WHITE PAPER · REGULATORY INTELLIGENCE SERIES

# Regulatory Risk Is *Underpriced* in Infrastructure M&A

*A Practitioner's Framework for Due Diligence in Regulated Asset Acquisitions*

Most infrastructure investors underwrite regulatory risk as a binary. This paper presents a practitioner-built framework for underwriting the question that actually determines returns.

*Michael Christopher Warren*

Founder, RegulatorIndex · April 2026 · White Paper No. 001

EXECUTIVE SUMMARY

# The Wrong Question Is Being Asked.

Regulatory risk is the most consistently underpriced variable in infrastructure M&A.; This is not because sophisticated investors ignore regulation. It is because most regulatory due diligence asks the wrong question.

The standard question is: will this get approved?

The question that actually determines returns is: on what terms, on what timeline, after how much friction, and with what long-term operating constraints?

THE CORE PROBLEM

Most capital is underwriting the first question. The practitioners who understand how regulated markets actually work are underwriting all five. The gap between those two analytical approaches is where infrastructure acquisitions quietly underperform their models.

This white paper presents a practitioner-built framework for regulatory due diligence in regulated asset acquisitions — built from direct engagement with commission proceedings, rate case records, and the intervenor dynamics that financial models consistently miss.

WHAT THIS PAPER COVERS

01 The fundamental problem with how regulatory risk is currently assessed in M&A; due diligence

02 The four blind spots that standard regulatory analysis consistently misses

03 A commission composition and behavior assessment framework

04 Intervenor ecosystem mapping methodology

05 Precedent under stress analysis

06 Record vulnerability assessment

07 A pre-acquisition regulatory risk checklist with key diagnostic questions

THE FUNDAMENTAL PROBLEM

# How Regulatory Due Diligence Currently Fails.

Walk into most infrastructure due diligence processes and the regulatory section will contain some version of the following assessment:

> *"The regulatory environment is generally constructive. The commission has historically approved similar transactions. We have good relationships with key stakeholders. Regulatory risk is assessed as low."*

This assessment is almost always based on three things: a review of recent commission orders, conversations with in-state counsel, and a characterization of the state's political environment as business-friendly or otherwise.

What it almost never includes is a systematic analysis of how the current commission actually behaves under pressure, who the intervenors are and what they will argue, where the evidentiary record is vulnerable, and what the realistic range of timeline outcomes is given procedural history.

The result is a due diligence process that is highly competent at assessing what has happened in a regulatory environment and structurally unprepared to assess what is likely to happen in a contested proceeding involving this specific asset under current conditions.

THE CRITICAL GAP

Standard regulatory due diligence models what the commission has done. It does not model what this commission will do in a contested proceeding involving this asset at this moment. Those are not the same analysis. The gap between them is where investment theses break down.

This is where infrastructure acquisitions get into trouble. Not because the commission is hostile. Because the diligence process modeled a different commission than the one that will actually decide the case.

THE FOUR BLIND SPOTS

# What Standard Due Diligence Consistently Misses.

### *Blind Spot 1: Over-reliance on historical outcomes*

Commissions approve similar things until they do not. The inflection points are predictable in retrospect and almost never captured in historical outcome summaries. Commissioner composition changes. Political pressure builds. A high-profile rate increase creates public backlash that reshapes the commission's risk tolerance. The question that historical outcome analysis cannot answer is the one that matters most: how will this commission respond to a contested proceeding involving this asset at this moment in time?

### *Blind Spot 2: Misreading "constructive regulatory environment"*

A commission in a state labeled business-friendly will still impose conditions, require additional testimony, or deny cost recovery for investments it finds imprudent on the record before it. The constructive environment characterization tells you something about the baseline political temperature. It tells you almost nothing about how a commission will respond to a specific evidentiary record and a specific intervenor coalition.

### *Blind Spot 3: Underestimating the intervenor ecosystem*

Standard regulatory due diligence models regulator behavior. It rarely models intervenor behavior with equivalent rigor. In contested proceedings, the intervenor ecosystem is often the primary driver of timeline, cost, and conditionality outcomes. Consumer advocates shape the record. Large industrial customers introduce cost allocation arguments that commissions take seriously. Environmental organizations challenge prudency determinations.

VIRGINIA — THE CASE STUDY

In the Dominion Energy biennial review, the coalition opposing full data center cost recovery included consumer advocates, environmental groups, the Attorney General's office, and large commercial customers. That coalition shaped the record sufficiently that the commission created a new rate class, imposed 14-year contract requirements, and deferred the full methodology question to the next rate case. A diligence process that modeled commission behavior without modeling intervenor behavior would have produced a materially different risk assessment.

## *Blind Spot 4: Treating timeline risk as linear*

Financial models assume a linear proceeding timeline. The realistic distribution of timeline outcomes in contested proceedings includes extended data request periods, supplemental testimony rounds, procedural motions creating delays, partial approvals requiring additional proceedings, and rehearing requests extending resolution by months or years. Time in a contested proceeding is not just time. It is uncertainty compounding.

THE FRAMEWORK

# A Practitioner's Regulatory Due Diligence Framework.

## Dimension 1: Commission Composition and Behavior Assessment

The question is not what has this commission done. The question is how will this commission behave in a contested proceeding involving this asset right now. Commissioners are public officials who speak frequently and on the record. Their positions on cost allocation, stranded asset risk, and ratepayer protection are knowable before a proceeding begins.

> Who are the current commissioners and when do their terms expire? What have they said publicly about the relevant issues in the past 24 months? What does their voting record in contested cases reveal about their risk tolerance? Where are they currently under political pressure and from whom?

## Dimension 2: Intervenor Ecosystem Mapping

Identify the parties who have historically participated in similar proceedings in that jurisdiction, the arguments each party reliably makes, which commissioners take each intervenor seriously, and the current political environment that might affect intervenor funding and participation levels.

> Who are the active intervenors in this jurisdiction for this asset class? What arguments have they made in the three most recent comparable proceedings? Which intervenors have successfully imposed conditions or modifications? What is the current funding and organizational capacity of the primary consumer advocates?

## Dimension 3: Precedent Under Stress

Historical outcome analysis reviews what commissions have approved. Precedent under stress analysis examines what commissions have done when proceedings became contested and controversial — the conditions imposed, the timeline extensions that resulted, and the evidentiary standards applied when making adverse rulings.

> What are the three most contested comparable proceedings in this jurisdiction in the past decade? What conditions and modifications did the commission impose? What timeline extensions resulted and what caused them?

## Dimension 4: Record Vulnerability Assessment

This is the dimension almost no standard due diligence process includes. The question is not whether you have a strong case. The question is where your case is weak and what a well-resourced intervenor will do with that weakness. Stress-test your position the way a skilled intervenor would before you file.

> What are the three strongest arguments an informed intervenor could make against this case? Where are the cost projections most dependent on challengeable assumptions? Where does the proposed cost recovery conflict with recent commission precedent or stated commissioner priorities?

PRE-ACQUISITION CHECKLIST

# Minimum Standard for Regulatory Due Diligence.

Use this checklist as a minimum standard for any regulated asset acquisition. Items are organized by the four framework dimensions. All items require documented analysis before investment committee presentation.

## COMMISSION ENVIRONMENT

- [ ] Current commissioner profiles completed with term expiration dates
- [ ] Commissioner voting patterns in contested cases reviewed for past 24 months
- [ ] Public statements on relevant issues reviewed and documented
- [ ] Staff positions on key technical questions assessed
- [ ] Political pressure environment mapped — who is applying pressure and on what issues

## INTERVENOR ECOSYSTEM

- [ ] Active intervenors in jurisdiction identified for this asset class
- [ ] Recent testimony and arguments documented for each major intervenor
- [ ] Intervenor win/loss record in comparable proceedings assessed
- [ ] Current intervenor funding and organizational capacity assessed
- [ ] Recent legislative or political activity affecting intervenor resources reviewed

## PRECEDENT UNDER STRESS

- [ ] Three most contested comparable proceedings identified and reviewed
- [ ] Conditions and modifications in those proceedings documented
- [ ] Timeline extensions and their causes analyzed

- [ ] Evidentiary standards applied in adverse rulings identified

RECORD VULNERABILITY

- [ ] Top three intervenor arguments against the proposed case identified
- [ ] Cost projection vulnerabilities mapped
- [ ] Cost allocation conflicts with recent precedent identified
- [ ] Prudency exposure assessed with mitigation plan developed

TIMELINE MODELING

- [ ] Base case timeline developed with procedural milestones
- [ ] Contested proceeding timeline scenario modeled
- [ ] Extended proceeding scenario modeled with capital-at-risk quantified
- [ ] Return sensitivity to timeline scenarios analyzed

MCW

*Michael Christopher Warren*

Michael Christopher Warren is a builder and author in New York.
He is the founder of StatecraftCRM, RegulatorIndex and Unborrowed.

hello@michaelchristopherwarren.com · michaelchristopherwarren.com · regulatorindex.com