New York

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

**Commission-Regulated Utilities**

The New York Public Service Commission (NYPSC) regulates the rates and services of private water companies. Pursuant to N.Y. Pub. Serv. Law § 89-c, NYPSC does not regulate government-owned utilities, including utilities owned by cities, towns, and water districts. NYPSC also does not have jurisdiction over county-owned utilities or water and wastewater authorities established under N.Y. Pub. Auth. Law § 1014.

With respect to NYPSC-regulated utilities, N.Y. Pub. Serv. Law § 89-b(1) states that all charges made or demanded "shall be just and reasonable and not more than allowed by law or by order of the commission." The law goes on to state that no commission-regulated utility shall charge or receive\(^ {256} \) a greater or less compensation for water than it receives "from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions."\(^ {257} \)

Finally, N.Y. Pub. Serv. Law § 89-b(3) maintains that no commission-regulated utility "shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever."

N.Y. Pub. Serv. Law § 37(1) requires large private water companies regulated by NYPSC\(^ {258} \) and government-owned utilities to offer residential customers a deferred payment plan prior to disconnecting service.\(^ {259} \) The statute goes on to define the terms of such an agreement, which include a down payment on the amount past due, as well as full payment of arrears over time.

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256. By any special rate, rebate, drawback or other device.
257. N.Y. Pub. Serv. Law § 89-b(2).
258. N.Y. Pub. Serv. Law § 50 defines "large private water utilities" as waterworks corporations with annual gross revenues in excess of $250,000 per year.
259. Specifically, the law states that "no utility corporation or municipality shall terminate or refuse to take all actions within such corporation or municipality's control . . . to restore service to a residential customer, because of arrears owed the utility corporation or municipality, unless the utility or municipality offers such customer a deferred payment agreement for such arrears." N.Y. Pub. Serv. Law § 37(1).

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While the statutes referenced above would seem to limit the ability of commission-regulated utilities to provide low-income customer assistance programs (CAPs) funded by rate revenues, in January 2017 NYPSC approved the development of a low-income rebate program by SUEZ Water, an investor-owned utility operating in New York. NYPSC’s “Order Establishing Rate Plan” for SUEZ Water specifically states that the program can be funded by ratepayer revenues.\(^ {260} \) SUEZ Water has 6 months from the effective date of the Order (January 24, 2017) to design the program.

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Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities

NYPSC does not regulate government-owned utilities, including water and wastewater authorities, and municipal- or county-owned utilities. N.Y. Pub. Auth. Law art. 5 establishes 24 water and/or wastewater authorities throughout the state (such as, Buffalo County Water Authority, New York City Water Finance Authority, and Albany Water Authority). Together, these entities serve the majority of New York state residents. In general, individual statutes provide broad authority for these entities to fix rates and collect charges that provide revenues sufficient to pay all expenses. However, in most cases, the law does not expressly authorize or prohibit low-income assistance programs and/or cross-subsidization.

In New York, all incorporated cities in the state operate pursuant to a home rule charter. Therefore, government-owned utilities may have some leeway to establish low-income CAPs funded by ratepayer revenues, subject to any limitations found in individual charts.

The NYC Department of Environmental Protection (DEP), which is governed by the New York City Water Board pursuant to N.Y. Pub. Auth. Law art. 5, offers several low-income assistance programs funded by customer revenues, including a Home Water Assistance Program (HWAP), which provides a bill discount via an annual credit of $115.89 to senior and disabled homeowners who make less than $37,500 per year.