



Louisiana

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

Commission-Regulated Utilities

The Louisiana Public Service Commission (LPSC) regulates private water and wastewater companies, including utilities owned by corporations and non-profit organizations. Per *La. Const. art. IV, § 21*, LPSC does not regulate government-owned¹⁶³ utilities.

With respect to LPSC-regulated utilities, several state statutes refer to the LPSC’s authority to fix “reasonable and just charges” for water and wastewater services.¹⁶⁴ For example, *La. Stat. Ann. § 45:1176* requires the LPSC to “investigate the reasonableness and justness of all contracts, agreements and charges entered into or paid by such public utilities with or to other persons.”

In *State ex rel. Guste v. Council of City of New Orleans*,¹⁶⁵ the court held that regulation of utilities under LPSC jurisdiction includes “prevention of unreasonable discrimination by the utility among its customers through various business practices (e.g., rebates, preferential charges, and service inequalities.)” Additionally, the court held that “[w]hile public utilities may reasonably distinguish among classes of customers by charging varying rates for varying services, any discrimination among customers as to the rate charged for the same service is uniformly considered impermissible.”¹⁶⁶ Finally, the court acknowledged that “[u]nlike many other states, Louisiana has no statute of statewide application that proscribes unreasonable discrimination by a utility in rate-making [sic]. However, the courts of this state have jurisprudentially adopted the generally prevailing rule that a utility’s rate structure must be nondiscriminatory.”¹⁶⁷

Thus, although state statutes do not explicitly prohibit commission-regulated utilities from implementing low-income customer assistance programs (CAPs) funded by customer revenues, or require that rates be

Commission-regulated utilities	
Noncommission-regulated utilities	

State Population (2016):	4,681,666
Median Annual Household Income (2015):	\$45,047
Poverty Rate (2015):	19.8%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$516
Louisiana has 992 community water systems (CWS), of which 442 are privately owned and 922 serve populations of 10,000 or fewer people.	
Louisiana has 269 publicly owned treatment works facilities (POTWs), of which 199 treat 1 MGD or less.	
1,127,850 people are served by privately owned CWS; 3,683,561 are served by government-owned CWS; and 3,470,186 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$9.6 billion
<i>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.</i>	

nondiscriminatory, the court’s holding, laid out above, suggests that commission-regulated rates *must* be nondiscriminatory. Such a holding creates the potential for legal challenges against rate-funded CAPs.

Noncommission-Regulated Utilities

La. Const. art. VI, § 5 enables parishes and municipalities to adopt home rule charters that grant them the authority to operate noncommission-regulated water and wastewater utilities.¹⁶⁸ Additionally, pursuant to *La. Stat. Ann. § 33:4163*, parishes and municipalities

163. This includes one or more subdivisions of parishes, cities, or towns.
 164. *La. Stat. Ann. § 45:1163, § 45:1176, § 45:1203*.
 165. *State ex rel. Guste v. Council of City of New Orleans*, 309 So. 2d 290, 294 (La. 1975).
 166. *Id.*
 167. *Id.*

168. In Louisiana, 23 of 64 parishes (similar to counties) in the state operate under a home rule charter; 31 of the state’s 303 municipalities have home rule authority (this includes the 10 largest cities, many of which operate as consolidated parish-city governments).

may sell and distribute water and wastewater services and may charge rates for such services. In *Johnson v. Mayor and City Commission of City of Natchitoches*, the court held that “[r]ates of municipally operated public utilities must be equal, uniform, and not discriminatory, applying to all classes, businesses, and individuals alike.”¹⁶⁹

The court further elaborated on the requirement that rates be non-discriminatory in *Hicks v. City of Monroe Utilities Commission*, a case in which customers of a municipal utility living outside of municipal limits brought a suit to annul a rate classification as unreasonable, arbitrary, and discriminatory.¹⁷⁰ The dispute stemmed from a rate classification that established one water rate for suburban customers who were using electricity supplied by the municipal utility and a higher rate for suburban customers who did not use electricity supplied by this utility. The plaintiffs’ contention that the rate classification was unreasonable and discriminatory was ultimately upheld.¹⁷¹ Importantly, the court found that a “utility may without being guilty of unlawful discrimination classify its customers on any reasonable basis and make separate rates for each class, but that such utility, whether privately or municipally operated, may charge but one rate for a particular service and any discrimination between customers as to the rate charged for the *same service under like circumstances* is improper.”¹⁷²

Therefore, a government-owned water or wastewater utility seeking to implement a low-income CAP funded by rate revenues could potentially face legal challenges if such a program results in rates that are deemed to be discriminatory, not equal, or not uniform.¹⁷³

169. *Johnson v. Mayor and City Comm’n of City of Natchitoches*, 129 So. 433, 436 (La. Ct. App. 1930).

170. *Hicks v. City of Monroe Utilities Commission*, 112 So. 2d 635, 637-38 (La. 1959).

171. *Id.* at 653.

172. *Id.* at 652.

173. Despite the limitations laid out in the statutes and case law, the Sewerage and Water Board of New Orleans offers a CAP funded by customer revenues. The ability of the Water Board to provide this program may be because the city of New Orleans has home rule authority to govern municipal affairs. Specifically, the board offers [the Water Help and Plumbing Assistance programs](#), which assist elderly, disabled, and economically disadvantaged customers in paying their water bills and making minor plumbing repairs. The program combines customer contributions with Sewerage and Water Board matching funds to create a fund administered by a local non-profit organization. The Water Help Program contributes up to \$200 annually to customers in need by way of a credit to their account, while the Plumbing Assistance Program pays up to \$250 annually to the licensed master plumber who is authorized by the Sewerage and Water Board to perform minor plumbing repairs at a customer’s home.