No. 13–787

IN THE

Supreme Court of the United States

STATE OF MISSOURI EX REL. KCP & L GREATER MISSOURI OPERATIONS COMPANY,
Petitioner,

v.

MISSOURI PUBLIC SERVICE COMMISSION AND DOGWOOD ENERGY, LLC,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, WESTERN DISTRICT

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF

Under this Court's Rule 15.8, Petitioner KCP&L–GMO ("the Company") respectfully submits this Supplemental Brief to advise the Court of new authority relevant to the pending petition.

In its petition, the Company noted that a following case, raising the same constitutional issue and involving several of the same parties, was pending in the Missouri Court of Appeals. Pet. 31, 33. Respondents Dogwood and the Missouri Public Service Commission seized on the pendency of that following case to argue against certiorari. In short, they alleged vehicle problems with the current case based on the pendency of the following one.

The Missouri Court of Appeals has now ruled in the second case. Supp. App. 1a–17a. In a single, dismissive paragraph, the Court of Appeals followed its precedential ruling in the opinion below—its holding that the Missouri Commission could lawfully allow the Company to provide Crossroads power in Missouri, but disallow recovery of the FERC-approved interstate transmission costs of receiving that power from Crossroads. Given the Court of Appeals' new order and unpublished memorandum opinion, it seems that even the Court of Appeals agrees that *this currently pending petition* is the correct vehicle for addressing these constitutional issues.

* * *

In their opposition briefs, Respondents repeatedly referred to the pendency of a second case

in the Missouri Court of Appeals as a reason not to grant certiorari now. Respondents contended that the pending case made the issue here unripe. Dogwood Br. at 15; Commission Br. at 7–11. The Commission in particular implied that perhaps the Court of Appeals might correct its own constitutional error. Commission Br. 10 ("The judicial review of the new tariffs is incomplete . . . . The outcome of GMO's appeal of the 2013 on [sic] tariffs is unknown."). Failing that, the Commission argued, the Company could always seek certiorari later, against that future ruling. Commission Br. 11 ("The appellate process challenging the Commission report and order that led to the implementation of the 2013 tariff is still ongoing. If GMO is dissatisfied with the outcome of that appeal, it will again have the opportunity to petition the Court for review.").

Now that the Court of Appeals has issued its order, however, it has erased both of these reasons to deny certiorari here. This Court is holding the keys to the best vehicle right now.

First, the Court of Appeals emphatically did not correct its own constitutional error. Although the Court of Appeals acknowledged that "GMO has filed a Petition for a Writ of Certiorari in the United States Supreme Court," it hewed firmly to its earlier decision. Supp. App. 12a–13a ("We are confident our previous analyses accurately set forth the law and correctly applied it."). Indeed, the Court of Appeals refused to even address the Company's constitutional arguments under the filed rate doctrine and Supremacy Clause. Instead, it stated simply that they had been "raised and resolved" in the previous

case, and that they "lack merit and are rejected." Supp. App. 12a. In other words, the Court of Appeals ignored the Company's arguments and doubled down on its earlier error.

Second, the new Court of Appeals opinion is not a better vehicle. Having addressed the constitutional issue at length in a published opinion in 2013, *see* Pet. App. 15a–20a, the Court of Appeals this time hardly mentioned it at all. *See* Supp. App. 12a–13a (addressing the issue in a single paragraph, and refusing to return to its merits at all). Further, the Court of Appeals' ruling this time is unpublished and per curiam, accompanied by an "informal, unpublished memorandum" that "shall not be reported, cited, or used in unrelated cases before this court or any other court." Supp. App. 4a, n.1. And, the new ruling may rest on an independent and adequate state law ground anyway, which in turn could poison this Court's potential review even if the Missouri Supreme Court agrees to hear the appeal in the meantime. Supp. App. 12a ("We cannot allow GMO to re-litigate these issues when they were raised and resolved in [the first case]").

In the second case, the Court of Appeals correctly observed that the constitutional issue had been raised, litigated, considered, and decided in the earlier case—the subject of the currently pending petition. Supp. App. 12a. For that reason, this Court should grant review in *this* case, of the *precedential* and *reasoned* opinion below on which both cases rely. The issue here is important and needs to be heard, and this latest Court of Appeals

decision confirms that the petition currently before the Court is the right vehicle.

