Regulatory Research Associates
REGULATORY FOCUS

Oct. 22, 2013

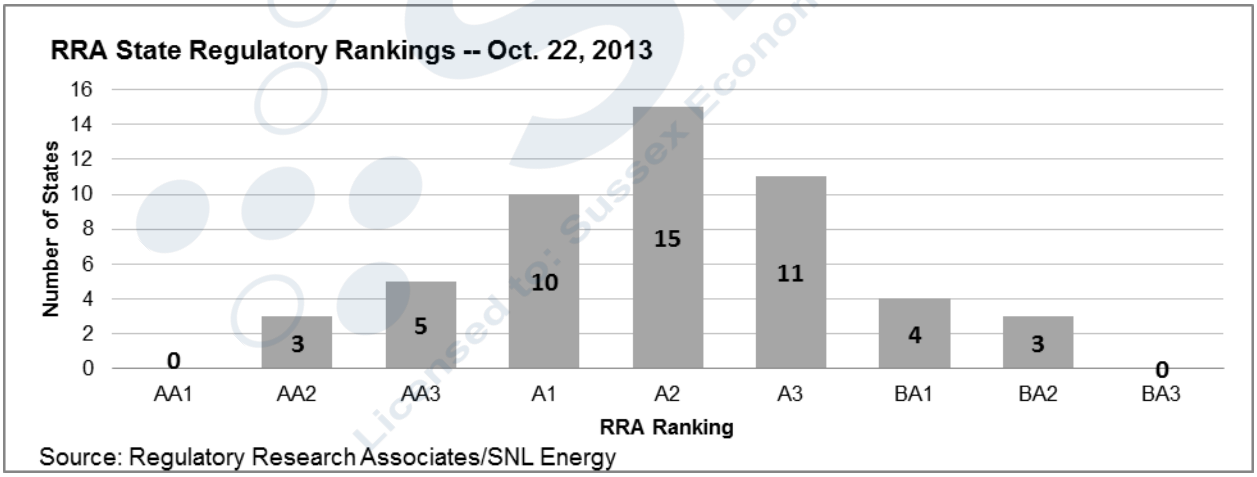
STATE REGULATORY EVALUATIONS

~ Including an Overview of RRA's ranking process ~

As part of RRA's regulatory research effort, we evaluate the regulatory climates of the 50 states and the District of Columbia on an ongoing basis. The evaluations are assigned from an investor perspective and indicate the relative regulatory risk associated with the ownership of securities issued by each jurisdiction's electric and gas utilities. Each evaluation is based upon our consideration of the numerous factors affecting the regulatory process in the state, and is changed as major events occur that cause us to modify our view of the regulatory risk accruing to the ownership of utility securities in that individual jurisdiction.

We also review our evaluations when we update our Commission Profiles, and when we publish this quarterly comparative evaluations report. The majority of factors that we consider are discussed in Focus Notes articles, Commission Profiles, or Final Reports. We also consider information obtained from contacts with commission, company, and government personnel in the course of our research. The final evaluation reflects our assessment of the probable level and quality of the earnings to be realized by the state's utilities as a result of regulatory, legislative, and court actions.

RRA maintains three principal rating categories, Above Average, Average, and Below Average, with Above Average indicating a relatively more-constructive, lower-risk regulatory environment from an investor viewpoint, and Below Average indicating a less-constructive, higher-risk regulatory climate from an investor viewpoint. Within the three principal rating categories, the numbers 1, 2, and 3 indicate relative position. The designation 1 indicates a stronger (more constructive) rating; 2, a mid-range rating; and, 3, a weaker (less constructive) rating. We endeavor to maintain about an equal number of ratings above the average and below the average. The graph below depicts the current distribution of our rankings. (***A more detailed explanation of our ratings process can be found in the Appendix that begins on page 3***.)



Our previous "State Regulatory Evaluations" report was published July 15, 2013, at which time we noted one ratings change. In light of a constructive rate case decision issued by the Washington Utilities and Transportation Commission (WUTC) for Puget Sound Energy, we raised our ranking of Washington regulation to Average/2 from Average/3. The WUTC decision provided for subsequent annual adjustments to the revenue requirement and implementation of a decoupling mechanism for both electric and gas operations. Since that time, we have conducted a periodic audit of our ranking framework and made four adjustments. Specifically, we: raised our ranking of Connecticut regulation to Below Average/2 from Below Average/3; lowered our ranking of the District of Columbia to Average/3 from Average/2; raised our ranking of Georgia regulation to Above Average/3 from Average/1; and, lowered our ranking of North Carolina to Average/1 from Above Average/3. Please note that these adjustments were not triggered by a specific regulatory event, but arose from a need to realign our rankings to more accurately reflect each jurisdiction's comparative risk.

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Above Average	Average	Below Average
1	**1**	**1**
	California	Montana
	Colorado	New Mexico
	Hawaii	Texas
	Kentucky	West Virginia
	Louisiana	
	Michigan	
	North Carolina**	
	North Dakota	
	South Carolina	
	Tennessee	
2	**2**	**2**
Alabama	Alaska	Illinois
Virginia	Delaware	Connecticut*
Wisconsin	Idaho	Maryland
	Kansas	
	Maine	
	Minnesota	
	Missouri	
	Nebraska	
	Nevada	
	New York	
	Ohio	
	Oklahoma	
	Utah	
	Washington	
	Wyoming	
3	**3**	**3**
Florida	Arizona	
Georgia*	Arkansas	
Indiana	District of Columbia**	
Iowa	Massachusetts	
Mississippi	New Hampshire	
	New Jersey	
	Oregon	
	Pennsylvania	
	Rhode Island	
	South Dakota	
	Vermont	

ALPHABETICAL LISTING

Alabama - AA/2	Illinois - BA/2	Montana - BA/1	Rhode Island - A/3
Alaska – A/2	Indiana - AA/3	Nebraska – A/2	South Carolina - A/1
Arizona - A/3	Iowa - AA/3	Nevada – A/2	South Dakota - A/3
Arkansas –A/3	Kansas – A/2	New Hampshire – A/3	Tennessee - A/1
California – A/1	Kentucky - A/1	New Jersey - A/3	Texas - BA/1
Colorado - A/1	Louisiana – A/1	New Mexico - BA/1	Utah - A/2
Connecticut – BA/2*	Maine - A/2	New York – A/2	Vermont - A/3
Delaware - A/2	Maryland – BA/2	North Carolina - A/1**	Virginia - AA/2
Dist. of Col. - A/3**	Massachusetts – A/3	North Dakota - A/1	Washington - A/2
Florida – AA/3	Michigan - A/1	Ohio - A/2	West Virginia – BA/1
Georgia – AA/3*	Minnesota - A/2	Oklahoma - A/2	Wisconsin - AA/2
Hawaii - A/1	Mississippi - AA/3	Oregon - A/3	Wyoming - A/2
Idaho - A/2	Missouri - A/2	Pennsylvania - A/3	

* Revised upward since July 15, 2013
** Revised downward since July 15, 2013

SNL Sussex Economic Advisors, LLC

Appendix: Explanation of RRA ratings process

As noted above, RRA maintains three principal rating categories, Above Average, Average, and Below Average, with Above Average indicating a relatively more constructive, lower-risk regulatory environment from an investor viewpoint, and Below Average indicating a less constructive, higher-risk regulatory climate. Within the three principal rating categories, the numbers 1, 2, and 3 indicate relative position. The designation 1 indicates a stronger (more constructive) rating; 2, a mid-range rating; and, 3, a weaker (less constructive) rating within each higher-level category. Hence, if you were to assign numeric values to each of the nine resulting categories, with a "1" being the most constructive from an investor viewpoint and a "9" being the least constructive from an investor viewpoint, then Above Average/1 would be a "1" and Below Average/3 would be a "9."

The rankings are subjective and are intended to be comparative in nature. Consequently, we do not use a mathematical model to determine each state's ranking. However, we endeavor to maintain a "normal distribution" with an approximately equal number of rankings above and below the average. The variables that RRA considers in determining each state's ranking are largely the broad issues addressed in our State Regulatory Reviews/Commission Profiles and those that arise in the context of rate cases and are discussed in RRA Rate Case Final Reports. Keep in mind that the rankings reflect not only the decisions rendered by the state regulatory commission, but also take into account the impact of the actions taken by the governor, the legislature, the courts, and the consumer advocacy groups. The summaries below are intended to provide an overview of these variables and how each can impact a given regulatory environment.

Commissioner Selection Process/Membership--RRA looks at how commissioners are selected in each state. All else being equal, RRA attributes a greater level of investor risk to states in which commissioners are elected rather than appointed. Generally, energy regulatory issues are less politicized when they are not subject to debate in the context of an election. Realistically, a commissioner candidate who indicates sympathy for utilities and appears to be amenable to rate increases is not likely to be popular with the voting public. Of course, in recent years there have been some notable instances in which energy issues in appointed-commission states have become gubernatorial/senatorial election issues, with detrimental consequences for the utilities (e.g., Illinois, Florida, and Maryland, all of which were downgraded by RRA when increased politicization of the regulatory process became apparent.)

In addition, RRA looks at the commissioners themselves and their backgrounds. Experience in economics and finance and/or energy issues is generally seen as a positive sign. Previous employment by the commission or a consumer advocacy group is sometimes viewed as a negative indicator. In some instances, new commissioners have very little experience or exposure to utility issues, and in some respects, these individuals represent the highest level of risk, simply because there is no way to foresee what they will do or how long it will take them to "get up to speed."

Commission Staff/Consumer Interest--Most commissions have a staff that participates in rate proceedings. In some instances the Staff has a responsibility to represent the consumer interest and in others the Staff's statutory role is less defined. In addition, there may or may not be: additional state-level organizations that are charged with representing the interests of a certain class or classes of customers; private consortia that represent certain customer groups; and/or, large-volume customers that intervene directly in rate cases. Generally speaking, the greater the number of consumer intervenors, the greater the level of uncertainty for investors. The level of risk for investors also depends on the caliber and influence (political and otherwise) of the intervening parties and the level of contentiousness in the rate case process. RRA's opinion on these issues is largely based on past experience and observations.

Rate Case Timing/Interim Procedures--For each state commission, RRA considers whether there is a set time frame within which a rate case must be decided, the length of any such statutory time frame, the degree to which the commission adheres to that time frame, and whether interim increases are permitted. Generally speaking, we view a set time frame as preferable, as it provides a degree of certainty as to when any new revenue may begin to be collected. In addition, shorter time frames for a decision generally reduce the likelihood that the actual conditions during the first year the new rates will be in effect will vary markedly from the test period utilized (a discussion of test periods is provided below) to set new rates. In addition, the ability to implement all or a portion of a proposed rate increase on an interim basis prior to a final decision in a rate case is viewed as constructive.

Return on Equity--Return on equity (ROE) is perhaps the single most litigated issue in any rate case. There are two aspects RRA considers when evaluating an individual rate case and the overall regulatory environment: (1) how the authorized ROE compares to the average of returns authorized for energy utilities nationwide over the 12 months, or so, immediately preceding the decision; and, (2) whether the company has been accorded a reasonable opportunity to earn the authorized return in the first year of the new rates. (It is important to note that even if a utility is accorded a "reasonable opportunity" to earn its authorized ROE, there is no guarantee that the utility will do so.)

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With regard to the first criteria, RRA looks at the ROEs historically authorized for utilities in a given state and compares them to utility industry averages (the benchmark statistics are available in *RRA's Major Rate Case Decisions Quarterly Updates*). Intuitively, authorized ROEs that meet or exceed the prevailing averages at the time established are viewed as more constructive than those that fall short of these averages.

With regard to the second consideration, in the context of a rate case, a utility may be authorized a relatively high ROE, but factors, e.g., capital structure changes, the age or "staleness" of the test period, rate base and expense disallowances, the manner in which the commission chooses to calculate test year revenue, and other adjustments, may render it unlikely that the company will earn the authorized return on a financial basis. Hence, the overall decision may be negative from an investor viewpoint, even though the authorized ROE is equal to or above the average. (RRA's *Rate Case Final Reports* provide a detailed analysis of each fully-litigated commission decision.)

