

Key Takeaways From WilmerHale's Recent Women in Energy and Infrastructure Conference

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On November 2, WilmerHale held its inaugural **Women in Energy and Infrastructure—Powering the Future** conference in Washington DC. The event and pre-conference dinner drew more than 100 attendees and provided a forum for women thought leaders to discuss legal and policy issues impacting energy and infrastructure companies and exchange ideas related to powering development. Speakers included senior government officials, in-house counsel, government affairs representatives, agency and Congressional staff, and other influencers.

The keynote speaker for the conference was **US Senator Lisa Murkowski** (R-Alaska), chairman of the Senate Energy and Natural Resources Committee and the Senate Appropriations Committee's Interior and Environment Subcommittee.

Featured speakers included **Jane F. Garvey**, former FAA Administrator and member of United Airlines' board of directors; **Jamie Gorelick**, chair of WilmerHale's Regulatory and Government Affairs Department, former Deputy Attorney General of the United States, and member of Amazon.com's and Verisign's boards of directors; and **Ambassador Charlene Barshefsky**, former US Trade Representative and chair of WilmerHale's International Trade Group.

Distinguished panel speakers included:

- **Kate MacGregor**, Acting Assistant Secretary for Lands and Minerals Management, US Department of the Interior
- **Angela Colamaria**, Permitting Team Lead, White House Office of Management and Budget
- **Amanda Neely**, General Counsel to Senator Rob Portman and Deputy Chief Counsel, US Senate Permanent Subcommittee on Investigations
- **Molly Joseph Ward**, Secretary of Natural Resources, Virginia
- **Karen Hawbecker**, Associate Solicitor for the Division of Mineral Resources in the Office of the Solicitor, US Department of the Interior
- **Stacy Linden**, Vice President, General Counsel & Corporate Secretary, American Petroleum Institute

- **Ann Loomis**, Senior Director, Federal and Environmental Policy, Dominion Energy
- **Erin Lieberman**, Vice President, Environmental & Wildlife Permitting, Invenergy
- **Kristie Tice**, Senior Counsel, Chevron USA, Inc.
- **Lynn Scarlett**, Co-Chief External Affairs Officer, The Nature Conservancy

Below are key takeaways from each of the conference sessions.

The Future of US Energy Development

Moderator: [Bonnie Heiple](#), Counsel, WilmerHale

The new administration has identified the future of energy development in the United States as a top priority in the coming years. During this panel discussion, industry leaders from the public and private sectors provided insight on the direction of domestic energy development and the changing role of US energy interests on the world stage. The lively discussion focused on the roles of women, technological innovation and the current administration in driving the nation's domestic energy future. Key insights included:

- Technological innovations will continue to play a significant role in US energy development, not only by making domestic energy resources more accessible, but also by bringing increased safety, efficiency and reliability to both the traditional and renewable energy sectors.
- The current administration is focused on reducing administrative burdens to facilitate more predictability and certainty in energy project permitting timelines. Identification and elimination of duplicative regulations will support the administration's expressed goal of facilitating US energy dominance.
- Wildlife issues in project development and permitting need to be addressed in a manner focused on the overarching goal of large-scale conservation.
- The role of women in the energy sector will continue to grow as more women enter technology-driven fields, and mentoring and policies that combat unconscious bias will contribute positively to that evolution.

Cutting the Red Tape: Improving Federal Review of Energy and Infrastructure Projects

Moderator: [Raya Treiser](#), Counsel, WilmerHale

Congress and federal agencies have taken steps in recent years to streamline the permitting of large infrastructure projects, increase transparency of the federal review process and establish agency accountability. Among the most notable of these steps has been the enactment of Title 41 of the Fixing America's Surface Transportation Act (FAST-41 Act). The panelists reflected on their practical experiences navigating the federal regulatory framework and discussed the implementation of the FAST-41 Act and other relevant laws and policies intended to streamline federal permitting. Noteworthy points included:

- To cut red tape in the permitting process, project developers should start the process early, stay focused and provide regulatory agencies with the information they need in the appropriate format.

- The FAST-41 Act is a significant development that resulted from Congressional efforts to simplify and streamline project permitting processes. Most notably, the act requires agencies to coordinate early on project development, creates an online dashboard to facilitate easy tracking and transparency in the permitting process, and reduces the statute of limitations for certain legal challenges for project permits issued through the program.
- Within the first two years of its implementation, the FAST-41 Act facilitated changes related to the permitting of major infrastructure projects that have begun to yield benefits for project developers, stakeholders and communities across the country.
- In addition to federal permitting coordination, it is important to take steps to coordinate reviews required at a state or local level. The FAST-41 Act encourages the lead federal agency to invite states to participate in the federal process, but since states are not required to do so, developers may still be subject to review processes at multiple levels of government.

Anticipate, Avoid, and Defend: Facing Legal Challenges

Moderator: Rachel Jacobson, Special Counsel, WilmerHale

This panel discussion focused on anticipating avoiding and defending legal challenges that may arise in a permitting process, perhaps even more so in an era of streamlined, accelerated project development. Key takeaways included:

- Transparency and early engagement with a wide group of stakeholders are important in order to discuss concerns and receive input regarding proposed projects. Communication with stakeholders must be a two-way process, and stakeholders and project proponents should work to improve dialogue and understanding. Early engagement can identify adjustments to proposed projects and resolve any potential conflicts up front.
- Work creatively and outside of litigation to reach resolutions, especially with local officials and field office representatives of federal and state agencies who are closer to the issues. Contrary to common assumptions, agencies are open to creative suggestions for resolving potential problems and appreciate attempts to settle legal challenges early in the process.
- Large-scale regional planning and mapping can play a role in avoiding litigation. Through landscape-level planning, often led by non-governmental organizations, areas more suitable for development can be identified for siting projects, which, in turn, can help avoid, minimize and mitigate impacts from energy and infrastructure projects. Identifying other areas for conservation priorities can provide mitigation opportunities, and aligning locations more suitable for development with infrastructure projects can help alleviate concerns, opposition and potential legal challenges.

US Energy Dominance on the World Economic Stage: A Discussion With Former US Trade Representative Ambassador Charlene Barshefsky

In the closing session of the conference, former US Trade Representative Ambassador Charlene Barshefsky shared her views on the impact of recent developments in US trade policy on the country's energy and infrastructure sectors. Noteworthy points included:

- The renegotiation of the North American Free Trade Agreement (NAFTA) can have important implications for US energy companies seeking to invest in the Mexico energy market. In particular, Chapter 11 of NAFTA—the investor-state dispute settlement provision—provides important protections to US investors in Mexico energy projects, which require large amounts of up-front investment and a long period of time to recover the investment.
- Suniva and SolarWorld brought a case to the International Trade Commission under Section 201 of the Trade Act alleging that they were injured by less expensive solar panel imports. Section 201 is used infrequently, and the complainant must prove that increased imports caused material injury to the industry in the United States. Under the statute, the US president determines the ultimate remedy.

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This content reflects WilmerHale's summary of the key issues discussed during conference sessions and should not be attributed to any individual conference participant.