

The banner features a dark background with a glowing lightbulb held in a hand, surrounded by various energy-related icons like a gear, a plug, and a leaf. The text 'Energy Market Drivers Series' is written in a white serif font. A red square with a white letter 'G' is positioned on the right side of the banner.

Energy Market Drivers Series

After the Deal: Managing Post-Closing Risk in Energy M&A

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Closing an energy transaction is not the finish line, it is the beginning of a new phase of risk. Post-closing disputes are common in energy deals, often arising from purchase price adjustments, title defects, environmental liabilities, and operational misalignment. This Alert highlights where disputes arise and how thoughtful structuring can mitigate exposure. recently presented at GableGotwals' Annual Energy Market Drivers and Current Legal Issues Seminar.

1. Purchase Price Adjustments Are a Frequent Source of Conflict

- Post-closing true-ups are standard, but often contentious.
- Disputes typically stem from:
 - Differing accounting methodologies
 - Working capital calculations
 - Ambiguities in the purchase agreement
- **Mitigation tip:** Clearly define adjustment mechanics and align accounting principles upfront to reduce ambiguity

2. Title Defects Require Precision in Drafting and Diligence

- Energy deals rely heavily on detailed title frameworks, including:
 - Definitions of “Defensible Title” and “Permitted Encumbrances”
 - Thresholds, deductibles, and valuation methodologies
- Pre-closing diligence is critical, but post-closing remedies are often limited to special warranty protections for a defined period
- **Mitigation tip:** Ensure purchase and sale agreements (PSAs) clearly outline defect remedies, timelines, and valuation methods

3. Environmental Liabilities Can Be Underestimated

- Known environmental issues are typically addressed through:
 - Specific indemnities
 - Purchase price adjustments
- Unknown risks present greater challenges:
 - Representations and warranties may be narrowly scoped
 - Buyers may face limited recourse without robust protections
- **Mitigation tip:** Accurately quantify remediation costs and negotiate flexibility to exclude high-risk assets

4. Post-Closing Operations Can Trigger Disputes Quickly

- Common friction points include:
 - Misallocated revenues and expenses
 - Ineffective “true-up” mechanisms
 - Delays in redirecting payments from third parties
- Overlapping remedies can further complicate resolution
- **Mitigation tip:** Establish clear operational transition protocols and avoid duplicative or conflicting remedies

5. Transition Services Agreements (TSAs) Offer Limited Protection

- TSAs are often:
 - Narrow in scope
 - Limited in enforceability (e.g., gross negligence standards)
- Practical risks include:
 - Lack of continuity if key personnel are unavailable post-closing
- **Mitigation tip:** Confirm operational readiness and do not over-rely on TSAs for critical business functions.

The Bottom Line

Energy M&A deals do not end at closing. Without careful structuring, diligence, and post-closing planning, routine provisions can evolve into costly disputes. Companies that proactively address these risks — through precise drafting, realistic valuations, and operational alignment — are better positioned to protect deal value and avoid litigation.

If you have any questions, please contact any member of [GableGotwals' Energy, Oil & Gas team](#).

This series covers topics featured during GableGotwals' Annual Energy Market Drivers and Current Legal Issues Seminar. To receive Alerts and information on future Firm events, [subscribe to our mailing list](#).



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