**THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | |
|---|---|
| **IN THE MATTER OF THE APPLICATION OF OHIO VALLEY ELECTRIC CORPORATION FOR APPROVAL OF TERMINATION OF SERVICE.** | **CASE NO. 15-892-EL-AEC** |

# SECOND FINDING AND ORDER

Entered in the Journal on July 14, 2021

## I. SUMMARY

**{¶ 1}** The Commission approves the Amended Joint Stipulation and Recommendation, filed March 22, 2021, related to the termination of 345kV electric service by the Ohio Valley Electric Corporation to the Department of Energy's Portsmouth, Ohio facility, which will be replaced by 138kV service from the Ohio Power Company to the Department of Energy.

## II. PROCEDURAL HISTORY

**{¶ 2}** Ohio Valley Electric Corporation (OVEC) and Ohio Power Company d/b/a AEP Ohio (AEP Ohio) are electric light companies as defined by R.C. 4905.03 and public utilities as defined under R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

**{¶ 3}** On May 7, 2015, OVEC filed an application seeking approval of its agreement with the United States Department of Energy (DOE) to terminate OVEC's right and obligation to provide service to DOE's facility in Portsmouth, Ohio (Facility) (the Termination Agreement). OVEC had been providing service to the Facility under a reasonable arrangement dating back to 1952. The Termination Agreement was subsequently modified by filings on July 22, 2015, September 11, 2015, February 19, 2016, August 22, 2016, March 2, 2017, August 23, 2017, and December 19, 2017. On April 10, 2018, a Joint Stipulation and Recommendation (Original Stipulation) was filed by DOE, AEP Ohio, and OVEC. Among other things, the Original Stipulation provided that AEP Ohio would assume the right and obligation to serve DOE.

**{¶ 4}** On May 15, 2018, AEP Ohio filed the direct testimony of Andrea E. Moore in support of the Original Stipulation.

**{¶ 5}** A hearing on this matter was held on May 17, 2018.

**{¶ 6}** By Opinion and Order dated June 28, 2018, the Commission approved the Original Stipulation.

**{¶ 7}** On July 20, 2018, OVEC filed notice of the eighth amendment to its Termination Agreement with DOE.

**{¶ 8}** On August 22, 2018, the Commission issued an Entry on Rehearing that granted DOE's request for clarification of the June 28, 2018 Opinion and Order and approved the eighth amendment of the Termination Agreement.

**{¶ 9}** On March 12, 2020, OVEC, DOE, and AEP Ohio filed a Joint Letter Agreement, requesting the Commission's approval of changes to certain exhibits in the Original Stipulation and Ms. Moore's testimony, which provided the cost of the service to all three parties, the rate structure of the DOE as compared to the investment necessary to serve the load, and a diagram of the infrastructure necessary to serve the new DOE load. OVEC, DOE, and AEP Ohio stated that, through additional scoping of the project, it was determined that a change in the ownership of certain facilities may be needed, which would include an update of cost responsibility, as well as a revision to the contribution in aid of construction agreement between AEP Ohio and DOE. With the Joint Letter Agreement, OVEC, DOE, and AEP Ohio submitted updated versions of Exhibits B, C, and D to the Original Stipulation and an updated version of Exhibit AEM-3 to Ms. Moore's testimony. OVEC, DOE, and AEP Ohio represented that the updated calculation did not represent a significant cost to other customers.

**{¶ 10}** On March 23, 2020, AEP Ohio filed correspondence stating that the updated version of Exhibit AEM-3, which showed a summary of the costs of additional investment versus payments received by DOE, was not the correct version of the exhibit. Accordingly,

AEP Ohio provided the final version of Exhibit AEM-3 and reaffirmed that the updated calculation did not represent a significant cost to other customers.

**{¶ 11}** By Finding and Order dated September 9, 2020, the Commission declined to approve the Joint Letter Agreement. In that Finding and Order, the Commission stated that the parties did not provide sufficient evidence for the Commission to determine that the proposed modifications to the unique arrangement were reasonable and furthered the policy of the state as set forth in R.C. 4928.02. The Commission specifically cited concerns about the net negative financial benefit for AEP Ohio's customers resulting from the proposal outlined in the Joint Letter Agreement and stated that OVEC, DOE, and AEP Ohio failed to explain what steps, if any, they would take to maximize the net benefit for other customers. The Commission, therefore, denied the request for approval, without prejudice.

**{¶ 12}** On March 22, 2021, OVEC, DOE, and AEP Ohio (collectively, Signatory Parties) filed an Amended Joint Stipulation and Recommendation (Amended Stipulation) and requested its approval by the Commission. The Signatory Parties believe that the Amended Stipulation and supporting exhibits incorporate the changes necessary to the Original Stipulation that prompted the proposal in the Joint Letter Agreement, while also addressing the concerns expressed by the Commission in its September 9, 2020 Finding and Order. Included as part of this filing is the Supplemental Testimony of AEP Ohio witness Andrea E. Moore (Supplemental Testimony), in which she explains the ways in which the Amended Stipulation addresses the Commission's previous concerns and states her belief that the Amended Stipulation meets both the requirements of the Ohio Revised Code and the Commission's three-prong test for the consideration of stipulations.

## III. REVIEW OF THE PROPOSED ARRANGEMENT

**{¶ 13}** R.C. 4905.31 authorizes the Commission to approve schedules or reasonable arrangements between a public utility and another public utility or one or more of its customers. The statute provides that every such schedule or reasonable arrangement shall be under the supervision and regulation of the Commission, and is subject to change, alteration, or modification by the Commission. Proposed modifications to a Commission-approved unique arrangement have generally been brought before the Commission by way of a formal motion or application to modify the arrangement, and the Commission has considered the requirements of Ohio Adm.Code 4901:1-38-05 in reviewing the proposed modifications. *See, e.g.*, *In re Ormet Primary Aluminum Corp.*, Case No. 09-119-EL-AEC, Opinion and Order (Oct. 2, 2013).

**{¶ 14}** As noted above, the Commission approved the Original Stipulation on June 28, 2018, and much of the Amended Stipulation mirrors the Original Stipulation. As noted in the cover letter accompanying the Amended Stipulation, while Commission Staff is not a signatory to the agreement, the parties did consult with Staff and seek its input concerning the Amended Stipulation prior to filing it. The Amended Stipulation, signed by OVEC, DOE, and AEP Ohio, provides for the termination of OVEC's 345kV electric service to the Facility, which will be replaced by 138kV service from AEP Ohio. AEP Ohio has committed to build the transmission and distribution lines and substation necessary to serve DOE's load under a 138kV service plan. Further, AEP Ohio and OVEC will establish new 345kV transmission interconnections directly between their networks, thereby bypassing the current 345kV transmission interchange that was used to service the Facility. DOE has committed to build the necessary facilities to replace the current OVEC service with 138kV service from AEP Ohio. DOE and OVEC will build the necessary facilities and finish other efforts necessary to remove DOE from the current 345kV transmission path. The Signatory Parties each acknowledge that these plans are subject to modification for engineering and planning considerations, or as may be required for approval by the Ohio Power Siting Board, PJM Interconnection, LLC, or the Federal Energy Regulatory Commission. (Amended Stipulation at 3-4.)

**{¶ 15}** The Amended Stipulation also sets forth various milestones that the Signatory Parties will work toward meeting within the timeline estimates outlined therein. In accordance with Milestone 6 in the Amended Stipulation, upon completing construction of the necessary 138kV facilities, the DOE load will be transferred from OVEC to AEP Ohio, under the applicable AEP Ohio tariff, unless otherwise ordered by the Commission. In accordance with Milestone 7 in the Amended Stipulation, upon completing construction of the new 345kV interconnection between OVEC and AEP Ohio, and removal of the current transmission infrastructure, all OVEC transmission facilities on the DOE reservation that are not utilized for the 345kV connection(s) between OVEC and AEP Ohio will be removed by OVEC at its expense. Until the 345kV transfer occurs, however, DOE will own and operate its X-530 substation, along with the transmission line from X-530 to the AEP Don Marquis substation, and will be solely responsible for the operation and care of the facilities. The applicable parties also agree to execute a Letter of Commitment, an Electric Service Agreement, and a Contribution in Aid of Construction Agreement, which are attached to the Amended Stipulation. (Amended Stipulation at 4-8.)

**{¶ 16}** As outlined above, subsequent to approval of the Original Stipulation, the Signatory Parties conducted additional scoping of the project and determined that a change in ownership of the facilities and updated cost responsibilities were necessary. They attempted to accomplish this via the Joint Letter Agreement and accompanying testimony, which the Commission declined to approve for the reasons outlined in the September 9, 2020 Finding and Order. In response, the parties submit the Amended Stipulation to accomplish these revisions and seek Commission approval of the agreement. The Amended Stipulation includes updated versions of Exhibit B (initial schematic drawings), Exhibit C (Letter of Commitment), Exhibit D (Electric Service Agreement), and Exhibit E (Contribution in Aid of Construction Agreement). Exhibit B contains updated schematics based on the changes proposed elsewhere in the agreement. Additionally, Table 1 in Exhibit B has been amended to show the revised cost responsibilities and ownership for the various facilities which the Signatory Parties feel is necessary to carry out the purposes of the

agreement. (Amended Stipulation, Ex. B at 1-2, 5.) The updated Letter of Commitment attached as Exhibit C reflects an increase in DOE's Contribution in Aid of Construction (CIAC) obligation to $5,160,000, up from $1,181,000 in the Original Stipulation. Exhibit C also increases the amount of construction costs for which DOE will reimburse AEP Ohio to $31,390,000, up from $23,130,000 in the Original Stipulation. (Amended Stipulation, Ex. C at 1-2.) The updated Electric Service Agreement attached as Exhibit D reflects, among other changes, the addition of a new facilities charge to be paid by DOE to AEP Ohio, totaling approximately $5,500,000 to be paid monthly over 11 years, as outlined in Attachment 1 to the exhibit (Amended Stipulation, Ex. D at 1, Att. 1). According to AEP Ohio witness Moore, AEP Ohio will credit these facilities charge payments to AEP Ohio's Basic Transmission Cost Rider (BTCR), which will lower the revenue requirement to all other customers and ensure that these payments directly benefit Ohio customers (Supplemental Testimony at 4). Exhibit D also amends the contract capacity to 26,000kW from 36,000kW in the Original Stipulation. (Amended Stipulation at Ex. D.)

**{¶ 17}** AEP Ohio witness Moore believes that these updates in the Amended Stipulation address the concerns previously expressed by the Commission in the September 9, 2020 Finding and Order and provide the Commission with the information necessary to determine that the revised interconnection plan does not impose a financial burden on other customers. According to Ms. Moore, the increased CIAC and the addition of the new facilities charge to be paid by DOE to AEP Ohio leave all other customers in a financially neutral position and bearing no financial burden for the reconfigured interconnection agreement. Ms. Moore attached two exhibits to her Supplemental Testimony, AEM-1 and AEM-2, which demonstrate that the cost of improvements undertaken under the Amended Stipulation are not being borne by other customers. Exhibit AEM-1 updates a similar analysis that was attached to the Original Stipulation and shows that under the amended agreement, the shortfall of payments from DOE in Year 1 (calculated at $935,496) is made up by the new facilities charge imposed under the Electric Service Agreement. Exhibit AEM-2 then outlines calculations of the annual facilities charge through Year 15. Ms. Moore

believes that this analysis, as well as the contractual obligations memorialized in the Amended Stipulation, demonstrate that the arrangement is nondiscriminatory and does not violate the provisions of R.C. 4905.33 and 4905.35. Ms. Moore further states that the Amended Stipulation furthers the state's policy outlined in R.C. 4928.02 by ensuring that DOE is charged nondiscriminatory and reasonable rates and that the project contributes to the state's effectiveness in the global economy. (Supplemental Testimony at 4-7.)

**{¶ 18}** Upon our review of the evidence, the Commission finds that DOE and AEP Ohio have adequately addressed the concerns raised in our September 9, 2020 Finding and Order and have met their burden of proof for obtaining a unique arrangement under Ohio Adm.Code 4901:1-38-05(B). The Commission further finds that such arrangement does not violate R.C. 4905.33 or 4905.35. AEP Ohio is directed to file an executed contract in this docket when final costs have been determined.

