



Agenda Date: 5/12/10
Agenda Item: 2B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF 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)

ORDER APPROVING STIPULATION

DOCKET NO. ER08020080

IN THE MATTER OF 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)

DOCKET NO. ER09020144

Martin F. Murphy (Johnson, Murphy, Hubner, McKeon, Wubbenhorst, Bucco & Appelt, P.C.)
Attorney for the Petitioner, Borough of Butler Electric Utility

Christine M. Juarez, Assistant Deputy Public Advocate, New Jersey Department of the Public
Advocate, Division of Rate Counsel (Stefanie A. Brand, Acting Public Advocate and Director)

Geoffrey R. Gersten, Deputy Attorney General, for Staff of the New Jersey Board of Public
Utilities (Paula T. Dow, Attorney General of New Jersey)

BY THE BOARD¹:

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 price energy contract with Constellation Energy Commodities which expires on May 31, 2014.

¹ Commissioner Elizabeth Randall did not participate in this matter.

On February 8, 2008, Butler Electric filed with the New Jersey Board of Public Utilities ("Board") a verified petition requesting approval of a Levelized Energy Adjustment Clause ("LEAC") for the period April 1, 2008 to March 31, 2009 under BPU Docket No. ER08020080. Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.108443 per kWh to \$0.093593 per kWh to be effective for services rendered on and after April 1, 2008; (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. ER8604-390² ("April 23 Order"). On April 16, 2008, a public hearing was held in the Borough of Butler Municipal Building. No members of the public attended the hearing or submitted comments opposing the LEAC adjustment.

On February 17, 2009, Butler Electric filed with the Board a verified petition under BPU Docket No. ER09020144, requesting approval to: (1) adjust the LEAC rate from \$0.123662 per kWh to \$0.112918 per kWh to be effective for services rendered on April 1, 2009 to March 31, 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 the April 23 Order. On December 1, 2009, a public hearing was held in the Borough of Butler Municipal Building. No members of the public attended the hearing or submitted comments opposing the LEAC adjustment.

In addition to Butler Electric, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), and Board Staff ("Staff") (collectively referred to as "Parties") participated in these proceedings. 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 March 30, 2010, the Parties executed a Stipulation of Settlement ("Stipulation").

STIPULATION

The Stipulation provides for the following:

- o The Parties agree that Butler Electric's requests for a LEAC rate of \$0.093593 per kWh for usage effective April 1, 2008, and a LEAC rate of \$0.112918 per kWh for usage effective April 1, 2009 are reasonable.
- o The Parties agree that Butler Electric shall hold a public hearing by April of every year, consistent with the provisions of N.J.S.A. 48:2-32.4. Additionally, Butler Electric will include in its annual 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 that Board Staff and Rate Counsel will be given the opportunity to comment on the notice prior to publication.
- o Pursuant to Board Order Approving Stipulation, Docket No. ER01010076, dated April 27, 2001, Butler Electric is authorized to continue to implement a LEAC rate as authorized by the April 23 Order. With respect to the annual LEAC rate, the Parties further agree that:

²In the Matter of the Application of the Borough of Butler for an Order Approving a Decrease in its Levelized Energy Adjustment Clause, BPU Docket No. ER8604-390 (April 23, 1987).

- a) Butler Electric's LEAC rate may continue to be adjusted on a quarterly basis during the annual LEAC period;
- b) Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over- or under-recoveries over a twelve month period;
- c) Interest on over-recoveries shall continue to be computed on an annual basis at the prevailing monthly New Jersey Cash Management Fund Interest Rate. Accrued interest from the previous LEAC year will be reflected in each annual filing;
- d) Unless otherwise altered by the Board, Butler Electric shall have an annual LEAC proceeding that shall be filed February 1 of each year, to be effective as of April 1 of the same year;
- e) The LEAC rate cap of \$0.130000 per kWh applicable to the quarterly LEAC adjustment filing, established by Board Order dated November 9, 2007 in In the Matter of the Petition of Butler Electric Utility to Exceed the Cap on its LEAC Rate, Docket No. ER07060413, shall continue to be in effect. Butler Electric shall continue to provide financial reports and data to Board 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.
- f) 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;
- g) In future annual LEAC petitions, 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. For this case, the Parties agree to calculate the line loss as stated above. The Parties, however, reserve their rights to review line loss adjustment calculations in future LEAC proceedings;
- h) The Parties agree that Butler Electric shall provide documentation in subsequent LEAC filings that support any new power supply contracts into which it enters, as well as documentation detailing the process by which such power supply contracts have been awarded. The power supply contract documentation is to be supplied as part of the quarterly report covering the period of January through March of the current LEAC year filed on or about December 15th each year, so it will be available for review in the annual filing made by Butler Electric on February 1 of each year. This documentation shall be subject to confidentiality agreements among the parties to the extent legally permissible.

DISCUSSION AND FINDING

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. Accordingly, the Board HEREBY APPROVES the attached Stipulation. The

Board HEREBY APPROVES the LEAC rate of \$0.093593 per kWh for services rendered after April 1, 2008, and the LEAC rate of \$0.112918 per kWh for services rendered after April 1, 2009.

The Board HEREBY DIRECTS the Company to make its revised tariff available for public inspection on its website in accordance with N.J.A.C. 14:3-1.3(h).

