

## EXAMINATION COVER SHEET

Student Examination Number: \_\_\_\_\_

**Final Examination**  
**Wednesday, April 23, 2008**  
**Spring 2008**

⌚ **Time Allowed:** 4 hours

**Authorized Materials:** This exam is open book. You may consult any hard copy written materials, but you may not receive assistance from other people.

**Special Instructions:** This exam consists of three essay-style questions. You must answer all three questions.

The exam is being graded on a 200 point scale. There also are three bonus questions at the end worth up to a total of 6 points.

You will be graded both on your ability to spot the issues of law, fact, and policy presented and on the quality of your analysis of those issues. Organize your answer before you begin to write. Concise expression and clarity of analysis—not numerosity of words—will be rewarded in grading.

The essay questions may fail to provide some information that you consider important. Should you find it necessary to make assumptions beyond those stated in the question, clearly explain your assumptions and their significance in your answer.

There are 8 pages to the exam, not including this cover sheet. Make sure you have all of them.

When time is called, you must stop working on your exam immediately and turn in your copy of the exam and your answers.

Good luck!

**GENERAL INSTRUCTIONS FOR ALL EXAMS:**

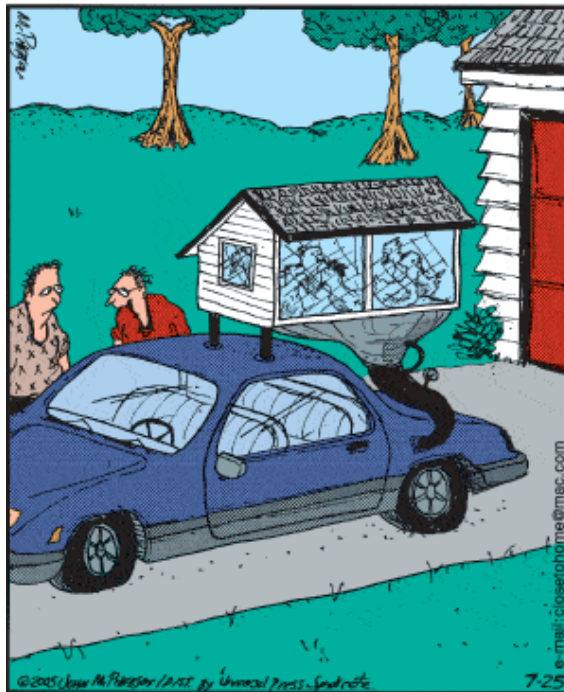
1. Exams do not leave the exam room! Write your exam number on your copy of the examination questions, and return it to the proctor at the end of the exam.
2. Students may NOT take any bluebooks or scratch paper from the examination room, whether blank or used. Return to proctor.
3. If you are using a bluebook print your exam number, the title of the course and the instructor's name on the front of each bluebook.
4. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first numbered bluebook.
5. If the examination utilizes a computer answer sheet (Scantron):
  - You must use **BLACK** or **BLUE INK** only; no pencils
  - You may use **CORRECTION TAPE** only; no liquid paper
  - Print your examination number in the box found in the lower left-hand section of the form. Write the number in the first 4 spaces, and zero-fill any remaining spaces.

For example, if your examination number is 2983:

**IDENTIFICATION NUMBER**

2	9	8	3	0	0	0	0
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Fill in the bubbles corresponding to the numbers written.



"It's a kit I found online. I converted the car so it runs entirely on chicken manure."

**Question Number 1:**

Jim Halpert and Dwight Schrute are CEOs and majority shareholders, respectively, in two publicly traded energy companies, Halpert Energy Trading LLC (“HET”) and Schrute Power & Light Company (“SP&LC”).



Jim Halpert



Dwight Schrute

HET is a sleek, modern operation. HET owns no power plants, no transmission lines, no distribution, not even a maintenance and repair fleet. Rather, its business model is that of an energy merchant. It buys and sells electricity among markets, attempting to maximize its profits by hedging transactions, seeking to sell power higher than it buys it low. Before starting HET, Halpert held various jobs, including, among other things, working as a salesman at a relatively unknown paper company in Scranton, Pennsylvania and, subsequently, as a broker on the New York Stock Exchange. It was in that latter position that Halpert acquired most of his skills, and it is in New York that his company now looks for new hires in whiz kid traders.



SP&amp;LC Headquarters



Cousin Mose

SP&LC is a longstanding electric utility company that serves a small territory outside of Scranton, Pennsylvania. The company was founded by Bratton Schrute, the great great grandfather of Dwight’s cousin, Mose, in 1925. It holds a certificate of public necessity and convenience from the Pennsylvania Public Utility Commission. In addition to its office building

in downtown Scranton, SP&LC has four primary assets: the distribution lines used to serve its customers, two AC transmission lines it uses to import electricity from other utilities in the Mid-Atlantic region, a license to a 50 kW dam on the Lackawanna River, and a 1 MW cogeneration facility that burns pig waste in order to simultaneously generate electricity and supply heated water to a nearby family beet farm.



HET and SP&LC rarely do business with each other. Nevertheless, HET has a practice of entering into *pro forma* transmission service agreements with all transmission-owning utilities in the United States under their respective open access transmission tariffs. On November 29, 2005, HET placed three requests for monthly firm transmission service from SP&LC. HET made the requests over SP&LC's open access same-time information system ("OASIS") for a price of \$24/kW. On December 1, 2005, SP&LC approved the requests at the price requested by HET. On December 9, 2005, HET placed four more requests for transmission service on SP&LC's OASIS, again for a price of \$24/kW. Two days later, SP&LC granted these requests, confirming service on its system. All seven of these reservations were for point-to-point transmission service with a point of receipt at SP&LC's substation at Harrisburg, Pennsylvania to a point of delivery at its substation in Hershey, Pennsylvania. HET made the reservations to follow through on a deal it had made to buy electricity from American Electric Power in Ohio and deliver it to PECO, an electric and natural gas utility that serves Philadelphia as a subsidiary of Exelon Corporation. The start and stop dates for these reservations were as follows:

Request	Start Date	Stop Date	MW Sought	MW Confirmed	Price Requested	Price Confirmed
1	Apr. 1, 2006	Apr. 30, 2006	50	50	\$24/kW	\$24/kW
2	May 1, 2006	May 31, 2006	100	100	\$24/kW	\$24/kW
3	June 1, 2006	June 30, 2006	150	150	\$24/kW	\$24/kW
4	July 1, 2006	July 31, 2006	150	150	\$24/kW	\$24/kW
5	Aug. 1, 2006	Aug. 31, 2006	150	150	\$24/kW	\$24/kW
6	June 1, 2007	June 30, 2007	150	150	\$24/kW	\$24/kW
7	July 1, 2007	July 31, 2007	150	150	\$24/kW	\$24/kW

As the new year turned, SP&LC's transmission analysts delivered a report to Schrute informing him that upgrades to their transmission lines are necessary, and thus, they must increase their transmission rates. Accordingly, on February 14, 2006, SP&LC submits a revised OATT to the Federal Energy Regulatory Commission seeking to increase its transmission rates. The proposed rate increases were: long-term firm service, from \$28/kW to \$34/kW; short-term firm service, from \$24/kW to \$30/kW; long-term non-firm service, from \$23/kW to \$28/kW; short-term non-firm service, from \$21/kW to \$24/kW. On March 30, FERC entered an order accepting SP&LC's revised tariff for filing effective April 1, 2006, establishing an evidentiary hearing on the filing, and making the new rate subject to refund pending the hearing's resolution.



Meredith Palmer



Ryan Howard

HET begins taking transmission service from SP&LC on April 1, 2006 as scheduled and continues doing so thereafter. When HET receives its first bill for service, however, the company balks. The bill, for April and May 2006, has been calculated using a \$30/kW rate rather than the \$24/kW rate at which its transmission reservations were confirmed. Accordingly, HET remits payment for a recalculated amount using the \$24/kW rate, accompanied by a letter protesting SP&LC's demand for any further monies. SP&LC then writes back insisting that payment is due immediately and that if full payment is not made forthwith, interest will accrue. Annoyed by this hassle over a minor transaction, Halpert hires outside counsel, Ryan Howard and Meredith Palmer, of Palmer, Howard, Martin, and Kapoor LLP, to resolve the dispute. Howard and Palmer send SP&LC a letter threatening a lawsuit in the local Pennsylvania state court seeking (1) an injunction and (2) damages for intentional interference with business relations. HET reminds SP&LC that there are heavy transmission constraints running from west to east across Pennsylvania, especially toward Philadelphia, and that all other transmission in the area would be so expensive as to make the HET lose substantial money on this deal. In fact, Palmer and Howard state, HET entered into its transactions with AEP and PECO only because it believed it would make a profit using the transmission it purchased from SP&LC. Paying the new price will flip the transaction from a barely lucrative one to a financially losing proposition.

SP&LC has retained you to do legal battle with Palmer and Howard. Please draft a short memorandum advising your client how you recommend proceeding.

## **Question Number 2:**

The United States recently annexed the entire Baja Peninsula in Mexico (consisting of the former Mexican states of Baja California Norte and Baja California Sur) as the fifty-first state in the Union: South California. This political move was made, in part, to give the United States additional coastal access and locations for liquefied natural gas (“LNG”) facilities, and to help serve California’s and Arizona’s burgeoning energy demands. Immediately following the granting of state status to South California, Pacific Gas & Electric (“PG&E”), Southern California Edison (“SCE”), and San Diego Gas & Electric (“SDG&E”) announced plans to jointly build and operate fifteen new nuclear power plants in South California. The utilities’ plan is to also build large transmission line(s) that will run up the peninsula into California and Arizona, to use the power produced by the nuclear plants to help serve those states’ major urban centers and provide for additional electricity to sell on the market.



The California utilities’ plans are big, but South California is less enthusiastic. Upon hearing of their arrangement, the state’s newly elected governor, Salma Hayek, immediately pronounces her disdain for the proposal. She calls upon the South California legislature to declare the state a “nuclear free zone,” based on her concern of the image that allowing nuclear power in the state will create and an accusation that South California has been targeted by the rest of the United States to exploit it for resources and problems with which the remainder of the country does not want to deal. “The next thing you know,” Hayek declares, “they’ll think we’re Nevada. We’re not! This is Baja, not Yucca! We’re not Nevada! We’re not Utah! And we won’t stand for this kind of nuclear colonialism as those states have!”



Governor Hayek



Corbin Bernsen

Heeding the governor's call, the South California legislature springs into action. It passes a slew of legislation seeking to implement Hayek's declaration of the state as a "nuclear free zone." The package consists of the following measures:

- A ban on the construction of any nuclear plants inside the state, premised on the dual notions that the existence of nuclear power plants will irreparably harm South California's primary industry—tourism—and that nuclear power is intrinsically unsafe;
- A ban on the delivery, transport, or storage of any kind of nuclear waste inside South California's borders;
- A criminal penalty of \$1 million per day per offense for the violation of either of the above bans, or for the release into the environment of any nuclear fuel or spent nuclear fuel within South California's borders;
- A provisional law erecting an elaborate scheme of safety measures restricting (a) the design conditions for how nuclear power plants may be constructed and (b) how nuclear waste will be disposed, in the event that the proposed facilities are built in the state;
- A provisional requirement that if any nuclear power plants are constructed in the state, the power produced by those plants must be used to supply any incremental load demand for South California before it can be sold elsewhere; and
- A provisional measure setting the price at which the new public utility serving the state, Baja California Electricidad ("BCE"), will purchase the power from PG&E, SCE, and SDG&E if any nuclear power plants are constructed in the state.

You are in-house counsel for PG&E, and the company's newly appointed general counsel, Corbin Bernsen, has just assigned you to lead an inter-company task force among PG&E, SCE, and SDG&E to fight South California's "nuclear free" designation. Please draft a brief memorandum to Mr. Bernsen (1) describing what, if any, challenges the companies might lodge against the South California legislation and (2) assessing the likelihood of success of such, if any, challenges.

**Question Number 3:**

You are the energy advisor to a prominent western state's new governor, Donny Osmond, and his lieutenant governor, Danny Bonaduce. The new president of the United States, Robert Van Winkle, his vice president, Meg Ryan, and their energy secretary, Tom Hanks, have called upon all western governors to provide proposals for how to reshape energy and environmental policy as their administration takes office. As the most respected of all western governors, Governor Osmond is being looked to by President Van Winkle for a leading plan in this regard. Specifically, the Van Winkle administration has expressed its concern about two critical issues: (1) climate change and (2) America's continuing dependence on fossil fuels.



President Van Winkle



Vice President Ryan



Secretary Hanks



Governor Osmond



Celine Dion



Lt. Governor Bonaduce

As President Van Winkle communicated it to Governor Osmond, he is particularly concerned about the dire environmental and economic effects that climate change may cause, but also that attempting to address climate change as a hermetically-sealed problem might squander an opportunity to move forward on the energy policy front as well. In this vein, he has thus identified three questions he is hoping that any governor-proposed plan will weigh and address:

1. Should climate change and any possible move to alternative/renewable energy sources be addressed separately or together and, depending on this determination, what policy initiatives should be used to do so?
2. Should the approaches used to address the questions of climate change and alternative/renewable energy be based in the federal government, state governments, or both, and how?
3. Should the approaches employ market-based mechanisms, centralized planning, or both, and how?

Governor Osmond is keenly interested in responding to President Van Winkle's request, but he has just received an offer to replace Celine Dion at Caesar's Palace in Las Vegas and has rushed out of town to explore this once-in-a-lifetime opportunity. In his stead, he has asked you to prepare a draft plan to submit to the Van Winkle administration addressing the questions they have raised.

**Bonus Questions:**

1. What shape is the reactor core at the University of Utah's College of Engineering?
2. What prompted Barrick Goldstrike to build its own generation facility, and what did it ultimately build?
3. Identify three things you learned from Wells Parker's presentation in class.