

190 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie, David Rosner,
Lindsay S. See and Judy W. Chang.

Voltus, Inc. and Gregg Dixon

Docket No. IN21-10-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 6, 2025)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Voltus, Inc. (Voltus) and Gregg Dixon (Dixon). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation (Investigation) under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2024), into whether Dixon, former CEO of Voltus, engaged in a fraudulent scheme in violation of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2024), and/or caused Voltus to violate the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), by registering demand response resources without those resources' knowledge or consent and clearing Load-Modifying Resource (LMR) capacity that would not have performed if the resources were dispatched, during the period from October 1, 2016, and continuing through June 1, 2020.
2. Voltus and Dixon stipulate to the facts in Section II of the Agreement, but neither admit nor deny the violations alleged in Section III of the Agreement. Voltus agrees to (a) disgorge \$7,080,543 in revenue that it earned during the Relevant Period; (b) pay a civil penalty of \$10,919,457 to the United States Treasury; and (c) provide compliance monitoring reports to Enforcement as provided more fully below. Dixon agrees to pay a civil penalty of \$1,000,000 to the United States Treasury and to step down from Voltus's Board of Directors (Board).

I. Facts

3. Enforcement, Voltus, and Dixon have stipulated and agreed to the following facts:

A. *MISO Market Rules***1. *Demand Response and Aggregators of Retail Customers***

4. MISO's Commission-approved Tariff contains the rules and procedures governing MISO's demand response (DR) program. The program allows energy users to participate in its energy and capacity markets by providing physical load adjustment or interruption.

5. MISO offers two types of demand response products that are relevant to Voltus's and Dixon's actions here: Load Modifying Resources and Emergency Demand Resources (EDRs).

6. Voltus is an aggregator of retail customers (ARC). Throughout the Relevant Period, MISO's Tariff provided ARCs the option to register LMRs and EDRs.¹ ARCs are, by definition, Market Participants, and are subject to Tariff requirements.²

2. *Load Modifying Resources*

7. During the Relevant Period, resources seeking to participate in MISO's capacity market could register as LMRs and offer their capacity in annual Planning Resource Auctions (PRAs). LMRs do not have a must offer requirement but must be available for use by MISO during Emergency events.³

8. LMR eligibility is governed by MISO's Tariff, Module E, Section 69A.3.5, which requires that only those "Market Participants that possess[] ownership or equivalent contractual rights in a Demand Resource can request accreditation for a Demand Resource as an LMR[.]"⁴

¹ Tariff, Section 38.6.

² See Tariff, Section 1.A.

³ MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r29, at p. 51 (Oct. 1, 2023).

⁴ During the Relevant Period, Tariff Module E, Section 69A.3.5, was renumbered to Tariff Module E-1. The eligibility requirements did not materially change during the Relevant Period except that in March 2019 Tariff Section 69A.3.5 (j) was revised to require Market Participants either to perform a real power test or accept a heightened

9. An ARC can register LMRs by submitting to MISO a variety of site-specific information as specified in MISO’s Tariff and Business Practices Manuals.⁵

10. In October 2021, after the Relevant Period and after Enforcement began the Investigation, MISO amended the “Demand Resource - Qualification Requirements” section of the Resource Adequacy Business Practices Manual. Previously, the manual provided that one qualification requirement was “[c]onfirming that the Market Participant has the authority to reduce demand using the DR.” In the October 2021 amendment, MISO added a requirement, stating that “[i]n the case of an ARC registering a DR, this would include uploading into the MECT registration a copy of the signatory pages between the ARC and the load asset customers.”⁶

3. *Zonal Resource Credits*

11. Following a successful registration, a Market Participant converts the LMR resource’s capacity to Zonal Resource Credits (ZRCs) in proportion to the resource’s capacity to curtail load—with pricing denominated in dollars per MW per day.⁷

12. A Market Participant then has the option to offer its ZRCs in the PRA (or sell them bilaterally) provided it “own[s] or ha[s] contractual rights” in the underlying resources.⁸ An LMR that clears capacity in the PRA receives capacity payments from

penalty in the event of non-performance. *See Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,116, at PP 4, 45 (2019).

⁵ *See* MISO Business Practices Manual, Demand Response, Manual No. 026-r9, at pp. 20-22, 27-30 (Oct. 1, 2022); MISO Business Practices Manual, Demand Response, Manual No. 026-r3, at p. 20 (July 10, 2018); MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r22, at pp. 61-64 (Oct. 1, 2019) (“Demand Resource (DR) – Qualification Requirements”).

⁶ MISO Business Practices Manual, Resource Adequacy, Manual No. BPM-011-r25, at § 4.2.9 (July 1, 2021).

⁷ MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r29, at p. 75 (Oct. 1, 2023).

⁸ Tariff Section 69A.7.1 (a), 42.0.0 (effective November 1, 2018). Prior to November 1, 2018, the Tariff permitted Market Participants “that own or have operational control of Planning Resources” to offer them in the PRA. *See* Section 69A.7.1(a), 39.0.0 (effective March 1, 2018).

MISO for being available to provide demand reduction in the event of an emergency dispatch.⁹

13. A Market Participant is required to notify MISO when the status or availability of an LMR changes.¹⁰ LMRs must be made “available” to MISO, either as an LMR or EDR, unless their non-availability was due to maintenance or force majeure.¹¹ If called upon by MISO, LMRs are required to ramp down and maintain the targeted reduction for at least four hours.¹² If LMRs are listed as “available” but do not perform as required in a dispatch event, the relevant Market Participant faces monetary penalties established by the Tariff.¹³ In contrast, if they are listed as “unavailable” during a dispatch event, they will not only incur penalties for nonperformance, but they may also be disqualified as LMRs for the remainder of the Planning Year.¹⁴

14. MISO allows Market Participants to change availability of LMRs. Voltus’s practice was to change the status of its resources from “available” to “unavailable” for resources that were not contracted during the Planning Year. Had MISO dispatched its resources and Voltus had underperformed, Voltus would have both lost its capacity payments and been subject to additional penalties.

4. *Emergency Demand Resources*

15. Resources can also seek to participate in MISO markets as EDRs if they are capable of dispatch in emergency events.¹⁵ Schedule 30 of the MISO Tariff provides that:

A Market Participant within the Transmission Provider Region may become an EDR Participant by complying with these Schedule 30 requirements if it: (i) has the ability to

⁹ See MISO Business Practices Manual, Demand Response, Manual No. 026-r9, at pp. 76-77 (Oct. 1, 2022) (describing the process by which LMR payments are settled).

¹⁰ Tariff, Section 69A.3.3.1.

¹¹ Tariff, Section 69A.3.5 (f); *see also* MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r29, at p. 51 (Oct. 1, 2023).

¹² Tariff, Section 69A.3.5 (d) & (f).

¹³ See Tariff, Section 69A.3.9 (describing penalties for underperformance of LMRs).

¹⁴ *Id.*

¹⁵ Tariff, Schedule 30.

cause a reduction in demand in response to receiving an EDR Dispatch Instruction from the Transmission Provider because . . . the Market Participant is [an] ARC with a contract that entitles the Market Participant to reduce Load at such facility[.]¹⁶

16. Unlike LMRs, EDRs do not participate as capacity resources in MISO. Instead, EDR holders submit EDR offers the day prior indicating their availability and receive compensation from the energy market only if and as dispatched by MISO.¹⁷

5. Dual Registration

17. Market Participants may dual-register resources as both LMRs and EDRs.¹⁸ EDRs are dispatched after LMRs in times of more acute need.¹⁹ Consequently, MISO instructs Market Participants with dual-registered resources to reduce their reported LMR availability to the extent of their EDR availability (*i.e.*, to report the LMR as unavailable).²⁰ Dual-registered resources receive both capacity payments (as LMRs) and, if dispatched, LMP-based payments (as EDRs).

6. Resource Registration, MISO's PRA, and Resource Replacement During the Relevant Period

18. During the Relevant Period, MISO's capacity market operated on a "Planning Year" basis running from June 1 of each year through May 31 of the following year.²¹

¹⁶ *Id.* at Section II.

¹⁷ *Id.* at Sections IV & VII.

¹⁸ MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r28, at p. 53 (May 31, 2023).

¹⁹ *See* MISO Market Capacity Emergency Operating Conditions SO-P-EOP-00-002 Rev: 20, at p. 40 (during a Maximum Generation Emergency implementing LMRs at Event Step 2a/EEA2 and then EDR resources at Event Step 2b), <https://www.misoenergy.org/markets-and-operations/reliability-information/reliability-operating-procedures> (visited July 17, 2023).

²⁰ *See* MISO Business Practices Manual, Demand Response, Manual No. 026-r9, at pp. 77-78 (Oct. 1, 2022).

²¹ *See* MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r28, at p. 24 (May 31, 2023).

19. The PRA imposes a variety of deadlines on Market Participants seeking to participate. Of relevance here, MISO operates a prompt year capacity market in which resources are able to qualify and begin performing in the same calendar year: new LMRs must be registered and accredited by February 1; pre-existing LMRs must be registered and accredited by March 1; and LMRs that are converted to ZRCs and clear in the PRA in April are expected to be available to perform three months later, starting on June 1 of the Planning Year.²²

20. During the Relevant Period, MISO's Tariff offered limited relief for ARCs that found, after the PRA, that their LMR resources were unable or unwilling to perform. In particular, Tariff Section 69A.3.1.h allowed Market Participants to "replace the cleared ZRCs with uncleared ZRCs to relieve the performance requirements applicable to the Planning Resource' if, any time during the Planning Year, a Planning Resource . . . is unable to meet the applicable performance requirements"²³ After the Relevant Period, MISO stated in a Tariff waiver request that only ZRCs that were already registered prior to the PRA participation deadline are eligible to serve as replacement resources and thus Market Participants "do not have the opportunity to replace and/or supplement a non-performing LMR or LMR portfolio with newly registered assets."²⁴

B. Voltus's Entry into the MISO Market

21. Voltus was founded in the summer of 2016. In its first year, Voltus analyzed the MISO market, determined that MISO's PRA is a "prompt' year auction [that] allows rapid market access and profit[.]" and decided to participate in the MISO market.

22. By participating in the 2017/18 MISO PRA, Voltus became the first ARC to participate in MISO's market and therefore Voltus believes it was the first occasion for MISO to give guidance to an ARC on its Tariff and Business Practices Manuals.

1. Discussions with MISO

23. In the months leading up to the February 1, 2017, deadline to register LMR resources to participate in MISO's 2017/18 PRA, Voltus personnel initiated communications with MISO concerning the process for registering LMR resources in MISO, and the rules and requirements of LMR participation.

²² See *id.* at Appendix K.

²³ *Midcontinent Indep. Sys. Operator, Inc.*, Request of MISO for Waiver of Tariff Provisions, Expedited Consideration, and Shortened Comment Period at 5, Docket No. ER20-2156-000 (filed June 24, 2020).

