



Agenda Date: 8/16/23  
Agenda Item: 5A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

WATER

IN THE MATTER OF THE PETITION OF MIDDLESEX )  
WATER COMPANY TO CHANGE THE LEVELS OF ITS )  
PURCHASED WATER ADJUSTMENT CLAUSE )  
PURSUANT TO N.J.A.C. 14:9-71 ET SEQ. )  
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**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Jay L. Kooper, Esq.**, Vice President, General Counsel & Secretary, on behalf of Middlesex Water Company, Petitioner  
**Louis N. Rainone, Esq.** and **Michael R. Burns, Esq.**, Rainone Coughlin & Minchello, LLC, on behalf of Intervenor the Old Bridge Municipal Utilities Authority and Marlboro Township

BY THE BOARD:

This matter is before the New Jersey Board of Public Utilities (“Board” or “BPU”) following an Initial Decision issued by Administrative Law Judge Jacob S. Gertsman (“ALJ Gertsman”) on April 25, 2023 (“Initial Decision”). By this Decision and Order, which is the Final Decision in this matter pursuant to N.J.S.A. 52:14B-10(c), the Board adopts the Initial Decision in its entirety.

**BACKGROUND AND PROCEDURAL HISTORY**

Middlesex Water Company (“Middlesex,” “Petitioner,” or “Company”) provides water to approximately 61,000 retail water customers primarily in the eastern portion of Middlesex County, New Jersey. Middlesex purchases a significant portion of the treated water needed to supply its customers through purchased water contracts with New Jersey American Water Company (“NJAW”).

On March 15, 2022, Middlesex filed a petition with the Board seeking approval to modify its Purchased Water Adjustment Clause (“PWAC”) pursuant to N.J.A.C. 14:9-7.1 *et seq.* (“Petition”). By the Petition, Middlesex requested to increase its annual operating revenue by \$3,725,535 above its current *pro forma* rate revenues of \$103,054,328, an overall increase of approximately 3.62 percent (3.62%).

According to the Petition, effective January 1, 2021, the New Jersey Department of Environmental Protection (“DEP”) adopted a maximum contaminant level of 14 parts per trillion for perfluorooctanoic acid (“PFOA”), a manufactured chemical that is part of a group of chemicals known as per-and polyfluoroalkyl substances (“PFAS”). Middlesex explained that, in September 2021, the DEP notified Middlesex that the groundwater from its Park Avenue Wellfield in South Plainfield, NJ (“Wellfield”) exceeded the DEPs newly adopted limits for PFOA.

Middlesex further explained that on November 9, 2021, with the DEP’s approval, the Company stopped pumping water from the Wellfield until a new treatment plant that will place the Wellfield into compliance with the new PFOA limits, expected mid-2023, could be completed. To account for the loss of the Wellfield supply, Middlesex incrementally increased the amount of water it purchases from NJAW and anticipated these incremental water purchases would continue as long as the Wellfield remained offline.

On March 16, 2022, this matter was transmitted to the Office of Administrative Law (“OAL”) as a contested case where it was assigned to ALJ Gertsman. On April 27, 2022, the Township of Marlboro, Water Utilities Division and the Old Bridge Municipal Utilities Authority (collectively, “Intervenors”) filed a motion seeking leave to intervene. The Intervenors filed an amended motion to intervene on May 3, 2022. In the absence of any objection from the parties, ALJ Gertsman granted on May 17, 2022.

The Company held virtual public hearings on May 19, 2022 at 4:30 p.m. and 5:30 p.m., following publication of notice in newspapers within the Company’s service territory.<sup>1</sup> No members of the public spoke at the hearings and the Board received no written comments.

On July 22, 2022, Middlesex filed a motion for emergency relief (“Motion”) with the Board, pursuant to N.J.S.A. 48:2-21.1 and N.J.A.C. 1:1-12.6, requesting that it be allowed to change the level of its PWAC, on an interim basis, until the Board issued a final decision resolving all issues arising during the pendency of this proceeding. On August 1, 2022, the Intervenors filed their opposition to the Motion, arguing that Middlesex provided inadequate information to support the proposed PWAC and that a full hearing was required before the Board could issue a decision in this matter. By Order dated September 28, 2022, the Board granted the Motion.<sup>2</sup>

On October 7, 2022, the Intervenors filed a motion to compel Middlesex to respond to certain discovery requests, which ALJ Gertsman denied by order dated December 2, 2022 (“Discovery Order”).

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<sup>1</sup> Public hearings were held virtually due to the COVID-19 pandemic.

<sup>2</sup> In re 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 02047-2022, Order dated September 28, 2022 (“September 2022 Order”).

On January 26, 2023, following settlement discussions and status conferences before ALJ Gertsman, Middlesex, Board Staff (“Staff”), and the New Jersey Division of Rate Counsel (collectively, “Signatory Parties”) filed a non-unanimous stipulation of settlement (“Stipulation”), resolving all issues arising during the pendency of this matter. The Intervenor notified ALJ Gertsman that they opposed, and did not sign, the Stipulation. ALJ Gertsman set a briefing schedule to address the dispute over the Stipulation. The Intervenor filed their opposition brief on February 24, 2023. Staff filed its response on February 28, 2023, Middlesex filed its response on March 6, 2023, and Rate Counsel filed its response on March 16, 2023. ALJ Gertsman heard oral argument on April 17, 2023, after which he closed the record.

On April 27, 2023, the Board received the Initial Decision in this matter, triggering a 45-day statutory period for review and final Board action by June 11, 2023. The parties filed no exceptions to the Initial Decision. On June 7, 2023, the Board approved Staff’s request for a 45-day extension of time for the Board to issue a Final Decision, rendering a deadline to issue a final decision on or before July 26, 2023.<sup>3</sup> By Order dated July 12, 2023, the Board, with the consent of the Parties, again extended the deadline for the Board to issue a Final Decision in this matter until September 11, 2023.<sup>4</sup>

### **STIPULATION**

By the Stipulation, the Signatory Parties stipulated and agreed as follows:<sup>5</sup>

1. The purchased water costs, established pursuant to Petitioner’s last base rate order dated December 15, 2021 in BPU Docket No. WR21050813 amounted to \$6,726,310 as appears on the Exhibit A, attached and made a part of the Stipulation. The new base cost of purchased water as agreed to by the Signatory Parties is agreed to be \$6,835,185 resulting in an increase in purchased water cost of \$108,875, as more fully set forth in Exhibit A of the Stipulation
2. The Signatory Parties agree that the sum of the allowable expenses in this matter is set forth in Exhibit A of the Stipulation and is agreed to be \$2,675,866 including:
  - a. Rate proceeding expenses of \$625, representing a 50% share of total rate proceeding expenses of \$1,250;
  - b. Additional purchased water costs through September 30, 2022 of \$2,079,441;
  - c. NJAW base rate case intervention costs of \$75,000, which the Signatory Parties

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<sup>3</sup> In re the Petition of Middlesex Water Company for Approval to Change the Levels of its Purchased Water Adjustment Clause Pursuant to N.J.A.C. 14:9-71, et seq. BPU Docket no. WR22030138, OAL Docket No. PUC 02047-2022, Order dated June 7, 2023.

<sup>4</sup> In re the Petition of Middlesex Water Company for Approval to Change the Levels of its Purchased Water Adjustment Clause Pursuant to N.J.A.C. 14:9-71, et seq., BPU Docket no. WR22030138, OAL Docket No. PUC 02047-2022, Order dated July 12, 2023. Pursuant to N.J.A.C. 1:1-1.4, 45 days from July 26, 2023 is September 9, 2023, a Saturday. Accordingly, pursuant to N.J.A.C. 1:1-1.4, the requested period of extension runs until Monday, September 11, 2023.

<sup>5</sup> Although summarized in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusion in this Order. Paragraphs are numbered to coincide with the Stipulation.

have determined after a review of the facts in this matter are just and reasonable expenses;

- d. Incremental purchased water costs of \$31,268
  - e. A revenue tax factor of 14.2256% and the resulting revenue tax of \$380,657.
3. For purposes of this matter, the base consumption established in Petitioner's last base rate case in million gallons (mg) is agreed to be 12,373.5 mg. This amount is reduced by the amount attributable to the Township of East Brunswick ("East Brunswick")<sup>6</sup> of 2,422.9 mg, resulting in a base consumption for recovery of the PWAC of 9,950.6 mg as more fully set forth in Exhibit A of the Stipulation.
  4. The Signatory Parties agree that, in the event the Intervenors challenge any final Board Order issued in this docket in the New Jersey courts and obtain a favorable final decision from the New Jersey courts that requires Middlesex to refund the Intervenors for all or a portion of the PWAC adopted in this proceeding, Middlesex shall be permitted to seek recovery of those costs associated with such a refund in the next PWAC or base rate case following final disposition by the New Jersey courts, whichever case is concluded first.
  5. For General Water Service ("GWS") customers under Rate Schedule No. 1, Revised Tariff Sheet No. 33A, a charge of \$2.5603 per thousand cubic feet shall be made to recover the increased purchased water costs, reflected on Rate Schedule No.1, Revised Tariff Sheet No. 33A, attached and made part of the Stipulation.
  6. For service under contract customers, Rate Schedule No. 5, Revised Tariff Sheet No. 40A, PWAC charges agreed to result in a charge of \$113.95 per million gallons, reflected on Rate Schedule No. 5, attached and made part of the Stipulation.
  7. As a result of the Stipulation, a residential customer with a 5/8" meter using 2,300 cubic feet or 17,204 gallons of water per quarter will see their water bill increase from \$198.41 to \$204.30 per quarter, an increase of \$5.89 per quarter, or an increase of 2.97%. The amounts are based on the current tariff sheets already approved by the Board in and filed by Middlesex in based on the current tariff in conformance with the Board's September 2022 Order.
  8. In accordance with N.J.A.C. 14:9-7.4, Petitioner shall file with the Board, not later than 45 days after the adjustment clause has been in effect for one year, a PWAC true-up schedule in connection with this proceeding. Copies of the true-up schedules shall be served upon all Signatory Parties to the present proceeding. In accordance with N.J.A.C. 14:9-7.3, this PWAC, if approved by the Board, shall remain in effect until the Company's next base rate case, provided that the Company submits an annual year-end true-up as well as an annual petition for adjustment of the PWAC amount in accordance with N.J.A.C. 14:9-7.4.

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<sup>6</sup> East Brunswick purchases untreated water under its own contract with the New Jersey Water Supply Authority ("NJWSA"). The Company pumps the untreated water to its primary treatments plant from the intake connection with the NJWSA. Once the Company performs the water treatment services, East Brunswick takes delivery of the treated water at the Company's primary treatment plant. The Company does not purchase water from the NJWSA to fulfill its obligation under its contract with Eat Brunswick. Therefore, none of the increased purchased water costs sought or agreed to in this proceeding should be allocated to East Brunswick.

9. With respect to the above-referenced Additional NJAW Purchased Water Costs incurred after September 30, 2022, Middlesex shall record these amounts as a deferred debit and include this amount in either its next PWAC filing or its next base rate case filing with the Board, whichever filing occurs first.

## **POSITIONS OF THE PARTIES**

### **Intervenors**

On February 24, 2023, the Intervenors filed their brief in opposition to the Stipulation with ALJ Gertsman (“Intervenors’ Brief”). The Intervenors argued that Middlesex’s request does not give the Intervenors the opportunity to fully litigate their position before the OAL and subverts the Intervenors’ statutory right to be heard in a contested matter. Intervenors Brief at 1. The Intervenors noted that Middlesex presented the Wellfield closure as if the shutdown occurred “suddenly and without warning.” Id. at 3. However, the Intervenors argued that Middlesex has monitored PFOA and PFAS since 2008; began evaluating treatment options in 2019, including designs for a new treatment plant to remove PFOA contamination; and did not notify customers in the Intervenors’ territory during its last rate case that the Wellfield would shut down. Id. at 3-4. As a result, the Intervenors argue Middlesex’s “lack of transparency” denied them a meaningful opportunity to investigate or object to the 2021 base rate calculations that Middlesex planned to increase with purchased water costs to replace the Wellfield supply. Id. at 4. Additionally, the Intervenors argued that Middlesex implemented a flawed cost of service model in its last rate case which failed to allocate any purchased water costs from contracts with NJAW to wholesale customers. Ibid.

The Intervenors argued that Middlesex failed to meet its burden of proving the proposed increase is just and reasonable. Id. at 5 (quoting N.J.S.A. 48:2-21). The Intervenors posited that, in a PWAC case, the Board has a statutory obligation to examine a utility’s increased purchased water costs and has broad discretion to examine the rationale behind the proposed increase and determine whether the utility requested the increase in good faith. Id. at 5-6. The Intervenors noted that the PWAC statutes create an “inescapable legal nexus” between a PWAC filing and the utility’s last rate case, thus requiring a “full and honest disclosure by the utility” of all facts which would inform discussions concerning the rate increase. Id. at 7. The Intervenors therefore argue that, because Middlesex excluded information about the Wellfield that resulted in an increase immediately following the Company’s last rate case, it failed to provide full and honest disclosure. Ibid. As such, the Intervenors argue that, before permitting settlement of this matter, it is the Board’s obligation to take these omissions into account in the form of a full and fair hearing on the issues including Middlesex’s knowledge of the coming changes, why Middlesex proceeded with the base rate case without such information, and what steps Middlesex took to mitigate ratepayer impact. Id. at 8. Finally, the Intervenors requested that the Stipulation be rejected “until such time as a full hearing on the merits can be held and a final determination made as to the just and reasonable nature” of the PWAC and that Middlesex be required to establish the legal nexus between the information presented in its preceding rate case and the instant PWAC. Id. at 9.

### **Staff**

By letter dated February 28, 2023, Staff filed its brief in support of the Stipulation and in reply to the Intervenors’ Brief (“Staff”). Staff argued that the Signatory Parties accomplished the purpose and scope of the PWAC in their negotiations and that the Stipulation is in the public interest. Staff Reply at 2. Further, Staff emphasized that the State of New Jersey has a strong public policy in favor of settlements. Id. at 3 [quoting Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div.

1983), certif. denied, 94 N.J. 600 (1983)]. Finally, Staff argued that the Intervenors received the opportunity to fully participate in the litigation phase of this proceeding in accordance with the Court's holding in Petition of Pub. Serv. Elec. & Gas Co., 304 N.J. Super. 247 (App. Div. 1997), certif. denied, 152 N.J. 12 (1997). Id. at 4.

### Middlesex

By letter dated March 6, 2023, Middlesex filed its reply to the Intervenors' Brief ("Middlesex Reply"). Middlesex argued that its legal right to recover purchased water costs through a PWAC is well-settled law and an entitlement most recently reaffirmed by the Board in the September 2022 Order, binding precedent which the Intervenors failed to address. Middlesex Reply at 2. Middlesex argued that the Intervenors' arguments amount to *ad hominem* attacks on the Company alleging deliberate exclusion of information from Middlesex's last rate case despite that information being unknown at the time. Id. at 3. Further, Middlesex noted that it complied exactly with the PWAC regulations and binding precedent and that it acted with complete transparency throughout this proceeding. Id. at 3-4. Middlesex contrasted its transparency with that of the Intervenors, noting that the Intervenors did not consider the September 2022 Order in their brief, despite the September 2022 Order rejecting the Intervenors' same arguments earlier in this proceeding. Id. at 5. Middlesex further argued that the Intervenors did not address the Discovery Order, which held that the September 2022 Order is binding precedent and the law of the case. Id. at 6.

Middlesex further argued that the Stipulation is voluntary, consistent with the PWAC regulations, and fully dispositive of all issues in controversy. Ibid. Further, Middlesex noted that the Intervenors' arguments in opposition to the PWAC on the grounds of prudence, rate design, and "their inappropriate attempt to re-litigate Middlesex's last rate case" were rejected as issues in controversy in the September 2022 Order. Id. at 6-7.

Middlesex argued that the instant PWAC occurred exactly as the regulations required; Middlesex did not know the actual rate increase amount for purchased water due to the Wellfield closure or the outcome of NJAW's own PWAC, and new base rates and the PWAC regulations allow recovery for all projected fluctuation in purchased water costs. Id. at 20-21.

Middlesex further argued that the Intervenors' argument that Middlesex acted imprudently is best examined in a rate case, not the instant PWAC. Id. at 22. Middlesex explained that, if the Intervenors believe Middlesex acted imprudently, they can fully litigate the issue in Middlesex's next rate case. Ibid.

Finally, Middlesex argued that the Stipulation fully disposes of all issues in controversy. Id. at 24. Middlesex explained that the only issues in controversy in a PWAC proceeding are 1) whether the costs to be recovered are fluctuations in purchased water and 2) whether the PWAC calculation is consistent with the Board's regulations. Ibid. The Company argued that the Stipulation disposed of both issues because the Stipulation only allows Middlesex to recover for fluctuations in purchased water costs and no party to this matter argued that the PWAC calculation is improper. Ibid. Middlesex noted that the Board and ALJ Gertsman granted the Intervenors ample opportunity to challenge Middlesex's prudence and the PWAC adjustment's application to the Intervenors, constituting a fair opportunity for the Intervenors to be heard. Id. at 25.

## Rate Counsel

On March 16, 2023, Rate Counsel filed its letter brief in support of the Stipulation and in reply to the Intervenor's Brief ("RC Brief"). Rate Counsel argued that the Stipulation should be approved because 1) the PWAC is a pass-through charge not intended to be fully litigated and 2) Middlesex customers outside the Intervenor's areas will pay higher rates if the Intervenor's request is granted. RC Brief at 3-4.

Rate Counsel argued that, because the PWAC is a pass-through charge, there is no requirement that the case be fully litigated, a conclusion reached by the Board in the September 2022 Order. Id. at 4. Rate Counsel reiterated the Board's explanation that the PWAC allows recovery in rates, on a dollar-for-dollar basis, of a change in purchased water costs above the base cost permitted in current Board-approved rates. Ibid. Rate Counsel further emphasized the Board's conclusion that the PWAC regulations do not contemplate shutdown of wellfields and concerns over Middlesex's business operations are best addressed in the Company's next rate case. Id. at 4-5. Rate Counsel argued that, because this matter involves dollar-for-dollar recovery of an increase in purchased water costs, the Board should permit the PWAC, and a fully litigated case is unnecessary. Id. at 5.

Rate Counsel further argued that the Intervenor's arguments regarding evidence, justness, and reasonableness should be addressed in a future base rate case. Ibid. Rate Counsel argued that the Intervenor did not present evidence that Middlesex failed to present relevant evidence in its last rate case. Id. (citing Middlesex Reply at 3). Rate Counsel further explained that Middlesex's response stated that the Company did not know it would have to take the Wellfield out of service at the time of its last base rate case. Id. at 5-6 (citing Middlesex Reply at 3). Additionally, Rate Counsel emphasized that fully litigating the PWAC would cause rate compression and inflict "irreparable harm" on Middlesex customers. Id. at 6 (quoting September 2022 Order at 4).

Finally, Rate Counsel argued that, if the Intervenor's request to avoid evenly splitting the cost of the increased purchased water costs is granted, Middlesex's remaining customers will see greater rate increases in addition to possible rate compression. Id. Rate Counsel noted that imposing higher rates on Middlesex ratepayers so only ratepayers in the Intervenor's territory avoid the PWAC charge is unjust and unreasonable. Id. at 7.

## **INITIAL DECISION**

After summarizing the positions of the parties consistent with the above, ALJ Gertsman analyzed the relevant law and made findings. Initial Decision at 3-4. ALJ Gertsman noted that the Appellate Division addressed a similar issue in Public Service, 304 N.J. Super. 247, wherein the court held that, if non-signatory parties to a stipulation receive a full opportunity to participate in the litigation phase of the proceedings, no procedural rights of the parties are violated. Id. at 4 (quoting Public Service, 304 N.J. Super. at 258). ALJ Gertsman explained that, in this matter, the Intervenor fully participated in the litigation phase and received the opportunity to contest the Stipulation in its brief and at oral argument. Ibid.

ALJ Gertsman further addressed the Intervenor's objection to the Stipulation, noting that the September 2022 Order is binding precedent and the law of the case and that the Intervenor's argument in opposition to the Stipulation is a restatement of their arguments in opposition to the Motion and in support of its motion to compel discovery, which were rejected by the Board and ALJ Gertsman, respectively. Id. at 5. ALJ Gertsman explained that the plain language of the September 2022 Order unambiguously determined the Intervenor's claims to be "at best

questions of prudence and rate design and are best resolved in a rate case and not a proceeding of limited scope[.]” and therefore, without merit. Ibid. (quoting September 2022 Order at 5).

Upon review of the record, in the context of N.J.A.C. 14:9-7.1, ALJ Gertsman found the Stipulation to be just and reasonable. Id. at 6. ALJ Gertsman further found that the Signatory Parties voluntarily agreed to the Stipulation, and that the Stipulation fully disposes of all issues in controversy and is consistent with the law. Ibid. ALJ Gertsman therefore concluded that the Stipulation meets the requirements of N.J.A.C. 1:1-19.1, the Stipulation should be approved, and ordered that the parties comply with the terms of the Stipulation. Id.

## **DISCUSSION AND FINDINGS**

The Board, upon careful review of the record in this matter, including the Petition, Stipulation, the Intervenor’s Brief and replies thereto, and the Initial Decision, agrees with ALJ Gertsman’s findings that the Stipulation is just and reasonable, voluntarily agreed to by the Signatory Parties, and fully disposes of all issues in controversy.

A PWAC is a pass-through charge which “allows a utility to include in rates the costs of fluctuations in purchased water or purchased wastewater treatment, without the necessity of a full base rate case.” N.J.A.C. 14:9-7.1(a). A PWAC therefore enables a utility to recover in rates, on a dollar-for-dollar basis, changes in purchased water costs above the base cost without the need to fully litigate a new base rate case whenever those costs change, allowing recovery of all purchased water costs incurred by the purchasing company to be trued-up at the conclusion of the designated PWAC period.<sup>7</sup>

The Board recognizes that the Stipulation was not signed by all the parties in this proceeding. Nonetheless, it is well-established that the Board may consider and rely upon a non-unanimous stipulation as a fact-finding tool so long as the Board independently examines the existing record, expressly finds “that the stipulated figures yield rates that satisfy the statutory standard,” and ensures the non-consenting parties received an opportunity to argue against the stipulation. Pub. Serv., 304 N.J. Super. at 270.

Additionally, the State of New Jersey has a strong public policy in favor of settlements. Pascarella, 190 N.J. Super. at 125. The purpose of this policy is to allow the parties to a dispute, who are in the best position to determine how to best resolve a contested matter, to reach an agreement on their own accord. Dep’t of Pub. Advocate, Div. of Rate Counsel v. Bd. Of Pub. Utils., 206 N.J. Super. 523, 528 (App. Div. 1985).

Here, the Intervenor’s argued that, for Middlesex to fully implement its PWAC and for the Intervenor’s to adequately argue their position, there must be a “full and fair hearing on the issues at play in this matter, including information regarding when they knew about the coming changes, how they made the determination to proceed with the base rate case without this information, and what steps they took to mitigate the impact of their decisions on consumers. . .” Intervenor’s Brief at 8. We disagree.

As ALJ Gertsman explained in the Initial Decision, the record shows that the Intervenor’s had ample opportunity to argue against the Stipulation via their brief in opposition and at oral

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<sup>7</sup> In re Petition of Middlesex Water Company for Approval of a Purchased Water Adjustment Clause and for an Increase in Rates Therein, BPU Docket No. WR96040307, OAL Docket No. PUC4117-96, Order dated January 1, 1997.

arguments, thus satisfying the standard set in Public Service. Initial Decision at 4. The Intervenor's arguments outlined herein were also proffered in their opposition to the Motion and their motion to compel discovery, and were considered by the Board and determined to be without merit in the Board's September 2022 Order. Further, the arguments contained in said filings were rejected in the Discovery Order issued by ALJ Gertsman. As set forth in the September 2022 Order, the Intervenor's claims "are at best questions of prudence and rate design" which do not fall within the ambit of a PWAC proceeding. The Intervenor has not raised any genuine or relevant issues of fact, and as a result, there is no need for an evidentiary hearing in this matter. See e.g. Frank v. Ivy Club, 120 N.J. 73, 98 (1990) ("It is well-established that where no disputed issues of material fact exist, an administrative agency need not hold an evidentiary hearing in a contested case."). This is particularly so when, as detailed in the September 2022 Order, the PWAC cannot be retroactive and implemented later, but by contrast, the Intervenor may challenge the prudence of Middlesex's costs in a later base rate case. Accordingly, the Board **HEREBY FINDS** that the Intervenor had ample opportunity to litigate their position contesting the Stipulation, and did so in their brief in opposition to the Stipulation; their brief in opposition to the Motion; their motion to compel discovery; and their oral arguments before ALJ Gertsman.

Having carefully reviewed the record in this matter, the Board **HEREBY ADOPTS** ALJ Gertsman's findings that the Parties have voluntarily agreed to the Stipulation, and that the Stipulation fully disposes of all issues in this proceeding and is consistent with the law. As such, the Board **FURTHER ADOPTS** the Initial Decision, which accepts the Stipulation attached hereto, in its entirety.

The Board **HEREBY ORDERS** that the Stipulation shall be subject to the following condition:

In accordance with the provisions of N.J.A.C. 14:9-7.3(c)-(d), Middlesex shall file with the Board, no later than 45 days after the PWAC has been in effect for one (1) year, a PWAC true-up schedule in connection with this proceeding. Copies of the true-up schedule shall be served upon all parties to the present proceeding.

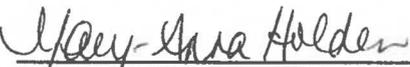
The Board **HEREBY DIRECTS** the Company to file tariff pages conforming to the terms and conditions of the Stipulation, and this Order by September 1, 2023.

The effective date of this Order is August 23, 2023.

DATED: August 16, 2023

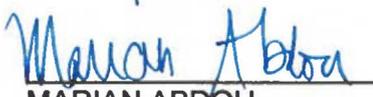
BOARD OF PUBLIC UTILITIES  
BY:

  
JOSEPH L. FIORDALISO  
PRESIDENT

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DR. ZENON CHRISTODOULOU  
COMMISSIONER

  
CHRISTINE GUHL-SADOVY  
COMMISSIONER

  
MARIAN ABDOU  
COMMISSIONER

ATTEST:   
SHERRI L. GOLDEN  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE PETITION OF MIDDLESEX WATER COMPANY TO CHANGE THE  
LEVELS OF ITS PURCHASED WATER ADJUSTMENT CLAUSE PURSUANT TO N.J.A.C.  
14:9-71 ET SEQ.

DOCKET NO. WR22030138  
OAL DOCKET NO. PUC 02047-22

SERVICE LIST

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SETTLEMENT**

OAL DKT. NO. PUC 02047-22

AGENCY DKT. NO. WR22030138

**INTHE MATTER OF 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.**

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**Jay L. Kooper**, General Counsel, for Middlesex Water Company

**Meliha Arnautovic** and **Brandon Simmons**, Deputy Attorneys General, for Staff  
of the Board of Public Utilities (Matthew J. Platkin, Attorney General of New  
Jersey, attorney)

**Susan E. McClure**, Esq., Managing Attorney, and **Christine Juarez**, Esq.  
Assistant Deputy Rate Counsel, for Division of Rate Counsel (Brian O.  
Lipman, Director)

**Michael R. Burns**, Esq., for intervenors, Township of Marlboro, Water Utilities  
Division and Old Bridge Municipal Utilities Authority (Rainone, Coughlin,  
Minchello, LLC, attorneys)

Record Closed: April 17, 2023

Decided: April 25, 2023

**BEFORE JACOB S. GERTSMAN, ALJ t/a:**

This proceeding involves a petition by Middlesex Water Company (Middlesex or Company) with the Board of Public Utilities (Board) seeking approval to change the levels of its Purchased Water Adjustment Clause (PWAC) pursuant to N.J.S.A. 14:9-7.1 et seq. This matter was transmitted to the Office of Administrative Law (OAL) on March 16, 2022, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15; N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13 and assigned to the undersigned, who conducted the initial case management conference on April 13, 2022.

A motion seeking leave to intervene was filed by the Township of Marlboro, Water Utilities Division and Old Bridge Municipal Utilities Authority on April 27, 2022, and an amended motion on May 3, 2022. No parties objected and the motion was granted on May 17, 2022. Duly noticed public hearings were held via Zoom Video Communications (Zoom) on May 19, 2022, at 4:30 and 5:30 p.m. No members of the public appeared at either hearing.

Following multiple status conferences, a non-unanimous stipulation of settlement (J-1) was filed on January 26, 2023, which resolves all issues in this proceeding. Said stipulation of settlement was signed by petitioner, Staff of the Board of Public Utilities (Board Staff) and Division of Rate Counsel (Rate Counsel) (collectively the Signatory Parties). It indicates the terms of settlement and is attached and fully incorporated herein.

The intervenors informed the undersigned that they opposed the settlement. A briefing schedule was then established for the intervenors to argue for the rejection of the settlement and for a response by the Signatory Parties. The intervenors' opposition brief was submitted on February 24, 2023, and responses were filed by Board Staff on February 28, 2023, Middlesex on March 6, 2023, and Rate Counsel on March 16, 2023. Oral argument was held on April 17, 2023, and the record closed.

## POSITIONS OF THE PARTIES

The intervenors oppose the settlement arguing that “Middlesex’s obligations in the instant proceeding and the Court’s requirement to make a proper determination of the just and reasonable rate increase therefore requires that the actions of Middlesex be taken into account before permitting any settlement of the issues. By excluding information regarding planned large-scale purchases of water from NJAWC [New Jersey American Water Company] and presented a flawed and misleading COS [Cost of Service] model to the Intervenor and the Board in the previous rate case, Middlesex severed the critical legal nexus between determinations made in the base rate case and their current PWAC proceeding. A full and fair hearing on the issues at play in this matter, including information regarding when they knew about the coming changes, how they made the determination to proceed with the base rate case without this information, and what steps they took to mitigate the impact of their decisions on the consumers is absolutely critical to determining if their request to evenly split the cost of their increased purchases between all wholesale recipients is a just and reasonable result.” (Intervenor Brief at 15.)

Petitioner contends that its right “to recover such costs through a PWAC is *well-settled law* using processes codified through the Board’s PWAC regulations. This right of recovery is an entitlement that the Board *most recently reaffirmed in this proceeding* on September 28, 2022, when the Board issued its Order Granting Emergency Relief.” (emphasis in original) (internal citations omitted) (Petitioner Brief at 3.) Further, the Board’s Order Granting Emergency Relief in this proceeding is binding precedent and the law of the case, and the settlement complies with N.J.A.C. 1:1-19.1(b) which provides that if the judge determines that the “settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.”

Rate Counsel argues in support of the settlement as “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.” Further, “Middlesex customers 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.” (Rate Counsel Brief at 3–4.)

Board Staff maintains that “[a] PWAC or PSTAC allows a utility to include in rates the costs of fluctuations in purchased water or purchased wastewater treatment, without the necessity of a full base rate case.’ N.J.A.C. 14:9-7.1. The Signatory Parties have accomplished the purpose and scope of the PWAC proceeding with the negotiation of the proposed stipulation of settlement. The OAL should adopt the stipulation of settlement as it is in the public interest.” (Board Staff Brief at 2.)

### **LEGAL ANALYSIS AND FINDINGS**

The Appellate Division addressed a similar issue in Petition of Pub. Serv. Elec. & Gas Co., 304 N.J. Super. 247 (App. Div. 1997) where the court addressed an appeal by an intervenor arising out of a series of stipulations in a public utility rate case. Board Staff noted that the court held that “it is important that most of the active parties participate in negotiating the settlement and that the non-consenting parties be given an opportunity to argue against the stipulations” (id. at 271) and “that as long as the non-signatory party had a full opportunity to participate in the litigation phase of the proceedings, no procedural rights of the [sic] are violated.” Id. at 258. (Board Staff Brief at 4.) In this matter, the record demonstrates that the intervenors have fully participated in the litigation phase of this matter and have been given the opportunity to argue against the stipulation of settlement through its brief in opposition and at oral argument.

Turning now to the merits of the intervenor’s objection to the settlement, my December 2, 2022, letter order denying the Intervenors’ motion to compel discovery (Discovery Order), noted that the Board, on September 28, 2022, granted petitioner’s motion for emergency relief which “requested that it be allowed to change the level of its PWAC on an interim basis, during the pendency of this proceeding, until a final Board decision resolving all issues in this proceeding was issued.” (Order Granting Emergency

Relief at 2.) The Board's order stated in pertinent part:

[T]he Board **FINDS** . . . that it is a well-settled right that Middlesex is able to recover the costs it seeks under N.J.A.C. 14:9-7.1 et seq. The PWAC was established to allow a recovery of rates, on a dollar-for-dollar basis, any increase or decrease in the cost of purchased water above the base cost already allowed in rates by the Board. In this regard, the Board essentially allows recovery of all prudently purchased water costs incurred by the Company. Pursuant to N.J.A.C. 14:9-7.1(a) “[a] PWAC . . . allows a utility to include in the rates the costs of fluctuations of purchased water . . . without the necessity of a full base rate case.” The PWAC regulations do not contemplate a prohibition in recovery of fluctuations in the cost of purchased water as a result of the shutdown of a wellfield. See N.J.A.C. 14:9-7.1, et. seq. Any concern over how Middlesex business operations is best addressed in its next rate case and any changes to the PWAC regulations should take place in a rulemaking.

[T]he Board **FINDS** that Middlesex has demonstrated that it will likely succeed on the merits of its case. The Intervenors have not raised any genuine or relevant issues of fact opposing the PWAC. Rather, the Intervenors claim whether Middlesex has acted prudently and whether Intervenors should be allocated a portion of the PWAC. These claims are at best questions of prudence and rate design and are at best resolved in a rate case and not a proceeding of limited scope.

[Id. at 5. (internal citations omitted)]

As further noted in the Discovery Order, the Board's order is binding precedent and the law of the case. (Discovery Order at 9.) However, the intervenors' arguments in opposition to the settlement, as summarized above, echo its arguments in both the motion for emergency relief and the motion to compel discovery, which were rejected by the Board and the undersigned, respectively. (Order Granting Emergency Relief at 2; Discovery Order at 6–7.) The plain language of the Board order is unambiguous, that the intervenor's “claims are at best questions of prudence and rate design and are at best resolved in a rate case and not a proceeding of limited scope.” Therefore, the intervenor's arguments are without merit.

Upon a review of the record in this matter, I am persuaded by the arguments of the Signatory Parties that pursuant to N.J.A.C. 14:9-7.1, a PWAC allows a utility to include in rates the costs of fluctuations in a PWAC without the necessity of a full base rate case, and that the settlement is in the public interest and is just and reasonable.

Based on the foregoing, I **FIND** that the stipulation of settlement is just and reasonable. Further, I have reviewed the terms of settlements and I **FIND**:

1. The Signatory Parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached document.
2. The settlement fully disposes of all issues in controversy between the parties and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified, or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

April 25, 2023

DATE

  
\_\_\_\_\_  
JACOB S. GERTSMAN, ALJ t/a

Date Received at Agency:

4/27/2023

Date Mailed to Parties:

4/27/2023

JSG/jm

**CERTIFICATE OF SERVICE**

STATE OF NEW JERSEY    )  
                                          )  
COUNTY OF MIDDLESEX   )

JAY L. KOOPER, an Attorney at Law of the State of New Jersey, hereby certifies the following:

1. I am the Vice President, General Counsel & Secretary of Middlesex Water Company, the Petitioner named in OAL Docket No. PUC 02047-2022S and BPU Docket No. WR22030138, and am authorized to make this Certification on its behalf.

2. On January 26, 2023, I caused to be served on the persons set forth in the attached Service List for OAL Docket No. PUC 02047-2022S and BPU Docket No. WR22030138, by electronic mail, copies of the enclosed Stipulations of Settlement package.

  
\_\_\_\_\_  
Jay L. Kooper

Dated: January 26, 2023

**OAL SERVICE LIST**

In the Matter of the Petition of Middlesex Water Company for Approval  
To Change The Levels of Its Purchased Water Adjustment Clause  
OAL Docket No. PUC 02047-2022S  
BPU Docket No. WR22030138

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STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
OFFICE OF ADMINISTRATIVE LAW

RECEIVED

2023 JAN 27 P 3:15

STATE OF NEW JERSEY  
OFFICE OF ADMIN. LAW

**In The Matter of 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.** :

**OAL Docket No. PUC 02047-2022S**  
**BPU Docket No. WR22030138**

**STIPULATION OF SETTLEMENT**

APPEARANCES:

Jay L. Kooper, Esq., Vice President, General Counsel & Secretary, on behalf of Middlesex Water Company, Petitioner

Meliha Arnautovic, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Matthew J. Platkin, Attorney General of the State of New Jersey)

Susan McClure, Esq., Managing Attorney, Water and Wastewater and Emily Smithman, Esq., Assistant Deputy Rate Counsel, on behalf of the Division of Rate Counsel (Brian O. Lipman, Director)

Louis N. Rainone, Esq. and Michael R. Burns, Esq., Rainone Coughlin & Minchello, LLC, on behalf of the Old Bridge Municipal Utilities Authority and Marlboro Township

TO THE HONORABLE JACOB S. GERTSMAN, ALJ AND THE BOARD OF PUBLIC UTILITIES:

This Stipulation of Settlement (“Stipulation”) resolves all issues in OAL Docket No. PUC 02047-2022S and BPU Docket No. WR22030138 in which Middlesex Water Company (“Middlesex”, “Company” or “Petitioner”) seeks approval by the New Jersey Board of Public Utilities (“Board”) of its Purchased Water Adjustment Clause (“PWAC”) to recover increased purchased water costs, together with deferred costs, as more fully set forth in the exhibits attached to the petition and other materials filed herein. The Signatory Parties to this Stipulation of Settlement are Middlesex, the New Jersey Division of Rate Counsel (“Rate Counsel”), and the

Staff of the Board (“Staff”) (collectively “Signatory Parties”). Also participating in this proceeding are the following entities who filed Motions To Intervene, which were unopposed by the Company: the Old Bridge Municipal Utilities Authority (“OBMUA”) and Marlboro Township (“Marlboro”) (collectively “Intervenors”) (together, the Signatory Parties and the Intervenors shall be designated as “Parties”). The Parties anticipate that the Intervenors will oppose the terms of this Stipulation of Settlement, rendering this Stipulation as Non-Unanimous.

As a result of an analysis of Petitioner's pre-filed testimony and exhibits, extensive discovery conducted, conferences, negotiations, and two public hearings held virtually on May 19, 2022, the Signatory Parties have come to an agreement on the issues in dispute in this matter. The Signatory Parties hereto agree and stipulate as follows:

The procedural history of this matter is as follows:

On March 15, 2022, Petitioner, a public utility corporation of the State of New Jersey, pursuant to N.J.A.C. 14:9-7.1 et seq., filed a petition with the Board seeking approval for an increase in its PWAC to recover increased purchased water costs, together with deferred costs, and associated expenses including PWAC rate case expenses and gross receipts and franchise taxes. The Company 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%.

The Company purchases water through two water purchase contracts. The first is for untreated water from the New Jersey Water Supply Authority (“NJWSA”) and the second is for treated water from New Jersey American Water Company (“NJAW”).

First, the Company was subsequently notified of an increase in its purchased water rate from NJAW from \$0.3646 per thousand gallons (tg) to \$0.3978 per tg effective April 1, 2022 pursuant to BPU Docket No. WR21111220.

Second, while the Company did not receive an increase in the purchased water rate from NJWSA in connection with this matter, the Company was notified by NJWSA of a debt service charge credit of \$88,683.

Third, on January 14, 2022, NJAW initiated a new base rate proceeding by filing with the Board a petition seeking an increase of its base rates (BPU Docket No. WR22010019). In its petition, NJAW proposed to increase the rates charged to Middlesex by 11.7%, which would increase the minimum annual cost for water service by approximately \$326,700. Consistent with prior NJAW base rate cases, Middlesex intervened in this NJAW base rate proceeding to ensure that the base rate set for water purchased by Middlesex for its customers pursuant to its water purchase contract with NJAW is based on appropriate cost of service metrics.

Fourth, effective January 1, 2021, the New Jersey Department of Environmental Protection (“NJDEP”) adopted a maximum contaminant level of 14 parts per trillion (“ppt”) for Perfluorooctanoic Acid (“PFOA”), a manufactured chemical that is a member of the group of chemicals known as Per- and Polyfluoroalkyl Substances (“PFAS”). On September 16, 2021, Middlesex received notice from the NJDEP that groundwater from its Park Avenue wellfield (“Park Avenue Wellfield”) located in South Plainfield exceeded the NJDEP’s new limit. As a result of this exceedance, Middlesex was issued a Notice of Non-Compliance by NJDEP.

On November 9, 2021, Middlesex, with NJDEP’s approval, ceased pumping water from the Park Avenue Wellfield and engaged in continuous testing to determine that a shutdown was an operationally-feasible action, on an interim basis, until the completion of an enhanced treatment facility at the Park Avenue Wellfield. The treatment facility is expected to be placed into service in mid-2023. Although an accelerated partial treatment solution has now been implemented, the Park Avenue Wellfield is expected to remain substantially offline until mid-2023 barring any unforeseen emergency necessitating full reactivation of the Park Avenue Wellfield prior to that

date. As a result, Middlesex developed a plan with NJAW, approved by NJDEP, for incremental water purchases from NJAW above Middlesex's minimum contractual requirement amounts set forth in its current water purchase contract with NJAW ("Additional NJAW Purchased Water").

On March 16, 2022, this matter was transferred to the Office of Administrative Law ("OAL") as a contested case where it was assigned to Administrative Law Judge Jacob S. Gertsman ("ALJ Gertsman"). A Pre-Hearing Conference was convened by ALJ Gertsman on April 13, 2022. After proper notice, two public hearings were held virtually at 4:30 p.m. and 5:30 p.m. on May 19, 2022, with ALJ Gertsman presiding. No members of the public attended.

On September 28, 2022, the Board issued in this matter its Order On Emergency Relief Motion For Interim Rates<sup>1</sup> in which the Board granted an Emergency Relief Motion filed by Middlesex pursuant to N.J.S.A. 48:2-21.1 and N.J.A.C. 1:1-12.6 and authorized Middlesex to increase its PWAC, on an interim basis, subject to refund with interest, effective October 1, 2022 pending final resolution of this matter ("Interim PWAC").

On September 29, 2022, Middlesex, in compliance with the Order Granting Emergency Relief, filed updated tariff sheets implementing the Interim PWAC. Under the Interim PWAC, the Company received an increase in annual operating revenue of \$2,675,866 above pro forma present rate revenues of \$103,054,328, which represents an overall increase of approximately 2.60%, based on an effective date for the new PWAC levels of October 1, 2022.

Subsequently, an agreement was reached among the Signatory Parties resulting in the following Stipulation:

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<sup>1</sup> *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")

1. The purchased water costs, established pursuant to Petitioner's last base rate order dated December 15, 2021 in BPU Docket No. WR21050813 amounted to \$6,726,310 as appears on the Exhibit A, attached and made a part of this Stipulation. The new base cost of purchased water as agreed to by the Signatory Parties is agreed to be \$6,835,185 resulting in an increase in purchased water cost of \$108,875, as more fully set forth in Exhibit A.

