

Energy Law (LAW 327/ENERGY 727)
Fall 2020, 3 credit hours
MW 10:55-12:20

Instructor:

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Office Hours: By Zoom appointment only.

Reading Materials:

- JOEL EISEN, EMILY HAMMOND, JIM ROSSI, DAVID SPENCE, JACQUELINE WEAVER & HANNAH WISEMAN, ENERGY, ECONOMICS AND THE ENVIRONMENT (5th ed. 2020).
- 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 with a focus on federal and state law relevant to the generation, transmission, and distribution of electricity. 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 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. Participation and Current Events:

This class is highly dependent upon class participation. All students are expected to attend class and to come to class prepared to contribute knowledgeably to our discussion. Class participation will be based on the quality of your classroom contributions, which reflects your preparation and participation, and your overall attendance record. Because this is a remote class, your class participation grade will be based on class attendance, submitted discussion questions and weekly writings on current energy policy. I will take

attendance at every Zoom class. Students will be required to submit at least one discussion question based on the assigned reading by 9:00am before class. Students are responsible for submitting discussion questions for 15 classes out of the semester. In addition, students will be required to read current media coverage of energy policy issues. Suggested news clipping services include Utility Dive, E&E Energy News, US Energy News and Energy News Regional. Students must submit informal reflections on news items of interest once a week for a minimum of 10 weeks of the semester. Weekly reflections are due each Monday before noon. Class participation will constitute 15% of the final grade.

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 will result in a lower class participation grade.

2. Case Study Discussion Leader

There will be 5 case study projects during the semester. Every student will be responsible for preparing for the class discussion on case study days. In addition, each student will be a discussion leader for one case study during the semester. Discussion leader responsibilities will likely include conducting additional background research, generating questions for the class, and leading the class discussion. Each student will individually prepare a 2-3 page policy brief on the case study that incorporates their research and presents their policy analysis of the problem presented. More information will be provided the first week of class. The case study will constitute 15% of the final grade.

3. Exam:

There will be a 3-hour open book and open note examination on **December 2**. The exam will constitute 70% 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.

Notes on Remote Class Expectations:

We are all navigating our new education format as best we can. My goal for us is that we all contribute to a dynamic, curious, engaged, and courteous class and community. To that end, please keep your video on during class and raise your hand to speak. I will post the power point by 8:00am on class days. I will not share my screen for the power point in order to maximize the number of students that I can see on my screen. We will discuss expectations on the first day of class.

“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. 24** **The U.S. Energy Mix, the Energy System and this Course**
Reading Assignment:
 - US EIA, *Annual Energy Outlook 2020*, available at <https://www.eia.gov/outlooks/aeo/pdf/AEO2020%20Full%20Report.pdf> and on Sakai

- 2 **Aug. 26** **State and Federal Institutions and Roles**
Reading Assignment:
 - Eisen, p. 6-27, ~~90-95~~

- 3 **Aug. 31** **Energy Justice and Stakeholder Engagement**
Reading Assignment:
 - Jenkins, et al, *Energy Justice: A Conceptual Overview*, Energy Research and Social Science 11 (2016) 174-182, available on Sakai.
 - Elizabeth Baldwin, *Exploring How Institutional Arrangements Shape Stakeholder Influence on Policy Decisions: A Comparative Analysis in the Energy Sector*, 79 Public Administrative Review 246-255 (2019), available on Sakai.

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. 2** **CONTINUED Discussion from August 31**

- 5 **Sept. 7** **Common Law Principles of Public Utility Regulation**
Reading Assignment:
 - Eisen, p. 36-56

- 6 **Sept. 9** **State Electric Utility Regulation: Cost of Service Pt. 1**
Reading Assignment:
 - Eisen, p. 479-484, 489-500

- 7 Sept. 14 **State Electric Utility Regulation: Cost of Service Pt. 2**
Reading Assignment:
• Eisen, p. 501-530
- 8 Sept. 16 **CASE STUDY #1: State Electric Utility Regulation**
Reading Assignment: See Sakai for reading assignment
- 9 Sept. 21 **Federalism and the Growth of Wholesale Competition**
Reading Assignment:
• Eisen, p. 90-95, 543-553, 683-699, 752-754
- 10 Sept. 23 **Retail Competition: Restructuring and Consumer Choice**
Reading Assignment:
• Eisen, p. 769-791
• 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>
- 11 Sept. 28 **Transmission Coordination and Planning: RTOs and FERC**
Reading Assignment:
• Eisen, p. 699-724
• OPTIONAL: Watch the Regulatory Assistance Project webinar on RTO's: <http://www.raonline.org/event/the-abcs-of-rtos-webinar/>
- 12 Sept. 30 **Operation and Governance of Electric Power Markets**
Reading Assignment:
• Eisen, p. 765-768, 979-981, 983-985
• FERC v. Electric Power Supply Association, 577 U.S. ____ (2016), available on Sakai and here:
https://www.supremecourt.gov/opinions/15pdf/14-840_k537.pdf
- 13 Oct. 5 **Case Study #2:** In 2018, FERC approved Order 841, which is designed to open up the wholesale market to energy storage, including aggregators at the distribution level and behind-the-meter storage. This case study explores the federalism issues inherent in storage, including the extent to which state-regulated grids can be disrupted by FERC or RTO grid operation.

