

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC.)	
FOR A GENERAL ADJUSTMENT OF RATES,)	CASE NO.
APPROVAL OF DEPRECIATION STUDY,)	2021-00103
AMORTIZATION OF CERTAIN REGULATORY)	
ASSETS, AND OTHER GENERAL RELIEF)	

INITIAL DATA REQUESTS OF EAST KENTUCKY POWER COOPERATIVE, INC.
TO APPHARVEST MOREHEAD LLC

Filed: July 15, 2021

I. DEFINITIONS AND INSTRUCTIONS

1. With respect to each discovery request, all information is to be divulged that is within the knowledge, possession or control of the parties to whom it is addressed, including their agents, employees, advisors, consultants, attorneys and/or investigators.

2. Please identify the witness(es) who will be prepared to answer questions concerning each request.

3. These requests shall be deemed continuing so as to require further and supplemental responses if the party receives or generates additional information within the scope of these requests between the time of the response and the time of any hearing conducted hereon.

4. All answers must be separately and fully stated in writing under oath.

5. Where a data request calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.

6. If any request appears confusing, please request clarification directly from counsel for East Kentucky Power Cooperative, Inc., (“EKPC”).

7. For purpose of these discovery requests, the following terms shall have meanings set forth below:

- (a) As used herein, “document,” “documentation” and/or “record,” whether stated as the singular or the plural, means any course of binders, book, pamphlet, periodical, letter, correspondence, memoranda, including but not limited to, any memorandum or report of a meeting or telephone or other conversation, invoice, account, credit memo, debit memo, financial statement, general ledger, ledger, journal, work papers, account work papers, report, diary, telegram, record, contract, agreement, study, draft,

telex, handwritten or other note, sketch, picture, photograph, plan, chart, paper, graph, index, tape, data processing card, data processing disc, data cells or sheet, check acceptance draft, e-mail, studies, analyses, contracts, estimates, summaries, statistical statements, analytical records, reports and/or summaries of investigations, opinions or reports of consultants, opinions or reports of accountants, trade letters, comparisons, brochures, pamphlets, circulars, bulletins, notices, forecasts, electronic communication, printouts, all other data compilations from which information can be obtained (translated if necessary by defendants into usable form), any preliminary versions, drafts or revisions of any of the foregoing, and/or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced and regardless of origin or location, in the possession, custody and/or control of the defendant and/or their agents, accountants, employees, representatives and/or attorneys. "Document" and "record" also mean all copies of documents by whatever means made, if the copy bears any other markings or notations not found on the original.

- (b) The terms "relating to," "referring to," "referred to," "pertaining to," "pertained to" and "relates to" means referring to, reporting, embodying, establishing, evidencing, comprising, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, presenting and/or constituting and/or in any way involving.

- (c) The terms “and,” “or,” and “and/or” within the meaning of this document shall include each other and shall be both inclusive and disjunctive and shall be construed to require production of all documents, as above-described, in the broadest possible fashion and manner.
- (d) The terms “AppHarvest Morehead” and “Company” shall mean AppHarvest Morehead Farm, LLC, and shall include, but is not limited to, each and every agent, employee, servant, advisor, consultant, insurer and/or attorney of AppHarvest Morehead Farm, LLC. The term “you” shall be deemed to refer to AppHarvest Morehead and the Company.
- (e) The term “Commission” shall mean the Kentucky Public Service Commission.
- (f) To “identify” shall mean:
 - (1) With respect to a document, to state its date, its author, its type (for example, letter, memorandum, chart, photograph, sound reproduction, etc.), its subject matter, its present location, and the name of its present custodian. The document may be produced in lieu of supplying the foregoing information. For each document which contains information as privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privilege or other grounds for exclusion.
 - (2) With regard to a natural person, to state his or her full name, last known employer or business affiliation, title and last known home address.

- (3) With regard to a person other than a natural person, state the title of that person, any trade name, or corporate name or partnership name used by that person, and the principal business address of that person.
- (g) To “produce” or to “identify and produce,” shall mean that Company shall produce each document or other requested tangible thing. For each tangible thing which Company contends is privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privilege or other grounds for exclusion.
- (h) The terms “Party or Parties” shall mean any organization, person, corporation, entity, etc., which intervened in the above-captioned proceeding and shall further include the Commission Staff.
- (i) “Incentive” means any:
 - (1) tax credit, rebate, discount or deferral;
 - (2) waived fees or charges;
 - (3) contribution to aid in construction;
 - (4) payment by cash, wire or other means;
 - (5) deferred or waived liability or obligation; or
 - (6) other type of financial consideration, assistance or subsidy.

