

## Energy Siting Can Be Incendiary

by Patrick Field, CBI Boston

Energy extraction and production have powerfully shaped the American landscape over the last hundred years. Blessed with extraordinary natural resources, among many other attributes, the United States has built the largest economy in the world. But energy land uses, from traditional gas and oil to newer wind and solar, have sparked intense conflict around safety, human health, visual impacts, "industrialization" of the rural landscape, and even national policy.

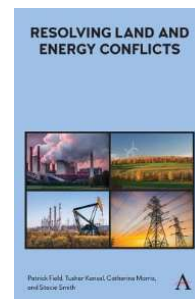


In the last decade, rapid technological advances in both renewables (primarily wind and solar) and gas and oil extraction have created a host of new and intensive land-use conflicts across the United States. A casual observer might find it surprising that wind turbines, seemingly clean, lean, and "sustainable," have stirred intense conflicts among abutters, developers, and communities, inciting phrases like "industrial wind" as a pejorative against rural values. That outsider might also be surprised to discover that a resurgence in U.S. gas and oil production via hydraulic fracturing technology, resulting in lower costs, more domestic production, and less dependence on unstable supplies of foreign oil, has created statewide bans, protest films, and national debate about this thing called "fracking."

Today, with heightened concerns about water quality, climate change, and the types of fuels we use (in light of carbon content), the challenge is, to coin a pun, incendiary. How do we balance the need for diverse energy production and distribution while respecting local interests and values? Take for example Enbridge's Line 3 proposed replacement oil pipeline, planned to cross the northern third of Minnesota from the border of South Dakota to Superior, Wisconsin. In between, the pipeline cuts across numerous privately-held parcels; across bogs, streams and wetlands; near several Ojibwa traditional and trust lands; and over the headwaters of the Mississippi to the Great Lakes carrying the thick bitumen of Alberta's tar sands. In previous decades, resolving siting for such a project was complex enough - complying with state and federal regulations, negotiating easements with numerous land owners, and responding to the health and safety concerns of local communities. Now there are a host of other interests and concerns being brought to the table:

- Climate activists, after many years of trying to make the "slow boil" climate change problem more tangible, have found pipelines to be a powerful symbol;
- Native Americans, after centuries of ceding land and land rights to state governments and corporations, are pushing back about what is right, fair, and best;
- Unions, communities, and local business, desperate for well-paid employment and tax base in the face of stagnant wages and declining rural economies, are demanding jobs.

Energy siting in the United States has become increasingly fraught. Given these increasing challenges, with the support of the Lincoln Institute of Land Policy and the publisher Anthem Press, CBI decided to write a book: *Resolving Land and Energy Conflicts*. Our new book seeks to develop a view of energy in the landscape -- across gas and oil extraction and transport, wind and transmission, and nuclear waste disposal - and demonstrate how collaboration can advance progress on these complex land use issues.



## **The Current State of Energy-Land Conflicts**

Given the shifts we have been seeing in energy-related land conflicts, we at CBI spent some time examining past projects and researching cases to see what we could learn. Our book explores the numerous causes of intense energy and land use conflict. These include:

- the unique and expansive nature of private property in the U.S.;
- the complexities of the above ground and underground mineral "split estate" for gas and oil;
- the uneven distribution of costs and benefits caused by energy development;
- jurisdictional complexity in legal authority over siting by various local, state, and federal entities;
- state preemption of land use controls despite typically leaving land use almost solely to local control in most other circumstances;
- the cumulative benefits and costs of energy production and transmission across landscape through multiple projects; and,
- the increasing proxy fights energy facilities serve to crystallize, for better and for worse, about national and even global values and priorities.

## **CBI's Book Presents A New Way Forward**

As we looked across cases and experiences, we found a host of collaborative tools that could be useful for mitigating energy siting conflicts. Our research concludes that the U.S. system-however much bargaining and collaboration may take place in and between formal processes-is a quasi-judicial administration. However, collaboration tools, techniques, and processes provide an opportunity to improve, mitigate, and even guide these quasi-judicial systems. We identify seven key lessons. They are:

1. Advance community engagement
2. Develop voluntary agreements
3. Collaboratively create voluntary guidelines
4. Improve regulatory processes
5. Deploy joint fact-finding at different scales
6. Build corporate social responsibility (CSR) tools
7. Regionalize for coordination and alignment

Tools and techniques to plan ahead of major development can help direct private interests and public concern toward locations where siting energy infrastructure is most appropriate, based on risk factors and values. For instance, in many states, stakeholders have banded together across sectors to set voluntary guidelines for where wind might best be sited within a state. Such voluntary efforts have sprung up in Maine, Vermont, Rhode Island, and other New England states. Early and frequent engagement among proponents and those affected can increase trust, allow for exploration of interests and priorities, and help find solutions that result in better and less controversial proposals.

General siting guidelines, joint fact-finding around key areas of uncertainty, and other collaborative tools can also help to provide a context, reasonable boundaries, and streamlined process for individual projects. For instance, at the federal level, recognizing the contentious nature of wildlife and wind development issues, the U.S. Fish and Wildlife Service created a federal advisory committee of diverse stakeholders to create draft wind and wildlife guidelines. The committee's consensus recommendations are now used across the country to guide siting and project development. As an example of joint fact

finding, with the support of U.S. Department of Energy, Bat Conservation International and the American Wind Energy Association established the Bat Wind Energy Cooperative (BWEC) to create and execute a long-term research strategy for assessing wind turbine impacts on bats.

Lastly, regionalizing the "problem" can provide a better sense of cumulative impacts, harness more resources, and allow for more trade-offs. For example, as conflicts erupted across New Hampshire around wind energy and electric transmission siting, the legislature decided to undertake a highly participatory, statewide process to improve its energy siting committee. On a regional scale, the Center for Sustainable Shale Development (CSSD) was established in 2013 as a collaborative effort by oil and gas companies active in the Marcellus Shale region and environmental organizations to support improvement in shale gas development practices through performance standards and third-party certification.

### **Learning More**

Collaboration is not always possible, certainly not with every constituent or interest. Collaboration is also not a panacea—that if only each developer or state agency had "done it better," all problems would have been solved. However, as our new book concludes: collaboration must be central to managing energy in our landscape if we are to advance America's energy future in a sustainable way.

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