PART III: Regulation of Energy Production and Use

- 14 Oct. 7 **Renewable Energy: Renewable Energy Portfolio Standards, Feed-in Tariffs, and Federalism**

Reading Assignment:

- Eisen, p. 751-767, 784-789

15 Oct. 12 Renewable Energy: Commerce Clause and Preemption

Reading Assignment:

- Eisen, p. 768-782
- Hughes v. Talen Energy Mktg., LLC 136 S. Ct. 1288 (2016) (available on Sakai).

16 Oct. 14 Case Study #3: On December 19, 2019, FERC approved an order directing PJM to expand its Minimum Offer Price Rule (MOPR) to more state-subsidized capacity resources. This case study explores the ongoing conflict between state clean energy policies and FERC energy resource policy.

17 Oct. 19 Renewable Energy: State and Local Land Use Issues, Transmission Siting and Cost Allocation

Reading Assignment:

- Eisen, p. 789-815

18 Oct. 21 Nuclear Energy: New Nuclear Incentives, Existing Nuclear Markets and Federalism

Reading Assignment:

- Eisen, p. 412-434
- Media coverage of SC PSC decisions on VC Summer, *available at*, <https://www.thestate.com/news/politics-government/article224504705.html>
- National perspective on nuclear: <https://www.utilitydive.com/news/state-carbon-free-policies-increasingly-inclusive-of-nuclear-but-resource/557535/>
- FERC's Resilience Docket 162 FERC ¶ 61,012 (Jan. 8, 2018) (*available on Sakai*)

19 Oct. 26 Oil and Natural Gas Extraction: Rule of Capture and Prevention of Waste, Unitization and Pooling

Reading Assignment:

- Eisen, p. 163-174, 180-191

20 Oct. 28 Oil and Natural Gas Extraction: Shale Revolution and Hydraulic Fracturing

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
- Eisen, p. 151-163, 191-201

- 21 Nov. 2 **CASE STUDY #4: HVHF Social License to Operate**
Reading Assignment:
- Protect Public Welfare Oil and Gas Operations, SB19-181 (2019), *available at* https://leg.colorado.gov/sites/default/files/2019a_181_signed.pdf and on Sakai.
 - Ben Markus, All Systems Go for Colorado Oil and Gas Despite Crackdown Efforts, CPR (Oct. 2, 2019), *available at* <https://www.cpr.org/2019/10/02/all-systems-go-for-colorado-oil-and-gas-despite-crackdown-efforts/>
 - Review the public comments received on current SB181 rulemaking on the COGCC website: *available at* https://cogcc.state.co.us/sb19181.html#/public_comments

- 22 Nov. 4 **Natural Gas Regulation**
Reading Assignment:
- Eisen, p. 545-551, 566-588

ENERGY WEEK AT DUKE NOVEMBER 9-12
(<https://www.energyweekatduke.org/>)

- 23 Nov. 9 **Oil and Natural Gas Pipelines**
Reading Assignment:
- Eisen, p. 588-594, 606-621
 - Elizabeth Ouzts, Atlantic Coast Pipeline foes file their broadest legal challenge yet, Energy News Network, (August 17, 2018), *available at* <https://energynews.us/2018/08/17/southeast/atlantic-coast-pipeline-foes-file-their-broadest-legal-challenge-yet/> and on Sakai.
 - 161 FERC ¶ 61,0142 (Oct. 13, 2017), *available at* <https://www.ferc.gov/CalendarFiles/20171013192035-CP15-554-000.pdf> and on Sakai. Please review the entire order, but read the following paragraphs closely: ¶ 24-70.

24 Nov. 11 **Case Study #5:** The Atlantic Coast Pipeline was initiated in 2014 and cancelled in 2020. It was designed to transport natural gas from the Marcellus down the Atlantic Coast to Eastern North Carolina. This case study explores natural gas pipeline law and policy in support or opposition to new natural gas infrastructure, along with energy justice and stakeholder engagement challenges.

- 25 Nov. 16 **Ocean Energy**
Reading Assignment:
- Eisen, p. 201-222
 - OPTIONAL: Cong. Research Service, *Offshore Oil and Gas Development: Legal Framework*, *available at* <https://www.fas.org/sfp/crs/misc/RL33404.pdf>

Part IV: Future of Energy Policy

26 Nov. 18

Transition to a low- or zero-carbon energy sector

Reading Assignment:

- Exam review: Bring your questions!
- SB 489, Energy Transition Act (2019), available here <https://www.nmlegis.gov/Sessions/19%20Regular/bills/senate/SB0489.pdf> and on Sakai
- Herman Trabish, The unknown costs of a 100% carbon-free future, Utility Dive (September 3, 2019), available at <https://www.utilitydive.com/news/the-unknown-costs-of-a-100-carbon-free-future/561639/> and Sakai