

Energy Regulation

**L8452
Columbia Law School
Fall 2017**

Prof. Michael B. Gerrard

Class hours: Tuesday, 4:20 pm - 6:10 pm
Jerome Greene Hall Room 101

Two credit hours

Instructor's office: JGH 525

Office hours: Tuesday and Thursday, 10:45 a.m. - 12:00 p.m. or by appointment
Contact michael.gerrard@law.columbia.edu for appointment

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This course concerns the regulation of energy, energy resources, and energy facilities. Among the topics will be the regulation of rates and services; the roles of the Federal Energy Regulatory Commission and the state public utility commissions; and the interaction with environmental law. Attention will be devoted to energy resources (such as oil and natural gas) and to generating, transmission and distribution facilities. The current and future roles of renewable energy, energy efficiency, and nuclear energy will receive special attention, as will the regulation and deregulation of electricity. Though there is some discussion of international issues, the focus is on U.S. law and policy.

Course grades will be based on a final exam, but they may be adjusted up or down a notch to reflect the quality of class participation. The final exam will be open book and will consist of a series of essay questions, most of which will require applying the law covered in the course to specified factual situations.

Additional materials or problem exercises may be assigned during the course of the semester, primarily as a result of recent developments. In that event, they will be posted on Courseworks.

Columbia University is dedicated to facilitating equal access for students with disabilities and to cultivating a campus culture that is sensitive and responsive to the needs of students. To request an accommodation for a disability during the course, students are welcome to reach out to the Office of Disability Services, to the Academic Counselors in Student Services, or to the instructor. (In general, students may decide whether or not to inform their professors of any accommodations, as they prefer. But note that individual exam arrangements are generally not discussed with the professor.)

Readings

Joseph P. Tomain and Richard D. Cudahy, *Energy Law* (Thomson/West Nutshell Series, 3rd ed., 2017). Readings from this text are designated as “Tomain”.

Michael B. Gerrard, ed., *The Law of Clean Energy: Efficiency and Renewables* (American Bar Association 2011). Readings from this text are designated as “Gerrard”.

There are additional readings for many sessions; they are all posted on Courseworks.

Class Topics and Readings

Class 1 -- September 5, 2017

Basic energy facts

Gerrard, Chapter 1

Tomain, pp. 51-107

Barack Obama, “The irreversible momentum of clean energy,” 355 *Science* 126 (January 13, 2017).

Class 2 -- September 12, 2017

Basics of utility regulation

Franklin D. Roosevelt, “A Campaign Address on Public Utilities and Development of Hydro-Electric Power,” Portland, Oregon, September 21, 1932

Tomain, pp. 9-50

Massachusetts Institute of Technology, *The Future of the Electric Grid*, pp. 175-194, 235-240 (2011)

Class 3 -- September 19, 2017

Rate regulation procedures

Tomain, pp. 165-206

Regulatory Assistance Project, *Electricity Regulation in the U.S.: A Guide 2d, ed*), pp. 3-57 (2016)

In-class ratemaking exercise; additional readings to be posted on Courseworks

Guest speaker: Eleanor Stein, Former Administrative Law Judge, New York Public Service Commission

Class 4 -- September 26, 2017
Federal/state jurisdiction

Tomain, pp. 142-164

(Note: Students who have not taken, and are not now taking, Administrative Law should also read Tomain, pp. 109-142)

Gerrard, Chapter 22

Connecticut Department of Public Utility Control v. Federal Energy Regulatory Commission, 569 F.3d 477 (D.C. Cir. 2009) (excerpts)

South Carolina Public Service Authority v. Federal Energy Regulatory Commission, 762 F.3d 41 (D.C. Cir. Aug. 15, 2014) (excerpts)

Class 5 -- October 3, 2017
Electricity Capacity Markets and Demand Response

Federal Energy Regulatory Commission v. Electric Power Supply Assn., 136 S.Ct. 760 (Jan. 28, 2016) (excerpts)

Hughes v. Talen Energy Marketing, LLC, 136 S.Ct. 1288 (April 19, 2016) (excerpts)

Class 6 -- October 10, 2017
Electricity Regulation and the Smart Grid

Tomain, pp. 384-419, 431-443

Peter Fox-Penner, *Smart Power: Climate Change, the Smart Grid, and the Future of Electric Utilities* (2010), chapters 3, 5, 8

Gerrard, chapter 9

Guest Speaker: Suedeem Kelly (former Commissioner, Federal Energy Regulatory Commission)

Class 7 -- October 17, 2017

Energy efficiency

Gerrard, chapters 2 and 3

Tom Tietenberg, "Reflections -- Energy Efficiency Policy: Pipe Dream or Pipeline to the Future?" 4 Rev. Environ. Econ. Pol'y 304 (2009)

Audrey B. Chang, Arthur H. Rosenfeld & Patrick K. McAuliffe, "Energy Efficiency," in *Climate Change Science and Policy* (Stephen H. Schneider et al., eds., 2009), pp. 433-445

Zero Zone, Inc. v. U.S. Department of Energy. 832 F.3d 654 (7th Cir., 2016) (excerpts)

Class 8 -- October 24, 2017

Natural Gas

Tomain, pp. 273-316

Chapter 2, "Wholesale Natural Gas Markets," in *Energy Primer: A Handbook of Energy Market Basics* (Federal Energy Regulatory Commission, July 2012), pp. 5-35

Phillips Petroleum Co. v. State of Wisconsin, 347 U.S. 672 (1954)

Onoek, Inc. v. Learjet, Inc, 135 S.Ct. 1591 (2015) (excerpts)

Class 9 October 31, 2017

New sources of natural gas: Shale formations

Jody Freeman, "The Wise Way to Regulate Gas Drilling," *N.Y. Times*, July 5, 2012

International Energy Agency, *Golden Rules for a Golden Age of Gas*, pp. 9-14 (2012)

David B. Spence, "Responsible Shale Gas Production: Moral Outrage vs. Cool Analysis," 25 *Fordham Env. L. Rev.* 141 (2013)

New York State Department of Environmental Conservation, Final Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program: Findings Statement (June 2015) (excerpts)

Class 10 -- November 7, 2017

Oil

Tomain, pp. 221-271

D. Koplow, Subsidies to Energy Industries, *Earth Track* (2015)

Class 11 -- November 14, 2017

Nuclear power

Tomain, pp. 445-493

Massachusetts Institute of Technology, *The Future of Nuclear Power* (2003), Executive Summary (pp. ix-x) and Chapter 1 (pp. 1-16)

Massachusetts Institute of Technology, *The Future of the Nuclear Fuel Cycle* (2010) (Executive Summary)

Class 12 -- November 21, 2017

Renewables

David Fridley, "Nine Challenges of Alternative Energy," in Richard Heinberg & Daniel Lerch, eds., *The Post Carbon Reader* (University of California Press, 2010)

Geoffrey Heal, "Reflections: The Economics of Renewable Energy in the United States," 4 *Rev. Environ. Econ. Pol'y* 139 (2010)

Uma Outka, "Environmental Law and Fossil Fuels: Barriers to Renewable Energy," 65 *Vanderbilt L. Rev.* 1679 (2012) (excerpts)

Class 13 -- November 28, 2017

Promoting Renewables: Renewable portfolio standards, feed-in tariffs, carbon tax, stranded costs

Gerrard, chapter 4

Karlynn Cory et al., "Feed-in Tariff Policy: Design, Implementation, and RPS Policy Interactions," National Renewable Energy Laboratory, March 2009

Energy and Environment Legal Institute v. Epel, 793 F.3d 1169 (10th Cir. 2015) (excerpts)

State of North Dakota v. Heydinger, 825 F. 3d 912 (8th Cir., 2016) (excerpts)

Class 14 -- December 5, 2017

Review Session

Steven Weissman and Romany Webb, *Addressing Climate Change Without Legislation: Vol. 2: FERC -- How the Federal Energy Regulatory Commission can use its existing legal authority to reduce greenhouse gas emissions and increase energy use* (Berkeley Energy & Climate Institute and Berkeley Law Center for Law, Energy & the Environment, July 2014)