

Energy Group Of The Year: Morgan Lewis

By Michael Phillis

Law360 (January 14, 2020, 2:13 PM EST) -- Morgan Lewis & Bockius LLP assisted gas-fired power plant developers deploy an innovative pricing model and helped a wind developer navigate complicated regulatory requirements for a major development off the coast of the Bay State, leading the practice to be named one of Law360's **2019 Energy Groups of the Year**.

The firm has long been committed to representing the energy industry. It has about 270 attorneys that work significantly on energy matters who are concentrated in areas like Washington, D.C.; Texas; London; and Moscow. And while some firms focus on a particular area like project finance, Morgan Lewis deploys enough resources to provide a broad range of services — from M&A to regulatory compliance — for clients that is flexible enough to shift with industry trends, partners at the firm told Law360.

“We understand the markets, we understand the business, we understand the challenges our clients are facing,” partner Kathryn M. Sutton said.

The firm helped Vineyard Wind pursue a utility-scale 800-megawatt wind farm off of Massachusetts, south of Cape Cod, that would produce enough energy to power 400,000 homes, according to the developers. Morgan Lewis helped guide that project along, navigating complex federal and local regulatory requirements as well as public questions and political sensitives about the impacts of an emerging source of clean energy.

“There is a great deal of public involvement in [big wind projects] as there should be. These are projects that affect our oceans and our coastlines and the resources that are in the seas,” Sutton said.

The firm helped the company win a favorable vote in February 2019 from the Rhode Island Coastal Resources Management Council. The firm expects final approval to occur in the latter part of this year and continues to assist the company on day-to-day issues.

Richard M. Filosa, a partner at the firm, said getting the project across the finish line was as difficult as working on a large-scale, conventional gas-fired power project in a populated area.



“There is a public process, and I think the permitting and hurdles you have to go through in order to develop a project and get it to a state where it is a viable project — there is just a lot of challenges,” Filosa said. “Vineyard Wind is probably the highest-profile one that is moving toward a construction start and a financing.”

Morgan Lewis also helped Sempra Energy’s Southern California Gas Co. win at the California Supreme Court in May. The state’s high court affirmed an appellate court ruling that said the company was not liable for economic losses suffered by businesses near the massive 2015 Aliso Canyon gas leak. Sutton said the ruling was vital for the company and set a precedent that will be important for businesses in the state, especially as climate change becomes an increasing threat.

“This is a case that is not only important to the company but to the generic issue of economic loss,” Sutton said.

Sutton added that the work has also showcased the firm’s crisis management capabilities. Companies want to know who they will turn to if an emergency arises, and Morgan Lewis has teams that deploy to help when they do, she said.

“When the crisis hits, time is at a premium,” she said. “The firm has this crisis management team, which is led by our litigation group, ready to go in any number of spaces, but energy is clearly one where that team has been quite active over time.”

The firm also worked on several “netback transactions” for natural gas power facilities. This type of transaction allows the plant developers to buy gas at a rate tied to energy pricing, which is designed to provide a predictable level of profitability by maintaining a fixed spark spread, or the difference between the wholesale market price of electricity and its cost of production using natural gas.

The netback model ties gas pricing to power pricing, which helps provide better assurances to companies when markets fluctuate, according to Filosa, who credited partner Kirstin E. Gibbs with being an innovator of the structure.

“It has become a little bit of a linchpin,” Filosa said of the netback model's role in helping recent deals, adding that the structure will likely be the new normal. “That puts us, I think, in a unique place of being on the cutting edge.”

According to Sutton, the firm works to ensure it has the right people in place to address its clients’ energy-related needs.

“The firm is very dedicated — very focused — on making sure it has the top talent and that this top talent is diverse and that we have transition and succession plans in place to make sure our bench is deep and will be here for the long haul,” Sutton said.

--Additional reporting by Adrian Cruz. Editing by Jack Karp.