

# NC Regulations and Standards Regarding Rates and Revenue for Government-Owned Water/Sewer Utilities

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# True or false?

## According to NC law...

- Utilities must hold a public hearing before raising rates
- Utilities must publish changes in water rates prior to their implementation
- Utility rates must depend on the volume of water used by customers
- Utility funds legally cannot be transferred to or from the General Fund

# Economic regulatory issues

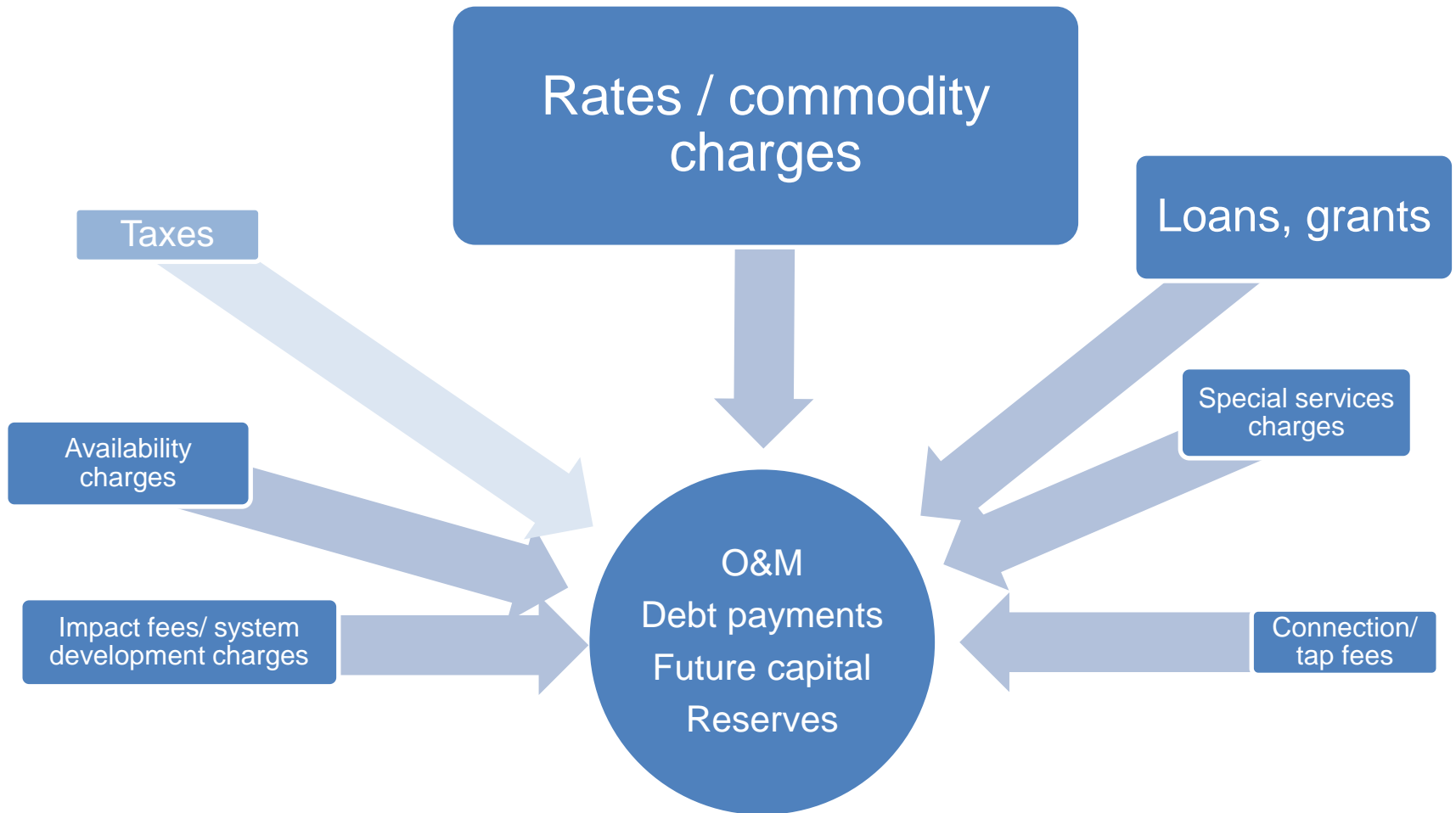
- General principles
- Permissible costs and revenues
- Authority to set rates
- Rate structures and billing practices
- Renters vs. owners
- Delinquencies and disconnections
- Appeal process
- Non-regulatory considerations

Focus is on government-owned utilities

# General principles

- Public enterprise
- Self-regulating monopolies
- Balanced by democracy
- Minimal regulations
- Flexible
- Important but limited role of courts
- Generally accepted standards and practices

# Permissible costs and revenues



# Where to look for guidance

- Your covenants, ordinances
  - Set financial targets
  - Specify rules utility will abide by
- State and case laws
  - Looking for what you can't (and can) do
  - Examples of court rulings
- Contracts with customers

# Authority to set rates and fees

- Part of authority to establish, manage and finance public enterprises
  - Counties G.S. 153A-276/277/284
  - Cities G.S. 160A-313/314/317
- Part of specific authority
  - Water and Sewer Authorities G.S. 162A-6 (9)
  - Sanitary Districts G.S. 130A-64/64.1/65
  - Metropolitan Water/Sewer Districts G.S. 162A-49/162A-72

# Municipal utilities' authority G.S. 160A-314

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for **the use of or the services furnished by any public enterprise.**

Schedules of rents, rates, fees, charges, and penalties **may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.**



# County utilities' authority G.S. 153A-277

- (a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the **use of or the services furnished by a public enterprise**. Schedules of rents, rates, fees, charges, and penalties **may vary for the same class of service in different areas of the county** and may vary **according to classes of service**, and **different schedules may be adopted for services provided outside of the county**.

# Water and sewer authorities G.S. 162A-9

- (a) An authority may establish and revise a schedule of rates, fees, and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts there of owned or operated by the authority. **The rates, fees, and charges established under this subsection are not subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision....**

Metropolitan Water/Sewer Districts – very similar!

Require public comment period for very specific rate increases

# G.S. 162A-9 continued

.....Rates, fees, and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times:

(1) To pay the **cost of maintaining, repairing, and operating the systems** or parts thereof owned or operated by the authority, **including reserves** for such purposes, and including provision for the **payment of principal of and interest** on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and

(2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

# Sanitary districts G.S. 130A-64

“A sanitary district board shall apply service charges and rates based upon the exact benefits derived. These service charges and rates shall be sufficient to **provide funds for the maintenance, adequate depreciation and operation of the work of the district.** If reasonable, the service charges and rates **may include an amount sufficient to pay the principal and interest maturing on the outstanding bonds** and, to the extent not otherwise provided for, **bond anticipation notes** of the district. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on or to the retirement of bonds or bond anticipation notes. The sanitary district board may modify and adjust these service charges and rates.”

Require public comment period for very specific rate increases

# Examples of specific rules covered in statutes

- Stormwater fee setting
- Discontinuing service
- Requirement to connect (eg. 160A-317)
- Collecting fees (system, ability to establish liens)
- Rate structures in the CCPCUA or those applying for loans/grants from state sources
- Public comment period if raising rates to pay for development as specified by a special planning board (only for authorities and districts)

# Rate structures: court rulings

- Rate classifications must be “reasonable” and based on “substantial differences”
- Rates cannot be arbitrary or discriminatory

# Power to require connections 160A-317

City has the power to require connections within the city limits if within a reasonable distance of any water or sewer line, and power to charge for connections.

Or (optional)

City can instead assess a periodic “availability charge” not to exceed the minimum periodic service charge for those connected (i.e.: the monthly base fee)

# New annexation law affects water/sewer finance (S.L. 2011-396)

- Property owners must be given option to sign up for new service
- If majority choose service, utility must provide service to all within 3.5 years
- Utility required to cover all cost of service directly to building if majority of annexed request it. Owners do not pay.
- If majority does not choose service, utility does not need to provide service to any
- Property owners that decide later to sign up may be charged pro-rated cost of installation (1<sup>st</sup> 5 years)



# Renting. Whose legal obligation?

Scenario	The Tenant	The Owner
Contract/account is in tenant's name: <i>Unless ...</i>	Yes	
... More than 1 tenant/house on the same meter		Yes
...Charges for sewer are separate from charges for water (sewer-only, different service provider)		Yes
Tenant is delinquent	Yes	<i>Only if co-signed</i>
Periodic availability charge in lieu of connection		Yes
Connected to system but premise is vacant		Only base fees if in contract

# Delinquencies and Disconnections

- May disconnect customers if >10 days delinquent (cities, counties) or >30 days delinquent (authorities, districts)
- Notices are not required for nonresidents, and for residents in counties (cities: unclear)
- Can create ordinance specifying order in which partial payments apply. Set electricity and water as last options.
- Many nuances – read Kara Millonzi's book

# Dealing with delinquencies and disconnections: scenarios



Meet Cust O. Mer

Cust is a tenant in this house

Cust is not the owner

How can the utility deal with the following scenarios?

# Dealing with delinquencies and disconnections: scenarios



Cust is delinquent but is disputing the amount owed.

**Can disconnect.**

But utility held liable for wrongful disconnection if fees are not owed.

# Dealing with delinquencies and disconnections: scenarios



Contract under owner's name. *Owner* is delinquent. Cust is a tenant, and is not responsible for the bill.

**Can disconnect.**



# Dealing with delinquencies and disconnections: scenarios



Cust was responsible for the bill and was delinquent. Got cut off. Moves out.

House remains vacant.

Is owner liable?

**Owner not liable for delinquency unless was in contract with utility (third party, co-sign)**

If in contract, can charge for base fee even for 0 use.

# Dealing with delinquencies and disconnections: scenarios



Cust was responsible for the bill and was delinquent. Got cut off. Moves out. New tenant moves in.

## Reconnect

New tenant not liable for delinquent account. May also apply to changing owners.

# Frequently Asked Questions

Can require another party to enter into contractual agreement (e.g.: the owner)?	Yes. Must be in writing.
Are rates/fees/penalties considered liens on property?	No
Can collect revenues without an explicit contract?	Generally yes
How far back can you back-bill a customer?	Sewer: up to 3 years Water: up to 4 years
Is the utility liable for overbilling customers?	Yes, up to 2 years
Can charge lower rates for senior citizens/low-income customers?	No
Are billing data “public record”?	No



# Capital reserve funds

## G.S. 159-18

- Can establish for issuing bonds
- Ordinance or resolution specifying purpose, time period, amounts to be accumulated, sources of funds
- Accumulation of reserves with the General Fund or other operating fund balance
  - Designated for future capital projects
  - Undesignated
- Can be amended to change purpose, but must be capital (e.g.: water to libraries)

# Appeal process

- Courts will rule on whether rates respect statutes otherwise;
- Local responsibility

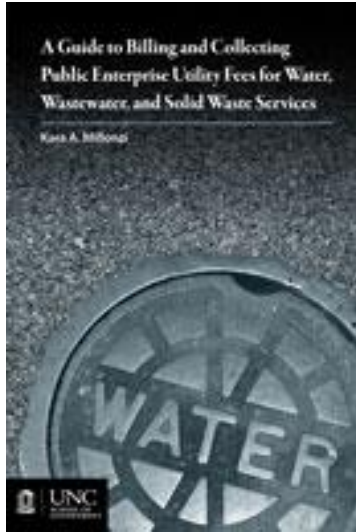
# Special assessments

- Cities G.S. 160A art. 10
- Counties G.S. 153A art.9
- Based on frontage, acreage, per lot, increased value of property
- Payments can be made over a period of 10 years
- No petition of property owners is required

# Non-regulatory considerations

- Revenue bond covenants
- Funding criteria (USDA, CDBG).
- Industry standards (AWWA)

# School of Government resources on legal issues



A Guide to Billing and Collecting Public Enterprise Utility Fees for Water, Wastewater, and Solid Waste Services

<http://shopping.netsuite.com/s.nl/c.433425/it.A/id.1258/.f?sc=7&category=4147>

or <http://www.sog.unc.edu/> and click on Publications Kara Millonzi

Jeff Hughes

## The Painful Art of Setting Water and Sewer Rates

- An increase in mergers and acquisitions
- Almost \$4 billion in assets and more than \$1 billion in annual revenues
- Changing regulations, affecting the bottom line
- A backlog in capital investment needs
- Intermittent supplies that hurt revenues
- Loss of major customers
- Innovative pricing and cost-reduction strategies
- Slagging revenues

Does this scenario sound like Wall Street or the South Carolina furniture or textile industry? Does it sound like a business that has a fleet of business school graduates on its board and its high-level management? There also are some characteristics of water and sewer enterprises owned by North Carolina local governments. Provision of centralized drinking water and sewer services resembles large business in many ways. However, the enterprises providing these services are not listed on Wall Street, and few government-owned water and sewer companies have even one business school graduate on their governing boards or in management.

Many features distinguish provision of water and sewer services from other businesses, but the challenge of providing safe drinking water and environmentally sound wastewater services have understandably become as much about financial management as about treatment technologies. The financial decisions affecting water and sewer enterprises

typically fall on governing boards that were chosen not as business or technical experts but as representatives of their constituents on a broad range of matters. The thought of 2002 brought two types of water issues to the headlines: (1) the struggles of many communities to maintain their water supplies and (2) the financial difficulties of many communities due to decreased sales. The response to the first type of circumstance was immediate and significant: an executive order requiring conservation, and statewide initiatives to examine current supplies. The response to the second type of circumstance has been less obvious and less pronounced. This article looks at the fundamental principles behind the water and sewer utilities in business. It focuses on high-priority financial decisions facing the boards governing water and sewer enterprises—decisions involving raising revenues from those whom they serve.

### Water and Sewer Revenues

In 2002 about 500 government-owned water and sewer enterprises collected more than \$1.4 billion in revenues from their customers, and their combined net assets were about \$7.8 billion (see

Table 1). These numbers are impressive. However, the projected numbers are staggering. According to a study for the North Carolina Rural Economic Development Center, the state will need more than \$11 billion in investments to meet its capital needs for water and sewer infrastructure over the next twenty years.<sup>1</sup> In North Carolina, as throughout the country, numerous water and sewer enterprises owned by local governments benefited from the federal government's ambitious construction grants program of the 1970s (for the pattern of federal wastewater funding from 1970 to 2000, see Figure 1). Many local government officials fondly remember those days of "free money." In fact, though, there was nothing free about that money: It was collected from citizens by the federal government through taxes, rather than by local governments through water and sewer charges. A recent trend is the shift of the burden of collecting revenues away from the state and federal governments, toward local governments. This shift is painful for state and local government. The state of North Carolina has periodically played the role of collector. As recently as 1998, citizens passed a referendum allowing the state to issue about \$500 million in bonds to provide grant and low-interest capital funds for government-owned water and sewer enterprises. The majority of the funds were disbursed between 1999 and 2003. The debt service on them will be raised

Table 1. Financial Overview of Water and Sewer Enterprises Owned by North Carolina Local Governments.

Number of enterprises	507
Annual revenues	\$1,410,130,282
Equity	\$774,793,806
Outstanding debt	\$4,115,026,560

Source: Calculated by author using data from local finance reports submitted to Local and State Dept. (L&S, N.C. Dept. of State Revenue, for fiscal year ending June 30, 2002).

## The Painful Art of Setting Water and Sewer Rates

<http://www.efc.unc.edu/publications/2005/PainfulArtOfSettingRates.pdf>

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# Acknowledgements

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