South Carolina

Commission-regulated utilities ⚠

Noncommission-regulated utilities ⚠

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

Commission-Regulated Utilities

The Public Service Commission of South Carolina (PSC) regulates rates set by private water and wastewater companies under S.C. Code Ann. § 58-3-140.[331] The PSC does not regulate municipal-owned water and wastewater utilities.[332]

South Carolina also has an Office of Regulatory Staff which is a separate agency of the state with duties that include "concerns of the using and consuming public with respect to public utility services, regardless of the class of customer."[333] The Office of Regulatory Staff performs more of the advocacy and investigative functions of rate setting and is a party to every proceeding before the PSC, with the ability to provide testimony and make recommendations. S.C. Code Ann. Regs. 103-503 and 103-703 address rate setting for wastewater and water utilities, respectively, stating that each customer within a given classification, such as residential, commercial, or industrial, "shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable justification is shown for the use of a different rate, and a contract."[334]

Thus, for commission-regulated utilities seeking to implement low-income customer assistance programs (CAPs) funded by rate revenues, they could potentially face legal challenges based on the requirement that customers in the same class be charged the same approved rate as every other customer within that classification. However, there may be some potential for commission-regulated utilities to show "reasonable justification … for the use of a different rate, and a contract" if they can demonstrate that a rate based on affordability concerns for low-income customers is reasonable.

State Population (2016):	4,961,119
Median Annual Household Income (2015):	$45,483
Poverty Rate (2015):	17.9%
Typical Annual Household Water and Wastewater Expenditures (2015):	$691

South Carolina has 585 community water systems (CWS), of which 304 are privately owned and 510 serve populations of 10,000 or fewer people.

276,138 people are served by privately owned CWS; 3,479,334 are served by government-owned CWS.

Estimated Long-Term Water Infrastructure Needs:	$1.8 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.

Noncommission-Regulated Utilities

For noncommission-regulated utilities, there are no explicit limitations found in the general statutes. However, the South Carolina Supreme Court held in *Simons v. City Council of Charleston*[335] that the choice for how to collect rates "is within the discretion of the city council, and so long as the revenues it uses for the purpose named are derived from 'reasonable' rates, the court will not interfere with the discretion sought to be exercised." The court applied the requirement of "reasonable" rates to both commission-regulated and noncommission-regulated utilities, specifically holding that a waterworks utility is a "public utility, and it makes no difference whether such utility be operated by a municipality or by a private corporation. Both are bound by the rule of reasonableness."[336]

331. Under S.C. Const. art. IX, § 1, the General Assembly will provide "appropriate regulation of common carriers, publicly owned utilities, and privately owned utilities serving the public as and to the extent required by the public interest."
332. See S.C. Code Ann. § 58-5-30. In addition, the South Carolina PSC does not regulate public service districts or special purpose districts, county governments, or homeowner's associations (HOAs) if the HOA has obtained an exemption.
333. S.C. Code Ann. § 58-4-10.
334. S.C. Code Ann. Regs. 103-503.
335. Simons v. City Council of Charleston, 187 S.E. 545, 546-47 (S.C. 1936).
336. Id. at 547.

In sum, noncommission-regulated utilities in South Carolina seem to be bound only by reasonableness standards in rate setting. Thus, such utilities have broad authority to implement low-income CAPs funded by rate revenues. However, any such programs could be subject to challenges on the basis of reasonableness regardless of whether the programs are implemented by noncommission-regulated utilities or commission-regulated utilities.