

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

**ANSWER TO PETITION FOR RECONSIDERATION OF ORDER ESTABLISHING  
PROCEDURAL SCHEDULE**

COME NOW Evergy Kansas Central, Inc., Evergy Kansas South, Inc. and Evergy Kansas Metro, Inc. (collectively “Evergy”) jointly file this answer to the April 3, 2023 Petition for Reconsideration of Order Establishing Procedural Schedule filed by Voltus, Inc. (“Petition for Reconsideration”). In support of this Answer, Evergy respectfully states as follows:

**I. Background**

1. On January 25, 2023, Evergy filed with the Commission an Application for Approval of Tariff Changes Related to Wholesale Demand Response Participation (“Application”).
2. On March 15, 2023, Evergy, Staff (“Staff”) for the State Corporation Commission of the State of Kansas (“Commission”), and the Citizens’ Utility Ratepayer Board (“CURB”) (collectively, the “Joint Movants”) moved for an order establishing a procedural schedule in this matter (“Motion”). In proposing the schedule, Joint Movants considered the Commission’s schedule of availability and potential scheduling conflicts posed by other Commission proceedings.
3. On March 21, 2023, the Commission by order adopted Joint Movants’ proposed procedural schedule. The next day, on March 22, 2023, Voltus, Inc. (“Voltus”) petitioned for intervention in this proceeding and asked the Commission to deny the proposed procedural schedule. On March

24, 2023, the Empire District Electric Company (“Empire”) also filed a petition to intervene in this matter.

4. On March 28, 2023, Evergy responded to Voltus’s petition to intervene, noting that it did not oppose Voltus’s intervention, provided that Voltus’s intervention would accept the procedural schedule as it stood and would not impact the orderly and prompt conduct of the proceeding. On April 3, 2023, Voltus filed the Petition for Reconsideration.

5. On April 4, 2023, the Commission issued an order granting the interventions of Voltus and Empire and denying Voltus’s request to delay the issuance of the procedural schedule.<sup>1</sup>

## **II. Answer**

6. Evergy respectfully urges the Commission to reject the Petition for Reconsideration given the Commission’s grant of Voltus’s petition to intervene, which provides Voltus with full rights as a party to this proceeding subject to the Commission-approved procedural schedule, and the Commission’s determinations that:

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. At this time, it is unclear that an evidentiary hearing is necessary. Once the Commission receives Staffs 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.<sup>2</sup>

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<sup>1</sup> Order Granting Intervention to Voltus, Inc. and the Empire District Electric Company; Denying Motion to Delay Issuance of Procedural Schedule, Apr. 4, 2023 (“Order Granting Intervention”).

<sup>2</sup> Order Granting Intervention, ¶ 8.

Though the above determinations moot the Petition for Reconsideration, Evergy responds as follows out of an abundance of caution:

7. As Evergy explained in its March 28, 2023 response, in early stages of this proceeding the parties collaborated with Staff to develop a right-sized procedural schedule for the Commission’s consideration of the Application, which sets forth Evergy’s framework for utility coordination with Demand Response Aggregators (“DRAs”). That procedural schedule, as approved by the Commission, was designed to “provide[] necessary structure and ensure[] the Commission receives evidence in a timely fashion, while affording due process rights to all interested parties,” taking into consideration practical factors including “the Commission’s current schedule of availability and potential scheduling conflicts posed by other Commission proceedings.”<sup>3</sup>

8. The Commission’s rules and precedent require late-in-time intervenors like Voltus to accept the proceeding as it stands,<sup>4</sup> subject to guardrails to ensure the prompt and orderly conduct of the proceeding despite late-in-time interventions.<sup>5</sup> Departure from these procedural norms is unwarranted and unsupported here. As the Commission has emphasized, the current procedural schedule *already*: (1) affords parties to this proceeding full rights to engage in discovery; (2) enables Staff and the parties to place before the Commission the full suite of substantive and procedural arguments, including witness testimony and other evidence, in response to the

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<sup>3</sup> Motion, ¶¶ 2, 3.

<sup>4</sup> *In re the Application of Westar Energy, Inc. and Kansas Gas and Electric Company to Make Certain Changes in Their Charges for Electric Service*, Docket No. 15-WSEE-115-RTS, Order On: Interventions, Petition for Leave to Issue Discovery, Motion to Accept Pre-Filed Direct Testimony Out of Time and Modifying Procedural Schedule, at 15 (citing *Farmland Indus., Inc. v. State Corp. Comm’n of Kansas*, 24 Kan. App. 2d 172, 185-186 (1997)).

<sup>5</sup> Kan. Stat. Ann. § 77-521(c) (providing that a presiding officer may “impose conditions upon the intervenor’s participation in the proceedings” as necessary to “promote the orderly and prompt conduct of the proceedings”); *see also* Kan. Stat. Ann. § 77-523(b) (similarly providing that the presiding officer may impose procedural limitations consistent with a limited grant of intervention).

Application; and (3) in no way forecloses the Commission’s ability to direct evidentiary hearing procedures and witness cross-examination.

9. Voltus’s concerns that the Commission will take action based on an incomplete record, will fail to consider relevant facts, or otherwise will “blandly” approach the record in this proceeding are premature and unfounded.<sup>6</sup> The Commission frequently adopts procedural schedules like the one in place here to efficiently develop a record and facilitate dialogue among the parties, all of which ultimately supports a prompt and orderly resolution to the issues raised on this proceeding. The current schedule affords Staff nearly 15 weeks to consider and respond to Evergy’s proposal and affords other parties more than 21 weeks in total to develop their submissions. Voltus’s suggestion that these timeframes somehow prevent the “comprehensive evaluation by all interested parties” of the Application is unsupported.<sup>7</sup> As Voltus notes, it is currently active in the Evergy footprint, underscoring the current need for a transparent, non-discriminatory and customer-protective process for utility-DRA coordination given SPP protocols and current Evergy tariff requirements.<sup>8</sup>

10. The Commission-approved procedural schedule protects all parties’ due process rights; enables the Commission’s prompt, orderly and efficient consideration of the Application; and in no way forecloses opportunities for parties to engage in discovery, present witness testimony or other evidence, or advocate for a full hearing based on the record developed. For these reasons, and based on the Commission’s grant of Voltus’s motion to intervene and its determinations in the

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<sup>6</sup> Petition for Reconsideration, ¶ 4.

<sup>7</sup> *Id.*, ¶ 5. Voltus suggests that these issues are more appropriately considered in the context of a full retail rate proceeding, which would unnecessarily protract the Commission’s consideration of the important but straightforward issues raised in this proceeding. *See id.*, ¶3.

<sup>8</sup> *See* Market Protocols for SPP Integrated Marketplace, Revision 94 (Feb. 2023), §§ 6.1.4, 6.1.5; Evergy Kansas Central, Inc. & Evergy Kansas South, Inc., Evergy Kansas Central Service Area General Terms and Conditions, § 7.12 (both providing for Commission and utility review of demand response registrations).

Order Granting Intervention, Voltus's Petition for Reconsideration should be denied. Evergy looks forward to the prompt and orderly resolution of this proceeding to better enable Evergy to facilitate DRAs' wholesale market participation in a customer-protective and non-discriminatory manner.

### **III. Conclusion**

WHEREFORE, Evergy respectfully urges the Commission to reject Voltus's Petition for Reconsideration.

Respectfully submitted,

/s/ Cathryn J. Dinges

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VERIFICATION

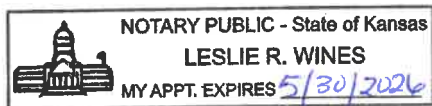
STATE OF KANSAS )  
 ) ss:  
COUNTY OF SHAWNEE )

Cathryn J. Dinges, upon oath first duly sworn, states that she is Senior Director and Regulatory Affairs Counsel for Evergy Kansas Central, Inc. and Evergy Kansas South, Inc., and Evergy Kansas Metro, Inc. that she has reviewed the foregoing pleading, that she is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of her knowledge and belief.

*Cathryn Dinges*

Cathryn J. Dinges

Subscribed and sworn to before me this 5<sup>th</sup> day of April, 2023.



*Leslie R. Wines*  
Notary Public

My Appointment Expires: May 30, 2026

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed, this 5<sup>th</sup> day of April 2023, to all parties of record as listed below:

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