



---

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

---

## Energy Practice: Morgan Lewis

By **Jesse Greenspan**

Law360, New York (July 31, 2008) -- With an end-of-the-year deadline looming to receive federal tax credits, applications to build new nuclear reactors are pouring in to the U.S. Nuclear Regulatory Commission, according to Jay Gutierrez, head of the energy group at Morgan Lewis & Bockius LLP.

Until September, a full application had not been submitted to the NRC for a new nuclear plant in almost 30 years. But since then, nine applications have been filed for a total of about 20 units, and applications for about 12 additional units will be filed by the Dec. 31 deadline, Gutierrez said.

Morgan Lewis represents about 60% of the installed nuclear capacity in the United States and about 60% of the units that have been proposed for the future, according to Gutierrez.

"I think the legislation is there for a rebirth of nuclear," he said in reference to the Energy Policy Act of 2005, which provides federal tax credits and federal loan guarantees to companies that build nuclear plants. The act also offers "stand-by support" to the first six new reactors as a way of covering the costs associated with regulatory delays.

Of Morgan Lewis' 55 full-time energy attorneys, 32 work in the nuclear subgroup. Gutierrez said he would be surprised if the next-largest U.S. nuclear practice had more than a dozen lawyers.

"We are the oldest and largest practice group of its kind," Gutierrez said.

The firm represents companies that are applying for design certifications, early site permits and combined licenses. It also works on nuclear plant regulation matters, such as NRC-imposed shutdowns, enrichment and fuel cycle matters, and nuclear-related employment issues.

Moreover, the firm counsels clients on nuclear waste management and decommissioning. In September, for example, the U.S. Department of Energy awarded a controversial \$100 million contract to Morgan Lewis to help prepare a license application for the Yucca Mountain underground nuclear waste depository in Nevada.

After being pushed to review the matter by the Nevada congressional delegation, which has long fought against the Yucca Mountain project, the DOE's inspector general found that Morgan Lewis had a conflict of interest because it represented utilities with claims against the DOE regarding the acceptance and disposal of spent nuclear fuel.

However, the inspector general went on to state that the DOE appeared to follow its own conflict of interest requirements, and that the law firm had implemented an acceptable mitigation plan.

"We are gratified that the DOE inspector general's investigation ... confirms that both the DOE and Morgan Lewis acted in accordance with the D.C. Rules of Professional Conduct, as well as all applicable acquisition rules," Morgan Lewis said at the time.

According to Gutierrez, nuclear legal work has historically centered on Morgan Lewis and two other firms. Though the rebirth of nuclear will prompt some additional firms to try to enter the field, the number of firms will always remain small, he said.

"The barrier to entry is, number one, experience," Gutierrez said. "You can't just read this in a book and become a nuclear lawyer.

"You can read the regulations, you can read the statutes, but you also have to practice," he added. "A lot of it is folklore, less formal."

Some of Morgan Lewis' nuclear attorneys have an engineering or "nuclear navy" background. But others have liberal arts backgrounds and didn't get into nuclear work until later.

Gutierrez, for example, graduated from law school right after the Three Mile Island accident. Though he began his legal career in private practice, he soon switched to become a hearing attorney at the NRC, where he served for nine years.

"You just wake up one day and you're an expert," Gutierrez said.

In addition to a nuclear subgroup, Morgan Lewis has an electrical energy subgroup and an oil and gas subgroup. Among other things, the electrical subgroup advises and represents clients on matters before the Federal Energy Regulatory Commission, state public service commissions and various courts.

Since the Energy Policy Act passed in 2005, FERC has had the power to levy \$1 million in civil penalties per day and per violation. As a result, helping companies comply with regulations has become particularly important for law firms.

The first fines, totaling \$22.5 million, were issued by FERC in January 2007. Tens of millions of dollars in additional fines have come in since then.

“These enforcement regimes are somewhat cyclical,” Gutierrez said. “And in the case of FERC it's new, so you're going to see increased fines and more intrusive investigations. But over time the pendulum will swing.”

For its part, the oil and gas subgroup helps companies negotiate tariff structures and rates, receive environmental approvals and comply with state and federal regulators.

Morgan Lewis also has two attorneys who work on renewable energy matters.

On the deal side of things, energy is one of Morgan Lewis' specialties, along with life sciences, financial services and media, according to Charlie Engros, co-chair of the firm's M&A practice.

“There are a lot of firms that can do M&A work competently, and I thought we needed to identify what we could do better than other firms,” Engros said of why the firm focuses on those four particular industries.

Deal activity in the nuclear industry, along with the fossil fuel industries, became especially prevalent after the electric utility industry was deregulated in the early 1990s.

“When this first happened, it was completely novel that you could buy a nuclear power plant,” said Richard Aldridge, the other co-chair of the firm's M&A practice.

Aldridge pointed out that the first nuclear plant sold was the remaining functioning unit at Three Mile Island.

Overall, Morgan Lewis has about 1,450 attorneys in 22 offices spread throughout the United States, Europe and Asia.