

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Ohio)
Valley Electric Corporation for Approval of) Case No. 15-0892-EL-AEC
the Termination of a Letter Agreement for the)
Temporary Supply of Arranged Power with the)
United States of America)
)

**Ohio Valley Electric Corporation’s Notice to the Commission of the Fourth Amendment to
Termination Agreement**

On May 7, 2015, Ohio Valley Electric Corporation (“OVEC”) and the Department of Energy (“DOE”) filed an Application to Terminate (the “Application”) any obligation OVEC has to provide utility service to DOE. That Application was amended on July 6, 2015 to change the effective date of the Termination Agreement to September 30, 2015 (“Termination Agreement Amendment”). An Amended Application to Terminate was filed with the Commission on July 22, 2015 to effect that change to the effective date (“Amended Application to Terminate”).

As the Commission did not rule at that time, on August 28, 2015, OVEC and DOE further amended the Termination Agreement to change the effective date to March 31, 2016 (“Second Termination Agreement Amendment”) and on February 10, 2016 further amended the Termination Agreement to change the effective date to October 31, 2016 (“Third Termination Agreement Amendment”). The Second Termination Agreement Amendment was filed with the Commission on September 11, 2015 and the Third Termination Agreement Amendment was filed with the Commission on February 19, 2016.

As October 31, 2016 is approaching and the Commission has not yet ruled, OVEC and DOE have again entered into an agreement to change the effective date. On August

12, 2016, OVEC and the DOE entered into a Fourth Amendment to Termination Agreement (“Fourth Termination Agreement Amendment”) (a copy is attaching as Exhibit A). In the Fourth Termination Agreement Amendment, OVEC and DOE agreed to change the effective date of the Termination Agreement to March 31, 2016.

The parties hereby reiterate their request for expedited consideration and approval of the Termination Agreement,¹ Termination Agreement Amendment,² Second Termination Agreement Amendment,³ Third Termination Agreement Amendment,⁴ and Fourth Termination Agreement Amendment,⁵ terminating the Letter Agreement (as modified on April 27, 2005 and September 4, 2008),⁶ and the underlying power supply arrangement between DOE and OVEC.

Respectfully submitted,

/s/ N. Trevor Alexander
Brian Chisling (0063402)
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-3075
bchisling@stblaw.com

N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1200 Huntington Center
41 South High Street
Columbus, OH 43215
(614) 621-1500
(614) 621-0010 (fax)
tal Alexander@calfee.com

Counsel for Ohio Valley Electric Corporation

¹ Seeking to terminate service.

² Providing extension of termination date through September 30, 2015.

³ Providing extension of termination date through March 31, 2016.

⁴ Providing extension of termination date through October 31, 2016.

⁵ Providing extension of termination date through March 31, 2017.

⁶ The 2003 temporary agreement between OVEC and DOE to provide for temporary supply of power and energy to the Facility. See Application ¶ 5.

CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 22nd day of August, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander
Counsel for Ohio Valley Electric Corporation

FOURTH AMENDMENT TO TERMINATION AGREEMENT

THIS FOURTH AMENDMENT TO TERMINATION AGREEMENT (this "Amendment"), is made and entered into this 12th day of August, 2016, by and 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").

WITNESSETH:

WHEREAS, OVEC and DOE are parties to that certain Letter Agreement, designated Contract No. DE-AC05-03OR22988, dated April 29, 2003, as modified as of April 27, 2005 and September 4, 2008 (the "Letter Agreement") with respect to the supply by OVEC of "arranged power" services to DOE for its facilities in Southern Ohio;

WHEREAS, OVEC and DOE entered into a Termination Agreement, dated as of March 28, 2015, as amended by the First Amendment to the Termination Agreement, dated as of July 6, 2015, the Second Amendment to the Termination Agreement, dated as of August 28, 2015, and the Third Amendment to the Termination Agreement, dated as of February 10, 2016 (the "Termination Agreement") to terminate the Letter Agreement; and

WHEREAS, OVEC and DOE desire to extend the effective time of the termination of the Letter Agreement set forth in the Termination Agreement, pursuant to the term and conditions of this Amendment.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, OVEC and DOE agree as follows:

1. Amendment of Termination Agreement. Effective as of the date hereof, the following amendment is made to the Termination Agreement: in Section 1 of the Termination Agreement, the definition of Effective Time shall be amended by deleting "October 31, 2016" and replacing it with "April 30, 2017".
2. Service Fee. DOE agrees to pay OVEC in cash in immediately available funds an additional service fee of \$191,114.19, payable in full upon execution of this Amendment by each party hereto.
3. Effect of Amendment. All references in the Termination Agreement to the "Agreement" shall be deemed to mean the Termination Agreement as amended by this Amendment. All provisions of the Termination Agreement that are not expressly amended by this Amendment shall remain in full force and effect.
4. OVEC Regulatory Filings; Update as to DOE Process. In accordance with the Letter Agreement, DOE shall cooperate with OVEC (including taking actions as reasonably requested by OVEC) in making filings with, or obtaining any authorizations from, any regulatory or other governmental authority (including the Public Utilities Commission of Ohio) to



effectuate the purposes of this Amendment. In recognition of OVEC's agreement to extend the effective date of the termination of the Letter Agreement under this Amendment and the prior amendments, and in recognition of the hardship and costs to OVEC of such extensions (which costs are difficult to determine), DOE agrees to use its best efforts to procure an alternative source of supply with arrangements in substantially final form on or before December 31, 2016 (the "Notice Date") to be effective as of April 30, 2017. DOE shall provide OVEC with updates on the progress to obtain such alternative supply (on no less than a monthly basis) and provide written notice to OVEC on or before the Notice Date as to the results of the procurement process and any final activities relating thereto. DOE expressly recognizes that notwithstanding the results of the procurement and any prior actions by OVEC (including prior extensions of the date of the termination of the Letter Agreement), OVEC has the right to enforce the Termination Agreement in accordance with its terms (including any and all available remedies) and that any further amendment to the Termination Agreement or the Letter Agreement could be effected solely with OVEC's prior express written consent, which may be withheld in OVEC's sole discretion.

5. Applicable Law. This Amendment shall be governed by and construed in accordance with, the laws of the State of Ohio (except where the Federal law of the United States of America applies).

6. Counterparts. This Amendment may be executed and delivered in two or more counterparts, each of which shall be deemed an original and all of which shall, taken together, be considered one and the same agreement. Any facsimile or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be duly executed and delivered on behalf of the parties hereto as of the date first above written.

OHIO VALLEY ELECTRIC
CORPORATION

By: RAO

Name: Robert A. Osborne

Title: Vice President and Chief Operating Officer

UNITED STATES OF AMERICA,
ACTING BY AND THROUGH THE
SECRETARY OF ENERGY, THE
STATUTORY HEAD OF THE
DEPARTMENT OF ENERGY

By: MCA

Name: Matthew Carpenter

Title: Contracting Officer

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/22/2016 11:31:49 AM

in

Case No(s). 15-0892-EL-AEC

Summary: Notice to the Commission of the Fourth Amendment to Termination Agreement electronically filed by Mr. Nathaniel Trevor Alexander on behalf of Ohio Valley Electric Corporation