

# Community Lawyering for Environmental Justice Part 10: Onshore Renewable Energy Permitting

## 1. Introduction to Community Lawyering

Community lawyering, also known as empowerment lawyering, is key to meaningful environmental justice-oriented pro bono work. Community lawyering involves collaboration with community members as facilitative partners. As a result, it differs from the more traditional representational lawyering.

## 2. Energy Transition Context

The United States has a stated goal of net zero emissions by 2050. Such a transition requires large-scale development of renewable generation sources such as wind and solar, as well as associated technologies like storage and transmission infrastructure. This transition is being accelerated by several recently enacted federal laws:

- Inflation Reduction Act (IRA) (2022): The IRA represents the single largest investment in climate and energy in American history, providing tax credits for solar, wind, low-carbon hydrogen, carbon capture and storage, electric vehicles, and other renewable energy technology projects. It also provides a tax credit to help preserve existing nuclear plants.
- Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act (2022): The CHIPS Act provided subsidies for research and development into the domestic production of semiconductors, an important technology for renewable energy sources. Domestic production was identified as a priority to address national security concerns.
- Infrastructure Investment and Jobs Act (IIJA) (2021): The IIJA provided more than \$60 billion in various grant programs to accelerate new technology and workforce development. Such grant programs prioritize hydrogen, including hydrogen hubs, and carbon capture and sequestration infrastructure.

In addition to its environmental implications, an energy transition also provides an opportunity to remediate the economic and public health harms of a fossil-fuel based economy and advance equity and justice throughout our energy systems.

## 3. Siting & Permitting Review

Project location, land ownership, need for transition, and federal involvement all play an important role in determining which agencies and levels of governments are involved in a particular project. In addition to federal regulatory mechanisms, permitting processes are incredibly localized and there is wide variation between states and local governments.

### a. Federal Authorities

## i. Key Agencies

With jurisdiction over public lands, the Bureau of Land Management (BLM) has authority over the siting and authorization of renewable projects. Most recently, BLM published its Renewable Energy Rule in 2024, which promotes the development of solar and wind on public lands by improving the application process and providing greater predictability in how BLM will administer future solar and wind project authorizations.<sup>1</sup> In addition to the process improvements, the rule also reduces acreage rents and reduces capacity fees by 80%.<sup>2</sup>

The Federal Energy Regulatory Commission (FERC) is primarily responsible for regulating interstate transmission of electricity, which includes protecting the reliability of the transmission system and reviewing siting applications for electric transmission projects under limited circumstances.<sup>3</sup> Earlier this year, FERC published Order No. 1920, which was designed to address long-term transmission planning by requiring transmission owners to utilize a 20-year time horizon to anticipate future needs and account for future shifts in production sources.<sup>4</sup> FERC also published Order No. 1977, which updates the process used by the agency when exercising its authority to review siting applications.<sup>5</sup> It includes a Landowner Bill of Rights which notifies landowners who would be affected of their right to intervene in a FERC proceeding and codifies an Applicant Code of Conduct as a way for applicants to demonstrate good-faith efforts to engage with landowners in the permitting process. The order also strengthens public participation by requiring applicants to develop Tribal Resource Reports and Environmental Justice Public Engagement Plans.

The Department of Energy (DOE) also plays a role in the development of renewable energy, albeit with only a minimal role in siting and permitting. Rather, DOE focuses on early-stage technical research, much of which is conducted through grants made by the agency. For example, this spring DOE announced up to \$22 million to improve planning, siting, and permitting processes for large-scale renewable energy facilities.<sup>6</sup> Much of this grantmaking is conducted in furtherance of the Renewable Energy Siting through Technical Engagement and

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<sup>1</sup> 89 Fed. Reg. 35634 (2024).

<sup>2</sup> 89 Fed. Reg. 35634 (2024).

<sup>3</sup> FERC also regulates the interstate transmission of natural gas and oil, as well as proposals to build liquid natural gas terminals and interstate natural gas pipelines as well as licensing hydropower projects. Fed. Energy Reg. Comm'n, What FERC Does, <https://www.ferc.gov/what-ferc-does>.

<sup>4</sup> Fed. Energy Reg. Comm'n, Order No. 1920, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation (2024), available at <https://www.ferc.gov/news-events/news/ferc-takes-long-term-planning-historic-transmission-rule>.

<sup>5</sup> Fed. Energy Reg. Comm'n, Order No. 1977, Applications for Permits to Site Interstate Electric Transmission Facilities (2024), available at <https://www.ferc.gov/news-events/news/ferc-unanimously-approves-backstop-transmission-siting-procedures>.

<sup>6</sup> U.S. Dep't of Energy, Biden-Harris Administration Invests \$22 Million to Improve Siting and Permitting for Large-Scale Renewable Energy and Energy Storage, <https://www.energy.gov/articles/biden-harris-administration-invests-22-million-improve-siting-and-permitting-large-scale>.

