

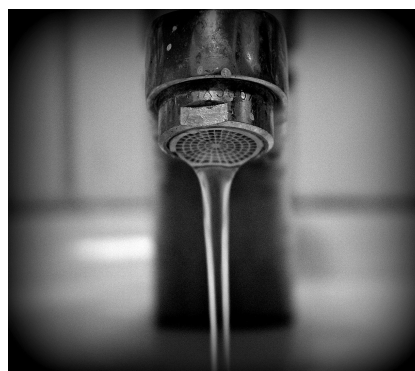
CLEARINGHOUSE COMMUNITY

FOR CONTRIBUTORS PRACTICE RESOURCES CONTACT US POVERTYLAW.ORG SEARCH

Uncharted Waters: The Emergence of Low-Income Water Affordability in Philadelphia

Robert W. Ballenger & Thu B. Tran

Philadelphia's city council passed an ordinance on November 19, 2015, to establish a new income-based water rate affordability program for low-income Philadelphians. Mayor Michael Nutter signed the ordinance on December 1, 2015. The law marks the beginning of a fundamental shift in how the City of Philadelphia will assist low-income families in maintaining life-essential water service.



Problems with the existing Philadelphia water assistance program have been documented over the years, with stories such as these:

- [Barbara testified \(PDF\)](#) in 2008 at a water rate public-input hearing that she was a low-income customer whose property was encumbered by unpaid bills from a prior owner. She applied for the existing "water revenue assistance program" twice and was denied twice despite having complete applications. Her water service was shut off while her second application was pending. When she went to the Water Revenue Bureau to ask for her denial to be reviewed, she was told that she could not talk to a supervisor and that applications were shredded after being denied.
- Joseph testified in 2012 at a water rate public-input hearing that he applied for the water revenue assistance program in August but was denied in September because he had submitted a Supplemental Security Income statement that was from the prior year. He testified that his disability had not changed, and there was no cost of living increase; the information he supplied showed his actual income. He appealed but was not scheduled to have a hearing for eight months. During the time waiting for his hearing, he received three water shut off notices, each time demanding

payment. He was informed on the date of his hearing that the hearing was cancelled because the city had approved his application two days before but had not yet given him any notice.

Barbara's and Joseph's stories are typical of the circumstances our low-income clients face in seeking assistance to maintain affordable water service in Philadelphia. While we at Community Legal Services of Philadelphia have advocated for many water revenue assistance program approvals for individuals and achieved limited success with systemic improvements, the overarching problems of inaccessibility and unaffordability persist. The city's new ordinance mandating a new income-based water rate affordability program stands in full recognition of longstanding problems with the current mode of water-bill assistance.

The Role of the Community Legal Services Energy Unit

The Community Legal Services Energy Unit is dedicated to ensuring that low-income Philadelphians are able to maintain affordable gas, electric, and water utility service. We represent individuals and groups in local and state administrative proceedings and in state and federal court on utility issues affecting low-income customers. We also serve as Public Advocate, representing all residential customers, in local oversight of our municipally owned gas utility and in Philadelphia water ratemaking proceedings. We actively participate in legislative and policy advocacy and work with lawmakers to improve our clients' access to affordable, life-essential utility service. Community Legal Services attorneys have long served as resources for constituent-services personnel in local elected offices and had previously discussed access to affordable water service with Councilwoman Maria Quiñones Sánchez, who spearheaded the campaign for an income-based water rate affordability program.

We serve Philadelphia's residential water customers in two primary contexts. First, we represent individual families in disputes over water shut offs, restorations, access to payment agreements, and water debt foreclosure cases. Through our day-to-day individual representation, we help our clients overcome the significant obstacles our clients face in accessing payment agreements or other assistance to maintain water service and, ultimately, to remain safely in their homes. Most of our clients are impoverished people of color. The threat or actual loss of water service in Philadelphia can have catastrophic social and legal consequences such as imminent health, safety, and sanitation risks; potential loss of custody of minor children; actual and constructive eviction; and the threat of homelessness. Many of our clients face water debts tied to their homes that date back over a period of years, sometimes decades, and amount to many thousands of dollars they cannot repay.

“The law marks the beginning of a fundamental shift in how the City of Philadelphia will assist low-income families in maintaining life-essential

water service.”

Second, as the city's Public Advocate in water-rate cases, we represent the interests of all residential customers. In this role, we retain expert utility-rate consultants to evaluate the city's water rate increase proposals. As Public Advocate, we are sought out by customers who have encountered barriers and obstacles to maintaining water service, and we encourage their participation in water rate public input hearings. Proposed water-rate increases must strongly consider the impact of higher charges on those who are most likely to have difficulty affording service, namely, the staggering number of families in [Philadelphia living below the poverty level](#), over a quarter of Philadelphia's 1.6 million population.

