Montana

Water and wastewater utilities in Montana fall under multiple rate setting regulatory systems.

Commission-Regulated Utilities

The Montana Public Service Commission (MPSC) regulates the rates and services of private water and wastewater companies pursuant to Mont. Code Ann. § 69-1-102 and § 69-3-102. MPSC does not regulate government-owned water or wastewater utilities.\(^{211}\)

Mont. Code Ann. § 69-3-201 requires commission-regulated utilities to charge rates that are “reasonable and just” and stipulates that “every unjust and unreasonable charge is prohibited and declared unlawful.” Additionally, Mont. Code Ann. § 69-3-305 states that a commission-regulated utility “may not charge, demand, collect, or receive a greater or less compensation for a utility service.” Mont. Code Ann. § 69-3-305 prohibits commission-regulated utilities from granting any rebate, concession, or special privilege to consumers that “directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.” However, Mont. Code Ann. § 69-3-306 gives the MPSC authority to “prescribe classifications of service” that can take into account “the quantity used, the time when used, and any other reasonable considerations.”

Thus, despite a prohibition on the granting of rebates or special privileges, it appears that, through Mont. Code Ann. § 69-3-306, commission-regulated utilities in Montana could potentially provide low-income customer assistance programs (CAPs) funded by rate revenues, if such rates were approved by the MPSC as part of the utility’s official rate schedule.\(^{212}\)

Noncommission-Regulated Utilities

Municipal-owned utilities, consolidated local government water supply and wastewater districts, metropolitan sanitary and/or storm sewer districts, and county water and/or wastewater districts are not regulated by the MPSC. Rather, different state statutes govern each of these different types of utilities. Utilities owned by a municipality\(^{213}\) are generally authorized to implement “reasonable and just” rates for customers under Mont. Code Ann. § 69-7-101. However, Mont. Code Ann. § 7-13-4305 provides that municipal-owned wastewater and water utility customers shall not “be permitted to use said system unless they pay the full and established rate for said service” and that “no person may have service reestablished after it is discontinued . . . unless they have paid the full amount past due, any interest or penalty on such past-due amount, and any required reestablishment deposit.” Further, Mont. Code Ann. § 7-13-4304 states that municipal-owned utility rates

\(^{211}\) The MMPSC also does not regulate providers that serve themselves only, including individuals, member-owned cooperatives, or associations serving members only.

\(^{212}\) At least one commission-regulated utility in Montana currently offers a bill discount program funded by customer revenues. Mountain Water Company offers monthly bill discounts for customers who qualify for the Low Income Home Energy Assistance Program.

\(^{213}\) According to Mont. Code Ann. § 7-1-4121, a municipality is "an entity that incorporates as a city or town."
“shall be uniform for like services in all parts of the municipality.” Although these provisions contain potential limitations on rate setting, Montana is also a home rule state, and therefore, municipal-owned utilities may have more leeway to implement different rates pursuant to local law.

Under Mont. Code Ann. § 7-13-3026, the governing bodies of consolidated local government water supply and wastewater districts are permitted to establish by ordinance or resolution “just and equitable” rates. This section also requires that “the rates, charges, and rentals must be as nearly as possible equitable in proportion to the services and benefits rendered…” Similar authority is provided for metropolitan sanitary and/or storm sewer districts and municipal-owned wastewater and/or water utilities.

Additionally, Mont. Code Ann. § 7-13-2301 authorizes the board of directors of county water and/or wastewater districts to fix water and wastewater rates, with no limiting language.

Thus, there are few statutory limitations on rate setting for most government-owned utilities. Municipal-owned utilities appear to have the greatest potential for legal challenges if such entities were to implement low-income CAPs funded by rate revenues, specifically due to the uniformity requirement and the requirement that customers must pay the “full and established rate” for service. Additionally, any government-owned utility would need to consult the applicable home rule charter within which it operates to make sure there are no local law restrictions against rate-funded CAPs.

214. Montana grants all powers to local governments through home rule.
216. The city of Bozeman currently offers a bill discount program funded by customer revenues. Under the program, the city credits back the fixed service charge portion of water and wastewater bills to participants. The program is available to homeowners who qualify for the State of Montana’s property tax assistance program for low-income homeowners.