Pennsylvania

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

Commission-Regulated Utilities

The Pennsylvania Public Utility Commission (Pennsylvania PUC) has jurisdiction over rate setting for all privately owned and operated water and wastewater companies. The Pennsylvania PUC does not regulate government-owned water and wastewater utilities.

For such companies, 66 PA Cons. Stat. § 1301, requires that every rate made, demanded, or received shall be “just and reasonable.” Additionally, 66 Pa. Cons. Stat. § 1304 prohibits commission-regulated companies from “making or granting any unreasonable preference or advantage to any person, or from subjecting any person to unreasonable prejudice or disadvantage.” The same provision further states that no commission-regulated company shall establish or maintain any “unreasonable difference as to rates between classes of service.”

The courts have interpreted the aforementioned reasonableness requirement to mean “as long as classification of customer[s] is reasonable or is founded upon some reasonable basis, a utility may charge different rates for different classes of customers.” In City of Pittsburgh v. Pennsylvania Public Utility Commission, the court held that to prove unreasonable discrimination, the city must show that certain customers “are paying an unreasonably high rate thereby giving an advantage to other residential customers who are paying unreasonably low rates.” In that case, the difference between the commission’s approved rates and the city’s proposed rates resulted in a $1.84 per year difference for an average residential customer, which the commission found to be de minimis and, therefore, not discrimination. It is, thus, conceivable that commission-regulated water or wastewater companies could attempt customer assistance programs (CAPs) that rely on rate revenues and which even utilize income-based classifications.

Estimated Long-Term Water and Wastewater Infrastructure Needs:

<table>
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<tr>
<th>State Population (2016):</th>
<th>12,784,227</th>
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<tbody>
<tr>
<td>Poverty Rate (2015):</td>
<td>13.5%</td>
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<tr>
<td>Typical Annual Household Water and Wastewater Expenditures (2015):</td>
<td>$826</td>
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<td>Pennsylvania has 1,960 community water systems (CWS), of which 1,130 are privately owned and 1,813 serve populations of 10,000 or fewer people.</td>
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<td>Pennsylvania has 846 publicly owned treatment works facilities (POTWs), of which 663 treat 1 MGD or less. 3,206,567 people are served by privately owned CWS; 7,835,576 are served by government-owned CWS; and 11,369,523 are served by POTWs.</td>
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<td>Estimated Long-Term Water and Wastewater Infrastructure Needs:</td>
<td>$21.2 billion</td>
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304. 66 Pa. Cons. Stat. Ann. § 1304. The prohibition, however, does not apply to rates charged for service rendered outside of a municipality’s corporate limits, so long as such differing rates are reasonable.
307. Id. at 1247-48.
Noncommission-Regulated Utilities

With respect to government-owned utilities not regulated by the Pennsylvania PUC, different types of local government entities in Pennsylvania, most notably, municipal authorities and municipalities, are treated differently for purposes of utility regulation. Municipal authorities have the power to fix, alter, charge, and collect reasonable and uniform rates. Municipalities, on the other hand, generally have no express statutory limitations on rate setting for provision of utility services. Any municipality operating a water or wastewater utility and serving customers outside of its corporate boundaries is subject to regulation by the Pennsylvania PUC. Additionally, if a city or other municipality operates under home rule, and has an individual charter, there could be limiting language that would affect water or wastewater rate setting found in such charter.

As for the ability of municipal authorities to implement CAPs relying on rate revenues, the statutes require only reasonable rates, and a uniform rate structure. Therefore, any rate funded CAP could be subject to reasonableness or uniformity challenges.

Municipalities attempting to implement low-income CAPs funded by rate revenues without home rule charters would be subject to any limitations in the relevant state codes, depending on whether they are a third class city, borough, or township. On the other hand, municipalities operating under home rule charters have freedom to determine their own rates, and would likely be able to implement rate-funded CAPs, if no prohibitions exist in their individual charters.

312. Most municipalities in Pennsylvania that operate their own utilities (i.e., those that do not use a municipal authority) are not home rule municipalities. Although the state codes for such municipalities do not generally contain rate-setting language or restrictions, Pennsylvania courts have generally held municipal rate making to the same general standards as public utility rate setting (reasonable, just, not unduly discriminatory).
313. Only a few cities and counties have adopted home rule and, therefore, operate under their own charter. Home rule is expensive, politically sensitive, and requires a level of professionalism and expertise that is often lacking in smaller municipalities.