



Agenda Date: 9/11/19  
Agenda Item: VA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</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 THE )  
TOWNSHIP OF MIDDLE SEEKING AN ORDER )  
PURSUANT TO N.J.S.A. 40:14B-20(6) APPROVING )  
THE EXTENSION OF WATER SERVICE INTO THE )  
DEL HAVEN SECTION OF MIDDLE TOWNSHIP AS )  
NECESSARY AND PROPER FOR THE PUBLIC )  
CONVENIENCE )

DECISION AND ORDER

DOCKET NO. WO19080945

**Parties of Record:**

**Leslie G. London, Esq.**, McManimon, Scotland & Baumann, LLC on behalf of Middle Township  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

**BACKGROUND**

On August 21, 2019, the Township of Middle, Cape May County ("Middle Township" or "Petitioner") filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU") pursuant to N.J.S.A. 40:14B-20(6) for approval of Middle Township's Resolution No. 222-19 ("Resolution") requesting the extension of water service into the Del Haven section of Middle Township ("Del Haven") by the Lower Township Municipal Utilities Authority ("LTMUA"), as necessary and proper for the public convenience. A copy of the Resolution is attached as Exhibit A.

According to the petition, Middle Township has determined that the private wells in Del Haven and areas immediately adjacent thereto are failing and therefore, to protect the health, safety and general welfare of all currently occupied properties and all residential properties that may be developed in Del Haven and immediately adjacent sections of Middle Township in the future, those properties must be connected to a public water system.

Middle Township and the LTMUA have agreed to enter into a proposed Water Supply and Distribution Agreement to provide for the construction of a water system to serve Del Haven and its areas immediately adjacent thereto, and to furnish retail water service.

Middle Township represents that Lower Township and the LTMUA are satisfied that extension of the LTMUA's water system into Del Haven, and the distribution of water by the LTMUA to Del Haven section and areas adjacent thereto pursuant to the proposed Water Supply and Distribution Agreement, can be accomplished without a diminution in service levels to the LTMUA's existing customers in Lower Township; will allow for a greater water turnover in the Township's Millman water storage tower which will eliminate the need to drain and refill the tower periodically and allow for more favorable water conditions; will not result in an inability to further expand the water system within Lower Township to residents who are not currently served by the LTMUA's water system; and can all be accomplished without rate increases to existing LTMUA water users that otherwise would not occur within the LTMUA's normal course of business.

Lower Township adopted Resolution No. 2018-381 on December 17, 2018, which gave consent to the LTMUA for an expansion of the LTMUA's water supply and distribution system into Middle Township to service Del Haven and for properties in the Del Haven section of Middle Township to connect to the LTMUA's water supply and distribution system for the purpose of the LTMUA supplying water to Del Haven and adjacent pursuant to the proposed Water Supply and Distribution Agreement.

Thereafter, Middle Township adopted its Resolution pursuant to N.J.S.A. 40:14B-20(6), requesting the LTMUA to sell water, at retail, to various properties within Middle Township and specifically, those located within Del Haven.

Middle Township also adopted Ordinance No. 1592-19 on July 1, 2019, which requires mandatory connection of Del Haven serviced properties to the LTMUA's water system. The LTMUA then adopted Resolution No. 90-2019 on July 10, 2019, authorizing the execution of the proposed Water Supply and Distribution Agreement with Middle Township to provide water and sell water at retail to Del Haven, contingent upon the Board approving Resolution No. 222-19 of Middle Township as necessary and proper for the public convenience as required by N.J.S.A. 40:14B-20(6).

### **NEW JERSEY DIVISION OF RATE COUNSEL ("RATE COUNSEL") COMMENTS**

By correspondence dated September 6, 2019, Rate Counsel indicated that it defers to the Board on the issue of jurisdiction in this matter.

### **DISCUSSIONS AND FINDINGS**

The LTMUA is a municipal water authority created by the New Jersey Municipal and County Utilities Authorities Law at N.J.S.A. 40:14B-1 to 78. Generally, municipal utility authorities are granted independent authority by the Legislature and "not subject to regulation as to . . . service charges by any . . . board, agency [or] other office of this State . . ." pursuant to N.J.S.A. 40:14B-68.

N.J.S.A. 40:14B-20(6) further provides that every municipal authority shall have the authority "[t]o produce, develop, purchase, accumulate, distribute and sell water and water services, facilities and products within or without the district, provided that no water shall be sold at retail in any municipality or county without the district unless the governing body of such municipality or county shall have adopted a resolution requesting the municipal authority to sell water at retail in such municipality or county. . . ." However, this provision requires approval by the Board

concerning the resolution adopted by the municipality for the sale of water by a municipal utility authority as "necessary and proper for the public convenience." N.J.S.A. 40:14B-20(6).

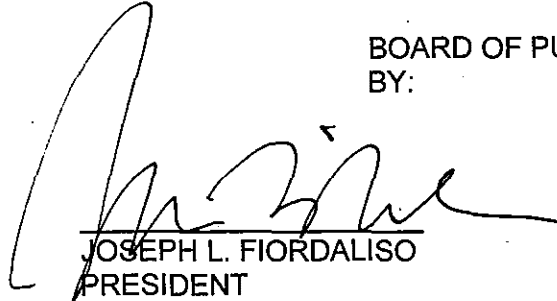
In the matter at hand, the record reflects that Middle Township has determined that the private wells in Del Haven and those areas adjacent to it are failing and that service by the LTMUA system to these residents and any future residents that may occupy these properties in the future is necessary to protect the health, safety and general welfare.

Therefore, the Board, based on the foregoing representations, **HEREBY FINDS** that Resolution No. 222-19 adopted by Middle Township requesting that the LTMUA extend and provide water service into the Del Haven section of Middle Township and its immediate vicinity, is necessary and proper for the public convenience. Middle Township and/or the LTMUA are further advised that this opinion is limited specifically to the facts presented and that changing conditions, including an expansion of service beyond what is described in the petition, which should be reported immediately to the Board, could subsequently lead to the modification of the Board's decision.

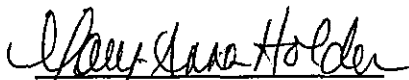
The effective date of this Order is September 21, 2019.

DATED: 9/11/19

BOARD OF PUBLIC UTILITIES:  
BY:



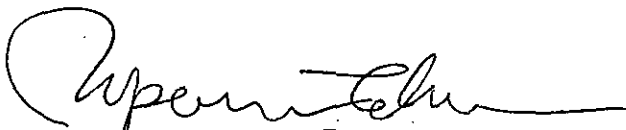
JOSEPH L. FIORDALISO  
PRESIDENT



MARYANNA HOLDEN  
COMMISSIONER



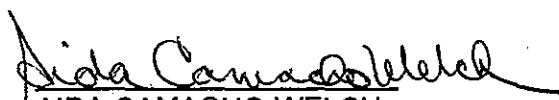
DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
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 THE TOWNSHIP OF MIDDLE SEEKING AN ORDER  
PURSUANT TO N.J.S.A. 40:14B-20(6) APPROVING THE EXTENSION OF WATER SERVICE  
INTO THE DEL HAVEN SECTION OF MIDDLE TOWNSHIP AS NECESSARY AND PROPER  
FOR THE PUBLIC CONVENIENCE  
BPU DOCKET NO. WO19080945**

**SERVICE LIST**

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**LOWER TOWNSHIP MUNICIPAL  
UTILITIES AUTHORITY**

Mike Chapman, Executive Director  
Lower Township Municipal Utilities Authority  
2900 Bayshore Road  
Villas, NJ 08251

# EXHIBIT

A

TOWNSHIP OF MIDDLE  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY

RESOLUTION  
222-19

Date: May 20, 2019

Subject: A RESOLUTION REQUESTING THE SALE OF WATER BY LOWER TOWNSHIP MUNICIPAL UTILITIES AUTHORITY IN AND TO THE TOWNSHIP OF MIDDLE  
Introduced By: Committeeman Clark    Seconded By: Committeeman Gandy  
Vote – Aye: Committeeman Clark, Committeeman Gandy, Mayor Donohue  
Nay:

WHEREAS, properties in the Township of Middle (the "Township") identified on Exhibit A (the "Properties") currently receive water service through private potable wells; and,

WHEREAS, the Township has determined that the private potable water wells serving the Properties are failing, and that in order to protect the health, safety and general welfare of current and future residents such Properties need be connected to a public water supply system; and

WHEREAS, the Lower Township Municipal Utilities Authority (the "LTMUA") is a municipal utility organized and established pursuant to the Municipal and County Utilities Authorities Law, *N.J.S.A. 40:14B-1 et seq.* (the "MUA Law");

WHEREAS, the Township has entered into an agreement with the LTMUA for the construction of a public water supply system that includes the construction of service connections to the Properties; and

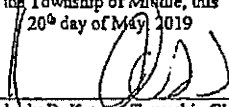
WHEREAS, *N.J.S.A. 40:14B-20(6)* sets forth the powers of municipal utilities authorities which include the ability to "produce, develop, purchase, accumulate, distribute and sell water and water services, facilities and products within or without the district" provided that such municipality adopt a resolution requesting that the municipal utilities authority sell water at retail within the municipality.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Middle in the County of Cape May and the State of New Jersey as follows:

- Section 1.     The aforementioned recitals are incorporated herein as though fully set forth at length.
- Section 2.     The Township hereby requests that the LTMUA sell the p water at retail to the Properties within the Township.
- Section 3.     A copy of this resolution shall be sent to the Township of Lower and the LTMUA by the Township Clerk.
- Section 4.     This resolution shall take effect in accordance with applicable law.

I, Kimberly D. Krauss, Township Clerk of the Township of Middle, Cape May County, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Township Committee at a meeting of said Middle Township Committee, held on May 20, 2019 and said Resolution was adopted by not less than a two-thirds vote of the members of the Township Committee.

Witness my hand and seal of  
the Township of Middle, this  
20<sup>th</sup> day of May, 2019

  
\_\_\_\_\_  
Kimberly D. Krauss, Township Clerk

