

Western Electricity Emerging Markets: State-Level Regulatory Analysis

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Executive Summary

After decades of failed proposals, the Western United States stands on the precipice of a regionalized electricity market. Current momentum exists in large part because of the success of extant real-time energy imbalance markets, stood up first by the California Independent System Operator in the mid-2010s and more recently by the Southwest Power Pool. State legislative efforts, most notably in Colorado and Nevada, also have created mandates that utilities in the West join organized wholesale markets, and recent studies have made clear the West's growing need for resource adequacy planning and sharing, particularly as the region's population and economy grow and as climate change alters the region's environment and water supply.

The primary discussions around new electricity markets focus on: (1) day-ahead markets and (2) fully integrated regional transmission organizations, or RTOs, which would operate markets, regionally dispatch the system, and facilitate transmission and resource planning. In the background, stakeholders are in the process of forming the Western Resource Adequacy Program (WRAP), which could operate in conjunction with either a day-ahead market or a fully integrated RTO, or could evolve with emerging, organized wholesale markets.

A core question as the West regionalizes is what role exists for state regulators. State public utility commissions, long charged with protecting consumers, advancing the public interest, and overseeing electric utilities, have significant experience and expertise that should play a vital role as these markets develop. Across the United States, RTOs utilize different structures and forms of governance. Some of those will map more naturally into the West than others. In turn, states have longstanding regulatory authority and responsibilities that should be important in helping shape the contours and scope of these markets.

This report overviews the role of state regulators in the context of emerging regional electricity markets in the West. It highlights three key authorities of these bodies:

- Retail ratemaking power, particularly prudence review;
- Authority over the transfer of control of jurisdictional facilities; and
- Integrated resource planning.

The report details how these powers may apply to utilities joining either a day-ahead market or a fully integrated RTO. The bottom line is that state regulators have played an essential role in governing the electricity industry historically, and they have the potential to adapt their jurisdictional levers to new and changing circumstances as the West transforms its markets.

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Introduction

This report provides an assessment of the responsibilities and regulatory levers available to state commissions should a utility seek to join a day-ahead or fully integrated regional market. The analysis focuses on general regulatory powers available to state public utility commissions in ten states, recognizing that Colorado and Nevada have adopted specific statutes mandating their utilities to join an organized wholesale market (in Colorado) or an RTO (in Nevada).²

The short version of our analysis is that state utility commissions have longstanding regulatory tools that they can—and are likely to—use as utilities explore further regionalizing their markets. As these markets take shape, these state authorities are vital, both as part of the regulatory context in which utilities operate and as levers that states may pull in order to influence the design and structure of the potential markets.

This should be good news. It means that regulators have needed oversight authority to protect the public interest and are well-equipped to do so. The most likely regulatory powers states may use are: (1) ratemaking, (2) review of transfer of asset control, and (3) integrated resource planning. In addition, public utility commissions have plenary authority to conduct investigations into possible industry developments, including by convening parties through technical conferences and the like. Notably, regulators used all of these tools in prior years when utilities joined real-time energy imbalance markets, which have been deemed generally successful for the West.

This report is structured as follows. First, it provides an overview of developments to regionalize electricity markets in the West. Second, it identifies key ways in which states may wish to influence the shape of regionalized electricity markets in the West. Third, it addresses the history and context of relevant state regulatory authority, with a detailed discussion of the three core policy levers we have identified.

The State of Play in the West

The West has taken an incremental approach to regional wholesale electricity markets. Following efforts in the late 1990s to introduce wholesale and retail competition in the electricity sector, much of the United States formed RTOs [1]. These nonprofit organizations are authorized by the Federal Energy Regulatory Commission (FERC) to independently operate the transmission grid and manage wholesale electricity markets. RTO markets respond to real-time imbalances and optimize day-ahead power trades across large regions. In some RTOs, operators and participants also harness markets to plan for long-term resource adequacy and to procure capacity [2].

² The scope of our assessment includes ten states: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Several institutional and market design elements, including governance, transmission cost allocation, and greenhouse gas accounting, will be critical to the success of any regional market initiative but are outside the scope of this project. California, which already includes an organized wholesale market, also is not considered.

Today, seven RTOs manage approximately two-thirds of the U.S. bulk power supply [3].³ The two regions that have not joined this group are the Southeast and the West. In the U.S. Western Interconnection, a single RTO manages trades for most of California (the California ISO or CAISO), but there are no multistate RTOs. Instead, entities in the West coordinate the system through a combination of regional energy imbalance markets and bilateral trades.

The first regional markets to optimize trading across states in the West were energy imbalance markets (EIMs). These real-time markets accept bids from power producers and centrally dispatch participating resources every five minutes. In these markets, day-ahead commitments are not optimized, and many transactions are bilateral. These markets have been designed specifically to allow utilities and state regulators to retain control and authority over transmission assets, resource planning, investments, and reliability obligations [4–6].

The Western Energy Imbalance Market (WEIM) operated by CAISO began functioning in 2014 and now includes twenty-one active and pending participants [7]. The Western Energy Imbalance Service market (WEIS) operated by the Southwest Power Pool (SPP) began functioning as a real-time market in 2021 and now includes eleven active or pending participants [8].

Both CAISO and SPP are planning to offer day-ahead markets. These markets would allow participants to bid into the day-ahead time frame. This would be an additional service that could optimize day-ahead unit commitments and real-time dispatch, providing cost savings through more efficient use of transmission and utilization of resources. Like the existing energy imbalance markets, the proposed day-ahead markets intend to leave state regulatory authority unchanged. A day-ahead market does not involve the direct transfer of operational or functional control of generation or transmission assets to an RTO. Instead, the day-ahead market is designed to reconcile a traditional OATT trading system with RTO-based market dispatch. Thus, because the volume of the transactions would be greater than in the energy imbalance markets, an important design consideration is whether and how to determine appropriate transmission compensation and sufficient transmission availability [9,10].

In addition, both CAISO and SPP are engaged in discussions about developing proposals to offer a fully integrated multistate RTO in the West. Other groups also have explored developing a new RTO in the West, both presently and in the past. In proposals for a fully integrated western RTO, the RTO would obtain operational and functional control of transmission, manage dispatch and energy flows across the entire region, and be assigned primary responsibility for reliability. These are features consistent with FERC's expectations for an RTO, as first delineated in its Order No. 2000 and as that order has been subsequently amended. In forming an RTO, joint

³ The seven RTOs in the United States are: the California Independent System Operator (CAISO), Electric Reliability Corporation of Texas (ERCOT), Independent System Operator of New England (ISO-NE), Midcontinent Independent System Operator (MISO), New York Independent System Operator (NYISO), PJM Interconnection (PJM), and Southwest Power Pool (SPP). ERCOT is not subject to FERC rate regulation because the Texas electricity grid is largely islanded from the rest of the nation's grid.

transmission tariffs would be developed for participants, and the RTO would manage joint transmission planning.⁴

Market Structure and State Influence—Possibilities in the West

Understanding the scope of options and the role of states is important as potential market structures emerge in the West.

Importantly, a utility joining an RTO does not remove state regulatory authority. Rather, just as they do today, state commissions will continue to regulate retail sales, and will retain responsibilities for resources connected to the distribution system and resource planning. Simply because a state's utilities join an RTO does not mean that a state must move to retail competition, as some jurisdictions nationwide have done; or order its utilities to divest generation, as was common in restructuring proceedings at the turn of the century; or move to an entirely new set of state goals for electricity consumption, such as the 100% clean energy mandate that some states have adopted. Our federalist system of government enshrined in the Constitution and the Federal Power Act reserve these authorities to the states; there is, accordingly, natural policy variability from one jurisdiction to the next. Likewise, while states will only be able to exercise the power to review transfer of control of facilities once (when a utility joins an RTO), state regulators will have a role to play in the governance of regional markets, including through increased responsibilities for coordination with other state commissions and through resource planning. In this way, the longstanding, well-established regulatory tools available to state public utility commissions are adaptive and malleable, enabling both state-specific practices and regional cooperation.

Two key dimensions outline the spaces in which states may use their regulatory authority to influence the emerging regional electricity landscape in the West.

First, state authority should be important in helping shape the structure and scope of the West's new markets. RTOs are not one-size-fits-all; they reflect a diversity of circumstances, contexts, scope, and design. They exist in states where utilities have sold off generation and those where utilities remain vertically integrated. They span multiple states and time zones (*e.g.*, PJM and MISO) while also existing exclusively or largely within single states (*e.g.*, New York and California). They operate where states have leaned heavily into retail rate competition but also where retail rates remain traditionally regulated. They include governance structures that vary between RTOs in how they allocate policy development and decisionmaking authority across independent boards, market participants, other stakeholders, and technical, professional staff. In addition, all RTOs have institutional relationships that structure their interactions with state regulatory commissions [2]. For example, all multistate RTOs include bodies for coordination with and among state regulators (*e.g.*, the Organization of PJM States and the Organization of MISO States).

⁴ Other RTO design features are still being developed but could involve differences in the degree to which balancing authorities are consolidated within the RTO footprint, the responsibilities assigned to any body representing or comprised of state regulators, and the approach to planning for and procuring resource adequacy. Potentially, the newly formed Western Resource Adequacy Program (WRAP) may be viewed as an alternative to including a voluntary or mandatory capacity market in a newly proposed RTO.

States thus will want to use their regulatory authority and oversight of utilities to help shape the scope and structure of regional market organizations that develop in the West. While FERC has established core market functions and governance principles that it expects RTOs to perform and reflect, there is variability both in the design and operation of RTOs. A core question in this connection is what governance structure an RTO might utilize. Every RTO varies in this dimension, including on what space the RTO creates for state policymakers to influence future choices. In MISO, for instance, states participate in stakeholder processes through a separate stakeholder sector and have delegated authority over transmission cost allocation and resource adequacy. In relatively sharp contrast, in PJM, states exert influence through communication with the board and with members but do not participate directly in member processes. And in SPP, the Regional States Committee has the ability to provide input on all issues of concern to the states and has delegated authority for transmission cost allocation, transmission rights, and regional resource adequacy.⁵

Second, state utility commissions can use (and have used) regular reporting and informal convenings to promote transparency, assess a range of public benefits, and create opportunities for stakeholders to raise concerns in connection with western electricity regionalization. For example, to understand the impacts of joining the WEIM, some state commissions required benchmarking of the benefits customers would see. Indeed, PacifiCorp includes the costs of participation in WEIM in its annual transmission adjustment mechanism filing; the WEIM benefits are reflected as a reduction to the net power cost forecast. Other states have initiated informal convenings of stakeholders or have used the IRP process to ensure that the commission is aware of stakeholder concerns on a forward-looking basis. A significant benefit of regional markets is that they increase transparency by providing more and better information about prices, operational constraints, and transmission congestion. Through the exercise of state authority, this information becomes more broadly available to utilities, other stakeholders, and state commissions.

