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Energy Lawyers Try Their Luck Beyond Houston

By Jesse Greenspan

Law360, New York (July 22, 2010) -- New matters are popping up for energy attorneys to work on, and not all of that growth is occurring in Houston, the traditional epicenter of the oil and gas industry, according to experts.

Although Houston is still home to the broadest cross-section of U.S. energy attorneys, some practitioners have been spreading out to do unconventional shale development, renewable, regulatory, carbon market and other work.

Energy firms have particularly set their sights on the Marcellus Shale, which is located underneath a half dozen or so Eastern states and contains up to 489 trillion cubic feet of natural gas.

"There's not an insignificant number of Texas attorneys getting licensed in Pennsylvania," where Marcellus development is farthest along, said Doug Atnipp, co-chair of the national energy practice at Greenberg Traurig LLP.

He pointed out that there hasn't been significant oil and gas development in the Northeast for about 100 years and that the region lacks attorneys who can prepare title opinions for exploration on private land, among other things.

"The know-how is here," said Atnipp, who is located in Houston. "It's being exported now."

At least one Houston-based energy law firm, Burleson Cooke LLP, even opened an office in the Pittsburgh area — its first non-Texas office — in late 2009 to serve companies with operations in the Marcellus Shale.

"This is a great time for us," said Rick Burleson, managing partner of Burleson Cooke.

"We're following the rock."

"I have not seen any other firms from Texas that have opened up offices or are even talking about it," he added. "But I have heard a few instances of firms in Texas that are doing Pennsylvania work."

Attorneys are also seeking out venture capital and university hot spots, such as the Silicon Valley and Austin, Texas, where new alternative energy technologies are being developed, according to Pete Boerner, a managing director at legal search firm Major Lindsey & Africa.

"The work that they're doing is more focused on financing and technology rather than traditional energy work," Boerner said. "And those companies tend to be at the stage where they don't yet need traditional energy expertise."

For more established alternative energy sources, like hydropower, firms will sometimes open offices mainly to deal with a single big client, Boerner added.

Earlier in July, for example, Bracewell & Giuliani LLP set up shop in Seattle to serve BC Hydro, along with a growing client base of other Pacific Northwest companies.

"Most of the renewable stuff is done by firms in their particular regions," said Jeff Nichols, a partner in the energy practice at Haynes and Boone LLP.

U.S. firms have become more active in Europe, advising companies on how to trade carbon credits, set up offset projects and comply with caps on their emissions.

Carbon trading work "tends to be primarily European-based, whether it's in London or Munich or where have you," Boerner said. Firms with a big international footprint, and not necessarily the traditional Houston-based firms, are expanding their work on those matters, he added.

The number of Washington-based energy attorneys may also be increasing as the Obama administration ramps up enforcement and tries to promote renewable energy development, according to experts.

"We have expanded our Washington office to start gearing up for the government contracting aspects of energy and power generation," said Rico Kolster, a partner in the construction group at Bryan Cave LLP who specializes in energy. "I would imagine other firms are doing the same thing."

Most renewable projects are not commercially feasible on their own, he pointed out, and

require such things as grants and tax breaks. But that makes those projects especially complicated and in need of lots of legal assistance, he added.

Companies need outside counsel to represent them before the Federal Energy Regulatory Commission, the Commodity Futures Trading Commission and other government agencies, Boerner said.

"Typically, any large Houston firm that has a substantial book of energy business will have a substantial presence in D.C.," he said.

Experts agreed, however, that the number of D.C.-based attorneys would take off even more if the U.S. Congress passed cap-and-trade legislation — something that appears unlikely to happen before the midterm elections.

"Before, I think firms were very much focused on getting cap-and-trade experts," Nichols said. "But now it's unclear what, if anything, will be enacted, so people are waiting for more clarity before making moves."

Atnipp said, "I've often joked with people that in the United States the only people making money in the legal business out of carbon credits and carbon sequestration are the people putting on the seminars."

And just because work is taking place outside Houston does not mean the number of firms or attorneys there is decreasing. In fact, DLA Piper, Morgan Lewis & Bockius LLP and Latham & Watkins LLP are among the firms to open up Houston offices within the past few years.

"It seems like just about every major firm in the country has either opened or tried to open a Houston office and tried to recruit energy attorneys," Atnipp said.

"If you want to be in the upstream business, most firms feel like they have to have a presence in Houston," he added.

Nichols pointed out that most electric utility companies also have offices in Houston and that energy trading takes place there.

"Ninety-nine percent of the U.S. attorneys that practice oil and gas law are in Houston," he said.

But even with all the lawyers there, experts said the region could use more.

"Exploration and production companies are still active, and they're still hiring, but what they want is someone in the sweet spot, which is five to 15 (years of legal experience)," said Susan Pye, president of the Pye Legal Group, a recruitment firm.

Burleson added, "If anything, to be honest, I don't think that the legal field has kept up with the need for lawyers that have expertise in the oil and gas industry."

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