

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 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)	
)	

**APPHARVEST MOREHEAD FARM, LLC'S RESPONSES TO EKPC'S REQUESTS
FOR INFORMATION NOS. 1-17**

REQUEST NO. 1:

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....”

RESPONSE TO REQUEST NO. 1:

- a. **Ms. Kelly reviewed numerous sources to familiarize herself with the John Sherman Cooper Generating Station (“Cooper Station”). These include, but are not limited to the following:**
 - **EKPC’s Rural Utility Service (“RUS”) Form 12s, provided by EKPC in Response to the AG Nucor Initial Request for Information, Request 40.**
 - **EKPC’s Application for General Adjustment of Rates and Testimony of Anthony Campbell (EKPC Ex. 11), Case No. 2021-00103 (Apr. 1, 2021).**
 - **EKPC’s 2019 Integrated Resource Plan, Case No. 2019-00096.**
 - **EKPC’s Application for Issuance of a Certificate of Public Convenience and Necessity for Alteration of Certain Equipment at Cooper Station, Case No. 2013-00259 (Aug. 21, 2013).**

- **Order on EKPC’s Application for Issuance of a Certificate of Public Convenience and Necessity for Alteration of Certain Equipment and Cooper Station, Case No. 2013-00259 (Feb. 20, 2014).**
 - **EKPC Website, Generation, <https://www.ekpc.coop/generation-making-power>.**
 - **Environmental Protection Agency, Power Plant Data Viewer, <https://www.epa.gov/airmarkets/power-plant-data-viewer>.**
 - **Kentucky Department for Environmental Protection, Issued Approvals, Cooper Station.**
- b. **Ms. Kelly relied on EKPC’s data provided in its RUS Form 12s. Apart from calculating monthly usage, Ms. Kelly was able to rely on the data provided by EKPC, as no further analysis was necessary.**
- c. **Ms. Kelly’s professional qualifications detailing her extensive experience in the energy and utility industry are provided in her testimony. See S. Kelly Direct Testimony (July 1, 2021) (“Kelly Direct”), at 1:8-2:2 and Attachment SGK-1. Those qualifications were more than adequate for Ms. Kelly to conduct her review.**
- d. **Ms. Kelly did not perform a voltage support study. No such study was necessary in view of the plant’s idle or near-idle state.**
- e. **The conclusions in Ms. Kelly’s direct testimony are not—and are not intended to be—legal conclusions. Nevertheless, Ms. Kelly reviewed Kentucky case law to the extent that it was necessary to ensure that Kentucky follows the general principles of the used and useful doctrine, which it does. Cases reviewed include, but are not limited to:**
- ***In the Matter of: Application of Big Rivers Elec. Corp. for an Adjustment of Rates*, No. 2012-00535 (Ky. Pub. Serv. Comm’n Oct. 29, 2013).**
 - ***Nat’l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503 (Ky. Ct. App. 1990).**
- f. **Ms. Kelly based her description of the used and useful doctrine as a “bedrock principle of utility law” upon her own judgement and experience. However, the United States Court of Appeals for the District of Columbia Circuit referred to the used and useful doctrine as such in *Kentucky Utilities Co. v. FERC*, 760 F.2d 1321, 1324 n.4 (D.C. Cir. 1985).**

Witness: Sudeen G. Kelly

REQUEST NO. 2:

2. Concerning Ms. Kelly's previous experience discussing the used and useful doctrine,
 - a. On page 1 of the Kelly Testimony it is stated that Ms. Kelly personally authored 100 separate statements while at the FERC. Indicate how many of those statements concerned a determination of the used and usefulness of an asset. Provide copies of each responsive statement.
 - b. Please refer to Attachment SGK-1 of the Kelly Testimony, page 4. Do any of the listed publications within the last five years include a discussion by Ms. Kelly of the application of the used and useful doctrine? If yes, provide the applicable sections of the publications, keeping the applicable sections in context.
 - c. Please refer to Attachment SGK-1 of the Kelly Testimony, pages 4 and 5. Do any of the listed sworn testimonies include a discussion by Ms. Kelly of the application of the used and useful doctrine? If yes, provide the applicable sections of the sworn testimony, keeping the applicable sections in context.

RESPONSE TO REQUEST NO. 2:

- a. **AppHarvest objects to this Data Request as seeking publicly available information that is equally accessible to EKPC. Subject to and without waiver of the foregoing, all separate statements authored by Ms. Kelly while she was a commissioner on the Federal Energy Regulatory Commission—and all Commission decisions that she participated in—are publicly available, and can be accessed at <https://elibrary.ferc.gov>.**
- b. **AppHarvest objects to this Data Request as seeking publicly available information that is equally accessible to EKPC. Subject to and without waiver of the foregoing, each of the publications listed in Attachment SGK-1 that Ms. Kelly authored or contributed to in the last five years is publicly accessible.**
- c. **Ms. Kelly did not discuss the used and useful doctrine in the testimonies listed in Attachment SGK-1.**

Witness: Sudeen G. Kelly

REQUEST NO. 3:

3. Please refer to the Kelly Testimony, page 4.
 - a. Specifically refer to lines 3 through 6.
 - i. Please define and describe what is meant by the phrase “environmental effects.”
 - 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.

RESPONSE TO REQUEST NO. 3:

- a.i. The phrase “environmental effects” used in Ms. Kelly’s testimony is clear, unambiguous, and speaks for itself.**
- a.ii. AppHarvest refers to EKPC’s use of Cooper Station to provide energy, capacity, and ancillary services, as provided in its RUS Form 12s, and in Mr. Campbell’s direct testimony in this proceeding (EKPC Ex. 11).**
- b. AppHarvest objects to this Data Request as seeking publicly available information that is equally accessible to EKPC. The Environmental Protection Agency’s website is publicly available, and EKPC can enter any data from that website into the record as necessary and relevant at the appropriate time. Subject to and without waiver of the foregoing, AppHarvest notes that over recent years, “emissions attributed to the Cooper Station have [] steadily decreased,” which is expected as Cooper Station has been reduced to an idle or near-idle state.**

Witness: Sudeen G. Kelly

REQUEST NO. 4:

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.

RESPONSE TO REQUEST NO. 4:

- a. **Ms. Kelly is offering an expert opinion as to whether Cooper Station is used and useful.**
- b. **Ms. Kelly did not discuss the subject of her testimony with any representative of PJM.**

Witness: **Suedeem G. Kelly**

REQUEST NO. 5:

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.”

RESPONSE TO REQUEST NO. 5:

- a. **“Sporadic benefit” refers to the plant’s occasional supply of energy to the electric system, including as referenced in Mr. Campbell’s testimony (EKPC Ex. 11).**
- b.i-iii. **Ms. Kelly did not perform these calculations. In her testimony, Ms. Kelly noted that in 2020, EKPC operated Cooper Station at a Plant Factor of just over 6%. In 2019, EKPC operated Cooper Station at a Plant Factor of only about 7%.**

Witness: **Sudeen G. Kelly**

REQUEST NO. 6:

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?

RESPONSE TO REQUEST NO. 6:

- a. **Ms. Kelly's conclusion that the Commission should reduce EKPC's cost recovery for Cooper Station by at least 90% is based upon EKPC's data in its RUS Form 12s showing that it has used Cooper Station with a Plant Factor of just over 7% and 6% for each 2019 and 2020, respectively. Because Ms. Kelly and AppHarvest lack access to key information, Ms. Kelly rendered only an approximation based on Cooper Station's Plant Factor.**
- b. **Ms. Kelly did not perform this calculation. However, Ms. Kelly noted in her testimony that in order to protect EKPC's ratepayers, it would be reasonable for the Commission to allow EKPC to recover its depreciation and costs of capital through other means. See Kelly Direct, 6:2-5.**

Witness: Sudeen G. Kelly

REQUEST NO. 7:

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."

RESPONSE TO REQUEST NO. 7:

- a. **AppHarvest objects to this Data Request because it calls for a legal conclusion. Subject to and without waiver of the foregoing, AppHarvest notes that Ms. Kelly concluded that it would be reasonable for the Commission to allow EKPC to be able to recover its depreciation and costs of capital associated with Cooper Station. See Kelly Direct, 6:2-5.**
- b. **Ms. Kelly did not perform this calculation. AppHarvest notes that Ms. Kelly concluded that it would be reasonable for the Commission to allow EKPC to be able to recover its depreciation and costs of capital associated with Cooper Station. See Kelly Direct, 6:2-5.**
- c. **Ms. Kelly's assessment was based upon her longstanding experience analyzing similarly situated facilities and EKPC's data provided in its RUS Form 12s showing that Cooper Station has been maintained in an idle or near-idle state.**

Witness: Sudeen G. Kelly

REQUEST NO. 8:

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.

RESPONSE TO REQUEST NO. 8:

- a. **Ms. Kelly reviewed EKPC's application in Case No. 2017-00129 in preparing her testimony.**
- b. **AppHarvest objects to this Data Request as seeking publicly available information that is equally accessible to EKPC. Subject to and without waiver of the foregoing, the Commission's June 6, 2017 Order in Case No. 2017-00129 is publicly available and speaks for itself.**
- c. **AppHarvest objects to this Data Request as calling for a legal conclusion. Subject to and without waiver of the foregoing, AppHarvest states that it will address EKPC's ability to permit customers to participate in wholesale markets, specifically with respect to energy efficiency resources, in its post-hearing briefs.**

Witness: Sudeen G. Kelly

REQUEST NO. 9:

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.

RESPONSE TO REQUEST NO. 9:

AppHarvest objects to this Data Request as calling for a legal conclusion. Subject to and without waiver of the foregoing, AppHarvest states that it will address EKPC's ability to permit customers to participate in wholesale markets, specifically with respect to energy efficiency resources, in its post-hearing briefs.

