

# New Jersey

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

## Commission-Regulated Utilities

The **New Jersey Board of Public Utilities (BPU)** regulates the rates and services of private water and wastewater companies to “ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey.”<sup>241</sup> With respect to utilities regulated by BPU, **N.J. Rev. Stat. § 48:3-1** mandates that no commission-regulated utility “shall make, impose or exact any unjust or unreasonable,<sup>242</sup> unjustly discriminatory or unduly preferential individual or joint rate,” nor may any commission-regulated utility “adopt or impose any unjust or unreasonable classification in the making or as the basis of any individual or joint rate.”<sup>243</sup> These rules on rates have two statutory exceptions, which apply only to certain senior citizen cooperative associations and to employees of natural gas and electric utilities.<sup>244</sup>

Initially, based on personal communications with BPU, the lack of a statutory exception for commission-regulated water and wastewater utilities was being interpreted to mean that these companies were unable to provide low-income customer assistance programs (CAPs) funded by rate revenues.<sup>245</sup> A February 2004 rate case decision ruled that **N.J.A.C. § 1:1-19.1 (d)** specifically allows New Jersey American Water to be reimbursed from its residential customers

241. Compared to most other states, investor-owned water utilities serve a relatively large portion (close to 40 percent) of New Jersey’s population.

242. **Petition of Pub. Serv. Coordinated Transp.**, 74 A.2d 580, 591-95 (N.J. 1950) (holding that the rate which a commission-regulated utility may reasonably charge should be sufficient to encourage good management and furnish a reward for efficiency, to enable utility under efficient and economic operations to maintain and support its credit, and to enable it to raise money necessary for proper discharge of its public duties, and it can never be more than reasonable worth of service supplied nor be fixed so low as to be confiscatory, and if rate is within such limits and supported by competent evidence, rate set would be just and reasonable).

243. Further, **N.J. Rev. Stat. § 48:3-4** prohibits commission-regulated utilities from providing any undue or unreasonable preference or advantage to any person or from subjecting any person to any prejudice or disadvantage.

244. Specifically, **N.J. Rev. Stat. § 48:19-26** allows the New Jersey Board of Public Utilities (BPU) to grant an exception from any law or rule prohibiting special, discriminatory, or preferential rates to non-profit water companies owned by senior citizen cooperative associations that provide service only to the members of such association. **N.J. Rev. Stat. § 48:3-4** allows gas or electric public utilities to supply such services to employees at reduced rates.

245. BPU has confirmed that expenditures for low-income customer assistance programs cannot be recovered through rates. Pers. comm. with Ken Welch, Maria L. Moran, Director, Division of Water, N.J. BPU (December 6, 2016).

Commission-regulated utilities



Noncommission-regulated utilities



<b>State Population (2016):</b>	8,944,469
<b>Median Annual Household Income (2015):</b>	\$72,093
<b>Poverty Rate (2015):</b>	10.8%
<b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>	\$786
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$24.6 billion

New Jersey has 587 community water systems (CWS), of which 269 are privately owned and 427 serve populations of 10,000 or fewer people.

New Jersey has 157 publicly owned treatment works facilities (POTWs), of which 67 treat 1 MGD or less.

3,327,582 people are served by privately owned CWS; 5,547,181 are served by government-owned CWS; and 8,148,555 are served by POTWs.

*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.*

for the incremental costs of the low-income program. It further states that “these costs shall be reflected in usage-based charges as determined in the future base rate case.”

## Noncommission-Regulated Utilities

BPU does not regulate the rates of government-owned water and wastewater utilities in New Jersey. New Jersey is a home rule state, meaning that local governments have relatively broad authority to establish local regulations subject to limitations included in state statutes. **N.J. Rev. Stat. § 40:14B-2** allows counties and municipalities to operate waterworks and wastewater facilities and to charge for the services they provide through the establishment of a municipal authority.

Additionally, under [N.J. Rev. Stat. § 40:14B-21](#) and [§ 40:14B-22](#), municipal water and wastewater authorities are authorized to charge and collect rates for services which “shall as nearly as the municipal authority shall deem practicable and equitable be *uniform* throughout the district for the same type, class and amount of use, products or services...” except as otherwise permitted by [N.J. Rev. Stat. § 40:14A-8.2](#).

The abovementioned exception allows municipal and county authorities to establish reduced rates or total abatements for senior and/or disabled citizens meeting certain income requirements.<sup>246</sup> Additionally, [N.J. Rev. Stat. § 40:14A-8.3](#) requires county, regional, and municipal wastewater authorities to establish a 50 percent reduction in connection or tapping fees for public housing authorities and non-profit organizations that construct affordable housing pursuant to Section 8 rules.

Therefore, government-owned water and wastewater utilities that do not operate under home rule charters may be limited to only providing CAPs to elderly and disabled customers who meet certain income requirements. Alternatively, if local governments operating under municipal charters seek to implement low-income CAPs funded by rate revenues, such programs could be subject to challenges under the “uniformity” clause or under any limitations found in individual charters. In addition, as of October 2016, the New Jersey state legislature is considering a bill that would expand the state’s Lifeline Credit Program and the Ten-ants’ Lifeline Assistance Program to provide assistance for water bills. Under existing law, these programs provide a \$225 benefit only on gas and electric utility bills to eligible customers who are participating in state or federal assistance programs.

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<sup>246</sup> N.J. Rev. Stat. § 40:14A-8.2.