



2. The Signatories recognize that EMW is acquiring a 22.2% interest in Dogwood for a final purchase price of approximately \$62,700,000, to be accounted for as provided in Paragraphs 6 and 7 below. EMW requests the Commission to determine pursuant to the CCN Rule's Section (2)(C) that the Company's decision to acquire and operate Dogwood, pursuant to the terms of this Stipulation, is prudent. This request for a determination of decisional prudence by EMW does not imply or suggest that Staff and/or OPC agree with or acquiesce to this request.

4. The Signatories agree that the in-service criteria which the Commission should consider in determining whether Dogwood is fully operational, and used and useful for service are as follows:

a. Dogwood may be operated and successfully complete the criteria items in subparagraphs b through i, below.

b. Dogwood will successfully complete the Southwest Power Pool, Inc. ("SPP") capacity accreditation testing process.

c. Dogwood will demonstrate its ability to start up from turning gear operation to nominal capacity on natural gas fuel when prompted by the operator.

d. Dogwood will demonstrate its ability to shut down from minimum load resulting in turning gear operation when prompted by the operator.

e. Dogwood will demonstrate its ability to operate at minimum load for one (1) hour on natural gas fuel.

f. Dogwood will demonstrate its ability to operate at or above 95% of nominal capacity for four (4) continuous hours on natural gas fuel, after adjusting for ambient conditions. During this test Dogwood will demonstrate its ability to operate at or above 98% of its nominal capacity for one (1) hour, after adjusting for ambient conditions.

g. Dogwood must be able to operate at or above its design capacity factor for a reasonable period of time. If the design capacity factor<sup>2</sup> is not specified, it will be assumed to be 0.60 unless EMW can offer evidence justifying a lower value.

h. Sufficient transmission facilities shall exist to carry the total design net electrical capacity of Dogwood to EMW's distribution/transmission system.

i. Dogwood's combustion turbine units, which are equipped to operate in any of the following modes, will demonstrate their ability to operate in the applicable modes before the equipment costs associated with these operation modes will be considered for inclusion in the rate base.

- o Startup of gas turbine driven by the generator and frequency converter.
- o Shutdown of gas turbine alone without the generator.

5. Staff completed a successful site visit on February 14, 2024 and observed Unit 1 operating in a 1x1 configuration. Staff further found Dogwood has met the above listed in-service criteria on that date.

6. EMW shall be allowed to recover a return **on and of** the net book value of Dogwood's property, plant & equipment, working capital and prepaid accounts, including the deferred maintenance contract of EMW's percentage ownership in Dogwood, so long as Dogwood remains owned by EMW and is operational, and the net book value is not fully recovered.

a. Every Signatory shall retain its respective right to argue for the allowance or disallowance of any unrecovered portion of the net book value of EMW's percentage

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<sup>2</sup> Design capacity factor  $\leq$  energy generated for a continuous period of 168 hours / (design full load X 168 hours).

ownership in Dogwood in the event that Dogwood ceases operation before its net book value is fully recovered.

7. EMW shall be allowed to recover a return of, but not return on the difference between (a) the net book value of Dogwood's property, plant & equipment, working capital and prepaid accounts, including the deferred maintenance contract of EMW's percentage ownership in Dogwood, and (b) the purchase price that EMW pays for its percentage ownership in Dogwood under the Asset Purchase Agreement of November 3, 2023 between EMW and Dogwood Energy, LLC (the "Agreement"), so long as Dogwood remains in EMW's ownership and is operational, and such difference is not fully recovered. This net amount shall be reduced by the net revenues<sup>3</sup> generated from the sale of energy and sale of capacity, Ancillary Services<sup>4</sup> revenues, and other applicable revenues (if any) associated with EMW's percentage ownership in Dogwood from the date the Agreement closes to the date new rates become effective for EMW in Case No. ER-2024-0189.

a. The net revenues generated from the sale of energy and sale of capacity, Ancillary Services revenues, and other applicable revenues (if any) associated with EMW's percentage ownership in Dogwood from the date the Agreement closes to the date new rates become effective for EMW shall **not** be recovered by ratepayers (through the fuel adjustment clause or otherwise) and shall be retained by the Company.

b. The return of the difference between the net book value of property, plant & equipment, working capital and prepaid accounts, including deferred maintenance contract of EMW's percentage ownership in the Dogwood Energy Facility and the

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<sup>3</sup> Net revenues = The revenues from the sale of energy and capacity less fuel costs and variable O&M.

