IN THE MATTER OF
ROCKLAND ELECTRIC COMPANY

Decided May 28, 1982

Initial Decision

SYNOPSIS

The Rockland Electric Company applied to the Board of Public Utilities for a change in its fuel cost adjustment rate (Levelized Energy Adjustment Clause). After a hearing before an administrative law judge, the judge determined that two unresolved issues existed: 1) interest sought on the utility's under and overrecovery and 2) the need for an automatic clause of prior period's L.E.A.C.

As to the first issue, the administrative law judge found that under the existing "one-way" interest system, the utility returned overrecovered funds to its customers with interest over the succeeding 12 month period. The utility proposed that there also be collection of interest on underrecoveries during the effective period of the L.E.A.C. arguing that the allowance of interest on underrecoveries as well as overrecoveries is an equitable response to monthly fluctuations in the cost of fuel. The judge noted that the philosophy behind fuel adjustment clauses was that the procedure allows a utility to rapidly pass on changes in its fuel costs to its customers without the necessity of going through a formal regulatory hearing and thus represents a "make whole" approach to the utility. The fuel adjustment clause is fixed—in this instance for 12 months and thus the necessity of full regulatory rate hearings in response to fluctuating fuel costs is precluded. The administrative law judge found that the adoption of two-way interest would dissuade it from overestimating future energy costs and encourage it to accept a lower and stipulated L.E.A.C. than under the present "one-way" system. Additionally, the judge found that requiring customers to pay interest on fuel costs in excess of those provided for in the L.E.A.C. does no more than compensate a utility for the actual costs of fuel and that such a system would promote a reduction of risk to the utility which was found to be in both the best interest of the utility and its customers.

Accordingly, the administrative law judge concluded that a "two-way" interest system should be permitted as it would best serve the goal of compensation of actual costs. The judge noted, however, that
equity does not necessarily require that the utility and its customers be subject to interest at the same rate, but requires only that parties be reimbursed the actual charges incurred by them in financing over- and underrecoveries. Thus the judge ordered that the utility should be reimbursed for underrecoveries with interest at a rate which reflects actual borrowing costs to it, the current monthly rate on short-term commercial paper. When the utility overrecovers, the customer was to be reimbursed at a rate which reflects his less favorable borrowing position.

As to the question of an automatic termination clause in the utility’s Levelized Energy Adjustment Clause, the administrative law judge noted that the utility’s L.E.A.C. does not currently contain an automatic termination clause but that Rate Counsel had proposed that such a clause be included in the L.E.A.C. The judge observed that what was desirable was a system which is equitable to all parties while promoting the goal of assuring that the utility is fully compensated for actual costs incurred with current ratepayers assuming current fuel costs. The judge found that automatic termination of a L.E.A.C. rate does not further the policy of ensuring that ratepayers assume current fuel costs, while also being basically inequitable, since it would subject the utility to an automatic termination even where a new rate has not been established by the termination date solely to forces beyond the utility’s control.

Accordingly, the judge ordered a filing date 105 days before the end of the utility’s L.E.A.C. rate in order to allow sufficient time for the regulatory process to be completed.


M. Diana Johnston, Deputy Public Advocate, and Margery S. Golin, Assistant Deputy Public Advocate, for Division of Rate Counsel (Joseph H. Rodriguez, Public Advocate, attorneys)

PARKER, ALJ:

On October 20, 1981, Rockland Electric Company, a public utility subject to the jurisdiction of the Board of Public Utilities, applied to the Board for a change in its fuel cost adjustment rate (Levelized Energy Adjustment Clause or L.E.A.C.).

The matter was transmitted to the Office of Administrative Law on October 23, 1981, for determination as a contested case pursuant
to N.J.S.A. 52:14F-1, et seq. A prehearing order issued on November 20, 1981, delineated the following unresolved issues:

1. Cost of past and projected power purchased from Orange & Rockland Utilities, Inc.;
2. Total power generation requirement for 1982;
3. Adjustment for over or underrecovery of L.E.A.C. for previous period;
4. Reconciliation period;
5. Interest sought on under and overrecovery ("two-way" interest);
6. Need for an automatic termination clause of prior period's L.E.A.C.

