

# Goss ■ Samford PLLC



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RECEIVED

August 3, 2015

AUG 03 2015

PUBLIC SERVICE  
COMMISSION

*Via Hand-Delivery*

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

Case No. 2015-00274

RE: *In the Matter of: Application of Fleming-Mason Energy Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Bid on a Franchise to Serve the City of Flemingsburg, Kentucky*

Dear Mr. Derouen:

Enclosed for filing is an CPCN application and all necessary attachments on behalf of Fleming-Mason Energy Cooperative, Inc., to bid on a franchise to serve the City of Flemingsburg, Kentucky.

Please file these documents in the record and return a file-stamped copy to me. Please let me know if you have any questions.

Sincerely,

L. Allyson Honaker

Enc.

RECEIVED

AUG 03 2015

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF FLEMING-MASON )  
ENERGY COOPERATIVE, INC., )  
KENTUCKY, INC. FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND )  
NECESSITY TO BID ON A FRANCHISE )  
TO SERVE THE CITY OF FLEMINGSBURG, )  
KENTUCKY )

CASE NO. 2015- 00274

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APPLICATION

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Comes now Fleming-Mason Energy Cooperative, Inc. ("Fleming-Mason"), by counsel, pursuant to KRS 278.020(4), 807 KAR 5:001, Section 15(1), 807 KAR 5:001 Section 14 and other applicable law, and tenders hereby its application for a certificate of public convenience and necessity to apply for and obtain a franchise from the city of Flemingsburg, in Fleming County, Kentucky ("Flemingsburg"), to provide electric distribution service, respectfully stating as follows:

1. Fleming-Mason is a nonprofit rural electric cooperative corporation without capital stock, duly organized and existing under KRS Chapter 279, originally incorporated on March 12, 1938, that is in good standing. Fleming-Mason supplies electricity to approximately 23,691 member-consumers in eight Kentucky counties. Fleming-Mason's business address is 1449 Elizaville Road, P.O. Box 328, Flemingsburg, Kentucky 41041.
2. Fleming-Mason proposes to bid upon a new municipal franchise to place and operate electric transmission and distribution facilities in public streets and

places of Flemingsburg and to provide related service to Flemingsburg. The new franchise will be awarded by the Flemingsburg City Council.

3. The Flemingsburg City Council has passed an Ordinance setting forth the requirements and deadlines for submitting a bid to secure a new franchise. A copy of the Ordinance is attached hereto as Exhibit A and incorporated herein by reference. A copy of the Legal Notice that was published in The Flemingsburg Gazette on June 24, 2015, regarding said new franchise is attached hereto as Exhibit B and incorporated herein by reference.
4. As evidenced by the Ordinance, there is, and will continue to be, a demand and need for the facilities and services sought to be rendered by Fleming-Mason pursuant to the franchise.
5. Upon obtaining a franchise from Flemingsburg, Fleming-Mason will file a true and correct copy of same with the Commission.

WHEREFORE, on the basis of the foregoing, Fleming-Mason respectfully requests the Commission to approve this application and to issue to Fleming-Mason a certificate of public convenience and necessity authorizing it to apply for and obtain a franchise from Flemingsburg, as set forth herein.

This the 3<sup>rd</sup> day of August, 2015.

Respectfully Submitted,



David S. Samford  
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*Counsel for Fleming-Mason Energy Cooperative, Inc.*

**CITY OF FLEMINGSBURG, KENTUCKY**  
**ORDINANCE NO. 6-15-04**

**AN ORDINANCE OF THE CITY OF FLEMINGSBURG, KENTUCKY  
CREATING A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE FOR  
THE USE OF THE CITY STREETS AND HIGHWAYS AND OTHER  
PUBLIC ROADS AND RIGHTS-OF-WAY IN THE CITY OF  
FLEMINGSBURG, KENTUCKY.**

WHEREAS, the City of Flemingsburg, Kentucky finds it necessary to franchise the use of its public ways in order to provide needed funds for the General Government budget, and the City Council being informed as to its options.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF FLEMINGSBURG, KENTUCKY:

Section 1

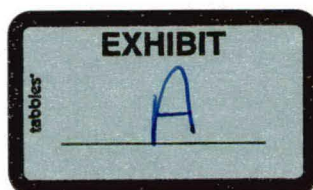
(a) There is hereby created a franchise to construct, erect, operate and maintain upon, through, along, under, and over the streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks, and other public ways of the City of Flemingsburg, Kentucky, a telephone and communications system embracing underground conduits, manholes, telephone & electric poles, cables, boxes, wires, fixtures, electrical conductors, and other apparatus, equipment, and facilities necessarily and essentially used or useful to and in the operation of a electric utility system, subject to all of the provisions of this Ordinance.

(b) The City of Flemingsburg declares as a legislative finding that the rights-of-way within the City:

1. Are a unique and physically limited resource;
2. Are critical to the travel and transport of persons and property in the City
3. Are intended for public uses and must be managed and controlled consistent with that intent;
4. Can be partially occupied by the facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
5. It requires the adoption of specific additional regulations established by this Ordinance to ensure coordination of users, maximization of available space, reduction of maintenance and costs to the public, and to facilitate entry of a maximum number of providers of communications and other services in the public interest.

Section 2

For brevity, the person, firm or corporation which shall become the purchaser of said franchise, or any successor or assignee of such person or firm, shall be referred to as the "Company",



and the City of Flemingsburg, Kentucky, shall be referred to as the "City". The public streets, alleys, avenues, public road, highways, bridges, viaducts, sidewalks, and other public ways (as the same now exist and including all which may be established or created) within the territorial limits of the City shall be referred to as the "streets". The underground conduits, manholes, telephone poles, cables, boxes, wires, fixtures, electrical conductors, and any other apparatus, equipment and facilities necessary to and essentially useful in the operation of the electric utility system shall be referred to as the "equipment and apparatus".

### Section 3

The Company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and maintaining an electric utility system, equipment and apparatus, upon, through, along, under, and over the streets within the corporate boundaries of the City as they now exist or may hereafter be extended, subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon, or reserved to said City.

### Section 4

(a) No pavements, sidewalks, curbs, gutters, or other such street installations shall be disturbed and no excavation in any of the said streets will be made, except with the written permission of the City through its designated employee, official, or agent.

(b) At least fifteen (15) days prior to performing any construction or installation work in the public streets and rights of way, the Company shall apply to the City for a permit and shall include descriptive information, which may be subject to proprietary treatment, about the specific location of any applicable lines, facilities, or equipment, and the Company shall coordinate any said new construction work with the City.

(c) When an emergency arises which requires immediate repair, the Company may disturb or excavate a street without first obtaining written permission from the City, provided that the City is notified in writing of said repair within five (5) days. This notification shall include at least the time, date, location, and extent of excavation or other work performed.

(d) When the Company shall enter upon any street for the purpose of constructing, erecting, operating, maintaining, and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence and shall dig and close up all trenches and exposed places or rapidly as possible and shall leave the streets in reasonably the same condition as prior to its entry. All such repairs shall be maintained by the Company for one (1) year in as good condition as the remainder of said street. In the event that the Company fails, refuses, or neglects to comply with the above provisions, the City shall have the right, after notice in writing having first been given to the Company or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the City by the Company within thirty (30) days from the date on which an itemized bill is presented to the Company.

(e) In the construction, reconstruction, maintenance, or removal of any of said equipment and

apparatus, the Company shall have due regard for the rights of the City and others, and shall avoid interference with and injury to the property of the City or others. Said purchaser shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the City as to placing lights, danger signals, or warning signs. Such work by the Company shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said streets. The Company's work in the public rights of way shall be accomplished with a minimum of disruption and interference to the free flow of vehicular and pedestrian traffic.

#### Section 5

(a) Whenever the City or any of its departments, agencies, and/or agents, servants, or employees shall grade, re-grade, construct, reconstruct, widen or alter any street or shall construct, reconstruct, repair, maintain, or alter any other municipal public works therein (including but not limited to storm sewers, sanitary sewers, and street lights), it shall be the duty of the Company, when so ordered by the City pursuant to a valid municipal purpose, to change its equipment and apparatus within 90 days in the street at its own expense so as to conform to the established grade or line of such street so as not to interfere with such municipal public works so constructed, reconstructed, or altered except that the 90-day period shall be extended to 180 days for good cause shown with respect to the magnitude of the requested project.

(b) The Company shall be given access to the street plans and specifications, and any proposed modifications to such, in the possession of the City.

#### Section 6

Upon 90 days notice from the City, that any street is planned to be constructed, reconstructed, widened, altered, paved, or re-paved, the Company shall make such extensions or changes in its equipment and apparatus, ahead of any paving. However, upon a showing of good cause with respect to the magnitude of the requested project, the Company shall be granted 180 days in which to comply. Further, upon the mutual agreement of both parties, the Company may require less than a 90-day compliance period for smaller projects.

#### Section 7

(a) The minimum clearance of wires and cables placed above the streets of the City, and also the placement of underground facilities, shall be done in accordance with federal, state and local law and shall conform to the standards of the latest edition of the National Electric Safety Code, National Bureau of Standards, U.S. Department of Commerce. The City reserves the right to require, by ordinance and upon reasonable notice to the Company, observation of greater standards of safety than those contained in such Code.

