



Under Cuomo, the PSC has undertaken an ambitious reimagining of the utility industry, has backed subsidies for renewable and nuclear energy and has set up a ratepayer-funded program to invest in clean energy technology. | Office of Governor Andrew Cuomo

Critics see Cuomo power play at the PSC

By MARIE J. FRENCH and DAVID GIAMBUSSO

06/05/2017 05:12 AM EDT

ALBANY — Gov. Andrew Cuomo has refashioned the Public Service Commission, the state's powerful utility regulator, into an organ of executive power in ways that critics find unprecedented and potentially troubling.

The PSC's board is nominally a bipartisan commission created by the Legislature. But Cuomo has filled it mostly with allies who rarely if ever defy his wishes on energy policy.

"It's an agency that carries out the governor's orders regardless of the impact on the ratepayers," Earthjustice attorney Chris Amato said of the utility regulator. "The public process is a charade, it's a play act."

Cuomo and his office have repeatedly taken credit for initiatives, led negotiations and announced deals that are traditionally the purview of the state's utility regulator.

Several former members of the PSC, most of whom asked not to be named, said that former governors generally were hands-off with the commission but that Cuomo's approach is different.

Peter Bradford served as chair of the Public Service Commission from 1987 until 1995. He said he rarely heard anything from Gov. Mario Cuomo or his office. The elder Cuomo instead intervened through a consumer protection board that no longer exists.

There were never any directives from the governor to the commission on substantive matters, Bradford said. "It just didn't happen," he said.

Bradford noted that utility regulatory commissions exercise a delegated legislative power since the Legislature itself used to set utility rates.

"Historically, the commission was supposed to be somewhat independent from the executive branch," he said.

A gubernatorial spokesman said critics are simply defending business as usual.

"The governor appoints members to this board, just like any past governor — the only difference is this administration understands government is not a glorified high school debate club," said Cuomo spokesman Rich Azzopardi in response to questions about the governor's involvement with the PSC. "The status quo will always have its champions, a mentality that sadly led to decades of inaction in all parts of state government, but we've focused on moving New York forward and improving the lives of its residents."

Cuomo has nominated one of his current top energy lieutenants, John Rhodes, to take over the PSC as chairman and lead the Department of Public Service. Rhodes currently heads up the New York State Energy Research and Development Authority.

If confirmed by the Senate, Rhodes will serve a six year term. But Cuomo can give the title of chair — and head of the DPS — to another commissioner at any time.

He recently nominated a labor ally, Philip Wilcox, to sit on the commission. And in 2015, Cuomo surprised the energy world by nominating former congressman Floyd Flake, a long-time political ally with virtually no experience in utilities, to sit on the commission. Flake withdrew his name, ostensibly to continue serving in his capacity as a clergyman.

The governor also created a new role to oversee and coordinate the state's energy policy, tapping former Goldman Sachs executive Richard Kauffman to serve as the state's energy and finance chair.

Colloquially known as the energy czar, Kauffman chairs the board of NYSERDA. While not a member of the PSC, public records show he has often met with utility company executives about rate cases and regulatory matters.

The PSC is a quasi-independent regulatory body, with set terms for the members after they're nominated and then confirmed. The commission is charged with setting utility rates and protecting consumers. The Department of Public Service, while overseen by the commission's chair, is an executive branch agency.

Under Cuomo, the PSC has undertaken an ambitious reimagining of the utility industry, called Reforming the Energy Vision, has backed subsidies for renewable and nuclear energy and has set up a ratepayer-funded program to invest in clean energy technology.

Those policies have been largely embraced by renewable energy advocates, but critics have focused on inconsistencies in Cuomo's energy moves particularly where politics has trumped policy.

Perhaps the most glaring example was Cuomo's fight to keep a flagging coal plant in Dunkirk afloat while at the same time burnishing his renewable energy bona-fides. The loss of jobs resulting from Dunkirk's closure would have been a gut punch to Western New York, where Cuomo has struggled for votes.

Amato takes particular umbrage at the process in that case. Cuomo traveled to the western New York community in December 2013 to announce a deal that was dubbed a "Christmas miracle." He said National Grid ratepayers would pay millions to retrofit the Dunkirk coal plant, which was slated to shut down, with equipment to burn natural gas.

The PSC must typically approve such agreements where ratepayers subsidize plants in the name of reliability. But Cuomo made his announcement before the PSC had done so.

