

intervene, Voltus did not have a clear interest in participating in this matter prior to the Commission's Orders in File No. EW-2021-0267, which allowed larger commercial and industrial customers of Commission-jurisdictional utilities to transfer demand response load reductions to RTO markets either directly or through an ARC such as Voltus. It was only at that point that Voltus had a significant interest in this docket as a potential competitor to Ameren for certain C&I customers' demand response load reductions. Had Voltus requested to intervene and participate in workshops in this proceeding prior to Voltus having a clear interest in these issues, Ameren would no doubt have objected to that request as premature.

3. Ameren next attempts to argue that Voltus' intervention should be denied because it did not timely request to intervene shortly after the Commission's October 12, 2023 Order in File No. EW-2021-0267. Ameren's over-reliance on the date October 12, 2023 conveniently overlooks the fact that the October 12, 2023 Order was subject to a Motion for Clarification, responses to that motion, an Order extending the effective date of the October 12, 2023 Order to January 1, 2024, and a December 13, 2023 Order Granting Clarification. Accordingly, Voltus' petition to intervene in this matter mere weeks after the January 1, 2024 effective date of the Order establishing Voltus' interests cannot be considered untimely and the Commission should ignore Ameren's suggestion that Voltus was "negligent" in not intervening sooner.

4. Apparently in support for its argument that Voltus has not demonstrated that good cause exists for intervention after the deadline, Ameren states that it filed its original MEEIA 4 Plan on March 27, 2023 "and did not materially amend its demand side programs in its recent filing." Yet, Ameren witness Antonio M. Lozano in his January 25, 2024 Direct Testimony listed several material changes to the Plan compared to the March 27, 2023 filing.³ Furthermore, Mr.

³ Direct Testimony of Antonio M. Lozano, File No. EO-2023-0136, p. 21 (Jan. 25, 2024).

Lozano's Direct Testimony acknowledges the change in the Commission's policy toward ARCs and states that "it is difficult to determine what those changes will be and how customers will react accordingly."⁴ As a result, it is apparent that Voltus' participation in this proceeding may be helpful in addressing issues this proceeding may consider.

5. Finally, Ameren claims that Voltus' interests do not differ from the general public or serve the public interest so as to justify intervention. Voltus disagrees. As a market leader in wholesale demand response in the United States and Canada, Voltus brings a level of expertise, information, and perspective that is different from the general public. Also, as of January 1, 2024, the effective date of the Order in File No. EW-2021-0267, Voltus may now compete for customer enrollment with Ameren's demand-side programs and plans being considered in this case. As such, Voltus has a direct economic interest in the outcome of this proceeding that differs from that of the general public.

6. The Commission, in the exercise of its discretion under 20 CSR 4240-2.075, may permit a party to intervene on the basis of one or both grounds for intervention: (1) if the party has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or (2) granting the proposed intervention would serve the public interest. The Commission has previously recognized that any person with a liberty or property interest that will be directly affected by the outcome of a proceeding should be permitted to intervene, and has also held that an economic interest supports permissive intervention under both the Commission's rules and civil rules.⁵

⁴ Direct Testimony of Antonio M. Lozano, at p. 26.

⁵ File No. WO-2002-273, *In the Matter of the Joint Application of Missouri-American Water Company et al. For an Accounting Authority Order Relating to Security Costs*, Order Granting Intervention, April 16, 2002.

7. Further, granting Voltus' requested intervention would serve the public interest by virtue of its experience assisting consumers with bidding their demand side assets into the competitive wholesale market across various RTOs and ISOs. 20 CSR 4240-2.075 (10) also provides that late-filed motions to intervene may be granted for good cause. Voltus could not have submitted a timely petition for intervention by April 11, 2023, as Voltus' significant interest in this docket as a potential competitor to Ameren for certain C&I customers' demand response load reductions was not solidified until the January 1, 2024 effective date of the Commission's Order in File No. EW-2021-0267. As the Commission has often observed:

Although the term "good cause" is frequently used in the law, the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning. Good cause "generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law." Similarly, "good cause" has been judicially defined as a "substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties." Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given "must be real not imaginary, substantial not trifling, and reasonable not whimsical." And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁶

Thus, the timing of the orders in EW-2021-0267 and that proceeding's impact on Voltus' interest is a substantial reason that establishes good cause sufficient for the Commission to grant intervention.

8. Voltus submits that it has satisfied both grounds for intervention in 20 CSR 4240-2.075, has demonstrated that good cause exists for its late-filed intervention, and therefore renews its request to intervene in this matter.

⁶ See, e.g., File Nos. GR-2010-0192 and YG-2010-0426, *In the Matter of Atmos Energy Corporation's Tariff Revision Designed to Implement a General Rate Increase for Natural Gas Service in the Missouri Area of the Company*, Order Granting Late Intervention, April 28, 2010 at p. 2 (internal citations omitted).

WHEREFORE, Voltus files its Reply to Ameren Missouri’s Response in Opposition to Petitions to Intervene and respectfully requests that it be permitted to intervene in this proceeding and for any such further relief as the Commission may deem just and appropriate.

Respectfully submitted,

POLSINELLI PC

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ATTORNEYS FOR VOLTUS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on all parties of record via electronic mail (e-mail) on this 5th day of February, 2024.

/s/ Anne E. Callenbach