

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.³⁰³ 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.”³⁰⁴

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.”³⁰⁵ In *City of Pittsburgh v. Pennsylvania Public Utility Commission*,³⁰⁶ 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.³⁰⁷ It is, thus, conceivable that commission-regulated water or wastewater com-

Commission-regulated utilities



Noncommission-regulated utilities



State Population (2016):	12,784,227
Median Annual Household Income (2015):	\$53,599
Poverty Rate (2015):	13.5%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$826
<p>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.</p> <p>Pennsylvania has 846 publicly owned treatment works facilities (POTWs), of which 663 treat 1 MGD or less.</p> <p>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.</p>	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$21.2 billion

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.

panies could attempt customer assistance programs (CAPs) that rely on rate revenues and which even utilize income-based classifications.^{308, 309}

308. The electric and gas industries have been implementing customer assistance programs funded by rate revenues for more than 20 years, beginning back in 1990 with Columbia Gas Company’s pilot energy assistance program. Since that time, the Pennsylvania PUC has interpreted classification of gas and electric rates based on income to be “reasonable” and in the best interest of all ratepayers, not just program participants. Further, the legislature, in creating legislation related to the restructuring of the electric utility industry, included in **66 Pa. Cons. Stat. § 2802(11)** that “[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.” The progress of the development of customer assistance programs in the energy sector is discussed in more detail in a subsequent section of this document.

309. In relation to arrearage/debt forgiveness programs specifically, **66 Pa. Cons. Stat. Ann. § 1405** authorizes the Pennsylvania PUC to establish payment arrangements between a public utility and its customers and applicants within certain limits, and it provides statutory limits on the length of payments, number of payments, and extensions of payments with which a utility would have to comply.

303. **66 Pa. Cons. Stat. § 501(b)**. See also **66 Pa. Cons. Stat. § 102**.

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.

305. *Peoples Natural Gas Co. v. Pennsylvania Pub. Util. Comm’n*, 409 A.2d 446, 455 (Pa. Commw. Ct. 1979).

306. *City of Pittsburgh v. Pennsylvania Public Utility Comm’n*, 526 A.2d 1243, 1247 (Pa. Commw. Ct. 1987).

307. *Id.* at 1247-48.

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.³¹⁰ Municipalities, on the other hand, generally have no express statutory limitations on rate setting for provision of utility services.³¹¹ 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.³¹² 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.³¹³

310. 53 Pa. Cons. Stat. § 5607(d)(9).

311. There are six forms of municipalities or local governments in Pennsylvania: counties, cities, boroughs, towns, townships, and school districts. See 53 Pa. Cons. Stat. Ann. § 5602.

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.