To understand, then, how states may influence regional electricity markets in the West, it is necessary to trace the regulatory authority that states possess.

⁵ Relatedly, RTOs differ in who possesses the ability to seek changes to its tariff (commonly referred to as Section 205 filing rights). In some RTOs, 205 filing rights remain at least partially with transmission owners (PJM), while in others, they are split between RTO members and the RTO itself (ISO-NE), and in others still the body of state regulators retains filing rights over some questions (MISO and SPP). In the background, FERC has power to charge an RTO tariff as unjust and unreasonable, under FPA Section 206. Another key difference among RTOs is whether they run a capacity market. PJM, ISO-NE, and NYISO have chosen to adopt mandatory capacity markets, while others, including MISO and SPP, have voluntary capacity markets, and others, including CAISO and ERCOT, have not adopted capacity markets at all.

State Regulatory Authority

States have several well-established, long-held regulatory tools they can utilize to address market changes as the West continues to regionalize. This is true as utilities consider joining a day-ahead wholesale market or entering a fully integrated RTO.

The presence of these regulatory powers is important for at least three reasons. First, the authorities exist to allow states to protect the public interest, including consumers. The very idea of modern electricity markets is to maximize efficiencies and reliability by promoting competition and increasing transparency. RTOs are designed in part to advance these purposes, and, in some jurisdictions, to further state-level policies on restructuring of generation ownerships or retail market reformation. State regulatory oversight, in conjunction with FERC's jurisdictional purview over wholesale markets and RTOs, has a critical role to play in ensuring the public is protected as utilities move to join new markets. Second, because the powers are traditional and long-used, they are also well-understood. Regulators know how to deploy them, having done so for decades in a variety of contexts, including through market evolution, during policy changes and regulatory shifts, and across industries. Third, the tools are adaptable and malleable, giving regulators flexibility as industries, systems, and processes evolve. This is particularly pertinent in the context of regional multilateral electricity markets. A regionalized day-ahead market is an extension of a now well-documented success in the West, namely, the WEIM, and, more recently, the WEIS. Entry into a fully integrated RTO would include extra steps, likely including transferring operational control of transmission assets and changing transmission planning, and could involve consolidating balancing authorities with a transfer of balancing area compliance obligations. Yet, the decades-long experience of RTOs across the nation shows that these regimes can be (and have been) adapted to a wide variety of regulatory, policy, and physical contexts and environments.

State regulatory authority over the electricity industry dates back more than a century. As the burgeoning industry grew in the late 1800s and early 1900s, cities and states invoked their inherent governance powers to regulate this new technology, which was quickly becoming an engine of modern economic growth. As electricity systems began to cross state boundaries, the question arose whether states or the federal government possessed the authority to govern interstate electricity transactions. In a landmark decision that still influences the industry's regulation today, *Public Utils. Comm'n v. Attleboro Steam & Elec. Co.*, 273 U.S. 83 (1927), the United States Supreme Court ruled that states lacked the authority to regulate electricity sales that cross state boundaries. The federal Constitution grants Congress power to regulate interstate commerce, the court reasoned, so by extension states lack the power to regulate extraterritorially. Because, however, Congress had not yet adopted a statute providing for regulation of interstate electricity transactions, in the wake of the court's decision, no governmental body possessed the power to regulate such sales. The court's decision, then, created what became known as the "Attleboro gap"—meaning an absence of regulation where oversight could be critical.

In 1935, Congress filled that gap. It adopted Part II of the Federal Power Act (FPA), which gave significant regulatory powers to the Federal Power Commission (the FPC, now the Federal Energy Regulatory Commission, or FERC). Importantly, Part II of the FPA divided regulatory jurisdiction. It gave FERC exclusive oversight over wholesale power sales, but it reserved state

authority over retail sales. It granted jurisdiction over electricity transmission sales to the federal government, but it saved jurisdiction over electricity distribution for the states. It created overlapping authority over electricity utility mergers and transfers of asset control, so that both FERC and states exercise regulatory authority in this sphere in parallel and different ways. And it left to state control the determinations of utilities' generation fleet structure, electricity resource planning, regulation of retail rates, and facilities siting (though subsequent amendments to the FPA have created limited federal authority over transmission siting) (*Pac. Gas & Elec. v. State Energy Comm'n*, 461 U.S. 190 (1983)).

Many of these powers—effectively reserved to the states by the FPA—come into play as utilities consider entering a multilateral day-ahead electricity market like the CAISO's Extended Day-Ahead Market (EDAM) or SPP's Markets+. Even though FERC has exclusive jurisdiction over wholesale electricity sales—including whether utilities must make such sales at traditional cost-of-service prices or instead are allowed to effect them on market-based terms—state utility commissions retain purview over utilities at the state and local levels. This includes, for instance, determining whether utilities have made the right choices in obtaining power to supply their local customers and approving retail rates across customer classes. Similarly, while FERC directly approves whether utilities and transmission providers may enter an RTO—and whether that RTO is properly designed and formed—state commissions still have the responsibility to review whether utilities may transfer control of their facilities to another entity, as joining an RTO anticipates.

Three regulatory tools are most likely to be invoked by state commissions as western utilities explore entering a regional day-ahead market or joining a fully integrated RTO. First, regulators may evaluate whether a utility's costs in making such a transition were prudently incurred as part of ratemaking proceedings, with a particular emphasis on the impact of such changes on consumer rates. Second, if a utility joins an RTO, the state utility commission generally will need to approve a transfer of control of the utility's physical assets. Third, how the utility procures energy or plans its resource portfolio—including investments, purchases, and assurance of resource adequacy—may be reviewed, challenged, or, in some jurisdictions, litigated as part of the state's integrated resource planning (IRP) process.

Of course, which of these powers a state invokes will vary based on what a utility does. Joining a day-ahead market may implicate both prudency and IRP review but not necessarily asset transfer approval, because the utility in that case arguably would retain operational control of its transmission and generation assets. By contrast, if a utility joins an RTO, all three of these tools for regulatory oversight become relevant. Further, state policy diversity will matter: There will be variations in details and of specific standards across jurisdictions, as is typical in any multijurisdictional regulatory context.

Below, we provide additional detail on each of these regulatory tools and their likely application to the ongoing evolution of western regional electricity markets. Appendix A excerpts applicable statutory and regulatory provisions relevant to these powers on a state-by-state basis. Appendix B summarizes how states exercised these powers when utilities joined or considered joining imbalance markets.

Ratemaking Authority (Prudency Review)

A core power that state energy regulators possess for influencing utility decisionmaking is the ability to review and approve retail rates. Common principles tend to apply across jurisdictions. State language often mirrors or mimics federal provisions. Under Section 5 of the FPA, utilities may not make wholesale sales that are not just, reasonable, or unduly discriminatory (16 U.S.C. § 824d, 824e). So too at the state level but within their retail rate jurisdiction ambit: Uniformly in the West, state statutes expect that utilities will charge only fair—just and reasonable—prices, as approved by their state-level public utility or service commission.

The mandate of just and reasonable rates is broad and flexible in its ideal and its application. The general concept is that approved rates cannot be too low (“just,” such that they do not constitute an unjust, unconstitutional taking of utilities’ assets) or too high (“reasonable,” such that they do not unduly enrich utilities at the expense of consumers) (*Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603–06 (1944)). Within that intentionally flexible zone of potential prices, utility regulators enjoy broad discretion to determine what should or should not be approved, including, for instance, what rate of return to allow on debt, what rate of return to allow on equity, and whether and how to permit charitable contributions by utilities.

A key principle that regulators employ in this context is prudency review. The idea is simple. To keep prices reasonable, utilities are obliged to make only investments that a prudent investor would make. Accordingly, if a state regulator determines from the factual record that a utility made an imprudent investment, the regulator may exclude that investment from the utility’s rate recovery [11]. Because utilities, as corporations, are profit maximizers, and exclusion of a cost from rate recovery shifts the fiscal risk from consumers to the utility’s investors, prudency review is a powerful regulatory tool for state utility commissions. Prudency review in the electricity industry came to greatest prominence in the 1980s when utilities’ investments in failed nuclear projects were challenged, but it has been, and is, used across a wide array of contexts still.

There is no question that state ratemaking authority will come into play as the western electricity markets regionalize. Utilities who join a day-ahead market, or an RTO, will incur significant costs in the process, likely in the millions of dollars or more. Such costs, for instance, will arise from software and technology changes and investments and the addition of employees to help manage participation in the market and the related technology. These expenses should be worth it in the long run; the very idea of these markets is to drive costs down, to the benefit of consumers. Nonetheless, state regulators will want to ensure that such transition costs were prudently incurred—that is, that a wise investor would have made the same choice, or that choice among a range of reasonable options. A determination of prudence means the utility may recover the costs in its rates.

Recent precedent illuminates how such an assessment might play out. When western utilities joined an energy imbalance market, they invariably requested that their state regulators ensure they could recover the attendant costs as part of their rates. Some jurisdictions, such as New Mexico and Utah, considered the possibility of preapproving the costs as prudent, based in part on a showing of net benefits from entering the market. Some jurisdictions—such as Idaho,

Oregon, Utah, and Washington—allowed utilities to track the costs in a specialized account or deferred cost accounting, so the costs could be specifically reviewed later. Many of the western jurisdictions have addressed WEIM benefits as part of a general rate case, irrespective of whether there were more specific treatments of the question through other mechanisms. In each of these cases, regulators found that joining an energy imbalance market was a prudent investment. In the context of further market regionalization or a fully integrated RTO, however, new regulatory analyses would assess the potential (or actual) benefits and costs of a utility joining a day-ahead market or utilizing other services with an RTO. This is because while FERC has jurisdictional authority over regional wholesale markets, state regulatory commissions retain retail ratemaking authority and the responsibility for prudency review of utility decisions to invest in new-generation assets.

Thus, long-established state ratemaking authority, including prudency review, stands as a key tool that regulators can use to exercise oversight for whether a utility may enter a broader regional electricity market, an existing RTO, or a newly formed RTO.

Asset Transfer Authority (Transfer of Control)

A second longstanding state regulatory power will come into play if utilities choose to go beyond entering a day-ahead regional market and join an RTO. State utility commissions, like FERC, typically have statutory authority to review when a utility seeks to merge, sell, or transfer control over its assets. For FERC, this power is limited to assets of a specific type or jurisdictional value threshold, as defined by the FPA. For state utility commissions, the power tends to be more plenary.

This authority to review—and thus either approve or block—asset transfers exists for good reason. Utilities and states participate in a mutually beneficial relationship known as a regulatory compact. Under this relationship, utilities traditionally have enjoyed exclusive service territories and the right to earn reasonable returns on their investments in exchange for providing efficient, reliable, universal service [12]. Use of the regulatory compact, however, creates risks. If, for example, utilities over-concentrate in the market, provision of their services may economically disadvantage ratepayers. Likewise, in the absence of market competition, utilities may have incentives to overinvest in capital, particularly if they believe they can recover the cost of that investment from customers. As well, where markets exist, the ability to control assets can be used for price manipulation, seen perhaps most infamously in the case of Enron’s exploitation of the California market at the turn of the century [13]. State control over asset transfers exists as a guard against these possibilities. State regulators, in other words, need to be assured that customers will not suffer as utilities get bigger, acquire competitors, or operate each other’s facilities.

The standard that regulators tend to use in assessing whether to approve such transfers is intentionally broad: whether the transaction is in the public interest. Different jurisdictions, naturally, put different glosses on this standard. Some look specifically at whether rates will increase as a result of the transaction. Others want to ensure that service will not be impaired, either as an explicit or implicit query. Some approach the question from the perspective of

whether the transaction will result in net benefits. Still others inquire whether there is a bona fide business interest in the transaction.

Two questions may arise in the context of this state regulatory authority and the regionalization of western electricity markets. First, it is theoretically possible parties could argue that this particular authority does not apply in some circumstances, namely, where a state's statute does not expressly reference "transfer" or "control" of a utility's facilities but instead focuses on mergers, leases, disposition of ownership, and the like. We view this as quite unlikely, both for the pragmatic reason that utilities are subject to long-term state regulatory oversight (so pursuing such a line of argument poses political risks) and because, as a general rule, these statutes are intentionally expansive (and for decades have been applied broadly). The Oregon statute, for instance, expressly declares that "No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility" without PUC preapproval (Or. Rev. Stat. § 757.511). By its plain terms, such a capacious phrasing, referencing both direct and indirect "influence," would seem necessarily to sweep in the actual control of a utility's facilities, such as by an RTO. Similarly, the Arizona statute proclaims that a public service corporation "shall not" without commission authorization "sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant or system necessary or useful in the performance of its duties to the public . . ." (Ariz. Rev. Stat. § 40-285). Again, by its usual meaning, a utility's transfer of control of transmission or other facilities to an RTO would seem inevitably to fall within the idea of "otherwise disposing" or "encumbering . . . any part" of its assets. Thus, even where a statute is not as explicit as, say, Idaho's, which specifically references assigning or transferring "in any manner whatsoever . . . the operation, management or control" of facilities (Idaho Code § 61-328), the western statutes appear quite clearly designed to charge the PUCs with this oversight obligation.⁶

Second, questions may arise concerning the precise contours of what public interest standard applies in the context of a utility joining an RTO. Because western utilities outside California have not yet joined or formed an RTO, there is no directly analogous western precedent for how state regulators may approach this question should utilities now seek either to join an existing RTO, such as CAISO or SPP, or form their own. Indeed, in other contexts applying these statutes, regulators have grappled with what version of the public interest test to apply (see, *e.g.*, *In re Legal Standard for Approval of Mergers*, 212 P.U.R.4th 449 (Or. 2001)), and, as noted,

⁶ The arguable exception is Utah's law, which addresses mergers, combinations, and consolidations (Utah Code § 54-4-28) and the acquisition "by lease, purchase or otherwise" by one public utility of "the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state" (Utah Code § 54-4-30). Potentially, a utility unblinkingly determined to join an RTO without PUC approval could contend that these ideas of merger and acquisition do not extend to a situation where it maintains ownership of its facilities but allows another entity to operate them. The counterpoints are manifold. The intent of the statute is broad. Control arguably fits within that intent. Control is akin to a lease. And, reading the law to create such an exemption could gut the statute's needed oversight. Practically, the utility will need PUC approval of other actions that do fall squarely within the statute's text in other circumstances, so pressing the issue in the context of an RTO, where less may be at stake for the utility than, say, an actual merger, could be unwise. The PUC also has general jurisdiction to regulate, including "all of the business of every such public utility" (Utah Code § 54-4-1), and other states have relied in part on parallel authority to regulate transfer of control.

there are different versions of the standard, with western states applying a variety of versions across jurisdictions. However, regulators have extensive and long experience in reviewing such transactions and will be quite familiar with the inquiries that such applications present. In addition, formal and informal legislative direction creates further considerations that regulators may take into account in applying the public interest standard. Of course, any assessment of asset transfer of control is assumed to require demonstrating that all state statutory requirements will continue to be met.

Integrated Resource Planning (IRPs)

Integrated resource plans, or IRPs, began in the 1970s and expanded rapidly into the 1990s and beyond. This changed somewhat as states restructured the electricity industry leading into the 2000s, with many states adopting requirements for energy procurement plans rather than traditional IRPs. But the use of IRPs, or their close cousins, persists [14]. In the West, all states but California, which uses a long-term procurement process rather than a per se IRP, have IRP requirements [15,16].

The idea of an IRP is to mitigate risk. IRPs offer the chance to assess what resources will be available for expected long-term demand, under the usual presumption of least-cost provision of service, as well as other state legislative and policy goals. IRPs leverage the strong planning culture of the electricity industry and stakeholder-driven processes, requiring utilities to assess different options for providing electricity to their customers. In part because of requirements in the Energy Policy Act of 1992, which mandated that states consider using IRPs, the laws generally encourage utilities to consider both supply-side and demand-side resources for meeting their expected long-term demand (Energy Policy Act of 1992, 42 U.S.C. §§ 13201–13574).

IRPs vary in structure and scope. Many ask the utility to plan for a ten-year period; others go as long as twenty years. Many but not all require the utility to regularly update their plan, often on a two-, three-, or five-year basis. In some states, utilities file their IRPs with the regulatory body, which accepts the filing or not, whereas in other jurisdictions the regulator may more actively engage with the IRP and formally approve or disapprove it.

IRPs typically include five steps. First, utilities forecast their likely demand for the planning period, based on both projections and historical trends. Second, utilities compare these forecasts against their available resources, in an effort to determine whether additional resources will be needed. Third, the utility develops different resource portfolios that could meet their projected demand. Fourth, the utility analyzes a candidate portfolio for different demand and supply situations, taking into account other possible risks, such as fuel costs, drought, and the like. Finally, the utility selects a preferred portfolio and submits its plan [17].

Because IRPs ask utilities to project how they will meet their likely system demand in the future, western utilities that join either a regional day-ahead market or an RTO will necessarily address in their plans how those developments will affect their resource planning, procurement, and investment. For example, sharing across the region could result in a different assessment of required planning reserve margins. In addition, if a utility joins an RTO, state regulators would participate in the RTO's body of state regulators (sometimes referred to as a regional states

committee) and may engage in deliberations that both draw on and shape state IRPs. In some RTOs, the body of state regulators makes recommendations about planning reserve margins, transmission planning, or other activities. In many existing IRP processes, other interested entities, including independent power producers, industrial customers, and nonprofit organizations, may participate or comment on proposed portfolios or plans submitted by the utility. This too may point up questions about how the utility's participation in regional markets will affect their delivery on demand obligations, as well as their compliance with other state policy goals, going forward.

Certainly, when utilities joined regional energy imbalance markets in the past, questions connected to those markets arose in the IRP context. In some states, such as Arizona, Nevada, Oregon, and Utah, the IRP process was important for socializing the idea of utilities joining an energy imbalance market before the utility made a final decision or brought the issue up as part of a rate case. In Nevada, specific approval to join the WEIM was requested as part of the state's energy supply plan process. In other states, the way questions about energy imbalance markets presented in IRP proceedings tended not to be particularly contentious—perhaps because utilities' choices to join the markets were so well-known and addressed in other proceedings, including ratemaking. Our expectation is that these patterns would be the case again; though IRPs might be used to socialize the idea of broader market entry, these proceedings do not tend to be the regulatory kiln where key issues are refined. Nonetheless, the IRP processes are worth noting, both because they may be one forum where regional markets are addressed and because it is possible in the long run that states will choose to alter their IRP processes as the WRAP initiative plays out or as utilities join an RTO.

Timing Considerations and the Dynamic Regulatory Relationship

One key question that arises in connection with investor-owned utilities joining an organized wholesale market relates to the timing of regulatory approval. Specifically, a question exists whether utilities must receive *preapproval* from their state public utility commission before joining a wholesale market.

The answer is both regulatory and practical. From a regulatory perspective, the dividing line generally appears to hinge on whether the utility's action involves the transfer of control of its assets. As noted, entry into a day-ahead market like CAISO's EDAM or SPP's Markets+ may not necessarily involve such a transfer of control, whereas entry into a fully integrated RTO likely would. If a utility transfers control of its assets to another entity, such as an RTO, western utility commissions generally should have legal authority to evaluate such a shift before it occurs, though there may be some differences across jurisdictions, as described above and detailed in Appendix A.

More pragmatically, irrespective of whether there is an affirmative statutory or regulatory obligation mandating utilities to seek commission preapproval, the reality is that utilities are likely to be in conversation with their regulators prior to making such a significant move.

