

George Mason University
Schar School of Policy and Government
College of Science

POGO 750/EVPP 505 DL1: Energy Law
(Distance Learning)

3 Credit Hours
Spring Semester 2020

Lecture/Location: On-Line

INSTRUCTOR: Paul Bubbosh
OFFICE HOURS: Wednesdays, 9:00-10:30am (by appointment only)
OFFICE LOCATION: Fairfax Campus, David King Hall, Room 3026; Arlington Campus, Van Metre Hall, Room 656
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PHONE: 240-550-1244 (cell/text)
PREREQUISITE: None

COURSE DESCRIPTION:

This course provides an introduction to energy law and regulation in the United States. It addresses the federal and state administration of energy, energy decisionmaking, and covers all major energy sources (oil, gas, coal, nuclear hydropower, renewables, and energy efficiency) and the electricity sector. The intersection between energy and the environment is a major component of this course and will be discussed within each energy source.

COURSE OBJECTIVES

At the completion of this course, students should be able to:

1. Describe the fundamental legal rules and institutions in the field of energy law, to include generation, transmission, sale, and use of energy resources.
2. Define relevant legal tools, terms and concepts presented in class.
3. Summarize the outcome of major energy cases.
4. Analyze actual and hypothetical fact scenarios involving energy legal issues.
5. Evaluate strengths and weaknesses of energy laws, markets, and institutions.
6. Formulate potential legal and regulatory approaches to emerging energy problems.
7. Write concisely on legal topics for decision-makers.

COURSE MATERIAL

- Eisen, Hammond, Rossi, Spence, Weaver and Wiseman, *Energy, Economics and the Environment* (4th Ed. 2015) (this book and version is essential for this course)
- Supplementary Articles and Videos (available on Blackboard course page)

CLASSES

This course is delivered in an asynchronous online method. This means that we will conduct the course entirely on-line. On a weekly basis, you will be responsible for reading the assigned book sections, supplementary legal cases, and articles; watching the lecture (information in the lecture expands upon assigned reading material and will be included in testing); and engaging in on-line discussions. You will need to manage your time accordingly to ensure that you complete your work on schedule. I understand events will happen that cause you to miss assigned deadlines. If you plan on being away, you are welcome to submit your posts ahead of time. Since most, if not all, deadlines relate to discussion forum entries and comments, once a deadline passes the utility of the posting also passes. I will allow up to three (3) missed deadlines. After that, a penalty of 10 percent will be assessed for missed assignments. For example, the total score for the legal case discussion board is 125 points. The fourth missed deadline for this activity will result in 12.5 points reduced from your score, and every subsequent missed deadline will result in an additional 12.5 points reduced from your score.

I am available to answer questions from 9am to 5pm Monday to Friday. My goal is to ensure a response as soon as possible throughout the entire week, but not more than 24-hours later. On weekends, it may take me longer to respond.

On-line classes can be liberating and convenient because you conduct the work on your own time and location; however, on-line courses can also feel isolated or detached and result in low motivation and self-direction (I know this because I took an online legal course recently). To mitigate this potential, I begin each week with an announcement that reviews the past week and introduces the new week; I assign due dates to guard against procrastinating until the end of the week to complete assignments; and I will require working in groups to foster a sense of collaboration. I will also take the effort to submit detailed comments on your postings. I might also reach out to you with some personal feedback. But you must be diligent and disciplined about completing the work on a timely basis because late submittals in an on-line course format (e.g., discussion forum) detract from the learning experience of all involved. I highly encourage you to progress through the module earlier in the week and aim to submit your comments on discussion boards early. Please, please avoid submitting comments on discussion boards at the last moment. This prevents others from benefitting from your input and does not allow for genuine review and comment.

If at any time you just feel like chatting with me about the subject matter, akin to coming up to me after a face-to-face lecture to talk, please reach out and let's chat or schedule a time to meet in person.

TECHNOLOGY REQUIREMENTS

High-speed internet connection.

STUDENT EVALUATION/GRADES

Students will be evaluated based on four components: (1) legal case discussion board; (2) group activity discussion; (3) mid-term exam; and (4) final exam.

Activity	% Contribution to Total Grade
Legal Case Discussion Board	25%
Group Activity Discussion Board	25%
Mid-Term Exam	25%
Final Exam	25%
TOTAL	100%

1) Legal Case Discussion Board – 25% of grade (125 points max)

The Legal Case Discussion Board resembles an in-class discussion about assigned legal cases. For each week, you will be required to read and then answer questions about the case. Then, you will be required to comment on other student's posts. The original post and subsequent comments are evaluated per a grading rubric that is supplied for that assignment. Review the grading rubric to understand how I will grade your responses. Note, posting original responses and comments earlier in the week allows for a better discussion forum. Conversely, posting right up to the deadline largely defeats the purpose of a group discussion and will be reflected in my assessment.

2) Group Activity Discussion Board – 25% of grade (125 points max).

The Group Activity Discussion Board simulates an in-class group activity. Learning about energy law requires applying and analyzing legal doctrine to current and hypothetical scenarios. I will pose a series of questions about a current issue, legal case, hypothetical scenario, and/or article. You will be required to answer questions and respond to other

student's entries. These are post-first discussions. Your discussion posts will be evaluated per the grading rubric. Note, posting original responses and comments earlier in the week allow for a better discussion.

3) Mid-Term Exam – 25% (125 points max)

At the mid-point of the semester, you will take a mid-term exam. You have one week to complete the mid-term exam (Sunday to Sunday). The exam will be administered through Blackboard. The format of the mid-term will consist of multiple choice, true/false, and/or short-essay questions. The mid-term is an open-book, no-internet test.

4) Final Exam – 25% (125 points max)

The final exam will be administered through Blackboard. The final exam will be open during GMU final exam week. This means you have one week to complete the exam. The exam tests material from the mid-way point to the final class, meaning the final exam does not cover any material covered in the mid-term exam. The final exam will be an open book, no internet exam. You can use the assigned book, lectures, reading materials, and any other material provided to you during the course. The format of the final exam will consist of true/false, multiple choice, and/or short-essay questions.

OVERALL GRADING:

Letter Grade	Score
SC	270-300
C+	300-330
B-	330-360
B	360-390
B+	390-420
A-	420-450
A	450-500

ACADEMIC INTEGRITY

GMU has an Honor Code with clear guidelines regarding academic integrity, which covers cheating and attempted cheating, plagiarism, lying, and stealing. Plagiarism includes using third-party information on an exam without attribution to the source. The principle of academic integrity is taken very seriously, and violations are treated gravely.

GMU's honor code is available here:

<http://www.gmu.edu/academics/catalog/9798/honorcod.html>.

Let's keep this simple: do not cheat. You are here to learn and grow intellectually as a person. If you are having difficulty keeping up with the work or it is too challenging, come see me. Don't risk disciplinary action.

DISABILITY ACCOMMODATIONS

If you have a documented learning disability or other condition that may affect academic performance you should: (1) make sure this documentation is on file with Office of Disability Services, and (2) talk with me to discuss your accommodation needs at the beginning of the semester.

DIVERSITY/INCLUSIVITY

George Mason University promotes a living and learning environment for outstanding growth and productivity among its students, faculty and staff. Through its curriculum, programs, policies, procedures, services and resources, Mason strives to maintain a quality environment for work, study and personal growth.

An emphasis upon diversity and inclusion throughout the campus community is essential to achieve these goals. Diversity is broadly defined to include such characteristics as, but not limited to, race, ethnicity, gender, religion, age, disability, and sexual orientation. Diversity also entails different viewpoints, philosophies, political views, and perspectives. Attention to these aspects of diversity will help promote a culture of inclusion and belonging, and an environment where diverse opinions, backgrounds and practices have the opportunity to be voiced, heard and respected.

STUDENT PRIVACY

Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal law that governs the educational records of eligible students. It grants students continuous access to their

educational records upon request, allows students to amend their records if they feel they're inaccurate, and restricts how and when their educational records can be disclosed.

When a student turns 18, or attends a postsecondary institution, FERPA rights belong to the student, not the parent. In general, Mason does not disclose non-directory information to third parties unless the student has provided consent, the release is to the parent of a dependent student, as required by § 23.1-1303.B.5 of the Code of Virginia, or the disclosure meets a qualified exception under FERPA. To find out more about FERPA see <https://registrar.gmu.edu/ferpa/>.

OTHER USEFUL CAMPUS RESOURCES

WRITING CENTER: Robinson Hall B213; 703-993-1200; <http://writingcenter.gmu.edu>

UNIVERSITY LIBRARIES: "Ask a Librarian" <http://library.gmu.edu/mudge/IM/IMRef.html>

COUNSELING AND PSYCHOLOGICAL SERVICES (CAPS): 703-993-2380; <http://caps.gmu.edu>

LEARNING SERVICES: 703-993-2999; <http://caps.gmu.edu/learningservices/>; offers many good study skills workshops!

ACADEMIC COUNSELING PROGRAM: 703-993-2380;
<http://caps.gmu.edu/learningservices/academiccounseling.php>

UNIVERSITY POLICIES: The University Catalog, <http://catalog.gmu.edu>, is the central resource for university policies affecting student, faculty, and staff conduct in university academic affairs. Other policies are available at <http://universitypolicy.gmu.edu/>. All members of the university community are responsible for knowing and following established policies.

