

Resolution 53-22

A Resolution approving the assumption of an interest of the City of Hamilton, Ohio, in the Fremont Power Sales Contract and declaring an emergency.

WHEREAS, the City of Orrville (the "City") owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, the City is also a member of American Municipal Power, Inc., ("AMP"); and

WHEREAS, the City, along with other AMP Members (collectively "Participants"), entered into a Power Sales Contract regarding the American Municipal Power Fremont Energy Center dated June 15, 2011 ("PSC"); and

WHEREAS, in order to obtain such sources of electric capacity and energy, each Participant purchases its PSCR Share (as defined in the PSC) of the output of the Power Sales Contract Resources (as defined in the PCS) from AMP; and

WHEREAS, the City has determined that it requires additional electric capacity and energy; and

WHEREAS, the City of Hamilton, Ohio is a Participant under the PSC ("Assignor"); and

WHEREAS, the City desires to accept the assignment of and assume up to 0.431% (2,000 kW) from Assignor's PSCR Share (the "Assigned Share") along with the other rights and obligations of Assignor under the PSC, including, without limitation, any obligation of Assignor to purchase Step Up Power and pay Step Up Costs, related to the PSCR Share (as such terms are defined in the PSC) (the "Assignment"); and

WHEREAS, AMP, on behalf of the remaining Participants, has waived or will waive, upon the effectiveness of this Resolution and certain other prerequisites, the right of first refusal to assume Assignor's rights under the PSC; and

WHEREAS, the City, Assignor and AMP desire to enter into an Assignment and Assumption Agreement ("Assignment Agreement") which sets forth the parties' respective rights and obligations with regard to the Assignment.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Orrville, Ohio:

- Section 1: The Assignment is hereby authorized and the Assignment Agreement, in substantially the form of which is on file with the Clerk, is hereby approved, and the Public Utility Board is authorized and directed to execute on behalf of the City a final form of the Assignment Agreement, substantially in the form approved by this Resolution with such completions and changes therein as may be necessary and approved by the Public Utility Board.
- Section 2: The City is hereby authorized, through the execution and delivery of the Assignment Agreement, to acquire the Assigned Share, and the Director of Utilities is authorized to execute and deliver any and all documents necessary for the City to acquire the Assigned Share and to carry out Assignor's related obligations under the PSC.
- Section 3: If any section, subsection, paragraph, clause or provision or any part thereof of this Resolution shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Resolution shall be unaffected by such adjudication and all the remaining provisions of this Resolution shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.
- Section 4: All Resolutions and parts of Resolutions insofar as they conflict with the provisions of this Resolution are hereby rescinded.

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Section 5: This Resolution is hereby declared to be an emergency measure necessary for the immediate protection and preservation of the public peace, health, safety, and general welfare of the residents of the City of Orrville, and for the further reason that a continuous, uninterrupted, and cost-effective power supply is necessary to preserve the health, welfare, and safety of the community. Therefore, this Resolution shall be in full force and effect immediately after its passage by Council and approval by the Mayor.

Passed this 5th day of December 20 .

Paul Oann
President of Council

Attest:

Janne Gault
Clerk of Council

Approved:

David S. Hurdal
Mayor

12/5/22
Date