At least two rationales undergird this practical reality. First, if a utility incurs significant costs in entering a new market without its regulator's implicit (if not express) consent, there is a risk that

it later will not be able to recover those costs as prudent. Because a determination of imprudence cuts into shareholder profits, utilities have strong disincentives to take this risk. Second, even setting aside this risk, utilities recognize that their relationship with regulators is not short-term and static, but rather, long-term and dynamic. That is, utilities are keenly aware that even if they can weather costs deemed imprudent for a single action, they do not want to establish a relationship with their regulator that leaves them subject to negative determinations or heightened skepticism going forward. This creates strong incentives for utilities to keep their regulators apprised of significant changes they are considering—such as entering an entirely new market—and to be sensitive to the signals they receive from their regulators in return.

External transparency into any utility's relationship with its regulator is not perfect. At the same time, each utility's relationship with its commission is likely unique—and dynamic, evolving over time. To be sure, utilities' past behavior when joining real-time balancing markets in the West strongly intimates that this assessment of the practical realities utilities face when considering entering a day-ahead market or a fully integrated RTO is accurate.

Two separate sets of actions underscore the point. First, notably, several utilities sought preapproval of their costs associated with joining the WEIM, either simply to be able to track those costs or to have the commission predetermine that the costs would be prudent. States that fell into this category include Idaho, New Mexico, and Utah. Although the commissions, perhaps predictably, declined to prejudge the prudence of these costs, the fact that utilities initiated these proceedings reflects, at a minimum, a desire to mitigate regulatory risk and, perhaps, an interest in obtaining at least tacit consent from their regulator before proceeding. Second, other jurisdictions, including Arizona, Colorado, Nevada, New Mexico, Oregon, and Utah, opened investigative dockets, specifically instructed their utilities to convene workshops with stakeholders, or held technical conferences in connection with imbalance market exploration, all to allow for greater socialization and understanding of what the utility entering the market would mean. This too demonstrates the dynamic nature of utilities' relationships with their regulatory bodies. Even if the regulator does not have (or does not exercise) express preapproval authority, it has other broad powers in its toolkit that may influence the environment in which utilities operate. Utilities understand that when those tools are wielded, cooperation may be both more efficacious and efficient than resistance.

Finally, it bears mention that the particular regulatory context will vary from state to state, and that this context continues to evolve. For example, Nevada specifically preapproved NV Energy entering the WEIM in connection with the state's energy supply plan requirement. Likewise, as has been widely publicized, Colorado passed a law mandating that its utilities enter an organized wholesale market, and the state's implementing regulations expressly require utilities to seek commission approval to enter such a market, whether balancing, day-ahead, or a fully integrated RTO (4 Code Colo. Reg. § 723-3-3002(X)-(XI)). Equally prominently, Nevada, too, has adopted legislation requiring its utilities to join an RTO. And, in a prior proceeding involving its entry into the WEIM, PacifiCorp (Rocky Mountain Power) represented to the Utah Public Service Commission that it would demonstrate net benefits specific to joining an RTO before it does so: “[I]n any future filing in which PacifiCorp seeks approval for expansion of participation in a regional Independent System Operator (ISO), PacifiCorp will demonstrate a net incremental benefit beyond that which has been achieved through its participation in the EIM” (In re Rocky

Mountain Power for Approval of the 2016 Energy Balancing Account, 2016 WL 6565827 (Utah P.S.C., Oct. 26, 2016)).

In short, whether a state expressly requires a utility to seek preapproval before joining a regional market, utilities are likely to engage both their energy commission and other stakeholders as they proceed. On this point, the past is precedent—a historical tally that may also serve, at least to an extent, as a blueprint for the future.

Conclusion

As western electricity markets are reshaped as part of the ongoing transformation of the region's future, state regulatory commissions have an essential role to play. Just as the market is dynamic, so too is the regulatory environment. Utilities that join these markets do so under the longstanding and ongoing oversight of state commissions charged with protecting the public interest. Even in the case of a fully integrated RTO, the utility's relinquishment of partial control of its assets when deemed in the public interest does not equate to an abdication of regulatory levers. Rather, that shift will require continued adaptation, more coordination, and potentially more reliance on public utility commission expertise and discretion—just as have other changes in the industry in the past.

Appendix A

State-by-State Legal Excerpts Related to Investor-Owned Utilities Joining an Organized Wholesale Market	
Arizona	
Asset Transfer and Transfer of Control in the Public Interest	<p>ARS § 40-285. Disposition of plant by public service corporations; acquisition of capital stock of public service corporation by other public service corporations; exemption. A. A public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge such system or any part thereof with any other public service corporation without first having secured from the commission an order authorizing it so to do. Every such disposition, encumbrance or merger made other than in accordance with the order of the commission authorizing it is void.</p>
Rate-making Authority and Prudency Review	<p>ARS § 40-203. Power of commission to determine and prescribe rates, rules and practices of public service corporations. When the commission finds that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service, product or commodity, or in connection therewith, or that the rules, regulations, practices or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and prescribe them by order, as provided in this title.</p> <p>ARS § 40-361. Charges by public service corporations required to be just and reasonable; service and facilities required to be adequate, efficient and reasonable; rules and regulations relating to charges or service required to be just and reasonable. A. Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and unlawful.</p> <p>B. Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable.</p> <p>C. All rules and regulations made by a public service corporation affecting or pertaining to its charges or service to the public shall be just and reasonable.</p>
Integrated Resource Planning and Other Relevant Requirements	<p>ADC R14-2-703. Load-serving entity reporting requirements. A. A load-serving entity shall, by April 1 of each year, file with Docket Control a compilation of the following items of demand-side data, including for each item for which no record is maintained the load-serving entity's best estimate and a full description of how the estimate was made. [Additional requirements specified in ADC R14-2-703 (A) (1-4)].</p> <p>B. A load-serving entity shall, by April 1 of each year, file with Docket Control a compilation of the following items of supply-side data, including for each item for which no record is maintained the load-serving entity's best estimate and a full description of how the estimate was made. [Additional requirements specified in ADC R14-2-703 (B) (1-4)].</p> <p>C. A load-serving entity shall, by April 1 of each even year, file with Docket Control a compilation of the following items of load data and analyses, which may include a reference to the last filing made under this subsection for each item for which there has been no change in forecast since the last filing. [Additional requirements specified in ADC R14-2-703 (C) (1-3)].</p> <p>D. A load-serving entity shall, by April 1 of each even year, file with Docket Control the following prospective analyses and plans, which shall compare a wide range of resource</p>

	<p>options and take into consideration expected duty cycles, cost projections, other analyses required under this Section, environmental impacts, and water consumption and may include a reference to the last filing made under this subsection for each item for which there has been no change since the last filing. [Additional requirements specified in ADC R14-2-703 (D) (1-17)].</p> <p>E. A load-serving entity shall, by April 1 of each even year, file with Docket Control a compilation of the following analyses and plan. [Additional requirements specified in ADC R14-2-703 (E) (1-3)].</p> <p>F. A load-serving entity shall, by April 1 of each even year, file with Docket Control a 15-year resource plan that. 1. Selects a portfolio of resources based upon comprehensive consideration of a wide range of supply- and demand-side options. [Additional requirements specified in ADC R14-2-703 (F) (2-9)].</p> <p>G. A load-serving entity shall, by April 1 of each odd year, file with Docket Control a work plan that includes: 1. An outline of the contents of the resource plan the load serving entity is developing to be filed the following year as required under subsection (F). [Additional requirements specified in ADC R14-2-703 (G) (2-4)].</p> <p>H. With its resource plan, a load-serving entity shall include an action plan, based on the results of the resource planning process, that: 1. Includes a summary of actions to be taken on future resource acquisitions. [Additional requirements specified in ADC R14-2-703 (H) (2-3)]. [Additional requirements specified in ADC R14-2-703 (I-M)].</p>
<p>Colorado</p>	
<p>Asset Transfer and Transfer of Control in the Public Interest</p>	<p>CRS § 40-5-105. Certificate or assets may be sold, assigned, or leased. (1) The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe; except that this section does not apply to assets that are sold, assigned, or leased: (a) In the normal course of business.</p> <p>4 CCR 723-3-3104. Transfers, controlling interest, and mergers. (a) A utility seeking authority to do any of the following shall file an application pursuant to this rule: transfer a certificate of public convenience and necessity; transfer or obtain a controlling interest in a utility, whether the transfer of control is effected by the transfer of assets, by the transfer of stock, by merger or by other form of business combination; or transfer assets subject to the jurisdiction of the Commission outside the normal course of business. A utility cannot transfer a certificate of public convenience and necessity; transfer or obtain a controlling interest in any utility; or transfer assets outside the normal course of business without authority from the Commission. (b) An application to transfer a certificate of public convenience and necessity, to transfer or obtain a controlling interest in a utility, or to transfer assets subject to the jurisdiction of the Commission shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attachments:(I) the information required in paragraphs 3002(b) and 3002(c), as pertinent to each party to the transaction;(II) a statement showing accounting entries, under the Uniform System of Accounts, including any plant acquisition adjustment, gain, or loss proposed on the books by each party before and after the transaction which is the subject of the application;(III) any agreement for merger, sales agreement, or contract of sale pertinent to the transaction which is the subject of the application;(IV) facts showing that the transaction which is the subject of the application is not contrary to the public interest;(V) an evaluation of the benefits and detriments to the customers of each party and to all other persons who will be affected by the transaction which is the subject of the application; and(VI) a comparison of the kinds and costs</p>

