

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
OHIO VALLEY ELECTRIC)
CORPORATION for Approval of a)
Second Modification to a Letter Agreement)
for the Temporary Supply of Arranged)
Power with the United States of America)

Case No. 08-1100-EL-AEC

APPLICATION

1. Ohio Valley Electric Corporation ("OVEC") is a public utility as defined in Section 4905.02, Revised Code.

2. In connection with America's national defense effort during the early 1950s, the United States Atomic Energy Commission planned the construction of a uranium enrichment facility in Ohio (the "Facility"). On October 1, 1952, 15 utilities from the region organized OVEC and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation, for the purpose of providing electric service to the Facility.

3. By Order dated January 29, 1953, in Proceeding No. 23,719, and by Order dated July 21, 1953, in Proceeding No. 24,150, this Commission approved a power agreement dated October 15, 1952 (the "DOE Power Agreement") between OVEC and the United States of America, then acting by and through the predecessor to the Secretary of Energy, the statutory head of the Department of Energy ("DOE"). From time to time, this Commission by various orders approved modifications and other amendments to the DOE Power Agreement.

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4. On September 29, 2000, the DOE sent OVEC a notice of cancellation of the DOE Power Agreement, effective on April 30, 2003. As a result of that cancellation, the DOE Power Agreement terminated in accordance with its terms on April 30, 2003.

5. In order to give the DOE additional time to negotiate arrangements for the supply of electricity to the Facility after the termination of the DOE Power Agreement, OVEC agreed to enter into the Letter Agreement, dated as of April 29, 2003, between OVEC and the DOE for the temporary supply of power and energy to the Facility (the "Letter Agreement"). A copy of the Letter Agreement is attached hereto as Exhibit A.

6. An application for approval of the Letter Agreement was filed with this Commission on May 16, 2003, in Case No. 03-1168-EL-AEC.

7. Under the Letter Agreement, OVEC agreed to continue to supply power and energy to the Facility in an amount not exceeding 50 MW in any hour under the identical terms and conditions that were applicable to "arranged power" under the DOE Power Agreement. In order to avoid any interruption of service to the DOE, service under the Letter Agreement commenced on 12:01 a.m. on May 1, 2003.

8. Under the Letter Agreement, OVEC purchases power and energy for resale to the DOE at market-based rates based on solicitations from various sellers, and the DOE reimburses OVEC for the costs and expenses of procuring and delivering power to the DOE, in accordance with the terms and conditions that were previously applicable to sales of power and energy to the DOE under the "arranged power" provisions of the DOE Power Agreement.

9. In consideration for OVEC's agreement to continue to serve the DOE under the terms of the Letter Agreement, the DOE, by letter dated April 27, 2005 ("April 2005

Letter”), agreed to modify the terms of the Letter Agreement. A copy of the April 2005 Letter is attached hereto as Exhibit B.

10. On May 11, 2005, OVEC filed an application for approval of the Letter Agreement and the April 2005 Letter in Case No. 05-624-EL-AEC. On August 10, 2005, this Commission issued an order approving the Letter Agreement and the April 2005 Letter.

11. OVEC and the DOE have been discussing the possibility of entering into a long-term contract for the supply of power and energy to the Facility. However, the parties have not yet reached agreement on the terms of such contract.

12. Consequently, OVEC and DOE, by letter dated September 4, 2008 (“September 2008 Letter”), agreed to modify certain terms of the current arrangements under the Letter Agreement (as previously modified). In particular, the parties agreed to modify the compensation arrangements and extend the term of the agreement from 30 days to 3 months, with either OVEC or DOE having the right to terminate on 30 days’ written notice at the end of any of the 3-month terms. A copy of the September 2008 Letter is attached hereto as Exhibit C.

13. Accordingly, OVEC hereby requests expeditious Commission approval of the modifications to the Letter Agreement contained in the September 2008 Letter.

WHEREFORE, OVEC hereby respectfully requests an order of this Commission:


(A) that approves, pursuant to Section 4905.31, Revised Code, the modifications to the Letter Agreement agreed to in the September 2008 Letter;

(B) that permits the modification to the Letter Agreement agreed to in the September 2008 Letter, including the rates therein, to take effect as of October 1, 2008;

(C) that grants pre-granted abandonment of the Letter Agreement, including the modifications to the Letter Agreement agreed to in the April 2005 Letter and the September 2008 Letter, upon the termination of the Letter Agreement in accordance with its terms; and

(D) that grants a waiver of any filing requirement not met by this Application.

Respectfully submitted,

By 

Brian E. Chisling
Simpson Thacher & Bartlett, LLP
425 Lexington Ave.
New York, New York 10017
Phone: (212) 455-3075
Email: bchisling@stblaw.com

Counsel for Ohio Valley Electric
Corporation

EXHIBIT A



Department of Energy

Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831—

Exhibit A

April 29, 2003

Mr. E. Linn Draper, Jr.
President
Ohio Valley Electric Corporation
P.O. Box 16631
Columbus, Ohio 43216

Dear Mr. Draper:

CONTRACT DE-AC05-03OR22988, LETTER AGREEMENT RELATING TO TEMPORARY SUPPLY OF ARRANGED POWER

This letter agreement (Letter Agreement) will confirm a number of understandings between Ohio Valley Electric Corporation (OVEC) and the United States of America, acting by and through the Secretary of Energy, the statutory head of the Department of Energy (hereinafter DOE), with respect to temporary arrangements for the supply of power and energy by OVEC to DOE after the termination of Power Agreement No. DE-AC05-76OR01530 (DOE Agreement).

We understand from our discussions with representatives of OVEC that it would be willing on a temporary basis, under the terms and conditions set forth in this Letter Agreement, to continue to provide power and energy to DOE after the termination of the DOE Agreement on April 30, 2003, in an amount not exceeding 50 MW in any hour, under the identical terms and conditions that were applicable to "arranged power" pursuant to Section 2.08 of the DOE Agreement and consistent with the arrangements and understandings of DOE and OVEC with respect to the procurement and supply of such "arranged power."

In consideration for entering into this Letter Agreement, DOE hereby agrees as follows:

- (1) Notwithstanding anything in this Agreement to the contrary, DOE shall in all events reimburse OVEC for all costs and expenses incurred by OVEC in connection with providing power and energy under this Letter Agreement, including, without limitation, all costs and expenses of procuring power and energy from third parties under the "arranged power" arrangements from current appropriations identified on the attached document as incremental funding for payment purposes;
- (2) Payment will be made by electronic funds transfer to the account identified by OVEC;

April 29, 2003

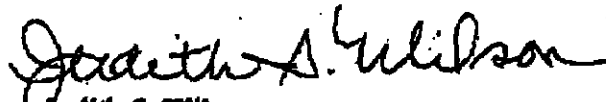
- (3) DOE shall cooperate with OVEC (including taking all action reasonably requested by OVEC) in making any filings with, or obtaining any required authorizations from, any regulatory or other governmental authority to authorize any term or condition of this Letter Agreement, including, without limitation, authorization of the Public Utilities Commission of Ohio to provide the services described in this Letter Agreement effective upon 12:01 a.m. on May 1, 2003; and,
- (4) DOE shall cooperate with OVEC (including taking all action reasonably requested by OVEC) in making any filings with, or obtaining any required authorizations from, any regulatory or other governmental authority to terminate this Letter Agreement in accordance with its terms, including, without limitation, pre-granted authorization to terminate.

DOE and OVEC agree that this Letter Agreement may be terminated by either DOE or OVEC in its sole discretion for any reason or no reason upon 30 days' written notice to the other party at any time after May 31, 2003.

DOE and OVEC acknowledge that the DOE Agreement shall terminate on April 30, 2003 and that nothing in this Letter Agreement shall in any way extend, amend, supplement or otherwise modify the DOE Agreement in any manner.


If OVEC agrees to the matters described above, please execute a copy of this Supplement at the place designated for your signature.

Sincerely,


Judith S. Wilson
Contracting Officer

OVEC hereby agrees to the provisions herein described.

OHIO VALLEY ELECTRIC CORPORATION


Date: April 30, 2003

DE-AC05-03OR22988
Ohio Valley Electric Corporation

Appropriations Data

Additional incremental funding will be obligated to the contract from time to time as needed prior to incurrence of services. Unused obligations will be deobligated at the end of the contract.

Current obligations are:

<u>B&R Code</u>	<u>Amount</u>
EU01MP6MC	\$653,000
603004000	\$218,000
820201	<u>\$108,624</u>
Total	\$979,624

EXHIBIT B



Department of Energy

Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831--

Exhibit B

April 27, 2005

Mr. David L. Hart
Vice President and Assistant to the President
Ohio Valley Electric Corporation
Post Office Box 16631
Columbus, Ohio 43216

Dear Mr. Hart:

Reference George W. Herron's letter to you dated April 22, 2005.

CONTRACT DE-AC05-03OR22988, OVEC-DOE ARRANGED POWER REQUEST

In accordance with recent DOE-OVEC discussions for the purchase of arranged power, DOE now modifies the requested term of the service, (Reference the George W. Herron letter to you dated April 22, 2005). DOE agrees to the following modifications: 1) the open access transmission tariff (OATT) of \$0.44 per kWh-month, and 2) retroactively applying negotiated difficult to quantify (DTQ) charges from a future DOE-OVEC long term arranged power agreement (if applicable) to the service period requested in this modification.

DOE now requests that OVEC obtain bids for a five-month period with a projected base load of 30 MW for May, June and July. For August and September, DOE requests 29 MW and 28 MW, respectively. DOE anticipates the need for this power to begin on May 1, 2005 at 0001 hours and continue on a 7 x 24 basis until September 30, 2005. DOE requests that OVEC solicit bids to supply this power to the Portsmouth Gaseous Diffusion Plant (PORTS) and that these bids be available for review by 11:00 a.m. EDT on April 28, 2005, and that the window of time for DOE's review and selection be a minimum of one hour.

DOE will compensate OVEC for its best efforts employed in procuring arranged power which will include an operating reserve of 4 percent of DOE's scheduled load, which must be in whole megawatts. DOE further understands that OVEC will be reimbursed for their "out-of-pocket costs for arranged power" as well as a charge for DTQ costs of 1 mill per scheduled kWh of arranged power. The methods used to accomplish this request should not differ from the procurement and reimbursement for arranged power used in similar requests from DOE to OVEC between April 2003 and April 2005.

If you have any questions please contact Charles Williams at 865-576-5657

Sincerely,


Walker K. Love
Contracting Officer

EXHIBIT C



Department of Energy

Environmental Management
Consolidated Business Center
250 East 5th Street, Suite 500
Cincinnati, Ohio 45202
(513) 246-0500

SEP 04 2008

Mr. David L. Hart
Vice President and Assistant to the President
Ohio Valley Electric Corporation
1 Riverside Plaza
Columbus, Ohio 43215

EMCBC-00850-08

Dear Mr. Hart:

CONTRACT NUMBER DE-AC05-03OR22988

This letter supplement (Supplement) amends certain provisions of the Letter Agreement designated Contract No. DE-AC05-03OR22988, dated April 29, 2003, and modified as of April 27, 2005 (Letter Agreement), between Ohio Valley Electric Corporation (OVEC) and the United States of America, acting by and through the Secretary of Energy, the statutory head of the Department of Energy (DOE). Any inconsistency between this Supplement and the Letter Agreement will be resolved by giving precedence to this Supplement.

OVEC and DOE are planning to negotiate a long-term power agreement on mutually acceptable terms that will replace this interim agreement.

Both parties agree to the following amendments to the Letter Agreement:

1. **Term.** The agreement shall have an initial term of 3 months, starting on the first day of the next month that is at least 20 days after the date of the agreement. The agreement will automatically be renewed for additional, consecutive 3-month terms, subject to either party's right to terminate in its sole discretion at the end of the then current agreement term, upon 30 days' written notice to the other party.
2. **Fees.** The DOE will pay OVEC the following fees: (a) an administrative service charge of 2.6 mills per scheduled kWh of power purchased by OVEC for delivery and use by DOE, in lieu of the 1 mill per scheduled Kwh charge previously paid under the Letter Agreement; and (b) the applicable charges under OVEC's Open Access Transmission Tariff (OATT) for (i) firm point-to-point transmission service under Schedule 7 (currently \$0.44/kW-month), (ii) transmission scheduling, system control and dispatch service under Schedule 1 (currently \$0.00021 per scheduled kWh), and (iii) reactive and voltage control under Schedule 2 (currently \$0.00019 per scheduled kWh).
3. **Credit to DOE for Certain Purchases.** The DOE will receive a credit to the administrative service charge (under section 2(a) above) payable for the next month for any amounts of energy purchased by OVEC for the DOE and actually delivered to OVEC

to the extent the amount of such energy purchases exceed the DOE's load (plus required reserves and losses) during any hour. Such credit will be in an amount equal to 75% of the total, actual fuel and fuel-related cost reductions to OVEC (in accordance with OVEC's customary record-keeping procedures) resulting from any such excess of scheduled purchases for the applicable month; provided that, such credit may not reduce the administrative service charge to below a charge of 1 mill per scheduled kWh of power purchased by OVEC for delivery and use by DOE during the applicable month.

4. **Retroactive Fees. Satisfaction of Asserted Retroactive Difficult To Quantify Fees.** OVEC has asserted that if DOE and OVEC were to enter into a long-term arranged power agreement providing for payment to OVEC of a 2.6 kWh mill charge, DOE would owe OVEC \$1,000,000 in retroactive difficult to quantify (DTQ) fees in accordance with the terms of the April 27, 2005 letter, which provides for "retroactively applying negotiated difficult to quantify (DTQ) charges from a future DOE-OVEC long-term arranged power agreement (if applicable) to the service period requested in this modification." DOE does not necessarily agree with OVEC's assertion. Notwithstanding the parties' differing views, OVEC and DOE agree that DOE will be deemed to satisfy, and OVEC will discharge, release, and hold DOE harmless for, any and all retroactive DTQ fees (including the asserted \$1,000,000) based on the terms of the April 27, 2005 letter on a pro rata quarterly basis over the initial twenty four (24) month period of this agreement in accordance with the following approach: At the conclusion of each three (3) month term under this agreement, DOE will be deemed to have satisfied \$125,000 worth of any and all retroactive DTQ charges. OVEC and DOE further agree that DOE will satisfy, and OVEC will discharge, release, and hold DOE harmless for paying, any and all retroactive DTQ charges which DOE might owe under the April 27, 2005 letter, in the event that, prior to twenty four (24) months, (a) OVEC and DOE enter into a mutually acceptable long-term power agreement in replacement of this agreement or (b) OVEC terminates this agreement for any reason other than DOE's material breach. OVEC and DOE agree that OVEC may pursue whatever remedies are available to it under applicable law to recover any remaining portion of the asserted \$1,000,000 in retroactive DTQ fees, and DOE reserves all rights and defenses it may have with respect to the asserted DTQ fees, if, prior to twenty four (24) months (i) DOE terminates this agreement (except due to OVEC's material breach of the agreement, if in fact OVEC is in material breach of the agreement) or (ii) OVEC terminates this agreement due to DOE's material breach of the agreement (if DOE is in fact in material breach of the agreement).

5. **Excess DOE Power Usage Procedures.** If during any hour, the DOE's load (plus required reserves and losses) exceeds the amount of energy purchased by OVEC for the DOE and delivered to OVEC under the Agreement, then (a) the DOE shall reimburse OVEC for the delivery of energy during such hour(s) (until OVEC is able to secure sufficient replacement energy in accordance with subsection (c) below) in the amount of the greater of 100 mills/kWh or the then-current market price for such shortfall; (b) the DOE shall pay an additional service charge of \$1,000 for each occurrence; and (c) OVEC is authorized to purchase one or more additional whole MWs of power and energy at then-current market rates for the remainder of the calendar month as would be sufficient to cover the previous shortfall; provided that, to the extent that OVEC is purchasing

power and energy for the DOE during such month using a "bandwidth" contract (as discussed below) and such shortfall could have been covered by the then-applicable bandwidth, then OVEC is authorized to purchase such additional whole MWs only until the start of the next business day for which a new daily schedule is provided by the DOE after the time of the shortfall (provided further that, to the extent that there are more than three occurrences of a shortfall during any calendar month under a bandwidth contract, then notwithstanding the above provision, OVEC is thereafter authorized to purchase any additional whole MWs under this provision for the then-current remainder of such calendar month). For purposes of this agreement, the required reserves for DOE's scheduled deliveries for any applicable period are the reserve requirements as established from time to time by the North American Electric Reliability Corporation or other applicable regional criteria (currently 4%), and the required losses are the estimated losses assumed for deliveries over OVEC's transmission system in accordance with its OATT (currently 1.8%).

6. **Bandwidth Option.** During the applicable term, the DOE may request that OVEC seek bids for a "bandwidth" purchase for any monthly periods in order to permit the DOE (through OVEC) to schedule the amount of whole MWs to be purchased on a day-ahead basis within a specified "bandwidth" of reserved power. If a "bandwidth" purchase is selected by the DOE, the DOE shall provide OVEC with the DOE's day-ahead schedule at least one half-hour prior to the required time for delivery of such schedule by OVEC to the applicable supplier.

7. **Additional Purchases.** During the applicable term, the DOE may request that OVEC purchase one or more additional whole MWs at then-current market rates for delivery to the DOE for the remainder of the calendar month (or longer purchase period) from any available supplier selected by OVEC, subject to all applicable charges under this agreement, plus a \$1,000 administrative service charge per purchase.

8. **Maximum Load.** Notwithstanding anything to the contrary the DOE's load (plus required reserve and losses) may not exceed 50MW during any hour; provided that, the parties agree to discuss any request by the DOE at any time for additional power and energy deliveries in excess of 50MW, subject to the parties' prior mutual agreement on the terms of such additional deliveries..


9. **Cooperation.** Notwithstanding anything to the contrary, the DOE agrees to use its reasonable best efforts in good faith to request from OVEC the purchase of quantities of power and energy (whether under a "bandwidth" contract or current block purchases) to satisfy the DOE's peak load (including required reserves and losses) for the applicable period. The DOE agrees to take all actions with respect to regulatory filings relating to this agreement as it agreed to take with respect to the April 29, 2003 letter (as contained in paragraphs 3 and 4 thereof). DOE recognizes that one or more of the systems from which OVEC proposes from time to time to purchase arranged power, and the energy associated therewith, are required to file, with respect to such service, rate schedules and/or tariffs, with the Federal Energy Regulatory Commission and/or other regulatory bodies having jurisdiction, and may from time to time file superseding rate schedules

and/or tariffs, which may or may not be made effective by the Federal Energy Regulatory commission or such regulatory bodies as so filed, and, therefore, OVEC cannot assure DOE that arranged power, and the energy associated therewith, will be supplied by OVEC to DOE under this agreement in any specific amount or at any specific rate for any particular period of time. OVEC will, however, use its best efforts to secure, and to keep DOE informed as to prevailing, and anticipated changes in, quantities of and proposed rates, for, power and the energy associated therewith, which OVEC can purchase for delivery to DOE as arranged power and to cooperate with DOE, to the extent such cooperation is in the judgment of OVEC, feasible and in the interests of OVEC, in the purchase of arranged power when requested by DOE with the objective that DOE will be supplied, with flexibility as to source if practical, a reliable and adequate amount of arranged power, and the energy associated therewith, on just and reasonable terms.

10. **Bidding Procedures.** Except as otherwise specified in this agreement, the methods and procedures used to purchase power and energy requested by the DOE shall continue to be the same as those used under the existing letter agreements.

If OVEC agrees to the matters described above, please execute a copy of this Amendment to the Letter Agreement at the place designated for your signature.

Sincerely,



Contracting Officer

OVEC hereby agrees to the provisions herein described.

OHIO VALLEY ELECTRIC CORPORATION



Michael G. Morris, President

Date: September 10, 2008