

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JEFFREY AND CHRISTY VICE	)	
	)	
COMPLAINANTS	)	
V.	)	CASE NO.
	)	2013-00010
FLEMING-MASON ENERGY COOPERATIVE, INC.	)	
	)	
DEFENDANT	)	

ORDER

On January 3, 2013, Jeffrey and Christy Vice (collectively “Complainants”) jointly filed a formal complaint against Fleming-Mason Energy Cooperative, Inc. (“Fleming-Mason”) alleging, *inter alia*, that frequent power outages, issues with low voltage, and power surges have caused significant damage to Complainants’ property and household appliances. Complainants allege that they had enrolled in Fleming-Mason’s Homeguard program, which, according to Complainants, was designed to protect appliances from power surges and to compensate the property owners for any loss if there was damage due to a power surge. Complainants assert that they received compensation for only a portion of their damaged property under the Homeguard program and request that the Commission order Fleming-Mason to provide compensation of approximately \$9,000 for the damage to household appliances and electronics. Complainants also request compensation for abnormally high electricity bills, alleging that Fleming-Mason’s negligence caused damage to Complainants’ heating ventilation and air conditioning (“HVAC”) unit, resulting in higher-than-normal

usage. In the alternative, Complainants request that the Commission find that Fleming-Mason's negligence caused the damage to their personal property.

On January 23, 2013, the Commission issued an Order directing Fleming-Mason to satisfy or answer the complaint. Fleming-Mason, in its response, asserted that, to the extent that Complainants were requesting an award of damages, such a request was outside the statutory authority of the Commission to grant. Fleming-Mason denies any negligence and asserts that the design and construction of the system serving Complainants complies with all applicable standards, and that Fleming-Mason has followed all necessary requirements when responding to Complainants' complaints. Fleming-Mason requested that the Commission dismiss the complaint.

#### BACKGROUND

Complainants allege that they have been having service issues since 2008, stating that they consistently experienced weekly power outages, "blinks," and issues with low voltage. On November 30, 2009, Complainants experienced a power outage. Subsequently, although it is unclear precisely when, Complainants' HVAC system malfunctioned and quit working. A serviceman inspecting the HVAC unit stated that the malfunction was due to overvoltage. On March 2, 2010, Complainants contacted Fleming-Mason regarding the outage and the damage to their HVAC unit and inquired as to whether they would be compensated for the repair costs. Fleming-Mason responded that the November 30, 2009 outage was due to a fault on the circuit due to insulators on a three-phase line that were beginning to break down, which could lead to power fluctuations. Fleming-Mason also stated that it had submitted the claim to its insurance provider to see if the loss was covered. On March 8, 2010, Fleming-Mason's

insurance provider, Federated Rural Exchange Insurance Exchange (“FREIE”), informed Complainants that it was denying the claim because there was no evidence of negligence on Fleming-Mason’s part. FREIE stated in its letter that equipment failure is a sudden and unforeseeable event, and not due to negligence on the part of Fleming-Mason.

Complainants experienced several additional service issues. Fleming-Mason, at the request of Complainants, installed a voltage recorder at Complainants’ residence from August 12, 2010, through August 20, 2010, and again from May 4, 2011, through May 12, 2011. The data from the voltage recorder indicated one voltage anomaly or “blink” on August 13, 2010, but otherwise reflected no abnormal power fluctuations during either of the monitored periods.

Complainants, allegedly at the suggestion of Fleming-Mason, ultimately enrolled in the Homeguard System for a monthly fee of \$5.50. Under the Homeguard System, Fleming-Mason installed a surge-protection collar at Complainants’ meter on May 12, 2011, and provided other surge-suppression devices to be installed by Complainants inside their residence to protect their electronic equipment. Under the Homeguard System, a third party, Schneider Electric USA, Inc. (“Schneider Electric”), provided the warranty for the surge-protection equipment and also offered replacement for “standard white appliances” such as stoves, refrigerators, etc., damaged by power surges. Complainants state they were under the impression that the Homeguard System covered all electronic devices and allege that Fleming-Mason never informed them that coverage was limited to “standard white appliances.” Fleming-Mason, however, asserts that all pertinent warranty information was provided to Complainants, including

information explaining what specific appliances were covered by the Homeguard system.

