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February 14, 2023

Via Electronic Mail

Ms. Carmen Diaz, Acting Secretary
Board of Public Utilities
44 South Clinton Avenue
Trenton, New Jersey 08625-0350

**Re: I/M/O the Application of Middlesex Water Company for Authority to Issue
and Sell up to 1,000,000 Shares of Common Stock
BPU Docket No.: WF22100625**

Dear Acting Secretary Diaz:

Please accept for filing in the above-referenced matter the New Jersey Division of Rate Counsel's ("Rate Counsel") comments concerning Middlesex Water Company's ("Middlesex" or "the Company") October 6, 2022 petition to the New Jersey Board of Public Utilities ("Board") for authority to issue up to 1.0 million Shares of Common Stock.

A. Background

Middlesex is a regulated public utility that provides water services to approximately 61,000 retail customers, primarily in eastern Middlesex County, New Jersey.¹ In addition, Middlesex provides water under wholesale contracts to the City of Rahway, the Townships of Edison and Marlboro, the Borough of Highland Park and the Old Bridge Municipal Utilities Authority.² Middlesex also provides water service to approximately 300 customers in Cumberland County, New Jersey, through a separate system that is not interconnected with its main service territory.³ Middlesex recorded revenues of approximately \$83.8 million in 2021.

¹ Petition, para. 1.

² *Ib.*

³ Petition, para. 4.

On October 6, 2022, Middlesex filed a petition (“Petition”) and supporting documents seeking approval from the Board to:

- a) Issue and sell in one or more offerings, up to 1.0 million shares of its Common Stock, without par value, in order to fund portions of its Water for Tomorrow capital program.
- b) Market the offering, if made through a traditional underwriting method through a selected underwriter on a negotiated, rather than a competitive basis.

By way of background, the current five-year Water for Tomorrow capital program projects that Middlesex will spend approximately \$288.0 million through 2026 to replace aging infrastructure, remain compliant with water quality regulations and enhance service. The funding of this capital program will likely require a combination of funds generated from operations, debt financing and/or equity issuances in order to maintain a balanced capital structure to continue to attract and retain investor interest.⁴ Middlesex anticipates selling the shares of Common Stock at a price per share which approximates the closing bid price quoted on the last trading day prior to the sale.⁵ Assuming a single traditional underwriting offering of all 1.0 million shares and the current market price of the Company’s Common Stock, the estimated maximum net proceeds that the Company believes can reasonably be anticipated based on its actual Stock price of \$87.42 at September 20, 2022 per share, and after deducting transactional expenses, fees and commissions, is approximately \$83.5 million.⁶ This net proceeds amount consists of gross proceeds of \$87.42 million from the Stock sale, reduced by approximately \$3.7 million (4.25%) for commissions and \$200,000 for external issuing expenses.⁷ The net proceeds from this Stock sale will be used to provide partial financing for the Water for Tomorrow capital program, to reduce short-term debt, and to maintain an appropriate balance in the capital structure of the Company.⁸

B. Findings and Recommendations

⁴ Petition para. 6 and 7.

⁵ Petition para. 13.

⁶ Petition para. 14.

⁷ Exhibit H

⁸ Petition para. 14.

Rate Counsel has carefully reviewed the Petition and discovery responses for this matter and, based on the facts and discovery responses specific to this Petition, does not object to its approval by the Board. Rate Counsel's recommendation is supported by the following findings:

- The Company's ongoing 5-year rolling Water for Tomorrow capital program has previously been investigated and approved by the Board as being in the public interest.⁹
- The Board has previously authorized Middlesex to issue and sell, on a negotiated basis, without the requirement of a further Board Order as to pricing, up to 1.5 million shares of Common Stock, without par value, through one or more traditional underwriting offerings.¹⁰
- Since at least 1989, Middlesex has proposed, and the BPU approved, the use of traditional stock underwritings on a negotiated basis.¹¹
- The assumed commission percentage of 4.25% and other external expenses of \$200,000 associated with the Stock issuance would appear to be reasonable when compared to the actual commission percentage and other external expenses incurred in BPU-approved 2019 Middlesex Common Stock offering.¹²
- Middlesex's target capitalization ratios are 47 percent long-term debt, 0.25 percent preferred stock, and 52.75 percent common equity and these ratios have been approved in the Company's recent prior base rate proceedings. The Company's actual capitalization ratios as of June 2022 are 43.40 percent long-term debt, 0.28 percent preferred stock, and 52.57 percent common equity.¹³ Middlesex's pro forma capitalization ratios with the inclusion of the proposed 1.0 million Stock Issuance and the Water for Tomorrow-related debt financing currently being requested in a separate proceeding before the Board¹⁴ are projected to be 47.03 percent long-term debt, 0.23 percent preferred stock, and 52.74 percent common equity.¹⁵ Therefore, the proposed transaction will not adversely impact Middlesex's previously authorized target capital structure.

⁹ BPU Order Authorizing the Issuance and sale of Common Stock, Docket No. WF19030339

¹⁰ *Id.*

¹¹ Middlesex response to RCR-4.

¹² Exhibit H.

¹³ Middlesex response to OE-3.

¹⁴ *I/M/O the Application of Middlesex Water Company for Authority to Issue and Sell up to \$300 Million of Principal Amount Debt Securities – BPU Docket No. WF22110689.*

¹⁵ Middlesex response to OE-3.

- The proposed Stock issuance would appear to be reasonable as part of the Company's overall strategy to provide safe, adequate, and reliable service to customers at the lowest possible cost.

Rate Counsel notes that approval of the Petition should not include authorization to include in rate base any specific assets that will be acquired as a result of this financing. Nor should it be construed as acceptance for ratemaking purposes of the resulting capital structure and capital costs. The determination of any assets to be included in rate base and the ratemaking impact of serving customers, including the impact of the transaction(s) on Middlesex's capital costs, should be addressed in a future base rate proceeding.

The Board approval should also include the following conditions:

- The authority granted by the Board in this docket should be restricted to fund utility operations and investments only, not to fund affiliated entities.
- The Company should be obligated to issue its planned Stock issuance at the lowest reasonable cost.
- The Company should be obligated to utilize a prudent and cost-effective capital structure and mix of capital to finance its utility rate base at the lowest reasonable cost.
- Finally, Rate Counsel reserves all rights to take appropriate positions in future Board proceedings involving the Company, including any such proceeding pending before the Board at this time.

Approval by the Board of these recommendations will satisfy the concerns of Rate Counsel that the Board's approval is limited to the transactions as herein described, does not indicate authorization to include any specific assets or amounts in rate base, does not indicate authorization for any other ratemaking treatment, and does not establish any precedent with regard to approval of future financing petitions.

Respectfully Submitted,

Brian O. Lipman, Esquire
Director, Rate Counsel

By:

Susan E. McClure
Susan McClure, Esquire