

## **Energy Law (LAW 327/ENERGY 727)**

Fall 2016, 3 credit hours

MW 9:00-10:21 am

Law School Room 4045

### **Instructor:**

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**Office Hours:** Wednesday 10:30-11:30am, Rm. 4213, or by appointment.

### **Reading Materials:**

- JOEL EISEN, EMILY HAMMOND, JIM ROSSI, DAVID SPENCE, JACQUELINE WEAVER & HANNAH WISEMAN, ENERGY, ECONOMICS AND THE ENVIRONMENT (4<sup>th</sup> ed. 2015).
- Additional reading materials posted on Sakai as applicable or available online for download through the syllabus.
- NOTE: There may be modifications to the syllabus during the semester. If so, students will be notified in class and via email.

### **Course Description:**

This course provides an introduction to U.S. energy law through the examination of the legal framework governing electricity production and the extraction and use of energy sources. It is designed to provide an overview of key topics in energy law so that students develop a foundational understanding of energy law and policy. Part I of the course provides the overall context for energy regulation. Part II of the course reviews electricity production. It discusses the federal and state law relevant to the generation, transmission, and distribution of electricity with particular attention to utility markets. Part III of the course reviews the primary sources of energy in the US and examines the varied legal frameworks for the extraction and use of coal, oil and natural gas, nuclear, and renewable energy. The course concludes with an exploration of the future of energy law that draws from the rest of the course.

### **Grading and Class Participation:**

#### **1. Attendance, Preparation, and Participation:**

This class is highly dependent upon class participation in our discussion of issues associated with the domestic energy system. All students are expected to attend class and to come to class prepared to contribute knowledgeably to our discussion. Class participation will constitute 10% of your final grade and will be based on the quality of your classroom contributions, which reflects your preparation and participation, and your overall attendance record. I understand that medical necessity, family emergencies, or important scheduling conflicts (such as job interviews) may prevent you from attending class from time to time. Repeated failure to attend class may result in a lower class participation grade. As noted in the syllabus below, **Oct. 24 is a**

**mandatory attendance day.** We will have guests guiding us through a class exercise on electric utility decision making and will need a full class for the exercise to work.

## 2. Exam:

There will be a 3-hour open book and open note examination on **Dec. 14, 2016 at 8:30am**. The exam will constitute 90% of your grade. The exam may include concepts discussed in class that are not part of the readings. I will hold an optional session on exam taking and course review prior to the end of the semester.

## “Duke Community Standard”:

Duke University is a community dedicated to scholarship, leadership, and service and to the principles of honesty, fairness, respect, and accountability. Citizens of this community commit to reflect upon and uphold these principles in all academic and nonacademic endeavors, and to protect and promote a culture of integrity. **The Pledge:** Students affirm their commitment to uphold the values of the Duke University community by signing a pledge that states: **To uphold the Duke Community Standard:** I will not lie, cheat, or steal in my academic endeavors; I will conduct myself responsibly in all my endeavors; and I will act if the Standard is compromised.

## SYLLABUS

### Part I: Introduction to the U.S. Energy System

- 1      Aug. 29      **The U.S. Energy Mix, the Energy System and this Course**  
Reading Assignment:
- US EIA, *Annual Energy Outlook 2015*, Executive Summary, available at [http://www.eia.gov/forecasts/aeo/pdf/0383\(2015\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf) and on Sakai
  - Eisen, p. 1-8
  - **SKIM ONLY** for general trends, US EIA, *Drivers of U.S. Household Energy Consumption, 1980-2009*, available at [http://www.eia.gov/analysis/studies/buildings/households/pdf/drivers\\_hhec.pdf](http://www.eia.gov/analysis/studies/buildings/households/pdf/drivers_hhec.pdf)
  - Diana Hernandez, *Sacrifice Along the Energy Continuum: A Call for Energy Justice*, 8 *Env't Justice* 4 (2015). Read **ONLY** *Energy Insecurity and Everyday Sacrifices*, p. 152-153, available on Sakai.

**AUGUST 31, 2016 at 3:15-4:36: OPTIONAL REVIEW ON U.S. LEGAL SYSTEM AND ADMINISTRATIVE LAW, Room 3041**

- 2      Aug. 31      **Physical Aspects of the Energy System: Sources and the Structure of the Grid**  
Reading Assignment:
- Eisen, p. 66-70
  - DOE, *Quadrennial Energy Review*, Chapter 3, p. 3-3 through 3-18, available at <http://energy.gov/sites/prod/files/2015/08/f25/QER%20Chapter%20II%20Electricity%20April%202015.pdf> and on Sakai

## September 5—No Class LABOR DAY

- 3      Sept. 7      **Energy Regulation: State and Federal Roles**  
Reading Assignment:
- Eisen, p. 18-22, 77-87
  - Hari M. Osofsky & Hannah J. Wiseman, *Dynamic Energy Federalism*, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2138127](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2138127) and on Sakai. Read Part II ONLY, p 36-53.

### Part II: Electricity Law

NOTE: For a general primer on electricity law, see Lazar, J. (2016). *Electricity Regulation in the US: A Guide. Second Edition*. Posted in Sakai in the background reading folder.

- 4      Sept. 12      **Common Law Principles of Public Utility Regulation**  
Reading Assignment:
- Eisen, p. 37-59
- 5      Sept. 14      **State Electric Utility Regulation: Cost of Service Pt. 1**  
Reading Assignment:
- Eisen, p. 455-457, 460-470
- 6      Sept. 19      **State Electric Utility Regulation: Cost of Service Pt. 2**  
Reading Assignment:
- Eisen, p. 470-500
- 7      Sept. 21      **State Electric Utility Regulation: A Basic Rate Case**  
Guest Lecturer: Chris Ayers, Executive Director, North Carolina Utilities Commission Public Staff
- Reading Assignment: No reading assignment
- 8      Sept. 26      **Industry Structure, Federalism, and Ratemaking**  
Reading Assignment:
- OPTIONAL BACKGROUND: Lazar, J. (2016). *Electricity Regulation in the US: A Guide. Second Edition* pp 11-24 Industry Structure.
  - Eisen, p. 511-516
  - Excerpt from FERC v. Electric Power Supply Association, 577 U.S. \_\_\_ (2016), available on Sakai. Full case available here: [https://www.supremecourt.gov/opinions/15pdf/14-840\\_k537.pdf](https://www.supremecourt.gov/opinions/15pdf/14-840_k537.pdf)
  - Excerpt from Hughes v. Talen, 578 U.S. \_\_\_ (2016), available on Sakai. Full case available here: [https://www.supremecourt.gov/opinions/15pdf/14-614\\_k5fm.pdf](https://www.supremecourt.gov/opinions/15pdf/14-614_k5fm.pdf)
  - OPTIONAL:
    - Utility Dive Summary of FERC v EPSA, <http://www.utilitydive.com/news/updated-supreme-court-upholds-ferc-order-745-affirming-federal-role-in-de/412668/>

- Utility Dive Summary of Hughes v Talen, <http://www.utilitydive.com/news/updated-supreme-court-rules-in-fercs-favor-in-hughes-v-talen-power-case/417704/>

- 9      Sept. 28      **The Growth of Wholesale and Retail Competition**  
Reading Assignment:
- Eisen, p. 625-640
  - OPTIONAL: FERC, *Energy Primer: A Handbook of Energy Market Basics*, Chapter 3 Wholesale Electricity Markets, (2015), available on Sakai and at <http://www.ferc.gov/market-oversight/guide/energy-primer.pdf>
- 10      Oct. 3      **Competition in Transmission: FERC Orders, 888, 889, and 2000, Regional Transmission Organizations**  
Reading Assignment:
- Eisen, p. 640-653, 656-661
  - OPTIONAL: Watch the Regulatory Assistance Project webinar on RTO's: <http://www.raonline.org/event/the-abcs-of-rtos-webinar/>
- 11      Oct. 5      **Competition in Electricity Markets: Restructuring Retail Markets**  
Reading Assignment:
- Eisen, p. 699-718
  - OPTIONAL: Borenstein, S., Bushnell, JB. *The US Electricity Industry After 20 Years of Restructuring*. Annu. Rev. Econ. 7 2015. Available here: <https://ei.haas.berkeley.edu/research/papers/WP252.pdf>

**Oct. 10-Oct. 14—No Class FALL BREAK**

**Part III: Legal Framework Governing Extraction and Use of Energy Sources**

- 12      Oct. 17      **Coal Extraction: The Regulation of Underground and Surface Mining**  
 Guest Speaker: Steve Roady  
Reading Assignment:
- Eisen, p. 105-124
- 13      Oct. 19      **Fossil-Fueled Electricity Generation: NAAQS, New Source Review, CSAPR, MATS**  
Reading Assignment:
- Eisen, p. 258-276
  - Cong. Research Service, *Clean Air Issues in the 114<sup>th</sup> Congress: An Overview* (2016), available on Sakai. Read pp 6-9 *Emissions of other Pollutants from Power Plants ONLY*.
- 14      Oct. 24      **Class Exercise—Electric Utility Decision-Making**  
Reading Assignment: No reading assignment  
 NOTE: Attendance is **MANDATORY**

- 15      Oct. 26      **Fossil-Fueled Electricity Generation: GHG Regulation and Clean Power Plan**  
Reading Assignment: **May change based on oral argument**
- Petitioner’s Brief excerpt (Jan 2016), available on Sakai. Full brief also saved on Sakai for reference.
  - EPA’s Initial Brief excerpt (March 2016), available on Sakai. Full brief also saved on Sakai for reference.
  - OPTIONAL: Cong. Research Service, *EPA’s Clean Power Plan for Existing Power Plants: Frequently Asked Questions* (2016), available on Sakai.
- 16      Oct. 31      **Oil and Natural Gas Extraction: Rule of Capture and Prevention of Waste, Unitization and Pooling**  
Reading Assignment:
- Eisen, p. 163-174, 180-191
- 17      Nov. 2      **Oil and Natural Gas Extraction: Shale Revolution and Hydraulic Fracturing**  
Guest Speaker: TBD  
Reading Assignment:
- US EIA, Energy In Brief: Shale in the United States, *available at [http://www.eia.gov/energy\\_in\\_brief/article/shale\\_in\\_the\\_united\\_states.cfm](http://www.eia.gov/energy_in_brief/article/shale_in_the_united_states.cfm)*
  - Eisen, p. 191-201
- 18      Nov. 7      **Ocean Energy**  
Reading Assignment:
- Eisen, p. 201-210
  - Cong. Research Service, *Offshore Oil and Gas Development: Legal Framework* p. 1-13 (stop before Lease Cancellation), *available at <https://www.fas.org/sgp/crs/misc/RL33404.pdf>*
  - Excerpt from DOE, *Nat’l Offshore Wind Strategy Report* (2016). The excerpt and full report are available on Sakai.
- 19      Nov. 9      **Nuclear Energy: Federal and State Regulation**  
Reading Assignment:
- Eisen, p. 412-434
  - BNA, *Government Attempt to Save Nuclear Plants May Be Too Late*, June 6, 2016, available on Sakai.
- Nov. 11      **Tentative MAKE-UP CLASS date**
- 20      Nov. 11      **Renewable Energy: Renewable Energy Portfolio Standards, Feed-in Tariffs, and Federalism**  
Reading Assignment:
- Eisen, p. 751-767, 784-789
- 21      Nov. 14      **Renewable Energy: State and Local Land Use Issues, Transmission Siting and Cost Allocation**

Reading Assignment:

- Eisen, p. 789-815

22 Nov. 16

**Renewable Energy: Commerce Clause Challenges**

Reading Assignment:

- Eisen, p. 768-782

23 Nov. 21

**Environmental Disasters and Energy Policy: Coal Ash, Oil Spills, and Nuclear Waste**

Reading Assignment:

- Eisen, p. 230-243, 403-412, 334-343

**Nov. 23 NO CLASS—Thanksgiving Break**

**Part IV: Future of Energy Policy**

24 Nov. 28

**Bridging the Energy/ Environment Divide**

Reading Assignment:

- Lincoln L. Davies, *Alternative Energy and the Energy-Environment Disconnect*, 46 Idaho L. Rev. 473 (2010), available on Sakai.

25 Nov. 30

**Planning for a Different Grid and Electricity Business Models**

Reading Assignment:

- Eisen, *Integrated Resource Planning* p. 883-889
- OPTIONAL Additional Information: Rachel Wilson and Bruce Biewold, *Best Practices in Electric Utility Integrated Resource Planning: Examples of State Regulations and Recent Utility Plans* (2013).
- Krysti Shallenberger, *Evolution of REV: New York PSC Chair Audrey Zibelman Says 2016 is the Year of Execution* (July 15, 2016), available at <http://www.utilitydive.com/news/evolution-of-rev-new-york-psc-chair-audrey-zibelman-says-2016-is-the-year/422684/>
- Excerpt from the NY Public Service Commission Order Adopting Regulatory Policy Framework and Implementation Plan, available on Sakai. NOTE: Full order is also available on Sakai for your reference.

26 Dec. 5

**Energy Technology and Market Innovation and Exam Review**

Reading Assignment:

- Excerpt from the Nat's Academies of Sciences, Engineering, and Medicine, *The Power of Change: Innovation for Development and Deployment of Increasingly Clean Electric Power Technologies* (2016), available on Sakai. NOTE: the full document is also available on Sakai for your reference as you read the summary.