

**TESTIMONY OF
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NATURAL RESOURCES DEFENSE COUNCIL**

**BEFORE THE
NEW JERSEY STATE SENATE ECONOMIC GROWTH COMMITTEE**

**IN SUPPORT OF S. 276
(A BILL TO PERMIT CERTAIN LOCAL AUTHORITIES AND UTILITIES TO
CHARGE REDUCED SEWERAGE SERVICE RATES FOR LOW-INCOME PERSONS)**

APRIL 5, 2018

Good morning Chairwoman Cruz-Perez and members of the Committee. I am Lawrence Levine, Director of Urban Water Infrastructure and Senior Attorney at the Natural Resources Defense Council (NRDC). Thank you for the opportunity to testify today, on behalf of NRDC's over 76,000 members and online activists in New Jersey, in support of S. 276, which would explicitly permit wastewater utilities to provide reduced rates to low-income customers.

In my testimony, I would also like to call the Committee's attention to some additional steps that the Legislature should take to expand upon this bill, to help ensure that everyone in New Jersey has affordable access to clean, safe, water and sewer service that protects their health and environment.

In sum, NRDC recommends that the Legislature:

- Adopt S. 276, with amendments (or complementary legislation) to also authorize reduced rates on *water* bills for low-income customers, ensure that the 2% "cap" on rate increases by sewerage authorities does not inhibit those utilities from adopting low-income water and sewer discount programs, and make one technical correction to the bill;
- Move beyond merely authorizing utilities to create their own programs, by creating a statewide water affordability program, with the scale necessary to ensure all people across New Jersey can afford water and sewer service to meet their basic needs;
- Create new or improved mechanisms to ensure that water and sewer utilities' rate-setting, bill collection, and related activities consistently apply principles of transparency, equity, and consumer protection;
- Address the full suite of recommendations offered by the Joint Legislative Task Force on Water Infrastructure, which provide a holistic approach to improve New Jersey's water infrastructure in ways that are cost-effective and equitable for all residents.

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NRDC is an environmental advocacy organization with, and more than 2 million nationwide. NRDC works to safeguard the earth – its people, its plants and animals, and the natural systems on which all life depends. We combine the power of our members and online activists with the expertise of some 500

scientists, lawyers, and policy advocates across the globe to ensure the rights of all people to the air, the water, and the wild.

I represent NRDC on the Steering Committee of the Jersey Water Works collaborative, which consists of over 400 members, representing the public, private and non-profit sectors, working together transform New Jersey's inadequate water infrastructure through sustainable, cost-effective solutions that provide communities with clean water; healthier, safer neighborhoods; local jobs; flood and climate resilience; and economic growth. NRDC's team of water experts at NRDC works on these same issues in states around the country and at the federal policy level.

Earlier this year, New Jersey's Joint Legislative Task Force on Drinking Water Infrastructure issued its report and recommendations, which embraced many of the ideas offered by NRDC and other Jersey Water Works members. The Joint Legislative Task Force's report underscored the need for significant new investment in New Jersey's water, wastewater, and stormwater infrastructure to protect human health, economic well-being, and the environment. As Jersey Water Works also emphasized in a recent report of its own, this is an investment the state can't afford not to make.¹

The Joint Legislative Task Force recognized that a combination of federal, state, and local funding is needed and that, as communities in New Jersey inevitably raise their water and sewer rates to fund the local share of these investments, the state must act to ensure that water and sewer service remain affordable for all. Water infrastructure improvements are vital to the health of communities, but it is just as vital to ensure that funding mechanisms are fair and equitable.

To address this concern, the Joint Legislative Task Force recommended:

- Prioritizing economically distressed communities as recipients of state water infrastructure funding, to help keep the local share of infrastructure costs affordable.
- Enacting legislation establishing a statewide, low-income customer assistance program for water and sewer bills, similar to the State's household energy assistance program.
- Exploring legislation to authorize local, rate-funded customer assistance programs.

