

Renewable Energy Law, Regulation and the Environment, MAST 667016, Fall 2013

Now known as

**MAST680: Renewable Energy and Climate: Law, Regulation and Environment
(1-3 credits)**

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Course Summary/Objectives

This one-credit short course is an introduction to the regulation of renewable energy electricity generation, transmission and integration. Particular attention will be given to large-scale renewable energy sources such as wind, hydroelectric and marine renewable (wave, current and tidal). The respective roles of federal government agencies such as the Federal Energy Regulatory Commission (FERC) and the Bureau of Ocean Energy Management (BOEM), the state public utility commissions and regional transmission organizations in regulating energy production, transmission and markets will be addressed as will the manner in which government policies such as taxes and renewable energy portfolios influence electricity development. Environmental and natural resources law constraints on the development of renewable energy also will be considered. The course will draw on judicial opinions as well as technical and scientific sources.

Class Meetings: Monday 5-7 pm, September 9, 16, 23, 30 & October 7, 14, **105 Robinson Hall**

Office Hours: By appointment

Basic Class Requirement: Come to class having read and thought about the readings and prepared to describe the cases, their holdings, rationale and implications

Paper: Each student will prepare a ~2500 word paper (exclusive of references) on a mutually agreed aspect of Renewable Energy Law.

- Proposed topic September 25 (via email)
- Paper due November 15 (via email)

The paper should describe the present situation, assess the effectiveness of the legal regime and barriers to success, and discuss trends that could result in changes to the present regime.

Grade Allocation*

In-class discussion of the readings	33%
Paper	67%

* The class is heavily dependent on advanced reading and participation; In the event we do not succeed, a short, in-class exam/test/quiz may also be given.

Required Readings: Readings are available either via a website link on this syllabus or on Sakai under the “Resources” tab. At times, the judicial opinions have been edited prior to posting; Full opinions are available from the *LexisNexis Academic* database on the UDEL Library Website and other websites.

Statutes and Cases on the Internet

Regulations and Additional Statutes:

<http://www.gpoaccess.gov/index.html>, <http://www.gpo.gov/fdsys/> and
<http://www.law.cornell.edu/federal/>

Statutes and Cases: Lexis-Nexis Academic Database at www.lib.udel.edu/db/

Glossaries to help you with terms, concepts, acronyms and abbreviations

US EIA Glossary, <http://www.eia.gov/tools/glossary/>

FERC Glossary, <http://www.ferc.gov/help/glossary.asp>

PJM Glossary, <http://www.pjm.com/Home/Glossary.aspx>

Other Helpful Sources

The Law of Clean Energy

Gellhorn and Levin, Administrative Law and Process in a Nutshell (5th Edition, 2006),
Westgroup

SCHEDULE

September 9: Course Mechanics, Renewable Energy Overview and Intro to Admin Law Review:

- Administrative Procedures Act (APA), 5 U.S.C. §§ 701–706, <http://www.law.cornell.edu/uscode/text/5/part-I/chapter-7>

Read:

- EEE, pp. 9-18
- Standing
 - *Lujan v. NWF*, 497 U.S. 871 (1990)
 - *Barnstable v FAA*, 659 F. 3d 28 (DC Cir. 2011)
- Deference
 - *Wilderness Society v. Morton* (TAPS case), 479 F.2d 842 (D.C. Cir. 1973)
 - *Chevron v. NRDC*, 467 U.S. 837 (1984)
 - *Decker v. Northwest Environmental Defense Center*, US Ct. 2013 (**Read only, Scalia, J., concurring in part; dissenting in part**), pp. 22-33.

September 16: Transmission, RTOs, Grid Integration, State Utility Commissions and Power Purchase Agreements (PPAs)

Review

- Energy Policy Act of 2005, Section 388, <http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/EPAAct2005Sec388.aspx>
- PURPA, <http://www.law.cornell.edu/uscode/text/16/824a-3>

Read

- EEE, pp. 609-613; 623-656, including *New York v. FERC*, 535 US 1 (2002)
- Karlynn Cory, FERC Ruling Changes Course and Assists Renewables (6/6/2011),
- Daniel K. Lee and Timothy P. Duane, "Putting the Dormant Commerce Clause Back to Sleep: Adapting the Doctrine to Support State Renewable Portfolio Standards," 43 *Environmental Law* 295-364 (2013), Read **297-310 only**
- *ICC v. FERC*, June 7, 2013 (7th Cir. 2013)
- *In Re Iberdrola Renewables v BPA*, 141 FERC ¶ 61,233 (Dec 20, 2012), **read at least through paragraph 51 on page 21 (read more for background).**
- *Cape Wind PPA; In re Mass. Elec. Co & Nantucket Elec. Co.*, Docket No. 10-54 (Mass. Board of Public Utilities) (Nov. 22, 2010), **Read Executive Summary only; skim parts of interest**
- *In re: Review of Proposed Town of New Shoreham Project*, No. 2010-273-M.P. (RI Sup. Court 2011), **Read 1-38 only; skim/examine other parts of interest**

September 23: Hydropower and Hydrokinetic Power

Background

- <http://www.ferc.gov/industries/hydropower/gen-info/licensing/hydrokinetics.asp> and <http://www.ferc.gov/industries/hydropower.asp>
- BOEM / FERC Guidelines on Regulation of Marine and Hydrokinetic Energy Projects on the OCS (Version 2, July 19, 2012), <http://www.boem.gov/BOEM-Newsroom/Press-Releases/2012/BOEM-FERC-staff-guidelines-pdf.aspx>
- Firestone, J., *Hydropower Relicensing: Opportunities for and Obstacles to Environmental Quality Improvements and Recreational Enhancements on Southeastern Rivers* (2001)
- Section 388 of the Energy Policy Act of 2005, <http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/EPAct2005Sec388.aspx>

Read

- EEE, 130-167
 - *In re Fairfax County Water Authority*, 43 FERC ¶ 61,062 (1988) (p. 131)
 - *Scenic Hudson Preservation Conference v. FPC*, 254 F.2d 608 (DC Cir. 1965) (p. 138)
 - *American Rivers v. FERC*, 129 F.3d 99 (2nd Cir. 1997) (p. 149)
 - *In re Merimil*, 110 FERC ¶ 61,240 (2005)
- *S.D. Warren Co. v. Maine Board of Environmental Protection*, 540 US 370 (2006)
- *In Re Verdant Power*, 111 FERC ¶ 61,024 (2005)
- *FERC Whitepaper on Hydrokinetic Licensing*, **pages 2-6 only** (April 2008)
- *In re PG&E*, 125 FERC ¶ 61,045(2008) (FERC Jurisdiction on the OCS, **Sections I (¶¶ 1-5) and V (¶¶ 39-65) in their entirety and Section III ((¶¶ 23-26) only**)
- DOI-FERC MOU (April 2009)

September 30: Wind and Solar, permitting and siting considerations

Read - General

- Firestone, J. and J. Kehne, *Wind Energy*, in Michael Gerrard (ed.), *The Law of Clean Energy: Efficiency and Renewables*, American Bar Association (2011)
- *Tenn v. 889 Associates, Ltd.*, 127 N.H. 321, 500 A.2d 366 (1985) (nuisance and structure interfering with light and air) (Souter)
- *Garden Lakes Community Association v. Madigan* (AZ Court of Appeals 2013) (community covenants and state law)

Read-Landscape, Cultural, Aesthetic, Noise Impacts

- *In re Champlain Wind (Bowers Wind Farm)*, Maine Land Use Commission (2012) (state vista laws and wind)
- *Quechan Tribe of the Fort Yuma Indian Reservation v USDOJ*, 43 ELR 20047 (S.D. CA. 2013) (tribal consultation, vistas and solar)
- *Sowers v. Forest Hills Subdivision*, Supreme Court of Nevada (2013) (private wind turbine; nuisance (noise, aesthetics, property values))

October 7: *Environment*

Read - Wildlife

- Lilley, M.B. and J. Firestone, Wind Power, Wildlife, and the Migratory Bird Treaty Act: A Way Forward, *Environmental Law*, 38(4): 1167-1214 (2008), **Read 1176-1193 only** (wind, migratory birds)
- *Center for Biological Diversity v. FPL Group, Inc.* 83 Cal. Rptr. 3d. 588 (Cal. Ct. App. 2008) (wind, raptors, public trust)
- *Animal Welfare Institute v. Beech Ridge Energy*, 675 F. Supp. 2nd 540 (D. Md. 2009) (wind, endangered Indiana Bat)
- *NWF v. NMFS*, (D. OR 2011) (hydroelectric dams/endangered salmon)
- *Desert Protective Council v. USDOJ*, 43 ELR 20048 (S.D. CA. 2013) (solar, raptors)

October 14: Catch-up and TBD

November 15 *Paper Due-submit as an email attachment*****