

**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 Metro, Inc. for Approval of Tariff) Docket No. 23-EKCE-588-TAR
Changes Related to Wholesale Demand Response)
Participation.)

**VOLTUS, INC.’S PETITION FOR RECONSIDERATION OF ORDER ESTABLISHING
PROCEDURAL SCHEDULE**

COMES NOW, Voltus, Inc. (“Voltus”) and petitions the State Corporation Commission of the State of the Kansas (“Commission”) pursuant to K.S.A. 77-529, K.S.A. 66-118b and K.A.R. 82-1-235 for Reconsideration of its March 21, 2023 Order Establishing Procedural Schedule. In support of its petition, Voltus states and alleges as follows:

I. BACKGROUND

1. On January 25, 2023, Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (collectively referred to as “Evergy Kansas Central”) and Evergy Metro, Inc. (“Evergy Kansas Metro”) (together with Evergy Kansas Central referred to as “Evergy”), hereinafter jointly referred to as “Evergy”, filed an application with the Commission for approval of its proposed tariff changes related to its Wholesale Demand Response Participation. The Citizens’ Utility Ratepayer Board (“CURB”) sought and was granted intervention in this matter on February 2, 2023.

2. On January 31, 2023, in accordance with K.S.A. 66-117, the Commission issued a Suspension Order, finding that suspension of Evergy’s Application and deferral of its effective date are required to allow sufficient time for a full investigation into this matter. Evergy’s

Application was therefore suspended for the full 240 days permitted by statute, until Friday, September 22, 2023.

3. On March 15, 2023, Evergy, the Staff of the State Corporation Commission of the State of Kansas (“Staff”), CURB filed a joint motion for approval of a procedural schedule. The proposed schedule includes a Staff Report and Recommendation to be filed by Tuesday, May 9, 2023, responses to Staff’s Report and Recommendation to be filed by Friday, June 23, 2023, with a requested Commission Order date of Monday, July 24, 2023.

4. On March 21, 2023, six days after the filing of the joint motion for approval of a procedural schedule, the Commission issued an Order Setting Procedural Schedule.

5. Voltus filed its petition to intervene in this matter on March 22, 2023, both asserting that its legal rights, duties, and privileges may be impacted by this proceeding, and expressing concerns with the abbreviated schedule proposed by the parties, and the impact of this request on demand response participation in the interstate electric markets.

6. On March 24, 2023, the Empire District Electric Company filed a petition to intervene in this matter.

7. Evergy responded to Voltus’ petition to intervene on March 28, 2023, noting that Evergy does not oppose Voltus’ intervention, provided that Voltus accepts the procedural schedule currently in place. As discussed further below, Voltus does not accept the procedural schedule as it currently stands and urges the Commission to reconsider its order setting the schedule in this matter to permit sufficient time for discovery, the filing of testimony, and an evidentiary hearing in this matter.

II. EVERGY HAS PROVIDED NO JUSTIFICATION FOR A CONDENSED PROCEDURAL SCHEDULE

8. Evergy's Application did not request expedited Commission treatment of this tariff filing, and Evergy has not demonstrated that this tariff filing requires expedited consideration, particularly in light of the full rate case Evergy expects to file later this spring where it can easily propose these same tariff modifications. Expeditious treatment was also neither mentioned nor requested by any party in the joint motion for procedural schedule. Once Voltus petitioned to intervene, however, Evergy did note in its response to Voltus that "prompt resolution" is "critical" because DRAs (such as Voltus) are already active in the Evergy footprint in Kansas.¹

9. Evergy insists that the current procedural schedule is "straightforward" in that it permits interested parties to review Staff's report and recommendation and provide responsive comments. Voltus disagrees. Voltus intends to issue discovery and offer expert witness testimony at an evidentiary hearing in this matter. There are currently no process, procedures or placeholder dates for intervenor testimony, rebuttal testimony, or an evidentiary hearing in the current schedule.

10. The extraordinarily short schedule proposed by the parties and adopted by the Commission does not afford the parties an opportunity for meaningful participation in the Commission's quasi-judicial or quasi-legislative decision-making process. Moreover, the current schedule denies Voltus and its customers their procedural due process rights by failing to allow the opportunity to file testimony, introduce other relevant evidence, and cross-examine witnesses at an evidentiary hearing.² In addition, the underlying federal-state jurisdictional issues raised in Voltus' Petition to Intervene should be given careful consideration. Given that the effective date

¹ Evergy Answer to Petition to Intervene at p. 2.

² *Mobil Exploration & Producing U.S. Inc. v. State Corp. Comm'n*, 258 Kan 796, 821, 908 P.2d 1276 (1995) (quoting *Adams v. Marshall*, 21 Kan. 595, 599-600, 512 P.2d 365 (1973)). See also *Wulfskuhle v. Dept. of Revenue*, 234 Kan. 241, 246, 671 P.2d 547 (1983) (holding that the right to cross-examine witnesses testifying at administrative hearings of a "quasi-judicial" character is an important requirement of due process).

of the tariff at issue here has already been suspended until September 22, 2023 pursuant to statute, the parties and the Commission should not feel compelled to sacrifice the benefits of full participation and deliberate consideration of the issues in an effort to “beat the clock.”

11. Evergy itself notes, and Voltus agrees, that there is a balancing of state and federal responsibilities in this area.³ Evergy’s tariff modifications appear to blur the line between state and federal roles by attempting to limit the requirements for and participation in wholesale demand response programs more than necessary. These limitations may impinge upon and unnecessarily burden participation in wholesale markets. Balancing these important policy issues requires more time and care to develop an accurate and comprehensive record in this matter, taking into consideration all relevant parties’ positions, not just the retail utility. Creating new rules and requirements for aggregators, absent relevant aggregator input in this docket, is not in the public interest. The current abbreviated schedule appears to treat the proposed tariff modifications as self-detonating if they are not hastily pushed through the appropriate regulatory channels.

12. Further, the Commission has previously acknowledged that it has an affirmative duty to seek out facts, take positive measures to protect the general public, and ensure that the record is complete.⁴ The Commission similarly has the duty to ensure that its record is complete⁵ and an agency “has an affirmative duty to inquire into and consider all relevant facts.”⁶ A public utility regulator's role “does not permit [the agency] to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the [agency].”⁷

³ Id. at 3.

⁴ Docket No. 02-WLST-210-AUD, Order on Staff and Wilson Petitions for Reconsideration, May 20, 2002, at para. 6

⁵ See generally *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608, 620 (2nd Cir. 1965).

⁶ Id. at 620.

⁷ Id.

13. Evergy states that it has no objection to Voltus' participation, provided that Voltus accepts the procedural schedule as it currently stands. As Voltus has explained in its Petition to Intervene and this Petition for Reconsideration, Evergy's proposed tariff modification deserves a comprehensive evaluation by all interested parties and that is not likely, given the current schedule. Voltus submits that no prejudice will accrue to Evergy, Staff or CURB by adjusting the schedule, as the procedural schedule was in place a mere 24 hours prior to Voltus' petition to intervene.

14. As noted in its petition to intervene, Voltus currently provides aggregator services to 28 customers within the State of Kansas that are also customers of Evergy. These customers represent a diverse cross-section of Kansas businesses, consisting of universities, colleges, cities, retail stores, and manufacturing. Both the Evergy customers whose interests Voltus represents and Voltus itself will be bound by any Commission order or activity in this proceeding. The ability to participate meaningfully in this matter should not be hindered by the acceleration of a ticking clock that is unnecessary. Voltus is confident that the parties can work collaboratively to propose a schedule that works for all parties and the Commission's calendar.

WHEREFORE, Voltus respectfully requests that the Commission (1) grant its Petition to reconsider the procedural schedule and direct the parties to coordinate on workable dates consistent with the Commission's schedule; (2) allow Voltus' intervention with full rights of participation; and (3) for any such additional and further relief as the Commission may deem just and appropriate.

Respectfully submitted,

POLSINELLI PC

/s/ Anne E. Callenbach

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VERIFICATION

I, Anne E. Callenbach, of lawful age and being first duly sworn upon my oath, state that I am an attorney for Voltus, Inc., that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

/s/ Anne E. Callenbach

April 3, 2023

CERTIFICATE OF SERVICE

23-EKCE-588-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 3rd day of April 2023, to the following:

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