One example of our work as Public Advocate came during the review of the city's proposed 2013 rate increase. We hired an expert consultant, Roger Colton, to evaluate the city's existing water revenue assistance program; he concluded that it was “fundamentally broken.” On a low-income customer's balance, the water revenue assistance program offered a “specialized payment agreement” that could extend up to 60 months and, for customers who were home owners, could result in the temporary suspension of collections on arrears and a small grant that reduced the current monthly bill amounts. Colton concluded that access to the water revenue assistance program was unreasonably restricted by administrative barriers that resulted in an average denial rate of over 40 percent. He found that the city's administrative processes discouraged customers from accessing the water revenue assistance program and did not give customers adequate information to pursue disputes of program denials. Furthermore, water revenue assistance program grants have historically been administered frugally—limited in number and amount—resulting in their unavailability for many needy families. Those fortunate enough to receive grants may receive reduced, but nonetheless unaffordable, bills when monthly payments are measured against income. To settle the 2013 rate case, Community Legal Services [agreed \(PDF\)](#) with the city to a reduced rate increase and to enter into mediation to “make substantial improvement in customer service and customer assistance programs” and, among other things, to improve the structure and delivery of the water revenue assistance program.

Mediation Yields to Legislation

The mediation was slated to take two years and address four topics: (1) the improvement of the informal dispute and hearings process; (2) the structure and delivery of the water revenue assistance program; (3) the delivery of deferred payment agreements; and (4) the treatment of tenant arrears and applications for service. The mediation commenced on December 9, 2013, with the first topic—improving due process to resolve customer disputes and appeals. After an extensive facilitated process, the independent mediation team issued its final report on this first topic on November 11, 2014, thus freeing Community Legal Services and the city to turn to the next topic—the structure and delivery of the water revenue assistance

program.

During the mediation of due-process improvements, Councilwoman Sánchez and three cosponsors introduced legislation to relieve significant outstanding water-bill debt and its impact on low-income families. At the time she took office, Councilwoman Sánchez's district (one of ten districts), covering parts of North Philadelphia, represented a disproportionate 20 percent of the city's outstanding water liens. Councilwoman Sánchez was determined to tackle unaffordable water bills, and she introduced [Bill 140607](#) on June 19, 2014.

From the outset, Councilwoman Sánchez's staff sought input from the city administration and Community Legal Services on how Bill 140607 should be amended to reflect the need for affordable monthly water bills. We gladly responded to requests from Councilwoman Sánchez's staff for resources and information on best practices for low-income utility assistance programs and ways to manage utility arrears.

Recognizing that Bill 140607 had the potential to remedy concerns with the city's water revenue assistance program, the city and Community Legal Services agreed that the mediation should skip this subject and move on to tenant arrears and applications for service. Nonetheless, a presumption that applied in the mediation (the need for "substantial improvement" in the water revenue assistance program) carried over to, and became a principal focus of, the negotiations on the language of the bill to take place over the 17 months between introduction and final passage of water-affordability legislation.

The Winding Course to Final Passage

From proposed bill to a signed law, the legislative process took many twists and turns. Multiple hearings, several rounds of negotiations, many phone calls and e-mails, and last-minute efforts occurred before passage of the final income-based water rate affordability program.

Comprehensive Affordability Amendments. Following introduction of Bill 140607, we worked with Councilwoman Sánchez's staff to amend the bill to accomplish the following:

- establish household income levels for program participation;
- determine how affordable bills would be calculated;
- integrate program participation with conservation efforts;
- separate pre-program water debt from current bills;
- establish an arrearage-forgiveness component;
- eliminate administrative barriers to enrollment in current programs;
- ensure access to information for applicants and participants; and
- ensure due process rights attach to adverse affordability-program determinations.

Councilwoman Sánchez amended the bill on April 9, 2015, to touch on each of these issues and to establish the income-based water rate affordability program. The amendments established that bills under this program would be calculated as a percentage of household income ranging from 2 percent to 4 percent of income monthly, consistent with [international standards](#) relating to water and sewer service affordability. The amendments allowed earned forgiveness of pre-program debt over a period of 24 to 36 months, depending on household income level, and guaranteed access to information, due process rights, and streamlined program administration. Before the finance committee of the city council, on April 9, 2015, testimony was provided by [HACE Community Development Corporation](#), [Hunting Park Neighborhood Advisory Committee](#), [Ceiba](#), [Philadelphia Volunteers for the Indigent Program](#), [Community Legal Services of Philadelphia](#), and [Roger Colton](#) (participating via Skype), urging the bill's favorable vote. All supporters viewed this affordability program as breaking down barriers to the needed benefits of affordability programs. Community Legal Services and Colton contended that the new income-based water rate affordability program would use a time-tested and proven means to increase current collections from low-income customers, positively affect revenues by increasing the incidence of timely payment, and reduce collections costs and shut-offs.

