



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE APPLICATON OF THE)
BOROUGH OF BUTLER FOR AN ORDER APPROVING)
A LEVELIZED ENERGY ADJUSTMENT CLAUSE)
(L.E.A.C.) FOR APRIL 1, 2020 TO JUNE 30, 2020)
DECISION AND ORDER
APPROVING STIPULATION
DOCKET NO. ER20010105

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Robert H. Oostydk, Jr., Esq., Murphy McKeon, P.C. on behalf of Borough of Butler Electric Utility

BY THE BOARD:

On February 1, 2020, the Borough of Butler Electric Utility (“Butler Electric”) filed a petition with the New Jersey Board of Public Utilities (“BPU” or “Board”), requesting approval to decrease its Levelized Energy Adjustment Clause (“LEAC”) for the period April 1, 2020 to June 30, 2020 under BPU Docket No. ER20010105 (“2020 LEAC Petition”).¹ By this Decision and Order, the Board considers a stipulation of settlement (“Stipulation”) executed by Butler Electric, the New Jersey Division of Rate Counsel (“Rate Counsel”) and Board Staff (“Staff”) (collectively, “Parties”) intended to resolve all issues related to this matter.

BACKGROUND

Butler Electric is a Municipal Corporation in the County of Morris, State of New Jersey. Butler Electric is owned and operated by the Borough of Butler and serves industrial, commercial and residential customers in the Boroughs of Butler, Bloomingdale and Kinnelon, and 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 (“PPANJ”) with energy purchases governed by the procedures described in N.J.S.A. 40A:11-5(6).

¹ While the 2020 LEAC Petition stated Butler Electric sought approval for its LEAC through June 30, 2020, due to the now biennial filing, the petition in fact sought approval for its LEAC through March 31, 2022 with quarterly adjustments as discussed below.

FEBRUARY 2020 PETITION

On February 1, 2020, Butler Electric filed the 2020 LEAC Petition and requested approval to: 1) adjust the LEAC rate from \$0.087989 per kilowatt hour (“kWh”) to \$0.064945 per kWh to be effective for services rendered on and after April 1, 2020; 2) continue the cap level of \$0.151718 per kWh on the quarterly LEAC adjustment that had been approved on September 17, 2010 by the State of New Jersey, Department of Community Affairs, Division of Local Government Services, and the Local Finance Board pursuant to N.J.S.A. 40A:5A-25; and 3) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated April 23, 1987 in Docket No. ER86040390.²

After adequate public notice, on April 21, 2020, a telephonic public hearing was held. No members of the public attended the hearing and the Board received no comments.

STIPULATION

Following review of the 2020 LEAC Petition and discovery responses, the Parties executed the Stipulation, which provides for the following³:

- (a) Butler Electric’s request for a LEAC rate of \$0.064945 per kWh for usage effective after April 1, 2020 is reasonable.
- (b) Butler Electric will file a complete LEAC Petition with all documents required by statute and Board Order, including the documents set forth in the Required Filing Content and Minimum Filing Requirements, once every two (2) years for its periodic LEAC review by the Board. Butler Electric filed the 2020 LEAC Petition in February of 2020, therefore the next filing will be due by February 1, 2022. Thereafter, biennial period audit filings will be made by February 1 of each year in which a filing is made, with rates proposed to be effective after April 1. Butler Electric will provide both hard copies and electronic copies of all filings and required documentation. Staff and Rate Counsel reserve all rights to challenge any rate proposed in a future hearing.
- (c) The Parties agree that the LEAC cap shall remain \$0.151718 per kWh.
- (d) The Parties agree that Butler Electric shall hold a public hearing by March 31 of every year in which it makes a biennial LEAC filing, consistent with the provisions of N.J.S.A. 48:2-32.4. 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. Staff and Rate Counsel will be given the opportunity to comment on the notice prior to publication.

² The Board’s original Order dated April 23, 1987 was missing a digit in the docket number. The correct docket number is ER86040390.

³ Although described in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusion in this Order. Paragraphs are numbered to reflect numbering in the Stipulation.

(e) 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. ER86040390, OAL Docket No. PUC 3596-86, dated April 23, 1987, and as further amended by the conditions of this Stipulation. With respect to the biennial LEAC rate, the Parties agree further as follows:

1. Unless otherwise altered by the Board, Butler Electric shall have a biennial LEAC proceeding that shall be filed February 1, to be effective after April 1 of the same year.
2. 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).
3. Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over- or under-recoveries over a twelve-month period.
4. Interest on over-recoveries shall 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 (2) 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.
5. Butler Electric shall continue to provide financial reports and data to Staff and Rate Counsel to support each quarterly LEAC adjustment filing at least 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. The Stipulation shall not preclude or prohibit the Board from taking any actions deemed appropriate as a result of any such audit.
7. Butler Electric shall continue to provide the "Required Filing Contents" outlined in Schedule A of the Borough's current biennial filing. 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.
8. 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 each month to the total kWh sold 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 (2) 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.

