



Agenda Date: 5/29/13

Agenda Item: 2M

STATE OF NEW JERSEY
Board of Public Utilities
44 S. Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu/

DIVISION OF ENERGY

IN THE MATTER OF THE APPLICATION OF THE) ORDER APPROVING STIPULATION
BOROUGH OF BUTLER ELECTRIC UTILITY FOR AN)
ORDER APPROVING A LEVELIZED ENERGY)
ADJUSTMENT CLAUSE (LEAC) FROM APRIL 1, 2010)
TO MARCH 31, 2011) DOCKET NO. ER10020131

(NOTIFICATION LIST ATTACHED)

APPEARANCES

Robert Ooydstyk, Esq., for the Borough of Butler Electric Utility
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

The Borough of Butler Electric Utility ("Butler Electric" or "Company") is a municipal utility in the County of Morris, State of New Jersey, which is owned and operated by the Borough of Butler and which serves industrial, commercial and residential customers in the Boroughs of Butler, Bloomingdale and Kinnelon, and which partially services the Township of West Milford and the Borough of Riverdale.

Butler Electric is a member of a group of municipal electric companies called the Public Power Association of New Jersey with energy purchases governed by the procedures described in N.J.S.A. 40A:11-5(6). After a competitive solicitation process, the Company entered into a 5 year fixed priced energy contract with Constellation Energy Commodities which expires on May 31, 2014.

On February 4, 2010, Butler Electric filed with the New Jersey Board of Public Utilities ("Board" or "BPU") a verified petition requesting approval of a Levelized Energy Adjustment Clause ("LEAC") for the period of April 1, 2010 to March 31, 2011 assigned to BPU Docket No. ER10020131. Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.126595 per kWh to \$0.125768 per kWh to be effective for services rendered on and after April 1, 2010; (2) continue the cap level of \$0.13000 per kWh on the quarterly LEAC adjustment; and (3) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated

April 23, 1987, in Docket No. ER8604390¹ ("April 23 Order"). On April 6, 2010, a public hearing was held at the Borough of Butler Municipal Building. No members of the public attended the hearing or provided comments on the filing.

In addition to Butler Electric, the Division of Rate Counsel ("Rate Counsel"), and Board Staff ("Staff") (collectively, the "Parties") participated in this proceeding. Rate Counsel and Staff propounded discovery requests on the Company. The responses were received and reviewed by Rate Counsel and Staff. After settlement negotiations, on April 18, 2013, the Parties executed a stipulation of settlement ("Stipulation").

STIPULATION

The Stipulation provides for the following:

- The Parties agree that Butler Electric's request for a LEAC rate of \$0.125768 per kWh for usage effective April 1, 2010 is reasonable.
- Butler Electric will file a petition once every two years for its periodic audit by the Board. The Borough filed a petition in February of 2012, therefore the next filing will be due February of 2014. Thereafter, biennial periodic audit filings will be made by February 1 of each year in which a filing is made, with rates to be effective April 1. Both hard copies and electronic copies of all filings and required documentation will be provided.
- The Parties agree that the LEAC cap is \$0.151718 per kWh. Butler Electric shall submit for Rate Counsel's and Staff's review all documents produced to the Local Finance Board to support the \$0.151718 cap as specifically set forth on page 2 of the September 17, 2010 Local Finance Board Resolution. This documentation must be provided by May 1, 2013.
- The Parties agree that Butler Electric shall hold a public hearing by April of every year in which it makes a biennial LEAC filing, consistent with the provisions of N.J.S.A. 48:2-32.4. Additionally, Butler Electric will include in its biennial LEAC filings a draft public hearing notice and a schedule for publication and public hearing consistent with N.J.S.A. 48:2-32.4 and Staff and Rate Counsel will be given the opportunity to comment on the notice prior to publication.
- Pursuant to Board Order Approving Stipulation in Docket No. ER01010076, dated April 27, 2001, Butler Electric is authorized to continue to implement a LEAC rate as authorized by Board Order, Docket No. ER8604390, OAL Docket No. PUC 3596-86, dated April 23, 1987, and as amended by the conditions of this Stipulation. With respect to the LEAC rate, the Parties agree further as follows:
 - Unless otherwise altered by the Board, Butler Electric shall have a biennial LEAC proceeding that shall be filed February 1, to be effective as of April 1 of the same year.
 - Butler Electric's LEAC rate may continue to be adjusted on a quarterly basis during the biennial LEAC period. Butler must make its revised tariff available for public inspection on its website, in accordance with N.J.A.C. 14:3-1.3(h).

