



Arkansas

Water and wastewater utilities in Arkansas fall under several rate setting regulatory systems.

Commission-regulated utilities	
Noncommission-regulated utilities	

Commission-Regulated Utilities

The **Arkansas Public Service Commission (APSC)** regulates the rates and services⁴² of private water and wastewater companies earning more than \$1 million in annual revenues.⁴³ APSC does not regulate government-owned water or wastewater utilities, including those owned and operated by “cities, towns, improvement districts, or any other public or quasi-public corporation.”⁴⁴

Ark. Code Ann. § 23-4-103 and **§ 23-4-104(a)** require the rates and charges of APSC-regulated utilities to be “just and reasonable.”⁴⁵ **Ark. Code Ann. § 23-3-114** further states that no commission-regulated utility “shall make or grant any unreasonable preference or advantage to any corporation or person or subject any corporation or person to any unreasonable prejudice or disadvantage.” Under the same provision, no commission-regulated utility “shall establish or maintain any unreasonable difference as to rates or services, either as between localities or as between classes of service.”⁴⁶ **Ark. Code Ann. § 23-4-101(b)** indicates that the rates of commission-regulated utilities may not be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of the law.

The language included in **Ark. Code Ann. § 23-3-114** and **§ 23-4-101(b)** potentially limits the ability of commission-regulated utilities to provide low-income assistance funded by customers. Case law further confirms that the APSC cannot implement low-income customer assistance programs (CAPs) absent specific authorization from the Arkansas General Assembly.

42. Under **Ark. Code Ann. § 23-4-201**, the APSC has “sole and exclusive jurisdiction and authority to determine the rates to be charged for each kind of product or service to be furnished or rendered by” the utilities it regulates.

43. Additionally, a private water company may petition the APSC to be regulated if it has annual revenues greater than \$400,000 for the three years prior to the petition.

44. “**Gas & Water Section**,” Arkansas Pub. Serv. Comm’n.

45. **Ark. Code Ann. § 23-4-103** also states that to the extent “rates, rules, or regulations may be unjust or unreasonable, [they] are prohibited.”

46. **Ark. Code Ann. § 23-3-114**.

State Population (2016):	2,988,248
Median Annual Household Income (2015):	\$41,371
Poverty Rate (2015):	19.3%
Typical Annual Household Water and Wastewater Expenditures (2016):	\$670
Arkansas has 697 community water systems (CWS), of which 118 are privately owned and 639 serve populations of 10,000 or fewer people.	
Arkansas has 359 publicly owned treatment works facilities (POTWs), of which 301 treat 1 MGD or less.	
212,034 people are served by privately owned CWS; 2,866,239 are served by government-owned CWS; and 1,802,415 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$6.8 billion
<i>Sources: U.S. Census Bureau, 2016 Population Estimate & 2011–2015 American Community Survey 5-Year Estimates; 2016 EFC Rates Survey; U.S. Environmental Protection Agency, 2016 Safe Drinking Water Information System, 2011 Drinking Water Infrastructure Needs Survey, and 2012 Clean Watersheds Needs Survey. See Appendix C for more details.</i>	

Specifically, in *Arkansas Gas Consumers, Inc. v. Arkansas Public Service Commission*,⁴⁷ the Supreme Court of Arkansas considered the legality of APSC’s Temporary Low Income Customer Gas Reconnection Policy. As part of the program, income-eligible customers who had been disconnected from service could have their service restored if they paid their utility’s reconnection fee in full and agreed to participate in a levelized payment plan under which they would eventually repay all past debt. To help cover the costs associated with the debt from overdue payments in the interim, APSC levied a temporary surcharge against all customers. The court ruled that APSC had no legislative author-

47. *Arkansas Gas Consumers, Inc. v. Arkansas Pub. Serv. Comm’n*, 118 S.W.3d 109, 112 (Ark. 2003).

ity to develop and mandate the program, in large part because the surcharge did not cover allowable expenses under state law, including expenses reasonably incurred with respect to existing facilities as a *direct* result of legislative or regulatory requirements. The court specifically stated “what the dissent fails to address is that nowhere in the Utility Code is the PSC, on its own motion, given the legislative authority to pay off the bad debt of low-income customers by assessing all ratepayers; nor is authority granted to the PSC to continue that assessment on all ratepayers to fund a low-income assistance program Had the General Assembly intended the PSC to have this additional authority, it could have easily provided for it as did California.”⁴⁸

Thus, commission-regulated utilities in Arkansas cannot currently implement low-income CAPs funded by rate revenues.

Noncommission-Regulated Utilities

In Arkansas, government-owned utilities that are not regulated by APSC primarily include municipal-owned utilities and improvement districts. [Ark. Code Ann. § 14-235-223\(a\)\(1\)](#) provides guidance for municipal-owned wastewater utilities, stating that “the council of the municipality shall have power . . . by ordinance to establish and maintain *just and equitable* rates or charges for the use of and the service rendered.” [Ark. Code Ann. § 14-250-111](#) provides wastewater treatment districts with the authority to fix, regulate, and collect rates and charges for the services they provide, stipulating that the rates shall be “just, reasonable, and nondiscriminatory.”

Separately addressing municipal water supply utilities, [Ark. Code Ann. § 14-234-214](#) authorizes the legislative body of a municipality to fix rates and charges for water supply systems.⁴⁹ [Ark. Code Ann. § 14-234-214](#) allows municipal-owned water supply utilities to use surplus revenues in multiple ways, including for

“any other municipal purpose.”⁵⁰ However, “municipal purpose” is not left to the discretion of the governing body. [Ark. Code Ann. § 14-199-101](#) limits the use of surplus revenues to a list of specific purposes, which, in terms of assistance, includes only assistance for low-income customers of municipal electric utilities.⁵¹

Importantly, all municipalities and counties in Arkansas can *only* exercise such powers as are expressly granted to them by the legislature and as are necessarily implied for effecting the purposes for which the grant of power was made.⁵² Thus, because [Ark. Code Ann. § 14-199-101](#) does not specifically authorize municipal-owned water and wastewater utilities to use surplus revenues for low-income CAPs, these programs are not allowed in the state of Arkansas.⁵³ At least one noncommission-regulated water utility, Central Arkansas Water, provides temporary assistance to residential customers through its [Help to Others Customer Assistance Fund](#). However, this program receives its funding from advertising sales, not from customer surcharges or rate revenues.

48. Id. at 124.

49. The statute further mandates that the rates be adequate to pay the principal of and interest on all revenue bonds and promissory notes, make payments into a revenue bond sinking fund, provide an adequate depreciation fund, and cover operation and maintenance costs for the waterworks system.

50. Pursuant to [Ark. Code Ann. § 14-235-223](#), municipalities must first transfer surplus revenues into either a depreciation account or bond and interest redemption account. If a surplus still exists in the bond and interest redemption account, the municipality can use the excess revenues for “any other municipal purpose,” and other items as specified.

51. Specifically, the statute allows municipal electric utilities to use up to 4 percent of surplus revenues to provide low-income customers with home energy efficiency improvements, bill payment assistance, or other approved assistance.

52. Pursuant to [City of Malvern v. Young](#), 171 S.W.2d 470, 474 (Ark. 1943), government-owned utilities may have some authority to charge different rates to different customers. However, this has generally been interpreted to mean that utilities can charge customers different rates based on differences in the cost of service.

53. Pers. comm. with Dawn Kelliher, General Counsel, Arkansas Pub. Serv. Comm’n (Jan. 9, 2017).