²⁴ *Id.*

24. On October 27, 2016, Dixon and others participated in a phone call with a MISO employee to discuss the LMR registration process. During this call, in response to a question posed by Voltus, a MISO employee confirmed that as part of the LMR registration process, Voltus would not be required to provide evidence of a contractual relationship with the entities underlying the LMRs it was registering.

2. *Ameren's Website*

25. Ameren Illinois (Ameren) is an electric utility within MISO's markets.

26. In the time leading up to the deadline to register LMR resources to participate in MISO's 2017/18 PRA, Dixon learned from one of Voltus's salespeople that non-public information concerning Ameren customers could be obtained by registering as an Ameren business partner and entering the customers' Ameren account numbers on Ameren's website. According to Dixon, Ameren had "advanced metering infrastructure and meter data available" that enabled Voltus to "measure performance for dispatches of demand response without having to install our technology." The Ameren data included non-public customer information that a Market Participant needed to register an LMR resource, such as a customer's meter number.

27. In order to access this data, a user of Ameren's website was first prompted to confirm that they were accessing data for only their own accounts or for accounts to which they had expressly been granted permission to access.

3. *Dixon Directs Voltus to Register Resources*

28. Throughout late-2016 and early-2017, Dixon and other Voltus salespeople contacted and attempted to sign-up energy users as LMR resources. Voltus's goals, as documented and communicated to all Voltus employees at the time in a PowerPoint presentation titled "Operation Violet – 200 MWs in MISO Zone 4", called for Voltus to "Sell 200 MWs before March 1, 2017." In many cases, Voltus requested copies of utility bills from customers for Voltus to conduct an analysis of what the customers could earn by participating in MISO's demand response program. For customers located in Ameren's service area, these utility bills contained the customers' Ameren account numbers.

29. Prior to MISO's 2017/18 PRA, Dixon and/or Voltus employees working at Dixon's direction or with his consent began engaging in two forms of conduct.

30. First, Voltus employees working at Dixon's direction or with his consent directed other Voltus employees to register as LMR resources energy users that had not signed a contract with Voltus agreeing to participate in MISO's demand response program. Voltus was able to register these resources without their consent by inputting their

Ameren account numbers into Ameren's website and downloading information required by MISO.

31. Second, for certain customers that had agreed to participate in the program, Voltus employees working at Dixon's direction or with his consent directed other Voltus employees to register these contracted resources at levels above what the resources had contractually agreed to curtail.

4. *Early 2017: A Contractor Resigns*

32. In 2016, Voltus engaged a contractor to manage the registration of new Voltus demand response resources in MISO. From his prior employment, the contractor had substantial experience in the asset registration process for demand response resources in non-MISO markets.

33. In December 2016, the contractor asked MISO to explain a sentence concerning replacement resources in its Business Practices Manual stating, "New resources can be used if registered, qualified and approved by MISO by the due dates for annual and Transitional PRAs." MISO replied, "[i]f you plan to use new resources for replacement, they should have completed the process of qualifying a new resource and exist in [MISO's capacity tracking tool] for the applicable planning year." The contractor then asked MISO about the use of replacement resources under circumstances where the PRA clears at lower-than-expected prices and Voltus's existing customers withdraw their participation. MISO indicated to the contractor that in these circumstances MISO could "work with" Voltus to register new resources post-PRA to serve as replacement capacity. The contractor passed on this information to Dixon.

34. Based on this information, Dixon directed Voltus employees to register certain resources at or near their summer peak demand (*i.e.*, register a resource as if it would conduct a total shutdown if called upon) whether or not that resource had demonstrated it could, or consented to, perform at that level. Dixon's plan was that, after registering and clearing these resources at these above-contract amounts, Voltus would rely on MISO's flexibility on the use of replacement resources to cover these commitments using other later-registered customers.

35. The contractor "personally felt comfortable" and did not "believe that there was anything in the rules to explicitly preclude participants" from "using the replacement capacity mechanism for a small number of assets." He did not think that registering resources "at values greater than what they could perform" was a "violation of the market rules" and was comfortable with this approach to some degree "if there were other customers that [Voltus] could register that could make up that shortfall."

36. But the contractor believed that Dixon's proposed use of replacement resources was contrary to the "spirit" of MISO's rules, and that this proposed use created

reputational risk for Voltus with MISO. Further, the contractor was concerned that if Voltus cleared more capacity than its customers could provide, and then MISO dispatched Voltus's resources, Voltus would have insufficient capacity to meet that dispatch and would be subject to financial penalties. The contractor also was concerned that this practice would lead to a regulatory investigation—and that by personally registering resources consistent with Dixon's wishes he was risking his own reputation and best-interests.

37. The contractor represented that he shared these concerns with Dixon, and that Dixon responded by questioning his suitability for an early-stage startup. The contractor's formal relationship with Voltus ended in the spring of 2017.

5. *Winter 2016/17 into Spring 2017: Voltus Begins to Register and Clear Resources in the 2017/18 PRA*

38. In the 2017/18 PRA, Voltus registered and cleared LMR capacity for ten resources with whom it had no contractual relationship and who did not consent to or have knowledge of their registration. These resources accounted for approximately 8 percent of the 226.9 MW that were cleared by Voltus in the PRA. In some cases, Voltus subsequently would later re-register the same resource across multiple Planning Years without the resource's knowledge and without securing a contractual commitment from them.

39. Voltus stated in testimony that these resources were intended to be replaced or were subsequently reported to MISO as unavailable.

40. Examples of this conduct include Company A and Company B (described below).

41. **Company A:** Voltus first contacted Company A on December 20, 2016. On January 24, 2017, Company A provided Voltus copies of its utility bills, which contained its Ameren account number. On January 27, 2017, Company A asked Voltus "for a dozen references" and Voltus's records state that a Voltus salesperson intended to send Company A an "agreement and will have him speak with customers if he still has interest." Voltus's records do not show additional communications between Voltus and Company A until after MISO's March 1, 2017 registration deadline. Voltus qualified the company in MISO as a 0.8 MW LMR, cleared its capacity in the 2017/18 PRA, and retained all capacity payments paid by MISO in connection with this resource. The following year, Voltus again emailed Company A about participating in MISO's demand response program. In this communication, Voltus did not mention that it had already re-enrolled Company A in MISO's demand response program at the time of the email (January 5, 2018). Company A did not sign a contract with Voltus to participate in the 2018/19 Planning Year. After clearing the resource in the 2018/19 PRA, Voltus substituted it using replacement capacity. Voltus received a total of \$438 in capacity payments associated with this resource.

42. **Company B:** Voltus first contacted Company B on December 14, 2016. On December 29, 2016, Company B provided Voltus copies of its utility bills, which contained its Ameren account number. The following day, Voltus provided Company B a proposal of the benefits it could obtain if it enrolled in MISO's demand response program. There are no records of the company responding to this or other follow-up communications from Voltus reminding Company B about MISO's enrollment deadline. Voltus qualified the company in MISO as a 0.1 MW LMR, and cleared its capacity in the 2017/18 PRA. Voltus again cleared its capacity in the 2018/19 PRA, but utilized replacement capacity to substitute the 0.1 MW. Later, Voltus tried to again sell Company B on demand response, sending a standard sales email that made no mention of the fact that Voltus had previously enrolled Company B. Voltus received a total of \$420 in capacity payments associated with this resource for the 2017/18 and 2018/19 Planning Years.

43. Certain other entities specifically informed Voltus that not only were they unwilling to participate in the program, but they were unable to curtail their energy use. Company C and Company D are examples that fall under this category (described below):

44. **Company C:** By early 2017, Company C had provided Voltus with a copy of its utility bill, which contained its Ameren account number. Voltus subsequently registered and cleared Company C (without its knowledge or consent) as a 5 MW LMR in the 2017/18 PRA. Voltus never had a contract with Company C, and Company C told Voltus in December 2017 that its facilities "have no back up and cannot reduce power at all." Voltus also enrolled and cleared Company C in the 2018/19 PRA (and registered but did not clear it in the 2019/20 PRA). Voltus received \$20,987 in capacity payments associated with this resource in the 2017/18 and 2018/19 Planning Years.

45. **Company D:** In early 2017, Company D provided Voltus with a copy of its utility bill, which contained its Ameren account number. By March 2017, Voltus's internal lead-tracking spreadsheet had coded Company D red and reported the lead's status as "disqualified," stating: "Can't participate operationally." Voltus registered (but did not clear) Company D in the 2017/18 PRA—without its knowledge and consent. In November 2017, Company D again informed Voltus that it could not participate in demand response, explaining that "there is no way to curtail anything" at its facilities. Voltus enrolled Company D in the 2018/19 PRA—without its knowledge and consent—and sold its capacity in a bilateral transaction. Voltus received \$48,399 in payments associated with this customer.

46. After the 2017/18 PRA cleared at prices lower than it expected, Voltus asked its contracted customers if they "were still interested in participating in the program at these low prices" and "most everyone said no." Only one customer told Voltus it still wanted to participate. All of Voltus's other customers, accounting for 96% of the 226.9 MW that were cleared by Voltus in the PRA said they no longer wanted to participate. Voltus

subsequently retained for itself the \$119,678 in capacity payments Voltus was to be paid by MISO for the resources of those customers that no longer wanted to participate in the program, telling certain customers that “no payments were available due to the low prices.”

47. Voltus did not inform MISO that these resources were no longer contractually committed to perform if called upon. These resources were listed as “available” to MISO throughout most of the 2017/18 Delivery Year and Voltus did not replace any of these resources using newly-registered resources.

48. Following Voltus’s initial registration of uncontracted resources in the 2017/18 PRA, Dixon determined to continue registering certain Ameren customers using their account numbers before finalizing any contractual arrangement.

49. Dixon laid out this strategy in an email sent on July 12, 2017, in which he set forth a plan to secure 100 MW of ZRCs in MISO in the next four weeks, telling his team: “Goal is not to close deals – goal is to get the Ameren Illinois account number (ONLY Ameren Illinois).” Dixon continued: “Every account number we convert to ZRCs that [] is part of the winning bid . . . gets paid – whether we eventually ink it or not[.]”

6. Summer 2017: Voltus Develops “Scranta”

50. In the Summer of 2017, Dixon and a Voltus employee developed a program that would allow Voltus to obtain customer account numbers from Ameren’s website without obtaining utility bills from potential customers. As explained by Dixon:

I also noticed that you could just plug in any account number, that, you know, you could go to the [Ameren] website and just plug in – you know, you could essentially script the URL. It’s a ten-digit account number code. You could plug that in, just cycle through them, and it would identify – we created a program that would identify any loads.