The parties reached an agreement resolving issues, 1, 2, 3 and 4 above. This agreement was incorporated in a Phase I Initial Decision issued by the undersigned on April 12, 1982. The agreement reserved issues 5 and 6 above for a Phase II determination. The parties were noticed and the record was concluded on April 23, 1982, upon receipt of a letter from the Attorney General's office regarding the closing of the briefing period.

FINDINGS OF FACT

Testimony was taken from Frederick W. Stewart, Manager, Rates, Rockland Electric Company, on February 9 and March 24, 1982; from Robert J. Henkes of Georgetown Consulting Group, on behalf of the New Jersey Department of the Public Advocate, on March 8, 1982; and from L. Mario DiValentino, Manager, Accounting, Orange and Rockland Utilities, Inc., and John Lombardi, Manager, Electric Planning, Orange and Rockland Utilities, Inc., on March 24, 1982. In addition, prefiled testimony of Mr. Stewart, Mr. Henkes and Mendel Grynsztejn, oil consultant, on behalf of the Department of the Public Advocate, have been received and considered by the court. Briefs were filed with the court by petitioner and Rate Counsel, a position paper was filed by Board Staff, and reply briefs were filed by petitioner and Rate Counsel.

A. Under the present "one-way" interest system, petitioner returns overrecovered funds to its customers with interest over the next twelve month period. Petitioner proposes that there also be collection of interest on underrecoveries during the effective period of the L.E.A.C.

Petitioner, through witnesses and briefs, argues that allowance of
interest on underrecoveries as well as overrecoveries is an equitable response to monthly fluctuations in the cost of fuel. Petitioner also argues that the nature of the fuel clause adjustment rate-making process further justifies the collection of interest on underrecoveries in that a public utility does not set its rates unilaterally. Rather, rates are established as a result of negotiations and/or litigation involving Rate Counsel, Board staff, and possibly intervening parties. Thus, petitioner contends, it is unfair to preclude it from collecting interest on underrecoveries where it is unable to charge the adjustment rate it proposed. Additionally, petitioner asserts that allowing "two-way" interest would dissuade it from overestimating projected energy costs and enhance settlements by encouraging acceptance of a projected adjustment rate "in the lower end of the range of reasonableness." Petitioner further supports its position by noting that other jurisdictions have adopted "two-way" interest.

Rate Counsel contends that petitioner has an adequate remedy in the event of underrecoveries in the Board's power to grant an interim rate increase. See, N.J.S.A. 48:2-21.1. Rate Counsel further argues that once the adjustment rate is established, only petitioner has the ability to control the price paid for fuel by its efficient purchase and use of such fuel. Thus, the argument runs, precluding the collection of interest on underrecoveries promotes operating efficiency because petitioner retains incentive to operate efficiently. Rate Counsel also stresses that petitioner has not shown a clear need for "two-way" interest and that other similarly situated public utilities in New Jersey do not collect such interest. Finally, Rate Counsel notes that the present policy of utilizing a levelized adjustment clause concept is more beneficial to petitioner than the tracking policy used prior to 1977.

In its position paper, Board staff points out that petitioner will not be denied any of its reasonable fuel expenses under the present system of "one-way" interest and that the present system furthers the goal of rate stability.

The philosophy behind fuel adjustment clauses is that the procedure allows a utility to rapidly pass on changes in its fuel costs to its consumers without the necessity of going through a formal regulatory hearing. Crew and Kleindorfer, Public Utility Economics 176 (1979). It thus represents a "make whole" approach to the utility. Prior practice in New Jersey required a utility to calculate its increased energy cost with a three-month delay, submit it to the Board for approval and unless disallowed by the Board within one week (see,
the rate became effective. The Board changed this procedure because of dissatisfaction with the fluctuations in customer's monthly bills produced by this practice. The levelized 'energy adjustment clause was introduced to better insure rate stability. Public Utility Economics, supra, at 176. Under the L.E.A.C., the fuel adjustment clause is fixed—in petitioner's case, for a period of 12 months.

The advantages of fuel adjustment clauses have been described as "reducing the transaction costs of regulatory hearings in a period of rising fuel prices" and "reduc[ing] risk . . . to the extent that risk is reduced by [a utility's] being sure of its ability to pass on increased fuel costs outside of its control." Id. at 177; See, generally Duffy, Electric Fuel Adjustment Clause Review in Ohio, 12 Akron L. Rev. 465, 486 (1979). Opposed to these advantages is the disadvantage that a guarantee of full recovery of its fuel costs may serve as a disinclination to a utility to operate efficiently. Public Utility Economics, supra, at 177.

A primary purpose of the establishment of fuel clause adjustment rates is to preclude the necessity of full regulatory rate hearings in response to fluctuating fuel costs. Rate Counsel contends that petitioner is adequately protected against the risk of upward cost fluctuations by its ability to petition the Board for readjustment while a L.E.A.C. is in effect. Any such readjustment which served to increase rates would be subject to the provisions of N.J.S.A. 48:2-32.4, requiring that the Board or the Office of Administrative Law "hold at least one public hearing in the municipality affected by the proposed adjustment." Clearly, the necessity of holding such a public hearing detracts from a purpose in adopting an energy adjustment clause of avoiding regulatory proceedings. Further, there is theoretically no limit to the frequency with which a utility could so petition the Board during the continuance of a L.E.A.C. thereby raising the spectre during periods of rapidly escalating fuel costs of excessive regulatory hearings and great rate instability. I therefore FIND that Rate Counsel's argument that petitioner has an adequate remedy in its ability to petition the Board for readjustment prior to expiration of the L.E.A.C. lacks merit. Similarly, Rate Counsel's contention that petitioner seek compensation for underrecoveries through rate proceedings should be rejected as deviating from the overall position of the Board that rates not be subjected to frequent change.

Petitioner's contention that adoption of two-way interest will dissuade it from overestimating future energy costs and encourage it to accept a lower L.E.A.C. than under the present one-way system is
persuasive. The court takes official notice that forecasting future energy costs is an inexact science and that Rate Counsel and/or Board staff often seek to reduce the fuel adjustment rates proposed by a utility. Knowing that it will be reimbursed with interest for any underrecoveries caused by the setting of a rate lower than that sought by it should encourage petitioner to enter into negotiated agreements as to rates, thereby reducing the regulatory lag as well as hearing costs. Although Rate Counsel states that the reasoning underlying this proposition is unclear, the court FINDS that assurance of full recovery of expended funds with interest will encourage the utility not to litigate a proposed rate "to the last cent." Additionally, assurance of complete, albeit future, compensation for all costs should discourage frequent interim requests for adjustments, thereby reducing the number and cost of regulatory proceedings and promoting the goal of rate stabilization.

As petitioner argues, it is equitable to permit it to collect interest on underrecoveries in the same manner as it pays interest on overrecoveries. Under a "one-way" system, one party (the customer) has conferred on it a present benefit (underpayment) which, without interest, is not adequately repaid by future reimbursement. The court does not accept Rate Counsel's dual characterization of interest, i.e., interest paid by a utility on overrecoveries "is to recompense its customers," while prospective interest payments by customers to a utility for underrecoveries are designated "a penalty"; both are compensation.

Where a utility underrecovers, it must pay interest on funds secured to finance the higher fuel costs; these interest charges constitute an actual cost to the utility. Conversely, customers have available to them for investment the monies effectively advanced to them by the utility through the purchase of fuel for their consumption. Rate Counsel has indicated its concurrence with the premise that the L.E.A.C. should enable a utility to be compensated for actual costs. To the extent that interest constitutes an actual cost of fuel, a utility should be compensated. I FIND that requiring customers to pay interest on fuel costs in excess of those provided for in the L.E.A.C. does no more than compensate a utility for the actual costs of fuel.

Rate Counsel advanced the position that a "one-way" interest system should be maintained because petitioner "is in a better position now" than it was under the pre-1977 tracking clause and because other New Jersey utilities (i.e., Butler Electric Company, Public Service Electric & Gas Company) are subject to a similar provision. However,
the court seeks in this matter to do that which is equitable and what has been done in the past, or what is being done currently with similarly situated companies, is not necessarily determinative of the issue before the court. No practice should be continued indefinitely or adopted universally without sound underlying reasons. Additionally, collection of interest on under as well as overrecoveries is not a novel idea. The issue has been considered and "two-way" interest systems adopted in other jurisdictions. See, *Application of Mountain Fuel Supply Company for a General Increase in Rates and Charges*, Case No. 81-057-01 (P.S.C. of Utah 1981); *Application of Utah Power & Light Company for Approval of Its Proposed Electric Rate Schedules and Electric Service Regulations*, Case No. 79-035-15 (P.S.C. of Utah 1981); *Re Investigation of Fuel Cost Recovery Clause*, 34 P.U.R. 4th 501, 510 (Fla. P.S.C. 1980); *Investigation Into Electric Fuel Cost Adjustment Tariff Provisions and Procedures*, Case No. 9886, Decision No. 8573 (Cal. P.U.C. 1975). Thus, there exists ample precedent for adoption of a "two-way" interest system as well as for maintenance of the status quo. I therefore **FIND** that Rate Counsel's position vis-a-vis other utilities is not persuasive.

Rate Counsel has stated that petitioner, in seeking to collect interest on underrecoveries, desires "total insulation from any risk whatever." Yet, previously as noted, reduction of risk to the utility is a primary advantage to be derived from use of a levelized energy adjustment clause. I **FIND** that adoption of a system which allows petitioners to collect interest on underrecoveries will promote risk reduction, a result which the court finds to be in the best interests of both the utility and its customers.

Rate Counsel also maintains that remedies are available to petitioner to counteract rising fuel costs. In Rate Counsel's view, "all [these remedies] lie with petitioner." In the court's view, the position is unrealistic. Clearly events which determine fuel prices are generally not under the control of a utility, *i.e.*, fuel costs are controlled by outside sources, including OPEC and out-of-state pipeline and well-head companies. Petitioner would, and should of course, be expected to act prudently in making fuel purchases regardless of whether it is allowed to collect interest on underrecoveries. To the extent it can be shown not to have done so, Rate Counsel's remedy would be to seek disallowance of that portion of a L.E.A.C. due to improvident purchasing, together with interest thereon, during a subsequent L.E.A.C. proceeding.

Board staff has stated in its position paper (not having introduced
any witnesses) that if the present system of "one-way interest were to be maintained, "petitioner would not be denied any of its reasonable fuel expense." Presumably, petitioner would be compensated for underrecoveries through interim adjustments or future base rate proceedings. However, both methods run counter to the purpose of adopting a L.E.A.C. The deficiencies of interim adjustments have been previously noted. Problems inherent in the recovery of prior fuel costs through base rates include: (1) the need for more frequent rate proceedings; (2) taxation of the regulatory process owing to the possibility of applications being filed during the pendency of a prior rate case; and (3) the tendency to keep all of a utility's costs, not only fuel costs, more closely adjusted to current levels than otherwise, thus raising the possibility of increasing rates at an ever increasing pace to consumers. Duffy, Electric Fuel Adjustment Clause Review in Ohio, supra, at 486.

Both Rate Counsel and petitioner rely upon the following quotation from a previous Board decision in support of their position:

This Board has not permitted carrying charges or interest on underrecoveries through energy clause, while it has required that interest inure to the benefit of consumers where there are overrecoveries.

The stated policy is that the Board does not wish to encourage ambitious projections of energy costs higher than what may be incurred, since these projections in the first instance lie with petitioner.

Public Service Electric & Gas Company Rate Case, Decision and Order, BPU DKT. 794-310, at 3-4. Rate Counsel's witness, Mr. Henkes, testified that the statement pertains only to the Board's support of the payment of interest on overrecoveries; an issue not in contention in the instant proceeding. When looked at in the context of "two-way" interest, it seems irrefutable that a utility would be less inclined to project "ambitious" energy costs knowing that it would collect interest on underrecoveries resulting from low projections. I FIND that the statement in its totality better supports petitioner's contention that "[w]ithout interest on underrecoveries, a utility might be encouraged to project energy costs on the high side to avoid an underrecovery."

Adoption of a levelized energy adjustment clause was designed to promote rate stability. The price paid was increased discrepancy between the estimated rate and actual fuel costs, as such costs are
actualized more remotely in time. Petitioner has clearly demonstrated the equity of adopting a system of “two-way” interest. Although Rate Counsel has stated that “where a party seeks to overturn a stated Board policy, it bears the burden of providing clear and convincing evidence on why that policy should be changed,” no citation has been provided for this statement and, as noted, the pronouncement relied upon by Rate Counsel in Public Service Electric & Gas Co. as establishing Board policy opposed to “two-way” interest merely sets forth a policy in support of the payments of interest by a utility on over-recoveries. Assuming, arguendo, that petitioner bears a clear and convincing evidence burden in this matter, I CONCLUDE that it has met that burden. Certainly, it is equitable for both providers and consumer to be subject to interest charges where either has benefitted because a projected adjustment rate does not coincide with actual fuel costs. Moreover, the prospect of “two-way” interest serves to encourage all parties to a L.E.A.C. proceeding to seek the most accurate projection of fuel costs, rather than those which might better serve their particular interests. Finally, I CONCLUDE that “two-way” interest will serve as an inducement to all parties to stipulate rates, thereby serving the salutary purpose of conserving the time and expense involved in full-scale regulatory proceedings.

I therefore CONCLUDE that a system of two-way interest would serve to promote the goal of rate stability while permitting the utility to fully recover its actual fuel cost. Further, as stated by the Florida Public Service Commission, such a system “is equitable, would counter any incentive to bias in either direction, and would thus lend credibility to the [rate-making] process.” Re Investigation of Fuel Cost Recovery Clause, 34 P.U.R. 4th 501, 510 (Fla. P.S.C. 1980).

Equity does not, however, necessarily require that petitioner and its customers be subject to interest at the same rate, but requires only that parties be reimbursed the actual charges incurred by them in financing over and underrecoveries. The court has considered the rates utilized by other jurisdictions which have adopted a system of “two-way” interest. In Application of Mountain Fuel Supply Company for a General Increase in Rates and Charges, Case No. 81-057-01 (P.S.C. of Utah 1981), the Public Service Commission of Utah applied a straight 9 percent interest rate to the balance of an account which reflected both over and underrecoveries. In Application of Utah Power & Light Company for Approval of its Proposed Electric Rate Schedules and Electric Service Regulations, Case No. 79-035-15 (P.S.C. of Utah 1981), the same Commission approved an agreement providing for
interest on the balance in a similar account with the rate to be the lower of the Company's then current authorized return on rate base or the prime rate. The Maine Public Utilities Commission amended its regulations to provide for "two-way" interest "based upon the short-term interest rate approved by the Commission in [a] utility's most recent rate proceeding." 65 C.M.R. 407, Chpt. 34 4(A)(6), Dkt. No. 80-234 (Me. P.U.C. 1981). In In Re Investigation of Fuel Cost Recovery Clause, 34 P.U.R. 4th 501, 519 (Fla. P.S.C. 1980), the Florida Public Service Commission concluded that the commercial paper rate be applied to "true-up over or underrecoveries" because it is "determined independent [sic] of the regulatory process and can readily be determined." The Commission noted that such a rate was "the most appropriate . . . particularly in view of the fact that the level of overrecovery or underrecovery will influence the level of the companies' short-term borrowings." Id. And, in Investigation Into Electric Fuel Cost Adjustment Tariff Provisions and Procedures, Case No. 9886, Decision No. 8573 (Cal. P.U.C. 1975), the California Public Utilities Commission determined that a 7 percent interest rate which had been applied to utilities' balancing accounts did "not fairly compensate the utility or the ratepayer, depending on under—or over collection. "Concluding that "[a]n interest rate that varies monthly most reasonably reflects actual money market conditions," the Commission adopted a three-month prime commercial paper rate.

The above cases are illustrative of the range of optional rates which can be applied under a system of "two-way" interest. However, the court finds none to be totally satisfactory because of the inequality of borrowing strength between petitioner and its customers. Since petitioner is in a superior financial position compared with individual customers, I CONCLUDE that a two-tier interest system would best serve the goal of compensation of actual costs. Petitioner should, therefore, be reimbursed for underrecoveries with interest at a rate which reflects actual borrowing costs to it, the current monthly rate on short-term commercial paper. See, Re Investigation of Fuel Cost Recovery Clause, supra, at 510; Investigation into Electric Fuel Cost Adjustment Tariff Provisions and Procedures, supra. Where petitioner overrecovery, however, customers should be reimbursed with interest at a rate which reflects their less favorable borrowing position. Such a rate should reflect the current rates being charged by major credit card companies, an alternative source to which the funds could be used by the customer.

B. Petitioner's L.E.A.C. does not currently contain an automatic
termination clause. Rate Counsel has proposed that such a clause be included in the L.E.A.C.

The caption of Rate Counsel's brief on the above point is as follows: "Petitioner's fuel cost adjustment rate should terminate at the expiration of the annual leveled period, subject to extension or modification by the Board." Rate Counsel hypothesizes that a system without an automatic termination clause "is open to manipulation by petitioners," while conceding that there is no evidence that petitioner has "attempted such a manipulation in this proceeding."

Petitioner would have incentive to "manipulate" the system to keep a present rate in effect only where fuel costs are decreasing. Where such costs are increasing, as has been the situation in recent proceedings, petitioner would unquestionably seek to have a new rate instituted as expeditiously as possible. In such an event, the system would be "open to manipulation" by Rate Counsel, the party which would have the incentive to delay proceedings to maintain the now-low rate in effect. Furthermore, a system which provides for automatic termination is subject to "manipulation" or delay by all parties at every stage of the process from the time the filing of a proposed new rate is received by the Board through its handling by an administrative law judge to rendering of a final decision by the Board. What is sought is a system which is equitable to all parties while promoting the goal of assuring that the utility is fully compensated for actual fuel costs incurred. As Rate Counsel notes, "the goal was to assure that, as nearly as possible, current ratepayers would assume current fuel costs." In 1981, revenues from the fuel adjustment rate accounted for 14 percent of petitioner's total revenues. I FIND that cancellation of the L.E.A.C. rate in its entirety could lead to massive disruptions of petitioner's cash flow as well as radical fluctuations in customers' bills as petitioner must make up for revenues lost during the period of cancellation. The above possibilities run counter to the motives behind institution of a L.E.A.C.

Furthermore, it is basically inequitable to subject petitioner to an automatic termination of the rate where a new rate has not been established by the cutoff date due solely to forces beyond petitioner's control. Clearly, the ideal situation is for a new rate to be put into effect upon the expiration of the current rate. However, in a "real world" of regulatory procedure the possibility of such not being the case despite due diligence being exercised by all parties will always exist. The Phase I proceeding in this matter is a case in point. While, as noted infra, earlier filing requirements can help insure that such
instances are kept to a minimum, the possibility must be recognized and dealt with in a manner which best furthers the policy underlying the adjustment rate. I **FIND** that automatic termination of a L.E.A.C. rate does not further the policy of ensuring that ratepayers assume current fuel costs.

Rate Counsel indicates its belief that "the Board should exercise greater control over the process and that one method of doing so is by providing for automatic termination." Through its witness, Mr. Henkes, Rate Counsel contends that such a provision would insure that petitioner would timely file its new rate even in a period of declining fuel prices. But petitioner is currently obligated to file for an updated fuel adjustment rate by November 15 of each year and, under the proposal recommended by the court **infra**, the filing deadline would be moved up to September 15. Furthermore, it is difficult to see how enhancement of "control" by the Board, in the absence of any indication from the Legislature or Board that such is desired, should be a factor in a decision on this issue. In fact, Board staff, in its position paper, takes a position opposing automatic termination because of the disruptive effect on petitioner's revenues and the likely negative effect on rate stabilization.

As noted **supra**, petitioner currently has a filing date of November 15 for its L.E.A.C., with an effective date of January 1. As was made evident in Phase I of this proceeding, the forty-five day period provided between the time of filing and the effective date is inadequate. Time must be allotted for the Board to determine if the matter is to be transmitted to the OAL and, if so, for OAL to calendar the case, for discovery to proceed and, if litigated, for hearings to be conducted. Additionally, where an increase in the L.E.A.C. is proposed, a public hearing must be held in accordance with the provisions of **N.J.S.A.** 48:2-32.4; twenty-day notice must be afforded the public where such a hearing is mandated. **See, N.J.A.C.** 14:1-6.16(c). Also, an initial decision must be rendered by the administrative law judge and a final order issued by the Board. I therefore **FIND** that, even where all parties proceed diligently,¹ a forty-five day limitation is severely strained by the administrative process.

Board staff and Rate Counsel have proposed that petitioner's filing date be advanced to September 15, thereby allowing approximately

¹The court has no reason to believe the parties to the instance proceeding have acted with anything other than due diligence.
one hundred-five days for the regulatory process to be completed. Under a proposed scenario, the Board could, if it determines not to hear the case itself, file the case with the OAL within one week of receipt. Discovery could be completed and a prehearing conference and public hearing scheduled within thirty days of receipt by the OAL. If hearings could be concluded thirty days thereafter an initial decision could be issued within two weeks and two weeks later the Board could issue its final order. The process could thus be completed by mid-December even assuming full litigation. Since prompt establishment of the new rate best serves the interest of both utility and customers, I CONCLUDE that September 15 be established as the filing date for petitioner's L.E.A.C.

Rate Counsel has stressed that there is no basis for continuing a L.E.A.C. in effect beyond the twelve-month period on which the projection of fuel costs is made. However, by the termination date of an existing L.E.A.C., petitioner will have filed its request for a new rate. In the filing the most current actual figures will be available. Where a new rate has not been established by the termination date, the average of the actual figures for the most recent three-month period will provide a reasonable approximation of fuel costs in the near future. Where the average of the most recent three month actuals indicates an increase in the adjustment rate is warranted, the present rate should be continued in effect to obviate the need for a public hearing when rates are increased.

Based upon the foregoing, I CONCLUDE that an average of the most current three month actual figures available meets the goal of providing petitioner with current recoupment of actual fuel costs with far less disruption to the financial state of the utility and potential for rate fluctuation than does automatic termination and that where no new rate has been established by the termination date of the existing L.E.A.C., (1) the average of the most recent three month actual figures for fuel costs be the basis of an interim adjustment rate to be maintained in effect until a new rate is established, and (2) the current adjustment rate be maintained in effect as an interim rate for a like period of time where the most recent three month actuals indicate an increase in rates is warranted.

1 It should be noted that adoption of the "two-way" interest system as previously recommended should streamline the L.E.A.C. regulatory process by eliminating the advantage to any party of keeping in effect a present rate which is not reflective of current actual costs.
I therefore ORDER that effective with the 1982 L.E.A.C. approved in Phase I of this proceeding, petitioner calculate the over or under-recovery of fuel costs and determine the appropriate interest charges due or collectable as set forth above, and that such charges be payable or collectable as the case may be during the subsequent L.E.A.C. period.

I further ORDER that Rate Counsel's application to impose an automatic termination clause on petitioner's L.E.A.C. be and is hereby denied and that petitioner's filing date for its L.E.A.C. be September 15 effective with the 1982 rate.

After reviewing this Initial Decision, the Board of Public Utilities on July 12, 1982, issued the following Final Decision

The Rockland Electric Company filed a petition with the Board of Public Utilities (Board) on October 20, 1981, seeking a revision in its fuel cost adjustment rate (L.E.A.C.). The matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

On April 19, 1982, the Board issued an Order adopting Initial Decision and Stipulation. In that Order, the Board directed the establishment of a Phase II proceeding for consideration of two issues:

1. interest on underrecoveries, and
2. an automatic termination clause for Rockland's L.E.A.C.

As to all other issues the Order adopted the stipulation of the parties.

In the initial decision on the Phase II proceeding the administrative law judge recommended that the Board permit the collection of interest on underrecoveries incurred by Rockland in its L.E.A.C. He also recommended that the Board not establish an automatic termination clause in the L.E.A.C. Rather, he proposed that the date for Rockland to file a revision to its L.E.A.C. be moved forward from November 15th to September 15th of each year and that the Board employ an average of the most recent three month period in setting an interim rate at the end of the levelized period.

In 1977, the Board authorized the use of the levelized fuel adjustment clause as a replacement for the previously employed tracking clause. The basis for this decision was to permit the utilities an opportunity to recover their actual fuel costs on a current basis and provide stability in rates for the ratepayers. At that time, the Board was of the opinion that it would be inequitable to allow interest to the utility on underrecoveries.

As the tracking clause contained no mechanism by which the util-
ities could recover previously underrecovered fuel costs, the Board, under the levelized clause, provided the utilities the ability to carry these underrecovered fuel balances forward to their next clause. In balancing the equities, the Board felt that interest on underrecoveries was unnecessary. The Board is not persuaded to change that policy, especially in light of the heavy burden currently placed on the ratepayers. The Board also notes that Rockland has a remedy for a developing underrecovery situation in the form of a petition for an emergent change in its L.E.A.C.

With respect to the proposal for the inclusion of an automatic termination clause in Rockland's L.E.A.C., the Board sees no purpose in establishing such a clause as it already possesses the power to review petitioner's L.E.A.C. on its own motion during the pendency of litigation as to a revised factor for the levelized clause. The institution of an automatic termination clause would introduce an element of inflexibility into the process which could seriously affect the financial position of the petitioner and cause instability in the rates under the L.E.A.C.

The Board is in agreement with the recommendation of the administrative law judge to advance the date for filing of a revision in the L.E.A.C. from November 15th to September 15th of each year. Such a change will furnish the parties with additional time for litigation and enhance the possibility of implementation of a revised clause by the end of the levelized period.

Therefore, the Board, after a careful review of the record in this matter, HEREBY REJECTS the initial decision with respect to interest on underrecoveries and ADOPTS only that portion of the initial decision associated with the denial of an automatic termination clause and the change in the date for filing of a revision to the L.E.A.C. The Board specifically REJECTS the administrative law judge's recommendation of the use of a three month average for actual fuel costs to determine an interim rate to be applied at the end of the levelized period.