IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY

KATHRYN FARMER, Individually and as Representative of a Class of Similarly Situated Persons and Entities, Plaintiff,	)	Case No.: 2021 CH 04583
v.	)	Calendar 3
CITY OF CHICAGO, an Illinois Municipal Corporation Defendant.	)	Judge Allen P. Walker

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant City of Chicago's motion pursuant to 735 ILCS 5/2-615 to dismiss Counts IX and X of Plaintiff's Fourth Amended Complaint ("FAC"). Counts IX and X allege, respectively, that the City's water and sewer rates are unjustly discriminatory and exorbitant/unreasonable under Illinois common law. For the reasons set forth below, the City's motion to dismiss is denied.

BACKGROUND

This matter comes before the Court on Defendant City of Chicago's motion to dismiss Counts IX and X of Plaintiff Kathryn Farmer's Fourth Amended Complaint ("FAC") pursuant to 735 ILCS 5/2-615. These are the only remaining claims in the case and concern the legality of the City's water and sewer rates from 2017 to the present.

Plaintiff filed the original complaint on April 29, 2021, and has since amended it multiple times. On March 25, 2024, the Court dismissed the corresponding counts in Plaintiff's Third Amended Complaint ("TAC") for failure to state a claim. In that order, the Court found that the TAC lacked concrete allegations demonstrating that the rates charged were unreasonable or discriminatory at the time of their establishment, and that it failed to allege facts necessary to support equitable relief. (Mar. 25, 2024, Order at 5).

On February 26, 2024, Plaintiff filed the FAC, which is now the operative pleading. It asserts two counts: Count IX alleges that the City's exemption of certain customers—including City departments, sister agencies, and nonprofit organizations—from water and sewer charges results in unjustified rate discrimination. *FAC* ¶¶ 173–215. Count X alleges that the City inflates the overall "Revenue Requirement" charged to ratepayers by embedding unrelated or excessive costs—such as indirect overhead and pension allocations—into the rate base. *FAC* ¶¶ 223–231, 235, 239–290. The FAC includes over 150 new factual paragraphs and references supporting

exhibits, including budget line items and comparative cost estimates. *FAC* ¶¶ 174, 223–231, 235, 239–290.

The City has moved to dismiss the FAC under Section 2-615, contending that the claims remain legally insufficient and that the rate-setting practices described in the FAC reflect legitimate governmental objectives and standard municipal budgeting discretion. The motion is fully briefed and submitted for decision.

2-615 MOTION TO DISMISS STANDARD

A motion brought under 735 ILCS 5/2-615 challenges the legal sufficiency of a pleading and admits all well-pleaded facts. A claim will survive dismissal if the facts alleged, when viewed in the light most favorable to the plaintiff, set forth a legally cognizable cause of action. *Doe-3 v. McLean County Unit Dist. No. 5*, 2012 IL 112479, ¶ 15.

DISCUSSION

I. Count IX – Unreasonable Rate Discrimination

Plaintiff alleges that the City of Chicago has created an unreasonably discriminatory rate structure by exempting certain categories of customers (the "Exempt Customers") from paying water and sewer charges, thereby shifting the financial burden to all remaining customers (the "Non-Exempt Customers"). *Plaintiff's Response Brief in Opposition to City's MTD FAC*, at 6–7. These Exempt Customers are identified in Chicago Municipal Code § 11-12-540 and include City-owned or City-occupied properties, Chicago Public Schools, City Colleges, certain hospitals, armories, and nonprofit entities. *Id. FAC* ¶¶ 17, 27, 207–215.

The FAC alleges that these exemptions result in a rate of $0—or a significantly reduced rate—for certain favored entities, while ordinary residents and businesses must pay full price for the same water and sewer services. *Plaintiff's Response Brief,* at 6–7; *FAC* ¶¶ 17, 62, 223. Plaintiff further contends that the cost to the City of delivering these services is the same for both classes of users, but because Exempt Customers do not contribute to the City's revenue requirement, their share of the system's costs is indirectly paid by the Non-Exempt Customers. *Id.* The FAC quantifies this shift at more than $50 million annually. *See id.*; see also *FAC* ¶¶ 17, 61–62, 207–215, 223.

Plaintiff asserts that there is no cost-based justification for these exemptions. *Plaintiff's Response Brief,* at 6–7; *FAC* ¶¶ 220–223. The FAC explicitly alleges that the disparity in treatment is not grounded in any demonstrated difference in the cost of service and instead reflects the City's policy choices to subsidize certain customers at the expense of others. *Id.*, at 7. The FAC further alleges that "[b]ecause the City does not receive payments from the Exempt Customers to cover those costs, those costs are necessarily covered by the Rates paid by the Non-Exempt Customers." *FAC* ¶ 223. Plaintiff argues that this creates a preference and corresponding disadvantage that meets the common-law definition of unjust discrimination. *FAC* ¶¶ *41–43, 46; see also Plaintiff's Response Brief, at pp. 2–4, 7.*

The City argues in response that exemptions from payment are not equivalent to rate discrimination. It contends that all customers are subject to the same nominal per-unit rate for water and sewer services and that the exemption scheme merely reflects a decision not to collect payments from certain users. *City's Reply in Support of MTD FAC*, at 3–4.

The City also relies heavily on *Village of Niles v. City of Chicago*, 201 Ill. App. 3d 651 (1st Dist. 1990), to argue that exemptions, by themselves, do not establish unreasonable discrimination unless the plaintiff can show that such exemptions rendered the rates charged to others unreasonably high. The City asserts that in *Niles*, the plaintiffs did not prevail because they failed to quantify how free or discounted services to others affected their rates. Here, the City argues that Plaintiff has similarly failed to plead facts that support a finding that the exemptions caused Plaintiff's rates to exceed the City's cost of providing service. *City's Reply,* at 5–6.

The City further dismisses Plaintiff's reliance on *Austin View Civic Ass'n v. City of Palos Heights*, 85 Ill. App. 3d 89 (1st Dist. 1980), noting that *Austin View* involved a straightforward comparison of different rates charged to different geographic customer classes and did not involve an exemption-based challenge. *City's Reply*, at 3.

Under Illinois law, utility rates must be reasonable and not unjustly discriminatory. While municipal utilities are not subject to the Illinois Public Utilities Act, common-law principles governing rate reasonableness and discrimination remain applicable. As the court in *Austin View* explained, "whether there has been discrimination in the application of water rates is a question of fact to be determined from the evidence presented." *Austin View, 85 Ill. App. 3d at 95.*. The court also noted that rate differentials are not impermissible per se, but "must be supported by differences in the cost of furnishing the service." *Id.*

The Illinois Appellate Court in *Niles* reaffirmed this standard and explained that, to prevail on a discrimination claim, plaintiffs must show that they paid rates that exceeded the City's cost of service "to the point of unreasonableness." *Niles,* 201 Ill. App. 3d at 672–73. The court in *Niles* ultimately denied relief because the plaintiffs did not quantify the burden imposed by exemptions or establish a nexus between those exemptions and the rates charged to paying customers.

Plaintiff's allegations, taken as true at the pleading stage, go beyond the level of generality found deficient in *Niles*. *Niles,* 201 Ill. App. 3d at 673–74. Unlike the plaintiffs in Niles, Plaintiff here identifies both the scope of the Exemptions and the estimated cost impact—over $50 million per year—borne by paying customers. *Plaintiff's Response Brief,* at 6; *FAC* ¶¶ 17, 27, 62, 207–215, 223. The FAC further alleges that there is no cost-of-service distinction between Exempt and Non-Exempt Customers that would justify this treatment. *FAC* ¶¶ *220–223*. The structure described—a zero or discounted rate applied to some, while others pay full cost—is precisely the sort of economic preference that courts have found to be potentially unlawful under common law standards. *FAC* ¶ 43.

Plaintiff's reliance on *Austin View* is also not misplaced. While that case involved geographic discrimination, the central inquiry—whether similarly situated customers are charged differently without cost justification—applies equally here. Plaintiff has alleged that she and other

Non-Exempt Customers pay higher effective rates than Exempt Customers, despite receiving the same service and imposing the same costs on the system. *Plaintiff's Response Brief,* at 7.

