



end of each energy year. The second component of the ZECRC is the Return of Excess Collections Credit Rate (“RECCR”).

Within 60 days of the filing of each EDC’s tariff, and upon public notice, opportunity for comment, and a public hearing, if consistent with the provisions of the Act, the Act requires the Board to approve the appropriate tariffs.

On December 16, 2020, the Board approved Butler’s request to revise its RECCR, resulting in an overall ZECRC rate of \$0.003851 per kWh, excluding New Jersey Sales and Use Tax (“SUT”).<sup>4</sup> By Order dated April 6, 2022, the Board approved Butler’s request to revise its RECCR, resulting in a total ZECRC rate of \$0.003917 per kWh, excluding SUT.<sup>5</sup> Each of these instances resulted in a charge to customers that was lower than the \$0.004 per kWh ZEC Charge because the RECCR was a credit, not a charge.

### **THE OCTOBER 13, 2022 PETITION**

On October 13, 2022, Butler filed a petition to revise its RECCR to \$0.000073 as of January 1, 2023 to prevent further under-collection, claiming that the rate approved in the April 2022 Order did not become effective until May 1, 2022, resulting in an excess return of over-collection to customers (“Petition”). On December 15, 2022, the Company updated its requested rate, and proposed to revise its RECCR to \$0.000069. The revised RECCR would result in an increase in the Company’s ZECRC from \$0.003917 per kWh before SUT to \$0.004069 per kWh before SUT. The Company estimates its net balance for Energy Years 2021 and 2022 to be an under-collection of \$7,754.89. Butler proposed to carry over any remaining balance due to customers, including interest, to the next year’s RECCR filing.

As such, Butler proposed a ZEC Charge of \$0.0040000 plus a RECCR of \$0.000069 for a total ZECRC of \$0.004069 per kWh before SUT.

The Company further requested that the Board handle RECCR filings similarly to Basic Generation Service reconciliation filings: via a 30-day notice compliance filing with provisional rates subject to additional examination by the Board.<sup>6</sup> The Company asserted that this change would allow the Company to most efficiently handle its ZECRC collection balances and help reduce regulatory expenses related to notice requirements.

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<sup>4</sup> In re the Implementation of L. 2018, C. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants; In re the Petition of Butler Electric for Approval of a Zero Emission Certificate Recovery Charge, BPU Docket Nos. EO18080899 and EO18091018, Order dated December 16, 2020.

<sup>5</sup> In re the Implementation of L. 2018, C. 16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants; In re Butler Electric for Approval of a Zero Emission Certificate Recovery Charge, BPU Docket Nos. EO18080899 and EO21111214, Order dated April 6, 2022 (“April 2022 Order”).

<sup>6</sup> Butler made this same request in its October 15, 2021 RECCR filing, but the Board declined to rule on that request in the April 2022 Order. See April 2022 Order at 3 (“The Board declines at this time to predetermine that Butler’s future RECCR adjustment filings will not require, or will not otherwise justify according to the Board’s discretion, the holding of public hearings.”).

After notice in newspapers of general circulation within the Company's service territory, virtual public hearings were held on December 20, 2022 at 4:30 p.m. and 5:30 p.m.<sup>7</sup> No members of the public attended the hearing. Additionally, the Board received no written comments from the public regarding the Petition.

### **THE NEW JERSEY DIVISION OF RATE COUNSEL'S COMMENTS AND BUTLER'S REPLY**

On February 8, 2023, the New Jersey Division of Rate Counsel ("Rate Counsel") filed a letter with the Board recommending denial of Butler's request. Rate Counsel proffered that N.J.S.A. 48:3-87.5(j) "only permits the Board to adjust the ZEC charge under specific circumstances, none of which are relevant here." Therefore, according to Rate Counsel, the Board does not have the authority to grant Butler's requested ZECRC of \$0.004069. Rate Counsel further noted that "the statute does not provide for a reconciliation of over-credited amounts," and as such, Butler's request to charge its customers above \$0.004 per kWh is "inconsistent with the Board's authority under the statute" and the Board cannot grant any adjustment to Butler's RECCR that would set the total ZECRC amount above \$0.004 per kWh. Rate Counsel also noted that Butler did not file with the Board to adjust its rate when its ZECRC excess collection balance approached zero, as Butler provided it would in its October 15, 2021 petition. Rate Counsel further argued that it is unaware of any new information since the April 2022 Order to justify granting Butler's request to allow this and future ZECRC filings to be handled via a 30-day-notice compliance filing.

On February 21, 2023, Butler responded to Rate Counsel's comments, asserting that the \$0.004 per kWh charge was the ZEC charge, not the total ZECRC. Butler asserted that the charge of \$0.004 per kWh refers to the amount nuclear plants may recover, not the limit a utility can charge its customers to recover the charges it must pay to the nuclear plants. Additionally, Butler noted that its October 15, 2021 petition served as a notice that its RECCR needed be set to zero as a result of Butler's excess refunds at that time. Butler noted that this change did not occur due to deviations from the prescribed timeline. Butler also referred to N.J.S.A. 48:3-87.5(j)(2), proffering that ZEC revenues are based on actual collected revenues and, due to the COVID-19 pandemic, nuclear providers received ZEC payments in excess of the actual revenues collected. In response to Rate Counsel's comment regarding the requested compliance filings, the Company noted that they request a "streamlined" process by which to file its ZECRC.

