





# Indiana

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

Commission-regulated utilities	
Noncommission-regulated utilities	

## Commission-Regulated Utilities

The **Indiana Utility Regulatory Commission (IURC)** regulates rates, financing, bonding, environmental compliance plans, and service territories of private water and wastewater companies, as well as government-owned water utilities.<sup>129</sup> IURC does not regulate government-owned wastewater utilities. Additionally, municipal-owned utilities, not-for-profit organizations, and cooperative utilities have the ability to opt out of IURC regulation through a vote of the local government or a majority vote by the citizens of the municipality.

Several state statutes directly address the rate setting practices of IURC-regulated utilities. **Ind. Code § 8-1-2-4** requires that the rates of regulated utilities must be “reasonable and just,” and “every unjust or unreasonable charge...is prohibited and declared unlawful.” **Ind. Code § 8-1-2-6** further mandates that the rates of commission-regulated utilities shall not be “unjust, unreasonable, insufficient, or unjustly discriminatory, or...preferential.” **Ind. Code § 8-1-2-103** adds that a commission-regulated utility may not “charge, demand, collect, or receive from any person a greater or less compensation for any service...than it charges, demands, collects or receives from any other person for a like and contemporaneous service.” Finally, **Ind. Code § 8-1-2-105a** maintains that no regulated “utility may make or give any undue or unreasonable preference or advantage to any person.”

In *Citizens Action Coalition of Indiana, Inc. v. Public Service Co. of Indiana*,<sup>130</sup> an Indiana court determined that a below-cost lifeline rate for customers in specific income or demographic groups violated state statutes. Specifically, the court held that a rate structure that charged customers different rates for the same service was in violation of **Ind. Code § 8-1-2-103**. In the same case, however, the court acknowledged that “[f]rom the evidence presented, a reasonable mind could

129. The government-owned utilities that the IURC regulates include municipal-owned, not-for-profit, and cooperative utilities and water conservancy districts.  
130. *Citizens Action Coalition of Indiana, Inc. v. Pub. Service Co. of Indiana*, 450 N.E.2d 98, 103-04 (Ind. App. 1983).

<b>State Population (2016):</b>	6,633,053
<b>Median Annual Household Income (2015):</b>	\$49,255
<b>Poverty Rate (2015):</b>	15.4%
<b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>	\$701
Indiana has 789 community water systems (CWS), of which 304 are privately owned and 703 serve populations of 10,000 or fewer people.	
Indiana has 479 publicly owned treatment works facilities (POTWs), of which 364 treat 1 MGD or less.	
926,020 people are served by privately owned CWS; 3,839,215 are served by government-owned CWS; and 4,261,915 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$13.5 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.*

conclude that a program of direct assistance<sup>131</sup> is more effective and equitable than lifeline rates in providing help to the needy.”<sup>132</sup>

Initially, rate-funded low-income customer assistance programs (CAPs) implemented by commission-regulated utilities could be challenged on the basis that the rates used to fund the programs are unreasonable, discriminatory, or preferential. However, due to the amending of **Ind. Code § 8-1-2-46**, the IURC may, but is not required to, allow a commission-regulated utility to establish a CAP to provide financial relief to

131. In responding to the IURC’s argument that a direct assistance program would be more effective than the lifeline rate, the plaintiff, Citizens Action Coalition, mentions critique of an existing Indiana direct assistance program, Project S.A.F.E., which must have been in place at the time of the ruling.  
132. *Id.* at 103.

qualified low income customers. In addition, the state specifically finds, under Ind. Code § 8-1-2-46(c), that it is no longer considered discriminatory to use rate revenue to implement a CAP.

At least one IURC-regulated utility has developed an affordability program that relies on alternative revenue streams (i.e., does not rely on rate revenues). Marion Utilities, a regulated municipal utility, created the [Help to Our Community \(H2O Community\) program](#) in 2013, in partnership with the Salvation Army and Via Credit Union. The H2O Community program is a *temporary assistance* program that provides financial assistance to low-income families and individuals who struggle to pay water bills. Income-eligible households can receive up to \$100 per year and can participate in financial education classes through Via Credit Union. H2O Community raises money through community events to fund the program.

### *Noncommission-regulated Utilities*

For noncommission-regulated, government-owned utilities, and for municipal-owned wastewater utilities, city or town councils typically serve as the governing boards that regulate and approve rates. With respect to these utilities, [Ind. Code § 36-9-25-11.3](#) gives a public wastewater district (i.e., a wastewater utility that serves multiple municipalities) the option of having rates adopted by ordinance in each municipality served or asking the IURC to approve the rates. When the IURC approves the rate, the commission must find the rates to be “nondiscriminatory, reasonable and just” and “sufficient to enable the district to furnish reasonably adequate services and facilities.” Those same standards do not appear to apply when rates are established by municipal ordinance. [Ind. Code § 36-9-25-12](#) provides factors to be considered by municipal-owned wastewater utilities in the determination of rates, stating that “the fees for the treatment and disposal of sewage may be based on: (1) a flat charge for each sewer connection; (2) the amount of water used on the premises; (3) the number and size of water outlets on the premises; (4) the amount, strength, or character of sewage discharged into the sewers; (5) the size of sewer connections; or (6) any combination of these factors or other factors that the board determines necessary in order to establish just and equitable rates and charges.”

law, and their authority is limited to the powers expressly granted to them by the state legislature. Thus, because Indiana state statutes do not expressly prohibit or allow municipal-owned utilities to implement rate-funded low-income CAPs, noncommission-regulated municipal-owned utilities may not be able to implement such programs. In addition, low-income CAPs funded by rate revenues could potentially face legal challenges on the basis of discrimination, reasonableness, and equitability.

Municipalities in Indiana are governed under general