Respectfully submitted,



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*Counsel for East Kentucky Power
Cooperative, Inc.*

1. Please refer to the Kelly Testimony, page 3. Prior to filing her direct testimony:
 - a. Describe the research performed by Ms. Kelly to establish her familiarity with the John Sherman Cooper Generating Station (“Cooper Station”). Include a listing of all source documents utilized for this research.
 - b. Provide copies of every analysis, study, and evaluation work product prepared by Ms. Kelly that she used in her determination of the used and usefulness of the Cooper Station. Include all assumptions and supporting documentation utilized in the analysis, study, or evaluation. If no analysis, study, or evaluation was prepared, so state and explain in detail why such work was not performed.
 - c. List Ms. Kelly’s professional qualifications that enabled her to perform the analysis, study, or evaluation provided in response to part (b).
 - d. In developing her conclusions about the used and usefulness of the Cooper Station, did Ms. Kelly perform or have performed a voltage support study?
 - i. If yes, provide the study, including all assumptions and supporting documentation.
 - ii. If no, explain in detail why such a study was not performed.
 - e. In developing her conclusions about the used and usefulness of the Cooper Station, did Ms. Kelly review Kentucky case law on the subject of used and useful?
 - i. If yes, provide a detailed listing of each case Ms. Kelly reviewed.
 - ii. If no, explain in detail why such a review was not undertaken.
 - f. Specifically refer to page 3, lines 3 through 7. Please identify the specific Kentucky legal authorities upon which Ms. Kelly relies to make the assertion that “[t]he used and useful doctrine is a bedrock principle of utility law....”

- ii. Based upon Ms. Kelly's knowledge and experience, please identify any and all of the benefits of maintaining the Cooper Station in its current status.
 - b. Specifically refer to lines 8 through 11. Please confirm that the U. S. Environmental Protection Agency website confirms that SO_x, NO_x, and CO₂ emissions attributed to the Cooper Station have all steadily decreased over the past ten years.
- 4. Please refer to the Kelly Testimony, page 4, line 16 through page 5, line 3.
 - a. Please state whether Ms. Kelly is offering an expert opinion on this subject.
 - b. Please identify the date, time, location, parties involved, and substance of any communications between Ms. Kelly and any representative of PJM Interconnection, LLC regarding the Cooper Station.
- 5. Please refer to the Kelly Testimony, page 5, lines 6 through 14.
 - a. Please identify each and every "sporadic benefit" of the Cooper Station that is known to Ms. Kelly.
 - b. Please provide Ms. Kelly's calculations and analysis, along with all input data and workpapers, regarding:
 - i. The net value of the Cooper Station.
 - ii. The true and complete cost of replacing the Cooper Station with "other generators."
 - iii. The true and complete cost of replacing the Cooper Station with "the PJM Market."
- 6. Please refer to the Kelly Testimony, page 5, lines 18 through 20.

- a. Please provide the analysis utilized by Ms. Kelly to determine that a 90% reduction of the Cooper Station costs was fair, just, and reasonable. Include all workpapers, assumptions, and supporting documentation.
 - b. If the Commission were to accept the recommendation to reduce EKPC's recovery of the costs associated with the Cooper Station by 90%, what impact would that have upon EKPC's margins?
7. Please refer to the Kelly Testimony, page 5, line 22 through page 6, line 5.
 - a. Please confirm that if premature retirement of the Cooper Station resulted in a stranded asset for ratemaking purposes, EKPC's owner-member cooperatives would be required to pay for both the stranded asset and the cost of replacement energy, capacity, and ancillary services for some period of time.
 - b. Has Ms. Kelly determined what the impact on the bills of AppHarvest would be if EKPC's owner-member cooperatives and their customers were required to pay for both a Cooper Station stranded asset and the cost of replacement energy, capacity, and ancillary services? If yes, what would that bill impact be? If no, explain why Ms. Kelly has not made that determination.
 - c. Please provide Ms. Kelly's calculations and analysis, along with all input data and workpapers, upon which she relied to assert that "these costs would *likely* be outweighed by the benefits of the retirement."
8. Please refer to the Kelly Testimony, page 7, lines 8 through 12, where Ms. Kelly refers to and attempts to summarize the Commission's June 6, 2017 Order in Case No. 2017-00129.
 - a. Indicate whether Ms. Kelly read EKPC's application in Case No. 2017-00129 when preparing this section of her testimony.

b. Please confirm that the June 6, 2017 Order in Case No. 2017-00129 states:

Significantly, the Kentucky General Assembly has not enacted any statute that allows retail electric customers to choose their generation supplier or to participate in any fashion in wholesale electric markets. Thus, there is no competition in Kentucky's electric supply market, and it remains fully regulated.

c. Please state whether Ms. Kelly believes the Commission has the authority to act inconsistently with a state statute.

