

Texas

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

Commission-Regulated Utilities

The [Public Utility Commission of Texas](#) (Texas PUC) regulates private water and wastewater companies pursuant to [Tex. Water Code Ann. § 13.041](#). Texas PUC does not regulate municipal-owned water and wastewater utilities.

With respect to rates, under [Tex. Water Code Ann. § 13.042](#), a municipality is given original jurisdiction over rates for any water or wastewater utility operating within its corporate boundaries, whether it is a private company or municipal-owned utility, so that those rates may be “fair, just, and reasonable.” Under the same provision, municipalities may, by ordinance, elect to have the Texas PUC take original jurisdiction over rates set by private water and wastewater companies operating within their corporate boundaries.³⁴⁶ Additionally, Texas PUC has original jurisdiction over rates set by municipal-owned utilities operating *outside* of the municipality’s corporate boundaries.³⁴⁷

Under [Tex. Water Code Ann. § 13.182](#), commission-regulated rates must be “just and reasonable” and cannot be “unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers.”³⁴⁸ Additionally, [Tex. Water Code Ann. § 13.189](#) prohibits its commission-regulated utilities from granting “any unreasonable preference or advantage” to any person within any classification or from subjecting any person to any “unreasonable prejudice or disadvantage.”

³⁴⁶ [Tex. Water Code Ann. § 13.042](#).

³⁴⁷ Under [Tex. Water Code § 13.043](#), the Texas Public Utility Commission has appellate jurisdiction over rate decisions made for customers of (1) a nonprofit water supply or sewer service corporation created and operating under [Chapter 67](#); (2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality; (3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality; (4) a district or authority created under [Article III, Section 52](#), or [Article XVI, Section 59](#), of the Texas Constitution that provides water or sewer service to household users; and (5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

Thus, for municipal-owned utilities, the municipality retains both original and appellate jurisdiction over rate challenges for rates within its corporate boundaries.

³⁴⁸ Furthermore, municipalities have to notify their customers in writing before they make any rate increases. [Tex. Water Code Ann. § 13.045](#).

Commission-regulated utilities



Noncommission-regulated utilities



State Population (2016): 27,862,596

Median Annual Household Income (2015): \$53,207

Poverty Rate (2015): 17.3%

Typical Annual Household Water and Wastewater Expenditures (2015): \$708

Texas has 4642 community water systems (CWS), of which 1,820 are privately owned and 4,308 serve populations of 10,000 or fewer people.

Texas has 551 publicly owned treatment works facilities (POTWs), of which 390 treat 1 MGD or less.

853,981 people are served by privately owned CWS; 25,560,008 are served by government-owned CWS; and 16,249,900 are served by POTWs.

Estimated Long-Term Water and Wastewater Infrastructure Needs: \$43.1 billion

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.

Furthermore, a commission-regulated utility may not utilize “unreasonable differences as to rates of service either as between localities or as between classes of service.” Finally, under [Tex. Water Code Ann. § 13.190](#), commission-regulated utilities may not receive greater or lesser compensation for services than what is prescribed in the schedule of rates.

Thus, commission-regulated utilities seeking to implement low-income customer assistance programs (CAPs) funded by rate revenues must get approval from Texas PUC to utilize rates that differ from those prescribed in the rate schedule. Additionally, the language prohibiting the granting of any “unreasonable preference or advantage” to persons in the same service classifications is likely to hold the greatest potential for challenges.



tial for legal challenges to such programs.

Noncommission-Regulated Utilities

As was mentioned above, noncommission-regulated utilities include private water and wastewater companies operating within a municipality's corporate boundaries for which the municipality has retained its original jurisdiction. Other than the general requirement that such rates should be "fair, just, and reasonable," municipalities have broad rate setting authority for such utilities. However, given the rights of customers to appeal any rate determinations to Texas PUC, the commission would still make the final determination as to whether a rate is allowable.

For municipal-owned utilities operating within corporate boundaries, Texas PUC does not have original or appellate jurisdiction over rates. Rather, under [Tex. Loc. Gov't Code Ann. § 552.001](#), municipalities are granted authority to own and operate water and wastewater utilities in a manner that protects the interests of the municipality. In *Gillam v. City of Fort Worth*,³⁴⁹ the Texas court held that "whether differences in rates between classes of customers of municipal water works are to be made, and, if so, the amount of the differences, are legislative rather than judicial questions and are for the determination of the governing bodies of the municipalities. The presumption is in favor of the legality of the rates established by the rate-making authority, and courts may interfere only in clear cases of illegality." The court further cited to an abundance of previous Texas case law in reiterating that "[i]t is well established that a municipal corporation operating its water works or other public utility has the right to classify consumers under reasonable classification based upon such factors as the cost of service, the purpose for which the service or product is received, the quantity or amount received, the different character of the service furnished, the time of its use or *any other matter* which presents a substantial difference as a ground of distinction."³⁵⁰

Thus, for private water and wastewater companies operating under a municipality's rate setting jurisdiction, the implementation of low-income CAPs funded by rate revenues would be subject to ultimate approval by Texas PUC, much as is the case with commission-

regulated utilities. For municipal-owned utilities, their rate setting authority is broad, and the language of the courts suggests a strong deference to the municipality's legislative role in rate setting. Thus, unless a court were to find a low-income CAP to be clearly illegal or unreasonable, such a program would likely be permitted.

³⁴⁹ Gillam v. City of Fort Worth, 287 S.W.2d 494, 497 (Tex. App. 1956).

³⁵⁰ Id.