In contrast, the commissioners of the Philadelphia water and revenue departments testified that, although they shared the goal of giving needed assistance to help customers continue water service, they had "real concerns" with the bill and asked for it to be held over for further discussion. They voiced concerns about debt forgiveness and proposed that improved low-income assistance programs be coupled with the elimination of the winter moratorium that prevents residential occupied properties from having water shut off from December through March.

Councilwoman Sánchez agreed to hold the bill for a short period and bring it back to the finance committee after further discussion with the water and revenue departments. She insisted that finalizing this legislation was critically important.

Negotiations and Compromise. Following discussion between the city and Community Legal Services, Councilwoman Sánchez made strategic amendments to Bill 140607 and presented it to the finance committee on June 10, 2015. These amendments eliminated the income levels for program participation, the specific methodology for calculating low-income water bills, and the 24-to-36-month period for earning arrearage forgiveness. In their place, the amended Bill 140607 required the city to work with the assistance of the Public Advocate (Community Legal Services) to submit to the city council by October 1, 2015: (1) a rate schedule of monthly low-income bills, differentiated by income level; (2) the terms and conditions of an earned forgiveness program for the income-based water rate affordability program; and (3) a definition of "low-income" for purposes of program participation.

The city council unanimously passed the amended Bill 140607 on June 18, 2015, positioning the city, Community Legal Services, and Councilwoman Sánchez's staff to seek resolution by the mandated October 1, 2015 deadline.

There Are Deadlines, and There Are Deadlines. Through the remainder of June until September 10, 2015, we endeavored to work in collaboration with the water and revenue departments, as envisioned by the city council's passed legislation. During this period, coinciding with the city council's summer recess, the legislation remained in limbo and not yet effective without mayoral signature.

The water and revenue departments used outside consultants to examine peer utility practices. The city presented an outline in August of its proposed new low-income water-rate program. The program featured a tiered discount approach, available to customers with household income up to 150 percent of the federal poverty level, that forgave or suspended collections on a portion of pre-program arrears and targeted monthly bills to approximate 4 percent of household income on average for low-income families. Bills would be calculated to give a fixed percentage discount on current charges, which, when added to a specified payment toward existing arrears, would equal 4 percent of income. However, the city's proposal would calculate the discounts on the basis of three hypothetically average low-income families, each consisting of 2.5 persons and having income at the midpoint of each of three tiers (i.e., 25 percent, 75 percent, and 125 percent of the federal poverty level). The city's proposal included discretion to reduce bills for low-income families above the threshold of 150 percent of the federal poverty level. Debt forgiveness would be available only for interest and penalties and could be earned only upon 24 months of on-time payments. The city's proposal included minimum monthly charges, a provision Community Legal Services did not oppose. Notably, the city's preferred approach was for the water department's own regulations to supply the critical terms of the income-based water rate affordability program and for the city council's legislation to establish very few operative terms.

In our view, this model was imprecise and ignored the household composition and income of each participating family and the city council's mandate in Bill 140607 that bills "[shall be affordable](#)" for low-income families. Moreover, it failed to address arrears adequately and presented continuing risks that customers would face unreasonable barriers to access, due to the reliance upon agency regulations rather than the clear rights and obligations set forth in the bill.

Recognizing the city's efforts and our continuing concerns, Councilwoman Sánchez recalled the legislation on September 10 to allow more time to work toward a shared vision for a new affordability program.

The window for obtaining an approved ordinance was closing. Under a "pocket veto" rule, any legislation passed during the last two sessions of each four-year mayoral term is automatically vetoed unless signed by the mayor. For the income-based water rate affordability program to become a certainty during this four-year term, Bill 140607 would have to be passed by the city council by November 19, 2015, the third-to-last session.

Last Efforts Pay Off. We turned our attention to the problems with the city's

proposal: a program that mistargets affordability by using average income figures to determine percentage discounts on bills and does not give an adequate opportunity for low-income families to earn forgiveness (with an accompanying inadequate incentive for payment). We worked closely with Roger Colton to produce a compelling report demonstrating that not only would the city's percentage-discount model fail to achieve affordability for many participating families, it would have disparate impacts across the city. In certain neighborhoods, where water customers have disproportionately lower income and disproportionately higher water usage, a huge percentage of low-income customers would not receive affordable bills. Colton concluded: "The extent to which the City's proposed program design fails to adequately target assistance is not small; the City's proposed design misses by a lot."

