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Dealmakers Q&A: Crowell & Moring's Patrick Lynch

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Patrick Lynch

Patrick W. Lynch is an energy group partner in Crowell & Moring LLP's Washington, D.C., office, concentrating his practice on infrastructure project development. He also works on general corporate and finance matters, with a particular emphasis on project financing and mergers and acquisitions in the energy and water industries. He has represented private sector developers, governments, lenders, and equity investors in the development and financing of energy and water projects domestically and in foreign countries. In the financing of infrastructure projects, he has represented borrowers, lenders and equity investors in connection with senior and subordinated construction and term credit facilities, equity investments, and taxable and tax-exempt bond offerings.

Lynch has worked on a wide range of projects, including conventional thermal and renewable generating facilities, electric transmission lines, oil and gas pipelines, desalination and wastewater treatment plants, solid waste processing facilities and industrial projects. He has extensive experience with all types of project agreements, including power purchase and other off-take agreements, fuel supply and transportation agreements, interconnection agreements, water supply and disposal arrangements, and construction and operating arrangements. Lynch has also worked on numerous project-related financing, M&A and joint venture transactions.

As a participant in Law360's Q&A series with dealmaking movers and shakers, Patrick Lynch shared his perspective on five questions:

Q: What’s the most challenging deal you’ve worked on, and why?

A: The most challenging transaction I have worked on has been representing the sponsor in the development and financing of the Carlsbad Desalination Project in California, an almost $1 billion project that will be the largest desalination facility in the Western Hemisphere. The project closed financing and commenced construction in 2012, and when completed will provide approximately 10 percent of the water supply of San Diego County. Getting the project to financial close was a year-long effort involving almost 60 separate parties. The project was challenging for a number of reasons, the first of which was that the project went through a very long development period, due in part to numerous challenges to the project's permits. The delay affected contracts with a number of project participants, requiring extensive renegotiation of contracts and replacement of certain parties.

Another challenge was the evolution of the project from a purely private sector project to a public-private partnership between Poseidon Water, the project's sponsor, and the San Diego County Water Authority, which necessitated the restructuring of key project contracts to reflect the increased public sector involvement inherent in a P3 project. In the P3 structure for the project, the desalination facility remains privately owned, while a related 10-mile water transmission pipeline is to be owned by the Water Authority. The project's financing was a combination of tax-exempt debt and private sector equity, and used a novel financing structure which permitted the financing of both the desalination facility and the pipeline with debt that has recourse to (and is taking the risk of the successful operation of) the private sector desalination facility.

Due to the P3 structure and the fact that this was a "first of its kind" project in the United States, the project received a high level of scrutiny from ratings agencies and other participants in the financing process. This scrutiny was further complicated by the very short time frame for the final push to close the project's financing. All in all, when the financing closed on Christmas Eve 2012 it was clear that the project's "Deal of the Year" designation was well-deserved.

Q: What aspects of regulation affecting your practice are in need of reform, and why?

A: The use of tax-efficient publicly traded master limited partnership (MLP) structures should be expanded to be available to energy assets beyond the oil and gas sector. This would be of particular benefit to renewable energy projects, as the ability to access public capital markets through MLPs would help replace the support lost as a result of the phaseout of tax benefits for these types of projects.

Q: What upcoming trends or under-the-radar areas of deal activity do you anticipate, and why?

A: In part because of the unavailability of MLPs for power assets, in the past 12 months a number of energy companies have created publicly traded "yieldcos" to access lower cost capital for projects with long-term contracted cash flows from creditworthy counterparties. The assets for the yieldco come from both the sponsoring energy company and from third-party acquisitions. Yieldcos are attractive to investors because the contracted cash flows support a steady dividend stream, and because dividends are expected to grow due to the sponsor's generally stated strategy of increasing the asset base of its yieldco. I think that the yieldco phenomenon will increase M&A activity in the power sector, as in order to realize their expected dividend growth, yieldcos will need to engage in significant third-party acquisitions.

Q: What advice would you give an aspiring dealmaker?

A: An aspiring practitioner in the project finance space should keep in mind that the name of the game is in large part risk allocation and mitigation. When negotiating the complex web of contracts that are part of a large infrastructure project, try and ask yourself "what if" for as many eventualities as could practically (or perhaps not so practically) occur. This is not to say that you need to have thought of every possible issue or come up with a mitigation strategy for those you do. In fact, some identified risks may need the leverage of the 800-pound gorilla of a project lender to properly allocate. However, this exercise will serve you well during the financing process when you will be second- (and if you are lucky) third-guessed by advisers for debt and equity investors.

Q: Outside your firm, name a dealmaker who has impressed you, and tell us why.

A: Gerald Farano of Jones Day. Jerry and I were associates together at another firm many (too many!) years ago, and we have subsequently worked on a number of transactions, both as opposing counsel and representing parties on the same side of a deal. Jerry is a knowledgeable and pragmatic energy transactional attorney, and combines a flexibility in negotiations with a focus on getting the best outcome on key issues for his client. Perhaps most importantly, he has a good sense of humor, which is a valuable asset in a practice involving complex and time-sensitive transactions.

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