



Fulbright Lawyers Explore Trends in Energy Litigation

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Those wondering what lies ahead in energy litigation and looking for analysis of emerging U.S. and international trends can find it in the 2007 Trends in Energy Litigation report authored by Fulbright & Jaworski L.L.P.'s recognized energy lawyers.

Among the numerous trends explored in the newly released report are:

- The criminalization of energy and environmental matters by the U.S. government and a marked increase in government regulations, investigations and litigation.
- Internationally, host governments' seeking a larger share of revenues through higher taxes and royalties and a greater participation in hydrocarbon projects through a combination of forced renegotiation of contracts and government decrees.
- A significant increase in regulatory oversight of energy markets designed to prevent and punish market manipulation.

"The factors driving energy litigation and regulatory actions are likely to continue: namely, growing global demand, rising prices, heightened geopolitical tensions, and a variety of regulatory, social and environmental issues," said Fulbright Partner Dan McClure, who co-edited the report with Partner David Van Susteren. "Now more than ever, keeping a close watch on energy litigation trends, and responding to those trends, makes economic sense."

More than 20 of Fulbright's 250 energy attorneys contributed articles and analyses of the emerging U.S. and international trends to the third biennial Trends in Energy Litigation report.

"Our latest Trends in Energy Litigation report is our most comprehensive yet," said Stephen C. Dillard, the head of Fulbright's worldwide litigation practice. "This in-depth report provides an overview of the emerging energy litigation trends our lawyers are seeing across the globe and gives a preview of where energy litigation is headed."

The report opens with a detailed section on international energy disputes. It explores how high prices, coupled with the swing of the political pendulum in several regions of the world, led to a chain reaction in which host governments in countries including Algeria, Bolivia, China, Ecuador, Russia and Venezuela have sought to increase their take from energy projects.

From there, the reader goes on a journey through U.S. upstream litigation trends, such as litigation over federal royalties, environmental laws, the Clean Water Act, toxic torts, and global warming.

An exploration of litigation trends ranging from the treatment of energy contracts in bankruptcy to litigation risks in the LNG business is followed by analysis of the Federal Energy Regulatory Commission's expanded jurisdiction and enhanced enforcement authority under the Energy Policy Act of 2005 to prohibit market manipulation.

The report also takes a look at the nation's increasing reliance on natural gas and the enormous capital requirements required by the energy industry in order to maintain and expand the interstate natural gas pipeline network and to develop new supply initiatives, including the importation of natural gas.

“At the same time, the nation's electric transmission grid faces even more pressing capital requirements,” writes Fulbright Partner Jack Harrington and Senior Associate Letitia McKoy. “A sustained 20-year period of underinvestment presents the prospect of massive capital expenditures simply to restore the nation's aging electric infrastructure to the level necessary to reliably meet existing requirements, much less to satisfy near-term increases in demand.”

Additionally, the report addresses litigation challenges of alternative energy and reviews SEC enforcement trends related to internal controls. As Fulbright Partner Peggy Heeg explains: “Officers and employees of corporations are increasingly being held personally liable for not maintaining adequate internal controls that lead to violations of the Securities Exchange Act.”

The final section of the report notes a trend toward fewer certifications of class actions and a trend away from antitrust conspiracy challenges in joint venture litigation.

The analysis provided within the report will help those who closely watch and participate in the energy industry to better understand where energy litigation is heading.

“Because of evolving legal standards and the dynamic nature of the energy industry, it is important to take a step back and analyze where we are seeing more litigation and where we are seeing less, as well as what litigation is having the most impact on the industry as a whole,” McClure said.

Fulbright & Jaworski L.L.P.

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The 2007 *BTI* survey of FORTUNE 1000 general counsel chose Fulbright as "The *BTI* Client Service 30" A-Team and *Corporate Board Member* magazine named Fulbright among the top 20 corporate law firms in the U.S. in their survey of board members of public companies. For more information, please visit: www.fulbright.com.

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