<sup>4</sup> Ancillary Services include day ahead and real time spinning reserve amounts, regulation service amounts, supplemental reserve amounts and ramp capability amounts.

purchase price under the Agreement that EMW pays for its percentage ownership in Dogwood (less net revenues, as described above) shall be recovered over an approximate two-year period at an annual value of \$6.9 million.

c. Once the difference between the net book value of EMW's percentage ownership in Dogwood and the purchase price EMW pays under the Agreement for its percentage ownership in Dogwood, less net revenues as described above, is fully collected, to the extent the \$6.9 million amount is still being recovered in retail rates, a regulatory liability will be established and the amount of the regulatory liability will be returned to customers as determined in the EMW's next general rate case in a manner consistent with traditional ratemaking principles.

d. The Signatories shall retain their respective right to argue for the allowance or disallowance of any unrecovered portion of the difference between the net book value of EMW's percentage ownership in Dogwood and the purchase price that EMW pays pursuant to the Agreement for its percentage ownership in Dogwood in the event that Dogwood ceases operation before such difference is fully recovered.

e. In the event that the net revenues generated from the sale of energy and the sale of capacity, Ancillary Services revenues, and other applicable revenues (if any) associated with EMW's percentage ownership in Dogwood from the date the Agreement closes to the date new rates become effective for EMW exceed the difference between the net book value of EMW's percentage ownership in Dogwood and the purchase price EMW pays for its percentage ownership in Dogwood, the excess shall be credited to the reserves of Dogwood as an offset to net original cost.

f. The Signatories to this Stipulation agree that the terms and conditions as outlined in Paragraph 6 and in this Paragraph 7, inclusive of its subparagraphs a. through e., are negotiated terms specific to the granting of a CCN and rate treatment for Dogwood under the transaction represented by the Agreement, and they will not be considered precedential by any party for any future CCN proceeding.

8. EMW shall comply with 20 CSR 4240-3.190 for the Dogwood facility.

9. EMW shall:

a. Agree to maintain and promote corporate social responsibility programs as defined in the settlement agreement of Case No. EM-2018-0012 for at least five years following the expiration of the existing agreement. Before any funding occurs, EMW, Staff and OPC agree to meet annually to discuss the program and determine whether there is joint agreement for any changes to individual funding amounts or agency recipients should be implemented.

b. Agree to meet with Signatories and Non-Signatory parties that do not oppose the Stipulation (listed below) a minimum of three times, beginning in the second quarter of 2024, to discuss the request for additional cost-benefit analysis of utility PISA (plant in-service accounting) investments that exceed \$1 million.

### **GENERAL PROVISIONS**

10. This Stipulation is being entered into solely for the purpose of settling the issues specifically set forth above and represents a settlement on a mutually-agreeable outcome without resolution of specific issues of law or fact. This Stipulation is intended to relate *only* to the specific matters referred to herein; no Signatory waives any claim or right which it may otherwise have

with respect to any matter not expressly provided for herein. No party will be deemed to have approved, accepted, agreed, consented, or acquiesced to any substantive or procedural principle, treatment, calculation, or other determinative issue underlying the provisions of this Stipulation. Except as specifically provided herein, no Signatory shall be prejudiced or bound in any manner by the terms of this Stipulation in any other proceeding, regardless of whether this Stipulation is approved.

11. This Stipulation has resulted from extensive negotiations, and the terms hereof are inter-dependent. If the Commission does not approve this Stipulation, approves it with modifications or conditions to which a party objects, or issues an order in another Commission case that negates its approval or conditions or modifies the Stipulation in a manner to which any party objects, then this Stipulation shall be null and void, and no Signatory shall be bound by any of its provisions.

12. If the Commission does not approve this Stipulation unconditionally and without modification, and notwithstanding its provision that it shall become void, neither this Stipulation, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.080 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation, shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

13. If the Commission unconditionally accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect only to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2); (2) to present oral argument and/or written briefs pursuant to Section 536.080.1; (3) to seek rehearing pursuant to Section 386.500; and (4) to judicial review pursuant to Section 386.510. These waivers apply only to a Commission order respecting this Stipulation issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation.

14. This Stipulation contains the entire agreement of the Signatories concerning the issues addressed herein.

15. This Stipulation does not constitute a contract with the Commission and is not intended to impinge upon any Commission claim, right, or argument by virtue of the Stipulation's approval. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has or as an acquiescence of any underlying issue. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

16. The Signatories agree that this Stipulation, except as specifically noted herein, resolves all issues related to these topics, and that the agreement should be received into the record without the necessity of any witness taking the stand for examination.

17. This Stipulation is a negotiated settlement. Except as specified herein, the Signatories to this Stipulation shall not be prejudiced, bound by, or in any way affected by the

terms of this Stipulation: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation, or in any way condition its approval of same.

18. If approved and adopted by the Commission, this Stipulation shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Stipulation and the operation of this Stipulation according to its terms.

**NON-SIGNATORY PARTIES THAT DO NOT OPPOSE STIPULATION**

19. The Signatories have been authorized to represent that the following parties, who have not executed this Stipulation, do not oppose Commission approval of this Stipulation:

- Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission (“MEC”);
- Kansas Municipal Energy Agency (“KMEA”);
- Midwest Energy Consumers Group (“MECG”); and
- City of Kansas City, Missouri (“KCMO”).

**WHEREFORE**, the Signatories respectfully request the Commission to issue an order in this case approving the Stipulation subject to the specific terms and conditions contained therein.

Respectfully submitted,

*/s/ Roger W. Steiner*

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 26<sup>th</sup> day of February 2024.

*/s/ Roger W. Steiner*

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Roger W. Steiner