(b) In the event that the Company leases space on the poles or in the conduits of an electric or other utility, the Company shall abide by the construction and other requirements of said utility, and the granting of a Communications Franchise by the City shall not be construed or interpreted in any way to alleviate the Company's responsibilities and obligations to the other pole or conduit owner.

#### Section 8

The Company agrees by the acceptance of this franchise to indemnify, keep, and save the City free and harmless from liability on account of injuries or damage to persons or property growing out of the construction, maintenance, repair, and operation of its equipment and apparatus located upon, through, along, under, or over the City's streets. If any suit to enforce such liability shall be brought against the City, either independently or jointly with the Company, upon notice by the City the Company shall defend the City at the cost of the Company and, in the event of final judgment being obtained against the City either independently or jointly with the Company, the Company shall pay such judgment with all costs and hold the City harmless therefrom.

#### Section 9

The City, or such assistants as it may employ or designate, may have access during normal business hours to the equipment and apparatus installed under this franchise for the sole purpose of inspecting or examining it consistent with the administration of this franchise, and may inspect, examine, or verify the papers of the Company as necessary for the limited purpose of administering this franchise.

#### Section 10

The franchise hereby created shall be for a set term of ten (10) years from and after the date the same shall become effective but is not exclusive, and the City reserved the right to sell similar franchises to others within its current or future Corporate Limits.

#### Section 11

The Company is hereby given the right to assign the franchise created by this ordinance to any person, firm, or corporation able, ready, and willing to carry out the terms of this franchise, but prior to such assignment, shall obtain consent from the City to such assignment, which consent shall not be unreasonably withheld.

#### Section 12

As consideration for the rights conferred by the granting of this franchise, and to compensate the City for its superintendence of the franchise, the successful bidder shall pay to the City a percentage, not to exceed three percent (3%) of the gross revenues received by the Company during the term of the franchise from the provision of local exchange access service to customers residing within the territorial limits of the City subject to the following conditions:

(a) Such percentage of revenues shall be initially fixed by separate resolution which shall state the City's acceptance of the Company's bid. Changes in such percentage, within the maximum percentage stated herein, shall be made by resolution with special notice thereof provided, at least sixty (60) days in advance, to the Company.

(b) The Company shall remit to the City, monthly all amounts due under this franchise. The first such remittance shall be based upon revenues received by the Company during the first month following the effective date of the franchise as set forth in Section 19 hereof, and shall be paid within



sixty (60) days following such period. Thereafter, payments shall be made within thirty (30) days after each subsequent period. The final payment shall be paid within thirty (30) days following expiration of this franchise.

(c) "Local access service" is defined for these purposes as that portion of electric service provided to end-user customers which permits a customer to access the normal service electricity, and is further identified as the basic electric service provided to residence and business customers through standard delivery methods and arrangements.

(d) As further consideration for the granting of this franchise, the Company shall permit the City to utilize, at tariffed rates, terms, and conditions, Company pole space and conduit duct raceway space when such space is vacant or available at the time of the request for space by the City, and the City shall similarly permit the Company to utilize, at reciprocal rates, terms, and conditions City pole space and conduit.

### Section 13

(a) The consideration set forth in the preceding section shall be paid and received in lieu of any tax, license, charge, fee, street or alley rental, or any other character of charge for the use and occupancy of the streets. It shall further be in lieu of any pole tax, inspection fee tax, easement tax, franchise tax (whether levied as an ad valorem, special, or other character of tax), and any other tax, license, fee, or imposition other than the usual general or special ad valorem property taxes now or hereafter levied. This section shall not be construed to exclude any funds that flow to municipalities as a result of state property tax or pole rentals provided under a separate agreement.

(b) Should the City not have the legal power to declare that the payment of the foregoing consideration shall be in lieu of such taxes, licenses, fees, and impositions, then the City declares that, should any such tax, license, fee, or other imposition be imposed upon the Company, then to the extent necessary, the consideration to be paid hereunder shall be applied toward the satisfaction of such obligations.

### Section 14

It shall be the duty of the Mayor, or a subordinate designated by the Mayor, as soon as practicable after the passage of this Ordinance, to offer for sale said franchise and privilege. Said franchise and privilege shall be sold at a time and place fixed by the Mayor after due notice thereof has been given by advertisement in at least one (1) issue of a newspaper of general circulation within the territorial limits of the City. Such advertisement shall appear not less than seven (7) days nor more than twenty-one (21) days before the date bids are to be received..

