

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

COME NOW Evergy Kansas Central, Inc., Evergy Kansas South, Inc. and Evergy Kansas Metro, Inc. (collectively “Evergy”) jointly file this answer to the March 22, 2023, Petition to Intervene of Voltus, Inc. and Response to Joint Motion for Procedural Schedule. As explained below, Evergy does not oppose Voltus, Inc.’s (“Voltus”) intervention provided that Voltus accepts the proceeding and procedural schedule as they stand. In support of this Answer, Evergy respectfully states as follows:

I. Background

On January 25, 2023, Evergy filed with the Commission an Application for Approval of Tariff Changes Related to Wholesale Demand Response Participation (“Application”).

On March 15, 2023, Evergy, Staff for the State Corporation Commission of the State of Kansas (“Commission”), and the Citizens’ Utility Ratepayer Board (collectively, the “Joint Movants”) moved for an Order establishing a procedural schedule in this matter. In proposing the schedule, Joint Movants considered the Commission’s schedule of availability and potential scheduling conflicts posed by other Commission proceedings.

On March 21, 2023, the Commission by order adopted Joint Movants’ proposed procedural schedule. The next day, on March 22, 2023, Voltus petitioned for intervention in this proceeding and asked the Commission to deny the proposed procedural schedule.

II. Answer

Evergy does not oppose Voltus’s petition to intervene and welcomes stakeholder participation in this proceeding, provided that later-in-time intervenors like Voltus accept the proceeding and procedural schedule as they stand.¹ The procedural schedule, as approved by the Commission, will enable the orderly and prompt conduct of this non-rate proceeding to consider Evergy’s proposed framework for utility coordination with Demand Response Aggregators (“DRAs”). The procedural schedule provides an opportunity for Staff to present its Report and Recommendations followed by an opportunity for all parties to present, in their comments, procedural and substantive arguments regarding the Application. This straightforward procedural approach is appropriate for prompt resolution of the issues raised in this proceeding, which is critical because DRAs are already active in the Evergy footprint in Kansas without a KCC-approved framework to ensure protections for both participating and non-participating customers.

Further, in response to the Voltus intervention, Evergy underscores that the Application is intended to establish a straightforward way for Evergy to fulfill its distribution utility responsibilities while also facilitating, in a non-discriminatory and transparent manner, retail customers’ wholesale market participation through DRAs. The Federal Energy Regulatory Commission (“FERC”) in Order 719-A made clear that FERC’s actions in Order 719 to encourage wholesale demand response participation did not encroach upon or alter the states’ ability to set and enforce their own requirements and to determine the eligibility of retail customers to provide

¹ *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)) (explaining that the Commission “does not have to amend a procedural schedule due to a party's late joinder in a case”; rather, “a party seeking intervention has the burden to become informed about the status of the case” and all parties to the case were “bound” the by the previously approved procedural schedule's deadlines).

demand response.² Even beyond Order No. 719, FERC has affirmed that wholesale market participation must occur under circumstances that are consistent with states' authority to regulate the distribution system, with a reviewing court noting that states retain the authority to impose safety and reliability requirements and require wholesale market resources to obtain “all requisite permits, agreements, and other documentation necessary to participate in federal wholesale markets.”³ Evergy’s proposal is fully consistent with the balance of state and federal responsibilities in this area. Evergy’s proposal is also consistent with SPP’s Tariff and Protocols, which incorporate Commission and utility review of demand response registrations,⁴ and with currently effective Section 7.12 of the GT&C, which requires Evergy to provide “express written consent” to wholesale market participation by Evergy customers.⁵

For these reasons, Evergy looks forward to the prompt and orderly resolution of this proceeding to better enable Evergy to facilitate DRAs’ wholesale market participation in customer-protective and non-discriminatory manner.

² *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719-A, 128 FERC ¶ 61,059 at PP 49, 54 (2009); *FERC v. Elec. Power Supply Ass’n*, 136 S.Ct. 760, 779-80 (“Wholesale demand response as implemented in [Order No. 719] is a program of cooperative federalism, in which the States retain the last word.”).

³ *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841-A, 167 FERC ¶ 61,154 at P 48 (2019); *Nat’l Ass’n of Regulatory Util. Commissioners v. FERC*, 964 F.3d 1177, 1189 (D.C. Cir. 2020) (discussing FERC Order No. 841 addressing market access for storage resources).

⁴ See Market Protocols for SPP Integrated Marketplace, Revision 93 (Jan. 2023), §§ 6.1.4, 6.1.5.

⁵ Evergy Kansas Central, Inc. & Evergy Kansas South, Inc., Evergy Kansas Central Service Area General Terms and Conditions, § 7.12

III. Conclusion

WHEREFORE, Evergy respectfully submits this answer to state that it does not oppose Voltus's request for intervention, provided that Voltus accepts the proceeding and procedural schedule as they stand.

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 28th day of March, 2023.



Nancy A Fienhage
Notary Public

My Appointment Expires: 3-23-24

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed, this 28th day of March 2023, to all parties of record as listed below:

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