STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JAMILA YOUMANS,

Plaintiff,

vs Case No. 2016-152613-CZ

CHARTER TOWNSHIP OF BLOOMFIELD,

Defendant.

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JUDGE'S OPINION

BEFORE THE HONORABLE DANIEL PATRICK O'BRIEN

Pontiac, Michigan - Thursday, July 12, 2018

APPEARANCES:

For the Plaintiff: GREGORY D. HANLEY (P51204)
Kickham Hanley, PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073
(248) 544-1500

For the Defendant: MARK S. ROBERTS (P44382)
Secrest Wardle
2600 Troy Center Drive
P.O. Box 5025
Troy, Michigan 48007
(248) 851-9500

For the Defendant: WILLIAM P. HAMPTON (P14591)
4064 Cranbrook Court
Bloomfield Hills, Michigan 48301
(248) 647-1108

Videotape Transcription Provided By:
Deanna L. Harrison, CER 7464
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TABLE OF CONTENTS

Pontiac, Michigan

Thursday, July 12, 2018

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THE CLERK: The Court calls Youmans versus Bloomfield Township, 2016-152613-CZ.

MR. HANLEY: Good afternoon, your Honor. My name is Greg Hanley, and I'm here on behalf of the Plaintiff and the class.

THE COURT: Thank you.

MR. ROBERT: Mark Roberts on behalf of the Township.

THE COURT: Thank you.

MR. HAMPTON: Bill Hampton on behalf of the Township.

THE COURT: Thank you. Good afternoon.

The record will reflect that this matter was tried to -- to the bench some time ago, and the matter was taken under advisement, and the Court will now proceed with its opinion.

First on the table, so to speak, is the Defendant's motion for a directed verdict, and the Court respectfully denies that motion for the reasons that will be stated in the forthcoming opinion.

The second on the list is the Defendant's motion to strike one or some of Plaintiff's pleadings for being

over the page limit, and that motion, respectfully, is denied.

In no particular order, the Court's opinion will be categorized according to the sections as the Plaintiff has pled; not by counts, but in sections. The first one being the storm water drains. And the Court shall proceed.

It is agreed by the parties, or it is effectively agreed by the parties, and the Court therefore finds Oakland County services storm water drains in Bloomfield Township, and Bloomfield Township is legally obliged to pay dollars to Oakland County for all those services.

It is effectively agreed by the parties, and the Court therefore finds, Bloomfield Township had identified, by virtue of its testimony, and a line item in some of its general fund budgets, the general fund, or taxpayers, as the class from whom to collect those dollars to pay the County.

It is effectively agreed by the parties, and the Court therefore finds, after some particular date, Defendant ceased identifying the general fund, or taxpayers, as the class to pay for these Oakland County services, and commenced identifying the sewer customers via sewer rates as the class from whom to collect those

dollars.

It is effectively agreed by the parties, and this Court therefore finds, the County neglected to charge or the Township failed to pay for some such services, which services were performed during the period of time when the Defendant had identified the taxpayer class as the class to pay for such services. What the Court at trial and here characterizes as the Oakland County quote, asleep at the wheel dollar charges.

It is effectively agreed by the parties, and the Court therefore finds, and for reasons speculated differently by each party, which speculative reasons the Court eschews as either unnecessary to resolve for this issue or unresolved by this record. There is no mens rea component in the law on this topic. Thus, the Defendant's state of mind is unnecessary, and to any extent, this Court sits in chancery; the Defendant's state of mind is not preponderantly clear to the Court. This Defendant's state of mind is unresolved.

So again, it is effectively agreed by the parties, and the Court therefore finds, around about the time Oakland County woke up and submitted to the Defendant its bill for past services, Defendant had ceased identifying the taxpayers as the class to pay past and current and future such services, and commenced

identifying the sewer customers as the class to pay for the past and current and future such services.

It is effectively agreed by the parties, and the Court therefore finds, at this time, above-mentioned Defendant, in addition to merely identifying the responsible class, actually commenced charging to and collecting from the sewer class via rates, the quote, asleep at the wheel dollars, the current service charge dollars, and by its testimony, will continue to so charge the sewer class for future such service dollars.

It is presumed by the parties, and the Court therefore abandons any thoughts to the contrary, that the quote, asleep at the wheel dollars, are legally or maybe equally, forcefully, pragmatically, the responsibility of Defendant. Some facet of it, i.e., no one suggests to tell Oakland County that it is not going to pay those tardy bills, so it is accepted, the notion, that they are due or they were due.

Plaintiff contends these asleep at the wheel charges having been incurred at a time when the Defendant itself identified the responsible class as the taxpayers, should have been collected from the taxpayers, not the sewer customers. Maybe Plaintiff also argues against these costs paid by sewer customers because these costs were incurred in days gone by and are being foisted upon

today's sewer customers, who neither occasioned nor benefited from the services to which the costs relate.

It may not bear mentioning, but the Court will anyway. These are the only two suggested sources for payment of these asleep at the wheels -- asleep at the wheel bills. Yesteryear's sewer customers and yesteryear's taxpayers, parenthetically, those classes of persons who were Bloomfield Township sewer customers, Bloomfield Township taxpayers, and their intersection, bulk sewer customers and taxpayers back at the time the quote, asleep at the wheel storm water drain service was provided, which members may or may not be today's sewer customers, and some of whom surely are today's taxpayers. How many? Who knows. They are not an isolatable, collectible class.

They may, incidentally, be members of other classes; current sewer customers, current taxpayers. Some may be, some probably are; some may not, some probably are not. But it is clear, if identifiable and isolatable, if for example, they were in this category, former/yesteryear's sewer customers or former/yesteryear's taxpayers who are not today's sewer customers, nor today's taxpayers, they are not a collectible class.

Plaintiff analogizes the Defendant's foisting of yesterday's storm water drain bills historically charged

to the taxpayers, not the sewer customers -- and let's not forget these classes or circles intersect, they are not mutually exclusive -- upon today's sewer customers, to the government foisting upon today's homeowner, his predecessor in title's unpaid property taxes.

The analogy works for a former taxpayer, and incidentally, not a former sewer customer; for if a former taxpayer was also a former sewer customer, if would be a wash. And the analogy also works for today's sewer customer, but only those who were not yesterday's or yesteryear's taxpayers.

No reason was given by the Defendant for the switch in obligors from the dissolved general fund line item to water and sewer. That the former fund was dissolved is not a reason, but only a cause in fact, and the reason matters not. The question is the power, the legal authority to do so, not the reason or motivation behind the action. At least, again, the Court finds no mens rea component in the jurisprudence.

Again, regarding the asleep at the wheel charges. The legality of yesterday's taxpayers' bill, whether or not a legal obligation, being imposed upon today's sewer customers; well first of all, it is tacitly agreed someone related to Bloomfield Township is going to have to or did have to pay for this or these services, and

this is where Plaintiff's analogy respectfully breaks down.

Plaintiff's analogical syllogism omits the premise of which of today's humans related to Bloomfield Township are rightfully charged with this obligation, this account payable. It omits the premise, one which is implicit in every analogical syllogism, one of two indisputable truths, death and taxes.

If Ted sells him home to Mary, and the government did not get its taxes from Ted, does anyone think for an instant that the government is going to write it off? Today's taxpayers are no more beholden to this bill than are today's sewer customers, but someone is going to be stuck with the bill, or has been, assuming -- parenthetically, a very big word which surely does not apply to some of these Plaintiff class members -- assuming all of today's sewer customers and taxpayers were not yesterday's beneficiaries of yesterday's storm water drain service, then neither class of Bloomfield Township persons is fairly assessed the bill. And since it is undisputed, between the parties at least, the bill has to or had to be paid, and has to or had to be paid by some people affiliated with Defendant, then among two undeserving classes, which one? And again, it bears repeating that built into that question is the surely untrue assumption

that all of today's sewer customers were not yesterday's beneficiaries of yesterday's storm drain service not charged yesterday.

Plaintiff's argument, though not entirely explicit, is: One, asleep at the wheel charges should have been borne by tod -- the taxpayers, not the sewer customers, because by virtue of Defendant's own decree -- parenthetically, back in the day Defendant pointed its royal scepter at the taxpayers as the responsible class -- services performed back in the day, but not charged until after Defendant pointed its scepter elsewhere, therefore, relate to and should be paid by those under the formal royal decree. This implicit argument implodes, of course. If the responsible class is merely the class upon whom the Defendant decrees it, then Defendant has so decreed.

Number two: Plaintiff also argues the asleep at the wheel, the current and future storm water drain charges are improperly charged to the sewer customers. Why? Well, per Plaintiff's post-trial quote, overcharge pleading, it is because the county drain system confers a public -- confers public benefits. Plaintiff questioned to witness Domine: A purpose of the storm drains is to keep roads clear of water to prevent soil erosion. Domine answer: Yes.

Plaintiff also seems to concede an

individualized benefit to the sewer customers from the storm water drain. Call it a sewer rate reduction. A separate storm water drain means less outflow in sewer drains.

The Court, maybe unlike the Plaintiff, may not be so quick to call this a sewer customer benefit. Presently, the sewer rate equation uses an artificial number for the quote, sewage out component to the equation; one unit of water in equals one unit of sewage out. Presently with this equation, actual sewage outflow does not immediately affect the sewer rates. Quote, water in -- parenthetically, or one of two options for non-water sewer customer, close bracket -- does. Be that as it may, Plaintiff dismisses any individualized benefit to the sewer customer class as meager relative to the public benefit, or incidental.

To legally fortify this reason, Plaintiff cites to Jackson County, *Jackson Coffee* versus *City of Jackson*, yet it is clear that this quote, public benefit notion Plaintiff champions is but a thread in a much vaster legal tapestry the Court will call *Bolt* -- the case of *Bolt*, which itself is but a culmination of earlier jurisprudence.

Bolt, of course, is much more than guidance whether a municipal charge is payable by one class or

another. Instead, it is a wider view whether a municipal charge is a quote, fee or a quote, tax, and in that broader analysis, public benefit versus individualized benefit is but one of several considerations.

Plaintiff would have this Court limit its scope of review to this section to the question whether the storm water drain confers a public benefit, and Plaintiff would perhaps say individual sewer customer benefit notwithstanding. Such a scope is too limited.

Citation to *Jackson* is but a springboard to *Bolt*, and *Bolt* observes the question to be whether the charge is a fee or a tax, and this question depends upon three criterion.

Number one, does the charge serve a regulatory purpose, rather than a revenue-raising purpose, and this is the Court speaking: It is clear, undisputed, or at least this Court finds from this record the dollars charged historically and presently are pass-through charges, no revenue raising intent or result has been proven by any standard of proof.

Number two, the charge -- is the charge proportionate to the necessary cost of the service -- and this is this Court speaking: Given the Court's finding in number one that the charge is but a pass-through, the answer here is yes.

Number three, is the charge voluntary -- and this is the Court speaking: While it is not voluntary in the sense articulated in *Bolt*, it is only the more involuntary. In *Bolt*, the defense contended the property owners could elect to build less on their property to reduce factors in the equation, which would reduce their share of the fee they would have to pay.

In this case, the equation which yields the sewer rate is -- parenthetically, presently at least -- largely unrelated to any volition possessed by the sewer customers. They cannot reduce their rates by -- please the -- excuse the Court -- excreting less. Remember, sewer out is not actually measured, and for those sewer customers who are not water customers, neither can they actually or feasibly, depending on which option they choose, reduce water in to reduce their sewer rate.

Stepping back, per the case of *Bray* cited by *Bolt*, a quote, tax is designed to raise revenue. The Plaintiff here contends that the storm water drain charge confers a public benefit more so than any quote, overflow mitigation benefit to the sewer customers -- parenthetically, whether there is any benefit whatsoever given the current sewer rate equation components.

Sharpening the point even more for purposes of argument, the Court would hypothesize there is no real

benefit to the sewer customers with storm water drains nor services performed on them. Fiscally speaking -- parenthetically, no difference in dollars out of pocket given the present sewer rate equation bearing on water in rather than sewage out. But there is, of course, the real and distinct benefit to the sewer class of less chance of sewer backup in their basements.

The question remains nevertheless, if this storm water drain charge and the sewer rate is illegal, it is so per Plaintiff, per *Jackson*, and per this Court per *Jackson* per *Bolt*. And per *Bolt*, per *Bray*, it is not a tax if it is not revenue-raising.

As stated earlier, Plaintiff's contention is this is a tax because it confers a public benefit, though Plaintiff does not contend, or this Court sure did not hear it, that Defendant is, by this charge, trying to raise revenues.

It is appropriate here to make a comparison of cases.

First, the Court will mention the case of *Bolt*. The charge there was storm water drain charge, and the conclusion was it was a public benefit, it orig -- originated with the defendant -- and there's an asterisk there -- it was involuntary, and it involved revenue-raising.

And then the case of *Jackson County*. It involved a storm water drain charge. The conclusion was it conferred a public benefit. It originated with the defendant -- again an asterisk -- it was involuntary, and it included revenue-raising.

In this case of Yeoman, this -- the -- the charge was storm water drain charge. The Court finds it conferred a public benefit, it did not originate with the Defendant -- again, an asterisk -- it was involuntary, and it did not involve rev -- revenue-raising.

The asterisks the Court was referring to reads as follows: From whom the charge originated is not one of the criterion of *Bolt*. The Court mentions it here if only to emphasize, unlike *Bolt* and *Jackson County*, the charges here do not even originate with the Defendant. They are but pass-through dollars from Oakland County. Defendant is not trying here to raise revenue.

The record is ample and this Court is satisfied the couple of spikes of 200 grand are attributable to the County's quote, asleep at the wheel bill or bills; Oakland County not charging punctually for these services. Simply, these charges are not revenue-raising charges, even though it is amply clear the storm water drain and its service charges confer public benefits.

There is a reason why the charge would seem not

to belong to the sewer customers. It confers a public benefit. It is involuntary. There is a reason why the charge would seem not to belong to the taxpayers. It is not generated to raise revenue. Sure, it is involuntary; sure, it confers a public benefit, and presently, given the artificial rather than the actual sewage flow component to the equation which yields the sewer rate, there appears no individualized benefit to the sewer customers, the class holding the bag, so to speak.

This is an overstatement, the Court acknowledges. The sewer customers distinctly enjoy a reduced chance of sewage backup in their basement. Yet there is no evidence, Plaintiff did not really try to prove, it was not its impetus in this section, to show the Defendant was trying to raise revenue, or if that was one of the Plaintiff's theories here, it escaped the Court or the proofs fell short.

Given the sewer rate equation is not presently a function of how much sewage each customer actually deposits, it would seem Defendant here lacks fidelity to its own claimed betrothal to the matching principle, and that's quoting from witness Tice. For the notion Defendant uses to charge these dollars to the sewer customers is that they benefit from an otherwise higher sewage flow, and since a substitute for actual sewage flow

is used as a component to the sewer rate equation, that benefit is theoretical, potential, but presently not actual.

In fidelity to the matching principle, the several other general public benefits suggests from this perspective the charge belongs to the general fund -- parenthetically, soil erosion and road water drainage -- that the County and the Michigan Department of Transportation own the roads, and therefore is not a general Bloomfield Township taxpayer's benefit is an argument truly beneath the Defendant.

If you, Defendant, really believed ownership of the roads displaces your taxpayer's public benefit, either no one in the world benefits from road drainage or the County and maybe MDOT should be the ones to pay for the County's service, which the Defendant never once suggested as an option, again, for either a legal, or maybe more so pragmatic reason.

The matching principle is not the law of the land, and Michigan is a no-fault divorce state, so to speak. So if the Defendant is unfaithful to its betrothed, that the reas -- that reason alone cannot move this Court's gavel in Plaintiff's favor.

This being a municipal ratemaking dispute, the phrase from *Novi* -- the case of *Novi* beckons quote,

presumptive reasonableness. It is hard to think about the concept of presumptive reasonableness, for a presumption is, itself, a substitute for reason, and reasonableness is a product of thought, a product of reason. So a presumption that something is thoughtful or reasonable means a person, without thinking, concludes a decision was thoughtful or reasonable, dot, dot, dot, unless the person thinks, without thinking, mind you, the decision was thoughtless or without reason, a/k/a, unreasonable. Presumptive reasonableness translates to, in this Court's opinion, thoughtless thoughtfulness.

It is the Court's opinion the Defendant is breaking or may be breaking its fidelity to the matching principle. It is charging the sewer customer class here for a fee which no more financially benefits them than any other person affiliated with Bloomfield Township.

Defendant mentions a financial individualized benefit to the sewer customers. In this Court's opinion, that is wrong. Defendant implies a practical individualized benefit to sewer customers; less chance of sewage backup. And the Court opines that is right. The Court agrees here, but to the eclipsing of the public benefit, question mark. Hardly, in this Court's opinion.

Plaintiff contends this charge to the sewer customers is against the law. It is forbidden by *Jackson*

County and in turn, *Bolt*. To be against this law, the Defendant's act in charging and collecting these dollars from the sewer customer class must run afoul -- afoul of all, not one or some of the *Bolt* criteria. It runs afoul of some, in this Court's opinion. It is a charge to an individualized set, not general taxpayers, despite it being involuntary and conferring -- conferring a primary public rather than an individualized benefit, but not all the *Bolt* criteria. In this Court's opinion, charging this to the sewer customers is probably unfair. In this Court's opinion, it is not illegal. The Court issues a judgment of no cause of action here.

The next section is OPEB. Defendant, via Finance Director Tice, testified that water and sewer employee health insurance is viewed by the Defendant in three categories. The Court here para -- paraphrases Tice. Number one, pay as you go. Defendant water and sewer fund contracts with Cigna, C-i-g-n-a, for say one year's health insurance for people who in that year are either retired water and sewer employees, or their spouse and dependents. As of February 9th, 2018, Tice testified there were 15 retirees. The Defendant charges water and sewer customers in year X for the cost of year X's health insurance for these people. The Court will call those OPEB dollars.

Number two, pay as you go. The Defendant, the water and sewer fund, contracts with Cigna, C-i-g-n-a, for say one year's health insurance for people who in that year are either currently employed by the water and sewer department or their spouses and dependents. The Defendant charges water and sewer customers in year X for the cost of year X's health insurance for these people. The Court -- these are not OPEB dollars, because these are -- because the water and sewer employee is not retired.

Number three, in 2009, Defendant commenced, and continues to date, a third category. For example, in addition -- in addition to charging via rates 2009 water and sewer customers for category one and two health insurance, the defendant charges them another quantity dollars, which dollars, when received, are stockpiled, cached, some in a trust, and some in water and sewer fund cash balance, co-mingled indistinguishably from other water and sewer fund cash balances to buy year 10 health insurance for year one, two, three, four, five, six, seven, and eight water and sewer retirees, and to buy today's year nine current water and sewer employee and dependents future health insurance, or a portion of it, when that employee retires, i.e., 2010, 2011, 2012, dot, dot, dot, up to however -- whatever year. Again, OPEB dollars.

The Defendant's finance director disagreed with this Court's characterization of that pot of money being a quote, nest egg. Defendant, through the witness, sees this category as a down payment on a current liability, necessarily a currently incurred rather than a future liability, hence the dispute with the nest egg phrase, and the Court agrees with the Defendant on this point.

Defendant, on any particular day, is legally obliged to pay for various costs, i.e., Band-Aids, a/k/a health insurance needed on that particular day by a person who, on that particular day, is a retired Township water and sewer employee or dependent. Defendant is right to procure these dollars from that day's water and sewer customers if Defendant does not already possess dollars procured previously for this particular use for this particular beneficiary. And same goes for a Band-Aid needed on that day for a current Township water and sewer employee or dependent.

This Court discerns no beef, if you will, from Plaintiff, nor decrees this Court is there any problem with the Defendant's methodology to achieve this end. Plaintiff echoed an objection in trial to the notion of current water and sewer customers paying for retirees' health benefits, but this objection was not fortified with any substantive reason. Why shouldn't they? Who else, if

Defendant, for whatever reason, had not previously procured dollars for this particular and these particular beneficiaries? Naturally, the water and sewer customers on any particular day may or may not match the accounts payable, the cost for all the Band-Aids incurred on that particular day, and vice versa. A dollar in the water and sewer fund used to pay for a Band-Aid cost incurred on a particular day may or may not find its source as a water and sewer customer on that particular day.

There are two trains on parallel tracks, each travelling at two different speeds. One train is occupied by Bloomfield Township water and sewer retirees. That train moved slow, and the passengers, thankfully, get on and off relatively infrequently. One train is occupied by Bloomfield Township water and sewer customers, which pays the fares for the retiree train passengers. The water and sewer customer train moves faster. Its passengers get on and off more frequently. As the trains travel down the tracks, some passengers on each train recognize each other, but not that many. On the whole, however, the bustling and changing population of water and sewer customer passengers sees and finances a pretty much equal quantity of retiree train passengers.

In this Court's opinion, it is well and good for today's water and sewer customer, Mary, to pay for a Band-

Aid needed today for Grandpa Francis, a 1956 retired Bloomfield Township water and sewer employee, who cut his finger today whittling a rocking horse for his grandson. Mary, a member of Plaintiff, may object, but as expressed earlier by the Court, she does not support her objection. Mary, furthermore, objects to paying today for the Band-Aid Grandpa Francis may need next year when she may not even be a water and sewer customer. If it is not right for Mary to pay for future health care for Joe, who actually wrenched on pipes while Mary was actually using the pipes as a water and sewer customer, then why would it be right for Mary to pay for Francis's benefits needed today, though Francis wrenched on those same pipes years ago, before Mary's mom and dad even met at the sock hop.

Plaintiff contends it, Mary and her class members, should neither have to pay for Joe -- Joe's nor Francis's future benefits, but again, as goes the logic of one, goes for the logic of the other. Plaintiff contends no, because this is a tax, a charge intended to finance a future obligation. Despite the obvious question, if not Mary, then whom -- parenthetically, and don't say the water and sewer customers in the future because the water and sewer customers of the future are those of today from the viewpoint of water and sewer employees of yesterday. And again, those classes of retirees beget no difference

from their distinction. And the question why not Mary, the matter is put to rest with this Court's opinion, and that opinion is that the OPEB charge component in the rate is intended to finance: One, a past due obligation payable today and in the future -- parenthetically, current retirees for whom Defendant is trying to catch up from prior administrations alleged -- or testified neglect; and two, a currently due or incurred obligation payable today and in the future, today's employees retiring today and tomorrow, and needing a Band-Aid benefits tomorrow and the next day.

To state the obvious, an employment benefit is a benefit provided in exchange for a service. It simply makes sense, and any other alternative makes no sense, that the benefit, the consideration coming from the employer, whether enjoyed today or 30 years hence, is earned at the moment the service, the consideration coming from the employee, is tendered. The employer's duty to perform has become absolute. That might be -- Williston on Contracts -- when its contractual counterpart, the employee, has performed, to-wit: done his job. This financing of OPEB is not, as Plaintiff contends, a future obligation, a -- a tax, a violation of *Bolt*, in this Court's opinion.

Neither, in this Court's opinion, is charging

for next year's Band-Aid a tax, or revenue-raising. The Court agrees with the Defendant that the liability to the Defendant is incurred not when the ret -- when the retiree's whittling knife slips, but when the retiree was trudging through the sewage wrenching on pipes as a water and sewer employee. There is no practical distinction, given this adjudicated date, when the liability was incurred between a Band-Aid needed today for a retired water and sewer employee and paid for by today's water and customer, and a Band-Aid needed tomorrow for a retired water and sewer employee and paid for by today's water and sewer customer, unless of course there is disproportion between rates and costs. And this proportion would manifest itself in a marked distinction between OPEB charges to one temporal class of water and sewer customers vis-à-vis another temporal class of water and sewer customers.

Plaintiff would identify itself as such a distinctly high quote -- quote, OPEB paying class. Plaintiff suggests, among its explicit arguments in this section on OPEB, that the Defendant is playing catch-up with former Township administration's neglect for failing to charge for OPEB too quickly. Defendant is laying it all on water/sewer customers of the temporal class of Plaintiff's membership class. This falls squarely, in

this Court's opinion, in the judicial restraint and respect due to divisions of power between coequal branches of government.

However, there remains a bee in this Court's bonnet. A raspberry seed stuck in the Court's teeth.

This Court has seen fit to exercise judicial restraint from its coequal branch of government concerning Defendant's OPEB financing methodology, its approach, its philosophy, if you will. That said, however, in reaching the conclusion that the judiciary should be hands-off about such methodology, it has become clear that the Defendant purports to leave to its sole discretion only partial fidelity to that methodology. It is a fact that OPEB dollars share dual citizenship. Some dollars are citizens of an OPEB trust and some dollars are citizens of the water and sewer fund cash accounts.

Through the use of Exhibit 8, Plaintiff counsel and finance director discuss that there was a financial event in that year, 2016, of the Defendant transferring $2.7 million out of water and sewer into a retire -- retiree health care trust, and all that money is dedicated not only to currently retired water and sewer employees, but also to fund future water -- water and sewer retirees' health costs. We still -- quote, we still have around a dozen employees that hired in long ago enough to where

they still have that promise of retiree health available to them when they retire. That's quoting Tice.

Continuing, Tice testified, this is covering some of the past service costs, as well as normal costs for the people who are currently accruing them. We're left with that, because prior administrations did not -- or didn't set aside that money as the employees were earning it, which is what you should do, but we were never forced to do it by any authority, whereas in pensions, you were, dot, dot, dot, dot. So we have a lot of catch-up to do. Our OPEB costs are jumping up exponentially each year. We have one of the largest in the state. So this was a good thing to set that money aside, dot, dot, dot, close quote.

Plaintiff questioning Tice: I just want to confirm that there was $2.7 million transferred in the fiscal year and that -- and that partially explains the reduction in the fund balance. Answer: Yeah, and I would say it also partially explains the increase in cash in the previous years.

Plaintiff questioned Tice on February 13, 2018 at 9:13 a.m.: Quote, there were at least some funds collected from the OPEB charges that was in the rate that did not go into a trust that is available for the water and sewer fund to use for whatever it deemed appropriate?

Answer: Yes.

This is the Court speaking. This Court finds now, as a matter of undis -- or this is the Court reasoning -- this Court finds now, as a matter of undisputed fact, that the water and sewer funds alleged OPEB dollars enjoy dual citizenship. They are residents both of a trust and the water and sewer fund cash accounts. Per Defendant quote, it is a good thing to set aside OPEB dollars to cure and prevent a repeat in prior administrations' OPEB neglect -- what the Court will call the sacred trust -- and yet some dollars, indistinguishable to the naked eye to the water and sewer customers, to the public at large, float bill-to-bill next to other undedicated greenbacks, and which can be used for whatever -- quote, whatever defendant deems appropriate are, according to an employee, Mr. Tice, actually dedicated sacred OPEB dollars. Those dollars, however many, if any there are, with such an a priori title, which quantify -- or strike that -- which quantity the Defendant's practice has made impossible to discern, which the Defendant designates by word, but not by deed, as OPEB dollars, the alleged portion residing in cash accounts, by Defendant's practice, estops the Defendant from today purporting to don them with any title other than cash on hand. They could not, may not, nor shall not be called

nor treated as OPEB dollars.

On cross-examination, Defendant's finance director offers a quantification, about $100,000.00 per year, and testifies since the $2.7 million transfer event, an annual transfer of OPEB dollars. All of them? Only some of them? To the trust. Hard to reconcile that with his direct testimony that those same dollars may be used by Defendant for whatever it deems appropriate. Non-trust cash.

Even if this is innocent, mistaken testimony, there would never be such a mistake if everything was transparent; each dollar had its string attached to its source in its originating budget, a projected line item or surplus for all eyes to see.

If the Defendant contends -- the Court surmises that it does -- that some of the cash at year end is really some of the OPEB projections come to life, Defendants commingling of these dollars with other unrestricted dollars, or the Defendant's failure to property -- or promptly -- strike that -- promptly divert them into trust, then the Defendant forsakes the argument they are, always have been, OPEB dollars. Defendant is estopped from such a contention.

It probably does not bear mentioning, but the -- but for comprehensiveness, the Court will. If the

Defendant contends, or somehow harbors the notion that some of the dollars in cash are not OPEB projected dollars come to life, but rather some other O&M cost, overshot projection, or projections come to life, and Defendant looking back at a given year -- indeed looking back every year since the time of what the Defendant would call the quote, administrative neglectful era, and retroactively purports to deem these dollars as needed supplements to the Defendant's uniformly undershot OPEB projections, well, I wouldn't go there if I were you, Defendant. That mean you acknowledge year in and year out you have under-projected OPEB, you never once learned from your mistake, and strove to correct it in the next fiscal year's projection. And to top it off, you've never once seen fit to do with those dollars what you yourself claimed quote, is a good thing, and emigrate those dollars to the home of the free, a trust, free from usage, however Defendant quote, deems appropriate.

Even if you did so contend, equity would not hear of it. Bottom line, the Court agrees with the Defendant's proposition that the retiree benefits are earned during the employee's employ. Funding for currently retired employees to catch up for prior neglect is entirely sound, reasonable, and proportionate. Funding for future retiree benefits is a practice of a coequal

branch of government exempt from judicial review. As a mere bystandard, it ma -- as a mere bystander, it makes complete sense in itself, and there is no sensible alternative anyway.

As to the Defendant's dual citizenship of OPEB dollars, it serves as circumstantial evidence in Plaintiff's favor that that cash in the water and sewer fund is -- well, more akin to a corn fed heifer than a couple of porterhouses with little marbling. No cause of action to Plaintiff regarding OPEB, but fodder, circumstantial evidence, for other sections. Judgment of liability to Plaintiff. No damages, however.

And I'll speak more later on the damages and remedies, but nevertheless, only a remedy, no dual citizenship of OPEB dollars, and no projecting for X line item and then switching to Y at the end of the year if X yields a surplus. And if money is in cash accounts, it cannot be donned as OPEB dollars unless there is no more trust account. More on that later.

The next sections will be rent and fire protection.

Rent: A component in the equation yielding the water and sewer rates is a figure increasing the numerator, which figure represents what the landlord or the Township believes or defers to its employees, finance

director, and water and sewer fund employee, to be a fair amount to charge its tenant, the water and sewer department, for renting a part of one of the Township's buildings.

Plaintiff challenges the Defendant's claimed equality of the horse-trading of services between the Township and the water and sewer department. There is no mystery to the numbers used. Indeed, Plaintiff's accusation is premised on acknowledging what are the constituents to the bartering: 350 grand in rent and 100 gra -- $350,000.00 in rent and $100,000.00 in Township service supplied to the water and sewer department. Plaintiff's accusation is simply that the fire protection costs, which water and sewer customers are paying for -- parenthetically, which they shouldn't be paying for, see other section -- is much higher than the $450,000.00 value of the Township's part of the trade. This exchange is not hidden; it is clear to anyone who cares to investigate. And whether or not it is fair horse-trading is clearly the prerogative of the municipality; clearly, the prerogative of the electorate at the ballot box and the non-electorate inhabitants in their decision to remain or emigrate from the Township. This ratemaking method, this horse-trading, rests soundly within the juridical presumption of reasonable ratemaking.

Additionally, Plaintiff challenges the veracity of the Defendant's claim at trial that the Defendant actually did any horse-trading; rather, Plaintiff argues, this claimed horse-trading is the Defendant's after the fact rationalization for the benefits it received at the expense of the water and sewer customers.

As mentioned in later sections, this Court discerns no mens rea component to the rate-make -- to the ratemaking. Proportionality is key. If the Defendant had it in its brain to fatten up cash accounts and explicitly said do not deduct non-rate revenue, for example, and the Defendant Board of Trustees adopted such rationale, and later that night, somehow -- someone somehow snuck in and reworked the rates to include a non-rate revenue deduction, Plaintiff would have no cause of action. Rates would there and then be proportionate, despite Defendant trying hypothetically to stick it to the water and sewer customers.

Same thing here. Whether horse-trading was envisioned consciously -- say in fact they were not -- in effect, if not in inspiration, equities were exchanged here, in this Court's opinion. It could have been clearer. Though no damages awarded, the Court adjudges that if Defendant chooses to trade services, it shall be explicit for all eyes to see. Thus, there is a remedy to

the water and sewer customers, but no damages.

Public fire protection. Per Plaintiff, the provision of public fire protection services is a governmental function, which confers a benefit upon the general public, and not merely the Township's water and sewer customers, and therefore, must be paid out of the general fund. *Lane*, 164 N.W.2d at 875, 194 P.3d 977, Washington, 2008; Headlee and *Bolt*, 221 Mich App 79, 1997, dissent, affirmed in 459 Mich 152, 1998. Plaintiff's amended complaint, paragraph 40.

Also quoting Plaintiff: Moreover, for another basis against this cost upon water and sewer customers, Plaintiff relies on the Revenue Bond Act. Plaintiff's amended complaint, paragraph 44. Also, Plaintiff claims the Defendant violates MCL 123.141, et seq.

The Court restates Plaintiff's claim this way. The Township buys water for two reasons. Number one, all reasons, except fighting fires. Number two, fighting fires. Both reasons occasion costs. Both reasons consume water. Hence, a cost is occasioned for a unit of water consumed in reason one, and a cost is occasioned for a unit of water consumed in reason two. Also, both reasons necessitate other costs, some of which are in union with both reasons, e.g., costs of patching a hole in a water pipe, and some costs are distinct to a reason, e.g., X

number of square feet of a holding tank necessary to sustain reason one water, and X plus Y number of square feet, Y representing the additional square feet, a holding tank necessary to sustain reason two water.

Firefighting is a Township, not water and sewer department, service. The Township should pay for this, not the water and sewer customers, Plaintiff contends. Plaintiff continuing: The Township lumps reasons one and two together, and foists the combined costs upon the water and sewer customers. This part of the case is straightforward. Some, not all of the costs of providing the fire department, are being paid by the taxpayers; call them portion A. And some are being paid, horse-trading or otherwise, by water and sewer customers; call these portion B. These latter costs, portion B, include the water that is used by the fire department to put out fires, a portion of the cost for infrastructure, which portion is that portion of total water supply infrastructure which is necessary to provide water to the fire department while not depleting reason one water, water for all reasons, except fighting fires. This is the cost of the extra infrastructure needed to provide water to the fire department, while still leaving enough water for all other purposes.

Plaintiff customers complain that the dollars

which are collected from them ought instead be collected from the taxpayers per Headlee and *Bolt*. Implicitly, the Defendant responds, in part, that water customers, as a general rule, receive more fire protection than some taxpayers, who do not receive Township water, e.g., well water residents. This is because fire trucks can tap into Township water-supplied fire hydrants in proximity to water customers, whereas well water residents are more remote. The Court surmises what the Defendant is saying without actually saying it, is that the water customers being recipients of more effective fire department service ought to pay more, a premium perhaps, than do the well water people.

Regarding *Bolt* and the case law facet of this section, if the water and sewer customers were paying for the fire trucks, and the Kibbles & Bits dog food for Spot, the fire department's Dalmatian, there may well be a Headlee, *Bolt*, or case law violation. However, the hairsplitting contention of Plaintiff here may well belong to the ballot box, not the courtroom.

Plaintiff point -- points to the public benefit component in distinguishing a charge of money by a municipality between a fee and a tax. However, there is more analysis in making that distinction than conferring a public benefit, voluntary/involuntary. Is the charge

motivated by revenue-raising? Here, no revenue-raising agenda. Under the *Bolt* analysis, as a whole, no Headlee violation, no *Bolt* violation, no cause of action on this facet of the fire protection claim.

The Court appreciates, even perhaps agrees with Plaintiff, that if the charge does not fit within the definition of a fee, it therefore must be a tax. This Court cannot, in good conscience, drop the gavel and declare the charge a tax, just because the Court would agree the charge does not completely fit within the definition of a fee. It must also and independently fit within the definition of a tax. The Court sees it not fitting fully under the tax rubric of *Bolt*, despite its ill-fit as a fee, either. Plaintiff has the burden of proof, and respectfully, the Court finds Plaintiff has not met it under this facet.

The next facet in this section is whether portion B costs confound the Revenue Bond Act. The Revenue Bond Act exists, per its title and germane to this case, bullet point one, quote, to collect money for constructing and repairing Bloomfield Township's water supply system -- what the Court would characterize as the public improvement. Two, to provide for imposing and collecting fee for water service. And there's others not applicable here.

As pertinent and applied here, MCL 141.103(b) defines public improvement as Bloomfield Township's water supply system. MCL 141.103(c) defines borrower as Bloomfield Township. MCL 141.103 does not define the word service.

The Court has highlighted sections of 141.118, and will read them here as applicable.

Free service shall not be furnish -- furnished by a public improvement to a public agency. Reasonable cost and value of any service rendered to a public corporation, including the borrower, by a public improvement, shall be a charge against the public corporation, and shall be paid for as the service accrues from the public corporation's current funds or from the proceeds of taxes which the public corporation, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for that purpose, or both, and those charges, when so paid, shall be accounted for in the same manner as other revenues of the public improvement.

Plaintiff claims a violation of MCL 141.118 by equating its members with the actual Bloomfield Township water and supply system, which in turn is equated with the fire department; i.e., the water and sewer customers are the men and women of the Bloomfield Township Fire

Department, by equating costs of a service with the service itself. Because water and sewer customers are paying for portion B, water purchased to put out fires and infrastructure created to contain such water, they are, as water and sewer customers, providing a fire protection service, per Plaintiff. Their payment of this portion of their rate is effectively equal to them sliding down the pole and steering the tiller of the fire truck responding to a fire -- five-alarm fire. Stated another way, running with the notion that paying dollars is the functional equivalent of providing a service, and also that the water and sewer customers themselves are the utility, then the question is, what is the service they are providing? Well, surely not water and sewer service, the object of their public accommodation, but neither does it seem likely their service is fire protection.

If Plaintiff contends that the service it is providing, via paying money, is fire protection, then to square with the statute, the free service the public accommodation is providing is not the service for which it exists.

MCL 141.118 forbids the utility to give away its service. This public accommodation, water and sewer, is giving away fire protection service. If the Defendant is doing wrong by reaping a benefit from water and sewer

customers, it is not doing so in repugnance to this statute.

A less tortured journey through the statute could be. And again, the Court will highlight 141.118 again. Free service shall not be -- free service shall not be furnished by a public improvement to a public agency. The reasonable cost and value of any service rendered to a public corporation, including the borrower, by a public improvement, shall be charged against the public corporation, and shall be paid for as the service accrues from the public corporation's current funds, or from the proceeds of taxes which the public corporation, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for that purpose, or both, and those charges, when so paid, shall be accounted for in the same manner as other revenues of the public improvement.

Now, as applied here, free water shall not be furnished by Bloomfield Township water supply system to anyone. That's a paraphrase and an application of that statute to the facts here.

Similar to the contended distinctionless difference in the equation in the denominator for sewer only customers, point 8H is actually point 7H, even though it is H, which is the smaller of the two factors, not the

number of customers. See the sewer-only customer section. Plaintiff would contend the bottom line is the same. Water and sewer customers are shouldering a responsibility rightfully borne upon the taxpayers' shoulders. The Court agrees with Plaintiff. The water and sewer customers are paying for some of portion B; only in this Court's opinion, not in repugnance to the statute. It’s like trying to fit a square peg into a round hole.

Next, Plaintiff claims the Defendant's charge and the Plaintiff's payment of these portion B dollars, some of which dollars the Defendant acknowledges Plaintiff is paying in real dollars, greenbacks, and some of which is being bartered or horse-traded, violated MCL 123.141(3). Limited to the cost of water used by the fire department to put out fires, and if it is easily measurable, the Court agrees with the Plaintiff here, horse-trading notwithstanding. The Court denies money to Plaintiff for infrastructure.

Anecdotally and equitably, Plaintiff itself, in the OPEB argument, rejects the notion of today's water and sewer customers financing tomorrow's water and sewer employees' health insurance benefit costs. While similarly, the added infrastructure to provide fire department service was a cost incurred a long time ago, if by water and sewer customers, not these water and sewer

customers. It is not for these water and sewer customers to be reimbursed for money paid by other earlier or predecessor water and sewer customers.

The Court eschews the Plaintiff's proffer of the main curve and the M1 manual. Plaintiff rightfully does not offer this tool for use in the task of determining whether or not Defendants are in breach of Michigan or applicable federal law. That task, Plaintiff would acknowledge, is performed with other tools. And only after the Court completes that task, would the M1 and cur -- M1 and the curve tool, main curve tool be used in damages assessment.

Given the limited damages awarded here, water in fire hoses, the tool is not needed, and returned to Plaintiff's toolbox. Judgment of damage -- judgment and damages equal to the costs -- to the cost of water in fire hose over the years at issue, no cause of action beyond that, but also there are remedies, and the Court will see -- will refer to that later.

The next section is Township not paying its share of lost water. In this section, Plaintiff defines water loss as bucket number one, municipal tap water; water which the Township purchases and which water reaches an intended destination, and that intended destination is a municipal tap. Bucket number two, truly lost water;

water which the Township purchases, but which water does not reach an intended destination. And bucket number three, construction water; water which the Township purchases and which water reaches its intended destination, and that intended destination is identified by its use, rather than its geographic destination; water, the parties stipulate, as water used in the operation and maintenance of the water system itself.

Plaintiff contends firstly that the above buckets ought to be poured into a single bigger -- bigger bucket called lost water bucket, and secondly, per ordinances, sections 38225 and 226, that bucket should be paid for. The cost should be absorbed by the general fund, the taxpayers.

Mathematically speaking, Plaintiff essentially contends the equation which yields the water and sewer rates, the portion of the equation germane to this subject, should be numerator over denominator. Numerator, cost of water purchased; denominator, units of water purchased. Specifically, Plaintiff would have no reduction in the denominator for lost water, as that phrase is defined by Plaintiff. Presently, the Court resists the suggestion to pour the buckets into one bucket.

The Court focuses first on the municipal tap

water bucket. Though Plaintiff counsel may have misspoke when he sought concurrence from witness Domine at 10:30:30 on February 8th, 2018, that quote, dot, dot, dot, water received by a Township facility was not -- bracket paid for with a bracket -- check written by water and sewer to general fund. Perhaps Plaintiff meant to -- Plaintiff counsel meant to say that there was no check written by the general fund in the water and sewer, it is clear there is neither a check nor an explicit reflection in the Township's statements or ledgers, nor budgets, of an exchange between the general fund and the water and sewer fund involving this bucket of water.

The Township contends this bucket of water is being paid for by the general fund, the taxpayers, nevertheless, not with a check nor reflection on the books, but through in-kind services.

In this Court's opinion, the Defendant's rationalization justification, albeit obfuscated, is reasonable, or rather, if reasonableness plays a role here, Plaintiff has failed to overcome the thoughtless thoughtfulness, the presumptive reasonableness of the Township's decision to pay for this bucket that way. It may be that the reasonableness -- it may be that reasonableness is not at play here, and -- in the Court's analysis, and the only question is whether the ordinance

has been violated.

Looking at the question through both lenses, Defendant prevails. Section 225 obliges the Township to pay for the water it uses. It does not specify how, cash or service. Though no damages awarded, the Court adjudges that if Defendant chooses to engage in trade for services, it shall be explicit for all eyes to see.

Next, the Court focuses on the truly lost water bucket. At first blush, the Court was of the mind to demur at Plaintiff's suggestion to look at the spatial proximity of 225 and 226. The Court reasoned, to itself, such was a mean -- meaningless spatial observation without an historical analysis of each section's history, time or origin, and revisions, if any.

Then the Court observed that the sections appear to have originated simultaneously on June 23rd, 2008. That being so bolsters Plaintiff's juxtaposition and extrapolation from the juxtaposition of the phrase water used by the Township in 225, and water consumed as determined by a meter in 226.

Plaintiff's logic, as applies -- as applied to this bucket and the other buckets, are -- is as follows: If water is not consumed, as determined by a meter under 226, then by process of elimination, or by default, must be water used by the Township under 225. If the Def -- if

the Defendant's position prevails, either ordinance speaks to this bucket of truly less water, and therefore the Township's historical practice carries the day. It is most apt to keep the buckets separated, and insofar as this isolated bucket is concerned, the Court is persuaded by Plaintiff's logic over the Defendant's default position. The cost for this truly lost water bucket per ordinance, per the Court, was destined to be borne on the shoulders of the general fund taxpayers.

Maybe, the Defendant contends, not though clearly with words, that it is also paying for this truly lost water bucket likewise via in-kind service. Well, let's see. For example, $8 million of water comes into the Township, say $115,000.00 of water leaks out of pipes going into the dirt; the water and sewer customers first pay out in rates to the Township $115,000.00, which the Township forwards to the water supplier. Next, the Township say extends rental space to the water and sewer department to the tune of $115,000.00, but water and sewer writes no real check for that rent, so that now the $115,000.00 which the water and sewer fronted for the Township is now being reimbursed via rent to the water and sewer, so that the cost of this truly lost water bucket is ultimately and duly shouldered by the taxpayers.

It is one thing to horse trade with your own

horses and hogs. I'll give you three of my hogs for one of your horses. It is a -- quite another to horse trade with someone else's dead chickens. I, the water and sewer customer -- customers will give Farmer John, the water supplier, three of my hogs to pay your Township debt of one horse to Farmer John for his three dead chickens -- truly lost water, water in the dirt -- for you to give me one horse -- credit for rent. Huh? The Court finds unpersuasive the Defendant's contention, if it even so contents, that it remunerated with in-kind service to the water and sewer customers for the money the water and sewer customers remitted to the Township for the Township to pay to the water supplier for a debt not owed by the water and sewer customers, but the Township's own debt to the supplier. Equitably, it would seem fair that this bucket would be borne on both the Township and general taxpayers' shoulders, and the water and sewer customers. But again, given the twin birth of 225 and 226, and the plausibility of Plaintiff's contention that this bucket was or is contemplated by those sections, as between two imperfect contentions, Plaintiff's contention prevails over the Defendant's effective default contention.

This section of the Court's opinion regarding the truly lost water bucket stops at this pronouncement. It shall be the duty of the parties to translate this

pronouncement into numbers and damages. The parties are charged to crunch the numbers.

It is not lost on the Court that some of these Plaintiff class members may also be, probably are taxpayers, an intersection between the parties. It would seem, only seem, the Court has not fully considered nor adjudged this, therefore, that these persons' receipts of these damages or dollars would be or could be, depending on Defendant's policy choice, of brief duration. These persons seemingly could be obliged to endorse their checks from the Township back to the Township as the externalization of their obligation as intersecting members of the taxpayer class, as well as the water and sewer customers, to shoulder the cost of this bucket.

Now onto the third bucket, construction water; again, water purchased by the Township which reaches its intended destination, such destination being a use, rather than a geographic location. Similar in consequence and similar, but not identical, in reasoning, the Court finds in Plaintiff's favor here.

Plaintiff argues that from the reading of Township ordinances 225 and 226, the cost of this bucket called construction water too is destined to be borne on the shoulders of the general fund taxpayers. The Court -- this Court agrees.

Section 225 defines, in broad terms, how and what water cost shall be borne by the Township. 22 -- section 226 defines in narrow terms how and what water costs shall be borne by the water and sewer customers, which of course includes Township metered water.

Unlike the analysis of truly lost water, there is no doubt the Township, as well as the other water and sewer customers, uses construction water. The Township itself decided to specify and attribute a sign or ascribe it to, if you will, explicitly point out name, specify target with a bulls-eye the Township as the responsible party to pay for the water it uses. That other water and sewer customers are also users of construction waters -- water is of no consequence. The Township painted a target on itself according to its use. The Township painted a target on all other water customers only according to a meter. Therein lies the distinction.

As with the truly lost water bucket, any claim that construction water has been paid for by the Defendant via horse-trading is rejected by the Court, as either having not taken place or if in some Township employee or public official's human mind it has taken place, the Court proceeds and adjudges as if it had not, because it is not -- was not reasonable, necessary, nor clear.

This section of the Court's opinion regarding

the construction water bucket stops at this pronouncement. It shall be the duty of the parties to translate this pronouncement into numbers and damages. The parties are charged to crunch the numbers.

To recap, truly lost water bucket and construction water buckets, the Court finds, because of obfuscation, intentional or not, misinterpretation of Township ordinance or not, has been paid for by the water and sewer customers over the time frame Plaintiff prosecutes, and they should not have been charged to them, but to the general fund. That, or if the Defendant contends it did pay through in-kind services, is rejected by the Court, if only because the proof of that is obfuscated and unnecessarily so.

Thus, the Court concludes the Defendant has not in any form reimbursed water and sewer, nor paid for these buckets itself.

Though also obfuscated, in this Court's opinion, the Court is more persuaded that municipal tap water, the first bucket, has been paid for by the Defendant effectively through horse-trading or in-kind services; hence, no damages to the Plaintiff for this bucket.

Again, the parties are charged with the above-described number crunching exercises, and again, it is not lost on the Court that some of the members of Plaintiff

prevailing class here may also be, probably are members of the Defendant, the losing class here, during the relevant time frame. See discussion earlier. This budding thought may be considered later by the parties, upon their return to Court, unless otherwise resolved or ignored by them.

How the Township henceforth chooses to pay for these two buckets, as well as the first bucket, of course, via check, horse-trading, et cetera, is for the Township to decide. The Court properly is hands-off, except insofar as the Court states the obvious; you had better make your methods clear Defendant, and the Court has made it clear you have not heretofore been clear. And this goes henceforth for all three buckets. Make the in-kind services clear for all three buckets. If in -- Defendant intends to continue the in-kind service, or horse-trading, and furthermore no horse-trading with the water supplier as -- for the reason -- the confusion and the reasons stated I -- the Court stated earlier.

The next section is sewer only customers.

The Township charges its water and sewer customers for their sewage disposal, not by how much sewage each -- each excretes into the sewer, a sewer's sewage is not measured, nor simply by equating each water and sewer customer's quantity of commodity water in, a/k/a Township versus say well water, with each water and sewer

customer's quantity of sewer sewage out, a/k/a sewage discharged into sewer versus septic field.

Rather, the Township charges this class of sewer customers -- water and sewer customers versus sewer but not water customers -- the following way:

A, the Township identifies the projected total bill from the County for the future fiscal year's sewer service.

B, the Township identifies a projected figure, which is the Township's cost for operating the water and sewer department.

C, the Township divides B by two, to distribute equally the projected Township expenses between one, the equation which yields the water rate, and two, the equation which yields the sewer rate.

D, the Township adds A to the quotient from C, which amount, among other figures irrelevant to this exercise, equals the figure the Township has to pay out, and therefore needs to charge sewer customers to provide the Township with the money the Township needs to pay for A plus point-five B.

E, the Township places the sum from D in an equation as the numerator.

F, the Township assumes of 100 percent of the sewer customers, 80 percent of them are water customers,

or 80 percent of the water customers are sewer customers. February 8th, 2018 witness Domine at 10:53 and 20 seconds: We take the number of water customers who are on sewer, and that is approximately 80 percent, dot, dot, dot, dot. So 80 percent of those sewer customers, dot, dot, dot, that's 80 percent of the water customers are on sewer, close quote.

Simply, the Township assumes that 80 percent of the sewage into its sewers is excreted by the class identified as the water and sewer customers. Query whether this implicit -- it is mental, it's not explicit -- assumption includes Township employee sewer sewage contribution. Surely it actually does not, for that is the antithesis of the object of an assumption, a substitute for mental thought. This comment regarding the Township employees' sewer sewage contribution, this Court acknowledges and professes as dicta; it's anecdotal.

G, the Township identifies the total projected units of water the Township will purchase in the next fiscal year.

H, the Township equates one unit of total Township water in, minus lost water? Minus Township metered water? The Court will steer clear of the debate over the adjectives used and consumed; see the debate over words in the ordinance on lost water section of this

opinion. With one unit of sewer sewage out.

I, the Township, effectively, if not explicitly, creates a sewer rate which is yielded from an equation, again effectively, if not explicitly, which equation is numerator over denominator. The numerator would be D, and the denominator would be point-8H. Tot -- the -- so the numerator is total projected Township sewer costs over the denominator which is approximated total water and sewer customers approximated units of sewer sewage.

In lockstep with the non-rate revenue dispute, Plaintiff points to I, the underlying equation as clear proof that this equation omits the math of a reduction from the numerator of receipts from the class of sewer customers identified as sewer only, or as this Court expounds, sewer but not water customers.

These sewer sewage customers receive their water from sources other than the Township, e.g., well water. Though Plaintiff has no beef with the equations which yields the rates for this class, they are described nevertheless. These sewer sewage but not water customers pay dollars for their sewer sewage service, which dollar amounts is derived from a rate, which rate is derived from an equation using at each such customer's option either one, the quantity of their water received elsewhere, e.g., well, as measured by a meters, as the quantity component,

the denominator of the equation. Or two, an equation, which equation approximates as the mean of all sewer sewage discharged by the class identified as water and sewer customers, whose sewer sewage quantity itself is the denominator in the water and sewer customers' sewer rate discussed earlier, and which it will be remembered is itself the Township's one-for-one unembraced approximation of units of Township water in to units of sewer sewage out, as the quantity component, the denominator of the equation; hence, a fixed rate for all such option two sewer sewage but not water customers, or sewer only customers.

The Plaintiff's beef again is not with the employment of the equations used to yield the sewer rate for the water and sewer customers, except insofar as it omits from the numerator the subtraction from projected total costs the figure which is the projected total sewer only customers' receipts. Plaintiff's beef is not with either equation which yields the two optional sewer only customers' sewer rates. Again, in lockstep with the non-rate revenue dispute, Plaintiff points to the water and sewer customers' sewer rate equation, A through I earlier, as clear proof that the equation omits an eternal equation, which component in the numerator -- as clear -- let me restate -- as clear proof that the equation omits

an internal equation component in the numerator, which equation would be a subtraction from projected total Township sewer costs an amount which is projected total revenues receipts generated from the two optional equations yielding the rates charged to the sewer only customers. And in lockstep with its defense of the non-rate revenue dispute, Defendant contends that the money coming in, the projected and actually fulfilled projected money coming into the Defendant's coffers from those two optional classes of sewer only customers, is enjoyed by water and sewer customers as a water and sewer customer's sewer rate equation reduction nevertheless.

How? Well, per Defendant, the class of water and sewer customers' sewer rate is derived from an equation, which equation contemplates and employs an artificially larger denominator. The rate is derived from an equation, which equation the Township plugs in numbers it actually disavows as true.

Let me explain, says Defendant, with the Court serving as interpreter.

Whereas the class of water and sewer customers' total projected sewage costs, the numerator, is being defrayed, distributed among an artificially large quantity of units of sewer sewage out, AEA -- also equated as -- units of Township water in, truth be told, the amount of

actual sewer sewage out from this class is less, say 10 percent; from 80 percent to 10 percent per the Defendant's summary disposition and trial brief and trial testimony.

This true number would, if used in the equation, result in a smaller denominator and correspondingly a higher quotient, a higher sewer rate to this class of water and sewer customers. Curiously, not really, the percentage used in the denominator of the water and sewer customers' sewer rate equation was proffered by Defendant to be a percentage representing a number of customers, F in the Court's description. That percentage of a class of customers multiplied by a quantity of sewer sewage, explicitly but not sincerely assumed to be equivalent to quan -- quantity of Township water in, yields a product which is projected total units of sewer sewage discharged by the class of water and sewer customers.

Again, curiously, not really, the Defendant explains that the quantity of sewage discharged by the sewer customers, who are water customers, is actually less than what the Defendant explicitly estimates in the equation which yields the rate.

However, to illustrate this, Defendant refers not to the number representing the quantity of sewage these persons excrete, but rather the percentage representing the number of these people, the number of

these customers. Again, Defendant contends the true or actual quantity of sewage discharged by this class is less than the figure the Township effectively inserts into the effective equation which yields the rates, and that this truth is proven by studying secondary meters or some such sort. Stated mathematically by the Court, not the Defendant, the Defendant contends in truth the formula which yields the denominator, point-8H, is actually more like point-7H. Remember, the figure which is the percentage figure is representative of a number of customers, and the variable, which is H, is represented -- is representative of a quantity of sewer sewage, itself represented by units of water in.

Defendant contends, however, the denominator is smaller, from point-8 to point-7, not because in truth the number of customers in this class is smaller; rather, the denominator is smaller because the number of units of sewer sewage, variable 8, is smaller.

In fairness to the Defendant, it is not so much which factor in the denominator is altered to yield the truth, what matters is what is the quotient after the computation. This dissection of the denominator is performed by the Court merely to demonstrate the convoluted mess, which even if performed with fidelity to the water and sewer customers, is abstruse, recondite, it

is not transparent.

One thing is clear, by the plausible arguments both sides present in support of their contention that sewer only revenues are and are not baked into the water and sewer customers' sewer rates, the Defendant's method is unclear. It is hardly verifiable. If there were not an easier, less convoluted, traceable equation to deduct such projected revenues from projected costs, Plaintiff may well be stuck with a trust me, I am your government proclamation. Plaintiff may well fail to overcome the presumptive reasonableness, the thoughtless thoughtfulness.

But there sure is a simpler, a transparent way to do this. The Defendant itself identifies the number of sewer only customers as quote, dot, dot, dot, relatively small, dot, dot, dot.

The abstrusity is not confined merely to those located on either side of the V to this case caption. Even the people located only on the right side cannot seem to keep it straight. The Defendant's former employee Domine and Defendant's agents, its lawyers in this case, say the truer number of sewer customers who are water customers is 70 percent, yet the Defendant's expert testified on 02/26/18 at 2:51 and 25 seconds, the percentage is 80 percent. Parenthetically, of course as

will be mentioned by the Court, he is but a repeater of information, not a discerner of it, so his figure, like any reasonable person, would be a cut and paste from documents prepared and attested as true by the Defendant, 80 percent. That's what the documents reflect, that is what the Defendant's expert testified to, and that is not what the Defendant's employee and a former employee said under oath in court.

And again, Defendant is talking about numbers of people, but in fact instead thinking about quantity of sewage; obviously two different objects, two different subject matters.

Given the height -- heightened decibel levels that expert -- defense expert Foster and defense witness Tice used to almost boast that the Defendant's projections are always gonna be wrong because of uncertainty, why in the world, if the Defendant is going to even attempt an exercise it calls projecting, would it not minimize wherever it can, any uncertainty, such as eliminating its own use of unsumptions? In this Court -- in this case, the Court has not mentioned it before; a new word has been formed. Whereas, Oxford defines assumption as the instance of accepting as true without proof, here, Defendant identified what it believes is untrue, and pretends it is true, now introducing the word unsumption:

the instance of accepting as true that which is known to be false. Sure, the bottom line is the same, says the Defendant; the point is, Defendant claims, the amount of sewage discharged by the water and sewer customers will be less than what the Defendant explicitly in budgets, rate memos, et cetera, foretells. Its projection is knowingly artificial.

Even with integrity and fidelity to the water and sewer customers, which integrity may ebb and flow with the humans who personify any legal entity and occupy its offices, the equation must be fudged to bring this to bear. The equation is a factor in the denominator. One variable is the number of water and sewer customers, and the other is the quantity of sewer sewage; redundancy intended. To profess the truth, less actual sewer sewage contribution by the water and sewer customers, Defendant must bastardize the equation. The Defendant does not alter the part of the equation which is the variable representing the very quantity which the Defendant professes is actually less than written into the equation, but rather the factor which is the assumed number of water and sewer customers; a written percentage, which the Defendant embraces as true. Why? Just be transparent, especially if your conviction is fidelity to your various bosses or bosses' bosses, the Township's water and sewer

-- Township water and sewer customers and their here adverse counterpart, some Township taxpayers, some of whom are one in the same person.

We the Township charge each water and sewer customer for the quantity of sewer sewage each produces. We don't measure each water and sewer customer's sewer sewage produced, we assume each water and sewer customer produces sewer sewage equal to the amount of water he buys, but not really. So far so good, in this Court's opinion.

We assume the total of all the water and sewer customers' sewer sewage is equal to 80 percent of the total sewer sewage the Township sends away, but not really. And that means we assume the remaining 20 percent of the sewer sewage comes from sewer only customers, sewer but not water customers, but not really.

We total our sewer sewage cost, say $1.00, and deign to allocate to the water and sewer customers to split up amongst themselves according to their proportion of water purchased, 80 percent, 80 cents on the dollar. Consequently, we allocate to the remaining sewer customers the remaining 20 percent, 20 cents on the dollar. Some of the water the water and sewer customers buy does not go down the drain into the sewer, but goes into their lawns, into blades of grass, the atmosphere, the dirt. So in

truth when we say the water and sewer customers' quantity of sewage produced is equal to their quantity of Township water purchased, that is untrue.

These water and sewer customers' sewer sewage contribution is a little less than their water quantity purchased. This means that the water and sewer customers' pie slice of the entire sewer sewage pie is not 80 percent, but something less than say 70 percent. This is Domine: We're trying to keep the rates low; we write 80 percent, even though in truth it's 70 percent. This is the Court: With all due respect, who are you, the child, the subordinate, or the parent, the principal? Don't conceal from your parents on the notion you're trying to protect them. If you are going to deal in assumptions, then deal in assumptions. Don't deal in assumptions if you are going to mix it up with perceived reality. We propose and chose to use 80 percent, but we believe the truth is 70 percent. Why use an assumption, only to renounce it? Just use the truth. If you believe 70 percent is the truth, then use it. Why use an assumption you assume is untrue? To beat a dead horse, quit unsuming.

It is one thing to select water in as the gauge to measure sewage out. It -- Plaintiff could not overcome the thoughtless thoughtfulness, the presumptive

reasonableness in the Township employing such an artifice. It is quite another to contend, as the Defendant has since its summary disposition brief, that quote, dot, dot, dot, actual measured ratio, dot, dot, dot, is closer to 70 percent, when the ratio itself is premised upon an artifice, water in equals sewage out. Unlike the men -- methodology of understating budgeted projected O&M to account for non-rate revenue, which concept, though not specifics, despite obfuscation could be traced, and easily fudged for that matter, intentionally or innocuously, Defendant's methodology for water and sewer customers' sewer rates creation, even if solemnly effectuated, yields equally persuasive evidence and arguments from both sides of the dispute. This is unreasonable. Eighty percent of that approximated sewage out may or may not reflect the percentage of the sewer sewage producing water and sewer customers; a reasonable legislative methodology.

Approximating a percentage of producers of a benign or intentionally inflated approximated quantity of sewer sewage as a means to offset an actually and easily -- parenthetically, the Defendant contends the number of sewer only customers is relatively small, Defendant's summary disposition brief page nine -- calculable source of revenue, sewer only customer receipts, is unreasonable.

I'm gonna -- the Court will restate that without

the parenthetically -- without the parenthesis for ease of understanding.

Approximating a percentage of producers of a benign or intentionally inflated approximated quantity of sewer sewage as a means to offset an actually and easily calculable source of revenue is unreasonable.

There is unnecessary unsumptions and there is unnecessarily too many assumptions baked in, conceivably honestly or dishonestly abstruse in and from the equation which yields the water and sewer customers' sewer rate.

Assume one unit of water in equals one unit of sewage out. But then again, acknowledge that assumption is untrue; actually water in is greater than sewer sewage out. One unit of water in is equal to one unit of sewer sewage out is an estimate Defendant employs and readily rejects.

Assume that 80 percent of sewer sewage is generated by 100 percent of the sewer customers. Assume the assumption is actually 70 percent.

Assume the receipts from the sewer sewage only customers equals the difference between the receipts generated from the water and sewer customers' sewer rates, with an assumed 80 percent sewer sewage contribution, and the receipts that would otherwise be generated from the water and sewer customers' sewer rates, with an honestly

believed assumed 70 percent sewer sewage contribution, a twice baked assumption of 70 percent sewer sewage contribution.

Why -- why? Some assumptions make sense, i.e., rather than metering sewage. But beyond that, why? This Court strives to reject any untoward reason. For relative convenience as between relevance and -- relative convenience and transparency, Defendant itself has persuaded the Court the inconvenience is meager. Leaving it the way it is, or without much difficulty break it all out on paper if you are going to employ assumptions. Break them out paper too, and eschew all unsumptions. It's a no-brainer, be transparent.

It is not lost on the Court that the Defendant maintains, like non-rate revenue, we do not have to explicitly deduct sewer only receipts, we only have to achieve proportionality between rates and costs. The Court opines and adjudges, however, you either are not achieving proportionality because of your methodology, or your methodology is abstruse, and no one can tell whether or not your rates are proportional to costs, save wholesale deference, blind faith to the Defendant. This is not the law.

This section, as with the next section on non-rate revenue, contains equations. The Court has

articulated, broken down into equations, not to suggest that these are the equations the Defendant explicitly employed; indeed to the contrary. Rather, the Court expresses these to simply show numerically how the Defendant effectively does what it says it does.

Non-rate revenue.

If anybody wants to stand and stretch, you're welcome to. This next section is probably the length of all the other ones combined, so.

A rate is the product of an equation. For fiscal year '10 to '11, Defendant, through its employees Domine and Trice professes the water rate equation is quote, dot, dot, dot, simply, dot, dot, dot, dividing the system costs by the projected water usage, and the sewer rate equation is, equating sewage out with water in, quote, dot, dot, dot, dividing the sewer system costs by the projected water usage of customers connected to the sanitary sewer system, close quote; Exhibit 19.

Mathematically speaking, Defendant effectively says the equation yielding both the water and sewer rate is numerator over denominator.

Numerator, projected -- asterisk -- costs, water and sewer, over projected volume -- parenthetically, water sewage -- bracket, using another equation, see sewer only section.

With respect to the asterisk, the Defendant does not use the word projected for this numerator, but meant projected, and there's no issue nor question about this.

For fiscal year '11/'12, the Defendant, through its employee -- employees Domine and Trice, profess the equation to yield the rates quote, dot -- colon quote, it is simply taking the total costs for the system and dividing it by the estimated volume to be used by the Township customers; Exhibit 20.

Mathematically speaking, the Defendant says the equation for both the water and sewer rate is numerator over denominator. Numerator, projected costs -- again, the projected with the asterisk -- water and sewer, over projected volume. Water, sewer, and sewer using another equation; see sewer only customer section.

For fiscal year '12/'13, Defendant, through its employees Domine and Trice profess the equation to yield the rates quote, it is simply taking the total cost for the system and dividing it by the estimated volume; Exhibit 21.

Mathematically speaking, Defendant says the equation for both the water and sewer rate is numerator over denominator. Numerator, projected -- again with the asterisk -- costs, water and sewer over projected volume, water sewer -- again with respect to sewer, see the --

another equation, see the sewer only section.

For fiscal year '13/'14, Defendant, through its employees Domine and Trice profess the equation to yield rates quote, it is simply taking the total cost for the system and dividing it by the estimated volume; Exhibit 22.

Mathematically speaking, Defendant says the equation for both the water and sewer rates is numerator over denominator. Numerator, projection -- again same asterisk -- costs -- projected costs water and sewer over projected volume again water and sewer, and with respect to sewer, see the sewer only section for this other equation.

For fiscal year '14/'15, Defendant, through its employees Domine and Trice, profess the equation to yield rates quote, it is simply taking the total cost for the system and dividing it by the estimated volume; Exhibit 23.

Mathematically speaking, again Defendant effectively says the equation for both the water and sewer rate is numerator over denominator. Numerator, projected -- asterisk -- projected costs water and sewer over projected volume, again water and sewer, and with respect to sewer, see the other equation in the sewer only customer section.

For fiscal year '15/'16, Defendant, through its employees Domine and Trice, say quote, to determine the Township charges, we must first estimate the volume of water to be purchased based on the Township's historic water volumes. Then we add the water and sewer system operating costs to the estimated water and sewer costs. The Township's charges are then determined by -- determined by dividing these costs by the estimated volume of water to be sold to the Township customers. Simply put, water and sewer charges are decided on several unknown variables, such as volumes for water and the sewer consumed by the Township's customers; Exhibit 24.

This is the Court -- mathematically speaking, well, it is discernible from this new elaborated explore -- explanation that the root equation is the same. It adds a lot of superfluous descriptors that seem to have already been stated in the earlier years' description with the simple single word projected. One projects only if there are several unknown variables. The reader already knows this. Yet even with more words, it is neither explicit nor is it even implicit that Defendant professes another step, another computation in the equation. More on this later.

For fiscal year '16/'17, Defendant, through its employees Domine and Trice say quote -- says quote, to

determine the Township charges, we use the estimated water volume to be purchased from SOCWA based on the Township's historic water volumes. The Township owns the water system that delivers the water to the customers, and the sewer system that collects the wat -- the waste water from each customer; therefore, we add the Township's water and sewer system's operating costs to the estimated water and sewer purchases from SOCWA and the WRC. The Township charges are then determined by dividing these costs by the estimated volume of water to be sold to the Township customers. Simply put, water and sewer charges are decided on several unknown variables, such as the metered volume for water and sewer to be used by the Township customers; Exhibit 25.

This is again the Court speaking; mathematically speaking, well, it is discernible from this new elaborated explanation that the root equation is the same. It adds a lot of superfluous descriptors that seem to have already been stated in the earlier years' description with the simple single word projected. One projects only if there are quote, several unknown variables. The reader already knows this. Yet even with more words, it is neither explicit, nor is it even implicit that the Defendant professes another step, another computation in the equation. More on this later.

For fiscal year '17/'18, Defendant, through its employees Domine and Trice say quote -- says quote, the Township owns the water system that delivers the water to the customers, and the sewer system that collects the water -- waste water from each customer. The total Township water and sewer system consists of over 500 miles of buried pipe throughout the township that is operated and maintained by the Township; therefore, the Township's water and sewer system's estimated expenses are added to the estimated water and sewer purchases from the Southeast Oakland County Water Authority, SOCWA, and the Oakland County Water Resource Commissioner's Office, WRC. The Township's charges for water and sewer to the customers are determined by dividing these costs by the estimated volume of water to be sold to the Township customers; Exhibit 26.

Again, the Court is musing here, mathematically speaking, well, it is discernible from this new elaborated explanation that the root equation is the same. It adds a lot of superfluous descriptors that seem to have already been stated in the earlier years' description with the simple single word projected. One projects only when there or if there are several unknown variables. The reader already knows this. Yet even with more words, it is neither explicit, nor is it even implicit that the

Defendant professes another step, another computation in the equation. More on this later.

All of these quotes are recited here, not so much for what they say to the world, to the Defendant's constituents, to the Defendant's fiducial beneficiaries, whom the Defendant calls customers, to the Defendant's non-arm's length customers, to the Defendant's masters, the Defendant's principals, rather all of these quotes are recited here for what they do not say, even those updated and elaborate quotes. They say nothing whatsoever, explicit nor implicit, on what the Defendant itself acknowledges quote, in fairness -- to quote Defendant's finance director -- should be a component to the equation which yields the water and sewer rates non-rate revenue.

And now for more quotes. The Defendant's summary disposition brief page five, footnote nine: Water and sewer revenue received from other sources referred to as non-rate revenue is deducted from the budgeted operating costs before the Township determines its revenue needs to cover those costs, close quote. This footnote cites Domine and Tice affidavits and deposition of their expert.

Domine's affidavit paragraph 14 quote, each year the Township customers' water and sewer rates are calculated by dividing the projected expenses -- and here

the quote -- the Court puts in capital and italicized letters -- less the non-rate revenue. Parenthetically -- this is the Court speaking -- if this new four-word inclusion is important enough to appear in a court file, it would seem only all the more important to appear in documents prepared for use by those who serve, public servants, Township trustees, who serve the constituents and fiducial beneficiaries whom the Defendant refers to as customers by the projected meter water and sewer sales -- that's continuing Domine's affidavit quote.

This is the Court speaking: Where, Defendant, can your bosses, your principals, your masters, your non-arm's length customers, your intimates, heck, yourself, your reflection in a mirror, where can they see this computation? You don't suggest, Defendant, that you know more than your superiors, or at least see more, or at least have more available for you to see than your superiors, do your -- do you?

Tice affidavit -- Defendant in its summary disposition brief, footnote nine, refers the reader to Tice's affidavits -- affidavit, paragraphs 11 and 12; however, this was clearly a typographical error, Defendant must have meant paragraph 21.

Paragraph 21, quote, each year, the Township customers' water and sewer rates are calculated by

dividing the projected expenses -- and again, this is the Court speaking, putting these in capital and italicized words -- less the non-rate revenue -- and this is the Court continuing its musings -- if this new four-word inclusion is important enough to appear in a court file, it would seem only all the more important to appear in documents prepared for use by those who serve, public servants, Township trustees who serve the constituents and fiducial beneficiaries whom the Defendant refers to as customers, by the projected metered water and sewer sales.

And again, I'm sorry; this is the Court continuing the Tice quote in his affidavit. And again, the Court speaking now: Where -- or -- musing now -- where, Defendant, can your bosses, your principals, your non-arm's length customers, your intimates, heck, yourself, your reflection in a mirror, where can they see this computation? You don't suggest, Defendant, that you know more than your superiors, that you see more than your superiors, that you have information more available to yourself than your superiors, do you?

And now the Defendant's expert witness deposition, page 56, lines 8 through 13, quote, so let me recap, my testimony is that -- and again, the Court emphasizes the following -- the Township has represented -- and this is the Court musing again -- these four words

are emboldened, italicized, and capitalized -- so let me recap, my testimony is the Township has represented that it recognizes non-rate revenue. It has represented non-rate revenue as a rate -- as rate calculations as an offset against Township operating expenses. I have no reason to conclude otherwise. This is the Court speaking: What yield from such a statement? When you trim the fat, what's left? Nothing but -- whatsoever, but a parroting of what the Defendant told him. Depositions contain useful and useless information, but this quote Defendant relies on to suggest this Court accept that non-rate revenue has reduced the rates. Whether or not the Defendant did deduct non-rate revenue from the equation yielding the rates is secondary to the incredulity of the Defendant expecting, as it succeeded with this, its witness, expecting the Court and apparently its fiducial beneficiary, whom the Defendant calls its customers, to trust me, I did.

Well, where Defendant; show me where in the equation? Where in the equation which yields the rates is this computation? Going back to your statement quote, dot, dot, dot, non-rate revenue is deducted from the budgeted operating costs before the Township determines its revenue needs to cover the costs, close quote, what do you mean with the temporal preposition before? How do you

mean deducted from the budgeted operating costs? Do you mean the projected operating costs are physically printed into the budget, and then that figure is reduced in someone's head by the figure which is non-rate revenue, and that def -- difference is inserted in the quote, simple equation which yields the rate? Surely not, given the obviously discrepancy between the acknowledged O&M cost figure used in the rates, and the O&M figure in the budget, and the projected non-rate revenue in the budget. So that means either Plaintiff is correct and non-rate revenue is not deducted, or Defendant contends, without explicitly saying so that what it means when it says quote, non-rate revenue is deducted from budgeted operating costs before the Township determines its revenue needs, dot, dot, dot, close quote, is that what it does -- parenthetically, before printing and professing to its municipal fiducial beneficiaries and to its taxpayers, the public, and everyone else in the world via budgets -- that water and sewer O&M costs to be X, it, the servant, actually thinks, to itself mind you, is that X is really X minus non-rate revenue. It mentally deducts from truly expected O&M costs, non-rate revenue, and tells its masters, its fiducial beneficiaries, and its taxpayers, and everyone else in the world that projected expenses are less than what the Defendant truly expects. Defendant

omits that computation from its fiducial beneficiaries' view, and its taxpayers, and everyone else in the world. Why?

It is true, this Court concludes as a matter of fact, this figure, which is projected non-rate revenue, is not located in the equation which the Defend -- Defendant annually refers to in its rate memos as the equation which yields the water and sewer rates. The quote, it is simply, dot, dot, dot, quote, verbiage.

With little discernment, it is no mystery that the equations which, when enumerated, produce the rates, includes no explicit equation which is, colon, supplier cost for projected water purchased minus non-rate revenue. Nor is there an explicit equation which is cost for sewage removed minus non-rate revenue. It is clear that the equation, which when enumerated, produced the rates include this equation: Supplier cost for projected water purchased plus X -- asterisk. And the asterisk reads X representing the figure, which figure is defined, for example in Exhibit 19, as quote, Township water system operating costs, close quote, which is itself restated as an equation, numerator water and sewer budgeted expenses over denominator, and the denominator is two. And there's an asterisk with that equation, and the asterisk reads: And it is clear, using Exhibit 19 as an example, that the

sewer rate includes the same equation for the other one-half of the water and sewer budgeted expense.

Going back to the body of the Court's opinion. It is evident the debate between the parties in this section is the means by which variable X is quantified. Plaintiff posits that the Defendant professes that variable X can be quantified by this equation: All projected water and sewer operating and maintenance costs, minus X, equals non-rate revenue; thus, X is quantified by deducting from all O&M costs, the non-rate revenue. Then X is added to the cost for water purchased, that figure is divided by the volume purchased, yielding a rate which would produce a balanced budget, or a proportionately balanced budget. And since the numbers in the rate memos do not equate with those in the budgets, the Defendant lies, per Plaintiff.

The only problem Plaintiff -- with Plaintiff's positing is that the Defendant does not profess this. Though Defendant, through its former employee Domine, did not articulate it, and in fact testified both that non-rate revenue was deducted and was not deducted in the equation which produces the rates, this confusion is resolved by the following: Unlike Plaintiff's posit what the Defendant professes, the Defendant's effective equation to quantify X is X equals question mark,

asterisk, over two. And the asterisk reads as follows: The Defendant describes the numerator with words and more words.

The numerator is water and sewer budgeted expense, and the quotient X is Township water operating costs and a likewise equation with quotient X being Township sewer operating costs. This description of course begs the question, what is water and sewer budgeted expense? The answer is not explicit in the record. If the Defendant's rate is in part the result of this equation to quantify variable X, the Defendant, though articulate -- inarticulate is not lying, and if that is the Defendant's unwritten equation to quantify variable X as a constituent to produce the rate, it is not necessarily so that there would be equivalence, as Plaintiff supposes the Defendant professes. For example, total O&M minus X, equals non-rate revenue. Indeed, it would be absurd to expect these independent numbers, expenses and non-rate revenue, even projected, to precisely offset each other, which would be a necessary consequence if the Defendant did profess, as Plaintiff's claims the Defendant professes as the means by which to quantify variable X.

For example, per Plaintiff, per Defendant, per Exhibit 22, total operating expenses; water variable costs

1,238,520, water fixed rate 827,680, sewer variable rate 1,250,200 -- parenthetically, on February 16th, 2018, a 3:14, Plaintiff attorney rounds this number to 1,250,000. Continuing, sewer fixed rate 850,000, totaling $4,166,400.00 O&M expense -- strike that -- O&M, excluding commodity.

Now, Exhibit 13 -- parenthetically, the budget corresponding to Exhibit 22, the rate memo -- $4,225,000.00, difference 500 -- the difference of 58,810. This is Plaintiff -- Plaintiff's attorney: In your budget, the non-rate revenue is 653,000, a far cry from 500 -- a far cry from 58,810. It is a pointless proposition for Plaintiff to accuse the Defendant of proclaiming that O&M equals non-rate revenue, since the two numbers are unrelated, independent, whether real or projected. So the method by which non-rate revenue is accounted for in the rates, if at all, must be explained otherwise. The Defendant, via employee Domine, contends the Defendant did this historically by notepads and sticky notes, and recently explicitly, as a training tool to his successor.

With some reservation, maybe only symbolic, with the millions of dollars in the black, it may be more genuine to acknowledge that the Defendant's objective was not so much to strive to develop an equation to produce a

rate which would yield income to meet expense so much as an objective to build a surplus in the water and sewer fund. If so, is this objective unreasonable? Defendant may either be inept at the task of equating cost with income, or as Defendant contends here, the surplus is itself meeting an expense, which from that perspective is resulting in proportion between rates and costs. But if this is Defendant's possession -- position that it needs extra beyond today's expense, then why the confusion? The Court is loath to say smoke and mirrors because the Court is not claiming anything sinister here, but why the -- why the abstrusity about how non-rate revenue is accounted for in the equation which yields the rates? Then when will Defendant be caught up to tomorrow's expenses, so that it no longer has future expenses to catch up to? When can it be expected a flat line in the water and sewer fund? Surely no one -- no way sensible and et -- eternal increase in the water and sewer fund balance.

If the Defendant believes that the millions of dollars in -- in the water and sewer fund is necessary to fund future expenses, then when will these expenses start coming due? They have either not come due in the past eight years or so, or they have, but their consequence has not prevented the water and sewer fund from increasing year in and year out.

Is it for a water and sewer fund rate expert to opine on the question what size a water and sewer fund's balance should be, or is that question beyond his or her pay grade? If a water and sewer rate expertise is in the matching of income with out-go, then the size of the fund beyond that computation would be beyond his or her pay grade. Or if the two are one, then the rate should be -- should correspond and -- should correspondingly produce a decreasing balance over time. It may be unreasonable that a fund which is supposed to match income with out-go have a net increase in its bank account year in and year out; if history is a mark of the future, the fund will only grow, and never balance out.

There is no honest debate whether non-rate revenue exceeds explicit non-commodity expenses in the water and sewer fund. Clearly they do. The honest question then is whether the excess, which is proposed to serve as a deduction from the commodity costs to thus reduce the rate is proportionate to all costs, explicit and otherwise. Or using the burden of proof parlance, has Plaintiff overcome the presumptive reasonableness?

What is the Defendant's explanation for this use -- for the use of this excess, which could, but is not serving as a constituent to reduce rates? OPEB, catch up with sewer supplier undercharges, et cetera. Well, but

when catch up; ever? And also, well the Court thought those costs, OPEB, catch up with sewer overcharges, et cetera, were already counted. Each year's OPEB expenses, et cetera, were identified and listed as projected expenses in the budget and in the rate equation.

For example, if year ten's budget identifies all of year ten's expenses, and year ten's expenses include one, costs which are incurred in year ten and paid in year ten; two, some costs which are incurred in year one, two, three, four, five, six, seven, eight, and nine, which are to be paid in year ten; and three, some costs which are to be incurred in years ten, 11, 12, 13, 14, 15, 16, 17, 18, and 19, and which will be put -- paid into a bank account or trust in year ten, to be withdrawn throughout the years 11, 12, 13, 14, 15, 16, 17, 18, and 19, then extrapolating out into infinity, even with human imperfections in predicting the future costs and revenues, with an eye towards matching costs with revenues, not profit-seeking, the bank account should hover somewhere close to zero, for any given year's receipts rates, not-rate revenue, would equal the current year's incurred costs payable that year, and that would be it, because at some point, yesterday's earned but unused Band-Aid, which gets purchased and used this year, will equal today's earned but unused Band-Aid, which Band-Aid will get purchased and used next year.

A fund which keeps growing and growing is depicted on a line on a time quantity axis which goes up and up eternally, and if proportionality between rates and receipts, or equality is the objective, that line on such axis would go down and down toward zero, although never reaching exactly zero. These lines are incongruent. There would be up-spikes in the downward pointing line to illustrate reserve buildups for long-term capital projects; maybe this current balance in the water and sewer fund is such an up-spike, maybe it is eternal.

This is question of damages with a range of zero, separation of powers, ballot box versus courthouse, to nominal or symbolic damages for the Defendant's abstruse, recondite methodology, to real money for Plaintiff -- see damages section to this verdict -- to zero.

Somehow the past near decade's continual balance increase is but a temporary, periodic up-spike, and Defendant has invisibly off the books, out of the view of its masters, its fiducial beneficiaries, indeed underestimated projected O&M proportionately to projected non-rate revenue, and of course, each year looking back has been spot-on in its projections, or whenever not has -- has made real adjustments to the rates in invisible fidelity to the principal the goal -- the goal of

proportionality, not profit-seeking. An unlikely damages scenario.

Defendant went to great lengths to have this Court believe that projected non-rate revenue was deducted in the rate equation numerator. Why? Well, there is nothing wrong in itself with an enterprise fund's rate equation excluding a source of revenue, so long as somehow, some way, the income of the fund is proportional to the costs of the fund, all is well.

However, clearly the law is referring to income of the fund, not just from the rates. For if the law meant the income from the rate equation must be proportionate to the fee, it never could not be proportionate. Please excuse the double negative. Without a third variable in the rate equation, besides water and sewer rates, and the cost of commodity, it is mathematically impossible to yield disproportion. Each variable is a factor of the other. Only with the third variable contemplated, but excluded from the equation, could disproportion result, i.e., some costs excluded, which would yield disproportionately cheaper rates, or some income excluded which would yield disproportionately higher rates.

No question that all O&M has been included; logically it would be pointless not to include it, whether

Defendant had its fiducial beneficiaries' best interest in mind, or profit-seeking in mind. And evidently, the rate memos suggest it all -- and the Court emphasizes all -- was included. Plaintiff directive Domine line-by-line, and for example Exhibit 19, all the rate memos, which shows costs, X divided by two in the water variable rate, and costs, X divided by two in the sewer variable rate; 50 plus 50 percent equals 100 percent.

With respect to the emphasis on the word all, all is the word of the day, however. For all could mean all, or all could mean net of an invisible reduction in an amount equal to projected non-rate revenue.

If the budgeted O&M, the figure which is written down printed in the budget, is a figure which itself was a priori, or prior to printing in the budget reduced, mentally reduced, derived from notepads and sticky notes, various iterations, using Defendant's former employee Domine's parlance, by an amount equal to projected non-rate revenue, then that figure, or an approximation of it as a constituent number in the equation which yields the rates would, when compared to the corresponding figure in the corresponding year's budget, be equal to or approximately equal to each other. The number in the rate equation would be all, even though it is a net figure, a figure which had earlier been reduced by a number equal to

or approximately equal to non-rate revenue.

Defendant contends it needs a buffer -- that's the Court's term -- an operating reserve, in case its own expenses or volume of commodity actually incurred is greater than projected in any given year. It is harmonious to profess that all expenses in the budget are all expenses, and all expenses did not -- does not include a buffer or an operating reserve. Indeed, grammatically, they are necessarily harmonious. Expense does not equal reserve. Reserve, as used here, means as the Court described, a buffer, something beyond expense. The Township could have, but did not posit that its equation which yields the water and sewer rates does not include an equation, explicitly or otherwise, which is a subtraction for non-rate revenue. It surely could have contended that the subtraction is intentionally omitted from the equation, because the non-rate revenue is earmarked for operating reserves, the buffer.

Whether or not such a pol -- policy decision would be wise or ill-conceived, overshoots the mark, or even unreasonable is, by the Defendant's position, off the Court's table for consideration because the Defendant professes that is not how it does business. Indeed it is clear that the Defendant omits its express equation yielding the water and sewer rates' sources of income, and

it is evident that the Defendant rationalizes this omission, principally or alternatively, whether an intended omission or not, with the common sense notion it needs a buffer.

It is important to note here that the Defendant is not explicitly proposing that the budget understates cost; Defendant is not contending that future healthcare costs are not contemplated or are under-contemplated by the budget, thus necessitating a buffer or operating reserve. Defendant, to its credit, stands by its word that the budget is just that, a budget, an educated projection, whether prescient or not, of all expenses and income. At least the Defendant is not explicitly contending it is underestimating; under expressing maybe is the better word, but maybe that is what Defendant is doing, or rationalizing. For example, see Exhibits 42 and 53, and Domine's hypotheses at 3:57 p.m. on 02/06/2018.

Why the obfuscation? The numbers used in Exhibit 23 coincide with the worksheet in 42, not 53, which demonstrates that non-rate revenue is omitted from the equation yielding the rates. There is no explicit sub-equation in the equation that yields the rates, which sub-equation in the numerator is costs minus non-rate revenue. See, says Plaintiff, Defendant has not accounted for non-rate revenue in setting the rates.

It is a fact that the Defendant's publicized equation used to yield the water and sewer rates contains no such computation. And the -- and though it is not necessarily a fact that the Defendant has not accounted for non-rate revenue, there is nothing besides trust me I did, to dispel that possibility, and there is circumstantial evidence, the water and sewer fund positive bal -- and historically increasing balance, OPEB, a claim of reserves with no such budgeted line item, to show Defendant has not accounted for it. More on circumstantial evidence later.

Well, to give Defendant every benefit of the doubt -- doubt, and considering it earnestly endeavored to match costs with income, looking at the positive balance in the fund over the years, a question could be is an after the fact rationalization for an equation yielding a water sewer rate a kernel in the question whether rates are proportional to the costs? In other words, looking solely at the yield from the rates against the backdrop of net costs, Township, and commodity costs, less other income, the receipts from rates are disproportionately high to the net costs.

Looking more broadly at the yield from the rates against the backdrop of net costs, Township commodity -- township, and commodity costs, less other income, and the

need, albeit perhaps latently, post-rationalized for a buffer for operational reserves in the event the Defendant, via its various fingers, rate-makers and budget-makers, underestimate costs, are the rates disproportionate to the costs?

Noteworthy is the silence in the event the Defendant overstates costs or understates other income. In such a scenario, more reserves would be actually realized than are necessary. A positive ending balance would result, just as is so and has been so year after year, but not in pursuit of building a buffer, a reserve, but because of the servant's hidden agenda to protect its masters. The result is identical, but the state of mind of the servant is different. And the master have no choice but to accept their servant's declaration trust me.

Plaintiff offers exhibits for the proposition that the equation which yielded the water and sewer rates did not include an equation which subtracted non-rate revenue. Exhibit 43, which produces $4.71 and $6.35 water and sewer rates, contains no explicit equations, which are subtractions of non-rate revenue figures from either water or sewer equations, and the amounts of $4.71 and $6.35 are the rates proposed in 42. Plaintiff refers to Exhibit 53, which the Defendant's former employee Domine, hypothesizing behind -- beyond his former pay grade

perhaps, testified shows a true Township projected cost, roughly $300,000.00 per commodity higher than the corresponding amount in 42. That true cost was then reduced by true projected non-rate revenue, and that difference was the Township cost -- costs, which was then inserted as a component to the equation which yield the water and sewer rates.

Domine at 3:02 and 40 seconds on 02/06/18, quote, the budgeted expenses overall is what I would call the operating expenses of the fund, and so by deducting the non-rate revenue from that operating expense, and you would remove the commodity cost, dot, dot, dot, then that would leave you with the expense that you would need to incorporate in the rates. Question from Plaintiff: All right, so we need to compare the budgeted O&M expenses to what you put in the rates -- in the rate for O&M expenses, leaving aside the commodity charges, dot, dot, dot, dot, in order to determine whether the budgeted O exp -- O&M expenses were actually higher than what was put into the rates -- rate, leaving aside the commodity rate, we would look at what the budget numbers were and compare them to what the O&M in the rates was, correct? Answer: Dot, dot, dot, once again, this is a recommendation of a rate, and this operating expense is what that rate is going to generate at that specific volume of water. It doesn't

necessarily meet exactly what that net operating expense is, dot, dot, dot, dot; it might be a little -- it might be a tad little higher to cover the revenues to cover the costs.

This is the Court speaking, or opining: This is basically what Domine is getting at without using these precise words, or it sure appears to the Court that this is what he's getting at. The rate equation used a figure for Township expenses, which was less than what was truly expected to be Township expenses. The reason a smaller number for Township expenses was used in the rate equation was to reflect or defray non-rate revenue, other income to the fund besides water and sewer receipts.

This is the Plaintiff attorney: To determine if you actually did that, it's just math. We can look at the budget and we can look at the rate document and then determine whether that's true. Plaintiff continuing: You're showing that the operating expenses of the Township for water and sewer are being covered by the variable and fixed rate, correct? Domine: Correct. Plaintiff: The non-rate revenue and the rate document is non-existent. It's not taken into account in that rate document, correct? Domine: Other than it might -- asterisk -- be reflected in the numbers, dot, dot, dot, shown in the operating expenses; there's nothing written about that.

With respect to might, the Court says really, Defendant, you say might, and your fiducial beneficiaries are to accept that and leave it at that?

Continuing, per Plaintiff, per Defendant, there is more Township expenses in the budget than in the rate equation, because the non-rate revenue is used to reduce the Township expenses in the rate equation. This is not true, contends Plaintiff; if this was true, in the fiscal year involving Exhibits 13 and 22, for example, the non-rate revenue earned should be in the neighborhood of $58,000.00. Instead, the non-rate revenue is $650,000.00.

If the Defendant were -- were true, argues Plaintiff, and with non-rate revenue of $650,000.00, then the budgeted Township expenses of $4,225,000.00 would be reduced by the true non-rate revenue of $650,000.00.

If the Defendant's contention held water, continues Plaintiff, then the difference between budgeted O&M Township expenses from the rate equation O&M Township expenses should be 650,000, not $58,000.00. Rate equation expenses should be $650,000.00 less than budgeted expenses. Plaintiff contends that if the Defendant's contention were true, that the Township expenses, which are added to the commodity costs and divided by the number of units of water purchased, sewage removed to yield the water and sewer rates are reduced by the non-rate revenue

before the steps of adding them to the commodity costs, then there would be a gulf between budgeted O&M and a rate O&M equal to the non-rate revenue, and, Plaintiff explains using Exhibits 13 and 22 as examples, this gulf would rear itself or show itself in the budget, Exhibit 13, as the currently expressed O&M plus $650,000.00; currently expressed Township O&M $4,225,000.00, plus $653,000.00, equals $4,787,000.00.

Plaintiff does not allow for the possibility that the gulf would rear itself -- show itself in the rate document, Exhibit 22, as the currently expressed O&M, $4,166,000.00 minus $653,000.00, equally $3,513,000.00. Exhibit 22, rate memo expenses, $1,238,520.00, $827,680.00, $1,250,200.00 -- again, Plaintiff states in trial that it's 1,250,000 -- $850,000.00, for a total of $4,166,400.00. Exhibit 13, budgeted expenses, 4 million -- totaling $4,225,000.00. This may be a distinction with a difference, for if this exercise was as Plaintiff contends, the gulf illustrated with an added $650,000.00 to expenses in the budget, then that would mean that the Township would write down numbers in the budget, O&M line items, which are untrue. Some or all or one line item would understate, underrepresent truly expected costs for those, or that line item or items to the tune of $650,000.00. On the other hand, if the gulf were

illustrated by a subtraction from the rate equation, O&M expenses, then there would be on underrepresentation in the budgeted O&M costs/projected costs expressed in the budget, they would be true unadulterated projections in the budget and they would undergo a $650,000.00 deduction in preparation for inclusion in the rate equation.

Plaintiff, so the water operating expenses weren't reduced in your -- on your Exhibit 42, because they are exactly the same as what went into your rate document, correct? This is the Court speaking, or again chiming in. This question begs the question which document fed the other? Either the constituents to the list and timing of the listing of operating expenses by the water and sewer department and finance department coincided, thus the numbers are the same, or the numbers are the same because one document fed the other. Plaintiff presumes 23 fed 42, but that hasn't been proven. It is rational that 42 fed 23. Indeed, Domine explains, the numbers have been reduced to a net operating expense that I would use in the rate; thus feasibly first comes the upstream finance department's reduction, then comes Domine's rate equation crunching.

This is Plaintiff, continuing: So now, to see if you have actually reduced it in the rate memo from the budgeted expenses, we could do that again by taking the

budget, dot, dot, dot, dot. This is the Court musing: Not necessarily so. If the budget understates the Township projected expenses to the tune of projected non-rate revenue, it will not manifest as Plaintiff contends. Plaintiff claim -- Plaintiff expects claims to have proven that the Township projected expenses in the rate -- let me start again. Plaintiff expects claims to have proven that Township projected expenses in the rate match the Township expenses in the budget, and since they match, it proves that the equation which yields the water and sewer rates, which equation includes an equation of adding Township expenses, did not include an equation which is a subtraction of projected non-rate revenue.

This is the Court: This syllogism is sound, so long as the only place where the subtraction of non-rate revenue could occur would be in the equation which yields the rate. The syllogism is unsound if the equation, which is the subtraction of projected non-rate revenue from projected Township costs, could occur elsewhere. Defendant implies, though does not explicitly profess here in the function of expressing projecting Township expenses, non-rate revenue is a priori deducted there, either in the budget itself or on notepads and sticky notes, and from various iterations, Domine's words. The non-rate revenue could be subtracted from say -- or call

it gross Township expenses to yield net projected Township expenses. This distinction being Def -- under Defendant masters and fiducial beneficiaries' radar.

This figure, massaged by the servant's unbeknownst by the masters, the principals, the fiducial beneficiaries whom the servant calls customers, could be used, matchingly, of course, both in the budget and freight equation. Stated another we -- another way, albeit redundantly, Plaintiff's premise is true only if the figure identified in the budget, which is the total of Township projected operating expenses has not itself been reduced somewhere in its lineage by the amount of non-rate revenue. For, if the budgeted or projected operating expenses has been understated by the amount of projected non-rate revenue, then that figure would match the projected operating expense figure in the rate equation, and both figures would be math -- would be the mathematical difference between tru -- truly, as opposed to tongue-in-cheek projected operating expenses and non-rate revenue, or net projected operating expense.

Tice on February 9th, 2018 at 3:00 p.m.: Quote, you can account for non-rate revenue five different ways; you can take the expenditures and apply the non-rate revenue to that, leaving your expenditures to be covered by rates. You could take the rev -- your revenues that

you have coming from the rates and then reduce the revenue. I understand the Defendant's contention is, as you Plaintiff say it, they, the Defendant, take the budgeted O&M and reduce it before they do it to the rate O&M. Again, this is Tice at 3 o'clock and 46 seconds: I look to rate -- bracket -- rate calculation from a global perspective of the fund. We need to raise so much to pay not only the ongoing operational costs for the year based on a lot, dot, dot, dot, of assumptions; you can't guarantee those other revenue items are going to come in. This is the Court's chiming in: What are you getting at, Defendant; are you saying without saying it that one item you are charging for, a cost which is not noted as a line item cost, is a reserve, a buffer? Well, first of all, why not call it what it is, a reserve, or a buffer? Why call it what you don't believe it, postage, uniform -- what you don't believe it is, postage and uniform, and regardless, your fear of deficiency and of course your joy from a surplus is easily remedied with an equation for looking back historically what actually happened.

Continuing with Tice: You're projecting on those -- bracket -- non-rate revenue as well, but just in fairness and trying to get as close to as good a pro -- projection as you can, they should be accounted for in some fashion. You could leave non-rate revenue blank, and

that's not necessarily wrong or incorrect either. That would be more conservative. This is the Court: The law is to be proportionate, not conservative. Continuing with his quote, if you get those moneys, it is going to go to the reserves. This is the Court: Interesting, there is no line item in the budgets for reserves. Continuing with Tice: It may not get spent, and we don't have enough in reserves. This is the Court speaking: Translation, our annual projections are themselves deficient. If a projection is a knowingly -- is knowingly deficient, they are not projections by definition. A projection is a forecast. A forecast is a prediction, a foretelling, a prophecy; a prophecy is foretelling future events, Oxford. If you are not projecting, trying to predict the future, actually striving to capture cost from rates, for whatever reason, to keep rates low, whatever, don't claim to be projecting. You are under-projecting, or depending upon the argument, over-projecting, all in the spirit of saving money. But what have you achieved except ushering in skepticism and mistrust? You under-project or over-project, you yield a surplus, or call it a reserve rather than a surplus, if it pleases you, and you stockpile those dollars, you put it in reserves because you don't have enough in reserves. Why? Because you altruistically under-projected -- parenthetically, since the topic of

overestimating costs is discussed elsewhere, the Court will limit its comments here to the topic of under-projecting -- and you will compensate for that under-projecting with the surprise surplus or reserves by placing it, mind you dollars earmarked as specific costs, all together, commingled in a category Defendant calls reserves, which category is not even a line item on any budget, which reserves category is, per Defendant, deficient, and deficient for one reason and one reason only; not getting enough out of rates. You are building up reserves with surprise dollars yielded from intentionally artificially low rates.

Continuing with Tice, Plaintiff question: You take non-rate revenue into account, right? Answer: Yes. Question: Let's say you have $10 million of expenses that are in your revenue requirement and you're anticipating having $1 million non-rate revenue, you agree with me that you set the rates to generate $9 million? Answer: You could. This is the Court: This is -- this exchange is as -- is good as far as it goes. It doesn't help if Defendant really expects $11 million in expenses, but proclaims $10 million. Defendant will mentally deduct $1 million from $11 million and lo and behold, we have a match between budgeted O&M and rate O&M of 10 million.

Continuing with Plaintiff, question: Well, no,

by taking it into account, that's what you're doing, right, you're reducing the revenue requirements by the amount of non-rate revenue, so that your rate gets set to generate the difference, right? Answer: Yes. Question: Okay, so the higher the non-rate revenue, the lower the rate, right, dot, dot, dot? Answer: It's possible, dot, dot, dot. Continuing with Tice: If you compare the proposed budget to the rate memo, and then year-end looking at actual, I guarantee every single year they will be completely different from one another. This is the Court: The dissociation of the year-end from the budget and the rate memo is so emphasized, despite it being obvious, it is as if the Defendant suggests the whole exercise is futile, pointless. They will not merely be different; they will be completely different.

Continuing with Tice: The enterprise fund doesn't even have to have a budget. We've done it just as a transparency. This is the Court speaking: The servant again seems to be acting as the master, the child acting as the parent; we don't have to do this. Well servant, even if the law does not require it, there is no doubt whatsoever that if you do proclaim something in writing, you'd better mean it. Servant, don't proclaim to your master that you expect 10 million in costs if you believe you will incur 11 million. Don't proclaim you will expect

to incur 11 million in costs if you believe you will incur 10 million. Don't keep your servant self -- don't keep to your servant self a silent deduction of 1 million for non-rate revenue from 11 million. Don't profess $5.00 in postage if you believe you will spend only four. Call it what it is, $4.00 in postage, $1.00 in reserve, in case $4.00 proves to be $5.00.

Even this judicial opinion still leaves room for the possibility that you did actually do what you claimed; albeit you possibly did it, but in an unnecessarily abstruse, recondite manner.

Defendant, via Tice, testifies juggling a need to increase reserves and a need to over -- to avoid overestimating non-rate revenue. Whether the money in the water and sewer fund is hot, gold, or the Goldilocks zone, is the legislative bailiwick. But for the servant to employ, it need not show its work; well, this is fair judicial oversight. Show your work. Whatever your -- whatever figures you use, show your work. Tice, 02/13/18, at 9:40: Almost year-to-year, at least every five years, the way the calculations -- bracket, accounting for non-rate revenue in the rates, bracket -- are done across various people and different types of worksheets, dot, dot, dot, dot, back of a napkin. We don't consistently do it the same way all seven years. As far as illustrating

it, or putting it in a formal document, I mean most of these things are our own internal worksheets. This is the Court: Huh? What do you mean your own? People frequently say this is your courtroom. This occ -- this occupant does not understand why they say that. Not only is there no "I" in judge, nor robes, nor in the word courtroom, the "I" is merely the currently personifier of the judiciary. When a criminal defendant appears for sentencing and says I am sorry for appearing in your courtroom, the current robe-wearer kindly corrects him and says it's not my courtroom, I'm just the custodian. The courtroom belongs to you; do with it as you choose. So this Court is struggling to understand what the financial director, hired by the board of trustees, in turn, servant to its masters, the people of Bloomfield Township, what he means when he says these are our own internal worksheets. There is not a paperclip that is your own, and God rest his soul, the Honorable Richard D. Kuhn was known, literally, to never take home a county paperclip.

Continuing with the Tice: Most of these things are our own internal worksheets that can change 15 times from September of March. This is the Court speaking: Well, okay, but Plaintiff isn't looking for one through 14 rough drafts; Plaintiff is asking for number 15 for each year. Where are they? Maybe Exhibit 42 and 53 can be

eked out to one year's final draft, maybe. This opinion is pretty much on its fifteenth revision too, but the Court is putting it all on the table. In the library behind this bench are mountains of notepads, sticky notes, and napkins; knock yourself out if you want to see them. But it's not those sticky notes and napkins you litigants are seeking. It's the final draft. You, Defendant, my master, are getting the final draft, as well you should, from the Court, your servant. Same goes for you, Defendant, to your masters, the Plaintiff class, and any other water and sewer customers.

And the Court cannot help but wonder at whether the Defendant's board of trustees was itself asleep at the wheel, oblivious to what its employers -- employees are doing or saying without saying it, what they are doing, or if in fact the board has been fully in the know, and the last line of obfuscation to the masters, the people.

At the end of the day, maybe it does not matter all that much. The matter shall be remedied, but truth be told, the buck does not stop with the president, the buck stops with the people. Don't complain too loudly, Plaintiff, if you are dissatisfied with what you received. Either as taxpayers, you hired all these people, or as water and sewer customers who are not taxpayers, of all the water and sewer vendors out there in the world, you

chose this one.

Continuing with Tice: There are worksheets to show that non-rate revenue was deducted from budgeted O&M; we didn't document this, because we were never in a CYA mode. Plaintiff question: Have you done your own calculation, comparing the -- comparing budgeted O&M with rate O&M? Answer: Yes. Defendant objected. Judge, Plaintiff is trying to shift the burden of proof. We don't have to prove anything. This is the Court: You're stretching it Defendant; that you don't have a burden to meet does not mean you are exempt from interrogation. You equate a presumption of reasonableness, the thoughtless thoughtfulness, a juridical instrument, with exemption from inquiry. Not so. This is the Court's preamble to continuing with Tice's testimony: To dispel Plaintiff's contention that the Defendant did not reduce rates by deducting non-rate revenue, a step which the Defendant contends it is not obliged to take in the first place, the Defendant offers a commentary, using as examples Exhibit 42 and 53. They were used by the Defendant, maybe both for their content and to illustrate the Defendant's contention it did explicitly account for non-rate revenue in the rates. With all due respect, the attempt was feeble.

This is Tice speaking: Here's what I did.

These are two different versions of the same spreadsheet. Again, these are our own internal worksheets. The prior finance director didn't have anything like this. This was my creation, which was probably circulated between Tom and Wayne. They have made adjust -- they may have made adjustments and sent it back. But anyway, in your document request, you ended up with two versions of this document, neither of which tie directly to what was put in the rate memo. Again, these are just worksheets. So what I had done was taken one of the versions that I had on my system, and I went back and put in the dollar amounts that were actually in the rate memo, Exhibit 23. So I took all the numbers Wayne -- excuse me for one minute -- so I took all the numbers Wayne used in the rate memo approved by the board, updated this spreadsheet for those -- bracket, numbers Wayne used, bracket -- and I can tie down to the rate of $4.71 for the water and $6.35 for the sewer, and that spreadsheet does clearly show, dot, dot, dot, taking out less other revenue.

Question from Plaintiff: But you'll agree Exhibit 53 has completely wrong numbers for water purchased, completely wrong numbers for sewer treatment, and completely wrong numbers for operating expenses, correct? Answer: Neither one of these, 42, 53, have all the right numbers that match the rate memo.

Question: Exhibit 42 ties out exactly to the rates approved by the board, $4.71, $6.35. Answer, paraphrasing Tice: That was one of the scenarios, dot, dot, dot. Again, these are internal worksheets. Both 42 and 53 are useless to the exercise to determine whether non-rate revenues were accounted for. This is the Court: Plaintiff met the Defendant's exemplified response to Plaintiff's charge that the Defendant did not reduce rates by non-rate revenue, at least not explicitly. The above dialogue was quoted here, because it solidified the Court's opinion the Defendant's claimed methodology without actually claiming it mentally, but not explicitly reducing rates commensurate with non-rate revenue hamstrings, impedes, prevents anyone from testing, let alone overcoming the presumption that the rates are proportionate to the costs.

Either one is forced to defer to the municipality, or the municipality is obliged to show the underbelly, show its work. No doubt the law requires the latter, and if the Defendant cannot show its work because of the sticky notes, notepads, and napkins are gone, well, get over it; show a little due humility and make good somehow. It is not a slam dunk that the Defendant omitted from its municipal brain non-rate revenue from the equation which yielded the rates, and it is surely no slam

dunk that the Defendant -- to the Defendant that it did. The presumption is re -- rebuttable. It is not a bridge spanning a pit dug by the beneficiary of the presumption itself. The Defendant has expressed essentially so what, we do not have to achieve proportionality between rates and costs by the precise exercise of deducting non-rate revenue. All we have to do is endeavor to make a rate that is proportionate to costs; end of story.

This is the Court: Well, if that's all that there was to this case, then there would be no place for circumstantial evidence of disproportion, say a water and sewer fund balance of one trillion dollars; don't ask questions, look at our financial documents, trust our expert explicitly, a trillion dollars in reserves is okay. How about a billion? How about 60 million? If non-rate revenue was not mentally deducted, Plaintiff has proven the obvious, it was not explicitly deducted for the Defendant's masters, the public at large to see deducted, then 60 million could be a lot of money and it could be circumstantial evidence that it is money beyond needed reserves, and the scales only tip the more in Plaintiff's favor when it is intimated to the Court that both -- that the Defendant both is under-projecting costs and over-projecting costs.

Defendant ordaining dual citizenship for OPEB

dollars; Defendant calling a dollar at the beginning of fiscal year a dollar needed for a specific use, a line item expense, postage, oxygen, settling, uniform, tools, et cetera, and for any of these dollars leftover at the end of the year, either retaining their title in that expense category as having been incurred in that year, but not yet paid, or magically switching identity, genesis. That dollar, those dollars, per Defendant, are not surplus dollars. No, they have mag -- magically metamorphosized into a new category, not appearing and never having appeared on any budget as a line item expense, even though generally accepted accounting principles and governmental accounting rules recognize and envision such a category as appropriate; the category, the unwritten, but much needed and to date still deficient category called reserves. Rather than call it a surplus to an enterprise fund, the dollar switches its genealogy from a stated line item expense into an unstated but much needed category, which metamorphosis establishes a new cost to consume that dollar, and bingo, proportion between rates and costs post hoc, after this, therefore because of this; the fallacy of assuming causality from temporal sequence. That's Black's 10th Edition.

Plaintiff would liken the Defendant to the fox watching the hen house. The Defendant, through clenched

teeth says to its masters you may not look into my mouth to inspect, I am presumed a dutiful guard, unless -- unless what, the Court asks? It is hard to resign to such a notion, Defendant, even if the Court does not necessarily ascribe to such cynicism. Even without a sinister motive, you've left the Court with much circumstantial evidence to soundly overcome the juridical presumption, or at least demur to its invocation.

Defendant, through its finance director, opines that proportion between rates and costs is evident from the comparison of cash-in/cash-out over the years at issue. $156 million cash in, compared with $150 cash out is only a 4 percent disparity over these years. Surely, Defendant is not hanging its hat on this hook. Surely, Defendant agrees cash-in/cash-out cannot itself gauge proportion.

The Court doubts it, but it sure would appear that maybe the Defendant's expert accepts such a simplistic notion. Question from Plaintiff: Your ultimate opinion is that the rates are reasonably proportionate because the cash-in versus cash-out was close to matching throughout the six or seven-year period, correct? Witness: I would not object to that characterization

With respect to the analysis of cash-in/cash-

out, of course the answer is it depends. If a utility over the same number of years has 156 million cash in and spends 150 million on -- 151 million on yachts and Lamborghinis, well, if cash-in and cash-out is the telltale heart, there's reasonable proportion; only 4 percent disparity.

Not that the evidence here points to yachts and Lamborghinis, but let's not get bedazzled by what appears a golden defense exhibit, but maybe just pyrite. One must, of course, look to the underbelly. What is the source for the cash-in, what are the purchases comprising the cash-out; whether or not the rates are proportional, well, the devil is in the details, not in the cash flow statements.

And back to the recognition of division of powers among coequal branches of government, and the presumption of reasonableness, a/k/a thoughtless thoughtfulness. It is not the judiciary's place to chime in on what those numbers should be. However, neither is it the Defendant's prerogative to invoke the presumption for a reason other than it's conceived purpose, such as serving as a substitute for expressing what the numbers actually are, since the mystery over their identity lies at the hands, and allegedly on the sticky notes, notepads, and napkins of the would-be invoker of the presumption,

the Defendant. No, that would render the presumption unrebuttable. It would affect what the judiciary declined to do, decree whole -- wholesale hands-off in homage to separation of powers.

Question from Plaintiff, the Plaintiff asked the Defendant's finance director: If we look at one year's statement of revenue expenses and changes in net assets, which shows $4 million balance, and we look at next year's corresponding statement showing 6 million, the water and sewer fund grew by 2 million and it is true, isn't it, that the statements show all expenses; the statements purport to take into account all expenses of the water and sewer fund operations, capital debt, capital improvements, operating expenses, the whole kit and caboodle. Answer: Not exactly, because you mentioned expenses for the cash flow statements, it's all cash inflows and outflows, which could be revenues, could be expenses, could be anything with cash, which doesn't necessarily mean it's an expense. Like paying down principal; it's not an expense, it's paying -- it's purely a balance sheet item. Just one second. All right, I understand.

But there's -- this is Plaintiff: But there's not items of expense that are left off of this. My definition of an expense may be more expansive than your understanding of it. But it is intended to show an amount

of cash increase after paying off all the obligations of the water and sewer operation.

If I -- if -- this -- I'm -- this is the Court adlibbing: If the Court said it's the -- this -- this colloquy is between Plaintiff and the expert, the Court misspoke. This is a colloquy between Plaintiff and the finance director Tice.

So continuing in answer to that question from Tice: Again, I want to be careful of the terminology, dot, dot, dot, dot, for example, depreciation is an expense, a very high expense each year, as something you'll see on the statement of revenues and expenses, but it's not going to be seen on the cash flow statements.

Question: Fair enough. Let me change my question. It purports to show all the expenses for which cash was expended in a particular year. Answer: That's fair.

Question: Cash-in/cash-out, that is what's leftover or this is the deficit we have? Answer: Yes, that's fair, dot, dot, dot. Exhibit 4, referencing cash, et cetera, of 11 1/2 million, and then continuing 4 million to 6.6 million to 11.5 million in a two-year period -- this is a question from Plaintiff regarding Exhibit 4: And then the statement of cash flow shows decreased in cash and cash equivalents, but that's

attributable to the fact that there was a purchase of investment of $10 million during that period of time, correct? What looks like what happened was at some point during that year, cash and cash equivalents were used to purchase marketable securities in the amount of $10.4 million, correct? Answer: See, I would disagree with how they presented it on this statement, as opposed to the prior years. I believe they should have still included the total of cash and cash equivalents at the bottom, dot, dot, dot, dot; they just went back and showed strictly the cash.

Question: Despite what they show on the statement of cash flows, the amount of current assets through -- through cash, cash equivalents, and marketable securities increased to about 11 1/2 million as of three -- March 31st, 2012, correct? Answer: Yes, that's correct.

Question: And again, that's after paying all the cash expenses of the water and sewer operations. Answer: For those specific dates. You could have an 11 million balance on one day and the next day have $3 million in expenses, dot, dot, dot, dot.

Question: Your receivables are always in excess of your accounts payable, aren't they, dot, dot, dot? Answer: We need cash on hand to pay our bills, because we

bill our customers quarterly, but we pay our suppliers monthly.

Question: But cash needs weren't so significant on March 31st, 2012, that you couldn't park 13.6 million in marketable securities, correct? To determine the health of a fund, you also look to the difference between accounts payable and accounts receivable, right? Answer: Sure.

This is Defendant's expert Foster on non-rate revenue, quote, Wayne Domine told me, dot, dot, dot, he deducted non-rate revenue. This is the Court: Well now, what's left for the Court to do? The expert in water and sewer rates is also an expert tape-recorder. The audited financial statements reflect non-rate revenue. This Court says so what?

Foster testifying: Revenues received and costs to operate comparison, they're commensurate, dot, dot, dot, and left the water and sewer fund with a reserve balance for subsequent obligations that are reasonable. This is the Court: To put it mildly and diplomatically, this sentence is condescending to the Court and to the Defendant's fiducial beneficiaries. With no budgeted line item called reserves, this comment is 100 percent the product of the man's feeling concerning the size of a municipal fund's bank account. May -- maybe an empirical

comparison to other municipal bank accounts, but there is zero percent, not a shred of this witness's opinion here which is this comment just quoted which bears upon actual numbers. Truthfully, honestly, effectively, and with all due respect, this is what the witness said: I'm out there every day looking at municipal fund balances. This balance is fine, Judge. Oh, and as far as whether they are proportionate, well they are, because of what I just said, and even if you feel the need to look deeper, Judge, well then Dwayne told me he accounted for non-rate revenue, and I, and therefore you, Judge, have no reason to conclude otherwise.

Given Foster himself does not know whether Defendant mentally -- explicitly is out of the question -- reduced rates to account for non-rate revenue, he is no more qualified to opine if Defendant's cash balance -- the Court will abstain from calling the balance a surplus or a reserve -- is too much, too little, or just right. And for him to say it is consistent with other municipalities is similar to saying Judge Smith's personal bank account balance is about the same as Judge Jones's personal bank balance, and therefore, Judge Smith's bank balance is just right. We know better. And furthermore, it is no help for the Defendant's witness to so opine when the Defendant itself contends its current balance is not enough. See

the finance director's testimony.

Continuing with Foster: Even if Mr. Hyde's opinion regarding non-rate revenue was accurate, and I have no reason to believe that it is, because I've been told non-rate revenue was taken into consideration, it wouldn't matter. At the end of the day, I'd be looking at the financial statements and determining that the rates that were charged, whether or not non-rate revenue was included, were commensurate with the revenue requirements of the system. And this is the Court -- this is Foster's translation per the Court: What the costs are is beyond judicial review. A cost line item for say a uniform, which at the end of the year leaves a balance, changes from a uniform line item surplus into a much needed and underfunded, but unwritten non-existent, testimonial labeled reserve category, which is exempt from judicial review. Receipts are proportionate to costs, costs are reported -- costs as reported by Defendant. This review by the judiciary may go no further than a look at two figures, both on the financial statements, actual receipts and actual costs. The judiciary may go no further. Then this Court asks rhetorically: Then how is the presumption rebuttable? It is not. Yet the law is that a presumption may be overcome by a proper showing of evidence. Defendant's implicit claim of the Court's scope of review

leaves no opportunity for even the introduction of evidence beyond the financial statements, let alone a vetting, an evaluation, meaning -- meaning and according a value to that evidence. Case law speaks otherwise.

Defendant, on the one hand, disputes its obligation to account for non-rate revenue into the rates, or reduce rates commensurate with non-rate revenue. On the other hand, the Defendant acknowledges, in fairness, Defendant Tice's testimony, it should manifest in reduced rates. It is a question of proportion of rates to costs. Because the Defendant does not show its work how non-rate revenue is accounted for in rate-reduction, either one, Defendant did not, until recently, consider non-rate revenue at all, and there is a cash cow in the water and sewer fund, or two, the Defendant did consider it, and until recently did not manifest that consideration anywhere, except notepads, sticky notes, backs of napkins, and per Defendant's Exhibits 50 -- 42 and 53, which has been discussed, was a feeble manifestation.

Continuing the study. If it's number two, then either A, the Defendant is not hitting its mark proportionately, either Defendant is shooting too low and running a deficit, which Defendant is not contending, and beware the Court is not conflating a contention that the Defendant has a lot of catching up to do, with a

contention that the Defendant's projections are deficient, or Defendant is shooting too high, and yielding more dollars than Defendant believes is necessary. That's the cash cow version. Or B, Defendant is hitting its mark proportionately.

If it is 2B, Defendant is reducing rates as a factor of non-rate revenue, albeit invisibly, then not a priori, but a posteriori, Defendant enjoys the presumption of reasonableness, proportionality of rates to costs. One may not point to the presumption before knowing whether the non-rate revenue actually reduced the rates. It is either out of ignorance or arrogance for the Defendant, the one who by not showing its work created this mystery, to pro -- point to the presumption now.

Well, the judicial -- if the judiciary does not reverently bow to the Defendant and deferentially gesture its arm to proceed unquestioned, what would the judiciary look to in order to confirm or disprove what the Defendant claims it did -- implies to claim that it did invisibly? Circumstantial evidence; if you look outside and see rain falling, that is circumstantial evidence that it is raining. If you look at the end of the year and you see OPEB with dual citizenship, some in a trust reserved for OPEB and some dollars cohabiting in cash accounts, which Defendant readily admits is available to the water and

sewer fund to use for whatever it deems appropriate, Defendant's finance director at 9:13 a.m. on February 13, 2018, that's circumstantial evidence of a surplus.

If the Defendant's rate equation, simply taking the total costs for the system and dividing it by the estimated volume, dot, dot, dot, close quote, rate memo exhibits, omits a reconciliation of projections to year-end reality audited financial statements, that would be circumstantial evidence of a surplus.

If Defendant -- see financial director's testimony -- emphatically guarantees that projections won't match reality, an obvious truism which therefore says to the Court Defendant emphatically sees the need to reconcile projections with year-end reality, which need, of course, is compounded annually, that would be circumstantial evidence of a cash surplus.

The above evidence may well be circumstantial evidence that the 60 mil -- or that the money in the water and sewer fund is a surplus, or not. It may very well point to a surplus rather than much needed reserves.

This Court finds as a fact that the Defendant proclaimed to the world in its budget in the years at issue, save one or two, that either one, Defendant expects to incur X dollars in costs for operating and maintaining its water and sewer service, when in truth, Defendant

believed it would incur X plus Y costs for these services, and that Defendant omitted from the equation which yielded the rates in those years a deduction from the numerator, the numerator being the total projected commodity cost, plus projected Township O&M, a quantity of dollars the Defendant believed it would collect from other sources besides rate receipts, non-rate revenue, which is quantity Y.

Or two, Defendant expects to incur X costs for operating and maintaining its water and sewer service, and expressed that amount in its budget in those years, and as claimed by Plaintiff, Defendant outright ignored non-rate revenue, did not deduct non-rate revenue from the numerator, not only not explicitly, nor mentally under its master's radar.

If in truth for one of more of these years at issue -- Plaintiff acknowledges a year or two that the Defendant explicitly accounted for non-rate revenue -- Defendant's -- Defendant functioned per scenario one, the Court finds it silently justifies this omission by the notion that the figure in the numerator representing projected Township O&M has been reduced -- not explicitly, as a reminder -- which reduction offsets what would otherwise be an appropriate non-rate revenue reduction from the numerator.

Domine, 02/09/18, at 9:55: Other income should reduce the rate. Domine, 09/29/18, at 9:59 and 27 seconds: We would recognize, like I said, and then we would subtract out that or apply that as a revenue that would cover a portion of those expenses. This is the Court: This precise exercise, if it actually took place, does not manifest on any piece -- piece of paper, at least not until later in the years which this Court trusts the lawyers acknowledge; it was always notepads and sticky notes and back of napkins, it was various iterations.

Either the Defendant re -- reduced projected operating expenses off the books, somewhere in the lineage of the exercises of expense projecting and non-rate revenue projecting, before expressing the projection on the books, the budget, the rate memos, or Defendant, as Plaintiff accuses, simply did not account for non-rate revenue in the rates whatsoever. Plaintiff hasn't proven the latter over the former, but again, the record is a far cry -- it is naturally vacant of evidence supporting the former. This vacancy, albeit tepid, most surely is warmed by Michigan jurisprudence overseeing ratemaking principle. A wont of transparency is an unreasonable ratemaking method.

If this current judicial occupant and his wife were to prepare a weekly budget for our family, and we

expected we would spend $4.00 a week on green apples for our boys' lunches, why in the world would we omit from our budget our belief that their grandparents, nana and papa and Mimi, will contribute $1.50 per week towards the apples? Why would we write down $2.50 in the budget? Kind of defeats the purpose of the budget, doesn't it? If we believe there is a reason to write down on a piece of paper what income and outgo we are expecting, then it only makes sense to write down income and outgo. It only makes sense to write it all down. Don't net it out and then write it down; the purpose of the budget is to assist me in the very exercise of the netting out of the income and the outgo. To net it out first before writing, conceiving the budget, is like deciding the winner of a baseball game in the dugout before the national anthem is sung. If we believe that there is a reason to develop a budget, then we would write down the income we expect, salary, and nana and papa and Mimi's $1.50, and we would list $4.00 in green apples. If we were inclined to skip a step, and change the $4.00 to $2.50, and ignore nana and papa and Mimi's contribution, why would we perform the rest of the exercise? We have achieved our objective in the very step or the non-step, the omission really of the mental deduction of $1.50 from $4.00. And this is only an example of the family drafting its own budget. If the

family were to hire someone to do its budget, there is no doubt at all that the servant should and would write it all down for his boss, the family, and would -- and it would only and rightfully usher in suspicion and contempt, and self-reproach for our choice in servants if the servant took it upon himself to perform that exercise on notepads and sticky notes, on the backs of napkins, to iterate back and forth with other family servants outside the view of the family, and to tell us we should expect to take -- to pay $2.50 for green apples, when the Meijer receipt is gonna show $4.00.

Now, it could be that the servant is pure of heart, and it could be otherwise. The law centers upon ratemaking methods, not the heart of a municipality's board, commission, nor employees.

And this green apple analogy says nothing about what happens at the end of a week when we come to learn was actually received only $1.40 in other income, rather than the expected $1.50. Nor what would happen at the end of another week when we come to learn we actually received $1.60, or with a steadily growing balance week after week; maybe nana and papa and Mimi are regularly contributing more than $1.50. Should we adjust our budget? Maybe I should reduce my salary by cutting down on my work hours and spending more time -- time at home with our boys, in

light of the higher than projected other income; maybe I could give back to our boys, our fiducial beneficiaries, our non-arm length customers, our intimates, heck -- heck our reflections in the mirrors, by reducing the rates they in the -- they -- that they pay in the form of hours spent -- spent without mom and dad at home with them. Or back to the water and sewer customers, reducing the rates they pay in the form of dollar bills.

This case could have been entirely avoided had Defendant merely revealed what it claims it did. I, says the Defendant, without actually saying it, did deduct non-rate revenue from costs. I just did it off paper. That's why budgeted O&M is nearly equal to rate O&M says -- again -- says Defendant, again without actually saying it. That is why there is not a non-rate revenue gulf between those figures. It is because our own employees did it mentally, sticky notes, notepads, napkins in various iterations. And the Court has no idea whether the elected officials knew this or not.

It is because our employee, so Defendant says, without saying it, maybe so says Defendant without even realizing it, in using notepads and sticky notes and napkins in various iterations back and forth, that we tweaked our budgeted O&M to the tune of non-rate revenue, and lo and behold, the water and sewer customers are

protected. If the Court did not know any better and did not find, as it does, that Domine and Tice and -- to be good and credible gentlemen, it would consider those comments conceit in such a proclamation by a subordinate, by an agent, by an employee, by a servant of the public, heck, even an arms-length customer. How could you imply that there are -- that you are the protective parent watching over your children as they sleep; a little role reversal, it would seem.

The Court discerns no such distaste in any gentlemen who testified, but the jury is out whether it lingers in the body politic.

MR. HANLEY: Your Honor --

THE COURT: So this is --

MR. HANLEY: I'm sorry to interrupt you; can I have a moment?

THE COURT: Yeah.

MR. HANLEY: I need to use the restroom.

THE COURT: Yeah, we'll take a break. All right. Let me know when you're ready.

MR. HANLEY: I -- I apologize. I'll be right back.

THE COURT: Yeah, no problem.

(At 3:29 p.m., court recessed)

(At 3:34 p.m., court resumed)

THE COURT: So this is what it boils down to, Defendant: Trust me, I did account for non-rate revenue, and don't be fool -- fooled by the uniform increase in the fund balance over the past eight years, from whatever deficit to however many millions in the water and sewer funds -- fund, costs really do roughly equal revenues, receipts really are proportionate to costs.

The latter proposition is rejected. The Court dances around the former proposition by rationalizing, for the Defendant's sake, that it need not pass upon what lies in the hearts of Defendant's men and women, employees and trustees, but needs concern itself only with the question whether it is an unreasonable ratemaking method when part of the method is obscured from public view, the alleged, without really being alleged, mental deduction of projected non-rate revenue from projected O&M.

This question presumes not only that the obscured portion of the method actually occurred; it also presumes that the elected officials knew or could have known of the obscured portion of the method; that it wasn't only non-elected employees who knew this and acted as the parents to the sleeping public officials acting as the children.

And all of this is not even the Defendant's espoused theory. Defendant merely proclaims that it did

deduct non-rate revenue, and a legal presumption of reasonableness constrains, obliges the Court and the public to leave it at that and don't ask questions.

The Court finds, as a matter of law, it is in keeping with and incumbent from Michigan law that the judiciary does ask questions and not leave it at the Defendant's proclamation. Defendant, you must show your work. This includes the eq -- this includes the equation in the numerator, which is projected costs minus projected non-rate revenue, and this also includes an annual equation reconciliation what was projected in expenses and income with what those figures actually were.

And on second thought, the Court refrains from how to construct your rate equation. The Court orders only that the Defendant show its work. The Court does not see how you will do this, Defendant, without the rate equation as it's set forth, but the Defendant is duly free to try.

It bears recognition that the judiciary exercises due restraint. That the judiciary decrees it necessary to share with the public all its work; its equations which yields the rates and decrees the rates must be annually reconciled between projected and actual expenses and income. Said decrees include no constraints whatsoever upon how the projections are made. That is

entirely and rightfully the province of the Township, and entirely and rightfully subject to ballot box approval and rejection, and continual -- continued habitation or emigration from the Township by the water and sewer customers who are not taxpayers.

Once again, as will be -- the Court's adlibbing here -- as will be clarified in the damages/remedies section, the Court is not purporting to dictate how a particular rate equation is constructed; I think that'll become more clear, and in case it's not clear here, I wanted to point that out now.

Simply, this case would be a nonstarter. There would be no way Plaintiff could ever overcome the presumption, no way to even address it if there was or is no transparency. Only the servant knows if it did reduce rates as a function of non-rate revenue; only with knowledge of that, could Plaintiff or anyone else even approach the question of proportionality between the rates and costs. If non-rate revenue did not reduce rates, it may probably be that the water and sewer fund is cash fat. If it did reduce rates, the water and sewer fund may, perhaps less probably, still be cash fat, or it may not. That answer may depend on the eye of the beholder, and most appropriately, it would merit employment of the juridical restraint via the presumption of reasonableness,

thoughtless thoughtfulness.

Defendant expects employment of such juridical restraint, blind deference upon its mere utterance I did account for it, now go home. A budget is defined as a statement of an organization's estimated revenues and expenses for a specified period, usually a year; Black's 10th Edition. A statement is def -- defined as the act or an instance of stating or being stated, expression in words; Oxford. A verbal assertion or nonverbal conduct intended as an assertion; Black's 10th Edition.

Where is the Defendant's assertion outside of this trial, save the recent post-lawsuit budgets and rate memos or spreadsheets, where Defendant, using written or verbal words, or nonverbal conduct to its master, taxpayers, water and sewer customers, the public at large, not between the servant's servants with sticky notes, notepads, and napkins, that it accounted for non-rate revenue in its rates? In private business, profit is desired. Here, in municipal business, profit is required. Revenue is required, not to accumulate profit, but solely to achieve proportionality between rates and costs -- between costs and rates.

In developing budgets in private business in pursuit beyond proportionality, profit-seeking, there are iterations, there is back and forth between departments in

setting prices, and indeed in accepting/rejecting costs, projecting, depending upon competition, margins, et cetera. An enterprise which objective is proportionality between costs and receipts, not profit-seeking, has to reason to contemporaneously project costs and revenue, and set rates. An enterprise, which objective is proportionality, not profit-seeking, first projects, then, as a consequence, derives rates. Without a third component, profit-seeking, to the enterprise fund's objective, there is no need to iterate between department. There would be forth, but no back. What is the back? The back would either imply the forth got it wrong, or imply the forth should be doing something with its projections other than projecting. A little massaging, for some reason or the other, besides projecting.

It would be, as the Defendant's own award-winning water and sewer department Defendant says, simply dividing costs by volume of commodity. Even servants with their master's best interests in mind pro -- promote no benefit, only confusion and skepticism when publicized equations are, themselves, post-baked mental, non-public equations, such as off the books reductions of non-rate revenue for costs. And it only makes matters more confusing -- confusing and harkens more skepticism, assuming the employee's master, the Township board of

trustees are aware of the mental math, when the master itself is but a servant to the ultimate master, the citizenry, the general taxpayer, the water and sewer customers.

And finally, such a framework surely invites abuse, such as omission of the mental math altogether, and no actual non-rate revenue reduction. Why? Why not do it on the books? Not simply to be in CYA mode, as the Defendant testified, bec -- but because it's the right thing to do. And it also provides the added benefit, avoiding the appearance of impropriety.

Part of this Court's contemplation is an order to the municipality to express equations, one being the projection equation, and one being the reconciliation equation; what numbers the Defendant comprise the equations purely and rightfully enjoy legislative deference. Once again, the Court will speak more to the remedy in a later section.

Evergreen sewer charges is one category of non-rate revenue, which Plaintiff contends is not a source the Defendant used for a rate reduction. Plaintiff points here to Defendant's projected X dollar receipts for this revenue, but at the end of each year, actual receipts prove to be 4X to 5X. Plaintiff argues this is pure and real cream, or cash, which the fund reaps, but does not

sow back. Defendant, through its financial director, said this was adjusted for by projecting. After multiple years of 4 to 5X, the amount of 2X. This issue, for an example, will be resolved by the reconciliation equation if the Court -- the Court's not ordering the Defendant to do it, but that surely would be taken care of by a reconciliation equation, projection reconciled with year-end reality.

But the Court, of course, does not purport to direct what figures are to comprise the projection variables. If the Defendant chooses zero for the projection variable, and Defendant somehow demonstrates proportionality nevertheless, that may rightfully receive deference from the Court, the presumption of reasonableness, thoughtless thoughtfulness. And this happens transparently on the Defendant's letterhead, for all the world to see; not on sticky notes, notepads, and napkins. With such transparency, the taxpayers at the ballot box, the water and sewer customers emigrating or staying put, and not their servant, nor servant's servants, Township board and Township employees, and not the judiciary, will oversee and there -- thereby effectively set the rates.

Well, one, you, Defendant, underestimate costs perhaps, X minus Y, because your true belief of what costs will be, X plus Y, will be offset to the extent of Y, what

you believe will be non-rate revenue, and two, on the other hand, you, Defendant, allude to overestimating costs, X plus Y, because you fear at the end of the year your estimate will be too low. So your artificial inflation of estimated costs will protect with real dollars against your belief, with a bucket of dollars you, Defendant, call reserves. Well, which is it, Defendant; you underestimated costs to account in fairness for non-rate revenue, or -- or you overestimated costs to buildup reserves to protect against your fear of being too optimistic in your belief about costs?

Every which way but loose; no matter how you present it, what you profess to the world as to what you believe will be the cost of postage, the cost of slag, the cost for uniforms, the cost for tools, et cetera, are not really what you believe they will be. You believe these costs will actually be more, but because of a reducing source of income, you will maintain as true what you truly believe is false. Or you believe these costs will actually be less, but because of fear that your belief will be deficient, you will maintain as true what you truly believe is false. And if it should happen that what you truly believe manifests, well no matter, just alter the identity of the excess dollars from the category postage, from the category slag, from the category

uniforms, to the unstated category reserves, and all of this mental exercise, if somehow there was a legitimate reason for it, is met with no post-year reconciliation of projection with reality, except unless you call the metamorphosis the reconciliation. No equation to reconcile if your professed projections, call them unsumptions, overshoot or undershoot the mark. No equation to reconcile if your silent true belief hit the mark.

And for what; what is to be gained by this abstruse, this recondite activity? A cynic would say to build a cash fund. Toward what end; for bragging rights, municipal awards? An optimist would say because the subordinate altruistically but ignorantly thinks they are superior to their bosses; they know better than their bosses, their customers, what is best for them, and they are better off with untruth than truth.

Please excuse me for a moment.

That completes non-rate revenue, and that completes all of the sections in this -- I believe it completes all the sections.

Now onto law. I believe all the sections touched upon the law. The -- this next section is germane to non-rate revenue and sewer only customer, the law concerning them.

Trahey versus *City of Inkster*. It was a bad month for Terrence Trahey. In July 2012, his City of Inkster increased his water and sewer rates, and with the use of a new water meter slapped him with a water and sewer bill of nearly $7,000.00. The trial court opined that the city, rather than the water and sewer customers, was to blame for part of the reason why the rates were increased, so the trial court ordered the city to reduce the rates somewhat. The Court of Appeals traced the legal root to the judiciary's review of municipal utility rates to the *City of Novi* versus *Detroit*, 433 Mich 414, 1989, and *Jackson County* versus *City of Jackson*, 302 Mich App 90, 2013. The *Trahey* court also observed at page 597, quote, MCL 123.141 does not alter the general standard of reasonableness applied by the courts when reviewing utility rates, close quote; citing *City of Novi*, 433 Mich App 431 to 432. So, per *Trahey*, all roads for judicial review of municipal utility rates lead to *City of Novi* and *County of Jackson*. *Trahey*, quote, absent clear evidence of illegal or improper expenses included in a municipal utility's rates, a court has no authority to disregard the presumption that the rate is reasonable; see *Jackson County*, 302 Mich App at 109.

Plaintiff class, this Youmans versus Bloomfield Township Plaintiff class, subtly graphs onto this language

regarding expenses, language regarding revenue. In other words, per Plaintiff class, illegal or improper expenses are not equivalent to -- are -- strike that. Illegal or improper expenses are roughly equivalent to not deducting non-rate revenue. Simply, these notions, in this Court's opinion, are not approximately equal. But the analysis does not stop at *Trahey*, since *Trahey*, of course, traces its roots back further. *Jackson*, in turn, referring to *Graham*, *Vernor*, and *Wheeler*, in fact says this court must presume the amount of the fee -- and this Court emphasizes that word, fee -- to be reasonable, unless the contrary appears upon the face of the law itself or is established by proper evidence, dot, dot, dot, close quote.

Graham and *Wheeler*, two roots of *Jackson*, in turn one of two roots of *Trahey*, like *Jackson*, were both cases ultimately adjudged by the prevailing court to be cases pertaining to fees, not rates. *Vernor*, a third root of *Jackson*, was a case that ultimately resolved a question whether an amendment of a public act, which act historically imposed a fee by virtue of the amendment, changed that fee into a tax. The *Vernor* case was not nor ever pertained to rates.

That *Trahey*, a rate case, borrowed from fee case jurisprudence may or may not be wise, but both parties cite to it in their positions -- for their positions.

There is no law which explicitly, micro -- microscopically specifies what precise dollars spent by a municipal water and sewer utility shall and shall not be a component in a rate equation. The fee must be reasonably proportionate to the direct and indirect costs. That's Jack -- *Jackson*, a fee case, borrowing from *Kircher*, 269 Mich App 224, a fee case, which in turn borrowed from *Merrelli*, 355 Mich 575, a fee case, which in turn borrowed from *Vernor*, a fee case discussed earlier.

Plaintiff -- Plaintiff class here takes that marching order and would reform it into -- into a marching order on how to construct a rate, or maybe more precisely, reform it into a marching order of what are the constituents to the equation, which equation yields a municipal utility rate.

A refer -- a reformation of the marching order for the -- for a municipality to charge a fee, emphasis added, into a rate, emphasis added, is the laws of the land; see *Trahey*. However, it does not necessarily mean that the reformation manifests as Plaintiff proposes.

In *City of Novi*, the Supreme Court corrected the judiciary's erroneous opinion that changes in 1981 Public Act 89, the act amending MCL 123.141, changed the standard of review of municipal utility rates. It did not. The standard of review and the allocation of the burden of

proof in municipal utility rate cases set forth in *Detroit* versus *Highland Park*, were recently cited with approval in *Plymouth* versus *Department City of Detroit*, 423 Mich 106, 133 to 134, 377 N.W.2d 689, 1985. In that case, the Court engaged in an extensive discussion of municipal utility ratemaking, and the means which courts have to -- have used to review those rates. The Court reaffirmed that the concept of reasonableness is a fundamental importance -- is of fundamental importance in this process, id., close quote. If the Court didn't say so, it just -- that was a quote from *Novi* at page 426.

Continuing, *Novi*, quoting *Meridian Township*, to which *Plymouth* cited, quote, dot, dot, dot, the determination of, dot, dot, dot, bracket, the, bracket, meaning, bracket, of the word reasonable, bracket, dot, dot, dot, depends upon a comprehensive examination of all factors involved, dot, dot, dot, dot, close quote.

The error by the *Novi* Court of Appeals was that it quote, dot, dot, dot, banished the concept of reasonableness, dot, dot, dot; *Novi* at 428.

By all means, the Supreme Court found the appellate court's reasoning, quote, dot, dot, dot, inconsistent with the dot, dot, dot, law of judicial deference in municipal utility rate cases, close quote; *Novi* at 428. Indeed, quote, Michigan courts, dot, dot,

dot, have recognized the longstanding principle of presumptive reasonableness -- asterisk with the word -- with that phrase -- of municipal rates, close quote; *Novi* at 428. But what does this mean, this presumptive reasonableness? Does it really mean thoughtless thoughtfulness? The Supreme Court expounds upon this concept by referring to itself in *Plymouth*, referring, in turn, to the United States Supreme Court in *Federal Power Commission* versus *Hope*, which both the Michigan and United States Supreme Court refer to the U.S. Supreme Court in *Federal Power Commission* versus *Natural Gas Pipeline*. And let us not forget what we are doing here in 2018, studying the law of 1942 and 1943; we are digging to find the *Novi* Michigan Supreme Court's meaning to the phrase quote, presumptive reasonableness, a plaintiff which would seem the Defendant would have this Court interpret as thoughtless thoughtfulness, effectively an unrebuttable presumption of reasonableness.

Observationally, it is clear -- it is clearly a rebuttable presumption, seeing that the *Novi* Supreme Court respected and preserved the sanctity, rather than displaced them as superfluous, the factual findings, of wont of them, by that year's trial court custodian, made in this very courtroom, as a matter of fact.

But more than procedural observation, it is

substantively clear too, by Michigan's jurisprudential reliance on the two U.S. Supreme Court cases on which the presumptive reasonableness principle was founded, that the wisdom of a municipal rate is deferred to the legislative body which set it, but not the representation to its constituents, and without knowledge, not imputed or party opponent deferred of the constituents of a rate, one can neither accord nor even invoke the presumptive principle. *Federal Power Commission, et al* versus *Hope Natural Gas, City of Cleveland*, 320 U.S. 591, 1943.

Standard Oil, a New Jersey private company, wholly owns Hope Natural Gas, a West Virginia private company. Hope sells natural gas. Hope sells to customers in West Virginia and to five companies who, in turn, sell to customers in Ohio and Pennsylvania. A couple of Ohio municipalities complained to the Federal Power Commission that Hope's rates were excessive and unreasonable. The Commission investigated, for multiple reasons, the reasonableness -- reasonableness of Hope's interstate rate. The Pennsylvania Public Utility Commission also complained to the Commission that Hope's rates -- bracket, which it received from its Pennsylvania distributing affiliate -- were unreasonable. The complaints were consolidated. The Federal Commission found various of the rates to be unjust, unreasonable, excessive, and therefore

unlawful. One need only read page 596 of the pin -- of the opinion, which portion itself omitted certain detail, to see clearly that for the Commission to be capable of passing upon the question of the reasonableness of the rates, it had to, just that, see clearly. If any of the numbers located on that page of the Supreme Court opinion were themselves products of unwritten equations or unsumptions, projections disavowed, the whole foundation upon which rests the question of reasonableness of rates collapses. $33,712,526.00 actual legitimate costs, what would happen to the reliability of a finding or a rebuttable presumption of reasonableness of a rate by eve -- by even a schooled utility commission, not to mention an ill-equipped trial court, if it turned out that this $33 million was net of a reduction of some source of income, or -- or was premised upon an artificially inflated consumption percentage unbeknownst to the commission, to the court, to the customers. There would be no reliability to an opinion regarding reliability, and if a breakdown of the 33 million was forbidden in deference to the presumption, the presumption ceases to be rebuttable; it becomes unrebuttable.

51,957,416 actual legitimate costs of the plant in interstate service, accrued depletion and depreciation of $22,328,016.00, and added $1,392,021.00 for future net

capital deductions, 566,105 for useful unoperated acreage, 2,125,000 working capital, and so on and so on. These are all numbers from the United States Supreme Court case. What could be said of a finding as between the lofty principles of reasonable versus unreasonable, just versus unjust, legitimate versus excessive, if one is obscured from the underbelly, if one does not show his work?

Defendant trace -- traces the root of the law governing municipal utility ratemaking methodology to *Federal Power Commission* versus *Hope*, again 320 U.S. 591, 1944 sic, it's actually 1943. Actually, the root can be traced back further to *Federal Power Commission* versus *Natural Gas Pipeline of America*, 315 U.S. 575, 1942. And the Court quotes from that case, quote, once a fair hearing has been given, comma, proper findings made, emphasis added by this Youmans' trial court, dot, dot, dot, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped.

If the commission's orders -- DOB -- this is the Court speaking -- as applied here, if the municipality's rates, dot, dot, dot, as applied to the facts before it and viewed in its entirety, again, emphasis added to those words, produces no arbitrary result, our, the judiciary's inquiry, is at an end. That's 315 U.S. at 586.

The presumption was not decreed as a license to a commission or a municipality to be beyond scrutiny, or because it is accorded more deference than say a criminal trial court, which is obliged to expound publically, comprehensively, on the reason why it imposes one particular judgment of sentence over another, than say a trial court, which is obliged to expound publicly, comprehensively on the best interests factors supporting or defeating a change of custody or parental rights termination, than say a court which is obliged to expound publicly -- not really -- comprehensively -- well, no -- on the question whether a parental bypass abortioning petitioning minor is well enough informed or is in her best interests to so act, than say a trial court, which is obliged to expound publically, comprehensively why it rules this way or that in say a water and sewer rate bench trial. No, it would bastardize the presumption. It would absolutely, necessarily, unequivocally transform it into an unrebuttable presumption if it were invoked before the question what are the constituents of the rates both publicly displayed and privately iterated back and forth on sticky notes, notepads, and backs of napkins.

It is clear from a reading of the law that a presumption exists once the details are on the table for all to see. First comes the details, then comes the

presumption.

Sure, it is the result reached, not the method employed, *Los Angeles Gas & Electric* versus *Railroad Commission*, 289 U.S. 287. But that is not the issue, at least not after this Court has distilled it down. But lest there be blind submission, true deference to a litigant in a case, Defendant here, or its hired experts, the millions in the water and sewer fund could be thin, fat, or just right. It depends. Defendant maintains it depends, plus presumption, equals no cause of action. Defendant would submit that this Court is obliged by virtue of the second variable, the presumption, to ascribe a value of zero to the first variable, it depends, resulting in the following equation: Zero information on it depends variable, plus presumptive reasonableness, equals no cause of action.

It is not Plaintiff's contention the Defendant's rate method contains infirmities or weaknesses; Plaintiff contends dereliction of duty. This Court does not as yet go so far, but not showing one's work, for whatever reason, any reason, creates a problem. It prevents a finding down to the heart and soul, not mere lip service connoting heart and soul, on the principle of just, on the principle of reasonable. The presumption reasonableness itself presumes equal knowledge by both parties to a

dispute. It hardly needs pointing out that this equality is only the more poignant when one of the parties works for the other.

Well, this fact-finder is hamstrung to make proper findings, quoting *Federal Power Commission* versus *Natural Gas Pipeline of America*, at least regarding non-rate revenue, and is on the fence, leaning toward Plaintiff whether it can make proper findings regarding the sewer only customers.

The rates cannot, because of Defendant's practice, be viewed in their entirety, quoting the United States Supreme Court again. This fact-seeker has dug and dug and dug some more. Everyone's heart will agree whether or not their lips will follow, it is not evident, easily seen or understood, Webster's II 3rd Edition, that the Bloomfield Township water and sewer fund rates are just and reasonable, that the money in the fund is reserves or is excess surplus. This anticlimactic conclusion is due simply and surely and solely because the Defendant's practice has prevented the rates from being viewed in their entirety, again in quotes.

No presumption invocation; that's premature. The Court loathes to speak in the negative that it is not evident that the rates are just and reasonable. The parties will be given some time to think about this; there

are many options left to them individually and collectively. You are invited to consult the Court's staff when, if at all, you wish to return for whatever. As a matter of fact, later in deliberation, the Court didn't leave the option open, you will be returning to court, and I'll explain that when I move to the next and final section, judgments -- judgment, damages, and remedies.

Storm water drain, judgment, no cause of action.

OPEB, judgment, liability in Plaintiff's favor; damages, no dollars. Remedy, henceforth, explicit accounting for all OPEB dollars. Any dollar in unrestricted cash or cash equivalent accounts which the Defendant would characterize as an OPEB dollar, must be transferred into trust, or that dollar shall lose any identity as OPEB, and shall instead be what it necessarily is, a surplus. Defendant may propose, upon return to court, a specified time that dollar may reside in unrestricted cash account before its true nature as a surplus dollar emerges. It would be sensible, but the Court abstains in deference to division of powers, to perform a year-end reconciliation.

Rent section. Liability in Plaintiff's favor; damages, no dollars. Remedy, henceforth explicit accounting of any quote, in-kind service exchanges, with

explicit valuations, or, of course, instead, actual payment of dollars rather than horse-trading. It would be sensible, but the Court abstains in deference to division of powers, to perform a year-end reconciliation.

Public fire protection, judgment, no cause of action in part, liability in Plaintiff's favor in part. Damages, MCL 123.141(3), Plaintiff prevails in a dollar amount equal to the cost of water in fire hoses over the relevant time frame paid by the general fund. The parties are to calculate, approximate, or stipulate to this figure and report back. The Court has mused over the intersection of the parties here; the parties may address this if they choose, or ignore it. Remedy, henceforth, explicit accounting of water in fire hoses to be paid for by the general fund, with explicit attention paid to the intersect -- strike that -- strike that.

If the Defendant chooses in-kind service exchanges, an explicit accounting of same, with explicit valuations. Or, of course, instead actual payment of dollars rather than horse-trading. It would be sensible, but this Court abstains in deference to the division of powers to perform a year-end reconciliation, or year-end reconciliations.

Lost water. Breaking it down into the three categories. A, municipal tap water, judgment, liability

in Plaintiff's favor. Damages, none. Remedies, hence -- henceforth explicit accounting of municipal tap water and paid by general fund with dollars, or if through in-kind services, explicit accounting of same with explicit valuations.

Sub -- the next category, truly lost water. Judgment, liability in Plaintiff's favor. Damages, Plaintiff prevails in a dollar amount equal to the price paid for the truly lost water. Naturally, since the quantity is not actually measured, the amount would be the difference remaining after deducting the other two buckets. The parties are to calculate, approximate, or stipulate to this figure and report back.

Continuing with the lost water section, truly lost water. Remedy, henceforth explicit accounting of truly lost water to be paid for by the general fund, with explicit attention -- strike that. It is not the Court's place to purport to forbid in-kind service exchanges for this bucket of water; however, as illustrated, this form of horse-trading is more wrought with problems than other in kind service exchanges. Suffice it to say that if the Defendant elects in-kind service exchanges, again explicit accounting of same with explicit valuations.

Lost water section continued. Construction water. Judgment, liability in Plaintiff's favor.

Damages, Plaintiff prevails in a dollar amount equal to the cost of construction water. The parties are to calculate, approximate, or stipulate to this figure, and report back. Remedy, henceforth explicit accounting of construction water to be paid for by the general fund with dollars, or if through in-kind services, explicit accounting of some with explicit valuations.

It would be sensible, but the Court abstains in deference to division of powers to perform a year-end or year-end reconciliations of all lost water buckets of water as characterized by the Court.

Non-rate revenue and sewer only. Judgment, liability to Plaintiff on both sections. Damages; first, the Court leaves as resolved between the parties that some period of time over which this case pertains non-rate revenue was to Plaintiff's satisfaction explicitly deducted from the numerator or from the rates. Whatever damages, if any, the Court trusts will exclude this portion.

Next, in case it has not been made abundantly clear in this Court's opinion in these sections for non-rate revenue and sewer only, this is the Court's opinion of what the Defendant, and this time likewise its expert, has to say about the positive balance in the water and sewer fund quote, it is needed, much needed reserves. And

this is the Court's opinion: Your abstruse, recondite practice prevents any such adjudication. You may not bait and switch, Defendant. You did not call it reserves at the beginning in projecting; you may not call it that at the end. You profess to the world in your budgets, you called it projected postage, slag, uniform, tools, et cetera, you called 80 percent sewer customers are water customers, you professed that to the world. You do not possess a magic wand at the end of the year and change what is -- what is surplus money for postage, slag, uniform, tools, et cetera, into much needed reserves. You possess no such magic wand to change 80 percent into 70 percent, regardless of your child protecting parent motif to reflect much needed reserves.

It is Defendant which creates this -- these mysteries; Defendant has impeded the Court, and more importantly, its customer and taxpayers from passing upon the question of whether the Defendant's rates are proportionate to its costs. This impediment, abstrusity, may be of late past practice, estops invocation of the presumptive reasonableness, the thoughtless thoughtfulness presumption of the rates. Short of blind deference to the Defendant, redundancy intended, Defendant's impediment, regardless of -- of intent, hamstrings the Court, and the Defendant's water and sewer customers, taxpayers, public

at large, prevents our ears from even being able to hear a claim of disproportion. In a word, if the presumption were to prevail here, the presumption is and evermore shall be in -- unrebuttable. This is not what the law intended.

The Court has plenty of ideas on the issue of damages and the issue of remedy. The Court has a clear view of some real injury -- I'm looking at Plaintiff's counsel -- but sitting in chancery, it is most apt the Court affords Defendant a last opportunity on its own to make good here. It is imminently reasonable that the Defendant show its work. It is entirely unreasonable to presume reasonable, unless it is demonstrated unreasonable, that which in the sole control of the Defendant by not showing its work, is impossible to demonstrate.

Defendant is invited not to try now for the first time to show its work, but to chime in on the question why, given that the Defendant did not, in this Court's opinion, show its work, and in this Court's opinion and regardless of the Defendant's motive, published a known untruth, 80 percent is 70 percent, why the Court should not in equity or otherwise assign the answer as no, Defendant did not deduct non-rate revenue which occasioned the disproportion Plaintiff contends, and

no, 80 percent equals 80 percent, not 70 percent, and the higher sewer receipts occasioned the disproportion Plaintiff contends? This would quantify the dollars in these sections as Plaintiff contends. The Court accepts Plaintiff's math as correct.

Defendant also may chime in, if it chooses, whether in equity or otherwise, for the same reasons above-mentioned, the Court should not assign some other lesser figure down to $1.00 nominal damages as symbolic of Defendant's, what this Court calls wrongdoing or I'll -- I'll put it less culpably -- omissions, adding, of course, the reasonable rates and hours for Plaintiff's attorney fees. The parties may resolve this themselves, come back, or of course go elsewhere. Remedy, explicit accounting. Any sticky notes, notepads, any backs of napkins upon which unsumptions are written, upon which non-rate revenue deductions from commodity costs which in fairness should be deducted are written, are to be made public for all eyes to see. Either no unsumptions, 80 percent actually equals 70 percent, or if employ them, specify them explicitly, rather than subsequently, as in a trial only. If you reduce rates by non-rate revenue and/or by sewer only customer receipts, then account for it explicitly. If you chose not to, specify so and demonstrate numerically how you achieve proportionality to costs

without such receipts and without non-rate revenue actually deducted.

That is the opinion, judgment, and order of the Court.

MR. HAMPTON: Thank you, Judge.

MR. HANLEY: Thank you, Judge. Do you have a time frame for the follow-up that you're contemplating?

THE COURT: No, it's up to you guys.

MR. HANLEY: Okay. We'll -- we'll discuss it.

THE COURT: You guys can talk amongst yourselves and just give me a call.

MR. HANLEY: Okay; thank you, Judge.

THE COURT: Exhibits -- for appellate purposes, I have exhibits from everyone, but they're so marked up that I would expect you guys can agree to create your own set.

MR. HANLEY: Absolutely.

THE COURT: All right; thank you.

MR. HANLEY: Thank you, Judge.

(At 4:17 a.m., proceedings concluded)

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CERTIFICATION

I certify that this transcript, consisting of 156 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Daniel Patrick O'Brien on Thursday, July 12, 2018, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

Deanna L. Harrison

/s/ Deanna L. Harrison, CER 7464
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