



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL.
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BRIAN O. LIPMAN
Director

March 23, 2022

VIA E-MAIL

Honorable Aida Camacho-Welch, Secretary
State of New Jersey, Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: MIDDLESEX WATER COMPANY PETITION TO DEFER COSTS
ASSOCIATED WITH
PARK AVENUE WELLFIELD
BPU Docket No.: WR22010009**

Dear Secretary Camacho-Welch:

Please accept for filing the Division of Rate Counsel's ("Rate Counsel") comments in connection with the above-referenced petition. Thank you for your consideration and attention to this matter.

Background

MWC provides water services to approximately 62,000 retail customers primarily in Middlesex County, and to several wholesale customers. MWC obtains water from three sources: a) raw surface water through the Delaware and Raritan Canal purchased from the New Jersey Water Supply Authority (74% of MWC's supply needs); b) groundwater from Company-owned wells (19% of MWC's needs); and c) purchase of treated water from New Jersey-American Water Company (7% of MWC's needs). MWC's largest well field is its Park Avenue

well field, consisting of 15 wells with a combined pumping capacity of 14.4 million gallons per day. The Park Avenue well field is located in the northwest area of MWC's retail service territory in South Plainfield, New Jersey.

In 2017, the New Jersey Department of Environmental Protection ("NJDEP") established a screening guideline level for Perfluorooctanoic Acid ("PFOA") of 40 ppt. PFOA's are a member of a group of Pre- and Polyfluoroalkyl Substances ("PFAS") which are manufactured chemicals that have been used in industry and commercial products since the 1940s. In addition, the Environmental Protection Agency ("EPA") had set a lifetime advisory level of 70 ppt. for PFAS. MWC has been testing its water for PFAS since 2008 and previously found that its levels were well below both the NJDEP's and EPA's advisory and guideline levels.

In anticipation that the NJDEP will lower its former guideline of 40 ppt. for PFOA, in 2018 MWC filed a lawsuit against the 3M Corporation ("3M"), the manufacturer of PFOA, to recoup the Company's costs for remediation efforts to remove PFOA from the Park Avenue wellfield as well as to recoup attorney's fees and related costs. Also in 2018, MWC began designing treatment options to remove PFAS from the Park Avenue wellfield. As a result, MWC began constructing a new water treatment system at the Park Avenue wellfield using a process called Granulated Activated Carbon, in order to reduce or eliminate the level of PFAS. The new treatment system is expected to become operational in mid-2023 and is estimated to cost approximately \$47 to \$50 million.

Meanwhile, as MWC expected, the NJDEP reduced its former guideline for PFOA of 40 ppt. to just 14 ppt., effective January 1, 2021. Presently, through more recent testing, MWC has been found to be in violation of the lower 14 ppt. guideline.

In October and November 2021, two separate class action lawsuits were filed naming MWC as a defendant seeking compensation for medical advice, installing home water filters, and purchasing bottled water. On November 9, 2021, MWC stopped pumping water from the Park Avenue wellfield. The stoppage is expected to continue until the new treatment plant is completed in mid-2023. Until that time, water production from the Park Avenue wellfield has been shifted to MWC's CJO Plant surface water treatment facility.

The Company claims that the additional production at the CJO Plant, since it is a surface water treatment facility, will require more chemicals than were needed at the Park Avenue well

field. MWC also anticipates that its residual disposal costs will increase since the Park Avenue well field did not generate any residuals at all. MWC's electricity-driven pumping costs, however, are expected to be reduced.

With its petition, MWC requests an order from the Board approving the Company's request to defer on its financial statements the extraordinary expenses it has incurred and expects to incur in the future for the environmental remediation of the contaminates at its Park Avenue well field.

Analysis and Recommendations

Generally accepted accounting principles require that periodic expenses be charged against income in the period in which the expenses are incurred. In some instances, however, it makes sense to defer for accounting purposes certain expenditures that are more properly related to an accounting cycle or multiple cycles other than the current period, such as with depreciation expenses. In regulatory accounting, utilities also can request approval for deferred accounting treatment for unusual expenses that were not considered in a prior rate proceeding. This last example of deferred accounting treatment is at the heart of MWC's petition in this proceeding.

MWC requests the Board's authorization to defer certain expenses that have been incurred and are expected to be incurred in the future in connection with the Company's environmental remediation efforts associated with the contamination of its Park Avenue wellfield with PFOA. Exhibit A to MWC's petition (as amended in response to RCR-11) identifies the categories of expenses that MWC proposes to defer and provides an estimate of expenses to be incurred. The categories of expenses that MWC proposes to defer along with the total projected deferral amounts are as follows:

- Lab supplies \$ 28,444
- Public Notices/Communications \$205,794
- Engineering Costs \$ 73,500
- Company Labor \$125,309
- Legal \$ 20,000
- Surface Water Production – Chemicals \$600,000
- Surface Water Production – Electric \$(135,000)

• Surface Water Production- Residuals	<u>\$638,000</u>
Total Expenses	<u>\$1,601,047</u>

It is Rate Counsel’s opinion that the expenses in question should meet certain standards in order to qualify for deferred accounting treatment. These standards are as follows:

- The expense could not have been recognized in a prior rate case.
- The expense is beyond the utility’s ability to control.
- The expense is significant to the utility’s overall financial health.

Concerning the first standard listed above, the Company did not begin to incur replacement water supply costs until November 2021, which followed the conclusion of MWC’s last base rate case. Thus, recognition of the projected replacement expenses in MWC’s most recent base rate proceeding would not have been appropriate at that time.

As for the second standard, while many of the costs that MWC will incur for replacement water are internal, it appears that the need to incur such costs is unavoidable. MWC is incurring now and will need to incur in the future incremental expenses associated with the replacement water produced at the CJO Plant because the Park Avenue wellfield is now shut down.

The third standard, i.e., the magnitude of the expenses relative to MWC’s overall financial health, is a far closer question than the previous two standards. Relying on MWC’s total deferred expense estimate, deferrals totaling \$1.6 million represent approximately 2 percent of MWC’s total annual revenue. A 2 percent reduction of annual revenue should not be catastrophic to MWC’s financial position. At the same time, 2 percent is not insignificant. Thus, since the first two objectives have been met and it is arguable whether the third objective has been met, Rate Counsel does not object to the deferred accounting treatment proposed by MWC, provided that certain restricting conditions also are met.

If deferred accounting treatment is to be approved by the Board, it should be approved only with the following conditions attached:

1. Only actual, incremental expenses incurred associated with the replacement of water sources should be deferred.
2. No internal salaried labor should be deferred.

3. Only non-salaried incremental labor beyond normalized over-time should be deferred.
4. No internal engineering costs should be deferred.
5. No internal or external legal costs other than those incremental external legal costs directly associated with the replacement of water should be deferred.
6. No judgement or settlement costs against MWC should be deferred.
7. Any judgments or settlement revenues received by MWC should be credited to the deferred account.
8. No return, carrying costs, or interest on the deferral should be added to the deferred account.
9. The Board's approval for deferred accounting should not be deemed pre-approval for recovery of such deferrals in a future rate proceeding. The amounts deferred and the appropriate recovery vehicle, if any, shall be subject to a prudence review and a recovery determination in a future base rate proceeding.

With these conditions, Rate Counsel does not object to MWC's request for deferred accounting treatment for incremental expenses incurred for replacement water only.

Respectfully submitted,

BRIAN O. LIPMAN, ESQ.
Director, Rate Counsel

By: Susan E. McClure
Susan E. McClure, Esq.
Managing Attorney – Water/Wastewater

cc: Service List via e-mail