

ORDINANCE 2009-O- 04

ORDINANCE OF THE CITY OF MARSHALL, ILLINOIS
TO PROTECT AGAINST THE POTENTIAL ADVERSE ECONOMIC
IMPACT OF FERC ORDER 719 BY PRECLUDING CUSTOMERS
OF THE CITY'S ELECTRIC UTILITY FROM BIDDING DEMAND
RESOURCES INTO THE MISO MARKETS

WHEREAS, the City of Marshall (the "Municipality") owns and operates its own municipal electric utility for the distribution and sale of electricity to its citizens and businesses; and

WHEREAS, under Illinois law, the Municipality is not subject to rate regulation or any other regulation by the Illinois Commerce Commission or any other agency of the State of Illinois, but rather the Municipality is the relevant retail regulatory authority that has jurisdiction over and establishes rates and policies with respect to electric customers within its service area; and

WHEREAS, also under Illinois law, the Municipality has the exclusive right to provide electric service to its customers located both inside and outside the corporate limits; and

WHEREAS, the Municipality is a Member of the Illinois Municipal Electric Agency ("IMEA") and has an existing Power Sales Contact pursuant to which the Municipality has contracted to purchase all of the power and energy requirements for its electric system; and

WHEREAS, the Municipality is the provider of last resort for its customers, and as such the Municipality and IMEA must plan for the capacity, energy and other electric service needs of all of the Municipality's customers, including the requirement to purchase sufficient capacity to cover its entire peak load for all customer usage; and

WHEREAS, the Federal Energy Regulatory Commission ("FERC") has issued its Final Rule regarding the centralized electric power markets operated by Regional Transmission Organizations ("RTOs"), Order No. 719, 125 FERC ¶ 61,071, 73 Fed. Reg. 64,099 (October 28, 2008); and

WHEREAS, pursuant to Order No. 719, 18 C.F.R. § 35.28(g)(1)(i)(A) provides: "Every Commission-approved independent system operator or regional transmission organization that operates organized markets based on competitive bidding for energy imbalance, spinning reserves, supplemental reserves, reactive power and voltage control, or regulation and frequency response ancillary services (or its functional equivalent in the Commission-approved independent system operator's or regional transmission organization's tariff) must accept bids from demand response resources in these markets for that product on a basis comparable to any other resources, if the

demand response resource meets the necessary technical requirements under the tariff, and submits a bid under the Commission-approved independent system operator's or regional transmission organization's bidding rules at or below the market-clearing price, unless not permitted by the laws or regulations of the relevant electric retail regulatory authority"; and

WHEREAS, pursuant to Order No. 719, 18 C.F.R. § 35.28(g)(1)(iii) provides: "Each Commission-approved independent system operator and regional transmission organization must permit a qualified aggregator of retail customers to bid demand response on behalf of retail customers directly into the Commission-approved independent system operator's or regional transmission organization's organized markets, unless the laws and regulations of the relevant electric retail regulatory authority expressly do not permit a retail customer to participate"; and

WHEREAS, the Municipality is located in the geographic area served by the RTO, Midwest Independent Transmission System Operator, Inc., and the RTO has not yet made its compliance filing in accordance with FERC Order 719 to finalize its rules regarding demand response resources associated with retail customers; and

WHEREAS, since FERC Order 719 specifically recognizes that the Municipality as the relevant electric retail regulatory may have laws or regulations precluding its customers from participating in the RTO markets with demand response resources, and since the Municipality must make its initial decision on such laws or regulations before the RTO has finalized its rules on this matter, it is appropriate for the Municipality to act to temporarily preclude its end-use customers from such participation so that the Municipality can evaluate the RTO's rules when they are issued and analyze whether participation in the markets by its customers will have any adverse economic impact on the Municipality and its other customers who are unable to participate in the RTO markets; and

WHEREAS, the City Council of the City of Marshall, having considered the foregoing, has determined that it is in the best interests of the Municipality to preclude the customers of its electric utility from bidding or selling demand response resources into the MISO markets or otherwise participating in the MISO markets with any such demand response resources whether directly or through a third-party aggregator.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARSHALL, CLARK COUNTY, ILLINOIS, AS FOLLOWS:

Section 1. The findings and determinations set forth in the preamble to this Ordinance are hereby made findings and determinations of the City Council of the City of Marshall and incorporated into the text of this Ordinance by this reference.

Section 2. The customers of the City of Marshall municipal electric utility are hereby restricted and precluded from bidding or selling demand response into any organized electric or ancillary services markets operated or administered by MISO (or any successor independent system operator or regional transmission organization) or otherwise participating in such markets with any demand response resources whether directly or through a third-party aggregator.

Section 3. The City Council will revisit this Ordinance once the MISO rules for implementing the FERC Order and Regulations have been put in place to determine if the protection afforded by this Ordinance is still required or whether customers of the Municipality's electric utility system will be permitted to participate in the MISO markets with any demand response resources, either directly, through a third-party aggregator or only through the Municipality or its designee.

Section 4. If any provision of this Ordinance, or application thereof, is held invalid by any Court, other provisions or applications of this Ordinance which can be given effect without the invalid provision or application shall not be affected, and to this end the provisions of this Ordinance are declared to be severable.

Section 5. It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Marshall, Illinois and the sections of this ordinance shall be renumbered to accomplish such intention.

Section 6. This Ordinance shall be in full force and effect from and after its passage.

	<u>AYES</u>	<u>NAYS</u>	<u>ABSENT</u>
James C. Anderson	✓		
Terry Clatfelter	✓		
Randall McGinnis	✓		
James McKittrick	✓		
Cheryl A. Raisner			✓
Tim J. Sanders	✓		
Mark R. Strait	✓		
James White	✓		

PASSED this 23rd day of February, 2009.

APPROVED this 23rd day of February, 2009.

Kenneth R. Smith

MAYOR

ATTESTED and filed in my office,
this 23rd day of February, 2009.

Ronald J. ...

CITY CLERK

(SEAL)