PUC and State Agency Mandate Reform

Prioritizing Climate and Equity in the Northeast

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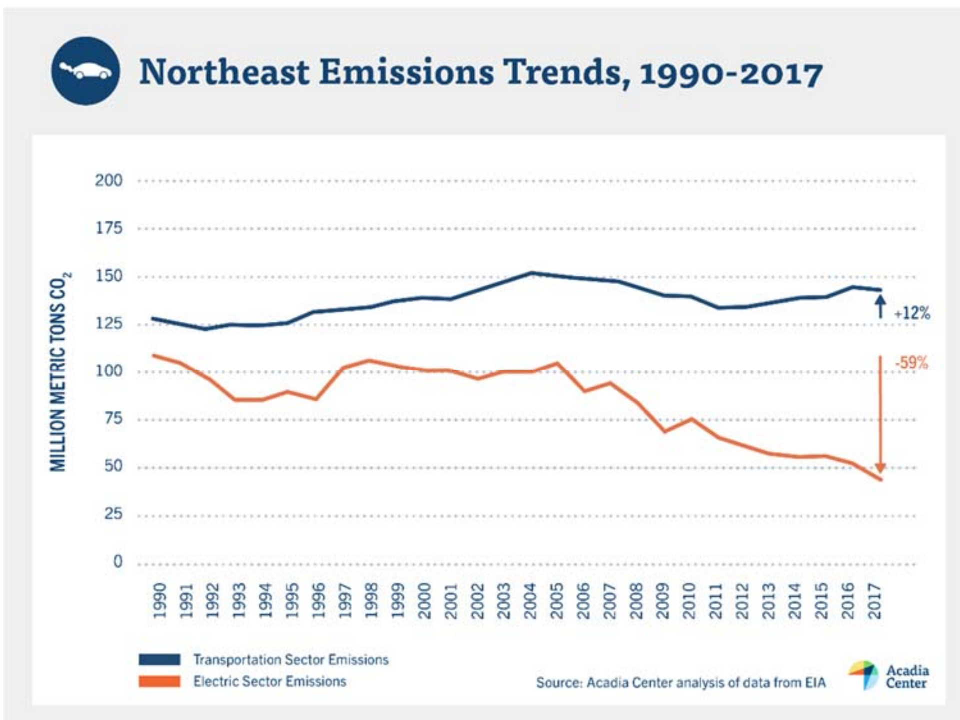
Reforming Agency Mandates Is Critical For Meeting Climate and Equity Goals

Across the Northeast, states have committed to significant cuts in economy-wide greenhouse gas emissions by 2050. But despite these ambitious climate goals, the six New England states do not empower state agencies whose decisions affect carbon emissions the most – such as Public Utility Commissions and Departments of Transportation – to prioritize climate and equity in their decision-making. This is a significant barrier as states attempt to make progress in reducing greenhouse gas emissions and meeting their climate targets.

Although the New England states recognize the risk of serious economic, health, and environmental consequences if they do not act to address climate change, the enabling statutes that guide state agencies' priorities are mostly silent on climate change or give it insufficient priority in agency decisions compared to more traditional responsibilities. As a result, while the region's CO2 emissions have declined overall in recent years, due in large part to energy efficiency and the expanded use of renewable energy, emissions from other sectors of the economy, such as transportation, have increased since state climate statutes were implemented.



To take one key entity as an example, Public Utility Commissions (PUCs) are mandated to provide reliable energy services, to keep customer rates low, and to guarantee utilities the opportunity to earn a profit on their business. PUCs cannot fully regulate utilities in alignment with state climate targets or make decisions that value reducing greenhouse gases. Because of the limits on their statutory mandates, PUCs cannot fully consider climate justice and equity of equal or higher importance than a regulated utilities' opportunity to earn a fair return.

The decisions that state agencies make today will create the building stock, transportation systems, and energy infrastructure of 2030, 2050, and beyond. If state agencies prioritized climate and equity, they would be better positioned to deliver customer-centric energy and public health solutions, create more efficient and comfortable buildings and transportation systems, and be less likely to approve fossil fuel investments that will dig states deeper into a greenhouse gas emissions hole.

Reforming Agency Mandates to Align with Climate and Equity Goals

Regulatory climate-blindness is a major barrier to state-level climate progress. To accelerate progress in meeting state climate goals, legislators should add climate and equity responsibilities to guide the everyday decision-making within state agencies. Reworking the missions of key state agencies to place climate at the center of all major regulatory decisions could act as a permanent screen against continued fossil-fuel investments.

Mandate Reform for Public Utility Commissions

Public Utility Commissions play an outsized role among state agencies in helping states meet or miss their climate targets. As Acadia Center showed in EnergyVision 2030, achieving the Northeast's climate goals will require electrification of all vehicles and building heating systems, eliminating use of fossil fuels like natural gas and oil, switching to renewable sources of electricity, and strengthening and modernizing the distribution and transmission grids to accommodate additional electric demand. But these outcomes are more difficult to achieve under existing statutory frameworks.

