

STATE OF VERMONT

SUPERIOR COURT
Franklin Unit

CIVIL DIVISION
Docket No. 21-CV-4028

THE COUNTY OF LAMOILLE,
VERMONT,
Plaintiff,

v.

THE VILLAGE OF HYDE PARK,
VERMONT
Defendant.

RULING ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff County of Lamoille, Vermont, asks this court to enjoin the Defendant Village of Hyde Park, Vermont, from continuing to charge the County new and greatly increased rates for municipal water and wastewater services. The County contends that the new rates must be enjoined because they are unlawful, excessive and discriminatory. The County further asks the Court to impose alternative interim rates during the pendency of this litigation. The Village of Hyde Park opposes the motion.

On March 8, 2022, the court held a two-hour evidentiary hearing on the the County's motion. The County was represented by Michael J. Tarrant, II, Esq. The Village was represented by Michael J. Hall and William F. Grigas, Esqs. Following the hearing both parties filed supplemental memoranda on the legal issues. Based upon the evidence, the pleadings, and the representations of counsel, the County's motion is *denied* for the following reasons.

Preliminary Factual Findings

The County of Lamoille owns and operates the Lamoille County Court House and the building that houses the Lamoille County Sheriff's Department, both of which are located within the Village of Hyde Park. The County is comprised of ten towns, namely, Belvedere, Cambridge, Eden, Elmore, Hyde Park, Johnson, Morristown, Stowe, Waterville, and Wolcott. To cover its costs and expenses, the County assesses a county tax on the 25,318 residents of its member towns.

At all times relevant, the Village of Hyde Park owned and operated an aging community water system serving a year-round population of approximately 462 residents and several businesses and governmental entities, including the Lamoille County courthouse and sheriff's department (Exhibit 1). The system utilized a spring, reservoir, pump station, 9.3 miles of distribution mains, 276 service connections, and 23 fire hydrants, among other things (Id.). In 2019, the Vermont Department of Environmental Conservation concluded that the water system was being operated in a manner that violated its Drinking Water and Groundwater protection rules, and Hyde Park was ordered to make several significant upgrades and improvements to bring its water and wastewater systems into compliance (Id.).

In response to the State's order, Hyde Park made approximately \$4,267,000 in water improvements and \$985,000 in wastewater improvements to meet its permit requirements. To finance the work, the Village issued bonds through the Vermont Municipal Bond Bank. With the approval of the Bond Bank, the Village also adopted a schedule of new water and wastewater rates designed to generate the revenue needed to repay the bonds with interest, pay ongoing operation and maintenance costs, and plan for future needs (Exhibit 2; Transcript of 3/8/22 Hearing, at 71, 73-74, 76-78). The new rates went into effect in September of 2020 for water service, and in May of 2021 for wastewater service; the new fixed service charges are subject to automatic annual 3% increases in January of each year.

The new rate structure created eight separate customer classes, each with its own set of new rates. The new rate structure includes both new charges for water and wastewater usage as well as new fixed charges for water and wastewater service. The new usage charges do not vary much by customer class; for water service the new usage charge is \$7.00 for the first 1,000 gallons and \$7.50 for each 1,000 gallons thereafter, regardless of customer class, and for wastewater service the new usage charge is \$7.49 for each 1,000 gallons, regardless of customer class (Exhibits 2, 3).

The new fixed charges, on the other hand, vary very considerably by customer class. For example, for a village resident in a one- or two-family home (a "Residential I" user), the fixed service charge for water increased from \$15 per month (\$180 per year) to \$20.25 per month (\$243 per year), a 35% increase, and the fixed service charge for wastewater increased from \$35 per month (\$420 per year) to \$36.75 per month (\$441 per year), a 5% increase (Exhibits 2-5). For the County, which falls within the "Governmental/Public I" user class, however, the fixed service charges for water and wastewater services for the Lamoille County Court House and Sheriff's Department jumped from \$1,200 to \$55,188 per year, a 4,499% increase, not counting usage charges or automatic annual 3% increases (Exhibits 1-5 and 8).

Because the County represents more than half of the Governmental/Public I” user class, the County and its taxpayers are required to pay a large percentage of the increased revenue generated under the Village’s new rate structure, and, because most of the revenue under the new rates is derived from the fixed service charges, rather than from usage charges, the County has no way to mitigate those costs. In order to avoid the shut-off of water and wastewater services to the Court House and Sheriff’s Department, the County has been paying the new rates under protest since they went into effect.

The County asks the Court to enjoin the rates that the Village of Hyde Park has put into place and impose water and wastewater rates that “equally distribute the fixed service charge regardless of user class” (Motion for Preliminary Injunction, at 4). Under the County’s proposal, Hyde Park’s usage rates would not change but water customers would pay a fixed service charge of \$59.30 per month, and wastewater customers would pay a fixed service charge of \$58.75 per month (Exhibit 8, at 11-15).¹

Analysis and Discussion

Preliminary Injunction Standard

“A preliminary injunction is an extraordinary remedy never awarded as of right.” Taylor v. Town of Cabot, 2017 VT 92, ¶ 19, 205 Vt. 586 (citation omitted). Moreover, the justification for an injunction must be “clear.” State Buildings Div. v. Town of Castleton Bd. Adj., 138 Vt. 250, 256 (1980) (“An injunction is an extraordinary remedy and will not be granted routinely unless the right to relief is clear.”).

In considering such a motion, the court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” Taylor ¶ 19. Moreover, as the moving party, the Plaintiff “bears the burden of establishing that the relevant factors call for imposition of a preliminary injunction.” Id.

The “main factors” to be considered on a motion for a preliminary injunction are: “(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.” Id. In addition, “[a] preliminary injunction will usually be denied ‘if it appears that the applicant has an adequate alternate remedy in the form of money damages or other relief.’” Id.

¹ The County proposes a second alternative rate structure in which the fixed service charges would be different for each of the eight customer classes. Under that proposal, Residential 1 customers would pay \$51.45 per month (\$617.44 per year) in fixed water service charges and \$51.25 per month (\$615.00 per year) in fixed wastewater service charges, not counting usage (Id.).

The Threat of Irreparable Harm to the Movant

The County contends that it will suffer irreparable harm if it is required to continue paying Hyde Park's water and wastewater rates while this case is pending. In support of its contention, the County argues that an award of money damages (i.e., a refund of overpayments) would not be an adequate remedy if it prevails in this case because "[b]y the end of this year, the overpayment amount will exceed \$70,000," it is uncertain whether the Village will be able to repay that amount, and any refund from the Village would go to the county taxpayers at the time of the refund, not necessarily the taxpayers that have paid the allegedly invalid rates (Post-Hearing Memorandum, at 6-7). The Village denies the County's contention and argues that an injunction must be denied because there is an adequate alternative remedy available to the County if it prevails in this case, namely, a refund of any overpayments (Defendant's Supplemental Legal Filing, at 6-7).

"A preliminary injunction will usually be denied 'if it appears that the applicant has an adequate alternate remedy in the form of money damages or other relief.'" Taylor, 2017 VT 92, ¶ 40 (citation omitted). If, however, an award of money damages will go unsatisfied absent equitable relief, or if the parties cannot be returned to the positions they previously occupied, then injunctive relief may be justified. C. Wright & A. Miller, *Federal Practice & Procedure* §2948.1 (3d ed. 2017).

The Court is not persuaded that the Village of Hyde Park will be unable to refund the County's estimated \$70,000 "overpayment" if ordered to do so in this case, nor is the Court convinced that the County would be unable to make its taxpayers substantially whole if it prevails in this case. The Village has the authority to raise taxes to cover its obligations, so it would be speculative at best to conclude that Hyde Park will be unable to pay a \$70,000 judgment. Moreover, the court is prepared to expedite this matter so that it can be resolved on its merits by the end of this calendar year; thus, any changes in the composition of the County's taxpayers will likely be fairly minimal. Therefore, the County appears to have an adequate alternative remedy available to it, namely a refund of any amounts found to have been unlawfully charged by the Village. This alone is sufficient to deny the County's request for a preliminary injunction.

The Potential Harm to the Other Parties and the Public Interest

An order enjoining Hyde Park from continuing to implement its rate increases, and imposing the County's proposed alternative rates in their place, would run a significant risk of causing harm to the Village and its residents. Under the current rate structure, Residential I users in Hyde Park pay a fixed service charge for water of \$20.25 per month (\$243 per year), and they pay a fixed service charge for wastewater of \$36.75 per month (\$441 per year). Under the County's

proposed alternative rates, however, those same Residential I Hyde Park users would pay a fixed service charge for water of \$59.30 per month (\$711.65 per year) plus a fixed service charge for wastewater of \$58.75 per month (\$705.00 per year). That is nearly triple what residential residents of Hyde Park are currently paying for water service and 60% more than what they are currently paying for wastewater service.² Moreover, in addition to those amounts, these customers would still also have to pay for their actual water and wastewater usage.

There are only 462 residents in Hyde Park, compared to the 25,318 residents who comprise the County of Lamoille, and many of the Village's residents earn lower incomes, or live on a fixed income or on governmental assistance.³ It is foreseeable that many Village residents would find it difficult, if not impossible to pay such higher rates for water and wastewater, both of which are essential services. The Court agrees with Hyde Park's contention that the County's proposed change to rates, "even during the pendency of litigation, could have an overwhelming negative impact on the citizens of the Village of Hyde Park" (Defendant's Supplemental Legal Filing, at 6).

The Court also agrees with Hyde Park's contention that enjoining the Village's current rates and imposing alternative rates in their place could adversely affect the status of its bond with the Municipal Bond Bank. As noted earlier, the current rates were designed with Bond Bank's approval to generate the revenue needed to repay the bonds with interest, among other things. A change in those rates could affect the status of the Village's bonds, especially if the change resulted in imposing significantly higher rates on a class of customers unable to pay the higher burden.⁴ On balance, it appears that the Village and its ratepaying residents likely would be more adversely affected by the issuance of a preliminary injunction than the County and its taxpayers would be by the denial of such an injunction.

The Likelihood of Success on the Merits

A municipality "may establish rates by meter service or annual rents to be charged ... for the supply of water to the inhabitants of such municipal corporation

² The percentage increases for Residential I customers would be a bit smaller under the County's second alternative proposed rate schedule, but the percentages would be higher for other customer classes under that proposal.

³ Although Hyde Park has 462 residents, there are only 236 water customers (Exhibit 8, at 11).

⁴ The County argues that its proposed alternative rate structure "would absolutely not jeopardize Defendant's revenue requirement or its commitment to the Vermont Municipal Bond Bank" because it's alternative rates "would generate the same amount of revenue as is captured by the village's current unreasonable rate" (Post-Hearing Memorandum, at 8). That contention assumes, however, that all of Hyde Park's water and wastewater customers will be able to pay the alternative rates. For the reasons stated above, there are good grounds to question whether that assumption is correct.

and others,” and may also “[f]rom time to time ... alter, modify, increase, or diminish such rates and extend them to any description of property or use as such municipal corporation may deem proper.” 24 V.S.A. § 3311; see also *Id.* §3313(a). The statute “affords municipal waterworks broad authority” in setting rates for water service, and there is no requirement that rates be based “on actual use or associated marginal costs.” Vermont North Properties v. Village of Derby Center, 2014 VT 73, ¶¶ 50, 51, 197 Vt. 130. Moreover, a municipality’s water rates “are entitled to a presumption of reasonableness,” and the courts “will defer to the municipal corporation as long as the rates are nondiscriminatory, and are not arbitrary and capricious.” *Id.*, ¶ 50.

Similarly, a municipality “may establish ... ‘sewer disposal charges’ and “may change the rates of such charges from time to time as may be reasonably required.” *Id.* §3615(a) and (b). The statute “identifies a host of factors on which a municipal corporation may base its rates,” and those rates will be affirmed on review so long as they are “fair, equitable and reasonable.” Vermont North Properties, ¶ 40 (quoting Handy v City of Rutland, 156 Vt. 397, 404 (1990)). As with water rates, a municipality is not limited to “actual use’ or “actual cost” in setting wastewater rates. *Id.*, ¶¶ 43, 44. In addition, “[w]e presume that the rates established by a lawful rate-fixing body are reasonable, and those who challenge such rates ‘bear the burden of showing that they are unreasonable.’” *Id.*, ¶ 46 “The burden is not on the Village to justify its rates.... It is on VNP to demonstrate, through evidence, that the rates are unreasonable.”).

Hyde Park’s Village Manager, Carol Robertson, testified at the court’s hearing that the Village followed the American Waterworks Manual I in setting its new rates, and that it used a “cost causation” approach to establishing its customer classes and rate structure. According to Robertson, the principal reason why the Village had to improve its water system, and incur millions of dollars in bond liability, was because of the need to improve fire flow (i.e., water pressure through its hydrants for fire suppression purposes). Robertson further testified that only a small number of Village customers benefitted from the improved fire flow, namely, the Hyde Park Elementary School, the Lamoille County Courthouse, the Lamoille County Sheriff’s Department, and the Hyde Park Fire Department. Robertson further testified that the remainder of the Village’s water users drew no benefit from those improvements. Therefore, according to Robertson, it was appropriate to create a rate design structure that required those who made the improvements necessary to contribute the lion’s share of the revenue needed to pay for them. In addition, Robertson testified that the County not only benefited the most from the upgrades but is also in a better position to bear the cost of the upgrades than the Village is, since the County has 25,318 taxpayers to share the cost with whereas the Village has only 462 residents.

The County disputes Robertson's proffered justification for imposing such an enormous rate increase on the County. The County contends that Robertson's explanation of how the new rates were set is inconsistent with explanations that the Village has offered in the past. The County also denies Robertson's claim that improved fire flow was the main reason for the required upgrades. The County notes in this regard that eliminating concerns about groundwater contamination was also a concern expressed by the Department of Environmental Conservation at the time Hyde Park's was ordered to bring its water and wastewater systems into compliance. Moreover, upgrades to the wastewater system had nothing to do with fire suppression. In addition, the County also denies Robertson's claim that only a small number of Village customers benefitted from the improved fire flow. The County points out that there are 23 fire hydrants in the Village, only five of which are located near the County Courthouse and Sheriff's Department. The County concludes, therefore, that all the residence of the Village benefitted from the improvements and that it is unjust, arbitrary and discriminatory to require the County to bear such a disproportionate amount of the cost of the improvements.

Based upon the record presently before the court, the court cannot conclude that the County has met its burden of establishing that it is likely to prevail on the merits in this case. The Village has come forward with a rational justification for its new rates, and, although the County has raised compelling arguments for concluding that the proffered justification is without merit, the facts are not yet sufficiently clear to overcome the presumption that the Village's rates are reasonable. A fuller development of the facts will be needed before the court can assess the relative merits of the parties' positions in this case.

Conclusion and Order

For all the foregoing reasons the County of Lamoille's motion for a preliminary injunction is *denied*. By not later than April 29, 2022, counsel shall agree upon and submit to the court a proposed stipulated scheduling order designed to complete all discovery, complete mediation, and achieve trial readiness by September 30, 2022. The clerk will please set this matter for a pre-trial conference after October 1st.

SO ORDERED this 14th day of April, 2022.



Robert A. Mello
Superior Judge

