Maryland

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

Commission-Regulated Utilities

The Maryland Public Service Commission (MPSC) regulates how rates are set and approves rate modifications for private water and wastewater companies.\(^{180}\) The MPSC does not regulate government-owned utilities. Md. Code Ann., Pub. Util. § 4-201 mandates that a commission-regulated utility “shall charge just and reasonable rates for the regulated services that it renders.” Md. Code Ann., Pub. Util. § 4-101 defines “just and reasonable rates” as rates that provide a “reasonable return on the fair value of the public service.” However, Md. Code Ann., Pub. Util. § 4-503 expressly prohibits rate discrimination for commission-regulated utilities, stating that “for any service rendered or commodity furnished,” such a utility “may not directly or indirectly, by any means, including special rates, rebates, drawbacks, or refunds... charge, demand, or receive from a person compensation that is greater or less than from any other person under substantially similar circumstances.” MSPC has interpreted this language to mean that commission-regulated utilities cannot provide special rates or benefits to low-income customers if they are subsidized by other customers.\(^{181}\)

Thus, low-income customer assistance programs (CAPs) funded by rate revenues currently appear to be prohibited for commission-regulated utilities because of how MPSC interprets the statutory prohibitions listed above.

Noncommission-Regulated Utilities

Government-owned water and wastewater utilities, including general- and special-purpose government utilities, are not regulated by the MPSC and appear to have discretion regarding rate structures and rate setting. All municipalities in the state are incorporated by charters, which provide limited local authority subject to state statutes. With respect to municipal services, Md. Code Ann., Local Gov’t § 5-205 requires only that municipalities establish and collect fees and charges that are “reasonable.” Most counties in the state, as well as the city of Baltimore\(^{182}\) operate under home rule charter or code and, as such, have the authority to implement low-income CAPs subject to any limitations that may be present in individual charters.\(^{183}\)

Although most government-owned utilities seem to have broad authority over rates and charges, a notable exception is the Washington Suburban Sanitary Commission (WSSC), which is one of the largest water and wastewater utilities serving the Washington, D.C.

\(^{181}\) Pers. comm. with Annette B. Garofalo, Assistant Staff Council, Maryland Public Service Commission (October 11, 2016).

\(^{182}\) The city of Baltimore is an independent political and geographic subdivision. It is an incorporated city with both a city charter and a home rule charter, giving Baltimore a broad political power base.

\(^{183}\) The city of Baltimore currently offers customer assistance programs supported by revenue derived from other customers.
region. WSSC is exempt from home rule legislation and, therefore, subject to greater oversight by the State of Maryland. In fact, the Maryland General Assembly recently enacted legislation that enables, and actually mandates, WSSC to use revenues from utility tap fees to fund a bill discount program for eligible low-income customers.