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PUC Fight: Commission denies rehearing requests; House passes a bill with a new plan for energy efficiency

New Hampshire Public Radio | By Mara Hoplamazian,

16-20 minutes

The state's utility companies proposed an ambitious 3-year plan for energy efficiency programs in the state. But the Public Utilities Commission delayed their decision, denied the plan, and moved in the other direction, cutting the rates funding New Hampshire Saves.

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Now, their recent order is the subject of multiple challenges, including a lawsuit by energy efficiency advocates.. We're sharing every update on the story here.

Need more context on the PUC and the fight over NHSaves and energy efficiency? Scroll to the bottom for the background.

Public Utilities Commission issues near complete denial of requests for rehearing

Update, Jan. 7, 2022

The Public Utilities Commission stood firm today on their controversial November order that reduces the rates that fund New Hampshire Saves, rejecting challenges from advocates, utility companies, and the state's Department of Energy to reconsider their decision.

Commissioners [provided some clarifications and partial rehearings](#) on issues brought up by those who challenged the order but denied in large part the request to rehear the issue.

New Hampshire's consumer advocate Don Kreis is among the challengers. He said today's order left him surprised and dismayed.

“The agency doubled down on its ideology-driven repudiation of the basic idea that energy efficiency is a critical part of the service that our electric and natural gas utilities provide to every customer in this state,” he said.

In their new order, the PUC claims the rates established in their November order would actually increase energy efficiency budgets compared to the 2018-2020 plan, despite the fact that the new yearly rates are identical to that plan and decrease over the next two years.

The PUC denied a request to disqualify one commissioner, Pradip Chattopadhyay, for conflict of interest. But they did say they've applied for the appointment of a special commissioner to fill the spot of the third commissioner, who also has a conflict of interest, something advocates had asked for.

The next step for the parties that challenged the initial order is to bring the issue before the New Hampshire Supreme Court. They have 30 days to submit a petition with the court.

Energy efficiency bill passes N.H. House of Representatives

Update, Jan. 7 , 2021

The House of Representatives voted unanimously on Thursday to pass HB 549, a bill that aims to give New Hampshire's legislature control over the funding mechanism for energy efficiency.

The bill would set funding for energy efficiency in the state at 2020 levels, with yearly increases based on the three-year average of inflation plus a quarter of a percent.

Republican Representative Michael Vose, who introduced the bill, says the current fight over energy efficiency could provide new a opportunity for different ways of thinking about efficiency.

“What the recent conflict with the PUC provides for us is motivation to look at these other solutions to see if we can find the one that works better,” he said.

The bill faced [opposition](#) in the house's Science, Technology and Energy committee when it was heard previously. Those who did not support it previously [said](#) it was a dramatic change to energy efficiency in the state and required a more thorough vetting process.

Sam Evans-Brown, an advocate for energy efficiency whose

organization has challenged the PUC's order in court, [said](#) the bill could be a "vehicle to rescue" New Hampshire Saves.

Superior Court judge declines to issue temporary hold on energy efficiency rules

Update, Dec. 30, 2021

Judge Andrew Schulman didn't waste any time.

Schulman, a Superior Court judge, was asked to issue a temporary hold on the Public Utilities Commission's recent order curbing emergency efficiency programs in the state. He released a three-page opinion today denying the plaintiffs' request.

On Monday, Schulman heard arguments from Clean Energy NH, an advocacy group, as well as energy efficiency contractors and other parties, who argued that the PUC's surprise move in November to cut efficiency programs with the stated intention of lowering energy rates for residents violated their due process rights and would put hundreds if not thousands of clean energy jobs at risk.

Lawyers from the New Hampshire Department of Justice, who are representing the PUC, argued that the appropriate place for an appeal was not in the superior courts, but rather within the PUC's own appeal system, or at the New Hampshire Supreme Court.

According to [state law](#), those seeking to challenge a PUC order can appeal to the Supreme Court within 30 days after their application for a rehearing is denied or after a decision is made on a rehearing.

Schulman agreed with the government, writing that the "New Hampshire Supreme Court has the exclusive jurisdiction to hear and decide this case."

He noted that the Supreme Court has the ability to issue interim orders on the appeal, including issuing a stay on the November order, as plaintiffs are requesting. Schulman noted that the justices on the highest court can "act with great alacrity when it needs to."

Lawyers for the plaintiffs did not immediately respond to a request for comment on if or when they will appeal to the Supreme Court.

In an email statement, Sam Evans-Brown, the executive director of Clean Energy New Hampshire, said the group will continue pushing back against the order.