9. Please refer to the Kelly Testimony, page 9, lines 5 through 10. Confirm that the restriction on Energy Efficiency Resource's participation in PJM's capacity market results from the application of Kentucky law and Commission decisions rather than a prohibition sought by EKPC.

10. Please refer to the Kelly Testimony, page 9, lines 13 through 18. Concerning EKPC's Commercial and Industrial Advanced Lighting Program that was discontinued effective March 1, 2019,

a. Was Ms. Kelly aware that to be eligible for this program, the customer had to have been in operation for at least two years prior to January 1, 2011?

b. Was Ms. Kelly aware that the incentive paid to the retail customer was \$213 for each kW of lighting load reduction and EKPC would further reimburse the owner-member cooperative an additional \$320 for each kW of lighting load reduction to compensate for lost revenues?

c. Was Ms. Kelly aware that the incentives were limited, with total incentives for commercial customers limited to \$15,000 per upgrade and the total incentives for industrial customers limited to \$30,000 per upgrade, and the total incentive was

defined as the total of rebates to retail customers and the owner-member cooperatives?

- d. Based on the tariff requirements, confirm that had this program still been in effect, AppHarvest would not have qualified for the program due to the fact it was not in operation for at least two years prior to January 1, 2011.
 - e. Based on the tariff provisions, confirm that had this program still been in effect and if AppHarvest had been able to participate, the maximum benefit to AppHarvest would have been limited to an approximate reduction in lighting load of 56 kW or approximately \$12,000.
11. Please refer to the Kelly Testimony, page 10, lines 17 through 20. For the AppHarvest Morehead facility:
- a. Please indicate whether the AppHarvest Morehead facility could have utilized all LED lighting. If it could not, what portion of the total lighting needs would have been covered by non-LED alternatives?
 - b. Please provide the total number of LED lights installed;
 - c. Please provide the total number of high-pressure sodium lights installed;
 - d. Please provide the cost of the installed LED lights.
 - e. Please provide the cost of the installed high-pressure sodium lights.
 - f. Was a cost benefit analysis prepared when AppHarvest was deciding on whether to install all LED lights in the greenhouse facility? Did that cost benefit analysis include a recognition of potential savings in electricity costs? If no formal cost benefit analysis was performed, explain in detail why not.

12. Please refer to the Kelly Testimony, page 11, lines 10 and 11. Concerning Ms. Kelly's recommendation that EKPC implement an incentive program for energy efficient commercial and industrial lighting:

- a. Is Ms. Kelly advocating that an incentive program for energy efficient commercial and industrial lighting should be implemented regardless of the cost?
- b. Was Ms. Kelly aware that such a program would need to be established for both EKPC and EKPC's owner-member cooperatives?
- c. Was Ms. Kelly aware that such a program requires a Commission-approved tariff?
- d. Was Ms. Kelly aware that the proposed program would have to "pass" a standard demand-side management cost-benefit test?

13. Please refer to the Direct Testimony of Suedeem G. Kelly in Case No. 2021-00109 ("Kelly 109 Testimony"), the Fleming-Mason Energy Cooperative, Inc. ("Fleming-Mason") pass-through rate case, specifically pages 8 and 9. Concerning Fleming-Mason's and EKPC's Economic Development Rider ("EDR"):

- a. In preparing her testimony on pages 8 and 9, did Ms. Kelly review the following documents:
 - i. The Commission's September 24, 1990 Order in Administrative Case No. 327;
 - ii. EKPC's Rate EDR tariff; and
 - iii. Fleming-Mason's Section EDR tariff.
- b. Confirm that the EKPC and Fleming-Mason EDR tariffs require the retail customer to agree to maintain a minimum load factor of 60% during the majority of the months in the discount period.

- c. Confirm that the EKPC and Fleming-Mason EDR tariffs require the retail customer desiring service under the EDR to submit an application for that service.
 - d. Was Ms. Kelly aware that the first two retail customers to take service under EKPC's and an owner-member cooperative's EDR tariff were a commercial grocery store and a warehouse operation?
14. Please provide the scope of work or similar description of Ms. Kelly's agreement to provide services to AppHarvest Morehead Farm, LLC, AppHarvest, Inc. or any affiliate thereof.
15. For AppHarvest Morehead, please provide its:
- a. NAICS classification(s); and
 - b. SIC classification(s).
16. Please provide copies of any prospectus, 10-Ks, or 10-Qs that have been filed by AppHarvest, Inc. with the U. S. Securities and Exchange Commission for the calendar years 2018, 2019, 2020, and 2021.
17. Please state whether Ms. Kelly has been involved in contract negotiations with EKPC for the purchase of power by AppHarvest Berea Farm, LLC, AppHarvest Richmond Farm, LLC or any additional affiliate of AppHarvest Morehead Farm, LLC.