



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF A REVIEW OF BUTLER)	ORDER RETAINING
ELECTRIC COMPANY'S BASE RATES)	JURISDICTION
)	
)	DOCKET NO. ER25020039

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Robert H. Oostdyk, Jr., Esq., Murphy McKeon, P.C., on behalf of Butler Electric Utility

BY THE BOARD:

On July 8, 2024, pursuant to N.J.S.A. 40A:5A-25, the Borough of Butler ("Borough") Electric Utility ("Butler Electric") filed an application with the Local Finance Board ("LFB"), a division of the New Jersey Department of Community Affairs established pursuant to N.J.S.A. 40A:9-22.1 *et seq.*, seeking approval of an increase in the base portion of its rates of approximately twenty-six percent (26%) ("Application"). By resolution dated August 14, 2024, the LFB granted Butler Electric's request to increase its base rates by no more than twenty-six percent (26%) ("Resolution"). By this Decision and Order, the New Jersey Board of Public Utilities ("Board") considers whether to retain jurisdiction over the Application and subsequent rate increase.

BACKGROUND AND PROCEDURAL HISTORY

Butler Electric is a municipal utility that serves approximately 11,900 customers throughout the Borough, the boroughs of Bloomingdale, Kinnelon, and Riverdale, and the Township of West Milford. Approximately sixty-five percent (65%) of Butler Electric's customers reside outside the Borough. Pursuant to N.J.S.A. 40:62-24, municipal utilities that serve customers outside their corporate limits are treated as public utilities subject to the jurisdiction of the Board with respect to such customers. In light of this jurisdiction, Butler Electric filed a petition with the Board for an increase in its base rates on January 24, 2003. By Order dated June 10, 2004, the Board granted Butler Electric's base rate increase; to date, Butler Electric has not filed with the Board for any subsequent increase in its base rates.¹

¹ In re the Petition of the Borough of Butler Electric Utility to Increase its Base Rate and Revise its Tariff and In re the Application of 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 Nos. ER03010049 and ER03010063, Order dated June 10, 2004.

By the Application, the Borough sought permission from the LFB, pursuant to N.J.S.A. 40A:5A-25, to raise its base rates by approximately twenty-six percent (26%). In its Application, Butler Electric asserted that its base rates have not been raised in sixteen (16) years and that its costs have increased significantly since its last base rate filing. Butler Electric further noted that it currently has a \$1.65 million budget deficit and, if the base rate increase went unapproved, the Borough's taxpayers would be required to fund the full deficit despite that deficit resulting from service provided not only in the Borough, but to all of the municipalities throughout Butler Electric's territory. Butler Electric further noted that, pursuant to N.J.S.A. 40A:31-23, municipal water utilities subject to the jurisdiction of the Board may increase their rates without Board approval if the rates charged within and outside the utility's municipal boundaries are the same, but noted there is no such allowance for municipal electric utilities.

By the Resolution, the LFB found that Butler Electric's current base rates were insufficient to avoid a budget deficit which would place an undue burden on the Borough's taxpayers. As such, the LFB approved the requested increase on a permanent basis, subject to the condition that Butler Electric not make an application to the LFB to increase the base portion of its rates prior to January 1, 2027 unless the Board declines jurisdiction over the rate increase or Butler Electric is able to document that a petition to increase the base rate has been submitted to the Board for review.

By letter dated September 12, 2024, Deputy Attorney General ("DAG") Steven Chaplar, on behalf of the Board, indicated that, pursuant to N.J.S.A. 48:2-21, N.J.S.A. 48:2-21.1, and N.J.A.C. 14:1-5.12, Butler must file a formal petition with the Board for a final rate determination related to the requests in the Application. In response, by letter dated September 17, 2024, Butler Electric contended that the Resolution granted a permanent rate increase and required no formal petition to be filed with the Board. Butler Electric stated that, accordingly, it would not file a petition with the Board for the requested increase, contending that a base rate increase in its territory must be approved either by application to the LFB pursuant to N.J.S.A. 40A:5A-25 or by application to the Board pursuant to N.J.S.A. 48:2-21, but not both.

By letter dated November 12, 2024, the New Jersey Division of Rate Counsel ("Rate Counsel") opposed Butler Electric's contentions and identified that the Board has jurisdiction over the instant rate increase with respect to Butler Electric customers located beyond the municipal boundaries of the Borough, pursuant to N.J.S.A. 40:62-24. Rate Counsel noted its concern that the requested increase applied to ratepayers outside the municipal boundaries of the Borough without any notice provided to Rate Counsel or opportunity for Rate Counsel to participate in the matter, thereby removing the due process protections normally afforded to ratepayers in a base rate proceeding. As such, Rate Counsel proffered that the instant rate increase is at odds with public utility rate-setting policy and practice in the State.

Rate Counsel further noted that Butler's September 17, 2024 letter and the Resolution are at odds with the applicable statutes governing base rate increases because the LFB has jurisdiction over rates set within the municipal boundaries of a municipal utility but the rates set for those customers outside such boundaries are subject to Board jurisdiction and therefore regulated like any other public utility. As such, the instant rate increase, with respect to the change in rates for customers outside the Borough, may not be set by the LFB and are subject to the Board's jurisdiction.

By letter dated January 7, 2025, Rate Counsel filed additional comments in this matter, noting that, on December 5, 2024, Butler Electric filed an application with the Board for an updated Levelized Energy Adjustment Clause ("LEAC") rate "that would almost triple" its current LEAC rate from \$0.027756 per kilowatt-hour ("kWh") to \$0.077221 per kWh. Rate Counsel identified that this increase is in addition to Butler Electric's increased base rates "that the [LFB] improperly

granted to Butler on an interim basis on August 14, 2024,” of which Rate Counsel first learned via DAG Chaplar’s September 12, 2024 correspondence. Rate Counsel noted that, because Butler Electric has not filed a formal petition with the Board requesting a final determination on its base rate increase, Rate Counsel has been deprived of the opportunity to exercise its jurisdiction under N.J.S.A. 52:27EE-48(a) and Butler Electric customers are therefore subject to two (2) significant rate increases over a short period without Board review. Rate Counsel concluded that the Board should exercise its jurisdiction over the instant base rate increase and direct Butler Electric to file a formal petition for a base rate case so the Board may determine whether Butler Electric’s rates are just and reasonable and whether Butler Electric is providing safe, adequate, and proper service at affordable rates.

BOARD STAFF’S (“STAFF’s”) RECOMMENDATION

Pursuant to N.J.S.A. 40:62-24, municipal utilities that serve customers outside their corporate limits are treated as public utilities subject to the jurisdiction of the Board with respect to such customers. In this instance, Butler Electric sought to increase base rates for all customers, including the sixty-five percent (65%) of its customer base located outside the corporate limits of the Borough. Butler Electric sought to increase its rates by twenty-six percent (26%) across all customer classes, regardless of whether those customers are situated within or beyond the corporate limits of the Borough. Because Butler sought to increase rates for the customers located outside the Borough’s corporate limits, the increases are subject to the provisions of N.J.S.A. 40:62-24 and therefore the jurisdiction of the Board. As a result, Staff recommends the Board assert its jurisdiction over this matter pursuant to N.J.S.A. 40:62-24.

Pursuant to N.J.S.A. 40A:5A-25, the LFB may grant a municipal public utility it has reason to believe is faced with financial difficulty an increase in rates notwithstanding any provisions to the contrary in N.J.S.A. 48:2-1 *et seq.* In this instance, the LFB agreed with Butler Electric’s contention that it would be met with financial hardship absent the requested rate increase and subsequently granted the rate increase across Butler Electric’s customer base. Because the customers for which Butler Electric’s service is considered a public utility regulated by the Board pursuant to N.J.S.A. 40:62-24 are subject to the instant rate increase, the increase to those customers’ rates remains subject to the Board’s jurisdiction pursuant to N.J.S.A. 48:2-21, N.J.S.A. 48:2-21.1, and any other such provisions as may apply to utility ratemaking subject to the Board’s jurisdiction. Although N.J.S.A. 40A:5A-25 authorizes the LFB to increase rates under certain circumstances notwithstanding the Board’s authority, it does not obviate the requirement to otherwise file with the Board and notice Rate Counsel. Staff therefore recommends the Board direct Butler Electric to file a petition for the increase of its base rates with respect to the customers it serves outside its corporate limits on or before January 1, 2027 and deem those rates interim and subject to refund until such time as Butler Electric may file its petition to increase base rates.

Butler Electric neither filed a formal petition with the Board seeking approval of the base rate increase nor did it serve notice of the requested increase on the Board or Rate Counsel, thereby limiting Rate Counsel's ability to advocate on behalf of the ratepayers in this matter. Pursuant to N.J.S.A. 52:27EE-48, Rate Counsel has the authority to represent the public interest in all utility "proceedings before and appeals from any State department, commission, authority, council, agency, or board charged with the regulation or control of any . . . utility regarding a requirement that the . . . utility provide a service or regarding the fixing of a rate" Pursuant to N.J.A.C. 14:1-5.12(b)(2), when a utility makes a filing to increase its base rates it must also serve notice of such increase on Rate Counsel such that Rate Counsel may be adequately apprised of the filing and enabled to adequately represent the ratepayers in the matter. As such, Staff recommends the Board direct Butler Electric to serve notice of all future rate increases with the Board and with Rate Counsel in accordance with all applicable ratemaking provisions.

DISCUSSION AND FINDINGS

The Board is vested with the power of general supervision, regulation of, and jurisdiction over all public utilities in the State. N.J.S.A. 48:2-13(a). Through that jurisdiction, it is the Board's authority to set just and reasonable public utility rates as may be necessary whenever the Board determines any existing rate to be unjust or unreasonable. N.J.S.A. 48:2-21(b)(1). Further, public utilities in the State include those municipal utilities that serve customers outside their corporate limits, with respect to those customers. N.J.S.A. 40:62-24. Those municipal utility customers are subject to the jurisdiction of the Board "to the same extent as other public utilities." Ibid.

Butler Electric serves a customer base of approximately 11,900 customers. Approximately sixty-five percent (65%) of Butler Electric's customers exist outside its corporate limits throughout the area surrounding the Borough. By the Application, Butler Electric sought not only LFB approval to increase rates within the Borough, but to increase rates for all Butler Electric customers, including the sixty-five percent (65%) of its customer base located outside the corporate limits of the Borough. Butler Electric identified that N.J.S.A. 40A:31-23 allows municipal water, but not electric, utilities to raise rates without Board approval provided those rates are the same within and outside the utility's municipal boundaries. By this exemption—which applies only to municipal water utilities—the State's legislature clearly intended no such allowance for municipal electric utilities and therefore intended municipal electric rate increases, such as the one at issue in this matter, to be subject to Board jurisdiction and approval regardless of whether rates charged within and outside the utility's municipal boundaries are the same.

Because Butler Electric serves customers outside its corporate limits, the Board **HEREBY FINDS**, pursuant to N.J.S.A. 40:62-24, Butler Electric's utility service provided to those customers outside its corporate limits constitutes a "public utility" as defined at N.J.S.A. 48:2-13(a). Because this service constitutes public utility service, the Board **FURTHER FINDS** that the rate increase approved by the Resolution, with respect to the Butler Electric customers located outside the Borough's corporate limits, is subject to the jurisdiction of the Board as set forth at N.J.S.A. 48:2-13. As such, the Board **HEREBY ADOPTS** the Staff's recommendation as set forth above and **HEREBY ORDERS** that the instant rate increase, and all future Butler Electric rate increases, with respect to Butler Electric customers located outside the corporate limits of the Borough, shall be subject to the jurisdiction of the Board as authorized by N.J.S.A. 40:62-24, N.J.S.A. 48:2-13, and all other statutes and regulations as may be applicable.

Pursuant to N.J.S.A. 40A:5A-25, the LFB has the authority to grant rate increases to municipal utilities when the LFB determines that, absent the requested increase, the municipal utility will face financial hardship. N.J.S.A. 40A:5A-25. Any LFB order issued pursuant to N.J.S.A. 40A:5A-

25 is “valid and enforceable notwithstanding any provisions of the contrary in [N.J.S.A.] 48:2-1 *et seq.*” Ibid. In this case, the LFB properly granted Butler Electric’s requested rate increase pursuant to its authority set forth at N.J.S.A. 40A:5A-25. However, because service provided to customers outside the Borough’s corporate limits is subject to the jurisdiction of the Board and therefore to the provisions of N.J.S.A. 48:2-1 *et seq.*, the rates set with respect to those customers are subject to Board approval.

As Staff noted, although N.J.S.A. 40A:5A-25 authorizes the LFB to increase rates under certain circumstances notwithstanding the Board’s authority, it does not obviate the requirement to otherwise file with the Board. It would be an unreasonable reading of the statute that Butler Electric could place itself in a position of financial hardship by electing not to file a rate case with the Board for many years and therefore create the very necessity to file with the LFB and bypass the Board. As Butler Electric noted itself in the Application, Butler Electric’s increased costs are the direct result of failing to file with the Board for at least sixteen (16) years. As such, the Board **FURTHER FINDS** that the rates set by the Resolution, with respect to the customers located outside the Borough’s corporate limits, are subject to the provisions of N.J.S.A. 40A:5A-25 and Board approval. The Board accepts Staff’s recommendation as set forth above and **FURTHER ORDERS** that the rates set in the Resolution, with respect to those customers outside the Borough’s corporate limits, be deemed interim and subject to refund until approved by the Board in Butler Electric’s next base rate case. Therefore, the Board **FURTHER ORDERS** Butler Electric to file a petition for a base rate case with respect to its customers located outside its corporate limits on or before January 1, 2027.


In accordance with the provisions set forth at N.J.A.C. 14:1-5.12(b)(2) and any other such regulations as may be applicable, the Board **FURTHER ORDERS** Butler Electric to file proper notice of all future ratemaking filings and procedures with the Board and Rate Counsel.

Butler Electric’s rates remain subject to audit by the Board. This Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of any Board Audit.


This Order shall be effective on March 26, 2025.

DATED: March 19, 2025

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRIL L. LEWIS
BOARD 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 A REVIEW OF BUTLER ELECTRIC COMPANY'S BASE RATES

BPU DOCKET NO. ER25020039

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