Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Energy Practice: Duane Morris

Law360, New York (September 11, 2008) -- A tidal wave of public outrage, a surge in government intervention and an inevitable shift in the way the United States goes about its daily life will come with the advent of a magic number – $5 a gallon, attorneys at Duane Morris LLP said.

Though energy issues have already gained prominence as the United States tries to balance the unwieldy tasks of not strangling a slowing economy, combating rising world oil prices and curbing pollution and greenhouse gases, the real trouble will begin when gas prices hit that figure.

“When the price of gas goes to five, then everything stops in its tracks and the whole of the U.S.' attention will be on the price of energy,” said Sheila Slocum Hollis, chair of the firm's Washington D.C. Office and a veteran in its Energy Practice.

Clients as big as Duane Morris' will need to navigate an even tougher regulatory environment, one where a wary government will clamp down at the slightest hint of any antitrust conduct that could raise energy prices.

Already in April, the seeds of discontent were sown by several members of Congress, who urged President Bush and U.S. Attorney General Michael Mukasey to form an “Enron-style” task force to investigate possible manipulation in the oil and gas markets, contending that record oil prices could not be explained by normal market forces.

Even if utilities and other energy industry types find ways to invest in creating more output to relieve some of the pressure of supply and demand, they will also need to make sure they're complying with new greenhouse gas regulations, as climate change becomes a bigger issue.

“There is going to be tremendous price pressure and it'll be up to the government to find a balance between fears of $5 gas and having a global warming bill in place. The national economy is weak right now, and it's going to be very, very tough politically for everyone,” Hollis said.

All Content Copyright 2008, Portfolio Media, Inc.

Duane Morris's energy practice is already deeply entrenched in the business of treading dangerous regulatory waters, promoting competition and building up resources that comply with new environmental standards.

One of its larger projects has been helping build up the Midwest Independent Transmission System Operator, which supports and supplies a constant stream of electricity to 15 U.S. states and the Canadian province of Manitoba.

“It's a huge geographic area...The utilities in these 15 states (and Manitoba) have turned over operational control to MISO. Even though they still own the facilities, MISO is responsible for determining how power moves over the wires,” said Michael Kessler, an energy partner who has represented MISO on a wide variety of matters.

“Sellers can offer to sell power to the market, like any kind of commodity. MISO evaluates all these bids and offers and tries to get the best bids. In addition, MISO operates a number of markets, making sure that electricity breaks down into different types of products and there are utilities in the background reserved in case significant events make another facility needed,” he explained.

MISO now ensures the reliable operation of nearly 94,000 miles of interconnected high voltage power lines in the Midwest. It also supports the transmission of more than 100,000 MegaWatts of energy.

“We built a market in which competitive energy could reign. Basically you have existing facilities that are bidding onto the system and the system operator dispatches plants based on pricing. On a hot day, for instance, where energy usage runs high, prices would be higher,” Hollis said.

“There's a lot of complex rules and we've been working with them to build the project up in steps. First we got transmission, then wholesale, and then over the last couple of years we've added an element that can incorporate these ancillary products,” Kessler said.

Hollis explained that the importance of grids such as MISO is their ability to optimize the efficiency of an interconnected system and plan for needs ahead of time.

“A lot of that work is futures – trying to have power in reserve when you need it.”

Hollis said that Duane Morris' work generally centered around two major areas: energy facilities and infrastructure, such as MISO; and market theory matters, such as running and regulating MISO.

“Our practice has one foot in the physical facility world, and another in the area of markets – market manipulation, ensuring competitive markets, that whole world of economists, mathematicians, and theoreticians,” she said.

All Content Copyright 2008, Portfolio Media, Inc.

Hollis said one of the largest concerns for everyone was the November election and what a regime change will mean to energy policy. Presidential nominees John McCain and Barack Obama have espoused different visions of how they want energy policy to be shaped.

“The Democrats are controlling both houses of Congress, so even if there is a Republican president, there will still be a lot of Democratic control. But it's hard to say what will happen,” she said, adding, “though, both candidates are pro-nuclear, so that issue is not going to go away.”

Companies are already anticipating a boom in nuclear energy and several have called up Duane Morris' nuclear task group to help them sort through the issues involved. Charles Whitney, a partner at the firm who has worked especially on nuclear issues, said that the area was growing rapidly.

“Two years ago, I got a call from a big company that was planning on building a nuclear plant and needed me to talk to them about the lessons I'd learned from the 1980s. So I cast a wide net for nuclear expertise and put together a nuclear group that would focus on construction – building, designing and selling to these plants,” Whitney explained.

“So far it's been a lot of strategy work, and it's been very successful. We have eight to 12 companies that say they'll engage us when they start building, and we have another 33 plants that have been announced.”

Nuclear power has become an important piece of the energy puzzle now that safety has been improved, reliability is up and cutting greenhouse gas emissions has become important. Whitney pointed out that nuclear plants have had a terrific operational history, and that plants that were running only 50% of the time in the 1970s were now hitting record run-times of 90%.

But Whitney warned that nuclear energy was not the be-all and end-all of the U.S.' energy problems. Though licensing for nuclear plants has gotten much easier, there were several factors that the plants' supporters needed to address.

“The availability of capital is one giant issue. One plant will probably cost $5 billion. Generally, the cost of every type of utility infrastructure has shot up exponentially,” he said.

“The next issue is one about skilled labor. It's been a long time since we've had people major in nuclear engineering – most of the employees working now are older folks from the last nuclear-building era. The big unions have just started training programs for the kind of expertise plants need, but that's an ongoing problem.”

Also of concern is whether the U.S. will be able to find enough foundry components to build the nuclear plants it needs. When the nation stopped building nuclear plants, “the whole support industry shut down. We need to either revive the industry or buy from

All Content Copyright 2008, Portfolio Media, Inc.

Japan and France – but China and other countries are already buying from them, so we'd have to get in line."

"These plants are so big and so complex that the only serious players are going to be the really big companies that already have institutional experience. Anyone's optimistic scenario is that the first nuclear plants will come out in 2015," Whitney said.

"A 2008 forecast shows us needing almost 200 Gigawatts of power by then, of which 15 to 20 can come from nuclear, so you're going to have to look at other sources in the meantime."

James McTarnaghan, a partner at the firm with a renewable energy focus, said that in the end, energy does not get more green than wind and solar. Already touted as the good guys of the energy world, the wind and solar industries could look forward to even more investment in the future.

"You're going to see a tremendous surge in renewables. Things like on-site generation, a lot of solar power and solar grid installation services. You'll see an evolution of smart companies going further and faster towards the renewables arena," McTarnaghan said.

"You'll also see many major investments, including in things such as undersea transmission down from Canada or massive wind farms. We have a huge appetite for energy and infrastructure is so aged that it has to be replaced."

The big problem, McTarnaghan said, was how to integrate renewables into the grid. Though certain areas in the United States have the ability to generate thousands of megawatts from sources such as wind, building transmission lines from those areas to existing power operators could incur phenomenal costs.

"We're dealing with the problem of integrating renewables with MISO, where we're negotiating all the agreements with entities that are seeking to build wind generating facilities and the like. Finding out who should pay for this stuff is a big issue – does the load entity pay or does the developer pay?" said Kessler.

One possible solution to the energy drought problem is to make coal plants, the second most powerful and cost efficient way of generating power, cleaner, Hollis said.

"If you look at our generation capabilities, the way it's stacked is we pull from nuclear first, and then coal-fired power plants, and then natural gas at the fringes – since it's the most expensive," said Hollis.

"One of the biggest issues we've been seeing is carbon capture and storage, where we take the CO2 coming from the plants and put it in the ground. It's a very wonderful idea, but there's a lot of complexities to it."

All Content Copyright 2008, Portfolio Media, Inc.

She pointed out that there were still issues with acquiring underground storage, actually capturing the CO2 from plants and how to transfer that CO2 once it is captured.

“There's a hardcore group of people that says carbon capture can never happen, and other less extreme groups are saying that huge amounts of technology and research need to be completed before it can happen,” Hollis said.

Getting hold of energy resources has become even more important because of the rise of other energy-hungry countries, such as China, Russia and Vietnam. Duane Morris recently financed a major Asian expansion, opening two offices in Vietnam and one in Singapore in less than two years.

“At a recent meeting, one of our partners talked about the incredible need for electricity abroad and the growth grids need to do in places like Vietnam and Russia ... With all the energy problems we have, they are even worse in many other countries,” said McTarnaghan.

Oliver Massmann, a partner who helped open up Duane Morris' Hanoi office, said that places like Vietnam were the future of energy contracts.

“Vietnam has about 12,500 MW generation capacity right now, and they want to have nearly 70,000 MW by 2014. According to the World Bank, they need investment capital of $70 to $80 billion just for power,” he said.

“They have huge potential, but the next steps of the Vietnamese government will be crucial. Their policy will influence the next 100 years.”

“We've ridden a wave of energy development around the world and it's taken us to the globe's far-flung corners. All of us have spent a lot of time in international waters,” said Hollis.

“There's literally no part of the energy world where we're not involved. We have a saying in our group that 'if we're not doing it, it's not being done.'”

--By Elaine Chow

All Content Copyright 2008, Portfolio Media, Inc.