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State Of 2024 Energy Dealmaking: Midyear Report

By **Keith Goldberg**

Law360 (July 18, 2024, 6:44 PM EDT) -- Energy dealmaking in the first half of 2024 has, in many ways, picked up where 2023 left off, whether it's merger madness in the oil and gas sector or tax credit transfers driving the clean energy project bus.

But energy companies also increasingly have an eye on the U.S. presidential election this fall that could bring drastic change to the dealmaking landscape.

Here are some transactional trends that have stood out to energy attorneys so far this year:

No End to Oil and Gas Merger Mania

The consolidation wave that hit the oil and gas sector in the latter half of 2023 showed little signs of receding in the first half of 2024.

Multibillion-dollar deals with oil as the centerpiece included Diamondback Energy Inc. in February buying fellow Texas independent driller Endeavor Energy Resources LP in a $26 billion cash-and-stock deal and ConocoPhillips agreeing in May to buy Marathon Oil in an all-stock deal worth $22.5 billion.

On the gas side, drilling giant Chesapeake Energy in January agreed to buy Southwestern Energy in a $7.4 billion deal, while Appalachian Basin driller EQT Corp. in March agreed to re-acquire pipeline unit Equitrans Midstream Corp. in an all-stock deal that puts a $13.9 billion purchase price on Equitrans, inclusive of debt.

"I think the large players are definitely seeing benefits of scale," said Breen Haire, who co-heads Simpson Thacher & Bartlett LLP's energy and infrastructure practice. "As the very largest supermajors consolidate, you saw increasing pressure on the rest of the large players in the industry to consolidate themselves to maintain some scale."

Many of 2024's oil and gas megamergers have been all-stock deals. Haynes and Boone LLP partner Kraig Grahmann chalks that up to a couple of factors: improving oil and gas company stock prices post-COVID-19 pandemic and continued difficulty in raising new debt to fund purchases.

There are still all-cash oil and gas deals being done, but they tend to be asset sales, Grahmann said.

"A lot of those companies are either smaller public companies, and they're using their existing debt facilities, or they're private equity-backed companies using their debt facilities and raising new equity," Grahmann said.

And while much of the consolidation has been in the upstream space so far in 2024, that likely won't be the case as the year progresses, attorneys say. For starters, pipeline giant Energy Transfer in May agreed to buy privately held WTG Midstream in a deal worth $3.25 billion.

"We're going to see consolidation in other parts of the oil and gas industry as well, whether it's midstream or downstream service," said Eric Otness, who heads the mergers and acquisitions and corporate group in Skadden Arps Slate Meagher & Flom LLP's Houston office.

Energy Transition Drives Power and Renewable Energy Deals

While consolidation has been the name of the game in the oil and gas sector so far in 2024, attorneys say dealmaking in the power and renewable energy sectors has been about companies ensuring they have their piece of the ongoing global transition to zero-carbon and low-carbon energy and the billions of dollars of investment that will entail.

"What's driving this is that many companies in these different areas are trying to bolster their portfolios and reinforce their capital strategies in response to volatility, and they're gearing up for increased capital spending demands," said Mona Dajani, who co-chairs Baker Botts LLP's global energy sector. "For companies that are focused on strategies for the energy transition, M&A is critical for them to achieve scale and efficiencies."

In May alone, a consortium of buyers including the Canada Pension Plan Investment Board and Global Infrastructure Partners agreed to take Midwest utility Allete Inc. private in a deal worth $6.2 billion, while Spain's Iberdrola SA bought out the rest of its North American utility unit Avangrid in a $2.6 billion deal.

Renewable deals included private equity giant BlackRock in January buying a $500 million stake in solar and energy storage developer Recurrent Energy. But Norton Rose Fulbright partner Becky Diffen, who works on renewable project development, said renewable M&A volume hasn't been quite as high so far in 2024 compared to 2023. She attributes some of the slowdown to the industry still trying to wrap its head around the recent tariff moves by the Biden administration, including a host of new duty rules on solar cell imports from Asia.

"Just like a few years ago when we had a bunch of new tariffs, it slowed down a number of deals and a number of deals died over it," Diffen said.

Tax Credit Transfers Take Off

As the one-year anniversary of the U.S. Department of the Treasury and Internal Revenue Service issuing guidance on the Inflation Reduction Act's so-called transferability provisions passes, attorneys say it's safe to conclude that after a cautious start, tax-credit-for-cash swaps have become a leading driver of renewable energy project finance and development.

"It's almost never that we're not considering there might be a transfer at the end of the day," said Morgan Lewis & Bockius LLP partner Laura Neumeister Wright.

Attorneys say transfer deals are evolving beyond developers simply cashing in their tax credits to hybrid deals, such as pairing tax credits with traditional tax equity so investors can still take advantage of things like depreciation, or pairing them with debt finance.

"People aren't even calling them transfer deals anymore," Diffen of Norton Rose Fulbright said. "You don't see people just doing a transfer deal where you're selling the credits and doing something else."

While that's been a boon for clean energy projects in general, McDermott Will & Emery LLP partner Carl Fleming said energy storage projects may be the biggest beneficiary of hybrid transferability, as it's helped ease any lingering investor concerns over the risks of such projects, especially if they don't have fixed offtake agreements with utilities or corporate buyers.

"Transferability with storage gives you three or four options now, where you couldn't do that before," Fleming said.

A Cautious Eye on November

It's not scaring energy companies away from the deal table yet, but as November's U.S. presidential election — along with two starkly different candidate choices in terms of energy policy — draws closer, it's becoming a bigger part of the dealmaking conversation, attorneys say.

"The questions are getting more frequent," Otness of Skadden said. "We're seeing a lot more questions and a lot of 'what if?' scenarios."

While President Joe Biden has championed clean energy development and tackling climate change, headlined by the Inflation Reduction Act, former President Donald Trump has vowed to try and unwind Biden's policies.

That includes the tax perks of the IRA, but Dajani of Baker Botts said that isn't worrying the biggest players in the industry, aside from large institutional sponsors and developers perhaps being more selective about their projects, and lenders performing more strenuous due diligence on investments.

If there's an election-related dealmaking slowdown happening, it's more with foreign companies that were increasingly drawn to the U.S. market by the IRA's promise, Dajani said.

"Especially with European companies that came here to the U.S., they're thinking, 'Let's see how this shakes out with the election,'" Dajani said.

--Additional reporting by Al Barbarino, Jade Martinez-Pogue and Jennifer Doherty. Editing by Emily Kokoll and Lakshna Mehta.