51. The program, named “Scranta” based on a combination of the words “scrape” and “Santa”, scraped data from Ameren’s computer systems by submitting tens of millions of potential account numbers, and when it identified an Ameren customer’s account, added certain account data to a database. Scranta went live in August 2017, after Voltus’s participation in its first MISO Planning Year. In certain instances, Voltus had already identified customers identified by Scranta using Google Maps or other customer identification tools. New accounts with peak demands above a 50 kW threshold were included in an automated email to Voltus leaders and distributed to the sales team as leads for the LMR program. Voltus used Scranta information both for sales leads and to register customers without their knowledge or consent. The information Voltus acquired

from Scranta required in the MISO registration process included, among other things, customer energy usage data that Voltus used to create mock tests.

52. In an August 7, 2017, email a Voltus employee stated: “We should exercise caution increasing the scraping rate, as it would be very easy for [Ameren] to make this much harder for us with some simple server config changes.” On September 6, 2017, the employee sent an email to Dixon, regarding using Scranta to obtain hourly data from Ameren, stating: “I think we should proceed with caution . . . as it looks like there might be a human in the middle approving the hourly requests, and we might alert Ameren to what’s going on. If we do [it], let’s do it from a dedicated account and server/IP.”

7. *Summer 2017 until Summer 2020: Voltus Expands Its Registration Practices*

53. Before developing Scranta, Voltus registered with MISO roughly 41 MW of uncontracted LMRs, clearing 19 MW in the 2017/18 PRA. After developing Scranta, Voltus registered with MISO approximately 207 MW of uncontracted LMRs in the 2018/19 PRA, 216 MW in the 2019/20 PRA, and 65 MW in the 2020/21 PRA. Starting in the 2018/19 Planning Year, Voltus also dual registered most of its uncontracted resources as EDRs. Voltus received capacity payments for the uncontracted LMR resources it cleared and/or sold bilaterally but did not receive energy revenue based solely on its registered EDRs because MISO never dispatched its EDRs during the Relevant Period.

54. Dixon acknowledged in testimony that Voltus had no way of knowing whether its uncontracted resources would respond to dispatch by MISO. Voltus kept the revenue from these uncontracted MISO registrations—which in certain instances reflected resources that Voltus had previously identified and unsuccessfully approached. If these uncontracted resources had been dispatched by MISO and underperformed Voltus would have been subject to financial penalties, as is consistent with the role of an ARC.

55. Examples of uncontracted resources registered with MISO using Scranta include Companies E, F, and G (described below).

56. **Company E:** Voltus first identified Company E as a potential demand response customer via Google Maps in November 2016. In December 2016, Company E informed Voltus that it was “unable to willingly curtail any load.” Company E never provided Voltus with a copy of its utility bill containing its Ameren account number and Voltus did not enroll the resource in the 2017/18 MISO PRA. Scranta later identified Company E’s Ameren account number on December 22, 2017, and Voltus subsequently qualified it as a 7.7-8.0 MW resource in three Planning Years (2018/19, 2019/20, and 2020/21). Although functioning during some of the Planning Years, Company E’s facility closed permanently months before Voltus registered it for the 2020/21 Planning Year and cleared it in the PRA. Voltus made several efforts to contact the company through 2021.

Voltus received \$42,705 in capacity payments associated with this resource during the two years it cleared the PRA of the three years it was bid.

57. **Company F:** Voltus first contacted Company F on November 17, 2016, because Voltus knew that Company F had participated in a demand response program in another market. On December 13, 2016, Company F informed Voltus: “We run the plant very hard, 90% or better load factor which is why we don’t participate in any DR program. That’s typical for most of our sites. No plans to change that going forward.” Company F declined Voltus’s sales approach without providing a copy of its utility bill containing its Ameren account number and Voltus was unable to enroll the resource in the 2017/18 MISO PRA. Voltus had already obtained Company F’s account number for the 2018/19 PRA when Scranta identified Company F’s Ameren account number on June 27, 2018, and Voltus registered Company F without its knowledge or consent as a 7.5 MW resource in three Planning Years (2018/19, 2019/20, and 2020/21) and cleared its capacity in two Planning Years (2018/19 and 2020/21). Voltus received \$41,245 in capacity payments from MISO associated with this resource.

58. **Company G:** Voltus first identified Company G as a potential demand response customer via Google Maps in November 2016. Voltus began attempting to contact Company G in early 2017 and did not receive a substantive response to its sales inquiries in that time period. After Scranta identified Company G’s Ameren account number on September 19, 2017, Voltus registered Company G without its consent or knowledge as a 5.5 MW resource and cleared its capacity in two Planning Years 2018/19 and 2020/21. Voltus received \$30,295 in capacity payments from MISO associated with this resource.

59. Voltus also registered large aggregations of entirely uncontracted resources whose information had been obtained by Scranta, including the VOLTAMILREPII aggregation described below.

60. **VOLTAMILREPII:** In the 2019/20 Planning Year, Voltus dual-registered VOLTAMILREPII as a 146.1 MW aggregated LMR/EDR composed of 144 uncontracted resources whose information was obtained through Scranta. In connection with registering these resources, Voltus submitted to MISO a spreadsheet and graph demonstrating customers’ load reductions, which MISO refers to as a mock test, using information Voltus obtained from Ameren through Scranta. These mock tests indicated that virtually all these entities would or could fully shut down if dispatched by MISO even though each customer was unaware it was participating in MISO’s programs. Prior to the beginning of the 2019/20 Planning Year, Voltus replaced 70 percent of the 146.1 MW registered for VOLTAMILREPII.

C. Voltus's Portfolio

1. Voltus Registered Customers At Levels Above What They Had Contracted for as an Estimate of their Performance

61. During the Relevant Period, Voltus's contracts consistently contained terms providing a "best estimate" of a contracted resource's ability to perform. Voltus's customer contracts also frequently stated that it would pay customers a share of the "capacity, availability, and/or energy payments obtained by Voltus owing to Customer's performance in the [demand response] Program(s)."

62. In addition to registering resources without their knowledge or consent, Voltus registered its contracted customers to provide curtailment at "above-contract" levels—*i.e.* for amounts above that which they had contractually agreed to perform in the event of a dispatch.

63. For example, Company H's contract estimated that Company H could provide 21 MW of curtailment. In the 2018/19 Planning Year, Voltus registered Company H for 41.1 MW without Company H's knowledge or consent.

64. In the 2018/19 Planning Year, Company I's contract estimated that Company I could curtail 7.5 MW and Voltus registered and cleared it for 21 MW.

65. These customers did not know they were registered at an above-contract level. Voltus kept the revenues that resulted from registering and clearing resources above their contract commitments.

2. Voltus's Portfolio Included Uncontracted and Above-Contract Demand Response Resources

66. In each Planning Year from 2017/18 through 2020/21, the MW Voltus cleared in the PRA or sold bilaterally that were uncontracted or above-contract demand response resources totaled as follows: (2017/18) 219 MW or 96% of its portfolio; (2018/19) 295 MW or 49% of its portfolio; (2019/20) 326 MW or 45% of its portfolio; and (2020/21) 231 MW or 29% of its portfolio.

67. In the 2018/2019 Planning Year, Voltus replaced 66 MW or 22% of its uncontracted or above-contract demand response resources with contracted customers. In the 2019/20 Planning Year, Voltus replaced 150 MW or 46% of uncontracted or above-contract demand response resources with contracted customers.

3. Voltus's Use of Availability Status

68. Voltus's LMR resources (including its uncontracted LMRs) were generally not shown as being "available" for dispatch by MISO as LMRs.

69. One reason for this, Voltus has asserted, is that Voltus understood it was appropriate to use availability reporting to make MISO aware of its operational capability. This understanding is based on conversations Voltus represents occurred with MISO personnel.

70. Voltus also had a practice of dual-registering its LMRs (including its uncontracted LMRs) with MISO as EDRs “to the greatest extent possible” for what Voltus has asserted was the purpose of securing energy payments during a dispatch. MISO instructs Market Participants with dual-registered resources to reduce their reported LMR availability to the extent of their EDR availability (*i.e.*, to report the LMR as unavailable). Voltus was therefore permitted to, and did, reduce the availability of its LMR availability of its dual-registered resources.

71. Voltus personnel recognized that uncontracted LMRs that were dual-registered as EDRs could be shown as “unavailable” as LMRs and simultaneously bid as EDRs where the number of MWs offered as an EDR **was** zero. Voltus personnel discussed how this approach would allow Voltus to “ensure” that its uncontracted “capacity is not dispatched.” Voltus employees working at Dixon’s direction or with his consent pursued this approach.

4. Voltus’s Use of Replacement Resources

72. Voltus stated during the Investigation that after registering uncontracted and above-contract demand response resources and clearing their capacity in the PRA, it continued soliciting new resources and intended to replace its uncontracted and above-contract demand response resources with newly contracted, newly registered customers between when PRA results were published (end of April) and the beginning of the Planning Year (June 1).

73. Voltus described this as a “pipeline” approach that it used to “take a position” in the PRA based on the MW of LMRs it expected to sell. Voltus stated during the Investigation that building a prospective sales pipeline is a common industry practice for ARCs in FERC-jurisdictional markets that clear in advance of the delivery year.

74. During the Relevant Period, Voltus asked MISO staff whether if “one of our customers decided they no longer wanted to participate” could Voltus replace the customer with a new customer. MISO responded, “If you were finding a new customer to replace the old customer in the same already approved DR program, we can work with you to make that change. We would view that as a change to an existing resource, not as an entirely new resource.” Based on MISO’s stated flexibility in the case of an existing customer, Voltus replaced certain uncontracted customers that it had registered without their knowledge or consent with contracted customers after the PRA. In certain instances, MISO provided Voltus with access to the MISO portal to register ZRCs after a PRA, to receive approval from MISO for replacement capacity transactions.

75. Voltus never informed MISO that the ZRCs it was replacing were associated with uncontracted LMRs.

76. In the spring of 2020, MISO informed Voltus it would no longer allow Voltus to use replacement capacity transactions, informing Voltus that MISO had only previously allowed such transactions due to a “customer service exception.” Voltus has represented that at that time, and prior to the onset of this Investigation, Voltus stopped its practice of clearing any non-contracted MW and relying on the use of replacement capacity to substitute any remaining non-contracted customers with contracted ones.

D. Voltus’s Communications

1. In Voltus’s Internal Communications, Dixon Stated That Voltus’s Actions Might Violate MISO’s Rules

77. In a March 29, 2019 Slack conversation among Dixon and other Voltus employees, Dixon drew an analogy between his actions in covertly cutting a mountain biking trail on “conservation land owned by the Trustees of Reservations” and Voltus’s actions in MISO.

78. Dixon stated, “It’s not clear whether we have permission or not to cut the trail. So, under the cover of darkness, I work away to cut a trail on a 650 acre preserve that only has one trail.” Dixon further explained that a year ago a “new guy became superintendent, and one of our trail builders got an email asking us to hold off until they develop a new policy on volunteer trail builders. That was more than a year ago. We’ve been pestering them but nobody answers our emails or phone calls. So, we keep building” Dixon then noted, “As I was cutting away at 3:00 am I started laughing that this trail blazing was so fitting for what we’re doing in MISO. I believe the trail we’re cutting on the preservation will do a whole lot of good for people who need a great trail to ride in a beautiful place. But we could be in violation of things we’re not fully aware of, or that we might interpret differently than the trustees.” In conclusion, Dixon stated, “It seems I’m uncomfortable enough to lose sleep over MISO. Yet, I believe wholeheartedly in what we’re doing and that a tremendous amount of good comes from it. Are you all comfortable with what we’re doing?”

79. In response, a Voltus employee stated: “I am quite at peace with our overall strategy from a ‘what is right’ perspective,” adding “If we sat around waiting for MISO to create the perfect rules for DR and always played by their exact rules there wouldn’t be DR in MISO at all!” The employee later added, “I do worry that we make sure our team understand all this. That we’re not ‘shady’ as [a person] [c]alled us. But we don’t always have all the answers, and if we waited around for 100% clarity from MISO we’d never do anything.”

80. Voltus contends that this conversation pertained to the incongruities in MISO's rules around DRR1 shutdown payments, a matter that Voltus disputed with MISO and about which MISO ultimately submitted a waiver to FERC that the Commission granted.²⁵

2. Dixon's Role In Voltus Employees' Communications with MISO

81. In January 2019, a Voltus employee asked Dixon if there was any reason not to register a resource contracted to perform at 10 MW as a 131 MW resource. Dixon told the employee to "hold off" stating, "That's a massive asset that would trigger phone calls to them." The employee then asked about other large assets that Voltus was planning to register "at way above their sold amount", including Company J. Dixon replied, "We'll play that card if we have to but I worry that it triggers a series of phone calls that get[s] MISO[']s and Ameren[']s knickers in a bunch."

82. In February 2019, MISO amended its Tariff to expand availability requirements for LMR resources—unless an ARC already had a contract in place that contained more stringent availability terms. Related to this exception, Dixon allowed Voltus to represent to MISO that its entire portfolio, which included uncontracted customers, was subject to more stringent availability requirements due to contractual terms.

83. In March 2019, a Voltus employee indicated to MISO it wanted to be able to replace resources where "Customer A shuts down or fails a test or for some other reason makes us lose confidence they could actually curtail." After MISO confirmed Voltus could enter the replacement resources, the employee forwarded the exchange to Dixon and noted that the actual issue was that Voltus possessed "sold and pipeline deals that aren't registered" that it would need to replace.

E. Cooperation

84. Voltus and Dixon fully cooperated with Enforcement during the Investigation.

II. Violations

A. Dixon

85. Enforcement has concluded that Dixon violated the Anti-Manipulation Rule, 18 C.F.R. § 1c.2, during the Relevant Period by engaging in a fraudulent scheme to obtain capacity payments from MISO that included (1) improperly obtaining customer data and using that data in connection with jurisdictional transactions, (2) registering LMRs to which Voltus lacked contractual rights, and (3) offering uncontracted LMRs into the

²⁵ *Midcontinent Indep. Sys. Operator, Inc.*, Order Granting Waiver Request, 174 FERC ¶ 61,202 (2021).

PRA. Enforcement has concluded Dixon made, and allowed Voltus employees under his control to make, false and misleading statements to MISO, customers and potential customers, and others, in furtherance of this fraudulent scheme. Enforcement has concluded Dixon knew, or was reckless in not knowing, that this fraudulent scheme violated the terms and requirements of the MISO Tariff.

B. *Voltus*

86. Enforcement has concluded that Voltus violated Tariff Section 69A.3.5 by registering some LMRs despite not having authority, via ownership or contractual rights, to reduce demand using those LMRs.

87. During the Relevant Period, Section 69A.3.5 of the MISO Tariff stated:

Participating ZRCs in the PRA: All Market Participants that own or have contractual rights to the Planning Resources that are represented within an [Local Resource Zone] or [External Resource Zone] and have converted Unforced Capacity to ZRCs, will have an option to (consistent with withholding provisions) submit offers into the PRA for such ZRCs . . . as described in Section 69A.9.

88. From 2015 until November 1, 2018, Tariff Section 69A.7.1(a) provided:

Participating ZRCs in an [Local Resource Zone]: All Market Participants that own or have operational control of Planning Resources that are located within an [Local Resource Zone] and have converted Unforced Capacity to ZRCs, will have an option to (consistent with withholding provisions) submit offers into the PRA for such ZRCs . . . as described in Section 69A.9.

89. Since November 1, 2018, Section 69A.7.1(a) of the Tariff has similarly provided:

Participating ZRCs in the PRA: All Market Participants that own or have contractual rights to the Planning Resources that are represented within an [Local Resource Zone] or [External Resource Zone] and have converted Unforced Capacity to ZRCs, will have an option to (consistent with withholding provisions) submit offers into the PRA for such ZRCs, to the extent that the Market Participant has not opted out of the PRA by submitting a [Fixed Resource Adequacy Plan], as described in Section 69A.9.

90. Enforcement has concluded that Voltus violated Tariff Section 69A.7.1 by offering uncontracted ZRCs in the PRA despite not owning or having contractual rights to them.

91. During the Relevant Period, Schedule 30 of the Tariff provided:

A Market Participant within the Transmission Provider Region may become an EDR Participant by complying with the[] Schedule 30 requirements if it . . . has the ability to cause a reduction in demand in response to receiving an EDR Dispatch Instruction from the Transmission Provider either because the Market Participant is the operator of a facility capable of reducing demand, or the Market Participant is a Load Serving Entity (“LSE”) or ARC with a contract that entitles the Market Participant to reduce Load at such facility[.]

92. Enforcement has determined that Voltus, violated Schedule 30 by registering EDRs even though it lacked “a contract that entitles the Market Participant to reduce Load at such facilit[ies].”

III. Stipulation and Consent Agreement

93. Enforcement, Voltus, and Dixon have resolved the Investigation by means of the attached Agreement.

94. Voltus and Dixon stipulate to the facts set forth in Section II of the Agreement and neither admit nor deny the violations described in Section III of the Agreement.

95. Voltus agrees to pay a civil penalty of \$10,919,457 to the United States Treasury and disgorge \$7,080,543 to MISO pursuant to the schedule set forth in the Agreement.

96. Voltus agrees, in accordance with the terms of the Agreement, that it will not make any cash distributions or dividend payments in respect of its capital stock to common or preferred stockholders until its disgorgement obligations have been satisfied in full.

97. Voltus agrees, in accordance with the terms of the Agreement, that Dixon will never again serve on Voltus’s Board or the Board of any Voltus successor entity or controlled affiliate. Voltus also agrees that Dixon will not serve as a Voltus Board member, employee, consultant, contractor, or in a similar position going forward.

98. Voltus agrees, in accordance with the terms of the Agreement, to submit annual compliance monitoring reports to Enforcement for two years with as many as two additional years at Enforcement’s discretion.

99. Dixon agrees to pay a civil penalty of \$1,000,000, by wire transfer, to the United States Treasury within 10 days of the Effective Date of the Agreement.

100. Dixon agrees to resign from Voltus's Board on or before the Effective Date of the Agreement and agrees to forfeit all rights with respect to the selection or replacement of Voltus Board members. Dixon also agrees that he will not pursue nor accept any role with Voltus or any Voltus successor entity or affiliate going forward, including but not limited to, a role as a Board member, employee, consultant, contractor, or similar position.

IV. Determination of Appropriate Sanctions and Remedies

101. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,²⁶ including the fact that Voltus and Dixon cooperated with Enforcement during the Investigation and Voltus's ability to pay the penalty and disgorgement.

102. Based on this information, the Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned, is in the public interest, and recognizes the specific considerations stated above and in the Agreement.

103. The Commission directs Voltus to satisfy disgorgement and pay the civil penalty as required under the Agreement in accordance with the schedule set forth in the Agreement.

104. The Commission directs Voltus to comply with all provisions in the Agreement, including the provisions requiring Voltus to submit an annual compliance monitoring report to Enforcement for two years and as many as two additional years at Enforcement's discretion, as well as the notice requirements associated with transfers in control.

105. The Commission directs Dixon to pay the civil penalty as required under the Agreement within 10 days of the Effective Date of the Agreement.

106. The Commission directs Dixon to comply with all provisions in the Agreement, including the provision requiring Dixon to resign from Voltus's Board on or before the Effective Date of the Agreement.

107. The Commission directs MISO to allocate the disgorged funds in its discretion for the benefit of MISO customers and upon approval by Enforcement of MISO's plan for doing so.

²⁶ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Voltus, Inc. and Gregg Dixon

Docket No. IN21-10-00

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission), Voltus, Inc. (Voltus), and Gregg Dixon (Dixon) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, formal investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2024). The Investigation addressed Voltus's and Dixon's (Voltus's former CEO) participation in the Midcontinent Independent System Operator, Inc. (MISO) demand response markets, and whether Dixon engaged in a fraudulent scheme in violation of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, and/or caused Voltus to violate the MISO Tariff, by registering demand response resources without those resources' knowledge or consent and clearing Load-Modifying Resource (LMR) capacity that would not have performed if the resources were dispatched, during the period from October 1, 2016, and continuing through June 1, 2020 (the Relevant Period).

2. When effective, and as described herein, this Agreement shall resolve alleged violations by Dixon of the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2, and alleged violations by Voltus of the MISO Tariff, within the MISO market during the Relevant Period. The Investigation did not examine and Enforcement expressed no views concerning either Voltus's or Dixon's conduct in MISO after the Relevant Period.

3. Voltus and Dixon stipulate to the facts in Section II, but neither admit nor deny the violations alleged in Section III, as set forth in this Agreement. Voltus agrees to (a) disgorge \$7,080,543 in revenue that it earned during the Relevant Period; (b) pay a civil penalty of \$10,919,457 to the United States Treasury; and (c) provide compliance monitoring reports to Enforcement as provided more fully below. Dixon agrees to pay a civil penalty of \$1,000,000 to the United States Treasury and to step down from Voltus's Board of Directors (Board).

II. STIPULATIONS

Enforcement, Voltus, and Dixon hereby stipulate and agree to the following facts:

A. MISO Market Rules

1. Demand Response and Aggregators of Retail Customers

4. MISO's Commission-approved Tariff contains the rules and procedures governing MISO's demand response (DR) program. The program allows energy users to participate in its energy and capacity markets by providing physical load adjustment or interruption.

5. MISO offers two types of demand response products that are relevant to Voltus's and Dixon's actions here: Load Modifying Resources (LMRs) and Emergency Demand Resources (EDRs).