Planning (R-STEP) program, which expands the decision-making capacity and expertise of state and local governments around large-scale renewable energy planning, siting, and permitting.<sup>7</sup>

## ii. NEPA Review

Renewable energy projects that are located on federally managed land, require a federal permit, or otherwise involve federal agencies must undergo environmental review under the National Environmental Policy Act (NEPA).<sup>8</sup> Examples of renewable energy projects that trigger NEPA review include transmission lines and wind and solar farms on federal land and hydropower projects that require permits from the Federal Energy Regulatory Commission.

While NEPA does not prescribe a particular outcome, it requires the lead agency to consider the environmental and public health impacts of a project. In addition to bolstering environmental review of a project's impacts, NEPA also provides a critical foundation for public participation in the permitting process.<sup>9</sup> NEPA requires federal agencies to involve the public early and continuously during the environmental review process, including notifying the public about draft documents and hold public meetings. NEPA also requires agencies to provide opportunities for the public to comment on Environmental Impact Statements and Environmental Assessments, which are prepared to evaluate the potential environmental impacts of proposed projects. Comments received from the public must be considered and, where appropriate, incorporated into final decision-making.

### b. State & Local Authorities

The principal authority for permitting often depends on the size of the project, with larger projects sited at the state level and smaller projects managed by local governments. At the state level, the decision-making body is typically the public utilities commission or public service commission, a quasi-governmental body that regulates utilities under their jurisdiction.<sup>10</sup> Decisions made at the local level are typically made by county or municipal governments. In addition to variance in lead permitting authority, there is wide variance in permitting timelines, ranging from as little as 30 days to as much as one year.<sup>11</sup>

In nearly three-quarters of states, local governments have either exclusive or conditional authority to manage use and regulate development and construction of solar and wind facilities.<sup>12</sup> Siting standards are generally included in either a state law or local zoning ordinance. These

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<sup>7</sup> U.S. Dep't of Energy, Renewable Energy Siting through Technical Engagement and Planning (R-STEP), <https://www.energy.gov/eere/renewable-energy-siting-through-technical-engagement-and-planning-r-steptm>.

<sup>8</sup> Federal permits that trigger NEPA review include those under the Endangered Species Act, the Clean Air Act, and the Clean Water Act.

<sup>9</sup> Council on Env't Quality, A Citizen's Guide to NEPA (2021), available at <https://ceq.doe.gov/docs/get-involved/citizens-guide-to-nepa-2021.pdf>.

<sup>10</sup> Berkley Lab, Energy Markets & Policy, Laws in Order: An Inventory of State Renewable Energy Siting Policies (2024), available at <https://emp.lbl.gov/publications/laws-order-inventory-state-renewable>.

<sup>11</sup> Berkley Lab, Energy Markets & Policy, Laws in Order: An Inventory of State Renewable Energy Siting Policies (2024), available at <https://emp.lbl.gov/publications/laws-order-inventory-state-renewable>.

<sup>12</sup> Berkley Lab, Energy Markets & Policy, Laws in Order: An Inventory of State Renewable Energy Siting Policies (2024), available at <https://emp.lbl.gov/publications/laws-order-inventory-state-renewable>.

standards often include public engagement requirements. Examples of such standards that strengthen communities' ability to meaningfully engage with the siting and permitting process include:

- Michigan: A public meeting is required in each affected local government unit.<sup>13</sup> The developer must also attempt to negotiate a host community agreement with the local agreement or a community benefit agreement with a local community-based organization.<sup>14</sup>
- New Hampshire: Two public information sessions and one public hearing are required. The first information session must be conducted at least 30 days before an application is submitted, and a similar session must be held within 45 days of the Site Evaluation Committee's acceptance of the application. Within 90 days of accepting the application, the Committee must provide a public hearing with an opportunity for public comment. The Committee may require additional public information sessions.<sup>15</sup>
- New York: The project developer must hold a meeting with local governments and a meeting with community members at least 60 days in advance of filing an application. Local governments and community groups may apply for intervenor funding through the Local Agency Account to engage in the draft siting permit public comment period.<sup>16</sup>
- Ohio: When reviewing applications, the Power Siting Board must include two ad hoc members to represent the community where the project will be located: one county commissioner and one township trustee.<sup>17</sup> Additionally, at least one public hearing is required.<sup>18</sup>

#### 4. Notes

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<sup>13</sup> Mich. Pub. Act 233 § 223.

<sup>14</sup> Mich. Pub. Act 233 § 227.

<sup>15</sup> N.H. RSA 162-H:10.

<sup>16</sup> N.Y. Comp. Codes R. & Regs. § 1100-1.3 (Pre-application procedures).

<sup>17</sup> Ohio Rev. Code § 4906.021 (Ad hoc member requirement, qualifications).

<sup>18</sup> Ohio Rev. Code § 4906.07 (Public hearing on application).

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