

DOCUMENT RESUME

02692 - [A1792819]

[Request for an Opinion on Matters Relating to an Electric Utility Service Contract]. B-112131. June 17, 1977. 3 pp.

Decision re: Energy Research and Development Administration; by Milton Socolar, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Atomic Energy Commission; Ohio Valley Electric Corp.

Authority: Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.). Energy Reorganization Act of 1974 (42 U.S.C. 5811 et seq.).

The Acting Administrator of the Energy Research and Development Administration (ERDA) requested an opinion with regard to ERDA's authority to enter into a modification to a continuing contract originally made between the Atomic Energy Commission (AEC) and the Ohio Valley Electric Corporation. AEC was authorized, and ERDA is authorized, to enter into the electric utility service contract, as amended, and the proposed modification which would extend the contract period will obligate the Government in accordance with the terms of the contract. Neither the proposed modification nor the current contract violates existing legislation. (Author/SC)

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Lawrence Lebow
Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-112131

DATE: June 17, 1977

MATTER OF: Energy Research and Development Administration
Request for Advance Decision

DIGEST:

ERDA is advised that AEC was authorized, and ERDA is authorized to enter into electric utility service contract No. E-(40-1)-1530, as amended, and that proposed amendment thereto will obligate Government in accordance with the terms thereof.

The Acting Administrator of the Energy Research and Development Administration (ERDA) has requested an opinion on matters relating to contract No. E-(40-1)-1530 (formerly No. AT-(40-1)-1530) entered into by the United States Atomic Energy Commission (AEC) and the Ohio Valley Electric Corporation (OVEC).

As background, AEC entered into the contract dated October 15, 1952, with OVEC, a corporation organized by 15 utility companies, for the purpose of supplying electric utility services to a uranium production facility to be built by AEC at Portsmouth, Ohio. The contract covers a period of 25 years with an option to extend the term for three successive periods of 5 years each. The contract will expire on October 14, 1977, unless prior thereto its term is extended. A Modification No. 8 to the contract has been proposed that would extend the contract period through March 31, 1979.

ERDA's Acting General Counsel is of the opinion that (1) ERDA (AEC) had full power and authority to enter into the contract as heretofore amended by Modifications Nos. 1 through 7; (2) ERDA has full power and authority to enter into Modification No. 8 and to obligate the United States of America, subject to

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the terms and conditions of the contract as heretofore modified and as to be modified by Modification No. 8, for all payments which may be required to be made to OVEC thereunder; and (3) that the contract, as heretofore modified and as to be modified by Modification No. 8, will not contravene the provisions of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq. (1970) or the Energy Reorganization Act of 1974, 42 U.S.C. § 5811 et seq. (Supp. IV 1974). However, it is stated that OVEC, as it has done previously, has requested that ERDA obtain our opinion on these matters before proceeding with Modification No. 8.

We previously advised AEC that it had full power and authority to enter into the contract and Modification No. 1 thereto. See B-112131, October 10, 1952, and July 27, 1953. The purpose of Modification No. 2 was to revise the cancellation provisions of the contract. Modifications Nos. 3 and 4 provided for the disposition of funds which OVEC had received and expected to receive as a result of claims made by OVEC against certain electrical equipment manufacturers based on violations of the anti-trust laws. Modification No. 5 followed a request by AEC for a temporary power reduction; Modification No. 6 provided for increases in power. Modification No. 7 provided for funding certain pollution control measures.

Section 164 of the Atomic Energy Act of 1954, supra, 42 U.S.C. § 2204, provides:

"The Commission [AEC] is authorized in connection with the construction or operation of the Oak Ridge Paducah, and Portsmouth installations of the Commission, without regard to section 665 of Title 31, to enter into new contracts or modify or confirm existing contracts to provide for electric utility services for periods not exceeding twenty-five years * * *."

Section 104 of the Energy Reorganization Act of 1974, supra, 42 U.S.C. 5814, provides:

"(c) There are hereby transferred to and vested in the Administrator [ERDA] all functions of the Atomic Energy Commission, the Chairman and members of the Commission, and the officers and components of the Commission * * *."

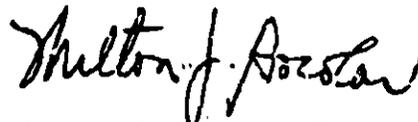
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In view of such provisions, we find no basis for disagreeing with the opinion of ERDA's General Counsel.

ERDA plans to execute Modification No. 8 not later than June 23, 1977, and thereupon submit it to Congress pursuant to Section 164 of the Atomic Energy Act of 1954, supra, which with respect to electric utility service contracts provides:

"* * * Any contract hereafter entered into by the Commission pursuant to this section shall be submitted to the Joint Committee [on Atomic Energy] and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days) before the contract of the Commission shall become effective: Provided, however, That the Joint Committee, after having received the proposed contract, may by resolution in writing, waive the conditions of or all of any portion of such thirty-day period."

ERDA initially questioned whether the 30-day period referred to above would be affected by the enactment after June 23, 1977, of S. 1153 or similar legislation that would abolish the Joint Committee on Atomic Energy, and in that event to which committee should it submit Modification No. 8. However, in light of the hypothetical nature of the questions, ERDA subsequently withdrew them.



Acting Comptroller General
 of the United States