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.

The Missouri Supreme Court has now denied review of the rate case following this one. Order Denying Transfer, *In the Matter of KCP&L Greater Missouri Operations Co.*, SC94175, June 24, 2014. (June 24 Order). The Missouri Supreme Court refused review on the issue presented here even after the United States' invitation brief signaled that Petitioner is "correct" on the law and the reasoning below appeared to be "in error." U.S. Br. 12. There is no longer any pending chance that the Missouri state courts will correct themselves on this $100 million constitutional error.

This denial of review by the state Supreme Court means two things. First, there is no longer any arguable vehicle problem based on a pending second case. Second, the State is holding firm to its erroneous and dangerous constitutional position.

* * *

1. There is no longer any arguable vehicle problem based on a pending second case between these parties.

Months ago, Respondents referred to the pendency of a second case between the parties as a reason not to grant certiorari here. Dogwood Br. at 15; Comm'n Br. at 7–11; *id.* at 10 ("The judicial review of the new tariffs is incomplete . . . . The

outcome of GMO's appeal of the 2013 on [sic] tariffs is unknown."). The Court of Appeals, however, chose to follow its precedent in the opinion below, addressing the issue in a single, dismissive paragraph. *See* Pet. Supp. Br. 2–3 (describing the opinion).

Thereafter, the Solicitor General raised hints about the possibility of Missouri Supreme Court review in that second case. *E.g.,* U.S. Br. 10 ("Petitioner has sought review of the [second] judgment in the Supreme Court of Missouri"); U.S. Br. 16–17 (referring to the 2013 rate case and noting that issues in it "should be decided by the Supreme Court of Missouri"). The Missouri Supreme Court has now denied that review.[1]

Except by this Court, there is now no chance of any further review in either this case or the second one. Any idea that the state Supreme Court could soon solve the Court of Appeals' constitutional error is dead.

2. This refusal also shows that the State stands firm on its erroneous constitutional position.

The constitutional error is the Court of Appeals' idea that the State may disallow federally-approved electric transmission costs when it objects to "the concept of requiring ratepayers to pay" them.

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[1] In its entirety, the Order states: "Now, at this day, on consideration of appellant-respondent's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied." June 24 Order.

Pet. App. 16a–17a. The state courts have now reaffirmed that ruling *three more times*—once expressly by the Court of Appeals, March Supp. App. 12a–13a, and twice by denials of further review. Pet App. 96a; June 24 Order. (The Solicitor General's comment that "the decision below, even if erroneous, does not indicate that the Missouri PSC or Missouri courts have been ignoring . or misapplying the filed-rate doctrine," U.S. Br. 17, was incorrect). And the state Commission continues to defend the ruling below. Comm'n Br. 17, 19, 22, 26, 29, 30.

The State stands defiant of the Supremacy Clause on this issue, and that defiance costs the local utility hundreds of thousands of dollars every month. As the Solicitor General put it: "The filed-rate doctrine would be ineffectual if a State could circumvent it by objecting to the 'concept' of passing on the FERC-approved rate to ratepayers at all." U.S. Br. 12.

The constitutional error is clear, and it is an expensive one—not just for the $100 million against a Midwestern utility, but for the destructive impact it portends on investment in new electric generation and transmission, especially distant renewable resources like wind. As further proven by the Missouri Supreme Court's June 24 Order, this case is the proper vehicle.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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