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)

Professor Jeremy Firestone
204 Robinson Hall
jf@udel.edu
831-0228

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

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

Other Helpful Sources
The Law of Clean Energy
SCHEDULE

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

Review:

Read:
- EEE, pp. 9-18
- Standing
  - *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)

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

Review
- PURPA, http://www.law.cornell.edu/uscode/text/16/824a-3

Read
- Karlynn Cory, FERC Ruling Changes Course and Assists Renewables (6/6/2011),
- *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).
- *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

- Firestone, J., Hydropower Relicensing: Opportunities for and Obstacles to Environmental Quality Improvements and Recreational Enhancements on Southeastern Rivers (2001)

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)
- 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

- 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 USDOI, 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**

- *Center for Biological Diversity v. FPL Group, Inc.* 83 Cal. Rptr. 3d. 588 (Cal. Ct. App. 2008) (wind, raptors, public trust)
- *NWF v. NMFS*, (D. OR 2011) (hydroelectric dams/endangered salmon)

October 14: Catch-up and TBD

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