



Agenda Date: 11/8/07
Agenda Item: 2A

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

ENERGY

IN THE MATTER OF THE PETITION OF THE)	ORDER ADOPTING
BOROUGH OF BUTLER ELECTRIC UTILITY)	STIPULATION
TO EXCEED THE CAP ON ITS LEAC RATE)	
)	DOCKET NO. ER07060413

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

The Borough of Butler Electric Utility ("Butler," "Butler Electric," or "Petitioner") 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 Borough of Butler, Boroughs of Bloomingdale and Kinnelon and which partially services the Township of West Milford and the Borough of Riverdale.

The Borough is a member of the Public Power Association of New Jersey ("PPANJ") along with seven other boroughs who use the PPANJ to purchase wholesale electricity. The present contract for wholesale electricity expires on December 31, 2007, so the PPANJ sought a new electric supply contract. After an active auction process in which the lowest bidder was selected, a new contract was awarded to DTE Energy Trading, Inc. The effect of the new contract will cause an increase in the Borough's LEAC rate that will exceed its previously established cap.

On June 23, 2007, Butler Electric filed with the New Jersey Board of Public Utilities ("Board") a Verified Petition seeking approval to exceed and to eliminate the cap on its Levelized Energy Adjustment Clause ("LEAC") under BPU Docket No. ER07060413. Because of a new contract with DTE Energy Trading, Butler Electric requested approval from the Board to exceed its previously stipulated cap on its LEAC rate. In addition, since all power purchase costs are contained in the LEAC rate, the Petitioner requested that the Board eliminate the cap on the LEAC rate.

¹Due to a potential conflict of interest, Commissioner Christine V. Bator did not participate in the vote or deliberations in this matter.

On October 4, 2007, Butler Electric filed with the Board an Amended Verified Petition seeking approval to only exceed the cap of its LEAC rate. Specifically, Butler Electric requested approval to: (1) establish a new cap level of \$0.134242 per kWh on the quarterly LEAC adjustment; and (2) adjust the LEAC rate from \$0.080187 per kWh to \$0.105544 per kWh to be effective for services rendered on and after December 1, 2007. The Amended Verified Petition also noted Butler Electric's continued obligation to make quarterly and annual LEAC rate filings with the Board. A notice of public hearing was published in the Suburban Trends on Wednesday, October 10, 2007. A public hearing was held in Butler, New Jersey on November 1, 2007. One member of the public attended the hearing and posed questions on the LEAC rate increase, which were answered by the Company. No other comments were received.

In addition to Butler Electric, the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), and Board Staff ("Staff") (collectively referred to herein as the "Parties") were parties to this proceeding. Rate Counsel and Staff propounded discovery requests on the Petitioner. Petitioner's responses were received and reviewed by Rate Counsel and Staff. After settlement negotiations among Butler Electric, Rate Counsel and Staff, on November 2, 2007, the Parties executed a Stipulation of Settlement ("Stipulation").

STIPULATION²

The Stipulation provides for the following:

- That the Petitioner's new LEAC rate cap will be \$0.130000 per kWh applicable to the quarterly LEAC adjustment filings, established by the Board.

Butler shall be allowed to implement a LEAC rate of \$0.105544 per kWh for usage effective December 1, 2007.

- 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.
- 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 Board Order, Docket No. ER8604-390, OAL Docket No. PUC 3596-86, dated April 23, 1987. With respect to the annual LEAC rate, the Parties agree as follows:
 - a.) Butler Electric's LEAC rate may continue to be adjusted on a quarterly basis during the annual LEAC period.

²The cited paragraphs below are a summary of the settlement. The full settlement document controls, subject to the Board's findings and conclusions contained herein.

- 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 directed 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, with a copy to Rate Counsel.
- e.) 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 will 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 LEAC petitions, Butler Electric will base its line loss adjustment on the lower of: 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 will 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 15 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 FINDINGS

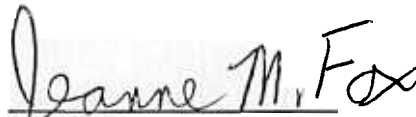
The Board, having reviewed the attached Stipulation entered into by the Parties, is satisfied that the Settlement represents a fair and reasonable resolution of the issues and is in the public interest. Accordingly, the Board HEREBY ADOPTS the attached Stipulation as its own as if it were set forth at length herein. Therefore, the Board HEREBY APPROVES the LEAC rate of \$0.105544 per kWh for services rendered after December 1, 2007. As a result of the Stipulation as adopted herein, a typical residential customer consuming 500 kWh in a month will have an average monthly increase of \$13.56 or 21.63% compared to November 2007 rates.


The Petitioner also is authorized to continue its quarterly LEAC rate adjustment mechanism, established by Board Order dated April 23, 1987 in Docket No. ER8604390, subject to a new cap of \$0.130000 per kWh and subject to the provisions of this order.

The Board HEREBY DIRECTS the Borough of Butler Electric Utility to file final tariff sheets reflecting the rates which conform to the terms and conditions of this Order within ten (10) days from the date of this Order.

DATED: 11/9/07

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

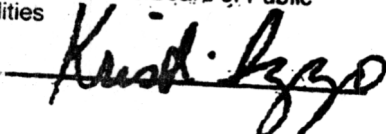

FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
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



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West Milford, New Jersey 07480

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Petition of the
Borough of Butler Electric Utility to
exceed the cap on its LEAC Rate

:
: BPU Docket No. ER07060413
:
:
: Stipulation of Settlement
:
:

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

The parties in this proceeding are as follows: 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"). The Parties have reached a settlement of all factual and legal issues pertaining to 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 June 23, 2007, Butler Electric filed with the New Jersey Board of Public Utilities ("Board") a Verified Petition seeking approval to exceed and to eliminate the cap on its Levelized Energy Adjustment Clause ("LEAC") under BPU Docket No. ER07060413. On October 4, 2007, Butler Electric filed with the Board an Amended Verified Petition seeking approval to: (1) establish a new cap level of \$0.134242 per kWh on the quarterly LEAC adjustment; and (2) increase the current LEAC rate from \$0.080187 per kWh to \$0.105544 per kWh to be effective for services rendered on and after December 1, 2007. The Amended Verified Petition also noted Butler Electric's continued obligation to make quarterly and annual LEAC rate filings with the Board. A notice of public hearing was published in the Suburban Trends

on Wednesday, October 10, 2007. A public hearing was held in Butler, New Jersey on November 1, 2007. One member of the public attended the hearing.

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:

The parties agree that Butler Electric's new LEAC rate cap will be \$0.130000 per kWh applicable to the quarterly LEAC adjustment filings.

Butler shall be allowed to implement a LEAC rate of \$0.105544 per kWh for usage effective December 1, 2007.

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.

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 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 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 directed 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, with a copy to Rate Counsel.
5. 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.
6. Butler Electric's LEAC costs will 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 will 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 line loss as stated above. The Parties, however, reserve their rights to review line loss adjustment calculations in future LEAC proceedings; and
8. The Parties agree that Butler Electric will 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 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 this matter, 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.

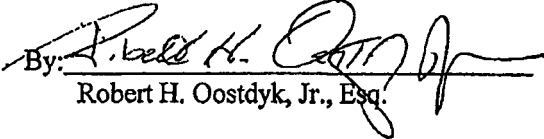
6. General Reservation. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein:

(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.

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


By: 
Robert H. Oostdyk, Jr., Esq.

RONALD K. CHEN
PUBLIC ADVOCATE

Stefanie A. Brand
Director, Division of Rate Counsel

By: _____
Christine M. Juarez
Assistant Deputy Public Advocate

ANNE MILGRAM,
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR STAFF OF THE
BOARD OF PUBLIC UTILITIES

By: 
Geoffrey Gersten
Deputy Attorney General


Dated: 11/2/07

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

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Dated: