

## BOOK REVIEW

ENERGY, ECONOMICS AND THE ENVIRONMENT by Fred Bosselman, Jim Rossi, and Jacqueline Lang Weaver. (Foundation Press, 2000).

Reviewed by  
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*Energy, Economics and the Environment*, by Fred Bosselman, Jim Rossi, and Jacqueline Lang Weaver (Foundation Press, 2000), fills a gaping hole in the universe of law casebooks. With the demise of law school courses in Oil and Gas, and Regulated Industries in recent decades, it has been difficult to find casebooks that address energy law issues in a modern context. There are some very good Natural Resources law texts and casebooks, but no books that address directly the present-day regulation of the energy industry. Bosselman et al. provide a comprehensive treatment of that subject, one that will be welcomed by professors who teach Energy Law.

### ORGANIZATION

This book is comprehensive and well-written. It is organized so as to provide students with a basic understanding of how primary sources of energy are regulated *and* a more thorough understanding of how the energy industry (and the regulation thereof) is being restructured. Thus, professors whose focus is on restructuring will welcome this organization; others focusing on different issues may have to pick and choose chapters to fit their needs.

The authors begin with important foundation material that sets the scene for the meatier material in later chapters. The first three chapters focus on the basics of the energy policy process (Chapter 1), the physics of energy and its relationship to important economic and ecological issues (Chapter 2), and the basics of public utility regulation (Chapter 3). For those of us who teach a mixture of law students and students from other backgrounds, the inclusion of these introductory chapters is welcomed.

The authors next embark on an extended treatment of the primary sources of energy, devoting separate chapters to water power (Chapter 4), coal (chapter 5), oil (Chapter 6), and natural gas (Chapter 7). These chapters are arranged chronologically, based upon when each of these primary energy sources came into common use. Each begins with basic information about their respective industries, including technological issues, their history, and their unique characteristics, before launching into a discussion

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on how each is regulated in the United States. Each of these chapters (along with Chapter 14 on nuclear energy, which I assign with these chapters) provides a thorough overview of the legal issues facing the industry. Professors who prefer a thinner treatment of these issues can pick and choose parts of these chapters. But if you choose to omit them, you do so at your peril, since most of these regulatory and legal regimes continue in effect today, overlapping deregulatory and restructuring efforts at both the federal and state levels.

The last of these chapters, on natural gas regulation, addresses natural gas regulation prior to 1985, at which point the Federal Energy Regulatory Commission (FERC) took its first steps toward restructuring natural gas regulation. In this way, the authors use natural gas regulation as a way to introduce the basic concepts and ideas underlining restructuring. This makes sense chronologically, since the introduction of competitive markets in the natural gas industry preceded restructuring in the electricity industry. However, this approach leads the authors to interrupt their discussion of natural gas regulation with a separate chapter on rate regulation generally (Chapter 8), in which the authors provide a thorough discussion of the traditional principles of rate regulation, before returning to the natural gas industry and its restructuring in Chapter 9. Some may find this organization awkward: that is, they may prefer to address the basics of public utility regulation (Chapters 3 and 8) and natural gas regulation (Chapters 7 and 9) in one place.

The book then proceeds from its discussion of restructuring in the natural gas industry in Chapter 9 to an extended consideration of restructuring in the electricity industry. This treatment, covering Chapters 10 through 13, begins with a chapter on the basics of electricity regulation (Chapter 10) and an excellent treatment of the first steps towards wholesale competition in the electricity industry from the 1970s through the present.<sup>1</sup> The authors then devote an entire chapter (Chapter 12) to the question of who will pay the stranded costs of restructuring, the costs associated with utilities' investment in plants that will no longer be useful or economically viable to operate in a competitive environment. This separate treatment reflects the amount of attention scholars have paid to the question, though it remains to be seen whether courts will ever match scholars in this regard. However, it seems clear that regardless of how much (or little) litigation it has generated, this issue hangs over state restructuring efforts and exerts real effects on the behavior of legislators and regulators.

The final chapter of the restructuring quartet (Chapter 13) addresses the emerging issues associated with retail competition in the electricity industry, and does a good job of imposing organization. That is, while it highlights the different approaches states are taking toward restructuring,

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1. Of course, this is a rapidly changing area of the law and there have been developments since the publication of this book in 2000. Indeed, the authors would be well advised to publish an annual supplement, given the rapid changes in both wholesale and retail competition law in the electricity industry.

it does so in a way that enables students to focus on larger legal issues that must be addressed in any restructuring process. The discussion in this chapter foresees some of the issues in the news today in California, though much has happened there since publication of the casebook. Professors may want to supplement Chapter 13 with additional material to bring students up to date on the California situation in particular.

The remainder of the book is a smorgasbord of important issues in the energy industry. After the already mentioned chapter on nuclear energy (Chapter 14) the authors address the role of energy and transportation (Chapter 15), international regulation of the petroleum industry (Chapter 16), climate change (Chapter 17), and other economic regulation issues that arise in the context of energy regulation (Chapter 18), particularly the relationship between energy regulation and antitrust law.

#### CONTENT AND APPROACH

The book has much to commend it. Faculty looking for course length treatments of subtopics of energy law, such as oil and gas, will have to look elsewhere. Likewise, it is not primarily a "regulated industries" book. Rather, the book provides an overview of the way the law regulates the energy industry, albeit one that is particularly strong on issues related to restructuring and deregulation. While the book follows a fairly standard casebook format, it integrates a wide variety of legal and policy issues in an accessible way. In particular, the book offers a thorough and readable treatment of all of the important legal issues it addresses; at the same time, it educates students about the history of the energy industry, and the important economic and other policy frameworks within which scholars and policy wonks alike view energy issues.

For example, the chapters on regulation of the coal and oil industries (Chapters 5 and 6) describe the early development of these two fossil fuels as an energy source, offering colorful descriptions of the move from wood to coal as a fuel source in the 18th century and of the discovery of oil in western Pennsylvania in 19th century. These chapters tackle not only the federal and state regulatory programs that address coal and oil mining directly, but important doctrines of property law (mineral rights and the rule of capture) and environmental law (the Clean Air Act and Clean Water Act) as well. Likewise, the chapter on natural gas regulation prior to 1985 (Chapter 7), provides a good description of how poorly-designed regulation and market forces combined to create first natural gas shortages in the 1970s, and then the surpluses and artificially high prices in the 1980s. The subsequent discussion of deregulation (Chapters 9, 11-13) reflects a clear understanding of the arguments for and against freer markets in energy.

Having used the book twice now for courses on the regulation of the energy industry, my only complaints about it are minor quibbles. Some of the case excerpts are long and/or repetitive of material in the notes and text; of course, that problem can be remedied by paring down the reading assignments. The division of natural gas regulation into two chapters, interrupted by a third chapter is awkward but perhaps unavoidable; as I ex-

plain above, it is easy to see why the authors chose this organization. On the other hand, I am particularly happy about the way the authors weave into their discussion of sophisticated treatments of environmental issues, which form an increasingly important part of regulation of the energy industry. The book should not be used for a course on environmental regulation of the energy industry, but it provides more than adequate discussions of how the environmental regulatory regime addresses energy issues and intersects with more direct forms of energy regulation.

All in all, *Energy, Economics, and the Environment* is a welcome resource for teachers of energy law and policy.

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