

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)	

ORDER

On May 7, 2021, East Kentucky Power Cooperative, Inc. (EKPC) filed, pursuant to KRS 278.400, a motion for rehearing of the Commission's April 27, 2021 Order granting AppHarvest Morehead Farm, LLC's (AppHarvest Morehead) request to intervene in this proceeding. On May 14, 2021, AppHarvest Morehead filed a response to EKPC's motion for rehearing. On May 17, 2021, EKPC filed a reply in support of its motion for rehearing. The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) and Nucor Steel Gallatin (Nucor), who are intervenors in this proceeding, did not file a response to EKPC's motion.

ARGUMENTS

EKPC Motion for Rehearing

In its motion, EKPC argued that the Commission should grant rehearing and deny AppHarvest Morehead's request to intervene because AppHarvest Morehead failed to satisfy the legal standard for permissive intervention and because AppHarvest Morehead had an improper purpose for intervening.

EKPC argued that AppHarvest Morehead failed to satisfy the criteria for intervention because it failed to state an interest other than a generalized interest in rates. EKPC explained that AppHarvest Morehead takes service under a special contract. EKPC contended that the contract is inherently designed to satisfy the particular needs of AppHarvest Morehead without harming the general interests of EKPC's Owner-Members and their retail customers. EKPC further contended that, because AppHarvest Morehead takes service under a contract tailored for its needs, AppHarvest Morehead does not have a special interest in general tariff rates. Additionally, EKPC maintained that the special contract insulates AppHarvest Morehead from a general rate increase.

EKPC asserted that AppHarvest Morehead requested to intervene in this proceeding to gain a commercial advantage over EKPC. EKPC explained that two affiliates (Affiliates) of AppHarvest Morehead are in protracted contract negotiations with EKPC and Blue Grass Energy Cooperative over the terms of industrial power agreements for electric service. EKPC argued that AppHarvest Morehead omitted a material fact when it omitted this information because the contract negotiations with the Affiliates involve the same two issues that AppHarvest Morehead cited as special interests to justify intervention: (1) rates paid by a large energy-intensive customer; and (2) a two-level contract demand reflecting seasonal impact of energy use. EKPC argued that AppHarvest Morehead will have access to EKPC's confidential information through discovery and that the information will be utilized by the Affiliates to EKPC's disadvantage. Because the Affiliates have common ownership and management, and common legal representation with AppHarvest Morehead, EKPC claimed that sharing the confidential information with AppHarvest Morehead equates to sharing the confidential information

with the Affiliates. EKPC argued that the Affiliates will use the confidential information as leverage in the contract negotiations to gain a commercial advantage over EKPC regarding the power agreement terms.

AppHarvest Morehead Response

Regarding EKPC's contention that AppHarvest Morehead failed to satisfy the regulatory standard for intervention, AppHarvest Morehead argued that Nucor's motion was substantively the same as AppHarvest Morehead's, and that EKPC did not object to Nucor's motion. AppHarvest Morehead further argued that its contract with EKPC is unique, which gives AppHarvest Morehead a special interest, and that the special contract does not insulate AppHarvest Morehead from future rate adjustments in this proceeding.

AppHarvest Morehead disputed EKPC's allegation that AppHarvest Morehead had an improper purpose in intervening in this proceeding. First, AppHarvest Morehead asserted that, in its request to intervene, it stated that two Affiliates were under construction in EKPC's territory, and that there was a "logical" inference that the Affiliates would be engaged in contract negotiations with EKPC.¹ Second, AppHarvest Morehead argued that it was impossible for the Affiliates to use information gleaned in this case to negotiate contract terms that are unfair to EKPC because the Commission has to approve the special contract and, if the terms are not fair, just and reasonable, the Commission would not approve the contract. Finally, AppHarvest Morehead argued that EKPC failed to identify the type of confidential information that would result in an unfair competitive advantage.

¹ AppHarvest Morehead Response to EKPC's Motion for Rehearing (filed May 14, 2021) at 2.

EKPC's Reply in Support of Motion for Rehearing

In reply, EKPC reiterated that AppHarvest Morehead failed to state a special interest, arguing that there is nothing in this general rate proceeding that will uniquely impact AppHarvest Morehead. Further, EKPC asserted that AppHarvest Morehead's participation will unduly complicate the case and be disruptive. In support of this claim, EKPC cited recent data requests propounded to EKPC by AppHarvest Morehead that, according to EKPC, are unrelated to AppHarvest Morehead's stated special interests and are not relevant to a general rate case based on a historical test year.

EKPC next underscored its assertion that AppHarvest Morehead intervened in this proceeding to gain a commercial advantage for its Affiliates. EKPC argued that AppHarvest Morehead was not transparent regarding its Affiliates and that it failed to explicitly state that two Affiliates are engaged in contract negotiations with EKPC or that the matters at issue in the contract negotiations are the same as AppHarvest Morehead's stated interest in EKPC's wholesale rate case. As examples of potential commercial advantage to AppHarvest Morehead, EKPC pointed to confidential information filed in the case that includes retail customers' names and usage, and a proposal to require a performance assurance for customers who obtain service under an economic development rate (EDR) tariff but fail to purchase power over the full term of the incentive agreement. EKPC argued that the customer data contains commercially sensitive information that would benefit the Affiliates in contract negotiations with EKPC. EKPC alleged that due to AppHarvest Morehead's intervention, the Affiliates have the ability to influence this proceeding so that no changes are made to the EDR tariff regarding performance assurance.

DISCUSSION AND FINDINGS

Based on the motion for rehearing, response, reply, case record, and being otherwise sufficiently advised, the Commission finds that EKPC's motion should be denied for the reasons discussed below. The Commission takes note of EKPC's concerns regarding confidential information and potential disruptions, which are also discussed below. The parties are on notice that the Commission strongly disfavors any effort to insert into this proceeding any issues pertaining to a business transaction that is superfluous to a ratemaking proceeding.

The Commission is not persuaded by EKPC's arguments that AppHarvest Morehead did not meet its burden of proof by satisfying the legal standards set forth in 807 KAR 5:001, Section 4(11). Despite EKPC's argument to the contrary, AppHarvest Morehead provided information in its request to intervene beyond a mere recitation of the quantity of utility service consumed or a general statement regarding impact of a possible modification of rates. The Commission weighed the specific information presented and determined that AppHarvest Morehead established that it had a special interest in the case not otherwise adequately represented as a large-scale controlled indoor farm with 350 employees that, as a large energy-intensive enterprise takes service under a special contract that includes an EDR, interruptible service, and a two-level contract demand that reflects the seasonal impact on its use of energy.

The Commission cautions AppHarvest Morehead that it must pursue its case in accordance with its own stated interests, and not the interests of its Affiliates. Further, the purpose of this proceeding is to determine whether EKPC's proposed rate adjustment is fair, just and reasonable. In other words, the scope of AppHarvest Morehead's

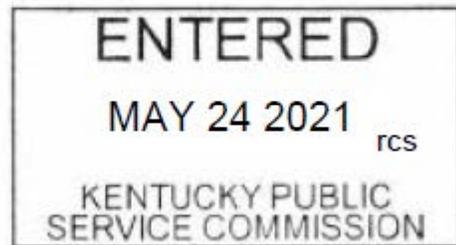
participation in the case should be consistent with the special interests claimed by AppHarvest Morehead and relevant to issues raised in this proceeding.

We now turn to the allegations of commercial disadvantage. As a vertically-integrated jurisdiction with established service territories for all retail electric utilities, each electric utility has an obligation to provide retail service to customers. Thus, if EKPC is unable to negotiate reasonable contract terms with the Affiliates, then the Affiliates will take service at the EKPC Owner-Member's tariff rates instead of the contract rate. Regarding EKPC's assertions regarding undue leverage, if EKPC were to withdraw a proposal already filed in this case, such as the performance assurance provision in the EDR, the parties should be aware that the Commission would closely scrutinize that decision.

Regarding confidential information, EKPC will have to enter into a non-disclosure agreement with AppHarvest Morehead. If the parties are unable to agree on reasonable terms that are consistent with 807 KAR 5:001, Section 11, or KRS 61.878, then the parties can bring the matter to the Commission for a ruling. Similarly, EKPC retains the right to object to certain requests for confidential information from AppHarvest Morehead, or any party. If the parties cannot come to a resolution, then the Commission will rule on the matter. Although the Commission stands ready to rule on such disputes if necessary, the parties are reminded that AppHarvest Morehead affirmed that it would not unnecessarily disrupt or complicate this proceeding when it requested to intervene. We expect all parties to honor this principle.

IT IS THEREFORE ORDERED that EKPC's motion for rehearing is denied.

By the Commission



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