6. Voltus is an aggregator of retail customers (ARC). Throughout the Relevant Period, MISO's Tariff provided ARCs the option to register LMRs and EDRs.¹ ARCs are, by definition, Market Participants, and are subject to Tariff requirements.²

2. Load Modifying Resources

7. During the Relevant Period, resources seeking to participate in MISO's capacity market could register as LMRs and offer their capacity in annual Planning Resource Auctions (PRAs). LMRs do not have a must offer requirement but must be available for use by MISO during Emergency events.³

8. LMR eligibility is governed by MISO's Tariff, Module E, Section 69A.3.5, which requires that only those "Market Participants that possess[] ownership or equivalent contractual rights in a Demand Resource can request accreditation for a Demand Resource as an LMR[.]"⁴

¹ Tariff Section 38.6.

² See Tariff Section 1.A

³ MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r29, at p. 51 (Oct. 1, 2023).

⁴ During the Relevant Period, Tariff Module E, Section 69A.3.5, was renumbered to Tariff Module E-1. The eligibility requirements did not materially change during the Relevant Period except that in March 2019 Tariff Section 69A.3.5 (j) was revised to require Market Participants either to perform a real power test or accept a heightened penalty in the event of non-performance. See *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,116, at PP 4, 45 (2019).

9. An ARC can register LMRs by submitting to MISO a variety of site-specific information as specified in MISO’s Tariff and Business Practices Manuals.⁵

10. In October 2021, after the Relevant Period and after Enforcement began the Investigation, MISO amended the “Demand Resource - Qualification Requirements” section of the Resource Adequacy Business Practices Manual. Previously, the manual provided that one qualification requirement was “[c]onfirming that the Market Participant has the authority to reduce demand using the DR.” In the October 2021 amendment, MISO added a requirement, stating that “[i]n the case of an ARC registering a DR, this would include uploading into the MECT registration a copy of the signatory pages between the ARC and the load asset customers.”⁶

3. *Zonal Resource Credits*

11. Following a successful registration, a Market Participant converts the LMR resource’s capacity to Zonal Resource Credits (ZRCs) in proportion to the resource’s capacity to curtail load—with pricing denominated in dollars per MW per day.⁷

12. A Market Participant then has the option to offer its ZRCs in the PRA (or sell them bilaterally) provided it “own[s] or ha[s] contractual rights” in the underlying resources.⁸ An LMR that clears capacity in the PRA receives capacity payments from MISO for being available to provide demand reduction in the event of an emergency dispatch.⁹

13. A Market Participant is required to notify MISO when the status or availability of an LMR changes.¹⁰ LMRs must be made “available” to MISO, either as an LMR or EDR,

⁵ See MISO Business Practices Manual, Demand Response, Manual No. 026-r9, at pp. 20-22, 27-30 (Oct. 1, 2022); MISO Business Practices Manual, Demand Response, Manual No. 026-r3, at p. 20 (July 10, 2018); MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r22, at pp. 61-64 (Oct. 1, 2019) (“Demand Resource (DR) – Qualification Requirements”).

⁶ MISO Resource Adequacy BPM, BPM-011-r25 at § 4.2.9.

⁷ MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r29, at p. 75 (Oct. 1, 2023).

⁸ Tariff Section 69A.7.1 (a), 42.0.0 (effective November 1, 2018). Prior to November 1, 2018, the Tariff permitted Market Participants “that own or have operational control of Planning Resources” to offer them in the PRA. See Section 69A.7.1(a), 39.0.0 (effective March 1, 2018).

⁹ See MISO Business Practices Manual, Demand Response, Manual No. 026-r9, at pp. 76-77 (Oct. 1, 2022) (describing the process by which LMR payments are settled).

¹⁰ Tariff Section 69A.3.3.1.

unless their non-availability was due to maintenance or force majeure.¹¹ If called upon by MISO, LMRs are required to ramp down and maintain the targeted reduction for at least four hours.¹² If LMRs are listed as “available” but do not perform as required in a dispatch event, the relevant Market Participant faces monetary penalties established by the Tariff.¹³ In contrast, if they are listed as “unavailable” during a dispatch event, they will not only incur penalties for nonperformance, but they may also be disqualified as LMRs for the remainder of the Planning Year.¹⁴

14. MISO allows Market Participants to change availability of LMRs. Voltus’s practice was to change the status of its resources from “available” to “unavailable” for resources that were not contracted during the Planning Year. Had MISO dispatched its resources and Voltus had underperformed, Voltus would have both lost its capacity payments and been subject to additional penalties.

4. *Emergency Demand Resources*

15. Resources can also seek to participate in MISO markets as EDRs if they are capable of dispatch in emergency events.¹⁵ Schedule 30 of the MISO Tariff provides that:

A Market Participant within the Transmission Provider Region may become an EDR Participant by complying with these Schedule 30 requirements if it: (i) has the ability to cause a reduction in demand in response to receiving an EDR Dispatch Instruction from the Transmission Provider because . . . the Market Participant is [an] ARC with a contract that entitles the Market Participant to reduce Load at such facility[.]¹⁶

16. Unlike LMRs, EDRs do not participate as capacity resources in MISO. Instead, EDR holders submit EDR offers the day prior indicating their availability and receive compensation from the energy market only if and as dispatched by MISO.¹⁷

¹¹ Tariff Section 69A.3.5 (f); *see also* MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r29, at p. 51 (Oct. 1, 2023).

¹² Tariff Section 69A.3.5 (d) & (f).

¹³ *See* Tariff Section 69A.3.9 (describing penalties for underperformance of LMRs).

¹⁴ *Id.*

¹⁵ Tariff Schedule 30.

¹⁶ *Id.* at Section II.

¹⁷ *Id.* at Sections IV & VII.

5. *Dual Registration*

17. Market Participants may dual-register resources as both LMRs and EDRs.¹⁸ EDRs are dispatched after LMRs in times of more acute need.¹⁹ Consequently, MISO instructs Market Participants with dual-registered resources to reduce their reported LMR availability to the extent of their EDR availability (*i.e.*, to report the LMR as unavailable).²⁰ Dual-registered resources receive both capacity payments (as LMRs) and, if dispatched, LMP-based payments (as EDRs).

6. *Resource Registration, MISO's PRA, and Resource Replacement During the Relevant Period*

18. During the Relevant Period, MISO's capacity market operated on a "Planning Year" basis running from June 1 of each year through May 31 of the following year.²¹

19. The PRA imposes a variety of deadlines on Market Participants seeking to participate. Of relevance here, MISO operates a prompt year capacity market in which resources are able to qualify and begin performing in the same calendar year: new LMRs must be registered and accredited by February 1; pre-existing LMRs must be registered and accredited by March 1; and LMRs that are converted to ZRCs and clear in the PRA in April are expected to be available to perform three months later, starting on June 1 of the Planning Year.²²

20. During the Relevant Period, MISO's Tariff offered limited relief for ARCs that found, after the PRA, that their LMR resources were unable or unwilling to perform. In particular, Tariff Section 69A.3.1.h allowed Market Participants to "'replace the cleared ZRCs with uncleared ZRCs to relieve the performance requirements applicable to the Planning Resource' if, any time during the Planning Year, a Planning Resource . . . is

¹⁸ MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r28, at p. 53 (May 31, 2023).

¹⁹ See MISO Market Capacity Emergency Operating Conditions SO-P-EOP-00-002 Rev: 20, at p. 40 (during a Maximum Generation Emergency implementing LMRs at Event Step 2a/EEA2 and then EDR resources at Event Step 2b), <https://www.misoenergy.org/markets-and-operations/reliability-information/reliability-operating-procedures> (visited July 17, 2023).

²⁰ See MISO Business Practices Manual, Demand Response, Manual No. 026-r9, at pp. 77-78 (Oct. 1, 2022).

²¹ See MISO Business Practices Manual, Resource Adequacy, Manual No. 011-r28, at p. 24 (May 31, 2023).

²² See *id.* at Appendix K.

unable to meet the applicable performance requirements”²³ After the Relevant Period, MISO stated in a Tariff waiver request that only ZRCs that were already registered prior to the PRA participation deadline are eligible to serve as replacement resources and thus Market Participants “do not have the opportunity to replace and/or supplement a non-performing LMR or LMR portfolio with newly registered assets.”²⁴

B. Voltus’s Entry into the MISO Market

21. Voltus was founded in the summer of 2016. In its first year, Voltus analyzed the MISO market, determined that MISO’s PRA is a “‘prompt’ year auction [that] allows rapid market access and profit[,]” and decided to participate in the MISO market.

22. By participating in the 2017/18 MISO PRA, Voltus became the first ARC to participate in MISO’s market and therefore Voltus believes it was the first occasion for MISO to give guidance to an ARC on its Tariff and Business Practices Manuals.

1. Discussions with MISO

23. In the months leading up to the February 1, 2017, deadline to register LMR resources to participate in MISO’s 2017/18 PRA, Voltus personnel initiated communications with MISO concerning the process for registering LMR resources in MISO, and the rules and requirements of LMR participation.

24. On October 27, 2016, Dixon and others participated in a phone call with a MISO employee to discuss the LMR registration process. During this call, in response to a question posed by Voltus, a MISO employee confirmed that as part of the LMR registration process, Voltus would not be required to provide evidence of a contractual relationship with the entities underlying the LMRs it was registering.

2. Ameren’s Website

25. Ameren Illinois (Ameren) is an electric utility within MISO’s markets.

26. In the time leading up to the deadline to register LMR resources to participate in MISO’s 2017/18 PRA, Dixon learned from one of Voltus’s salespeople that non-public information concerning Ameren customers could be obtained by registering as an Ameren business partner and entering the customers’ Ameren account numbers on Ameren’s website. According to Dixon, Ameren had “advanced metering infrastructure and meter data available” that enabled Voltus to “measure performance for dispatches of demand

²³ *Midcontinent Indep. Sys. Operator, Inc.*, Request of MISO for Waiver of Tariff Provisions, Expedited Consideration, and Shortened Comment Period at 5, Docket No. ER20-2156-000 (filed June 24, 2020).

²⁴ *Id.*

response without having to install our technology.” The Ameren data included non-public customer information that a Market Participant needed to register an LMR resource, such as a customer’s meter number.

27. In order to access this data, a user of Ameren’s website was first prompted to confirm that they were accessing data for only their own accounts or for accounts to which they had expressly been granted permission to access.

3. Dixon Directs Voltus to Register Resources

28. Throughout late-2016 and early-2017, Dixon and other Voltus salespeople contacted and attempted to sign-up energy users as LMR resources. Voltus’s goals, as documented and communicated to all Voltus employees at the time in a PowerPoint presentation titled “Operation Violet – 200 MWs in MISO Zone 4”, called for Voltus to “Sell 200 MWs before March 1, 2017.” In many cases, Voltus requested copies of utility bills from customers for Voltus to conduct an analysis of what the customers could earn by participating in MISO’s demand response program. For customers located in Ameren’s service area, these utility bills contained the customers’ Ameren account numbers.

29. Prior to MISO’s 2017/18 PRA, Dixon and/or Voltus employees working at Dixon’s direction or with his consent began engaging in two forms of conduct.

30. First, Voltus employees working at Dixon’s direction or with his consent directed other Voltus employees to register as LMR resources energy users that had not signed a contract with Voltus agreeing to participate in MISO’s demand response program. Voltus was able to register these resources without their consent by inputting their Ameren account numbers into Ameren’s website and downloading information required by MISO.

31. Second, for certain customers that had agreed to participate in the program, Voltus employees working at Dixon’s direction or with his consent directed other Voltus employees to register these contracted resources at levels above what the resources had contractually agreed to curtail.

4. Early 2017: A Contractor Resigns

32. In 2016, Voltus engaged a contractor to manage the registration of new Voltus demand response resources in MISO. From his prior employment, the contractor had substantial experience in the asset registration process for demand response resources in non-MISO markets.

33. In December 2016, the contractor asked MISO to explain a sentence concerning replacement resources in its Business Practices Manual stating, “New resources can be used if registered, qualified and approved by MISO by the due dates for annual and Transitional PRAs.” MISO replied, “[i]f you plan to use new resources for replacement, they should have completed the process of qualifying a new resource and exist in [MISO’s

capacity tracking tool] for the applicable planning year.” The contractor then asked MISO about the use of replacement resources under circumstances where the PRA clears at lower-than-expected prices and Voltus’s existing customers withdraw their participation. MISO indicated to the contractor that in these circumstances MISO could “work with” Voltus to register new resources post-PRA to serve as replacement capacity. The contractor passed on this information to Dixon.

34. Based on this information, Dixon directed Voltus employees to register certain resources at or near their summer peak demand (i.e., register a resource as if it would conduct a total shutdown if called upon) whether or not that resource had demonstrated it could, or consented to, perform at that level. Dixon’s plan was that, after registering and clearing these resources at these above-contract amounts, Voltus would rely on MISO’s flexibility on the use of replacement resources to cover these commitments using other later-registered customers.

35. The contractor “personally felt comfortable” and did not “believe that there was anything in the rules to explicitly preclude participants” from “using the replacement capacity mechanism for a small number of assets.” He did not think that registering resources “at values greater than what they could perform” was a “violation of the market rules” and was comfortable with this approach to some degree “if there were other customers that [Voltus] could register that could make up that shortfall.”

36. But the contractor believed that Dixon’s proposed use of replacement resources was contrary to the “spirit” of MISO’s rules, and that this proposed use created reputational risk for Voltus with MISO. Further, the contractor was concerned that if Voltus cleared more capacity than its customers could provide, and then MISO dispatched Voltus’s resources, Voltus would have insufficient capacity to meet that dispatch and would be subject to financial penalties. The contractor also was concerned that this practice would lead to a regulatory investigation—and that by personally registering resources consistent with Dixon’s wishes he was risking his own reputation and best-interests.

37. The contractor represented that he shared these concerns with Dixon, and that Dixon responded by questioning his suitability for an early-stage startup. The contractor’s formal relationship with Voltus ended in the spring of 2017.

5. Winter 2016/17 into Spring 2017: Voltus Begins to Register and Clear Resources in the 2017/18 PRA

38. In the 2017/18 PRA, Voltus registered and cleared LMR capacity for ten resources with whom it had no contractual relationship and who did not consent to or have knowledge of their registration. These resources accounted for approximately 8 percent of the 226.9 MW that were cleared by Voltus in the PRA. In some cases, Voltus subsequently would

later re-register the same resource across multiple Planning Years without the resource's knowledge and without securing a contractual commitment from them.

39. Voltus stated in testimony that these resources were intended to be replaced or were subsequently reported to MISO as unavailable.

40. Examples of this conduct include Company A and Company B (described below).

41. **Company A:** Voltus first contacted Company A on December 20, 2016. On January 24, 2017, Company A provided Voltus copies of its utility bills, which contained its Ameren account number. On January 27, 2017, Company A asked Voltus "for a dozen references" and Voltus's records state that a Voltus salesperson intended to send Company A an "agreement and will have him speak with customers if he still has interest." Voltus's records do not show additional communications between Voltus and Company A until after MISO's March 1, 2017 registration deadline. Voltus qualified the company in MISO as a 0.8 MW LMR, cleared its capacity in the 2017/18 PRA, and retained all capacity payments paid by MISO in connection with this resource. The following year, Voltus again emailed Company A about participating in MISO's demand response program. In this communication, Voltus did not mention that it had already re-enrolled Company A in MISO's demand response program at the time of the email (January 5, 2018). Company A did not sign a contract with Voltus to participate in the 2018/19 Planning Year. After clearing the resource in the 2018/19 PRA, Voltus substituted it using replacement capacity. Voltus received a total of \$438 in capacity payments associated with this resource.

42. **Company B:** Voltus first contacted Company B on December 14, 2016. On December 29, 2016, Company B provided Voltus copies of its utility bills, which contained its Ameren account number. The following day, Voltus provided Company B a proposal of the benefits it could obtain if it enrolled in MISO's demand response program. There are no records of the company responding to this or other follow-up communications from Voltus reminding Company B about MISO's enrollment deadline. Voltus qualified the company in MISO as a 0.1 MW LMR, and cleared its capacity in the 2017/18 PRA. Voltus again cleared its capacity in the 2018/19 PRA, but utilized replacement capacity to substitute the 0.1 MW. Later, Voltus tried to again sell Company B on demand response, sending a standard sales email that made no mention of the fact that Voltus had previously enrolled Company B. Voltus received a total of \$420 in capacity payments associated with this resource for the 2017/18 and 2018/19 Planning Years.

43. Certain other entities specifically informed Voltus that not only were they unwilling to participate in the program, but they were unable to curtail their energy use. Company C and Company D are examples that fall under this category (described below):

44. **Company C:** By early 2017, Company C had provided Voltus with a copy of its utility bill, which contained its Ameren account number. Voltus subsequently registered

and cleared Company C (without its knowledge or consent) as a 5 MW LMR in the 2017/18 PRA. Voltus never had a contract with Company C, and Company C told Voltus in December 2017 that its facilities “have no back up and cannot reduce power at all.” Voltus also enrolled and cleared Company C in the 2018/19 PRA (and registered but did not clear it in the 2019/20 PRA). Voltus received \$20,987 in capacity payments associated with this resource in the 2017/18 and 2018/19 Planning Years.

45. **Company D:** In early 2017, Company D provided Voltus with a copy of its utility bill, which contained its Ameren account number. By March 2017, Voltus’s internal lead-tracking spreadsheet had coded Company D red and reported the lead’s status as “disqualified,” stating: “Can’t participate operationally.” Voltus registered (but did not clear) Company D in the 2017/18 PRA—without its knowledge and consent. In November 2017, Company D again informed Voltus that it could not participate in demand response, explaining that “there is no way to curtail anything” at its facilities. Voltus enrolled Company D in the 2018/19 PRA—without its knowledge and consent—and sold its capacity in a bilateral transaction. Voltus received \$48,399 in payments associated with this customer.

46. After the 2017/18 PRA cleared at prices lower than it expected, Voltus asked its contracted customers if they “were still interested in participating in the program at these low prices” and “most everyone said no.” Only one customer told Voltus it still wanted to participate. All of Voltus’s other customers, accounting for 96% of the 226.9 MW that were cleared by Voltus in the PRA said they no longer wanted to participate. Voltus subsequently retained for itself the \$119,678 in capacity payments Voltus was to be paid by MISO for the resources of those customers that no longer wanted to participate in the program, telling certain customers that “no payments were available due to the low prices.”

47. Voltus did not inform MISO that these resources were no longer contractually committed to perform if called upon. These resources were listed as “available” to MISO throughout most of the 2017/18 Delivery Year and Voltus did not replace any of these resources using newly-registered resources.

48. Following Voltus’s initial registration of uncontracted resources in the 2017/18 PRA, Dixon determined to continue registering certain Ameren customers using their account numbers before finalizing any contractual arrangement.

49. Dixon laid out this strategy in an email sent on July 12, 2017, in which he set forth a plan to secure 100 MW of ZRCs in MISO in the next four weeks, telling his team: “Goal is not to close deals – goal is to get the Ameren Illinois account number (ONLY Ameren Illinois).” Dixon continued: “Every account number we convert to ZRCs that [] is part of the winning bid . . . gets paid – whether we eventually ink it or not[.]”

6. *Summer 2017: Voltus Develops “Scranta”*

50. In the Summer of 2017, Dixon and a Voltus employee developed a program that would allow Voltus to obtain customer account numbers from Ameren’s website without obtaining utility bills from potential customers. As explained by Dixon:

I also noticed that you could just plug in any account number, that, you know, you could go to the [Ameren] website and just plug in – you know, you could essentially script the URL. It’s a ten-digit account number code. You could plug that in, just cycle through them, and it would identify – we created a program that would identify any loads.

51. The program, named “Scranta” based on a combination of the words “scrape” and “Santa”, scraped data from Ameren’s computer systems by submitting tens of millions of potential account numbers, and when it identified an Ameren customer’s account, added certain account data to a database. Scranta went live in August 2017, after Voltus’s participation in its first MISO Planning Year. In certain instances, Voltus had already identified customers identified by Scranta using Google Maps or other customer identification tools. New accounts with peak demands above a 50 kW threshold were included in an automated email to Voltus leaders and distributed to the sales team as leads for the LMR program. Voltus used Scranta information both for sales leads and to register customers without their knowledge or consent. The information Voltus acquired from Scranta required in the MISO registration process included, among other things, customer energy usage data that Voltus used to create mock tests.

52. In an August 7, 2017, email a Voltus employee stated: “We should exercise caution increasing the scraping rate, as it would be very easy for [Ameren] to make this much harder for us with some simple server config changes.” On September 6, 2017, the employee sent an email to Dixon, regarding using Scranta to obtain hourly data from Ameren, stating: “I think we should proceed with caution . . . as it looks like there might be a human in the middle approving the hourly requests, and we might alert Ameren to what’s going on. If we do [it], let’s do it from a dedicated account and server/IP.”

7. *Summer 2017 until Summer 2020: Voltus Expands Its Registration Practices*

53. Before developing Scranta, Voltus registered with MISO roughly 41 MW of uncontracted LMRs, clearing 19 MW in the 2017/18 PRA. After developing Scranta, Voltus registered with MISO approximately 207 MW of uncontracted LMRs in the 2018/19 PRA, 216 MW in the 2019/20 PRA, and 65 MW in the 2020/21 PRA. Starting in the 2018/19 Planning Year, Voltus also dual registered most of its uncontracted resources as EDRs. Voltus received capacity payments for the uncontracted LMR resources it

cleared and/or sold bilaterally but did not receive energy revenue based solely on its registered EDRs because MISO never dispatched its EDRs during the Relevant Period.

54. Dixon acknowledged in testimony that Voltus had no way of knowing whether its uncontracted resources would respond to dispatch by MISO. Voltus kept the revenue from these uncontracted MISO registrations—which in certain instances reflected resources that Voltus had previously identified and unsuccessfully approached. If these uncontracted resources had been dispatched by MISO and underperformed Voltus would have been subject to financial penalties, as is consistent with the role of an ARC.

55. Examples of uncontracted resources registered with MISO using Scranta include Companies E, F, and G (described below).

56. **Company E:** Voltus first identified Company E as a potential demand response customer via Google Maps in November 2016. In December 2016, Company E informed Voltus that it was “unable to willingly curtail any load.” Company E never provided Voltus with a copy of its utility bill containing its Ameren account number and Voltus did not enroll the resource in the 2017/18 MISO PRA. Scranta later identified Company E’s Ameren account number on December 22, 2017, and Voltus subsequently qualified it as a 7.7-8.0 MW resource in three Planning Years (2018/19, 2019/20, and 2020/21). Although functioning during some of the Planning Years, Company E’s facility closed permanently months before Voltus registered it for the 2020/21 Planning Year and cleared it in the PRA. Voltus made several efforts to contact the company through 2021. Voltus received \$42,705 in capacity payments associated with this resource during the two years it cleared the PRA of the three years it was bid.

57. **Company F:** Voltus first contacted Company F on November 17, 2016, because Voltus knew that Company F had participated in a demand response program in another market. On December 13, 2016, Company F informed Voltus: “We run the plant very hard, 90% or better load factor which is why we don’t participate in any DR program. That’s typical for most of our sites. No plans to change that going forward.” Company F declined Voltus’s sales approach without providing a copy of its utility bill containing its Ameren account number and Voltus was unable to enroll the resource in the 2017/18 MISO PRA. Voltus had already obtained Company F’s account number for the 2018/19 PRA when Scranta identified Company F’s Ameren account number on June 27, 2018, and Voltus registered Company F without its knowledge or consent as a 7.5 MW resource in three Planning Years (2018/19, 2019/20, and 2020/21) and cleared its capacity in two Planning Years (2018/19 and 2020/21). Voltus received \$41,245 in capacity payments from MISO associated with this resource.

58. **Company G:** Voltus first identified Company G as a potential demand response customer via Google Maps in November 2016. Voltus began attempting to contact

Company G in early 2017 and did not receive a substantive response to its sales inquiries in that time period. After Scranta identified Company G's Ameren account number on September 19, 2017, Voltus registered Company G without its consent or knowledge as a 5.5 MW resource and cleared its capacity in two Planning Years 2018/19 and 2020/21. Voltus received \$30,295 in capacity payments from MISO associated with this resource.

59. Voltus also registered large aggregations of entirely uncontracted resources whose information had been obtained by Scranta, including the VOLTAMILREPII aggregation described below.

60. **VOLTAMILREPII:** In the 2019/20 Planning Year, Voltus dual-registered VOLTAMILREPII as a 146.1 MW aggregated LMR/EDR composed of 144 uncontracted resources whose information was obtained through Scranta. In connection with registering these resources, Voltus submitted to MISO a spreadsheet and graph demonstrating customers' load reductions, which MISO refers to as a mock test, using information Voltus obtained from Ameren through Scranta. These mock tests indicated that virtually all these entities would or could fully shut down if dispatched by MISO even though each customer was unaware it was participating in MISO's programs. Prior to the beginning of the 2019/20 Planning Year, Voltus replaced 70 percent of the 146.1 MW registered for VOLTAMILREPII.

C. Voltus's Portfolio

1. Voltus Registered Customers At Levels Above What They Had Contracted for as an Estimate of their Performance

61. During the Relevant Period, Voltus's contracts consistently contained terms providing a "best estimate" of a contracted resource's ability to perform. Voltus's customer contracts also frequently stated that it would pay customers a share of the "capacity, availability, and/or energy payments obtained by Voltus owing to Customer's performance in the [demand response] Program(s)."

62. In addition to registering resources without their knowledge or consent, Voltus registered its contracted customers to provide curtailment at "above-contract" levels—*i.e.* for amounts above that which they had contractually agreed to perform in the event of a dispatch.

63. For example, Company H's contract estimated that Company H could provide 21 MW of curtailment. In the 2018/19 Planning Year, Voltus registered Company H for 41.1 MW without Company H's knowledge or consent.

64. In the 2018/19 Planning Year, Company I's contract estimated that Company I could curtail 7.5 MW and Voltus registered and cleared it for 21 MW.

65. These customers did not know they were registered at an above-contract level. Voltus kept the revenues that resulted from registering and clearing resources above their contract commitments.

2. Voltus's Portfolio Included Uncontracted and Above-Contract Demand Response Resources

66. In each Planning Year from 2017/18 through 2020/21, the MW Voltus cleared in the PRA or sold bilaterally that were uncontracted or above-contract demand response resources totaled as follows: (2017/18) 219 MW or 96% of its portfolio; (2018/19) 295 MW or 49% of its portfolio; (2019/20) 326 MW or 45% of its portfolio; and (2020/21) 231 MW or 29% of its portfolio.

67. In the 2018/2019 Planning Year, Voltus replaced 66 MW or 22% of its uncontracted or above-contract demand response resources with contracted customers. In the 2019/20 Planning Year, Voltus replaced 150 MW or 46% of uncontracted or above-contract demand response resources with contracted customers.

3. Voltus's Use of Availability Status

68. Voltus's LMR resources (including its uncontracted LMRs) were generally not shown as being "available" for dispatch by MISO as LMRs.

69. One reason for this, Voltus has asserted, is that Voltus understood it was appropriate to use availability reporting to make MISO aware of its operational capability. This understanding is based on conversations Voltus represents occurred with MISO personnel.

70. Voltus also had a practice of dual-registering its LMRs (including its uncontracted LMRs) with MISO as EDRs "to the greatest extent possible" for what Voltus has asserted was the purpose of securing energy payments during a dispatch. MISO instructs Market Participants with dual-registered resources to reduce their reported LMR availability to the extent of their EDR availability (*i.e.*, to report the LMR as unavailable). Voltus was therefore permitted to, and did, reduce the availability of its LMR availability of its dual-registered resources.

71. Voltus personnel recognized that uncontracted LMRs that were dual-registered as EDRs could be shown as "unavailable" as LMRs and simultaneously bid as EDRs where the number of MWs offered **as an EDR** was zero. Voltus personnel discussed how this approach would allow Voltus to "ensure" that its uncontracted "capacity is not dispatched." Voltus employees working at Dixon's direction or with his consent pursued this approach.

4. Voltus's Use of Replacement Resources

72. Voltus stated during the Investigation that after registering uncontracted and above-contract demand response resources and clearing their capacity in the PRA, it continued

soliciting new resources and intended to replace its uncontracted and above-contract demand response resources with newly contracted, newly registered customers between when PRA results were published (end of April) and the beginning of the Planning Year (June 1).

73. Voltus described this as a “pipeline” approach that it used to “take a position” in the PRA based on the MW of LMRs it expected to sell. Voltus stated during the Investigation that building a prospective sales pipeline is a common industry practice for ARCs in FERC-jurisdictional markets that clear in advance of the delivery year.

74. During the Relevant Period, Voltus asked MISO staff whether if “one of our customers decided they no longer wanted to participate” could Voltus replace the customer with a new customer. MISO responded, “If you were finding a new customer to replace the old customer in the same already approved DR program, we can work with you to make that change. We would view that as a change to an existing resource, not as an entirely new resource.” Based on MISO’s stated flexibility in the case of an existing customer, Voltus replaced certain uncontracted customers that it had registered without their knowledge or consent with contracted customers after the PRA. In certain instances, MISO provided Voltus with access to the MISO portal to register ZRCs after a PRA, to receive approval from MISO for replacement capacity transactions.

75. Voltus never informed MISO that the ZRCs it was replacing were associated with uncontracted LMRs.

76. In the spring of 2020, MISO informed Voltus it would no longer allow Voltus to use replacement capacity transactions, informing Voltus that MISO had only previously allowed such transactions due to a “customer service exception.” Voltus has represented that at that time, and prior to the onset of this Investigation, Voltus stopped its practice of clearing any non-contracted MW and relying on the use of replacement capacity to substitute any remaining non-contracted customers with contracted ones.

D. Voltus’s Communications

1. In Voltus’s Internal Communications, Dixon Stated That Voltus’s Actions Might Violate MISO’s Rules

77. In a March 29, 2019 Slack conversation among Dixon and other Voltus employees, Dixon drew an analogy between his actions in covertly cutting a mountain biking trail on “conservation land owned by the Trustees of Reservations” and Voltus’s actions in MISO.

78. Dixon stated, “It’s not clear whether we have permission or not to cut the trail. So, under the cover of darkness, I work away to cut a trail on a 650 acre preserve that only has one trail.” Dixon further explained that a year ago a “new guy became superintendent, and one of our trail builders got an email asking us to hold off until they develop a new policy

on volunteer trail builders. That was more than a year ago. We've been pestering them but nobody answers our emails or phone calls. So, we keep building" Dixon then noted, "As I was cutting away at 3:00 am I started laughing that this trail blazing was so fitting for what we're doing in MISO. I believe the trail we're cutting on the preservation will do a whole lot of good for people who need a great trail to ride in a beautiful place. But we could be in violation of things we're not fully aware of, or that we might interpret differently than the trustees." In conclusion, Dixon stated, "It seems I'm uncomfortable enough to lose sleep over MISO. Yet, I believe wholeheartedly in what we're doing and that a tremendous amount of good comes from it. Are you all comfortable with what we're doing?"

79. In response, a Voltus employee stated: "I am quite at peace with our overall strategy from a 'what is right' perspective," adding "If we sat around waiting for MISO to create the perfect rules for DR and always played by their exact rules there wouldn't be DR in MISO at all!" The employee later added, "I do worry that we make sure our team understand all this. That we're not 'shady' as [a person] [c]alled us. But we don't always have all the answers, and if we waited around for 100% clarity from MISO we'd never do anything."

80. Voltus contends that this conversation pertained to the incongruities in MISO's rules around DRR1 shutdown payments, a matter that Voltus disputed with MISO and about which MISO ultimately submitted a waiver to FERC that the Commission granted.²⁵

2. Dixon's Role In Voltus Employees' Communications with MISO

81. In January 2019, a Voltus employee asked Dixon if there was any reason not to register a resource contracted to perform at 10 MW as a 131 MW resource. Dixon told the employee to "hold off" stating, "That's a massive asset that would trigger phone calls to them." The employee then asked about other large assets that Voltus was planning to register "at way above their sold amount", including Company J. Dixon replied, "We'll play that card if we have to but I worry that it triggers a series of phone calls that get[s] MISO[s] and Ameren[s] knickers in a bunch."

82. In February 2019, MISO amended its Tariff to expand availability requirements for LMR resources—unless an ARC already had a contract in place that contained more stringent availability terms. Related to this exception, Dixon allowed Voltus to represent to MISO that its entire portfolio, which included uncontracted customers, was subject to more stringent availability requirements due to contractual terms.

²⁵ *Midcontinent Indep. Sys. Operator, Inc.*, Order Granting Waiver Request, 174 FERC ¶ 61,202 (2021).

83. In March 2019, a Voltus employee indicated to MISO it wanted to be able to replace resources where “Customer A shuts down or fails a test or for some other reason makes us lose confidence they could actually curtail.” After MISO confirmed Voltus could enter the replacement resources, the employee forwarded the exchange to Dixon and noted that the actual issue was that Voltus possessed “sold and pipeline deals that aren’t registered” that it would need to replace.

E. Cooperation

84. Voltus and Dixon fully cooperated with Enforcement during the Investigation.

III. VIOLATIONS

A. Dixon

85. Enforcement has concluded that Dixon violated the Anti-Manipulation Rule, 18 C.F.R. § 1c.2, during the Relevant Period by engaging in a fraudulent scheme to obtain capacity payments from MISO that included (1) improperly obtaining customer data and using that data in connection with jurisdictional transactions, (2) registering LMRs to which Voltus lacked contractual rights, and (3) offering uncontracted LMRs into the PRA. Enforcement has concluded Dixon made, and allowed Voltus employees under his control to make, false and misleading statements to MISO, customers and potential customers, and others, in furtherance of this fraudulent scheme. Enforcement has concluded Dixon knew, or was reckless in not knowing, that this fraudulent scheme violated the terms and requirements of the MISO Tariff.

B. Voltus

86. Enforcement has concluded that Voltus violated Tariff Section 69A.3.5 by registering some LMRs despite not having authority, via ownership or contractual rights, to reduce demand using those LMRs.

87. During the Relevant Period, Section 69A.3.5 of the MISO Tariff stated:

Participating ZRCs in the PRA: All Market Participants that own or have contractual rights to the Planning Resources that are represented within an [Local Resource Zone] or [External Resource Zone] and have converted Unforced Capacity to ZRCs, will have an option to (consistent with withholding provisions) submit offers into the PRA for such ZRCs . . . as described in Section 69A.9.

88. From 2015 until November 1, 2018, Tariff Section 69A.7.1(a) provided:

Participating ZRCs in an [Local Resource Zone]: All Market Participants that own or have operational control of

Planning Resources that are located within an [Local Resource Zone] and have converted Unforced Capacity to ZRCs, will have an option to (consistent with withholding provisions) submit offers into the PRA for such ZRCs . . . as described in Section 69A.9.

89. Since November 1, 2018, Section 69A.7.1(a) of the Tariff has similarly provided:

Participating ZRCs in the PRA: All Market Participants that own or have contractual rights to the Planning Resources that are represented within an [Local Resource Zone] or [External Resource Zone] and have converted Unforced Capacity to ZRCs, will have an option to (consistent with withholding provisions) submit offers into the PRA for such ZRCs, to the extent that the Market Participant has not opted out of the PRA by submitting a [Fixed Resource Adequacy Plan], as described in Section 69A.9.

90. Enforcement has concluded that Voltus violated Tariff Section 69A.7.1 by offering uncontracted ZRCs in the PRA despite not owning or having contractual rights to them.

91. During the Relevant Period, Schedule 30 of the Tariff provided:

A Market Participant within the Transmission Provider Region may become an EDR Participant by complying with the[] Schedule 30 requirements if it . . . has the ability to cause a reduction in demand in response to receiving an EDR Dispatch Instruction from the Transmission Provider either because the Market Participant is the operator of a facility capable of reducing demand, or the Market Participant is a Load Serving Entity (“LSE”) or ARC with a contract that entitles the Market Participant to reduce Load at such facility[.]

92. Enforcement has determined that Voltus, violated Schedule 30 by registering EDRs even though it lacked “a contract that entitles the Market Participant to reduce Load at such facilit[ies].”

IV. REMEDIES AND SANCTIONS

93. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to Voltus’s and Dixon’s conduct evaluated in Enforcement’s Investigation, Voltus and Dixon agree with the facts as stipulated in Section II of this Agreement, and neither admit nor deny the violations described in Section III of this Agreement.

A. Voltus

94. Voltus further agrees to undertake the obligations set forth in the following paragraphs.

1. Civil Penalty and Disgorgement

95. Voltus agrees to pay a civil penalty of \$10,919,457 to the United States Treasury and disgorge \$7,080,543 to MISO. The schedule for Voltus's payments is set forth below.

96. Within 10 days of the Effective Date of this Agreement, as defined herein, Voltus shall make a payment of \$2,000,000.

97. On the first anniversary of the Effective Date of this Agreement, Voltus shall make a payment of \$3,000,000.

98. On the second anniversary of the Effective Date of this Agreement, Voltus shall make a payment of \$4,080,543.

99. On the third anniversary of the Effective Date of this Agreement, Voltus shall make a payment of \$4,500,000.

100. On the fourth anniversary of the Effective Date of this Agreement, Voltus shall make a payment of \$4,419,457.

101. The first \$7,080,543 paid by Voltus under this schedule shall be for purposes of disgorgement. Voltus shall direct all payments to MISO for disgorgement until it has paid the agreed-upon disgorgement amount called for in this Agreement (\$7,080,543). Thereafter, Voltus shall make all payments to the United States Treasury for civil penalties.

102. Voltus agrees that it will not make any cash distributions or dividend payments in respect of its capital stock to common or preferred stockholders until its disgorgement obligations have been satisfied in full.

103. Until the payments contemplated by paragraphs 95-101 have been paid in full, Voltus agrees to provide at least 60 days' notice to Enforcement of any merger, acquisition, going public transaction, or similar change in control event or transaction involving Voltus and in which a majority of the voting power is transferred (or substantially all of the assets of Voltus on a consolidated basis are transferred) to a third party (Change of Control Transaction); provided, however, that this paragraph shall not apply (and no notice shall be required) in connection with a financing transaction or any transaction that is effected primarily as an internal corporate reorganization or restructuring, including for tax or administrative purposes.

104. Voltus agrees that any outstanding civil penalty or disgorgement amounts owed must be paid in full prior to or in connection with the closing of any Change of Control Transaction.

2. *Dixon's Participation in Voltus*

105. Voltus represents that Dixon is no longer its CEO, and agrees that Dixon will never again serve on Voltus's Board or the Board of any Voltus successor entity or controlled affiliate. Voltus agrees that Dixon will not serve as a Voltus Board member, employee, consultant, contractor, or in a similar position going forward.

3. *Operations*

106. Voltus has adjusted its current operations such that departments that interact directly with wholesale markets report to the Chief Financial Officer and/or Chief Operating Officer.

4. *Compliance*

107. Voltus agrees that it will update existing policies, or prepare new policies, under the supervision of its Chief Legal Officer and Director of Regulatory Compliance concerning its wholesale market activities. As part of Voltus's annual compliance reporting, described below, Voltus will provide Enforcement its policies and procedures that relate to compliance with this term.

108. Voltus shall make annual compliance monitoring reports to Enforcement for two years following the Effective Date of this Agreement. The first annual compliance monitoring report shall be submitted one year after the Effective Date of the Agreement. The second annual compliance monitoring report shall be submitted one year from the date of the first report. After the receipt of the second annual report, Enforcement may, at its sole discretion, require Voltus to submit reports for as many as two additional years.

109. Each compliance monitoring report shall: (1) identify any known violations of Commission regulations that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures Voltus instituted or modified during the reporting period related to compliance with Commission regulations; and (3) describe all Commission-related compliance training that Voltus administered during the reporting period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

110. Each compliance monitoring report shall also include an affidavit executed by an officer or authorized representative of Voltus stating that it is true and accurate to the best of his/her knowledge.

111. Upon request by Enforcement, Voltus shall provide to Enforcement documentation supporting the contents of its reports.

B. Dixon

1. Civil Penalty

112. Within 10 days of the Effective Date of this Agreement, as defined herein, Dixon agrees to pay a civil penalty of \$1,000,000, by wire transfer, to the United States Treasury.

2. Dixon's Participation in Voltus

113. Dixon agrees that he will resign from Voltus's Board on or before the Effective Date of the Agreement and agrees to forfeit all rights with respect to the selection or replacement of Voltus Board members. Dixon also agrees that he will not pursue nor accept any role with Voltus or any Voltus successor entity or affiliate going forward, including but not limited to, a role as a Board member, employee, consultant, contractor, or similar position.

V. TERMS

114. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to Dixon and Voltus and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

115. Commission approval of this Agreement without material modification shall release Voltus and Dixon and forever bar the Commission from holding Voltus and Dixon and any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

116. Failure by Voltus and/or Dixon to make the disgorgement or civil penalty payments, or to comply with the compliance obligations agreed to herein or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. § 792, et seq., and may subject Voltus and/or Dixon to additional action under the enforcement provisions of the FPA.

117. If Voltus does not make the required disgorgement payment described above within the time agreed by the parties, or if Voltus and/or Dixon do not pay the required civil penalties described above within the time agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) from the date that payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

118. This Agreement binds Dixon and Voltus and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Dixon or Voltus, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

119. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Voltus or Dixon has been made to induce the signatories or any other party to enter into the Agreement.

120. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Voltus nor Dixon shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Voltus and/or Dixon.

121. In connection with the disgorgement payment and/or civil penalties provided for herein, Voltus and Dixon agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order under 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). Voltus and Dixon waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

122. This Agreement can be modified only if in writing and signed by Enforcement and Voltus and/or Dixon as to their respective obligations, and any modifications will not be effective unless approved by the Commission.

123. The undersigned warrants that he/she is an authorized representative of Voltus and/or Dixon, is authorized to bind such entity or individual, and accepts the Agreement on the entity or individual's behalf.

124. The undersigned representative of Voltus and/or Dixon affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

125. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Agreed to and Accepted:
JANEL
BURDICK

Digitally signed by
JANEL BURDICK
Date: 2024.11.14
16:49:05 -05'00'

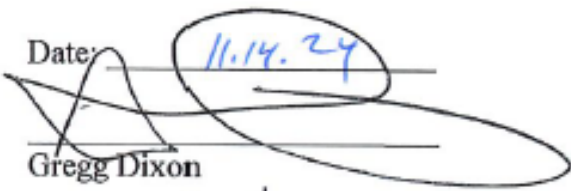
Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 11/14/24



Todd Mullins
Counsel for Voltus, Inc.

Date: 11.14.24



Gregg Dixon

Date: 11/14/2024