



Town of Apex

P.O. BOX 250
APEX, NORTH CAROLINA 27502

September 9, 2020

TO: Drew Havens, Town Manager

FROM: Vance Holloman, Finance Officer *VH*

SUBJECT: Impact of Suspending Utility Cutoffs upon Utility Funds

You have asked what the financial impact of continuing the Town’s suspension of utility cutoffs for nonpayment would be. The Town has three funds providing services whose charges are collected through monthly utility billings. These are the General Fund, the Water Sewer Operating Fund and the Electric Operating Fund. The Electric Operating Fund is the most vulnerable financially. The Fund has the lowest cash balance of the three. The Fund also has the highest dollar amount and percentage of past due accounts. The Town applies utility payments of electric customers to the General Fund and Water Sewer Operating Fund charges first. If an electric customer does not pay their bill, their electric service is cutoff for nonpayment. In addition the Town’s outstanding revenue bonds require the maintenance of certain coverage ratios to comply with bond covenants. That ratio measures how many times the net operating income, excluding depreciation, will cover the annual debt service requirements. For that reason I have chosen to perform a stress test of the Electric Operating Fund for the 2020-21 fiscal year (FY 21).

The information below compares, as of June 30 and August 31, the three fund’s ratio of past due accounts to revenues from utility charges since March 1. The purpose of this chart is to illustrate the impact of the suspension upon actual collections.

Fund	June 30, 2020	August 31, 2020
Electric Operating Fund	3.6%	2.9%
Water Sewer Operating Fund	2.7%	2.2%
General Fund	2.5%	2.1%
Total	3.2%	2.6%

I first looked at the impact of the suspension has had upon on preliminary figures for the Electric Operating Fund as of June 30th. I found very little change in the Fund’s cash and working capital balances, roughly \$5 million and \$8 million respectively. The debt service coverage ratio remains high, 4 times coverage. When calculating that ratio I used the FY 21 debt service requirements which doubled over the prior year due to the issuance of new debt. The Operating Fund currently reflects a small positive income after having made a \$2.25 million transfer to the Electric Capital Project Fund.



Assuming a reduction in revenues of 3.3% due to amounts not collected, I project a decrease of up to \$1.5 million in cash and working capital in FY 21 and a loss in the operating fund of that same amount. That loss is after a transfer of \$1.25 million to the Electric Capital Project Fund. The debt service coverage ratio would remain strong at 3 times coverage. While the Operating Fund can sustain such a loss for a single year, repeated losses of this magnitude would lead to significant reduction in resources and the need to increase rates to compensate for the loss. If the level of noncollection were to change the projection would also change.

In addition to the long term impact on the financial stability of the Electric Operating Fund there are other concerns about continuing the suspension of utility cutoffs for nonpayment. There is an expectation that the Town will make all possible efforts to collect past due accounts from the Town's utility customers, debt holders and oversight agencies. While a temporary suspension of those efforts was mandated by the Governor, there is an expectation those efforts will continue at some point. An extension of the limit will also increase the amounts we will not be able to ultimately collect.

There are reasons to be concerned about the impacts of COVID 19 and the down turn in the economy upon some customers' ability to pay. The Town has options to help customers who are in need. The Town currently plans to implement a payment plan for customers who request it. As long as customers make their current payments and pay a portion of their outstanding balance services will not be interrupted. Wake County has established a program using Federal COVID funds to help utility customers catch up on past due accounts. Town staff has undertaken multiple efforts to make customers aware of these options.

It is also possible for municipalities to establish customer assistance programs (CAPS). One key aspects of CAPS is that funds cannot come from utility payments. The source of funding is typically a General Fund appropriation and voluntary contributions from utility customers or others. Also eligibility is determined by an outside organization with knowledge and experience in social services and eligibility determinations. A publication from the School of Government concerning CAPS can be found at https://efc.sog.unc.edu/sites/default/files/2018/FINAL_Pathways%20to%20Rate-Funded%20CAPs.pdf I have enclosed a few pages from that publication which contain a discussion of issues unique to North Carolina and a case study of a CAP established by the City of Raleigh.

If I can answer any question or give you any further information please let me know.

North Carolina

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

Commission-Regulated Utilities

The [North Carolina Utilities Commission \(NCUC\)](#) regulates rates set by private water and wastewater companies.²⁶⁶ The NCUC does not regulate government-owned water or wastewater utilities.²⁶⁷

Under [N.C. Gen. Stat. § 62-130](#), the NCUC shall “make, fix, establish, or allow just and reasonable rates” for commission-regulated utilities. Regulation by the NCUC is done on an individual rate case basis.²⁶⁸ [N.C. Gen. Stat. § 62-140](#) provides that no commission-regulated utility shall “make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage” and prohibits commission-regulated utilities from utilizing “any unreasonable difference as to rates or services either as between localities or as between classes of service.”