PUCs have the potential to advance a low-carbon future, but outdated mandates keep them from doing so. PUCs cannot require the monopoly utilities that plan and operate the distribution and transmission systems to fully consider the carbon impacts of their planning decisions, nor can regulators approve projects that might achieve long-term savings and avoid future emissions if the short-term rate impacts are too high.

A view that considers only the short-term rate impacts misses the potential future costs of energy investments that lean heavily on fossil fuels. These costs will accrue to utilities and ratepayers in the form of more-expensive grid hardening costs and storm recovery from increasingly common extreme weather events. PUC enabling statutes throughout the Northeast do not appropriately account for these continued impacts and are misaligned with the states' push for dramatic emissions reductions. These statutes are overdue for reform.

One example of the power of outdated mandates is the Massachusetts Department of Public Utilities' finding in an early case implementing its efficiency programs that, although the Green Communities Act has a non-discretionary requirement to acquire *all* available cost-effective energy efficiency resources, "the pace at which the program administrators acquire those resources… is moderated in part by the requirement that the Department consider the effect of any rate increases on residential and commercial customers bills."[1] In other words, the DPU cannot help ratepayers spend less on their bills through efficiency as fast as the statute's language requires because it would too quickly raise rates. Acadia Center is hopeful that the revisions to the DPU's mandate in 2021 to include greenhouse gas reductions and equity impacts will enable it to consider the long-term benefits of reducing emissions and energy burdens when it evaluates the 2022-2024 three-year energy efficiency plans

[1] D.P.U. Order 08-50-D at 9.

this fall. Acadia Center will push for the DPU to use its authority to require climate action that will save lives and money down the road, even if short-term costs appear higher.

Numerous other examples can be found that are the result of misaligned mandates: PUC decisions that do not support consumer friendly solar policies because they might undercut returns to utilities; decisions to approve natural gas expansions that would sustain the use of fossil fuels whose use is inconsistent with climate goals and that may lead to additional stranded costs in coming years; and approvals for siting fossil-fuel related infrastructure in already overburdened communities because there is no requirement to consider justice on equal footing as utility profits.

How would PUC decisions change after mandate reform?

Reforming PUC mandates could lead to decisions that save ratepayers money, improve equity and environmental justice outcomes, and support decarbonization. For example, utility regulators commonly approve extending natural gas service and building natural gas pipelines when gas utilities propose new projects. However, if PUCs were required to consider greenhouse gas emissions and environmental justice impacts when making decisions, it could avoid a continued reliance on fossil fuels. Instead of defaulting to approvals for new fossil fuel infrastructure, a PUC with a reformed mandate could be in a better position to require electrification of a larger number of buildings and more widespread improvements in energy efficiency. This could save ratepayers money by avoiding financing fossil fuel infrastructure that may become stranded in the future. It would also support technologies that reduce emissions cost-effectively today, instead of needing to invest in more expensive emissions reduction solutions in the future as the climate crisis worsens.

Other State Agencies

Outside of the PUC's role in overseeing electricity and gas service, other state agencies play powerful roles in key carbon-intensive sectors such as transportation infrastructure, buildings (including codes, zoning, and financing), and land use. Agency rules and regulatory decisions can shape major investments that lock in significant amounts of new carbon pollution for decades. Examples of state regulatory decisions with long-term climate ramifications include approving new highway and road construction, establishing building and energy codes, and setting forestry policy for state lands. Even decisions like purchasing a new fleet of buses, funding affordable housing projects, refurbishing a building, or setting the budget for transit can either lock in fossil fuel use for decades or allow states to shift towards cleaner alternatives. For latter to happen, however, agencies must be required to act in support of state climate targets.

Strategies for Mandate Reform

Two types of reforms are necessary: 1) enabling statutes must allow agencies to consider climate alongside other responsibilities, and 2) climate statutes must assign responsibility for hitting those targets to relevant agencies.

Assign New Statutory Responsibilities to Agencies

States must assign PUCs and other state agencies new responsibilities to meet climate targets. All state agencies should have a responsibility to:

- Actively promote implementation of global warming statutes.
- Actively encourage a phase out of fossil fuels.
- Prioritize decisions that reduce emissions in environmental justice areas.

By clearly stating PUC and agency responsibilities and priorities in line with state climate targets, states can give agencies an affirmative duty to promote reductions in emissions. Agency mandate reform will lead to decisions that deliver better outcomes for ratepayers. For example, by prioritizing climate and equity, PUCs could accelerate grid modernization and a build out of the resources needed in anticipation of electrification, distributed energy resources, and non-wires alternatives, rather than allowing regulators to default to expanding fossil fuels. Mandate reform can lead to decisions that reduce emissions and alleviate energy burdens, rather than simply keep energy costs low, and it will avoid decisions that lead to greater costs in the future from stranded assets.

