



Agenda Date: 4/25/18  
Agenda Item: 2D

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
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 )  
BOROUGH OF BUTLER ELECTRIC UTILITY FOR AN ) ORDER APPROVING  
ORDER APPROVING A LEVELIZED ENERGY ) STIPULATION  
ADJUSTMENT CLAUSE (LEAC) FROM APRIL 1, 2018 )  
TO JUNE 30, 2018 ) DOCKET NO. ER18020090

**Parties of Record:**

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

BY THE BOARD:

On February 1, 2018, the Borough of Butler Electric Utility ("Butler Electric") filed with the New Jersey Board of Public Utilities ("Board") a verified petition ("2018 LEAC Petition") for approval of a Levelized Energy Adjustment Clause ("LEAC") for the period April 1, 2018 to June 30, 2018 under BPU Docket No. ER18020090<sup>1</sup>. By this 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, the "Parties") intended to resolve the 2018 LEAC Petition.

**BACKGROUND/PROCEDURAL HISTORY**

Butler Electric 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 Boroughs of Butler, Bloomingdale and Kinnelon, and which 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).

<sup>1</sup> While the 2018 LEAC Petition stated Butler Electric sought approval for its LEAC through June 30, 2018, due to the now biennial filing, the petition in fact sought approval for its LEAC through March 31, 2020 with quarterly adjustments as discussed below.

On February 1, 2018, Butler Electric filed the 2018 LEAC Petition and requested approval to: (1) adjust the LEAC rate from \$0.071616 per kilowatt hour ("kWh") to \$0.074179 per kWh to be effective for services rendered on and after April 1, 2018; (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, 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.<sup>2</sup>

After adequate public notice, on March 20, 2018, a public hearing was held at the Borough of Butler Municipal Building. No members of the public attended the hearing or provided comments on the filing.

### **STIPULATION**

Following discovery, the Parties reached a settlement of all issues and on March 28, 2018 executed the Stipulation. The Stipulation provides the following:<sup>3</sup>

- (a) The Parties agree that Butler Electric's request for a LEAC rate of \$0.074179 per kWh for usage effective after April 1, 2018 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 Requirement,<sup>4</sup> once every two years for its periodic LEAC review by the Board. Butler Electric filed this petition in February of 2018, therefore the next filing will be due by February 1, 2020. Thereafter, biennial period audit filings will be made by February 1 of each year in which a filing is made, with rates to be effective after April 1. Both hard copies and electronic copies of all filings and required documentation will be provided.
- (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. Additionally, 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.

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<sup>2</sup> The Board's original Order dated April 23, 1987 was missing a digit in the docket number. The correct docket number is ER86040390.

<sup>3</sup> Although summarized 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.

<sup>4</sup> 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 (May 31, 2013) ("May 2013 Order").

- (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 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 fifteen (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. 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.

8. 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.
9. 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.
10. 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.
  - Petition to 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.

11. The total impact on the monthly bill of the average residential customer using 1,000 kWh is a \$2.73 or 2.29% increase.

### **DISCUSSION AND FINDING**

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 as amended by the Stipulation, including documents required pursuant to the Stipulation by February 1<sup>st</sup> 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 \$0.074179 per kWh for services rendered after the effective date of this Order. The total increase on the monthly bill for the average residential customer using 1,000 kWh would be \$2.73 or a 2.29% increase.

The Board **HEREBY DIRECTS** Butler Electric to file the appropriate tariff pages 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 Staff and Rate Counsel within five (5) business days of the effective date of this Order.

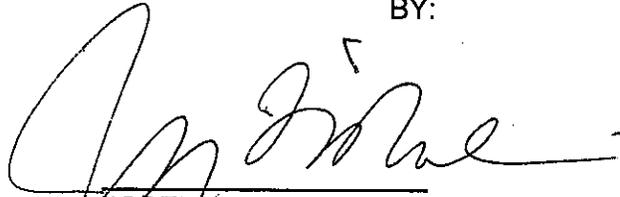
Butler Electric is **HEREBY AUTHORIZED** to continue its LEAC cap which shall remain at \$0.151718 per kWh as previously authorized by the Local Finance Board pursuant to N.J.S.A. 40A:5A-25 and ratified by the Board in its May 2013 Order.

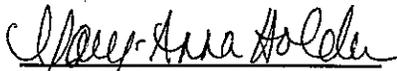
Butler Electric's LEAC costs remain subject to audit by the Board, and approval of the Stipulation shall not preclude or prohibit the Board from taking any such actions deemed appropriate as a result of any such audit.

The effective date of this Order is May 5, 2018.

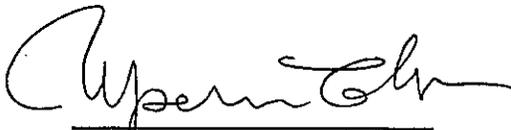
DATED: 4/25/18

BOARD OF PUBLIC UTILITIES  
BY:

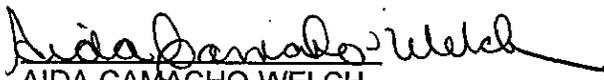
  
JOSEPH L. FIORDALISO  
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MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

  
ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
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 Electric Utility for an Order Approving a  
Levelized Energy Adjustment Clause (LEAC) from April 1, 2018 to June 30, 2018  
BPU DOCKET NO. ER18020090

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. ER18020090
Borough of Butler Electric Utility for an	:	
Order Approving a Levelized Energy	:	
Adjustment Clause (LEAC) from April 1, 2018	:	<b>Stipulation of Settlement</b>
to June 30, 2018	:	
	:	
	:	
	:	

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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, 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 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, 2018, Butler Electric filed with the Board a Verified Petition for approval of a Levelized Energy Adjustment Clause (“LEAC”) for the period April 1, 2018 to June 30, 2018<sup>1</sup> under BPU Docket No. ER18020090. Specifically, Butler Electric requested approval to: (1) adjust the LEAC rate from \$0.071616 per kWh to \$0.074179 per kWh to be effective for services rendered on and after April 1, 2018; (2) continue the cap level of \$0.151718 per kWh on the quarterly LEAC

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<sup>1</sup> While the Petition stated Butler sought approval for its LEAC through June 30, 2018, due to the now-biennial filing the Petition in fact sought approval for its LEAC through March 31, 2020 with quarterly adjustments as discussed below.

adjustment that had been approved on September 17, 2010 by the State of New Jersey, Department of Community Affairs, Division of Local Government Services, Local Finance Board, pursuant to N.J.S.A. 40A:4A-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 March 20, 2018. No members of the public attended.

3. Staff and Rate Counsel propounded discovery requests 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 and responses to discovery, and after a public hearing was held on March 20, 2018, 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 \$0.074179 per kWh for usage effective after April 1, 2018 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 Requirement,<sup>2</sup> once every two years for its periodic LEAC review by the Board. Butler Electric filed this petition in February of 2018, therefore the next filing will be due by February 1, 2020. Thereafter, biennial period audit filings will be made by February 1 of each year in which a filing is made, with rates to be effective after April 1. Both hard copies and electronic copies of all filings and required documentation will be provided.

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<sup>2</sup> 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. Additionally, 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 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 fifteen (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. 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.

8. 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.
9. 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.

10. 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.
  - Petition to 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.

11. The total impact on the monthly bill of the average residential customer using 1,000 kWh is a \$2.73 or 2.29% increase.

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 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 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:

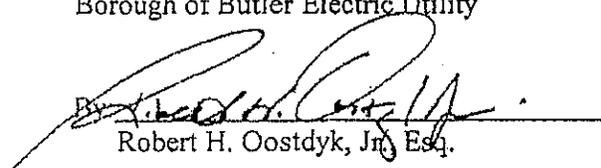
(a) By executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation.

(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.

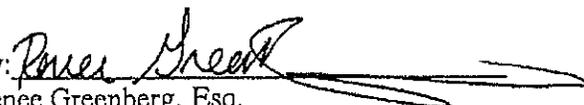
Dated:

STEFANIE A. BRAND, ESQ.  
Director, Rate Counsel

By:   
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:   
Renee Greenberg, Esq.  
Deputy Attorney General

Dated: 3/28/2018