



Wisconsin

Water and wastewater utilities in Wisconsin fall under several rate setting regulatory systems. However, Wisconsin is unique in that it is the only state in which all municipal-owned water utilities are regulated by the state utility commission. Unlike in most states, where government-owned utilities are treated differently than private water companies, in Wisconsin the main regulatory differences lie between water utilities and wastewater utilities.

Commission-Regulated Utilities

Under Wis. Stat. § 196.02, the **Public Service Commission of Wisconsin** (PSCW) regulates the water rates of any public utility providing water to the public for domestic, commercial, or industrial purposes, including municipal-owned water utilities.³⁸⁴ Regional water authorities, cooperatives, water trusts, and private wells are not regulated by the PSCW. Under Wis. Stat. § 66.0815(2)(a), the PSCW has “jurisdiction over the rates and service to any city, village or town where light, heat or water is furnished to the city, village or town under any contract or arrangement, to the same extent that the public service commission has jurisdiction where that service is furnished directly to the public.”

Additionally, the PSCW regulates 5 of the almost 600 wastewater utilities in Wisconsin.³⁸⁵ Wis. Stat. § 196.03 requires that the charges made by any public utility be “reasonable and just.” Wis. Stat. § 196.22 further requires that no public utility may charge more or less compensation for any service rendered than it charges, demands, collects, or receives from any other person for a like service. Wis. Stat. § 196.604 prohibits any person from knowingly soliciting or receiving “any rebate, concession, or discrimination from a public utility.” Finally, Wis. Stat. § 66.0809 requires that municipal public utility rates must be “uniform for like service in all parts of the municipality.”

Although the Wisconsin courts have not answered

384. Wisconsin is the only state in which all municipal-owned water utility rates are regulated by a state utility commission.

385. Wis. Stat. § 66.0819(3) provides that a city, town, or village which owns both a water utility and a wastewater utility may by ordinance consolidate the utilities into a “single public utility,” which is then regulated by the Public Service Commission of Wisconsin (PSCW).

Commission-regulated utilities



Noncommission-regulated utilities



State Population (2016):	5,778,708
Median Annual Household Income (2015):	\$53,357
Poverty Rate (2015):	13.0%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$675
Wisconsin has 1,057 community water systems (CWS), of which 455 are privately owned and 979 serve populations of 10,000 or fewer people.	
Wisconsin has 582 publicly owned treatment works facilities (POTWs), of which 505 treat 1 MGD or less.	
107,469 people are served by privately owned CWS; 3,973,370 are served by government-owned CWS; and 4,349,081 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$12.9 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.

the exact question of whether a low-income customer assistance program (CAP) funded by rate revenues would be allowed under the strong statutory language laid out above, in 2002, the court ruled against a similar type of subsidization. In *City of Madison v. Pub. Serv. Comm'n of Wisconsin*, the court reviewed a PSCW denial of Madison’s request for a rate increase, which would have been used to subsidize the cost of replacing the remaining customer-owned lead laterals in the city.³⁸⁶ The court held that “review of the [PSCW’s] decision is limited to determining whether it was arbitrary or capricious and whether the [PSCW’s] findings of fact are supported by substantial evidence

386. *City of Madison v. Pub. Serv. Comm'n of Wisconsin*, 644 N.W.2d 293 (Wis. Ct. App. 2002).

in the record.”³⁸⁷ Thus, the PSCW had only to prove that it had a rational basis for denying the city’s request. Despite the city’s emphasis on the overall benefits to all city residents that could be had by replacement of the lead laterals, specifically, avoidance of fines of up to \$25,000 per day for noncompliance with EPA regulations, as well as prevention of risks to community waters if the alternative chemical method were to be used, the PSCW instead relied on the fact that the “proposed rate increase would be used to benefit a select group of customers by providing a subsidy for the replacement of the privately owned lead laterals, which those customers are responsible for maintaining and repairing.”³⁸⁸ The court found that the PSCW’s conclusion was rational and, therefore, upheld its denial of the rate request.

Thus, considering the strong statutory language that prohibits commission-regulated utilities from charging different rates to customers receiving similar services, as well as a relatively recent case that highlights how both the PSCW and state courts interpret such statutory requirements, it is unlikely that commission-regulated utilities can currently implement low-income CAPs funded by rate revenues.

Noncommission-Regulated Utilities

The PSCW does not regulate *most* wastewater utilities in Wisconsin. According to the PSCW, wastewater utility regulation is primarily a “voluntary decision on the part of the municipality.”³⁸⁹ Instead, under [Wis. Stat. § 66.0821](#), local governing bodies are responsible for setting rates for noncommission-regulated wastewater utilities.³⁹⁰ However, if there are customer complaints or rate disputes against any wastewater utility, the PSCW has the authority to get involved, per [Wis. Stat. § 66.0821\(5\)\(a\)](#).³⁹¹ Specifically, the statute provides that when a customer complains to the PSCW that rates are unreasonable or unjustly discriminatory, the PSCW shall hold a public hearing. If the PSCW then determines that the rates *are* unreasonable or unjustly discriminatory, it shall fix and impose just and reason-

able rates.

Thus, although given much broader freedom to set its own rates, a noncommission-regulated wastewater utility which implements a low-income CAP funded by rate revenues could still face a potential challenge on the basis that the program results in rates that are unreasonable or unjustly discriminatory, and it would subsequently have to contend with a PSCW determination on such a challenge.

387. Id.

388. Id.

389. “Does the PSC regulate sewer utilities?” Public Service Commission of Wisconsin.

390. Although private wastewater companies would be regulated by the PSCW, there are no such companies currently in Wisconsin.

391. “Introduction to Water Rates,” Public Service Commission of Wisconsin (2015).