Rate Base and Test Period--As noted above, a commission's policies regarding rate base and test year can impact the ability of a utility to earn its authorized ROE. These policies are often outlined in state statutes and the commission usually does not have much latitude with respect to these overall policies. With regard to rate base, commissions employ either a year-end or average valuation (some also use a date-certain). In general, assuming rate bases are rising, i.e., new investment is outpacing depreciation, a year-end valuation is preferable from an investor viewpoint. Again this relates to how well the parameters used to set rates reflect actual conditions that will exist during the rate-effective period; hence, the more recent the valuation, the more likely it is to approximate the actual level of rate base being employed to serve customers once the new rates are placed into effect. Some commissions permit post-test-year adjustments to rate base for "known and measurable" items, and, in general, this practice is beneficial to the utilities.

Another key consideration is whether state law and/or the commission generally permits the inclusion in rate base of construction work in progress (CWIP), i.e., assets that are not yet, but ultimately will be, operational in serving customers. Generally, investors view inclusion of CWIP in rate base for a cash return as constructive, since it helps to maintain cash flow metrics during a large construction phase. Alternatively, the utilities accrue allowance for funds used during construction (AFUDC), which is essentially booking a return on the construction investment as a regulatory asset that is recoverable from ratepayers once the project in question becomes operational. While this method bolsters earnings, it does not augment cash flow.

With regard to test periods, there are a number of different practices employed, with the extremes being fully-forecasted (most constructive) on the one hand and fully historical (least constructive) on the other. Some states utilize a combination of the two, in which a utility is permitted to file a rate case that is based on data that is fully or partially forecast at the time of filing, and is later updated to reflect actual data that becomes known during the course of the proceeding.

Accounting--RRA looks at whether a state commission has permitted unique or innovative accounting practices designed to bolster earnings. Such treatment may be approved in response to extraordinary events such as storms, or for volatile expenses such as pension costs. Generally, such treatment involves deferral of expenditures that exceed the level of such costs reflected in base rates. In some instances the commission may approve an accounting adjustment to temporarily bolster certain financial metrics during the construction of new generation capacity. From time-to-time commissions have approved frameworks under which companies were permitted to, at their own discretion, adjust depreciation in order to mitigate under-earnings or eliminate an over-earnings situation without reducing rates. These types of practices are generally considered to be constructive from an investor viewpoint.

Alternative Regulation--Generally, RRA views as constructive the adoption of alternative regulation plans that: allow a company or companies to retain a portion of cost savings (e.g. fuel, purchased power, pension, etc.) versus benchmark levels; permit a company to retain for shareholders a portion of off-system sales revenues; or, provide a company an enhanced ROE for achieving operational performance and/or customer service metrics or for investing in certain types of projects (e.g., demand-side management programs, renewable resources, new traditional plant investment). The use of ROE-based earnings sharing plans is, for the most part, considered to be constructive, but it depends upon the level of the ROE benchmarks specified in the plan, and whether there is symmetrical sharing of earnings outside the specified range.

Court Actions--This aspect of state regulation is particularly difficult to evaluate. Common sense would dictate that a court action that overturns restrictive commission rulings is a positive. However, the tendency for commission rulings to come before the courts, and for extensive litigation as appeals go through several layers of court review, may add an untenable degree of uncertainty to the regulatory process. Also, similar to commissioners, RRA looks at whether judges are appointed or elected.

Legislation--While *RRA's Commission Profile*s provide statistics regarding the make-up of each state legislature, RRA has not found there to be any specific correlation between the quality of energy legislation enacted and which political party controls the legislature. Of course, in a situation where the governor and

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legislature are of the same political party, generally speaking, it is easier for the governor to implement key policy initiatives, which may or may not be focused on energy issues. Key considerations with respect to legislation include: how prescriptive newly enacted laws are; whether the bill is clear or ambiguous and open to varied interpretations; whether it balances ratepayer and shareholder interests rather than merely "protecting" the consumer; and, whether the legislation takes a long-term view or is it a "knee-jerk" reaction to a specific set of circumstances.

Corporate Governance--This term generally refers to a commission's ability to intervene in a utility's financial decision-making process through required pre-approval of all securities issuances, limitations on leverage in utility capital structures, dividend payout limitations, ring-fencing, and authority over mergers (discussed below). Corporate governance may also include oversight of affiliate transactions. In general, RRA views a modest level of corporate governance provisions to be the norm, and in some circumstances these provisions (such as ring-fencing) have protected utility investors as well as ratepayers. However, a degree of oversight that would allow the commission to "micromanage" the utility's operations and limit the company's financial flexibility would be viewed as restrictive.

