

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On April 30, 2021, AppHarvest Morehead Farm, LLC (AppHarvest Morehead) filed a motion, pursuant to 807 KAR 5:001, Section 4(11), requesting to intervene in this proceeding. On May 7, 2021, Fleming-Mason Energy Cooperative, Inc. (Fleming-Mason Energy) filed a response in objection to AppHarvest Morehead’s motion to intervene. On May 14, 2021, AppHarvest Morehead filed a reply in support of its motion to intervene. No other party requested to intervene by the April 30, 2021 deadline to request intervention established in the April 15, 2021 procedural schedule.

ARGUMENTS

AppHarvest Morehead Motion to Intervene

AppHarvest Morehead stated that it is a large-scale controlled indoor farm with 350 employees. AppHarvest Morehead explained that it takes service from Fleming-Mason Energy as an industrial customer under an industrial power agreement with interruptible service and economic development rider.

AppHarvest asserted that it had a special interest in this proceeding related to being a large energy-intensive customers taking service under a special contract that

included a two-level contract demand that reflects the seasonal impact on the use of electricity for grow lights utilized by AppHarvest Morehead at its indoor farm. AppHarvest Morehead further asserted that no other party could adequately represent AppHarvest Morehead's interests, and that it timely filed its motion to intervene. AppHarvest stated it would play an active, constructive role that would assist the Commission in rendering a decision. Finally, AppHarvest Morehead stated that it was committed to not unduly complicate or disrupt the proceeding.

Fleming-Mason Energy Response in Opposition

In its response opposing AppHarvest Morehead's motion to intervene, Fleming-Mason Energy argued that the Commission should 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.

Fleming-Mason Energy argued that AppHarvest Morehead failed to satisfy the criteria for intervention. Fleming-Mason Energy first argued that AppHarvest Morehead merely recited a generalized statement that it would be impacted by a rate adjustment in contravention of the Commission's previous instruction that a motion to intervene must be supported by specificity regarding the movant's special interest that is not otherwise adequately represented. Fleming-Mason Energy next argued that AppHarvest Morehead takes service under a special contract based upon a template used by many other industrial customers served by East Kentucky Power Cooperative's (EKPC) Owner-Member distribution coops, and thus there was nothing special or unique about the service that AppHarvest Morehead receives from Fleming-Mason Energy. Finally,

Fleming-Mason argued that the terms of the special contract insulates AppHarvest Morehead from a general rate increase.

Referencing EKPC's motion for rehearing of an Order granting AppHarvest Morehead intervention in EKPC's wholesale rate case,¹ Fleming-Mason Energy asserted that AppHarvest Morehead requested to intervene in this proceeding to gain a commercial advantage over EKPC and another EKPC Owner-Member Blue Grass Energy Cooperative Corporation (Blue Grass Energy) in contract negotiations between two affiliates (Affiliates) of AppHarvest Morehead, EKPC and Blue Grass Energy, over the terms of industrial power agreements for electric service. Fleming-Mason Energy argued that AppHarvest Morehead will use confidential information obtained in this case and that the information will be utilized by the Affiliates to EKPC's and Blue Grass Energy's disadvantage.

AppHarvest Morehead Reply in Support of Its Motion

Regarding Fleming-Mason Energy's contention that AppHarvest Morehead failed to satisfy the regulatory standard for intervention, AppHarvest Morehead argued that a similar motion filed in another Owner-Member's rate case was substantively the same as AppHarvest Morehead's, and that the motion was granted without an objection to that motion filed by the Owner-Member. AppHarvest Morehead disputed that the terms of its contract with EKPC and Fleming-Mason Energy do not insulate AppHarvest Morehead from future rate adjustments in this proceeding.

¹ Case No. 2021-00103, *Electronic Application of East Kentucky Power Cooperative, Inc. for a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief* (filed May 7, 2021)

AppHarvest Morehead disputed Fleming-Mason Energy's allegation that AppHarvest Morehead had an improper purpose in intervening in this proceeding. First, AppHarvest Morehead argued that Fleming-Mason Energy failed to identify the type of confidential information that would result in an unfair competitive advantage. Next, AppHarvest Morehead argued that it could not use information gleaned in this case to negotiate contract terms that are unfair to EKPC or Blue Grass Energy in those negotiations 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.

DISCUSSION AND FINDINGS

As an initial matter, the legal standard for permissive intervention established in 807 KAR 5:001, Section 4(11)(a), requires the movant to demonstrate either a special interest in the proceeding that is not otherwise adequately represented in the case, or that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, the Commission finds that AppHarvest Morehead is a customer of Fleming-Mason Energy and timely filed a motion to intervene. The Commission further finds that, despite Fleming-Mason Energy's arguments to the contrary, AppHarvest Morehead met its burden of proof by satisfying the legal standards set forth in 807 KAR 5:001, Section 4(11). AppHarvest Morehead provided information in its motion 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 economic development rate, interruptible service, and a two-level contract demand that reflects the seasonal impact on its use of energy. Therefore, the Commission finds that AppHarvest Morehead's motion to intervene should be granted.

The Commission acknowledges the issues raised by Fleming-Mason Energy in this proceeding and by EKPC in Case No. 2021-00103. For that reason, the Commission cautions AppHarvest Morehead that it must pursue its case pursuant to the special interests claimed by AppHarvest Morehead and relevant to issues raised this ratemaking proceeding. Further, regarding confidential information, Fleming-Mason Energy and EKPC will have to enter into a non-disclosure agreement with AppHarvest Morehead in this case and in Case No. 2021-00103. 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, Fleming-Mason Energy retains the right to object to certain requests for confidential information from AppHarvest Morehead. 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 unduly disrupt or complicate this proceeding when it requested to intervene. We expect all parties to honor this principle

IT IS THEREFORE ORDERED that:

1. The motion of AppHarvest Morehead to intervene is granted.

2. AppHarvest Morehead shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. AppHarvest Morehead shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.

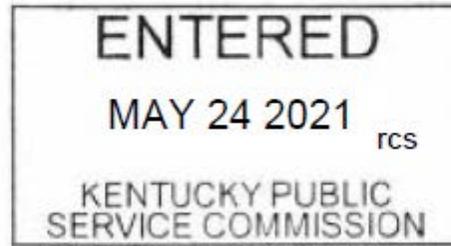
4. AppHarvest Morehead shall adhere to the procedural schedule set forth in the Commission's April 15, 2021 Order and as amended by subsequent Orders.

5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, AppHarvest Morehead shall file a written statement with the Commission that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

By the Commission



ATTEST:


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