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July 24, 2019

PSC STAFF OPINION 2019-008

Joni Hazelrigg
Manager/CEO
Fleming-Mason Energy
1449 Elizaville Road
P.O. Box 328
Flemingsburg, KY 41041

RE: Fleming-Mason Energy's 2019-2022 Construction Work Plan

Dear Ms. Hazelrigg:

Commission Staff acknowledges receipt of your letter received on February 27, 2019, on behalf of Fleming-Mason Energy (Fleming-Mason), in which you request an opinion as to whether any or all projects contained in Fleming-Mason's 2019-2022 Construction Work Plan (CWP) require a Certificate of Public Convenience and Necessity (CPCN) or whether the projects fall within the "ordinary course of business" exemption and, therefore, do not require a CPCN.

Pursuant to the Commission's decision that each construction project contained in a CWP should be analyzed on an individual basis to determine whether that individual project is exempt from the requirement in KRS 278.020(1) to obtain a CPCN, Commission Staff has reviewed the projects contained in Fleming-Mason's 2019-2022 CWP. This letter represents Commission Staff's opinion, which is advisory in nature, and not binding on the Commission should the issues herein be formally presented for Commission resolution.

As with all legal opinions requesting a determination of the exemption from the requirement of a CPCN, Commission Staff's review does not consider the reasonableness or the need for each project. Therefore, because reasonableness and need are not considered herein, or in other non-rate cases, the cost of such a project can be denied recovery in a rate case if found to be unreasonable or unnecessary.

According to its 2010-2022 CWP, Fleming-Mason proposes individual construction projects grouped according to the following RUS Codes: (1) Code 100 for new services construction at an estimated total cost of \$3,936,600; (2) Code 300 for line conversion and replacement at an estimated total cost of \$7,130,200; (3) Code 601 for transformers

and meters at an estimated cost of \$2,139,400; (4) Code 602 for service upgrades at an estimated cost of \$394,900; (5) Code 603 for sectionalizing equipment at an estimated cost of \$214,400; (6) Code 604 for regulators at an estimate cost of \$390,000; (7) Code 606 for pole replacements at an estimated cost of \$2,673,600; (8) Code 608 for conductor replacement at an estimated cost of \$405,800; and (9) Code 700 for security lights at an estimated total cost of \$1,072,250.

KRS 278.020(1) provides, in relevant part, as follows:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

Regarding the exception to the CPCN requirement, Administrative Regulation 807 KAR 5:001, Section 15(3) provides, in full, as follows:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

In analyzing whether each individual project contained in Fleming-Mason's 2019-2022 CWP would materially affect the company's financial condition, Commission Staff takes notice of Fleming-Mason's 2018 Annual Report, which shows that Fleming-Mason has a net utility plant of approximately \$68,306,808 as of December 31, 2018. When reviewed individually, each proposed construction project based on its estimated cost would not materially impact Fleming-Mason's existing financial condition. Therefore, each construction project is generally considered to be an extension in the ordinary course of business. Likewise, the cost estimate of each project considered separately in

the 2019-2022 CWP will not have an immediate or significant impact on Fleming-Mason's rates. Lastly, the individual construction projects would not result in wasteful duplication of facilities or conflict with the service of other utilities. Thus, Commission Staff is of the opinion that each of the proposed projects set out in Fleming-Mason's 2019-2022 CWP satisfy the "ordinary course of business" exemption from CPCN requirement.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Quang D. Nguyen at (502) 782-2586.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E.B. Pinney", with a large, stylized flourish at the end.

John E.B. Pinney
Acting General Counsel

QN/ch