Merger Activity--In cases where the state commission has authority over mergers, RRA reviews the conditions, if any, placed on the commission's approval of these transactions, specifically: whether the company will be permitted to retain a portion of any merger-related cost savings; if guaranteed rate reductions or credits were required; whether certain assets were required to be divested; and, whether the commission placed stringent limitations on capital structure and/or dividend policy.

Electric Regulatory Reform/Industry Restructuring--RRA generally does not view a state's decision to implement retail competition as either positive or negative from an investor viewpoint. However, for those states that have implemented retail competition, RRA considers: whether up-front guaranteed rate reductions were required; how stranded costs were quantified and whether the utilities were accorded a reasonable opportunity to recover stranded costs; the length of the transition period and whether utilities were at risk for power price fluctuations associated with their default service responsibilities during the transition period; how default service is procured following the end of the transition period; and, how any price volatility issues that arose as the transition period expired were addressed.

Gas Regulatory Reform/Industry Restructuring--Retail competition for gas supply is more widespread than is electric retail competition, and the transition was far less contentious, as the magnitude of potential stranded asset costs was much smaller. Similar to the electric retail competition, RRA generally does not view a state's decision to implement retail competition for gas service as either positive or negative from an investor viewpoint. RRA primarily considers the manner in which stranded costs were addressed and how default service obligation-related costs are recovered.

Securitization--Securitization refers to the issuance of bonds backed by a specific existing revenue stream that has been "guaranteed" by regulators. State commissions have used securitization to allow utilities to recover demand-side management costs, electric-restructuring-related stranded costs, environmental compliance costs, and storm costs. RRA views the use of this mechanism as generally constructive from an investor viewpoint, as it virtually eliminates the recovery risk for the utility.

Adjustment Clauses--For many years adjustment clauses have been widely utilized to allow utilities to recover fuel and purchased power costs outside a general rate case, as these costs are generally subject to a high degree of variability. In some instances a base amount is reflected in base rates, with the clause used to reflect variations from the base level, and in others, the entire annual fuel/purchased power cost amount is reflected in the clause. More recently, the types of costs recovered through these mechanisms has been expanded in some jurisdictions to include such items as pension and healthcare costs, demand-side management program costs, FERC-approved transmission costs, and new generation plant investment. Generally, RRA views the use of these types of mechanisms as constructive, but also looks at the frequency with which the adjustments occur, whether there is a true-up mechanism, and whether adjustments are forward-looking in nature. Other mechanisms that RRA views as constructive are weather normalization clauses that are designed to remove the impact of weather on a utility's revenue and decoupling mechanisms that may remove not only the impact of weather, but also the earnings impacts of customer participation in energy efficiency programs. Generally, an adjustment mechanism would be viewed as less constructive if there are provisions that limit the utility's ability to fully implement revenue requirement changes under certain circumstances, e.g., if the utility is earning in excess of its authorized return.

Integrated Resource Planning--RRA generally considers the existence of a resource planning process as constructive from an investor viewpoint, as it may provide the utility at least some measure of protection from hindsight prudence reviews of its resource acquisition decisions. In some cases, the process may also provide for pre-approval of the ratemaking parameters and/or a specific cost for the new facility. RRA views these types of provisions as constructive, as the utility can make more informed decisions as to whether it will proceed with a proposed project.

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Renewable Energy/Emissions Requirements--As with retail competition, RRA does not take a stand as to whether the existence of renewable portfolio standards or an emissions reduction mandate is positive or negative from an investor viewpoint. However, RRA considers whether there is a defined pre-approval and/or cost-recovery mechanism for investments in projects designed to comply with these standards. RRA also reviews whether there is a mechanism (e.g., a percent rate increase cap) that ensures that meeting the standards does not impede the utility's ability to pursue other investments and/or recover increased costs related to other facets of its business. RRA also looks at whether incentives, such as an enhanced ROE, are available for these types of projects.

Rate Structure--RRA looks at whether there are economic development or load-retention rate structures in place, and if so, how any associated revenue shortfall is recovered. RRA also looks at whether there have been steps taken over recent years to reduce/eliminate inter-class rate subsidies, i.e., equalize rates of return across customer classes. In addition, RRA considers whether the commission has adopted or moved towards a straight-fixed-variable rate design, under which a greater portion (or all) of a company's fixed costs are recovered through the monthly customer charge, thus according the utility greater certainty of recovering its fixed costs.

