

**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 Eighth 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, OVEC and DOE agreed to amend the Termination Agreement to change the effective date on March 31, 2016 (“Second Termination Agreement Amendment”), February 10, 2016 (“Third Termination Agreement Amendment”), August 12, 2016 (“Fourth Termination Agreement Amendment”), March 2, 2017 (“Fifth Termination Agreement Amendment”), August 23, 2017 (“Sixth Termination Agreement Amendment”), and December 8, 2017 (“Seventh Termination Agreement”). Those amendments were previously filed with the Commission.

The Seventh Termination Agreement Amendment expires on July 31, 2018. As the Commission has not yet ruled, on July 11, 2018, OVEC and DOE entered into an Eighth Amendment to Termination Agreement (“Eighth Termination Agreement Amendment”) (a copy

is attached as Exhibit A). In the Eighth Termination Agreement Amendment, OVEC and DOE agreed to change the effective date of the Termination Agreement to the 138kV Transfer Date as defined in the Joint Stipulation and Recommendation filed with the Commission in the above-captioned proceeding and as approved by the Commission on June 28, 2018.

The parties hereby reiterate their request for expedited consideration and approval of the Termination Agreement,<sup>1</sup> Termination Agreement Amendment,<sup>2</sup> Second Termination Agreement Amendment,<sup>3</sup> Third Termination Agreement Amendment,<sup>4</sup> Fourth Termination Agreement Amendment,<sup>5</sup> Fifth Termination Agreement Amendment,<sup>6</sup> Sixth Termination Agreement Amendment<sup>7</sup>, Seventh Termination Agreement Amendment,<sup>8</sup> and Eighth Termination Agreement Amendment<sup>9</sup> terminating the Letter Agreement (as modified on April 27, 2005 and September 4, 2008),<sup>10</sup> and the underlying power supply arrangement between DOE and OVEC.

---

<sup>1</sup> Seeking to terminate service.

<sup>2</sup> Providing extension of termination date through September 30, 2015.

<sup>3</sup> Providing extension of termination date through March 31, 2016.

<sup>4</sup> Providing extension of termination date through October 31, 2016.

<sup>5</sup> Providing extension of termination date through March 31, 2017.

<sup>6</sup> Providing extension of termination date through October 31, 2017.

<sup>7</sup> Providing extension of termination date through January 31, 2018.

<sup>8</sup> Providing extension of termination date through July 31, 2018.

<sup>9</sup> Providing extension of termination date through the 138kV Transfer Date as defined in the Joint Stipulation and Recommendation and approved by the Commission in this case on June 28, 2018.

<sup>10</sup> The 2003 temporary agreement between OVEC and DOE to provide for temporary supply of power and energy to the Facility. *See* Application ¶ 5.

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)  
talexander@calfee.com

Counsel for Ohio Valley Electric Corporation

**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 20th day of July, 2017. 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

**EIGHTH AMENDMENT TO TERMINATION AGREEMENT**

THIS EIGHTH AMENDMENT TO TERMINATION AGREEMENT (this "Amendment"), is made and entered into this 11th day of July, 2018, 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, the Third Amendment to the Termination Agreement, dated as of February 10, 2016, the Fourth Amendment to the Termination Agreement, dated as of August 12, 2016, the Fifth Amendment to the Termination Agreement, dated as of February 21, 2017, the Sixth Amendment to the Termination Agreement, dated as of August 21, 2017 and the Seventh Amendment to the Termination Agreement, dated as of December 8, 2017 (as amended, 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, this Termination Agreement shall be effective through the 138kV Transfer Date as defined in the Joint Stipulation and Recommendation ("Stipulation") filed with the Public Utilities Commission of Ohio ("PUCO") in Docket No. 15-0892-EL-AEC on April 10, 2018 (such date, the "Transfer Date") and approved by the PUCO on June 28, 2018 (the term of this Amendment through such date, the "Term").

2. Fees; Reimbursement for Long Term Firm Reservation Expenses. DOE agrees to pay OVEC in cash in immediately available funds (i) an amendment fee of \$119,704.63, payable in full upon execution of this Amendment by each party hereto, (ii) an annual service fee of \$189,082.97 (the "Annual Service Fee"), payable in full upon execution of this Amendment by each party hereto and thereafter in advance on each anniversary of the date hereof until termination or expiration of this Amendment; provided that, if this Amendment is terminated prior to the end of the Term, or the Term expires prior to the end of a full annual period, the Annual Service Fee

shall be prorated and subject to reimbursement, and (iii) any additional amounts for services described in Annex A hereto performed by OVEC that are not part of the Annual Services Fee, such amounts to be calculated and paid in accordance with the terms of Annex A. The parties acknowledge and agree that any regulatory compliance service that is not outlined in Annex A shall not be within the scope of OVEC's services to be provided hereunder. In addition, DOE agrees and acknowledges that due to prior difficulties in obtaining long-term firm transmission service for the delivery of power and energy from a third party supplier with sources in the regions administered by PJM Interconnection LLC ("PJM") for delivery to the OVEC transmission system (and given the possibility of a further amendment to the termination Agreement), to the extent OVEC elects not to join PJM, that OVEC may continue to pursue with a single third party an undertaking for such third party to take commercially reasonable actions to obtain firm transmission service from PJM for up to 45 MW for a term of one year, which service may be used to serve DOE as part of any response by such third parties to any future requests for proposal under the Letter Agreement (but could otherwise be used by such third party for other purposes). DOE acknowledges that in order to induce such third party to make such firm transmission service request and to obtain such firm service for such one-year period, OVEC has agreed to reimburse such third party for any and all charges, costs, fees and other expenses incurred by such third party to obtain such firm transmission service reservations and any transmission-related charges incurred by such third party in connection with the utilization of such firm transmission service to serve the DOE, and DOE agrees to promptly reimburse OVEC for any such amounts reasonably reimbursed to such third party, including, for the avoidance of doubt, any demand charges or similar charges associated with such reservations. In the event a material change in services transpires, the parties agree to reevaluate the Annual Service Fee.

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 PUCO) to effectuate the purposes of this Amendment. Pursuant to the Stipulation, OVEC, DOE and AEP Ohio have agreed to transfer OVEC's retail service obligations to AEP Ohio. The Stipulation initiates certain obligations of the parties to perform required activities to effectuate the transfer and to terminate transmission activities associated with the X-530 switchyard. DOE and OVEC agree to use commercially reasonable efforts to complete all obligations contained therein. OVEC has the right to enforce the Termination Agreement in accordance with its terms (including any and all available remedies) and 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. DOE and OVEC agree that each party has the right to enforce the Termination Agreement in accordance with its terms (including any and all available remedies), and any further amendment to the Termination Agreement or the Letter Agreement could be effected solely with each party's prior express written consent which may be withheld in such party's sole discretion.

5. Electric Service. The parties hereto agree that OVEC shall continue the prior practice ("RFP"), as described in the Letter Agreement, to supply power and energy to DOE for a four (4) month period, commencing on August 1, 2018, and, unless OVEC provides written notice to DOE no later than 60 days prior to the end of such 4-month period that it will join PJM, continuing with subsequent intervals through the Term, unless OVEC provides written notice to DOE no later than 60 days prior to the end of any then-current interval period that it will join PJM on or prior to the expiration of the then-current interval. If OVEC joins PJM on or prior to the end of the Term, then with respect to the remainder of the Term, after any then-in-effect RFP purchases and subject to any supplemental or alternative arrangement mutually agreed pursuant to Paragraph 6(b) below, OVEC shall continue to use its commercially reasonable efforts to procure energy to serve the DOE on an as-needed basis from the PJM energy markets (without any third party RFP) and pass through any costs related thereto to DOE. Pursuant to Paragraph 6(b) below, DOE would be responsible for any other allocable charges under the PJM tariff with respect to such continued service of DOE's retail load within the OVEC zone of PJM.

6. PJM Membership. (a) Notwithstanding anything to the contrary herein, OVEC may determine in its sole discretion to join PJM as a member, at any time and in such capacity as it deems necessary or desirable; provided, however, that such membership shall not alter OVEC's rights and obligations to serve the DOE under the Letter Agreement as modified by the Termination Agreement and this Amendment and in accordance with applicable law. DOE shall provide information and other assistance to OVEC as reasonably requested in connection with such application. OVEC shall provide information and other assistance to DOE as reasonably requested to facilitate OVEC's move to PJM.

(b) If OVEC becomes a member of PJM, OVEC agrees to continue to use its commercially reasonable efforts to provide retail service to DOE in accordance with the Letter Agreement as modified by the Termination Agreement and this Amendment and in accordance with applicable law. If DOE determines that supplemental and/or alternative and preferable methods of procuring retail services for DOE exist from OVEC, including (x) through an RFP similar to the prior practice or on different terms and conditions for power and energy from third party sources contracted pursuant thereto, or (y) through temporary assignment by OVEC of its rights as DOE's load serving entity, to the extent allowed for and approved by PUCO, to a third party, OVEC agrees to consider those alternative procurement methods and, upon mutual agreement as to all terms, including cost-reimbursement or other compensation to OVEC, memorialize them in an amendment to the Letter Agreement, consistent with the terms of the Letter Agreement and this Termination Agreement. In furtherance of the foregoing, if the DOE requests a continuation of the prior RFP process even after OVEC joins PJM for some portion of the DOE's projected load, then OVEC agrees to continue such bidding on the same terms and conditions, but subject to DOE's advance agreement to reimburse OVEC for incremental costs and expenses of OVEC for such continued RFP and with DOE's recognition that power and energy purchased under such RFP may not mitigate certain costs to be reimbursed by DOE to OVEC, including for the purchase of capacity rights to cover DOE's load (inclusive of losses) as required under the PJM tariff. In all cases, DOE agrees that the charges from OVEC shall (consistent with the Letter Agreement) include reimbursement to OVEC of all costs and expenses to deliver third party power and energy to DOE thereunder, including any applicable charges allocated based on DOE's load from time to time under the PJM tariff, such as the allocated portion of any capacity obligations

as a load serving entity under the PJM Reliability Assurance Agreement and any other charges, all solely on a pass-through cost basis.

7. 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).

8. 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: 

Name: Justin J. Cagier

Title: CFO, Secretary & Treasurer

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

By: 

Name: Matthew Carpenter

Title: Contracting Officer

## **Annex A: Additional Services**

A. The following services are included in the Annual Service Fee as “Regulatory Compliance Contract Costs”.

1. Communicate directly with the Reliability Coordinator (RC) on DOE’s behalf with regard to:
  - a. EOP-004 R2 – when notified by DOE, report events to the RC
  - b. IRO-017 R2 – outage coordination with RC
  - c. PRC-001 R2.2 – when notified by DOE, notify the RC regarding protective relay failure which reduces reliability
  - d. TOP-001 R8 – when notified by DOE, inform the RC of actual or expected operations that could result in an emergency
  - e. TOP-001 R9 – when notified by DOE, forward notification to the RC of planned and unplanned outages of telemetering and control equipment, monitoring and assessment capabilities, and associated communications channels for 30 minutes or more.
  - f. Provide notification to DOE PORTS of anticipated or actual Geomagnetic Disturbance Events and coordinate actions to address same with the RC.
2. Obtain and utilize status, voltages, and flow data outside DOE PORTS TOP Area to support the determination of System Operating Limit (SOL) exceedances within DOE PORTS TOP Area (TOP-001 R10.2).
3. Utilize and maintain/update existing data collection equipment (OVEC’s RTU in X-530) and communications paths to gather and transmit DOE operating data to applicable entities systems including the RC’s Energy Management Systems (EMS) and any other data required by the RC and neighboring entities.

B. OVEC shall also provide the following additional services under EOP-008 R1.2.2. For the performance of such services, DOE shall pay the sum of (i) a standby fee of \$850 per month and (ii) an amount equal to \$850 per event. Such amount shall be payable on a monthly basis.

1. Upon request from DOE, provide back-up reliability operations for monitoring and maintaining situational awareness of the DOE PORTS TOP Area in the event of the loss of US DOE PORTS primary control functionality. Control of DOE PORTS TOP Area would remain DOE’s responsibility, local to the X-530 Switchyard, as directed by OVEC.

C. With respect to the MOD family of standards, DOE can access OVEC’s ATCID, which is publically available on OVEC’s OASIS.

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/20/2018 4:53:20 PM**

**in**

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

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