



UTILITY COMMISSIONS: STATE REGULATORY STRUCTURES IN THE WEST

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The 2019-20 Energy and Telecommunications Committee (ETIC) voted to complete a study of the Montana Public Service Commission (PSC), Montana Consumer Counsel (MCC), and the state's utility regulatory scheme during the 2019-20 legislative interim. This report begins the committee's work with an overview of the PSC's development, jurisdiction, and structure. It also details the structure of several surrounding states and provides key considerations from other states regarding commission structure.

MONTANA

History & Jurisdiction

Public utility regulation began in Montana with the founding of the 3-member Board of Railroad Commissioners. The legislature created the board in 1907, before later expanding the jurisdiction of the commission to include public utilities. Prior to the legislature's 1974 expansion of the commission, 3 commissioners were elected statewide to 6-year staggered terms. In 1974, the legislature expanded the commission to its current 5-members serving 4-year terms, elected from regional districts. The commissioners elect their own chairman every other year. Today, the PSC regulates the rates and service quality for investor owned electric, natural gas, water, waste-water, and legacy telecommunication companies. The PSC also oversees rail and pipeline safety regulations in the state and certain motor carriers, including garbage trucks and passenger carriers.¹

Montana Public Service Commission Structure

The Montana PSC is an elected body of 5-members, serving 4-year terms. Commissioners represent one of five districts in the state. The PSC's enabling legislation can be found in Title 69, Chapter 1, Part 1, MCA, including the following:

Composition and elections

The following portions of the MCA detail the composition and election process of the PSC:

69-1-103. Composition of commission. The commission shall consist of five members, who shall be qualified electors of the district from which they are elected, with each such member elected from a separate district of the state.

69-1-104. Public service commission districts. In this state there are five public service commission districts, with one commissioner elected from each district, distributed as follows:

(1) first district: Blaine, Cascade, Chouteau, Daniels, Dawson, Fergus, Garfield, Hill, Judith Basin, Liberty, McCone, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux Counties;

(2) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Treasure, and Yellowstone Counties;

(3) third district: Beaverhead, Broadwater, Deer Lodge, Gallatin, Golden Valley, Jefferson, Madison, Meagher, Musselshell, Park, Silver Bow, Stillwater, Sweet Grass, and Wheatland Counties;

(4) fourth district: Granite, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders Counties;

¹ Montana Public Service Commission

(5) fifth district: Flathead, Glacier, Lake, Lewis and Clark, Pondera, and Teton Counties.

69-1-105. Term of office — term limits. (1) A term is for a period of 4 years. A commissioner when elected shall qualify at the time and in the manner provided by law for other state officers and shall take office on the first Monday of January after the election.

(2) A commissioner shall serve until a successor is elected and qualified.

(3) The secretary of state or other authorized official may not certify a candidate's nomination or election to the public service commission or print or cause to be printed on any ballot the name of a candidate for the public service commission if, at the end of the current term of that office, the candidate will have served in that office or, had the candidate not resigned or been recalled, would have served in that office for 8 or more years in a 16-year period.

(4) When computing the time served for the purposes of subsection (3), the provisions of subsection (3) do not apply to time served in terms that ended during or prior to January 1995.

Although Montana code requires commission candidates to be qualified electors, the state does not have pre-qualification requirements for professional experience or former public service. The state doesn't require the commission composition to include a bipartisan group of members.

WESTERN STATES UTILITY COMMISSIONS

Utility commissions in the western United States vary widely in structure. When examining the differences in each of these commissions one should consider several key factors including:

1. Commission jurisdiction;
2. Commission size
3. Commissioner selection method;
4. Term lengths and limits
5. Partisan membership requirements; and
6. Commissioner Prequalification requirements.

Idaho Public Utilities Commission

Jurisdiction

The Idaho Public Utilities Commission regulates investor-owned or privately-owned utilities that provide gas, water, electricity or some telephone services for profit. The Commission is also responsible for safe operations of the utilities it regulates including inspection of gas pipelines.

The commission regulates the operation of railroads and enforces state and federal regulations regarding the transportation of hazardous materials by rail. It also inspects railroad crossings for safety and maintenance. The commission also reviews railroad abandonment proposals.²

² Idaho Public Utilities Commission

Commission composition

The Governor appoints three commissioners with confirmation by the Idaho Senate. No more than two commissioners may be of the same political party. The commissioners serve staggered six-year terms. Vacancies that occur when the Idaho Senate is not in session are filled by gubernatorial appointment subject to confirmation by the Senate upon reconvening in regular session.

The Governor may remove a commissioner before his/her term has expired for dereliction of duty, corruption or incompetence.

Commissioner Pre-qualifications

Commissioners must be a qualified elector of the state. Idaho statutes also include prohibitions on official relationships with corporations or entities regulated by the PUC and on political activity as an appointed public servant.³

North Dakota Public Service Commission

The North Dakota Public Service Commission was established before North Dakota became a state. Dakota Territory established a Board of Railroad Commissioners in 1885 to oversee railroads, sleeping car companies, express companies, and telephone companies. The State's constitution retained the board. In 1940 the Board's name was changed to the Public Service Commission.

Jurisdiction

The North Dakota commission's authority is granted in the state's constitution. The agency has varying degrees of statutory authority over the following:

- Electric and Gas Utilities;
- Telecommunications Companies;
- Energy Plant and Transmission Siting;
- Railroads;
- Auctioneers and Auction Clerks;
- Weighing and Measuring Devices;
- Pipeline Safety;
- Coal Mine Reclamation and Abandoned Mine Lands; and
- Damage Prevention

Commission composition

The three members of the North Dakota Commission are elected state-wide to terms of 6-years.

