



Agenda Date: 5/22/24  
Agenda Item: 2B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE APPLICATION OF THE	)	DECISION AND ORDER
BOROUGH OF BUTLER FOR AN ORDER APPROVING	)	APPROVING STIPULATION
A LEVELIZED ENERGY ADJUSTMENT CLAUSE	)	
("L.E.A.C.") FOR APRIL 1, 2024 TO JUNE 30, 2024	)	DOCKET NO. ER24010068

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Robert H. Oostdyk, Jr., Esq.**, on behalf of the Borough of Butler

BY THE BOARD:

On January 25, 2024, the Borough of Butler ("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, 2024 to June 30, 2024 ("2024 LEAC Petition"). 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 AND PROCEDURAL HISTORY**

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 with energy purchases governed by the procedures described in N.J.S.A. 40A:11-5(6).

## **2024 LEAC PETITION**

On January 25, 2024, Butler Electric filed the 2024 LEAC Petition and requested approval to: 1) adjust the LEAC rate from \$0.057195 per kilowatt hour (“kWh”) to \$0.022856 per kWh to be effective for services rendered after April 1, 2024; and 2) continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated May 25, 2016 in BPU Docket No. ER16010092.<sup>1</sup>

After adequate public notice, on April 16, 2024, virtual public hearings were held. No members of the public attended the hearings, and the Board received no comments.

## **STIPULATION**

Following review of the 2024 LEAC Petition and discovery responses, the Parties executed the Stipulation, which provides for the following:<sup>2</sup>

4. Based upon Staff and Rate Counsel’s review of the 2024 LEAC Petition, the attachments to the 2024 LEAC Petition, responses to discovery, and after the April 16, 2024 public hearing, the Parties stipulate and agree to the following terms of settlement:
  - (a) Butler Electric’s request for a LEAC rate of \$0.022856 per kWh for usage effective after April 1, 2024 is reasonable.
  - (b) Butler Electric will file a complete LEAC Petition with the Board containing 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.<sup>3</sup> Butler Electric filed the Verified Petition by February 1, 2024, therefore, the next filing is due by February 1, 2026. Thereafter, biennial period LEAC 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 electronic copies of all filings and required documentation. Staff and Rate Counsel reserve all rights to challenge any rate proposed in a future filing.
  - (c) The LEAC cap shall remain \$0.151718 per kWh.
  - (d) Butler Electric shall hold a public hearing on or before 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

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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) from April 1, 2016 to June 30, 2016, BPU Docket No. ER16010092, Order dated May 25, 2016 (“2016 LEAC Order”).

<sup>2</sup> 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.

<sup>3</sup> 2016 LEAC Order.

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 dated April 27, 2001, in Docket No. ER01010076, Butler Electric may continue to implement a LEAC rate as authorized by Board Order dated April 23, 1987, Docket No. ER86040390, OAL Docket No. PUC 3596-86, and as further amended by the conditions of the Stipulation.<sup>4,5</sup> With respect to the biennial LEAC rate, the Parties agree:
1. Unless otherwise altered by the Board, Butler Electric shall file for its future biennial LEAC proceedings on or before February 1, to be effective after April 1 of the same year.
  2. Butler Electric's LEAC rate may be adjusted on a quarterly basis during the biennial LEAC period. Butler Electric 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 12-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 shall 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 Petitioner'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

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<sup>4</sup> In re the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause (LEAC) from April 1, 2001 to March 31, 2002, BPU Docket No. ER01010076, Order dated May 27, 2001.

<sup>5</sup> In re the Application of the Borough of Butler for an Order Approving a Decrease in its Levelized Energy Adjustment Clause, BPU Docket No. ER8604390, Order dated April 23, 1987.

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 utilized since the last filing;
  - b) the reasons 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 (2) 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 during the previous two (2)-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 11-month average, the most recent 12-month average, or the average over the past five (5) 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 to any such proceeding believes that an alternative methodology is appropriate.

11. To expedite the processing of Butler Electric's filings, the Parties agree to follow the following three (3)-month schedule for future audit petitions:

- Butler Electric will 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, on or before 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 on or before March 1.
- All responses to discovery to be provided on or before March 15.
- Butler Electric shall provide a draft Stipulation on or before April 1.
- The Parties will use best efforts to complete all paperwork in time for the Board to hear the matter during a May Agenda Meeting. However, should the Board, in its discretion, decide to hear the matter at a time other than May, the terms of the Stipulation will remain in full force and effect. 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 decrease of \$36.61 or 33.9%.

### **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 Butler Electric not incur debt which would have to be funded under Local Bond Law, N.J.S.A. 40A:2 et seq.

In light of the above, having reviewed the record and the attached Stipulation entered into by the Parties, the Board **HEREBY FINDS** that the Stipulation 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 \$0.022856 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 \$36.61 or 33.9%.

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, 2024.

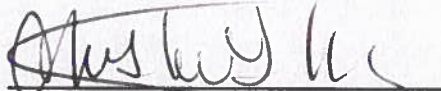
Butler Electric is **HEREBY AUTHORIZED** to continue its LEAC cap on quarterly LEAC adjustments which shall remain at \$0.151718 per kWh as previously authorized by the Local Finance Board pursuant to N.J.S.A. 40A:5A-25 and ratified by the Board.


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.

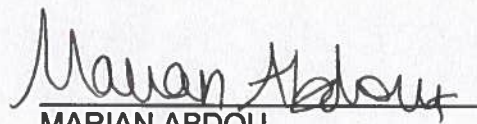
The effective date of this Board Order is May 29, 2024.

DATED: May 22, 2024

BOARD OF PUBLIC UTILITIES  
BY:

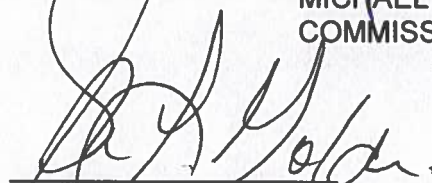
  
CHRISTINE GUHL-SADOVY  
PRESIDENT

  
DR. ZENON CHRISTODOULOU  
COMMISSIONER

  
MARIAN ABDOU  
COMMISSIONER

  
MICHAEL BANGE  
COMMISSIONER

ATTEST:

  
SHERRY L. GOLDEN  
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 FOR AN ORDER  
APPROVING A LEVELIZED ENERGY ADJUSTMENT CLAUSE ("L.E.A.C.") FOR APRIL 1, 2024 TO  
JUNE 30, 2024

DOCKET NO. ER24010068

SERVICE LIST

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STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

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In the Matter of the Application of the	:	BPU Docket No. ER24010068
BOROUGH OF BUTLER for an	:	
Order Approving a Levelized Energy	:	
Adjustment Clause (L.E.A.C.) for April 1, 2024	:	<b>Stipulation of Settlement</b>
to June 30, 2024	:	
	:	
	:	
	:	

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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’s Petition 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 January 25, 2024, Butler Electric filed, with the Board, a Verified Petition for approval of a Levelized Energy Adjustment Clause (“LEAC”) for the period commencing April 1, 2024 under BPU Docket No. ER24010068 (“Verified Petition”). Specifically, Butler Electric requested approval to: 1) adjust its LEAC rate from \$0.057195 per kilowatt hour (“kWh”) to \$0.022856 per kWh to be effective for services rendered on and after April 1, 2024; and 2)



continue to implement the LEAC quarterly adjustment rate mechanism as authorized by Board Order dated May 25, 2016, in Docket No. ER16010092.<sup>1</sup>

2. Two (2) public hearings were held virtually on April 16, 2024 at 4:30 p.m. and 5:30 p.m. No members of the public participated at the hearings and the Board received no written comments in this matter.

3. Staff and Rate Counsel propounded discovery requests on the Petitioner, whose responses Staff and Rate Counsel subsequently received and reviewed.

4. Based upon Staff and Rate Counsel's review of the Verified Petition, the attachments to the Verified Petition, responses to discovery, and after the April 16, 2024 public hearing, the Parties hereby stipulate and agree to the following terms of settlement:

(a) Butler Electric's request for a LEAC rate of \$0.022856 per kWh for usage effective after April 1, 2024 is reasonable.

(b) Butler Electric will file a complete LEAC Petition with the Board containing 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.<sup>2</sup> Butler Electric filed the Verified Petition by February 1, 2024, therefore, the next filing is due by February 1, 2026. Thereafter, biennial period LEAC 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 electronic copies of all

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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) from April 1, 2016 to June 30, 2016, BPU Docket No. ER16010092, Order dated May 25, 2016.

<sup>2</sup> In re 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, Order dated May 31, 2013.

filings and required documentation. Staff and Rate Counsel reserve all rights to challenge any rate proposed in a future filing.

- (c) The LEAC cap shall remain \$0.151718 per kWh.
- (d) Butler Electric shall hold a public hearing on or before 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 dated April 27, 2001, in Docket No. ER01010076, Butler Electric may continue to implement a LEAC rate as authorized by Board Order dated April 23, 1987, Docket No. ER86040390, OAL Docket No. PUC 3596-86, and as further amended by the conditions of this Stipulation.<sup>3 4</sup> With respect to the biennial LEAC rate, the Parties hereby agree:

1. Unless otherwise altered by the Board, Butler Electric shall file for its future biennial LEAC proceedings on or before February 1, to be effective after April 1 of the same year.
2. Butler Electric's LEAC rate may be adjusted on a quarterly basis during the biennial LEAC period. The Petitioner must make its

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<sup>3</sup> In re the Application of the Borough of Butler Electric Utility for an Order Approving a Levelized Energy Adjustment Clause (LEAC) from April 1, 2001 to March 31, 2002, BPU Docket No. ER01010076, Order dated May 27, 2001.

<sup>4</sup> In re the Application of the Borough of Butler for an Order Approving a Decrease in its Levelized Energy Adjustment Clause, BPU Docket No. ER8604390, Order dated April 23, 1987.

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 (12)-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 shall 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 Petitioner'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 utilized since the last filing; b) the reasons 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 (2) 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 during the previous two (2)-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 (11)-month average, the most recent twelve (12)-month average, or the average over the past five (5) 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 to any such proceeding believes that an alternative methodology is appropriate.
11. To expedite the processing of Butler Electric's filings, the Parties agree to follow the following three (3)-month schedule for future audit petitions:
  - Butler Electric will 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, on or before 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 on or before March 1.
- All responses to discovery to be provided on or before March 15.
- Butler Electric shall provide a draft Stipulation on or before April 1.
- The Parties will use best efforts to complete all paperwork in time for the Board to hear the matter during a May Agenda Meeting. However, should the Board, in its discretion, decide to hear the matter at a time other than May, the terms of this Stipulation will remain in full force and effect. 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 decrease of \$36.61 or 33.9%.

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:

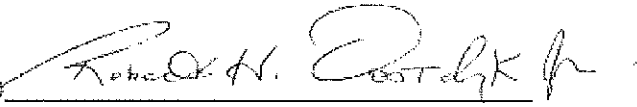
(a) By executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation.

(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.

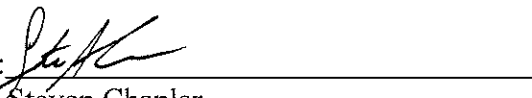
Dated: 04/24/2024

BRIAN O. LIPMAN, ESQ.  
Director, Rate Counsel

By:   
Brian Weeks, Esq.  
Deputy Rate Counsel

Dated: 4/24/24

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Staff of the Board of Public Utilities

By:   
Steven Chaplar  
Deputy Attorney General

Dated: April 24, 2024