

## ORDINANCE 11-2011

### ORDINANCE OF THE BOROUGH OF MADISON REVISING CHAPTER 94 OF BOROUGH OF MADISON CODE TO MAKE PROVISION WITH RESPECT TO THE AGGREGATION OF DEMAND RESPONSE ON BEHALF OF RETAIL CUSTOMERS IN THE BOROUGH OF MADISON ELECTRIC UTILITY SYSTEM

**WHEREAS**, the Federal Energy Regulatory Commission (“Commission”) has issued Order No. 719, 125 FERC ¶ 61,071, 73 Fed. Reg. 64,099 (October 28, 2008), as amended by Order No. 719-A, 128 FERC ¶ 61,059, 74 Fed. Reg. 37775 (July 29, 2009), order denying rehearing, Order No. 719-B, 129 FERC ¶ 61,252 (December 17, 2009); and

**WHEREAS**, pursuant to Order No. 719, as amended, 18 C.F.R. § 35.28(g)(1)(iii) provides: “Aggregation of retail customers. Each Commission-approved independent system operator and regional transmission organization must accept bids from an aggregator of retail customers that aggregates the demand response of the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, and the customers of utilities that distributed 4 million megawatt-hours or less in the previous fiscal year, where the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an aggregator of retail customers. An independent system operator or regional transmission organization must not accept bids from an aggregator of retail customers that aggregates the demand response of the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an aggregator of retail customers, or the customers of utilities that distributed 4 million megawatt-hours or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an aggregator of retail customers.” and

**WHEREAS**, pursuant to Order No. 719, as amended, 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 Chapter 94, Article 1 et seq. of the Madison Borough Code, the Madison Borough Council is authorized to enact laws and regulations governing the provision of electric power to retail customers served within the boundaries of the Borough of Madison Electric Utility System; and

**WHEREAS**, the Borough of Madison distributed less than 4 million megawatt-hours in the previous fiscal year; [08-09: 138,343 MWH; 04-05: 146,401 MWH; 05-06: 143,376 MWH] and

**WHEREAS**, the Madison Borough Council, as the electric retail regulatory authority for the Borough of Madison Electric Utility, has determined it to be desirable and in the interests of

the residents/users in the Borough of Madison that the electricity to those residents/users continue to be provided by the Borough of Madison Electric Utility and that demand response, which has always been considered an inherent part of the load management responsibility of the Borough of Madison Electric Utility, also continue to be provided by or under the control of the Borough of Madison Electric Utility so that aggregation of demand response on behalf of retail customers served by the Borough of Madison Electric Utility should be bid directly into the organized electric and ancillary services markets administered by PJM (or any successor independent system operator or regional transmission organization to which the Borough of Madison Electric Utility is a participant) by the Borough of Madison Electric Utility or its authorized designee; and

**WHEREAS**, the Madison Borough Council has determined that it would be harmful to the ability of the Borough of Madison Electric Utility to provide electricity to the residents/users of the Borough of Madison at the lowest feasible long-run cost, and to the collective interests of the Borough of Madison Electric Utility as a load-serving entity with an obligation to serve at retail, and the Borough of Madison Electric Utility System's retail customers to permit any entity other than the Borough of Madison Electric Utility System itself or its authorized designee to aggregate demand response on behalf of its retail customers;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

**Section 1.** CHAPTER 94, ARTICLE 1 et seq., of the Borough Code is hereby revised to add, under the heading "Aggregation of Retail Customer Demand Response," a new subsection Chapter 94-6 to provide as follows:

- A. The Borough of Madison Electric Utility System or its authorized designee is the sole entity permitted to bid demand response on behalf of retail customers served by the Borough of Madison Electric Utility System directly into any Federal Energy Regulatory Commission-approved independent system operator's or regional transmission organization's organized electric markets.
- B. Retail customers served by the Borough of Madison Electric Utility wishing to bid their demand response into a Federal Energy Regulatory Commission-approved independent system operator's or regional transmission organization's organized electric markets may do so by participating in the program established by the Borough of Madison Electric Utility or its authorized designee. Retail customers are not permitted to participate in the demand response program of any other entity without the express prior authorization of the Borough of Madison Electric Utility.

**Section 2.** CHAPTER 94, ARTICLE 1 et seq., of the Borough Code is hereby revised to add, under the heading "Ancillary Services Provided by Demand Response Resources," a new subsection Chapter 94-7 to provide as follows:

- A. The Borough of Madison Electric Utility or its authorized designee is the sole entity permitted to bid demand response on behalf of retail customers served by the Borough of Madison Electric Utility directly into any Commission-approved independent system operator's or regional transmission organization's organized markets 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).

- B. Retail customers served by the Borough of Madison Electric Utility wishing to bid their demand response into a Commission-approved independent system operator's or regional transmission organization's organized markets 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) may do so only by participating in the program established by the Borough of Madison Electric Utility or its authorized designee. Retail customers are not permitted to participate in the demand response program of any other entity without the express prior authorization of the Borough of Madison Electric Utility.

**Section 3.** CONFLICTS. Any provision of any Ordinance of the Borough of Madison which is in conflict with any provision of this Ordinance is hereby repealed to the extent, but only to the extent, necessary to be consistent with this Ordinance.

**Section 4.** This ordinance shall take effect as provided by law.

ADOPTED AND APPROVED

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MARY-ANNA HOLDEN, Mayor

Attest:

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ELIZABETH OSBORNE, Borough Clerk