

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

In the Matter of the Joint Application of)
Evergy Kansas Central, Inc., Evergy Kansas)
South, Inc., and Evergy Metro, Inc. for) Docket No. 23-EKCE-588-TAR
Approval of Tariff Changes Related to)
Wholesale Demand Response Participation.)

**ORDER GRANTING INTERVENTION TO VOLTUS, INC. AND THE EMPIRE
DISTRICT ELECTRIC COMPANY; DENYING MOTION TO DELAY ISSUANCE OF
PROCEDURAL SCHEDULE**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On January 25, 2023, Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc. (collectively Evergy) filed a Joint Application for Approval of Tariff Changes Related to Wholesale Demand Participation. Evergy seeks to update its tariffs to better address its Kansas retail customers' participation in Southwest Power Pool's¹ (SPP) wholesale markets through demand response aggregators (DRAs).² Specifically, Evergy's proposed updates: (1) define the term "Demand Response Aggregator" in both the Evergy Kansas Central and the Evergy Kansas Metro tariffs as "an entity that aggregates the load of one or more Customers for purposes of participation as demand response in the SPP Integrated Marketplace;" and (2) amend Section 7.12 of the Evergy Kansas Central tariff (and add a new corresponding Section in the Evergy Kansas Metro tariff) to (a) require any retail customer seeking to participate in SPP's markets to

¹ SPP is the Regional Transmission Organization, which covers 9 states, including Kansas.

² Joint Application for Approval of Tariff Changes Related to Wholesale Demand Participation, Jan. 25, 2023, ¶ 5.

first provide a “Customer Registration and Consent Form” to Evergy and (b) limit a retail customer participation in SPP’s markets to be through a DRA that has an effective Distribution Utility – Demand Response Aggregator Agreement with Evergy.³

2. On March 15, 2023, Evergy, Commission Staff (Staff), and the Citizens’ Utility Ratepayer Board (CURB)⁴ filed a Joint Motion for Approval of Proposed Procedural Schedule. On March 21, 2023, the Commission adopted the following schedule:

Tuesday, May 9, 2023	Staff Report and Recommendation (R&R) due	5:00 pm
Friday, June 23, 2023	Responses to Staff R&R due	5:00 pm
Monday, July 24, 2023	Commission Order due	5:00 pm

3. On March 22, 2023, Voltus, Inc. (Voltus) filed a Petition to Intervene and a Response to Joint Motion for Procedural Schedule. Voltus explains it acts as an Aggregator of Retail Customers (ARC) to allow consumers to participate in wholesale programs in the Southwest Power Pool (SPP) market with the customers’ own behind-the-meter facilities, including 28 customers in Kansas that are Evergy customers.⁵ Voltus asserts the rates paid and the services received by Voltus and its customers may be substantially affected by any Commission order on Evergy’s proposed tariff changes related to its Wholesale Demand Response Participation.⁶ Voltus also belatedly requested the Commission to deny the Joint Motion for Procedural Schedule.⁷

4. On March 24, 2023, the Empire District Electric Company (Liberty-Empire) filed a Petition to Intervene, explaining any policy decisions on retail electric customers’ participation

³ *Id.*, ¶ 9.

⁴ CURB was granted intervention on February 2, 2023.

⁵ Petition to Intervene of Voltus, Inc. and Response to Joint Motion for Procedural Schedule, March 22, 2023, ¶¶ 4, 6, 9.

⁶ *Id.*, ¶ 15.

⁷ *Id.*, ¶ 18.

in the wholesale electricity market as demand response resources may substantially impact Liberty-Empire's electric utility operations.⁸

5. On March 28, 2023, Evergy filed its Answer to Voltus' Petition to Intervene and Response to Joint Motion for Procedural Schedule. Evergy does not oppose Voltus' intervention, provided that it does not change the existing procedural schedule.⁹ Evergy claims the existing procedural schedule provides a sufficient opportunity for parties to respond to a Staff Report and Recommendation with procedural and substantive arguments, and prompt resolution of the issues is critical because Demand Response Aggregators are already active in Evergy's territory without a KCC-approved framework to protect both participating and non-participating customers.¹⁰

6. To qualify for intervention, a petition must: (1) be in writing; (2) state facts demonstrating that the petitioner's legal rights, duties, privileges, and immunities, or other legal interests may be substantially affected by the proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and (3) not impair the interest of justice and the orderly and prompt conduct of the proceedings. The Commission has broad discretion in deciding whether to grant intervention. At any time during a proceeding, the Commission may impose limitations on an intervenor's participation.

7. The Commission finds Voltus and Liberty-Empire have met the requirements of K.A.R. 82-1-225 and K.S.A. 77-521 and should be granted intervention in this Docket and added to the mailing list. Service of electronic notices, pleadings, communications, and correspondence should be delivered to:

⁸ Petition to Intervene, March 24, 2023, ¶ 2.

⁹ Answer to Petition, March 28, 2023, p. 2.

¹⁰ *Id.*

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8. Voltus' request for the Commission to deny the Joint Motion for Procedural Schedule is moot as the Commission issued the schedule prior to Voltus filing its request. While Voltus has not asked the Commission to modify the procedural schedule, the Commission will address the schedule. Voltus advises that it intends to issue discovery and offer expert witness testimony at an evidentiary hearing. However, the existing schedule allows plenty of time to conduct discovery before Staff's Report and Recommendation is due. Thus, Voltus' ability to conduct discovery should not be impaired under the current schedule. As noted by Voltus, the procedural schedule includes a deadline for a Commission order sixty days earlier than required by statute.¹¹ At this time, it is unclear that an evidentiary hearing is necessary. Once the Commission receives Staff's Report and Recommendation, and the Parties' Responses, the Commission can reevaluate the need for a hearing. If the Commission finds it necessary to conduct a hearing, it can extend the schedule by up to sixty days to accommodate a hearing. For now, the Commission believes scheduling an evidentiary hearing is premature.

¹¹ See Petition to Intervene of Voltus, Inc. and Response to Joint Motion for Procedural Schedule, ¶ 18.

THEREFORE, THE COMMISSION ORDERS:

- A. Voltus' Petition to Intervene is granted.
- B. Liberty-Empire's Petition to Intervene is granted.
- C. Voltus' Request to Deny the Joint Motion for a Procedural Schedule is denied. The

procedural schedule outlined in paragraph 2 remains in effect.

- D. This order is procedural and constitutes non-final agency action.¹²

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 04/04/2023



Lynn M. Retz
Executive Director

BGF

¹² K.S.A. 77-607(b)(2).

CERTIFICATE OF SERVICE

23-EKCE-588-TAR

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 04/04/2023.

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