2. The Signatory Parties agree that the sum of the allowable expenses in this matter is set forth in Exhibit A and is agreed to be \$2,675,866 including:

- a. Rate proceeding expenses of \$625, representing a 50% share of total rate proceeding expenses of \$1,250;
- b. Additional purchased water costs through September 30, 2022 of \$2,079,441
- c. NJAW base rate case intervention costs of \$75,000, which the Signatory Parties have determined after a review of the facts in this matter are just and reasonable expenses;
- d. Incremental purchased water costs of \$31,268
- e. A revenue tax factor of 14.2256% and the resulting revenue tax of \$380,657.

3. For purposes of this matter, the base consumption established in Petitioner's last base rate case in million gallons (mg) is agreed to be 12,373.5 mg. This amount is reduced by the amount attributable to the Township of East Brunswick ("East Brunswick")<sup>2</sup> of 2,422.9 mg,

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<sup>2</sup> East Brunswick purchases untreated water under its own contract with the NJWSA. The Company pumps the untreated water to its primary treatment plant from the intake connection with the NJWSA. Once the Company performs the water treatment services, East Brunswick takes delivery of the treated water at the Company's primary treatment plant. The Company does not purchase water from the NJWSA to fulfill its obligation under its contract with East Brunswick. Therefore, none of the increased purchased water costs sought or agreed to in this proceeding should be allocated to East Brunswick.

resulting in a base consumption for recovery of the PWAC of 9,950.6 mg as more fully set forth in Exhibit A.

4. The Signatory Parties agree that, in the event Intervenors challenge any final Board Order issued in this docket in the New Jersey courts and obtain a favorable final decision from the New Jersey courts that requires Middlesex to refund the Intervenors for all or a portion of the PWAC adopted in this proceeding, Middlesex shall be permitted to seek recovery of those costs associated with such a refund in the next PWAC or base rate case following a final disposition by the New Jersey courts, whichever case is concluded first.

5. For General Water Service (“GWS”) customers under Rate Schedule No. 1, Revised Tariff Sheet No. 33A, a charge of \$2.5603 per thousand cubic feet shall be made to recover the increased purchased water costs, reflected on Rate Schedule No. 1, Revised Tariff Sheet No. 33A, attached and made a part of this Stipulation.

6. For service under contract customers, Rate Schedule No. 5, Revised Tariff Sheet No. 40A, PWAC charges agreed to herein result in a charge of \$113.95 per million gallons, reflected on Rate Schedule No. 5, attached and made part of this Stipulation.

7. As a result of this Stipulation, a residential customer with a 5/8” meter using 2,300 cubic feet or 17,204 gallons of water per quarter will see their water bill increase from \$198.41 to \$204.30 per quarter, an increase of \$5.89 per quarter, or an increase of 2.97%. The amounts are based on the current tariff sheets already approved by the Board in and filed by Middlesex in conformance with the Board’s Order Granting Emergency Relief.

8. In accordance with N.J.A.C. 14:9-7.4, Petitioner shall file with the Board, not later than 45 days after the adjustment clause has been in effect for one year, a PWAC true-up schedule in connection with this proceeding. Copies of the true-up schedules shall be served upon all Signatory Parties to the present proceeding. In accordance with N.J.A.C. 14:9-7.3, this PWAC, if

approved by the Board, shall remain in effect until the Company's next base rate case, provided that the Company submits an annual year-end true-up as described above and an annual petition for adjustment of the PWAC amount in accordance with N.J.A.C. 14:9-7.4.

9. With respect to the above-referenced Additional NJAW Purchased Water Costs incurred after September 30, 2022, the Company shall record these amounts as a deferred debit and include this amount in either its next PWAC filing or its next base rate case filing with the Board, whichever filing occurs first.

10. This Stipulation is the product of negotiations by the Signatory Parties, and it is an express condition of the settlement embodied by this Stipulation that it be presented to the Board in its entirety without modification or condition. It is also the intent of the Signatory Parties to this Stipulation that this settlement, once accepted and approved by the Board, shall govern all issues specified and agreed to herein. The Signatory Parties to this Stipulation specifically agree that if adopted in its entirety by the Board, no appeal shall be taken by them from the order adopting same as to those issues upon which the Signatory Parties have stipulated herein. The Signatory Parties agree that the within Stipulation reflects mutual balancing of various issues and positions and is intended to be accepted and approved in its entirety. Each term is vital to this Stipulation as a whole, since the Signatory Parties hereto expressly and jointly state that they would not have signed this Stipulation had any individual terms been modified in any way. In the event any particular aspect of this Stipulation is not accepted and approved by the Board, then any Party hereto materially affected thereby shall not be bound to proceed under this Stipulation. The Signatory Parties further agree that the purpose of this Stipulation is to reach fair and reasonable rates, and that it will avoid costly litigation of certain issues, and that with respect to any policy or other issues which were compromised in the spirit of reaching an agreement, none of the Signatory Parties shall be prohibited from, or prejudiced in, arguing a different policy or position before the

Board in any other proceeding, as such agreements pertain only to this matter and to no other matter.

11. It is specifically understood and agreed that this Stipulation has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, the Company, Board Staff and Rate Counsel shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein in total or by specific item. The Signatory Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of the Stipulation.

12. All rates are subject to audit by the Board.

13. This Stipulation may be executed in as many counterparts as there are Signatory Parties of this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

MIDDLESEX WATER COMPANY

Jan, 23, 2023  
Date

By: Jay Kooper  
Jay L. Kooper, Esq.  
Vice President, General Counsel & Secretary

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board  
of Public Utilities

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Meliha Arnautovic  
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.  
DIRECTOR – DIVISION OF RATE COUNSEL

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Susan McClure, Esq.  
Managing Attorney, Water and Wastewater

MIDDLESEX WATER COMPANY

Jan, 23, 2023  
Date

By: *Jay Kooper*  
Jay L. Kooper, Esq.  
Vice President, General Counsel & Secretary

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board  
of Public Utilities

1/25/2023  
Date

By: *Meliha Arnautovic, DAG*  
Meliha Arnautovic  
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.  
DIRECTOR – DIVISION OF RATE COUNSEL

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Susan McClure, Esq.  
Managing Attorney, Water and Wastewater

MIDDLESEX WATER COMPANY

Jan. 23, 2023  
Date

By: Jay Kooper  
Jay L. Kooper, Esq.  
Vice President, General Counsel & Secretary

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board  
of Public Utilities

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Meliha Arnautovic  
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.  
DIRECTOR - DIVISION OF RATE COUNSEL

Jan. 26, 2023  
Date

By: Susan McClure  
Susan McClure, Esq.  
Managing Attorney, Water and Wastewater



January 26, 2023

**Via Electronic Mail and Overnight Mail**

The Honorable Jacob S. Gertsman  
Administrative Law Judge  
New Jersey Office of Administrative Law  
3444 Quakerbridge Road, Building 9  
Mercerville, NJ 08619

Re: In the Matter of 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 Judge Gertsman:

Enclosed please find for Your Honor's consideration a Stipulation of Settlement executed by Petitioner Middlesex Water Company ("Middlesex"), Staff of the New Jersey Board of Public Utilities ("Staff") and the New Jersey Division of Rate Counsel ("Rate Counsel"), and the exhibits supporting the Stipulation. As previously reported to Your Honor, it is anticipated that Intervenors Old Bridge Municipal Utilities Authority and Marlboro Township will oppose this Stipulation of Settlement, rendering it non-unanimous.

Please contact me at (732) 638-7506 or [jkooper@middlesexwater.com](mailto:jkooper@middlesexwater.com) with any questions or concerns with respect to this filing.

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 (attached) (via electronic mail)  
Judith Matthews (OAL) (via electronic mail)

**CERTIFICATE OF SERVICE**

STATE OF NEW JERSEY    )  
                                          )  
COUNTY OF MIDDLESEX   )

JAY L. KOOPER, an Attorney at Law of the State of New Jersey, hereby certifies the following:

1. I am the Vice President, General Counsel & Secretary of Middlesex Water Company, the Petitioner named in OAL Docket No. PUC 02047-2022S and BPU Docket No. WR22030138, and am authorized to make this Certification on its behalf.

2. On January 26, 2023, I caused to be served on the persons set forth in the attached Service List for OAL Docket No. PUC 02047-2022S and BPU Docket No. WR22030138, by electronic mail, copies of the enclosed Stipulations of Settlement package.

  
\_\_\_\_\_  
Jay L. Kooper

Dated: January 26, 2023

**OAL SERVICE LIST**

In the Matter of the Petition of Middlesex Water Company for Approval  
To Change The Levels of Its Purchased Water Adjustment Clause  
OAL Docket No. PUC 02047-2022S  
BPU Docket No. WR22030138

Susan McClure, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625  
[smcclure@rpa.nj.gov](mailto:smcclure@rpa.nj.gov)

Meliha Arnautovic, DAG  
Division of Law  
Hughes Justice Complex  
25 Market Street  
P.O. Box 112  
Trenton, NJ 08625  
[meliha.arnautovic@law.njoag.gov](mailto:meliha.arnautovic@law.njoag.gov)

Jay L. Kooper, Esq.  
Vice President, Gen. Counsel & Sect.  
Middlesex Water Company  
485C Route 1 South, Suite 400  
Iselin, NJ 08830  
[jkooper@middlesexwater.com](mailto:jkooper@middlesexwater.com)

Michael Burns, Esq.  
Rainone, Coughlin Michello, LLC  
555 U.S. Highway One South, Suite 440  
Iselin, NJ 08830  
[mburns@njrcmlaw.com](mailto:mburns@njrcmlaw.com)

Chirstine Juarez, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625  
[cjuarez@rpa.nj.gov](mailto:cjuarez@rpa.nj.gov)

Emily Smithman, Esq.  
Division of Rate Counsel  
140 E. Front Street, 4<sup>th</sup> Floor  
P.O. Box 003  
Trenton, NJ 08625  
[esmithman@rpa.nj.gov](mailto:esmithman@rpa.nj.gov)

Louis Rainone, Esq.  
Rainone, Coughlin Michello, LLC  
535 U.S. Hwy. One South, Suite 440  
Iselin, NJ 08830  
[lrainone@njrcmlaw.com](mailto:lrainone@njrcmlaw.com)

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
OFFICE OF ADMINISTRATIVE LAW**

|                                                                                                                                                                                                  |                                                                      |                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------|
| <b>In The Matter of the Petition of<br/>Middlesex Water Company for<br/>Approval To Change The Levels of Its<br/>Purchased Water Adjustment Clause<br/>Pursuant To N.J.A.C. 14:9-7.1 et seq.</b> | <b>:</b><br><b>:</b><br><b>:</b><br><b>:</b><br><b>:</b><br><b>:</b> | <b>OAL Docket No. PUC 02047-2022S<br/>BPU Docket No. WR22030138</b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------|

**STIPULATION OF SETTLEMENT**

APPEARANCES:

Jay L. Kooper, Esq., Vice President, General Counsel & Secretary, on behalf of Middlesex Water Company, Petitioner

Meliha Arnautovic, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Matthew J. Platkin, Attorney General of the State of New Jersey)

Susan McClure, Esq., Managing Attorney, Water and Wastewater and Emily Smithman, Esq., Assistant Deputy Rate Counsel, on behalf of the Division of Rate Counsel (Brian O. Lipman, Director)

Louis N. Rainone, Esq. and Michael R. Burns, Esq., Rainone Coughlin & Minchello, LLC, on behalf of the Old Bridge Municipal Utilities Authority and Marlboro Township

TO THE HONORABLE JACOB S. GERTSMAN, ALJ AND THE BOARD OF PUBLIC UTILITIES:

This Stipulation of Settlement (“Stipulation”) resolves all issues in OAL Docket No. PUC 02047-2022S and BPU Docket No. WR22030138 in which Middlesex Water Company (“Middlesex”, “Company” or “Petitioner”) seeks approval by the New Jersey Board of Public Utilities (“Board”) of its Purchased Water Adjustment Clause (“PWAC”) to recover increased purchased water costs, together with deferred costs, as more fully set forth in the exhibits attached to the petition and other materials filed herein. The Signatory Parties to this Stipulation of Settlement are Middlesex, the New Jersey Division of Rate Counsel (“Rate Counsel”), and the

Staff of the Board (“Staff”) (collectively “Signatory Parties”). Also participating in this proceeding are the following entities who filed Motions To Intervene, which were unopposed by the Company: the Old Bridge Municipal Utilities Authority (“OBMUA”) and Marlboro Township (“Marlboro”) (collectively “Intervenors”) (together, the Signatory Parties and the Intervenors shall be designated as “Parties”). The Parties anticipate that the Intervenors will oppose the terms of this Stipulation of Settlement, rendering this Stipulation as Non-Unanimous.