### Section 15

(a) Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the Mayor or his designated subordinate upon the date and the time fixed in said advertisement for the receipt of such.

(b) Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this Ordinance and shall be accompanied by a non-refundable application fee in the amount of \$600 payable to the City Council to defray the City's costs of advertising and other administrative expenses incurred.

(c) If any bid shall include an offer of payment over and above the requirement contained in Section 12 of this Ordinance, then a certified check for said amount, payable to the City, shall be remitted with the bid. This amount shall be considered as additional consideration for the grant of this franchise.

(d) Each bid shall be accompanied by cash or a certified check drawn upon a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the equipment and apparatus to be placed under the franchise created by this Ordinance, which check or cash shall be forfeited to the City in case the bid should be accepted and the bidder should fail, for thirty (30) days after confirmation of the sale, to pay any consideration then due and to give a good and sufficient bond in the sum equal to one-fourth (1/4) of the fair estimated cost of the equipment and apparatus to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within nine (9) months, to install the equipment and apparatus contemplated to be provided, pursuant to the franchise created by this Ordinance; but such deposit and bond need not be made by a corporation or person already owning within the territorial limits of the City the equipment and apparatus contemplated by the franchise created by this Ordinance.

(e) Any cash or check remitted by an unsuccessful bidder shall be returned.

#### Section 16

At the first regular meeting of the Council following the receipt of such bids, the Mayor shall report and submit to the Council all bids and proposals for acceptance of bids. Acceptance of a bid shall be expressed by an ordinance. The Council reserves the right, for and in behalf of the City, to reject any and all bids for said franchise and privilege. In case the bids reported by the Mayor shall be rejected by the Council, it may direct, by resolution or ordinance, that said franchise and privilege be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and accepted.

#### Section 17

Any granting of the franchise created hereby shall include the obligation of the City to provide, at least eighteen (18) months before its expiration, for the sale of a new franchise to the highest and best bidder on terms that are fair and reasonable to the City, to the existing holder of the franchise, and to its patrons.

#### Section 18

Any violation by the company, its vendee, lessee, or successor of the provisions of this

franchise or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder after written notice to the Company and continuation of such violation, failure, or default.

Section 19

The franchise created by this Ordinance shall become effective upon acceptance of the Company's bid, as expressed in the Ordinance of Acceptance which additionally fixes the initial revenue percentages to be paid pursuant to the maximum limit set forth herein.

Section 20

This ordinance shall be effective after two readings thereof, affirmative vote of the City Council of the City of Flemingsburg, Kentucky, Mayoral approval thereof, and publication as required by law.

**COUNCIL ACTION (#6-15-04)**

First Reading of this Ordinance was had on the 11 <sup>May</sup>~~th~~ day of ~~June~~, 2015.

Joy S. Roark  
Joy S. Roark, City Clerk

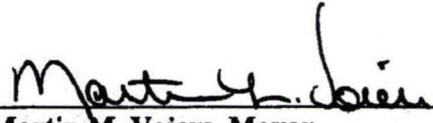
Second Reading of this Ordinance was had on the 8<sup>th</sup> day of June, 2015, and upon roll call vote was adopted by the City Council of the City of Flemingsburg, Kentucky, as follows:

Ricky Hurst	<u>yes</u>
Kathy Moore	<u>yes</u>
Scott Manning	<u>yes</u>
Georgianna Sparks	<u>yes</u>
Meredith Story	<u>yes</u>
Van Alexander	<u>yes</u>

Joy S. Roark  
Joy S. Roark, City Clerk

**MAYORAL APPROVAL (Ordinance #6-15-04)**


I hereby accept and approve the foregoing Electric Utility Franchise Ordinance No. 6-15-04 and direct same to be published in accordance with applicable law this 8<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
Martin M. Voiers, Mayor

Attest:

  
\_\_\_\_\_  
Joy S. Roark, City Clerk

**PREPARED BY:**

  
\_\_\_\_\_  
**Thomas L. MacDonald, City Attorney**  
**MacDonald, Walton & Razor, PLLC**  
129 W. Water Street  
Flemingsburg, Kentucky 41041

Affidavit of Publication

I, Patricia Mitchell, hereby certify that I am  
Graphic Designer of the Flemingsburg Gazette. I certify  
that the attached clipping of the advertisement is a true copy of  
said advertisement in the said Newspaper on  
June 24, 2015.

In Testimony whereof, witness my signature this 24 day  
of June 2015.

The Newspaper Office

BY Patricia Mitchell

Subscribed and sworn to before me this 24 day of

June 2015

My Commission expires: June 8 2019

Juliana Cochran  
Notary Public