Maine leads the way on PUC mandate reform

In June 2021, Maine Governor Mills signed LD 1682, which adds climate-related responsibilities to the PUC's legislative mandate. The PUC is now required to reduce greenhouse gas emissions in line with Maine's climate targets and to prioritize climate alongside its other responsibilities. By elevating the importance of greenhouse gas emissions, the Maine PUC is now positioned to become a strong partner in helping the state meet its Climate Action Plan.

Mandate reform could result in long-lasting updates to agencies' missions, serving as a tempering force against the preferences of different administrations by integrating climate and justice considerations into law as simply and completely as possible.

Amend Global Warming Statutes to Add Climate and Equity Responsibilities for State Agencies

Legislators should amend climate laws to assign the responsibility for making decisions in line with state climate targets to all agencies. It should be the explicit responsibility of state agencies to promote implementation of state climate goals; otherwise, states risk wasting money and time, with agencies' decisions competing against public interests. State agencies should consider and integrate climate change, climate change impacts, and state GHG emissions reduction requirements into their planning, budgets, investments, and policy-making decisions. In doing so, agencies should prioritize actions that reduce GHG emissions in a cost-effective manner and prioritize efforts to mitigate burdens on environmental justice communities.

As states set stronger emissions targets, they should also establish explicit require states agencies to help meet those targets. For example, in April 2021 Rhode Island Governor McKee signed the Act on Climate, which updates the state's economy-wide emissions targets and makes them statutorily binding – a significant victory. The state can accelerate progress in meeting the targets by also adding legal responsibilities to state agencies to prioritize climate impacts and emissions in their decision-making. Vermont's Global Warming Solutions Act of 2020 is an initial attempt to do so: the bill states that "[in] order to facilitate the State's compliance with the goals established in this section, all State agencies shall consider, whenever practicable, any increase or decrease in greenhouse gas emissions in their decision-making."[2]

Massachusetts adds equity and climate to DPU's mandate

In March 2021, Massachusetts Governor Baker signed a landmark climate bill (S.9) that achieves key mandate reform goals. Effective June 2021, the bill requires the state's Department of Public Utilities (DPU) to consider equity and reductions in greenhouse gas emissions as equal priorities to reliability, safety, and affordability. The bill will serve as a critical tool in empowering the DPU to act in alignment with the state's climate goals.

In addition to including climate and equity responsibilities in agency mandates, states should develop guidelines for how agencies can most effectively incorporate climate and equity considerations in their decision-making. For example, as part of Maine's LD 1682, the Governor's Office of Policy Innovation and the Future (GOPIF) will

[2] https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT153/ACT153%20As%20Enacted.pdf

conduct a public process to develop guidelines for how state agencies should consider equity in their decision-making. By establishing a formal process that prioritizes stakeholder input, states can develop guidelines and recommendations that position agencies as strong partners in addressing climate change and improving equity outcomes.

Reforming agency mandates is only one piece of a larger puzzle

While reforming agency mandates to include climate and equity responsibilities will be a powerful lever to position state agencies as partners in meeting state climate targets, these reforms are just one component of efforts to meet our public policy goals. In addition to mandate reform, states must ensure that their greenhouse gas emission targets are sufficiently ambitious; even with clearer climate responsibilities, an agency may be hamstrung by a weak state climate law. At the same time, greater responsibility among agencies to consider climate and equity may create additional challenges, especially if agencies are already at maximum capacity in meeting their traditional responsibilities and lack internal expertise and resources to put towards assessing climate impacts. Policymakers should allocate sufficient resources to build staff expertise and establish guidelines and criteria, developed through robust stakeholder processes, for implementing climate and equity considerations in agency decision-making. In doing so, agencies must reform existing cost-benefit methodologies to fully value the benefits of taking climate and equity into account.

Next Steps

To push PUC and state agency mandate reform forward, Acadia Center will:

- Continue to raise awareness about the need for mandate reform among policymakers, regulators, and other stakeholders by holding informational meetings and publishing educational materials.
- Pursue legislative opportunities and increase policymaker support in key states for climate law reform and adding climate and equity responsibilities to agency mandates.
- Contribute to the successful implementation of mandate reform legislation in Maine and Massachusetts by requiring each state's regulatory body to actively include climate and equity considerations in decision-making.
- Provide input and ensure broad stakeholder participation in Maine's government-wide process to develop guidelines for implementing equity considerations in agency decision-making.

For more information:

Amy Boyd, Director of Policy, aboyd@acadiacenter.org, (617) 742-0054, ext. 102

Oliver Tully, Policy Strategist, otully@acadiacenter.org, (860) 246-7121, ext. 202