Introduction to Energy Law

Law 270.4

UC Berkeley School of Law / Spring 2016

M. Grady Mathai-Jackson / energyprofmj@gmail.com / 925-891-5821

COURSE DESCRIPTION

Berkeley Law offers a sequence of courses related to energy law, regulation, and policy. These subjects are often unavailable to first-year JD students. This one-unit course offers an introductory exposure to energy law and policy and is available to law students and other graduate students at all levels.

The primary objectives of the class include:

(1) providing a high-level survey of laws and policies related to the generation, transmission, sale, and use of energy resources, with a particular focus on electricity and federal/state jurisdictional boundaries;

(2) introducing students to a variety of potential career paths in the field of energy law;

(3) focusing on current and “hot” topics in the field of energy policy;

(4) developing the ability to write concisely on legal topics for decision-makers outside of a traditional litigation or law firm environment;

(5) developing an appreciation for the interconnections between energy law and other areas of legal practice.

Required readings for each 110-minute class session will be limited to 40 pages. Attendance and participation in class are critical. As described more fully below, students will also be expected to submit two very short writing assignments.

Although the goal of the course is to survey the field broadly, many topics that might be included in a longer energy law course, and that are certainly relevant to the field of energy law, will not be specifically covered. These include: mineral rights, extraction, and production; issues specific to leasing and energy development on public lands; environmental laws related to energy extraction and generation (other than climate change); siting of transmission infrastructure; contracts and transactional law; regulation of energy commodity and derivative trading; antitrust law; administrative law; international law related to energy; and business organizational law.

Berkeley Law students who wish to continue pursuing a career in energy law and policy after this course have the option of enrolling in a wide variety of more detailed and specific courses, including courses covering energy-related the topics not covered here.

SCHEDULE AND LOCATION OF CLASSES

We will meet on Tuesdays from 6:25-8:15 in Room 170 of the Law School. The class will meet for 7 sessions, each including two 50-minute blocks separated by a 10-minute break. The first class will meet on January 12, 2016, and the last class will meet on February 23, 2016.
If it is necessary to cancel a class for any reason, I will give you as much notice of the cancellation as possible via email and will schedule a make-up class. The make-up class will be recorded and made available online. If you wish to record a class for other reasons, please seek my prior approval.

**OFFICE HOURS, GUEST SPEAKERS, AND CLASS WEBSITE**

I will hold office hours in the law school cafe (Café Zeb – non-café side) from 5:15 to 6:15 on each Tuesday that our class meets.

I anticipate inviting several guest speakers to join our class during the semester. These speakers will provide the perspective of an attorney who has actively practiced in the area we are studying at the time. I will also encourage our guest speakers to share with you their own paths to a career in energy law.

We will have a bCourses website, where I will post supplemental materials, guest speaker biographies, or exemplary student memoranda. I will alert you in class or via email if I have posted material on the class website. Please set your bCourses Notification Preferences for Announcements to “Notify me Right Away” so you will promptly receive my announcements.

**READINGS**

**Required Readings**

The syllabus below details the required reading associated with each topic and class meeting date. Required readings are drawn from a variety of resources, including an energy law treatise, journal articles, judicial opinions, policy papers, and factual presentations. You will need access to Joseph P. Tomain and Richard D. Cudahy, *Energy Law in a Nutshell* (2nd Ed. 2011). Although the remaining required readings are available online or through Law Library resources, I will post each of them on the class bCourses website for ease of reference.

If you have any problems or difficulties accessing the materials please do not hesitate to let me know.

**Recommended Reading**

For more in-depth exploration of the topics we cover, you may wish to consult a leading casebook in the field:


**GRADING AND EVALUATIONS**

This is a credit/no credit course. To receive credit, you are expected to attend class, complete the required readings each day, contribute to the classroom discussion, and submit briefing papers meeting the standard described below. There will be no final exam.
Class Participation

20% of your evaluation will be based upon attendance, and 30% of your evaluation will be based upon verbal participation.

In order to track attendance, we will fill out a seating chart in the first class, and I ask that you occupy the same seat throughout the course. Unexcused absences will count against your attendance credit.

Although I expect the class to be large, I intend to give many opportunities for students to participate. I will ask for volunteers to participate in discussions and also call upon students (focusing on those students later in the semester who have not yet participated). To track participation, I will provide a form to students who are prepared and contribute substantively to the discussion during class. Please enter your name on the form, briefly note the topic discussed, and return to me at the end of the class so that I can give you credit. If you are unprepared to discuss required reading when I call upon you, I will not provide you a tracking form and cannot guarantee that I will have the opportunity to call on you again. You can seek participation credit in that case by visiting my office hours.

