

**STATE OF MICHIGAN
BRANCH COUNTY CIRCUIT COURT**

JASON MATE, individually and as
representative of a class of
similarly-situated persons and entities,

Plaintiff,

v.

CITY OF COLDWATER, MICHIGAN
a municipal corporation, by and through THE
COLDWATER BOARD OF PUBLIC UTILITIES

Defendant.

Case No. 2025-12507-CZ

Hon. Kirk A. Kashian
Acting Circuit Court Judge

Hearing Date:
Friday, April 10, 2026
10:30 A.M.

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BRANCH COUNTY
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COUNTY CLERK

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT CITY OF COLDWATER'S
MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY PENDING THE
OUTCOME OF THE CITY'S RULE 2.116(C)(8) MOTION FOR SUMMARY DISPOSITION**

Plaintiff Jason Mate ("Plaintiff"), by his attorneys, Kickham Hanley PLLC and Head Murphy Law, individually and on behalf of a class of similarly situated class members, states as follows in response to *Defendant City of Coldwater's Motion for Protective Order to Stay Discovery Pending the Outcome of Defendant's Rule 2.116(C)(8) Motion for Summary Disposition* (the City's "Stay Motion"):

1. This putative class action challenges the retail electric rates and charges (the “Electric Rates” and “Electric Charges”) the City of Holland (the “City”), through the City’s municipally-owned electric utility (the “Electric Utility or the “Electric Fund”), imposes on citizens and entities who/which receive electricity from the City’s Electric Utility (the “Electric Customers”). The City has grossly overcharged its Electric Customers by including in its Rates a so-called “payment in lieu of taxes” charge (the “PILOT Transfer Charge”) that is designed to raise millions of dollars of revenues that the Electric Utility then transfers to the City’s General Fund “for the use and benefit of the city,” allegedly in “recognition of and in compensation for all benefits received from the city in the use of city streets, services, and facilities...” City Charter, Sec. 15.9(a) (Exhibit 1 hereto).

2. At the outset, it is important for the Court to understand that Plaintiff’s Complaint alleges a significant **ongoing** financial harm. Notwithstanding the filing of the case in December 2025, the City continues to impose and collect the PILOT Transfer Charges at a rate of over \$3 million per year. As a result, the longer the City delays the Court’s resolution of the case, the more financial harm will be visited upon the City’s Electric Customers.

3. The City filed its Stay Motion on March 20, 2026 requesting that discovery be stayed “to protect the City” purportedly from “incurring considerable expense” in having to answer Plaintiff’s discovery requests prior to the Court deciding whether “Plaintiff’s alleged claims can proceed as a matter of law”— *i.e.* stay discovery until the Court rules on the City’s Motion for Summary Disposition it filed pursuant to MCR 2.116(C)(8)(the “City’s MSD”). *See* City’s Stay Motion, pp. 1, 4.

4. The sole basis for the City’s motion is to avoid the nebulous and unquantified “burden” of responding to discovery that might be unnecessary if the Court grants its motion. The City’s sole request for relief is that “discovery should be stayed pending the outcome of the City’s Rule 2.116(C)(8) motion for summary disposition.” *Id.* p. 4.

5. Plaintiff refutes the City’s position—specifically denies that his narrowly tailored, minimal

discovery requests (which the City acknowledges include only 27 requests for admission, 6 interrogatories and 13 requests for production, *id.* p. 2) could cause the City “considerable expense” to respond to them. As such, the Court should deny the City’s motion. The Court should not permit the City to use its MSD as a tool to hinder Plaintiff’s investigation into the City’s wrongdoing—even temporarily.

6. Plaintiff’s Complaint has two Counts. Count I alleges that the City has violated Section 15.9(a) of its Charter by transferring 6 ½ percent of the gross revenues of the Electric Utility to the City’s General Fund. To resolve Count I, the Court will have to determine the meaning of the term “gross income” as used in Section 15.9(a). The City claims that “gross income” is the same as “revenues.” Plaintiff claims that “gross income” is total revenues minus “costs of goods sold.” Both parties contend that Section 15.9(a) clearly and unambiguously reflects their respective interpretations of that provision. Therefore, unless the Court finds that Section 15.9(a) is ambiguous, no discovery is needed at this juncture as to the claims in Count I.

