

**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.)

**PETITION TO INTERVENE OF VOLTUS, INC. AND
RESPONSE TO JOINT MOTION FOR PROCEDURAL SCHEDULE**

COMES NOW, Voltus, Inc. (“Voltus”) and petitions the State Corporation Commission of the State of the Kansas (“Commission”) for intervention in the above-captioned case pursuant to K.S.A. 77-521(a) and K.A.R. 82-1-225. 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”) filed an application with the Commission for approval of its proposed tariff changes related to its Wholesale Demand Response Participation.

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”), and the Citizens’ Utility Ratepayer Board (“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.

II. ABOUT VOLTUS, INC.

4. Voltus is one of the largest distributed energy resources (“DER”) platform service providers to residential, commercial, and industrial customers across the United States and Canada. Voltus acts as an Aggregator of Retail Customers (“ARC”) to enable consumers to profitably participate in various wholesale programs across, among other markets, the Southwest Power Pool (“SPP”) footprint.

5. Voltus operates in all of the North American regional electricity markets, and, on December 1, 2019, Voltus was the first ARC to enter SPP’s Integrated Marketplace. Voltus enables consumers to provide benefits from behind-the-meter assets (*i.e.*, load flexibility, energy storage, distributed generation, and energy efficiency) by delivering energy, capacity, and ancillary services that the grid needs to operate efficiently. In return, Voltus sources and secures for its customers wholesale market revenues in payment for the use of their assets which participate in wholesale electric markets.

6. 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. A

list of Voltus' Evergy-specific customers that may be impacted by this proceeding is attached hereto as **Confidential** Exhibit A.

III. REQUEST TO INTERVENE

7. Order No. 719, issued by the Federal Energy Regulatory Commission ("FERC") in 2008, required RTOs and ISOs to amend their market rules as necessary to permit an ARC to bid demand response resources on behalf of retail customers directly into the RTOs or ISO's organized wholesale markets. In issuing Order No. 719, FERC reasoned that allowing an ARC to act as an intermediary for many small retail loads that cannot individually participate in the organized markets would reduce a barrier to demand response participation in such markets.¹ To avoid encroaching on state-regulated aspects of demand response, FERC also adopted an "opt-out" mechanism that provides for RTOs and ISOs to amend their market rules, unless the laws or regulations of the relevant electric retail authority do not permit a retail customer to participate.

8. As Evergy notes in its Application, the State of Kansas has not elected to "opt-out" of FERC Order 719, meaning that Kansas has no state-level rules prohibiting or addressing retail customers' participation as demand response resources in wholesale markets.

9. Voltus currently provides Kansas businesses and entities with a non-jurisdictional service platform to enable such customers to participate in the SPP wholesale market with the customers' own behind-the-meter facilities. Evergy's proposed tariff revisions, apart from the innocuous new definition of the term "Demand Response Aggregator,"² attempt to (1) establish new limitations and requirements for retail customers' participation as a demand response resource in wholesale markets; and (2) force a non-jurisdictional entity such as Voltus to enter into a

¹ Order No. 719, FERC Stats. & Regs. ¶31,281 at P 154.

² Demand Response Aggregator ("DRA") and Aggregator of Retail Customers ("ARC") are interchangeable terms.

contract with Evergy in order to represent its customer's interests in the SPP wholesale marketplace.

10. Specifically, Evergy proposes to change Section 7.12 of the Evergy Kansas Central GT&C (and to insert a new corresponding Section in the Evergy Kansas Metro GR&R) to: (1) require any retail customer seeking to participate in SPP's markets to provide a "Customer Registration and Consent Form" to Evergy; and (2) state that a retail customer is only permitted to participate in SPP's markets through a DRA (such as Voltus) that has entered into and maintains an effective Distribution Utility-Demand Response Aggregator Agreement with Evergy ("DU-Aggregator Agreement").

11. Contrary to FERC's stated goals in Order 719 to reduce barriers to demand response participation, Evergy's proposed tariff revisions create new and additional barriers to demand response participation by retail customers and impose unreasonable and unnecessary contractual obligations upon non-jurisdictional entities such as Voltus. As briefly mentioned in Evergy's Application and discussed in greater detail in Mr. Darren Ives' testimony, "the purpose of the DU-Aggregator Agreement is to establish the obligations and rights of the DRAs and Evergy with respect to the DRA's participation in SPP's wholesale markets utilizing the load of Evergy retail customers as demand response resources."

12. Given that third party aggregators like Voltus are competitive non-utility entities operating wholly in FERC-jurisdictional wholesale markets, it remains unclear whether the Commission has sufficient statutory authority or jurisdiction to approve a retail electric provider's tariff that would regulate or restrict Voltus' participation in wholesale markets on behalf of its customers.

13. Moreover, Evergy's proposed tariff revisions are at odds with both Order 719 and Order 719-A. Order 719 defined an ARC broadly by stating that it "refer[s] to an entity that aggregates demand response bids."³ It also noted that "[a]n ARC can bid demand response either on behalf of only one retail customer or multiple retail customers," and "[a]n individual customer may serve as an ARC on behalf of itself and others."⁴ FERC also reiterated in Order No. 719-A that retail customers can participate in wholesale demand response programs either individually or through an ARC.⁵

14. Evergy's proposed tariff change, mandating that a retail customer is only permitted to participate in SPP's markets through a DRA that maintains an effective DU-Aggregator Agreement with Evergy, directly contravenes FERC's ruling that a retail customer may participate in wholesale demand response programs on an individual basis.

15. Both the Evergy customers whose interests Voltus represents and Voltus itself will be bound by any Commission order or activity in this proceeding. The rates paid and the services received by Voltus and its customers may be substantially affected by any Commission order or activity in this proceeding with respect to Evergy's proposed tariff changes related to its Wholesale Demand Response Participation. Further, the interests of Voltus and its customers are not adequately represented by any other party to this proceeding.

16. Voltus has demonstrated that its legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by this proceeding, and the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing Voltus to intervene.

³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at n.3.

⁴ Id. P 158.

⁵ See e.g. Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 68-69.

17. Voltus therefore requests that the Commission grant Voltus' Petition to Intervene and allow it to participate fully in this docket, including but not limited to the right to conduct discovery, file pleadings and testimony, present oral argument, and fully participate in any scheduled hearings.

IV. RESPONSE TO JOINT MOTION FOR PROCEDURAL SCHEDULE

18. If allowed intervention in this proceeding, Voltus intends to issue discovery and offer expert witness testimony at an evidentiary hearing. There are currently no placeholder dates for intervenor testimony, rebuttal testimony, or an evidentiary hearing in the proposed procedural schedule filed by Evergy, Staff, and CURB. Voltus submits that it is premature to establish such an abbreviated schedule with a requested Commission Order date two months in advance of the statutory operation of law date. As such, Voltus respectfully requests that the Commission deny the Joint Motion for Procedural Schedule so that Voltus and other potential intervenors have a full and fair opportunity to evaluate Evergy's proposed tariff revisions and present their own evidence on the matter.

19. In addition to undersigned counsel, please include the following Voltus representatives on all electronic notices, pleadings, and correspondence regarding this Application:

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WHEREFORE, Voltus respectfully requests that the Commission (1) grant its Petition to Intervene in this matter; (2) deny the Joint Motion for Procedural Schedule; 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

STATE OF MISSOURI

SS:

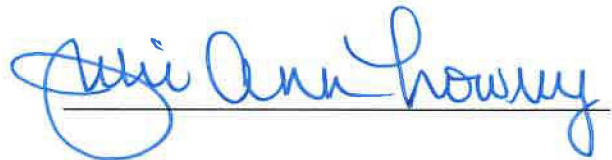
COUNTY OF JACKSON

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.



SUBSCRIBED AND SWORN to before me this 22nd day of March, 2023.

**JULIE ANN LOWREY
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXPIRES 7/29/2024
COMMISSION # 20401259**



Notary Public

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 22nd day of March, 2023, to the following:

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Voltus, Inc.

Exhibit A

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