

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTONIC APPLICATION OF FLEMING-MASON ENERGY) CASE NO. 2021-00109
COOPERATIVE, INC'S PASS-THROUGH OF EAST KENTUCKY)
POWER COOPERATIVE, INC'S WHOLESALE RATE)
ADJUSTMENT)

APPHARVEST MOREHEAD FARM, LLC's
MOTION FOR CONFIDENTIAL TREATMENT

AppHarvest Morehead Farm, LLC (AppHarvest Morehead), by counsel and pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, respectfully moves for an order granting confidential treatment for certain information contained in its brief and for which Fleming-Mason Energy Cooperative, Inc. (Fleming-Mason) has previously sought confidential treatment.

1. In response to the Commission Staff's Second Request for Information, Fleming-Mason provided the monthly energy usage and revenue for AppHarvest Morehead in conjunction with a Motion for Confidential Treatment on June 23, 2021.

2. In its Motion for Confidential Treatment, Fleming-Mason stated, "The Confidential Information contains sensitive information that describes the customer's unique usage and associated revenue. The Confidential Information is commercially sensitive and proprietary, is retained by Fleming-Mason on a 'need-to-know' basis, and is not publicly available. Moreover, it is well-understood that individual customers have a reasonable expectation of privacy with regard to their unique transactions with a regulated utility."

3. AppHarvest Morehead likewise agrees with Fleming-Mason that AppHarvest Morehead's unique usage and expenses are sensitive information that AppHarvest Morehead maintains as proprietary and not available to the public. In addition, the Commission has recognized that individual customers have

a privacy interest in their transactions with a regulated utility.¹

4. In its brief, AppHarvest Morehead refers to this Confidential Information. Accordingly, the Confidential Information included in AppHarvest Morehead's brief is being tendered in redacted form in the public version of AppHarvest Morehead's filing and in an unredacted form filed under seal herewith.

5. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. See KRS 61.878(1)(c). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties. Moreover, the Kentucky Supreme Court has stated, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

6. In accordance with the provisions of 807 KAR 5:001, Section 13(3), AppHarvest Morehead respectfully requests that the Confidential Information be withheld from public disclosure for an indefinite period of time.

WHEREFORE, AppHarvest Morehead respectfully requests confidential treatment of its usage and customer-expense information contained in its brief.

Respectfully submitted,

/s/ James W. Gardner

STURGILL, TURNER, BARKER & MOLONEY, PLLC

James W. Gardner

M. Todd Osterloh

333 W. Vine Street, Suite 1500

Lexington, Kentucky 40507

Telephone No.: (859) 255-8581

Facsimile No.: (859) 231-0851

jgardner@sturgillturner.com

tosterloh@sturgillturner.com

Attorneys for AppHarvest Morehead

¹ See 807 KAR 5:001, Section 4(10); *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief*, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018); *In the Matter of the Proposed Revision of Rules Regarding the Provision of Wholesale Water Service by the City of Versailles to Northeast Woodford Water District*, Case No. 2011-00419 (Ky. P.S.C. Mar. 14, 2012) (commercial account information).