



Ohio

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

Commission-regulated utilities	
Noncommission-regulated utilities	

Commission-Regulated Utilities

The **Public Utilities Commission of Ohio (PUCO)** regulates private water and wastewater companies. PUCO does not have the authority to regulate government-owned utilities.²⁷⁹

PUCO gains its jurisdiction over private water and wastewater companies from **Ohio Rev. Code Ann. § 4905.04** and **§ 4905.05**. PUCO rates must be “reasonable,” and **Ohio Rev. Code Ann. § 4909.15** provides the criteria that the commission should use when determining and fixing reasonable rates. Commission-regulated utilities need to file their rate changes and new rate schedules with PUCO before modifying their rates according to **Ohio Rev. Code Ann. § 4905.32** and **§ 4909.17**. Commission-regulated utilities are also prohibited, under **Ohio Rev. Code Ann. § 4905.32**, from charging rates different than those filed with PUCO.

Additionally, a commission-regulated utility cannot charge different rates than it charges any other person, firm, or corporation for “doing a like and contemporaneous service under substantially the same circumstances and conditions.” **Ohio Rev. Code Ann. § 4905.33(A)**. And, under **Ohio Rev. Code Ann. § 4905.33(B)**, no commission-regulated utility “shall furnish free service or service for less than actual cost for the purpose of destroying competition.”²⁸⁰ However, **Ohio Rev. Code Ann. § 4905.34** provides an exception, allowing commission-regulated utilities to grant free or reduced services “for charitable purposes.”

Therefore, for commission-regulated utilities, the aforementioned prohibition against furnishing free or reduced-cost services holds the greatest potential for legal challenges to low-income customer assistance programs (CAPs) funded by rate revenues, although the statutory exception “for charitable purposes”

279. However, for private water and wastewater companies operating within the boundaries of a municipal corporation, the legislative authority of such municipal corporation has statutory authority to regulate the rates set by the private utility.
280. See *Ohio Edison Co. v. Pub. Utils. Comm’n*, 678 N.E. 2d 922, 926-28 (Ohio 1997) (holding that **Ohio Rev. Code Ann. § 4905.33** is unambiguous and requires public utilities to charge all similarly situated customers the same rates).

State Population (2016):	11,614,373
Median Annual Household Income (2015):	\$49,429
Poverty Rate (2015):	15.8%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$632
Ohio has 1,216 community water systems (CWS), of which 584 are privately owned and 1,055 serve populations of 10,000 or fewer people.	
Ohio has 815 publicly owned treatment works facilities (POTWs), of which 634 treat 1 MGD or less.	
3,081,963 people are served by privately owned CWS; 711,7313 are served by government-owned CWS; and 9,243,750 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$25.9 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>	

seems likely to protect such programs. Additionally, commission-regulated utilities would need PUCO approval to implement rate-funded CAPs.

Noncommission-Regulated Utilities

Ohio has a unique system of regulation for private water and wastewater companies operating within municipal boundaries. Although such companies are regulated by PUCO in compliance with the rules articulated above, **Ohio Rev. Code Ann. § 743.26** provides that the legislative authority²⁸¹ of a municipal corporation has the right to regulate the rates charged by water and wastewater companies within its jurisdiction, and

281. Including municipalities, counties, cooperatives, and water and wastewater districts.

that such companies may not charge greater rates than are established by ordinance.

However, rates set by private water and wastewater companies operating within municipal boundaries can still be subject to PUCO review in several scenarios. First, private utilities can complain and seek review of the municipal fixed rates from PUCO.²⁸² In the event of a complaint, PUCO determines whether the set rates are “reasonable” and will re-set a rate if it finds it unreasonable.²⁸³ Private utilities can also file a petition to PUCO to change their rates on the basis that company costs changed.²⁸⁴ In addition, if a municipality fails to establish or fix rates by ordinance, the private utilities can file a petition to have PUCO fix “just and reasonable rates.”²⁸⁵ However, PUCO has no power to review municipal-owned water utility rates without a complaint or petition from a private utility, and there is nothing stopping the municipal legislature from exercising its power to subsequently establish a “reasonable” rate by ordinance. For purely government-owned or operated water and wastewater utilities, they are not regulated by PUCO in any manner. According to the [Ohio Constitution](#), Ohio is a home rule state. This gives local governments operating pursuant to home rule charters broad authority to set their own rates, so long as they are reasonable. Furthermore, municipal legislatures can provide by ordinance that water or wastewater services can be “furnished free of charge.”²⁸⁶

Thus, for commission-regulated utilities operating within municipal boundaries, rates may be set by the municipal government through ordinances. Such rates could potentially be used to implement low-income CAPs; however, rates could still be challenged through

the complaint and review process articulated above, and PUCO would be the ultimate decider as to whether the rates are reasonable. For government-owned or operated water and wastewater utilities, it appears that there is broad rate setting authority with few limitations and additional statutory language that could potentially be used to support the provision of low-income CAPs funded by rate revenues.

282. *Maxwell v. Ohio Fuel Gas Co.*, 22 N.E.2d 639, 643 (Ohio Ct. App. 1938).

283. *City of Cleveland v. Pub. Utils. Comm'n*, 125 N.E. 864, 865-66 (Ohio 1919).

284. Under [Ohio Rev. Code Ann. § 4909.171](#), utilities must meet two conditions to qualify for a rate change:

- (1) The water or sewage treatment is provided to the company by either of the following:
 - (a) A municipal corporation or other local governmental unit of this state whose rates are not subject to regulation by the commission;
 - (b) Another waterworks company, or another sewage disposal system company, that is a public utility and whose rates for the water, or the sewage treatment, have been approved by the commission pursuant to an application filed under [section 4909.18](#) of the Revised Code.
- (2) The change in rate or charge is based solely on a change in the cost to the company of the water or the sewage treatment.

285. [Ohio Rev. Code Ann. § 4909.35](#).

286. [Ohio Rev. Code Ann. § 743.27](#). See also *State ex. rel. City of Dayton v. Kenealy*, 164 N.E.2d 400, 401 (Ohio 1960) (holding that municipal governments are allowed to pass “rate-fixing ordinance(s)” without the necessity of the utility’s acceptance).