7. Count II, however, is a completely different matter.

8. Count II challenges the reasonableness of the City’s electric rates based upon the City’s inclusion of the PILOT Transfer Charge in its Electrical Rates. “The determination of ‘reasonableness’ [of municipal utility rates] is generally considered by courts to be a question of fact.” *Trabey v. City of Inkster*, 311 Mich. App. 582, 595; 876 N.W.2d 582 (2015). Thus, a stay of discovery is highly inappropriate as to Count II under circumstances where Plaintiff has properly stated a claim and the discovery that Plaintiff has served upon the City will enable Plaintiff to obtain additional factual support for Count II.

9. In sum, there are two potential outcomes of the City’s (C)(8) motion: either the Court denies the City’s MSD motion in full or in part and the case proceeds (which Plaintiff believes is more likely), or the Court grants the motion in full and dismisses the case.

10. Should the Court grant the City's request to stay discovery under circumstances where the chances of the City succeeding on a full dismissal of the case are relatively low, the potential harms to Plaintiff and the Class will far outweigh any potential harms the City might suffer if it has to respond to Plaintiff's narrowly tailored discovery requests.

11. Simply, if the City has to respond to Plaintiff's discovery requests now and then later the Court grants its (C)(8) motion, the harm to the City would be minimal—limited time and expense to respond to Plaintiff's narrow discovery requests. Notably, the City makes no attempt in its motion to quantify any alleged harm by, for example, stating that the responses will require “x amount of attorney time” and “y amount of City personnel time.” This is because the City knows that to answer 27 requests for admission (which require only ‘admit’ or ‘deny’ responses) and respond to 6 interrogatories and 13 requests for production is not unduly time consuming—and completely proportional to the needs of the case at this stage of the proceedings.

12. Moreover, whatever expense the City will incur in responding to Plaintiff's discovery requests pales in comparison to the amount of PILOT Transfer Charges the City will impose and collect during the time that discovery is stayed. The City collects over \$3 million per year in PILOT Transfer Charges. That means that if the discovery (and effectively the case) is stayed for just 4 months, the City will collect an additional \$1 million in PILOT Transfer Charges during that stay.

13. It lies poorly in the mouth for the City to complain about the limited time and expense it might incur if discovery is not stayed, given that, the longer the City protracts the case, the more PILOT Transfer Charges it will collect. Indeed, Plaintiff offered to agree to the City's request for a stay of discovery upon the condition that the City would escrow the PILOT Transfer Charges it collected during the stay. The City flatly rejected Plaintiff's proposal. *See* Exhibit 2, email

communication between counsel dated March 24, 2026.¹

14. The harm to Plaintiff and the putative class is more significant than any that might befall the City. Here, if Court stays discovery and then denies the City’s MSD in whole or in part, the delay in allowing Plaintiff to prosecute his case will cause significant harm to Plaintiff and the Class because the City will continue to impose the illegal PILOT Transfer Charges through at least June 2026 while Plaintiff will be prevented from taking discovery for at **least 6 months** after the filing of the case (December 8, 2025)—put another way, the discovery phase of the case will begin over 6 months after the filing of the Complaint. Indeed, if the Court takes the Parties’ respective MSDs under advisement—then the additional delay in entering the discovery phase—and resulting harm—will be even more pronounced.

CONCLUSION

Plaintiff requests that the Court deny the City’s motion for a protective order to stay discovery pending a decision on the City’s MSD and order that the City respond to Plaintiff’s discovery requests by April 24, 2026.

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley

Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
Edward F. Kickham (P70332)
40950 Woodward Avenue, Suite 306
Bloomfield Hills, Michigan 48304
(248) 544-1500
Counsel for Plaintiff and the Class

Date: April 3, 2026

¹ The City’s counsel’s suggestion that Plaintiff’s request for an extension on his class certification motion somehow delays this case is nonsensical. Here, the hearing date on the parties’ respective motions for summary is June 11, 2026. Unlike discovery, which can and should be developed in the interim period between now and the June hearing to avoid unnecessarily prolonging the case, the issue of class certification does not stall procedural progress. This issue can be decided after the June 11, 2026 hearing date without prejudice to either party.

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2026, I filed the foregoing document with the with the Clerk of the Court for the Branch County Circuit Court. I also delivered the document to all counsel of record via email, as previously stipulated to by the parties. Counsel was properly served at the following email addresses:

Soni Mithani: Mithani@millercanfield.com

Kimberly L. Scott: scott@millercanfield.com

Elyse K. Lisznyai: lisznyai@millercanfield.com

/s/ Jamie Warrow _____

Jamie Warrow

4900-8449-4749, v. 1

EXHIBIT – 1

CHAPTER 15
BOARD OF PUBLIC UTILITIES

Section 15.1. City Utilities.