"Whatever happened to the objective weighing of the public interest that is the PSC's role?" Amato asked.

More recently, the PSC's decision to provide as much as \$7.6 billion in subsidies to flagging upstate nuclear plants under the state's Clean Energy Standard at Cuomo's behest drew anger and legal challenges from both environmental advocates and energy executives. Until then, Kauffman and PSC leadership had argued that the path to a clean energy economy was through the animation of markets and away from subsidies.

Richard Brodsky, a former assemblyman and frequent Cuomo critic, has spoken out against what he sees as interference from the governor in the PSC. He points to a letter that Cuomo to former chair Audrey Zibelman, in her capacity as CEO of the Department

of Public Service, directing her to open a proceeding on getting the state to 50 percent renewable energy by 2030 and providing the nuclear subsidies.

“He has no right to order the PSC to do stuff, yet he did on the Clean Energy Standard,” Brodsky said. “It was ham-handed and illegal.”

Cuomo’s aides were involved in developing the eventual policy that the PSC approved in August to subsidize the upstate nuclear plants and negotiated directly with the plant’s owners, former state operations director Jim Malatras told the Syracuse Post-Standard.

Other governors have pushed for the PSC to adopt more renewable energy friendly policies, including George Pataki, who urged the PSC to implement the state’s first renewable portfolio standard in a 2003 State of the State address. That policy wasn’t implemented by the PSC until September 2004. By contrast, Cuomo sent the letter to Zibelman on the Clean Energy Standard in December 2015 and the policy was approved eight months later.

And Cuomo’s father, Mario Cuomo, also was accused of meddling excessively in PSC affairs. Paul Gioa, a former PSC chair, accused the elder Cuomo of reducing the PSC’s independence by negotiating directly with electric and telecommunications utilities.

“I think in recent years there has been more involvement by public officials with respect to specific commission decisions than there has been in the past,” Gioa said when he resigned from the commission in 1987, according to the New York Times.

But critics say Cuomo’s influence has been overt and aggressive, potentially weakening the PSC’s role as an objective regulator.

“This governor governs. The violation of traditional separation of powers is everywhere... The PSC is not an executive branch agency, it’s a legislative branch agency,” Brodsky said. “His overreach with respect to the PSC is probably even greater than his overreach in the normal way he treats agencies.”



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

ANDREW M. CUOMO
GOVERNOR

December 2, 2015

Audrey Zibelman, CEO
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12222-1350

Dear Ms. Zibelman:

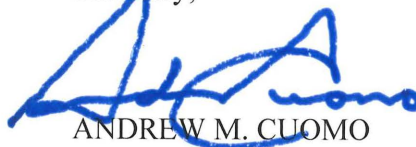
By this letter I am directing the Department of Public Service, through you as its Chief Executive Officer, to immediately commence a proceeding to establish a Clean Energy Standard for the State. As set forth in the 2015 State Energy Plan (SEP), the State's long term goal is to provide 50% of its electricity from renewable resources by 2030 (50 by 30 goal). By mandating a Clean Energy Standard we ensure that this goal is converted from aspirational to actionable. Talking about goals and achieving them are two different things. As leaders from around the world meet at the United Nations Conference on Climate Change in Paris, France this week, New York will set the right example in establishing a Clean Energy Standard to cost effectively and efficiently achieve our environmental objective of reducing carbon emissions 40% by 2030. This plan is both rational and among the most aggressive in the nation.

The Department, and ultimately the Public Service Commission, is required by section 6-104(5)(b) of the Energy Law to take steps to render decisions and policies that are reasonably consistent with the SEP. The use of a Clean Energy Standard will ensure that steps are being taken to achieve the 50 by 30 goal.

In developing the Standard, additional attention needs to be given to ensure emissions free sources of electricity remain operational. Specifically, elimination of upstate nuclear facilities, operating under valid federal licenses, would eviscerate the emission reductions achieved through the State's renewable energy programs, diminish fuel diversity, increase price volatility, and financially harms host communities. This support should be separate and distinct from the renewable energy goal.

In order to ensure the Clean Energy Standard is adopted and implemented in a timeframe affording the achievement of the 50 by 30 goal, I direct the Department to present the Clean Energy Standard to the Public Service Commission by June of 2016.

Sincerely,



ANDREW M. CUOMO

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