"We disagree with the judge's analysis that the standard process of appealing a PUC decision represents an adequate legal remedy

speedy enough to avoid the harm to the state's energy efficiency workforce," he said. "In collaboration with the numerous parties that disagree with this decision, we will continue to exhaust all legal remedies until this order is overturned."

-Todd Bookman, NHPR

Liberty Utility president says energy efficiency programs are a way to offset variability in energy costs

Updated: Dec. 29, 2021

Neil Proudman, President of Liberty Utilities, spoke with NHPR's Peter Biello about the PUC's decision on energy efficiency.

"When I think about energy efficiency and the energy efficiency programs that we offer, [they] are good for customers at a time when energy prices are at the most volatile. When you think about the energy commodity prices, we're very susceptible at the moment to this global energy economy. And we, as utilities, can do absolutely nothing about that.... There's a couple of ways that we can offset that, but one of the best ways is through an energy efficiency program."

NHPR's Peter Biello speaks with Neil Proudman, President of Liberty Utilities

Judge hears arguments for pausing PUC decision on energy efficiency

Update: Dec. 27, 2021

A superior court judge heard a request today to temporarily halt a recent order by the Public Utilities Commission that scales back energy efficiency programs in New Hampshire.

The suit was filed by Clean Energy NH, an advocacy group, as well as several energy efficiency construction firms, the New Hampshire Housing Authorities Corporation, and the Town of Hanover. The petitioners are asking the court to halt the new plan from the PUC and reinstate a previous set of guidelines and funding rates while a separate appeal before that agency is heard.

The hearing was the latest step in a legal fight that, according to activists, could determine the fate of New Hampshire's energy efficiency industry.

"These plaintiffs are hanging on by a thread," Amy Manzelli, who is representing Clean Energy NH, told Judge Andrew Schulman

during Monday's hearing. "They are on the verge of closing their businesses. They are already laying off people."

The PUC – a regulatory body that has oversight over utilities in the state – rejected a proposed \$350 million, three-year funding plan for energy efficiency programs in November, surprising advocates and utility providers. The commission said the plan would have placed too large a financial burden on customers in New Hampshire.

In court Monday, lawyers from the state Department of Justice, which is representing the PUC, argued state law prohibits a superior court judge from halting the order, and that the plaintiffs should have filed their request with the New Hampshire Supreme Court.

The judge also appeared to question if the appeal had been filed in the proper court, asking the plaintiffs why he should "usurp" the jurisdiction of the state's highest court. In response, the plaintiffs argued that the PUC's decision, which came nearly a year after a deadline, violated the due process rights of energy efficiency contractors and didn't provide advocates with a meaningful opportunity to participate in the decision.

Plaintiffs also raised concerns that recent turnover among the PUC's three commissioners, including a nominated but not yet confirmed new commissioner, could lead to delays in the appeals process before the regulatory body.

"We need your intervention now because of the drastic disruption that the order is putting into the energy efficiency sector," Manzelli told the court.

Judge Andrew Schulman told the parties he would issue a written order, but didn't provide a timeframe for when that decision may be handed down.

Utility providers, a statewide chamber of commerce, and Gov. Chris Sununu have all raised concerns with the potential impact of the PUC's order. An estimated 11,000 New Hampshire residents work in the state's energy efficiency sector, with many of those jobs, advocates say, directly threatened by the decision to reduce funding for programs.

New Hampshire Bulletin: PUC staffer nominated as 'special commissioner' on energy efficiency program dispute

Updated: Dec. 22, 2021

Attorney F. Anne Ross was nominated at Wednesday's Executive Council meeting to serve as a special commissioner on the Public Utilities Commission, which she works for as general counsel.

If confirmed, Ross would be acting on a total of 26 various issues that are currently before the utilities commission, including the contentious [triennial energy efficiency plan](#) and other cases where another commissioner can't act on because his prior involvement in the cases creates a conflict of interest. In addition to working for the commission, Ross has previously served as the consumer advocate.

Current Consumer Advocate Don Kreis said the nomination raised a question of whether Ross would be able to act independently as a commissioner given that she currently reports to the chair of the commission. He said the appointment would set a bad precedent.

-Amanda Gokee

[Read the rest of the story at New Hampshire Bulletin](#)

Office of Consumer Advocate asks for disqualification of PUC member

December 17, 2021

The Office of the Consumer Advocate asked for Pradip Chattopadhyay, a [recently confirmed](#) Commissioner at the Public Utilities Commission, to be disqualified from participating in the decision-making on energy efficiency. Chattopadhyay previously worked in the Office of the Consumer Advocate, which joined with others to file a motion for rehearing on the PUC's recent energy efficiency decision.

