



Agenda Date: 4/12/23
Agenda Item: VB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE APPLICATION OF)
MIDDLESEX WATER COMPANY FOR AUTHORITY TO)
ISSUE AND SELL UP TO 1.0 MILLION SHARES OF)
COMMON STOCK)
)
) ORDER AUTHORIZING THE
ISSUANCE AND SALE OF
COMMON STOCK
DOCKET NO. WF22100625

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Jay L. Kooper, Esq., Vice President, General Counsel & Secretary,
Middlesex Water Company

BY THE BOARD:

On October 6, 2022, Middlesex Water Company (“Middlesex”, “Petitioner”, or “Company”), a public utility of the State of New Jersey, filed a petition with the New Jersey Board of Public Utilities (“Board”), pursuant to N.J.S.A. 48:3-9 and N.J.A.C. 14:1-5.9, requesting authority to issue and sell in one (10 or more offerings, up to 1,000,000 (1.0 million) shares of Common Stock, without par value (“Petition”).

According to the Petition, the foregoing authority is requested in furtherance of planned infrastructure upgrades, replacements and improvements to the Company’s water system, which are necessary to ensure the continued provision of safe and reliable water service to its customers. These plans include the preparation of a perpetual five-year capital infrastructure budget that is based on the Company’s engineering assessments, system studies, and government regulatory requirements. The Company’s current five-year capital program, known as “Water for Tomorrow,” projects that Middlesex will spend approximately \$288.0 million through the year 2026 to replace aging infrastructure, remain compliant with water quality requirements, and enhance service.

The funding of Middlesex's projected \$288.0 million infrastructure investment will require a combination of funds generated from operations, debt financing, and equity investments in order to maintain a balanced capital structure to continue to attract investor interest. The Company has sought, via a separate petition, Board approval to issue debt to finance a portion of the Water for Tomorrow projects.¹

The Company proposed, as part of this overall plan, to issue and sell in one (1) or more offerings up to 1.0 million shares of its Common Stock. Middlesex contemplated that this sale will be made by public offerings either through a traditional underwritten offering and/or through an alternative method known as an "at-the-market" ("ATM") offering. Registration of the 1.0 million shares of Common Stock with the United States Securities and Exchange Commission ("SEC") is required for either type of offering.

The Company expects that the offerings, if made through a traditional underwriting method, will be underwritten on a firm commitment basis by an underwriter selected by the Company at a price which has not yet been determined. The Company will pay to the underwriter a fee, which will be a percentage of the total proceeds from a sale and a fee for their costs. Commissions paid to brokers participating in the offerings are included in the underwriter's fee. In addition, the Company anticipates that under a firm commitment underwriting, the underwriter will receive a 30-day over-allotment option to purchase additional shares. The over-allotment is a mechanism that facilitates price stabilization of the Company's Common Stock during the 30-day period. If price stabilization is not a factor, the underwriter can use the over-allotment to satisfy buyer orders. Including shares sold under an over-allotment, however, not more than 1.0 million shares of Common Stock in total will be sold in the aggregate.

The Company further sought Board approval to market the offerings, if made through a traditional underwriting method, through a selected underwriter on a negotiated rather than a competitive bid basis. According to the Petitioner, a negotiated offering provides the Company with lower costs, shorter lead time and flexibility in scheduling, higher assurances of completion, and the services of proven market-makers in Middlesex stock. The Company further averred that the plan to place multiple, smaller offerings rather than a single offering practically requires that it be made on a negotiated rather than a competitive bid basis.

The Company expects that the offerings, if made through the ATM method, will be made through a broker-dealer at a price that is expected to reflect market conditions at the time the offering is made to interested sophisticated investors. Under the ATM method, the broker-dealer will identify potential investors willing to purchase a substantial block of the Common Stock. The Company averred that the flexibility in the transaction timetable and the commissions/fees provide the ATM method with advantages over a traditional underwriting offering.

The Company indicated that it expects the proposed common stock offerings, if approved, to begin in the third quarter of 2023, and continue on a parallel path with the debt financings related to the Water for Tomorrow program. This expected timing of the offerings is subject to change, if necessary, to account for actual project expenditure timetables, financial market conditions, and possible SEC review.

¹ The Company's petition requesting Board authorization of the debt financings has been assigned Docket No. WF22110689.

Petitioner further expects that the agreement between the Company and the underwriter and/or broker-dealer will be based on the market price of the Common Stock on the agreed-to pricing date to be selected. Subject to satisfaction of the terms and conditions of the underwriting agreement and/or broker-dealer agreement, including the agreement of the parties to consummate the sale, the Company anticipates selling the shares of Common Stock at a price per share which approximates the closing bid price quoted on the last trading day prior to the sale ("Pricing Date"), subject to the then-current market conditions. According to the Company, utilizing this pricing mechanism will give the parties greater flexibility in the transaction and enable them to proceed in an efficient manner.

The Company proposed to use the net proceeds of the sales of up to 1.0 million shares of its Common Stock to provide additional financing for the Company's Water for Tomorrow capital program, reduce short-term debt, and maintain an appropriate balance in the capital structure of the Company, including its regulated affiliates.

The New Jersey Division of Rate Counsel ("Rate Counsel") reviewed this matter and, by letter dated February 14, 2023, indicated that it does not object to Board approval of the Petition. Rate Counsel also recommended that any Board approval include the following conditions:

- The authority granted by the Board in this docket should be restricted to fund utility operations and investments only, not to fund affiliated entities.
- The Company should be obligated to issue its planned stock issuance at the lowest reasonable cost.
- The Company should be obligated to utilize a prudent and cost-effective capital structure and mix of capital to finance its utility rate base at the lowest reasonable cost.

Rate Counsel also reserved its rights to take appropriate positions in future Board proceedings involving the Company, including any such proceeding currently pending before the Board.

DISCUSSION AND FINDINGS:

The Board, after investigation, having considered the Petition, exhibits submitted in this proceeding, and the comments of Rate Counsel and Board Staff, pursuant to N.J.S.A. 48:3-9, **HEREBY FINDS** that the action proposed to be taken by Petitioner as indicated above is in accordance with law, in the public interest, and approving of the purposes thereof, **HEREBY ORDERS** that Petitioner be and is **HEREBY AUTHORIZED** to issue and sell, on a negotiated basis, without the requirement of a further Board Order as to pricing, up to 1,000,000 (1.0 million) shares of Common Stock, without par value, through one (1) or more traditional underwriting offerings and/or through one or more ATM offerings, subject to the following provisions:

1. The Company shall issue and sell up to 1.0 million shares of Common Stock to such underwriters (under the traditional underwriting method) as may be authorized under an applicable underwriting agreement at a mutually agreed upon price which will be based on the closing bid price on the Pricing Date.
2. The Company shall issue and sell up to 1.0 million shares of Common Stock, less any shares issued and sold through the traditional underwriting method, through such broker-

dealers (under the ATM method) as may be authorized at a mutually agreed upon price which will be based on the closing bid price on the Pricing Date.

3. In the event that the Company finds it appropriate to effect the issuance and sale of the Common Stock in a manner other than as described in the Order, the Company shall file with the Board as soon as practicable a statement advising the Board of such facts, stating the reasons therefor, proposing an alternative course of action and requesting an order specifically authorizing the actions then proposed to be taken.
4. The Company shall, as soon as practicable, after the issuance and sale of the Common Stock, submit to the Board a statement, which shall indicate the date or dates of sale, the closing bid price on the Pricing Date, the price paid to the Company, the underwriter's spread, the broker-dealer fee, and the net and gross proceeds to the Company.
5. The Company shall, as soon as practicable, after the issuance and sale of the Common Stock, submit to the Board a copy of the journal entries to record the issuance and sale of the Common Stock and the expenses related thereto in accordance with the appropriate Uniform System of Accounts.
6. The Company shall submit to the Board copies of an executed underwriting agreement or broker-dealer placement agency agreement and all other agreements as executed and filed with other regulatory agencies.
7. This Board's approval is expressly limited to the sale of the Company's Common Stock without par value described herein and as more fully described in the Petition and supporting documents.
8. This Order shall not be construed as directly or indirectly fixing, for any purposes whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
9. This Order shall not be construed as a certification that the Common Stock authorized to be issued or sold will be represented by tangible or intangible assets of commensurate value or investment costs.
10. The authority granted by the Board in this docket is restricted to fund utility operations and investments only, not to fund affiliated entities.
11. The Company shall utilize a prudent and cost-effective capital structure and mix of capital to finance its utility rate base at the lowest reasonable cost.
12. This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future petition or in any proceedings with respect to rates, franchises, services, financing (including the method of sale of securities), accounting, capitalization, depreciation or in any other matter affecting the Petitioner.
13. The authority granted in this Order shall become null and void and of no effect with respect to any portion which is not exercised on or before December 31, 2025.

This Order shall become effective on April 19, 2023.

DATED: April 12, 2023

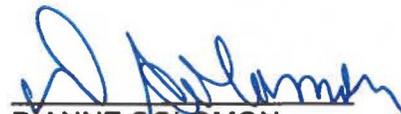
BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER

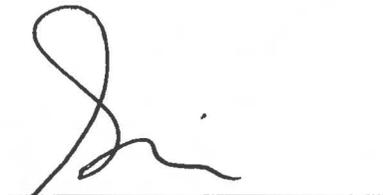


DIANNE SOLOMON
COMMISSIONER



DR. ZENON CHRISTODOULOU
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 APPLICATION OF MIDDLESEX WATER COMPANY FOR
AUTHORITY TO ISSUE AND SELL UP TO 1.0 MILLION SHARES OF COMMON STOCK

DOCKET NO. WF22100625

SERVICE LIST

Division of Rate Counsel

140 East Front Street, 4th Floor
PO Box 003
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Susan McClure, Esq.
smcclure@rpa.nj.gov

Christine Juarez, Esq.
cjuarez@rpa.nj.gov

Emily Smithman, Esq.
esmithman@rpa.nj.gov

Marylin Silva
msilva@rpa.nj.gov

Robert Henkes
rhenkes@optonline.net

Middlesex Water Company

485C Route One South
Suite 400
Iselin, NJ 08830

Jay L. Kooper
jkooper@middlesexwater.com

A. Bruce O'Connor
aboconnor@middlesexwater.com

Robert J. Capko
rcapko@middlesexwater.com

Tracy Tyrell
ttyrell@middlesexwater.com

Yvonne Nieto
ynieto@middlesexwater.com

Michele Tilley
mtilley@middlesexwater.com

Board of Public Utilities

44 South Clinton Avenue, 1st Floor
Trenton, NJ 08625-0350

Carmen Diaz, Acting Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Ben Witherell, Ph.D., Chief Economist
ben.witherell@bpu.nj.gov

Mike Kammer
mike.kammer@bpu.nj.gov

Christine Lin
christine.lin@bpu.nj.gov

David Schmitt
david.schmitt@bpu.nj.gov

Division of Law

Richard J. Hughes Justice Complex
25 Market Street., 7th Floor West
P.O. Box 112
Trenton, NJ 08625

Pamela Owen, Chief, DAG
pamela.owen@law.njoag.gov

Meliha Arnautovic, DAG
meliha.arnautovic@law.njoag.gov

Terel Klein, DAG
terel.klein@law.njoag.gov