Following the installation of the surge-protection collar on their meter, as well as the other surge-protection devices, Complainants allegedly continued to suffer from service issues, including power surges. Complainants allege that they experienced several more power surges and outages, and that the professionals brought in to repair damaged appliances stated that the damage was caused by power surges and/or low-voltage conditions. On February 7, 2012, Complainants informed Fleming-Mason that the Homeguard system had taken a hit and that their television had been damaged beyond repair. Fleming-Mason allegedly instructed Complainants to send the surge-protection device to which the television was attached to Schneider Electric for testing. The testing indicated that the surge-protection device was functioning properly and had not been subjected to any overvoltage conditions.

On June 28, 2012, Complainants contacted the Commission's Consumer Services Division to file an informal complaint regarding power outages and surges. In furtherance of the informal investigation, a Commission Staff investigator was dispatched to place a voltage recorder at Complainants' home. On August 8, 2012, Commission Staff met with Complainants and Fleming-Mason representatives at the Complainants' residence. Commission Staff directed a Fleming-Mason employee to install a Commission-supplied voltage recorder at the transformer pole serving Complainants. Complainants are the only customers served from this transformer.

While inspecting the service entrance to the Complainant's home, a Fleming-Mason employee removed Complainants' meter to inspect the meter base for damage

at which time the surge-protection collar was removed. Fleming-Mason informed Commission Staff that the collar had not been tested prior to installation or since, but agreed to send the collar to be tested. On August 30, 2012, Schneider Electric informed Complainants that the surge-suppression device had been subjected to prolonged overvoltage conditions and instructed Complainants on the procedure for filing a claim.

In early September 2012, Complainants finally submitted a claim to Schneider Electric which reimbursed Complainants \$4,143.60 for the loss of their "standard white appliances" but did not cover the losses of Complainants' HVAC, two televisions, two personal computers, a microwave, and a water heater. Complainants allege that it is at this point they discovered that the Homeguard system did not cover all electronic equipment. Complainants value the uncovered losses at \$9,099 and seek recovery from Fleming-Mason in that amount.<sup>1</sup>

Commission Staff's voltage recorder was in place from August 8, 2012, until August 30, 2012. Commission Staff, in its November 20, 2012 Inspection Report ("Inspection Report"), noted that although the circuit feeding Complainants' residence experienced power swells and sags over the recorded period, the swells and sags were "within the allowable tolerances" as prescribed in Commission regulation 807 KAR 5:041, Section 6, Voltages and Frequency.<sup>2</sup> The most restrictive of those tolerances, in Section 6(2)(a), apply to lighting and require that "variations in voltage between 5 p.m. and 11 p.m. shall not be more than five (5) percent plus or minus the nominal voltage

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<sup>1</sup> The damage to the "uncovered" equipment occurred over a long period of time, beginning in March 2008 and ending in May 2012.

<sup>2</sup> Inspection Report at 3.

adopted, and total variation of voltage from minimum to maximum shall not exceed six (6) percent of the nominal voltage.”

In August 2012, Fleming-Mason discontinued the Homeguard program stating that it discontinued the program because, “we no longer trust the device will work as described. In addition, our members can go on the Internet or any reputable technology provider and buy comparable equipment for less money than we can offer the Homeguard system.”<sup>3</sup>

Complainants filed their formal complaint against Fleming-Mason on January 3, 2013, to which Fleming-Mason filed its Answer on February 1, 2013. On March 1, 2013, the Commission entered an Order that: allowed Complainants to file a reply to Fleming-Mason’s Answer; and required Fleming-Mason to file a supplemental answer to specifically address Complainants’ claim that they had experienced unusually high electricity bills for December 2010, January 2010, and February 2010.

Fleming-Mason filed its supplemental answer on March 5, 2013. Fleming-Mason stated that Complainants’ high electricity bills covered the January 2010 and February 2010 periods, during a time when the Complainants’ HVAC unit was not working properly and the strip heat was causing unusually high voltage. Fleming-Mason also responded that December 2010 was an abnormally cold month, hence the higher power bill.<sup>4</sup>

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<sup>3</sup> Response of Fleming-Mason Energy Cooperative, Inc. to Commission Staff’s Initial Request for Information (filed July 16, 2013), Item 6.

<sup>4</sup> Complainants’ Response to Fleming-Mason’s Answer (filed Mar. 18, 2013) at 3. Complainants stated that December 2009, not 2010, was the correct month for the abnormally high power bill, which would coincide with the problems with their HVAC unit.

Complainants filed a reply on March 18, 2013, disputing several of the assertions in Fleming-Mason's Answer. The Complainants request that if the Commission cannot award damages, that it find Fleming-Mason negligent in causing the property damage so that Complainants may seek judicial recovery from Fleming-Mason. Complainants also note that there were no voltage recorders on their line when they suffered the major equipment losses and argue that, therefore, the voltage recordings are not relevant to the damaged equipment or ongoing service issues. Complainants allege that Fleming-Mason did not know that the meter collar should have been tested prior to installation until informed by Commission Staff. Complainants also allege that Fleming-Mason tried to surreptitiously remove the meter collar during Commission Staff's investigation, but were stopped when Mr. Vice was at home. Complainants' response also included several other allegations pertaining to their interactions with Fleming-Mason in reporting outages and addressing other service issues.

Commission Staff issued requests for additional information to Fleming-Mason and Complainants on July 3, 2013. Commission Staff issued subsequent requests for information to Fleming-Mason on February 26, 2014, and July 1, 2014, along with a subsequent request for information to Complainants on August 25, 2014.

The record is now complete and there are no disputes as to material facts. Therefore the Commission finds that a hearing would not be in the public interest and that the case should be submitted for a decision on the record.

#### DISCUSSION

The complaint presents the Commission with two issues, one relating to damages, and the other relating to quality of service. As to the former, the Commission

has no jurisdiction to grant such relief; the Commission, however, does have the jurisdiction to resolve the service claim.

Complainants ask, among other requests for relief, that the Commission award them compensation for damage to electronic equipment that Complainants allege was caused by Fleming-Mason's negligence. The Commission has the statutory duty of regulating utilities and enforcing the provisions of KRS Chapter 278.<sup>5</sup> It has "exclusive jurisdiction over the regulation of rates and services of utilities"<sup>6</sup> and "original jurisdiction over complaints as to rates or service of any utility."<sup>7</sup>

While exercising jurisdiction over service complaints, the Commission's authority is limited to determining "the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and . . . fix[ing] the same by its order, rule or regulation."<sup>8</sup> It does not possess the authority to award compensatory or punitive damages.

Kentucky courts have long held that the Commission lacks the legal authority to award monetary damages. *See Carr v. Cincinnati Bell, Inc.* 651 S.W.2d. 126, 128 (Ky. App. 1983) ("Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement.")

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<sup>5</sup> KRS 278.040(1).

<sup>6</sup> KRS 278.040(2).

<sup>7</sup> KRS 278.260(1).

<sup>8</sup> KRS 278.280(1).



Therefore, to the extent that Complainants seek monetary damages, whether with regard to Fleming-Mason's alleged negligence or misrepresentation of the coverage of the Homeguard system, the award of such damages is outside the Commission's jurisdiction and the Commission cannot award the portion of Complainants' claim for compensation for damage to electronic equipment and appliances.

The Commission, however, does have jurisdiction over issues related to service, including the authority to ensure that a utility provides "adequate, efficient and reasonable service . . . ." <sup>9</sup> Therefore, the Commission may review the service that Fleming-Mason is providing to Complainants to ensure that it is adequate.

The electric line providing service to the Complainants' subdivision is "a long circuit in terms of miles of line." <sup>10</sup> According to Fleming-Mason, the length of the circuit impacts its reliability because it exposes the circuit to a heightened chance of lightning strikes, animals interfering with the equipment, and other unforeseen circumstances. <sup>11</sup> Fleming-Mason asserts that it is inspecting the circuit more frequently than is required by Commission regulation and has heightened its vegetation monitoring along the circuit as well.

During the course of this case, Commission Staff has requested from Fleming-Mason information pertaining to service outages for Complainants' circuit, as well as requested updates on other efforts Fleming-Mason was making to maintain and improve

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<sup>9</sup> KRS 278.030(2).

<sup>10</sup> Fleming-Mason's Answer (filed Feb. 1, 2013) at 5.

<sup>11</sup> *Id.*

the circuit. The responses reflect that from the date of the filing of the complaint until July 2014, the circuit serving Complainants suffered approximately 65 power outages, varying in reason, duration and number of customers affected.<sup>12</sup> It is not clear from the record whether Complainants lost power or experienced over- or under-voltage conditions during these specific outages. However, a review of the causes for the recorded outages appears to be consistent with typical reasons for power losses, and there is nothing in the record to indicate that these power outages were the result of Fleming-Mason's unreasonable behavior or negligence.

Commission Staff and Fleming-Mason also placed voltage recorders on Complainants' line from September 23, 2013, until October, 22, 2013. Neither of the data sets collected from the recorders show any voltage variations in violation of 807 KAR 5:041, Section 6. Combined with the other sets of data from Commission Staff's and Fleming-Mason's voltage recorders installed prior to the initiation of this complaint, there are approximately 2½ months of voltage recording data during which there was only one apparent voltage condition outside of the allowable tolerances. Although it is possible that voltage fluctuations occurred while voltage recorders were not in place, the evidence before the Commission supports the finding that there is not an endemic problem with voltage fluctuations on Complainants' circuit leading to inadequate service.

The responses indicate that Fleming-Mason is making reasonable efforts to ensure the quality of service on Complainants' circuit. These efforts include repairs to several phase conductors, vegetation management, transformer relocation and

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<sup>12</sup> See Response of Fleming-Mason Energy Cooperative, Inc. to Commission Staff's Second Request for Information (filed Mar. 10, 2014), Item 2, Exhibit B, and Response of Fleming-Mason Energy Cooperative, Inc. to Commission Staff's Third Request for Information (filed July 18, 2014), Item 1, Exhibit A.

replacement, and reconfiguring the lines serving Complainants' subdivision from one phase to another of the three-phase lines.<sup>13</sup> Fleming-Mason also has replaced aging conductor in the area to prevent outages caused by failed conductors.<sup>14</sup> These efforts appear to be reasonable steps to ensure that Fleming-Mason provides adequate service to Complainants.

The damage to Complainants' electronic equipment and appliances, allegedly due to over- or under-voltage conditions, occurred during a four-year period, beginning in March 2008 and ending in May 2012. Although there have been power outages since May 2012, the Complainants have not reported any additional damage to property.<sup>15</sup> With regard to the property damaged prior to the filing of this complaint, the evidence cannot support a determination that the damage resulted from unreasonable or inadequate service provided by Fleming-Mason. Further, Fleming-Mason's provision of the Homeguard surge protection system was an optional offering that was an unregulated activity. Neither the rates nor the terms of service for the Homeguard system were set forth in Fleming-Mason's tariff, and neither the rates nor the terms of service were subject to the Commission's jurisdiction.

The Commission also cannot grant Complainants' requested relief that the above-average power bills from December 2009 through February 2010 be adjusted due to Fleming-Mason's alleged negligence. Pursuant to KRS 278.160, a utility must

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<sup>13</sup> Response of Fleming-Mason Energy Cooperative, Inc. to Commission Staff's Second Request for Information (filed Mar. 10, 2014), Item 3.

<sup>14</sup> Response of Fleming-Mason Energy Cooperative, Inc. to Commission Staff's Third Request for Information (filed July 18, 2014), Item 2.

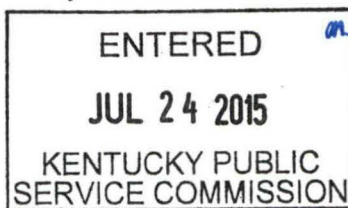
<sup>15</sup> Response of Jeff and Christy Vice. to Commission Staff's Second Request for Information (filed Nov. 20, 2014), Item 4.

charge its filed rates to all of its customers. Kentucky courts have found that, even in the presence of a tort committed by a utility, the utility must collect its filed rates and charges. See, *Boone County Sand and Gravel v. Owen County Rural Electric Cooperative Corporation*, 779 S.W.2d 224 (Ky. App. 1989). Even assuming that Fleming-Mason's negligence led to the above-average bills, the Commission cannot order that the bills be reduced. Complainants do not dispute the accuracy of the December 2009, through February 2010 bills, and it is undisputed that the electricity flowed through Complainants' meter for Complainants' consumption. If the Commission were to order a refund of all or part of these bills, Complainants would be receiving service for a lesser rate than other customers, in violation of KRS 278.160(2) and KRS 278.170.

IT IS THEREFORE ORDERED that:

1. The January 3, 2010 Complaint filed against Fleming-Mason is dismissed with prejudice.
2. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
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Executive Director

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