9. The Parties agree that Butler Electric will provide as an exhibit to its biennial filing documentation on any new power supply contracts into which it enters during the previous two-year period, 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.
10. 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 calculation 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.
11. 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 the Stipulation, by February 1. A copy of the Petition and all documents filed with the Board will be served on Rate Counsel at its address at the time of the filing.
 - Any discovery by Staff or Rate Counsel is to be served by March 1.
 - All responses to discovery to be provided by March 15.
 - Butler Electric to provide a draft Stipulation by April 1.
 - The Petition will be placed on Board's May agenda. Staff will prepare an agenda package prior to the Board's May agenda as long as the Parties have resolved the issues and signed a 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 the 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.

12. The total impact on the monthly bill of the average residential customer using 1,000 kWh is a \$24.57 or 17.45% decrease.

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 et seq.

In the light of the above, having reviewed the record and the attached Stipulation entered into by the Parties, the Board **FINDS** that the Stipulation 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 Minimum Filing Requirements, including documents required pursuant to the Stipulation by February 1st of the filing year will assist the parties in their review of future LEAC filings. Accordingly, the Board **HEREBY APPROVES** the attached Stipulation.

The Board **HEREBY APPROVES** the LEAC rate of \$0.064945 per kWh for services rendered after the effective date of this Order. For an average residential customer using 1,000 kWh per month, the bill impact is a monthly decrease of \$24.57 or 17.45%.

The Board **HEREBY DIRECTS** Butler Electric to file the appropriate tariff sheets with the Board and **FURTHER HEREBY DIRECTS** Butler Electric 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 the terms and conditions of this Order by June 1, 2020.

Butler Electric is **HEREBY AUTHORIZED** to continue its LEAC cap which shall remain at \$0.151718 per kWh as previously authorized by the Local Finance Board pursuant to N.J.S.A. 40A:5A-25 and ratified by 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.

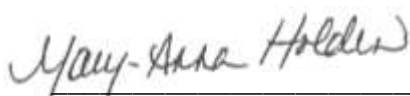
The effective date of this Order is May 30, 2020.

DATED: May 20, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE APPLICATION OF THE BOUROUGH OF BUTLER FOR AN ORDER
APPROVING A LEVELIZED ENERGY ADJUSTMENT CLAUSE (L.E.A.C.) FOR APRIL 1, 2020 TO
JUNE 30, 2020 - BPU DOCKET NO. ER20011015

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May 5, 2020

VIA OVERNIGHT MAIL

Aida Camacho-Welch, Executive Assistant
Office of the Secretary
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Application of the Borough of Butler
for an Order Approving a Levelized Energy Adjustment Clause
(L.E.A.C.) for April 1, 2020 to June 30, 2020**

Dear Ms. Camacho-Welch:

Enclosed please find the fully executed Stipulation of Settlement in connection with the above-referenced matter for filing.

Please contact me if you have any questions or concerns.

Very truly yours,

MURPHY McKEON P.C.

Robert H. Oostdyk, Jr.
Robert H. Oostdyk, Jr.

RHO/dmd
Enclosure

cc: Service List

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Application of the : BPU Docket No. ER20010105
Borough of Butler Electric Utility for an :
Order Approving a Levelized Energy :
Adjustment Clause (LEAC) from April 1, 2020 : **Stipulation of Settlement**
to June 30, 2020 :
: :
: :
: :

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 New Jersey Board of Public Utilities (“Staff”), and the New Jersey Division of Rate Counsel (“Rate Counsel”) (collectively, “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 New Jersey Board of Public Utilities (“Board” or “BPU”) issue a Final Decision and Order approving this Stipulation in the above-captioned matter, based upon the following:

1. Procedural History:

On February 1, 2020, Butler Electric filed with the Board a Verified Petition for approval of a Levelized Energy Adjustment Clause (“LEAC”) for the period April 1, 2020 to June 30, 2020 under BPU Docket No. ER20010105.¹ Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.087989 per kWh to \$0.064945 per kWh to be effective for services rendered on and after April 1, 2020; (2) continue the cap level of \$0.151718 per kWh on the quarterly LEAC adjustment that was approved on September 17, 2010 by the State of New

¹ While the Petition stated Butler sought approval for its LEAC through June 30, 2020, due to the now-biennial filing the Petition in fact sought approval for its LEAC through March 31, 2022 with quarterly adjustments as discussed below.

Jersey, Department of Community Affairs, Division of Local Government Services, Local Finance Board, pursuant to N.J.S.A. 40A:5A-25; and (3) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated April 23, 1987, in Docket No. ER86040390, OAL Docket No. PUC 3596-86.

2. A public hearing was held in Butler, New Jersey on April 21, 2020. No members of the public participated.

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

4. Based upon Staff's and Rate Counsel's review of the Verified Petition, the attachments to the Petition, responses to discovery, and after the April 21, 2020 public hearing, the Parties agree upon the following terms of settlement::

(a) Butler Electric's request for a LEAC rate of \$0.064945 per kWh for usage effective after April 1, 2020 is reasonable.

(b) Butler Electric will file a complete LEAC Petition with all documents required by statute and Board Order, including the documents set forth in the Required Filing Content and Minimum Filing Requirements, once every two (2) years for its periodic LEAC review by the Board.² Butler Electric filed this petition in February of 2020, therefore the next filing will be due by February 1, 2022. Thereafter, biennial period audit filings will be made by February 1 of each year in which a filing is made, with rates proposed to be effective after April 1. Butler Electric will provide both hard copies and electronic copies of all filings and required documentation. Staff and Rate Counsel reserve all rights to challenge any rate proposed in a future filing.

² In the Matter of the Application of the Borough of Butler to Establish a Mechanism for a Review of its Levelized Energy Adjustment Clause (LEAC) Rate, BPU Docket Nos. ER10020131, ER11020058, and ER12030292, dated May 31, 2013.

- (c) The Parties agree that the LEAC cap shall remain \$0.151718 per kWh.
- (d) The Parties agree that Butler Electric shall hold a public hearing by March 31 of every year in which it makes a biennial LEAC filing, consistent with the provisions of N.J.S.A. 48:2-32.4. 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. Staff and Rate Counsel will be given the opportunity to comment on the notice prior to publication.
- (e) 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. ER86040390, OAL Docket No. PUC 3596-86, dated April 23, 1987, and as further amended by the conditions of this Stipulation. With respect to the biennial LEAC rate, the Parties agree further as follows:
1. Unless otherwise altered by the Board, Butler Electric shall have a biennial LEAC proceeding that shall be filed February 1, to be effective after April 1 of the same year.
 2. 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).
 3. Each quarterly adjustment shall be calculated to eliminate current year cumulative LEAC over- or under-recoveries over a twelve-month period.

4. Interest on over-recoveries shall 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 (2) 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.
5. Butler Electric shall continue to provide financial reports and data to Staff and Rate Counsel to support each quarterly LEAC adjustment filing at least 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. Butler Electric shall continue to provide the "Required Filing Contents" outlined in Schedule A of the Borough's current biennial filing. 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.
8. 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 each month to the total kWh sold 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.

9. The Parties agree that Butler Electric will provide as an exhibit to its biennial filing documentation on any new power supply contracts into which it enters during the previous two-year period, 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.

10. 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 calculation 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.

11. 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. A copy of the Petition and all documents filed with the Board will be served on Rate Counsel at its address at the time of the filing.
- Any discovery by Staff or Rate Counsel is to be served by March 1.
- All responses to discovery to be provided by March 15.
- Butler Electric to provide a draft Stipulation by April 1.

- The Petition will be placed on Board's May agenda. Staff will prepare an agenda package prior to the Board's May agenda as long as the Parties have resolved the issues and signed a 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.

12. The total impact on the monthly bill of the average residential customer using 1,000 kWh is a \$24.57 or 17.45% decrease.

5. 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 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 had not been signed, and all Parties shall be returned to the position they were in immediately before this Stipulation was signed.

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

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

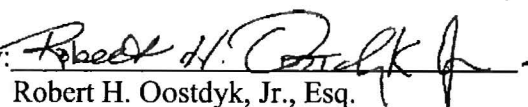
(a) By executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation.

(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.

The Parties further acknowledge that a Board Order approving this Stipulation will become effective upon service of said Board Order, or upon such date after the service thereof as the Board may specify, in accordance with N.J.S.A. 48:2-40.

MURPHY McKEON, P.C.
Attorney for Petitioner,
Borough of Butler Electric Utility

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

Dated: April 28, 2020

STEFANIE A. BRAND, ESQ.
Director, Rate Counsel

By: Brian Weeks
Brian Weeks, Esq.
Deputy Rate Counsel

Dated:

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Staff of the Board of Public Utilities

By: Matko Ilic
Matko Ilic
Deputy Attorney General

Dated: 4/28/2020