¹ In re the Application of the Borough of Butler for an Order Approving a Decrease in its Levelized Energy Adjustment Clause, BPU Docket No. ER8604390 (April 23, 1987).

- Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over-or under recoveries over a twelve-month period.
- Interest on over-recoveries shall continue to be computed on a biennial basis. In its biennial filings, Butler Electric will include all supporting calculations with respect to the over/under collections during the last two years and the interest calculation based upon the NJ Cash Management Fund interest rate pursuant to Docket No. ER01010076. Accrued interest from the previous LEAC period will be reflected in each biennial filing.
- Butler Electric shall continue to provide financial reports and data to Staff and Rate Counsel to support each quarterly LEAC adjustment filing at least fifteen (15) days prior to the effective date of the proposed adjustment.
- Butler Electric's LEAC costs shall remain subject to audit by the Board. This Stipulation shall not preclude or prohibit the Board from taking any actions deemed appropriate as a result of any such audit.
- Butler Electric shall continue to provide the "Required Filing Contents" outlined in Schedule A of the Borough's current annual filings. In addition, Butler Electric will provide the following cost information: a) total annual cost per kWh; b) total fixed cost per kWh, with reference to contract price; c) total pass-through costs per kWh, with reference to contract terms; and d) total kWhs purchased. Butler Electric will also provide, as part of its biennial LEAC filing: a) the supporting calculations and/or explanations for any changes in the LEAC methodology since the method used to determine rates in the last filing; b) the underlying reasoning and assumptions behind the growth factor with schedules demonstrating the derivation of such projections; c) a chart listing the actual total kWh sold, the percentage of kWh sold outside of Butler for the last two years; d) a comparison of the projected growth factor to the actual growth factor for sales outside the Borough of Butler for the last two years, with schedules demonstrating the calculations of actual growth factors; and e) a detailed calculation of the projected line loss percentage, including a comparison of the projected line loss with historical actual line losses and with the line loss proposed in Butler Electric's last biennial filing with the Board.
- Butler Electric shall base its line loss adjustment on the lower of the following: the most recent eleven-month average, the most recent twelve-month average, or the average over the past five years. The Parties, however, reserve their rights to review line loss adjustment calculations in future LEAC proceedings, and to recommend an alternative line loss methodology for future cases, if a Party believes that an alternative methodology is appropriate.
- The Parties agree that Butler Electric shall provide documentation in subsequent LEAC filings that support any new power supply contracts into which it enters within one month of execution of the new power supply contract, as well as documentation detailing the process by which such power supply contracts have been awarded. Such information will include: a) a description of the procurement process; b) copies of all Requests for Proposal issued for supply; c) copies of all responses to Requests for Proposal; d) all analyses of bids received; e) an analysis of the term proposed; f) an explanation as to how and why the winning bidder was selected including information on price and term; and g) an estimate of the power supply costs in each year during the term of the contract. This documentation shall be subject to confidentiality agreements among the parties to the extent legally permissible.
- In order to expedite the processing of the Borough's filings, the parties agree to follow the following 3 month schedule for future audit petitions:
 - Butler Electric to file a complete petition with all documents as set forth in the Required Filing Contents and Minimum Filing Requirements, including

- documents required pursuant to this Stipulation by February 1.
- Any discovery by Staff or Rate Counsel is to be filed by March 1.
- All responses to discovery to be provided by March 15.
- Butler Electric to provide a draft Stipulation by April 1.
- Petition to be placed on Board's May agenda. Staff will prepare an agenda package prior to the Board's May agenda as long as we have resolution of the issues and a signed stipulation one week prior to the May agenda deadline for paperwork.

If this schedule is not kept by any party or if the Required Filing Contents, Minimum Filing Requirements, or any other documentation agreed by the Parties to be filed pursuant to this Stipulation, are incomplete or are not pre-filed with the petition and provided to the parties, the Parties recommend that the Board send the matter to the Office of Administrative Law for expeditious resolution of the Matter.

DISCUSSION AND FINDINGS

The Board notes that because Butler Electric is a municipal electric utility, unlike investor owned utilities, it is subject to the provisions of N.J.S.A. 40A:5A and the jurisdiction of the Local Finance Board, in addition to the jurisdiction of this Board. The LEAC, as implemented for Butler Electric, is more in the nature of a true-up proceeding, with rates adjusted quarterly subject to an overall cap with the goal of ensuring both that ratepayers pay only the actual costs of the energy used, and that the Company not incur debt which would have to be funded under Local Bond Law, N.J.S.A. 40A:2.