Additionally, commission-regulated utilities are not allowed to charge any person more or less than what the NCUC sets for any service, nor are customers permitted to receive service for a rate greater or less than what the NCUC has set.²⁶⁹ Under [N.C. Gen. Stat. § 62-132](#), rates set by the NCUC are deemed “just and reasonable,” and any rate charged by a commission-regulated utility that differs from the NCUC rates shall be deemed “unjust and unreasonable.”

In sum, commission-regulated utilities are not expressly prohibited from implementing low-income customer assistance programs (CAPs) funded by rate revenues; however, any such program would have to be approved by the NCUC. Additionally, the language prohibiting commission-regulated utilities from charging greater or less than commission approve rates, or from granting any preferences or advantages to one customer over another customer, likely holds the

266. N.C. Gen. Stat. § 62-130.

267. The NCUC has jurisdiction over any utility furnishing water to the public for compensation or operating a public wastewater utility for compensation. See [N.C. Gen. Stat. § 62-3\(23\)d](#), [§ 62-30](#), [§ 62-31](#), [§ 62-32](#).

268. “Rate Consolidation,” National Association of Water Companies.

269. N.C. Gen. Stat. § 62-139.

Commission-regulated utilities



Noncommission-regulated utilities



State Population (2016):	10,146,788
Median Annual Household Income (2015):	\$46,868
Poverty Rate (2015):	17.4%
Typical Annual Household Water and Wastewater Expenditures (2017):	\$914
North Carolina has 2,010 community water systems (CWS), of which 1,458 are privately owned and 1,875 serve populations of 10,000 or fewer people.	
North Carolina has 318 publicly owned treatment works facilities (POTWs), of which 213 treat 1 MGD or less.	
855,740 people are served by privately owned CWS; 7,164,754 are served by government-owned CWS; and 4,409,160 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$15.1 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.

greatest potential for legal challenges.

Noncommission-Regulated Utilities

Under [N.C. Gen. Stat. § 160A-312\(a\)](#) and [§ 153A-275](#), cities and counties are authorized to own and operate “public enterprises,” which are defined to include water and wastewater utilities.²⁷⁰ Further, [N.C. Gen. Stat. § 160A-314](#) and [§ 153A-277](#) provide that cities and counties may establish and revise rates for public enterprise services, which “may vary according to

270. N.C. Gen. Stat. § 160A-311.

classes or service.”²⁷¹ In *City of Asheville v. State*,²⁷² the court held that, under the broad rate-setting authority found in N.C. Gen. Stat. § 160A-314, “the setting of . . . rates and charges [for water and sewer services] is a matter for the judgment and discretion of municipal authorities, not to be invalidated by the courts *absent some showing of arbitrary or discriminatory action.*” However, in *Town of Taylorsville v. Modern Cleaners*,²⁷³ the court held that “[a] public utility, whether publicly or privately owned, may not discriminate in the distribution of services or establishment of rates.” Additionally, the court elaborated that the “[s]tatutory authority of the city to fix and enforce rates for water and sewer services and to classify its customers is not a license to discriminate among customers of essentially the same character and services; rather, the statute must be read as a codification of the general rule that a city has the right to adopt reasonable classifications based on factors such as cost of service.”²⁷⁴

Thus, although there appears to be broad rate-setting authority granted to government entities owning and operating water and wastewater authorities, the aforementioned case law could be interpreted as requiring that rates must be based on cost of service characteristics. For government-owned utilities, this possible cost of service limitation likely creates the greatest potential for legal challenges to low-income CAPs funded by rate revenues. Several publications by the state’s leading local government finance legal academic expert reflect this view, advising local governments that using rate revenues to fund these programs is not allowed.²⁷⁵

271. For counties, the phrasing is slightly different and provides that rates may vary for the same class in different areas of the county or may vary according to classes.

272. *City of Asheville v. State*, 665 S.E.2d 103, 123 (N.C. Ct. App. 2008) (citing *Town of Spring Hope v. Bissette*, 280 S.E.2d 490 (N.C. 1981)).

273. *Town of Taylorsville v. Modern Cleaners*, 237 S.E.2d 484, 486 (N.C. Ct. App. 1977).

274. *Id.*

275. See generally Kara A. Millonzi, A Guide to Billing and Collecting Public Enterprise Utility Fees for Water, Wastewater, and Solid Waste Services, UNC School of Government (2008), 89 (concluding that government-owned utilities cannot reduce utility fees directly).

Case Study #7: City of Raleigh Public Utilities Department, North Carolina

Utility Customer Assistance Program: A Local Government Partnership Overcomes Legal Limitations

Background

Government-owned utilities in North Carolina do not have express authority for establishing low-income customer assistance programs (CAPs) funded by rate revenues. At the same time, “cost of service” rate setting statutory provisions have been interpreted by some legal experts as limiting direct cross subsidization between rate classes. For this reason, North Carolina water and wastewater utilities have been reluctant to implement income-indexed rates, bill discounts, or income eligibility driven temporary assistance funds. Several utilities have created modest CAPs that are funded primarily from nonutility or nongovernmental revenue, such as Orange Water and Sewer Authority’s “Care to Share” program. These programs tend to be small in size and have capacity to assist only a limited number of customers each year. In 2016, the City of Raleigh partnered with several other local governments to design a customer assistance program that would comply with what it interpreted as being permissible, but which would still be able to provide significant assistance.

In March 2016, the Raleigh City Council authorized staff to develop a CAP.⁴⁴⁹ Raleigh recognized that the financial challenges facing some of its utility customers were significant, were not being addressed by existing social programs, and likely could not be adequately addressed by a purely voluntary program. Raleigh also recognized that providing assistance to utility customers would provide cost benefits to the entire community by reducing staff costs and lost revenues associated with disconnections. In December 2016, the city council formally approved a new **Utility Customer Assistance Program** (UCAP) that would be funded through approximately \$215,000 in general local government revenues from the City of Raleigh and the City of Garner, a neighboring community that has residents who receive services from Raleigh’s utility.

About CORPUD

Raleigh is the county seat of Wake County and the capital of North Carolina. The City of Raleigh Public Utilities Department (CORPUD) is a regional water and wastewater service provider that is owned and governed by Raleigh. The utility provides service to approximately 550,000 people who reside within Raleigh’s city limits and in a number of surrounding Wake County municipalities.⁴⁵⁰ Raleigh and Garner have appropriated funds that have the capacity to serve 895 customer accounts. Six months after launching the program, approximately 400 low-income customers have enrolled and are receiving assistance.⁴⁵¹ The CORPUD service area covers approximately 194 square miles. CORPUD bills on a monthly basis for water and wastewater services. Some CORPUD customer bills also include charges for other services such as solid waste and stormwater. Raleigh maintains inter-local agreements with the governments of the other municipalities that it serves. These agreements govern different aspects of rate setting, utility expansion, and expenditures.

About UCAP

UCAP provides up to \$240 per year of one-time financial assistance to utility customers who meet established criteria. Each of the local governments that have residents served by CORPUD are given the opportunity to participate in the program by providing general fund revenue into a centrally managed program. During the first year of the program, only Raleigh and Garner chose to participate, providing \$200,000 and \$14,173 respectively. The program is implemented through a partnership with multiple governmental agencies. CORPUD advertises the program on its website, on utility bills, and through customer service staff. Wake County Human Services (WCHS) is responsible for processing applications and carrying out eligibility screening for the program at its offices. WCHS may also notify eligible customers seeking other social assistance of the UCAP’s existence. The eligibility requirements are similar to those of the federal Low-

449. City of Raleigh, City Council Meeting Notes The City Council of the City of Raleigh met in a regular session at 1:00 p.m. on Tuesday, November 15, 2016

450. <https://www.raleighnc.gov/home/content/Departments/Articles/PublicUtilities.html>

451. City of Raleigh, Correspondence with Author April 4, 2017.

Income Heating and Energy Assistance Program, which is also locally implemented by WCHS. In order to be eligible, utility customers must have incomes less than 130 percent of the federal poverty level and be past due on their accounts or otherwise economically distressed. Once a customer's eligibility for UCAP has been determined, WCHS notifies CORPUD and \$240 is credited to the customer's account.

Legal Framework

North Carolina statutes provide general guidance on how rates should be set and provide utilities with the authority to vary rates based on classes of service.