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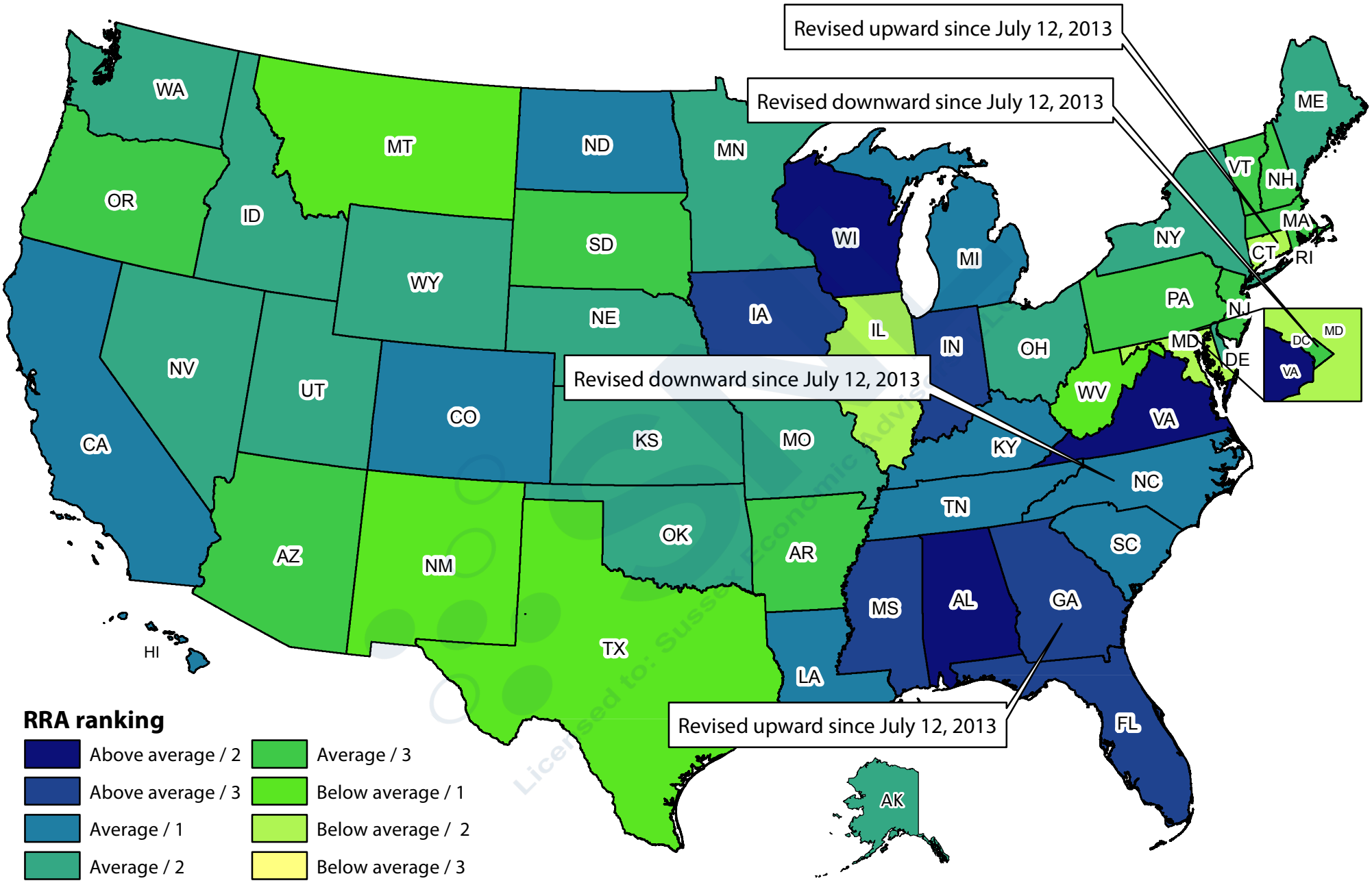
RRA state regulatory rankings



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