Instead, Colton supported our initial proposal that the program be structured as a percentage-of-income program, 2 percent to 4 percent of monthly income. He conducted an analysis of projected program costs and administrative costs and concluded that both had been overstated by the city and that a percentage-of-income program would cost less and achieve the city council's affordability mandate. He concluded, "A percentage of income program, as recommended by the Public Advocate, will appropriately target affordability assistance, thereby reducing both the 'breadth' of unaffordability and the 'depth' of unaffordability."

Although the city refuted several of Colton's conclusions, his report's impact could not be avoided. Councilwoman Sánchez reintroduced a further amended Bill 140607, which was again passed unanimously by the Philadelphia City Council. Final passage occurred on November 19, the last day upon which the bill could avoid pocket veto. The mayor signed the bill into law on December 1, 2015.

"Utility-affordability advocacy can be and should be incorporated into the work of all legal services offices."

The final bill reserves to the city some flexibility to determine program design. But it is remarkable in its limiting parameters. It maintains that monthly bills under the income-based water rate affordability program "[shall be affordable for low-income households, based on a percentage of the household's income.](#)" It does not set specific targets for affordable percentage-of-income bills, but it dramatically departs from typical assistance programs run by municipal water utilities, e.g., fixed-dollar or flat-percentage discounts. The ordinance establishes three low-income tiers to receive reduced bills, designated as 0 percent to 50 percent of the federal poverty level, 51 percent to 100 percent of the federal poverty level, and 101 percent to 150 percent of the federal poverty level (but permits an equivalent measure such as area median income to be used). It requires the city to offer customers with incomes between 150 percent and 250 percent of the federal poverty level payment agreements that result in total bills—including payments on outstanding arrears—that are affordable. It mandates that earned forgiveness of arrears be made available.

The new ordinance positions low-income and consumer advocates to argue forcefully for program terms that result in more affordable water bills, incentivize payment by offering arrearage forgiveness, and result in positive payment practices and beneficial impacts on revenues. Community Legal Services will continue to work to ensure that Philadelphia's low-income water customers have improved access to real affordable water service under a new income-based water rate affordability program.

Engaging in Utility Advocacy

The rapidly increasing cost of utilities will continue to place our clients at a growing risk of losing life-essential electric, gas (heating), and water services. Utility-affordability advocacy can be and should be incorporated into the work of all legal services offices. Advocates can start laying the groundwork now for utility affordability by integrating the steps below in work with clients and community groups.

-Highlight the impact of unaffordable utility service. Encourage low-income customers and their advocates to attend and testify publicly about proposed utility-rate increases. A rate increase for our low-income clients could require a [tradeoff between life-essential utility service or other essentials such as food or medicine](#). Robust public testimony will lay the groundwork for new programs and improvement of existing programs.

-Monitor implementation of utility low-income programs. Help clients narrate their inability to access low-income assistance programs. These narratives may demonstrate inadequate processes both locally and at state regulatory levels. Inadequate dispute procedures may implicate state and constitutional due process protections.

-Represent community groups in rate cases and other utility proceedings. Public utility commission proceedings often follow procedural rules that resemble civil rules of procedure including discovery, evidentiary hearings, and briefing. Do not be deterred by a new forum. The [National Consumer Law Center](#) offers valuable resources that can guide advocates.

-Build a network of advocates on low-income utility issues. Many service providers and agencies are dealing with the fallout of unaffordable utility service, whether it be the medical office inundated with requests for help to delay shut offs or homeless shelters unable to obtain approval for subsidized housing for clients with utility debt. The voices of doctors, nurses, physician assistants, social workers, and case managers, along with legal services advocates, paint a fuller picture of the dire need for change.

-Work with elected officials to give input on low-income utility issues. Many legal services offices receive referrals of constituents from staff of elected officials because of the beneficial work we do. Engaging in the advocacy work above will lay

the factual foundation to respond to elected officials when their constituents face challenges emblematic of the need for new or improved low-income utility-assistance programs going forward.

Authors' Acknowledgment

George Gould, Energy Unit Managing Attorney, and Josie Pickens, Energy Unit Supervising Attorney, contributed their valuable time and expertise to the advocacy work surrounding the water-affordability legislation and the editing of this article.



Robert W. Ballenger
Senior Attorney



Thu B. Tran
Senior Attorney

Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
215.981.3788



© 2016 SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW