

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
OHIO VALLEY ELECTRIC CORPORATION
FOR AUTHORITY TO ISSUE EVIDENCE OF
SHORT-TERM INDEBTEDNESS IN THE
FORM OF ONE OR MORE REVOLVING
CREDIT, TERM LOAN OR OTHER
FACILITIES.

CASE NO. 22-926-EL-AIS

FINDING AND ORDER

Entered in the Journal on December 14, 2022

I. SUMMARY

{¶ 1} The Commission approves the Application of Ohio Valley Electric Corporation for authorization to issue debt and execute related financing agreements.

II. APPLICABLE LAW

{¶ 2} The Applicant, Ohio Valley Electric Corporation (OVEC or the Company), is an Ohio corporation and a public utility, as defined in R.C. 4905.02, subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4905.401 permits public utility companies to issue stocks, bonds, notes, and other evidences of indebtedness, payable at periods of not more than twelve months, when authorized by the Commission. R.C. 4905.401 also provides a statutory exemption that permits Ohio electric utilities to borrow up to five percent of the par value of all outstanding long-term securities without prior Commission approval (Statutory Exemption). The application process for obtaining Commission authorization is outlined in R.C. 4905.41, and must include the amount, purpose, and terms of the financial arrangement, as well as the total assets and liabilities of the utility.

III. PROCEDURAL HISTORY

{¶ 4} On November 3, 2022, OVEC filed an application in this docket seeking authorization to issue up to \$185 million in short-term securities during the 2023 calendar

year (Application), using OVEC's existing \$185 million revolving credit facility (Revolver), or under new unsecured or secured revolving credit facilities, term loans, or other arrangements.

{¶ 5} On December 2, 2022, Staff filed a report concluding that the Application appears reasonable and recommending that OVEC's request be approved. Staff calculates that, as of September 30, 2022, OVEC could have borrowed approximately \$55 million without prior Commission approval, under the Statutory Exemption. Staff notes that OVEC proposes to use the \$185 million in proceeds for the interim financing of OVEC's capital expenditure programs, working capital needs, and to repay previous borrowings incurred for such purposes. Staff also observes that OVEC is currently authorized, through December 31, 2022, to have outstanding short-term debt in an aggregate principal amount of no more than \$185 million and that this application represents a renewal of that authority. *In re Ohio Valley Electric Corp. for Authority to Issue Debt*, Case No. 21-1151-EL-AIS, Finding and Order (Dec. 15, 2021). If the Application is approved, Staff further recommends that OVEC be directed to file reports on a quarterly basis in this case docket that provides details about the utilization of authority granted in this case.

{¶ 6} According to the Staff report, OVEC primarily issues its short-term debt through its Revolver arrangement with a group of banks that was originally negotiated in 2014 and expires in February 2024. Staff notes that OVEC's actual and projected capital construction costs are \$64 million for 2022. Staff adds that OVEC anticipates spending approximately \$52 million during 2023. Pointedly, Staff states that construction is underway on several environmental projects to maintain compliance with regulations from the U.S. Environmental Protection Agency (US EPA) relating to coal combustion residuals and effluent limitation guidelines. According to Staff, potential cash outflows for these projects are included in OVEC's capital construction budget. Staff concludes that OVEC has demonstrated a need for short-term funding over the course of 2023 to support its capital expenditure program and other corporate needs that may exceed the amount permitted by the Statutory Exemption under R.C. 4905.401.

{¶ 7} On November 28, 2022, The Ohio Manufacturers' Association Energy Group (OMAEG) filed a motion to intervene, citing concerns with OVEC's intent to use its short-term borrowing authority "to finance coal, reagent, environmental allowance, material and supply inventories at its [. . .] Clifty Creek Plant[. . .] and pay its [Indiana-Kentucky Electric Corporation's] general obligations, [and . . .] to pay any expenditures incurred in connection with the compliance with environmental regulations of the Ohio, Indiana, and United States Environmental Protection Agencies." (Application at 7). As argued by OMAEG, OVEC should not be permitted to buy coal inventory for its Clifty Creek Plant if it anticipates the plant's inability to comply with the coal combustion residual environmental regulations and, thus, imminent closure.

{¶ 8} On December 9, 2022, OVEC filed a memorandum contra OMAEG's motion to intervene. In its memorandum, OVEC argues that OMAEG's intervention is predicated on a presumption that the US EPA will ultimately decide that the Clifty Creek Plant must close, which OVEC avers is not a possible result of an adverse decision where OVEC is currently underway on construction of US EPA-compliant facilities at the Clifty Creek Plant. Further, OVEC states that it is seeking the same short-term borrowing authority that the Commission previously approved with no cost increases or other changes to OVEC's loan or borrowing terms.

{¶ 9} On December 13, 2022, by Entry, the attorney examiner granted OMAEG's motion to intervene.

IV. DISCUSSION

{¶ 10} Upon review of the Application and Staff's recommendations, the Commission finds that the maximum amount of the requested securities does not appear to be unreasonable, and that their probable costs, prices to OVEC, and other terms to be determined within the parameters set forth in the Application do not appear to be unjust or unreasonable. Further, the purposes to which the proceeds from the borrowings shall be applied appear to be reasonably required to meet OVEC's present and prospective

obligations to provide utility service. Therefore, the Commission finds that the Application should be approved.

{¶ 11} OVEC is directed to report any draws upon the Revolver and the use of the proceeds on a quarterly basis. Further, the proposed guidelines or parameters set forth in the Application are intended to facilitate the issuance of the securities on the best terms and at the lowest cost obtainable. The authorization of the sale of securities within the guidelines set forth in the Application in no way relieves OVEC of its obligation to negotiate and obtain the best terms available. Further, the effect on OVEC's revenue requirements resulting from the issuance of the securities can be determined only in rate proceedings in which all factors affecting rates are considered, according to law.

{¶ 12} Finally, the Commission notes, concerning issues cited by OMAEG in its accompanying memorandum to its motion to intervene, that Staff's report of investigation provides that OVEC is currently under way on several construction projects to address concerns brought to OVEC by the US EPA. Further, while the Commission finds concerning the issues cited by the US EPA regarding the Clifty Creek Plant, we find that denial of short-term borrowing authority is not the proper remedy for those issues. The Commission directs Staff to monitor the US EPA action as to concerns on the Clifty Creek Plant and, when necessary, report back to the Commission as the situation develops.

V. ORDER

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That OVEC be authorized through December 31, 2023, to incur short-term debt through its Revolver, or the issuance of other short-term securities, in an aggregate principal amount of up to \$185 million as described in the Application. It is, further,

{¶ 15} ORDERED, That OVEC be authorized to apply the proceeds from such debt for the purposes set forth in this Finding and Order, or otherwise pursuant to R.C. 4905.401. It is, further,

{¶ 16} ORDERED, That OVEC file reports, on a quarterly basis, regarding any use of the Revolver and the application of such proceeds, as authorized by this Finding and Order. It is, further,

{¶ 17} ORDERED, That OVEC account for the issuance of any securities as prescribed by the Federal Energy Regulatory Commission Uniform System of Accounts in effect at the time of such issuance. It is, further,

{¶ 18} ORDERED, That nothing in this Finding and Order be construed to imply any guaranty or obligation as to any unsecured notes and other evidences of indebtedness or the associated interest on the part of the state of Ohio. It is, further,

{¶ 19} ORDERED, That nothing in this Finding and Order be deemed to be binding upon this Commission in any future proceedings or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation of OVEC. It is, further,

{¶ 20} ORDERED, That nothing in this Finding and Order be construed to imply any guaranty or obligation by the Commission to assure completion of any specific construction project of OVEC. It is, further.

{¶ 21} ORDERED, That a copy of this 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

JMD/mef

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/14/2022 2:35:52 PM

in

Case No(s). 22-0926-EL-AIS

Summary: Finding & Order approving the application of Ohio Valley Electric Corporation for authorization to issue debt and execute related financing agreements electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio