

Energy Group Of The Year: Latham

By Christopher Cole

Law360 (February 5, 2019, 3:28 PM EST) -- A key player in major energy sector deals and litigation, Latham & Watkins LLP scored big wins in some closely watched cases, including a \$765 million suit on behalf of CONSOL Energy Inc. and CNX Gas Co., landing the firm among Law360's Energy Groups of the Year.

Latham — which had a hand this past year in more than \$800 billion in project financing, mergers and more — has been sought after as a sprawling global firm boasting hundreds of attorneys with energy sector expertise. One of its chief accomplishments was securing dismissal of one of two class action antitrust suits against Northeast energy giant Avangrid, which was one of two companies accused in an Environmental Defense Fund whitepaper of inflating electric prices by withholding gas transportation capacity.

The energy practice group's services run the gamut of companies' needs, from getting the money together for multibillion-dollar transactions to getting the courts to enforce clients' contract claims.

David Schwartz, global chair of Latham's energy regulatory and markets practice, said that Latham can help with virtually any aspect of a client's legal needs, thanks to its significant bandwidth, enabling a kind of holistic approach to client service.

"We're not a firm that has profit center accounting. Instead we are a firm that wants to put forth the best expertise that we have for each matter and for each client," Schwartz said.

An important Latham victory came in November 2017, when the firm won at trial on behalf of CONSOL and CNX Gas in a massive suit against Noble Energy Inc. and NBL Midstream LLC. CONSOL, which had a 50/50 joint venture with Noble in a midstream gathering company in the Marcellus shale of the Appalachian Basin, sued over Noble's attempted \$765 million sale of its half interest in the venture without granting Consol bargained-for preferential purchase rights.

Latham said the case was tried on an expedited basis. The trial court found liability in favor of CONSOL and against Noble on four separate and independent liability bases, issued a declaratory judgment for CONSOL and entered a permanent injunction against Noble blocking its attempted sale to a third party until CONSOL was granted the purchase rights.



It was such a big win that Latham said CONSOL's CEO called it the top victory in the history of the company, which dates to 1864.

While Latham takes part in major energy sector transactions every year, a few recent deals stand out.

The firm advised Fermaca Pipeline El Encino S. de R.L. de C.V. in an \$814.8 million refinancing of its gas pipeline in Chihuahua and Durango, Mexico, that is crucial to the country's energy infrastructure, via a commercial bank credit facility and fixed-rate global notes sold to a European investor. The financing provided Fermaca with short- to medium-term flexibility, and Latham said it was the first side-by-side bank-and-bond project financing in Mexico involving a pure private placement of the notes.

Latham represented Energy Transfer Equity LP in its nearly \$60 billion acquisition of Energy Transfer Partners in a unit-for-unit exchange. And in an ongoing project, the firm represents funds managed by Macquarie Infrastructure Corp. and Real Assets in selling a roughly 44 percent equity interest in the parent entity of Puget Sound Energy Inc. to a consortium of investors.

Deals are a big part of what Latham does, of course, but if they run into legal logjams, the firm's litigation team is ready to jump in.

"Obviously as transactional lawyers we don't want anything to go to litigation," said Debbie Yee, a partner in Latham's Houston office focused on the oil and gas industry. "But being able to offer our clients a litigation team that knows energy and knows contract law, etc., is a huge benefit for us here in Houston."

In a standout achievement, Latham has represented Avangrid in several matters dealing with an October 2017 whitepaper by the Environmental Defense Fund alleging that two companies withheld gas transportation capacity to increase electric prices in New England by more than \$3.6 billion, seeing a related class action thrown out.

Latham pointed out that the paper led to two different antitrust suits, an inquiry by the Federal Energy Regulatory Commission and a Connecticut regulatory proceeding. A Massachusetts federal judge dismissed one of the class actions, which is currently on appeal, and Avangrid is seeking a dismissal of another. FERC announced that its staff found no market manipulation or other wrongdoing and was closing the inquiry.

David Penna, a partner in Latham's Washington, D.C., and New York offices and co-chair of the project development and finance practice, stressed that the firm has a global culture of attorneys working together to share their expertise, creating a one-stop shop for energy clients in all their legal affairs.

"The practices bolster each other, and they make everything stronger," he said. "Our clients are more and more looking for a firm that can really handle everything, because if you don't have expertise it's hard to help clients see around corners."

--Additional reporting by Alison Noon. Editing by Nicole Bleier.