The city's electric, water, and sewage utility facilities and services shall constitute a department of the city government. Such utilities of the city shall be under the control and direction of a board, to be known as the Board of Public Utilities. The Board shall be composed of five members who shall be appointed by the Mayor, subject to the approval of the Council, for terms of five years each, with the terms of one member expiring in each year. Board members may be removed by the Council for inefficiency, neglect of duty, or malfeasance in office. The term of office of each member of the Board shall commence on the day of the first regular meeting of the Board next following the date of his appointment, except that the term of office of any person who is appointed to fill a vacancy shall commence on the date of his appointment. The Board shall organize at its regular meeting held in the month of July, and shall elect one of its members President. The Board shall hold at least one regular meeting in each month at a meeting place designated by the Board with the approval of the Council. Special meetings may be called at the request of the President or of any two members in the manner provided in this charter for calling special meetings of the Council. All meetings of the Board shall be open to the public. The Board shall keep a journal of its meetings, and its proceedings shall be filed with the Clerk as a public record. Within 15 days the Board shall designate its Secretary. Members of the Board shall not receive any compensation, but shall be allowed reasonable expenses when actually incurred by them upon authority of the Board.

Section 15.2. Appointee of the Board of Public Utilities.

The Board shall appoint a Director who shall be responsible to the Board and serve at its pleasure. The Board shall set his compensation. The Director shall have control and direction of and be responsible for the supervision of all of the utility facilities and the properties of the city pertinent thereto which are entrusted to the Board, and shall be responsible for the economical and proper operation and maintenance thereof. As the administrative agent of the Board, he shall have the control and direction of the employees of the Board, subject to the provisions of this charter.

Section 15.3. Responsibilities of Board.

Subject to the general direction of the Council, the Board of Public Utilities shall have charge of the city's electric services, water supply services, and sanitary sewers and sewage disposal facilities, and shall organize and conduct the affairs of the city's systems for the construction, generation, maintenance, purchase, extension, and distribution of electric light and power and water, and of the construction, extension, maintenance, and operation of the city's sanitary sewer and sewage disposal system and facilities, in a manner consistent with the best practices therefor. The Board shall make contracts concerning the electric, water, and sewage facilities of the city, subject to the overall control of the Council relating to all departments of the city.

Section 15.4. Purchases and Sale of Personal Property.

The Board of Public Utilities shall establish the procedures for the purchase and sale of personal property which may, in whole or in part, be through the officer charged with the functions of making purchases for the city. Subject to the approval of the Council, the Board shall provide the dollar limit within which purchases of personal property may be made without the necessity of securing competitive bids, and the dollar limit within which purchases may be made by the Director without the necessity of Board approval.

Section 15.5. Property of the Board.

The Board shall have the power to acquire property, and interest in property, both real and personal, in the name of the city, for its purposes, and shall have the power to dispose of personal property by sale, exchange, or lease. The Board may dispose of real property or any interest therein by sale, exchange, lease, or otherwise, upon the approval thereof by the affirmative vote of not less than six members of the Council, and subject to the limitations on the sale of property by the city contained in Sections 13.3 and 14.5 of this charter.

Section 15.6. Power of Board.

- (a) The Board shall have full power and authority to fix all rates for electricity, water, and sewage disposal services, which shall become effective 30 days after the same have been approved by the Council and filed with the Clerk as a public record. Such rates shall not be fixed any lower than will produce the revenue required to pay all operating, maintenance, depreciation, and obsolescence expenses of the city's electric, water, and sewer and sewage disposal utility systems, together with a sufficient amount to provide for necessary expansions and extensions.
- (b) The Board and the Council shall agree upon rates and conditions upon which the Board will furnish electricity and services for street lighting and other city uses, and water and sewage disposal services used by the city.

Section 15.7. Appropriations to the Board.

- (a) The Board of Public Utilities shall submit to the City Manager the itemized estimates required by Section 7.2. of this charter. The City Manager shall include such estimates in the budget proposal submitted to the Council, without change or recommendation on his part, except that he may make recommendations concerning such parts thereof as directly affect or relate to departments of the city for which he is responsible. The Council shall consider such estimates in the same manner as the estimates of other departments of the city when it adopts the budget of the city for the ensuing fiscal year of the city and the appropriation for such fiscal year shall include the operation, maintenance, extension, and improvement of the utilities of the city which are entrusted to the Board.
- (b) No appropriations of money shall be made by the Council for the operating expenses of the city's utility facilities entrusted to the Board, other than to pay for utility services actually used by the city, if it is agreed between the Board and the Council that such payment shall be made. No free service of electricity, water, or sewage disposal shall be furnished by the city's utility services to any person, public or private, or to any public agency or instrumentality, other than the city.

Section 15.8. Board Fund Control.

- (a) Subject to the provisions of this charter, and the general accounting procedures of the city which shall be consistent with and meet any requirements of law, the Board shall have and exercise control over all of its funds. Such funds and revenues shall be in a bank account separate from other city funds. Except as provided in Section 15.9 to 15.13 inclusive, such funds shall be used only to defray the cost of operating the city's electric plant or plants and distribution systems, water plant and system, and sewage plant and system, necessary overhead, plant and system extensions, debt service, and other incidental and pertinent expenses of operating, maintaining, improving, extending, and changing the electric, water, and sewage and sewage disposal plants and systems, including allowance for depreciation and obsolescence. All checks drawn for the payment of money, under authority of the Board, shall be signed by the City Treasurer in addition to the signature of any person authorized by

the Board to sign such checks.

Section 15.9. Payments to the City.

- (a) The Board of Public Utilities shall, annually, pay to the Treasurer for the use and benefit of the city, 6 1/2% of the gross income of the department, which payment shall be in recognition of and compensation for all benefits received from the city in the use of city streets, services, and facilities and shall constitute a part of the expenses of the administration and operation of the utilities of the city required to be paid under the first priority of Section 15.12 (a).
- (b) Notwithstanding other provisions of this chapter, except when otherwise provided by Section 15.12 (b) of this chapter, the Board shall have power to transfer to the city such sums of money as it may deem proper and under such terms and conditions as the Board and the Council may mutually agree upon.

Section 15.10. Loans to the Board of Public Utilities.

The Council shall have power to loan money to the Board of Public Utilities from funds of the city which are not appropriated or budgeted for expenditure within the term of such loan. Each such loan shall be based upon the payment of reasonable interest by the Board, to be determined by the Council, and the repayment thereof to the city in substantially equal annual or other periodic installments.

Section 15.11. Utility Reserve Fund.

- (a) There is hereby created a public utility reserve fund in the amount of 15% of the undepreciated original cost of the utilities and facilities of the city entrusted to the Board, which reserve fund shall be maintained for the purpose of accumulating and holding available such money which, in addition to insurance carried by the city, may be deemed by the Board of Public Utilities to be prudently necessary for the protection, improvement, replacement, and extension of the city's public utilities and facilities entrusted to the Board. Such fund shall not be allowed to fall below the sum of 5% of the undepreciated original cost of the said utilities and facilities, as estimated by the Board and approved by the Council, including the value of any fire, wind, explosion, or other disaster type of insurance carried on the utilities and their facilities. The Council may, at any time, at the request or with the consent of the Board, and for so long as it deems desirable, increase the amount held and reserved in the city's public utility fund to a sum larger than the amount required to be maintained by this section.
- (b) Moneys placed in the city public utility reserve fund shall not be used for any purpose other than the purpose of the fund, as stated in this section, unless the proposition to do so is approved by a majority of the electors of the city who are the owners of property which is assessed for taxes by the city, and the lawful husbands and wives of such persons, voting on such proposition at a regular or special election. This subsection shall not prohibit the investment and reinvestment of such moneys in any manner permitted by law.

Section 15.12. Distribution of Revenues of City Utilities.

- (a) The revenues of each utility of the city shall be devoted to the following purposes in the order listed: First, to the expense of administration and operation of each utility, and the maintenance thereof as may be necessary to preserve it and its facilities in good repair and working order; second, such of the remaining amount of the revenues as may be required for the principal and interest on any indebtedness against the utility; third, of the remaining amount of the revenues, an amount shall each

year, be placed in the city's public utility reserve fund or funds which shall be sufficient to maintain the said fund at the per cent level established by Section 15.11 of this chapter, or such higher level as may be established under Section 15.11 (a) or for any reserve fund established for any bond issue, so long as any of the bonds thereof remain unpaid: Provided, that, in case of the depletion of the city's public utility reserve fund below the level so established, or if there exists any debt from the city to such fund, no funds shall be devoted to the next (fourth) purpose, until such level has been restored or such debt repaid, or both; and fourth, unless otherwise required by law, the balance of such revenues shall be placed in the fund created by Section 15.13.

- (b) In the event that the city shall issue bonds under the provisions of Act 94 of the Public Acts of 1933, as amended, or under the provisions of any other legislative authority authorizing the issuance of bonds based upon the revenue of a public utility, and to the extent that it has issued any such bonds, the provisions of this section, and of Section 15.13 shall be subject to the provisions of such act and any ordinance adopted in accordance therewith.

Section 15.13. Uses and Distribution of Utility Funds Under Fourth Purpose.

All revenues of the City's utility operations which are placed in the funds of the city in accordance with the fourth provision of Section 15.12 shall be placed in a fund which is hereby created to be known as the capital public improvement fund, to be used solely to defray the cost or a part of the cost of capital public improvements of the city. No moneys shall be expended from the capital public improvement fund, except to alleviate disaster, unless the proposition to do so is placed before the people of the city by a vote of not less than six members of the Council and is then approved by a vote of not less than a majority of the electors of the city voting on such proposition at a regular or special election, who are the owners of property assessed for taxes by the city, and the lawful husbands or wives of such persons.

Section 15.14. Operating Personnel.

The director shall have power to employ all personnel deemed by him to be necessary for carrying on the supervision, operation, maintenance, and general conduct of the utilities of the city entrusted to the Board. Such salaries and hourly rates of pay as are established within the department shall be consistent with the salaries and rates of pay established by the Council for city employees performing comparable work, but shall not be so limited for other employees of the Board.

Section 15.15. Annual Report of Board of Public Utilities.

An annual report shall be prepared by the Board within 60 days after the completion of the annual audit, made under the provisions of Section 7.14 of this charter, which report shall clearly show the financial position of the utility systems of the city entrusted to the Board by a profit and loss statement, balance sheet, and such other information as may be pertinent thereto. Such annual report shall be published in a manner determined by the Board, and one copy thereof shall be filed with the Clerk, one with the Public Library, and one with each newspaper published in the city.⁹

9. Editor's Note: The Schedule Chapter that immediately followed is included as an attachment to this Charter.

EXHIBIT – 2

Jamie Warrow

From: Scott, Kimberly L. <scott@millercanfield.com>
Sent: Tuesday, March 24, 2026 3:55 PM
To: Gregory Hanley
Cc: Jamie Warrow; Shawn Head; Mithani, Soni
Subject: RE: Mate v. City of Coldwater

Hi Greg,

My client rejects your proposal. Plaintiff didn't seem to have any concerns with the City purportedly "profiting from the delay" when he sought an adjournment of the motion for class certification. What Plaintiff is asking for is essentially a preliminary injunction without obtaining a ruling from the Court that Plaintiff is entitled to an injunction.

Let me know if you will agree to the stay without these (or any other) conditions.

Best,

Kim

Kimberly L. Scott | Principal

(she/her/hers/herself)

Miller Canfield

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From: Gregory Hanley <ghanley@kickhamhanley.com>
Sent: Monday, March 23, 2026 1:24 PM
To: Scott, Kimberly L. <scott@millercanfield.com>; Mithani, Soni <Mithani@millercanfield.com>
Cc: Jamie Warrow <jwarrow@kickhamhanley.com>; Shawn Head <head@headmurphyllaw.com>
Subject: Mate v. City of Coldwater

Caution: This is an external email. Do not open attachments or click links from unknown or unexpected emails.

Soni and Kim,

We have received and reviewed the City's motion to stay discovery. As you already know, we don't believe a stay is warranted, for the reasons outlined in detail in my March 18, 2026 email to Kim.

Nonetheless, we will stipulate to your requested stay on two conditions:

1. The stay ends when the Court rules on the City's pending MCR 2.116(C)(8) motion for summary disposition, unless terminated earlier as a result of either party's motion to terminate the stay, with good cause shown; and
2. The City deposits in an interest-bearing escrow account all PILOT Transfer Charges it receives during the pendency of the stay. The escrow account will remain in place after the stay is lifted, and the funds in the account (including accrued interest) will be preserved through the end of the case, either (a) to partially satisfy the claims of the Class (if Plaintiff prevails) or (b) to be returned to the City (if the City prevails).

We believe our proposal balances the City's desire to avoid what it claims might be the needless expenditure of time and expense with our desire to prevent the City from profiting from the delay attendant to a stay.

Let me know if the City will agree to these terms. If so, I can prepare a stipulated order reflecting the agreement. Thanks.



Gregory D. Hanley
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