



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 S. Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

DIVISION OF ENERGY

- |  |                            |  |
|--|----------------------------|--|
| IN THE MATTER OF THE APPLICATION OF THE<br>BOROUGH OF BUTLER ELECTRIC UTILITY FOR AN<br>ORDER APPROVING A LEVELIZED ENERGY<br>ADJUSTMENT CLAUSE (LEAC) FROM APRIL 1, 2010<br>TO MARCH 31, 2011 | )<br>)<br>)<br>)<br>)<br>) | ORDER APPROVING STIPULATION<br>TO ESTABLISH A REVISED<br>LEAC MECHANISM<br><br>DOCKET NO. ER10020131 |
| IN THE MATTER OF THE APPLICATION OF THE<br>BOROUGH OF BUTLER ELECTRIC UTILITY FOR AN<br>ORDER APPROVING A LEVELIZED ENERGY<br>ADJUSTMENT CLAUSE (LEAC) FROM APRIL 1, 2011<br>TO MARCH 31, 2012 | )<br>)<br>)<br>)<br>)<br>) | DOCKET NO. ER11020058  |
| IN THE MATTER OF THE APPLICATION OF THE<br>BOROUGH OF BUTLER ELECTRIC UTILITY FOR AN<br>ORDER APPROVING A LEVELIZED ENERGY<br>ADJUSTMENT CLAUSE (LEAC) FROM APRIL 1, 2012<br>TO MARCH 31, 2013 | )<br>)<br>)<br>)<br>)<br>) | DOCKET NO. ER12030292  |
| IN THE MATTER OF THE APPLICATION OF THE<br>BOROUGH OF BUTLER TO ESTABLISH A<br>MECHANISM FOR A REVIEW OF ITS LEVELIZED<br>ENERGY ADJUSTMENT CLAUSE (LEAC) RATE                                 | )<br>)<br>)<br>)<br>)<br>) | DOCKET NOS. ER10020131,<br>ER11020058, ER12030292  |

(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 electric utility that serves residents of the Borough of Butler and surrounding municipalities. Because Butler Electric serves customers outside its municipal borders, it is subject to the jurisdiction of the New Jersey Board of Public Utilities ("Board") which authorized Butler Electric to recover its costs associated with purchasing electric supply, and other related costs through what is known as the levelized energy adjustment clause ("LEAC"). Butler Electric is permitted to adjust the LEAC rate

quarterly, and is required to file with the Board a petition for an annual true-up by February 1 of each year.

In an Order approving a stipulation settling Butler Electric's 2008 and 2009 LEAC filings (BPU Docket Nos. ER08020080 and ER09020144),<sup>1</sup> the Board directed that there be a review of Butler Electric's LEAC mechanism. Accordingly, on September 30, 2010, Butler Electric filed the petition in this proceeding. Specifically, Butler Electric requested that the Board change the LEAC mechanism so that the LEAC rate is only reviewed when Butler Electric enters into a new contract for the purchase of electric power. A public hearing was held in Butler, New Jersey on November 5, 2012. No members of the public attended or provided comments on the filing.

In addition to Butler Electric, the Division of Rate Counsel ("Rate Counsel"), and Board Staff ("Staff") (collectively referred to as "Parties") participated in this proceeding. After settlement negotiations, on April 18, 2013, the Parties executed a Stipulation of Settlement ("Stipulation").

### **STIPULATION**

The Stipulation provides for the following:

- o The Butler Electric will file a petition once every two years for its periodic LEAC by the Board. The Company filed a petition on February of 2012; therefore the next filing will be due in February of 2014.
- o The Parties agree that the LEAC cap is \$0.151718 per kilowatt hour. The parties agree that if Butler Electric seeks to change the LEAC cap, Butler Electric will file a petition with the Board. 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.
- o In addition to the Required Filing Contents outlined in Schedule A of the Company's annual filings, any future LEAC petition must contain the following additional information ("Minimum Filing Requirements"):
  - Total annual cost per kwh;
  - Total fixed cost per kwh, with reference to contract price
  - Total pass-through costs per kwh, with reference to contract terms;
  - Total kwhs purchased;
  - The underlying reasoning and assumptions behind the growth factor with schedules demonstrating the derivation of such projections;
  - A chart listing the actual total kwh sold, the percentage of kwh sold outside of Butler for each month to the total kwh sold for the last two years;
  - 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;
  - A detailed calculation of the projected line loss percentage, as well as historic line losses for the past five years. In addition, identify the line loss projected in the Borough's last filing with the Board;

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<sup>1</sup> In re the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause ("LEAC") for April 1, 2008 to March 31, 2009 AND In re the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause ("LEAC") for April 1, 2009 to March 31, 2010 BPU Docket Nos. ER08020080 and ER09020144

- 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 pursuant to Docket No. ER01010076.
  - The supporting calculations and/or explanations for any changes in the LEAC methodology since the method used to determine rates in the last filing.
- In order to expedite the processing of the Borough's filings, the Parties agree to follow the following 3 month schedule for future LEAC petitions:
    - Butler to file a complete LEAC petition with all documents as required by statute. In addition, Butler will file the following documents as set forth in the Required Filing Content and Minimum Filing Requirement by February 1 every two years. A hard copy of the Petition will be filed along with an electronic copy to be sent on February 1. The LEAC petition will include a draft public notice. Before publishing the public notice, Butler agrees to circulate to all parties the final public notice for discussion among the parties.
    - Any discovery by Staff or Rate Counsel shall be submitted by no later than March 1.
    - Responses to discovery shall be supplied by Butler no later than March 15.
    - Butler shall circulate a draft stipulation by no later than April 1.
    - 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 the schedule is not kept by any Party, or if the Required Filing Contents or Minimum Filing Requirements 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.
    - A public hearing will be held to correspond to these bi-annual filings.
    - The parties will execute a Confidentiality Agreement if requested by the Butler.
    - 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).
    - Purchase Power Agreement – When the Company's existing Power Purchase Agreement expires, it will file, along with a copy of the executed agreement, the following information with the Board within one month of execution of new Power Purchase agreement:
      - A full description of the procurement process;
      - Copies of all Requests for Proposals issued for supply;
      - Copies of all responses to Requests for Proposals;
      - All analyses of bids received;
      - An analyses of the term(s) proposed;
      - An explanation as to how and why the winning bidder was selected, including information on both price and term; and
      - An estimate of power supply costs in each year during the term of the contract.

## **DISCUSSION AND FINDINGS**

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. While the number of filings will be reduced to alleviate some of the administrative burden on Butler Electric, the additional information to be provided with future filings will

expedite a thorough review of the Company's energy costs to ensure that ratepayers pay only prudently incurred expenses. Accordingly, the Board **HEREBY APPROVES** the attached Stipulation as clarified below.

No new rate proposed by Butler Electric as part of its LEAC filing shall become effective prior to the date of service of a Board Order approving that rate.

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 Rate Counsel and Staff within five business days from the date of this Order.


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:

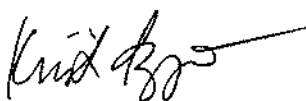
  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

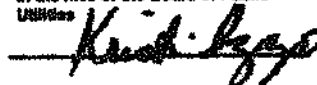
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA 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  
BPU Docket No. ER1002131 et al