CLASS SYLLABUS

Week One (Jan 19 - 26)

Energy Overview, Public Utilities, & Electric Power I

Reading: Chapter 1 & 2

- Ch. 1: Themes in Energy Law (sections A & B) (pgs. 1—24) (23 pages)
- Ch. 2: Why Treat Electric Power as a “Public Utility”? (pgs. 37-59) (22 pages)
- Ch. 2: An Overview of the Electric Power Industry (pgs. 66 – 76) (10 pages)

Week Two (Jan 26 – Feb 2)

Electric Power II: Regulation & Rate Regulation Principles

Reading: “FERC & Climate Change,” Glick, R Christiansen, M, *Energy Bar Association* (May, 2019) (Blackboard) (pgs. 1-33) (32 pages)

Reading: Chapters 2 & 8

- Ch. 2: The Rise of Electric Power Regulation (pgs. 77 – 87) (10 pages)
- Ch. 8: The Ratemaking Equation (pgs. 455 – 57) (2 pages)
- Ch. 8: Cost-of-Service Regulation Principles (pgs. 467 – 469; 477- 492) (15 pages)

Case Study: Virginia & Dominion Power

Week Three (Feb 2 - 9)

Coal

Reading: *Eastern Enterprises v. Apfel* (1998) (Blackboard) (8 pages)

Reading: Chapter 3 (pgs. 89-130) (41 pages)

Case Study: Coal Resilience

Week Four (Feb 9 - 16)

Oil & Natural Gas I

Reading: Chapter 4 (pgs. 131-191) (60 pages)

Case Study: Hydraulic Fracturing

Week Five (Feb 16 - 23)

Oil & Natural Gas II

Reading: *Village of False Pass v. Clark* (1984) (Blackboard) (8 pages)

Reading: Chapter 4 (pgs. 201-222; 230-256) (47 pages)

Case Study: Offshore Oil Spills

Week Six (Feb. 23-March 1)

Externalities of Fossil Fuels I

Reading: *Wisconsin Electric Power Co. v. Reilly* (1990) (Blackboard) (9 pages)

Reading: Chapter 4 (pgs. 191-201) (10 pages)

Reading: Chapter 5 (pgs. 257-283) (26 pages)

Week Seven (March 1 - 8)

MID-TERM EXAM

Mid-Year Evaluation Survey

March 9 – 15: SPRING RECESS

Week Eight (March 15 - 22)

Externalities of Fossil Fuels II

Reading: *Michigan v. EPA* (2015) (Blackboard) (6 pages)

Reading: *Utility Air Regulatory Group v. EPA* (2014) (Blackboard) (3 pages)

Reading: Chapter 5 (pgs. 283-320) (37 pages)

Case Study: Resiliency of Clean Power Plan

Week Nine (March 22 - 29)

Nuclear Energy

Reading: Vincent Manapat, "Seeking an Informed Decision: Early Site Permits and Energy Alternatives in *Environmental Law and Policy Center v. NRC*" (19 Vill. Envtl. L.J. 335) (2008) (Read section V only) (5 pages)

Reading: *Baltimore Gas & Electric v. NRDC* (1983) (5 pages)

Reading: *NEI v. EPA* (2004) (3 pages)

Reading: Chapter 7 (pgs. 395-402; 412-419; 435-455) (34 pages)

Case Study: Long-term dangers of nuclear energy waste

Week Ten (March 29 – April 5)

Renewables 1 (Hydroelectric Power)

Reading: *National Wildlife Federation v FERC* (1990) (5 pages)

Reading: Mark Widerschein, "Flowing Water, Flowing Costs: Assessing FERC's Authority to Decommission Dams," *Environmental Law Reporter* (Oct. 2019) (13 pages)

Reading: Chapter 6 (48 pages)

Case Study: Decommissioning Dams

Week Eleven (April 5 – April 12)

Renewables 2

Reading: Chapter 12

Reading: Robert J Michaels, *A National Renewable Portfolio Standard: Politically Correct, Economically Suspect*, 21 *The Electricity Journal* 9 (2008); David Fridley, *Nine Challenges of Alternative Energy*, in Richard Heinberg & Daniel Lerch, eds., *The Post Carbon Reader* (University of California Press, 2010)

Case Study: Renewable Portfolio Standards

Week Twelve (April 12 - 19)

Conservation, Efficiency, & Smart Grid

Reading: *The Future of the Electric Grid* (MIT) (Blackboard) (Appendix A & B); McKinsey Global Energy and Materials, *Unlocking Energy Efficiency in the U.S. Economy* (July 2009), Executive Summary; Amanda R. Carrico et al., *Energy and Climate Change: Key Lessons for Implementing the Behavioral Wedge*, 2 *Journal of Energy & Environmental Law* 61 (2011)

Reading: Chapter 13

Case Study: Smart Meters & Privacy

Week Thirteen (April 19 - 26)

Pipelines

Reading: Paul W. Parfomak et al., *Keystone XL Pipeline Project: Key Issues*, Congressional Research Service (2012)

Reading: Chapter 9

Case Study: Keystone XL

Week Fourteen (April 26 – May 3)

Transportation

Reading: Chapter 15

Case Study: Self Driving Vehicles

FINAL EXAM – May 6 - 13

