



Delaware

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

Commission-regulated utilities	
Noncommission-regulated utilities	

Commission-Regulated Utilities

The **Delaware Public Service Commission (DPSC)** regulates most aspects of water and wastewater services provided by private water and wastewater companies, including the establishment of rates.⁷⁶ DPSC does not regulate government-owned water and wastewater utilities.

The Public Utilities Act of 1974 (**Del. Code Ann. § 26-301a**) establishes that no commission-regulated “utility shall make, impose or exact any unjust or unreasonable or unduly preferential or unjustly discriminatory individual or joint rate . . . or enforce any regulation, practice or measurement which is unjust, unreasonable, unduly preferential or unjustly discriminatory.” DPSC may also, after a hearing, “fix just and reasonable individual rates...which shall be imposed, observed and followed thereafter...whenever the Commission determines any existing individual rate...to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential.”⁷⁷

However, state statutes also provide that DPSC shall authorize commission-regulated utilities “to establish an individual or joint rate for any product or service rendered within the State for the purposes of ensuring the State’s current and future economic well-being and growth...” if the commission makes certain requisite findings, which include finding that the rate is “in the public interest” and that the rate “prevents the loss of customers.”⁷⁸

Thus, it appears that DPSC may authorize special individual or joint rates under certain circumstances, which may at times align with the provision of low-income assistance. However, in general, if a commis-

76. Utility tariffs outline the rules that commission-regulated utilities must follow when setting rates for their services.

77. **Del. Code Ann. § 26-309a.**

78. **Del. Code Ann. tit. 26, § 303d(1).** Before authorizing an individual or joint rate, the DPSC must find that the rate is in the public interest; that the rate prevents the loss of customers, encourages customers to expand present facilities and operations, or attracts new customers; that the rate will provide recovery of at least incremental cost of providing the service; if, how, and to what extent any discount shall be recovered; and, the period of time during which the rate will remain in effect.

State Population (2016):	952,065
Median Annual Household Income (2015):	\$60,509
Poverty Rate (2015):	12.0%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$680
Delaware has 214 community water systems (CWS), of which 179 are privately owned and 197 serve populations of 10,000 or fewer people.	
Delaware has 17 publicly owned treatment works facilities (POTWs), of which 9 treat 1 MGD or less.	
521,842 people are served by privately owned CWS; 366,540 are served by government-owned CWS; and 701,973 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$0.6 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>	

sion-regulated utility seeks to implement low-income customer assistance programs (CAPs) funded by rate revenues, such programs may be subject to legal challenge to determine if they are unduly preferential or discriminatory.

Noncommission-Regulated Utilities

Utilities that are not regulated by DPSC include water and wastewater utilities owned and operated by county or municipal governments. Municipal-owned utilities seem to have broad authority to set water and wastewater rates. The majority of Delaware’s municipalities

have adopted municipal charters,⁷⁹ under which they can establish rules for setting water and wastewater rates and charges. For example, [the municipal charter for Wilmington](#) specifically states that any wastewater rate, fee, or charge “may include a discount for payment within a certain period of time and a penalty for failure to pay within a certain period of time.”

The language governing county-owned utilities is more limiting. [Title 9](#) of the Delaware Code separately provides each of Delaware’s three counties with the authority to operate water and wastewater systems and to charge and collect rates for the use of services. Pursuant to [Del. Code Ann. § 9-6709](#), county service charges “shall, as near as the county government deems practicable and equitable, be *uniform* throughout the area served by the sewerage or water system,” and may be based on water consumption, the number and kind of water outlets at a property, the number and kind of plumbing or sewerage fixtures or facilities, the number of people residing or working at a property, on a front footage basis, “or on other factors determining the type, class and amount of use or service of the sewerage or water system, or on any combination of any such factors.” Thus, although counties seem to have leeway to determine rates for different types of customers, state statutes do require rates to be uniform.

Based on state statutes and regulations that allow municipalities to adopt home rule charters, municipal-owned utilities seem to have potential to establish low-income CAPs funded by rate revenues. Although the language for counties is more limiting, Sussex County currently offers eligible customers a subsidy of up to \$200 per year to help pay for water and wastewater services (customers can access subsidies for water and wastewater separately, so total subsidies amount to a maximum of \$400). To be eligible for the program, the customer must be the homeowner and full-time resident of the property and meet income and asset requirements. The City of Wilmington also has the option to provide discounts on wastewater bills.

79. A chartered city, county, or municipality is one that possesses a unique set of laws that forms the legal foundation of its local system of government. Charters define the powers and functions of elected officials, as well as the organization and procedures of local government. Currently, 55 of Delaware’s 57 municipalities have adopted municipal charters.