Witness: Suedeem G. Kelly

REQUEST NO. 10:

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.

RESPONSE TO REQUEST NO. 10:

AppHarvest objects to these Data Requests because they are irrelevant and unlikely to yield admissible information. Ms. Kelly did not advocate for the wholesale reinstatement of EKPC's prior Industrial and Advanced Lighting Program, which was discontinued on March 1, 2019. See Kelly Direct, 11:10-11. Rather, she proposed that the Commission should adopt a "similar" program, *i.e.*, one that provides industrial and commercial customers with incentives to purchase and install energy efficient lighting products. The specific contours of such a program would need to be developed at a later time in cooperation with all stakeholders.

Witness: Sudeen G. Kelly

REQUEST NO. 11:

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.

RESPONSE TO REQUEST NO. 11:

- a. **The AppHarvest Morehead facility could have utilized all LED lighting.**
- b. **15,300**
- c. **15,300**
- d. **\$15.46 million**
- e. **\$7.38 million**
- f. **AppHarvest conducted a cost-benefit analysis of installing all LED lighting, which reviewed the higher upfront costs, energy savings, and potential impact on production levels. AppHarvest decided to limit LED lights to 50%, in part, because the higher capital costs would have been difficult to absorb in its budget.**

Witness: Jackie Roberts

REQUEST NO. 12:

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?

RESPONSE TO REQUEST NO. 12:

- a. No.
- b. Ms. Kelly was aware that EKPC and its owner-member cooperatives would need to coordinate such a program.
- c. Yes.
- d. Ms. Kelly was aware that an incentive program should prove cost effective.

Witness: Sudeen G. Kelly

REQUEST NO. 13:

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?

RESPONSE TO REQUEST NO. 13:

a.i. In preparing her direct testimony in Case No. 2021-00109 (pages 8-9), while Ms. Kelly did not originally review the Commission’s September 24, 1990 Order in Administrative Case No. 327 directly, she reviewed more recent KPSC orders evaluating proposed EDRs in light of the guidelines set forth in Administrative Case No. 327, including:

- *In the Matter of Elec. Joint Application of E. Kentucky Power Coop., Inc. & Inter-Cty. Energy Coop. Corp. for Approval of an Indus. Power Agreement with Economic Development Rider & Renewable Energy Purchases, Case No. 2020-00193 (Ky. Pub. Serv. Comm’n Nov. 16, 2020);*
- *In the Matter of Application of East Kentucky Power Cooperative, Inc. for Approval of an Industrial Power Agreement with Economic Development Rider, Case No. 2016-00316 (Ky. Pub. Serv. Comm’n Nov. 21, 2016);*
- *In the Matter of Application of Kentucky Power Company for (1) Approval of an Economic Development Rider; (2) for Any Required Deviation from the Commission’s Order in Administrative Case No. 327; and (3) All Other Required Approvals and Relief, Case No. 2014-00336 (Ky. Pub. Serv. Comm’n Mar. 4, 2015).*

Having subsequently reviewed Administrative Case No. 327, Ms. Kelly did not change any of the opinions in her direct testimony.

a.ii. Yes

a.iii. Yes

b. Confirmed.

c. Confirmed.

d. No. However, Ms. Kelly maintains that AppHarvest's existing EDR contract, by virtue of its load factor requirement, is not the best-suited EDR for AppHarvest and other agricultural technology customers.

***Witness:* Sudeen G. Kelly**

REQUEST NO. 14:

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.

RESPONSE TO REQUEST NO. 14:

Ms. Kelly was retained by Sturgill, Turner, Barker & Moloney, PLLC to analyze EKPC's rate filing in Case No. 2021-00103 and Fleming-Mason Energy Cooperative Inc.'s rate filing in Case No. 2021-00109.

Witness: **Sudeen G. Kelly**

REQUEST NO. 15:

15. For AppHarvest Morehead, please provide its:

- a. NAICS classification(s); and
- b. SIC classification(s).

RESPONSE TO REQUEST NO. 15:

- a. **111000 Crop Production (including greenhouse and floriculture)**
- b. **0100 Agricultural Production – Crops**

Witness: Jackie Roberts

REQUEST NO. 16:

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.

RESPONSE TO REQUEST NO. 16:

AppHarvest objects to this Data Request as seeking publicly available information that is equally accessible to EKPC. Subject to and without waiver of the foregoing, AppHarvest responds that these documents can be accessed through the U.S. Securities and Exchange Commission's website, <https://www.sec.gov/edgar/searchedgar/companysearch.html>

Witness: Jackie Roberts

REQUEST NO. 17:

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.

RESPONSE TO REQUEST NO. 17:

AppHarvest objects to this Data Request as irrelevant to Ms. Kelly's testimony. Any prior representation of AppHarvest or its affiliates, relating to the purchase of power, is of no consequence to the subject of Ms. Kelly's testimony. Accordingly, AppHarvest will not respond to this Data Request.