Chattopadhyay said in a memo that he wouldn't recuse himself from the energy efficiency decision-making process, because he was not assigned to work on the energy efficiency proceedings as part of his job as the Assistant Consumer Advocate, though he attended office-wide staff meetings where some made reference to the plan. He said that he is not privy to any confidential information related to the energy efficiency plan, and that his prior employment has not led him to prejudge the issues.

"My prior employment with the OCA has no impact on my ability to participate in this docket fairly and impartially," Chattopadhyay wrote.

On Thursday, the Office of the Consumer Advocate, led by Don

Kreis, filed a motion for Commissioner Chattopadhyay to be disqualified from further participation in the docket, saying that his position was high-ranking within the department, and because of that, every matter taken up by the OCA was assigned to him while he was there. Kreis also said energy efficiency is one of the highest priorities at the OCA, and was discussed at nearly every weekly staff meeting since 2016, almost all of which Commissioner Chattopadhyay attended.

Kreis also noted that the Office of the Consumer Advocate requested in September that Commissioner Chattopadhyay be excluded from participating in the energy efficiency proceedings, before Chattopadhyay was promoted from Senior Advisor to PUC Commissioner.

December 16, 2021

Wednesday, Dec. 15 was the deadline for the state's utilities to file updated energy efficiency budgets based on the PUC's November order. The day before the filing was due, the Commission issued an order in response to the multiple requests for stay, clarification, and rehearing of their order, and suspended two of the requirements – the utilities no longer had to file a spreadsheet with program and cost items larger than \$500,000, and didn't have to include program proposals with their budgets.

Utility companies filed their energy efficiency budgets, which reflected a decrease in the energy efficiency portion of the system benefits charge for the next two years as mandated by the order.

It's a decrease of less than one cent per kilowatt-hour, which could add up to a few dollars in savings per month for the average residential customer. The system benefits charge isn't the only source of funding for energy efficiency budgets, but it's where most of the funding comes from, according to Wednesday's filings. Eversource's filings show revenues from the system benefits charge that could be used toward energy efficiency efforts are expected to decrease about \$12 million between 2021 and 2022, and \$7 million between 2022 and 2023.

The Background: What is this all about?

New Hampshire is making potential changes to energy efficiency that could have a major impact on the state. Things like weatherization and updating old appliances have upfront costs, but those efforts save money in the long run and cut down on fossil fuel

use. In New Hampshire, many agree on the value of energy efficiency. But who should pay for it, and how much should they pay?

In mid-November, the state's Public Utilities Commission, which regulates utilities, [rejected](#) a three-year plan to expand energy efficiency programs in the state, jolting the entire industry. That plan was supported by utility companies and other major stakeholders and would have cost about \$350 million for [NH Saves](#). That money comes from what's known as the system benefits charge on customers' electricity bills.

Instead, the PUC [reversed course](#): decreasing the rates of funding for those programs and advocating for "market-based" energy efficiency programs. The commissioners said that the price of the original proposal was too high and would place "an enormous burden on New Hampshire ratepayers." It also did away with performance incentives for utilities, which meant [those companies would earn more if customers saved more](#).

The next week, some [utilities halted some of their energy efficiency work](#) and some said this would [increase utility costs in the future](#). Energy efficiency contractors said the uncertainty meant they might have to lay off employees during the holidays. Advocates are worried about all of this happening during the coldest part of the year [when home heating costs are rising](#).

Now, a similar coalition that put together that triennial plan is pushing back on PUC's order. In early December 2021, clean energy advocates, the state's utility companies, community action agencies and others filed a motion for rehearing. Clean Energy NH, energy efficiency contractors and the Town of Hanover also [sued the PUC](#) in Superior Court, asking a judge to issue a stay on the order and return energy efficiency funding back to 2020 levels. The Department of Energy [also asked](#) for a return to those funding levels, while the decision is reconsidered.

Gov. Chris Sununu and the [Business and Industry Association](#) have both expressed support for the efforts to push back on the PUC's order. But both remain opposed to the levels of funding in the original proposal. Sununu [says that it would harm small businesses](#), and the BIA wants a more "modest approach."

"I think this has forced Granite Staters to think about whether these initiatives are important to ratepayers and to the public policy of the state," Don Kreis, the state's consumer advocate said. "There

seems to be consensus that in fact, this is good public policy and we should not reverse course and get rid of it.”

We’re keeping all our coverage of how this energy efficiency decision unfolds here, so keep checking back for the latest updates.

Read previous coverage from the New Hampshire Bulletin on this issue [here](#).