



Agenda Date: 7/11/2007

Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

ENERGY

IN THE MATTER OF THE APPLICATION OF	)	ORDER ADOPTING
BOROUGH OF BUTLER ELECTRIC UTILITY	)	STIPULATION
FOR AN ORDER APPROVING A LEVELIZED	)	
ENERGY ADJUSTMENT CLAUSE ("LEAC")	)	DOCKET NO. ER07020088
FOR APRIL 1, 2007 TO MARCH 31, 2008	)	

(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.

On February 9, 2007, Butler Electric filed a petition requesting approval to (1) adjust its Levelized Energy Adjustment Clause ("LEAC") rate from \$0.061521 per kWh to \$0.058945 per kWh to be effective for services rendered on and after April 1, 2007; (2) continue the cap level of \$0.080187 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, OAL Docket No. PUC 3596-86.

On May 15, 2007, a public hearing was held on this matter at the Borough of Butler Municipal Building. Public Notice was provided in a newspaper in circulation in Butler's service territory on May 2, 2007. No one appeared at the hearing or submitted comments opposing the LEAC adjustment.

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

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

² In 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).

Counsel and Staff. After settlement negotiations among Butler Electric, Rate Counsel and Staff, on June 22, 2007, 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 \$0.058945 per kWh for usage effective April 1, 2007 to March 31, 2008 is reasonable.

- 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.
 - 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. Butler Electric's LEAC rate cap of \$0.080187 per kWh applicable to the quarterly LEAC adjustment filing, established by Board Order dated June 10, 2004 in Docket Nos. ER03010049 and ER03010063³ 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 at least fifteen (15) days prior to the effective date of the requested 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.

³ In the Matter of the Petition of the Borough of Butler Electric Utility to Increase its Base Rate and Revise its Tariff, BPU Docket No. ER03010049 and 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, 2003 to March 31, 2004, BPU Docket No. ER03010063 (June 10, 2004).

- 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 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.
-) If, prior to its next annual filing, Butler Electric requests an increase in its LEAC rate cap of \$0.080187 per kwh as a result of entering into a new power supply contract, then Butler Electric will provide, at a minimum, the following information as part of that filing: (a) the reason for the increase; (b) a discussion of why Butler Electric chose to participate in the Public Power Association of New Jersey ("PPANJ") solicitation, if applicable; (c) a discussion of the process used by Butler Electric or the PPANJ, if applicable, to procure a new power supply; (d) information provided to prospective bidders about the supply requirements of Butler Electric or the PPANJ, if applicable; (e) the number and identity of bidders participating in the solicitation process; (f) evaluation criteria used by Butler Electric, or the PPANJ, if applicable, to select a new power supplier; and (g) the impact of the procurement on Butler Electric's rates for service

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. The Board HEREBY APPROVES the LEAC rate of \$0.058945 per kWh for services rendered after April 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 decrease of \$1.38 or -2.62% compared to January 2007 rates.

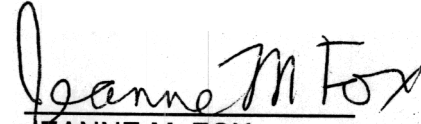
The Petitioner is also authorized to continue its quarterly LEAC rate adjustment mechanism, established by Board Order dated April 23, 1987 in Docket No. ER8604390, subject to a cap of \$0.080187 and subject to the provisions of this Order.

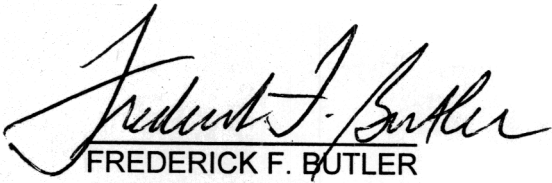
Butler's LEAC costs remain subject to audit by the Board, and approval of the Stipulation shall not preclude nor prohibit the Board from taking any actions deemed appropriate as a result of any such audit.