	of service rendered before and after the transaction which is the subject of the application.
Ratemaking Authority and Prudency Review	<p>CRS § 40-3-101. Reasonable charges--adequate service. (1) All charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such rate, fare, product or commodity, or service is prohibited and declared unlawful. Rates and charges demanded or received by any public utility for gas transportation service furnished or to be furnished shall not be deemed to be unjust or unreasonable so long as said rate or charge is no greater than a maximum rate and no lower than a minimum rate determined by the commission (or, in the case of a municipal utility, by the governing body of the municipal utility in accordance with sections 40-3-102 and 40-3.5-102) to be just and reasonable, and the provision of such gas transportation service at such rates or charges shall not constitute per se unjust discrimination or the granting of a preference. Nothing in this subsection (1) shall limit or restrict the commission's authority to regulate rates and charges, correct abuses, or prevent unjust discrimination.</p> <p>CRS § 40-3-102. Regulation of rates – correction of abuses. The power and authority is hereby vested in the public utilities commission of the state of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility of this state to correct abuses; to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state; to generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated in articles 1 to 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power, and to enforce the same by the penalties provided in said articles through proper courts having jurisdiction; except that nothing in this article shall apply to municipal natural gas or electric utilities for which an exemption is provided in the constitution of the state of Colorado, within the authorized service area of each such municipal utility except as specifically provided in section 40-3.5-102.</p>
Integrated Resource Planning and Other Relevant Requirements	<p>CRS § 40-6-107. Production of documents--transparency in planning for future acquisitions. (b) In any commission proceeding regarding electric resource planning or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities, the commission shall establish procedures regarding the designation and approval of information as highly confidential that protect the public interest and assure that ratepayers receive the benefits of competition and transparency while protecting the trade secrets of computer modeling software producers, independent bidders, and the investor-owned public utility.</p>
Idaho	
Asset Transfer and Transfer of Control in the Public Interest	<p>IC § 61-328. Electric utilities — Sale of property to be approved by commission. (1) No electric public utility or electrical corporation as defined in chapter 1, title 61, Idaho Code, owning, controlling or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall merge, sell, lease, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any certificate of convenience and necessity or franchise covering the same, except when authorized to do so by order of the public utilities commission.</p> <p>(2) The electric public utility or electrical corporation shall file a verified application setting forth such facts as the commission shall prescribe or require. The commission shall issue a public notice and shall conduct a public hearing upon the application.</p> <p>(3) Before authorizing the transaction, the public utilities commission shall find: (a) That the</p>

	<p>transaction is consistent with the public interest; (b) That the cost of and rates for supplying service will not be increased by reason of such transaction; and (c) That the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service. The applicant shall bear the burden of showing that standards listed above have been satisfied.</p> <p>(4) The commission shall have power to issue said authorization and order as prayed for, or to refuse to issue the same, or to issue such authorization and order with respect only to a part of the property involved. The commission shall include in any authorization or order the conditions required by the director of the department of water resources under section 42-1701(6), Idaho Code. The commission may attach to its authorization and order such other terms and conditions as in its judgment the public convenience and necessity may require.</p>
Ratemaking Authority and Prudency Review	<p>IC § 61-502. Determination of rates. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursions or commutation tickets, or that the rules, regulations, practices, or contracts or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force and shall fix the same by order as hereinafter provided, and shall, under such rules and regulations as the commission may prescribe, fix the reasonable maximum rates to be charged for water by any public utility coming within the provisions of this act relating to the sale of water.</p>
Montana	
Asset Transfer and Transfer of Control in the Public Interest	<p>MCA § 69-3-102. Supervision and regulation of public utilities. The commission is hereby invested with full power of supervision, regulation, and control of such public utilities, subject to the provisions of this chapter and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.</p> <p>MCA § 69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, or regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.</p>
Ratemaking Authority and Prudency Review	<p>MCA § 69-3-330. Decision by commission. (1) If, upon a hearing and due investigation, the rates, tolls, charges, schedules, or joint rates are found to be unjust, unreasonable, or unjustly discriminatory or to be preferential or otherwise in violation of the provisions of this chapter, the commission may fix and order substituted the rates, tolls, charges, or schedules as are just and reasonable.</p> <p>(3) If the commission finds that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this chapter or that the service is inadequate or any reasonable service cannot be obtained, the commission may substitute other regulations, measurements, practices, services, or acts and make an order relating to it as is just and reasonable.</p>

<p>Integrated Resource Planning and Other Relevant Requirements</p>	<p>MCA § 69-3-1204. Integrated least-cost plan. (1)(a) The commission shall adopt rules requiring a public utility to prepare and file a plan every 3 years for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve and in accordance with this part. (b) The rules must prescribe the content and the time for filing a plan.</p> <p>ARM 38.5.2001. Goal and policy. (1) The goal of these integrated least cost resource planning guidelines is to encourage electric utilities to meet their customers' needs for adequate, reliable and efficient energy services at the lowest total cost while remaining financially sound. To achieve this goal utilities should plan to meet future loads through timely acquisition of an integrated set of demand- and supply-side resources. Importantly, this includes actively pursuing and acquiring all cost effective energy conservation. The cost effectiveness of all resources should be determined with respect to long-term societal costs.</p> <p>(2) These guidelines represent the policy of the Montana public service commission concerning proper integrated least cost resource planning and acquisition. Electric utilities under the jurisdiction of the Montana public service commission are required to file least cost plans as outlined below.</p> <p>(3) These guidelines do not change the fundamental ratemaking relationship between the utilities and the commission. Rather, they are a restatement of the commission's regulatory objective: to efficiently allocate society's resources to the provision of electricity services and ensure just and reasonable rates for consumers.</p>
<p>Nevada</p>	
<p>Asset Transfer and Transfer of Control in the Public Interest</p>	<p>NRS § 704.329. Mergers, acquisitions or changes in control of public utility or entity that holds controlling interest in public utility: Authorization of Commission required; time within which Commission must act; exceptions. 1. Except as otherwise provided in subsection 6, a person shall not merge with, directly acquire, indirectly acquire through a subsidiary or affiliate, or otherwise directly or indirectly obtain control of a public utility doing business in this State or an entity that holds a controlling interest in such a public utility without first submitting to the Commission an application for authorization of the proposed transaction and obtaining authorization from the Commission.</p> <p>2. Any transaction that violates the provisions of this section is void and unenforceable and is not valid for any purpose.</p> <p>3. Before authorizing a proposed transaction pursuant to this section, the Commission shall consider the effect of the proposed transaction on the public interest and the customers in this State. The Commission shall not authorize the proposed transaction unless the Commission finds that the proposed transaction: (a) Will be in the public interest; and (b) Complies with the provisions of NRS 704.7561 to 704.7595, inclusive, if the proposed transaction is subject to those provisions.</p> <p>NAC 704.79981. Requirement to submit application. A person who seeks to merge with, acquire through a subsidiary or affiliate, or otherwise directly or indirectly obtain control of an energy utility doing business in this State or of an entity that holds a controlling interest in such an energy utility, must submit an application to the Commission pursuant to NRS 704.329 that complies with NAC 704.79971 to 704.79991, inclusive.</p> <p>NAC 704.79985. Application for authorization of proposed transaction: Inclusion of information on effect on costs and rates. An application for the authorization of a proposed transaction must include information relating to the anticipated effect of the proposed transaction on the costs and rates, including, without limitation [requirements specified in NAC 704.79985 (1-6)].</p>

	<p>NAC 704.79987. Application for authorization of proposed transaction: Inclusion of information on effect on competition. An application for the authorization of a proposed transaction must include information relating to the effect of the proposed transaction on competition in the markets for energy services and products in which the resulting energy utility will do business, including, without limitation [requirements specified in NAC 704.79987 (1-3)].</p> <p>NAC 704.79989. Application for authorization of proposed transaction: Inclusion of information on facilities. An application for authorization of a proposed transaction must include information relating to the facilities of the parties to the proposed transaction, including, without limitation [requirements specified in NAC 704.79989 (1-5)].</p> <p>NAC 704.79991. Order from Commission for changes or additions. 1. If the Commission finds that a proposed transaction is not in the public interest, the Commission: (a) Will not authorize the proposed transaction; or (b) Will issue an order that specifies the changes in or additions to the proposed transaction that the parties to the proposed transaction must make before the Commission will authorize the proposed transaction.</p>
<p>Ratemaking Authority and Prudency Review</p>	<p>NRS § 704.040. Public utilities required to provide reasonably adequate service and facilities; charges for services required to be just and reasonable; unjust and unreasonable charges unlawful; applicability; fair and impartial regulation of telecommunication providers; levy and collection of assessment for deposit in fund to maintain availability of telephone service; regulations concerning independent administrator to certify or recertify eligibility of customers for lifeline service; termination of service to certify or recertify eligibility for lifeline service under certain circumstances. 1. Every public utility shall furnish reasonably adequate service and facilities. Subject to the provisions of subsection 3, the charges made for any service rendered or to be rendered, or for any service in connection therewith or incidental thereto, must be just and reasonable.</p> <p>2. Every unjust and unreasonable charge for service of a public utility is unlawful.</p> <p>NRS § 704.102. Procedure for changing schedule: No presumption that recorded expenses, investments or other costs included in application were prudently incurred; exception; burden of proof. Except as otherwise provided in this chapter, when the Commission reviews an application to make changes in any schedule, there is no presumption that any recorded expenses, investments or other costs included in the application were prudently incurred, unless the Commission has previously determined that such expenses, investments or other costs were prudently incurred. The public utility has the burden of proving that an expense, investment or cost was reasonably and prudently incurred.</p>
<p>Integrated Resource Planning and Other Relevant Requirements</p>	<p>NRS § 704.741. Plan to increase supply or decrease demands: Triennial submission required; joint plans by certain affiliated utilities; contents prescribed by regulation; requirements. 1. A utility which supplies electricity in this State shall, on or before June 1 of every third year, in the manner specified by the Commission, submit a plan to increase its supply of electricity or decrease the demands made on its system by its customers to the Commission. Two or more utilities that are affiliated through common ownership and that have an interconnected system for the transmission of electricity shall submit a joint plan.</p> <p>NRS § 704.746(8). Public hearing on adequacy of plan; determination by Commission; regulations. 8. The Commission shall, after a hearing, review and accept or modify an emissions reduction and capacity replacement plan which includes each element required by NRS 704.7316. In considering whether to accept or modify an emissions reduction and</p>

	<p>capacity replacement plan, the Commission shall consider: (a) The cost to the customers of the electric utility or utilities to implement the plan; (b) Whether the plan provides the greatest economic benefit to this State; (c) Whether the plan provides the greatest opportunities for the creation of new jobs in this State; and (d) Whether the plan represents the best value to the customers of the electric utility or utilities.</p> <p>NAC § 704.9494. Approval or modification of action plan; determination that elements of energy supply plan and distributed resources plan are prudent; recovery of costs to carry out approved plans. 1. The Commission will issue an order: (a) Approving the action plan of the utility as filed; (b) Modifying the action plan of the utility; or (c) If the plan is not approved as filed or modified, specifying those parts of the action plan the Commission considers inadequate.</p> <p>6. A utility may recover all costs that it prudently and reasonably incurs in carrying out an approved action plan in the appropriate separate rate proceeding. A utility may recover all costs it prudently and reasonably incurs in carrying out an approved distributed resources plan in an appropriate separate rate proceeding. A utility may recover all costs that are prudently and reasonably incurred in carrying out the approved energy supply plan, including deviations pursuant to subsection 1 of NAC 704.9504 approved by the Commission in the appropriate deferred energy application filed pursuant to NAC 704.023 to 704.195, inclusive.</p>
<p>New Mexico</p>	
<p>Asset Transfer and Transfer of Control in the Public Interest</p>	<p>NMSA § 62-6-12. Acquisitions, consolidations, etc.; consent of commission. A. With the prior express authorization of the commission, but not otherwise:</p> <p>(1) any two or more public utilities may consolidate or merge with each other so as to form a new concern;</p> <p>(2) any person and a public utility or public utility holding company may consolidate or merge with each other so as to form a new concern;</p> <p>(3) stock of a public utility or public utility holding company may be acquired by: (a) any person who prior to the acquisition of any such stock or part thereof is a person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction; (b) any person who is or during the course of an acquisition covered by this section becomes subject to regulation or is classified as a public utility or public utility holding company in any jurisdiction based on reasons other than solely the acquisition described in this paragraph; (c) any person associated, affiliated or acting in concert with any person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction for the purposes of any acquisition subject to the provisions of this section; (d) any person associated, affiliated or acting in concert with any person described in Subparagraphs [Subparagraph] (a), (b) or (c) of this paragraph; or(e) any person who, during the course of an acquisition covered by this section, merges or consolidates with a person described in Subparagraphs [Subparagraph] (a), (b), (c) or (d) of this paragraph.</p> <p>(4) any public utility may sell, lease, rent, purchase or acquire any public utility plant or property constituting an operating unit or system or any substantial part thereof; provided, however, that this paragraph shall not be construed to require authorization for transactions in the ordinary course of business.</p> <p>B. Any consolidation, merger, acquisition, transaction resulting in control or exercise of control, or other transaction in contravention of this section without prior authorization of the commission shall be void and of no effect.</p> <p>C. Nothing in this section shall limit or expand the authority of the commission with respect to Class II transactions as provided in the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].</p>

<p>Ratemaking Authority and Prudency Review</p>	<p>NMSA § 62-8-1. Rates. Every rate made, demanded or received by any public utility shall be just and reasonable.</p> <p>NMSA § 62-8-7. Change in rates. A. At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.</p> <p>B. Unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.</p> <p>C. Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.</p> <p>D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility or the commission by its order shall direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].</p>
<p>Integrated Resource Planning and Other Relevant Requirements</p>	<p>NMAC 17.7.3.8. Integrated resource plans for electric utilities. A. A public utility supplying electric service to customers shall file with the commission every three years a proposed integrated resource plan (IRP) to meet the service needs of its customers over the planning period. The plan shall show the resource options the utility intends to use to meet those needs. The plan shall also specify how the implementation and use of those resource options would vary with changes in supply and demand. The utility is only required to identify a resource option type, unless a commitment to a specific resource exists at the time of the filing. The utility shall also discuss any plans to reduce emissions from existing resources through sales, leases, deratings, or retirements.</p> <p>E. The utility shall promptly notify the commission and participants of material events that would have the effect of changing the statement of need or action plan had those events been recognized when the statement of need or action plan was accepted.</p> <p>(1) The utility shall, within two weeks of knowledge of the material event or events, submit a filing in its most recent IRP docket detailing the material events and options being considered as proposed modifications to the accepted action plan.</p> <p>(2) This notice shall occur prior to the development of any proposed action plan modifications</p>

	<p>to ensure that the commission has advance notice. The utility shall serve the filing on everyone on the service list as well as each commissioner.</p> <p>(3) The utility bears the burden of explaining why the events qualify as material and whether it shall file a variance, pursuant to 1.2.2.40 NMAC or 17.7.3.17 NMAC, from the accepted statement of need or action plan.</p>
Oregon	
Asset Transfer and Transfer of Control in the Public Interest	<p>ORS § 757.511. Application for authority to exercise influence over utility. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the Public Utility Commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015 (“Affiliated interest” defined for ORS 757.105 (1) and 757.495) (1), (2) or (3).</p> <p>(2) Notice must be given to the commission of an application under this section at least 60 days before the application is filed with the commission. The notice must indicate whether the transaction is a transaction described in ORS 757.814 (Creation of acquisition review committee) (1). If the transaction is a transaction as described in ORS 757.814 (Creation of acquisition review committee) (1), the commission shall give notice to cities and counties as required by ORS 757.814 (Creation of acquisition review committee) (1).</p> <p>(3) The application required by subsection (1) of this section shall set forth detailed information regarding: (a) The applicant’s identity and financial ability; (b) The background of the key personnel associated with the applicant; (c) The source and amounts of funds or other consideration to be used in the acquisition; (d) The applicant’s compliance with federal law in carrying out the acquisition; (e) Whether the applicant or the key personnel associated with the applicant have violated any state or federal statutes regulating the activities of public utilities; (f) All documents relating to the transaction giving rise to the application; (g) The applicant’s experience in operating public utilities providing heat, light or power; (h) The applicant’s plan for operating the public utility; (i) How the acquisition will serve the public utility’s customers in the public interest; and (j) Such other information as the commission may require by rule.</p> <p>(4) (a) The commission promptly shall examine and investigate each application received pursuant to this section. Except as provided in subsection (5) of this section, the commission shall issue an order disposing of the application within 19 business days of its receipt. If the commission determines that approval of the application will serve the public utility’s customers and is in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant’s satisfactory performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest. (b) In reviewing an application received pursuant to this section for an electricity or natural gas utility, the Public Utility Commission must consider the effect of the acquisition or merger on the amount of income taxes paid by the utility or its affiliated group and make any necessary adjustments to the rates of the utility, including the establishment of a balancing account to track income tax expense, to ensure that the acquisition or merger serves the utility’s customers and is in the public interest.</p>
Ratemaking Authority and Prudency Review	<p>ORS § 757.020. Duty of utilities to furnish adequate and safe service at reasonable rates. Every public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such</p>

	<p>service is prohibited.</p> <p>(4) Periodically, but not less often than every two years after the implementation of a plan referred to in subsection (2) of this section, the commission shall submit a report to the Legislative Assembly that shows the impact of the plan on rates paid by utility customers.</p> <p>(5) The commission and staff may consult at any time with, and provide technical assistance to, utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the commission’s decisions shall be based on the record made at the hearing.</p>
<p>Integrated Resource Planning and Other Relevant Requirements</p>	<p>OAR 860-027-0400. Integrated resource plan riling, review, and update. (1) Scope and Applicability: This rule applies to investor-owned energy utilities. Upon application by an entity subject to this rule and for good cause shown, the Commission may relieve it of any obligation under this rule.</p> <p>(2) As used in this rule, “Integrated Resource Plan” or “IRP” means the energy utility’s written plan satisfying the requirements of Commission Order Nos. 07-002, 07-047 and 08-339, detailing its determination of future long-term resource needs, its analysis of the expected costs and associated risks of the alternatives to meet those needs, and its action plan to select the best portfolio of resources to meet those needs.</p> <p>(3) An energy utility must file an IRP within two years of its previous IRP acknowledgment order or as otherwise directed by the Commission. If the energy utility does not intend to take any significant resource action for at least two years after its next IRP is due, the energy utility may request an extension of its filing date from the Commission.</p> <p>(4) The energy utility must present the results of its filed IRP to the Commission at a public meeting prior to the deadline for written public comment.</p> <p>(5) Commission staff and parties must file their comments and recommendations within six months of IRP filing.</p> <p>(6) The Commission must consider comments and recommendations on an energy utility’s IRP at a public meeting before issuing an order on acknowledgment. The Commission may provide the energy utility an opportunity to revise the IRP before issuing an acknowledgment order.</p> <p>(7) The Commission may provide direction to an energy utility regarding any additional analyses or actions that the energy utility should undertake in its next IRP.</p> <p>(8) Each energy utility must submit an annual update on its most recently acknowledged IRP. The update is due on or before the acknowledgment order anniversary date. The energy utility must summarize the annual update at a Commission public meeting. The energy utility may request acknowledgment of changes, identified in its update, to the IRP action plan. The annual update is an informational filing that: (a) Describes what actions the energy utility has taken to implement the action plan to select best portfolio of resources contained in its acknowledged IRP; (b) Provides an assessment of what has changed since the acknowledgment order that affects the action plan to select best portfolio of resources, including changes in such factors as load, expiration of resource contracts, supply-side and demand-side resource acquisitions, resource costs, and transmission availability; and (c) Justifies any deviations from the action plan contained in its acknowledged IRP.</p> <p>(9) As soon as an energy utility anticipates a significant deviation from its acknowledged IRP, it must file an update with the Commission, unless the energy utility is within six months of filing its next IRP. This update must meet the requirements set forth in section (8) of this rule.</p> <p>(10) If the energy utility requests Commission acknowledgement of its proposed changes to the action plan contained in its acknowledged IRP: (a) The energy utility must file its proposed changes with the Commission and present the results of its proposed changes to the Commission at a public meeting prior to the deadline for written public comment; (b) Commission staff and parties must file any comments and recommendations with the Commission and present such comments and recommendations to the Commission at a public meeting within six months of the energy utility’s filing of its request for acknowledgement of</p>

	proposed changes; (c) The Commission may provide direction to an energy utility regarding any additional analyses or actions that the utility should undertake in its next IRP.
Utah	
Asset Transfer and Transfer of Control in the Public Interest	<p>UC § 54-4-28. Merger, consolidation, or combination. No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission, which shall be granted only after investigation and hearing and finding that such proposed merger, consolidation or combination is in the public interest.</p> <p>UC § 54-4-30. Acquiring properties of like utility only on consent of commission. Hereafter no public utility shall acquire by lease, purchase or otherwise the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease or acquisition of said plants, equipment, facilities and properties will be in the public interest.</p> <p>UAC R746-401-3. Reporting requirements. B. Each public utility shall file with the Commission, at least 30 days before its being consummated, a report of the sale, transfer or other disposition by that utility of utility assets having a book cost allocated to Utah in excess of the lesser of ten million dollars or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.</p> <p>C. Each public utility shall file with the Commission, at least 30 days before being placed into effect, a report of the construction, purchase, acquisition, sale, transfer or other disposition by that utility of nonutility assets having a book cost in excess of the lesser of twenty million dollars or ten percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.</p>
Ratemaking Authority and Prudency Review	<p>UC § 54-3-1. Charges must be just; service adequate; rules reasonable. All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy.</p>
Integrated Resource Planning and Other Relevant Requirements	<p>UC § 54-1-10. Conservation planning -- Annual reports. The Public Service Commission shall engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources. The commission shall make and submit to the governor and the Legislature an annual report containing a full and complete account of the transactions of its office, together with any facts, suggestions and recommendations it may deem necessary. The Division of Public Utilities shall provide any assistance the commission may require in the preparation of the annual report. The report</p>

shall be made and submitted by October 1 of each year or as soon after as may be feasible and shall be published as are the reports of other departments of the state.

UC § 54-17-301. Review of integrated resource plan action plans. (1) An affected electrical utility shall file with the commission any action plan develop as part of the affected electrical utility's integrated resource plan to enable the commission to review and provide guidance to the affected electric utility.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing a process for its review of an action plan. (b) The rules required under Subsection (2)(a) shall provide sufficient flexibility to permit changes in an action plan between the periodic filings of the affected electrical utility's integrated resource plan.

UAC R746-430-1. Definition and filing of action plan. Definition: "Action Plan" means a plan, prepared or updated in anticipation of the acquisition of the Affected Utility's significant energy resource(s) under the Energy Resource Procurement Act, Utah Code Title 54 Chapter 17, outlining actions and specific resource decisions intended to implement an Affected Utility's Integrated Resource Plan consistent with the utility's strategic business plan.

(1) Filing of an Action Plan- As soon as practicable after development of its Integrated Resource Plan or as part of the development of an Integrated Resource Plan, each Affected Utility shall file with the Commission an Action Plan. The Affected Utility shall include with the Action Plan the following: (a) Information showing the Affected Utility's analysis and conclusions by which it identified and selected the actions and significant energy resources which will be pursued through the Action Plan consistent with the Energy Resource Procurement Act, Utah Code Title 54, Chapter 17; (b) Identification of the Integrated Resource Plan used in the development of the Action Plan, including information showing how the Action Plan is consistent with the Integrated Resource Plan or why deviations have been made; (c) Identification of all data, models and information used to develop the Action Plan, including, but not limited to, the Affected Utility's costs, risk and scenario analysis, methodologies and assumptions used to develop the Action Plan; and (d) Identification of the means, whether included or not included in the Action Plan, by which the Affected Utility may enable changes to the actions and significant energy resource(s) pursued through the Action Plan, which changes may be warranted as the Affected Utility prepares and pursues future Integrated Resource Plans or may revise actions and significant energy resources in future Action Plans.

(2) Procedure on an Action Plan- Upon the filing of an Action Plan: (a) The Commission shall set and give notice of a scheduling conference to set a schedule which will identify the time period during which interested parties may obtain information to prepare comments on the Action Plan, set the date upon which comments shall be provided to the Commission and other interested parties, and set a date upon which reply comments may be made to the comments previously filed. (b) The Commission may, but is not required to, hold hearings in connection with the Action Plan for the purpose of the Commission's review and guidance.

(3) Affect of Review or Guidance - Nothing in these rules requires any acknowledgment, acceptance or order pertaining to the Action Plan submitted. Any review or guidance provided by the Commission shall not be binding on the Affected Utility and shall not be construed as approval of any action or resource identified in the Action Plan. The Affected Utility's response to any Commission review or guidance may be considered by the Commission in connection with any other request or filing made by the Affected Utility under the Energy Resource Procurement Act, Utah Code Title 54, Chapter 17.

Washington	
<p>Asset Transfer and Transfer of Control in the Public Interest</p>	<p>RCW § 80.12.020. Order required to sell, merge, etc.—Exemption. (1) No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it to do so. The commission shall not approve any transaction under this section that would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company without a finding that the transaction would provide a net benefit to the customers of the company.</p> <p>(2) This section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a special purpose district as defined in RCW 36.96.010, city, county, or town.</p> <p>RCW § 80.12.030. Disposal without authorization void—Approval or denial within eleven months, extension permitted. (1) Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void.</p> <p>(2) The commission shall enter an order approving or denying a transaction under RCW 80.12.020 or 80.12.040 within eleven months of the date of filing, which the commission may extend up to four months for cause.</p> <p>WAC 480-100-248. Electric companies -Transfers of property. Before selling, leasing, or assigning any of its property or facilities which are necessary or useful in the performance of its duties to the public, or before acquiring property or facilities of another public utility, an electric utility must obtain from the commission an order authorizing such transaction in accordance with chapters 80.12 RCW (Transfers of property) and 480-143 WAC (Commission general—Transfers of property).</p> <p>WAC 480-143-120. Commission general - Transfers of property. A public service company may not complete a transfer of property necessary or useful to perform its public duties unless the company first applies for, and obtains, commission approval. Transfers include sale, lease, assignment of all or part of a public service company's property, and merger or consolidation of a public service company's property with another public service company. Certain telephone utility leases are exempt under WAC 480-143-200. Applications must describe transfers in detail and must include the public service company's current financial statements and copies of all transfer instruments.</p> <p>WAC 480-143-170. Application in the public interest. If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.</p>
<p>Ratemaking Authority and Prudency Review</p>	<p>RCW § 80.28.010 (1). Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating. (1) All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient. Reasonable charges necessary to cover the cost of administering the collection of voluntary donations for the purposes of supporting the development and implementation of evergreen community management plans and</p>

	<p>ordinances under RCW 80.28.300 must be deemed as prudent and necessary for the operation of a utility.</p> <p>RCW § 80.28.100. Rate discrimination prohibited—Exception. No gas company, electrical company, wastewater company, or water company may, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, wastewater company services, or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.</p>
<p>Integrated Resource Planning and Other Relevant Requirements</p>	<p>RCW § 80 19.280.040. Investor-owned utilities submit integrated resource plans to the commission—Rules. (1) Investor-owned utilities shall submit integrated resource plans to the commission. The commission shall establish by rule the requirements for preparation and submission of integrated resource plans.</p> <p>(2) The commission may adopt additional rules as necessary to clarify the requirements of RCW 19.280.030 as they apply to investor-owned utilities.</p> <p>RCW § 80 19.280.060. Department's duties—Report to the legislature. The department shall review the plans of consumer-owned utilities and investor-owned utilities, and data available from other state, regional, and national sources, and prepare an electronic report to the legislature aggregating the data and assessing the overall adequacy of Washington's electricity supply. The report shall include a statewide summary of utility load forecasts, load/resource balance, and utility plans for the development of thermal generation, renewable resources, conservation and efficiency resources, and an examination of assessment methods used by utilities to address overgeneration events. The commission shall provide the department with data summarizing the plans of investor-owned utilities for use in the department's statewide summary. The department shall submit any reports it receives of existing and potential combined heat and power facilities as reported by utilities to the Washington State University extension energy program for analysis. The department may submit its report within the biennial report required under RCW 43.21F.045.</p>
<p>Wyoming</p>	
<p>Asset Transfer and Transfer of Control in the Public Interest</p>	<p>WS § 37-1-104. Reorganization of public utility; definition; approval. (a) No reorganization of a public utility shall take place without prior approval by the public service commission. The commission shall not approve any proposed reorganization if the commission finds, after public notice and opportunity for public hearing, that the reorganization will adversely affect the utility's ability to serve the public.</p> <p>(b) For purposes of this section, "reorganization" means any transaction which, regardless of the means by which it is accomplished, results in a change in the majority ownership interest or control of a public utility, or the majority ownership interest or control of any entity which owns a majority interest in or controls a public utility. "Reorganization" as used in this section shall not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.</p> <p>WAR 3-21. Notices and applications. (f) A utility shall file an application and obtain Commission approval prior to abandoning, transferring, selling, leasing, discontinuing the use of, or otherwise disposing of, relinquishing complete or partial operational control of, or, in the case of an electrical generation facility, converting to the use of a different primary fuel, any utility plant or facilities used or useful in providing service to the public.</p> <p>(i) The application shall include: (A) Studies of past, present and prospective customer use of</p>

	<p>the subject service, plant or facility; (B) A description of any impact of the proposed action on other public utilities; and (C) A description of any anticipated cost savings to customers.</p> <p>(ii) In addition to the items in § 21(f)(i), if the utility is retiring a major utility facility, the application shall include: (A) any material state and local socioeconomic impacts or cost externalities, incurred, or likely to be incurred, by or in the state of Wyoming; (B) the costs and a plan for decommissioning and reclamation of the facility's site; and (C) if applicable, any federal law mandating closure or environmental compliance expenditure that makes it no longer cost effective to operate the facility with supporting analysis.</p> <p>(iii) If a utility is retiring an electric generation facility, as defined in Wyo. Stat. 37-2-134(a)(iii), in addition to § 21(f)(i) and (ii), the application shall include: (A) a reliability study, if applicable, analyzing the proposed action upon quality of services provided, including descriptions of: (1) the generation or other resources that will replace the capacity of the facility proposed for retirement, (2) the effect of the proposed retirement on system reliability and resilience, including with respect to disaster preparedness, (3) the dispatchability of the replacement generation or other facility relative to the facility proposed for retirement, and (4) any anticipated alterations to transmission facilities or effects on transmission system operations that would be necessary to accommodate the proposed retirement and facilities providing replacement capacity; and (B) a detailed analysis of any potential alternatives to discontinuing, abandoning or otherwise disposing of the utility plant, facility or service.</p>
<p>Ratemaking Authority and Prudency Review</p>	<p>WS § 37-2-122. Matters considered in fixing rates; order changing services or facilities; qualifying facilities contracts. (a) In determining what are just and reasonable rates the commission may take into consideration availability and reliability of service, depreciation of plant, technological obsolescence of equipment, expense of operation, physical and other values of the plant, system, business and properties of the public utility whose rates are under consideration. In determining just and reasonable rates for electricity the commission shall consider common sets of facts developed pursuant to W.S. 37-2 114(b)(i) and regional benefits provided by the utility.</p> <p>(b) If, upon hearing and investigation, any service or service regulation of any public utility shall be found by the commission to be unjustly discriminatory or unduly preferential, or any service or facility shall be found to be inadequate or unsafe, or any service regulation shall be found to be unjust or unreasonable, or any service, facility or service regulation shall be found otherwise in any respect to be in violation of any provisions of this act, the commission may prescribe and order substituted therefor such service, facility or service regulation, as it shall determine to be adequate and safe, or just and reasonable, as the case may be and otherwise in compliance with the provisions of this act, including any provisions concerning the availability or reliability of service. It shall be the duty of the public utility to comply with and conform to such determination and order of the commission.</p> <p>WS § 37-3-101. Rates to be just, reasonable and uniform; exceptions. All rates shall be just and reasonable, and all unjust and unreasonable rates are prohibited. A rate shall not be considered unjust or unreasonable on the basis that it is innovative in form or in substance, that it takes into consideration competitive marketplace elements or that it provides for incentives to a public utility. Except as otherwise provided in W.S. 15-7-407, no public utility shall in any manner charge, demand, collect or receive from any person greater or less or different compensation for any service rendered or to be rendered by the public utility than is charged, demanded, collected or received by the public utility from any other person for a like and contemporaneous service under similar circumstances and conditions. The commission may determine that rates for the same service may vary depending on cost, the competitive marketplace, the need for universally available and affordable service, the need for contribution to the joint and common costs of the public utility, volume and other discounts, and other reasonable business practices. Nothing in this title shall prohibit any public utility</p>

	<p>from furnishing free or reduced rate service to its current or pensioned employees and dependent family members under rates approved by the commission.</p> <p>WS § 37-3-109. Investigation of interstate rates; application for relief. The commission may investigate all existing or proposed interstate rates, where any act under such rate shall or may take place within this state. When such rates are, in the opinion of the commission, unjust, unreasonable, unjustly discriminatory, unduly preferential or otherwise, or in any respect in violation of the provisions of the act to regulate commerce or of any other act of congress or in conflict with the rules and orders of the surface transportation board or any other department of the federal government, the commission may apply for relief by petition or otherwise to the surface transportation board or to any other department of the federal government or to any court of competent jurisdiction.</p>
<p>Integrated Resource Planning and Other Relevant Requirements</p>	<p>WAR 023-0002-3-33. Integrated Resource Plan (IRP). Each utility serving in Wyoming that files an IRP in another jurisdiction shall file that IRP with the Commission. The Commission may require any utility to file an IRP.</p>

Appendix B

State-by-State Summary of Prior Proceedings Concerning Investor-Owned Utilities Entering Imbalance Markets			
State	Type(s) of Proceedings Utilized When Utilities Joined WEIM	Disposition	Docket(s)
Arizona	IRP	<p>Even before they joined the WEIM, Arizona required its utilities to discuss the status of their deliberations over and participation in the market as part of their IRPs and three-year action plans. Utilities were required to hold public pre-filing workshops. Utilities estimated costs and benefits of joining WEIM and reported this in IRP proceedings.</p> <p>For at least two utilities, Arizona also approved purchased power and fuel adjustment clauses that contained estimated WEIM benefits, or required the regular reporting of those benefits in connection with such a clause.</p>	<p>E-00000V-13-0070, Decision No. 75068</p> <p>E-00000V-15-0094, Decision No. 76632</p> <p>E-00000V-19-0034, Decision No. 78499</p> <p>E-04204A-21-0374, Decision No. 78437</p> <p>E-01933A-19-0028, Decision No. 78551</p>
Colorado	Investigation	<p>Early on, Colorado opened an investigative docket to have interested parties provide information, feedback, and data on potential benefits and costs, suggestions about the possibility of utilities joining an organized wholesale market, including a real-time balancing market.</p> <p>Subsequently, in response to state legislation, the Colorado PUC issued a separate order in a later proceeding determining that it is in the public interest for Colorado utilities to organize in regionalized markets, including energy imbalance markets.</p>	<p>11M-998E, Decision No. C11-1347</p> <p>19M-0495E, Decision No. C21-0755</p>
Idaho	<p>Ratemaking</p> <p>IRP</p>	<p>Idaho primarily dealt with utilities joining the WEIM through rate proceedings. Specifically, Avista, Idaho Power, and PacifiCorp (Rocky Mountain Power) all sought PUC approval of EIM costs through</p>	<p>AVUE2211, Order 35543</p> <p>AVUE2001, Order 34606</p> <p>IPCE1716, Order 34100</p>

		<p>energy cost adjustment mechanisms. Avista and Idaho Power did so in advance of joining WEIM, seeking to track costs on a deferred accounting basis. The PUC specifically wanted WEIM benefits to Idaho customers to exceed implementation costs. PacifiCorp (Rocky Mountain Power) also represented to the PUC that WEIM benefits would exceed costs of purchasing GHG allowance obligations in California.</p> <p>Joining the WEIM was also discussed in passing in at least one IRP proceeding.</p>	<p>IPCE1619, Order 33706</p> <p>PACE2002, Order 34679</p> <p>PACE1703, Order 33751</p>
Montana	N/A	The primary references to utilities joining the WEIM in Montana proceedings relate to cost changes in QF proceedings for PURPA charges.	
Nevada	<p>Investigation</p> <p>Direct Approval</p> <p>IRP</p> <p>Ratemaking</p>	<p>Nevada initially opened an investigative proceeding concerning the WEIM. Part of the aim of this was for stakeholder engagement.</p> <p>Subsequently, Nevada specially approved NV Energy (Nevada Power Company and Sierra Pacific Power Company) joining the WEIM, via their application to have their Energy Supply Plans approved (a subset of the Nevada IRP process). The PUC noted that prudence hinged on whether benefits would exceed costs.</p> <p>The PUC imposed regular reporting requirements on the utilities.</p> <p>Nevada has also examined WEIM costs and impacts in ratemaking proceedings.</p>	<p>Docket No. 11-04025 (June 28, 2013)</p> <p>Docket No. 14-04024 (August 29, 2014)</p> <p>Docket No. 15-03001 (July 22, 2015) (September 11, 2015)</p> <p>Dockets No. 19-03001 19-03002 19-03003 (August 1, 2019)</p>
New Mexico	<p>Investigation</p> <p>Ratemaking</p>	Initially, New Mexico opened an inquiry docket to assess the feasibility of PNM entering a regional imbalance market.	<p>Case No. 17-00261-UT (October 18, 2017) (December 27, 2018)</p>

	IRP	<p>Subsequently, PNM and El Paso Electric both obtained PUC ratemaking approval to create an accounting mechanism to track WEIM costs. The PUC specifically declined to approve the prudence of these costs in advance. It noted that prudence could turn on whether net benefits exist.</p> <p>PNM's joining the WEIM is also mentioned in passing in an IRP order.</p>	<p>Case No. 18-00261-UT (March 18 & 27, 2019)</p> <p>Docket No. 21-00180-UT (September 15, 2021)</p> <p>Case No. 17-00174-UT (October 26, 2018)</p>
Oregon	Ratemaking Investigation	<p>All three utilities operating in Oregon—PacifiCorp (Pacific Power), Portland General, and Idaho Power—have had their participation in the WEIM addressed via ratemaking proceedings. Sometimes these are general rate cases, but often they have been annual or transition adjustment proceedings. The core disputes have centered on how to account for or forecast benefits and costs from the EIM.</p> <p>In addition, the Oregon PUC has ordered the utilities to hold workshops to address questions related to the WEIM with stakeholders, and for socialization of market changes.</p>	<p>Pacific Power UE 307, Order No. 16-482 UE323, Order No. 17-444 UE 339, Order No. 18-421 UE 400, Order No. 22-389</p> <p>Portland General UE 283, Order No. 14-422 UE 319, Order No. 17-384 UE 377, Order No. 20-390 UE 391, Order No. 21-380 UE 402, Order No. 22-427</p> <p>Idaho Power UE 398, Oder No. 22-191</p>
Utah	Ratemaking Investigation	<p>Utah approved deferred cost accounting for PacifiCorp's (Rocky Mountain Power's) entry into the WEIM in ratemaking proceedings. It specifically deferred determining cost prudence until a later proceeding.</p> <p>The PSC also convened a technical conference to explore PacifiCorp's (Rocky Mountain Power's) planned entry into the WEIM.</p> <p>Finally, PacifiCorp (Rocky Mountain Power) represented to the PSC that it would demonstrate net</p>	<p>Docket No. 13-035-184 (August 29, 2014)</p> <p>Docket No. 16-035-01 (October 26, 2016)</p>

		benefits beyond the WEIM to enter any ISO: “[I]n any future filing in which PacifiCorp seeks approval for expansion of participation in a regional Independent System Operator (ISO), PacifiCorp will demonstrate a net incremental benefit beyond that which has been achieved through its participation in the EIM.”	
Washington	Rate-making	Washington repeatedly has addressed EIM participation through rate proceedings. Utilities have sought to recover costs (less benefits) through annual power cost adjustment mechanisms, which the commission has allowed, typically through settled proceedings. For some utilities, though, the commission has ordered them to remove these costs from the annual power cost adjustment mechanism and instead recover them through general rate cases.	UE-140762, UE-140617, UE-131384, UE-140094 (March 25, 2015) UE-152253 (September 1, 2016) UE-170033 & UG-170034 (September 15, 2017) UE-191024, UE-190750, UE-190929, UE-190981, UE-180778 (December 14, 2020) UE-220530 (October 27, 2022)
Wyoming	Rate-making IRP	Wyoming’s treatment of utilities’ entry into the WEIM has focused on rate-making. This has included whether to include WEIM benefits in energy purchase adjustment charges or otherwise, but it has focused most prominently on how to determine the size and scope of such benefits as part of general rate-making proceedings. At least one commenter did ask for WEIM to be addressed as part of an IRP proceeding.	20000-514-EA-17 Record No. 14696 20000-582-EM-20 Record No. 15500 20000-446-ER-14 Record No. 13816 20000-469-ER-15 Record No. 14076 20000-394-EA-11 Record No. 12813

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