



January 13, 2022

Via Electronic Mail

Honorable Aida Camacho Welch
Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350

Re: In the Matter of Middlesex Water Company's Request For Deferred Accounting Authority For Expenses Related To Its Park Avenue Wellfield Remediation
BPU Docket No. WR2201_____

Dear Secretary Camacho-Welch:

Enclosed herewith for filing please find Middlesex Water Company's ("Middlesex" or "the Company", or "Petitioner") verified Petition in connection with the referenced matter.

This Petition is being filed electronically only consistent with the Board's Order dated March 19, 2020 (Board Docket No. EO20030254) directing that all submissions to the Board, of any kind, be submitted electronically. I hereby certify that copies of the enclosed verified Petition and Exhibit have this day been transmitted to all persons in the enclosed Service List by electronic mail.

For the reasons set forth in the enclosed Petition, Middlesex respectfully requests that the Board approved the Company's request set forth in the Petition pursuant to N.J.S.A. 48:2-16, 48:2-21, 48:2-21.1, 48:2-23 and such other statutes, regulations and Board Orders as may be deemed by the Board as applicable.

Kindly confirm receipt of this filing by electronic mail to jkooper@middlesexwater.com and please do not hesitate to contact me if there are any questions or concerns

Very truly yours,

A handwritten signature in blue ink that reads "Jay Kooper".

Jay L. Kooper
Vice President, General Counsel & Secretary

Enclosures

cc: Service List

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF MIDDLESEX	:	PETITION
WATER COMPANY'S REQUEST	:	
FOR DEFERRED ACCOUNTING	:	Docket No. WR2201_____
AUTHORITY FOR EXPENSES RELATED	:	
TO ITS PARK AVENUE WELLFIELD	:	
REMEDICATION	:	

TO: THE HONORABLE COMMISSIONERS OF THE BOARD OF
PUBLIC UTILITIES:

Petitioner, Middlesex Water Company (hereinafter referred to as "Petitioner," "Middlesex" or the "Company"), respectfully submits this Petition pursuant to N.J.S.A. 48:2-16, 48:2-21, 48:2-21.1, 48:2-23 and such other statutes, regulations, and Board of Public Utilities ("Board" or "BPU") Orders that may be deemed by the Board to be applicable for deferred accounting authority as follows:

1. Middlesex is a corporation organized and existing under the laws of the State of New Jersey, with its principal offices located at 485C Route One South, Suite 400, Iselin, New Jersey 08830.

2. Middlesex is a duly organized and existing public utility of the State of New Jersey subject to the jurisdiction of the Board. Middlesex provides water services to approximately 62,000 retail customers, primarily in eastern Middlesex County, New Jersey. The Middlesex System's retail customers are located in an area of approximately 55 square miles in Woodbridge Township, the City of South Amboy, the Boroughs of Metuchen and Carteret, portions of the Township of Edison and the Borough of South Plainfield in Middlesex County, and a portion of the Township of Clark in Union County. Retail

customers include a mix of residential customers, large industrial concerns and commercial and industrial light facilities. These customers are located in generally well-developed areas of central New Jersey.

3. Middlesex provides water under wholesale contracts to the City of Rahway, Townships of Edison and Marlboro, the Borough of Highland Park and the Old Bridge Municipal Utilities Authority. Middlesex treats, stores and distributes water for residential, commercial, industrial and fire protection purposes. Middlesex also provides water treatment and pumping services to the Township of East Brunswick under contract. The contract customers of the Middlesex System comprise an area of approximately 146 square miles with a population of approximately 300,000. Contract sales to Edison, Old Bridge, Marlboro and Rahway are supplemental to the existing water systems of these customers.

4. Middlesex provides water service to approximately 300 customers in Cumberland County, New Jersey. This system is referred to as Bayview, and is not physically interconnected with the Middlesex System. The Company owns and operates water treatment, supply, transmission and distribution systems for these purposes. The Company also owns subsidiaries that provide utility and utility-related services in Southampton Township in Burlington County, and portions of Delaware and Pennsylvania.

5. By this Petition, the Company respectfully requests authority from the Board to defer on its books certain extraordinary expenses related to the environmental remediation of its wells contaminated with Per- and Polyfluoralkyl Substances (“PFAS”). The wells are situated on land owned by the Company located in South Plainfield, New Jersey on Park Avenue (“Park Avenue Wellfield”). The treatment of these deferred expenses would be addressed in Middlesex’s next base rate case.

6. PFAS are a group of manufactured chemicals that have been used in industry and consumer products since the 1940s. Perfluorooctanoic Acid (“PFOA”) and Perfluorooctane Sulfonate (“PFOS”) are two of the most widely used and studied chemicals in the PFAS group.

7. Currently, the U.S. Environmental Protection Agency (“EPA”) has no federal drinking water standard for PFAS compounds. To date, the EPA has established a lifetime health advisory level (not a regulation) of 70 parts per trillion (“ppt”) for the sum of PFOA and PFOS in drinking water. This current advisory was established by the EPA in 2016.

8. In 2017, the New Jersey Department of Environmental Protection (“NJDEP”) set a screening guideline level (not a regulation) for PFOA at a maximum contaminant level (“MCL”) of 40 ppt.

9. Since 2008, Middlesex has been testing for PFAS as part of the EPA’s Unregulated Contaminant Monitoring Program. Through this testing, Middlesex detected the presence of PFAS in the groundwater of its wellfields at the Park Avenue Wellfield. The levels of the PFAS were well below both the EPA’s lifetime health advisory level of 70 ppt and the NJDEP’s screening guideline level of 40 ppt. Depending on the season and other water supply conditions, the Park Avenue Wellfield has generally produced approximately 20% of Middlesex’s long term water supply.

10. In 2018, Middlesex filed a lawsuit against the 3M Corporation (“3M”) to recoup remediation costs for the Park Avenue Wellfield through compensatory damages in addition to obtaining punitive damages and recoupment of attorney’s fees and costs. For decades, 3M manufactured and distributed PFAS in New Jersey, and 3M’s unique chemical fingerprint has been detected in the testing of the PFAS discovered at the Park Avenue Wellfield. 3M is, in fact, the manufacturer of the PFAS detected in Middlesex’s wells at the

Park Avenue Wellfield. This lawsuit is still in progress before the United States District Court for the District of New Jersey and is docketed as *Middlesex Water Co. v. 3M Company*, Civil Action No. 1:18-cv-15366.

11. Also in 2018, in anticipation that the NJDEP might establish a regulation that adopted a lower MCL for PFAS than its prior screening guideline level, Middlesex began evaluating and designing treatment options to mitigate and remove the PFAS detected in the groundwater at the Park Avenue Wellfield.

12. As a result of this evaluation, and its early plans and actions taken to deal with the PFAS exceedances, Middlesex has been able to commence construction of a new water treatment system at the Park Avenue Wellfield that, using a process called Granulated Activated Carbon (“GAC”) will work to mitigate the levels of the PFAS family of chemicals and bring the Park Avenue Wellfield into compliance with the NJDEP regulation’s 14 ppt MCL standard for PFOA. This new system is expected to be placed into service in mid-2023 and is estimated to cost approximately \$47 to \$50 million.

13. In 2020, the NJDEP adopted a regulation that significantly lowered its former guideline of 40 ppt. Under this new regulation, which took effect on January 1, 2021, the MCL for PFOA was established at 14 ppt.

14. Starting on January 1, 2021, water utilities were required to start monitoring for emerging contaminants like PFOA and PFOS under the new NJDEP regulation and report quarterly results to NJDEP. Under NJDEP regulation, the newly established MCL limits are applied on the basis of a Quarterly Running Annual Average (“QRAA”) in which the four most recent quarters of monitoring data are averaged.

15. In September 2021, Middlesex received notice from NJDEP that groundwater from its wellfield exceeded the NJDEP's new 14 ppt MCL limit for PFOA based on Middlesex's QRAA samples collected in the first, second and third quarters of 2021. As those results were 25 ppt, 23 ppt and 36 ppt for a QRAA of 21 ppt, Middlesex's MCL would exceed the NJDEP's 14 ppt MCL standard regardless of the result of the fourth quarter of 2021 testing.

16. As a result of this exceedance of the 14 ppt MCL standard, Middlesex was issued a Notice of Violation from NJDEP and was ordered to issue a NJDEP-required public notification of the exceedance. Exceeding the MCL for PFOA is considered a Tier 2 Violation, meaning it is not considered an acute health threat and does not require notification within 24 hours.

17. In consultation with NJDEP, Middlesex through two mailings – one in October 2021 and one in November 2021 – mailed public notifications to customers deemed to be located in the notification area, i.e., the portion of Middlesex's service territory where customers may have received any amount of water from the Park Avenue Wellfield. Middlesex has already and continues to anticipate within its comprehensive communications plan that it will be required to issue additional public notifications to the affected customers in early 2022 following the confirmation of the fourth quarter of 2021 testing results at the Park Avenue Wellfield.

18. On October 29, 2021, a class action lawsuit was filed against Middlesex by a proposed class of plaintiffs seeking, inter alia, restitution for costs incurred from seeking medical advice, installing home water filters, and purchasing bottled water in response to the public notification issued by Middlesex. This lawsuit is docketed as *Vera et al v. Middlesex*

Water Co., Docket No. MID-L-6306-21, and has been filed in the Superior Court of New Jersey, Law Division, Middlesex County.

19. On November 16, 2021, a separate class action lawsuit was filed against Middlesex and 3M by a proposed class of plaintiffs seeking the same remedies as those set forth in the *Vera* case. This separate lawsuit is docketed as *Lonsk et al. v. Middlesex Water Co. et al.*, Civil Action No. 2:21-cv-19808 and has been filed in the U.S. District Court for the District of New Jersey.

20. On November 9, 2021, Middlesex, with NJDEP's approval, stopped pumping water from the Park Avenue Wellfield having engaged in continuous testing to determine that a shutdown of the Park Avenue Wellfield was an appropriate action, on an interim basis, until the completion of the remediation of Park Avenue and its placement into service in mid-2023. Upon completion of this system testing, Middlesex, on December 16, 2021, publicly announced the shutdown of the Park Avenue Wellfield until the new water treatment system at Park Avenue is completed in mid-2023 barring any unforeseen emergency necessitating reactivation of the Park Avenue Wellfield prior to that date. At this time, the Park Avenue Wellfield remains offline, and as a result Middlesex expects that going forward from the first quarter of 2022, it will not exceed the NJDEP regulation's MCL standards.

21. Up to December 31, 2021, the Company has incurred extraordinary expenses of approximately \$222,588 related to the immediate environmental remediation needs of the Park Avenue Wellfield. These include expenses incurred for assessing temporary solutions and ultimately implementing the adopted interim solution to allow for the shutdown of the Park Avenue Wellfields. These also include expenses incurred for the development, printing and mailing of customer notifications, issuing of customer communications and other related

costs. These expenses represent prudently incurred costs. Middlesex has been proactive, prudent and timely in its response to the changing NJDEP regulations concerning PFOA and in the actions the Company has taken with respect to this issue. At no time has NJDEP in its communications with Middlesex alleged otherwise with respect to Middlesex's handling of these issues with respect to the Park Avenue Wellfield.

22. The Company annexes Exhibit A, which lists the types of expenses actually incurred and expected to continue to be incurred, as well additional types of expenses to be incurred, to this Petition and makes it a part of this Petition as if fully set forth herein. As set forth in Exhibit A, the Company estimates that it will incur additional extraordinary expenses of approximately \$1,447,000 through June 2023 for total projected expenses of \$1,669,588

23. All correspondence in this case should be addressed to:

Jay L. Kooper
Vice President, General Counsel & Secretary
Middlesex Water Company
485C Route One South, Suite 400
Iselin, New Jersey 08830
Tel: (732) 638-7506
jkooper@middlesexwater.com

Stephen B. Genzer, Esq.
Saul Ewing Arnstein & Lehr LLP
One Riverfront Plaza
Newark, New Jersey 07102-5490
Tel: (973) 286-6712
stephen.genzer@saul.com

WHEREFORE, the Petitioner respectfully requests that the Board review and expeditiously issue an Order approving Middlesex's request for authority to defer on its books the extraordinary expenses associated with the immediate environmental remediation needs for the Park Avenue Wellfield as more fully set forth here, and such other relief that the Board deems just and proper.

Respectfully Submitted,

By:  _____

JAY L. KOOPER, ESQ.
Vice President, General Counsel & Secretary
Middlesex Water Company
485C Route One South, Suite 400
Iselin, NJ 08830
Attorney for Petitioner

Dated: January 13, 2022
Iselin, New Jersey

IN THE MATTER OF MIDDLESEX WATER COMPANY'S REQUEST FOR
DEFERRED ACCOUNTING AUTHORITY FOR EXPENSES RELATED TO ITS
PARK AVENUE WELL FIELD REMEDIATION

EXPENSES

Expense Description	Actual Thru 12/31/2021	Estimated thru June 2023	Total Projected Expenses
Lab Supplies	4,444	24,000	28,444
Public Notices/Communications	115,794	90,000	205,794
Engineering Costs	53,500	20,000	73,500
Company Labor	48,850	145,000	193,850
Legal	-	20,000	20,000
Surface Water Production - Chemicals	-	600,000	600,000
Surface Water Production - Electric	-	(135,000)	(135,000)
Surface Water Production - Residuals	-	683,000	683,000
 TOTAL EXPENSES	 <u>\$ 222,588</u>	 <u>\$ 1,447,000</u>	 <u>\$ 1,669,588</u>

VERIFICATION

STATE OF NEW JERSEY:

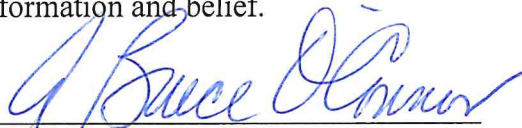
SS:

COUNTY OF MIDDLESEX:

A. BRUCE O'CONNOR, of full age, being duly sworn, according to law, deposes and says:

1. I am the Senior Vice President, Treasurer and Chief Financial Officer of Middlesex Water Company and am authorized to make this Verification on behalf of the Company;

2. I have reviewed the within Petition and the information contained therein is true to the best of my knowledge, information and belief.



A. Bruce O'Connor

Sworn and subscribed to
before me this 13 day
of January, 2022.



(Notary)

SELENA MONTERO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 50095002
My Commission Expires 12/28/2023

Middlesex Water Company – BPU Docket No. WR2201 _____
In The Matter of Middlesex Water Company’s Request For Deferred Accounting
Authority For Expenses Related To Its Park Avenue Wellfield Remediation
~ Service List ~

Middlesex Water Company

<p>Jay L. Kooper Middlesex Water Company 485C Route One South Suite 400 Iselin, NJ 08830 jkooper@middlesexwater.com</p>	<p>A. Bruce O’Connor Middlesex Water Company 485C Route One South Suite 400 Iselin, NJ 08830 aboconnor@middlesexwater.com</p>	<p>Robert J. Capko Middlesex Water Company 485C Route One South Suite 400 Iselin, NJ 08830 rcapko@middlesexwater.com</p>
<p>Tracy Tyrell Middlesex Water Company tyrell@middlesexwater.com (electronic only)</p>	<p>Michele Tilley Middlesex Water Company 485C Route One South Suite 400 Iselin, NJ 08830 mtilley@middlesexwater.com</p>	

Board of Public Utilities

<p>Christine Lin Board of Public Utilities 44 South Clinton Avenue 3rd Floor, Suite 314 Post Office Box 350 Trenton, NJ 08865-0350 (609) 292-2951 - Telephone Christine.lin@bpu.nj.gov</p>	<p>Michael Kammer Board of Public Utilities Division of Water 44 South Clinton Ave., 9th Floor P.O. Box 350 Trenton, NJ 08625 Mike.kammer@bpu.nj.gov</p>	<p>Dr. Ben Witherell Board of Public Utilities 44 South Clinton Avenue 9th Floor Trenton, NJ 08865-0350 (609) 292-2637 – Telephone (609) 292-3191 – Fax Ben.witherell@bpu.nj.gov</p>
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Division of Rate Counsel

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