PILICY & RYAN, P.C.
ATTORNEYS AT LAW

FRANKLIN G. PILICY
fpilicy@pilicy.com
Also Admitted in MA

DONALD J. RINALDI
drinaldi@pilicy.com
As of Counsel to the Firm

365 Main Street
P.O. Box 760
Watertown, Connecticut 06795
Ph: 860-274-0018
Fax: 860-274-0061
www.pilicy.com

CHARLES A. RYAN
cryan@pilicy.com
Also Admitted in MA

JEFFREY M. GEORGE
jgeorge@pilicy.com
Also Admitted in RI

JILLIAN A. JUDD
jjudd@pilicy.com

April 13, 2020

Via: **PRIVILEGED LITIGATION MATTER**
EXECUTIVE SESSION MATTER

John Gavallas, Interim Town Manager
Town Hall Annex
424 Main Street
Watertown, CT 06795

RE: City of Waterbury v. Town of Watertown
Waterbury Superior Court
Docket No. UWY-CV19-6045213

Status Report of Present Case
History of Watertown Purchase of Water from Waterbury
Potential Impact to Watertown Water Customers
Recommendation

Interim Town Manager Gavalas,

You have requested a report concerning the referenced Waterbury Court case against Watertown seeking to substantially increase the cost of water that Waterbury provides to Watertown.

Watertown has received all of its public water supply from Waterbury since at least 1939. Water was provided to Watertown pursuant to a series of water supply contracts beginning November 20, 1939. The latest contract began July 1, 2013 and ended June 30, 2018. All water contracts provided water rates based upon a bulk or wholesale rate taking into account the cost to Waterbury providing water to Watertown. A the end of the 2013 contract, Waterbury began charging Watertown a water rate based upon the retail rate charged to Waterbury water customers plus ten (10%) percent. This new water rate proposed by Waterbury is approximately double all prior water rates and ignores all prior contract relationships.

History of Waterbury and Watertown Water Supply Relationship

1. **Waterbury Water System, The Early Years**

In 1867 the citizens of Waterbury voted to construct Waterbury's first public water supply and distributing reservoir. This East Mountain reservoir was constructed in 1869. This reservoir quickly proved insufficient. Two additional reservoirs, the Cook Reservoir and the Prospect Reservoir were constructed between 1879 and 1881. Again, the supply was quickly outpaced due to rapid domestic and industrial growth. In 1883 Waterbury supplemented its water supply by pumping water from the Mad River.

During 1893 Waterbury took its first bold step into Litchfield County seeking water supplies by securing diversion rights to 18 square miles of watershed on the West Branch of the Naugatuck River ("West Branch"). This required State Legislative approvals and an agreement with the Town of Washington.

2. **State Legislature Authority for Expansion of the Waterbury Water Supply Waterbury and Town of Washington Agreement**

Special Act 252, passed April 25, 1893, by the General Assembly of the State of Connecticut, provided, *inter alia*, that Waterbury is authorized to take and convey from any and all brooks, rivers, springs, ponds, lakes and reservoirs within the limits of the County of Litchfield such supply of water as the necessities or convenience of the inhabitants of Waterbury may require and further to construct any and all needed infrastructure for conveying said water from the County of Litchfield into and through Waterbury.

Special Act 252 was later modified by Special Acts 344 (1909) and 346 (1919), which excepted from the scope of Special Act 252 the waters of Bantam Lake in Litchfield County and the waters of its tributaries and the waters of the Naugatuck River northerly of the southerly borough line of the Borough of Torrington.

Washington Agreement. On or about May 3, 1921, Waterbury and the Town of Washington entered into an agreement ("Washington Agreement"), which provides, *inter alia*, that Waterbury is authorized to divert water from the West Branch of the Shepaug River, a river located in Litchfield County and flowing through the Town of Washington, with such diversion to occur in accordance with Special Act 252 and in accordance with other terms and conditions set forth in the Washington Agreement.

The Washington Agreement is significant in that it expressly provides that water diverted from the Shepaug watershed to the West Branch Waterbury reservoirs may be used to serve a number of towns including Waterbury, Washington, Litchfield, Thomaston, **Watertown** and the village of Platt Hills.

Special Act 391, passed June 14, 1921, provided, *inter alia*, that Waterbury was authorized to supply water to continuous municipalities, boroughs and fire districts. Said Special Act provides in pertinent part as follows "the city of Waterbury is authorized and empowered, by its mayor and a majority of its aldermen, to contract to supply water for domestic purposes and fire protection to **any municipality, borough or fire district, through which, or contiguous to which the water supply mains of said city are or shall be laid, or in which its reservoir or reservoirs are located (Watertown),** or may contract to supply water for domestic purposes and fire protection to any private

company, chartered for the purpose of supplying water to such municipality, borough or fire district **on such terms and rates as shall be just and equitable to the contracting parties."**

In accordance with the legislative Acts and the Washington Agreement, it is clear that the West Branch water supply and the Shepaug water supply were expressly authorized to include **Watertown**. The legislature approved that such water shall be provided to Watertown on such terms and rates as shall be just and equitable.

In accordance with the Legislative Acts and the Washington Agreement, Waterbury expanded its water supply as described herein into Litchfield County. Watertown is part of Litchfield County and part of the watershed accessed by Waterbury.

3. West Branch

Waterbury first constructed the Wigwam Dam and a 36 inch supply main, ten miles long, to Waterbury. The Wigwam Dam and reservoir are located in Watertown. Water from the Wigwam Dam first entered Waterbury in 1895. In 1902, the Wigwam Dam was raised to a height of 91 feet. During 1908, Waterbury authorized the construction of a second dam at a higher elevation, the Morris Dam. The Morris Dam was completed in 1913. Notwithstanding this West Branch watershed and two new reservoirs, the water supply proved dangerously low during drought conditions.

4. Shepaug Development

By 1908 Waterbury was in urgent need of further water resources. Bantam Lake and its tributaries and the Naugatuck River watershed were precluded by legislative Acts. Waterbury began investigation of the Shepaug watershed west of Bantam Lake. Following the Special Act of 1921 and the Washington Agreement, Waterbury initially acquired a 37 square mile watershed in the Woodville section of Washington ("Initial Shepaug watershed"). Waterbury immediately constructed a water transport tunnel ("Shepaug tunnel") from the Initial Shepaug watershed to a location above the Morris Dam. The Shepaug tunnel was completed by 1923. The Shepaug tunnel runs 7 miles from what is now the Shepaug Dam to a discharge point above the Morris Dam. This location is now part of the Pitch Reservoir. The Pitch Reservoir is one of the three West Branch reservoirs and was completed in 1942. The Pitch Reservoir is the highest elevation in the West Branch and delivers water to the Morris Reservoir at a mid elevation and in turn to the Wigwam Reservoir at the lowest elevation. The Pitch Reservoir is also critical to the water pressure needed to transmit water to Waterbury.

The Shepaug Dam was completed in 1933. By 1964, Waterbury added approximately 10 square miles of additional watershed to the Shepaug watershed, constructed a new reservoir, the Cairns, and constructed a second dam at this location.

The expanded Shepaug watershed now included 48 square miles of watershed area, two dams, two reservoirs and the seven mile transport tunnel ("Shepaug Development"). The Shepaug Development has been a critical component of the Waterbury water supply continuously from 1923 to the present. This is a period of almost 100 years. Again,

Watertown was authorized and intended by all parties to be a participant or special partner in this water supply and has been a municipal bulk customer of this water supply since at least 1939.

5. **Transmission**

Beginning 1895 and for more than two decades thereafter the sole water transmission main was a 36 inch main from the Wigwam Reservoir to Waterbury. During the 1920s Waterbury began work on a second transmission main. The first part of this transmission main was an aqueduct known as Steele's Brook Tunnel which ran from the Wigwam Reservoir to approximately Northfield Road and Fernhill Road in Watertown, a distance of 7,400 feet. Steele's Brook Tunnel was completed in 1929 and transported water until approximately 1948. From the end of Steele's Brook Tunnel, the water transmission was then carried in a high service water main running along Northfield Road in Watertown, westerly to Main Street in Watertown, and along Main Street in a southerly direction to Waterbury. In 1948 the Steele's Brook Tunnel began to cave in. After a number of temporary repairs, the Steele's Brook Tunnel was abandoned in favor of a 36 inch high service main for its entire 10 mile length to Waterbury. It is significant that the Wigwam Dam is located in Watertown and the main transmission line from the Wigwam Dam to Waterbury is located in Watertown. The primary Waterbury transmission main still exists at the same location.

6. **Oakville Fire District (Watertown)**

The Oakville Fire District ("Oakville District") was established pursuant to a Special Act of the Connecticut legislature, approved on October 13, 1910. The Oakville District charter was amended by a series of Special Acts between 1923, with the latest amendment approved July 15, 1953. Oakville District included substantial territory within the Town of Watertown known as the Oakville section. The Oakville District charter authorized the establishment of a waterworks system. The system then assumed and expanded a then relatively small system constructed by the Watertown Water Company. It is known that Waterbury supplied water to both the Watertown Water Company and the Oakville District prior to 1939, but no written agreements exist.

1939 Agreement

On November 20, 1939 the Oakville District entered into a written contract to purchase all of its water supply from Waterbury. Said agreement provided, *inter alia*, **"[s]aid Fire District SHALL buy, and said City SHALL sell such quantity or quantities of water as may be required by said Fire District, subject to the conditions of this agreement."** This contract provision is significant because it required the Oakville District to contract for all of its water from Waterbury. This was at a time when Watertown could have obtained similar legislative approval to obtain its own water supply in Litchfield County. Watertown, in reliance upon this contract provision, did not pursue development of its own water supply at that time.

This is a significant point. For example, beginning in 1913, the Watertown Fire District obtained legislative approvals similar to Waterbury. The Watertown Fire District

obtained a Special Act Charter from the legislature, first approved on May 22, 1913. This Special Act was amended through a series of Special Acts approved on March 20, 1917, June 24, 1921, May 16, 1923, June 22, 1927 and April 5, 1933. Said Special Acts authorized the Watertown Fire District to divert water from Litchfield County the same as the Waterbury legislation. The Watertown Fire District territory includes approximately 2,000 acres within the center portion of Watertown. The Watertown Fire District has approximately 2,300 domestic and commercial water customers. In accordance with the legislative authority, the Watertown Fire District acquired a substantial watershed in Bethlehem and Woodbury within Litchfield County. The Watertown Fire District constructed a large Well field in Woodbury in 1924. The Watertown Fire District Well field was supplemented with substantial watershed in Bethlehem. The Watertown Fire District constructed a reservoir and dam in Bethlehem. The dam was completed in 1957. The Watertown Fire District during the same time period that Waterbury was developing its two watersheds in Litchfield County developed its own watershed in Litchfield County based on similar legislation. The point is that Watertown did not take advantage of the same opportunity to develop its own water supply the same as Waterbury and the same as the Watertown Fire District due to this mandatory and mutually beneficial 1939 Agreement.

Said 1939 Agreement provides that Watertown would access the Waterbury water supply through one or more bulk meters. Said agreement provides that the Oakville District would pay for said water at a bulk rate equal to the same rate as is charged to users of similar quantities of water within Waterbury plus 10 percentum. On September 30, 1942 the Oakville District entered into a subsequent water supply agreement with Waterbury. This agreement essentially expanded the locations of water delivery to the Oakville District system but did not change the bulk billing rate. Waterbury and Watertown continued this arrangement substantially unchanged until 1989, a period of fifty years. Pursuant to a Special Act of the Connecticut legislature in 1969, Watertown consolidated the Oakville District into a department of Watertown. The Oakville District transferred all of its water distribution facilities and other assets to the Watertown. The Oakville District ceased to exist. Watertown assumed all liabilities and assets of the Oakville District including the two referenced water supply agreements with Waterbury. Again the water supply relationship remained unchanged until 1989 with respect to the bulk rate Watertown paid for its water supply.

7. **Waterbury Filtration Plant**

In 1979 Waterbury began the design to construct a water filtration plant in accordance with a directive from the federal government to improve water quality. Waterbury requested that Watertown provide an estimate of its water usage for a period of 35 years into the future as part of the design capacity of the filtration plant. Waterbury designed the filtration plant at approximately thirty-eight million gallons per day "MGD" and Watertown reserved three million GPD of this amount. The total cost of the filtration plant was approximately 33 million dollars. Watertown was obligated to pay Waterbury 7.85% or $2,590,500.00 for its reserved capacity interest. The filtration plant was completed in 1987. The filtration plant is located in Watertown. Significantly, the Wigwam Reservoir, the Waterbury filtration plant, 705 acres of the West Branch

watershed and the main water transmission line to Waterbury are all located in Watertown.

On February 10, 1989 Waterbury and Watertown entered into a water supply agreement ("1989 Agreement"). The 1989 Agreement was for a term of 25 years with two automatic 10 year extensions unless terminated 2 years before a 10 year extension began. The 1989 Agreement continued to recognize that Watertown was a bulk water user and rate payer. Water payments were based upon an agreed formula that took into account the portions of the Waterbury filtration and distribution system that Watertown used. The concept being that Watertown would pay a reasonable and proportionate share of the Waterbury filtration and distribution system only to the extent that Watertown actually used said portions of the system. The distribution component of costs in the 1989 Agreement was called operation and maintenance or "O&M".

The 1989 Agreement at Appendix 2 contained a chart of accounts identifying all of the accounting line items used or to be used by Waterbury to track its costs of its entire waterworks system. Appendix 2 identified the line item accounts that Watertown used and the line item accounts that Watertown did not use.

Appendix 2 broke the Watertown payments into 2 categories. Category 1 is Watertown s proportionate share of the capital costs of the Waterbury filtration plant. This cost is 3/38.2 or 7.85%. This 7.85% of the capital costs is based on Watertown's designed reserve capacity of 3 MGD. The second component, O&M, of the water charge is directly related to the chart of accounts, taking into account the line items representing portions of the O&M of the water system used by Watertown. Said Appendix 2 provides that Watertown will pay the O&M costs based on Watertown's actual usage which at that time was approximately 0.9 MGD. The actual usage in 2019 was 0.8 MGD. The O&M costs of Watertown water for the one year prior to the 1989 Agreement was agreed at $1.25 CCF (1 CCF = 748 gallons). For all periods beginning July 1, 1989 Watertown water would be billed based upon the contract bulk rate. Again, the 1989 Agreement recognizes a bulk rate required by the 1921 legislation and adhered to for 50 years based upon the initial 1939 water agreement.

Waterbury and Watertown were locked into a multi-year dispute over water billing pursuant to the 1989 Agreement for the following reasons. Watertown disputed the amount of its water bills for the following reasons:

1. Waterbury failed to maintain the costs of its waterworks system in accordance with Appendix 2 of the 1989 Agreement.

2. Waterbury bonded for the construction costs of the filtration plant several years before the filtration plant was started and funds were not yet needed for construction. Waterbury invested the funds. Waterbury paid the bond premiums out of the water accounts but put the investment income into the general fund to offset general taxes. This inflated the actual capital costs of the filtration plant. The investment income should have been put into the filtration plant construction account.

3. The Waterbury water accounts paid $3,000,000.00 each year into the Waterbury general fund to reduce general fund taxes.

4. Waterbury sued the filtration plant construction contractor and recovered 8.1 million dollars from the litigation. Waterbury funded the litigation costs in the amount of approximately $300,000.00 out of its water accounts. Waterbury put the 8.1 million dollar recovery into its general fund to offset general taxes. Waterbury should have put the 8.1 million dollars towards reducing the bonded debt for the filtration plant that Watertown was then still paying at the rate of 7.85% of the capital costs principal plus interest.

5. Waterbury failed to provide an annual audit of its water works system as required by the 1989 Agreement.

Waterbury sent water bills to Watertown without taking into account any of the above financial issues and without any explanation as to how the amount of the water bill was determined. Watertown estimated the correct amount of the Watertown water bills at 75% of the amount billed. For several years Watertown paid 75% of each water bill. Watertown did not pay any of the interest being accrued on the unpaid portion of the bills. This billing dispute continued for more than ten years.

Following a series of meetings between Watertown representatives and Waterbury representatives, an agreement was reached on all water billing disputes. On November 15, 2006, Watertown and Waterbury agreed that all unpaid principal and interest on water bills claimed by Waterbury would be forgiven. Watertown agreed to forgive any claim that the water bill payments (at 75%) were more than the amount that should have been properly billed ("Settlement Agreement"). Significantly, Waterbury provided a Schedule A to this Settlement Agreement. Schedule A replaced the Appendix 2 of the 1989 Agreement. This Schedule A water billing formula was intended to conform to the actual chart of accounts that Waterbury used to track its O&M costs of its water system. Water billing proceed without incident throughout the remainder of the 1989 Agreement term. In other words, Waterbury again confirmed and continued the special partner status of Watertown paying a bulk rate for water. The bulk rate was reasonably related to the Waterbury cost to deliver the water to the bulk meters.

The point is that from 1939 through 2018 there is a documented past practice that Waterbury correctly was paid for water at a bulk rate that is reasonable and just and equitable, taking into account the legislative history, the Washington Agreement and the statutory rule that water and sewer costs must be reasonably related to the actual costs of providing same.

8. 2013 Agreement

On June 27, 2013 Waterbury and Watertown entered into a water agreement for a period of five years ("2013 Agreement"). The 2013 Agreement provides the cost of water for operation and maintenance to be $1.12 per CCF with an annual increase of 2% per year. In addition, there is the possibility of an increase equal to any percentage increase

imposed on Waterbury customers. The 2013 Agreement again recognizes a bulk rate but eliminates any reference to Waterbury's actual costs of providing the water to Watertown as part of the water bill computation. At the end of the five year term of the 2013 Agreement, Waterbury requested that Watertown pay a substantial increase of almost double the water rate in the 2013 Agreement. Watertown continued to pay at the prior bulk rate based on the 2013 Agreement and past practice. Waterbury refused to negotiate in good faith, taking into account the history of the Waterbury/Watertown special partner relationship as described herein and failing to take into account other provisions of Connecticut law. By Return Date January 22, 2019, Waterbury commenced the present action against Watertown, seeking to impose its arbitrary, improper and illegal water rates on Watertown.

9. Statutory Provision and Court Precedent

The pertinent statute with respect to a municipal water company selling water is Chapter 102 of the General Statutes which deals with the water works.

"Under chapter 102 of the General Statues, which deals with waterworks, any town, city or borough or district...may acquire, construct and operate a municipal water supply system, General Statutes 7-234, and establish rates which shall be "just and equitable," and shall be sufficient in each year for the payment of the expense of operation, repair, replacements and maintenance of such system and for the payment of the sums herein required to be paid in the sinking fund. General Statutes 7-239." (internal quotations omitted) *Pepin v. Danbury,* 171 Conn. 74, 85 (1976).

It is significant that the statutory language of *General Statutes* Chapter 102 which mandates that "established rates shall be **just and equitable"** is identical to the Special Act legislative mandate that a municipality that is provided water by contract shall pay rates that shall be **"just and equitable".**
In *Pepin*, Danbury added 7.5% or 15% to each water or water and sewer bill, respectively, to be diverted to the general tax fund. The trial court and the CT Supreme Court concluded that the general tax component of the water and sewer bills is in violation of the statute and in excess of the cost needed to operate the water and sewer systems respectively. The court found the water and sewer rates were not just and equitable. In this case, Waterbury is for the first time in 80 years arbitrarily seeking to increase water and sewer rates to amounts that have no relation to this just and equitable standard.

Summary

The West Branch watershed and the Shepaug Development ("Litchfield County watershed") constitute the sole source of Waterbury water.

The Litchfield County watershed was authorized by Legislative Special Acts and the Washington Agreement. Watertown has always been included as a special partner with rights to share this water by express provisions. Watertown has protected rights to share this water.

Significant parts of the West Branch water facilities are located in Watertown.

Watertown receives its bulk water supply at several metered locations along Waterbury transmission mains. All metered water access locations are located in Watertown. Watertown adds zero burden or costs to Waterbury with respect to the other parts of the Waterbury waterworks system. Said other parts include but are not limited to: maintenance, repair and replacement of its distribution system; employee costs; administrative and overhead costs; pumping operations within the city; and customer billing. Waterbury and Watertown have always recognized that there is no justification for Watertown to participate in such Waterbury's solely O&M costs.

Watertown has always paid and remains committed to pay, its 7.85% portion to future upgrades to the filtration plant and/or increased storage capacity of the five dams.

The express language of the Legislature, in both the Special Acts and the waterworks statutes command that Watertown water rates be "just and equitable". Waterbury and Watertown have jointly agreed that the just and equitable rate is a bulk rate. This interpretation has been in effect for the entire recorded history of the relationship from 1939 to 2018, a period of 80 years.

Waterbury and Watertown merged in 1939 with a mandatory sale and buy water supply agreement. Watertown, in reliance thereon, did not seek similar legislation and establish its own watershed diversion rights in Litchfield County.

Discussions with Waterbury

At the end of the 2013 contract, Waterbury negotiated with Watertown but insisted on changing the relationship to Watertown paying retail water rates. Waterbury refused to recognize the prior contractual relationship.

Waterbury simply began billing Watertown at the new proposed water rate that, again, is approximately double all prior water rates. Watertown has continued to pay the prior rate for water bills received. Waterbury has imposed statutory interest of 1 ½ % per month on the unpaid portions of the water bills.

During January 2019, Waterbury filed the referenced lawsuit seeking to confirm the status of Watertown as a "retail" water customer and to collect the unpaid portions of the water bills and statutory interest.

Watertown is contesting this court case.

During April 2020, Waterbury and Watertown conducted new negotiations. Specifically, the Mayor of Waterbury discussed the pending court case with the undersigned. The Mayor suggested a meeting without lawyers to discuss the history and background of the Waterbury/Watertown water supply relationship. The undersigned agreed. The Mayor contacted Acting Town Manager Gavalas to schedule a telephone conference meeting. The undersigned prepared a written Report of the Watertown/Waterbury water relationship in preparation of the telephone meeting. This report was provided to the Mayor of Waterbury

several days before the telephone meeting. At the time of the telephone meeting, the Mayor and Waterbury City Attorney participated. The Town Manager and the undersigned participated for Watertown.

The Waterbury City Attorney stated Waterbury's position is as stated in the Court case. Waterbury does not recognize any reason to treat Watertown different than its own customers. Waterbury has repudiated all prior water billing concepts as contained in the prior water contracts. Waterbury has repudiated any recognition of Watertown as a special partner. Waterbury has repudiated any obligation to determine water rates, taking into account its actual cost of providing water to Watertown. The Waterbury City Attorney stated Waterbury would proceed with its court case. Watertown restated its position in a summary manner. Watertown stated that Watertown would defend the court case.

Recommendation

1. It is recommended that Watertown vigorously defend the court case. It is not likely that a court will ultimately determine an appropriate water rate. It is anticipated that a court will reject Waterbury's effort to treat Watertown as a regular retail water use customer and rate payer. It is also possible that the Superior Court would refer this case to a professional mediator to assist in resolving the case. It must be acknowledged that this is a very unique situation. There is no court precedent.

2. It is recommended that the Water and Sewer Authority immediately increase the water and sewer rates and deposit the funds into a reserve account. It is important for Watertown to begin accumulating funds to have available in the event that Waterbury prevails in this case, or that some compromise water and sewer billing rate increase is determined.

RESPECTFULLY,
Pilicy & Ryan, PC

_____
Franklin G. Pilicy, Esq.
Consultant

[Substitute for Senate Joint Resolution No. 160.]

[262.]

AUTHORIZING THE CITY OF WATERBURY TO INCREASE ITS WATER SUPPLY.

Resolved by this Assembly: SECTION 1. That the court of common council of the city of Waterbury, in addition to the powers heretofore granted, is hereby authorized and empowered to take and convey from any or all brooks, rivers, springs, ponds, lakes, and reservoirs within the limits of the county of New Haven or of the county of Litchfield, such supply of water as the necessities or convenience of the inhabitants of said city may require.

SEC. 2. The court of common council of said city is hereby empowered, and it shall be its duty, by committee or otherwise, to ascertain a feasible place for the introduction and proper distribution of water into and through the town and city of Waterbury, and into and through such other towns, cities, villages, and boroughs as may be found by said court convenient and expedient; to employ engineers, surveyors, and others with reference thereto; to estimate the probable cost of carrying its plans into execution; to make contracts with the proprietors of any estate, real, personal, or mixed, or of any franchise, right, or privilege which shall be required for the purpose.

SEC. 3. Whenever any plan shall be agreed upon by said court of common council, the said court of common council shall thereupon immediately be empowered to take and hold for and in behalf of said city any lands or other estate necessary, situated in New Haven county or in Litchfield county, for the construction of any dams, canals, aqueducts, reservoirs, pipe lines, or other work for conveying or containing water, or for the erection and construction of any buildings or machinery, or for laying any pipes or conductors for conveying water from either of said counties, or from any town in either of said counties, into or through said town and city of Waterbury, or into or through any other town or city, village or borough, or to secure and maintain any portion of the water-works aforesaid; and in general, to do any other acts necessary or convenient for accomplishing the purposes contemplated by this act, and to distribute said water through said town and city of Waterbury and elsewhere, as may be determined by the court of common council of said city; to establish hydrants; to prosecute or defend any action against any person or corporation for the breach of any contract, or the violation of any obligation or duty relating to said water-works or the management of the same, or the distribution of the water, or for money due for the use of the water, or for any injury, or trespass, or nuisance affecting the water, machinery, pipes, buildings, apparatus, or other things pertaining to said water-works, or for any improper use of the water or any wasting thereof, or upon any contract or promise made by said court of common council or with their predecessors or successors.

SEC. 4. Said court of common council is hereby authorized to enter in or upon any land or water for the purpose of making surveys, and to agree with the owner or owners of any property or franchise which may

be required for the purpose of this act as to the amount of compensation to be paid to such owner or owners. And in case of disagreement between said board and any owner or owners as to such compensation, or as to the amount of damages which ought to be awarded to any person or persons or corporation claiming to be injured in his estate by the doings of said court of common council, or in case any such owner shall be an infant, or married woman, or insane, or absent from this state, or unknown, or the owner of a contingent or uncertain interest, any judge of the superior court may, on application of either party, cause such notice to be given of such application as such judge shall see fit to prescribe, and after proof thereof shall appoint three disinterested persons, who shall examine such property so to be taken, injured, or damaged by the doings of said court of common council; and they being sworn to a faithful discharge of their duties shall estimate the amount of compensation which said owners shall receive, and report the same in writing to the clerk of the superior court for New Haven county, to be by him recorded. Said judge may confirm the doings of said appraisers; and upon the payment to the individual or corporation of the amount of damages so ascertained as aforesaid, or the deposit thereof in the treasury of said city, the said court of common council may proceed with the construction of said works. And several persons or corporations or owners of different rights of property or franchises may be made parties and embraced in the same application, their respective interests or rights being therein described.

SEC. 5. Said court of common council shall also be empowered to make use of ground or soil under any road, railroad, highway, street, private way, lane, or alley, within any of the towns of Litchfield or New Haven counties for the purpose of constructing the work contemplated by this act, but shall in all cases cause the surface of such road, railroad, highway, street, private way, lane, or alley to be restored to its usual condition, and damages done thereto to be appraised, and all damages sustained by any person or corporation in consequence of the interruption of travel to be paid to such person or corporation.

SEC. 6. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved, April 25, 1893.

[Substitute for Senate Joint Resolution No. 111.]

[253.]

AUTHORIZING THE CITY OF WATERBURY TO ISSUE WATER BONDS.

Resolved by this Assembly: SECTION 1. That the city of Waterbury is hereby authorized to issue bonds under the corporate name and seal of said city, to be signed by its mayor and countersigned by its clerk, to an amount not exceeding five hundred thousand dollars in the whole, bearing a rate of interest not exceeding four per centum per annum. The principal of said bonds shall be payable at the office of the treasurer of said city within one hundred and five years after the date thereof, and the interest thereon shall be payable semi-annually at the office of

said treasurer. No less than five thousand dollars in amount shall mature and become payable each and every year, after the expiration of five years from the date thereof, until the amount of said bonds so issued shall be paid. Said bonds shall bear such date as the court of common council of said city shall determine, and be for the amount of five hundred dollars each.

SEC. 2. Said bonds shall be known and called Water Bonds of the City of Waterbury, Third Series. The court of common council of said city, from time to time, shall designate the amount of such bonds that said city shall issue, not exceeding in the whole the sum of five hundred thousand dollars, prescribe the form of said bonds, determine and fix the date and the rate of interest they shall bear, not exceeding four per centum per annum; and shall, at least thirty days before the date of issue, advertise for proposals or bids for such portions of said bonds as they shall have before that time designated to be issued at said date; said proposals to be under seal and opened in public by said court of common council, at some time and place by them appointed; and if the whole of said bonds shall not be issued under the proposals first advertised for, any further issue of said bonds, determined upon as hereinbefore specified, shall in like manner be advertised at least thirty days, by said court of common council, for proposals. No bids shall at any time be accepted for less than par, or the face value of said bonds, and the accrued interest thereon.

SEC. 3. Said bonds, when so executed, issued, and delivered, shall be obligatory on said city and the inhabitants thereof, in the same manner and to the same extent as debts lawfully contracted by municipal corporations in this state, according to the tenor and purport of the same.

SEC. 4. The proceeds derived from the sale of said bonds shall be paid to and received by the treasurer of said city, and shall be expended only in the purchase of an increase of the water supply for the use of the inhabitants of said city, under the direction of the court of common council, or for retiring any water bonds of said city, issued under the provisions of this or any previous act, when the same shall become due, or when said court of common council shall desire.

Approved, April 25, 1893.

[Senate Bill No. 106.]

[254.]

MAKING AN APPROPRIATION FOR DEFICIENCY IN APPROPRIATION FOR THE SUPERIOR COURT FOR NEW LONDON COUNTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened: SECTION 1. The following sum is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated, to supply deficiencies in the appropriations for the two fiscal years ending June 30, 1891: for the clerk of the superior court for New

[Substitute for House Joint Resolution No. 52.]

[344.]

AMENDING A RESOLUTION AUTHORIZING THE CITY OF WATERBURY TO INCREASE ITS WATER SUPPLY.

Resolved by this Assembly: That the waters of Bantam lake in Litchfield county and the waters of its tributaries be and they are hereby excepted and exempted from the provisions of the resolution authorizing the city of Waterbury to increase its water supply, approved April 25, 1893.

Approved, July 20, 1909.

[Substitute for House Bill No. 516.]

[345.]

AN ACT REVISING AND AMENDING THE CHARTER OF THE CITY OF SOUTH NORWALK.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. The act revising and amending the charter of the city of South Norwalk, approved May 28, 1897, is hereby revised and amended so as to read as follows: The corporation now existing and known by the name of the city of South Norwalk shall be and remain a body politic and corporate by the name of the city of South Norwalk, and by that name shall have perpetual succession, and be capable of suing and being sued, pleading and being impleaded in all actions and suits whatsoever, and of purchasing, holding, and conveying in fee simple, or otherwise, any and all property, real or personal; and shall have a common seal, with power to alter the same at pleasure; and shall have and continue to exercise and enjoy all the property, rights, immunities, powers, privileges, and franchises now belonging to, and shall be subject to all the duties, liabilities, and obligations now resting upon said corporation, except as herein otherwise expressly provided. The city of South Norwalk, by its council, may accept, care for, improve, and maintain any land, situated in the town of Norwalk, which may be donated to said city for a public park, and said land, when so accepted, shall become and remain a part of the territory of said city, the same as if included within its present boundaries.

SEC. 2. The boundaries of said city shall be as follows: Beginning at the north line of Connecticut avenue, formerly called Connecticut turnpike, one hundred and forty feet west of the intersection of the west line of North Taylor avenue, formerly called Bouton lane, with the north line of said Connecticut avenue, thence

EXHIBIT
4
NO.

SHEPAUG RIVER AGREEMENT

MEMORANDUM OF AN AGREEMENT made this third day of May, 1921, by and between the City of Waterbury and the Town of Washington, Municipal Corporation of Connecticut.

Whereas the Town of Washington is a riparian owner of land bounding on the Shepaug River which flows through said Town in a general southerly direction and is interested in the preservation of said stream for sanitary and other purposes, and

Whereas the City of Waterbury proposes to take and divert certain waters thereof under and in accordance with resolution of the General Assembly of the State of Connecticut approved April 25, 1893, entitled "Authorizing the City of Waterbury to Increase its Water Supply" at or near a point about one mile northerly of Woodville Bridge, so-called, and

Whereas, there is now pending before said General Assembly a proposed act, known as House Bill No. 120, concerning the repeal of said resolution.

NOW THEREFORE in consideration of the mutual promises and undertakings of the parties hereto, as hereinafter set forth, they do mutually agree to and with each other, as follows:

1. The Town of Washington hereby agrees to withdraw, as far as it is able, the further consideration by the present General Assembly of said House Bill No. 120 and agree that the same may be adversely reported by the Committee on Cities and Boroughs so which said bill is now referred.

2. The City of Waterbury agrees that in the event it shall erect a dam on the West Branch of the Shepaug River at a point about one mile above the village of Woodville for the purpose of creating a reservoir on said river or in the event that it shall construct an aqueduct and shall divert into it some part of the waters of said West Branch, it will maintain at all times between the period of the first day of May and the first day of November in each year a flow

in the said West Branch at a point of measurement at Woodville Bridge, so-called, which flow shall not be less than one and one-half million gallons in each twenty-four hours and which flow shall be as nearly as possible uniformly distributed throughout the twenty-four hours of each day.

3. And the City of Waterbury further agrees that it will not divert water from the West Branch of the Shepaug River at any time when the distributing reservoirs into which the city aqueduct shall convey such water so diverted are full and overflowing.

4. And the City of Waterbury further agrees that it will only divert such water to the extent that may be required to supply the actual needs of the customers of said City and to maintain the storage in its potable water supply reservoirs. It is hereby expressly agreed that no water shall be diverted from said West Branch of the Shepaug River under the provisions of this agreement, except for the use of inhabitants of the towns of Waterbury, Washington, Litchfield, Thomston, Watertown and the village of Platt Hills, so-called.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the City of Waterbury acting by its Mayor thereunto duly authorized by the action of its Board of Aldermen, under resolution adopted at a legal meeting of said Board held on the second day of May, 1921 and approved by the Mayor of said City under date of _____ and the Town of Washington, acting by Arthur C. Titus its Agent, thereunto duly authorized by a resolution duly adopted at a meeting of the electors of said Town of Washington, duly called and holden under date of April 23rd, 1921.

Signed, Sealed and Delivered in the presence of

Robert A. Cairns

City of Waterbury by
Mr. Sandland Mayor (L.S.)

A.S. Gregg, Clarke

Town of Washington By
Arthur C. Titus
First Selectman (L.S.)

Seal of Waterbury
Seal of Washington

Executive Department
CITY OF WATERBURY, CONNECTICUT

At a meeting of the Board of Aldermen held May 2, 1921, it was voted: That the Mayor be authorized and empowered on behalf of the City of Waterbury to execute an agreement with the Town of Washington providing for the maintenance of a certain minimum flow in the West Branch of the Shepaug River and further providing; that the City of Waterbury will not divert water from the said Shepaug River except as required for the actual needs of the customers of Waterbury.

The above and foregoing is a true copy of a resolution passed by the Board of Aldermen, City of Waterbury, Connecticut, at a meeting thereof, held May 2, 1921.

Attest:

Subscribed and sworn to before
me this 3rd day of May, 1921

C.B. Tomkinson
City Clerk

c:\nyfs03\matthed\crplitrsu\0064851.01
November 25, 1996 3:00pm

PLAINTIFFS EXHIBIT 16

MEMORANDUM OF AN AGREEMENT Made this third day of May, 1921, by and between the City of Waterbury and the Town of Washington, municipal Corporation of Connecticut,

Whereas the Town of Washington is a riparian owner of land bounding on the Shepaug River which flows through said Town in a general southerly direction and is interested in the preservation of said stream for sanitary and other purposes, and

Whereas the City of Waterbury proposes to take and divert certain waters thereof under and in accordance with resolution of the General Assembly of the State of Connecticut approved April 25, 1893, entitled "Authorizing the City of Waterbury to Increase its Water Supply" at or near a point about one mile northerly of Woodville Bridge, so-called, and

Whereas, there is now pending before said General Assembly a proposed act, known as House Bill No. 12, concerning the repeal of said resolution

NOW THEREFORE in consideration of the mutual promises and undertakings of the parties hereto, as hereinafter set forth, they do mutually agree to and with each other, as follows:

1. The Town of Washington hereby agrees to withdraw, so far as it is able, the further consideration by the present General Assembly of said House Bill No. 12, and agrees that the same may be adversely reported by the Committee on Cities and Boroughs to which said bill is now referred.

2. The City of Waterbury agrees that in the event it shall erect a dam on the West Branch of the Shepaug River at a point about one mile above the village of Woodville for the purpose of creating a reservoir on said river or in the event that it shall construct an aqueduct and shall divert into it some part of the waters of said West Branch, it will maintain at all times between the period of the first day of May and the first day of November in each year a flow in the said West Branch at a point of measurement at Woodville Bridge, so-called, which flow shall not be less than one and one-half million gallons in each twenty-four hours and which flow shall be as nearly as possible uniformly distributed throughout the twenty-four hours of each day.

3. And the City of Waterbury further agrees that it will not divert water from the West Branch of the Shepaug River at any time when the distributing reservoirs into which the city aqueduct shall convey such water so diverted are full and overflowing.

4. And the City of Waterbury further agrees that it will only divert such water to the extent that may be required to supply the actual needs of the customers of said City and to maintain the storage in its potable water supply reservoirs. It is hereby expressly agreed that no water shall be diverted from said West Branch of the Shepaug River under the provisions of this agreement except for the use of inhabitants of the towns of Waterbury, Washington, Litchfield, Thomaston, Watertown and the village of Platts Mills, so-called.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the City of Waterbury acting by its Mayor thereunto duly authorized by action of its Board of Alderman, under resolution adopted at a legal meeting of said Board held on the second day of May, 1921 and approved by the Mayor of said City under date of and the Town of Washington, acting by Arthur C. Titus its Agent, thereunto duly authorized by a resolution duly adopted at a meeting of the electors of said Town of Washington, duly called and holden under date of April 23rd, 1921.

Signed, Sealed and Delivered
in the presence of
Robert A. Cairns
A. S. Gregg Clarke

City of Waterbury by
Wm Sandland Mayor (L.S.)
Town of Washington by
Arthur C. Titus
First Selectman (L.S.)

Seal of Waterbury
Seal of Washington

Executive Department
CITY OF WATERBURY, Connecticut

At a meeting of the Board of Alderman held May 2, 1921, it was

Voted:- That the Mayor be authorized and empowered on behalf of the City of Waterbury to execute an agreement with the Town of Washington providing for the maintenance of a certain minimum flow in the West Branch of the Shepaug River and further providing that the City of Waterbury will not divert water from the said Shepaug River except as required for the actual needs of the customers of Waterbury.

The above and foregoing is a true copy of a resolution passed by the Board of Aldermen, City of Waterbury, Connecticut, at a meeting thereof held May 2, 1921.

Attest:-
C. B. Tomkinson
City Clerk

Subscribed and sworn to before me this 3rd day of May, 1921
Joseph P. Corcoran, Notary Public

(over)

SH2241

[Senate Bill No. 616.]

[390.]

AN ACT AUTHORIZING THE MERIDEN HOSPITAL TO ISSUE BONDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

The Meriden Hospital, in accordance with a vote at a meeting duly warned and held for that purpose, may issue bonds to an amount not exceeding one hundred thousand dollars. Such bonds shall be exempt from taxation, shall be secured by a mortgage upon real estate of the said hospital, shall be issued in such form and signed and countersigned by such persons and shall mature at such time or times, be of such denominations and bear such rate of interest not exceeding seven per centum per annum as shall be determined by the executive committee of said hospital or by a committee by it appointed. The proceeds of such bonds shall be used for the purpose of erecting an addition to the buildings of said hospital.

Approved, June 14, 1921.

[Substitute for House Bill No. 157.]

[391.]

AN ACT AMENDING THE CHARTER OF THE CITY OF WATERBURY CONCERNING THE CITY'S WATER SUPPLY SYSTEM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

The mayor of the city of Waterbury, with the consent of two-thirds of the board of aldermen of said city, is authorized and empowered to contract and agree on behalf of the said city, upon such terms as the mayor and board of aldermen may deem proper, with any electric power company, incorporated and doing business in the state of Connecticut, in such manner and form as will enable the said power company to develop electrical energy by water power from any surplus waters which may at any time exist in any present or future reservoir or reservoirs of the said city. The term "surplus water" as used in this act, shall be construed to mean such water impounded in or escaping from such reservoir or reservoirs as is not actually needed by the said city for the proper and necessary public use and convenience of the inhabitants. All water so used for the purpose of developing electrical energy shall be returned to the stream from which taken. The mayor, with the consent of two-thirds of the board of aldermen of said city, is authorized and empowered to contract to lease any land owned by said city to such electrical power company for such length of time and on such terms

as may be agreed upon for the location thereon of power houses, conduits and transmission lines, and for such other purposes as may be necessary or convenient for the creation, development and transmission of electrical energy developed from such surplus water by the power company contracting for its use. The city of Waterbury is authorized and empowered, by its mayor and a majority of its aldermen, to contract to supply water for domestic purposes and fire protection to any municipality, borough or fire district, through which, or contiguous to which the water supply mains of said city are or shall be laid, or in which its reservoir or reservoirs are located, or may contract to supply water for domestic purposes and fire protection to any private company, chartered for the purpose of supplying water to such municipality, borough or fire district on such terms and rates as shall be just and equitable to the contracting parties.

Approved, June 14, 1921.

[Senate Bill No. 626.]

[392.]

AN ACT PROVIDING FOR OFFICIAL INTERPRETERS FOR THE CITY COURT OF ANSONIA.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

The judge of the city court of Ansonia is authorized to appoint such court interpreters as he may determine, who shall be sworn to a faithful discharge of their respective duties.

Approved, June 14, 1921.

[House Bill No. 947.]

[393.]

AN ACT EXTENDING THE TIME WITHIN WHICH THE NEW BRITAIN, KENSINGTON AND MERIDEN STREET RAILWAY COMPANY MAY ORGANIZE AND EXTEND ITS LINES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

The time within which The New Britain, Kensington and Meriden Street Railway Company may organize and construct its lines is extended until the rising of the general assembly at its January session, 1923.

Approved, June 14, 1921.

ENTRY
#
122.00
EXHIBIT D

2

DOCKET NO: UWY-CV19-6045213	:	SUPERIOR COURT
CITY OF WATERBURY	:	JD OF WATERBURY
V.	:	AT WATERBURY
TOWN OF WATERTOWN	:	MAY 22, 2020

AFFIDAVIT OF FRANKLIN G. PILICY, ESQ.

RE:

WATERBURY- WATERTOWN WATER SUPPLY HISTORY

Franklin G. Pilicy, having been duly sworn, deposes and says:

I am over the age of 18 and believe in the obligation of an oath;

I have lived in Watertown, Connecticut since 1974 and served various times as Town Attorney between 1981 and 2007, and as such, because of prior research, I know the following to be true.

#1 Watertown is not now and has never been a regular retail water use customer. Watertown, for more than 80 years, has been more in the nature of a "Special Partner" with respect to sharing water from the Waterbury watershed. Watertown has purchased and used water from the Waterbury waterworks system since at least 1939 pursuant to a series of water supply contracts. Watertown has always paid a bulk rate or wholesale rate for water, taking into account Watertown's special partner status ("bulk rate") and the circumstance that Watertown does not use all the functional components of Waterbury's water system, and that Watertown does not receive the same services as Waterbury's retail customers. The bulk rate has always been based upon a reasonable approximation of the cost to Waterbury to provide water to Watertown. Watertown has approximately 5,000 municipal water customers. Watertown has its own public water agency and its own water distribution system (i.e., pipelines. Watertown operates, maintains and repairs its own water distribution system. Watertown bills its water users directly. Watertown does not have a separate public water supply. Waterbury is the sole source of water for Watertown. In other words, Waterbury provides a bulk water supply to Watertown and Watertown through its own water agency distributes that water and services all of its water customers including operating and maintaining its own waterworks distribution system.

of its water customers including operating and maintaining its own waterworks distribution system.

#2 History of Waterbury and Watertown Water Supply Relationship

A. In 1867 the citizens of Waterbury voted to construct Waterbury's first public water supply an distributing reservoir. This East Mountain reservoir was constructed in 1869. This reservoir quickly proved insufficient. Two additional reservoirs, the Cook Reservoir and the Prospect Reservoir were constructed between 1879 and 1881. Again, the supply was quickly outpaced due to rapid domestic and industrial growth. In 1883 Waterbury supplemented its water supply by pumping water from the Mad River.

B. During 1893 Waterbury took its first bold step into Litchfield County seeking water supplies by securing diversion rights to 18 square miles of watershed on the West Branch of the Naugatuck River ("West Branch"). This required State Legislative approvals and an agreement with the Town of Washington. **(Exhibit 1, Water Supply, City of Waterbury, Description, Data and Recommendations as prepared by Bureau of Engineering, Waterbury, Connecticut.)**

#3 State Legislature Authority for Expansion of the Waterbury Water Supply Waterbury and Town of Washington Agreement

A. Special Act 252, passed April 25, 1893, by the General Assembly of the State of Connecticut, provided, *inter alia*, that Waterbury is authorized to take and convey from any and all brooks, rivers, springs, ponds, lakes and reservoirs within the limits of the County of Litchfield such supply of water as the necessities or convenience of the inhabitants of Waterbury may require and further to construct any and all needed infrastructure for conveying said water from the County of Litchfield into and through Waterbury. **(Exhibit 2, Special Act 252)**

B. Special Act 252 was later modified by Special Act 344 (1909) which excepted from the scope of Special Act 252 the waters of Bantam Lake in Litchfield County

(Exhibit 3, Special Act 344

C. Washington Agreement. On or about May 3, 1921, Waterbury and the Town of Washington entered into an agreement ("Washington Agreement"), which provides, *inter alia*, that Waterbury is authorized to divert water from the West Branch of the Shepaug River, a river located in Litchfield County and flowing through the Town of Washington, with such diversion to occur in accordance with Special Act 252 and in accordance with other terms and conditions set forth in the Washington Agreement.

D. The Washington Agreement is significant in that it expressly provides that water diverted from the Shepaug watershed to the West Branch Waterbury reservoirs may be used to serve a number of towns including Waterbury, Washington, Litchfield,

Thomaston, **Watertown** and the village of Platt Hills. **(Exhibit 4, Shepaug River Agreement, May 1921)**

E. Special Act 391, passed June 14, 1921, provided, *inter alia*, that Waterbury was authorized to supply water to continuous municipalities, boroughs and fire districts. Said Special Act provides in pertinent part as follows "the city of Waterbury is authorized and empowered, by its mayor and a majority of its aldermen, to contract to supply water for domestic purposes and fire protection to **any municipality, borough or fire district, through which, or contiguous to which the water supply mains of said city are or shall be laid, or in which its reservoir or reservoirs are located (Watertown),** or may contract to supply water for domestic purposes and fire protection to any private company, chartered for the purpose of supplying water to such municipality, borough or fire district **on such terms and rates as shall be just and equitable to the contracting parties."**

F. In accordance with the legislative Acts and the Washington Agreement, it is clear that the West Branch water supply and the Shepaug water supply were expressly authorized to include **Watertown**. The legislature approved that such water shall be provided to Watertown on such terms and rates as shall be just and equitable.

G. In accordance with the Legislative Acts and the Washington Agreement, Waterbury expanded its water supply as described herein into Litchfield County. Watertown is part of Litchfield County and part of the watershed accessed by Waterbury. **(Exhibit 5, Special Act 391)**

#4 West Branch

A. Waterbury first constructed the Wigwam Dam and a 36 inch supply main, ten miles long, to Waterbury. The Wigwam Dam and reservoir are located in Watertown. Water from the Wigwam Dam first entered Waterbury in 1895. In 1902, the Wigwam Dam was raised to a height of 91 feet. During 1908, Waterbury authorized the construction of a second dam at a higher elevation, the Morris Dam. The Morris Dam was completed in 1913. Notwithstanding this West Branch watershed and two new reservoirs, the water supply proved dangerously low during drought conditions. **(*See*, Exhibit 1)**

#5 Shepaug Development

A. By 1908 Waterbury was in urgent need of further water resources. Bantam Lake and its tributaries and the Naugatuck River watershed were precluded by legislative Acts. Waterbury began investigation of the Shepaug watershed west of Bantam Lake. Following the Special Act of 1921 and the Washington Agreement, Waterbury initially acquired a 37 square mile watershed in the Woodville section of Washington ("Initial Shepaug watershed"). Waterbury immediately constructed a water transport tunnel ("Shepaug tunnel") from the Initial Shepaug watershed to a location above the Morris Dam. The Shepaug tunnel was completed by 1923. The Shepaug tunnel runs 7 miles

from what is now the Shepaug Dam to a discharge point above the Morris Dam. This location is now part of the Pitch Reservoir. The Pitch Reservoir is one of the three West Branch reservoirs and was completed in 1942. The Pitch Reservoir is the highest elevation in the West Branch and delivers water to the Morris Reservoir at a mid elevation and in turn to the Wigwam Reservoir at the lowest elevation. The Pitch Reservoir is also critical to the water pressure needed to transmit water to Waterbury.

B. The Shepaug Dam was completed in 1933. By 1964, Waterbury added approximately 10 square miles of additional watershed to the Shepaug watershed, constructed a new reservoir, the Cairns, and constructed a second dam at this location.

C. The expanded Shepaug watershed now included 48 square miles of watershed area, two dams, two reservoirs and the seven mile transport tunnel ("Shepaug Development"). The Shepaug Development has been a critical component of the Waterbury water supply continuously from 1923 to the present. This is a period of almost 100 years. Again, **Watertown** was authorized and intended by all parties to be a participant or special partner in this water supply and has been a municipal bulk customer of this water supply since at least 1939. (***See*, Exhibit 1**)

#6 Transmission

A. Beginning 1895 and for more than two decades thereafter the sole water transmission main was a 36 inch main from the Wigwam Reservoir to Waterbury. During the 1920s Waterbury began work on a second transmission main. The first part of this transmission main was an aqueduct known as Steele's Brook Tunnel which ran from the Wigwam Reservoir to approximately Northfield Road and Fernhill Road in Watertown, a distance of 7,400 feet. Steele's Brook Tunnel was completed in 1929 and transported water until approximately 1948. From the end of Steele's Brook Tunnel, the water transmission was then carried in a high service water main running along Northfield Road in Watertown, westerly to Main Street in Watertown, and along Main Street in a southerly direction to Waterbury. In 1948 the Steele's Brook Tunnel began to cave in. After a number of temporary repairs, the Steele's Brook Tunnel was abandoned in favor of a 36 inch high service main for its entire 10 mile length to Waterbury. It is significant that the Wigwam Dam is located in Watertown and the main transmission line from the Wigwam Dam to Waterbury is located in Watertown. The primary Waterbury transmission main still exists at the same location in Watertown. (***See*, Exhibit 1**)

#7 Oakville Fire District (Watertown)

A. The Oakville Fire District ("Oakville District") was established pursuant to a Special Act of the Connecticut legislature, approved on October 13, 1910. The Oakville District charter was amended by a series of Special Acts between 1923, with the latest amendment approved July 15, 1953. Oakville District included substantial territory within the Town of Watertown known as the Oakville section. The Oakville District charter authorized the establishment of a waterworks system. The system then assumed and expanded a then relatively small system constructed by the Watertown Water

Company. It is known that Waterbury supplied water to both the Watertown Water Company and the Oakville District prior to 1939, but no written agreements exist. **(Exhibit 6, Oakville Fire District Charter)**

B. On November 20, 1939 the Oakville District entered into a written contract to purchase all of its water supply from Waterbury. Said agreement provided, *inter alia*, **"[s]aid Fire District SHALL buy, and said City SHALL sell such quantity or quantities of water as may be required by said Fire District, subject to the conditions of this agreement."** This contract provision is significant because it required the Oakville District to contract for all of its water from Waterbury. This was at a time when Watertown could have obtained similar legislative approval to obtain its own water supply in Litchfield County. Watertown, in reliance upon this contract provision, did not pursue development of its own water supply at that time.

C. This is a significant point. For example, beginning in 1913, the Watertown Fire District obtained legislative approvals similar to Waterbury. The Watertown Fire District obtained a Special Act Charter from the legislature, first approved on May 22, 1913. This Special Act was amended through a series of Special Acts approved on March 20, 1917, June 24, 1921, May 16, 1923, June 22, 1927 and April 5, 1933. Said Special Acts authorized the Watertown Fire District to divert water from Litchfield County the same as the Waterbury legislation. The Watertown Fire District territory includes approximately 2,000 acres within the center portion of Watertown. The Watertown Fire District has approximately 2,300 domestic and commercial water customers. In accordance with the legislative authority, the Watertown Fire District acquired a substantial watershed in Bethlehem and Woodbury within Litchfield County. The Watertown Fire District constructed a large Well field in Woodbury in 1924. The Watertown Fire District Well field was supplemented with substantial watershed in Bethlehem. The Watertown Fire District constructed a reservoir and dam in Bethlehem. The dam was completed in 1957. The Watertown Fire District during the same time period that Waterbury was developing its two watersheds in Litchfield County developed its own watershed in Litchfield County based on similar legislation. The point is that Watertown did not take advantage of the same opportunity to develop its own water supply the same as Waterbury and the same as the Watertown Fire District due to this mandatory and mutually beneficial 1939 Agreement.

D. Said 1939 Agreement provides that Watertown would access the Waterbury water supply through one or more bulk meters. Said agreement provides that the Oakville District would pay for said water at a bulk rate equal to the same rate as is charged to users of similar quantities of water within Waterbury plus 10 percentum. On September 30, 1942 the Oakville District entered into a subsequent water supply agreement with Waterbury. This agreement essentially expanded the locations of water delivery to the Oakville District system but did not change the bulk billing rate. Waterbury and Watertown continued this arrangement substantially unchanged until 1989, a period of fifty years. Pursuant to a Special Act of the Connecticut legislature in 1969, Watertown consolidated the Oakville District into a department of Watertown. The Oakville District transferred all of its water distribution facilities and other assets to the Watertown. The

Oakville District ceased to exist. Watertown assumed all liabilities and assets of the Oakville District including the two referenced water supply agreements with Waterbury. Again the water supply relationship remained unchanged until 1989 with respect to the bulk rate Watertown paid for its water supply. **(Exhibit 7, 1939 Agreement)**

#8 Waterbury Filtration Plant

A. In 1979 Waterbury began the design to construct a water filtration plant in accordance with a directive from the federal government to improve water quality. Waterbury requested that Watertown provide an estimate of its water usage for a period of 35 years into the future as part of the design capacity of the filtration plant. Waterbury designed the filtration plant at approximately thirty-eight million gallons per day "MGD" and Watertown reserved three million GPD of this amount. The total cost of the filtration plant was approximately 33 million dollars. Watertown was obligated to pay Waterbury 7.85% or $2,590,500.00 for its reserved capacity interest, thus eliminating any capital risk for Waterbury. The filtration plant was completed in 1987. The filtration plant is located in Watertown. Significantly, the Wigwam Reservoir, the Waterbury filtration plant, 705 acres of the West Branch watershed and the main water transmission line to Waterbury are all located in Watertown.

B. On February 10, 1989 Waterbury and Watertown entered into a water supply agreement ("1989 Agreement"). The 1989 Agreement was for a term of 25 years with two automatic 10 year extensions unless terminated 2 years before a 10 year extension began. The 1989 Agreement continued to recognize that Watertown was a bulk water user and rate payer. Water payments were based upon an agreed formula that took into account the portions of the Waterbury filtration and distribution system that Watertown used. The concept being that Watertown would pay a reasonable and proportionate share of the Waterbury filtration and distribution system only to the extent that Watertown actually used said portions of the filtration or distribution system. The distribution component of costs in the 1989 Agreement was called operation and maintenance or "O&M". The O&M costs for Waterbury's distribution system are not segregated from the O&M costs of other functions of Waterbury's water system (i.e., supply, treatment, storage and transmission), so could only be estimated by Waterbury's staff.

C. The 1989 Agreement at Appendix 2 contained a chart of accounts identifying all of the accounting line items used or to be used by Waterbury to track its costs of its entire waterworks system. Appendix 2 identified the line item accounts that Watertown used and the line item accounts that Watertown did not use.

D. Appendix 2 broke the Watertown payments into 2 categories. Category 1 is Watertown s proportionate share of the capital costs of the Waterbury filtration plant. This cost is 3/38.2 or 7.85%. This 7.85% of the capital costs is based on Watertown's designed reserve capacity of 3 MGD. The second component, O&M, of the water charge is directly related to the chart of accounts, taking into account the line items representing portions of the O&M of the water system used by Watertown. Said Appendix 2 provides that Watertown will pay the O&M costs based on Watertown's actual usage which at that

time was approximately 0.9 MGD. The actual usage in 2019 was 0.8 MGD. The O&M costs of Watertown water for the one year prior to the 1989 Agreement was agreed at $1.25 CCF (1 CCF = 748 gallons). For all periods beginning July 1, 1989 Watertown water would be billed based upon the contract bulk rate. Again, the 1989 Agreement recognizes a bulk rate required by the 1921 legislation and adhered to for 50 years based upon the initial 1939 water agreement. **(Exhibit 8, Waterbury-Watertown Water Agreement, Feb 10, 1989)**

#8 Waterbury-Watertown Billing Dispute

A. Waterbury and Watertown were locked into a multi-year dispute over water billing pursuant to the 1989 Agreement for the following reasons. Watertown disputed the amount of its water bills for the following reasons:

1. Waterbury failed to maintain the costs of its waterworks system in accordance with Appendix 2 of the 1989 Agreement.

2. Waterbury bonded for the construction costs of the filtration plant several years before the filtration plant was started and funds were not yet needed for construction. Waterbury invested the funds. Waterbury paid the bond premiums out of the water accounts but put the investment income into the general fund to offset general taxes. This inflated the actual capital costs of the filtration plant. The investment income should have been put into the filtration plant construction account.

3. The Waterbury water accounts paid $3,000,000.00 each year into the Waterbury general fund to reduce general fund taxes.

4. Waterbury sued the filtration plant construction contractor and recovered 8.1 million dollars from the litigation. Waterbury funded the litigation costs in the amount of approximately $3,037,471.00 out of its water accounts. Waterbury put the 8.1 million dollar recovery into its general fund to offset general taxes. Waterbury should have put the 8.1 million dollars towards reducing the bonded debt for the filtration plant that Watertown was then still paying at the rate of 7.85% of the capital costs principal plus interest.

5. Waterbury failed to provide an annual audit of its water works system as required by the 1989 Agreement.

B. Waterbury sent water bills to Watertown without taking into account any of the above financial issues and without any explanation as to how the amount of the water bill was determined. Watertown estimated the correct amount of the Watertown water bills at 75% of the amount billed. For several years Watertown paid 75% of each water bill. Watertown did not pay any of the interest being accrued on the unpaid portion of the bills. This billing dispute continued for more than ten years.

C. Following a series of meetings between Watertown representatives and Waterbury representatives, an agreement was reached on all water billing disputes. On November 15, 2006, Watertown and Waterbury agreed that all unpaid principal and interest on water bills claimed by Waterbury would be forgiven. Watertown agreed to forgive any claim that the water bill payments (at 75%) were more than the amount that should have been properly billed ("Settlement Agreement"). Significantly, Waterbury provided a Schedule A to this Settlement Agreement. Schedule A replaced the Appendix 2 of the 1989 Agreement. This Schedule A water billing formula was intended to conform to the actual chart of accounts that Waterbury used to track its O&M costs of its water system. Water billing proceed without incident throughout the remainder of the 1989 Agreement term. In other words, Waterbury again confirmed and continued the special partner status of Watertown paying a bulk rate for water. The bulk rate was reasonably related to the Waterbury cost to deliver the water to the bulk meters.

D. The point is that from 1939 through 2018 there is a documented past practice that Waterbury correctly was paid for water at a bulk rate that is reasonable and just and equitable, taking into account the legislative history, the Washington Agreement and the statutory rule that water and sewer costs must be reasonably related to the actual costs of providing same. **(Exhibit 9, Settlement Agreement, Mutual Release and Covenant Not to Sue, Nov. 15, 2006)**

#9 2013 Agreement

A. On June 27, 2013 Waterbury and Watertown entered into a water agreement for a period of five years ("2013 Agreement"). The 2013 Agreement provides the cost of water for operation and maintenance to be $1.12 per CCF with an annual increase of 2% per year. In addition, there is the possibility of an increase equal to any percentage increase imposed on Waterbury customers. The 2013 Agreement again recognizes a bulk rate but eliminates any reference to Waterbury's actual costs of providing the water to Watertown as part of the water bill computation. At the end of the five year term of the 2013 Agreement, Waterbury requested that Watertown pay a substantial increase of almost double the water rate in the 2013 Agreement. Watertown continued to pay at the prior bulk rate based on the 2013 Agreement and past practice. **(Exhibit 10, 2013 Water Agreement Between Town of Watertown and City of Waterbury, June 27, 2013)**

#10 Summary

A. The West Branch watershed and the Shepaug Development ("Litchfield County watershed") constitute the sole source of Waterbury water.

B. The Litchfield County watershed was authorized by Legislative Special Acts and the Washington Agreement. Watertown has always been included as a special partner with rights to share this water by express provisions. Watertown has protected rights to share this water.

C. Significant parts of the West Branch water facilities are located in Watertown.

D. Watertown receives its bulk water supply at several metered locations along Waterbury transmission mains. All metered water access locations are located in Watertown. Watertown adds zero burden or costs to Waterbury with respect to the other parts of the Waterbury waterworks system. Said other parts include but are not limited to: maintenance, repair and replacement of its distribution system; employee costs; administrative and overhead costs; pumping operations within the city; and customer billing. Waterbury and Watertown have always recognized that there is no justification for Watertown to participate in such Waterbury's solely O&M costs.

E. Watertown has always paid and remains committed to pay, its 7.85% portion to future upgrades to the filtration plant and/or increased storage capacity of the five dams.

F. The express language of the Legislature, in both the Special Acts and the waterworks statutes command that Watertown water rates be "just and equitable". Waterbury and Watertown have jointly agreed that the just and equitable rate is a bulk rate. This interpretation has been in effect for the entire recorded history of the relationship from 1939 to 2018, a period of 80 years.

G. Waterbury and Watertown merged in 1939 with a mandatory sale and buy water supply agreement. Watertown, in reliance thereon, did not seek similar legislation and establish its own watershed diversion rights in Litchfield County.

H. Watertown has never been a retail water customer. Watertown does not received retail water service. Watertown has always been a special partner with a protected right to share in the Litchfield County watershed water. Watertown has a protected right to pay a just and equitable water rate that has historically been interpreted by the parties to be a bulk rate. The bulk rate has always been determined taking into account the reasonable cost to Waterbury of providing water to Watertown, i.e. the factors described herein. Waterbury benefits financially from its relationship with Watertown in at least two ways: (1) Waterbury is reimbursed by Watertown for the proportional share of capital and operating costs of Waterbury's water system; and (2) Waterbury enjoys lower unit costs for water used by its retail customers by virtue of the economies of scale afforded by the inclusion of Watertown's usage in the construction and operation of Waterbury's water system.

This affidavit is based upon the personal knowledge of the undersigned, Franklin G. Pilicy, and/or the exhibits cited herein and made a part hereof.

Franklin G. Pilicy, Esq.

Subscribed and sworn before me on this 27 day of May, 2020.

Name: Jessica George, Esq
~~Notary:~~
~~My Commission Expires:~~
Commissioner of the Superior Court

DOCKET NO. UWY-CV-19-6045213-S	:	SUPERIOR COURT
CITY OF WATERBURY		J.D. OF WATERBURY
vs.		AT WATERBURY
TOWN OF WATERTOWN		MARCH 24, 2021

3

MEMORANDUM OF DECISION

MOTION FOR SUMMARY JUDGMENT # 114

This case revolves around an interstitial dispute as to the manner in which the rates charged by Waterbury to Watertown for water and sewer service may lawfully be set in the absence of a contract. The headwaters of this question are found in a Special Act passed by the Connecticut General Assembly in 1921. This legislation (18 Special Acts, Part 2, 903, #391 (1921)) authorized the City of Waterbury "to contract to supply water for domestic purposes and fire protection to any municipality through which . . . the water supply mains of said city are or should be laid . . . on such terms as shall be just and equitable to the contracting parties."[1] Watertown is such a municipality, and, pursuant to this legislation, Waterbury first entered into a contract to sell water to Watertown in 1939.[2] The 1921 Special Act was in the nature of the granting of a service area franchise. The General Assembly has often granted such franchise areas through Special Acts to privately held water companies. These acts authorize the provision

[1] Conspicuous by its absence, insofar as the present dispute is concerned, is any language in this Special Act conferring upon Waterbury the unilateral power to determine the rates to be paid by Watertown.

[2] The City of Waterbury had developed a robust and plentiful water supply to quench the thirst of industry that flourished in that community in the first half of the twentieth century. A detailed recitation of the particulars of this extraordinary water system may be found in *City of Waterbury* v. *Town of Washington*, 250 Conn. 506, 800 A.2d 1102 (2002).

of water by such utilities to defined geographic areas.[3] General Statutes Section 7-234 provides for the granting of comparable service areas to municipal water departments under specific conditions set forth in that statute.

From 1939 until 2018, Waterbury and Watertown together negotiated a series of successive contracts spelling out the terms under which Watertown would purchase water from Waterbury. At the end of 2018, when the last contract expired, the agreed upon rate was $1.33 per hundred cubic feet of water. Against the backdrop of the inability of the parties to reach agreement as to the price Watertown should pay for water after 2018, Waterbury argues that it may now legally charge Watertown $2.52 per hundred cubic feet of water. This is the rate that was set by Waterbury for its customers in 2015 under the authority granted to it by General Statutes Section 7-239.[4] In the present motion, Waterbury argues that there is no genuine issue of material fact that it may collect from Watertown for water consumed since January 1, 2019, an amounted computed at the $2.52 per hundred cubic feet rate.

Also now before the court is the question of whether there is a genuine issue of material fact regarding the legality of the rates Waterbury seeks to impose on Watertown for the receipt and processing of sewage emanating from Watertown starting on January 1, 2019. Waterbury began receiving sewage from Watertown in 1951 pursuant to terms contained in a negotiated contract between Waterbury and Watertown that spelled out a bulk rate to be paid by

---

[3] See e.g. 15 Special Acts 652, #62, Section 1 (1909). This Special Act authorized the Torrington Water Company to lay pipes and provide "water for public or private use" to a specifically designated portion of the Town of Harwinton.

[4] General Statutes Section 7-239 (a) provides in relevant part that "[t]he legislative body shall establish just and equitable rates or charges for the use of the waterworks system authorized in this subsection, to be paid by the owner of each lot or building which is connected with and uses such system, and may change such rates or charges from time to time. Such rates or charges shall be sufficient in each year for the payment of the expense of operation, repair, replacements and maintenance of such system and for the payment of the sums in this subsection required to be paid into the sinking fund. . . ."

Watertown.[5] Subsequent uninterrupted contracts all resulted in such negotiated bulk rates being agreed to until the most recent contract expired in 2018. The final negotiated bulk rate was 88 cents per hundred cubic feet of sewage. In the face of the parties having been unable to agree on new terms after the expiration of their final sewage contract in 2018, Waterbury now seeks to charge Watertown $2.472 per hundred cubic feet of sewage. This rate was adopted by Waterbury in 2015 pursuant to General Statutes Section 7-255.[6] At the time that sewer rate was set, three years remained in the final sewer contract of the parties, and Watertown was paying at the rate established in that contract. Not surprisingly, Watertown did not avail itself of any now expired appeal rights it may have theoretically possessed in 2015 to challenge the sewage rate then set by Waterbury for Waterbury property owners who were users of the sewer system.

II

DISCUSSION

"[S]ummary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving

[5] Such a contractual arrangement is expressly permitted by General Statutes Section 7-273 which provides that "[a]ny town, city, borough or fire or sewer district, maintaining a sewerage system, may contract with any adjoining town or property owner therein for connection with and the use of such sewerage system."

[6] General Statutes Section 7-255 (a) provides in relevant part that "[t]he water pollution control authority may establish and revise fair and reasonable charges for connection with and for the use of a sewerage system. The owner of property against which any such connection or use charge is levied shall be liable for the payment thereof. . . . No charge for connection with or for the use of a sewerage system shall be established or revised until after a public hearing before the water pollution control authority at which the owner of property against which the charges are to be levied shall have an opportunity to be heard concerning the proposed charges. . . . any appeals from such charges must be taken within twenty-one days after such filing."

party." (Internal quotation marks omitted.) *Cefaratti* v. *Aranow*, 321 Conn. 637, 645, 138 A.3d 837 (2016).

"[T]he genuine issue aspect of summary judgment requires the parties to bring forward before trial evidentiary facts, or substantial evidence outside the pleadings, from which the material facts alleged in the pleadings can warrantably be inferred. . . . A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." (Citation omitted; internal quotation marks omitted.) *Buell Industries, Inc.* v. *Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002). "A genuine issue has been variously described as a triable, substantial or real issue of fact . . . and has been defined as one which can be maintained by substantial evidence." (Citation omitted; internal quotation marks omitted.) *United Oil Co.* v. *Urban Redevelopment Commission*, 158 Conn. 364, 378, 260 A.2d 596 (1969). "'Issue of fact' encompasses not only evidentiary facts in issue but also questions as to how the trier would characterize such evidentiary facts and what inferences and conclusions it would draw from them." Id., 379.

Waterbury frames the issue to be decided in simple terms. "In this collection action, the Court's role is to enforce lawfully-set rates, not to review their reasonableness." (Reply Brief of Waterbury dated August 26, 2020, p. 1.) Watertown disagrees, arguing, among other things, that the special defenses it has raised present genuine issues of material fact as to whether the amounts Waterbury claims are now due for water and sewer service may lawfully be collected from Watertown. The special defenses that have been pleaded include assertions that, as applied to Watertown, the rates are neither "just and equitable" [as to water] nor "fair and reasonable" [as to sewer] because, among other things, "Watertown maintains its own water and sewer infrastructure for distribution of water and collection of sewer and, as such, does not make use of

most of Waterbury's respective infrastructure."[7] Watertown has also pleaded a special defense of municipal estoppel claiming that Waterbury "should be estopped from alleging or claiming that water and sewer rates established 3 years before the expiration of the parties' contract, and while the parties were negotiating a renewal, are now due."

The court embarks on its analysis mindful of the immutable fact that the services for which Waterbury seeks to charge Watertown are in the nature of public utilities, and that there do not exist reasonable or realistic options, at least in the short term, for Watertown to secure these essential services from other providers. Equally self-evident is the absence of political accountability of Waterbury elected officials to ratepayers in Watertown.[8] When such accountability is lacking, such as in cases when a public utility is owed by a private entity, it has long been the public policy of the state to furnish a mechanism by which the reasonableness of the rates charged by such entities may be reviewed. "The limitation of rates to what are reasonable is the enactment in statutory form of an ancient rule of the common law. To limit the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, is only changing a regulation which existed before. It establishes no

[7] One important distinction between Waterbury and Watertown customers is that water users in Waterbury pay their bills to the City of Waterbury while Watertown customers pay their bills to the Town of Watertown at a rate that includes a surcharge for the separate infrastructure maintained by Watertown to furnish this service. The City of Waterbury owns and bears the costs of maintaining so much of the collection and distribution systems that exclusively serve the Waterbury consumer while the infrastructure for water delivery (e.g. pipes and pumps) in Watertown and serving exclusively Watertown customers are owned and maintained by Watertown. Watertown must therefore charge it customers more than the rate it pays to secure water service from Waterbury in order to fund the maintenance and repair of its infrastructure. For sewer service, Waterbury is not seeking to charge Watertown a $1..481 per hundred cubic feet "Capital Recovery Charge" that it charges to sewer users located in Waterbury. No evidence has been presented on the issue of whether any of the $2.472 standard sewer rate now sought to be collected covers other expenses attributable only to Waterbury users. In addition, Watertown sewer users must bear the costs of maintaining so much of the sewer infrastructure that serves them exclusively.

[8] This point bears notation especially given that there is no statutory right of appeal from water rates set by municipalities under Section 7-239 and that this section by its terms allows only for the setting of rates to "to be paid by the owner of each lot or building which is connected with and uses such system." This language suggests that Section 7-239 was not contemplated to apply to bulk sales of water from one municipality to another.

new principle in the law, but only gives a new effect to an old one. The remedy for the enforcement of reasonable rates provided by our act was new in this jurisdiction. So long as the company establishes reasonable rates, these cannot be lowered by commission or court. When it fails in this duty the Public Utilities Commission is authorized to prescribe just and reasonable maximum rates. And its authority, under this act, may be invoked whenever the rates as fixed are either so high or so low as to be unreasonable." (Citations omitted; internal quotation marks omitted.) *Turner* v. *Connecticut Co.*, 91 Conn. 692, 697, 101 A. 88 (1917).[9] Consistent with this principle, both the 1921 Public Act and Section 7-239 require rates charged for water service to be "just and equitable."

Waterbury's position, when carried to its logical conclusion, is that, notwithstanding the law's command that the water rates it charges be "just and equitable," no remedy exists to enforce this stricture and that the city nevertheless has unfettered, non-appealable power to charge and collect from Watertown any rate for water that it chooses to impose. Such a construct belies fundamental common law principles articulated in the *Turner* case cited above surrounding the reasonableness requirement for charges associated with the provision of essential public services by monopolistic providers. While a trial on the merits might vindicate Waterbury's position that the rates it now seeks to charge are lawfully collectable, this court

[9] This principle is now codified in General Statutes Section 16-20 (b) and provides in relevant part: "If any . . . private water company unreasonably . . . refuses to furnish adequate service at reasonable rates to any person within the territorial limits within which the company has . . . authority to furnish the service . . . and if no other specific remedy is provided in this title or in regulations adopted thereunder, the person may bring a written petition to the Public Utilities Regulatory Authority alleging the . . . refusal. The authority shall investigate and, not more than sixty days after receipt of a petition, (1) if appropriate, issue an order prescribing the service to be furnished by the company, the conditions under which and maximum rates or charges at which the service shall be furnished, or (2) order that a hearing be held on the matter or that the matter be set for alternative dispute resolution . . ."

concludes that there are genuine issues of fact that must be resolved in order to make any such determination. Among these issues are the reasonableness of the rates at issue.

Also to be decided is the subsidiary question of whether municipal estoppel may be proven to be a valid special defense to this collection action. "[I]n order for a court to invoke municipal estoppel, the aggrieved party must establish that: (1) an authorized agent of the municipality had done or said something calculated or intended to induce the party to believe that certain facts existed and to act on that belief; (2) the party had exercised due diligence to ascertain the truth and not only lacked knowledge of the true state of things, but also had no convenient means of acquiring that knowledge; (3) the party had changed its position in reliance on those facts; and (4) the party would be subjected to a substantial loss if the municipality were permitted to negate the acts of its agents. . . ." *Levine* v. *Town of Sterling*, 300 Conn. 521, 535, 16 A.3d 664 (2011).

Watertown asserts that Waterbury was engaged in negotiations to extend the parties' water and sewer contracts in 2015 when Waterbury was also unilaterally setting the water and sewer rates it now seeks to collect. To the extent it is proven that Waterbury induced Watertown to believe such negotiations were being undertaken in good faith and that contractual extensions would ensue and to the extent that posture created an environment in which Watertown, in reliance on those expectations, did not avail itself of the right to be heard in the 2015 water and sewer rate setting processes and the corresponding right to appeal the sewer rate set, genuine issues of fact also exist as to whether municipal estoppel might apply.

For the reasons set for the above, Waterbury's motion for summary judgment is denied.

JURIS # 434448

RORABACK, J.

DOCKET NO. UWY-CV-19-6045213-S	:	**SUPERIOR COURT**
	:	
CITY OF WATERBURY	:	**JUDICIAL DISTRICT**
	:	**OF WATERBURY**
VS	:	
	:	
TOWN OF WATERTOWN	:	**JULY 28, 2023**

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is a collection litigation concerning water supply and sewer use charges associated with the supply of water and the provision of sewer services to the Town of Watertown (Watertown) by the City of Waterbury (Waterbury) for the period beginning on July 1, 2018, and continuing to present. The disagreement concerns the appropriate rates to be charged for water and sewer services. The court held a multiday court-side trial starting on May 3, 2023.

FINDING OF FACT:

Based upon the evidence introduced at trial, the court has made the following factual findings:

1. Starting on or about June 29, 1988,[1] Waterbury provided water and sewer services to Watertown pursuant to written agreements between the parties with terms of twenty-five years.[2] During the period of the foregoing agreements, Waterbury charged, and Watertown paid, rates as provided for in the foregoing agreements, which rates were less than the rates that Waterbury charged to its own residents.
2. At times during their long relationship, Watertown paid for portions of capital costs related to the improvement of the Waterbury water and sewer systems for the benefit of Watertown.
3. In conjunction with the expiration of the foregoing agreements, the parties negotiated and abided by new subsequent agreements, which started in 2013 and terminated five years

[1] Contracts providing for the supply of water by Waterbury to Watertown go back in time to about 1939. See the defendant's exhibit T. It is notable that the 1939 agreement provided that for water supply Waterbury would charge Watertown "the same rate as is charged therefor to users of similar quantities within the limits of said City at the time of billing, plus ten percentum." See the defendant's exhibit T, section 5. Waterbury's current charges for the supply of water to Watertown are set on the very same basis as this first 1939 agreement between them. Contracts for the provision of sewer services go back to 1951. See the defendant's exhibit LL.

[2] See the defendant's exhibits II and JJ for the 1989 sewer and water agreements.

later on June 30, 2018.[3] These 2013 water and sewer agreements applied flat rates for water and sewer service, and applied an escalator to those rates at 2 percent per year. See the defendant's exhibits F and G.[4]

4. In advance of the termination of their 2013-2018 agreements, the parties attempted to negotiate a further agreement but failed to reach an agreement. Accordingly, as of June 30, 2018, no agreement existed between the parties concerning the provision of water and sewer services, and there was no agreement concerning the rates to be charged. Despite there being no agreement between the parties, Waterbury continued to provide, and Watertown continued to consume, water and sewer services.

5. Waterbury deployed good faith efforts to achieve new agreements, or amended 2013 agreements, but, despite those good faith efforts, no agreement arose after the expiration of the 2013 agreements on June 30, 2018.[5]

---

[3] These agreements which expired in 2018 initially set the rate for the provision of water by Waterbury to Watertown at $1.33 per hundred cubic feet.

[4] The negotiations for the 2013-2018 agreements began in 2012. During these negotiations, the Mayor of Waterbury informed Watertown that Waterbury would seek to impose the Waterbury resident standard rates on Watertown after these 2013 contracts expired in five years, and that the 2 percent per year escalator as applied to the flat rates in the agreements was a start in that direction. Accordingly, Watertown had substantial notice of Waterbury's intent concerning pricing, which notice preceded the 2015 public meetings which set the prices at issue.

[5] Section 504 of the 2013 water agreement confirmed that there was no obligation to come to an agreement other than through the free will of the parties. The primary impediment between the parties to reaching agreement was price.

6. In December of 2017, Waterbury again firmly advised Watertown that, in the absence of a negotiated agreement, Waterbury would charge Watertown the same rates for water and sewer service that it charged Waterbury residents, plus a 10 percent municipal system benefit charge on the water rates. Ultimately, Waterbury further informed Watertown of its position in a letter dated June 8, 2018. See the defendant's exhibit PP.
7. Waterbury's independent water and sewer consultants conducted studies in 2014 to make recommendations to Waterbury for water and sewer rates for the period from 2015 through 2019, and made the following findings and recommendations:
    a. Waterbury water and sewer rates had been insufficient to support the short and long-term financial needs of the Waterbury systems, and Waterbury had been funding deficits through other means, including the use of reserves.
    b. There had been underinvestment by Waterbury in its aging water and sewer systems over the years and that underinvestment will require substantial capital expenditures in the near-term coming years.
    c. Waterbury needed to build a capital reserve to plan for required capital investments.
    d. The annual cost of operating Waterbury's water system is expected to increase from under $12 million in 2015 to $13.7 million in 2019, a 3.4 percent per year increase, and $35 million in capital improvements to the water system were required over the coming five years.

e. Waterbury's water and sewer charges to its customers were substantially lower than other comparable Connecticut suppliers.

f. The rate recommendations made by Woodard & Curran were designed on a break-even basis for Waterbury's operations, but Waterbury chose lower rates and increases than those recommended by Woodard & Curran. Accordingly, Waterbury's rates for 2015 through 2019 still did not produce break-even operations.

See the plaintiff's exhibits 2, 25 and 26.

8. In relevant part, starting in 2015, pursuant to General Statutes § 7-239, Waterbury established rates to be charged for persons or entities being supplied water by the Waterbury waterworks. The rate set was $2.31 per hundred cubic feet of water for 2015, $2.43 for 2016, $2.47 for 2017, and $2.52 for 2018 through 2021. See the plaintiff's exhibit 21. In 2022, the rate was increased to $2.65 per hundred cubic feet of water[6]. The foregoing rates were set after publication and public hearings as required in the statute. These rates were adopted by Waterbury's Board of Aldermen. See the plaintiff's exhibits 2-20. The court found no credible evidence of any irregularity in the procedures used by Waterbury to set its rates.

[6] Woodard & Curran had recommended a rate of $2.97 per hundred cubic feet.

9. In relevant part, starting in 2015, pursuant to General Statutes § 7-255, Waterbury established rates to be charged for persons or entities using the Waterbury sewer system. The rate was set at $2.472 per hundred cubic feet for 2019 through 2022.[7] See the plaintiff's exhibit 21. The foregoing rate remains in effect today. The foregoing rate was set after publication and public hearings as required in the statute. These rates were adopted by Waterbury's Board of Public Works. See the plaintiff's exhibits 2-20. The court found no credible evidence of any irregularity in the procedures used by Waterbury to set its rates.

10. The rates adopted by Waterbury in 2015 for water and sewer were less than the rates recommended by Woodard & Curran, Waterbury's independent water and sewer consultant. [8] Further, the rates adopted in 2015 by Waterbury for water and sewer were not sufficient to make the Waterbury water and sewer enterprises self-sufficient.[9]

---

[7] During these years, a separate capital recovery charge was set at $1.481 per hundred cubic feet of sewage. Woodard & Curran had recommended a rate of $3.52 per hundred cubic feet plus a capital recovery charge.

[8] The rates set by Waterbury are based on Waterbury's cost of service. Woodard & Curran had conducted a study of Waterbury's cost of service for water and sewer and had recommended rates that were meant to place Waterbury in a break-even state in view of the short and long term costs of operating the systems. Waterbury set rates that were below these recommended rates. Watertown's argument that the Waterbury rates are not cost based is really an argument that Waterbury has not given Watertown special credit for portions of the costs which, in Watertown's view, do not sufficiently benefit Watertown. As noted later in this decision, the court found Watertown's cost arguments not supported by the evidence and are unconvincing.

[9] To balance its water and sewer budgets, Waterbury used certain reserves.

Waterbury adopted these low 2015 rates in an effort to slowly bring its water and sewer enterprises up to self-sufficiency without overwhelming its citizens. See the plaintiff's exhibit 2, particularly the sections labeled "Commentary – Water Bureau" and "Commentary – WPC."

11. The rates for water and sewer adopted by Waterbury in 2015 were charged to all Waterbury residents and businesses regardless of size, location within Waterbury and usage. Waterbury also applied these rates to the towns of Naugatuck, Cheshire, Middlebury and Prospect. All municipalities currently acquiring water from Waterbury pay 110 percent of Waterbury's standard rate for water, and all municipalities, other than Wolcott, which use Waterbury sewer services pay 100 percent of Waterbury's standard rate.[10] It was reasonable for Waterbury to adopt a uniform system of pricing, particularly since Waterbury's accounting system did not support accurate costing of distinctions or classes. See the plaintiff's exhibit 29.[11]

---

[10] Waterbury had an ongoing long-term agreement with Wolcott for the supply of sewer services at contracted rates.

[11] The court found the fact that the defendant left the pages comprising the plaintiff's exhibit 29 out of what the defendant produced as the defendant's exhibit QQ, as well as the defendant's subsequent unfair interpretation of the plaintiff's exhibit 29, to have undercut the defendant's credibility.

12. Prior to the expiration of the 2013 agreements with Watertown, Waterbury notified Watertown that starting July 1, 2018, Waterbury would begin charging Watertown at Waterbury's standard resident rate plus 10 percent for water and at Waterbury's standard resident rate for sewer service. See the defendant's exhibit PP.

13. As of July 1, 2018, Waterbury began charging Watertown $2.52 per hundred cubic feet of water plus an additional 10 percent municipal system benefit charge and $2.472 per hundred cubic feet of sewage plus a capital recovery charge of $1.481 per hundred cubic feet of sewage.[12] These rates were the rates charged by Waterbury to its residents and other surrounding towns, but were higher than the contractual rates previously charged to Watertown pursuant to the previously expired contracts. The adopted Waterbury water and sewer rates for 2015 through 2022, and Watertown's short paying, are reflected in the plaintiff's exhibit 21.

14. Watertown has not paid the foregoing rates and has short paid the invoices issued by Waterbury for the period beginning on July 1, 2018.

---

[12] Waterbury only applied the capital recovery charge to Watertown as of July 1, 2022. The capital recovery charge was not applied before July 1, 2022, because, prior to the foregoing date, Watertown had separately paid for its proportion of certain capital expenses through payments made on capital bonds, but Watertown's separate capital payments ended in 2020.

15. During the foregoing time periods, Waterbury has charged municipalities, other than Watertown, the rates that Waterbury established pursuant to §§ 7-239 and 7-255, plus a 10 percent municipal system benefit charge on the water rates.

16. Commencing on July 1, 2018, Waterbury began charging Watertown interest at the rate of 18 percent per year on the amounts Waterbury claimed were due because of Watertown's practice of short paying the Waterbury invoices.

17. Watertown directly charges its residents for water and sewer services and, thus, bears the cost and burden of collection. Watertown also owns the pipes and other equipment, located within Watertown's borders (except for certain supply and collection stations and the primary supply pipes), which are used to distribute water and sewer services within Watertown to Watertown residents.[13]

18. It is true that if Waterbury charges Watertown the normal Waterbury resident rates for water and sewer, plus 10 percent on the water side, Watertown residents will pay more

[13] Watertown has made an argument that it does not utilize Waterbury's distribution system. This argument is unfounded. Watertown receives it water supply directly from Waterbury pipes and supply stations. Watertown discharges its sewage through a Waterbury collection station into the Waterbury sewer system which then transports it to Waterbury's sewage treatment plant. Watertown bases its argument on drawing a distinction between "distribution" and "transmission." However, this distinction is merely based upon an arbitrary delineation between pipe sizes. It is clear that Watertown does not use the entirety of the Waterbury water and sewer distribution systems, but it certainly does use portions of each system. It is also clear that each Waterbury resident and customer uses only portions of the Waterbury sewer and water distribution systems, and that each such resident and customer is differently situated in this regard.

than Waterbury residents for water and sewer because Watertown must also charge for its own customer service and infrastructure costs. However, the court does not find the foregoing to be unusual or unreasonable because it is typical for consumers who are further away from the producer on the economic chain to pay more than consumers who are closer to the producer on the economic chain. It is also not unreasonable for Waterbury, which has invested in, and assumes the operational risk of, its water and sewer systems, to receive some benefit for its investment and risk.

19. Watertown's water delivery system is connected to the Waterbury water system at two points, referred to as Fern Hill and Carvel. The Watertown sewer system is connected to the Waterbury sewer system at one point referred to as Matoon Road. Accordingly, each Watertown water and/or sewer customer is connected to the Waterbury water and sewer systems.

20. In general, the court found the testimony of Michael LeBlanc, the Finance Director of Waterbury, to be reliable and credited his testimony.

21. The court found the testimony of Watertown's expert, Edward Donahue, to be unreliable. The court found that Mr. Donahue's testimony was internally inconsistent and inconsistent with testimony of other witnesses that the court found more reliable. Accordingly, the court did not credit Mr. Donahue's testimony.

22. The court found the testimony of Attorney Jessell to be substantially biased and not forthcoming, and did not credit his testimony.

23. The court found the testimony of Mr. Jerry Lukowski, the Superintendent of Public Works and Water and Sewer of Watertown, to be reliable and credited his testimony.

24. The court found Attorney Pilicy's testimony regarding the history of agreements between the parties to be reliable and credited that testimony.

25. The court found the testimony of Watertown's expert, Michael Maker, to be unreliable. Mr. Maker's testimony was internally inconsistent and inconsistent with other evidence that the court found more credible. In addition, it was clear to the court that Mr. Maker, and Mr. Donahue, relied on information that was significant in reaching their conclusions, which information was either known to them, or should have been known to them, to be unreliable. In particular, their reliance on the information contained in the last page of the defendant's exhibit PP was inappropriate. [14] This substantially undercut both experts' conclusions and credibility, and at least partly explains the ridiculous results determined by these experts. In this regard, see the defendant's Exhibit M, which proposes that Watertown pay water rates that were 45 percent less than the rates paid by

---

[14] In this regard, the court refers to the communications from Mr. Donahue requesting the foregoing information, knowing that Waterbury did not account for the numbers requested and specifically instructing Waterbury not to spend time on the request but to instead provide rough guesses. See the third page of the defendant's Exhibit V, which was the impetus for Waterbury to produce the information subsequently relied on by the experts. While the court is convinced that the experts knew and appreciated this vulnerability in their argument, their unfair refusal to acknowledge it on the stand undercut their credibility overall.

Watertown under the 2013 agreement.[15] Further, both experts' continued insistence that the Waterbury rates were not cost based undercut their credibility.[16] The specific alternate rates entered into evidence in defendant's exhibit M were based upon unreliable information, and the defendant's proposed rates are not realistic, reasonable or reliably established. [17]

26. The court found the testimony of Mayor O'Leary to be reliable and credible.

---

[15] The court finds that these suggested rates were unreasonable in the extreme and should have been known as such by Watertown and its experts. These extremely unreasonable rate proposals cause the court to question whether they were arrived at and suggested in good faith. A glimpse of this issue may be seen in Waterbury's response as depicted in the letter contained in the defendant's exhibit PP. See also the defendant's exhibit M for the rate proposals and a comparison.

[16] Waterbury's rates are clearly cost based in that the rates were based upon, but lower than, Woodward & Curran's study and recommended rates which were based upon the short and long-term financial needs of the systems (i.e., the costs to operate the systems). Further, the Waterbury rates are in actuality lower than Waterbury's cost of operating the system. Although they were unable to articulate it properly, the Watertown experts' arguments were that Waterbury would not preferentially classify Watertown as a wholesale user and apply special customized rates based upon Watertown's asserted use of services and infrastructure. The foregoing argument does not equate to a conclusion that Waterbury's standard rates are not cost based even as applied to Watertown. The foregoing argument only advocates that Waterbury has not customized Watertown's rate to Watertown's liking.

[17] In contrast, the only rational and reasonable cost-based rates entered into evidence are the rates established by Waterbury for all of its customers, which rates were established using the cost study produced by Woodard & Curran and the statutorily prescribed process by open meetings held through the public entities established through the political process.

27. In 2013, while negotiating the 2013 agreements, Mayor O'Leary informed Attorney Jessell that the rates and escalator in the 2013 agreements were meant to transition Watertown to the normal Waterbury resident rates for water and sewer service, and that after the 2013 agreements expired in 2018, Waterbury would charge Watertown 110 percent of the normal Waterbury resident rate for water and 100 percent of the normal Waterbury resident rate for sewer services.

28. Over the years, federal regulatory mandates have made it substantially more costly for Waterbury to operate its water and sewer systems.

29. When the Waterbury-Watertown water and sewer contracts expired in 2018, Mayor O'Leary, on behalf of Waterbury, did not cut off water and sewer service to Watertown because he understood that doing so would give rise to catastrophic problems for Watertown residents and he did not think that to be an appropriate manner in which to treat neighbors.

30. Other sources for the supply of water to Watertown would be substantially more expensive than the rates charged by Waterbury to its residents and now to Watertown.

31. Watertown has short paid[18] Waterbury invoices for water and sewer service since July 1, 2018. Waterbury billed $23,455,544.42 in aggregate principal for water and sewer service from July 1, 2018, through April 25, 2023.

32. Because of Watertown's practice of short paying invoices, Waterbury has applied interest at 18 percent per year on unpaid amounts, which results in an aggregate interest charge of $4,637,784.58 over the period from July 1, 2018, through April 25, 2023.

33. For the period from July 1, 2018, through April 25, 2023, Watertown owes Waterbury $18,800,445.37 in unpaid principal and interest for water and sewer services. See the plaintiff's exhibit 1.

APPLICABLE LAW:

Although no contract was in place during the contested period, in view of the special defenses asserted, the court provides a basic review of contract law. A contract is an agreement enforceable at law. Contracts may be express or implied. If the agreement is shown by the direct words of the parties, spoken or written, the contract is an express one. If such agreement can only be shown by the acts and conduct of the parties, interpreted in the light of the subject matter and of the surrounding circumstances, then the contract is an implied one. In order to form a binding

[18] Watertown paid at the rates provided for in the 2013 to 2018 agreements despite the fact that Watertown acknowledges that those agreements expired pursuant to their terms on June 30, 2018, and were of no effect in establishing rates thereafter.

contract, there must be mutual assent or a meeting of the minds at the time the contract was formed. *Janusauskas* v. *Fichman*, 264 Conn. 796, 802, 826 A.2d 1066 (2003); *Boland* v. *Catalano*, 202 Conn. 333, 338-39, 521 A.2d 142 (1987); *Skelly* v. *Bristol Savings Bank*, 63 Conn. 83, 87, 26 A. 474 (1893); *Atlas* v. *Miller*, 20 Conn. App. 680, 683, 570 A.2d 219 (1990); *Hale* v. *Benvenuti, Inc.*, 38 Conn. Supp. 634, 638-39, 458 A.2d 694 (1983); 1 Restatement (Second), Contracts §§ 1, 4 (1981). In order for there to be a meeting of the minds, the parties must agree that they have entered into a contract and must have similar understanding as to the essential terms. *Bridgeport Pipe Engineering Co.* v. *DeMatteo Construction Co.*, 159 Conn. 242, 249, 268 A.2d 391 (1970); *Hoffman* v. *Fidelity & Casualty Co.*, 125 Conn. 440, 443-44, 6 A.2d 357 (1939). Words in a contract are to be given their ordinary meaning unless they are special terms of trade or the parties have given them special meaning. *Ramirez* v. *Health Net of Northeast, Inc.*, 285 Conn. 1, 13-14, 938 A.2d 576 (2008); *Tomlinson* v. *Board of Education*, 226 Conn. 704, 722, 629 A.2d 333 (1993); *Southern New England Contracting Co.* v. *Norwich Roman Catholic Diocesan Corp.*, 175 Conn. 197, 199, 397 A.2d 108 (1978). In order to recover on a breach of contract claim, the plaintiff must prove: (i) the formation of an agreement with the defendant; (ii) that the plaintiff performed (his/her/its) obligations under the agreement; (iii) that the defendant failed to perform (his/her/its) obligations under the agreement; and (iv) as a result, the plaintiff sustained damages. *Keller* v. *Beckenstein*, 117 Conn. App. 550, 558, 979 A.2d 1055, cert. denied, 294 Conn. 913, 983 A.2d 274 (2009). The plaintiff must prove the meaning of the contract and its breach by the defendant by a preponderance of the evidence.

The first count of the complaint asserts a claim pursuant to § 7-239, which concerns the municipal provision of water and provides in relevant part as follows concerning rates:

> (a) The legislative body shall establish just and equitable rates or charges for the use of the waterworks system authorized in this subsection, to be paid by the owner of each lot or building which is connected with and uses such system, and may change such rates or charges from time to time. Such rates or charges shall be sufficient in each year for the payment of the expense of operation, repair, replacements and maintenance of such system and for the payment of the sums in this subsection required to be paid into the sinking fund. In establishing such rates or charges, the legislative body shall consider measures that promote water conservation and reduce the demand on the state's water and energy resources. Such rates or charges may include: (1) Demand projections that recognize the effects of conservation, (2) implementation of metering and measures to provide timely price signals to consumers, (3) multiyear rate plans, (4) measures to reduce system water losses, and (5) alternative rate designs that promote conservation. No such rate or charge shall be established until after a public hearing at which all the users of the waterworks system **and** the owners of property served or to be served and others interested shall have an opportunity to be heard concerning such proposed rate or charge. Notice of such hearing shall be given, at least ten days before the date set therefor, in a newspaper having a circulation in such municipality. Such notice shall set forth a schedule of rates or charges, and a copy of the schedule of rates or charges established shall be kept on file in the office of the legislative body and in the office of the clerk of the municipality, and shall be open to inspection by the public. The rates or charges so established for any class of users **or** property served shall be extended to cover any additional premises thereafter served which are within the same class, without the

necessity of a hearing thereon. Any change in such rates or charges may be made in the same manner in which they were established, provided, if any change is made substantially pro rata as to all classes of service, no hearing shall be required. The provisions of this section shall not apply to the sale of bottled water. (Emphasis added.).

The second count of the complaint asserts a claim pursuant to §§ 7-255 and 7-258 concerning the municipal provision of sewer services. Section 7-255 provides in relevant part as follows concerning rates:

> (a) The water pollution control authority may establish and revise fair and reasonable charges for connection with **and** for the use of a sewerage system. The owner of property against which any such connection or use charge is levied shall be liable for the payment thereof. Municipally-owned and other tax-exempt property which uses the sewerage system shall be subject to such charges under the same conditions as are the owners of other property, but nothing herein shall be deemed to authorize the levying of any property tax by any municipality against any property exempt by the general statutes from property taxation. No charge for connection with **or** for the use of a sewerage system shall be established or revised until after a public hearing before the water pollution control authority at which the owner of property against which the charges are to be levied shall have an opportunity to be heard concerning the proposed charges. Such hearing may be conducted in person or by means of electronic equipment. Notice of the time, place and purpose of such hearing shall be published at least ten days before the date thereof in a newspaper having a general circulation in the municipality and on the Internet web site of the municipality. A copy of the proposed charges shall be on file in the office of the clerk of the municipality and available for inspection by the public for at least ten days before the date of such hearing. When the water pollution control authority has established or revised such charges, it shall file a copy thereof in the office of the clerk of the municipality and, not later than five

days after such filing, shall cause the same to be published in a newspaper having a general circulation in the municipality and on the Internet web site of the municipality. Such publication shall state the date on which such charges were filed and the time and manner of paying such charges and shall state that any appeals from such charges must be taken within twenty-one days after such filing. In establishing or revising such charges the water pollution control authority may classify the property connected or to be connected with the sewer system and the users of such system, including categories of industrial users, and: (1) May give consideration to any factors relating to the kind, quality or extent of use of any such property or classification of property or users including, but not limited to, (A) the volume of water discharged to the sewerage system, (B) the type or size of building connected with the sewerage system, (C) the number of plumbing fixtures connected with the sewerage system, (D) the number of persons customarily using the property served by the sewerage system, (E) in the case of commercial or industrial property, the average number of employees and guests using the property and (F) the quality and character of the material discharged into the sewerage system. The water pollution control authority may establish minimum charges for connection with and for the use of a sewerage system. . . . Any person aggrieved by any charge for connection with or for the use of a sewerage system may appeal to the superior court for the judicial district wherein the municipality is located and shall bring any such appeal to a return day of said court not less than twelve or more than thirty days after service thereof. The judgment of the court shall be final. (Emphasis added.).

ANALYSIS:

The effective complaint is an amended complaint dated January 27, 2020. Count one asserts a collection claim for the provision of water pursuant to § 7-239. Count two asserts a collection claim for the provision of sewer services pursuant to §§ 7-255 and 7-258. The

defendant has answered and asserted eight special defenses. The first special defense alleges that the statutory provisions of §§ 7-239,7-255, and 7-258 do not apply to Waterbury's provision of water and sewer services to Watertown. The second special defense alleges that Waterbury should be estopped from applying its municipal rates to Watertown. The third special defense alleges that Waterbury did not comply with a pre-suit mediation provision found within the most recently expired contract between the parties. The fourth special defense alleges that Watertown maintains its own infrastructure and should not pay for Waterbury's infrastructure through the charges Waterbury has applied. The fifth special defense asserts that Waterbury's rates are not fair and reasonable or just and equitable. The sixth special defense asserts that Waterbury's municipal rates were set in an arbitrary and capricious manner. The seventh special defense asserts that the Waterbury rates were not set pursuant to published legal notice and a public hearing as required. The eighth special defense asserts that Watertown bears some of the capital expenses associated with certain municipal bonds.

A. STATUTORY ANALYSIS

A special act of our legislature in 1921 provided that "**The city of Waterbury is authorized and empowered** . . .to contract to supply water for domestic purposes and fire protection to any municipality, borough or fire district, through which . . . the water supply mains of said city are or shall be laid . . . on such terms and rates as shall be just and equitable **to the**

contracting parties." (Emphasis added.) See 18 Special Acts 904, No. 391 (1921). Watertown is a town through which Waterbury's water supply mains run. Accordingly, the foregoing special act applies to the relationship between Waterbury and Watertown. However, the special act only "authorized and empowered" Waterbury to enter into contracts with Watertown to supply water, it did not compel such a result. Accordingly, once the contract between the parties for the supply of water expired on June 30, 2018, and there was no further contract in place, the special act had no further application other than to authorize any subsequent contract the parties chose to enter into. However, the parties admittedly never entered into a subsequent contract. Further, if the parties ever enter into a contract for the supply of water, the special act merely specifies that the "terms and rates as shall be just and equitable to the contracting parties." The very act of entering into such a contract confirms that the parties view the terms contained therein as just and equitable, for if they did not, they would not enter into the contract.

Section 7-273 provides that "any town, city, borough or fire or sewer district, maintaining sewerage system, **may** contract with any adjoining town or property owner therein for connection with and use of such sewerage system." (Emphasis added.). Similarly, § 7-273 permissively allows for the contracting of sewer services between municipalities, but it does not compel it, and it does not compel any particular terms.

Section 7-239 regulates the municipal supply of water and clearly applies to Waterbury and its waterworks. In interpreting the application of § 7-239 (a) to the situation at hand, the court finds that it is important to analyze and consider seven interrelated statutory provisions

contained therein: (1) the rates to be set[19] by the legislative body are to be "just and equitable", (2) such rates are to be "for the use of the waterworks system", (3) such rates are "to be paid by the owner of each lot or building which is connected with and uses such system", (4) such rates shall be "sufficient in each year for the payment of the expense of operation, repair, replacements and maintenance of such system and for the payment of the sums in this subsection required to be paid into the sinking fund", (5) no such rate shall be set until after a public hearing, (6) "all the users of the waterworks system **and** the owners of property served" shall be able to participate in the public hearings, and (7) rates **may** be established for "any class of users **or** property served." (Emphasis added.).[20] When interpreted in context, the statute requires the municipality's legislative body to set, after a public hearing, just and equitable rates that are sufficient to pay each year for the statutorily specified operation and upkeep of the system, to be applied to all users of the system, and which rates may[21] be segregated by class of user. In the

---

[19] The authority to establish rates and charges carries with it the implied ability to charge and collect such rates as set.

[20] The court notes that the "and" and the "or" in the foregoing subsections six and seven clearly indicate the applicability to both users in general as well as property owner users. Generally, only property owner users are capable of incurring charges for making hard connections to facilities. Although tenants may perhaps also incur hard connection charges, the landowner provides a backstop because of the potential for liens arising from unpaid costs.

[21] The court notes that the statutory authority to establish classes of users is permissive not mandatory. Further, the provision authorizes the setting of rates for ANY "class of users" OR "property served," clearly indicating that rates may be applied to users other than property owners. The court views contracted rates which are different from the normal rates as a type of classification.

court's interpretation, Watertown is a user of the Waterbury waterworks to which § 7-239 applies.[22]

In similarly analyzing the applicability of § 7-255 (a) to the situation at hand, the court has focused on the following interrelated statutory provisions: (1) the rates to be set by the water pollution control authority are to be "fair and reasonable"[23], (2) such rates are to be "for connection with and for use of a sewerage system", (3) "[t]he owner of property against which any such connection or use charge is levied shall be liable for the payment thereof", (4) no such rate shall be set until after a public hearing, (5) in establishing the rates the authority may[24] "classify the property connected . . . and the users of such system", and (6) "[a]ny person aggrieved by any charge for connection with or for the use of a sewerage system may appeal to

---

[22] Even with Watertown's restrictive interpretation of this statute in mind, in its relationship with Waterbury, Watertown acts on behalf of and stands in the shoes of the residents and property owners of Watertown whose property is connected to and who use the Waterbury waterworks. The court notes that the relevant Watertown lots are connected to the Waterbury water delivery and sewer systems, albeit initially through pipes owned by Watertown. Further, Watertown itself is a property owner whose properties are connected to and serviced by the Waterbury water and sewer systems making Watertown itself a direct user and property owner connected to the Waterbury systems.

[23] The ability to establish and revise charges carries with it the ability to collect such charges from users.

[24] The ability to establish classes is again permissive, not mandatory.

the superior court." In the court's interpretation, Watertown is a user of the Waterbury sewerage system to which § 7-255 applies.[25]

It should not be surprising that the foregoing statutes apply to Watertown's use of the Waterbury waterworks and sewerage system. It is uncontested that Watertown is a direct and indirect user of the Waterbury waterworks and sewerage system. Watertown customers are connected to the Waterbury systems. The foregoing statutes are clearly meant to regulate the operation and use of municipal waterworks and sewerage systems. Restricting their application only to property owners whose property is connected to the systems is illogical in the context of those statutes in that such a restrictive reading would exclude large classes of users such as tenants, certain condominium owners, and mobile users which purchase water or dump sewerage. The court views that the statutory focus on property owners arises primarily from the liens that may arise from unpaid bills[26], making the property owners the ultimate backstop, and further from the property owners' responsibility for one-time hard connection charges and assessments.

---

[25] Even with Watertown's restrictive interpretation of this statute in mind, in its relationship with Waterbury, Watertown acts on behalf of and stands in the shoes of the residents and property owners of Watertown whose property is connected to and who use the Waterbury sewerage system. Further, Watertown itself is a property owner whose properties are connected to and serviced by the Waterbury water and sewer systems making Watertown itself a direct user and property owner connected to the Waterbury systems.

[26] Waterbury has not attempted to utilize the lien provisions of the statutes in this context.

The foregoing water and sewer service supply statutes apply to users of the Waterbury water and sewer systems. While Waterbury was authorized to contract with Watertown concerning these services, it was not compelled to. In the absence of an enforceable contract agreeing otherwise, the statutory rates apply. The statutory authorization to set and charge rates impliedly includes the ability to collect the rates charged. [27]

B. ABSENCE OF ONGOING CONTRACTS

The parties have conceded, and the court has found, that as of June 30, 2018, no effective contract exists between the parties concerning the provision by Waterbury, and the use by Watertown, of water and sewer services.[28] It is also conceded that from July 1, 2018, to the present, Waterbury has continued to supply, and Watertown has continued to use, water and sewer services. Further, the court has found that there was no requirement arising out of the expired contracts, or out of applicable law, that compelled the parties to reach an agreement concerning the supply of water and sewer services. Although the parties negotiated for a new

[27] See also the authorizations provided to municipalities in General Statutes § 7-148(c)(4)(G) and § 7-148(c)(6)(B).

[28] Since no effective contract existed between the parties as of June 30, 2018, the rates provided for in the expired contracts were no longer applicable. Furthermore, other provisions of the expired contracts, such as pre-suit mediation provisions, were no longer applicable for matters such as this which are outside the purview of the now expired contracts.

contract in good faith, they were unable to reach agreement, primarily because they continued to materially disagree on price.

In the absence of any relevant contract, and in the absence of any liability for failing to arrive at a contract, the parties were free to act as each party saw fit, subject to the provisions of the applicable statutes. Accordingly, Watertown's arguments here are internally inconsistent. On the one hand, Watertown argues that the rates must be "just and equitable" and "fair and reasonable." On the other hand, Watertown argues at the same time that §§ 7-239 and 7-255 do not apply to their relationship with Waterbury. Obviously, the foregoing phrases and requirements come from the foregoing statutes. If the statues do not apply, then neither do the foregoing portions of the statutes. In that case, in the absence of statutory regulation and in the absence of any enforceable agreement, the parties are unrestrained in their freedom to agree or disagree, subject only to the fairly wide guardrails applied by common law, such as the prohibitions of fraud, negligent misrepresentation and unjust enrichment. However, in any case, the court has found that the foregoing water and sewer statutes apply.[29]

---

[29] The court notes that Watertown's experts inherently accepted and fostered the position that the water and sewer statutes apply to the relationship between Waterbury and Watertown in that their arguments are grounded in the proposition that the rates must be "just and equitable" and "fair and reasonable." They also argued that the rates must be cost based, which is a concept embedded in the statutes.

C. JUST AND EQUITABLE, FAIR AND REASONABLE

As noted, the Connecticut water and sewer statutes require that the rates charged be just and equitable and fair and reasonable, respectively. The water and sewer statutes apply two basic overarching concepts in setting the rates and ensuring that the rates meet the standard of just and equitable and fair and reasonable. First, the statutes set a floor requiring that the rates are sufficient for the yearly operation, repair, replacements and maintenance of the systems, including making provisions for the anticipated future needs of the systems. See § 7-239, second sentence and § 7-256. Second, the statutes require that the rate be set and adjusted only after public notice and a hearing before the applicable public authority.[30] Accordingly, the statutes provide the relevant authority with a cost-based floor, which takes into account both short-term and long-term costs, and a procedure meant to provide public input and accountability in the setting of rates. These statutory provisions provide substantial assurances that the rates set by the public authority will meet the standard of just and equitable and fair and reasonable. [31]

---

[30] The sewer statute also provides an explicit appeal right. See § 7-255.

[31] In addition to the foregoing statutory substantive and procedural safeguards, the statutes provide that the rate be set by public authorities, here the Board of Aldermen for water and the Board of Public Works for sewer service. Accordingly, the accountability of these entities to the electorate provides some assurance of reasonability. Again, the court notes that Watertown is being charged the same rates as all Waterbury users and the other surrounding towns, which rates are below Waterbury's break-even point. Accordingly, although Watertown and its residents are not part of the Waterbury electorate, they have received the same consideration and result as the

The statutes also permissively provide that the relevant authority "may" set different rates for different classes of users and "may" consider various factors in establishing rates for classes of users. See §§ 7-239 (a) and 7-255.[32] However, the statutes are clear that classes of users are permissively allowed but not required and that the considerations provided are also permissive and not exclusive. Accordingly, the public authorities may, but need not, establish classes of users and may set the rates in their reasonable discretion, subject to public notice and hearing, as is required to fund the operations in the short and long term.

In this case, the rates established by the relevant Waterbury authorities were set based upon a study by independent experts, Woodard & Curran, who studied Waterbury's water and sewer operations, and recommended rates that would be sufficient to fund the short and long-term needs of the systems. The Waterbury authorities determined to set rates at levels below the rates recommended by Woodard & Curran so as to be more lenient with its users.[33] Further, the rates were set by the Waterbury authorities only after public notice and hearing as required in the

---

Waterbury electorate. Further, Watertown had the ability to participate in the public hearings and was forewarned of Waterbury's intent concerning pricing to Watertown.

[32] In § 7-239 (a), see the third and last sentences thereof. In § 7-255, see the seventh and eighth sentences thereof.

[33] Accordingly, the Waterbury water and sewer rates are set at levels which are not sufficient to fund the short and long-term needs of the systems. In this regard, Waterbury has chosen to supplement the rates charged in order to properly fund the systems. See the plaintiff's exhibit 2.

statutes.[34] Accordingly, Waterbury went through the statutorily required procedural safeguards for setting the rates. In addition, Waterbury arrived at water and sewer rates that were below those recommended by Waterbury's independent experts and below the rates necessary to fund the short and long-term financial needs of the Waterbury systems.

In view of the foregoing, the court finds that the rates set by Waterbury's Board of Aldermen for the supply of water and the rates set by Waterbury's Water Pollution Control Authority for sewer services are just and equitable and fair and reasonable, respectively, for the periods of time in question. The rates meet the foregoing standards because Waterbury adhered to the procedural safeguards and factually arrived at rates that are lower than required to fund the short and long-term needs of the systems.[35] Clearly, Waterbury could have set higher rates that would also have been reasonable. Further, Watertown has failed to prove or establish any other rates that could reasonably be implemented and has failed to undermine the reasonableness of the Waterbury rates.

---

[34] Watertown has argued that it did not participate in these hearings. However, the hearings and the proposed rates were published in advance in accordance with the statutes and the subsequent hearings were open to the public, including to representatives of Watertown. The fact that Watertown chose not to participate in the hearings does not undermine the compliant publication and hearing process that Waterbury ran. As noted, Waterbury gave Watertown substantial advance notice of its intentions concerning the rates to be applied between them.

[35] As discussed below, the court finds Waterbury's set rates to be just and equitable and fair and reasonable both in general and as applied to Watertown. It appears hard to argue that rates which are set below break-even levels, and at levels below nearly all comparable suppliers, are not reasonable.

D. CLASSIFICATION

Watertown argues that even if Waterbury's rates as applied to its own residents are reasonable, they are not reasonable as applied to Watertown. In this regard, Watertown argues that Watertown should be classified as a wholesale customer of Waterbury and charged lower rates than Waterbury residents because Watertown uses less services and infrastructure than Waterbury residents do. The court finds this argument misplaced for several reasons.

First, as noted above, the relevant statutes permissively allow classification[36] of customers, but do not require such classification to occur. In this regard, common practice within the water and sewer industries also allows for classification of customers but does not require it. See the plaintiff's exhibits 22 and 29 where the water manual touted by the defendant's experts clearly states that the application of uniform rates is a normal practice where "[p]otential cost-of service differentials among customer or service classifications are not recognized . . . ." and that uniform rates are "simple for water utilities to implement and for customers to understand." In this regard, the court notes that Waterbury charges uniform rates to residential, commercial and industrial users within Waterbury without regard to size, usage or particularity. The court also

[36] It is the classification of customers that would allow the utility to set different rates for each class based upon particular characteristics of each class, including consideration of finer distinctions of costs associated with each class. As noted, Waterbury chose not to designate classes of users but instead to employ uniform rates. The court notes that Waterbury's accounting was not sufficient to support or analyze finer distinctions of costs and Watertown knew that.

notes that Waterbury charges the uniform Waterbury resident rates to all of the surrounding towns that Waterbury services.[37] Accordingly, Waterbury has sought to establish a uniform rate for all customers.[38]

Second, Watertown argues that it uses less services than Waterbury residents. Watertown's argument in this regard is that it does not utilize Waterbury customer service and does not use the Waterbury distribution infrastructure.[39] These arguments are based upon partial truths. While it is true that Waterbury does not invoice and collect directly from Watertown's customers, Waterbury does invoice and collect from Watertown. Given this litigation, the court wonders which of the foregoing is the more formidable responsibility. The court further notes that Waterbury maintains three dedicated large scale metering stations to support the billing of Watertown. As for distribution infrastructure, while it is true that Watertown maintains its own distribution infrastructure, it is also true that Watertown uses Waterbury's distribution infrastructure. On the water side, Watertown receives water through Waterbury delivery pipes

---

[37] The one exception to this is that Wolcott's sewer rates are still subject to an ongoing long-term contract.

[38] This fact was confirmed by the testimony of Waterbury's Mayor O'Leary.

[39] Watertown's arguments in this regard are dependent upon Watertown's unilateral artificial distinction between distribution pipes and transport pipes. The court notes that Watertown never clearly stated precisely where its proposed distinction line is drawn. The court found Watertown's proposed distinction to be unfounded and misleading. Further, Watertown has failed to reliably or convincingly prove the specific value of the services that Watertown seeks to avoid.

and through Waterbury metering stations. On the sewer side, Watertown deposits its sewer flow, through a Waterbury metering station into the Waterbury sewer pipe infrastructure for transport to the Waterbury sewer plant. Furthermore, Waterbury water and sewer services are only available to Watertown if the entirety of the Waterbury systems are operational. Accordingly, Watertown depends upon the entirety of the Waterbury systems. Lastly, since classification of customers is permitted but not required, there is no legal basis upon which one can unilaterally demand lower rates merely because one does not utilize all of the services offered.

Third, Watertown was clearly forewarned in 2013 that when the 2013 agreements expired in 2018, Watertown would be treated uniformly with Waterbury's other customers and charged the rates set by the relevant Waterbury public authorities and charged to Waterbury residents. Accordingly, Watertown was forewarned five years in advance that Waterbury would not separately classify Watertown.

Lastly, allowing Watertown to claim special status and reduced rates would either promote similar requests from other potential classes of users or impair the fairness of the Waterbury rate system. In this regard, the court notes that Watertown is not the only user of Waterbury water and sewer services that can claim to use less infrastructure or services than other customers. The court notes that other towns, large industrial users, commercial users and large residential complexes are all charged by Waterbury the same rates as each other and the same rates charged to each individual residence. Large industrial, commercial and residential

complexes maintain their own water and sewer "distribution system" within their owned property and complexes. Should they be charged less because of the foregoing or because they use very large volumes? Other surrounding towns pay the standard rates even though they deploy their own infrastructure and customer service. Should they pay less than the standard rates? On the other end of the scale, should the residence located next door to the sewer treatment facility pay less than residences located further away from the facility based upon pipe usage? Instead of engaging in this endless level of gradation,[40] Waterbury has chosen to impose uniform rates and the defendant has pointed to no legal compulsion that prevents Waterbury's choice.

In view of all of the foregoing, it was reasonable for Waterbury to refuse Watertown's proposed classification and instead seek to impose uniform rates. While classification is permitted, it is not required. Waterbury's accounting is not sufficient to support classification, and, as a result, expanding accounting to support classifications would only increase Waterbury's costs. With one single exception,[41] Waterbury has applied its uniform rates to all of its

---

[40] The court notes that Waterbury's current accounting would not support this level of gradation, and in fact does not support the level of gradation sought by Watertown, and Watertown knew this.

[41] The single exception was Wolcott sewer rates, which were still governed by an ongoing contract.

customers, including other municipalities. There is no compelling reason to exempt Watertown from this uniform system.

E. WATERBURY ORDINANCES

Section 51.90 of the Waterbury City Ordinances provides that "out of city users" of the Waterbury sewer system will pay a sewer user charge, sewer user surcharge and capital recovery charge based upon an executed agreement between the city and the out of city user.[42] See the defendant's exhibit RR. In this case, it is clear that up until July 1, 2018, Waterbury and Watertown operated through executed agreements governing their relationship as it related to sewer use by Watertown. It is also clear and uncontested that the last contract between the parties concerning sewer use expired on June 30, 2018 and had no continuing relevant contractual effect thereafter. The court has found that prior to the expiration of the foregoing agreement, Waterbury had negotiated in good faith with Watertown concerning a new or extended agreement but no such new agreement was achieved primarily because the parties could not agree on price. The court has also accepted the testimony of Mayor O'Leary that Waterbury did not cut off water and sewer service to Watertown after June 30, 2018, because he understood that doing so would give rise to catastrophic problems for the Watertown residents and he did not think that was an

[42] The court notes that no Waterbury City Ordinance provides similar requirements concerning contracts on the water supply side.

appropriate way in which to treat Waterbury's neighbors. At this point, Waterbury was left with the choice of giving rise to catastrophic problems for Watertown residents or capitulating to Watertown's price demands that Waterbury firmly believed were unfair to Waterbury. Accordingly, after June 30, 2018, despite Waterbury's good faith efforts to achieve an agreement and despite no agreement being in place, Waterbury continued to supply water and sewer services and brought this litigation to resolve the situation. In view of the foregoing, the Watertown cannot utilize the foregoing city ordinance to prevent Waterbury from collecting for water and sewer services knowingly utilized by Watertown. The internal authorization to continue to supply Watertown is an internal matter for Waterbury, not a shield to be utilized by Watertown to avoid paying the bills. Lastly, in this regard, the court finds that the equities lie heavily in favor of Waterbury in that Waterbury continued the supply of water and sewer services despite the lack of a contract and in the face of Watertown's refusal to pay.

F. SPECIAL DEFENSES

Watertown's first special defense asserts that §§ 7-239 and 7-255/258 do not apply to the provision of water and sewer services to Watertown by Waterbury and the collection of amounts due therefore. In view of the court's statutory interpretation and findings of fact, the court finds that the first special defense is unproven. The second special defense asserts estoppel. In view of the court's findings of fact, including the findings of good faith negotiations by Waterbury, the

reasonableness of the rates, the fact that no relevant contractual provisions were in place, and the advance notice of Waterbury's pricing intent provided as far back as 2013, the court finds that the second special defense is unproven. [43] The third special defense asserts non-compliance with pre-suit mediation provisions contained in the 2013 agreements. The court finds this special defense unproven because the referenced agreements had expired, and the asserted mediation provisions were no longer enforceable, since this litigation does not assert claims under the referenced agreements. The fourth special defense asserts that because Watertown maintains its own infrastructure, the rates applied by Waterbury are unreasonable. The court found this special defense unproven. The fifth special defense asserts that the Waterbury rates were not fair and reasonable or just and equitable. The court has found otherwise and therefore finds this special defense unproven. The sixth special defense asserts that the Waterbury rates were set in an arbitrary and capricious manner. The court has found that Waterbury set its rates using the statutorily prescribed procedure and based upon reasonable financial information provided by its consultants. Accordingly, the court finds that the sixth special defense is unproven. The seventh special defense asserts that the statutorily required publication of the Waterbury rate hearings was not made. The court finds otherwise and finds the seventh special defense unproven. The eighth special defense asserts that Watertown bore some capital expenses associated with the

[43] In view of the court's evidentiary findings, Watertown's estoppel arguments are deeply misplaced.

Waterbury systems through payment of certain bonds. Watertown's payment of the referenced bonds has ended, and in any case, Watertown's payment of certain capital costs is not an effective special defense of the claims, particularly in view of the court's findings. In summary, the court has found the asserted special defenses unproven.

G. CONCLUSION

Waterbury clearly has the statutory authority to set water and sewer rates and did so properly utilizing the specified procedures. Waterbury provided substantial advance notice of its intent to charge Watertown the same rates that Waterbury charges all of its residents and all other towns with which it does business. Although Waterbury was authorized to enter into contracts with Watertown for water and sewer supply, as of June of 2018, no contract remained despite the parties' efforts. Watertown's position that Waterbury can only charge Watertown for water and sewer pursuant to an agreement of the parties, places Waterbury in an untenable position. Since Watertown can refuse, and has unilaterally refused, to agree on price, Waterbury would be forced to either cease the supply of water and sewer services to Watertown, thereby allowing catastrophic issues to unfold for Watertown residents, or capitulate to Watertown's price

demands causing Waterbury to supply at rates that are shocking below Waterbury's cost. [44] Waterbury instead chose to continue to supply at the very same rates that it charges all of its residents, big and small, and all of the other surrounding towns, thereby placing Watertown and its residents on the same footing as all other Waterbury customers. The foregoing rates were set by the appropriate political bodies using the appropriate statutory procedures and safeguards. This court has concluded that the course that Waterbury has chosen was authorized and was the most appropriate course of action.

JUDGMENT:

The court enters judgment for the plaintiff on both counts in the aggregate amount of $18,800,445.37.

John L. Cordani, Judge

Copy to RJD Sent 7/28/23
JDNO Notice Sent 7/28/23
Order Processed 7/28/23
TAC

[44] Note that even the rates that Waterbury is currently charging are below Waterbury's cost of service.

DOCKET NO.: UWY-CV19-6045213-S	:	SUPERIOR COURT
	:	
CITY OF WATERBURY	:	J.D. OF WATERBURY
	:	AT WATERBURY
VS.	:	
	:	
TOWN OF WATERTOWN	:	JULY 24, 2023

WATERTOWN'S POST-TRIAL MEMORANDUM

DEFENDANT TOWN OF WATERTOWN

By: /s/ David P. Friedman

David P. Friedman - #308724
dfriedman@murthalaw.com
Lorey Rives Leddy - #417205
lleddy@murthalaw.com
Daniel J. Sorger - #444196
dsorger@murthalaw.com

MURTHA CULLINA, LLP
107 Elm Street
Stamford, CT 06902
Telephone: 203.653.5400
Facsimile: 203.653.5444
Juris No.: 424154
Its Attorneys

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

This case is about whether the City of Waterbury, a Connecticut municipality, exceeded its statutory authority by unilaterally setting and billing rates for water and sewer services it supplies to Watertown, an adjacent municipality. Because Waterbury's authority to act has been challenged, the Court must first address this issue before proceeding to the merits of Waterbury's claim. Waterbury alleges in its Amended Complaint that it set water and sewer rates pursuant to statute and then charged Watertown accordingly. But a plain reading of the applicable statutes and Special Acts of the General Assembly, and of Waterbury's own Charter and Ordinances, makes clear Waterbury is authorized only to enter into contracts with adjacent towns for such services, as it has done historically for decades, on terms both contracting parties deem fair and reasonable (sewer) and just and equitable (water), and thus exceeded its authority here. As such, Waterbury cannot prevail, in the first instance, in proving it lawfully charged Watertown the rates it claims to have unilaterally set by statute and, accordingly, judgment must enter in favor of Watertown on both counts in the Amended Complaint.

This case is also about whether Waterbury lacks statutory standing to bring a collection action against Watertown for allegedly unpaid charges. Apart from Waterbury's lack of statutory power to unilaterally set and impose those charges on Watertown, as set forth above, Waterbury also lacks statutory authority to sue Watertown under the very statutes Waterbury cites as the basis for this action. A plain reading of these statutes makes clear that neither of them grants Waterbury the express power to sue an adjacent municipality; without the express power to do so, Waterbury cannot meet its burden of proving it has the authority to bring this action in the first instance. Judgment must enter in favor of Watertown on both Counts of the Amended Complaint.

Alternatively, in the event the Court interprets the applicable Special Acts, the Charter and the Ordinances as expressly granting Waterbury the authority to act as it alleges in the Amended Complaint, then because those rates are not cost-based and do not appropriately allocate costs to Watertown as a wholesale user of those services, the rates set by Waterbury are not fair and reasonable

(sewer) or just and equitable (water), as mandated by Conn. Gen. Stat. §§ 7-239 and 7-255. More particularly, those rates would impose millions in premiums on Watertown for Waterbury resident services that Watertown does not receive, unlawfully subsidizing rates paid by Waterbury retail customers. Judgment must therefore enter in favor of Watertown.

Moreover, based on Waterbury's failure to provide notice in 2015 to Watertown of its intent to shift from the decades-long history of contractual relations for such services, thereby inducing Watertown not to participate in the 2015 rate setting proceedings, Waterbury must be equitably estopped from attempting to apply those rates to Watertown now.

QUESTIONS PRESENTED TO THE TRIAL COURT

The following factual and legal questions have been presented to the Court:

- As a matter of law, did Waterbury exceed its statutory authority by unilaterally imposing water and sewer rates on Watertown for wholesale inter-municipal water and sewer services, as Waterbury alleges it did in the Amended Complaint? Or, is Waterbury statutorily constrained to selling water and sewer services to Watertown only pursuant to contract?

- As a matter of law, does Waterbury have statutory standing to bring a collection action against Watertown under Conn. Gen. Stat. §§ 7-239, 7-255 and 7-258, where these statutes do not expressly authorize Waterbury to sue an adjacent town for fees for water and sewer services?

- If the Court determines Waterbury did not exceed its statutory authority by unilaterally setting and charging rates for water and sewer services chargeable to Watertown, were the rates set by Waterbury reasonable?

- If the Court determines Waterbury did not exceed its statutory authority, is Waterbury nevertheless estopped from applying water and sewer rates to Watertown that Waterbury set in 2015 without any involvement of Watertown, where Waterbury induced Watertown not to participate in the rate setting process by negotiating with Watertown, through 2018, to set new rates by contract without suggesting Waterbury would impose rates unilaterally if no agreement was reached?

ARGUMENT

I. Waterbury Exceeded the Powers Expressly Conferred by the General Assembly

Watertown purchases water in bulk from the adjacent City of Waterbury, and Watertown also pays Waterbury for the bulk treatment of Watertown's sewage. In the Amended Complaint,

Waterbury alleges it established water and sewer rates pursuant to its authority in Conn. Gen. Stat. §§ 7-239, 7-255 and 7-258 (Am. Comp., First Count, ¶ 4; Second Count, ¶ 4), and that, after the expiration of the 2013 Sewer and Water Agreements between the parties, Waterbury was authorized to charge Watertown those rates (Id., First Count, ¶¶ 10, 13; Second Count, ¶¶ 8-10). Waterbury claims Watertown has failed to pay the new rates imposed in 2018 for water and sewer services.

However, Waterbury does not have the requisite statutory authority to unilaterally set sewer and water rates chargeable to an adjacent municipality. As the Supreme Court recently reiterated, under Connecticut law, a municipality is "a creation of the state [and] has no inherent powers of its own ... A municipality has only those powers that have been *expressly granted to it by the state* or that are necessary for it to discharge its duties and to carry out its objects and purposes." *Town of Glastonbury v. Metropolitan District Commission*, 328 Conn. 326, 338 (2018) (emphasis added) (quoting *Wright v. Woodridge Lake Sewer District*, 218 Conn. 144, 148 (1991)); *see also Pepin v. City of Danbury*, 171 Conn. 74, 83 (1976); *City Council v. Hall,* 180 Conn. 243, 248 (1980) (municipalities "may only exercise those powers expressly granted by the legislature").

Accordingly, "[i]n order to determine what powers were granted to [a municipality] by the state, it is appropriate to examine the legislation that undergirded the [municipality's] claimed authority." *Town of Glastonbury*, 328 Conn. at 339. "The rules that determine whether a power has been delegated to a municipality are also well established." *Simons v. Canty,* 195 Conn. 524, 530 (1985). "The legislature has been very specific in enumerating those powers it grants to municipalities." *Buonocore v. Branford,* 192 Conn. 399, 404 (1984). The determination of the scope of powers delegated to a municipality is a matter of law for the Court. *Wellswood Columbia, LLC v. Town of Hebron*, 295 Conn. 802, 816 (2010).

Significantly, "[a]n enumeration of powers in a statute is uniformly held *to forbid the things not enumerated*." *State ex rel. Barlow v. Kaminsky,* 144 Conn. 612, 620 (1957) (emphasis added); *see also State ex rel. Barnard v. Ambrogio,* 162 Conn. 491, 498 (1972). "We do not search for a statutory

prohibition against [what is sought]; rather, we must search for statutory authority for the enactment." *Avonside, Inc. v. Avon Zoning & Planning Commission*, 153 Conn. 232, 236 (1965); *Buonocore*, 192 Conn. at 402. "Delegation of authority to municipalities is therefore *narrowly construed*." *Simons,* 195 Conn. at 530 (emphasis added), citing *Gregory v. Bridgeport,* 41 Conn. 76, 86 (1874); *see also Kuchinsky v. City of Ansonia*, 1991 WL 240148, at *2 (Conn. Super. Ct. Nov. 7, 1991) ("the State has the authority to grant powers to its municipalities and *such powers must be specifically enumerated and narrowly construed*.") (emphasis added). Accordingly, the authority to act must be affirmatively granted by the State before Waterbury can do as it claims; if the power is not expressly granted, it cannot be presumed or inferred. *Buonocore*, 192 Conn. at 402.

Whether a municipality has the statutory authority to act must be addressed by the Court whenever or however raised. *Highgate Condominium Ass'n v. Watertown Fire Dist.*, 210 Conn. 6, 15-17 (1989). Where, as here, Watertown asserts that Waterbury has acted beyond the scope of the authority granted to it by the General Assembly, the Court must first examine the alleged unauthorized acts and declare them legal or not.[1] Id. Therefore, before the Court can consider any other issues in this case, the Court must first determine whether Waterbury is authorized by the State of Connecticut, under any statute or Special Act, to unilaterally set water and sewer rates charged to Watertown as Waterbury claims to have been in the Amended Complaint. Id.

As set forth herein, because Waterbury's statutory authority is, in fact, limited to negotiating and entering into contracts with adjacent towns (including Watertown) for water and sewer services, Waterbury cannot meet its burden of demonstrating it acted within the scope of its authority by unilaterally setting and imposing those rates. Accordingly, as a matter of law, judgment must enter in favor of Watertown on both counts in the Amended Complaint.

---

[1] To the extent Waterbury claims Watertown has not raised Waterbury's lack of statutory authority as a special defense, this argument is inapposite. Under the Supreme Court's holding in *Highgate*, the Court must intervene at any time a challenge is made to a municipality's authority to act. 210 Conn. at 15-17. Moreover, in Watertown's First Special Defense (Dkt. No. 124.00), Watertown asserts that the rates charged for water and sewer services must be contractually established and that the statutory rate scheme cited by Waterbury as authorizing unilateral rate setting is not applicable.

A. Waterbury Lacks the Power to Unilaterally Set Sewer Rates for Watertown

Waterbury claims in the Amended Complaint that, when it unilaterally set rates for sewer services provided to Watertown, it acted pursuant to the authority granted in Conn. Gen. Stat. §§ 7-255 and 7-258. Am. Comp. Second Count, ¶ 4. As set forth above, as a matter of law, Waterbury can only act within the express authority granted to it by the General Assembly. While statutes exist authorizing Waterbury to enter *into contracts* with adjacent municipalities for the provision of sewer services, no such legislation exists – including Conn. Gen. Stat. §§ 7-255 and 7-258 – permitting Waterbury to unilaterally set rates chargeable to Watertown for those sewer services. Accordingly, Waterbury has not proven – and cannot prove – that it has the authority to impose on Watertown unilaterally established sewer rates.

1. Applicable Statutory and Ordinance Authority

In 1949, the General Assembly enacted a series of statutes regarding sewer and wastewater management. Waterbury contends that Conn. Gen. Stat. §§ 7-255 and 7-258 apply and provide Waterbury with the requisite authority to unilaterally set and charge sewer rates to Watertown. However, the only applicable statute providing Waterbury with the authority to provide sewer services to an adjoining municipality is Conn. Gen. Stat. § 7-273. Under this statute, the legislature granted Waterbury the express authority *to contract* with Watertown, as an adjacent town, for connection with and use of Waterbury's sewerage system. More particularly, the statute states, "[a]ny town, city, borough or fire or sewer district, maintaining a sewerage system, *may contract with any adjoining town* or property owner therein for connection with and the use of such sewerage system." Conn. Gen. Stat. § 7-273 (emphasis added); *see also* Dkt. 127.00 at 2-3, n.5.[2]

[2] Conn. Gen. Stat. § 7-234, also enacted in 1949, expressly provides further, in relevant part, that "[a]ny municipality by its water pollution control authority may acquire, construct and operate a sewerage system or systems, ... [and] may enter into and fulfill contracts, including contracts for a term of years, with any person or any other municipality or municipalities to provide or obtain sewerage system service for any sewage ..." Conn. Gen. Stat. § 7-234(a). This statute reaffirms the limited authority granted in Section 7-273 to municipalities providing sewer services to other municipalities: such services may only be provided by contract on terms negotiated and entered into by the parties.

On September 20, 1999, Waterbury enacted several sewerage Ordinances relevant to this case, specifically, Sections 51.86, 51.89 and 51.90. *See* ***Exh. RR***.[3] The scheme set forth in these Ordinances actually comports with the express statutory authority provided to municipalities in 1949 in Conn. Gen. Stat. §§ 7-255 and 7-273, by specifically distinguishing between "city users" and "out of city users" of Waterbury's sewer system. More particularly, Section 51.86 of the Ordinances defines the only two types of users of Waterbury's sewerage system. Id. "City users" are defined specifically as "[a]ll owners of record of properties *within the city* connected to the city's sewerage system, including without limitation municipally-owned and other tax-exempt properties." Id. (emphasis added). "Out of city users" are, by contrast, defined as "[*t*]*owns*, cities or districts *located outside of the city* connected to the city's sewerage system, but shall not include individual dwellings, establishments or facilities." Id. (emphasis added). No owners of record of properties are identified in the Ordinances as "out of city users;" indeed, Section 51.86 specifically excludes individual dwellings, establishments or facilities from the definition of an out of city user. Id.

Section 51.89 of the Ordinances sets forth the user charge system for "city users" and states specifically that the rates charged to "city users" "shall be established and revised by the [Waterbury Pollution Control Authority] *in accordance with Conn. Gen. Stat. § 7-255*," the statute under which Waterbury purports to have set the sewer rates chargeable to Watertown. ***Exh. RR*** (emphasis added). Under Section 51.90 of the Ordinances, however, Waterbury is expressly and specifically restricted in how it sets rates and charges for "out of city users," including Watertown, for sewer charges: such charges applied to out of city users *shall* be "based upon an executed written agreement between the city and the out of city user, which establishes fair and reasonable charges for the use of the city's sewerage system." Id.

When enacting these Ordinances, Waterbury must have known what it was doing. It created

[3] While the relevant ordinances were admitted as full exhibits at trial, "the court shall take judicial notice of: ... (3) ordinances of any town, city or borough of this state, ..." Conn. Gen. Stat. § 52-163.

two separate categories of users of the sewer system to account for the differences in authority granted to Waterbury by statute to establish rates and charges for those services. Property owners within Waterbury, or "city users," would be governed by Conn. Gen. Stat. § 7-255 and Ordinance Section 51.89, and "out of city" towns, cities or districts, like Watertown, would be governed by Conn. Gen. Stat. § 7-273 and Ordinance Section 51.90, which both require that the two municipalities enter into contracts for sewer services.

"In determining whether the municipality had the authority to adopt [an ordinance], then, 'we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment.'" *Buonocore*, 192 at 401-402 (quoting *Avonside*, 153 Conn. at 236). In this case, Waterbury's Ordinance regarding rate charges for sewer services provided to Watertown flows directly from the statutory grant of authority in Conn. Gen. Stat. § 7-273, pursuant to which Waterbury is authorized *to contract* with "any adjoining town or property owner therein" to utilize Waterbury's sewerage system. By statute and by its own Ordinances, as a matter of law, Waterbury is authorized to provide sewer services to Watertown, but only pursuant to contracts entered into between them. Contrary to Waterbury's allegation in the Second Count of the Amended Complaint, no other state statute, Charter provision or Ordinance expressly provides Waterbury with authority to unilaterally set rates charged to an adjoining municipality.

2. Sewer Contracts Between Waterbury and Watertown

Waterbury and Watertown began their 70-year history of contractual relations for sewer services shortly after the General Assembly enacted Conn. Gen. Stat. §§ 7-234 and 7-273 in 1949, in the first agreement dated August 25, 1951 (the "1951 Sewer Disposal Agreement").[4] Pursuant to this agreement, Watertown's Oakville Fire District could construct and maintain a sanitary sewer line to

[4] The 1951 Sewer Disposal Agreement was entered into between Waterbury and the Oakville Fire District, part of Watertown which was then merged into the Town of Watertown. Pilicy, 5/3/23 Tr., 163:4-5. For the Court's convenience, excerpts from transcripts cited or quoted herein are submitted as ***Exhibits 3 to 6*** in Watertown's Appendix.

connect into Waterbury's sewerage system. *See* ***Exh. LL***. Under Section 7 of this contract, the parties agreed to the rates payable to Waterbury for the sewer services included in the contract. For the first two years, the parties agreed to a rate per million gallons, and thereafter for the duration of the contract, the rate structure shifted to a cost-based rate. Id., at Sect. 7. "[T]he first paragraph [of section 7] is a specific rate per million gallons until such time as the sewer treatment plant was completed. And thereafter a rate of $45 per million gallons and then it went into a cost base formula at five year intervals... This was a fixed rate for the first year or two and then – [] beginning in 1955 it became a strict cost based, as set forth therein." Pilicy, 5/3/23 Tr., 180:4-10; 12-14.

The 1951 Sewer Disposal Agreement lasted until 1988, when the parties negotiated and entered into a new sewer services agreement dated June 29, 1988 (the "1988 Sewer Agreement"). *See* ***Exh. II***. Consistent with the 1951 Sewer Disposal Agreement, pursuant to the 1988 Sewer Agreement, Waterbury would provide sewer services to Watertown and, in exchange, Watertown agreed to pay Waterbury an annual sum based on two components: (i) a percentage of all capital costs incurred by Waterbury in connection with expansion or major renovations to the system, plus (ii) a cost-based rate based on Waterbury's operating costs charged on a per million gallons basis. Id., at Section 2. *See also* Pilicy, 5/3/23 Tr., 181:18-182:6 (the cost-based component is based on "the total cost of operating the system" and "Watertown's contribution to that system").

In 2001, in connection with a major upgrade to the Waterbury sewage treatment plant, Waterbury and Watertown entered into the "Waterbury/Watertown Intermunicipal Agreement Regarding Sewage Treatment Plant Upgrade Project CWF-201," dated January 31, 2001 (the "2001 Agreement"). *See* ***Exh. NN***. By this agreement, the parties renegotiated only the capital costs provision of the 1988 Sewer Agreement to account for the upgrade; Watertown agreed to set up and fund an account to defray its proportionate share of the capital costs of the upgrade based on a fixed average daily flow capacity assigned to Watertown, which totaled approximately $8 million. Id., at Article B (a). The cost-based charges payable by Watertown to offset its share of Waterbury's

operating costs remained the same. Id.; *see also* Pilicy, 5/3/23 Tr., 183:16-184:4.

The 1988 Agreement was then superseded by the "2013 Waterbury/Watertown Intermunicipal Sewer Agreement," dated June 27, 2013 (the "2013 Sewer Agreement"). *See* ***Exh. F.*** Pursuant to Article E of the 2013 Sewer Agreement, the sharing of capital costs for the Sewage Treatment Plant, which was the subject of the 2001 Agreement, was reaffirmed, and the parties further agreed to share future capital costs for new construction and upgrades pursuant to capital cost methodology to calculate Watertown's proportionate share of such costs. Id. In Article F, the parties agreed that Watertown would also pay cost-based charges to Waterbury for the costs of operating and maintaining that portion of the system utilized by Watertown. Id. Again, as with the prior sewer contracts, Waterbury agreed to calculate Watertown's cost-based payment on a rate set by per 1,000 gallons of sewage received from Watertown by Waterbury. Id. The 2013 Sewer Agreement was for a five-year term and remained in place until its termination on June 30, 2018. Id. At no time during the negotiation of the 2013 Sewer Agreement did any party representing Waterbury's interests state or suggest that, in the alternative to contracting, Waterbury could simply set and charge rates for sewer services to impose on Watertown under Conn. Gen. Stat. § 7-255. *See* Jessell, 5/5/23 Tr., 34:9-16.

In addition to this nearly 70-year history of Waterbury and Watertown negotiating and entering into contracts for the provision of sewer services, the rates for which included capital costs and a cost-based assessment, Waterbury also historically had entered into contracts to provide sewer services to other adjacent municipalities, including Wolcott, Prospect, Cheshire and Naugatuck, *see* LeBlanc, 5/3/23 Tr., 56:9-18; 57:5-8, further reflecting its understanding that Waterbury could provide such services to neighboring municipalities, but only pursuant to contract as required by Conn. Gen .Stat. § 7-273 and the Waterbury Ordinances.

During negotiation of a new agreement, Waterbury demanded that the new Watertown rates for sewer services be equal to, or 100% of, the rates set for city users of the sewer system. LeBlanc, 5/3/23 Tr., 115:10-16. Watertown did not agree to this increase which would have more than tripled

the rates for sewer services in a single year and obligated Watertown to pay for portions of the sewer system that Watertown and its residents did not utilize or benefit from. *See infra,* Section III.B. When the parties' efforts to finalize a new contract were unsuccessful, and with no contract in place as required by law, Watertown continued to pay the charges based on the terms of the 2013 Sewer Agreement. Jessell, 5/5/23 Tr., 33:14-25. However, with no new contract, Waterbury unilaterally decided to charge Watertown the rates it was charging city users for sewer services, tripling rates in a single year without any agreement by Watertown. *See* LeBlanc, 5/3/23 Tr., 29:6-12; 38:25-39:8.

3. No Statutory Authority in Conn. Gen. Stat. §§ 7-255 or 7-258

In the Second Count of the Amended Complaint, Waterbury claims it set sewer rates for Watertown pursuant to Conn. Gen. Stat. § 7-255, and seeks to collect allegedly unpaid charges under Conn. Gen. Stat. § 7-258. Based on well-established principles of statutory construction, however, it is clear that neither of these statutes grants Waterbury the authority to unilaterally set sewer rates chargeable to an adjoining municipality and, accordingly, that Waterbury lacked the power to set such rates in the first instance. To the contrary, as set forth above, Waterbury's authority to provide and charge Watertown for sewer services derives only from Conn. Gen. Stat. § 7-273 and Waterbury's own Ordinances, which specifically restrict Waterbury to entering into contracts on just and reasonable terms with Watertown. Any other efforts to set sewer charges are plainly ultra vires.

The Court's task in interpreting the meaning of Sections 7-255 and 7-258 starts with application of the plain meaning rule: "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." Conn. Gen. Stat. § 1-2z; *see also Kuchta v. Arisian*, 329 Conn. 530, 534 (2018). "When construing a statute, '[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, we seek to determine, in a reasoned manner, the meaning

of the statutory language as applied to the facts of [the] case, *including the question of whether the language actually does apply*.'" *Kasica v. Town of Columbia*, 309 Conn. 85, 93 (2013) (emphasis added) (quoting *Ugrin v. Cheshire*, 307 Conn. 364, 379 (2012)).

In this case, Section 7-255, on which Waterbury relies for its authority to unilaterally set rates and collect charges from Watertown, states that a water pollution control authority can set "fair and reasonable charges for connection with and for the use of a sewerage system." Conn. Gen. Stat. § 7-255(a). The rest of the statute makes clear, however, that this provision is intended to apply only to owners of property within Waterbury. Nothing in the language of this statute indicates that Waterbury is authorized to unilaterally set and impose sewer rates charged to an adjacent municipality.

Likewise, under Section 7-258, any unpaid charges "shall constitute *a lien upon the real estate* against which such charge was levied from the date it became delinquent." Conn. Gen. Stat. § 7-258(a) (emphasis added). Section 7-258 also permits Waterbury to foreclose on such liens in the same manner as for delinquent taxes. Id. This statute clearly applies only to residents and property owners within Waterbury since Waterbury cannot either place a lien on Watertown or foreclose on any such lien. In short, logic dictates that neither of these statutes applies to the relationship between Waterbury and Watertown, an adjacent municipality, for the setting of rates for sewer service.

This is particularly true where, as here, the General Assembly enacted – in 1949 at the same time as Sections 7-255 and 7-258 – the related statute in Conn. Gen. Stat. § 7-273, which expressly authorizes Waterbury to negotiate and enter into contracts with adjacent towns for sewer services. Under the plain meaning rule, in determining whether the language of the statutes relied on by Waterbury provides the express authority to unilaterally set sewer rates, the Court must consider "the text of the statute itself and *its relationship to other statutes*." Conn. Gen. Stat. § 1-2z (emphasis added). It is well settled that:

> the legislature is always presumed to have created a harmonious and consistent body of law.... [T]his tenet of statutory construction ... requires [this Court] to read statutes together when they relate to the same subject matter.... Accordingly, [i]n determining

> the meaning of a statute ... we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction.

Felician Sisters of St. Francis of Connecticut, Inc. v. Historic District Comm'n of Town of Enfield, 284 Conn. 838, 850 (2008) (quoting *Renaissance Management Co. v. Connecticut Housing Finance Authority*, 281 Conn. 227, 238-39 (2007)). Because Section 7-273 addresses precisely the relationship between two municipalities when one is providing sewer services to the other, requiring the use of contracts for such a purpose, it would be nonsensical to construe Section 7-255 – enacted at the same time – as intended by the General Assembly to deviate from the clear mandate of using contracts between municipalities for sewer services and to allow one municipality, alternatively, to unilaterally set sewer rates to charge the adjacent municipality.

Moreover, in construing these statutory provisions to determine whether Waterbury has the authority, as it claims, to unilaterally set sewer rates chargeable to Watertown, the Court must follow the tenet that it is "not permitted to supply statutory language that the legislature may have chosen to omit." *Dept. of Public Safety v. State Board of Labor Relations*, 296 Conn. 594, 605 (2010). "It is the duty of the court to interpret statutes as they are written ... and not by construction read into statutes provisions which are not clearly stated." *Luce v. United Technologies Corp.*, 247 Conn. 126, 133 (1998). Another applicable rule of statutory construction applies: "expressio unius est exclusio alterius," or that a statute that references certain matters excludes all other matters that might have been included, requires the Court to presume the legislature did not intend to include matters not specifically included. *See State ex rel. Barlow*, 144 Conn. at 620; *Stratford Police Department v. Board of Firearms Permit Examiners,* 343 Conn. 62, 73-74 (2022); *Mayer v. Historic District Commission of Town of Groton*, 325 Conn. 765, 776 (2017).

Applied here, if the General Assembly chose not to include language in Sections 7-255 and 7-258 to specifically make these provisions applicable to adjacent municipalities like Watertown, the assumption is that the legislature did not intend to include municipalities in these statutes. Because

the General Assembly simultaneously enacted Section 7-273, the only reasonable interpretation of the statutory scheme is that the legislature intended to treat the two types of users differently, mandating that Waterbury negotiate and enter into contracts for sewer services with Watertown. Waterbury plainly understood the statutory differences between sewer users within city limits and adjacent municipalities which also utilize Waterbury's sewerage system. In its Ordinances, as set forth above, Waterbury incorporated Section 7-255 by reference into the rate setting rules for "city users" but clearly restricted its powers, in setting rates and charges for "out of city users," to negotiating and entering into contracts to provide such services. *See* ***Exh. RR***, §§ 51.86, 51.89, 51.90.

Accordingly, because neither Section 7-255 nor 7-258 provide Waterbury with the requisite statutory authority to unilaterally set and charge sewer rates to Watertown, as an adjacent municipality, Waterbury cannot prevail in its Second Count of the Amended Complaint. As such, judgment must enter in favor of Watertown.

B. Waterbury Lacks the Power to Unilaterally Impose Water Rates on Watertown

Waterbury also contends in the First Count of the Amended Complaint that, under Conn. Gen. Stat. § 7-239, Waterbury is authorized to unilaterally set water rates chargeable to Watertown. Am. Comp., First Count, ¶ 4. However, as with Waterbury's claim regarding sewer charges, Waterbury cannot prove that Section 7-239 or any other legislation, or its Charter or Ordinances, expressly authorize Waterbury to set water rates for providing water to an adjacent municipality. To the contrary, for over a century, the only power the General Assembly has ever granted to Waterbury with respect to selling water to adjacent municipalities is the power to negotiate and enter into contracts with terms which must be just and equitable to both contracting parties. Without the statutory authority to act, Waterbury cannot unilaterally set water rates to charge Watertown.

1. Applicable Statutory Authority

In 1893, the General Assembly enacted Special Act No. 252, which authorized Waterbury to secure water from sources across Litchfield County in order to meet rising demand within Waterbury

by taking water from "any and all brooks, rivers, springs, ponds, lakes, and reservoirs within the limits of the county of New Haven or the county of Litchfield, such supply of water as the necessities or convenience of the inhabitants of said city may require." ***Exh. R,*** Special Act No. 252, Sec. 1 (1893); *see also* Pilicy, 5/3/23 Tr., 156:5-11. Nothing in Special Act No. 252 provided Waterbury with the power to set rates for the sale of water to neighboring municipalities.

In June 1921, the General Assembly enacted Special Act 391, which expressly authorized Waterbury to supply water to Watertown and other adjacent towns. Special Act 391, entitled "An Act Amending the Charter of the City of Waterbury Concerning the City's Water Supply System," states, in relevant part:

> The city of Waterbury is authorized and empowered, by its mayor and a majority of its alderman, *to contract to supply water* for domestic purposes and fire protection to any municipality, borough or fire district, through which, or contiguous to which the water supply mains of said city are or shall be laid, or in which its reservoir or reservoirs are located, or may contract to supply water for domestic purposes and fire protection to any private company, chartered for the purpose of supplying water to such municipality, borough or fire district *on such terms and rates as shall be just and equitable to the contracting parties*.

Special Act 391 (***Exh. L***) (emphasis added). This exact language was thereafter expressly incorporated into the Waterbury Charter in Section 11A-7.[5]

Subsequently in 1931, pursuant to Special Act 499, § 55[6], the General Assembly made minor grammatical revisions to the authority granted to Waterbury, but the authorization to enter into contracts with adjacent towns for the supply of water remained essentially the same:

> The city of Waterbury is authorized and empowered, by its mayor and a majority of its alderman, to contract to supply water for domestic purposes and fire protection to any municipality, borough or fire district, through which, or contiguous to which, the water supply mains of said city are or shall be laid, or in which its reservoir or reservoirs are located, or may contract to supply water for domestic purposes and fire protection to any private company, chartered for the purpose of supplying water to

[5] The Court is authorized to take judicial notice of Waterbury's Charter. *See State v. Lindsay*, 109 Conn. 239, 146 A. 290, 291 (1929); Conn. Gen. Stat. § 52-163. For the Court's convenience, a true and correct copy of the relevant portions of the Charter are appended hereto as ***Exhibit 1***.

[6] Although Special Act 499, § 55, was not offered or admitted into evidence at trial as a full exhibit, under Conn. Gen. Stat. § 52-163, "[t]he court shall take judicial notice of: (1) Private or special acts of this state." For the Court's convenience, a true and correct copy of Special Act 499 is appended hereto as ***Exhibit 2***.

such municipality, borough or fire district, on such terms and rates as shall be just and equitable to the contracting parties.

This version of the General Assembly's grant of contracting authority to Waterbury, with the minor revisions, was thereafter incorporated into Waterbury's Charter in Section 11A-2(c), which superseded Section 11A-7, and remains in place today. *See* ***Exhibit 1.***

Critical to the Court's resolution of this case, apart from these Special Acts, the General Assembly has granted *no other express powers* to Waterbury related to the sale of water to Watertown or adjacent municipalities.[7] Accordingly, Waterbury was authorized to utilize water resources from areas in Litchfield and New Haven Counties outside of Waterbury's own boundaries, but only by contract based on just and equitable between the contracting parties. ***Exhs. L, R***; *see also* Pilicy, 5/3/23 Tr., 160:26-161:4. Contrary to Waterbury's allegation in the First Count, no other statutory basis exists authorizing Waterbury to unilaterally set rates for supplying water to Watertown.

2. Water Contracts Between Waterbury and Watertown

After the enactment in 1921 of Special Act 391, Waterbury and Watertown negotiated and entered into a series of contracts by which Waterbury supplied water to Watertown based on rates the parties agreed were fair and equitable. In November 1939, Watertown entered into the first water supply contract with Waterbury ("1939 Water Agreement"),[8] pursuant to which Watertown was obligated to purchase all of its water from Waterbury: "[Watertown] shall buy, and Waterbury shall sell such quantity or quantities of water as may be required." ***Exh. T***, ¶ 1. Also, under the 1939 Water Agreement, Waterbury charged Watertown for water metered in bulk at two locations, "at the same

[7] Waterbury's argument that it has a general grant of authority to address the supply of water under Conn. Gen. Stat. § 7-148 is unavailing. This enabling statute was not enacted until 1949, long after Special Acts 391 and 499, and no statute modifying or extending Waterbury's authority beyond these two Special Acts has been enacted since 1949 that would affirmatively grant Waterbury the express, specific power it claims to exercise in setting water and sewer rates under Conn. Gen. Stat. §§ 7-239 and 7-255. Further, nothing in Conn. Gen. Stat. § 7-148 eliminates or supersedes those Special Acts enacted before 1949. As the law makes clear, the "delegation of authority to municipalities [must be] narrowly construed." *Simons*, 195 Conn. at 530. Because the issue of providing water to adjacent municipalities is specifically addressed in the Special Acts, the more general provision in Section 7-148 must be narrowly construed in favor of the limited authority granted in the Special Acts.

[8] The 1939 Water Agreement was entered into between Waterbury and the Oakville Fire District. *See* ***Exh. T.*** The Oakville Fire District was thereafter merged into the Town of Watertown. Pilicy, 5/3/23 Tr., 163:4-5.

rate as is charged therefor to users of similar quantities within the limits of said City at the time of billing, plus a ten per centum." Id., at ¶ 6; *see also* Pilicy, 5/3/23 Tr., 163:1-8. This contract between Watertown and Waterbury remained in place for 50 years, until 1989, when Waterbury and Watertown entered into a new contract ("1989 Water Agreement"). *See* ***Exh. JJ***.

Under the 1989 Water Agreement, Waterbury was obligated to supply a maximum of up to 3,000,000 gallons of water per day to Watertown, and Watertown was obligated to make two types of payments to Waterbury for that water: (i) "annual capital costs" which consisted of the Watertown's proportionate share of the costs to construct a water filtration plant jointly utilized by Watertown and Waterbury (using a ratio based on 3,000,000/38,200,000 gallons of water), and (ii) "operation and maintenance costs" which consisted of Watertown's proportionate share of the operation and maintenance costs for specific systems and facilities itemized in the agreement which were utilized jointly by Watertown and Waterbury. Id., at Sections 201(c), 302 and 303; *see also* Pilicy, 5/3/23 Tr., 165:7-166:11; 173:9-174:5. This second component, again, was cost based, utilizing the variable "cost, per hundred cubic feet, of treating and pumping the water sent out from the treatment plant." ***Exh. JJ***, at Appx. 2.

According to Attorney Franklin Pilicy, the "annual capital costs" component of the charges to Watertown for water service worked out to be approximately 7.85-8 percent of the total cost associated with construction of the water filtration plant. Pilicy, 5/3/23 Tr., 166:1-14. The second component is a purely cost-based calculation of Watertown's proportionate share of Waterbury's overall costs for operating and maintaining the waterworks system as a whole, which share is based on the amount of water actually utilized by Watertown in any given year. Id., 173:19-174:5. To cover costs, Waterbury charges on a rate per million cubic feet of water utilized by Watertown. Id.

The 1989 Water Agreement was superseded by the 2013 Water Agreement, which – like the contracts it succeeded – provided Watertown would pay a cost per cubic foot of water which reflected Watertown's share of Waterbury's actual operating and maintenance costs of treating and transporting

water in bulk to Watertown, as well as a proportional cost of future capital costs for updates to Waterbury's water treatment facility. *See* ***Exh. G.*** Like the Parties' historic contracts, the 2013 Water Agreement reflects a cost-based ratemaking approach under which Watertown pays its proportionate share of operating and maintenance costs associated with the bulk treatment and transport of Watertown's water by Waterbury. *See* Jessell, 5/5/23 Tr., 24:16-20. The contract specifies a unit rate per hundred cubic feet based on Waterbury's actual operating and maintenance costs, which rate is multiplied by the amount of bulk water/sewage transported and treated by Waterbury. Id., at Sect. 301. The 2013 Water Agreement was for a five-year term. Id., at Sect. 506.

In negotiating a new contract in 2018, Waterbury insisted that Watertown agree to increase the water rates to be 110% of the rate charged to Waterbury property owners, even though Watertown did not utilize most of Waterbury's water supply system (and the water itself came from Watertown). ***Exh. PP***; *infra,* Section III.B. Such a rate increase would increase Watertown residents by increasing water bills by 164% in a single year. ***Exh. M.*** Negotiations were unsuccessful and the 2013 Water Agreement expired at the end of its term on June 30, 2018. Jessell, 5/5/23 Tr., 33:14-25. Since then, Watertown has continued to pay Waterbury for water at the rates set in the 2013 Water Agreement. Id. Waterbury, however, claims Watertown must pay the higher rate of 110% of the rate charged to Waterbury residents.

For decades, Waterbury has also provided small quantities of water to other adjacent municipalities, including Wolcott and Middlebury. LeBlanc, 5/3/23 Tr., 51:10-19; ***Exh. B***. However, as confirmed by Michael LeBlanc, except for Watertown since 2018, Waterbury provides bulk water to these municipalities pursuant to contracts. LeBlanc, 5/3/23 Tr., 51:10-26; 52:22-53:8.

3. No Statutory Authority in Conn. Gen. Stat. § 7-239

Waterbury contends in the First Count of the Amended Complaint that it is authorized by Conn. Gen. Stat. § 7-239 to act in unilaterally setting and charging water rates to Watertown. However, examination of the statute, utilizing mandated rules of construction, makes clear this statute

does not, in fact, provide Waterbury with the authority it claims. The only authority granted to Waterbury for supplying water to Watertown is in Special Acts 391 and 499, as incorporated into the Waterbury Charter, all mandating that the supply of water must be governed by contract on just and equitable terms to both contracting parties.

As set forth above, the Court must apply the plain meaning rule in interpreting Section 7-239. Conn. Gen. Stat. § 1-2z. Again, the Court cannot add or read into a statute language that the legislature has not specifically included. *Dept. of Public Safety*, 296 Conn. at 605; *Luce*, 247 Conn. at 133. Of particular significance in addressing whether Section 7-239 can be read as broadly as Waterbury contends, the Court must adhere to the tenet of "expressio unius est exclusio alterius" and presume the lack of specific inclusion of certain matters must have been intentional by the legislature. *See State ex rel. Barlow*, 144 Conn. at 620; *Stratford Police Department,* 343 Conn. at 73-74; *Mayer*, 325 Conn. at 776 (2017). If the General Assembly opted not to include language in 7-239 specifically applying the provision to other municipalities in addition to owners of lots or buildings, the assumption is that the legislature did not intend to include other municipalities.

In this case, under Conn. Gen. Stat. § 7-239, Waterbury is authorized to establish rates and charges to be paid by "the owner of each lot or building which is connected with and uses such system." The statute says nothing about use of the system by another municipality or rates for wholesale treated water which is resold to retail users in another municipality. For only those owners of lots and buildings using the waterworks system, as expressly identified in Section 7-239(a), Waterbury is authorized to "establish just and equitable rates or charges for the use of the waterworks system *authorized in this subsection*." Id. (emphasis added). The plain meaning is clear: Section 7-239(a) authorizes Waterbury to set rates only for the limited and specific use "authorized in this subsection," which is expressly restricted to users who are owners of lots and buildings *in Waterbury*.[9]

[9] Although Watertown owns properties in Watertown that use the system, such ownership cannot be read expansively to include *all water use* by Watertown *and all its residents*. While this could arguably apply to those limited properties

That Section 7-239 does not provide Waterbury the authority it claims in this case is further buttressed by the remaining provisions of the statute which set forth procedures, *inter alia*, by which, after demand "on the owner of the premises" for overdue charges, those charges become a lien "on the premises served" on which the municipality can foreclose "in the same manner as a lien for taxes." Conn. Gen. Stat. § 7-239(b). The statutory provisions regarding foreclosure of tax liens likewise refer to municipal liens on specific parcels of real estate; nothing in the tax laws reflects the right of one municipality to impose and/or foreclose on a tax lien against another municipality. In short, nothing in Section 7-239 or any other statute authorizes Waterbury to impose or foreclose on any type of lien against Watertown. To read the statute as providing such authority would lead to ridiculous results.

In sum, Section 7-239 does not expressly reference setting rates charged to municipalities and it cannot be expanded beyond the text to include adjacent municipalities that purchase bulk supplies of water from Waterbury to resell to residents in those municipalities as within the definition of "owners of lots and buildings." As set forth above, courts "are not permitted to supply statutory language that the legislature may have chosen to omit." *Dept. of Public Safety*, 296 Conn. at 605. "If there is reasonable doubt as to the existence of the power, it does not exist ..." *Raspberry Junction Holding, LLC v. Se. Connecticut Water Auth.*, 331 Conn. 364, 375 (2019); *see also Borough of Wallingford v. Town of Wallingford*, 15 Conn. Supp. 344, 347 (Conn. Super. Ct. 1948) ("court[s] should recognize and enforce [this rule] as a safeguard against the tendency of municipalities to embark upon enterprises which are not germane to the objects for which they are incorporated").

This conclusion is consistent with Waterbury's own practice, for over 75 years, of entering into contracts not only with Watertown, but with every adjacent municipality to which it supplies water. At no time since 1921, when the first Special Act was enacted, until 2018 has Waterbury ever attempted to unilaterally set rates for water supplied to an adjacent municipality. *See* Pilicy, 5/3/23

---

actually owned by Watertown, the rules of statutory construction prohibit this Court from expanding the scope of Section 7-239 to apply generally to Watertown as a municipality and wholesale purchaser and reseller of water.

Tr., 187:9-27; Jessell, 5/5/23 Tr., 34:9-16. Indeed, if such a power existed, nothing would have stopped Waterbury from unilaterally doing so over the past decades whenever Waterbury wished to increase revenues through the supply of water to Watertown and other municipalities. Particularly considering the water in question comes from a reservoir in Watertown, is treated at a plant in Watertown, is piped through municipal mains located in Watertown and taken out of the supply before the water ever reaches Waterbury, the statutory framework cannot be read to allow Waterbury to unilaterally set water rates for the services provided to Watertown.

Accordingly, as a matter of law, Waterbury is restricted by the authority granted in Special Acts 399 and 491 to negotiating and entering into contracts with Watertown for the supply of water, including contracting for rates that are just and equitable to both contracting parties; Waterbury is not authorized by Conn. Gen. Stat. § 7-239, as Waterbury claims in the Amended Complaint, to unilaterally set rates for the supply of water to adjacent municipalities, including Watertown. As a result, judgment must enter in favor of Watertown on the First Count of the Amended Complaint.

C. Waterbury Violated Its Own Charter and Ordinance in Setting Rates

Waterbury's own Charter and Ordinances incorporate the statutory requirement of *contracting* with other municipalities for the provision of water and sewer services. Section 11A-7 of Waterbury's Charter tracks Special Act 391 and authorizes Waterbury to supply water to neighboring towns only by contract "*on such terms and rates as shall be just and equitable to the contracting parties*." ***Exhibit 1*** (emphasis added). Yet, Waterbury claims it has the power to unilaterally set water rates charged to Watertown, in direct violation of its own Charter. "Agents of a city ... have no source of authority beyond the charter." *Stamford Ridgeway Assocs. v. Bd. of Representatives of City of Stamford*, 214 Conn. 407, 423 (1990).

Likewise, Waterbury's Ordinances expressly distinguish between city users and out of city users, required that rates for out of city users like Watertown "shall be charged ... *based upon an executed written agreement between the city and the out of city user*, ..." ***Exh. RR***, at Section 51.90

(emphasis added). By attempting to unilaterally set rates for water and sewer services provided to Watertown, Waterbury has ignored and violated its own Charter and Ordinance mandating the use of contracts to set rates for neighboring municipalities like Watertown.

II. Waterbury Lacks Statutory Authority to Sue Watertown

In addition to Waterbury's lack of authority, in the first instance, to unilaterally set water and sewer rates charged to Watertown, Waterbury also lacks statutory authority to bring a civil action against Watertown for alleged non-payment of the water and sewer charges, as Waterbury claims it can do in both counts of the Amended Complaint. *See* Am. Comp., First Count, ¶¶ 10, 13-15; Second Count, ¶¶ 9-12. Waterbury brought this collection action purportedly under Conn. Gen. Stat. §§ 7-239 and 7-258, seeking compensatory damages and interest at the rate of eighteen per cent (18%) per annum for Watertown's alleged failure to pay water and sewer fees after July 1, 2018. However, wholly apart from Waterbury's lack of authority to unilaterally set water and sewer rates, neither of these statutes provides Waterbury with the express authority to sue a neighboring municipality for non-payment of those unilaterally set water and sewer rates. Without the statutory authority to do so, Waterbury lacks the power, or the statutory standing, under either statute to sue Watertown for non-payment of water and sewer charges. *Glastonbury*, 328 Conn. at 338; *Pepin*, 171 Conn. at 83.

As set forth above, Conn. Gen. Stat. § 7-239(b) sets forth Waterbury's rights and remedies in the event *an owner of a premises* fails to pay the fee for water use: Waterbury can foreclose on a lien on the premises to recover the unpaid charges or assign the lien for such recovery. Also as set forth above, under Conn. Gen. Stat. § 7-258, unpaid sewer charges become *a lien upon the real estate* and Waterbury is authorized by statute to foreclose on that lien (or assign the lien) to collect unpaid charges. Apart from the remedy of foreclosure, *nothing in these statutes* authorizes a municipality to bring a civil action against any such premises owner or real estate owner to collect damages for unpaid fees. And further, to the extent the statute provides Waterbury with a remedy of foreclosing on a lawful lien, that remedy is limited to pursuing foreclosure against the owners of specific premises or

real estate which receive, but did not pay for, water or sewer services from the municipality.

More significantly, *nothing in these statutes* authorizes a municipality, like Waterbury, to either lien property of another municipality or foreclose on such a lien. Waterbury would not dispute that it lacks the authority to assert or foreclose on a lien against Watertown; to presume otherwise would lead to absurd results with municipalities foreclosing on other municipalities. Certainly, *nothing in these statutes* authorizes a municipality to bring a civil action against another municipality – like Watertown – to collect allegedly unpaid water and sewer charges. For this additional reason, because Waterbury lacks statutory authority under Conn. Gen. Stat. §§ 7-239 or 7-258 to bring this action in the first instance, judgment must enter in favor of Watertown on the Amended Complaint.

III. Alternatively, Waterbury's Rates Charged to Watertown are Unreasonable

In the event the Court determines Waterbury has the authority to unilaterally set water and sewer rates chargeable to Watertown, then nevertheless, under Conn. Gen. Stat. §§ 7-239 and 7-255, Connecticut common law, and established utility ratemaking principles, the rates set by Waterbury are unreasonable. More particularly, Watertown unequivocally demonstrated at trial that: (i) the retail rates Waterbury seeks to impose on Watertown as a wholesale customer include excessive and unlawful premiums of 164% for water service and 363% for sewer service, and (ii) charging these retail rates results in Watertown subsidizing rates for Waterbury city users, thus unlawfully discriminating against Watertown. Accordingly, Waterbury cannot prevail on its claims in the Amended Complaint because the uncontroverted evidence at trial established Waterbury unreasonably seeks to collect millions of dollars each year from Watertown for Waterbury-only retail services that Waterbury does not provide to Watertown as a wholesale customer.

A. Applicable Connecticut Law and Accepted Principles on Reasonable Ratemaking

It is undisputed that municipal water and sewer rates charged in Connecticut must be reasonable. Both Conn. Gen. Stat. § 7-239 ("[t]he legislative body shall establish *just and equitable rates or charges* for the use of the waterworks system") (emphasis added), and Conn. Gen. Stat. § 7-

255 ("The water pollution control authority may establish and revise *fair and reasonable charges* for connection with and for the use of a sewerage system") (emphasis added), mandate that such rates be reasonable. "Reasonableness" in this context is defined as not unjustifiably exceeding cost of service and not discriminating between types of users – like wholesale and retail users. *See Turner v. Connecticut Co.*, 91 Conn. 692, 101 A. 88, 91 (1917) (rate must not be "so high as to be an unjust extraction from the public; either intrinsically so, or because it is discriminatory").

That "reasonable" rates must be *cost-based* is crystal clear under Connecticut law, accepted ratemaking principles applied by courts nationwide, and the authoritative American Water Works Association *Principles of Water Rates, Fees, and Charges* (7th Ed., 2017) (AWWA Manual M1) (***Exh. QQ***).[10] *See Highgate*, 210 Conn at 20 (reasonableness analysis must be based on "costs to the fire district to provide these services"); *Pepin*, 171 Conn. at 84-85 (considering Sections 7-239 and 7-255, city exceeded its authority when charging "an amount in excess of 'the cost of [ ] services'"); *see also Morgan v. Imperial Irrigation Dist.*, 223 Cal. App. 4th 892, 899 (2014); *Hingham v. Dep't of Telecomm. & Energy*, 433 Mass. 198, 203 (2001); Maker, 5/16/23 Tr.,12:16-13:5 (explaining that AWWA Manual M1 is a "treatise . . . for setting water and sewer rates" based on cost, which provides "methodologies and best practices for employing the requirements of [Sections 7-239 and 7-255], just and equitable, fair and reasonable"). By extension, rates which unjustifiably exceed actual costs to provide water and sewer services are not reasonable. *Pepin*, 171 Conn. at 84-85; *Barr v. First Taxing District, Norwalk*, 151 Conn. 53, 69 (1963). The cost-based principle applies equally in "a case involving a large municipality and smaller surrounding towns." *City of New Haven v. New Haven*

[10] *See Niles v. Chicago*, 201 Ill. App. 3d 651, 667 (1990) (court recognizes AWWA water rate manuals as authoritative in water rates dispute); *Artesian Water Co. v. Chester Water Auth.*, 2012 WL 3029689, at *5, *10 (E.D. Pa. July 24, 2012) (same); *see also Youmans v. Bloomfield*, 336 Mich. App. 161, 173 (2021) ("'the generally recognized standard to use for generally accepted cost of service and rate making practices for water utilities' was . . . 'the American Water Works Association M1 Manual'"); *Butler Cty. Bd. of Commrs. v. Hamilton*, 145 Ohio App. 3d 454, 473 (2001) (AWWA Manual M1 used as authoritative guide to create a "fair and equitable" water rate for outside county served by city based on "actual cost incurred by the city for serving the county"); *Farley Neighborhood Ass'n v. Speedway*, 765 N.E.2d 1226, 1229 (Ind. 2002) ("AWWA Rates Manual [ ] offers a reasonable methodology for setting municipal sewer rates").

Water Co., 118 Conn. 389 (1934). In this situation, "a higher rate may be prescribed for consumers in the smaller communities, without unlawful discrimination, provided it is not unreasonably high in comparison with the city rate, *considering the respective costs of service and other conditions affecting rates*. Such a differentiation, however, *logically involves an apportionment of the values, revenues, and expenses*." Id. (emphasis added).

Accordingly, the Court's determination of reasonableness must take into consideration the fairness of Waterbury's allocation of its costs to Watertown and whether those rates unlawfully require Watertown to pay the cost of services not utilized by Watertown. Indeed, unlawful discrimination occurs where rates for Watertown are set to cover the costs of services utilized only by Waterbury city users, resulting in Watertown subsidizing rates charged to Waterbury retail customers. Maker, 5/16/23 Tr., 16:9-11 ("water rates are considered fair and equitable when each customer class pays a cost allocated to the class and consequently cross class subsidies are aborted [*sic*]") (quoting ***Exh. QQ***, at 4).

At trial, Watertown's ratemaking experts, Edward Donahue III, CMC and Michael Maker, affirmed that cost of service ratemaking is a fundamental industry practice used to ensure reasonable rates, which applies to the assessment of Waterbury's rates here. Donahue, 5/5/23 Tr., 67:16-68:2; Maker, 5/16/23 Tr., 13:6-16:11; ***Exh. QQ***, at 4 (rates set by qualified professional using AWWA Manual M1 are "fair and equitable because these rate-setting methodologies result in cost-based rates that generated revenue from each class of customer in proportion to the cost to serve each class").[11]

B. Waterbury's Rates Unreasonably Exceed the Cost of Wholesale Service

Watertown bears the burden of demonstrating Waterbury's rates unreasonably exceed Waterbury's cost of service. *Highgate*, 210 Conn. at 20. Specifically, Watertown must "prove two things: first, the amount of the charges imposed upon that party for the municipal services rendered,

[11] Maker explained his expert opinions are based on his experience conducting municipal cost of service studies in Connecticut, which were governed by Conn. Gen. Stat. §§ 7-239 and 7-255. Maker, 5/16/23 Tr., 6:3-7:24.

and second, the cost to the municipality to provide those services." Id. "It is the differential between these two factors upon which a court's determination of reasonableness ordinarily must rest." Id.; *see also Barr*, 151 Conn. at 59; *Town of Speedway*, 765 N.E.2d at 1229 ("it is petitioner's burden to demonstrate that the rate differential is not justified by variations in costs, including capital, of furnishing services to various locations"). Watertown met its burden by offering uncontroverted evidence that (i) Waterbury did not utilize cost-based ratemaking in 2018 when Waterbury sought to impose retail water and sewer rates on Watertown, a wholesale user, and (ii) the resulting rates exceed the cost of wholesale service to Watertown by 363% for sewer and 164% for water, without the requisite cost-based justification.[12]

1. Watertown Must Be Treated as a Wholesale User

In considering the reasonableness of Waterbury's rates based on a cost of service analysis, Watertown must be classed as a "wholesale user," which is defined as a municipal utility that purchases bulk services (e.g., treatment and bulk transmission) from a wholesaler, resells those services to its own retail end-use customers and independently covers the local distribution and customer service costs to provide such retail services. Maker, 5/16/23 Tr., 23:4-24:18; ***Exh. QQ***, at 297-98. In contrast, "retail" water and sewer service, as Waterbury provides to its city customers, "refers to full service, supply, treatment, transmission, distribution, customer service." Donahue, 5/5/23 Tr., 71:10-19; *Miller's Pond Co. v. New London*, 273 Conn. 786, 816 (2005) ("[w]holesale water customers [ ] are utility companies themselves, which purchase water in bulk for resale to retail

[12] Donahue explained that actual costs of service can be assessed and determined by conducting a cost of service study which identifies the overall cost to a municipality of providing water or sewer service and then allocates the costs to different functions and groups receiving different levels of service (e.g., wholesale and retail users). Donahue, 5/5/23 Tr., 63:14-24; ***Exh. C*** at 3. Likewise, Maker testified regarding a similar industry-wide three step methodology used to ensure that water and sewer rates are cost based and non-discriminatory. Maker, 5/16/23 Tr., 16:1-17:8; ***Exh. QQ***, at 4-5, Fig. 1.1-1. As is common among municipalities, Waterbury engaged a consultant in 2015 to prepare a cost analysis in setting rates for Waterbury retail users, and specifically excluding adjacent municipal customers. LeBlanc, 5/3/23 Tr., 98:11-104:1, 105:25-106:1; ***Exh. BB***, at 4. Waterbury has also demonstrated its ability to determine costs attributable specifically to Watertown. *See* ***Exh. PP***, at 5 (subtracting retail-only water and sewer costs not attributable to Watertown via credits); ***Exh. B*** (isolating volume of Watertown water and sewage treated by Waterbury).

customers."); *City of New Haven Water Pollution Control Authority v. Town of Hamden,* 1997 WL 176371, at *3 (Conn. Super. Ct. April 2, 1997); *Town of Greenwich v. Dept. of Utilities Control*, 1990 WL 284017, at *1, *7 (Conn. Super. Ct. May 2, 1990) (enforcing distinction between retail/resident and wholesale water customers).[13]

The policy underlying the separate treatment of wholesale sewer and water customers from retail users is simple: it ensures wholesale users like Watertown do not unfairly bear costs for Waterbury's retail services that Watertown does not use, especially where Watertown also pays for its own costs for providing retail services to its own users. The policy prevents Watertown from effectively subsidizing rates charged by Waterbury to its retail customers (and voters).[14] Donahue explained, "if you are only getting some of those services as Watertown is, you are getting wholesale services ... you are not buying the operation and maintenance of your water distribution system nor are you buying customer service." Donahue, 5/5/23 Tr., 71:12-19; id., at 135:10-136:15 (Watertown is a wholesale user for which a separate cost of service must be completed to determine the reasonableness of rates); Maker, 5/16/23 Tr., 23:4-14 (customers must be "broken up into classes" to account for clear differences in "services they actually use" and "if there's ever a time where there's a clear segregation between classes, it's in the case of wholesale versus retail"); id., 35:10-18.

Here, as Maker explained, "what essentially makes Watertown a wholesale customer is they are a separate utility and not just a customer and then they're reselling that water to their own customers." Maker, 5/16/23 Tr., 24:8-18. Watertown has "their own distribution system, entire

---

[13] The *New Haven WPCA* case illustrates a typical inter-municipal wholesale arrangement for water and sewer service (with Hamden as wholesale customer) that is remarkably on point here. 1997 WL 176371, at *11-12. The court found New Haven could not properly charge Hamden for costs of collection, pumping, billing and customer service provided to New Haven retail customers. Id.

[14] As this Court determined at summary judgment, , "[t]he court embarks on its analysis mindful of the immutable fact that the services for which Waterbury seeks to charge Watertown are in the nature of public utilities, and that there do not exist reasonable or realistic options, at least in the short term, for Watertown to secure these essential services from other providers. Equally self-evident is the absence of political accountability of Waterbury elected officials to ratepayers in Watertown. When such accountability is lacking, such as in cases when a public utility is owed [*sic*] by a private entity, it has long been the public policy of the state to furnish a mechanism by which the reasonableness of the rates charged by such entities may be reviewed." Dkt. 127.00 at 5; *see also Highgate*, 210 Conn. at 16.

system of pipes for both water distribution and sewage collection and they have their own costs for that." Id. Because Watertown does "not use the services of Waterbury in terms of their distribution and collection [ ] they should not pay for that." Id. In sum, under cost-based ratemaking, the wholesale-retail class segregation is required to ensure that customers only pay rates "[f]or the services they receive." Id., at 25:18-21; *see* id., at 16:9-11; *see also* ***Exh. QQ***, at 302-305 (detailing accepted methodology for cost allocation to wholesale users).[15]

2. Evidence Regarding Watertown's Wholesale Status

The Superintendent of the Watertown Water and Sewer Authority ("WWSA"), Gerald J. Lukowski, detailed Watertown's operations as a wholesale customer of Waterbury. Specifically, he explained how the WWSA purchases bulk water and sewage treatment services from Waterbury (a separate utility) and then the WWSA operates and finances end-user distribution, maintenance, and customer service functions within Watertown to its own retail users. The full costs of these services (wholesale from Waterbury and retail from Watertown) are entirely borne by Watertown ratepayers—who pay significantly more than Waterbury ratepayers. ***Exh. D***; Maker, 5/16/23 Tr., 26:20-30:18.[16]

Lukowski explained that Watertown's water comes from a watershed located in and just north of Watertown, which is treated at a plant in Watertown operated by Waterbury. Lukowski, 5/3/23 Tr., 127:20-128:20; *see* ***Exh. A***; ***Exh. G***, at Appx. B. The water then travels from the plant to a pipe leading directly to Watertown distribution infrastructure without passing through Waterbury, after

[15] Notably, after conducting hundreds of municipal water and sewer cost of service studies for over forty years, Donahue had never seen a situation where a municipality ignored the wholesale service classification and charged a wholesale customer with retail rates. Donahue, 5/5/23 Tr., 72:16-20.

[16] *See also* Dkt. 127.00, at 5, n.7 ("One important distinction between Waterbury and Watertown customers is that water users in Waterbury pay their bills to the City of Waterbury while Watertown customers pay their bills to the Town of Watertown at a rate that includes a surcharge for the separate infrastructure maintained by Watertown to furnish this service. The City of Waterbury owns and bears the costs of maintaining so much of the collection and distribution systems that exclusively serve the Waterbury consumer while the infrastructure for water delivery (e.g. pipes and pumps) in Watertown and serving exclusively Watertown customers are owned and maintained by Watertown. Watertown must therefore charge its customers more than the rate it pays to secure water service from Waterbury in order to fund the maintenance and repair of its infrastructure ... In addition, Watertown sewer users must bear the costs of maintaining so much of the sewer infrastructure that serves them exclusively.").

which point the WWSA assumes full responsibility for distributing water to its retail customers. Lukowski, 5/3/23 Tr., 127:20-128:20, 130:7-26.

Watertown's proportional capital costs for the water treatment facility operated by Waterbury as well as the WWSA's costs to purchase bulk water treatment services from Waterbury, its operation and maintenance costs, and billing and customer service costs are entirely paid for by Watertown ratepayers. Id., at 129:5-131:25. In 2022, the WWSA budgeted $1,791,755 in water expenditures to be collected from Watertown ratepayers. Id., at 145:12-14; ***Exh. FF*** (2022 budget). Approximately half of the WWSA's water expenses went to a bulk water treatment charge paid to Waterbury, with the remainder going primarily to operations, maintenance and personnel expenses dedicated to end-user distribution within Watertown. Lukowski, 5/3/23/ Tr., 145:3-147:26; ***Exhs. FF, MM*** (2023 budget).[17]

For sewer service, while Waterbury ultimately collects and treats Watertown's sewage, Lukowski explained the system "basically works in reverse," with the WWSA staff overseeing operations, maintenance and customer service associated with the provision of sewer services to Watertown customers. Lukowski, 5/3/23 Tr., 135:2-137:26. As with water service, Watertown's sewage treatment infrastructure costs – i.e., Watertown's proportional capital costs for the sewage treatment facility operated by Waterbury, and the cost to purchase bulk sewage services from Waterbury, plus Watertown's operation and maintenance, and billing and customer service costs, are entirely paid for by Watertown ratepayers. Id. As such, Watertown ratepayers are responsible for paying the WWSA roughly $1,000,000 per year for services exclusively dedicated to sewage collection within Watertown, in addition to approximately $1,000,000 per year to buy sewage treatment services from Waterbury. Id., 146:14-147:26; ***Exhs. FF, MM***.

[17] Jesell, 5/5/23 Tr., 33:14-25 (since Waterbury refused to negotiate in 2018 Watertown has continued to pay for water and sewer service under the expired 2013 contract, which payments have not been rejected).

As set forth above and as Attorneys Pilicy and Jessell testified, the historic contractual relationship between the parties clearly reflects the parties' understanding that Watertown is a wholesale customer and purchaser of sewer and water services from Waterbury. Specifically, the parties' water and sewer agreements incorporated charges to Watertown calculated solely to cover the operation, maintenance, and proportional capital costs associated with Watertown's actual wholesale use of Waterbury's treatment and transmission facilities. *See supra,* Sections I.A.2, I.B.2.

Furthermore, Waterbury effectively agreed that Watertown is a wholesale customer. *See* O'Leary, 5/17/23 Tr., 11:6-10, 14:6-11, 22:6-18. With respect to sewer service, Mayor O'Leary acknowledged that Waterbury's own ordinances differentiate between retail city users (subject to Section 7-255 rates) and out of city users subject to "fair and reasonable charges" based exclusively on "executed written agreement[s]." Id., 5/17/23 Tr., 20:1-21:8; *see also* ***Exh. RR***, at Section 51.90.

In sum, Connecticut law and accepted ratemaking principles require municipal utilities to charge customers based on the cost of "the services they receive." Here, Watertown must be treated as a wholesale water and sewer user or customer, and the determination of reasonableness of the rates imposed by Waterbury must take into consideration that Watertown can only be charged its fair share of Waterbury's costs *directly associated* with the provision to Watertown of those services.

3. Waterbury's Wholesale Rates for Watertown Unlawfully Exceed Cost of Service

In 2015, when Waterbury went through the process of resetting water and sewer rates for its city user retail customers, Waterbury received recommendations from a reputable consultant which proposed rates based on the actual cost to provide services to Waterbury's retail users; those recommendations would have significantly increased rates to city users. LeBlanc, 5/3/23 Tr., 98:11-100:14; ***Exh. BB*** at 4; ***Exhs. 25***, ***26***. Costs (and thus rates) for wholesale municipal customers were specifically and intentionally excluded from those recommendations because, at the time, Watertown and Waterbury were in the middle of a long term contract and it was anticipated that the rates would continue to be set by contract, as had been done for many decades. *See* ***Exh. BB*** at 8.

In 2018, when the intermunicipal water and sewer agreements were set to expire, Waterbury did not engage in any new cost-based analysis to determine Watertown's fair share of those costs; instead, Waterbury simply determined that Watertown should be charged the same or slightly higher rates as Waterbury's retail customers for water (110%) and sewer (100%) without any cost-based justification tying those rates to the actual cost of services provided by Waterbury to Watertown. In the rate schedule provided in 2018, Waterbury even appropriately subtracted out customer service and retail distribution functions not attributable to Watertown, and capital charges for which Watertown has always paid its proportional share. ***Exh. PP***. But then, without conducting any further analysis of the costs associated specifically with services provided to Watertown, Waterbury informed Watertown of its intent to nevertheless charge the higher retail rates to Watertown.[18] Id.

When Watertown repeatedly requested backup cost data justifying Waterbury's new rates, Waterbury produced a rate schedule which it would eventually adopt – ***Exh. PP*** – including a breakdown of costs for the systems as a whole, subtracting out costs for services not provided to Watertown, and then backfilling the rates with surcharges not based on actual costs; these surcharges resulted in raising the rates to Watertown to be the equivalent of the rates charged to Waterbury's city user customers. LeBlanc, 5/3/23 Tr., 90:4-9 (Q. So if I understand your testimony correctly, these four surcharges were not the result of any calculation by the City of Waterbury? They were simply put in place to provide a justification or explanation for the fact that you – you were going to charge 110 percent; is that right? A. Yes.); id., 90:15-18 (Q. [U]ltimately the City of Waterbury adopted the rates as set forth in the February 2018 rate specs schedule; isn't that right? A. Absolutely.); *see* ***Exhs. C***, ***PP***; Donahue, 5/5/23 Tr., 136:4-15.

[18] That Waterbury ultimately identified numerous surcharges to make up the difference between actual costs and the rates Waterbury wanted to charge Watertown only after Ed Donahue, Watertown's expert, asked Waterbury to include an explanation for components of the proposed rate change, does not alter the immutable fact that those surcharges are not in any way connected or tied to costs for services provided to Watertown, thus violating clear Connecticut law and ratemaking principles mandating that rates be based on actual costs for those services. Maker, 5/16/23 Tr., 50:26 (concluding that LeBlanc "fabricated those numbers" on Waterbury's behalf because "[h]e admitted that he made [the surcharges] up and there's no justification of those numbers").

As a result, based on Watertown's unrefuted expert analysis and testimony, through those surcharges, Waterbury has sought to impose a premium on Watertown of 164% of the estimated cost of providing Watertown with wholesale water service, and of 363% of the estimated cost of providing Watertown with wholesale sewer service. ***Exh. C*** at 5 (Waterbury's estimated cost to provide wholesale service to Watertown for fiscal year 2019 was $0.67 per CCF for water (as compared to $2.77 per CCF charged by Waterbury) and $0.76 per CCF for sewer (as compared to $3.95 per CCF charged by Waterbury)); *see* ***Exhs. M, PP***; Maker, 5/16/23 Tr., 36:1-41:19; ***Exh. C*** at 3-4; *see also* ***Exh. BB*** (Waterbury cost data relied on by Watertown's experts). In addition, compared to the wholesale rates recommended by Watertown's experts (including a 10% premium), Waterbury's unilaterally-set rates impose a premium of 153% for water and 353% for sewer. ***Exh. M***; ***Exh. C***, at 5. As compared to the 2013 Water and Sewer Agreements' wholesale rates Watertown continues to pay, Waterbury's unilaterally-set rates impose a premium of 109% for water and 348% for sewer—equaling millions of dollars per year for *Waterbury-only* retail services. ***Exhs. M, C***; ***Exh. 1***.[19]

As explained by Watertown's experts, had Waterbury included a premium of not more than 10% of actual costs for services provided to an outside customer, such a premium might not be deemed unreasonable. ***Exh. C***; Donahue, 5/5/23 Tr. 111:9-113:27; Maker, 5/16/23 Tr., 41:20-42:26. However, to be reasonable, this premium must still be based on demonstrable costs or risks undertaken by the service provider. Donahue, 5/5/23 Tr. 111:9-113:27; ***Exh. C***; *Barr*, 151 Conn. at 56-58 (expert detailed factors making it "more expensive" for municipal utility "to provide and maintain the system and the service to the outer district" which justified premium). In this case, Waterbury's "premium" in the rates charged Watertown – 164% for water and 363% for sewer – far exceeded what would be deemed appropriate and, more importantly, as Waterbury affirmed, those

[19] Even under the 2013 Water and Sewer Agreements' rates that Watertown continues to pay, Watertown's unrefuted expert testimony established that a typical Watertown residential user pays approximately $96.28 more per year than a typical Waterbury residential sewer user, and approximately $274.30 more per year than a typical Waterbury residential sewer user. ***Exh. D*** (typical Watertown residential user pays approximately $1,054.16 for annual water and sewer service whereas typical Waterbury user pays $683.58 annually); Maker, 5/16/23 Tr., 26:20-30:18 (explaining rate derivation).

premiums are not based on any identified costs to Waterbury (*e.g.*, maintaining a distribution system), or any identified risks to Waterbury (*e.g.*, capital risks associated with a treatment plant). Donahue, 5/5/23 Tr., 136:16-24 ("Waterbury has very little financial risk, so it's not entitled to a premium of greater than ten percent."); Maker, 5/16/23 Tr., 41:20-42:26; LeBlanc, 5/3/23 Tr., 90:4-9.[20]

Accordingly, because Waterbury's rates substantially and unjustifiably exceed the cost to provide wholesale services to Watertown, those rates are necessarily unreasonable and cannot form the basis for Waterbury's claims in the Amended Complaint. Donahue, 5/5/23 Tr., 135:10-136:24; Maker, 5/16/23 Tr., 33:25-34:15, 41:20-42:26; ***Exhs. C, M***. Put simply, Connecticut law and accepted ratemaking principles preclude Waterbury from charging Watertown for millions of dollars in annual *Waterbury-only retail water and sewer services*, which Waterbury admits that Watertown does not receive. LeBlanc, 5/3/23 Tr., 90:4-9; ***Exh. I***; *see New Haven Water Co.*, 118 Conn. 389; *Highgate*, 210 Conn. at 20-21; *Pepin*, 171 Conn. at 84-85. For these additional reasons, those claims must fail, and judgment must enter on both counts in favor of Watertown.

---

[20] Waterbury did not controvert Watertown's expert testimony on this issue. Instead, Mayor O'Leary compared a 2014 list of *retail* water rates charged by various utilities to the rates that Waterbury charges for *wholesale* service to Watertown. O'Leary, 5/17/23 Tr., 23:5-24:2. However, the 2014 list expressly included only rates for retail "Annual Household" service—including wholesale treatment, end-user distribution, and customer service. ***Exh. 25***, at 6. This results in a comparison of apples to oranges in this case. *See* Maker, 5/16/23 Tr., 13:12-18 ("Q. Can you make a judgment as to the reasonableness of it simply by looking at the rates and comparing them to other rates? A. No. Municipal rates are not market based. They are not . . . whatever the markets [*sic*] willing to bear . . . they really need to be cost of service based."). Michael LeBlanc also pointed to market-based wholesale rate comparisons (as opposed to cost-based, apples-to-apples data) to justify Waterbury's premiums. LeBlanc, 5/3/23 Tr., 106:8-26, 29:27-32:14, 34:10-35:3. But such comparisons are not a proper measure of reasonableness in this case. Maker, 5/16/23 Tr., 13:12-18 (market comparisons are inappropriate). Waterbury also refused at trial to put any other wholesale contracts into evidence, thus offering no evidence as to the costs to serve other wholesale customers needed to make a rational cost of service comparison. LeBlanc, 5/3/23 Tr., 32:13-34:17. And significantly, Waterbury offered no expert testimony comparing the costs to serve other much smaller wholesale customers to the costs of serving Watertown in order to warrant charging the same premiums on Watertown. *See* ***Exh. B*** (Waterbury intermunicipal sewage treatment volume is 70% for Watertown, 29% for Wolcott, and 1% for Prospect, Naugatuck, and Cheshire combined, and intermunicipal water treatment volume is approximately 84% for Watertown and approximately 16% split between four other customers). Even if small wholesale customers are paying materially above the cost of service – which was not shown – Waterbury offered no explanation as to why this situation would provide any justification for charging Watertown multiples above its actual cost of service. *See* Maker, 5/16/23 Tr., 13:12-18. Indeed, it appears that Waterbury's next largest inter-municipal sewer customer, Wolcott, has also challenged the 100% Waterbury retail rate imposed upon them. Leblanc, 5/3/23 Tr., 31:1-25; id., at 57:27-58:5 (Wolcott not paying Waterbury retail rate): Complaint in *City of Waterbury v. Town of Wolcott*, UWY-CV22-6068317-S (12/6/22), ¶ 13 ("Waterbury reasonably believes that Wolcott will continue to refuse or neglect to pay the total amounts billed by Waterbury for sewerage services under the sewer rates established pursuant to Conn. Gen. Stat § 7-255 and that the amount unpaid will increase the future...").

C. Rates Charged to Watertown Unlawfully Subsidize Rates of City Users

Connecticut law and accepted ratemaking principles further mandate that a municipal utility cannot set rates for one group of users which effectively subsidize the cost to another group of users; to do so constitutes unlawful discrimination against the wholesale users. *Turner*, 91 Conn. 692; *see also Texarkana*, 151 Tex. at 104 ("[t]he common-law rule that one engaged in . . . a utility service, may not discriminate in charges or service . . . is of such long standing and is so well recognized that it needs no citation of authority to support it"); *Town of Greenwich*, 1990 WL 284017, at *7 (affirming DPUC finding that "bulk, wholesale [water] sales are not comparable to sales to residential customers" and upholding DPUC decision that wholesale water customer should be required to subsidize retail customers); Maker, 5/16/23 Tr., 16:9-11; *see* ***Exh. QQ***, at 73, 309-10 ("Cost allocation requires specific attention with respect to wholesale customers because wholesale service generally requires the use of only a portion of the owner utility's facilities."). In this case, Waterbury's decision to impose rates on Watertown as a wholesale user that bear no rational connection to Waterbury's costs, thus grossly exceeding the cost of service to Watertown, *supra*, Section III.B, while charging Waterbury retail users and voters rates below the cost of service, constitutes unlawful discrimination.

Rather than increasing the rates imposed on Watertown to reflect actual cost of services to Watertown, as required by Connecticut law and accepted ratemaking principles, the evidence at trial demonstrates that the 2018 attempted rate hike to Watertown came after Waterbury was told by its rate consultants that, due largely to deferred infrastructure maintenance of Waterbury's own systems and decreased consumption, additional investments and rate increases were urgently needed to maintain Waterbury's retail service for city users.[21] LeBlanc, 5/3/23 Tr., 99:13-100:14; ***Exhs. 25***, ***26***.

[21] Waterbury's consultants recommended that, in addition to increasing charges for Waterbury retail customers based strictly on cost of service, Waterbury increase the *number of* inter-municipal, wholesale sewer customers it serviced to bring in additional revenue from processing "3 to 4 Millions gallons per day in additional flow" without significant additional infrastructure costs. ***Exh. 26***, at 7 (noting "[a]ny incremental increase in the costs of plant operations would be insignificant in comparison to the additional revenue" and that "additional flow from existing or new inter-municipal connections could have a dramatic impact on rates" by utilizing the "valuable asset [of] installed infrastructure").

Instead, to avoid increasing rates for Waterbury's retail users, Waterbury opted to partially shift onto Watertown the cost of maintenance due on Waterbury's own system through the non-cost based "surcharges" included in the rates Waterbury seeks to impose, thus forcing Watertown, a wholesale user, to subsidize rates to Waterbury's residents and voters. *Supra*, Section III.B. This intra- versus inter-municipal class discrimination and attempt to shift millions of dollars in Waterbury retail costs to Watertown residents each year is directly contrary to settled ratemaking principles of equity and non-discrimination. *Turner*, 91 Conn. 692; *New Haven Water Co.*, 118 Conn. 389; Maker, 5/16/23 Tr., 16:9-11; ***Exh. 1***; ***Exh. QQ***, at 4, 73 ("Rate-making endeavors to assign costs to classes of customers in a nondiscriminatory, cost-responsive manner so that rates can be designed to closely meet the cost of providing service to such customer classes."); *see Texarkana*, 151 Tex. at 108 (1952) (permitting "city to discriminate, at its pleasure, between its patrons . . . would return us to the primitive state of development in utility control when rates were determined by friendship and political power"). On this basis, judgment must enter for Watertown on its unreasonableness defense.

IV. Waterbury is Estopped from Charging Watertown Water and Sewer Rates Set in 2015

Watertown and Waterbury had existing water and sewer contracts – the 2013 Water and Sewer Agreements – which did not expire until 2018. In 2015, three years before the expiration of those contracts, Waterbury set water and sewer rates for its city users. At that time, Waterbury published notices to Waterbury residents of the intent to set water and sewer rates pursuant to Conn. Gen. Stat. §§ 7-239 and 7-255. However, such notice was not directed to Watertown. *See* Jessell, 5/5/23 Tr., 34:9-16. Indeed, because the parties still had three years remaining on the 2013 Water and Sewer Agreements, Watertown had no reason to believe – in 2015 – that without notice, Waterbury would deviate from the decades-long history of contracting with Watertown for water and sewer services and apply the 2015 rates to Watertown in the future. Under Connecticut law, a party asserting municipal estoppel must establish:

> (1) an authorized agent of the municipality had done or said something calculated or intended to induce the party to believe that certain facts existed and to act on that belief; (2) the party had exercised due diligence to ascertain the truth and not only lacked knowledge of the true state of things, but also had no convenient means of acquiring that knowledge; (3) the party had changed its position in reliance on those facts; and (4) the party would be subjected to a substantial loss if the municipality were permitted to negate the acts of its agents. . . .

Levine v. Town of Sterling, 300 Conn. 521, 535 (2011); *see also see Shoreline Shellfish v. Branford*, 2014 WL 1814283, at *1 (Conn. Super. Ct. Apr. 8, 2014); *Foster v. Ayala*, No, 2011 WL 4424781, at *1 (Conn. Super. Ct. Sept. 2, 2011).

Here, because Waterbury failed to provide the requisite notice in 2015, Watertown was induced to not participate in the Sections 7-239 and 7-255 rate proceedings or to challenge Waterbury's 2015 rates. Even after 2015, Waterbury's authorized agents repeatedly affirmed that any future sewer and water rates would be established by contract. *See* Jessell, 5/5/23 Tr., 15:8-26, 23:22-25:9; LeBlanc, 5/3/23 Tr., 38:5-39:2; ***Exhs. U, Y, Z.*** As late as June 2018, while pressing Watertown to accept Waterbury's retail rates, Waterbury's Corporation Counsel, Linda Whibey, said in a letter that "we look forward to *execution of inter municipal agreements* at the reasonable rates as set by the City." ***Exh. PP*** at 4 (emphasis added); O'Leary, 5/17/23 Tr., 8:21-9:5.

Accordingly, because Waterbury – through its actions and inactions – induced Watertown to forego involvement in the 2015 rate setting proceedings and thus, by default, to waive any appeal rights regarding those proceedings, Watertown and its residents will suffer a substantial loss as a result of the 164% rate hike for water service and the 348% rate hike for sewer service. ***Exhs. M***; ***I***. Based on the foregoing, equity mandates that Waterbury be estopped from its efforts to apply 2015 water and sewer rates to Watertown. On this basis, judgment must also enter in favor of Watertown.

CONCLUSION

For all the foregoing reasons, the Town of Watertown respectfully requests that judgment be entered *against* the City of Waterbury and in favor of the Town of Watertown on both counts of the Amended Complaint, and that the Court enter further orders that are just and equitable.

DEFENDANT TOWN OF WATERTOWN

By: /s/ David P. Friedman

David P. Friedman - #308724
dfriedman@murthalaw.com
Lorey Rives Leddy - #417205
lleddy@murthalaw.com
Daniel J. Sorger - #444196
dsorger@murthalaw.com

Murtha Cullina LLP
107 Elm Street
Stamford, CT 06902
Telephone: 203.653.5400
Facsimile: 203.653.5444
Juris No.: 424154
Its Attorneys