In light of the above, having reviewed the record and the attached Stipulation entered into by the Parties, the Board **FINDS** that the Settlement represents a fair and reasonable resolution of the issues and is in the public interest. The Board **FURTHER FINDS** that the filing requirements set forth in the Required Filing Contents and Minimum Filing Requirements, including documents required pursuant to the Stipulation by February 1st in each filing year will assist the parties in their review of the LEAC filings. Accordingly, the Board **HEREBY APPROVES** the attached Stipulation.

The Board **HEREBY APPROVES** the LEAC rate of \$0.125768 per kWh for services which were rendered after April 1, 2010.

The Board **HEREBY DIRECTS** the Company to make the revised tariff available for public inspection on its website in accordance with N.J.A.C. 14:3-1.3(h), and to provide proof of compliance to Staff and Rate Counsel within five business days of the date of this Order.

Based on the information provided, the Board **HEREBY RATIFIES** the increase of the Company's quarterly LEAC cap to \$0.151718 per kWh as previously authorized by the Local Finance Board pursuant to N.J.S.A. 40A:5A-25, and directs the Company to file the appropriate tariff pages with the Board.

Butler Electric's LEAC costs remain subject to audit by the Board, and approval of the Stipulation shall not preclude or prohibit the Board from taking any such actions deemed appropriate as a result of any such audit.

DATED: 5/31/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
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 the Borough of Butler Electric Utility for an Order Approving a
Levelized Energy Adjustment Clause (LEAC) from April 1, 2010 to March 31, 2011
Docket No. ER10020131

NOTIFICATION LIST

BOARD OF PUBLIC UTILITIES		
Jerome May, Director Board of Public Utilities 44 S. Clinton Avenue, 9 th Floor P.O. Box 350 Trenton, NJ 08625-0350	Alice Bator Board of Public Utilities 44 S. Clinton Avenue, 9 th Floor P.O. Box 350 Trenton, NJ 08625-0350	Andrea Reid Board of Public Utilities 44 S. Clinton Avenue, 9 th Floor P.O. Box 350 Trenton, NJ 08625-0350
Kristi Izzo, Secretary Board of Public Utilities 44 S. Clinton Avenue, 9 th Floor P.O. Box 350 Trenton, NJ 08625-0350	Michael Ryan, Esq. Board of Public Utilities 44 S. Clinton Avenue, 9 th Floor P.O. Box 350 Trenton, NJ 08625-0350	Bethany Rocque-Romaine, Esq. Board of Public Utilities 44 S. Clinton Avenue, 9 th Floor P.O. Box 350 Trenton, NJ 08625-0350
DIVISION OF RATE COUNSEL		
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DEPARTMENT OF LAW & PUBLIC SAFETY		
Alex Moreau, DAG Division of Law 124 Halsey Street, 5 th Floor P.O. Box 45029 Newark, NJ 07101	Babette Tenzer, DAG Division of Law 124 Halsey Street, 5 th Floor P.O. Box 45029 Newark, NJ 07101	
BOROUGH OF BUTLER		
James Lampmann, Administrator Borough of Butler One Ace Road Butler, NJ 07405	Robert H. Oostdyk, Jr., Esq. Murphy McKeon P.C. 51 Route 23 South - P.O. Box 70 Riverdale, New Jersey 07457	David H. Evans Nisivoccia & Company 5 Emery Avenue Randolph, NJ 07869

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause (LEAC) from April 1, 2010 to March 31, 2011	: BPU Docket No. ER10020131 : : : Stipulation of Settlement : : :
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TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

This Stipulation of Settlement ("Stipulation") is hereby made and executed by and among the Petitioner, the Borough of Butler Electric Utility ("Petitioner" or "Butler Electric"), the Staff of the Board of Public Utilities ("Staff") and Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties"), in settlement of all factual and legal issues pertaining to Butler Electric in connection with the above-captioned proceeding.

The Parties do hereby recommend that the Board issue a Final Decision and Order approving this Stipulation in the above-captioned matter, based upon the following:

1. Procedural History:

On February 4, 2010, Butler Electric filed with the New Jersey Board of Public Utilities ("Board") a Verified Petition for approval of a Levelized Energy Adjustment Clause ("LEAC") for the period April 1, 2010 to March 31, 2011 under BPU Docket No. ER10020131. Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.126595 per kWh to \$0.125768 per kWh to be effective for services rendered on and after April 1, 2010; (2) continue the cap level of \$0.130000 per kWh on the quarterly LEAC adjustment; and (3) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated April 23, 1987,

in Docket No. ER8604-390, OAL Docket No. PUC 3596-86. A public hearing was held in Butler, New Jersey on April 6, 2010. No members of the public attended.

