



Oklahoma

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

Commission-regulated utilities	
Noncommission-regulated utilities	

Commission-Regulated Utilities

The **Oklahoma Corporation Commission (OCC)** was created by **Okla. Const. art. 9, § 15** and regulates private water companies.²⁸⁷ The OCC does not regulate government-owned utilities or wastewater utilities.²⁸⁸ **Okla. Stat. tit. 17, § 152** grants the OCC general supervision over all private water companies and explicit power to fix and establish rates. There is no statutory language regarding the types of rates that the OCC must fix or establish. However, **Okla. Const. art. 9, § 18** provides that the OCC shall have the power and authority to regulate and supervise private water companies, for the purpose of “preventing unjust discrimination and extortion” by such utilities. In order to do so, the OCC is granted the power to prescribe and enforce rates, as well as charges and classifications, and to make and enforce requirements, rules, and regulations “as may be necessary to prevent unjust or unreasonable discrimination and extortion” in favor of or against any person.²⁸⁹

Thus, it seems possible that commission-regulated water utilities could implement a low-income customer assistance program (CAP) funded by rate revenues, if such rates are approved by the OCC. However, the OCC’s additional role of preventing “unjust discrimination” could create the potential for a legal challenge.

Noncommission-Regulated Utilities

Municipalities²⁹⁰ in Oklahoma, not regulated by the OCC, operate under both general law and, in some cases, individual municipal charters. Under general

State Population (2016):	3,923,561
Median Annual Household Income (2015):	\$46,879
Poverty Rate (2015):	16.7%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$468
Oklahoma has 1,071 community water systems (CWS), of which 269 are privately owned and 1,018 serve populations of 10,000 or fewer people.	
Oklahoma has 488 publicly owned treatment works facilities (POTWs), of which 438 treat 1 MGD or less.	
71,536 people are served by privately owned CWS; 3,560,321 are served by government-owned CWS; and 2,646,453 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$8.9 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.

law, municipalities are granted the power to own and operate water and wastewater utilities under **Okla. Stat. tit. 11, § 37-102**. Further, **Okla. Stat. tit 11, § 37-109** provides that the municipal governing body shall fix the water charges to be paid by the consumer.

Although there is very little guidance for rate setting by municipal-owned water or wastewater utilities in the Oklahoma statutes, the state courts have provided some helpful analysis. In *Fretz v. City of Edmond*, the Oklahoma Supreme Court asserted that a municipality operating a utility is governed by the same restrictions as private utility companies in practices of discrimination in rates and service.²⁹¹ The court further clarified

287. Okla. Stat. tit. 17, § 151.

288. Government-owned utilities include those owned by cities, towns, and other bodies politic.

289. The Oklahoma Supreme Court has interpreted this as providing that a public utility is entitled to earn a reasonable return on its investment, but at the same time, the Corporation Commission has the duty to insure the public adequate service at reasonable rates without discrimination. See *Application of Valliant Tel. Co.*, 656 P.2d 273, 275 (Okla. 1982).

290. Municipality is defined to include any incorporated city or town. **Okla. Stat. tit. 11, § 1-102**.

291. *Fretz v. City of Edmond*, 168 P. 800, 802-04 (Okla. 1916); see also *Oklahoma City & Motor Hotel Ass’n, Inc. v. Oklahoma City*, 531 P.2d 316, 319 (Okla. 1974).

that the rule does not prohibit discrimination of any kind, but only *unjust* discrimination.²⁹² In *Fretz*, the court found that it was not discriminatory for the city municipality to donate water to a school, even though the citizen, taxpayer, customer plaintiff was required to pay a fixed water rate.²⁹³ The Supreme Court of Oklahoma also addressed rate setting for municipal wastewater utilities in *Sharp v. Hall*.²⁹⁴ In that case, the court held that the constitutional and statutory provisions granting municipalities the powers of engaging in business do not specifically prescribe what rates may be charged, nor do they specify to what purpose the profits must be appropriated.²⁹⁵

In sum, government-owned water and wastewater utilities have broad rate setting authority, which appears to be limited only by the aforementioned requirement that rates must not be “unjustly discriminatory.” If such utilities seek to implement low-income CAPs funded by rate revenues, this requirement holds the greatest potential for legal challenges.

292. *Fretz*, 168 P. at 803.

293. *Id.* at 804.

294. *Sharp v. Hall*, 181 P.2d 972, 974-75 (Okla. 1947).

295. *Id.*