Finally, whether the City's policy goals in providing exemptions are sound is not at issue at the pleading stage. What matters is whether Plaintiff has alleged facts that, if proven, would support a finding that the resulting rate structure imposes unjust discrimination. Plaintiff has done so here. *Doe v. Coe,* 2019 IL 123521, ¶ 20 ("we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. We also construe the allegations in the complaint in the light most favorable to the plaintiff.").

Plaintiff has adequately stated a claim for unreasonable rate discrimination. The FAC identifies two customer classes, alleges unequal economic treatment not justified by differences in cost, and quantifies the impact of that treatment. Whether the City's justifications can be substantiated is a question for a later stage. For present purposes, Plaintiff has alleged facts sufficient to survive a motion to dismiss under Illinois common law standards. Accordingly, the motion to dismiss Count IX is denied.

II. Count X – Exorbitant and Unreasonable Rates

Plaintiff alleges that the City of Chicago has imposed water and sewer rates that are exorbitant and unreasonable because they grossly exceed the actual cost of providing those services. According to the FAC and supporting brief, each year the City calculates a "Revenue Requirement" that informs how much must be collected from ratepayers. Plaintiff does not challenge the concept of recovering legitimate costs—such as operations, maintenance, and fair administrative allocations—but contends that the Revenue Requirement includes inflated or illegitimate costs that substantially pad the rate base and result in overcharging customers. *FAC* ¶¶ 6–7, 12, 19–20, 28–30, 53–68.

Two principal categories of alleged padding are identified. First, the City's allocation of "indirect costs" from central administration is, according to Plaintiff, vastly overstated. The FAC cites a 2022 Maximus study that found the Water Fund's fair share of central service costs to be approximately $21.7 million, while the City's 2022 budget allocated $69.3 million—more than three times the calculated fair share. Similarly, the Sewer Fund was allocated $37.7 million, though Maximus estimated its share should be only $1.5 million. *FAC* ¶ 245. Plaintiff characterizes this as a covert tax on utility customers used to fund unrelated City operations. *FAC* ¶¶ 239–245.

Second, the FAC alleges that the City unfairly burdened the Water and Sewer Funds with pension obligations that far exceed their proportional share of pension-eligible employees. For instance, in 2021, the Water Fund was charged $36.9 million toward the Municipal Employees' pension fund, while the Corporate Fund—which covers the bulk of City employees—was charged $49.7 million. *FAC* ¶¶ 294–304. Plaintiff asserts that the Water Department does not comprise a proportionate share of the workforce to justify such allocations. Moreover, the City has continued to collect these overcharges despite a dedicated utility tax enacted in 2017 to fund pensions. *FAC* ¶¶ 19, 294–304.

Plaintiff also alleges that the rate-setting structure, codified by ordinance in 2016, locked in annual increases indexed to inflation, effectively perpetuating and compounding the excessive baseline rates set at that time. *FAC* ¶¶ 64–68. According to Plaintiff, the rate ordinance baked the excesses into the structure, and subsequent inflationary increases merely carried forward the unjustified charges.

The City responds that Plaintiff improperly relies on post-2016 data—such as the Maximus study and recent budget figures—to challenge rates set nearly a decade ago. Citing *West v. City of Batavia*, the City argues that utility rate reasonableness must be assessed at the time the rates are set and not through hindsight using more recent evidence. *West v. City of Batavia*, 155 Ill. App. 3d 925, 928 (2d Dist. 1987) ("Judicial review of rates which were unilaterally established by a municipal utility may not take intervening circumstances or after-acquired information into account").

The City further contends that municipalities have some flexibility in setting rates, including the ability to build modest reserves or earn a return akin to depreciation. The City suggests that even if the allocations are not perfectly precise, they do not rise to the level of unreasonableness required to state a claim.

Illinois courts have consistently held that municipal utility rates must reflect reasonable compensation for services rendered. In *Village of Niles v. City of Chicago*, the court stated that "the ultimate question is whether the rates charged the plaintiffs are reasonably related to the cost of service." *Village of Niles v. City of Chicago*, 201 Ill. App. 3d 661 (1st Dist. 1990). The court further explained that "[i]f the rates charged to plaintiffs are discriminatorily high or exceed the cost of service to the point of unreasonableness, plaintiffs are entitled to relief." *Id.* at 673. Likewise, the Illinois Municipal Code mandates that municipalities may charge only "reasonable compensation for the use and service of the combined waterworks and sewerage system." 65 ILCS 5/11-139-8.

The FAC meets the applicable pleading standard by alleging that the City's rates were unreasonable at the time of their adoption and remain unreasonable due to the embedded cost inflators. Plaintiff alleges that by 2016, the City had already included excessive indirect costs and pension allocations in its rate structure, and those costs were carried forward under the inflation-indexed increases adopted by ordinance. *FAC* ¶¶ 60–66, 224–225, 288, 297–298. The 2016 Appropriation Ordinance included specific line items for "General Fund Reimbursements" and "Pension Expense" in the water and sewer budgets, demonstrating that the challenged categories were part of the rates as originally set.

While the Maximus study and 2021–2022 budget data are more recent, they illustrate the scale of the alleged overcharges and reinforce the claim that similar overcharges existed in 2016. Importantly, the Maximus study analyzed 2020 figures—closer in time to the rate-setting date—making its findings probative of the conditions at issue. Plaintiff uses these later data points to support a reasonable inference that the same flawed practices were present earlier.

The magnitude of the alleged overcharges—more than $40 million annually in indirect costs alone, plus substantial pension over-allocations—far exceeds what might reasonably be

attributed to reserves or returns on investment. Plaintiff alleges the rates generate over $100 million in surplus annually, suggesting not incidental misallocation but systemic overcharging for unrelated City obligations. If proven, such practices amount to a hidden tax imposed through utility billing—a practice the Illinois Supreme Court has cautioned against. *East St. Louis v. Union Electric Co.*, 37 Ill. 2d 537, 542–43 (1967) ("On a literal and superficial view it might appear as if the utility tax ordinance imposed a tax burden upon the Company, but on examination it is evident that the burden was placed on the consumers.... Adoption of the Company's argument would give it the best of possible worlds.... The Company cannot plead that it has the burden of the utility tax and then pass it on to its consumers and in the same voice relieve itself of its obligations.... Plainly, such a construction would be unreasonable.").

Plaintiff also points to violations of municipal ordinances governing the use of utility revenues. Section 3-12-010 of the Municipal Code restricts the use of the sewer fund to sewer-related purposes, and Section 11-12-260 similarly mandates that water rates must cover the system's needs. Allegations that revenues have been siphoned to the City's Corporate Fund or to pay general pension obligations bolster the claim that the rates are not grounded in legitimate cost recovery.

Finally, Plaintiff's allegations align with Section 11-139-8 of the Illinois Municipal Code, which limits water/sewer charges to "reasonable compensation." The combination of specific factual allegations, quantitative data, and citations to statutory and municipal limits all support a plausible claim that the rates far exceed the cost of service. *FAC* ¶¶ 4, 45–46, 58, 59–60.

Count X of the Fourth Amended Complaint adequately pleads a cause of action for exorbitant and unreasonable rates. Plaintiff has alleged that the rates, as established in 2016 and perpetuated thereafter, include cost inflators—such as overstated indirect costs and disproportionate pension allocations—that collectively impose a burden far beyond the legitimate cost of service. The use of recent data does not undermine the claim because the FAC ties the overcharges to the original rate-setting period and uses current figures illustratively.

Whether the City can justify these charges will depend on the evidence presented later in the case. But at the pleading stage, Plaintiff's detailed and data-driven allegations are sufficient. Accordingly, the City's motion to dismiss Count X is denied.

In its March 25, 2024 Order, the Court dismissed Counts IX–XII of the Third Amended Complaint for lack of factual detail supporting a good-faith claim of rate discrimination or unreasonableness, noting the absence of allegations linking the challenged rates to their establishment period or to actual costs. *MTD 4th Amd. Comp.*, at 3–5.

CONCLUSION

Accordingly, the City of Chicago's Motion to Dismiss Counts IX and X of the Fourth Amended Complaint pursuant to 735 ILCS 5/2-615 is hereby denied. This matter is set for status August 4, 2025 at 10:00AM.

Dated: __7/11/2025_____ ENTERED:

Hon. Judge Allen P. Walker

Associate Judge
Allen Price Walker

JUL 11 2025

Circuit Court-2071