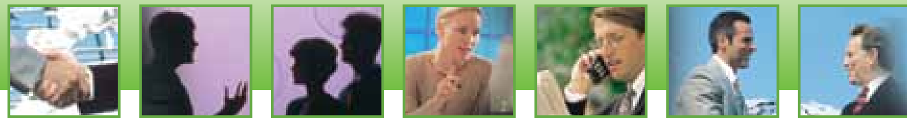
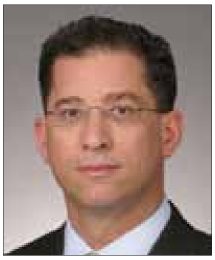


Legal Business Keeping Pace With Latest Energy Boom

By **Jeff Share**/Editor



Today's fast-paced energy business is proving to be lucrative for many professional people, including lawyers. In recent years, developments in oil and gas, including the pipeline sector, have created a significant increase in legal issues. As a result, many of the nation's leading law firms are busy either establishing or expanding the legal services they provide to the pipeline and oil and gas businesses.

Mark Lewis is an attorney with Bracewell & Giuliani who specializes in oil and gas issues. He handles U.S. and global oil and gas development projects with respect to project structuring, contracting and regulation. One particular topic he can address expertly is the need for additional pipeline capacity to handle the growing amounts of oil and gas from today's hot shale plays.

P&GJ: What was the career path that has led to your current position with Bracewell & Giuliani?

Lewis: I have been an oil and gas lawyer for over twenty years, first focusing on regulatory matters and then evolving into project development and transactional work, although regulatory work remains a large part of my practice. To be a full service lawyer to clients in the oil and gas industry, it is vital to be on a platform where I am surrounded by lawyers across all disciplines who are expert in the oil and gas industry. Bracewell has lawyers that handle the full spectrum of issues that arise in the oil and gas industry, including issues related to operations, finance, restructuring, governmental regulation, tax, environment, corporate governance, litigation, government relations and strategic communications.

P&GJ: What are some of the big trends you see today in the pipeline industry?

Lewis: There are currently two significant trends that are having a dramatic impact on the pipeline industry. The first relates to the focus on crude oil and NGL pipeline development. This new focus is driven in part by new production. For example, there is a need to bring the liquids-heavy production in the Bakken and Eagle Ford to market. Part of the focus on oil and NGL pipeline development, however, stems from the fact that the existing oil and NGL pipeline grid is dated.

The oversupply of crude at Cushing and the related price differential between Cushing and the Gulf Coast is a good example of the way in which existing oil pipeline infrastructure has not kept pace with the markets it serves. The second trend is on the gas side of the industry, where there is increasing focus on the construction of large-scale gathering systems to bring new production in non-traditional production areas to the existing pipeline grid.

P&GJ: What has been the impact of the various shale plays on pipeline development issues?

Lewis: The various shale plays are impacting pipeline development in numerous ways. The liquids-rich plays are leading to a race to build crude oil and condensate lines. It is interesting, however, that the pace of development varies from play to play. For example, the Eagle Ford is seeing a multitude of competing projects while the Bakken has to date faced huge capacity short-falls, leading to prorationing on the existing pipelines and a number of crude-by-rail projects.

On the gas side, the wet gas production in the Marcellus is leading to various proposals to develop pipelines to export NGLs to Mont Belvieu, Sarnia or East Coast ports. Gas produced needs to be processed to meet the quality specifications of the interstate pipelines, and this involves the stripping out of the NGLs and there needs to be infrastructure to get those NGLs to market.

More generally, the shale gas plays are leading to midstream companies agreeing to build out gathering infrastructure in exchange for dedication of production from the acreage that will feed into the gathering system. We've been involved in a number of transactions, both on behalf of the producer or the midstream company, where a producer agrees to dedicate a significant acreage position in exchange for the midstream company agreeing to develop the infrastructure necessary to gather and process the production so it can get to market.

A related development is an increasing trend toward producers developing their own gathering in order to control the development to ensure it meets their production profiles. Sometimes, those producer-developed gathering systems are being financed in part through joint ventures or other structures with financial players.

P&GJ: What are some of the obstacles faced today by pipeline developers?

Lewis: There are numerous obstacles facing pipeline developers today. As is evident by the much-publicized opposition to the Keystone XL project, some of the opposition to pipelines is really driven by environmental opposition to fossil fuels generally. Some opposition is driven by objections from environmental activists about new drilling and production techniques, whether focused on oil sands production or fracking in the shale plats. While the administration has announced a delay in the Keystone XL matter in order to consider a major routing alternative, those who are fundamentally opposed to the project as a matter of principle will never be satisfied by another route.

More specific to pipelines themselves, the primary obstacles are those presented by directly impacted stakeholders, be they landowners, environmental groups or local governments. As many pipeline developers have learned over the years, these obstacles can be minimized through early, frequent and transparent communication with affected stakeholders. When pipeline developers are able to communicate clearly about the project and its impacts, both short term and long term, most reasonable stakeholders are able to come to grips with the mitigation measures that pipelines are able to implement. Nevertheless, on many projects, there remain those who simply do not want to listen but instead only want to block what is generally regarded as a safe and efficient method to transport hydrocarbons.

Q&A...

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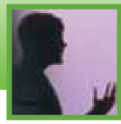
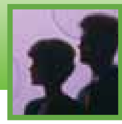
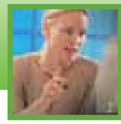

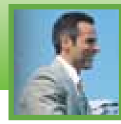
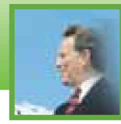

Q&A...

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P&GJ: Are there unique regulatory issues?

Lewis: Regarding oil pipelines, strange as it may seem, the absence of FERC authority over the construction of new pipelines can actually complicate the development of new infrastructure. Under the Interstate Commerce Act, which is the source of FERC's authority over oil and NGL pipelines, FERC has no authority to approve new pipeline projects. Perhaps more significantly, FERC has no ability to grant federal eminent domain authority with respect to oil pipelines.

Thus, oil pipeline developers must deal with various state and local regulatory issues without an overriding federal agency with uniform standards. For example, the potential for state action such as that being considered by the Nebraska legislature to require a re-routing of Keystone XL would be pre-empted by FERC siting authority if the subject matter was an interstate natural gas pipeline. Moreover, if FERC were the lead agency for permitting an oil pipeline, then one could foresee Keystone XL being processed in a much more efficient manner than is the case with the State Department taking the lead on something that is really not within the commonly thought of area of expertise of the State Department.

In that sense, the absence of federal siting regulatory authority for oil pipelines creates an obstacle. Along these lines, although FERC must approve an interstate pipeline's rates and terms and conditions of service, an oil pipeline does not technically need to have its rates or terms and conditions of service approved by FERC before construction commences. The result is that some oil pipelines will not know the rates or terms and conditions that will govern service on its facility until after construction is completed. This lack of certainty on key terms of service can make shippers, lenders or other project participants reluctant to commit to new oil pipeline projects.

With respect to gas pipelines, the connection of new shale basins to the interstate grid is causing certain segments of long-haul pipelines to be rendered less valuable. As a result, there are regulatory issues and potential obstacles related to the costs associated with stranded pipeline segments. I anticipate that this will be an issue for years to come, as interstate gas pipelines seek to rationalize their existing infrastructure and the need for new infrastructure.

P&GJ: How might these obstacles impact the development of pipelines?

Lewis: Investors in large, capital-intensive infrastructure desire regulatory certainty. The absence of FERC siting and federal eminent domain authority for oil pipelines deters some investors from pursuing new oil pipeline projects. Regarding gas pipelines, concerns about stranded assets and associated cost responsibility is actually encouraging owners of existing infrastructure to consider opportunities to convert under-utilized gas pipelines to oil or NGL service.

P&GJ: How might these same obstacles affect the oil and gas industry more broadly?

Lewis: Take, for example, the obstacles presented by broad-based opposition to the production and transportation of Canadian oil sands through the Keystone XL project to the United States. That type of opposition, if successful, will cause Canadian oil to be exported to Asia, thereby deepening U.S. reliance on imported oil from countries less stable and less allied with U.S. interests than Canada.

More generally, any obstacles that make development of necessary pipeline infrastructure more costly or that delay the development of infrastructure will run the risk of stranding production and harming the economics of North American production. It seems that as a policy, the U.S. government would want to encourage the production of North American oil and gas rather than create or maintain obstacles to the production and transportation of such resources to market.

P&GJ: How can the industry better manage some of the obstacles you have described?

Lewis: As noted above, and as practiced by many pipeline developers, one of the most important and effective things for the industry to do is to communicate early and often with affected stakeholders. The industry has a positive story to tell in terms of safety, efficiency, environmental stewardship, job creation and otherwise. Yet often that positive message gets lost in the fuzz of mixed and incorrect messages that get distributed about the industry. ***P&GJ***