

# Kentucky

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

## Commission-Regulated Utilities

The **Kentucky Public Service Commission (KPSC)** regulates private water and wastewater companies.<sup>155</sup> The KPSC gains its jurisdiction over such utilities from **Ky. Rev. Stat. Ann. § 278.040**. The KPSC does not regulate government-owned utilities.<sup>156</sup>

Under **Ky. Rev. Stat. Ann. § 278.030**, every commission-regulated utility may demand, collect, and receive fair, just, and reasonable rates. Additionally, under the same provision, a utility may utilize “suitable and reasonable classifications of its service, patrons and rates.”<sup>157</sup> Further, **Ky. Rev. Stat. Ann. § 278.170** prohibits utilities from granting unreasonable preferences or advantages to any person or from establishing or maintaining an unreasonable difference between “localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.”

In terms of discounted rates, **Ky. Rev. Stat. Ann. § 278.170** gives commission-regulated utilities permission to grant free or reduced rate service to the utility’s officers, agents, or employees or to the United States, charitable institutions, and persons engaged in charitable and eleemosynary<sup>158</sup> work. Additionally, utilities may grant free or reduced rate service “for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity.”<sup>159</sup>

Although the statute specifies certain individuals and institutions that may receive free or reduced rate service, the Kentucky Supreme Court has found that such inclusion is not to the exclusion of other entities. In **Public Service Commission of Kentucky v.**

Commission-regulated utilities	
Noncommission-regulated utilities	



<b>State Population (2016):</b>	4,436,974
<b>Median Annual Household Income (2015):</b>	\$43,740
<b>Poverty Rate (2015):</b>	18.9%
<b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>	\$596
Kentucky has 389 community water systems (CWS), of which 29 are privately owned and 281 serve populations of 10,000 or fewer people.	
Kentucky has 260 publicly owned treatment works facilities (POTWs), of which 195 treat 1 MGD or less.	
1,515,148 people are served by privately owned CWS; 3,095,437 are served by government-owned CWS; and 2,872,413 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$12.4 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.

**Commonwealth**,<sup>160</sup> a case dealing with a utility’s ability to offer economic development rates to certain businesses, the court held that “while utilities are statutorily entitled to offer reduced rates to the persons and entities identified in [Ky. Rev. Stat. Ann.] § 278.170(2) and (3), those utilities may also offer other customers reduced rates subject to [KPSC] approval and compliance with general statutory guidelines regarding reasonableness.”

Thus, for commission-regulated water and wastewater utilities, it is possible they could implement a low-income customer assistance program (CAP) funded by rate revenues under the statute allowing such utilities

155. The Kentucky Public Service Commission also regulates water districts and commissions.

156. **Ky. Rev. Stat. Ann. § 278.010**. This includes cities and regional wastewater commissions.

157. **Ky. Rev. Stat. Ann. § 278.030**. Under **Ky. Rev. Stat. Ann. § 278.030**, such classifications may take into account “the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.”

158. Eleemosynary is an adjective that describes things related to charitable giving.

159. **Ky. Rev. Stat. Ann. § 278.170**.

160. **Pub. Serv. Comm’n v. Commonwealth**, 320 S.W.3d 660, 667 (Ky. 2010).

to provide free or reduced rates, particularly in the case of “calamity,” or by relying on the provisions stating that charitable organizations and specific individuals may receive assistance. Additionally, case law supports the notion that commission-regulated utilities can offer various forms of assistance to low-income individuals, subject to commission approval and reasonableness requirements.

### *Noncommission-Regulated Utilities*

Under [Ky. Rev. Stat. Ann. § 96.170](#), the legislative body of any city may, by ordinance, provide water to the city and its inhabitants and fix prices to private consumers and customers. The Kentucky court has held that “[d]iscrimination in rates or services is not permitted by municipalities any more than private utilities.”<sup>161</sup> But, “a distinction may be made between different customers or classes of customers on account of location, amount of consumption or such other *material conditions* which distinguish them from each other or from other classes.”<sup>162</sup>

It therefore seems possible that noncommission-regulated water and wastewater utilities could implement low-income CAPs funded by rate revenues. Although such programs could be challenged as discriminatory, it is possible that a person’s income could be established as a “material condition” that distinguishes some utility customers from others.

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161. *Louisville & Jefferson County Metro. Sewer Dist. v. Joseph E. Seagram & Sons, Inc.*, 211 S.W.2d 122, 126 (Ky. Ct. App. 1948).

162. *Id.*