While the second case was pending at the Court of Appeals, Respondents asked this Court to wait. They implied that the state court might correct itself, or that a future petition could be the proper path to address this issue. But now that the Court of Appeals has ruled in the second case, it is clear that those two "birds in the bush" do not actually exist. This Court should go with the one it already has in hand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 2014

APPENDIX

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MISSOURI COURT OF APPEALS
WESTERN DISTRICT

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WD76166 and
WD76167

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IN THE MATTER OF KCP&L GREATER MISSOURI OPERATIONS COMPANY'S REQUEST FOR AUTHORITY TO IMPLEMENT A GENERAL RATE INCREASE FOR ELECTRIC SERVICE; MISSOURI PUBLIC SERVICE COMMISSION,
Appellant-Respondent,

v.

MISSOURI ENERGY CONSUMERS' GROUP;
Respondent-Appellant,

OFFICE OF PUBLIC COUNSEL;
Respondent,

MISSOURI PUBLIC SERVICE COMMISSION;
Respondent,

DOGWOOD ENERGY, INC.; AND
Respondent,

UNION ELECTRIC D/B/A AMEREN MISSOURI,
Respondent.

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ORDER FILED: March 4, 2014

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APPEAL FROM THE
PUBLIC SERVICE COMMISSION

Before Division One: Alok Ahuja, P.J., Thomas H. Newton, and Anthony R. Gabbert, JJ.

ORDER

Per Curiam:

KCP&L Greater Missouri Operations Company and Missouri Energy Consumers' Group appeal the decisions of the Public Service Commission.

For reasons stated in the memorandum provided to the parties, we affirm. Rule 84.16(b).

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WD76166 and
WD76167

IN THE MATTER OF KCP&L GREATER MISSOURI OPERATIONS COMPANY'S REQUEST FOR AUTHORITY TO IMPLEMENT A GENERAL RATE INCREASE FOR ELECTRIC SERVICE; MISSOURI PUBLIC SERVICE COMMISSION,
Appellant-Respondent,

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MISSOURI ENERGY CONSUMERS' GROUP;
Respondent-Appellant,

OFFICE OF PUBLIC COUNSEL;
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MISSOURI PUBLIC SERVICE COMMISSION;
Respondent,

DOGWOOD ENERGY, INC.; AND
Respondent,

UNION ELECTRIC D/B/A AMEREN MISSOURI,
Respondent.

MEMORANDUM FILED: March 4, 2014

MEMORANDUM PROVIDING REASONS FOR ORDER AFFIRMING JUDGMENT UNDER RULE 84.16(B)[1]

KCP&L Greater Missouri Operations Company (GMO) and Missouri Energy Consumers' Group (MECG) appeal the decisions of the Public Service Commission (PSC). GMO appeals the PSC's decision issued on January 9, 2013, denying its requested tariffs and ordering compliance tariffs. MECG appeals the decision issued on January 23, 2013, approving the compliance tariffs. We consolidate the appeals, affirm the January 9, 2013, Report and Order, and do not address the January 23, 2013, Approval Order because it has been vacated.

Factual and Procedural Background[2]

This is the second time that these parties and issues are on appeal. In June 2010, GMO submitted tariffs[3] to the PSC to obtain approval of a general rate increase for electric service. *State ex rel. KCP&L Greater Mo. Operations Co. v. Mo. Pub. Serv. Comm'n (GMO)*, 408 S.W.3d 153, 157 (Mo. App. W.D. 2013).

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[1] This informal, unpublished memorandum is provided to the parties to explain the rationale for the order affirming judgment. This memorandum is not a formal opinion and is not uniformly available. It shall not be reported, cited, or used in unrelated cases before this court or any other court. A copy of this memorandum shall be attached to any motion filed for rehearing or for transfer to the Supreme Court.

[2] A detailed history of the disputes can be found in *State ex rel. KCP& L Greater Mo. Operations Co. v. Mo. Pub. Serv. Comm'n*, 408 S.W.3d 153, 157-59 (Mo. App. W.D. 2013).

[3] "A tariff is a document which lists a public utility['s] services and the rates for those services." *AG Processing Inc. v. Pub. Serv. Comm'n*, 408 S.W.3d 175, 178 (Mo. App. W.D. 2013) (internal quotation marks and citation omitted).

The submitted tariffs sought to recover GMO's costs associated with providing electric service to certain customers through the Crossroads Plant (Crossroads), located 500 miles away in Mississippi. *Id.* at 157-58.

In its May 4, 2011, Report and Order, the PSC rejected the proposed tariffs, but allowed the recovery of some costs and ordered GMO to file compliance tariffs, which GMO did. *Id.* at 158.[4] All of the parties involved filed petitions for review in the circuit court, which affirmed the PSC's decision. *Id.* at 159. The parties appealed to this court. *Id.*

In February 2012, while the appeal was pending, GMO again submitted tariffs to the PSC, seeking to recover the same types of costs that it attempted to recover in the June 2010 tariffs from the same service areas. *Id.* at 159, 159 n.3. Upon this court's discovery that the PSC had issued decisions in January 2013 based on the newly submitted tariffs, we determined that the issues on appeal from the May 2011 Report and Order were moot. *Id.* at 159-60. However, in our discretion, we concluded that certain issues met the public interest exception to mootness, found those issues in favor of the PSC, and affirmed the PSC's decision. *See id.* at 160.

The PSC's January 2013 decisions are the subjects of the current appeals. In a Report and Order dated January 9, 2013, the PSC maintained the rulings from its May 2011 decision. GMO had requested that the PSC reconsider its May 2011 decision in assigning a lesser value to Crossroads and in disallowing the

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[4] The May 2011 decision ruled on other issues among these and other interested parties. This decision mentions only the issues that concern this consolidated appeal among the PSC, GMO, and MECG.

transmission costs from the base rate. During several hearings, GMO presented its previous evidence on these issues from the hearings on the June 2010 tariffs, plus additional evidence. The PSC staff rebutted the additional evidence, specifically rejecting some of it as irrelevant. The PSC disapproved the superseding tariffs and ordered GMO to submit tariffs in compliance with its decision. GMO filed a motion for rehearing, and later submitted tariffs that complied with the PSC's order.

In an Approval Order dated January 23, 2013, the PSC approved GMO's compliance tariffs and provided only two-plus days for any application of review to be filed. *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 522, 524, 525 (Mo. App. W.D. 2013). MECG filed a motion for rehearing. *Id.* at 528. The PSC denied both motions for rehearing. GMO appeals the January 9, 2013, Report and Order, and MECG appeals the January 23, 2013, Approval Order.

Standard of Review

In reviewing a PSC's decision, we initially determine if the order is lawful, and we then determine its reasonableness. *GMO*, 408 S.W.3d at 159; § 386.510.[5] Because the PSC's decision is presumed lawful and reasonable, the party challenging it must "show by clear and satisfactory evidence that the order or determination of the PSC is unlawful or unreasonable." *Id.*; § 386.270. A PSC's decision is lawful if its ruling does not exceed its statutory authority; we conduct a *de novo* review of interpretations of the law. *See id.*; *see also AG Processing Inc. v. Pub. Serv. Comm'n*, 408 S.W.3d 175, 182 (Mo. App. W.D. 2013).

[5] Statutory references are to RSMo 2000 and the Cumulative Supplement 2012, unless otherwise noted.

The reasonableness of the PSC's decision depends upon whether the order is supported by substantial and competent evidence on the whole record and is not arbitrary, capricious, or unreasonable. *Id.* Whether the PSC has abused its discretion also reflects the reasonableness of its decision. *Id.*

Legal Analysis

GMO's Appeal

In its first point, GMO argues that the PSC erred in valuing Crossroads because the decision lacked adequate findings and conclusions. GMO further argues that the decision was not supported by competent and substantial evidence and was arbitrary and unreasonable.

In its January 9, 2013, Report and Order, the PSC determined that its previous rulings concerning the valuation of Crossroads at $61.8 million was valid and incorporated, by reference, the findings and conclusions from the May 2011 decision. Additionally, it provided a summary of its findings relevant to the valuation. Those findings include the following: the sworn statement by Great Plains Energy Incorporated (GPE) to the Security Exchange Commission (SEC) indicating that the fair market value of Crossroads was $51.6 million based on sales of comparable assets; those assets were the sales of turbines in Illinois that were the same as those at Crossroads; Aquila Merchant sold other of the same type turbines at a loss; Aquila Merchant was not able to sell Crossroads and transferred it to its affiliated company Aquila; GPE purchased Aquila and consequently acquired Crossroads; and GPE sold Crossroads to Aquila and renamed the company GMO when it also could not find

a nonaffiliated buyer for Crossroads. The PSC then updated the value of Crossroads to $62.6 million.

GMO argues that the PSC's findings were inadequate because the PSC failed to cite "one piece of evidence presented in [the] case." It also argues that the decision was thus not based on competent and substantial evidence on the record as a whole, especially since the PSC failed to consider the "new, additional evidence presented in [the] case."

Under Missouri law, the PSC must issue a decision with written findings of fact and conclusions of law. *GMO*, 408 S.W.3d at 161. Whether findings and conclusions in a PSC's decision are adequate is a question of law. *Id.* at 162. Adequate findings are "sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence." *Id.* (internal quotation marks and citation omitted). Thus, inadequate findings "cause us to speculate as to which part of the evidence the [PSC] believed." *Id.*

We understand that the basis for the PSC's valuation of Crossroads was the sales of comparable assets that occurred under similar circumstances. Section 393.230.3 provides that findings in the PSC's report and order are conclusive evidence of "the facts therein stated as of the date therein stated," unless a showing is made of "a subsequent change in conditions bearing upon the facts therein determined." The PSC did not find a change in the evidence from its May 2011 decision.

Contrary to GMO's contention, the PSC did consider GMO's additional evidence in reconsidering its previous valuation of Crossroads. Although the PSC stated that maintaining its previous ruling would promote "administrative and judicial economy" because the same issues were pending in this court, it nevertheless found that "[n]o party ha[d] shown that the [PSC] should change its previous rulings."

Because the PSC's findings from the May 4, 2011, Report and Order are considered evidence, these findings were adequate and there was substantial and competent evidence to support the January 9, 2013, Report and Order. Additionally, the findings were adequate because we do not have to speculate about the evidence that the PSC believed in making its decision.

Next, GMO argues that the PSC unreasonably rejected its valuation evidence because its figure was consistent with the Uniform System of Accounts (USoA), contrary to the PSC's findings. GMO claims that in doing so the PSC erroneously decided that its figure was the fully distributed cost, as opposed to evidence of fair market value.

The PSC has the authority to value a utility's property for ratemaking purposes. § 393.230.1. Although the utility has the right to present evidence to support its valuation of the property, the PSC may rely upon other information in determining value. *See* § 393.230.2. PSC staff witnesses discounted all of GMO's evidence as either irrelevant because it reflected events after it considered GPE to have acquired Crossroads, or inaccurate because of the lack of clarity of the exhibits as to costs. In its conclusions, the PSC found that GMO sought a rate base value of $82.7 million (the depreciated book value) based on "case law

from another jurisdiction, . . . Aquila's building costs, the price in a transaction between affiliated entities GPE and GMO, and an estimate expressly designed to justify the price paid in that transaction, none of which are persuasive." It further found that under the affiliate transaction rule,[6] it was required to accept the lesser of the fair market value rather than the fully distributed costs. In essence, GMO is asking us to substitute our discretion for that of the PSC, which we cannot do. *State ex rel. GS Tech. Operating Co. v. Pub. Serv. Comm'n*, 116 S.W.3d at 680, 690-91 (Mo. App. W.D. 2003). Thus, we find that PSC's rejection of GMO's evidence was reasonable.

Additionally, GMO argues that the PSC's reliance upon certain SEC filings was unreasonable because they were preliminary and subsequent filings with the SEC reported the net book value to be higher. Because the PSC is allowed to look at other information, we do not find unreasonable its reliance upon three SEC

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[6] 4 CSR 240-20.015(2)(A) states:

> A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if—
>
> 1. It compensates an affiliated entity for goods or services above the lesser of—
>
> A. The fair market price; or
>
> B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself; or
>
> 2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—
>
> A. The fair market price; or
>
> B. The fully distributed cost to the regulated electrical corporation.

filings that reported the same fair value of Crossroads. To the extent that GMO asserts that a written analysis concerning this evidence was required, the law is to the contrary. Detailed findings are not required, but findings that allow us to determine what evidence the PSC believed. *See State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 186 S.W.3d 376, 382 (Mo. App. W.D. 2005). Additionally, the PSC relied upon other evidence bearing upon the value of Crossroads at the time GPE acquired it from Aquila Merchant, including the lack of an outside buyer found to purchase Crossroads, despite several attempts to sell it, and the fact that the general market was down at that time for deregulated facilities such as Crossroads.

Lastly, GMO argues that the PSC unreasonably calculated its valuation using the "forced sale of two dissimilar combustion turbines." GMO argues that in *State ex rel. Public Counsel v. Public Service Commission.*, 274 S.W.3d 569 (Mo. App. W.D. 2009), this court and the PSC previously determined that the sales of the Illinois plants used to determine the fair market value of Crossroads were not adequate indicators of comparable valuation. Although the PSC and this court found that the Illinois plants were inadequate indicators of fair market value, the facts in that case were that the plant being valued was not a distressed asset like the Illinois plants and that the types of generators for the plant differed from those at the Illinois plants. *Id.* at 579. Contrary to GMO's contention that no evidence showed Crossroads to be considered a distressed asset, a PSC Staff witness testified that Crossroads was considered as such at the time of transfer because it could not be sold on the market. Additionally, the turbines sold at the Illinois plants were identical to those used at Crossroads.

Thus, the PSC's use of the Illinois plants in determining the fair market value of Crossroads was reasonable. We will not reweigh the evidence. GMO's first point is denied.

In its second point, GMO argues that the PSC erred in disallowing transmission costs from recovery because the disallowance was not based on adequate findings of facts and conclusions of law and was not supported by competent and substantial evidence. GMO further argues that the disallowance was arbitrary and unreasonable because the PSC failed to analyze the "undisputed evidence" that the savings in fuel transportation costs outweighed transmission costs and unreasonably and illogically removed the transmission costs after the PSC accepted GMO's total cost option. GMO lastly argues that the disallowance violates the Filed Rate Doctrine and the Supremacy Clause.

At the outset, we note that we previously affirmed the PSC's disallowance of the transmission costs, concluding that it was lawful, reasonable, and supported by competent and substantial evidence. *GMO*, 408 S.W.3d at 166. In doing so, we specifically rejected the contentions that the findings supporting the disallowance were insufficient, that the decision was illogical and inconsistent with the PSC's other rulings, and that the disallowance violated the Filed Rate Doctrine and the Supremacy Clause. *Id.* at 162, 163-166. Thus, to the extent GMO's arguments challenge those PSC rulings, they lack merit and are rejected. We cannot allow GMO to re-litigate these issues when they were raised and resolved in *GMO*. *See AG Processing Inc.*, 408 S.W.3d at 188 n.17. We are confident that our previous analyses accurately set

forth the law and correctly applied it.[7] We address only the challenges to the findings supporting the PSC's decision to maintain its previous ruling concerning the transmission costs.

In the January 9, 2013, Report and Order, the PSC deemed GMO's request for the inclusion of transmission costs in the rate base to be a challenge to its previous ruling. It then stated that the evidence weighted heavily against GMO's position that the lower price of fuel in Mississippi outweighed the substantially higher transmission costs. It found that GMO thus failed to meet its burden.

GMO contends that these findings were not adequate because the PSC did not explain why it maintained its previous ruling in light of the new undisputed evidence. GMO further contends that because the PSC ignored this additional evidence and adopted its previous ruling, the decision lacked substantial and competent evidence on the record.

As stated earlier, detailed findings are not required. *See Mo. Gas Energy*, 186 S.W.3d at 382. In the January 9, 2013, Report and Order, the PSC incorporated its findings and conclusions from its previous ruling from the May 2011 decision, which we had previously decided were sufficient. It also summarized key findings that support the preservation of its previous ruling, including a finding that there were other generating facilities closer to Missouri than Crossroads. The PSC is not required to address why it rejected certain evidence, but it is required to provide

[7] GMO has filed a Petition for a Writ of Certiorari in the United States Supreme Court, seeking review of our decision (WD75038) that the PSC's disallowance did not infringe upon rights provided by the federal law.

us with the basic facts to support its ruling. *See Friendship Vill. Of S. Cnty v. Pub. Serv. Comm'n*, 907 S.W.2d 339, 346 (Mo. App. W.D. 1995) (stating that findings are adequate when the "basic facts" rather than "summaries of testimony" supporting the decision are included). Because those basic facts were provided here in the January 9, 2013, Report and Order, the findings are sufficient.

As for the new evidence, GMO presented a table, along with testimony from an expert, purporting to show how the high costs of transmission was outweighed by the lower fuel costs in Mississippi, as compared to other facilities including the Illinois plants. However, contrary to GMO's contention, the record shows that this evidence was disputed; the PSC staff expert disagreed with it and testified that the transmission costs were still not prudent because other facilities in the area cost less. The record also shows that the PSC did consider this new evidence by stating that GMO's contention was that fuel-cost savings outweighed the higher transmission cost; but the PSC concluded that "the high cost of transmission is *not* outweighed by lower fuel costs in Mississippi." We cannot and will not substitute our judgment for that of the PSC. The PSC did consider all of the evidence before it and specifically found that GMO did not persuade it to change its previous ruling. Because there was evidence to support its decision, we find that the PSC's rejection of GMO's new evidence was reasonable. GMO's second point is denied.

MECG's Appeal

We now address MECG's appeal. MECG raises five points on appeal.[8] All concern the January 23, 2013, Approval Order. While this appeal was pending, we vacated that order in a writ case filed by the Office of Public Counsel (OPC). *Office of Pub. Counsel*, 409 S.W.3d at 524.

Instead of filing an application for review of the Approval Order during the two-plus days in which to do so, the OPC filed a writ of mandamus in this court. *Id.* at 525. The OPC requested that we issue a writ vacating the January 23, 2013, Approval Order for the lack of a reasonable, meaningful opportunity to challenge it in an application for review. *Id.* On September 10, 2013, while this current appeal was pending, we made absolute our preliminary writ of mandamus. *Id.* at 524. We ordered the PSC to vacate the January 23, 2013, Approval Order and "allow the OPC a reasonable time to prepare and file an application for rehearing upon the approval of those tariffs in any subsequent order." *Id.* at 529.

For this reason, the PSC filed a motion to dismiss MECG's appeal. We took the motion with the case and now address it. The PSC asks that MECG's appeal be dismissed as moot because it challenges the vacated January 23, 2013, Approval Order. MECG concedes that our decision renders moot all of its points, but it claims that this appeal is not moot because the court can grant financial relief under section 386.520.2.

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[8] Points one and two concern the short period in which to file an application for review of the Approval Order. Points three and four challenge the contents of the Approval Order. Point five concerns the denial of a procedural matter concerning a rehearing on the Approval Order.

Thus, we deny MECG's five points as moot because the decision from which it appeals is vacated.[9]

We also deny the PSC's motion to dismiss so that we may address the issue of financial relief. Section 386.520.2 states:

> (1) In the event a *final and unappealable judicial decision determines that a commission order or decision unlawfully or unreasonably decided an issue or issues in a manner affecting rates, then the court shall instruct the commission to provide temporary rate adjustments* and, if new rates and charges have not been approved by the commission before the judicial decision becomes final and unappealable, prospective rate adjustments.

(emphasis added).

MECG claims that our opinion making the writ of mandamus absolute was a final and unappealable judicial decision that had determined the PSC's order was unreasonable or unlawful and affected the rates, so this court should instruct the PSC to provide temporary rate adjustments. We recently determined that this subsection did not apply to our September 10, 2013, writ decision because that decision did not find that the PSC's order "unlawfully or unreasonably decided an issue affecting rates," and was not a final and unappealable judicial "decision within the meaning of section 386.520.2(1)." *See Kansas City Power & Light Co. v. Midwest Energy Consumers' Group*, Nos.

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[9] Additionally, MECG claims that dismissal of its appeal would not return jurisdiction to the PSC as long as GMO's appeal is pending; it thus argues that both appeals should be dismissed. Because we do not dismiss the appeal but deny all of the points as moot, we need not address this issue.

WD76164 & WD76165, 2014 WL 289418, at *2-3 (Mo. App. W.D. Jan. 28, 2014).

Accordingly, the statute does not apply, and no statutory financial relief is granted. MECG's five points are denied.

Conclusion

For the above reasons, we affirm.