As a result of an analysis of Petitioner's pre-filed testimony and exhibits, extensive discovery conducted, conferences, negotiations, and two public hearings held virtually on May 19, 2022, the Signatory Parties have come to an agreement on the issues in dispute in this matter. The Signatory Parties hereto agree and stipulate as follows:

The procedural history of this matter is as follows:

On March 15, 2022, Petitioner, a public utility corporation of the State of New Jersey, pursuant to N.J.A.C. 14:9-7.1 et seq., filed a petition with the Board seeking approval for an increase in its PWAC to recover increased purchased water costs, together with deferred costs, and associated expenses including PWAC rate case expenses and gross receipts and franchise taxes. The Company 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%.

The Company purchases water through two water purchase contracts. The first is for untreated water from the New Jersey Water Supply Authority (“NJWSA”) and the second is for treated water from New Jersey American Water Company (“NJAW”).

First, the Company was subsequently notified of an increase in its purchased water rate from NJAW from \$0.3646 per thousand gallons (tg) to \$0.3978 per tg effective April 1, 2022 pursuant to BPU Docket No. WR21111220.

Second, while the Company did not receive an increase in the purchased water rate from NJWSA in connection with this matter, the Company was notified by NJWSA of a debt service charge credit of \$88,683.

Third, on January 14, 2022, NJAW initiated a new base rate proceeding by filing with the Board a petition seeking an increase of its base rates (BPU Docket No. WR22010019). In its petition, NJAW proposed to increase the rates charged to Middlesex by 11.7%, which would increase the minimum annual cost for water service by approximately \$326,700. Consistent with prior NJAW base rate cases, Middlesex intervened in this NJAW base rate proceeding to ensure that the base rate set for water purchased by Middlesex for its customers pursuant to its water purchase contract with NJAW is based on appropriate cost of service metrics.

Fourth, effective January 1, 2021, the New Jersey Department of Environmental Protection (“NJDEP”) adopted a maximum contaminant level of 14 parts per trillion (“ppt”) for Perfluorooctanoic Acid (“PFOA”), a manufactured chemical that is a member of the group of chemicals known as Per- and Polyfluoroalkyl Substances (“PFAS”). On September 16, 2021, Middlesex received notice from the NJDEP that groundwater from its Park Avenue wellfield (“Park Avenue Wellfield”) located in South Plainfield exceeded the NJDEP’s new limit. As a result of this exceedance, Middlesex was issued a Notice of Non-Compliance by NJDEP.

On November 9, 2021, Middlesex, with NJDEP’s approval, ceased pumping water from the Park Avenue Wellfield and engaged in continuous testing to determine that a shutdown was an operationally-feasible action, on an interim basis, until the completion of an enhanced treatment facility at the Park Avenue Wellfield. The treatment facility is expected to be placed into service in mid-2023. Although an accelerated partial treatment solution has now been implemented, the Park Avenue Wellfield is expected to remain substantially offline until mid-2023 barring any unforeseen emergency necessitating full reactivation of the Park Avenue Wellfield prior to that

date. As a result, Middlesex developed a plan with NJAW, approved by NJDEP, for incremental water purchases from NJAW above Middlesex's minimum contractual requirement amounts set forth in its current water purchase contract with NJAW ("Additional NJAW Purchased Water").

On March 16, 2022, this matter was transferred to the Office of Administrative Law ("OAL") as a contested case where it was assigned to Administrative Law Judge Jacob S. Gertsman ("ALJ Gertsman"). A Pre-Hearing Conference was convened by ALJ Gertsman on April 13, 2022. After proper notice, two public hearings were held virtually at 4:30 p.m. and 5:30 p.m. on May 19, 2022, with ALJ Gertsman presiding. No members of the public attended.

On September 28, 2022, the Board issued in this matter its Order On Emergency Relief Motion For Interim Rates<sup>1</sup> in which the Board granted an Emergency Relief Motion filed by Middlesex pursuant to N.J.S.A. 48:2-21.1 and N.J.A.C. 1:1-12.6 and authorized Middlesex to increase its PWAC, on an interim basis, subject to refund with interest, effective October 1, 2022 pending final resolution of this matter ("Interim PWAC").

On September 29, 2022, Middlesex, in compliance with the Order Granting Emergency Relief, filed updated tariff sheets implementing the Interim PWAC. Under the Interim PWAC, the Company received an increase in annual operating revenue of \$2,675,866 above pro forma present rate revenues of \$103,054,328, which represents an overall increase of approximately 2.60%, based on an effective date for the new PWAC levels of October 1, 2022.

Subsequently, an agreement was reached among the Signatory Parties resulting in the following Stipulation:

---

<sup>1</sup> *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")

1. The purchased water costs, established pursuant to Petitioner's last base rate order dated December 15, 2021 in BPU Docket No. WR21050813 amounted to \$6,726,310 as appears on the Exhibit A, attached and made a part of this Stipulation. The new base cost of purchased water as agreed to by the Signatory Parties is agreed to be \$6,835,185 resulting in an increase in purchased water cost of \$108,875, as more fully set forth in Exhibit A.

2. The Signatory Parties agree that the sum of the allowable expenses in this matter is set forth in Exhibit A and is agreed to be \$2,675,866 including:

- a. Rate proceeding expenses of \$625, representing a 50% share of total rate proceeding expenses of \$1,250;
- b. Additional purchased water costs through September 30, 2022 of \$2,079,441
- c. NJAW base rate case intervention costs of \$75,000, which the Signatory Parties have determined after a review of the facts in this matter are just and reasonable expenses;
- d. Incremental purchased water costs of \$31,268
- e. A revenue tax factor of 14.2256% and the resulting revenue tax of \$380,657.

3. For purposes of this matter, the base consumption established in Petitioner's last base rate case in million gallons (mg) is agreed to be 12,373.5 mg. This amount is reduced by the amount attributable to the Township of East Brunswick ("East Brunswick")<sup>2</sup> of 2,422.9 mg,

---

<sup>2</sup> East Brunswick purchases untreated water under its own contract with the NJWSA. The Company pumps the untreated water to its primary treatment plant from the intake connection with the NJWSA. Once the Company performs the water treatment services, East Brunswick takes delivery of the treated water at the Company's primary treatment plant. The Company does not purchase water from the NJWSA to fulfill its obligation under its contract with East Brunswick. Therefore, none of the increased purchased water costs sought or agreed to in this proceeding should be allocated to East Brunswick.

resulting in a base consumption for recovery of the PWAC of 9,950.6 mg as more fully set forth in Exhibit A.

4. The Signatory Parties agree that, in the event Intervenors challenge any final Board Order issued in this docket in the New Jersey courts and obtain a favorable final decision from the New Jersey courts that requires Middlesex to refund the Intervenors for all or a portion of the PWAC adopted in this proceeding, Middlesex shall be permitted to seek recovery of those costs associated with such a refund in the next PWAC or base rate case following a final disposition by the New Jersey courts, whichever case is concluded first.

5. For General Water Service (“GWS”) customers under Rate Schedule No. 1, Revised Tariff Sheet No. 33A, a charge of \$2.5603 per thousand cubic feet shall be made to recover the increased purchased water costs, reflected on Rate Schedule No. 1, Revised Tariff Sheet No. 33A, attached and made a part of this Stipulation.

6. For service under contract customers, Rate Schedule No. 5, Revised Tariff Sheet No. 40A, PWAC charges agreed to herein result in a charge of \$113.95 per million gallons, reflected on Rate Schedule No. 5, attached and made part of this Stipulation.

7. As a result of this Stipulation, a residential customer with a 5/8” meter using 2,300 cubic feet or 17,204 gallons of water per quarter will see their water bill increase from \$198.41 to \$204.30 per quarter, an increase of \$5.89 per quarter, or an increase of 2.97%. The amounts are based on the current tariff sheets already approved by the Board in and filed by Middlesex in conformance with the Board’s Order Granting Emergency Relief.

8. In accordance with N.J.A.C. 14:9-7.4, Petitioner shall file with the Board, not later than 45 days after the adjustment clause has been in effect for one year, a PWAC true-up schedule in connection with this proceeding. Copies of the true-up schedules shall be served upon all Signatory Parties to the present proceeding. In accordance with N.J.A.C. 14:9-7.3, this PWAC, if

approved by the Board, shall remain in effect until the Company's next base rate case, provided that the Company submits an annual year-end true-up as described above and an annual petition for adjustment of the PWAC amount in accordance with N.J.A.C. 14:9-7.4.

9. With respect to the above-referenced Additional NJAW Purchased Water Costs incurred after September 30, 2022, the Company shall record these amounts as a deferred debit and include this amount in either its next PWAC filing or its next base rate case filing with the Board, whichever filing occurs first.

10. This Stipulation is the product of negotiations by the Signatory Parties, and it is an express condition of the settlement embodied by this Stipulation that it be presented to the Board in its entirety without modification or condition. It is also the intent of the Signatory Parties to this Stipulation that this settlement, once accepted and approved by the Board, shall govern all issues specified and agreed to herein. The Signatory Parties to this Stipulation specifically agree that if adopted in its entirety by the Board, no appeal shall be taken by them from the order adopting same as to those issues upon which the Signatory Parties have stipulated herein. The Signatory Parties agree that the within Stipulation reflects mutual balancing of various issues and positions and is intended to be accepted and approved in its entirety. Each term is vital to this Stipulation as a whole, since the Signatory Parties hereto expressly and jointly state that they would not have signed this Stipulation had any individual terms been modified in any way. In the event any particular aspect of this Stipulation is not accepted and approved by the Board, then any Party hereto materially affected thereby shall not be bound to proceed under this Stipulation. The Signatory Parties further agree that the purpose of this Stipulation is to reach fair and reasonable rates, and that it will avoid costly litigation of certain issues, and that with respect to any policy or other issues which were compromised in the spirit of reaching an agreement, none of the Signatory Parties shall be prohibited from, or prejudiced in, arguing a different policy or position before the

Board in any other proceeding, as such agreements pertain only to this matter and to no other matter.

