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March 16, 2023

VIA HARD COPY & ELECTRONIC DELIVERY

Hon. Jacob Gertsman, ALJ
Quakerbridge Plaza, Building 9
P.O. Box 049
Trenton, N.J. 08625

**Re: I/M/O the Petition of Middlesex Water Company for Approval To Change
The Levels Of Its Purchased Water Adjustment Clause Pursuant to N.J.A.C.
14:9-7.1 et. seq.
BPU Docket No.: WR22030138
OAL Docket No.: PUC 02047-2022S**

Dear ALJ Gertsman:

Please accept for filing this letter brief in lieu of a more formal brief from the Division of Rate Counsel ("Rate Counsel") in the above referenced matter. Copies of this letter brief are being filed with each person on the service list by electronic mail. One copy of the brief will be sent to your office via overnight mail. Thank you very much for your attention to this matter.

Procedural History and Statement of Facts

On March 15, 2022, Middlesex Water Company ("Middlesex") filed its petition for approval to change the levels of its Purchased Water Adjustment Clause ("PWAC").¹ Middlesex sought Board of Public Utilities ("Board") approval for an increase to its PWAC to recover increased purchased water costs, together with deferred costs, and associated expenses including

¹ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Petition (Mar. 15, 2022) ("Petition").

PWAC rate case expenses and gross receipts and franchise taxes.² Middlesex originally requested an increase in annual operating revenue of \$3,725,535 above pro forma present rate revenues of \$103,054,328, which represents an overall increase of approximately 3.62%, based on an effective date for the new PWAC levels of November 1, 2022.³

On March 16, 2022, the Board transferred this matter to the Office of Administrative Law (“OAL”) as a contested proceeding.⁴ It was subsequently assigned to Administrative Law Judge (“ALJ”) Jacob S. Gertsman. On April 27, 2022, the Old Bridge Municipal Utilities Authority (“OBMUA”) and Marlboro Township (“Marlboro”) (collectively “Intervenors”) filed a Motion to Intervene in this proceeding,⁵ and on May 17, 2022, ALJ Gertsman issued an Order Granting Intervention to the Intervenors.⁶ The parties, including Middlesex, Board Staff, the Division of Rate Counsel, and Intervenors, engaged in settlement meetings.

While this matter was pending at the OAL, Middlesex filed a Motion for Emergency Relief with the Board on July 22, 2022.⁷ On September 28, 2022, the Board issued an Order granting emergency relief.⁸ On October 7, 2022, Intervenors filed a Motion to Compel Middlesex to respond to their prior discovery requests MARL/OBMUA-3, 5, 8, 9, 12, 14 and

² Id. at p. 1.

³ See Petition.

⁴ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Office of Administrative Law Transmittal Forms (Mar. 16, 2022).

⁵ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Motion To Intervene (Apr. 27, 2022).

⁶ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Order Granting Intervention (May 17, 2022).

⁷ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Motion for Emergency Relief (July 22, 2022).

⁸ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Order On Emergency Relief Motion For Interim Rates (Sept. 28, 2022) (“Order Granting Emergency Relief”).

15.⁹ Your Honor denied the Motion to Compel and affirmed the Order on Emergency Relief as binding precedent and the rule of the case by Order dated December 2, 2022.¹⁰

On January 26, 2023, Middlesex filed a Stipulation of Settlement with ALJ Gertsman's office.¹¹ The Stipulation was non-unanimous and executed by all parties except the Intervenors. The agreed-upon increase to annual revenues was \$2,675,866 above pro forma present rate revenues.¹² On February 24, 2023, Intervenors filed a brief opposing the Stipulation.¹³ On February 28, 2023, Deputy Attorney General Arnautovic, on behalf of Board Staff, filed a brief in support of the Stipulation.¹⁴ Middlesex filed a Brief in Support of the Proposed Stipulation of Settlement and Reply to Opposition on March 6, 2023.¹⁵

Argument

The Stipulation should be approved and Intervenors' request should be denied for several reasons. First, the PWAC is a pass-through charge. It is not intended to be a fully litigated rate case and there is no expectation of litigation as there is in a base rate case. Middlesex properly filed and settled its last base rate case and timely filed its PWAC. Second, Middlesex customers

⁹ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Motion To Compel Discovery (Oct. 7, 2022) ("Motion To Compel").

¹⁰ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Order Denying Intervenors' Motion To Compel Discovery (Dec. 2, 2022) ("Order Denying Motion To Compel").

¹¹ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Stipulation of Settlement (Jan. 26, 2023).

¹² Id. at p. 2.

¹³ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Brief in Opposition To The Proposed Stipulation of Settlement (Feb. 24, 2023) ("Opposition").

¹⁴ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Brief in Support Of The Proposed Stipulation of Settlement (Feb. 28, 2023).

¹⁵ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Brief in Support Of The Proposed Stipulation of Settlement and Reply to Opposition (Mar. 6, 2023) ("Brief in Support Of The Proposed Stipulation of Settlement and Reply to Opposition").

outside of the areas represented by the Intervenor will pay higher rates if Intervenor's request is granted. This would result in unjust and unreasonable rates for a majority of Middlesex's customers.

I. The Purchased Water Adjustment Clause Is A Pass-Through Charge.

The PWAC is a pass-through charge and not a fully litigated rate case. Per New Jersey regulations, a PWAC "allows a utility to include in the rates the costs of fluctuations of purchased water or purchased wastewater treatment, without the necessity of a full base rate case."¹⁶ In other words, the PWAC allows utilities to recover the costs of changes in what it pays for purchased water. Middlesex's right to utilize a PWAC to recover the costs of fluctuations in purchased water is well-settled law. The Board recognized Middlesex's legal right to recover changes in the price of purchased water without a fully litigated case through a PWAC in its Order on Emergency Relief.

A. The Board Has Already Concluded That The PWAC Is A Pass-Through Charge And Not Fully Litigated.

The Board has already concluded, in its response to Intervenor's Motion for Emergency Relief, that it is settled law that Middlesex should be permitted to recover the costs it seeks under N.J.A.C. 14:9-7.1 et. seq.¹⁷ The Board explained that the PWAC was established to allow recovery of rates, on a dollar for dollar basis, of any change in the price of purchased water above the base cost already permitted in Board-approved rates.¹⁸ The Board further stated that the PWAC regulations do not contemplate the shutdown of a wellfield, and that concerns over

¹⁶ N.J.A.C. 14:9-7.1(a).

¹⁷ Order Granting Emergency Relief at p. 5.

¹⁸ Id., citing In re Petition of Middlesex Water Co., Docket No. WR96040307 1997 WL 40666, Board Order (Jan. 23, 2997).

Middlesex business operations would be best addressed in the next base rate case.¹⁹ On December 2, 2022, Your Honor affirmed the Board's Order and findings as binding precedent and the law of the case.²⁰ Here, Middlesex is attempting to recover, on a dollar-per-dollar basis, an increase in purchased water costs. The Board has stated that full recovery of purchased water costs incurred by the Company should be permitted. A fully litigated case is therefore unnecessary.

B. Intervenor's Arguments Regarding Evidence, Justness, and Reasonableness Should Be Addressed In A Base Rate Case.

Intervenors argue that Middlesex excluded relevant evidence during its last base rate case and is seeking an unjust and unreasonable increase. Intervenors allege that Middlesex dishonestly presented news of the Park Avenue wellfield going offline as sudden and argued that Middlesex had advance notice of problems and the resulting need to take the wellfield offline.²¹ Intervenors state that Middlesex's actions "violat[ed] the basic principles of a just and reasonable increase to the Intervenors"²² and that Middlesex sought to do so "without [giving the Intervenors] the opportunity ... to have a fully litigated presentation of evidence before the OAL."²³

Intervenors do not present any evidence that Middlesex failed to present relevant evidence or "hid" evidence in its last base rate case, and Middlesex denies that it did so in its reply.²⁴ In fact, Middlesex's response explains that it did not know it would need to take the

¹⁹ Order Granting Emergency Relief at p. 5.

²⁰ Order Denying Motion To Compel at p. 9.

²¹ Opposition at pp. 10-11.

²² *Id.* at pp. 11-12.

²³ *Id.* at p. 9.

²⁴ Brief in Support Of The Proposed Stipulation of Settlement and Reply to Opposition at p. 3.

wellfield out of service at the time of the last rate base case.²⁵ Even if Intervenor's allegations are true, the correct matter to address them in would be Middlesex's next filed base rate case. There is no law or regulation requiring that the parties fully litigate the PWAC.

Moreover, fully litigating the PWAC would very likely harm all of Middlesex's customers by causing rate compression or rate shock. The Board already concluded that either outcome should be avoided, stating that Middlesex's customer base would "suffer irreparable harm" if the "associated increase in costs" was "compressed into a smaller timeframe."²⁶ The Board explained that, each month the PWAC is not in effect "will lead to a significant increase of costs of the PWAC charged to ... customers ... because of the shortened recovery period."²⁷ Like the relief requested in Intervenor's Motion for Emergency Relief, fully litigating the PWAC to examine the issue of obstruction of evidence would shorten the recovery period of the PWAC.

II. Middlesex Customers Will Shoulder the Burden of Higher Costs If Intervenor's Request is Granted.

Intervenors seek to not pay for their fair share of this rate increase, pushing it onto the remaining ratepayers. Specifically, Intervenor asks that the OAL hold a hearing to address whether Middlesex's request to "evenly split the cost of their increased purchases between all wholesale recipients is a just and reasonable result."²⁸ If Intervenor's request is granted, and the OAL determines that the cost of purchased water should not be evenly divided between recipients, then Middlesex's remaining customers will pay intervenor's portion of the PWAC, resulting in higher rates for those remaining customers in addition to possible rate compression and rate shock. Intervenor represents a small portion of Middlesex's customer base. Since the PWAC is a pass-through charge that permits Middlesex to recover for changes in the price of

²⁵ *Id.*

²⁶ Order on Emergency Relief at p. 4.

²⁷ *Id.* at p. 5.

²⁸ Opposition at p. 15.

purchased water, those changes will be passed to Middlesex's other customers if Intervenor's customers are excluded from cost recovery.

The Middlesex System's retail customers are located in an area of approximately 55 square miles across Woodbridge Township, the City of South Amboy, the Boroughs of Metuchen and Carteret, portions of the Townships of Edison and the Borough of South Plainfield in Middlesex County, and a portion of the Township of Clark in Union County.²⁹ The contract customers of the Middlesex System comprise an area of approximately 146 square miles with a population of approximately 300,000.³⁰ Contract sales to Edison, Old Bridge, Marlboro and Rahway are supplemental to the existing water systems of these wholesale customers. The Middlesex System provides treatment for its surface water supply to East Brunswick, and treated water to Rahway, Marlboro, and the Old Bridge Municipal Utilities Authority under various long-term agreements.³¹ By contrast, Intervenor's represent only the Old Bridge Municipal Utilities Authority and Marlboro Township. It would be unjust and unreasonable to require customers in the other townships and municipalities served by Middlesex to pay higher rates so that Old Bridge and Marlboro customers can be excluded from the PWAC charge.

²⁹ I/M/O Petition of Middlesex Water Company For Approval To Change The Levels Of Its Purchased Water Adjustment Clause Pursuant To N.J.A.C. 14:9-7.1 et seq., BPU Dkt. No. WR22030138, OAL Dkt. No. PUC 02047-2022S, Middlesex's Brief in Support of Motion for Emergency Relief (Sept. 28, 2022) at p. 3.

³⁰ Id.

³¹ Id.

Conclusion

For all of these reasons, Rate Counsel urges ALJ Gertsman to approve the Stipulation of Settlement and deny the relief requested in Intervenors' brief.

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**MIDDLESEX WATER COMPANY FOR
APPROVAL TO CHANGE THE
LEVELS OF ITS PURCHASED
WATER ADJUSTMENT CLAUSE
PURSUANT TO N.J.A.C. 14:9-
7.1,ET SEQ.**

BPU DOCKET NO. WR22030138

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