NOTIFICATION LIST

| <b>BOARD OF PUBLIC UTILITIES</b>   |  |  |
|--|--|--|
| Jerome May, Director<br>Board of Public Utilities<br>44 S. Clinton Avenue, 9 <sup>th</sup> Floor<br>P.O. Box 350<br>Trenton, NJ 08625-0350   | Alice Bator<br>Board of Public Utilities<br>44 S. Clinton Avenue, 9 <sup>th</sup> Floor<br>P.O. Box 350<br>Trenton, NJ 08625-0350        | Andrea Reid<br>Board of Public Utilities<br>44 S. Clinton Avenue, 9 <sup>th</sup> Floor<br>P.O. Box 350<br>Trenton, NJ 08625-0350                  |
| Kristi Izzo, Secretary<br>Board of Public Utilities<br>44 S. Clinton Avenue, 9 <sup>th</sup> Floor<br>P.O. Box 350<br>Trenton, NJ 08625-0350 | Michael Ryan, Esq.<br>Board of Public Utilities<br>44 S. Clinton Avenue, 9 <sup>th</sup> Floor<br>P.O. Box 350<br>Trenton, NJ 08625-0350 | Bethany Rocque-Romaine, Esq.<br>Board of Public Utilities<br>44 S. Clinton Avenue, 9 <sup>th</sup> Floor<br>P.O. Box 350<br>Trenton, NJ 08625-0350 |
| <b>DIVISION OF RATE COUNSEL</b>  |  |  |
| Stefanie A. Brand, Esq.<br>Division of Rate Counsel<br>31 Clinton Street, 11 <sup>th</sup> Floor<br>P.O. Box 46005<br>Newark, NJ 07101       | Paul Flanagan, Esq.<br>Division of Rate Counsel<br>31 Clinton Street, 11 <sup>th</sup> Floor<br>P.O. Box 46005<br>Newark, NJ 07101       | Christine Juarez, Esq.<br>Division of Rate Counsel<br>31 Clinton Street, 11 <sup>th</sup> Floor<br>P.O. Box 46005<br>Newark, NJ 07101              |
| Ami Morita, Esq.<br>Division of Rate Counsel<br>31 Clinton Street, 11 <sup>th</sup> Floor<br>P.O. Box 46005<br>Newark, NJ 07101              |  |  |
| <b>DEPARTMENT OF LAW &amp; PUBLIC SAFETY</b>   |  |  |
| Alex Moreau, DAG<br>Division of Law<br>124 Halsey Street, 5 <sup>th</sup> Floor<br>P.O. Box 45029<br>Newark, NJ 07101                        | Babette Tenzer, DAG<br>Division of Law<br>124 Halsey Street, 5 <sup>th</sup> Floor<br>P.O. Box 45029<br>Newark, NJ 07101                 |  |
| <b>BOROUGH OF BUTLER</b>   |  |  |
| James Lampmann,<br>Administrator<br>Borough of Butler<br>One Ace Road<br>Butler, NJ 07405  | Robert H. Oostdyk, Jr., Esq.<br>Murphy McKeon P.C.<br>51 Route 23 South - P.O. Box<br>70<br>Riverdale, New Jersey 07457                  | David H. Evans<br>Nisivoccia & Company<br>5 Emery Avenue<br>Randolph, NJ 07869   |

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

|  |   |                                  |
|--|---|----------------------------------|
| In the Matter of the Application of the    | : | BPU Docket Nos. ER10020131       |
| Borough of Butler to Establish a Mechanism | : | ER11020058                       |
| for a Review of its Levelized Energy       | : | ER12030292                       |
| Adjustment Clause (LEAC) Rate              | : | <b>Stipulation of Settlement</b> |
|  | : |                                  |
|  | : |                                  |

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" or "Borough"), the Staff of the Board of Public Utilities ("Staff") and the New Jersey 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. Background and Procedural History:

Butler Electric is a municipal electric utility that serves residents of the Borough of Butler and several surrounding municipalities. A number of years ago, the New Jersey Board of Public Utilities ("Board") authorized Butler Electric to implement a Levelized Energy Adjustment Clause ("LEAC"). The LEAC allows Butler Electric to recover the costs associated with purchasing electric supply, and other related costs. Butler Electric is permitted to adjust the LEAC rate quarterly, and is required to file with the Board a petition for an annual "true-up" by February 1 of each year.

In an Order approving a stipulation from Butler Electric's 2008 and 2009 LEAC filings (BPU Docket Nos. ER08020080 and ER09020144), the Board directed the Parties to review Butler Electric's LEAC mechanism. Accordingly, on September 30, 2010, Butler Electric filed the Petition in the above-captioned proceeding. Specifically, Butler Electric requested the Board to change the LEAC mechanism so that the LEAC rate is only reviewed when Butler Electric enters into a new contract for the purchase of electric power. A public hearing was held in Butler, New Jersey on November 5, 2012. No members of the public attended.