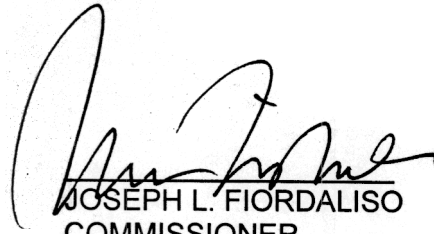
The Board HEREBY DIRECTS the Borough of Butler Electric Utility to file final tariff sheets reflecting the rates which conform to the terms and conditions of this Order within ten (10) days from the date of this Order.

DATED: 7/12/07

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

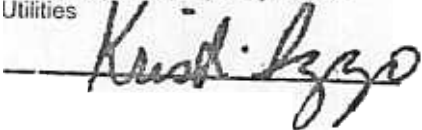

FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

ATTEST:


CARMEN DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



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, 2007
to March 31, 2008

: BPU Docket No. ER07020088
:
:
:
: Stipulation of Settlement
:
:

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

This Stipulation of Settlement of the Levelized Energy Adjustment Clause (the "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 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 8, 2007, 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, 2007 to March 31, 2008 under BPU Docket No. ER07020088. Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.061521 per kWh to \$0.058945 per kWh to be effective for services rendered on and after April 1, 2007; (2) continue the cap level of \$0.080187 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 May 15, 2007. No members of the public attended.

2. In addition to Butler Electric, Rate Counsel and Staff 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.

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 \$0.058945 per kWh for usage effective April 1, 2007 to March 31, 2008 is reasonable.

(b) 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.

(c) 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 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 of the same year.
5. The Petitioner's LEAC rate cap of \$0.080187 per kWh applicable to the quarterly LEAC adjustment filing, established by Board Order dated June 10, 2004 in Docket No. ER03010049 and ER03010063¹ 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.
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

¹ In the Matter of the Petition of the Borough of Butler Electric Utility to Increase its Base Rates and Revised its Tariff, BPU Docket No. ER03010049 AND and 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, 2004 to March 31, 2004, BPU Docket No. ER03010063.

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 adjustment calculations in future LEAC proceedings.

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.
documentation shall be subject to confidentiality agreements among the parties to the extent legally permissible.

9. If, prior to its next annual filing, Butler Electric requests an increase in its LEAC rate cap of \$0.080187 per kwh as a result of entering into a new power supply contract, then Butler Electric will provide, at a minimum, the following information as part of that filing: (a) the reason for the increase; (b) a discussion of why Butler Electric chose to participate in the Public Power Association of New Jersey ("PPANJ") solicitation, if applicable; (c) a discussion of the process used by Butler Electric or the PPANJ, if applicable, to procure a new power supply; (d) information provided to prospective bidders about the supply requirements of Butler Electric or the PPANJ, if

applicable; (e) the number and identity of bidders participating in the solicitation process; (f) evaluation criteria used by Butler Electric, or the PPANJ, if applicable, to select a new power supplier; and (g) the impact of the procurement on Butler Electric's rates for service.

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 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

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JOHNSON, MURPHY, HUBNER

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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.

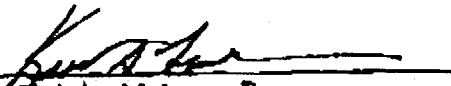
JOHNSON, MURPHY, HUBNER, McKEON,
WUBBENHORST, BUCCO & APPELT
ATTORNEYS FOR PETITIONER,
BOROUGH OF BUTLER ELECTRIC UTILITY

By: 

Martin F. Murphy, Esq.

RONALD K. CHEN
PUBLIC ADVOCATE OF NEW JERSEY

Kimberly K. Holmes, Esq.
Acting Director, Rate Counsel

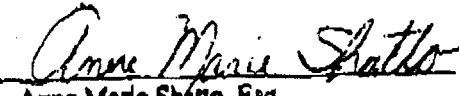
By: 

Christine M. Juarez, Esq.

Asst. Deputy Public Advocate

KURT S. LEWANDOWSKI, ADPA

STUART RABNER,
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR STAFF OF THE
BOARD OF PUBLIC UTILITIES

By: 

Anne Marie Shatto, Esq.

Deputy Attorney General

Dated:

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