2. Rate Counsel and Staff propounded discovery requests on the Petitioner. Petitioner's responses were received and reviewed by Rate Counsel and Staff.

3. Based upon Staff's and Rate Counsel's review and after settlement discussions by and among Butler Electric, Staff and Rate Counsel, the Parties have agreed upon the following terms of settlement regarding these matters:

(a) The Parties agree that Butler Electric's request for a LEAC rate of \$0.125768 per kWh for usage effective April 1, 2010 is reasonable.

(b) Butler Electric will file a petition once every two years for its periodic audit by the Board. The Borough filed a petition in February of 2012, therefore the next filing will be due February of 2014. Thereafter, biennial periodic audit filings will be made by February 1 of each year in which a filing is made, with rates to be effective April 1. Both hard copies and electronic copies of all filings and required documentation will be provided.

(c) The Parties agree that the LEAC cap is \$0.151718 per kwh. Butler Electric shall submit for Rate Counsel's and Staff's review all documents produced to the Local Finance Board to support the \$0.151718 cap as specifically set forth on page 2 of the September 17, 2010 Local Finance Board Resolution. This documentation must be provided by May 1, 2013.

(d) The Parties agree that Butler Electric shall hold a public hearing by April of every year in which it makes a biennial LEAC filing, consistent with the provisions of N.J.S.A. 48:2-32.4. Additionally, Butler Electric will include in its biennial LEAC filings a draft public hearing notice and a schedule for publication and public hearing consistent with N.J.S.A. 48:2-32.4 and Staff and Rate Counsel will be given the opportunity to comment on the notice prior to publication.

- Butler Electric to file a complete petition with all documents as set forth in the Required Filing Contents and Minimum Filing Requirements, including documents required pursuant to this Stipulation, by February 1.
- Any discovery by Staff or Rate Counsel is to be filed by March 1.
- All responses to discovery to be provided by March 15.
- Butler Electric to provide a draft Stipulation by April 1.
- Petition to be placed on Board's May agenda. Staff will prepare an agenda package prior to the Board's May Agenda as long as we have resolution of the issues and a signed stipulation one week prior to the May agenda deadline for paperwork.

If this schedule is not kept by any party or if the Required Filing Contents, Minimum Filing Requirements, or any other documentation agreed by the Parties to be filed pursuant to this Stipulation, are incomplete or are not pre-filed with the petition and provided to the parties, the Parties recommend that the Board send the matter to the Office of Administrative Law for expeditious resolution of the matter in the ordinary course.

4. Entirety of Stipulation. The Parties agree that this Stipulation contains mutual balancing and interdependent clauses and is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, then any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right, upon written notice to be provided to all other Parties within ten (10) days after receipt of any such adverse decision, to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board in its Order in

these matters, then any Party hereto is free, upon the timely provision of such written notice, to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation has not been signed, and all Parties shall be returned to the position they were in immediately before this Stipulation was signed.

5. Binding Effect. The Parties agree that this Stipulation shall be binding on them for all purposes herein.

6. General Reservation. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein:


(a) By executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation.

(b) The contents of this Stipulation shall not in any way be considered, cited or used by any of the undersigned Parties as an indication of any Party's position on any related or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation.

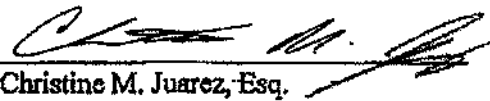
WHEREFORE, the Parties hereto have duly executed and do respectfully submit this Stipulation to the Board and request that the Board issue a Final Decision and Order adopting and approving this Stipulation in its entirety in accordance with the terms hereof.

MURPHY McKEON, P.C.
ATTORNEYS FOR PETITIONER,
BOROUGH OF BUTLER ELECTRIC UTILITY


By:

 4/18/13
Martin F. Murphy, Esq.

STEFANIE A. BRAND, Esq.
Director, Rate Counsel

By:  4/18/13
Christine M. Juarez, Esq.
Assistant Deputy Rate Counsel

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Staff of the Board of Public Utilities

By: 
Alex Moreau *Geoffrey R. Gristle*
Deputy Attorney General

Dated: