Vermont

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

Commission-Regulated Utilities

The Vermont Department of Public Service (PSD) and the Public Service Board (PSB) regulate private water companies in Vermont. Both entities gain jurisdiction over such companies from Vt. Stat. Ann. tit. 30, § 203(3). The PSD advocates for consumers and the public interest while making recommendations on all private water company petitions filed with the PSB, and the PSB has formal authority to grant, deny, or modify petitions of those companies. Government-owned water and wastewater utilities are exempt from regulation by the PSD or the PSB.

Under Vt. Stat. Ann. tit. 30, § 203(3), the PSB and PSD have general supervision over private water companies engaged in the collection, sale, and distribution of water for domestic purposes. Further, Vt. Stat. Ann. tit. 30, § 209, grants the PSB jurisdiction to hear, determine, render judgment, and make orders and decrees regarding rates “when unreasonable or in violation of law.” Going into more detail regarding the nature of rates, Vt. Stat. Ann. tit. 30, § 218 provides that, “[w]hen, after opportunity for hearing, the rates, tolls, charges, or schedules are found unjust, unreasonable, insufficient, or unjustly discriminatory, or are found to be preferential or otherwise in violation of a provision of this chapter,” the PSB may order and substitute just and reasonable rates.355 Under the same statutory provision, the PSB is required to set certain telephone utility rates in order to enable the state to participate in the Federal Communications Commission's Lifeline program, which assists low-income customers with telecommunications bills.356 Additionally, the statute further provides that the PSB, on its own motion or upon petition of any person, may approve a rate schedule that provides reduced rates for low-income electric utility consumers “better to assure affordability.”357 There is, however, no similar provision in the Vermont statutes providing for reduced rates for low-income water or wastewater customers.

Thus, for commission-regulated water utilities, any low-income customer assistance program (CAP) funded by rate revenues would need to be approved by the PSB. Additionally, such a program could be subject to legal challenges on the basis that the rates are “discriminatory” or “preferential.”

Noncommission-Regulated Utilities

Municipalities358 in Vermont, which are not regulated

355. See also Petition of Milton Water Corp., 218 A.2d 710, 713 (Vt. 1966) (holding that the Public Service Board has the power and duty to prevent unjust discrimination in rates charged by a public utility in this state and to substitute rates found to be just and reasonable for those found to be unjustly discriminatory).
358. Municipality is defined to include “a city, town, town school district, incorporated school or fire district or incorporated village, and all other governmental incorporated units.” Vt. Stat. Ann. tit. 1, § 126.
by the PSD or the PSB, are permitted to establish rates for the supply of water under Vt. Stat. Ann. tit. 24, § 3311. Although the statutory language itself does not require that the rates meet any standard, the Vermont Supreme Court has interpreted this provision to mean that municipal-owned water utilities have “broad authority to determine what kinds of uses they will charge (such as, for example, reserved allocations), and whether they will charge based on annual fees or meter service.”

Further, the court held “water rates are entitled to a presumption of reasonableness, and [the Court] will defer to the municipal corporation as long as the rates are nondiscriminatory, and are not arbitrary and capricious.”

With respect to wastewater utilities, municipalities in Vermont are permitted to establish rates under Vt. Stat. Ann. tit. 24, § 3615. Although this statutory provision also does not provide any explicit standards for the rates, the Vermont Supreme Court has interpreted the language to require that the wastewater rates be “fair, equitable and reasonable.”

Therefore, for noncommission-regulated water utilities, their jurisdiction to set rates is broad, and their potential to implement low-income CAPs funded by rate revenues would likely be limited only by the requirement that rates must be reasonable, nondiscriminatory, and not arbitrary or capricious. Likewise, for noncommission-regulated wastewater utilities, their ability to implement such CAPs seems to be limited only by the requirement that rates be fair, equitable, and reasonable.

360. Id. (citing Handy v. City of Rutland, 598 A.2d 114, 118 (Vt. 1990)).