

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

ELECTRONIC APPLICATION OF)	
FLEMING-MASON ENERGY)	Case No. 2023-00223
COOPERATIVE, INC. FOR A GENERAL)	
ADJUSTMENT OF RATES)	

ATTORNEY GENERAL’S MEMORANDUM BRIEF

Comes now the Attorney General of the Commonwealth of Kentucky, by his Office of Rate Intervention (“Attorney General”), and submits the following Memorandum Brief pursuant to the Commission’s Order of January 31, 2024 that the parties submit memorandum briefs and the case would stand submitted for a decision by the Commission.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On August 4, 2023, Fleming-Mason Energy Cooperative, Inc. (“Fleming-Mason” or the “Cooperative”) filed its application for a general adjustment of rates. Fleming-Mason is engaged in the business of distributing retail electric power to approximately 25,741 customers in eight Kentucky counties, and obtains the power it sells wholesale from East Kentucky Power Cooperative, Inc.¹ The Cooperative’s current rates were set in 2021 after a streamlined proceeding, with Fleming-Mason’s last general rate case occurring in 2012.² The 2012 rate case was revenue neutral; Fleming-Mason’s last general

¹ Application at 1.

² Application at 2.

rate case, where it requested a rate increase, occurred in 2007.³

With the current application, Fleming-Mason initially proposed to increase annual revenue by \$2,754,137, or 2.57% to reflect a 2.0 Times Interest Earned Ratio (“TIER”) and 1.85 Operating Times Interest Earned Ratio (“OTIER”).⁴ Further Fleming-Mason requested that the monthly customer charge be increased from \$15.57 to \$19.50.

The Attorney General was granted intervention into this matter on August 28, 2023.⁵ The Attorney General issued three sets of Data Requests to the Cooperative. Further, the Attorney General sponsored the testimony of an expert witness, Mr. Greg R. Meyer, which was filed on November 27, 2023. Witness Meyer’s testimony concluded that a revenue requirement increase of \$984,171 was reasonable.⁶

Importantly, as this matter has proceeded, the Cooperative has amended its original requested relief. The most substantial amendment to its request is detailed in response to Attorney General Data Request 1-7.⁷ As discussed there, Fleming-Mason decreased the amount of its revenue requirement increase request from \$2,755,741 to \$1,868,707 to correct certain Fuel Adjustment Clause and Environmental Surcharge calculation errors as discussed fully within that response.

Fleming-Mason has also made other adjustments in response to Data Requests of the Commission.⁸ After all of these amendments are considered, Mr. Wolfram, the

³ Application at 2.

⁴ Application at 3.

⁵ Order of August 28, 2023.

⁶ Direct Testimony of Mr. Greg Meyer at 5.

⁷ Fleming-Mason Energy Response to Attorney General Data Request 1-7. October 24, 2023.

⁸ Rebuttal Testimony of Mr. John Wolfram at 12.

Company's expert, concluded that the revenue requirement deficiency amounted to \$1,943,724.⁹

Despite the concessions made by Fleming-Mason over the course of this matter, the Attorney General and the Cooperative continue to disagree on several important potential amendments. The Attorney General believes that further reductions of the revenue requirement should be made to reflect (1) a more reasonable OTIER, (2) a reasonable level of wages, (3) a reasonable level of healthcare costs, and (4) a reasonable rate case amortization period. Further, the Commission should consider a gradual increase of the customer charge from \$15.57 per month to the requested \$19.50 per month.

II. DISCUSSION

A. A 1.5 OTIER is a more reasonable value than the excessive 1.85 OTIER.

Fleming-Mason carries the burden of proof to show that an OTIER of 1.85 will lead to fair, just, and reasonable rates.¹⁰ It has failed to meet that burden. The Commission stated that, "the authorized TIER for an electric distribution cooperative will be addressed on a case by case basis, and the current interest rates for the cooperative and market conditions must be part of the consideration."¹¹

First, all of Fleming-Mason's loan contracts require OTIER coverage much lower

⁹ *Id.*

¹⁰ See KRS 278.190. "At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility...."; See KRS 278.030(1). "Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person."

¹¹ Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC June 30, 2022), Order at 18; note also that Mr. John Wolfram acknowledges that, while "TIER and OTIER... differ," there is a "conceptual basis" for comparing the two. See Rebuttal Testimony of Mr. John Wolfram at 9.

than 1.85.¹² Second, even if revenues collected as excess rates would accrue to the benefit of member-ratepayers, collecting excess rates could damage certain ratepayers financially due to a lag in returning capital credits to ratepayers.¹³ Third, and perhaps most importantly, a 1.85 OTIER is not supported by market conditions because Fleming-Mason's long-term debt is held at 100% fixed interest rates.¹⁴ Finally, the authorization of an excessive OTIER acts as a disincentive to controlling discretionary spending, limiting the effect of Commission disallowance of unauthorized expenditures.¹⁵

Mr. Wolfram attacks Mr. Meyer's recommendation of a 1.5 OTIER as "arbitrary," and states, "[t]here is no evidence in the record or in Commission precedent to support the reasonableness of applying a 1.50 OTIER for Fleming-Mason."¹⁶ Respectfully, Mr. Meyer's narrative testimony supporting a 1.5 OTIER provides as much or more support than Fleming-Mason provided for a 1.85 OTIER. Mr. Wolfram largely concluded that a 1.85 OTIER was appropriate, because "[t]he Commission's streamlined rate pilot program allows for a maximum OTIER of 1.85[.]" and that the Commission approved a 1.85 OTIER for other utilities.¹⁷ This type of analysis flies directly in the face of the Commission's recent statements that OTIER will be addressed "on a case-by-case

¹² Direct Testimony of Mr. Greg Meyer at 17.

¹³ Direct Testimony of Mr. Greg Meyer at 18.

¹⁴ Direct Testimony of Mr. Greg Meyer at 18; citing Direct Testimony of Ms. Lauren Fritz at 5.

¹⁵ For example, if the Commission disallowed recovery of the costs of a certain benefit, if the Cooperative concurrently collected excess rates based on OTIER, those funds could be expended to fund the disallowed item.

¹⁶ Rebuttal Testimony of Mr. John Wolfram at 9.

¹⁷ Direct Testimony of Mr. John Wolfram at 8.

basis.”¹⁸ Further, this inappropriately attempts to shift the burden. The Cooperative has the burden to demonstrate that its proposal is reasonable; the burden is not on the Attorney General to demonstrate the Cooperative’s proposal is unreasonable.

Therefore, the Commission should adopt a 1.5 OTIER based on Mr. Meyer’s well-supported reasoning. Acceptance of this proposal would save ratepayers \$545,304 annually while still providing over \$500,000 of increased expense protection.¹⁹

B. Certain wages are overstated in the test year.

a. Pro forma regular wages are overstated in the test year, because the Cooperative included vacant positions in its calculation.

Fleming-Mason seeks to include costs associated with two vacant employee positions. Cooperative Witness Ms. Lauren Fritz testified that, as of August 4, 2023, Fleming-Mason employed 49 employees.²⁰ But the Cooperative based its wage calculations on 51 employees.²¹ Mr. Wolfram disagreed with the Attorney General’s proposal to base wages on 49 employees, asserting that, “Fleming-Mason is working to return to the 51 headcount threshold.”²²

It is unfair to require Fleming-Mason’s customers to pay rates that include vacant employee position costs, because those costs are not currently being expended, are merely speculative, and there is no guarantee that the positions will be filled. The

¹⁸ Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC June 30, 2022), Order at 18

¹⁹ Direct Testimony of Mr. Greg Meyer at 5.

²⁰ Direct Testimony of Ms. Lauren Fritz at 8.

²¹ Direct Testimony of Mr. Greg Meyer at 9.

²² Rebuttal Testimony of Mr. John Wolfram at 4.

Commission has agreed with the Attorney General on the issue of vacant positions previously, excluding those costs from rates.²³ It should do the same here.

This adjustment would save ratepayers \$96,461.

b. Overtime wage and salaries are overstated in the test year, because the Cooperative has failed to justify the substantial increase in overtime hours.

Fleming-Mason proposes a substantial and unjustified increase of 790 overtime hours beyond the test year value, but fails to justify the substantial increase.²⁴ The Cooperative does not provide adequate explanation to justify this level of ongoing expense. The Attorney General supports utilizing the test year value of 7,063 overtime hours.²⁵ This would result in \$25,774 of savings for ratepayers.²⁶

C. Healthcare costs are overstated.

First, the Cooperative erred in its calculation of healthcare costs. This error is detailed in the testimony of Mr. Meyer.²⁷ Mr. Wolfram agrees that this error occurred. “Mr. Meyer is correct; there is a mistake in the calculation. The correction to the 7 calculation as outlined in Meyer Direct page 12 is appropriate.”²⁸ Correcting this error would result in savings to ratepayers of \$29,915.²⁹

Second, Mr. Wolfram proposes that healthcare costs should increase by 9% year-

²³ Case No. 2022-00147, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates and a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure* (Ky. PSC Apr. 12, 2023), Order at 27.

²⁴ Direct Testimony of Mr. Greg Meyer at 10.

²⁵ Direct Testimony of Mr. Greg Meyer at 11.

²⁶ Direct Testimony of Mr. Greg Meyer at 11.

²⁷ Direct Testimony of Mr. Greg Meyer at 12.

²⁸ Rebuttal Testimony of Mr. John Wolfram at 6.

²⁹ Direct Testimony of Mr. Greg Meyer at 12.

over-year based solely on the change in premiums for 2023.³⁰ This value is not reflective of a broader set of data of the long term market for health insurance costs. . As discussed by Mr. Meyer, Fleming-Mason’s actual insurance premiums across different plan types increased by 5.82% to 7.17% from 2019-2023.³¹ This is in line with the PricewaterhouseCooper’s Report projecting healthcare costs to increase between 6% and 7% in 2023-2024. A healthcare cost escalation value of 6.5% would be reasonable, and would result in savings for ratepayers of \$10,684.³²

Finally, and perhaps most importantly, Fleming-Mason failed to capitalize any of these employee-related healthcare costs. Mr. Wolfram agrees this is an error. “Mr. Meyer is correct that health insurance premium costs are payroll-related and as such a portion of these amounts should be capitalized.”³³ Despite a couple attempts to correct this, Fleming-Mason has not been able to properly account for the capitalization of health care costs. The Attorney General would request that the Commission order Fleming-Mason to properly reflect the capitalization of health care costs in its final determination of its cost of service.

D. Rate case expense should be amortized over five years instead of three years.

The Cooperative proposes to amortize rate case expense over three years. This is unreasonable given that the Cooperative last filed a general rate case seeking an increase in rates in 2007, over 15 years ago. Amortization of rate case expense over five years

³⁰ Rebuttal Testimony of Mr. John Wolfram at 6.

³¹ Direct Testimony of Mr. Greg Meyer at 13.

³² Direct Testimony of Mr. Greg Meyer at 15.

³³ Rebuttal Testimony of Mr. John Wolfram at 7.

would be more than reasonable. Such a change would reduce the revenue requirement by \$19,333.³⁴

E. The proposed increase to the customer charge is unreasonable.

Fleming-Mason proposes to increase its residential monthly customer charge from \$15.57 to \$19.50, a 25% increase.³⁵ An increase of this magnitude to the residential customer charge could hinder the ability of residential customers to control their monthly electric bills, and pose a further financial hardship on those customers struggling to make ends meet. The Commission has always relied upon the principle of gradualism in ratemaking, which mitigates the financial impact of rate increases on customers.³⁶ The Attorney General respectfully requests the Commission to continue to rely upon the principle of gradualism when awarding any increase to the residential monthly customer charge.

III. CONCLUSION

Therefore, the Attorney General believes that further reductions of the revenue requirement, in addition to those agreed to by the Company over the course of this proceeding, should be made to reflect (1) a more reasonable OTIER, (2) a reasonable level of wages, (3) a reasonable level of healthcare costs, and (4) a reasonable rate case

³⁴ Direct Testimony of Mr. Greg Meyer at 8.

³⁵ Rebuttal Testimony of Mr. John Wolfram at 12.

³⁶ Case No. 2014-00396, *In the Matter of Application of Kentucky Power Company for: (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2014 Environmental Compliance Plan; (2) An Order Approving its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief*, (Ky. PSC June 22, 2014) (“the Commission has long employed the principle of gradualism”); See also Case No. 2000-00080, *In the Matter of: The Application of Louisville Gas & Electric Company to Adjust its Gas Rates and to Increase its Charges for Disconnecting Service, Reconnecting Service and Returned Checks* (Ky. PSC Sept. 27, 2000) (“the Commission is adhering to the rate-making concepts of continuity and gradualism in order to lessen the impact of these increases on the customers that incur these charges.”)

amortization period. Further, the Commission employ the principles of gradualism in consideration of increasing the monthly customer charge. The Attorney General requests that the Commission enter an order reducing the revenue requirement accordingly.

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on February 8, 2024, an electronic copy of the foregoing was served via the Commission's electronic filing system.

This 8th day of February, 2024.

A handwritten signature in blue ink, appearing to read "J. Michael New". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Assistant Attorney General