The Company is HEREBY AUTHORIZED to continue its quarterly LEAC rate adjustment mechanism as established by the April 23 Order, subject to a cap of \$0.130000 as established by Board Order dated November 9, 2007 in Docket No. ER07060413, and to file the appropriate tariff pages reflecting the quarterly LEAC rate adjustment with the Board.

The Board HEREBY DIRECTS the Parties to review the Company's LEAC rate adjustment mechanism and provide comments or recommendations on this mechanism to the Board within 60 days of the date of this Order.

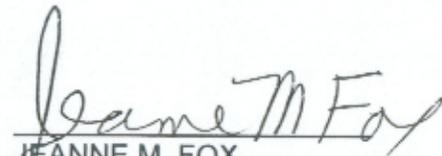
Butler Electric's LEAC costs remain subject to audit by the Board, and approval of the Stipulation shall not preclude or prohibit the Board from taking any actions deemed appropriate as a result of any such audit.

DATED: 5/12/10

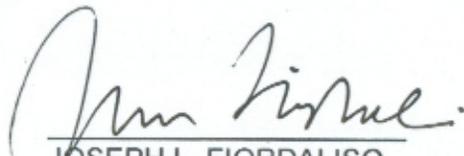
BOARD OF PUBLIC UTILITIES
BY:



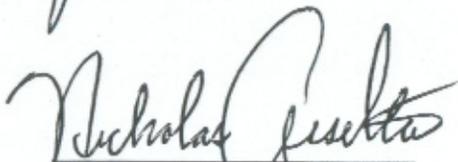
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER

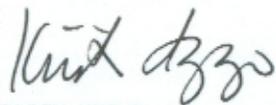


JOSEPH L. FIORDALISO
COMMISSIONER



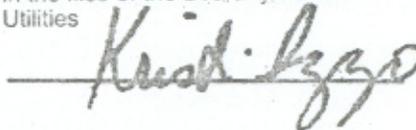
NICHOLAS ASSELTA
COMMISSIONER

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") FOR APRIL 1, 2008 TO MARCH 31, 2009
DOCKET NO. ER08020080

IN THE MATTER OF 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
DOCKET NO. ER09020144

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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, 2008
to March 31, 2009

: BPU Docket No. ER08020080

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, 2009
to March 31, 2010

: BPU Docket No. ER09020144

: Stipulation of Settlement

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 the Department of the Public Advocate, 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 proceedings.

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:

(a) On February 8, 2008, 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, 2008 to March 31, 2009 under BPU Docket No. ER08020080. Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.108443 per

kWh to \$0.093593 per kWh to be effective for services rendered on and after April 1, 2008; (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 16, 2008. No members of the public attended.

(b) On February 17, 2009, Butler Electric filed with the Board a Verified Petition for approval of a LEAC for the period April 1, 2009 to March 31, 2010, under BPU Docket No. ER09020144. Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.123662 per kWh to \$0.112918 per kWh to be effective for services rendered on and after April 1, 2009; (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 December 1, 2009. 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 \$0.093593 per kWh for usage effective April 1, 2008 is reasonable.

(b) The Parties agree that Butler Electric's request for a LEAC rate of \$0.112918 per kWh for usage effective April 1, 2009 is reasonable.

(c) The Parties agree that Butler Electric shall hold a public hearing by April of every year, consistent with the provisions of N.J.S.A. 48:2-32.4. Additionally, Butler Electric will include in its annual 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 that Staff and Rate Counsel will be given the opportunity to comment on the notice prior to publication.

(d) 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. ER8406390, OAL Docket No. PUC 3596-86, dated April 23, 1987. With respect to the annual LEAC rate, the Parties agree further as follows:

1. Butler Electric's LEAC rate may continue to be adjusted on a quarterly basis during the annual LEAC period.
2. Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over- or under-recoveries over a twelve-month period;
3. Interest on over-recoveries shall continue to be computed on an annual basis at the prevailing monthly New Jersey Cash Management Fund Interest Rate. Accrued interest from the previous LEAC year will be reflected in each annual filing;
4. Unless otherwise altered by the Board, Butler Electric shall have an annual LEAC proceeding that shall be filed February 1 of each year, to be effective as of April 1 of the same year.
5. The Petitioner's LEAC rate cap of \$0.130000 per kWh applicable to the quarterly LEAC adjustment filing, established by Board Order, Docket No. ER07060413, shall continue to be in effect. 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.

6. 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.
7. In future annual LEAC petitions, 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. For these case, the Parties agree to calculate line loss as stated above. The Parties, however, reserve their rights to review line loss adjustment calculations in future LEAC proceedings.
8. The Parties agree that Butler Electric shall provide documentation in subsequent LEAC filings that support any new power supply contracts into which it enters, as well as documentation detailing the process by which such power supply contracts have been awarded. The power supply contract documentation is to be supplied as part of the quarterly report covering the period of January through March of the current LEAC year filed on or about December 15th each year, so it will be available for review in the annual filing made by Butler Electric on February 1 of each year. This documentation shall be subject to confidentiality agreements among the parties to the extent legally permissible.

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.

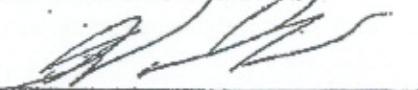
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ATTORNEY FOR STAFF OF THE
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By: 
Geoffrey R. Gersten
Deputy Attorney General

Dated: March 30, 2010

IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF BUTLER ELECTRIC
UTILITY FOR AN ORDER APPROVING A LEVELIZED ENERGY ADJUSTMENT CLAUSE
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