## IV. CONSIDERATION OF THE AMENDED STIPULATION

**{¶ 19}** Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight, particularly where the stipulation is unopposed by any party and resolves all issues in the proceeding. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

**{¶ 20}** The Commission has established a three-part test in considering whether a stipulation is reasonable and should be adopted:

a. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

b. Does the settlement, as a package, benefit ratepayers and the public interest?

c. Does the settlement package violate any important regulatory principle or practice?

**{¶ 21}** The Supreme Court of Ohio has endorsed the Commission's use of these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. In determining the reasonableness of a stipulation, the Commission should consider the agreement as a package. *In re Ohio Edison Co., et al.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at 99-100.

***A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?***

**{¶ 22}** The Commission notes that, while Staff is not a signatory to the Amended Stipulation, the Signatory Parties state that they did consult with Staff and seek input from Staff regarding the Amended Stipulation prior to filing it. No opposition to the Amended Stipulation has been filed by any parties to the case. Furthermore, AEP Ohio witness Moore testified that the Amended Stipulation is the product of meetings and negotiations between experienced counsel and technical experts from each represented party (Supplemental Testimony at 10). Upon review of the record, the Commission finds that the first prong of the three-part test for the reasonableness of a stipulation has been met.

***B. Does the settlement, as a package, benefit ratepayers and the public interest?***

**{¶ 23}** As discussed above, according to Ms. Moore's Supplemental Testimony, the Amended Stipulation properly allocates the cost responsibilities for construction of the new facilities, as well as ownership of the facilities, and results in other customers bearing no financial responsibility for necessary improvements. The Commission also notes that Ms. Moore's supplemental testimony highlights additional system and operational benefits that

will result from the implementation of the Amended Stipulation, such as reducing outage exposure on certain transmission circuits, resolving aging infrastructure issues, and improving the control, operation, and regulation of bulk electric system elements (Supplemental Testimony at 7-9). Upon review of the evidence, the Commission finds that the second prong of the Commission's three-part test for stipulations has been met.

### *C. Does the stipulation violate any important regulatory principle or practice?*

**{¶ 24}** Ms. Moore states that the Amended Stipulation does not violate any important regulatory principle or practice. According to her Supplemental Testimony, Ms. Moore believes the Amended Stipulation to be a reasonable settlement of the request to terminate the current contract to serve load from OVEC to DOE and to appropriately provide AEP Ohio the right and obligation to serve the load as part of its service territory. (Supplemental Testimony at 10-11.) No party has offered evidence to refute these statements. Accordingly, the Commission finds that the third prong of the three-part test for the reasonableness of a stipulation has been met and, thus, the Amended Stipulation should be approved.

**{¶ 25}** Finally, as we have found that the arrangement does not appear to be unjust or unreasonable, in accordance with Ohio Adm.Code 4901:1-38-05(B), we do not find a hearing is necessary to consider the Amended Stipulation in this matter.

## V. ORDER

**{¶ 26}** It is, therefore,

**{¶ 27}** ORDERED, That the arrangement for the assumption of service to DOE by AEP Ohio, pursuant to the Amended Stipulation, is reasonable and should be approved. It is, further,

**{¶ 28}** ORDERED, That OVEC, DOE, and AEP Ohio file all documentation and take all steps necessary to implement the Amended Stipulation and carry out the terms of this Second Finding and Order. It is, further,

**{¶ 29}** ORDERED, That nothing in this Second Finding and Order shall be binding upon this Commission or the Ohio Power Siting Board, in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation, or the environmental compatibility of, or public need for, any facility. It is, further,

**{¶ 30}** ORDERED, That a copy of this Second Finding and Order be served upon all parties of record.

COMMISSIONERS:
***Approving:***
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

DMH/kck

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

**Commission of Ohio Docketing Information System on**

**7/14/2021 2:58:47 PM**

**in**

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

Summary: Finding & Order approving the Amended Joint Stipulation and Recommendation, filed March 22, 2021, related to the termination of 345kV electric service by the Ohio Valley Electric Corporation to the Department of Energy's Portsmouth, Ohio facility, which will be replaced by 138kV service from the Ohio Power Company to the Department of Energy electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio