

Energy MVP: Morgan Lewis' Mark Haskell

By **Bibeka Shrestha**

Law360, New York (December 01, 2011, 3:13 PM ET) -- Morgan Lewis & Bockius LLP partner Mark Haskell was instrumental in clearing regulatory hurdles for Australian mining giant BHP Billiton Ltd.'s first foray into the U.S. shale market and its subsequent \$12.1 billion acquisition of operations in three major shale formations, making him one of Law360's Energy MVPs for the year.

BHP — among the world's largest producers of iron ore and coal — counted on Haskell's regulatory expertise when it bought Chesapeake Energy Corp.'s interests in the Fayetteville Shale, including a midstream pipeline system, for \$4.75 billion in February.

The acquisition fast-tracked BHP to a spot as a major North American shale gas producer at a time of mushrooming domestic and international interest in the U.S. natural gas industry.

"They're obviously a major transnational player in minerals, but this was their first step into the natural gas industry in the U.S.," Haskell said.

Under the deal, BHP gained 487,000 acres of leasehold and natural gas properties in Arkansas that already produce more than 400 million cubic feet of gas per day, along with development options to support substantially higher production over a 40-year operating life. BHP said the transaction brought it the second largest position in one of the largest gas fields in the world.

If that weren't enough, the Morgan Lewis attorney also worked behind the scenes to bring BHP's acquisition of Houston-based Petrohawk Energy Corp. to fruition in July.

BHP agreed to fork over \$38.75 per share, representing a total equity value of \$12.1 billion, to snap up Petrohawk's operations in the Eagle Ford and Haynesville shales as well as the Permian Basin.

The acquisition brought BHP approximately 1 million net acres in Texas and Louisiana with an estimated 2011 production of 950 million cubic feet, or 158,000 barrels of oil equivalent, daily.

In both transactions, Haskell took care of Federal Energy Regulatory Commission and Commodity Futures Trading Commission due diligence, while also handling other regulatory matters tied to the Petrohawk deal.

The attorney said he tries to give clients a panoramic view of regulatory issues that could potentially arise from the development of shale resources. He pores over not just federal standards, but also state regulations and environmental issues that could come into play.

"Part of the challenge is to integrate those regulatory structures and also look for things that may be less obvious," Haskell said.

While attorneys working on shale project deals naturally look at gaining access to energy resources, they should also focus on how companies can bring those reserves to markets over time, Haskell stressed.

A common challenge that's cropped up in recent years has been winning FERC approval to transfer interstate pipeline capacity to companies stepping into the shoes of those that have developed shale resources, according to the attorney.

"As new folks are added, you have to integrate that into existing long-term commercial arrangements with pipelines and storage providers," Haskell said.

Haskell was able to do just that with the Chesapeake transaction, arranging for regulatory clearances and waivers to enable the transfer of a portion of Chesapeake's interstate pipeline capacity along with its natural gas resources to BHP.

With FERC receiving substantially expanded authority in 2005 to levy fines on those that violate policies governing the transfer and use of interstate pipeline capacity, attorneys are being increasingly cautious, Haskell said. Civil penalties for such violations could reach \$1 million per violation per day, according to the attorney.

"We're generally seeing more and more of a focus in this area," Haskell said.

In 2010, Haskell aided Florida Power & Light Co., the largest electric utility in the state, in a dispute with Florida Gas Transmission Co., which was raising its pipeline rates. The fight was ultimately resolved through a settlement that provided significantly reduced rates, though not without an initial objection from a third party.

The complex matter included a large number of stakeholders, including those regulating utilities, producers, marketers and end users of all types. According to Haskell, FGT customers had raised swords mostly over the proper rate design.

"There were a number of disputes, not only typical disputes between the pipeline and customers, but also disputes among customers," Haskell said. "It looked like we were going to trial, but the parties came together at the end."

Next on Haskell's list is helping BP PLC and its subsidiaries on several pending matters related to pipelines, rates and liquefied natural gas deliveries.

Haskell's practice focuses on FERC investigations, litigation and court appeals as well as CFTC investigations impacting the energy industry. He has more than 25 years of experience with federal regulation of oil and gas, electric energy, and interstate pipeline safety and infrastructure.

This past year, Haskell said he has most enjoyed helping BHP enter into the country's rapidly growing shale gas industry.

"It's good to have the opportunity to have clients doing interesting things," Haskell said.

--Editing by Cara Salvatore.

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