

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>THE ELECTRONIC APPLICATION OF</b>	)	
<b>FLEMING-MASON ENERGY COOPERATIVE,</b>	)	
<b>INC., FOR PASS-THROUGH OF EAST</b>	)	<b>Case No. 2021-00109</b>
<b>KENTUCKY POWER COOPERATIVE, INC.'S</b>	)	
<b>WHOLESALE RATE ADJUSTMENT</b>	)	

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**BRIEF**

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Comes now Fleming-Mason Energy Cooperative, Inc. (“Fleming-Mason”), by counsel, pursuant to the Commission’s August 13, 2021 Order in this docket setting forth a deadline for filing simultaneous briefs, and respectfully stating as follows:

**I. INTRODUCTION**

On April 1, 2021, Fleming-Mason tendered its Application with the Kentucky Public Service Commission (“Commission”), pursuant to KRS 278.455(2), 807 KAR 5:007 and other applicable law, for a pass-through of East Kentucky Power Cooperative, Inc.’s (“EKPC”) adjustment of its wholesale rates (“Application”). A motion for intervention filed by AppHarvest Morehead Farm, LLC (“AppHarvest”) was granted on May 24, 2021. Fleming-Mason and AppHarvest are collectively referred to herein as “the Parties”. The Parties have agreed to waive a formal hearing in this matter and to submit briefs for the Commission’s consideration.

**II. ARGUMENT**

**A. Fleming-Mason’s Proposed Pass Through Methodology is Reasonable and Consistent with KRS 278.455(2).**

Fleming-Mason is one of EKPC’s sixteen (16) Owner-Members who will receive an increase in its wholesale rates based upon the Commission’s decision in EKPC’s rate adjustment

proceeding.<sup>1</sup> The pass-through of EKPC's wholesale rate to its owner-members is governed by KRS 278.455(2) which states in part as follows:

Notwithstanding any other statute, **any revenue increase authorized by the Public Service Commission** or any revenue decrease authorized in subsection (1) of this section **that is to flow through the effects of an increase or decrease in wholesale rates may, at the distribution cooperative's discretion, be allocated to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect...** (emphasis added)

KRS 278.455(2) does not specify the exact method to use in allocating the rate increase to each customer class and within each tariff on file with the Commission. In evaluating the ways that the increase could be allocated, Fleming -Mason analyzed two methods for allocation – the traditional method that has been used by Fleming-Mason in prior pass-through cases and the *Kenergy* method that was announced shortly before Fleming-Mason filed its Application.<sup>2</sup> Fleming-Mason made the decision to use the traditional method that has been approved in Fleming-Mason's prior pass-through cases to allocate the proposed increase from EKPC to Fleming-Mason's retail customers because the traditional method resulted in an allocation that was less distorted than the *Kenergy* method.

The traditional method includes taking the 2019 billing information, to match EKPC's test year, for each rate class in Fleming-Mason's Commission-approved tariffs and calculating the billings for each rate class and for each base rate billing component within these classes.<sup>3</sup> Next

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<sup>1</sup> See *In the Matter of the Electronic Application of East Kentucky Power Cooperative, Inc. for a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and other General Relief*, Application, Case No. 2021-00103 (filed April 1, 2021).

<sup>2</sup> See *In the Matter of: Electronic Application of Kenergy Corp. for a Declaratory Order*, Order, Case No. 2020-00095 (Ky. P.S.C. March 11, 2021).