11. It is specifically understood and agreed that this Stipulation has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, the Company, Board Staff and Rate Counsel shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein in total or by specific item. The Signatory Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of the Stipulation.

12. All rates are subject to audit by the Board.

13. This Stipulation may be executed in as many counterparts as there are Signatory Parties of this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

MIDDLESEX WATER COMPANY

Jan, 23, 2023  
Date

By: Jay Kooper  
Jay L. Kooper, Esq.  
Vice President, General Counsel & Secretary

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board  
of Public Utilities

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Meliha Arnautovic  
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.  
DIRECTOR – DIVISION OF RATE COUNSEL

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Susan McClure, Esq.  
Managing Attorney, Water and Wastewater

MIDDLESEX WATER COMPANY

Jan. 23, 2023  
Date

By: Jay Kooper  
Jay L. Kooper, Esq.  
Vice President, General Counsel & Secretary

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board  
of Public Utilities

1/25/2023  
Date

By: Meliha Arnautovic, DAG  
Meliha Arnautovic  
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.  
DIRECTOR – DIVISION OF RATE COUNSEL

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Susan McClure, Esq.  
Managing Attorney, Water and Wastewater

MIDDLESEX WATER COMPANY

Jan. 23, 2023  
Date

By: Jay L. Kooper  
Jay L. Kooper, Esq.  
Vice President, General Counsel & Secretary

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board  
of Public Utilities

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Meliha Arnautovic  
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.  
DIRECTOR – DIVISION OF RATE COUNSEL

Jan. 26, 2023  
Date

By: Susan McClure  
Susan McClure, Esq.  
Managing Attorney, Water and Wastewater

**MIDDLESEX WATER COMPANY  
PURCHASED WATER ADJUSTMENT CLAUSE  
PROPOSED COST PER UNIT OF VOLUME  
BPU DOCKET NO. WR22030138**

|                                                                 |                            |
|-----------------------------------------------------------------|----------------------------|
| PURCHASED WATER COSTS PURSUANT TO BPU DOCKET NO. WR21050813     | \$ 6,726,310               |
| NEW COST OF PURCHASED WATER (EXHIBIT E, PAGE 2 OF 3)            | 6,835,185                  |
| INCREASE IN BASE PURCHASED WATER COST                           | <u>\$ 108,875</u>          |
| RATE PROCEEDINGS COSTS (EXHIBIT G)                              | \$ 625                     |
| NJAWC BASE RATE CASE INTERVENTION COSTS (EXHIBIT G)             | \$ 75,000                  |
| INCREMENTAL PURCHASED WATER COSTS (EXHIBIT E, PAGE 3 OF 3)      | \$ 31,268                  |
| ADDITIONAL PURCHASED WATER COSTS (EXHIBIT E, PAGE 4 OF 4)       | \$ 2,079,441               |
| REVENUE TAX FACTOR @ (EXHIBIT H) 14.2256%                       | \$ 380,657                 |
| SUM OF ALLOWABLE EXPENSES                                       | <u><u>\$ 2,675,866</u></u> |
| BASE CONSUMPTION - MILLION GALLONS (MG)                         |                            |
|                                                                 | <u>MG</u>                  |
| BASE CONSUMPTION PURSUANT TO BPU DOCKET NO. WR21050813          | 12,373.5                   |
| LESS: EAST BRUNSWICK PURSUANT TO BPU DOCKET NO. WR21050813      | <u>(2,422.9)</u>           |
| BASE CONSUMPTION FOR RECOVERY OF PWAC                           | <u><u>9,950.6</u></u>      |
| CURRENT PWAC RATE PER TCF (RATE SCHEDULE NO. 1, SHEET NO. 33A)  | \$0.0000                   |
| CURRENT PWAC RATE PER MG (RATE SCHEDULE NO. 5, SHEET NO. 40A)   | \$0.0000                   |
| PROPOSED PWAC RATE PER TCF (RATE SCHEDULE NO. 1, SHEET NO. 33A) | \$2.5603                   |
| PROPOSED PWAC RATE PER MG (RATE SCHEDULE NO. 5, SHEET NO. 40A)  | \$113.9500                 |

MIDDLESEX WATER COMPANY

Fifteenth Revised Sheet No. 33A

B.P.U. No. 1 - WATER

Cancelling

Fourteenth Revised Sheet No. 33A

---

RATE SCHEDULE NO. 1 (Continued)

GENERAL WATER SERVICE – GS

PURCHASED WATER ADJUSTMENT CLAUSE (PWAC) CHARGES

A charge of \$ 2.5603 per thousand cubic feet will be made to recover the increased purchased water costs.

---

Date of Issue: March 15, 2022

Effective for service

Rendered on and after:

Issued by: Dennis W. Doll, President  
485C Route 1 South  
Suite 400  
Iselin, New Jersey 08830-0452

October 1, 2022

Filed pursuant to an Order of the Board of Public Utilities, State of New Jersey, dated September 28, 2022, in Docket No. WR22030138.

MIDDLESEX WATER COMPANY

Fifteenth Revised Sheet No. 40A

B.P.U. No. 1 - WATER

Cancelling

Fourteenth Revised Sheet No. 40A

---

RATE SCHEDULE NO. 5

SERVICE UNDER CONTRACT - SC

PURCHASED WATER ADJUSTMENT CLAUSE (PWAC) CHARGES

A charge of \$113.95 per million gallons will be made to recover the increased purchased water costs.

---

Date of Issue: March 15, 2022

Effective for service

Rendered on and after:

Issued by: Dennis W. Doll, President  
485C Route 1 South  
Suite 400  
Iselin, New Jersey 08830-0452

October 1, 2022

Filed pursuant to an Order of the Board of Public Utilities, State of New Jersey, dated September 28, 2022, in Docket No. WR22030138.

MIDDLESEX WATER COMPANY  
PURCHASED WATER ADJUSTMENT CLAUSE  
BPU DOCKET NO. WR22031038

|                        |             |             | <u>PROPOSED RATES</u> |                         |
|------------------------|-------------|-------------|-----------------------|-------------------------|
|                        |             |             | <u>PWAC<br/>RATE</u>  | <u>REVENUE</u>          |
| RESIDENTIAL            | USAGE (CCF) | 505,835,703 | 0.0025603             | 1,295,091               |
| COMMERCIAL             | USAGE (CCF) | 237,033,052 | 0.0025603             | 606,876                 |
| INDUSTRIAL             | USAGE (CCF) | 143,558,085 | 0.0025603             | 367,552                 |
| SUBTOTAL               |             |             |                       | <u>2,269,519</u>        |
| PRIVATE FIRE           | USAGE (CCF) | 16,425,776  | 0.0025603             | 42,055                  |
| PUBLIC FIRE            | USAGE (CCF) | 0           | 0.0025603             | 0                       |
| SUBTOTAL               |             |             |                       | <u>42,055</u>           |
| SUB-TOTAL              |             |             |                       | <u>2,311,574</u>        |
| EDISON / HIGHLAND PARK | USAGE (MG)  | 1,025.424   | 113.95                | 116,847                 |
| EAST BRUNSWICK         | USAGE (MG)  | 2,422.908   | N/A                   | 0                       |
| OLD BRIDGE MUA         | USAGE (MG)  | 870.717     | 113.95                | 99,218                  |
| MARLBORO               | USAGE (MG)  | 1,106.307   | 113.95                | 126,064                 |
| RAHWAY                 | USAGE (MG)  | 194.802     | 113.95                | 22,198                  |
| SUBTOTAL               |             |             |                       | <u>364,327</u>          |
| ROUNDING               |             |             |                       | (34)                    |
| TOTAL PWAC REVENUE     |             |             |                       | <u><u>2,675,866</u></u> |

**MIDDLESEX WATER COMPANY  
PURCHASED WATER ADJUSTMENT CLAUSE  
PROPOSED COST PER UNIT OF VOLUME  
BPU DOCKET NO. WR22030138**

|                                                                 |                            |
|-----------------------------------------------------------------|----------------------------|
| PURCHASED WATER COSTS PURSUANT TO BPU DOCKET NO. WR21050813     | \$ 6,726,310               |
| NEW COST OF PURCHASED WATER (EXHIBIT E, PAGE 2 OF 3)            | 6,835,185                  |
| INCREASE IN BASE PURCHASED WATER COST                           | <u>\$ 108,875</u>          |
| RATE PROCEEDINGS COSTS (EXHIBIT G)                              | \$ 625                     |
| NJAWC BASE RATE CASE INTERVENTION COSTS (EXHIBIT G)             | \$ 75,000                  |
| INCREMENTAL PURCHASED WATER COSTS (EXHIBIT E, PAGE 3 OF 3)      | \$ 31,268                  |
| ADDITIONAL PURCHASED WATER COSTS (EXHIBIT E, PAGE 4 OF 4)       | \$ 2,079,441               |
| REVENUE TAX FACTOR @ (EXHIBIT H) 14.2256%                       | \$ 380,657                 |
| SUM OF ALLOWABLE EXPENSES                                       | <u><u>\$ 2,675,866</u></u> |
| BASE CONSUMPTION - MILLION GALLONS (MG)                         |                            |
|                                                                 | <u>MG</u>                  |
| BASE CONSUMPTION PURSUANT TO BPU DOCKET NO. WR21050813          | 12,373.5                   |
| LESS: EAST BRUNSWICK PURSUANT TO BPU DOCKET NO. WR21050813      | <u>(2,422.9)</u>           |
| BASE CONSUMPTION FOR RECOVERY OF PWAC                           | <u><u>9,950.6</u></u>      |
| CURRENT PWAC RATE PER TCF (RATE SCHEDULE NO. 1, SHEET NO. 33A)  | \$0.0000                   |
| CURRENT PWAC RATE PER MG (RATE SCHEDULE NO. 5, SHEET NO. 40A)   | \$0.0000                   |
| PROPOSED PWAC RATE PER TCF (RATE SCHEDULE NO. 1, SHEET NO. 33A) | \$2.5603                   |
| PROPOSED PWAC RATE PER MG (RATE SCHEDULE NO. 5, SHEET NO. 40A)  | \$113.9500                 |

MIDDLESEX WATER COMPANY  
PURCHASED WATER ADJUSTMENT CLAUSE  
BPU DOCKET NO. WR22030138

**SCHEDULE OF BASE COSTS OF PURCHASED WATER  
PER MWC BPU DOCKET NO. WR21050813**

| <u>PURVEYOR</u>                                       | <u>RATE<br/>PER MG</u> | <u>MINIMUM TAKE OR<br/>PAY AMOUNTS (MG)</u> | <u>COST</u>        |
|-------------------------------------------------------|------------------------|---------------------------------------------|--------------------|
| <u>NEW JERSEY AMERICAN WATER</u>                      |                        |                                             |                    |
| BASE RATE TARIFF SCHEDULE G (BPU DOCKET NO. 19121516) | \$2,554.30             | 1,095.00                                    | \$2,796,959        |
| PWAC RATE SCHEDULE O-1 (BPU DOCKET NO. WR20110719)    | \$364.60               |                                             | \$399,237          |
| TOTAL NEW JERSEY AMERICAN WATER COST PER MG           | \$2,918.90             |                                             |                    |
| BASELINE ADDITIONAL WATER PURCHASES                   | \$2,918.90             | 14.25                                       | \$41,591           |
| TOTAL NEW JERSEY AMERICAN WATER                       |                        |                                             | \$3,237,787        |
| <u>NEW JERSEY WATER SUPPLY AUTHORITY</u>              |                        |                                             |                    |
| BASE RATE - TIER 1 (20 MGD)                           | \$336.00               | 7,300.00                                    | \$2,452,800        |
| BASE RATE - TIER 2 (7 MGD)                            | \$405.37               | 2,555.00                                    | \$1,035,724        |
| TOTAL NEW JERSEY WATER SUPPLY AUTHORITY               |                        |                                             | \$3,488,524        |
|                                                       |                        | <u>10,964.25</u>                            | <u>\$6,726,310</u> |

**SCHEDULE OF PROJECTED REVISED PURCHASED WATER COSTS**

| <u>PURVEYOR</u>                                                    | <u>RATE<br/>PER MG</u> | <u>MINIMUM TAKE OR<br/>PAY AMOUNTS (MG)</u> | <u>COST</u>        |
|--------------------------------------------------------------------|------------------------|---------------------------------------------|--------------------|
| <u>NEW JERSEY AMERICAN WATER</u>                                   |                        |                                             |                    |
| BASE RATE TARIFF SCHEDULE G (BPU DOCKET NO. 22010019 SETTLEMENT)   | \$2,699.20             | 1,095.0                                     | \$2,955,624        |
| PWAC RATE SCHEDULE O-1 (BPU DOCKET NO. WR21111220)                 | \$397.80               |                                             | \$435,591          |
| TOTAL NEW JERSEY AMERICAN WATER COST PER MG                        | \$3,097.00             |                                             |                    |
| BASELINE ADDITIONAL WATER PURCHASES                                | \$3,097.00             | 14.25                                       | \$44,129           |
| TOTAL NEW JERSEY AMERICAN WATER                                    |                        |                                             | \$3,435,344        |
| <u>NEW JERSEY WATER SUPPLY AUTHORITY</u>                           |                        |                                             |                    |
| BASE RATE - TIER 1 (20 MGD)                                        | \$336.00               | 7,300.0                                     | \$2,452,800        |
| BASE RATE - TIER 2 (7 MGD)                                         | \$405.37               | 2,555.0                                     | \$1,035,724        |
| RETROACTIVE DEBT SERVICE CHARGE (\$14,770.31 X 12 MONTHS) RCR-A-10 |                        |                                             | (\$177,244)        |
| RETROACTIVE DEBT SERVICE CHARGE CREDIT RECEIVED JUNE 2020 RCR-A-10 |                        |                                             | \$88,561           |
| TOTAL NEW JERSEY WATER SUPPLY AUTHORITY                            |                        |                                             | \$3,399,841        |
|                                                                    |                        | <u>10,964.25</u>                            | <u>\$6,835,185</u> |

MIDDLESEX WATER COMPANY  
PURCHASED WATER ADJUSTMENT CLAUSE  
BPU DOCKET NO. WR22030138

Incremental Purchased Water Costs (Contract Requirement)

|                                                                         | <u>Base Rate</u>   | <u>Take/Pay<br/>Volume (MGD)</u> | <u>Days in<br/>Period</u> | <u>Total Cost</u>       |
|-------------------------------------------------------------------------|--------------------|----------------------------------|---------------------------|-------------------------|
| NJAWC<br>Base Rate (Effective Date 9/1/22)                              | \$ 2,699.20        | 3.0                              | 30                        | \$ 242,928              |
| NJAWC<br>Base Rate (Effective Date 11/1/20)                             | <u>\$ 2,554.30</u> | 3.0                              | 30                        | <u>\$ 229,887</u>       |
|                                                                         | \$ 144.90          |                                  |                           | <u>\$ 13,041</u>        |
| NJAWC - 4/1/22 thru 9/1/22<br>PWAC Rate (Effective Date 4/1/22)         | <u>\$ 397.80</u>   | <u>3.0</u>                       | <u>183</u>                | <u>\$ 218,392</u>       |
| NJAWC - 4/1/22 thru 9/1/22<br>PWAC Rate (In MWC Rates Effective 1/1/22) | <u>\$ 364.60</u>   | 3.0                              | 183                       | <u>\$ 200,165</u>       |
| Change                                                                  | \$ 33.20           |                                  |                           | <u>\$ 18,227</u>        |
|                                                                         |                    |                                  |                           | <u><u>\$ 31,268</u></u> |
| <b>Total Deferred Purchased Water Costs</b>                             |                    |                                  |                           | <u><u>\$ 31,268</u></u> |

MIDDLESEX WATER COMPANY  
PURCHASED WATER ADJUSTMENT CLAUSE  
BPU DOCKET NO. WR22030138

Water Purchases Over Contractual Take/Pay Minimum Due to Park Ave Shut Down

| <u>Actual</u>    | <u>MG/Day</u> | <u># Days</u> | <u>Total MG</u> | <u>Cost/MG</u>  | <u>Total Cost</u> |
|------------------|---------------|---------------|-----------------|-----------------|-------------------|
| May (1)          | 3.0           | 28            | 84.0            | \$ 2,952.10 (B) | \$ 247,976        |
| <b>Projected</b> |               |               |                 |                 |                   |
| June             | 3.0           | 30            | 90.0            | \$ 2,952.10 (B) | 265,689           |
| July             | 7.0           | 31            | 217.0           | \$ 2,952.10 (B) | 640,606           |
| August           | 7.0           | 31            | 217.0           | \$ 2,952.10 (B) | 640,606           |
| September        | 3.0           | 30            | 90.0            | \$ 3,097.00 (C) | <u>278,730</u>    |

Total Projected Water Purchases Over Contractual Take/Pay Minimum \$ 2,073,607

(1) Only 28 days included for May since NJAWC experienced plant issues and requested MWC reduce water flow take for 3 days during the month.

Standard Water Purchases Over Contractual Take/Pay Minimum

| <u>Actual</u>  | <u>Total MG</u>        | <u>Total Cost</u> |
|----------------|------------------------|-------------------|
| October, 2021  | 2.348 \$ 2,918.90 (A)  | \$ 6,854          |
| November, 2021 | 0.141 \$ 2,918.90 (A)  | 412               |
| December, 2021 | 0.236 \$ 2,918.90 (A)  | 689               |
| January, 2022  | 10.496 \$ 2,918.90 (A) | 30,635            |
| February, 2022 | 1.042 \$ 2,918.90 (A)  | 3,041             |
| March, 2022    | 0.007 \$ 2,918.90 (A)  | 20                |
| April, 2022    | 0.167 \$ 2,952.10 (B)  | 493               |
| May, 2022      | 1.789 \$ 2,952.10 (B)  | 5,281             |

Total Standard Water Purchases Over Contractual Take/Pay Minimum \$ 47,425

|                                                                        |                         |
|------------------------------------------------------------------------|-------------------------|
| Total Additional Water Purchases Over Contractual Take/Pay Minimum     | \$ 2,121,032            |
| Less: Baseline Additional Water Purchases (MWC BPU Docket #WR21050813) | (41,591)                |
| <b>Total Additional Purchase Water Costs</b>                           | <b><u>2,079,441</u></b> |

|                             |                        |
|-----------------------------|------------------------|
| NJAWC - 1/1/22 thru 3/31/22 | <u>Rate</u>            |
| Base Rate                   | \$ 2,554.30            |
| PWAC Rate                   | \$ 364.60              |
|                             | <u>\$ 2,918.90 (A)</u> |

|                             |                                            |
|-----------------------------|--------------------------------------------|
| NJAWC - 4/1/22 thru 8/31/22 | <u>Rate</u>                                |
| Base Rate                   | \$ 2,554.30                                |
| PWAC Rate                   | \$ 397.80 NJAWC PWAC Rate Effective 4/1/22 |
|                             | <u>\$ 2,952.10 (B)</u>                     |

|                             |                                              |
|-----------------------------|----------------------------------------------|
| NJAWC - 9/1/22 thru 9/30/22 | <u>Rate</u>                                  |
| Base Rate                   | \$ 2,699.20 NJAWC Base Rate Effective 9/1/22 |
| PWAC Rate                   | \$ 397.80 NJAWC PWAC Rate Effective 4/1/22   |
|                             | <u>\$ 3,097.00 (C)</u>                       |

**MIDDLESEX WATER COMPANY  
PURCHASED WATER ADJUSTMENT CLAUSE  
RATE PROCEEDINGS COSTS  
BPU DOCKET NO. WR22030138**

|                                             |                 |                        |
|---------------------------------------------|-----------------|------------------------|
| <u>MWC 2022 PWAC Proceeding Costs</u>       |                 |                        |
| Court Reporter                              | \$350           |                        |
| Public Hearing Notices                      | 650             |                        |
| Public Hearing Rental Space                 | 150             |                        |
| Misc Supplies                               | 100             |                        |
| Total                                       | <u>\$1,250</u>  |                        |
|                                             | <u>50%</u>      |                        |
| 50% Sharing                                 |                 | \$625                  |
| NJAWC Base Rate Case Intervention Costs (1) | <u>\$75,000</u> |                        |
| Total Costs                                 |                 | <u><u>\$75,625</u></u> |

(1) Costs projected to be incurred as an active intervenor in the New Jersey American Water Company (NJAWC) base rate proceeding (BPU Docket No. WR22010019).

**MIDDLESEX WATER COMPANY  
PURCHASED WATER ADJUSTMENT CLAUSE  
TAX GROSS UP CALCULATION  
BPU DOCKET NO. WR22030138**

|                         |                    | @ 7/1/2022<br><u>89.943690%</u>  |
|-------------------------|--------------------|----------------------------------|
|                         | Total<br>Tax Rates | Public/Private<br>ROW Adjustment |
| Franchise - Excise      | 0.6250%            | 0.5622%                          |
| Franchise               | 5.0000%            | 4.4972%                          |
| Gross Receipts          | 0.9375%            | 0.9375%                          |
| Gross Receipts - Excise | 7.5000%            | 7.5000%                          |
| Total GRAFT Rate        | 14.0625%           | 13.4968%                         |
| NJBPU/RC Assessment (A) | 0.3014%            | 0.3014%                          |
| Bad Debt                | 0.4273%            | 0.4273%                          |
| Total                   |                    | 14.2256%                         |

(A)

|               |                   |                         |
|---------------|-------------------|-------------------------|
| BPU:          | 0.00248290737830  | 2022 Assessment Invoice |
| Rate Counsel: | 0.000530996898013 | 2022 Assessment Invoice |
|               | 0.003013904276313 |                         |