Commissioners must be a qualified elector of the state, who is at least 25 years old and a resident of the state for the five years preceding election. The state does not require a bi-partisan commission membership.

³ Idaho Statutes, 61-207

South Dakota Public Utilities Commission

Jurisdiction

The South Dakota Public Utilities Commission regulates investor-owned electric, natural gas and telephone utilities. The PUC has authority to issue permits for the construction of energy conversion, AC/DC conversion, wind energy, solar energy, and electric transmission facilities as well as certain pipelines, including those designed to transport coal, gas, liquid hydrocarbon products or carbon dioxide.

The PUC helps resolve disputes between customers and their utilities and operates the South Dakota Do Not Call Registry. The commission also operates the natural gas pipeline safety program and licenses and inspects state public grain warehouses and grain buyers.⁴

Commission composition

South Dakota elects three commissioners in state-wide elections to terms of six years. The state has no requirement for bipartisan membership on the commission.

Commissioner Pre-qualifications

The state requires commissioners to be a citizen of the United States, at least 25 years old and a resident of South Dakota for more than two years. State law also prohibits commissioners from owning bonds or stocks in any company under commission regulation.⁵

Oregon Public Utilities Commission

Jurisdiction

Utility regulation in Oregon began when the provincial government began regulating mills and millers in 1843. The state's Public Utility act of 1911 expanded regulation from railroads to include all public utilities. Today, the commission's jurisdiction includes regulation of electric, natural gas, telecommunications, and certain water utilities.

Commission composition

The Governor appoints three commissioners with confirmation by the Oregon Senate. No more than two commissioners may be of the same political party. The commissioners serve staggered four-year terms, with the chairman selected by the Governor. The Governor may remove members of the commission for any cause deemed sufficient by the governor.

Commissioner Pre-qualifications

Oregon does not have pre-qualifications for commissioners, but does prohibit the following:

- Holding any other office of profit;
- Holding any office or position under any political committee or party;

⁴ South Dakota Public Utilities Commission

⁵ SDC 49-1-3

- Holding any pecuniary interest in any business entity conducting operations which if conducted in this state would be subject to the commission’s regulatory jurisdiction; or
- Holding any pecuniary interest in, have any contract of employment with, or have any substantial voluntary transactions with any business or activity subject to the commission’s regulatory jurisdiction.

Washington Utilities and Transportation Commission

Jurisdiction

The Washington Railroad Commission was created in 1905 with jurisdiction limited to railroad and express companies. The commission was the first three-member board to regulate public companies in the state. In 1911, the Washington Legislature changed the name of the agency to the Washington Public Service Commission, expanding its jurisdiction to include electric and gas service. Regulation was also extended to telephone, telegraph, public water vessels, docks, warehouses, water and public motor carrier rates.

Today, the Washington Utilities and Transportation Commission’s jurisdiction includes electric, telecommunications, natural gas, and water. The commission also regulates in-state household movers, solid waste carriers, private ferries, and inter-city busses, as well as safety issues affecting charter buses, railroads, limousines, and nonprofit senior/handicapped transportation services.⁶

Commission composition

The Governor appoints three commissioners with confirmation by the Senate. No more than two commissioners may be of the same political party. The commissioners serve staggered six-year terms. The Governor designates one member the chair of the commission. The governor may fill vacancies by appointment to serve the remainder of the term.

Commissioner Pre-qualifications

Commissioners must be a qualified elector of the state and provide a \$20,000 bond for the faithful discharge of duties. Washington also prohibits any pecuniary interest or ownership in companies subject to the commission’s supervision.

Wyoming Public Service Commission

Jurisdiction

The Wyoming PSC was created in 1915. Today the commission has jurisdiction over four investor owned electric utilities operating in Wyoming and some jurisdiction over eighteen retail rural electric cooperatives. The Commission also regulates 11 natural gas utilities that provide retail gas service to Wyoming customers, telephone companies, intrastate pipelines and private water utilities.

⁶ Washington Utilities Commission

Commission composition

The Governor appoints three commissioners with confirmation by the Senate. No more than two commissioners may be of the same political party. The commissioners serve staggered six-year terms. Members elect their own chair, while the Governor may appoint a commissioner to fill vacancies.

Commissioner Pre-qualifications

Commissioners must be a qualified elector of the state.⁷

OTHER STATES OF INTEREST

Although, Montana's neighbors exhibit a similar utility commission structure, there are several examples from across the country that take much different approaches to one or several aspects of commission composition.

Commission composition

Only two utility commissions are made up of more than 3-member or 5-member commissions. Both North and South Carolina have 7-member boards.

The majority of states, 39, require Governor's appointments for public service commission members. Montana is among 11 states to elect public service commissioners.

Commissioner Pre-qualifications

Eleven states require some form of pre-qualification professional standards for public service commissioners. The most stringent of these are:

- Ohio – commissioners must have three years of experience in economics, law, finance, accounting, engineering or the sciences;
- Nebraska – requires two attorneys, one accountant and two lay members; and
- Nevada – requires two years of experience in accounting, business, economics, or law.

Other states with pre-qualification requirements include: Arkansas, Connecticut, Florida, Hawaii, Indiana, Massachusetts, Rhode Island, South Carolina, and Tennessee.

MONTANA: IN COMPARISON

When considering the structure of Montana's Public Service Commission, it is important to consider the following:

1. The PSC is among the majority of states to have either a 3-person or 5-person commission;
2. Montana does not limit the number of members from a specific party on the commission;
3. Montana does not require professional standards for pre-qualification on the commission; and
4. The Montana PSC's jurisdiction is similar to the neighboring western states mentioned above.

⁷ Idaho Statutes, 61-207