2. 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 Borough will file a petition once every two years for its periodic LEAC by the Board. The Borough filed a petition in February of 2012; therefore, the next filing will be due February of 2014.
- b) The parties agree that the LEAC cap is \$0.151718 per kilowatt hour. The parties agree that if Butler Electric seeks to change the LEAC cap, Butler Electric will file a petition with the Board. 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.
- c) In addition to the "Required Filing Contents" outlined in Schedule A of the Borough's annual filings, any future LEAC petition must contain the following additional information ("Minimum Filing Requirements"):
  1. Total annual cost per kwh;
  2. Total fixed cost per kwh, with reference to contract price;
  3. Total pass-through costs per kwh, with reference to contract terms;
  4. Total kwhs purchased;
  5. The underlying reasoning and assumptions behind the growth factor with schedules demonstrating the derivation of such projections;

6. A chart listing the actual total kwh sold, the percentage of kwh sold outside of Butler for each month to the total kwh sold for the last two years;
  7. 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;
  8. A detailed calculation of the projected line loss percentage, as well as historic line losses for the past five years. In addition, identify the line loss projected in the Borough's last filing with the Board.
  9. 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 pursuant to Docket No. ER01010076.
  10. The supporting calculations and/or explanations for any changes in the LEAC methodology since the method used to determine rates in your last filing.
- d) In order to expedite the processing of the Borough's filings, the Parties agree to follow the following 3 month schedule for future LEAC petitions:
1. Butler to file a complete LEAC petition with all documents as required by statute. In addition, Butler will file the following documents as set forth in the Required Filing Content and Minimum Filing Requirement by February 1 every two years. A hard copy of the Petition will be filed along with an electronic copy to be sent on February 1. The LEAC petition will include a draft public notice. Before publishing the public notice, Butler agrees to circulate to all parties the final public notice for discussion among the parties.
  2. Any discovery by Staff or Rate Counsel shall be submitted by no later than March 1.
  3. Responses to discovery shall be supplied by Butler by no later than March 15.
  4. Butler shall circulate a draft stipulation by no later than April 1.
  5. 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.
- e) If this schedule is not kept by any Party, or if Required Filing Contents or Minimum Filing Requirements as set forth in 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.

- f) A public hearing will be held to correspond to these bi-annual filings.
- g) The parties will execute a Confidentiality Agreement if requested by the Borough.
- h) 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).
- i) Purchase Power Agreement - When the Borough's existing Power Purchase Agreement expires, it will file, along with a copy of the executed agreement, the following information with the Board within one month of execution of new Power Purchase agreement:
  - 1. A full description of the procurement process;
  - 2. Copies of all Requests for Proposals issued for supply;
  - 3. Copies of all responses to Requests for Proposals;
  - 4. All analyses of bids received;
  - 5. An analyses of the term(s) proposed;
  - 6. An explanation as to how and why the winning bidder was selected, including information on both price and term; and
  - 7. An estimate of power supply costs in each year during the term of the contract.

3. 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.

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


5. 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.

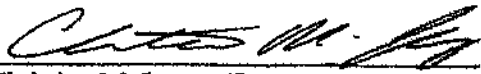
(b) The contents of this Stipulation shall not in any way be considered, cited or used by any of the undersigned Parties as an indication of any Party's position on any related or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation.

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.

JOHNSON, MURPHY, HUBNER, McKEON,  
WUBBENHORST, BUCCO & APPELT  
ATTORNEYS FOR PETITIONER,  
BOROUGH OF BUTLER ELECTRIC UTILITY

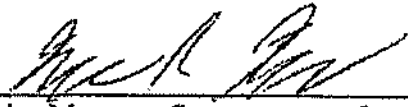
By:  4/18/13  
Martin F. Murphy, Esq.

STEFANIE A. BRAND, Esq.  
Director, Division of Rate Counsel

By:   
Christine M. Juarez, Esq.  
Assistant Deputy Rate Counsel

4/18/13

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

By:   
Alex Moroni Jeffrey R. Gersten  
Deputy Attorney General

Dated: