Kansas

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

Commission-Regulated Utilities

The Kansas Corporation Commission (KCC) currently regulates the rates and service of private water companies in the state. KCC does not regulate government-owned or nonprofit water and wastewater utilities. Pursuant to Kan. Stat. Ann. § 66-1,230, commission-regulated water utilities are considered “miscellaneous” utilities for the purposes of KCC regulation. Kan. Stat. Ann. § 66-1,232 mandates that every miscellaneous utility shall be required to establish “just and reasonable” rates. Under the same statute, “every unjust or unreasonably discriminatory or unduly preferential classification, rate, joint rate, fare, toll, charge or exaction is prohibited, unlawful and void.” Kan. Stat. Ann. § 66-109 further prohibits commission-regulated utilities from charging “a greater or less compensation for the same class of service…than is specified in the printed schedules or classifications.” However, this statute also states that commission-regulated water utilities may charge different rates “by agreement with the customer, in cases of charity, emergency, festivity, or public entertainment.”

Thus, this allowance of the use of different rates in cases of “charity” or “emergency” would appear to provide room for commission-regulated utilities to implement low-income customer assistance programs (CAPs) funded by rate revenues.

Noncommission-Regulated Utilities

Several state statutes authorize and regulate rate setting by government-owned water and wastewater utilities. In general, these statutes provide authority to local governing bodies to establish rates and charges, stipulating only that rates be just, reasonable, and sufficient to cover full cost of service. For example, with respect to municipal-owned combined water and wastewater utilities, Kan. Stat. Ann. § 12-860 states that “the governing body of the city shall establish rates and charges for water and for the use of the sewage disposal system” and that “the amount of such rates and charges shall be reasonable and sufficient to cover the cost of operation, repairs, maintenance, extension and enlargement of the water and sewage system and improvements thereof…” Kansas cities and counties operate under home rule per Kan. Const. art. XII, § 5.

142 Pursuant to Kan. Stat. Ann. § 66-104e, cities may relinquish their utility regulation authorities to the Kansas Corporation Commission (KCC).


145 However, programs incorporated into a commission-regulated utility’s rate schedule could be subject to KCC review and approval to ensure that discounts or benefits for low-income customers are not unreasonably discriminatory or unduly preferential.

146 Government-owned utilities include those owned by municipalities of different classes and counties.

147 Additionally, under Kan. Stat. Ann. § 19-101 et. seq., cities and counties are permitted to operate pursuant to local charters.

State Population (2016): 2,907,289
Median Annual Household Income (2015): $52,205
Poverty Rate (2015): 13.6%
Typical Annual Household Water and Wastewater Expenditures (2015): $595
Estimated Long-Term Water and Wastewater Infrastructure Needs: $7.9 billion

largest possible measure of self-government.”

Case law suggests that Kansas does not prohibit government-owned utilities from establishing different rate plans for different classes of users as long as there is a rational basis for such differences. In Shawnee Hills Mobile Homes, Inc. v. Rural Water District, the Kansas Supreme Court recognized that “discrimination is a relative term and that absolute equality is seldom, if ever, fully realized” in holding that a higher per volume rate charged a mobile home park compared to individual homeowners was neither unreasonable nor discriminatory. However, dictum found in Eudora Development Co. of Kansas v. City of Eudora indicates that differences in rates could be subject to legal challenge if they are not based on differences in service. Specifically, the court found that “neither the common law nor the statutes forbid reasonable classification of rates or discrimination so long as it is not unjust, but is reasonable in view of substantial differences in services or in conditions of service.”

Government-owned water utilities in Kansas appear to have sufficient local home rule authority to offer low-income CAPs funded by customer revenues. However, differences in rates may be subject to legal challenge if they are not based on differences in service. In addition, in Kansas, government-owned utilities are subject to federal and state equal protection and public purpose requirements. To meet equal protection requirements, rate classifications cannot be arbitrary and capricious, and differences must be reasonably related to a legitimate governmental interest. To meet public purpose requirements, appropriations of public money for private individuals must be for a public purpose and promote the public welfare.

---

150. Eudora Dev. Co. of Kansas v. City of Eudora, 78 P.3d 437, 438 (Kan. 2003). “Water rates set by a municipality are presumed to be valid and reasonable until the contrary has been established; burden of overcoming the presumption of validity and reasonableness rests with the challenging party.” Id.
151. Id.
152. As an example, Johnson County Wastewater works with Johnson County Department of Human Services to offer bill assistance to low-income customers to promote public health and safety. The Johnson County Utility Assistance program is funded by the city and county, private donations, and utility funds.