





New Mexico

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

Commission-Regulated Utilities

The **New Mexico Public Regulation Commission** (NMPRC) regulates private water and wastewater companies. The Gas, Water, and Wastewater Engineering Bureau, a division of the NMPRC, “develops rate base, and provides input to the cost of service and revenue requirements portions of rate cases.”²⁴⁷ The NMPRC and the bureau do not regulate rates and services for government-owned utilities.²⁴⁸ However, domestic water associations and water and sanitation districts may elect to be regulated by NMPRC under **N.M. Stat. Ann. § 3-28-21** and **§ 73-21-55**, respectively.

With respect to commission-regulated utilities, **N.M. Stat. Ann. § 62-8-1** requires that all rates shall be “just and reasonable,” and **N.M. Stat. Ann. § 62-8-6** mandates that no commission-regulated utility shall “make or grant any unreasonable preference or advantage” to any person within any classification or subject any person to “any unreasonable prejudice or disadvantage.” This statute goes on to state that no commission-regulated utility “shall establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.”²⁴⁹ Although this section allows approval of economic development rates and energy efficiency programs designed to reduce the burden of energy costs on low-income customers, it does not specifically allow commission-regulated water or wastewater utilities to develop low-income customer assistance programs (CAPs) funded by rate revenues. The ability to charge different rates to customers within the same class is further limited by **N.M. Stat. Ann. § 62-2-5**, which states that any private water company formed for the purpose of furnishing and supplying water has the right to “furnish water . . . at such rates as the bylaws may prescribe; but equal rates shall be conceded to each class of consumers.”

Commission-regulated utilities	
Noncommission-regulated utilities	

State Population (2016):	2,081,015
Median Annual Household Income (2015):	\$44,963
Poverty Rate (2015):	21.0%
Typical Annual Household Water and Wastewater Expenditures (2016):	\$1,605
New Mexico has 579 community water systems (CWS), of which 213 are privately owned and 551 serve populations of 10,000 or fewer people.	
New Mexico has 125 publicly owned treatment works facilities (POTWs), of which 100 treat 1 MGD or less.	
153,132 people are served by privately owned CWS; 1,742,954 are served by government-owned CWS; and 1,791,255 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$1.5 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>	

Thus, for commission-regulated utilities seeking to implement low-income CAPs funded by rate revenues, the greatest potential for legal challenges would likely arise from the statutory provision prohibiting such utilities from utilizing any unreasonable differences in rates between classes of service. State statutes also explicitly authorize low-income CAPs for energy providers; however, the statutes do not currently provide the same authorization for commission-regulated water and wastewater utilities. Therefore, this lack of authority may be used to support the argument that such programs are not allowed.

247. “Engineering.” Gas, Water, and Wastewater Engineering Bureau, N.M. Pub. Reg. Comm’n.

248. Government-owned utilities include municipal-owned utilities, special districts, and mutual domestic water users associations.

249. **N.M. Stat. Ann. § 62-8-6**.

Government-owned utilities, including water and sanitation districts, and mutual domestic water users associations are not regulated by the NMPRC. State statutes require only that municipalities and counties impose a “just and reasonable” service charge upon customers for maintaining wastewater and water services.²⁵⁰ Additionally, [N.M. Const. art. IX, § 14](#), contains an antidonation clause that prohibits counties and municipalities from using government funds to benefit persons or private entities, even charitable organizations. However, the clause includes an exception for “sick and indigent persons.”²⁵¹

As a home rule state, government-owned utilities have relatively broad authority to establish utility rates. Case law suggests that municipal-owned utilities are not strictly limited to charging rates that cover only the cost of service.²⁵² Additionally, state courts have held that the laws of the State of New Mexico mandate no particular methodology for a municipality to follow when determining reasonable, fair, and equitable rates for use of a municipal-owned water utility.²⁵³

Thus, for government-owned utilities, state statutes mandate only that rates be “*just and reasonable*.” The Albuquerque Bernalillo County Water Utility Authority (ABCWUA),²⁵⁴ the largest utility in the state, currently offers a [low-income bill discount](#) to eligible customers, which is funded, at least in part, by consumer revenues.²⁵⁵

251. [N.M. Stat. Ann. § 3-26-2, § 3-27-4, § 4-36-8 and §4-36-10](#).

252. In [Apodaca v. Wilson](#), 525 P.2d 876, 881-86 (N.M. 1974), the court found that rates charged by the city were reasonable even though they raised more money than was necessary to provide the services. Further, the court held that statutes, which specifically authorized municipalities to charge just and reasonable rates for the purposes of maintaining, constructing, and repairing water and wastewater facilities, did not preclude the city from using funds received from such rates for any other purposes.

253. See [Fleming v. Town of Silver City](#), 992 P.2d 308, 311-13 (N.M. 1999)

254. The Albuquerque Bernalillo County Water Utility Authority (ABCWUA) was established in 2003 under [N.M. Stat. Ann. § 72-1-10](#), which provides ABCWUA with the power to “set policy and regulate, supervise and administer the water and wastewater utility of Albuquerque and Bernalillo County, including the determination and imposition of rates for services.” The statute does not expressly prohibit ABCWUA from providing customer assistance programs (CAPs) to low-income customers.

255. ABCWUA has cited New Mexico’s antidonation clause as something to be attentive to when designing CAPs. It believes it is able to offer the bill discount program, despite the antidonation clause, by narrowly defining the income category to indigent customers and by contracting with a third party to evaluate low-income qualifications for the program.