

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company)	
d/b/a Ameren Missouri's 4 th Filing to)	
Implement Regulatory Changes in Furtherance)	File No. EO-2023-0136
of Energy Efficiency as Allowed by MEEIA.)	

**VOLTUS, INC.'S MOTION FOR RECONSIDERATION OF ORDER DENYING
INTERVENTION**

COMES NOW Voltus, Inc. (“Voltus”) and, pursuant to 20 CSR 4240-2.160(2), files this motion for reconsideration of the Commission’s February 29, 2024 *Order Regarding Intervention Requests* in which the Commission denied the petitions to intervene of both Voltus and Enerwise Global Technologies, LLC d/b/a/ CPower. In support of its motion for reconsideration, Voltus states as follows:

1. Commission Rule 20 CSR 4240-2.160(2) provides that motions for reconsideration of procedural and interlocutory orders may be filed within ten days of the date the order is issued, unless otherwise ordered by the Commission. Motions for reconsideration must specifically set forth the grounds on which the applicant considers the order to be unlawful, unjust, or unreasonable.

2. Voltus makes no assertion here that the Commission’s order denying its intervention is unlawful. It is clear that the Commission’s rules governing intervention, found at 20 CSR 4240-2.075, are discretionary in that they state that the Commission *may* grant intervention upon a showing that (i) the proposed intervenor has an interest which is different than that of the general public and which may be adversely affected by a final order arising from the case; or (ii) when granting the proposed intervention would serve the public interest. Consequently, all interventions in Commission cases are permissive, and no party has a right to intervene other than

the statutory right of the Staff of the Commission and the Office of the Public Counsel to participate as parties in all Commission cases.

3. The Commission's Order denying Voltus' request to intervene is, however, unjust and unreasonable and should be reversed. The Commission's stated reasons for denying intervention are: (1) the request was filed more than nine months after the April 11, 2023 deadline; (2) the request did not state a specific position on the case; and (3) the Commission is not persuaded by the good cause statements to explain why Voltus could not have requested to intervene sooner.

I. BACKGROUND

4. The Commission originally established an April 11, 2023 intervention deadline in this case for parties to evaluate Union Electric Company d/b/a Ameren Missouri's ("Ameren") *Application to Approve DSIM and Demand-Side Management Portfolio and Plan, Request for Variances, and Motion to Adopt Procedural Schedule* (the "MEEIA 4 Plan") in its March 27, 2023 *Order Directing Notice of Application and Establishing Intervention Filing Date*.

5. Since the intervention deadline of April 11, 2023, the current parties filed status reports on May 22, 2023, June 20, 2023, July 10, 2023, August 16, 2023, and September 25, 2023. Each status report also requested an extension of time in which to file either a procedural schedule or another status report. The Commission issued orders granting the requested extensions of time on May 25, 2023, June 21, 2023, July 12, 2023, and August 17, 2023.

6. On August 3, 2023, in a separate proceeding, File No. EO-2018-0211, the parties sought and were granted approval to extend Ameren's MEEIA 3 Plan through December 31, 2024.

7. A procedural schedule was adopted in this proceeding on October 4, 2023. On January 11, 2024, the parties filed another *Joint Motion to Amend Procedural Schedule*. That motion indicated that a revised and amended MEEIA 4 application was to be filed by Ameren on January 25, 2024.

8. On October 12, 2023, in File No. EW-2021-0267, the Commission partially lifted the ban on Aggregators of Retail Customers' ("ARCs"¹) participation in Missouri.² The *Order Partially Modifying the Commission's 2010 Order Regarding ARCs* became effective on January 1, 2024 after an *Order Granting Clarification* was issued on December 13, 2023. The January 1, 2024 effective date of that Order is when Voltus' interests in this proceeding began.

9. Voltus filed its petition to intervene in this proceeding on January 24, 2024, **one day prior to Ameren's filing of its amended application.** In its Petition to Intervene, Voltus stated that it had no objections to the parties' *Joint Motion to Amend Procedural Schedule* and agreed to accept the schedule as was ordered by the Commission.

10. On January 25, 2024, Ameren filed its amended MEEIA 4 application with material changes.³

11. The Commission granted the parties' *Joint Motion to Amend Procedural Schedule* on February 29, 2024, granting the *Joint Motion* with minor modifications and establishing dates for testimony and an evidentiary hearing, among other procedural matters. Also on February 29, 2024, the Commission denied Voltus' Petition to Intervene.

II. THE APRIL 11, 2023 INTERVENTION DEADLINE IS NO LONGER RELEVANT DUE TO THE REGULATORY LIMBO THIS PROCEEDING HAS BEEN IN THE LAST TEN MONTHS, THE COMMISSION'S PARTIAL LIFTING OF THE BAN ON ARC PARTICIPATION, AND THE MATERIAL CHANGES TO AMEREN'S APPLICATION

¹ Voltus may use ARC and DRA ("Demand Response Aggregator") interchangeably throughout this pleading.

² In its October 12, 2023 Order, the Commission lifted a portion of that prohibition to permit larger commercial and industrial ("C&I") customers of Commission-jurisdictional utilities to transfer demand response load reductions to RTO markets either directly or through an ARC, such as Voltus. The modification allowing C&I customers to participate in wholesale demand response programs does not include C&I customers participating in retail demand response programs.

³ See Amended and Supplement Application to Approve DSIM and Demand-Side Management Portfolio and Plan, and Request for Variances filed January 25, 2024, page 21 of the Direct Testimony of Antonio M. Lozano filed January 25, 2024, and the Direct Testimony of Jeff R. Brueggemann filed January 25, 2024.

12. The Commission's April 11, 2023 intervention deadline is irrelevant due to the numerous extensions in this proceeding and orders impacting ARCs' interests in the ten months since that deadline. The Commission's April 11, 2023 deadline for intervention pre-dated multiple requests for extensions of time and new procedural schedules in this proceeding, which ultimately led to the parties' agreement to delay the procedural schedule so that Ameren could refile its MEEIA 4 application in early 2024.

13. Also, the April 11, 2023 intervention deadline pre-dated the Commission's October 12, 2023 Order in File No. EW-2021-0267, in which the Commission partially lifted the ban on ARCs participation in Missouri. The October 12, 2023 Order became effective on January 1, 2024, at which time Voltus acquired a vested interest in this proceeding. Voltus then promptly sought intervention on January 24, 2024, the day before Ameren's amended application was filed. Given the timeline of those events, Voltus could not have intervened in this proceeding any sooner than January 1, 2024.

14. Additionally, Ameren could easily have filed its amended⁴ MEEIA 4 application in a new proceeding, given that nearly a year had passed since its original application, the amended content in the application, and the newly changed regulatory landscape regarding DRA activity in Missouri. In fact, one could argue that because more than 180 days had elapsed between the notice and amended MEEIA 4 application, the noticed case filing could have been closed and a new

⁴ Despite its protestations to the contrary, Ameren's January 25, 2024 amended MEEIA 4 application is clearly an "amendment." Voltus previously addressed this in its Response to *Ameren's Opposition to Voltus [sic], Inc.'s and Enerwise Global Technologies, LLC d/b/a CPower's Motions to Intervene*, but because Ameren's statement that its application "has not been materially amended" appears again in the Commission's *Order Regarding Intervention Requests*, Voltus is compelled to emphasize it. See, page 21 of Ameren witness Antonio M. Lozano's January 25, 2024 Direct Testimony, which listed numerous material changes to the Plan compared to the March 27, 2023 filing, and See Direct Testimony of Ameren witness Jeff R. Brueggemann, which details additional modifications from the original MEEIA 4 filing.

Notice of Intended Case Filing filed, pursuant to 20 CSR 4240-4.017(1),⁵ in order to comply with *ex parte* and extra record communication rules.

15. Moreover, the Commission clearly has the authority to require an amended application to be filed in a new docket, and has required public utilities to do so in the past.⁶ Had Ameren filed its amended MEEIA 4 application in a new matter, as perhaps it should have, the parties would not now be arguing over a long-stale intervention deadline.

16. Further, “the Commission establishes a deadline for intervention early in a case so that all parties can promptly know who will be involved and so an appropriate procedural schedule can be established.”⁷ These issues clearly are not present in this case. While Voltus’ intervention came after the initial intervention deadline, Voltus still managed to petition to intervene before the amended application was filed, before a procedural schedule was issued, and before testimony was filed. In fact, all parties were aware of Voltus’ intervention for *36 days* before a procedural schedule was issued. Even had Voltus intervened after the procedural schedule was issued, it agreed to accept the procedural schedule as would be ordered by the Commission. Given all that, the interests normally associated with establishing an early intervention deadline do not carry the same weight at this point in the proceeding.

17. Certainly when the April 11, 2023 intervention date was established, the Commission could not foresee the circumstances that led to Ameren’s January 2024 amended

⁵ “Any person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission and shall include a summary of all communication regarding substantive issues likely to be in the case between the filing party and the office of the commission that occurred in the ninety (90) days prior to filing the notice. The filing of such notice shall initiate a new noticed case and be assigned an appropriate case designation and number. If the expected case filing is subsequently made, it shall be filed in the noticed case. If the expected case filing is not made within one hundred eighty (180) days, the noticed case shall close.”

⁶ See, e.g., File No. EA-2023-0017, July 13, 2022 *Notice Regarding Filing*, removing Grain Belt Express’ notice of intent to file an amended CCN application in the prior docket (EA-2016-0358) and requiring Grain Belt Express to file its amended application in a new file.

⁷ File No. EC-2014-0223, May 14, 2014 *Order Regarding Application to Intervene Out of Time*, at p. 2.

application, nor could it have known it would issue an Order partially lifting the ban on ARC participation in Missouri, but the April 11, 2023 deadline clearly became an irrelevant deadline prior to Voltus' intervention. As a result, the 16 days between the *Order Directing Notice of Application and Establishing Intervention Filing Date* and the initial intervention filing deadline is not a relevant measure of the timeliness of Voltus' intervention since its interests vested. Even if it was, those 23 days before Voltus filed its intervention cannot be considered egregious. Therefore, it is unjust and unreasonable to hold Voltus to an intervention deadline established far in advance of these significant events.

III. VOLTUS HAS DEMONSTRATED GOOD CAUSE FOR ITS REQUEST TO INTERVENE OUT OF TIME

14. The Commission has indicated that it is unpersuaded by the good cause statements provided by Voltus to explain why it could not have requested to intervene sooner.⁸

15. As Voltus explained in its petition to 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 ("C&I") 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.

16. The Commission's October 12, 2023 Order became effective on January 1, 2024, and Voltus sought intervention in this matter 23 days after the Order's effective date. In most circumstances, but particularly in the circumstances involved here, 23 days cannot be considered so untimely to deny a party with a clear interest from participating in the proceeding.

⁸ *Order Regarding Intervention Requests* at p. 3.

17. Though Voltus has previously cited the Commission’s statements discussing good cause,⁹ it bears repeating that 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.¹⁰

17. Utilizing the Commission’s own words, it is a legitimate factual showing, and not a mere conclusion of a party or their attorney, that Voltus had no vested interest in this proceeding until ARCs were allowed to compete with Ameren for certain C&I customers’ demand response load reductions as a result of the January 1, 2024 effective date of the Commission’s Order in File No. EW-2021-0267. This is real, not imaginary, substantial, not trifling, and reasonable, not whimsical. It would be unjust and unreasonable for the Commission to find as such. Moreover, the timing of Voltus’ filing for intervention is a far cry from the “we just found out” excuse¹¹ so despised by the Commission.

IV. IT IS UNJUST AND UNREASONABLE TO DENY VOLTUS’ INTERVENTION BASED UPON A MISAPPLICATION OF COMMISSION REGULATIONS

18. The Commission’s Order denied Voltus’ intervention in part because “the interventions do not state a specific position.” This is not the legal standard for intervention in

⁹ Voltus, Inc. *Reply to Ameren Missouri’s Response in Opposition to Motion to Intervene*, at ¶ 7.

¹⁰ *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).

¹¹ “Were the Commission to accept ‘we just found out’ as good cause, “good cause” as used in the Commission’s rule would have no substance.” *See*, File No. EO-2012-0135, *Order Denying Application to Intervene*, February 27, 2013; File No. GR-2006-0422, *Order Denying Application to Intervene*, August 28, 2006; File No. GA-2007-0168 *Order Denying Application to Intervene*, April 19, 2007, and others.

Missouri. 20 CSR 4240-2.075(2)(F) only requires that the petition to intervene include “a statement as to whether the proposed intervenor or new member supports or opposes the relief sought or that the proposed intervenor or new member is unsure of the position it will take.” Voltus’ Petition to Intervene appropriately included the statement “[i]n accordance with the statement required by 20 CSR 4240-2.075(2)(F), at this time Voltus is uncertain what position it will take in this proceeding and will reevaluate its position once it has analyzed Ameren Missouri’s upcoming amended MEEIA 4 filing.”¹² Thus, Voltus’ Petition to Intervene complied with Missouri regulations.

19. Furthermore, Voltus’ decision to not take a position was reasonable given that Voltus’ Petition to Intervene was filed *prior* to Ameren filing its amended application. As a result, Voltus could not have known at that time what position it would take.

20. The Commission routinely grants intervention where parties have not stated a position. Therefore, it is unjust and unreasonable for the Commission to deny Voltus’ intervention when Voltus clearly has complied with Missouri regulations.

21. Additionally, while not referenced in the *Order Regarding Intervention Requests*, at the Commission’s Business Meeting denying Voltus’ intervention, the Commissioners seemed to place emphasis on the fact that Voltus’ intervention was objected to by Ameren. It is unclear the weight that argument was given in the Commission’s ultimate denial of Voltus’ intervention because it is not repeated in the Order. However, because it was referenced multiple times at the Business Meeting, it is crucial to note that whether a party’s intervention request is objected to is not pertinent to intervention.¹³ The legal standard for intervention is found in 20 CSR 4240-2.075.

¹² Voltus Petition to Intervene at ¶ 12.

¹³ Even if objections were pertinent, which they are not, the Commission has frequently granted late-filed interventions when good cause has been shown despite objections of other parties. *See, e.g.*, File No. WR-2022-030, *Order Regarding Intervention* (Nov. 9, 2022) (granting Consumers’ Council of Missouri late-filed intervention over

It is the nature of a competitive business that parties will attempt to prevent the intervention of parties they do not desire to participate in the proceeding. Especially in situations where a proposed intervenor is a competitor to an incumbent utility, as are the circumstances here, that utility's objection should perhaps be scrutinized more critically for potential anti-competitive motivation, rather than be improperly used as a basis for denying intervention to its competitor.

V. PERMITTING ARCS SUCH AS VOLTUS TO INTERVENE AND FULLY PARTICIPATE IS IN THE PUBLIC INTEREST

22. As of January 1, 2024, Voltus may now compete for customer enrollment with Ameren's demand-side programs and plans being considered in this case. As the Commission noted in its October 12, 2023 Order in File No. EW-2021-0267

this partial modification of the 2010 Order will allow the Commission and utilities to gain valuable experience with ARCs as FERC moves towards implementation of Order No. 2222. Comments and stakeholder presentations emphasized the complexity of state-level issues raised by Order No. 2222, and the value of practical experience with ARCs in analyzing possible responses to these issues and crafting appropriate policies.”¹⁴

23. The Commission will gain practical experience and acquire valuable information with ARCs participating in MEEIA dockets. As noted in testimony filed by the Office of Public Counsel in this proceeding on March 1, 2024, “this MEEIA portfolio will represent the first opportunity to see if participating aggregators will be allowed to compete fairly in Missouri.”¹⁵ If ARCs are not granted intervention in this proceeding, it does not appear that ARCs will be allowed to compete fairly in Missouri.

Missouri-American Water Company's objection); File No. ER-2018-0145, *Order Granting Intervention* (Aug. 8, 2018) (granting Advanced Energy Management Alliance's late-filed intervention over Kansas City Power & Light Company's opposition); File Nos. GR-2017-0215, YG-2017-0195, GR-2017-0216, YG-2017-0196, *Order Granting Interventions* (July 12, 2017) (granting the Environmental Defense Fund's and National Housing Trust's late-filed interventions over Laclede Gas Company's objection); et al.

¹⁴ File No. EW-2021-0267 *Order Partially Modifying the Commission's 2010 Order Regarding ARCs* at pp. 5-6.

¹⁵ Direct Testimony of Geoff Marke, at p. 31.

24. Further, as the Commission noted in its *Order Granting Clarification* on December 13, 2023,

Because the Order does not change or modify any utility tariff or currently effective contract, movement between retail and wholesale demand response programs continues to be governed by any relevant rules, tariffs or contracts. As Staff notes in its response, the Commission may consider this issue in utility tariff filings.¹⁶

In other words, the Commission has previously stated that proceedings such as this one are an appropriate venue in which to consider and address movement between retail and wholesale demand response programs. If ARCs are not granted intervention in this proceeding, it does not appear that this issue will be fully addressed in this proceeding.

25. More importantly, as Dr. Marke observed when addressing the Commission's denial of Voltus' and CPower's intervention requests, ratepayers will be adversely impacted by the exclusion of ARCs from this proceeding and the public interest is not served "by excluding a viable market alternative in favor of the incumbent natural monopoly."¹⁷ Further, "if ARCs are allowed to compete fairly, ratepayers should benefit by no longer having to pay MEEIA related costs for this service but would still receive the benefit of a lower clearing price."¹⁸ Dr. Marke concluded by stating that

If Ameren Missouri continues to operate as it is today with the financial backing of captive ratepayers, then ARCs have little reason to operate in Missouri and the past several years of workshops, outside help from Lawrence Berkeley National Labs, and other efforts undertaken by the Commission's Staff in preparation of the Commission partially lifting the ban on ARCs will be for nothing.¹⁹

¹⁶ File No. EW-2021-0267, Order on Clarification, December 13, 2023 at pp. 4-5.

¹⁷ Direct Testimony of Geoff Marke at p. 31.

¹⁸ Id. at p. 33.

¹⁹ Id. at pp. 31-32.

26. Voltus maintains 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.

WHEREFORE, Voltus files its petition for reconsideration of the Commission's *Order Regarding Intervention Requests* and requests that it be reversed as unjust and unreasonable, and respectfully requests that it be permitted to intervene in this proceeding with full rights of participation 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 March, 2024.

/s/ Anne E. Callenbach