Further, many of the Task Force's other recommendations—such as improving asset management and limiting diversion of utility revenues to general municipal budgets—would help control costs for all water and sewer ratepayers.

S. 276, which the Committee is considering today, would help to address the third recommendation above: authorizing local, rate-funded customer assistance programs. Although further action is needed fully address that recommendation – and the Task Force's broader suite of “affordability” recommendations – this bill is a step in the right direction, and NRDC supports its passage.

New Policies and Programs are Needed to Ensure that Water and Sewer Service Remains Affordable for Low-Income Households, Even as Utilities Generate Additional Local Revenue to Meet Clean Water Needs

We do not want to have in this state a two-tiered system where the wealthy get water that is clean and safe for their families, and the less well-to-do get second-class water, wastewater, and stormwater

¹ Jersey Water Works, “Our Water Transformed,” 2017, <http://www.jerseywaterworks.org/our-work/watertransformed/>

systems that pose risks to their health and environment. Rather, we need to create a system that ensures that all communities can afford to upgrade their water infrastructure and that everyone has affordable access to clean, safe, and sufficient water and sanitation for their families.

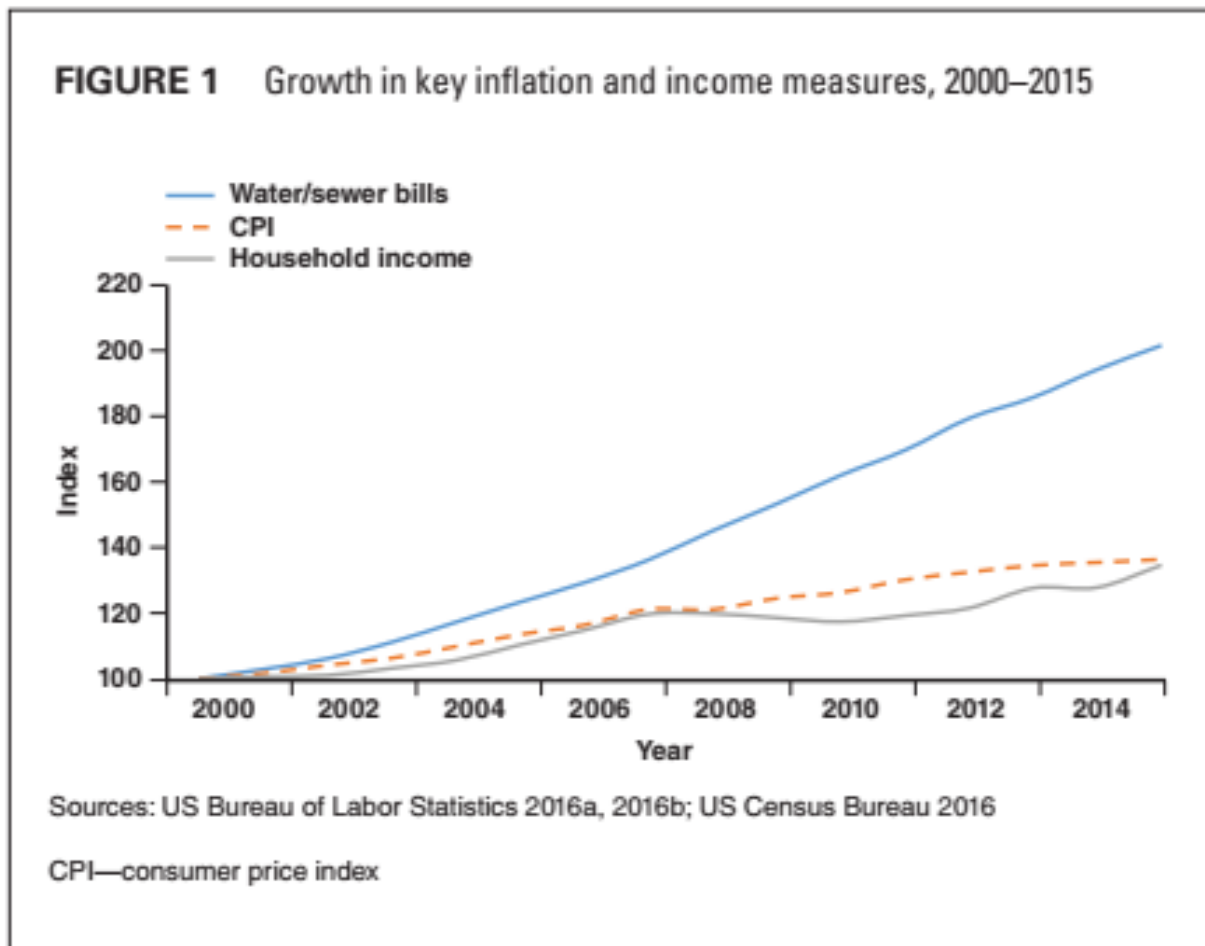
Capital investments in water and wastewater systems require local revenue streams – typically in the form of increased water and sewer rate rates.² When communities believe they are unable to raise rates without imposing undue burdens on those least able to pay, they will often seek to avoid or defer necessary investments. Conversely, when communities raise rates to pay for infrastructure improvements but do not have programs available to mitigate the effects on those least able to pay, low-, moderate-, and fixed-income customers can face unaffordable bills.

To sustainably generate the local rate revenues needed to provide 21st century water infrastructure, New Jersey must ensure that water and sewer service remains affordable for those least able to pay, even when a utility raises its rates.

Water and sewer rates have already been on the rise across the country. Over the last 15 years, increasing capital investment needs (and decreasing federal financial assistance) have caused water and wastewater rates to rise nationally at about twice the rate of both inflation and income growth. (See Figures 1 and 2 below.)

² In some cases, infrastructure investments can yield net savings for a utility by substantially reducing operating costs of outdated system components. However, on the whole, major new investment requires increased local revenues.

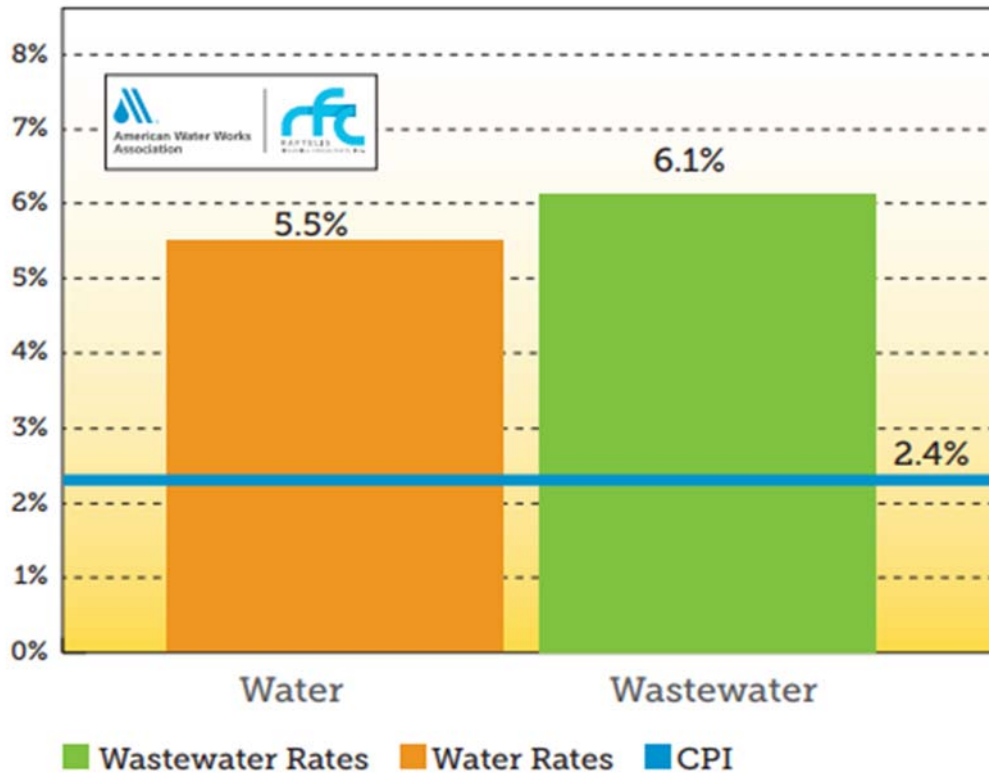
Figure 1. Growth in Water and Sewer Bills, CPI, and Household Income, 2000-2015.³



³ J. Mumm and J, Ciaccia, “Improving the Narrative on Affordability and the Measurements We Need to Take Us There” *Journal - American Water Works Association*, May 2017, <https://www.awwa.org/publications/journal-awwa/abstract/articleid/65274626.aspx>.

Figure 2. The Average Annual % Change in Cost of Drinking Water and Wastewater Charges vs. Consumer Price Index.⁴

Annualized Rate Increases from 2004 to 2014



For more information, see the Water and Wastewater Rates webpage at awwa.org

There is no comparable, state-specific data available for New Jersey. But, as New Jersey reinvests in water infrastructure to protect public health and the environment, water and sewer bills will inevitably rise, making these basic services increasingly expensive – as a share of household income – for many people across the state.

Critically, the consequences of unaffordable water bills are not only financial. Unpaid bills can trigger water shutoffs; according to the Water Research Foundation, low-income households are three times more likely to have their water and/or sewer service disconnected than other households.⁵ Shutoffs, in turn, pose health risks and can lead to loss of housing and even temporary loss of custody of children, as well as property liens that ultimately lead to foreclosure on homes.⁶

⁴ American Water Works Association, “Water and Wastewater Rate Summary Figures,” <https://www.awwa.org/resources-tools/water-and-wastewater-utility-management/water-wastewater-rates.aspx>, last visited 12/3/2017.

⁵ Cromwell, at al., “Best Practices in Customer Payment Assistance Programs,” Water Research Foundation, 2010, <http://www.waterrf.org/publicreportlibrary/4004.pdf>.

⁶ Jones, P., and Moulton, A., “The Invisible Crisis: Water Unaffordability in The United States,” Unitarian Universalist Service Committee, 2016, http://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf.

Nearly all water and wastewater utilities, unlike electric, gas, and other public utilities, are not subject to oversight by the Board of Public Utilities, so most consumers have fewer protections from such consequences when they struggle to pay their water and sewer bills than they do when they cannot afford other utilities. Moreover, while low-income customer assistance programs are well-established for electric and gas customers – using a combination of federal funds (under the Low Income Home Energy Assistance Program block grant) and dedicated state funds (primarily the Universal Service Fund program, which is funded through and overseen by the Board of Public Utilities) – there are no such federally- or state-funded assistance programs for water and sewer customers, and local programs are scarce.

Experience in the energy sector shows that unaffordable bills for low-income households not only harm those particular households, but also adversely affect the financial stability of water and sewer systems as a whole, to the detriment of all ratepayers. Conversely, ensuring affordability not only helps low-income ratepayers – it helps all ratepayers, by improving a utility’s finances. For example, studies in Indiana and Colorado have shown that by offering affordable bill programs, utilities were able to generate increased customer revenues and/or increased “net back” (i.e., customer revenue minus bill collection costs).⁷

Leaders in the water and sewer utility sector are becoming more aware of these issues and beginning to take action. Some water and sewer utilities around the country – though by far a minority – are adopting low-income customer assistance programs. In a 2016 review of nearly 800 water and wastewater utilities,⁸ EPA found that 29 percent of them offered at least one type of low-income assistance program. But 71 percent of the utilities surveyed offered no customer assistance program whatsoever, sidestepping responsibility to provide a basic safety net to ensure that the most vulnerable populations continue to receive an essential service. Moreover, of the customer assistance programs EPA identified, only about half were designed to provide long-term reduction in low-income customers’ bills; those programs used approaches that are commonplace among energy utilities, such as bill discounts, “lifeline” rates, or water efficiency assistance (to reduce bills by reducing water usage).

In New Jersey, EPA’s nationwide review identified only one water or sewer utility that provides ongoing assistance to low-income customers to reduce their water bills. Under a BPU-approved program funded by rate revenues, New Jersey American Water provides bill discounts and/or waivers of certain fixed charges to eligible customers. However, participation rates in this program have been very modest.⁹

The Legislature Should Authorize Both Sewerage and Water Utilities to Offer Reduced Rates to Low-Income Customers

The Legislature should adopt S. 276, with amendments (or complementary legislation) to authorize reduced rates on *water* bills for low-income customers; ensure that ensure that the 2% “cap” on rate

⁷ Colton, Roger D. “Water Bill Affordability for the City of Philadelphia,” 2015, pp. 4-7.

<http://www.povertylaw.org/files/docs/Colton%20City%20Council%20comments--April%208%202015--Final.pdf>.

⁸ EPA, Office of Wastewater Management, *Drinking Water and Wastewater Utility Customer Assistance Programs* (April 2016), available online at https://www.epa.gov/sites/production/files/2016-04/documents/dw-ww_utilities_cap_combined_508.pdf.

⁹ New Jersey American Water, “Low Income Program,” <https://amwater.com/njaw/customer-service-billing/low-income-program>.

increases by sewerage authorities does not inhibit those utilities from adopting low-income water and sewer discount programs; and make one technical correction to the bill.

Currently, publicly-owned water and sewer utilities are expressly allowed by statute to offer reduced rates to seniors, the disabled, and certain military service members on deployment. No other type of discount is expressly mentioned in state law. This may be taken to suggest that publicly-owned utilities cannot provide other discounts, such as a low-income customer discount. While this legal issue has never been tested, creating express statutory authorization for low-income discounts, which S. 276 would do for publicly-owned sewer utilities, is clearly a step forward, as it removes any doubt on the issue.

NRDC recommends three further improvements to the bill.

First, the Legislature should also expressly permit publicly-owned water utilities to provide reduced rates for low-income customers. While S. 276, as introduced, applies only to wastewater utilities, there is no reason not to extend the same opportunity to water utilities. Notably, current law allows for such reduced rates by privately-owned water (and wastewater) utilities, which are regulated by the Board of Public Utilities.¹⁰ There is no reason that state law should not permit all publicly-owned water and sewer utilities to do the same thing.

Second, the bill should be drafted to avoid unintended consequences resulting from P.L.2017, c.290, enacted in January 2018, which instituted a 2% cap on annual growth of the amount billed to each customer of a sewerage authority.¹¹ Adopting a low-income discount, as envisioned by S. 276, may require, at least in the near term, spreading the cost of that discount across the utility's entire rate base.¹² When that cost is spread across a large number of customers – who can afford to pay it – the cost per customer will tend to be small. However, it appears that this cost would count towards the 2% cap on annual growth in a customer's bill. This puts sewerage authorities in the position of trading off their interest in adopting low-income discounts against their interest in generating revenue for other necessary expenses. In other words, the 2% cap creates a disincentive to adopting the low-income discounts that S. 276 authorizes and seeks to promote. To avoid this unintended consequence, the Committee should amend the bill to exempt from the 2% “cap” any rate increases associated with adoption of a low-income discount.

Third, one technical amendment to the bill appears to be needed. Section 3.a of the bill references “C.40:26A-10.1” of the existing state code. This should, instead, be a reference to “C.40A:26A-10.1”.

¹⁰ BPU must approve rates for privately-owned utilities and must ensure they are “just” and “reasonable.” N.J.S.A. § 48:3-1. BPU has exercised this authority to approve low-income discounts for one major water utility, New Jersey American Water, with the costs of those discounts being spread across the customer base as a whole.

¹¹ N.J.S.A. 40:14A-4.2.a(1)(a) (“The percentage of growth in the fee-funded appropriations in the annual budget of a regional sewerage authority shall not exceed two percent per year; and the amount billed to customers of the authority, or the amount billed to a local unit for its proportional share of the authority's expenses, as the case may be, shall not exceed that amount billed in the previous budget year to each customer or local unit, as the case may be, by more than two percent for a similar amount of use or service of the sewerage system.”).

¹² As discussed above, low-income discounts can actually result in a net increase in revenue for the utility, which could avoid the need to increase rates of other customers to “pay for” the discount. However, it seems likely that, at least when first adopting a new low-income discount, utilities may budget for some “cost” of the discount program that must be “recovered” through other rate revenues.

The Legislature Should Create a Statewide Water Affordability Program

Authorizing utilities to create their own low-income assistance programs, if they so choose, is a step in the right direction. However, there is a need to move well beyond this, by creating a statewide water affordability program, with the scale necessary to ensure all people across New Jersey can afford water and sewer service to meet their basic needs.

There are many ways in which authorizing utility-level programs is not, by itself, sufficient to ensure low-income customers can afford their water and sewer bills. For example:

- S. 276 authorizes, but does not require, utilities to adopt reduced rates for low-income customers. And it allows each utility to decide, on whatever basis it sees fit, how to define eligibility thresholds for the reduced rates, as well as how large a discount to offer eligible customers. Therefore, where rate reductions are offered, they may fall well short of meeting the need for low-income customer assistance. And many places surely will not choose to offer a rate reduction at all.
- The bill provides for reduction in sewer charges, but in some municipalities the costs of sewer service are embedded within the property tax, without any separate “sewer service” line item charged to the property owner. In these places, it is not clear that reduced sewer rates could be offered to low-income households, as a practical matter.
- Utilities that serve a population with a very high percentage of low-income customers may lack a sufficient rate base to be able to cover the costs of a low-income discount for all eligible customers.
- S. 276 applies only to one- and two-family dwellings. But a large percentage of New Jersey households live in multi-family buildings. And the state’s low-income residents, whose household budgets are most sensitive to utility expenses, are disproportionately represented among that group.
 - Addressing water and sewer affordability for residents of multi-family buildings – most of whom are renters – is especially challenging. These households typically are not “customers” of a water or sewer utility, but many of them indirectly bear the costs water and sewer service. Multi-family buildings are rarely sub-metered for water. In such buildings, the landlord is the water and sewer customer that receives and pays the bill. Therefore, water and sewer charges affect the residents’ cost-of-living only indirectly, if at all, as part of their rent. It is challenging – but important – to determine when these indirect water and sewer expenses impose an undue burden on low-income renters.¹³ It is equally challenging – and important – to devise ways to ameliorate that burden, but this cannot be achieved by providing a reduced water or sewer rate to low-income “customers” because renters are not customers of the utility.¹⁴

For reasons such as these, New Jersey must develop a broader approach to water affordability, which is not limited exclusively to utility-scale programs. There is strong political support for developing a broader approach. NRDC recently joined representatives from 34 public-sector, private-sector and

¹³ Some of these renters are likely sheltered from bearing the full cost of water and sewer service by various rent regulations that apply to public or subsidized affordable housing. Others are not, and their landlords can be expected to “pass on” their water and sewer costs to the extent the unregulated rental market will bear.

¹⁴ A recent report by the Water Research Foundation offered some potential approaches. Water Research Foundation, “Customer Assistance Programs for Multi-Family Residential and Other Hard to Reach Customers,” 2017, <http://www.waterrf.org/Pages/Projects.aspx?PID=4557>.

nonprofit organizations to urge Governor Murphy to embrace a comprehensive water agenda, which includes a call to “**launch a public process to recommend statewide policies and programs to ensure water and sewer services are affordable to all ratepayers.**”¹⁵ Supporters of this platform include leaders in the utility, environmental, community development, agriculture, municipal, smart growth, industry, engineering, resilience, and planning sectors.

The Joint Legislative Task Force on Drinking Water Infrastructure made a specific recommendation to enact legislation establishing a statewide, low-income customer assistance program for water and sewer bills, similar to the State’s household energy assistance program.

The Legislature should closely examine that recommendation and work to design a dedicated funding mechanism for such a program. This effort could be aided by creating a formal study process, bringing together key stakeholders with relevant state agency leadership to analyze alternatives and develop specific recommendations.

No state currently has a statewide water and sewer affordability program, but several state legislatures are moving in this direction. California passed a law several years ago requiring the development of a program – or recommendations for legislation needed to establish a program.¹⁶ Bills are pending in Michigan¹⁷ and Illinois¹⁸ that would direct creation of programs similar to low-income energy assistance programs, with details to be worked out by state agencies and/or stakeholders. New Jersey has an opportunity to be a national leader on this issue, and the Legislature can lay out the parameters for developing a program that works for this state.

Jersey Water Works members and committees are currently working on two studies that will aid in this effort: a report assessing water and sewer affordability based on a comparison of utility rates with income data; and a review of legal and policy options to facilitate creation of low-income customer assistance programs. We will keep the Committee and the Legislature up-to-date as these studies are completed.

The Legislature Should Develop Mechanisms to Promote Equity, Transparency, and Consumer Protection in Water and Sewer Utilities’ Rate-Setting, Bill Collection, and Related Activities

Reduced rates for low-income customers and other forms of “assistance” directed towards individual low-income customers are one piece of a larger puzzle.

Because the vast majority of water and wastewater utilities in New Jersey are not subject to BPU jurisdiction, there is little or no state oversight of rate-setting processes, rate structures, or consumer protections. Accordingly, local practices vary widely and are highly influenced by local political considerations, which may or may not be consistent with best practices. (This is true in most states. Publicly-owned water and sewer utilities are rarely regulated by state utility commissions.)

¹⁵ <http://www.njfuture.org/news/news-releases/clean-water-agenda/>

¹⁶ Calif. Water Code section 189.5. See California State Water Resources Control Board, “Water Conservation Portal - Low-Income Water Rate Assistance Program,”

https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/.

¹⁷ Mich. House of Representatives, HB 4394 (2017), <http://legislature.mi.gov/doc.aspx?2017-HB-4394>.

¹⁸ Ill. Gen. Assembly, HB 5044 (2018),

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=5044&GAID=14&DocTypeID=HB&LegId=110517&SessionID=91&GA=100>.

Against this backdrop, there is much that the state can do to improve affordable access to water and sewer services by improving transparency in decision-making, promoting equitable rate designs, and establishing basic consumer protections.

One of the most important ways of improving water affordability is to promote more equitable rate structures. Low-income discounts and other “assistance” typically attempt to mitigate a high bill that a customer would otherwise be responsible to pay. But the rate *structure*, in combination with the total revenue needs of the system, determines how large the underlying bill is, for a given level of usage.

Rate structures can vary widely, and some are more equitable than others, from the perspective of affordability. The state should promote the use of utility rate structures that raise revenue with greater equity among users, such as “lifeline,” tiered, and/or seasonal rates for water and sewer service; volume-based (rather than flat rate) pricing for wastewater; and stormwater charges based on the burden a customer places on the public storm sewer system. The BPU can use its authority to drive the use of these equitable rate structures by regulated, investor-owned water and wastewater utilities – and the Legislature can direct the BPU to do so. However, the vast majority of water and wastewater utilities (which serve about 60% of water customers and all but a small number of wastewater customers) are publicly-owned and not subject to rate regulation by BPU. The state should find ways to promote and provide incentives to use these equitable rate structures, which help communities generate revenues needed for water infrastructure investment without unduly burdening low-income households.

One immediate next step the Legislature should take in this direction is to pass legislation, such as S. 1073, authorizing creation of local or regional stormwater utilities that can recover costs for public stormwater infrastructure through fees based on the amount of impervious area on a customer’s property.

Experts and advocates in other states have compiled other state policy recommendations on rate-setting and related matters, geared toward promoting affordability, to which New Jersey should also give serious consideration. An advisory panel convened in Michigan, to address the water crisis in Flint, developed a very strong set of recommended state policies for “improving water ratemaking and affordability,” which are equally applicable to any state.¹⁹ The recommendations address issues such as promoting equitable rate structures; ensuring transparency and accountability in rate-setting, accounting, finance, and planning; providing water efficiency assistance targeted at low-income customers; establishing statewide water disconnection rules with appropriate consumer and public health protections.

Another strong set of state policy recommendations on water affordability was prepared by a leading national expert on water affordability, on behalf of the Unitarian Universalist Service Committee and submitted to the State of California for consideration.²⁰ These recommendations, similarly, address such

¹⁹ Flint Water Interagency Coordinating Committee, “Water Rates Subcommittee Recommendations for Improving Water Ratemaking and Affordability in Michigan, 2017, http://www.michigan.gov/documents/flintwater/FWICC_Water_Rates_Subcommittee_Recommendations_for_Water_Affordability_072117_580277_7.pdf.

²⁰ Colton, R., State Legislative Steps to Implement the Human Right to Water in California, Prepared for Unitarian Universalist Service Committee, March 2015, <http://www.detroitmindsdying.org/wp-content/uploads/2015/11/2015-colton-cali.pdf>.

topics as transparency in rate-setting; equitable rate structures; consumer protections for customers in arrears, including rules on disconnections; and others.

The Legislature Should Enact the Comprehensive Recommendations of the Joint Legislative Task Force on Drinking Water Infrastructure

Finally, the Legislature should address the full suite of recommendations offered by the Joint Legislative Task Force on Water Infrastructure, which provide a holistic approach to improve New Jersey’s water infrastructure in ways that are cost-effective and equitable for all residents.

Two aspects of these recommendations are especially important for affordability: providing new money to help communities in need, and promoting strategies that help all utilities reduce costs for all customers. Specific examples include:

- *Increasing state funding for water infrastructure, with an emphasis on grants (rather than loans) and a priority for disadvantaged communities:* The state should make a major, long-term commitment to funding necessary water infrastructure investments, including a new water infrastructure grant program. (New York, for example, last year adopted a five-year, \$2.5 billion water infrastructure grant program.) This program should emphasize aid to communities with low median household incomes, as well as communities with high income inequality and large numbers of low-income households. In addition, the state should continue its efforts to help small and disadvantaged communities more easily access existing grant and loan programs.
- *Increase utilities’ use of asset management, green infrastructure, and water efficiency strategies that reduce costs for all customers:* Sound asset management practices hold costs down for everyone in the long run, since preventive maintenance and repair on a regular cycle is far cheaper than reacting in emergency mode when something breaks or greatly exceeds its useful life, and water lost from leaking water mains is a financial drain on ratepayers. Likewise, maximizing the use of cost-effective water efficiency and green infrastructure strategies, rather than relying exclusively on costly “gray” infrastructure investments to meet water supply and water quality needs, helps to mitigate costs for all customers. The Joint Legislative Task Force included strong recommendations on these issues.

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Thank you very much for the opportunity to testify today. NRDC looks forward to working with the Committee and the Legislature to help ensure that everyone in New Jersey has affordable access to safe, clean water and sanitation.