<sup>3</sup> See Direct Testimony of John Wolfram p. 3 (filed Apr. 1, 2021).

the “present” rates and revenues are determined by accounting for a limited number of adjustments.<sup>4</sup> These adjustments were on an extremely limited basis and included adjustment of the 2019 amounts to reflect the revised base energy charges and Fuel Adjustment Clause (“FAC”) charges since the Commission approved an FAC roll-in effective February 1, 2020.<sup>5</sup> An adjustment was also made to account for a small number of large commercial or industrial retail members that either switched rates or revised their contract demand amounts since 2019.<sup>6</sup> In order to ensure that the rate calculations would not result in any change to the retail rate design currently in effect for Fleming-Mason, adjustments were made to the billing determinants for these end-users. These types of adjustments are reflected in the “Present Rates” and “Present Revenues” in Exhibit 3 attached to Fleming-Mason’s Application and are necessary to ensure that the full effects of the wholesale rate increase flowed through proportionately.<sup>7</sup> These limited adjustments were the only adjustments made to the test year for Fleming-Mason.

The next step in the calculation process was to allocate the EKPC revenue increase proportionately, first to each rate class, and then to the individual base rate billing components of each class.<sup>8</sup> The proposed per-unit charges were determined such that the rate class revenue allocation shares and the billing component allocation shares were maintained.<sup>9</sup> In other words,

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<sup>4</sup> *See id.*

<sup>5</sup> *See In The Matter Of Electronic Examination Of The Application Of The Fuel Adjustment Clause Of East Kentucky Power Cooperative, Inc. From November 1, 2016 Through October 31, 2018*, Order, Case No. 2019-00003 (Ky. P.S.C. Dec. 26, 2019); *In The Matter Of: Electronic Examination Of The Application Of The Fuel Adjustment Clause Of East Kentucky Power Cooperative, Inc. Cooperatives From November 1, 2016 Through October 31, 2018*, Order, Case No. 2019-00008 (Ky. P.S.C. Dec. 26, 2019; Order, Case No. 2019-00008 (Ky. P.S.C. Jan. 22, 2020).

<sup>6</sup> *See* Wolfram Testimony, p. 4.

<sup>7</sup> *See id.*

<sup>8</sup> *See id.*

<sup>9</sup> *See id.*

the increase was allocated first to the rate classes and then to the billing components on a proportionate basis, resulting in no change in the rate design currently in effect.<sup>10</sup> This fact is important since KRS 278.455(2) states that the allocation cannot result in a change to the rate design of the cooperative.<sup>11</sup> Using the traditional method produced the most reasonable results for Fleming-Mason to pass-through EKPC's rate increase.<sup>12</sup>

Fleming-Mason also evaluated and took into account the method described in the Commission's *Kenergy* Order.<sup>13</sup> However, when the *Kenergy* method was used for Fleming-Mason, it produced unreasonable results. Relying on the last rate order to allocate the total increase to the rate classes seems reasonable in theory, but has limitations based on how the customer mix within the rate classifications has changed over time.<sup>14</sup> For Fleming-Mason, the list of rate classes with active members differed from the last rate order and the present test year. The *Kenergy* Order does not address this kind of variance.<sup>15</sup>

More importantly, relying on the last rate order for Fleming-Mason to allocate the class revenue to the individual billing components was more problematic.<sup>16</sup> For certain two-part rate classes like residential, the percentage split between customer charge revenue and energy charge revenue does not typically fluctuate much over time between rate cases, so for those classes the

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<sup>10</sup> *See id.*

<sup>11</sup> *See id.*

<sup>12</sup> *See id.*

<sup>13</sup> *See id.* p. 6.

<sup>14</sup> *See id.*

<sup>15</sup> *See id.*

<sup>16</sup> *See id.*

results were mostly reasonable.<sup>17</sup> However, for rate classes with more than two parts – for example, a large customer class with four parts (customer charge, energy charge, contract demand charge, and excess demand charge) – it was more common for the percentage shares across the components to vary significantly between the last rate order method and the present test year method.<sup>18</sup> For example, there might be zero excess demand kW (and thus revenue) in the present test year, but 25 percent excess demand revenue in the last rate order.<sup>19</sup> The converse could also be true. In either event, holding the last rate order component percentages fixed and applying them to 2019 billing units often resulted in skewed charges on a per-unit basis.<sup>20</sup> For Fleming-Mason, applying the last rate order component percentages yielded declines in the excess demand charge which would have resulted in a significant change to the rate design currently in effect (where the excess demand charge currently exceeds the contract demand charge).<sup>21</sup> This appears to run afoul of the proportionality standard in KRS 278.455(2) and would result in a rate design change, which is prohibited by KRS 278.455(2). It could also be considered to violate the ratemaking principle of gradualism.<sup>22</sup> Since this was the situation for Fleming-Mason, it elected to use the present test year allocations to develop proposed rates.

Fleming-Mason chose to use the same methodology it has used in prior pass-through cases since the result of applying this method resulted in more reasonable rates without violating the

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<sup>17</sup> *See id.*

<sup>18</sup> *See id.*

<sup>19</sup> *See id.*

<sup>20</sup> *See id.*

<sup>21</sup> *See id.*

<sup>22</sup> *See In the Matter of Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, Case No. 2011-00036 (Ky. P.S.C. Nov. 17, 2011). (“Such an action would be inconsistent with our long-standing practice of employing the principle of gradualism in moving toward cost-of-service based rates.”)

pass-through statute with rate design changes. In 1944, in *Federal Power Commission v. Hope Natural Gas Co.*, the Supreme Court held that, in setting maximum rates, the utility commission would not be "bound to the use of any single formula or combination of formulae in determining rates." Rather, it would be the "result reached, not the method employed" that would be controlling.<sup>23</sup> Kentucky law fully embraces the *Hope* Doctrine and Fleming-Mason's methodology used in this proceeding is consistent with the *Hope* Doctrine as well. It was not practical to use the *Kenergy* method for Fleming-Mason's pass-through rates due to the unreasonable results it produced since Fleming-Mason's last rate case was several years ago. Based on the unreasonable results produced by the *Kenergy* method, the determination of proposed rates based on the present test year allocations should be accepted as it has been in the past.

If the Commission were to issue an Order that the *Kenergy* method must be used by Fleming-Mason to pass-through EKPC's rate increase to its retail customers, some end-use retail customer classes – including AppHarvest – will immediately see very significant changes in their monthly bills. This skewing effect between retail customer classes will likely force Fleming-Mason to file a rate case shortly after EKPC's wholesale rates take effect. Since the goal behind the enactment of KRS 278.455 was to avoid the need for each distribution cooperative to file a rate case following an increase in wholesale rates, the *Kenergy* approach could work at cross-purposes to the policy embodied in the statute. The overall revenue impact of the rate pass-through is consistent regardless of whether the *Kenergy* Order's last rate order method or the traditional present test year approach is applied. Either way, Fleming-Mason should be able to successfully absorb and pass through any increase in its wholesale power expense to its end-use retail members, even if the pass-through introduces some revenue distortions within a particular rate class.

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<sup>23</sup> See *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

However, the traditional method that has been approved in past cases, will not result in the rate distortion that the *Kenergy* method produces for Fleming-Mason and other distribution cooperatives.

**B. AppHarvest’s Request to be Excluded From Any Rate Increase is Unreasonable and Contrary to Law.**

AppHarvest argues that it should not receive a share of the rate increase because it was not a customer of Fleming-Mason in the 2019 test year.<sup>24</sup> Specifically, lines 87-94 for Ms. Kelly’s testimony states in part

AppHarvest should not pay any share of EKPC’s desired increase in annual revenue requirement over its 2019 test year revenues because, as a new 2020-2021 customer and the only customer in its customer class, AppHarvest is already contributing to that revenue increase.... the proportional sharing methodology proposed by Fleming Mason, which results in increasing all rates by approximately 4.4%, if applied to AppHarvest’s new 2020-2021 rates, which were not part of the 2019 test year, will result in an over-collection of the \$43 million annual revenue increase sought by EKPC....

However, Ms. Kelly ignores the clear language of the statute. KRS 278.455(2) clearly states that “any revenue increase authorized by the Commission ...that is to flow through the effects of an increase or decrease in wholesale rates may, at the distribution cooperative’s discretion, be allocated to each rate class and within each tariff on a proportional basis that will result in no change in the rate design *currently* in effect.” (Emphasis added). The purpose of the instant case is to flow through the “current” effects of an increase in wholesale rates.<sup>25</sup> AppHarvest currently takes service from Fleming-Mason pursuant to an approved retail tariff.<sup>26</sup> In this docket,

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<sup>24</sup> See Testimony of Suedeen Kelly, p. 5 ( July 1, 2021).

<sup>25</sup> See Rebuttal Testimony of John Wolfram, p. 2 (July 27, 2021).

<sup>26</sup> See *id.*

Fleming-Mason proposed an allocation of the EKPC increase on a proportional basis and in a manner that results in no change in the rate design currently in effect.<sup>27</sup> Furthermore, there are most likely residential customers who were also not customers of Fleming-Mason during the 2019 test period but are current customers. Those customers will also be receiving their portion of the rate increase.

If a portion of the rate increase is not allocated to AppHarvest, this will result in Fleming-Mason's other customer classes subsidizing AppHarvest until the next wholesale rate case of EKPC or the next retail rate increase case of Fleming-Mason. The Commission has long-standing precedent of moving towards the removal of inter-class subsidization between rate classes.<sup>28</sup> When inter-class subsidization is found to be occurring between rate classes, the principles of gradualism are used to lower the subsidization.<sup>29</sup> It would not be fair to Fleming-Mason's other customers to increase the subsidization of the rates of AppHarvest.

In addition, the Commission stated in its Order in Case No. 2006-00473 that the statute and the administrative regulation "are quite clear that the allocation of the wholesale rate increase must not change the retail rate design currently in effect and that the wholesale rate increase must be allocated to each retail class and within each retail tariff on a proportional basis" and that they "require the distribution cooperative to follow a 'strict adherence' to the existing proportion of revenues at retail, by rate mechanism component."<sup>30</sup> Fleming-Mason does not have the discretion

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<sup>27</sup> See *id.*

<sup>28</sup> See *In the Matter of Electronic Application of Atmos Energy Corporation for an Adjustment of Rates*, Order, Case No. 2018-00281 (Ky. P.S.C. May 7, 2019); *In the Matter of West McCracken Water District Application for (1) General Rate Decrease (2) Refund to Customers*, Order, Case No. 95-00588 (Ky. P.S.C. Nov. 26, 1996).

<sup>29</sup> See *Big Rivers*, p. 30.

<sup>30</sup> *In the Matter of Application of Big Sandy Rural Electric Cooperative Corporation to Pass-Through An Increase Of Its Wholesale Power Supplier Pursuant to KRS 278.255(2)*, Order, Case No. 2006-00472 pp. 3-4 (Ky. P.S.C. April 1, 2007).



to forego the proportional allocation of the increase to AppHarvest without violating the “strict adherence” requirement set forth in that Order.<sup>31</sup> In addition, AppHarvest’s witness, Suedeen Kelly, appears to be promoting a change in the retail rate design applicable to AppHarvest.<sup>32</sup> This case is a pass-through case pursuant to KRS 278.455(2), not a full rate case and the rate design cannot be changed. In the *Kenergy* Order, the Commission found that “if the G&T rate increase distorts the total revenue received by the Member System as compared to revenue prior to the rate increase, the Member System may seek to adjust their rate design through a rate case.” Changing the rate design in a pass-through case is not permitted.

In addition to wanting the rate design change, Ms. Kelly also argues that AppHarvest is already contributing to the desired revenue requirement increase, and that raising AppHarvest’s rates will result in an over-collection of the desired annual revenue.<sup>33</sup> This is simply not accurate. Fleming-Mason did not incur wholesale purchased power costs associated with AppHarvest in the 2019 test year and AppHarvest did not contribute revenues to Fleming-Mason during the 2019 test year. Therefore, the share of EKPC’s revenue requirement allocated to Fleming-Mason excludes any costs for serving AppHarvest in the same way that the revenue used in determining Fleming-Mason’s retail rates excludes revenue from AppHarvest. AppHarvest’s current rates are based on the current cost of wholesale power to Fleming-Mason, not the proposed increase requested by EKPC in its wholesale rate adjustment case.<sup>34</sup> AppHarvest incorrectly wants to just look at one

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<sup>31</sup> See Wolfram Rebuttal p. 3.

<sup>32</sup> See Kelly Testimony, p. 7 (“The Commission should direct Fleming Mason to develop a new customer class for AppHarvest.”).

<sup>33</sup> See *id* at 5.

<sup>34</sup> See Wolfram Rebuttal p. 4.

side of this equation, which is very unfair, unjust and unreasonable to Fleming-Mason's other customers.

AppHarvest has already entered into service agreements and is taking service under Fleming-Mason's retail tariffs as these tariffs existed at the time AppHarvest became a customer in 2020, only a year ago. However, in this proceeding AppHarvest is requesting the Commission to create a new customer class for AppHarvest.<sup>35</sup> These issues are not appropriate for a pass-through rate case proceeding and should instead be raised by AppHarvest in contract renegotiations. There is no evidence in the record of this proceeding to support Ms. Kelly's assertion that AppHarvest's present rates are unreasonable and should be revised. With the benefit of many advisors, it agreed to the rates under which it is served only a year ago. The changes that are being suggested by AppHarvest would have the result of undoing the past rate design and distort the current rate design. This is not appropriate for a pass-through rate proceeding.

Moreover, Ms. Kelly's reliance upon *In Re Louisville Gas & Electric Company*, Order, Case No. 2002-00419 (Ky. P.S.C. Mar. 19, 2003), as precedent for requiring a cost-of-service study before allocating a portion of the rate increase to AppHarvest, is misplaced.<sup>36</sup> The case cited by Ms. Kelly in testimony is a case dealing with multi-family master meter service and the desire of Louisville Gas & Electric Company and Kentucky Utilities Company to reclassify this service at the option of the customer to a residential rate solely to avoid the six percent sales tax rate charged on commercial accounts. Ms. Kelly failed to point out that this Order also stated: "When rates are adjusted in the absence of a cost-of-service study, the Commission has historically allocated revenue increases or decreases on a proportionate share to maintain each customer class's

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<sup>35</sup> See Kelly Testimony, p. 7.

<sup>36</sup> See *id.*

(i.e., residential, commercial, and industrial) relative contribution.” Therefore, the same Order Ms. Kelly cites as requiring a cost-of-service study clearly states that this is not required and lays out how the rates will be allocated without one. Ironically, the methodology articulated by the Commission in the one case cited by AppHarvest is effectively identical to that stated in KRS 278.455(2). Fleming-Mason is proposing to allocate the rate increase on a proportional basis, just as the Order states the Commission has historically done. The fact that KRS 278.455(2) mandates this outcome in the context of passing through a generation and transmission cooperative’s wholesale rate increase is all the more reason to demonstrate the Fleming-Mason’s approach is reasonable.

### **III. CONCLUSION**

AppHarvest’s arguments and requests are not reasonable. AppHarvest is not the only current customer of Fleming-Mason’s that was not a customer in the 2019 test period, but it fails to cite any authority that suggests that current customers should be excluded from a rate increase. To argue that just because it was not a customer during the test period they should not be allocated a portion of the rate increase is unreasonable. This argument would cause Fleming-Mason to have to account for all customers (residential, commercial, industrial, etc.) who were not customers in the 2019 test period and insure that no portion of the rate increase went to any of those customers. This would be a logistic and billing nightmare that is wholly inconsistent with ratemaking precedent and KRS 278.455(2). The rules cannot be bent for one customer.

This 1<sup>st</sup> day of September 2021.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed; that the electronic filing was transmitted to the Commission on September 1, 2021; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. No paper copies of this filing will be made.



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Cooperative, Inc.*