While you are welcome to use your computer or other device in class, please note that I will consider you unprepared if you are distracted due to use of these devices when I call upon you.

If you feel that you cannot participate in class despite regular attendance, please talk to me during office hours or contact me by phone or email.

Questions are welcome at any time in class, although I may defer discussion on a question if we are short on time or if your question is tangential to the focus of the class that day.

Briefing Papers

50% of your evaluation will be based upon two briefing papers that you submit on the dates assigned by last name in the syllabus below.

The purpose of these writing exercises is to: (1) present a topic in a clear and concise way, focusing on the most relevant elements; (2) practice conveying key messages and ideas to decision-makers in the most effective and efficient manner; and (3) spot legal and policy issues that may require further examination. To emphasize conciseness, each briefing paper must be no more than one single-sided page (font no smaller than 11 point, and margins no less than 1 inch). Your goal is efficiency: convey more with less.

Your briefing paper will be evaluated on both substance and presentation. With regard to substance, my evaluation will track each of the following requirements:

(1) The extent to which the briefing paper appropriately addresses the audience and purpose. The assignment for each class will include a hypothetical scenario (see the syllabus below, last column). Your paper should be tailored to that scenario. Please make sure you convey why the topic is or may be relevant to the decision-maker receiving the paper.

(2) The extent to which the paper provides a summary of the relevant information from the required reading for the specified class block. It is not necessary to do any additional research.
(3) The extent to which the paper provides the recipient with relevant questions for further discussion or research. This is your opportunity to spot issues from the reading that are relevant to your recipient.

I will also evaluate a briefing paper based upon how quickly a decision-maker can review it and how clearly it conveys the key points and messages. Consider carefully the use of formatting (e.g., bullets, fonts, tables, graphics, spacing) to convey information in the most efficient and effective manner.

In all cases, you should assume the recipient of the paper has no significant familiarity with the topic you are presenting and that you will not necessarily have the opportunity to “talk through” the paper with the recipient. Thus, the briefing paper should stand on its own and terms of art (jargon) should be avoided or defined.

If you are assigned to submit a briefing paper for a particular class, you must email it to me (PDF format recommended so that it displays and prints out as you intended it to appear, but Word is also acceptable) at energyprofmj@gmail.com by no later than 1 p.m. on the Friday before the applicable class date. This will give me an opportunity to review your work and to incorporate any particularly relevant questions or issues you raise in the class discussion. Please note that I may call upon students who have submitted briefing papers to discuss their submissions during class, and this will count toward class participation.

There will be no student-written briefing papers due for the first class, but I will upload to bCourses an example briefing paper covering the material for the first class.

CROSS-ENROLLMENT

I encourage graduate students from other departments to cross-enroll in this class. Cross-enrollment requires the permission of the instructor – please talk to me after class during the first week of classes if you wish to cross-enroll. We will discuss your prior background and experience in order to determine whether this class is suitable.

SYLLABUS

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<tr>
<th>Class Date</th>
<th>Topics</th>
<th>Required Reading</th>
<th>Briefing Papers (Due 1 p.m. on Friday before Class Date)</th>
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Biomass, and Geothermal

Block 2: “Negawatts”: Energy Efficiency and Conservation

You are counsel to a venture capital firm, and you’ve been asked to provide a one-page overview to the firm’s partners on the legal risks and opportunities of the renewable energy space in order to help the firm evaluate a potential investment in a start-up company with a new high-efficiency photovoltaic panel design.

Block 2 - Last Names: E-I

You are in-house counsel to a nonprofit organization that advocates on behalf of low-income communities. Your executive director is thinking of launching a new initiative to seek new state subsidies for disadvantaged communities to install energy efficiency improvements. She has asked you to provide a one-page paper that discusses the state of the law/policy in this area and takes a position on whether or not to pursue her idea.

Jan. 26

Block 1: Nuclear Power
Block 2: Hydropower

[Guest Speaker: Judge Noel Wise]

Block 1: Nutshell, pp. 426-441.
Block 2: Nutshell, pp. 475-494.

You are counsel to a major bank considering an investment in the development of a new nuclear power plant. As a first step in the process, your internal client has asked for a one-page paper describing the legal environment for nuclear
| Feb. 2 | Block 1: Fossil-Fueled Electric Generation – Focus on Coal | Block 1: Nutshell, pp. 316-338. Block 2: U.S. Environmental Protection Agency (EPA), “Overview of the Clean Power Plan,” 2015 (related to GHG regulation of existing power plants). EPA, “Factsheet: Final Limits on Carbon Pollution from New, Modified and Reconstructed Power Plants,” 2015. | Block 1 - Last Names: R-U You are in-house counsel to a national environmental nonprofit organization primarily focused on biological conservation. Your board is considering entering into the climate change space with a focus on seeking to ensure no new coal-fired generation gets built in the U.S. Your executive director has asked you for a one-page overview of the industry to help her prepare for the board meeting. She would like you to include key issues and to recommend whether or not she should support the Board’s idea. |
| Block 2: Energy Policy and Climate Change – Focus on the Clean Power Plan | | Block 2 - Last Names: O-Q You are in-house counsel to an electric generation developer. Your company is thinking of expanding into the development of small hydropower facilities, and your general counsel is attending a national conference on the topic. He has asked you to prepare a one-page background paper for him on the topic with suggested questions or topics for him to raise or investigate at the conference. |
| Block 1: Federalism and the Regulation of Energy – Focus on Electricity Market |
| Block 2: Retail Competition: California Case Study of Direct Access, Community Choice Aggregation, and Municipal Utilities |
| [Guest Speaker: To be announced on bCourses] |

February 9

Block 1: Federalism and the Regulation of Energy – Focus on Electricity Market

- Block 2: Retail Competition: California Case Study of Direct Access, Community Choice Aggregation, and Municipal Utilities
- [Guest Speaker: To be announced on bCourses]

**Block 1 - Last Names: A-D**

**NY v. FERC**

You are a junior associate at a boutique energy law firm. Your managing partner has asked you to prepare a one-page “client alert” on the New York v. FERC case the day after the decision is handed down. He asks you to focus on information most relevant to the firm’s key utility clients, which generally bundle the sale of transmission and generation to customers.

**Block 2 - Last Names: E-I**

**FERC vs. Miss.**

You are counsel to the National Association of
| Feb. 16 | Block 1: Powering Transportation – Focus on Alternative Fuels  
Block 2: The Smart Grid: Energy Storage, Demand Response, and Distributed Generation  
Block 2: Federal Energy Regulatory Commission, Smart Grid Policy, 128 FERC ¶ 61,060 (2009). (Read paragraphs 2-6, 22-24, 40, 46, 51, 55, 74, fn. 108, 81, 90-91, 122-128). | Regulatory Utility Commissioners (an organization primarily comprised of state regulatory commissioners), and your executive director has asked you to prepare a one-page alert to the membership regarding the *FERC v. Mississippi* case the day after the decision is handed down.  
Block 1 - Last Names: J-N  
You are counsel to a venture capital firm, and you’ve been asked to provide a one-page overview to the firm’s partners on the legal risks and opportunities of the alternative fuel space in order to help the firm evaluate a potential investment in a start-up company with a patent for new technology to create biodiesel from algae.  
Block 2 - Last Names: O-Q  
You are in-house counsel to a small technology start-up. The founders of the company are thinking of using proprietary systems optimization software they created to help owners of combined rooftop solar and battery storage installations automate their systems to maximize the compensation they get from selling excess generation into the market. To help start their discussion, they’ve... |
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[**Guest Speaker:** Kent Kauss, PG&E] |
| | **Block 1: Advanced Energy Economy Institute, “Toward a 21st Century Electricity System in California,” 2015. (Read Part II (pp. 7-11) and “Regulatory Framework, Incentives, and Revenue Mechanisms” (pp. 24-34)).**  
| | **Block 1 - Last Names: R-U**  
You are counsel for an electric ratepayer advocacy organization (which generally seeks to reduce the cost of electricity to customers), and your executive director has been invited to attend a conference at the Advanced Energy Economy Institute (AEEI) on the future of the electricity system in California. He asks you to provide a one-page overview of the AEEI paper and to identify key issues and questions related to ratepayer protection that he can raise at the conference. |
| | **Block 2 - Last Names: V-Z**  
You are on staff for a junior Republican member of the California Assembly, and your member has asked you for a one-page review of the Senate’s floor analysis of SB 350. Specifically, your member wants you to identify any concerns or questions that she may want to raise with colleagues or the legislative leadership. |
| | **All Students:** Come prepared to propose one |
|   |   | conceptual amendment to SB 350. |