

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

**AJAX METAL PROCESSING, INC, a
Michigan corporation, individually and as a
representative of a class of similarly situated
persons and entities,**

Plaintiffs,

Case No. 23-015314-CB

-v-

Hon. Annette J. Berry

**CITY OF DETROIT, a municipal
corporation,**

Defendant.

OPINION AND ORDER

At a session of said Court held in the Coleman
A. Young Municipal Center, Detroit, Wayne
County, Michigan,

on
this: 12/3/2025

PRESENT: Hon. Annette J. Berry
Circuit Judge

This civil matter is before the Court on a motion for summary disposition filed by Defendant City of Detroit (hereafter “the City”). For the reasons stated below, the Court will deny the motion.

I. BACKGROUND

Plaintiff Ajax Metal Processing, Inc. (hereafter “Plaintiff”) and other similarly situated persons and entities have filed a class action, which was certified by this Court on September 12, 2025, claiming that the City’s rate making processes are unreasonable.

This action arises out of a challenge to the “Inclining Block Water Rates” (hereafter “Block Rates”) imposed by the City. Plaintiff essentially claims that the City’s “Block Rate” structure unfairly burdens certain water customers. It claims that the rates are not uniform across all customers. It increases rates as consumption increases. Plaintiff and the putative class are mostly commercial or industrial consumers of water. They assert that, “[u]nder an increasing block rate structure, each customer’s per gallon cost of water can be different based upon the total volume of water consumed by each customer.” [Complaint, p. 7, ¶ 25]. Plaintiff contends that the rate structure is unreasonable and inequitable. It also points to insufficiencies and contradictions in the study done by Stantec Consulting Services, Inc. on behalf of the City before implementing the current rate structure. Originally, Plaintiff’s complaint included four claims: (1) assumpsit – money had and received in violation of the City Charter; (2) unjust enrichment for violation of the City Charter; (3) assumpsit – money had and received due to unreasonable water rates; and (4) unjust enrichment due to unreasonable water rates. Plaintiff brings two claims for unjust enrichment. Plaintiff’s Counts I and III were dismissed in the Courts Opinion and Order issued on February 28, 2025. Now before the Court is Defendant’s Motion for Summary Disposition pursuant to MCR 2.116(C)(10) on Count II Unjust Enrichment due to charter violation and Count IV Unjust Enrichment do to unreasonable water rates.

II. FACTS

The City provides water services to residential, commercial, and industrial customers through Detroit Water and Sewerage Department (hereafter “DWSD”). Prior to August 1, 2022, the City used uniform volumetric water rates. The City retained Stantec, specifically Andrew Burnham, to perform a rate study and proposed updated water and sewer rates. Burnham has 23 years of experience and has been involved in over 500 studies involving more than 150 local governments.

The City adopted Stantec’s proposed rate structure, effective August 1, 2022. The proposed rate structure included (1) a uniform rate charged to all users who use more than 0.6 MCF of water per month; and (2) a lower basic or “lifeline” rate charged to all users who use 0.6 MCF or less of water per month. The water rates reflect a single customer usage class and do not differ among customer types. The rates also recognize that the City’s water system is larger and more complex than necessary to meet essential water needs to meet essential water needs.

The Block Rates are based upon volume of water used by the customer. They are determined by how many thousand cubic feet of water (MCF) is used. Through the Block Rates, the City charges \$15.024 for the first 0.6 MCF used per month and approximately 60 cents per 100 gallons for usage in excess of 0.6 MCF per month (\$44.92 per MCF).

Plaintiff relies on an opinion from its expert John Damico to point out the errors Stantec made. Damico did not conduct comprehensive rate or cost of service study. He did not have training management of water systems. He had no training in or experience

with city finance. He never served as a financial officer of a utility. He did not perform research into DWSD or the City. He did not review any deposition of City employees. He did not consider the City's policies and objectives. He did not conduct his own revenue requirement analysis. He did not review or rely on any guidance to support his conclusion. He did not independently analyze whether Tier 2 customers impose an increased burden. He didn't attempt to analyze relationship between costs assigned by Stantec to both the lifeline and uniform rate. He was not able to conclude residential customers are the source or cause of peaking costs.

Defendant retained expert Eric Rothstein, co-author of AWWA M1 Manual and has more than 35 years of experience with water and sewage utility financing. Rothstein, based on his decades of experience, concluded that the City's rates are not excessive and do not recover illegal or improper expenses. Rothstein further concludes that a uniform rate with a lifeline component is reasonable and equitable.

III. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Jackson v Southfield Neighborhood Revitalization Initiative*, __ Mich App __; __NW3d __; 2023 WL 6164992, at *19. In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). “A

genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The moving party has the initial burden of supporting its position through documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish the existence of a genuine issue of material fact. *Id.* The non-moving party “. . . may not rest on the mere allegations or denials of his or her pleadings, but must, by affidavit or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial.” MCR 2.116 (G)(4). If the opposing party fails to do so, the motion for summary disposition is properly granted. *Id.*; *Quinto, supra* at 363. Finally, a “reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules.” *Maiden, supra* at 121.

Generally, a motion for summary disposition under MCR 2.116(C)(10) is premature if discovery has not closed, unless there is no fair likelihood that further discovery would yield support for the nonmoving party's position. *St Clair Med, PC v Borgiel*, 270 Mich App 260, 271; 715 NW2d 914 (2006). “In addition, a party opposing summary disposition cannot simply state that summary disposition is premature without identifying a disputed issue and supporting that issue with independent evidence.” *Marilyn Froling Revocable Living Tr v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009).

IV. DISCUSSION

The City has three arguments. First, the City asserts that Plaintiff cannot establish that the City's water rates were inequitable because it did not perform a rate study. Second, the City asserts that the City's water rates are equitable because they recover only the costs of operating the system and do not include impermissible charges. Third, the City asserts that Plaintiff has not otherwise shown that the City's water rates are unreasonable or inequitable.

"An equitable claim of unjust enrichment is grounded on the theory that the law will imply a contract to prevent the unjust enrichment of another party." *Landstar Express Am, Inc v Nexteer Auto Corp*, 319 Mich App 192,204; 900 NW2d 650 (2017) [Citation omitted]. A claim alleging unjust enrichment requires that a plaintiff establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Id* at 205. Whether a specific party has been unjustly enriched generally involves a question of fact. *Trahey v City of Inkster*, 311 Mich App 582, 594; 876 NW2d 582 (2015).

In the context of municipality water rates, "[i]n contemporary municipal utility ratemaking cases, a similar focus on principles of 'unjust enrichment' is encapsulated within the rebuttable presumption that a municipality's utility rates are reasonable." *Youmans v Charter Twp of Bloomfield*, 336 Mich App 161,214; 969 NW2d 570 (2021).

"The determination of 'reasonableness' is generally considered by courts to be a question of fact." *Trahey, supra*, quoting *City of Novi v Detroit*, 433 Mich

414,431; 446 NW2d 118 (1989). The presumption of 'reasonableness' "exists because '[c]ourts of law are ill-equipped to deal with the complex, technical processes required to evaluate the various cost factors and various methods of weighing those factors required in rate making.'" *Id.*, quoting *City of Novi* at 430. "However, the presumption of reasonableness may be overcome by a proper showing of evidence." *Id.* A utility rate fee charged by a municipality is presumed reasonable unless it is facially or evidently so wholly out of proportion to the expense involved that it must be held to be a mere guise or subterfuge to obtain the increased revenue. *Shaw v City of Dearborn*, 329 Mich App 640, 654; 944 NW2d 153 (2019). The Plaintiff has the burden to prove that "any given rate or ratemaking practice is unreasonable." *Trahey, supra*, quoting *City of Novi v Detroit*, 433 Mich 414, 432-433; 446 NW2d 118 (1989).

Plaintiff does not have to perform a rate study to prove the water rates are unjust. Plaintiff can do so by performing a rate study or providing other similar evidence that demonstrates the rates are unjust. *See Youmans*. Plaintiff has demonstrated that there is a genuine issue of material fact whether the City's rates are reasonable and equitable. There is competing testimony from Plaintiff and the City about the reasonableness of the water rates. "[A]n opposing party's disagreement with an expert's opinion or interrelation of facts, and gaps in expertise, are matters of the weight to be accorded to the testimony, not its admissibility." *Bouverette v. Westinghouse Elec. Corp.*, 245 Mich. App. 391, 628 N.W.2d 86 (2001).

V. CONCLUSION

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that motion for summary disposition filed by Defendant the City of Detroit is **DENIED** under MCR 2.116(C)(10).

IT IS FURTHER ORDERED that this **DOES NOT** resolve the last pending claim and **DOES NOT CLOSE THE CASE.**

IT IS SO ORDERED.

DATED: 12/3/2025

The seal of the Third Judicial Circuit Court of Michigan is circular. It features a central shield with a scale of justice and a book. The shield is surrounded by a ring containing the text "THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN".
/s/ Annette J. Berry
December 3, 2025
CIRCUIT COURT JUDGE