



Oregon

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

Commission-regulated utilities	
Noncommission-regulated utilities	

Commission-Regulated Utilities

The **Oregon Public Utility Commission (PUC)** regulates private water and wastewater companies. The Oregon PUC does not regulate government-owned water and wastewater utilities. With respect to commission-regulated utilities, **Or. Rev. Stat. § 756.040** requires the Oregon PUC to protect customers “from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.” In addition, the statute states that the commission “shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates.”²⁹⁶ Rates are “fair and reasonable” according to this section if they provide adequate revenue for capital and operating costs, as well as an adequate return to the equity holder.²⁹⁷

While *Gearhart v. Public Utility Commission of Oregon*²⁹⁸ established that the Oregon PUC has broad jurisdiction in determining what is “fair,” “just,” and “reasonable,” **Or. Rev. Stat. § 757.310** prohibits commission-regulated utilities from charging customers “a rate or an amount for a service that is different from the rate or amount the utility charges any other customer for a like and contemporaneous service under substantially similar circumstances.” An exemption exists in **Or. Rev. Stat. § 757.315(3)**, which explicitly allows natural gas utilities to use rate revenues for bill payment assistance, however, there is no similar exception for water utilities.

A 1993 opinion issued by the Office of the Oregon Attorney General confirmed that the Oregon PUC cannot approve income-based rate classifications, stating “[t]he commission is a creation of the legislature. As such, ‘its power arises from and cannot go beyond that

296. Or. Rev. Stat. § 756.040.

297. Rate setting requirements for utilities regulated by Oregon PUC are further established in **Or. Rev. Stat. § 757.020**. This section requires that charges made by any commission-regulated utility “shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited.” Id.

298. *Gearhart v. Pub. Util. Comm’n of Oregon*, 299 P.3d 533, 537 (Or. 2013). The court in *Gearhart* also established that the Oregon PUC “is not obligated to employ any single formula or combination of formulas to determine what are in each case just and reasonable rates.” Id.

State Population (2016):	4,093,465
Median Annual Household Income (2015):	\$51,243
Poverty Rate (2015):	16.5%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$991
Oregon has 884 community water systems (CWS), of which 538 are privately owned and 829 serve populations of 10,000 or fewer people.	
Oregon has 182 publicly owned treatment works facilities (POTWs), of which 140 treat 1 MGD or less.	
148,639 people are served by privately owned CWS; 3,261,298 are served by government-owned CWS; and 3,481,662 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$8.9 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>	

expressly conferred upon it’ by the legislature . . . Nothing in ORS 757.230, or in any other statute, gives the commission authority to set rate classifications based on income.”²⁹⁹

However, the opinion goes on to state that the Oregon PUC could approve the issuance of rebates to eligible low-income customers. The attorney general’s office reasoned that with rebates, the commission would not be authorizing utilities to collect customer rates that differ by the income of those customers. Instead, all classes of customers, regardless of income level, would be charged the same utility rates. A utility could then issue rebates to low-income customers without being

299. Or. Op. Atty. Gen. OP-6475 (Or. A.G.), 1993 WL 602059 (internal citations omitted).

in violation of [Or. Rev. Stat. § 757.310](#).

Thus, commission-regulated utilities could face legal challenges based on the statutes that prohibit utilities from offering different rates for customers under substantially similar conditions or on the basis of the attorney general’s opinion cited above. However, under the same attorney general’s opinion, commission-regulated utilities may provide rebates to low-income customers (i.e., after rate charges have been collected).

Noncommission-Regulated Utilities

State statutes provide very few restrictions on the establishment of rates for government-owned utilities.³⁰⁰ Additionally, many municipalities operate under home rule, which gives them broader rate setting authority.

However, some statutes and case law suggest that rates must be based on cost of service. Specifically, [Or. Rev. Stat. § 264.310](#) states that water supply districts may fix and classify rates “according to the type of use and according to the amount of water used.” Additionally, in *Kliks v. Dalles City*,³⁰¹ a case challenging differences in rates on the basis of nonservice characteristics, the court found that where a municipality makes differentiations in rate to be charged for water service or other service rendered by municipal utilities, but differences in conditions cannot be shown between customers entitled to different rates, “all customers are entitled to receive the same service on an equal basis and at uniform rate.” The court further held that “a difference in rates must find justification in a difference in conditions of service.”³⁰²

Thus, although government-owned utilities have broad rate setting authority, the aforementioned case law suggests that classifications and rates based on nonservice characteristics would be subject to legal challenges. Despite this, and as documented in the U.S. EPA’s 2016 compendium, *Drinking Water and Wastewater Utility Customer Assistance Programs*, several government-

owned water and wastewater utilities in Oregon offer low-income customer assistance programs.

300. In Oregon, utilities that are not regulated by Oregon PUC include municipal-owned water and wastewater utilities, domestic water supply districts, sanitary districts, water and sanitary authorities, and People’s Utility Districts.

301. *Kliks v. Dalles City*, 335 P.2d 366, 374 (Or. 1959). In this case, the nonservice characteristics were the inclusion of rooming houses, boarding houses, motels, hotels, and trailer courts under a classification distinct from, and under a more favorable rate structure than, apartment houses. *Id.*

302. *Id.*