George Mason University
Schar School of Policy and Government

Special Topics 750: Energy Law & Regulations
(Distance Learning)
3 Credit Hours
Spring Semester 2020

Lecture/Location: On-Line

INSTRUCTOR: Paul Bubbosh
OFFICE HOURS: By appointment
EMAIL: pbubbosh@gmu.edu
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 structure of laws and regulations related to the 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 success of current energy laws.
6. Formulate potential legal and regulatory approaches to emerging energy problems.
7. Write concisely on legal topics for decision-makers.
COURSE MATERIAL

- Environmental Legal Cases (available on Blackboard course page)
- Environmental Statutes and Regulations (available on Blackboard course page)
- Supplementary Articles and Videos (available on Blackboard course page)

The Blackboard course page contains all the legal cases you will be asked to read in this class. These cases have been edited to focus only on the relevant sections, so they are much shorter than the actual opinion. In addition, I have removed citations and footnotes to reduce length and improve clarity. If you are interested in reading the entire case, I would recommend finding the case in Google Scholar.

CLASSES

This course is delivered in an asynchronous online method. This means that we will conduct the course on-line. On a weekly basis, you will be responsible for reading the assigned book sections, cases, and articles; watching the lecture; engaging in on-line discussions; and taking quizzes. You will need to manage your time accordingly to ensure that you complete your work on schedule.

I am available to answer questions from 9am to 6pm 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 cause low motivation and self-direction. To mitigate this potential, I assign mid-week due dates, videos, working groups, and I provide constant feedback throughout the week. You will need to be diligent about checking-in on a daily basis to the Blackboard course page, reading and responding to e-mail messages and completing the work by the due dates and working with your group. 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.

TECHNOLOGY REQUIREMENTS

You need to download and use Kaltura CaptureSpace Desktop Recorder (available from GMU). Beyond that, you do not need any specific technology other than an internet connection. All the material you will need is uploaded into the course page or in the assigned book. There will be videos uploaded for you to watch, and some of these videos will be large files, so a high-speed, broadband connection is helpful.
STUDENT EVALUATION/GRADERS

Students will be evaluated based on four components: (1) case briefs; (2) discussion board participation, (3) weekly quizzes, and (4) final exam. There is no mid-term exam.

<table>
<thead>
<tr>
<th>Activity</th>
<th>% Contribution to Total Grade</th>
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<tbody>
<tr>
<td>Case Briefs</td>
<td>10%</td>
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<td>Discussion Boards</td>
<td>30%</td>
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<td>Quizzes</td>
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<td>Final Exam</td>
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<td>TOTAL</td>
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1) Case Briefs – 10% of grade (50 points)

Student case briefs consists of you recording and uploading to the course page an outline and explanation of a legal case. You will follow a provided briefing format, use PowerPoint (or similar software) to write your brief, and use Kaltura CaptureSpace Desktop Recorder to record and upload your brief. The objective of the case brief is twofold: first, it teaches you how to understand legal decisions which will assist you in any future interaction with the law; secondly, it achieves one of the highest orders of learning—teaching others about the material. You are much more likely to retain information longer when briefing your classmates about the case compared to reading the case and listening to a lecture. Depending on the number of students and the number of cases each week, you may be assigned to brief a case every other week. When assigned a case brief, the videos are due on Wednesday of the week assigned (uploaded to the course page by 5pm). This provides the class an opportunity to review your brief and engage in discussion questions for the remainder of the week. A sample format of how to brief the case is attached at the end of this syllabus. I will also demonstrate how to brief a case during our first class and provide a sample of a past student’s video briefing of a case. Student case briefings will be evaluated for conciseness, clarity, and insights. Completing this task can be time consuming for your first few video briefs, but should become easier as the semester progresses.

2) Discussion Boards – 30% of grade (150 points).

The discussion board simulates in-class group discussion and group activities. Learning about environmental law requires applying and analyzing legal doctrine to new and changing factual scenarios. Engaging in this “gray area” is key to understanding the law. I will pose a series of questions about a legal case, hypothetical scenario, and/or article. You will be required to answer one or more questions, and possibly respond to other student’s
entries. In most cases, these are post-first discussions. Your discussion posts will be evaluated in three areas: demonstrating an understanding of legal concepts; original and creative analysis; and quality and persuasiveness of writing. This effort requires careful thought and deliberation, so take your time on this task.

3) **On-Line Quiz after Class – 30% (150 points)**

After each of the first ten classes, you will be required to take an after-class quiz via Blackboard. This is an open-book, no-internet quiz that tests the material from that week’s class. Each quiz consists of ten questions in true/false or multiple-choice format. You must submit your responses prior to the start of the next class on the following Sunday. Take your time on the quizzes. Feedback on correct and incorrect answers are automatically provided for most questions.

4) **Final Exam – 30% (150 points)**

The final exam will be sent to you via e-mail at the beginning of exam week (the final exam is not linked with Blackboard’s testing system). You have the entire exam period (usually 7 days) to complete the exam. It will be an open book, open note exam (you may use any of the course material). Do not use the internet. The format of the final exam will focus primarily on hypothetical scenarios where you must apply the law to a fact situation (short essay format). The final exam is not intended to test your speed test-taking skills, but rather to evaluate how you think and analyze when armed with the law and given a hypothetical fact scenario.

**Note on Late Submissions:** If you anticipate submitting any required material late or if you need additional time, please contact me as soon as you possible before the deadline to make appropriate arrangements. If you fail to contact me prior to the deadline, this may affect your grade negatively.

**OVERALL GRADING:**

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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

Class One (Jan 19 - 26)

Legal Fundamentals; Energy Overview; Public Utilities & Electric Power Industry
Reading: Annual Energy Outlook (EIA, 2019) (Blackboard); Key Facts about the Electric Power Industry (EEI, 2007) (Blackboard)
Reading: Chapter 1 & 2
- Historical Development of the Electric Utility (29 – 59)
- An Overview of the Industry (66 – 76)
- The Rise of Electric Power Regulation (77 – 87)

Class Two (Jan 26 – Feb 2)

Rate Regulation Principles
Reading: The Future of the Electric Grid (MIT, 2011 (Blackboard) (pp. 175-194, 235-240); Electricity Regulation in the U.S.: A Guide (RAP, 2011) (Blackboard) (pp 9-57)
Reading: Chapter 8
- The Ratemaking Equation (455 – 57)
- Cost-of-Service Principles (464 – top 477; 482 – 87; bottom 489 – 500)
- Ratemaking Case Study (TBA; materials will be posted on BB)

Class Three (Feb 2 - 9)

Coal
Reading: The Future of Coal (MIT, 2007)
Reading: Chapter 3

Class Four (Feb 9 - 16)

Oil
Reading: Chapter 4

Class Five (Feb 16 - 23)

Natural Gas
Reading: The Future of Natural Gas (MIT, 2011) (Blackboard)
Reading: Chapter 4

Class Six (March 1 - 8)

Hydroelectric
Reading: Chapter 6
Mid-Year Evaluation Survey
March 9 – 15: SPRING RECESS

Class Seven (March 15 - 22)

**Nuclear**
Reading: Chapter 7

Class Eight (March 22 - 29)

**Renewables: Background**
Reading: Chapter 11

Reading:
- NAS, Electricity from Renewable Resources: Status, Prospects, & Impediments (2009) (Executive Summary);
- Hugh Sharman, Why Wind Power Works for Denmark, 158 Civil Engineering 66 (2005);
- Dan Kammen, The Rise of Renewable Energy, 295 Scientific American 84 (2006);
- IPCC, Special Report on Renewable Energy Sources & Climate Change Mitigation (2011)

Class Nine (March 29 – April 5)

**Renewables: Barriers to State Programs; Feed-In-Tariffs; Federal RPS**

Reading: Chapter 12

Reading:
- Robert J Michaels, A National Renewable Portfolio Standard: Politically Correct, Economically Suspect, 21 The Electricity Journal 9 (2008);

Class Ten (April 5 – April 12)

**Conservation, Efficiency, & Smart Grid**

Reading: The Future of the Electric Grid (MIT) (Blackboard) (Appendix A & B);

Reading: Chapter 13

Class Eleven (April 12 - 19)

**Pipelines**


Reading: Chapter 9

Class Twelve (April 19 - 26)

**Transportation**

Reading: Chapter 15
Class Thirteen (April 26 – May 3)

*International Energy Markets*

Reading: Chapter 14

FINAL EXAM – May 6 - 13
APPENDIX: HOW TO BRIEF A CASE

Writing a case brief is the best way to prepare for discussing a legal case in the classroom. The case brief organizes key information in a format that allows for easy recall when called upon. There are different formats for briefing a case, but at a minimum a case brief should contain four components: Facts, Issue, Rule, and Analysis. Each will be described below, and a partial example provided for in the case of *Lujan v. Defenders of Wildlife* (1986).

1. **What are the relevant facts?** Describe the most relevant facts as they pertain to the rule identified above. The facts are best displayed in bullet format.
   - **Facts:**
     - In 1978, the Fish and Wildlife Service (FWS) required, via regulation, that the obligations imposed by the Endangered Species Act section 7(a)(2) (consultations) extend to actions taken in foreign nations.
     - In 1983, the FWS changed the regulation to limit consultations to actions within the United States only.
     - Joyce Kelly, a member of Defenders of Wildlife, traveled to Egypt in 1986 to view the Nile crocodile. Another member, Amy Skilbred, travelled to Sri Lanka to view the Asian elephant and the leopard.
     - Neither Ms. Kelly nor Ms. Skilbred saw the endangered animals that they had traveled to those foreign nations to see, instead, each only observed the representative habitats of these endangered species.
     - Both Kelley and Skilbred stated that they hoped to return to those countries at some point in the future, but neither had any concrete plans to return.

2. **What is the legal issue?** Court opinions may include more than one legal issue. Focus on the legal question and not necessary the factual dispute. Look for what the court is asked to decide. For example, in *Lujan v. Defenders of Wildlife* the two parties are in court to settle a dispute over protecting endangered species, but the legal question has to do with a preliminary issue—standing to sue.
   - **Issue:** Do member of the Defenders of Wildlife organization have legal standing to sue the Department of Interior over an issue about implementing the Endangered Species Act?

3. **What is the rule?** Determine the rule of law the court uses to decide the case. This is one of the most important parts, because you will apply the rule to the facts in the analysis section below to determine the outcome. In some cases, the court introduces new interpretations that differ from past decisions. In such cases, the court is setting precedent (new case law) on the issue. Such actions are reserved for the U.S. Supreme Court.
   - **Rule:** In order to show standing, a plaintiff needs to demonstrate: (1) Injury in fact – a
plaintiff’s injury must be (a) actual or imminent, not conjectural or hypothetical, and (b) concrete and particularized; (2) Causation – the causal connection between injury and conduct complained of must be fairly traceable to the defendant and not the result of independent action of third party not before court; and (3) Redressability – the injury must be likely to be redressed by a favorable decision of the court, as opposed to merely speculative.

4. **Analysis.** This is the most important part of the brief. The court weighs the relevant facts in light of the rule and makes its decision. How courts apply the rule to the facts and analyze the case must be understood in order to properly predict outcomes in future cases involving a similar issue. Begin with the court’s decision, and then explain why they came to that conclusion.

- **Analysis:** The Department of Interior prevails. The majority did not find that the two members would be directly affected by the Department’s actions, and therefore had not suffered an injury in fact. The majority finds that the lack of concrete plans to return to the locations of the endangered species—the “some day” intentions—did not support a finding of actual or imminent harm.

  The Court then goes through its analysis of the two remaining rules (causation and redressability).

**Dissents:** If a concurring and/or dissenting opinions are included in the case (and included in the excerpt provided to you), you should explain their rationale for coming to a different conclusion.