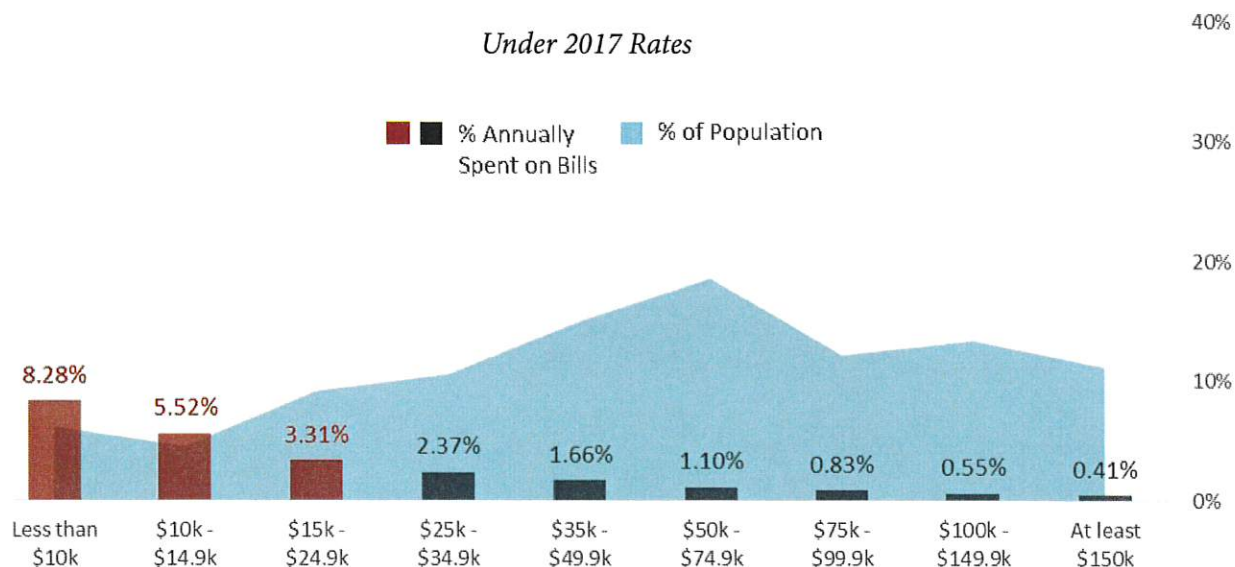
Under common law, classes of service and, therefore, the rates customers pay, are tied to factors that affect the cost of serving a customer rather than general attributes of the customer that do not affect cost (e.g., income, age, and so forth).⁴⁵² Legal specialists have strictly interpreted this cost of service requirement to limit indirect rate differentiation that would arise if revenue involuntarily collected from one customer was used to fund an emergency or temporary assistance payment program that was only eligible to customers who meet income eligibility criteria.⁴⁵³ As a result

of these limitations, utilities in North Carolina have avoided implementing any type of income indexed rates or temporary assistance programs funded with rate revenues.

Affordability Assessment for Raleigh

The annual bill for a customer who uses 5,000 gallons a month is \$828. The annual bill increases to \$1,249 for customers who use 8,000 gallons a month. The chart that follows shows the household income distribution of Raleigh in blue, with the percentage of income residential customers with different incomes would spend on water and wastewater services if they used 5,000 gallons/6.7 ccf. For example, a customer in the \$10,000–\$14,999 bracket will spend at least 5.52 percent of their income on water and wastewater services.

Figure 19. Affordability of Water & Wastewater Rates in Raleigh Assessed at 5,000 Gallons/Month and 2015 Income Levels*



* These charts were generated from the "Water and Wastewater Residential Rates Affordability Assessment Tool" created by the Environmental Finance Center at UNC Chapel Hill. This free tool can be accessed at <http://www.efc.sog.unc.edu/rslib/item/water-wastewater-residential-rates-affordability-assessment-tool>

452. <http://canons.sog.unc.edu/utility-rate-discounts-can-a-local-government-cut-its-utility-customers-a-break/>
453. Id.

The following table shows key socioeconomic indicators for Raleigh, with the state and national averages available for comparison. Values in red indicate that the indicator is “most stressed,” as compared to both the state and national averages. For Raleigh, no indicators are “most stressed.”

Figure 20. Affordability for Low-Income Customers in Raleigh

	Raleigh, North Carolina in 2015	Raleigh in 2014	United States in 2014
Median Household Income	\$55,398	\$46,693	\$53,482
% Unemployment	5.0%	6.6%	5.8%
% Not in labor force	29.2%	36.8%	36.1%
% of all people with income below poverty	16.0%	17.6%	15.6%
% with Social Security income	18.7%	30.4%	29.3%
% with Supplemental Security income	3.2%	4.9%	5.3%
% with cash public assistance income	1.3%	2.0%	2.8%
% with Food Stamps/SNAP benefits	9.8%	14.4%	13.0%

Sources:

- U.S. Census Bureau's American Community Survey, obtained from American FactFinder, Income tab, Selected Economic Characteristics table from American Community Survey.
- U.S. Census Bureau's American Community Survey, obtained from American FactFinder, B25118: Tenure By Household Income In The Past 12 Months.
- Raleigh Public Utilities, “Utility Rates, Deposits & Other Charges.”