

***Energy Efficiency v. Connecticut***  
**The Federal Case to Stop the Raid of Energy Efficiency and Clean Energy Funds**

Roger Reynolds, Chief Legal Director for Connecticut Fund for the Environment  
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**The Lawsuit**

On May 15, 2018, a coalition of ratepayers, environmental organizations, home performance contractors, solar installers, and other groups concerned with energy equity for low-income households filed a federal lawsuit to block the Connecticut legislature's raid of \$145 million of ratepayer funds specifically designated for energy efficiency and clean energy projects. These projects reduce energy bills for households and businesses while decreasing pollution. Diverting this funding to the state general fund is an interference with the agreement between ratepayers and utilities in violation of the U.S. Constitution Contracts Clause. The lawsuit therefore seeks to stop the transfer and restore the funds to their legally intended purposes.

In response to the plaintiffs' request for expedited proceedings, federal Judge Janet Hall set a briefing schedule agreed to by all parties whereby the entire case could be briefed and resolved as early as September 2018. This is an extraordinarily fast timeline for a federal case and is necessary in light of the very real and imminent harm that ratepayers, businesses, and the environment could face from the state's actions.

The plaintiffs are represented by attorneys Steve Humes from Holland & Knight, John Wolfson from Feiner Wolfson, and Roger Reynolds from Connecticut Fund for the Environment.

**The Sweeps**

When the General Assembly found itself facing a deficit in fall 2017, they passed a budget instructing the state to "sweep" and divert the energy efficiency and clean energy funds to the general fund. However, these funds are not government property and were not raised through state taxes but were paid by ratepayers to utilities for specific services. Therefore, seizing these funds amounts to taking ratepayer funds that were paid for another purpose.

Connecticut collected millions more in taxes in spring 2018 than expected and the plaintiffs worked tirelessly at the end of the 2018 legislative session to convince the General Assembly to restore the sweeps using these new revenues. Instead, the General Assembly only restored \$10 million of the original \$155 million swept, leaving \$145 million still wrongfully converted to the general fund, which led to this lawsuit.

## **The Parties**

The two lead plaintiffs are:

- (1) Leticia Colon de Mejias, the founder and CEO of Energy Efficiency Solutions, which offers energy reduction strategies and counsels consumers and communities on renewable energy options and return on investment; and
- (2) Connecticut Fund for the Environment, an environmental advocacy organization that represents ratepayer members who paid the energy efficiency and clean energy funds fully expecting the funds would be used to reduce their energy bills and improve the environment in their neighborhoods.

Other plaintiffs are Fight the Hike, Best Home Performance of CT, LLC, Connecticut Citizen Action Group, New England Smart Energy Group, LLC, CT Weatherproof Insulation, LLC, Steven C. Osuch, Energy ESC, LLC, Jonathan Casiano, and Bright Solutions, LLC. These individuals and organizations are all ratepayers and either energy performance and solar contractors, or advocacy organizations impacted by the raid.

## **The Suit and Response**

The plaintiffs are asking the court to block the governor, treasurer and comptroller from unlawfully seizing these ratepayer funds, held and managed by Connecticut's electric distribution utilities, and to return the funds to be used for their lawful purpose.

In response to the lawsuit, Governor Malloy, the chief named defendant, actually issued a statement opposing the raids:

This should come as a surprise to no one. I have long maintained that these shortsighted sweeps would increase energy costs for consumers and businesses and cause untold harm to our green energy economy. [W]e should be cementing our role as a national leader in our efforts to combat climate change and protect our communities. The energy sweeps . . . represented a massive step backwards, and I continue to strongly oppose them.

Read his full statement [here](#).

Another named defendant, State Comptroller Kevin Lembo, took a similar position in response to our suit. *The Day* quoted Lembo's office as urging the state to "uphold its commitments to clean energy investment and innovation. Connecticut is a leader in clean energy production. Unpredictability is an enemy of economic development and growth."

Unfortunately, neither of the Senate Leaders took the occasion of the lawsuit as an opportunity to reconsider their actions. Senator Fasano called the taking of ratepayer funds a "necessary measure" to support state revenues and Senator Looney called the raids "defensible."

## **The Impacts**

Some of the plaintiffs are ratepayers who own businesses that benefit from the Energy Efficiency Funds and have responded to the state's call for development of clean energy and green job growth. These companies had substantial business operations that were underway and significant job growth anticipated for this year before the passage of the raid. Even though the funds have not actually been swept yet, the negative impacts began as early as January thanks to the expectation of reduced programs, resulting significant layoffs already.

These funds support Connecticut's demand reduction plan, a cost-effective way to reduce pollution, lower the costs of energy, and stabilize our statewide energy grid—all goals now jeopardized. Every dollar expended from the energy efficiency fund puts \$7 back into the economy.

Because of the raids, in 2018, 12,900 homes will not receive energy assessments, weatherization upgrades, reduced pricing on insulation, or associated energy bill savings. Furthermore, 5,600 of these are low income households that often require additional financial assistance to close the energy affordability gap.

The award-winning Connecticut Green Bank leverages \$6 in private investment for every \$1 of renewable energy funding. Yet these sweeps resulted in a 53% reduction in this program's budget, requiring layoffs and project cancellations.

The raids also harmed nonprofit organizations. When the State of Connecticut decided to illegally sweep ratepayer funds and convert them into tax revenue, they harmed all tax-exempt organizations, like Connecticut Fund for the Environment, by illegally turning them into taxpayers, which also violates expectations of donors to charities.

## **The Next Steps**

Given the importance of the matter, the imminent and ongoing harm, and the lawmakers' failure to remedy the damages, we had no choice but to pursue a lawsuit at this time. We still hope the lawmakers will reconsider, restore the improperly taken funds, and prevent future raids. If not, however, we hope to have a decision from a judge in early fall restoring these ratepayer funds to their intended purpose: reducing energy bills and preventing climate pollution.