### **DISCUSSION AND FINDINGS**

The Board reviewed the record in this matter including the Petition, Rate Counsel's comments, and Butler's reply.

The applicable law is N.J.S.A. 48:3-87.5(j)(1) which provides, in pertinent part, as follows:

The board shall order the full recovery of all costs associated with the electric utility's required procurement of ZECs, and with the board's implementation of the ZEC program under this act, through a non-bypassable, irrevocable charge imposed on the electric public utility's retail distribution customers. Within 150 days after the date of enactment of this act, each electric public utility shall file with the board a tariff to recover from its retail distribution customers a charge in the amount of \$0.004 per

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<sup>7</sup> Due to the COVID-19 Pandemic, the public hearings were held virtually.

kilowatt-hour which reflects the emissions avoidance benefits associated with the continued operation of selected nuclear power plants.

The Board disagrees with Rate Counsel's arguments in opposition. Pursuant to N.J.S.A. 48:3-87.5(j)(1) the Board shall "order the full recovery of all costs associated with the electric public utility's required procurement of ZECs . . . ." The ZEC charge component mandated by this section represents one (1) component by which the utilities may recover those costs. However, this section is silent as to recovery when the ZEC charge component, capped at \$0.004 per kWh, is insufficient for the utility to recover its costs in full.

In this instance, Butler petitioned to use its RECCR, traditionally a return to customers when a utility's ZEC charge results in an over-recovery, to satisfy its statutory entitlement to full recovery of costs associated with the procurement of ZECs. Butler did not propose to set its ZEC charge component rate above the clear statutory mandate of \$0.004 per kWh.

As such, the Board **HEREBY FINDS** Butler's proposed RECCR to be consistent with the Act and necessary for it to fully recover its costs associated with the procurement of ZECs. Accordingly, the Board **HEREBY APPROVES** Butler's revised total ZECRC rate of \$0.004069 per kWh, excluding SUT, for service rendered on and after March 15, 2023. As a result, a residential customer using approximately 650 kWh per month will see an increase of \$0.11 in their monthly bill.

Pursuant to N.J.S.A. 48:2-32.4 and 48:2-32.6, public hearings must be held to review applications by gas and electric light, heat and power companies other than municipally owned companies "for significant increases, changes, or alterations in their rate schedules . . . ." The Board **HEREBY NOTES** that it considers any reduction to a credit rate as an increase in that rate and customers' respective bills. The Board declines at this time to predetermine that Butler's future RECCR adjustment filings will not require, or otherwise justify according to the Board's discretion, public hearings. Accordingly, the Board **HEREBY DENIES** Butler's request that, if future RECCR adjustments are required, rate changes be handled via a 30-day compliance filing.

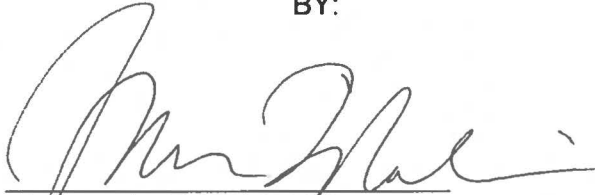
The Board **HEREBY DIRECTS** Butler to file revised tariffs prior to March 15, 2023.

The Company's costs will remain subject to audit by the Board. This Order shall not preclude or prohibit the Board from taking further action relating to any such audit.

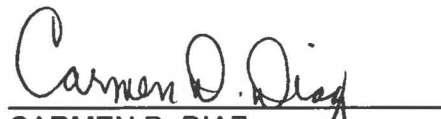
The effective date of this Order is March 13, 2023.

DATED: March 6, 2023

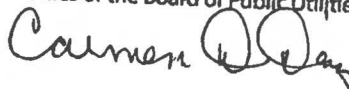
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CARMEN D. DIAZ  
ACTING SECRETARY

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



IN THE MATTER OF THE PETITION OF BUTLER ELECTRIC FOR APPROVAL OF A ZERO EMISSION  
CERTIFICATE RECOVERY CHARGE

BPU DOCKET NO. EO22100629

SERVICE LIST

<p><b><u>Board of Public Utilities</u></b> 44 South Clinton Avenue, 1<sup>st</sup> Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Carmen D. Diaz, Acting Secretary <a href="mailto:board.secretary@bpu.nj.gov">board.secretary@bpu.nj.gov</a></p> <p>Stacy Peterson, Deputy Executive Director <a href="mailto:stacy.peterson@bpu.nj.gov">stacy.peterson@bpu.nj.gov</a></p> <p><b><u>Office of General Counsel</u></b></p> <p>Michael Beck, General Counsel <a href="mailto:michael.beck@bpu.nj.gov">michael.beck@bpu.nj.gov</a></p> <p>Carol Artale, Deputy General Counsel <a href="mailto:carol.artale@bpu.nj.gov">carol.artale@bpu.nj.gov</a></p> <p>Heather Weisband, Senior Counsel <a href="mailto:heather.weisband@bpu.nj.gov">heather.weisband@bpu.nj.gov</a></p> <p>Michael Hunter, Regulatory Officer <a href="mailto:michael.hunter@bpu.nj.gov">michael.hunter@bpu.nj.gov</a></p> <p><b><u>Division of Water and Energy</u></b></p> <p>Mike Kammer, Director <a href="mailto:mike.kammer@bpu.nj.gov">mike.kammer@bpu.nj.gov</a></p> <p>Malike Cummings, Deputy Director <a href="mailto:malike.cummings@bpu.nj.gov">malike.cummings@bpu.nj.gov</a></p> <p>Scott Sumliner <a href="mailto:scott.sumliner@bpu.nj.gov">scott.sumliner@bpu.nj.gov</a></p> <p><b><u>New Jersey Division of Law</u></b> NJ Department of Law and Public Safety Richard J. Hughes Justice Complex Public Utilities Section 25 Market Street, P.O. Box 112 Trenton, NJ 08625</p> <p>Pamela Owen, ASC, DAG <a href="mailto:pamela.owen@law.njoag.gov">pamela.owen@law.njoag.gov</a></p> <p>Terel Klein, DAG <a href="mailto:terel.klein@law.njoag.gov">terel.klein@law.njoag.gov</a></p> <p>Daren Eppley, DAG <a href="mailto:daren.eppley@law.njoag.gov">daren.eppley@law.njoag.gov</a></p>	<p><b><u>New Jersey Division of Rate Counsel</u></b> 140 East Front Street, 4<sup>th</sup> Floor Post Office Box 003 Trenton, NJ 08625</p> <p>Brian O. Lipman, Esq., Director <a href="mailto:blipman@rpa.nj.gov">blipman@rpa.nj.gov</a></p> <p>T. David Wand, Esq., Managing Attorney <a href="mailto:dwand@rpa.nj.gov">dwand@rpa.nj.gov</a></p> <p><b><u>Butler Electric Utility</u></b> Robert H. Oostdyk, Jr., Esq. Murphy McKeon, P.C. 51 Route 23 South P.O. Box 70 Riverdale, NJ 07457 <a href="mailto:roostdyk@murphymckeonlaw.com">roostdyk@murphymckeonlaw.com</a></p> <p>James Lampmann Borough Administrator One Ace Road Butler, NJ 07405 <a href="mailto:jlampmann@butlerborough.com">jlampmann@butlerborough.com</a></p> <p><b><u>Public Service Electric and Gas Company</u></b> PSEG Services Corporation 80 Park Plaza, T5 Post Office Box 570 Newark, NJ 07102</p> <p>Matthew M. Weissman, Esq. <a href="mailto:matthew.weissman@pseg.com">matthew.weissman@pseg.com</a></p> <p>Donna Powell <a href="mailto:donna.powell@pseg.com">donna.powell@pseg.com</a></p> <p>Michele Falcao <a href="mailto:michele.falcao@pseg.com">michele.falcao@pseg.com</a></p> <p>Stephen Swetz <a href="mailto:stephen.swetz@pseg.com">stephen.swetz@pseg.com</a></p> <p>Caitlyn White <a href="mailto:caitlyn.white@pseg.com">caitlyn.white@pseg.com</a></p>
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<p><b><u>Atlantic City Electric Company</u></b> 500 N. Wakefield Drive PO Box 6066 Newark, DE 19714-6066</p> <p>Philip J. Passanante, Esq. <a href="mailto:philip.passanante@pepcoholdings.com">philip.passanante@pepcoholdings.com</a></p> <p>Susan DeVito <a href="mailto:susan.devito@pepcoholdings.com">susan.devito@pepcoholdings.com</a></p> <p>Heather Hall <a href="mailto:heather.hall@pepcoholdings.com">heather.hall@pepcoholdings.com</a></p> <p>Thomas Hahn <a href="mailto:thomas.hahn@pepcoholdings.com">thomas.hahn@pepcoholdings.com</a></p> <p><b><u>Rockland Electric Company</u></b> 4 Irving Place New York, NY 10003</p> <p>Margaret Comes, Esq. Associate Counsel <a href="mailto:comesm@coned.com">comesm@coned.com</a></p> <p>William Atzl, Jr. <a href="mailto:atzlw@coned.com">atzlw@coned.com</a></p> <p>Cheryl Ruggiero <a href="mailto:ruggieroc@coned.com">ruggieroc@coned.com</a></p>	<p><b><u>Jersey Central Power &amp; Light Company</u></b> 300 Madison Avenue PO Box 1911 Morristown, NJ 07962-1911</p> <p>Mark A. Mader Director, Rates &amp; Regulatory Affairs – NJ <a href="mailto:mamader@firstenergycorp.com">mamader@firstenergycorp.com</a></p> <p>Thomas Donadio <a href="mailto:tdonadio@firstenergycorp.com">tdonadio@firstenergycorp.com</a></p> <p>Joshua R. Eckert, Esq. <a href="mailto:jeckert@firstenergycorp.com">jeckert@firstenergycorp.com</a></p>
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