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PSC Case No. 2013-00221

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BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP.
AND BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS AND
FOR A DECLARATORY ORDER
CASE NO. 2013-00221

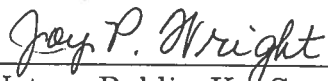
VERIFICATION

I, Robert W. Berry, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.


Robert W. Berry

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Robert W. Berry on this
the 8 day of July, 2013.



Notary Public, Ky. State at Large
My Commission Expires _____

Notary Public, Kentucky State-At-Large
Commission Expires: July 3, 2014
JD 421951

BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP.
AND BIG RIVERS ELECTRIC CORPORATION
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FOR A DECLARATORY ORDER
CASE NO. 2013-00221

VERIFICATION

I, Billie J. Richert, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.


Billie J. Richert

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Billie J. Richert on this
the 8th day of July, 2013.


Notary Public, Ky. State at Large
My Commission Expires 1-12-17

BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP.
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VERIFICATION

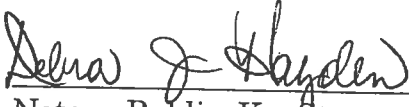
I, Gregory J. Starheim, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Gregory J. Starheim

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Gregory J. Starheim on
this the 9th day of July, 2013.



Notary Public, Ky. State at Large
My Commission Expires 5-24-15

ORIGINAL

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

**JOINT APPLICATION OF KENERGY CORP. AND)
BIG RIVERS ELECTRIC CORPORATION FOR)
APPROVAL OF CONTRACTS AND)
FOR A DECLARATORY ORDER)**

Case No. 2013-00221

**Response to the Office of the Attorney General's
Initial Request for Information
dated July 2, 2013**

FILED: July 11, 2013

ORIGINAL

**JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS AND FOR A DECLARATORY ORDER
CASE NO. 2013-00221**

**Response to the Office of the Attorney General's
Initial Request for Information
dated July 2, 2013**

July 11, 2013

1 **Item 1)** *Reference the Application and the proposed agreement(s) filed for approval.*
2 *Please provide any and all analysis performed for Big Rivers and Kenergy regarding all*
3 *costs and benefits of the proposed agreement(s).*

4
5 **Response)** Big Rivers and Kenergy negotiated and agreed upon the final form of the
6 contracts in an effort to encourage the continued operation of Century's Hawesville plant. In
7 the negotiation of these contracts, the underlying foundation of Big Rivers' and Kenergy's
8 negotiation with Century was to ensure that no additional costs were experienced by their
9 Members as a result of this transaction beyond the rate increase that is required whether or not
10 Century continues smelting operations. Both Big Rivers and Kenergy believe they have
11 accomplished the goal. Big Rivers' Members will benefit from this transaction by: 1) deferral
12 of the severance costs if the Coleman plant is required to operate under an SSR agreement, and
13 2) receipt of transmission revenue from Century if it operates at Base Load and Coleman is not
14 required to operate under an SSR agreement. Furthermore Big Rivers and Kenergy believe
15 both Big Rivers' Members and the economy of western Kentucky will benefit if the
16 Hawesville smelter remains in operation.

17 Attached is a risk analysis Big Rivers and Kenergy prepared in the course of
18 analyzing the risks involved in the proposed Century transaction. Also attached is the

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1 confidential "must run" analysis performed by Big Rivers regarding the "must run" costs of the
2 Coleman plant if it operates under a SSR agreement; this document is being provided subject
3 to a petition for confidentiality.

4

5 **Witness)** Robert W. Berry

6

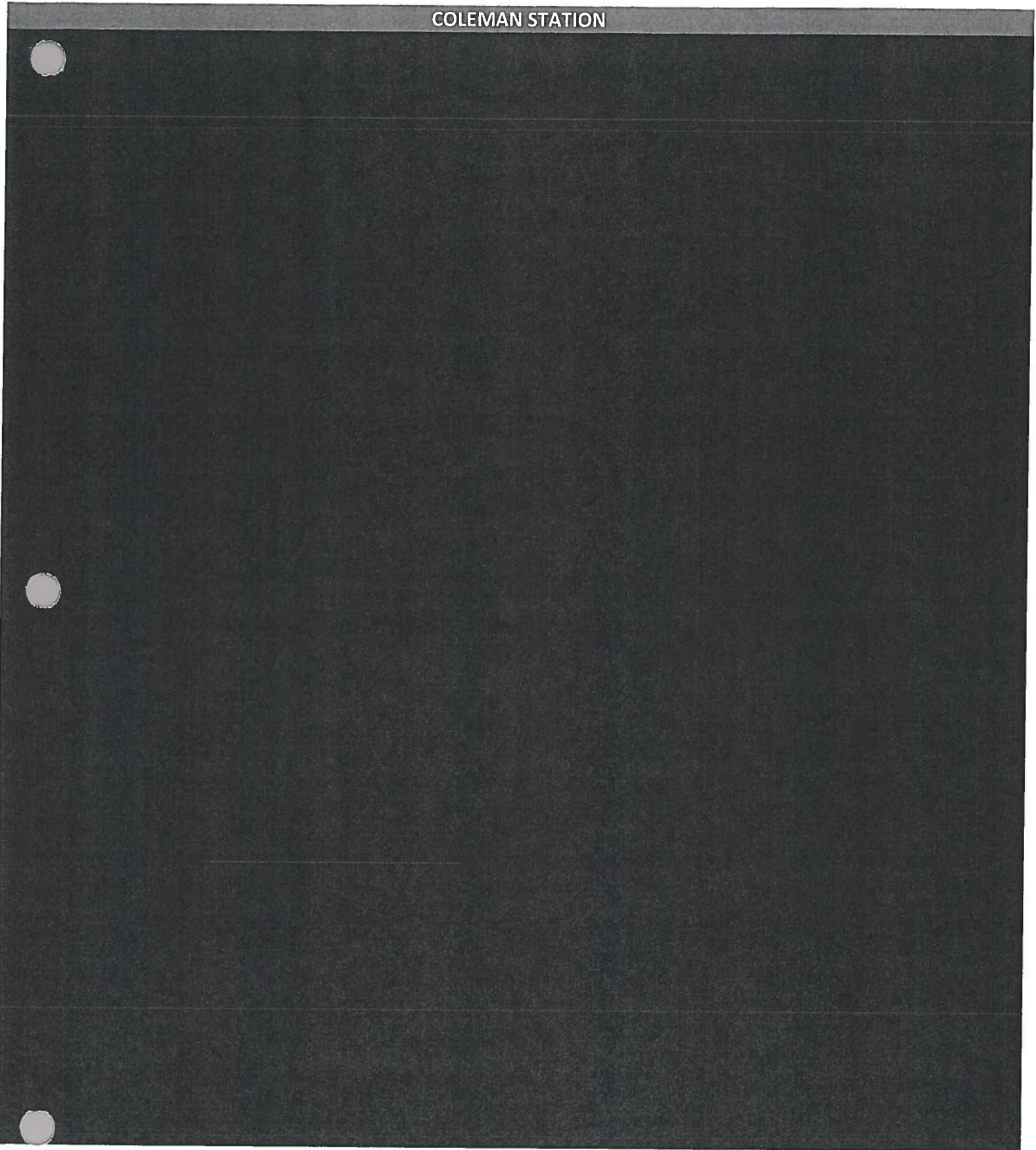
CENTURY TRANSACTION RISK ALLOCATION

Risks	Section of TS	Description
Generation Risk	See each paragraph	<ul style="list-style-type: none"> • Big Rivers is not required to operate its own generation facilities to serve Century. (III.A., IV.A) • Big Rivers may be required to operate the Coleman Generation Station for reliability purposes by MISO but has made provision for those costs as described below. (VI.B.1, Schedule I) • Century agrees it has no right to return to service from Big Rivers' generation facilities in the future. (IX.A.3, IV.O.2,)
Market Price Risks	See each paragraph	<ul style="list-style-type: none"> • Big Rivers has no obligation to supply electric and related services to Kenergy for delivery to Century unless those services are available in the MISO Market or under a bilateral contract entered into expressly for the benefit of Big Rivers. (III.A., IV.C.1, V.E.2) • Thus, any change in the market price for any electric and related services is borne by Century. (IV.C.1, V.E.1) • If the cost of operating Big Rivers' transmission system increases, Big Rivers recovers these amounts under the MISO tariff. (Per MISO tariff)
Change in Law Risk	See each paragraph	<ul style="list-style-type: none"> • If the law changes, any resulting impact to power prices is borne by Century except to the extent a Century previously has directed the market participant to enter into longer-term bilateral agreement with another entity. (III.A., IV.C.1., V.E.2.) • Century is responsible for any costs relating to environmental law or regulations associated with serving Century. Because Big Rivers is not serving Century from Big Rivers' own generation facilities, these costs are not expected to be significant. (IV.C.5, V.E.3) • Century is responsible for any resulting costs from Century's operation under the Dodd-Frank Wall Street Reform and Consumer Protection Act. This act most likely could be implicated if federal agencies regulate energy purchases from the market in currently unexpected ways. (IV.C.8, V.E.6)
Tax Risk	IV.C.12, V.E.10	<ul style="list-style-type: none"> • Century is responsible for any applicable taxes related to the delivery of electric and related services to Century. • If Century for some reason does not require power already purchased, Big Rivers will sell that power back

		into the market for Century, net any expected tax liability of Big Rivers.
RTO Risk	III.B, III.D.	<ul style="list-style-type: none"> • If Big Rivers determines that it should not be a member of MISO or any other RTO, Big Rivers may terminate its participation in MISO and join another RTO or not join any RTO. Century has limited rights to remain in MISO if Century desires but it cannot stop Big Rivers from joining whatever RTO Big Rivers deems best for its members, subject to delivery of a one-year's notice before leaving MISO.
Counterparty Risk	IV.L., IX.B.	<ul style="list-style-type: none"> • Century will not have the right to assign its interest in the transaction documents except to a successor acquiring all or substantially all of the assets or the equity of the Century entity party to the electric service agreement who agrees to assume the transaction documents.
Financial Risk	See each paragraph	<ul style="list-style-type: none"> • Century will reimburse Big Rivers for all out-of-pocket costs incurred or committed to by Big Rivers in connection with Century's operation of the Hawesville smelter. (IV.C.11, VI.B.3.) Specific examples include the following. • Century will reimburse Big Rivers for any transmission capital costs related to Century's operation to the extent Big Rivers does not recover those costs indirectly from other market participants in MISO. (VI.B.2.) • If Big Rivers is required to operate Coleman for reliability purposes, Century will pay the capital costs and other operating expenses associated with this required operation of Coleman, subject to a credit for (1) the benefit of using Big Rivers' transmission system in these circumstances, and (2) amounts other utilities pay Big Rivers for the operation of Coleman. The Direct Agreement provides that Century must pay these costs regardless of whether (a) a SSR Agreement is in effect with MISO and (b) whether Big Rivers is the Market Participant with MISO. (VI.B.1.) • To cover internal costs of Big Rivers associated with the arrangement, Century will compensate Big Rivers for a 0.25 full-time-equivalent employee to handle matters relating to the Century transaction. (V.E.8)
Century Credit Risks	See each paragraph	<ul style="list-style-type: none"> • Term sheet requires Century to post collateral in the form of (1) cash collateral, (2) a letter of credit from an A+ or better rated bank, or (3) other collateral acceptable to Big Rivers in its sole discretion. (XI.A) • Century required to post collateral in any form required by MISO. (XI.C.)

		<ul style="list-style-type: none"> • Century required to post collateral with respect to any third party bilateral contracts entered into for the benefit of Century. (XI.D.) • Century parent will guarantee all obligations of Century to any transaction documents. The guarantee will survive termination of the underlying agreements. (XI.B)
Capacitor and Protective Relays Risks	See each paragraph	<ul style="list-style-type: none"> • Century pays all costs, including any costs incurred by Big Rivers, associated with the construction, installation, ownership, operation and maintenance of the capacitor additions and protective relays Century desires to install to increase the load able to be delivered to Century without creating transmission or generation reliability issues. (VII.C., VIII.B.) • Century will indemnify Big Rivers for any risks, financial or otherwise, relating to the capacitor additions or the protective relays, including claims by others, such as a reliability authority. (VII.B., VIII.A.)
Delivery Risk	IV.N, V.K	<ul style="list-style-type: none"> • Performance by Big Rivers is excused under the arrangement if an event of force majeure (e.g., acts of nature) occurs.
Dispute Risk	XIII.A.	<ul style="list-style-type: none"> • The agreements contain provisions intended to speed resolution of disputes. • Authorized representatives of the parties must meet within 10 days of notification of a dispute. • AAA arbitration will occur if the dispute continues. Arbitration is used to speed the proceeding and reduce the costs to resolve.
Cut-Off Risk	IV.P.4	<ul style="list-style-type: none"> • Century will acknowledge that it can be cut off for failure to pay amounts owing to Big Rivers for 72 hours.

COLEMAN STATION



JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS AND FOR A DECLARATORY ORDER
CASE NO. 2013-00221

Response to the Office of the Attorney General's
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dated July 2, 2013

July 11, 2013

1 Item 2) *Reference the Application and the proposed agreements filed for approval,*
2 *and as to the same, please provide the following:*

3 a. *Provide all presentations made to the Big Rivers and Kenergy Board(s)*
4 *of Directors regarding the Application and agreement(s). Please*
5 *consider this an ongoing request for information.*

6 b. *Provide all presentations made by Big Rivers and/or Kenergy to RUS,*
7 *CFC, CoBank, or any other creditors and to the credit rating agencies*
8 *regarding the Application and agreement(s). Please consider this an*
9 *ongoing request for information.*

10

11 Response)

12 a. Please see attached the following documents that represent those
13 presentations made to the Kenergy Board by Kenergy management
14 relating to the Application and agreement(s):

15 Term Sheet Summary to Board – May 2013,

16 Management Report to Board – May 2013,

Case No. 2013-00221

Response to AG 1-2

Witnesses: Robert W. Berry (a. – *Big Rivers only*),
Gregory J. Starheim (a. and b. – *Kenergy only*), and
Billie J. Richert (b. – *Big Rivers only*)

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**JOINT APPLICATION OF KENERGY CORP. AND
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July 11, 2013

1 Management Report to Board – June 2013, and

2 Management Report to Board – July 2013.

3 Also attached is a copy of the presentation that was presented to the
4 boards of directors of Big Rivers, Jackson Purchase and Meade County.
5 This document is marked “CONFIDENTIAL,” but is no longer considered
6 confidential.

7 b. Kenergy’s creditors (lenders) include RUS, CoBank and CFC. Kenergy
8 has been providing ongoing verbal updates to its lenders about the Century
9 situation and the Century Agreements. This included a May 1, 2013
10 conference call with RUS. Big Rivers has made no presentations to its
11 creditors or any ratings agency, but has provided verbal updates to them
12 on these subjects from time to time. Big Rivers has provided a copy of the
13 Century transaction term sheet to each of the RUS, CoBank and CFC.

14

15

16

17 Witnesses) Robert W. Berry (a. – *Big Rivers only*),

Case No. 2013-00221

Response to AG 1-2

Witnesses: Robert W. Berry (a. – *Big Rivers only*),
Gregory J. Starheim (a. and b. – *Kenergy only*), and
Billie J. Richert (b. – *Big Rivers only*)

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July 11, 2013

1 **Gregory J. Starheim (a. and b. – *Kenergy only*), and**

2 **Billie J. Richert (b. – *Big Rivers only*)**

3

Case No. 2013-00221

Response to AG 1-2

**Witnesses: Robert W. Berry (a. – *Big Rivers only*),
Gregory J. Starheim (a. and b. – *Kenergy only*), and
Billie J. Richert (b. – *Big Rivers only*)**

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Century Term Sheet for Market Power

Term Sheet Summary

May 14, 2013

1. Contract Structure:

- Electric Service Agreement: Contract between Kenergy and Century for the retail sale of “market power” to Century including statement of costs that will be added to “flow through” power costs.
- Arrangement Agreement: (Sub-) Contract between Kenergy and BREC to arrange for the market power and related services while BREC is the Market Participation (in MISO).
- Direct Agreement: Contract between BREC and Century covering direct terms affecting BREC - e.g. “must run” of Coleman, transmission arrangements, capacitors and relay installation, etc.
- Parent Guarantee: Provides Century parental (corporate) guarantee for all financial and credit obligations of “Century Aluminum of Kentucky General Partnership”.
- Tax Indemnity Agreement: Agreement between Century and Kenergy which indemnifies Kenergy from any financial loss if serving Century under the contract causes Kenergy to lose its tax-exempt status.
- Capacitor & Protective Relay Agreements (2) – and related Parent Guarantee covering these agreements: Agreements between Century and BREC relating to the design and installation of capacitor banks (to ensure that Century maintains its reactive power obligations) and protective relays (to allow the MISO to quickly shed Century load as an alternative to requiring the “must run” of Coleman).

-
- Note, in parallel to above contract, Kenergy and Century to complete a standard Tariff Contract for PSC approval to cover facilities loads up to 10 MW in the event the “Market Power” contract is not completed or approved. Without the tariff contract, Kenergy will not be legally able to supply “facility-type loads.”

- #### 2. Maximum Load: Century plans to purchase maximum amount of power that can be imported to site without the Coleman Plant in operation (375 MW?). MISO requested to identify/confirm limit (potentially will curtail future economic benefit opportunity). Century also proposing to install relays that would be activated by MISO (proposed) in event of unplanned disturbance. MISO response pending.

Since installation of capacitors and relays cannot be accomplished by 8/20/13, BREC to enter into short-term (9-month) agreement, or the "SSR" agreement, with MISO for the "must run" of Coleman. SSR agreement to remain in effect until the earlier of the time capacitors and relays are placed in service or 6/1/14, whichever occurs first.

3. Power Supply: Kenergy will provide supply off the MISO Day-Ahead market with balancing off the Real-Time market. Century may also arrange for bi-lateral purchases but Kenergy retains right to approve all contracts to protect against financial and other risks.
4. Market Participation: At least initially, BREC will be the MP for Kenergy. Kenergy has right to become the MP in the future with Century consent (see below re. tax indemnification). Century may also name a MP (that complies with State law), subject to Kenergy's consent. **NEED TO MAKE SURE KENERGY PROTECTED FROM LACK OF CONSENT.**
5. MISO Node: Separate CP (commercial pricing) node to be secured specifically for Hawesville Smelter. MISO will allocate associated costs to Hawesville node.
6. Charges & Payments: Century obligated to post-credit and make payment for all costs associated with Kenergy & BREC providing market power and related services to provide the supply as well as SSR costs. BREC agreed to offset SSR costs with incremental transmission revenue it receives from Century.
7. Credit & Security: Century obligated to provide and maintain adequate credit as determined by Kenergy and BREC.
8. Liability Protection: Century to indemnify Kenergy and BREC.
9. Term: Contract to be effective from midnight on 8/29/13 to December 31, 2023 (same term as current agreement). Contract to automatically extend annually if neither party gives 1-year notice of termination.
10. Termination Rights: Century may terminate the agreement w/ 60 day notice.
11. Disputes: Binding arbitration through AAA.
12. Changes to RTO: BREC and/or Kenergy to provide 1-year notice to Century of interest/intent to leave the MISO.
13. Assignment rights: Century may not assign agreement without Kenergy & BREC consent.
14. Conditions Precedent:
 - CP Node established.
 - Reps & warranties satisfied
 - Approval of BREC Board and boards of 3 distribution co-ops
 - Agreement of MISO or SERC regarding protective relays
 - Coleman "must run" agreement with MISO – if applicable.
 - All other conditions satisfied by MISO
 - All documents executed and received by all parties.



Management Report

May 2013

ENGINEERING & OPERATIONS

POWER SUPPLY / SMELTER NEGOTIATIONS

- Century "Market Access": On 4/26, the BREC/Kenergy team reached a tentative agreement with Century on the "Market Access" Term Sheet. Terms to be reviewed with each board during May meetings for approval – BOARD AGENDA ITEM. Definitive contract documents have been drafted by Orrick and are under review now by BREC/Kenergy negotiations teams with team meeting planned for 5/13-14 to conform a draft contract that would be sent to Century on 5/15. In light of the time constraints associated with PSC and RUS approval, agreement on contract must be complete no later than late-May to ensure un-interrupted supply after 8/2013. Negotiations expected to be fairly intense over next couple (few?) weeks.



Management Report

June 2013

ENGINEERING & OPERATIONS

POWER SUPPLY / SMELTER NEGOTIATIONS

Smelter Update:

- Sebree Acquisition: Based on 5/20/13 Board approval, Kenergy and BREC has consented to the assignments of Alcan contracts to Century. Century and Alcan have announced closure of the acquisition. Negotiations for providing the Sebree "market power" supply on-hold pending completion of negotiations with Century on the Hawesville Smelter.
- Century "Market Access": High level of effort continues on conforming contract documents after reaching agreement on a non-binding Term Sheet. Kenergy Board approval pending. Details to be discussed as agenda item.



Management Report

July 2013

ENGINEERING & OPERATIONS

SMELTER UPDATE:

Century Hawesville Smelter - "Market Power Supply":

- Negotiated contract submitted to PSC for approval along with "Alternative Service Agreement" which would allow Kenergy to serve non-smelting loads at the Hawesville Smelter after 8/19 if the "Market Power Supply agreement does not go into effect. PSC has opened case and has set procedural schedule – SEE BELOW.

Century Sebree Smelter:

- Since the acquisition of the smelter by Century, no negotiations have occurred to provide "market power" to the smelter after the 1/31/14 termination date since all parties are focused on obtaining regulatory approvals for the Hawesville agreement. The only exception is the extension of the agreement to provide Alcan (now Century) up to 10 MW of "market power" from July 1st through January 31st through the termination date which has now received PSC approval – SEE BELOW. If/when the Hawesville contract is approved, a duplicate effort for Sebree is expected to occur.

FINANCE & ACCOUNTING:

LEGISLATIVE & REGULATORY AFFAIRS:

PSC – Hawesville Smelter "Market Power Supply" Contract (Case 2013-00221):

- BREC and Kenergy jointly submitted the contract documents to the PSC (as well as to RUS) for approval on an expedited basis given the short timing to the termination of the existing supply agreement to the smelter on 8/20. KIUC, the AG and the Sierra Club have intervened and have argued for a temporary approval of the contract with final ruling later to give more time for all parties to understand the intricacies of the contract and to allow more time for due process. Due to the complexities and issues that proposal would create, the PSC has announced the following expedited procedural schedule (which will run parallel to the BREC "Century" and "Alcan" Rate Cases):

7/2	Data Request due
7/11	Responses due to Data Requests
7/12	Informal Conference (@ PSC offices)
7/19	Intervener testimony due
7/25	Rebuttal testimony due
7/30	Hearing
8/6	Post Hearing briefs to be filed

PSC – Sebree Smelter "Market Power" Agreement Extension:

- PSC approved the agreement between Kenergy, BREC and Alcan (since assigned to century) to continue to provide up to 10 MW of power supply from the wholesale power markets from July 1st (current expiration of the existing agreement) through 1/31/14 when the BREC/Kenergy power supply agreement terminates.



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Century Term Sheet Summary

May 2013

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Principal Goals / Objectives

- **Negotiate a framework to allow Century to obtain its power supply from the wholesale market rather than cease operations.**
 - Once Century gains market access Big Rivers is no longer obligated to serve them.
 - The arrangement cannot increase the Members rates more than would be necessary if the smelter ceased operation.
 - Successfully accomplished both objectives

Term Sheet

- **The Term Sheet outlines the structure of the 7 Agreements associated with the transaction.**
 1. **Electric Service Agreement** - A retail electric service agreement between Kenergy and Century for the sale of electricity, electric capacity and electricity-related ancillary services, including transmission services, by Kenergy to Century.
 2. **Arrangement Agreement** - The power arrangement and procurement agreement between Big Rivers and Kenergy pursuant to which at least initially Big Rivers arranges and procures electricity, electric capacity and electricity-related ancillary services for Kenergy for resale to Century under the Electric Service Agreement.


Term Sheet (Continued)

- **The Term Sheet outlines the structure of the 7 Agreements associated with the transaction.**
 3. **Direct Agreement** - An agreement between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with the Transaction.
 4. **Capacitor Agreement** - An agreement entered into between and among Big Rivers, Kenergy, and Century relating to obligations for the design, development, purchase, installation, operation, maintenance and indemnification of risk regarding the Capacitor Additions at Century.

Term Sheet (Continued)

- **The Term Sheet outlines the structure of the 7 Agreements associated with the transaction.**
 5. **Protective Relay Agreement** - An agreement entered into between and among Big Rivers, Kenergy, and Century relating to obligations for the design, development, purchase, installation, operation, maintenance and indemnification of risk regarding the Protective Relay additions at Century.
 6. **Tax Indemnity Agreement** – Agreement between Kenergy, and Century and Century Parent to indemnify Kenergy if this transaction were to jeopardize Kenergy’s tax exempt status.
 7. **Parent Guarantee of Century Parent** – Agreement between and among Big Rivers, Kenergy and Century Parent.



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Overview

- The term (Service Period) of the transaction is August 20, 2013 through December 31, 2023.
- Century may terminate the agreement upon 60 days prior written notice.
- Big Rivers will at least initially be the Market Participant for Kenergy to arrange and schedule the required electricity, capacity and associated services for Kenergy to sale to Century.
- Kenergy may elect, subject to the consent and approval of Century, to become the Market Participant.
- Century may designate an alternative Market Participant with a 120 day notice to Kenergy, and to Big Rivers, if the Arrangement Agreement is in effect.

Overview (Continued)

- This transaction only applies to the Hawesville smelter.
- Century plans to purchase the maximum amount of energy (Base Load) that can be imported into the Hawesville smelter without the Coleman Plant operating. (Potentially 375 MW)
- This will require approximately 300 MVAR of Capacitors to be installed at Century / Hawesville, at Century's cost to maintain the appropriate system voltage support.
- Century is investigating the possibility of purchasing additional electricity on an interruptible basis (Curtailed Load) by utilizing protective relays, also at Century's cost, that can be activated to protect system stability in the event of an unplanned disturbance (i.e. loss of transmission, transformer failure or generating units).




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Overview (Continued)

- Installation of the Capacitors and approval for the Protective Relays cannot be accomplished before August 20, 2013.
- To avoid interruption in service, Big Rivers agreed to enter into a short term (9 months) System Support Resource (SSR) agreement with MISO to operate the Coleman Plant until the earlier of, the date when the Capacitors and Protective Relays are in place or June 1, 2014.
- Century has agreed to pay all of the operating cost of Coleman that is allocated to Big Rivers by MISO during this 9 month period.
- Big Rivers agreed to offset the SSR cost with the incremental transmission revenue it receives from Century. This only applies during the short term (Rider I SSR period).



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Credit Support

- Century shall provide and maintain credit support, cash or letter of credit from a bank rated A+ or better for the following:
 - The amounts reasonably estimated by Kenergy and Big Rivers to be due with respect to Century's obligations under the Electric Service Agreement for a period not longer than the payment terms required by Kenergy's suppliers.
 - The amounts reasonably estimated by Big Rivers to be due with respect to Century's additional obligations to Big Rivers for a period of two months for amounts under the Direct Agreements.
 - The amounts estimated by Kenergy to be due with respect to Century's obligation under the Tax Indemnity Agreement.
 - All other amounts reasonably projected by Kenergy or Big Rivers to become payable to either or both of them by Century.




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Credit Support & Billing

- Century will provide and maintain credit support in the form and in the amount required by MISO with respect to the of electricity, capacity and ancillary services for resale to Century.
- Big Rivers will invoice Kenergy and Kenergy will invoice Century based on how Big Rivers is invoiced by MISO (weekly) for energy and related services.
- Big Rivers will invoice Kenergy and Kenergy will invoice Century based on how Big Rivers is invoiced by MISO (monthly) for all other ancillary services including transmission.
- Big Rivers will invoice Century monthly for all services associated with the Direct Agreement.

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Electric Service Agreement

- Agreement between Century and Kenergy that Century is obligated to pay for costs of electric services related to Hawesville's operation:
 - Electricity, capacity and ancillary services including transmission services
 - Kenergy's internal and direct cost including a nominal net margin (equivalent to current net margin).
 - Cost associated with any entity other than Big Rivers serving as the Market Participant.
 - Cost incurred by Kenergy to comply with state or federal renewable energy portfolio or similar standards.
 - Charges to Kenergy for MISO Transmission Expansion Plan (MTEP) or Multi-Value projects (MVP).




Your Touchstone Energy® Cooperative 

Electric Service Agreement

- Agreement between Century and Kenergy that Century is obligated to pay for costs of electric services related to Hawesville's operation: (Continued)
 - Any cost to Kenergy arising out of any bilateral electrical supply contract that Century has approved.
 - Costs related to Century's operation incurred by Kenergy to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act.
 - Monthly charges with respect to items charged to Kenergy by Big Rivers under the Arrangement Agreement.
 - Excess reactive demand charges.
 - All other direct costs of Kenergy incurred or committed to by Kenergy related to Century's operation.



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Arrangement Agreement

- Agreement between Kenergy and Big Rivers under which Kenergy is obligated to pay Big Rivers for costs of procuring wholesale electric services related to Century's operation:
 - Electricity, capacity and ancillary services to serve Kenergy for resale to Century.
 - Costs incurred by Big Rivers to comply with state or federal renewable energy portfolio or similar standards.
 - MISO charges to establish and maintain the Hawesville Node.
 - Charges to Big Rivers for MISO Transmission Expansion Plan (MTEP) or Multi-Value projects (MVP).



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Arrangement Agreement

- Agreement between Kenergy and Big Rivers under which Kenergy is obligated to pay Big Rivers for costs of procuring wholesale electric services related to Century's operation: (Continued)
 - Costs related to Century's operation incurred by Big Rivers to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act.
 - Costs or charges of ACES, or similar service for scheduling, awards and settlements.
 - Costs of a 0.25 Full Time Equivalent (FTE) employee of Big Rivers if it is serving as the Market Participant.
 - Any other amounts due and owing to Big Rivers under the Definitive Documents, including applicable taxes.


Direct Agreement

- Agreement between Big Rivers and Century under which Century is obligated to pay Big Rivers for direct, bilateral obligations related to Hawesville's operation:
 - All SSR (must run) costs of the Coleman generating station under the circumstances contemplated in Rider I, less any transmission revenue received by Big Rivers from Century.
 - All electrical transmission capital costs related to Century's operation allocated by MISO to the Century Node (Does not include costs allocated to Big Rivers Node for remaining load).
 - Other third-party out of pocket costs of Big Rivers incurred or committed to by Big Rivers related to Century's operation.
 - All SSR (must run) costs, including capital if Coleman is forced to restart due to Century's increase in load.

Direct Agreement (Continued)

- Century will hold Big Rivers harmless from all direct costs, expenses, liabilities, claims or similar consequences relating to the following to the extent not recovered under the Electrical Service Agreement:
 - Purchasing and transmitting electricity, capacity and ancillary services for resale to Century under the transaction.
 - Claims of bilateral power suppliers under contracts to which Century has agreed for electricity, capacity and ancillary services.
 - Any other amounts due and owing to Big Rivers under the Definitive Documents.



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Rider I

- SSR Agreement for Short Term Operation of Coleman
 - The purpose is to recover the cost associated with the MISO must run requirement of one or more of the Coleman units after August 20, 2013, until Century can install the Capacitors and Protective Relays.
 - The term ends on the earlier of June 1, 2014, or when Century completes the installation of the capacitors and protective relays.
 - Century will pay all costs allocated from MISO to Big Rivers under the SSR agreement. Big Rivers agrees not to spend any capital at Coleman other than what it would have spent if Century would have ceased operation.



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Rider I

- SSR Agreement for Short Term Operation of Coleman (continued)
 - If a major failure occurs at Coleman during the Rider I period, Century will pay the \$1 million insurance deductible, or if less than 3 units are required to operate, Century will pay the costs to restart the idled unit.
 - Under the SSR agreement, Big Rivers' expenses are reimbursed by MISO, but it does not receive any revenue from sales from the plant.



RTO Membership


- Big Rivers has the freedom to leave MISO and Century can remain in MISO, if MISO allows and as long as it does not inhibit Big Rivers' ability to leave.
- Century is responsible for any additional costs resulting from the Hawesville Node remaining in MISO.
- Big Rivers is required to provide Century with one year's notice before leaving MISO.
- Big Rivers agreed to provide Century notice if management recommends to the Board of Directors to terminate Big Rivers membership in MISO.
- Agreed to provide Century the annual MISO membership update given to the KPSC, if the update is publicly available.



Closing Summary

- Definitive documents need to be completed and filed at the KPSC by June 1, 2013
- Need Board approval based on the term sheet structure prior to the June 1 deadline.
- Asking the Board to approve prior to June 1, based on our management confirming these principal provisions remain substantively unchanged in the definitive agreements.



Your Touchstone Energy[®] Cooperative 

Term Sheet

Questions

**JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS AND FOR A DECLARATORY ORDER
CASE NO. 2013-00221**

**Response to the Office of the Attorney General's
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dated July 2, 2013**

July 11, 2013

1 **Item 3)** *Reference the Application at page 3, paragraph 4 and at page 11-12,*
2 *paragraph 14. Please explain how the Kenergy/Big Rivers Wholesale Electric Service*
3 *Agreement dated July 1, 2009 was approved by the Commission over 3 months earlier on*
4 *March 6, 2009 in PSC Case No. 2007-00455.*

5

6 **Response)** The Commission approved the Kenergy/Big Rivers Wholesale Electric Service
7 Agreement (“Wholesale Agreement”) in ordering paragraph 2, on page 45 of the March 6,
8 2009 order in PSC Case No. 2007-00455. All the approvals granted by the Commission in that
9 order were subject to the closing of the unwind transaction. So the Wholesale Agreement
10 dated as of July 1, 2009, and all the other unwind transaction documents were not executed and
11 delivered until the unwind transaction closing on July 16, 2009.

12

13

14 **Witness)** Robert W. Berry

15

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1 **Item 4)** *Reference the Application at page 4, paragraph 6. Please explain what is*
2 *meant by Big Rivers' "unmitigated revenue loss resulting from the termination by Century*
3 *Kentucky" in light of Big River's rate application in Case No. 2012-00535.*

4 *a. Has Big Rivers not proposed to recover all of these revenues in its rate*
5 *filing, Case No. 2012-00535?*

6 *b. If no to a., please detail what other revenue loss may result and provide*
7 *all studies, analysis performed, inclusive of workpapers, detailing this*
8 *additional sum.*

9 *c. If no to a., please advise if and when Big Rivers intends to seek recovery*
10 *of this additional revenue loss from its member cooperatives.*

11

12 **Response)** "Unmitigated revenue loss" means the revenue loss to Big Rivers resulting
13 from the Century contract termination that has not otherwise been mitigated by actions taken
14 by Big Rivers.

15 a. Assuming the question intends to ask whether Big Rivers proposes to
16 recover those revenues in its rate filing, then the answer is yes.

17 b. Not applicable.

18 c. Not applicable.

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1

2 **Witness)** Robert W. Berry

3

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- 1 **Item 5)** *Reference the Application at page 6, paragraph 10, subparagraph b.*
- 2 *a. Under the Arrangement Agreement, please confirm that Big Rivers will*
- 3 *be the market participant to provide services for Kenergy to perform the*
- 4 *Electric Service Agreement with Century.*
- 5 *b. Please provide a detailed analysis of all costs Big Rivers will incur in*
- 6 *providing these services and all benefits Big Rivers will receive for*
- 7 *providing these services. Analysis should detail how this arrangement*
- 8 *benefits Big Rivers and Big Rivers' remaining customers.*

9

10 **Response)**

- 11 a. Yes, Big Rivers will be the initial Market Participant in the proposed
- 12 transaction. Under Section 3.1.1 of the Arrangement Agreement, "Big
- 13 Rivers shall act as the initial Market Participant with respect to the Electric
- 14 Service Agreement in connection with the Transaction and, pursuant to
- 15 this Agreement, shall use reasonable commercial efforts to arrange and
- 16 procure the Electric Services required by Kenergy for delivery to Century
- 17 under the Electric Service Agreement." Market Participant is defined
- 18 under that agreement to be "Big Rivers, in its capacity as the procurer of

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1 Electric Services under the Tariff or from a Bilateral Counterparty for
2 resale to Kenergy pursuant to this Agreement for resale to Century
3 pursuant to the Electric Service Agreement, prior to termination of this
4 Agreement pursuant to Article 7, and, thereafter, the counterparty to any
5 other contractual arrangement with Kenergy relating to the purchase of
6 Electric Services from the wholesale electric market, including pursuant to
7 bilateral contracts, for resale to Kenergy for delivery to Century.”

8 b. Please see the response to AG 1-1. Big Rivers and Kenergy proposed to
9 enter into these contracts in an effort to encourage the continued operation
10 of Century's Hawesville plant. In the negotiation of these contracts, the
11 underlying foundation of Big Rivers' and Kenergy's negotiation with
12 Century was to ensure that no additional costs were experienced by their
13 Members as a result of this proposed transaction beyond the rate increase
14 that is required whether or not Century continues smelting operations.
15 Big Rivers receives payment in an amount equal to one-fourth of a full-
16 time equivalent employee for the time it will spend handling transactions
17 for Kenergy, plus Big Rivers will be reimbursed other third-party costs it
18 incurs for that service.

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1

2 **Witness)** Robert W. Berry

3

4

**JOINT APPLICATION OF KENERGY CORP. AND
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1 **Item 6)** *Reference the Application at page 6, paragraph 10, subparagraph c. Please*
2 *describe why the Direct Agreement applies even if Big Rivers is no longer the market*
3 *participant under the Arrangement Agreement and why specifically Century would not just*
4 *procure these services directly from MISO.*

5

6 **Response)** The Direct Agreement will remain in effect notwithstanding Big Rivers' status
7 as the Market Participant under the Arrangement Agreement. This is so because by entering
8 into the Direct Agreement, Century is undertaking obligations to Big Rivers that should remain
9 in effect to protect Big Rivers and its Members from any incremental costs associated with this
10 transaction, even if Big Rivers is no longer the Market Participant. For example, Century has a
11 duty to pay SSR Costs as set forth in the agreement, even if Big Rivers is no longer the Market
12 Participant. Century does not procure services from MISO under the Direct Agreement. It
13 procures all electric service through Kenergy, under the Arrangement Agreement.

14

15 **Witness)** Robert W. Berry

16

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1 Item 7) *Reference Appendix 2 to the Application, Testimony of Gregory J. Starheim*
2 *("TE Starheim") at page 10, lines 5-14. Regarding the Hawesville Node, please answer the*
3 *following questions:*

4 a. *When specifically did Big Rivers establish the Hawesville Node in*
5 *MISO?*

6 b. *Under what authority did Big Rivers establish the Hawesville Node*
7 *separate and apart from Big Rivers other commercial pricing node in*
8 *MISO?*

9 c. *Please identify and provide copies of the relevant state or federal tariffs*
10 *established reflecting this distinction.*

11 d. *Please identify and provide all relevant Internet links and/or copies of*
12 *MISO filings relating to the establishment of the Hawesville Node.*

13

14 Response)

15 a. Big Rivers e-mailed the request to MISO to establish the Hawesville Node
16 on March 13, 2013, and the node will be in effect on August 20, 2013.

17 b. Big Rivers established the Hawesville Node as a Market Participant under
18 authority provided for in the MISO Tariff.

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- 1 c. The MISO tariff, as approved by FERC, is publically available at
2 <https://www.misoenergy.org/Library/Tariff/Pages/Tariff.aspx>.
3 Additionally, the FERC website <http://etariff.ferc.gov/TariffList.aspx> may
4 be reviewed for changes to the MISO tariff that are pending approval.
5 d. See attached files that Big Rivers submitted as part of MISO's
6 "Attachment B" process to establish the "Hawesville Node".

7
8
9
10
11

Witness) Robert W. Berry



**Attachment B
Notice of Change of Information**

A Market Participant (MP) must update, amend, and/or correct any information previously submitted to Midwest Independent Transmission System Operator, Inc. ("MISO") using this Notice of Change of Information form. Once completed, please PRINT and SIGN this form and return to the Customer Service team via one of the following methods:

Email: register@misoenergy.org
OR
Fax: 317.249.5361

To acknowledge receipt of this form, MISO will send written notice to the MP and will notify the MP of any deficiencies. Notice will be sent via email to the registered General and/or Authorized Contact with MISO. Please note that the Attachment B must be executed by one of the following individuals as defined in the BPM for Market Registration: (1) General Contact (2) the contact identified as "Authorized to Execute Market Participation Agreement", (3) an Officer of the company, or (4) Mayor of a City or Municipality.

NOTE: If your organization intends to submit a Banking change, Contact change or a Commercial Model change, please ensure that these changes are submitted on separate Attachment B forms.

A. Market Participant (MP) Information

Entity Name:	BIG RIVERS ELECTRIC CORPORATION
Address:	201 Third Street
City, State, Zip Code:	Henderson, KY 42420
NERC Entity Code (NERC ID):	BRPS

Information to be Changed

Change Type #1:

Asset Owner Action:

Reference Information:

If you are adding or removing an Asset Owner, please include the "AO Change.csv" template. The template is located at: www.misoenergy.org > Stakeholder Center > Market Participant Resources > Asset Registration Templates

Content:

See attached template "AO Change.csv"
BRPS is creating a new AO: "BR_CENTAO", "CENTURY AO FOR BRPS"

Contact Type(s): The below contact types should only be used with change type "Contact Information." Otherwise, it is not applicable.

<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------

Commercial Model change:

*****3/15/2013 deadline for 6/1/2013 Commercial Model (Topology)*****

Effective Date of Change:

8/20/2013

Change Type #2:

CPNode

CPNode Action:

Add

Reference Information:

If adding CPNode(s), templates are required. Templates are located at: www.misoenergy.org > Stakeholder Center > Market Participant Resources >
 The CPNode name cannot exceed 14 characters

Content:

See attached template "Load Zone Change.xls"
 A new CPNode BREC.CENTURY is being created under the new AO: BR_CENTAO

 See attached template "Cpnode to Epnode Relationship Change.csv"
 The new CPNode, BREC.CENTURY is being assigned the following
 EPNodes: L BREC COLEMABR NSAO, L BREC COLEMABR NSA1, L BREC COLEMABR NSA2
 L BREC COLEMABR NSA3 and L BREC COLEMABR NSA4.
 from CPNode BREC.BREC

Contact Type(s): The below contact types should only be used with change type "Contact Information." Otherwise, it is not applicable.

▼	▼	▼
▼	▼	▼

Commercial Model change:

3/15/2013 deadline for 6/1/2013 Commercial Model (Topology)

Effective Date of Change:

8/20/2013

Change Type #3:

Click here for dropdown list

Action:

Click here for dropdown list

Reference Information:

--	--

Content:

--	--

Contact Type(s): The below contact types should only be used with change type "Contact Information." Otherwise, it is not applicable.

▼	▼	▼
▼	▼	▼

Commercial Model change:

Click here for dropdown list

Effective Date of Change:

--

C. Authorization

I further affirm that all statements made and information provided in this Change of Information form are true, correct and complete.

Robert Berry 3/12/13

Signature of General/Authorized Representative

(Document must be executed by one of the following:

General Contact, Authorized Contact, Officer of the Company, or Mayor)

Robert Berry

Printed Name

Chief Operating Officer

Title

270-827-2561

Phone Number

03/12/13

Date

Load Zone Changes

Type of Change	Load Zone/Pseudotielz name	Asset type	Asset Owner ABBREV NAME	Control area	MDMA ABBREV NAME	MDMA LEGAL NAME	EffectiveDateofChange	Participate In Retail Choice (Yes/No)	If "Yes," Electric Distribution Company (EDC)
Add	BREC.CENTURY	Load Zone	BR_CENTAO	BREC	BREC	Big Rivers Electric Corporation	8/20/13	No	



Type of Chan AO ABBREV | AO LEGAL N/ MP ABBREV | EffectiveDateofChange
Add BR_CENTAO CENTURY AO BRPS 8/20/13



Type of Chan Epnod Nam Epnod Cont Load zone/P: Load zone/P: Asset Owner New Percent

Update	L BREC COLEI BREC	BREC.CENTU BR_CENTAO	1
Update	L BREC COLEI BREC	BREC.CENTU BR_CENTAO	1
Update	L BREC COLEI BREC	BREC.CENTU BR_CENTAO	1
Update	L BREC COLEI BREC	BREC.CENTU BR_CENTAO	1
Update	L BREC COLEI BREC	BREC.CENTU BR_CENTAO	1
Update	L BREC COLEI BREC	BREC.BREC BRPS	0
Update	L BREC COLEI BREC	BREC.BREC BRPS	0
Update	L BREC COLEI BREC	BREC.BREC BRPS	0
Update	L BREC COLEI BREC	BREC.BREC BRPS	0
Update	L BREC COLEI BREC	BREC.BREC BRPS	0

EffectiveDateofChange

8/20/13

8/20/13

8/20/13

8/20/13

8/20/13

8/20/13

8/20/13

8/20/13

8/20/13

8/20/13

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1 Item 8) *Reference TE Starheim at page 12, line 17 to p. 14 at line 2. Regarding the*
2 *current Retail Electric Service Agreement referenced and the "mechanics" by which*
3 *Century may purchase "Market Energy" from Kenergy, please answer the following:*

4 a. *Please describe the type of energy defined under Section 2.3.2(c) of the*
5 *2009 Retail Agreement.*

6 b. *Between July 1, 2009 and June 30, 2013, how many times has Century*
7 *requested that Kenergy acquire energy under the terms of Section*
8 *2.3.2(c) of the 2009 Retail Agreement?*

9 c. *For each occasion described under (b), please provide the details*
10 *concerning the amount and duration of the energy supplied.*

11

12 **Response)**

13 a. Kenergy is not certain what is meant by the phrase "type of energy."
14 Under the 2009 Retail Agreement, Market Energy is one category of
15 Supplemental Energy under Section 2.3.2. Interruptible Energy and Buy-
16 Through Energy are the other two categories of Supplemental Energy. As
17 noted, Market Energy is defined in Section 2.3.2(c), and the description of
18 the Market Energy Charges is found in Section 4.3.3.

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- 1 b. None.
2 c. Not applicable.

3

4

5 **Witness)** Gregory J. Starheim

6

7

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1 **Item 9)** *Reference TE Starheim at page 20, line 20 and page 21, line 3. Please*
2 *explain what is meant by "above and beyond the increase necessary to replace the load" and*
3 *provide any and all minutes of the meetings of the Kenergy Board of Directors and/or any*
4 *communications on behalf of the Kenergy Board of Directors reflecting the sentiment of the*
5 *Board that the Century transaction proposed not lead to additional rate increases.*

6

7 **Response)** In my testimony, the context of "any solution to Century's problem must not
8 have any negative effect on Kenergy's other members above and beyond the increase
9 necessary to replace the load" was intended to convey the Board's position that any solution or
10 agreement that would be developed in response to Century's request for market power would
11 not subject Kenergy to any cost that would be unreimbursed by Century or subject Kenergy to
12 any undue business risk beyond what it would have if Century ceased smelting operations.
13 The agreement that was negotiated is consistent with that position.

14 Please see attached the following meeting minutes (including Board resolutions)
15 and communications with the Kenergy Board relating to the proposed transaction:

16 Kenergy Board Meeting Minutes:

17 September 24, 2012,

18 November 13, 2012, and

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1 June 11, 2013 (approval pending);

2 Kenergy Board Resolution:

3 June 11, 2013.

4

5

6 **Witness)** Gregory J. Starheim

7

8

SPECIAL TELEPHONIC MEETING OF
KENERGY BOARD OF DIRECTORS

A special telephonic meeting of the board of directors of Kenergy Corp. was held at 7:30 a.m. on Monday, September 24, 2012.

Those participating in the meeting were as follows: Directors John Warren, Brent Wigginton, Billy Reid, Bob White, Bill Denton, Randy Powell, Larry Elder, Chris Mitchell, Allan Eyre, Jonathan Aye, Glenn Cox, President and CEO Greg Starheim, Executive Assistant Debbie Hayden, and Attorney Chris Hopgood.

President Greg Starheim stated the purpose of the meeting was to consider a written proposal from Century Aluminum to go to the open market, through Kenergy, with a pass through rate. He stated there are many issues with the proposal as currently written, and that the Big Rivers board has agreed to proceed with acknowledging receipt of the proposal and to be open to discussions with Century.

The CEO outlined the details of the proposal and responded to questions of the board. He further stated the two items the board was being requested to act upon at this time are:

- 1) Prepare a response to Century that Kenergy would be open to discussions concerning Kenergy purchasing power on the open market for resale to Century.
- 2) Enter into a Common Interest Agreement (i.e. confidentiality agreement) with Big Rivers, and proceed to discussions on the condition that Century would indemnify Kenergy for special counsel legal fees.

Director Bob White moved for approval. Motion was seconded by Director Brent Wigginton and carried by unanimous vote.

The meeting adjourned at 7:50 a.m.

William H. Reed
Secretary

APPROVED:

Jim B. Hansen II
Chair

KENERGY CORP.

MINUTES OF MEETING OF BOARD OF DIRECTORS

A meeting of the board of directors of Kenergy Corp. was held at 1:00 p.m. Tuesday, November 13, 2012, at the offices of the cooperative in Henderson. The following directors were present:

John Warren, Chairman	Glenn Cox
Brent Wigginton, Vice Chairman	Chris Mitchell
William Reid, Secretary-Treasurer	Bob White
Larry Elder	Bill Denton
Randolph Powell	Jonathan Ayer

Director Allan Eyre participated by phone. Also present were Greg Starheim, President and CEO; Debbie Hayden, Executive Assistant and Assistant Corporate Secretary; John Newland, Vice President of Engineering; Keith Ellis, Vice President of Human Resources; Ken Stock, Vice President of Operations; Scott Gentry, Manager of Technical Services; Rob Stumph, Manager of Planning & Design; Bobby Hayden, Manager of Operational Services; Kathy Gebhard, Manager of Member Accounting; Doug Hoyt, Director of Vegetation Management & Fleet; Christine Cornelius and Courtney Metzger, Administrative Assistants; and Chris Hopgood, Attorney. Monica Schmidt and Henry Cano of NRECA and Kyle Drefke of Orrick, Herrington & Sutcliffe participated telephonically for portions of the meeting.

After invocation, the meeting was called to order by Chairman John Warren.

The Chairman called for approval of the minutes of the October meeting. Director Glenn Cox moved, seconded by Director Bob White, that the minutes be approved. Motion carried by unanimous vote.

There being no unfinished business to consider, the Chairman called for new business.

CEO Greg Starheim discussed options available to Kenergy through the RUS Cushion of Credit and requested direction from the board on how to proceed. Director Billy Reid moved that Kenergy take advantage of investment opportunities available through the program. Motion was seconded by Director Bob White. Motion carried with Directors Denton and Elder voting nay.

CEO Greg Starheim and Attorney Chris Hopgood gave an update on Century negotiations. They presented the draft terms of a Reimbursement Agreement and Escrow Agreement to the board and advised that it had taken seven weeks to prepare these agreements, which were on their 8th revision. Director Denton expressed concern about the ability of a third party auditor to challenge transaction costs. Attorney Hopgood discussed the detailed definition of transaction costs with the board and advised that the third party auditor would likely be a large accounting firm with utility experience which had to be mutually agreeable to both parties. Attorney Kyle Drefke of Orrick, Herrington & Sutcliffe participated by phone and advised the board about the likely steps to be taken once the Reimbursement Agreement was executed. Part of Kenergy's due diligence from Attorney Drefke's perspective is to examine the ability of Kenergy to participate, directly or indirectly, in MISO and the risks associated with that participation. Additionally, a significant part of the due diligence will be the risk associated with complaints or objections by other members to the proposal by Century and the regulatory obstacles that could be faced even if all objections are resolved. Following this discussion, Director Billy Reid moved that CEO Greg Starheim be authorized to execute a Reimbursement Agreement and an Escrow Agreement on behalf of Kenergy. Motion was seconded by Bob White and carried by unanimous vote.

In Steve Thompson's absence, CEO Greg Starheim provided a financial overview for September.

Vice President of Operations Ken Stock gave an update on the Marion office project.

The board reviewed the schedule of agenda items, the safety report, and the schedule of contributions.

KENERGY CORP.

MINUTES OF MEETING OF BOARD OF DIRECTORS

A meeting of the board of directors of Kenergy Corp. was held at 1:00 p.m. on Tuesday, June 11, 2013, at the offices of the cooperative in Henderson.

The following directors were present: John Warren, Chairman; Brent Wigginton, Vice Chairman, William Reid, Secretary-Treasurer; Larry Elder; Randolph Powell, Glenn Cox; Chris Mitchell; Bill Denton, Allan Eyre, Bob White, and Jonathan Ayer. Also present were Greg Starheim, President and CEO; Debbie Hayden, Executive Assistant and Assistant Corporate Secretary; Steve Thompson, Vice President of Finance and Accounting; John Newland, Vice President of Engineering; Keith Ellis, Vice President of Human Resources; Ken Stock, Vice President of Operations; David Hamilton, Vice President of Member Services, Travis Siewert, Manager of General Accounting; Doug Hoyt, Director of Procurement; and Attorney Chris Hopgood, Corporation.

After invocation, the meeting was called to order by Chairman John Warren.

Following the adoption of the agenda, the Chairman called for approval of the minutes of the May 14 board meeting. Director Bob White moved, seconded by Brent Wigginton that the minutes be approved. Motion carried by unanimous vote.

The Chairman called for approval of the minutes of the May 20 special telephonic board meeting. Director Billy Reid moved, seconded by Director Glenn Cox, that the minutes be approved. Motion carried by unanimous vote.

The Chairman called for approval of the minutes of the May 24 special board meeting. Director Glenn Cox moved, seconded by Bob White, that the minutes be approved. Motion carried by unanimous vote.

Directors Denton and Elder had nothing to report on Big Rivers other than what was contained in the board packet.

The board went into executive session by majority vote, whereupon all persons other than board members, the CEO, and the attorney left the room.

Upon exiting executive session, the board approved the Century "Market Power Supply" Contract as presented by the CEO and Attorney Hopgood.

The meeting adjourned at 4:00 p.m.

Secretary

APPROVED:

Chairman

KENERGY CORP.

RESOLUTION

WHEREAS:

1. By letter dated August 20, 2002, Century Aluminum of Kentucky General Partnership ("Century") served notice to Kenergy Corp. ("Kenergy") that it was terminating its retail power contract with Kenergy;
2. Since that time Kenergy and its wholesale power supplier, Big Rivers Electric Corporation ("BREC"), have been negotiating with Century to enable Century to acquire power from the wholesale market through BREC as a market participant that would be distributed by Kenergy to Century;
3. The negotiations have now resulted in contractual terms in the following agreements involving Kenergy:
 - (a) Electric Service Agreement between Kenergy and Century;
 - (b) Arrangement Agreement between Kenergy and BREC;
 - (c) Tax Indemnity Agreement from Century to Kenergy protecting Kenergy from negative tax consequences as a result of the transaction;
 - (d) Parent Guarantee by Century's parent of Century's obligations to Kenergy;
 - (e) Protective Relay Agreement regarding system reliability;
 - (f) Capacitor Agreement involving system reliability;
 - (g) Century's guarantee(s) to Kenergy of the Capacitor and Protective Relay Agreements;
 - (h) Alternative Service Agreement between Kenergy and Century for Century's non-smelting load up to 10 megawatts should Century no longer smelt aluminum but still need power for non-smelting reasons;
 - (i) Wholesale letter agreement between BREC and Kenergy for the supply of wholesale power of up to 10 megawatts that would be necessary to serve Century's non-smelting load; and

(j) Lockbox Agreement whereby Century's payments for power are conveniently and securely processed through a bank account;

NOW, therefore, **BE IT RESOLVED** that the Board of Directors approves the foregoing contracts and accepts the guarantees and authorizes Gregory Starheim to sign the foregoing documents on behalf of Kenergy, and submit the contracts to applicable lending and regulatory authorities for approval

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of Kenergy Corp. on June 11, 2013, and that said resolution has not been amended or modified and is in full force and effect, this the 11th day of June, 2013.

Debbie Hayden, Assistant Secretary

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1 Item 10) *Reference Appendix 3 to the Application, Testimony of Robert W. Berry ("TE*

2 *Berry") at page 8, lines 1-3.*

3 a. *Please describe how Big Rivers will be compensated for the services it*
4 *provides Kenergy under special contracts.*

5 b. *Please provide all estimated costs of providing these services and all*
6 *estimated compensation for the services provided.*

7

8 Response)

9 a. Article 4 of each of the Electric Service Agreement and the Arrangement
10 and Procurement Agreement and Section 4 of the Direct Agreement
11 describe how Big Rivers will be compensated for the services it provides
12 to Kenergy with respect to the proposed contracts.

13 b. Please see the response to KIUC 1-5.

14

15

16 Witness) Robert W. Berry

17

18

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1 **Item 11)** *Reference TE Berry at page 10, lines 5-16. Please describe how Big Rivers*
2 *proposes to collect the MISO energy costs at the Hawesville Node from Kenergy and*
3 *specifically which sections of the agreement(s) address this.*

4
5 **Response)** Under Section 4.2 of the Arrangement Agreement, Kenergy is obligated to pay
6 Big Rivers for Applicable RTO Charges. These charges are “[c]harges and credits invoiced to
7 Big Rivers by the applicable RTO or ISO on a pass-through basis for all Electric Services
8 purchased by Kenergy at the Hawesville Node hereunder, other than Electric Services
9 purchased by Big Rivers under a Bilateral Contract, and any other RTO or ISO charges
10 payable by Big Rivers for the benefit of Century under the Electric Service Agreement.” The
11 initial “applicable RTO or ISO” under the agreement will be MISO. Big Rivers will bill
12 Kenergy for, and Kenergy will pay Big Rivers, these amounts pursuant to Section 5.1 of the
13 agreement. Also under that section, Kenergy has assigned to Big Rivers, pursuant to the
14 Lockbox Agreement, its right to receive like amounts from Century under Section 5.1 of the
15 Electric Service Agreement.

16
17
18 **Witness)** Robert W. Berry

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1 **Item 12)** *Reference TE Berry at page 18, lines 1-19. Please verify that Century's*
2 *operations are such that third party protective relay activation to curtail load is feasible*
3 *without consequences to environmental obligations or Century smelting equipment. Please*
4 *explain your answer in detail.*

5
6 **Response)** MISO or another reliability authority will direct the operation of any protective
7 relays if they are installed. Big Rivers does not believe the installation or operation of any
8 protective relay equipment will have any environmental consequences other than any resulting
9 environmental consequences of Century's operation of the Hawesville Smelter at a higher load.
10 Big Rivers cannot speak definitively to any consequences of the protective relay equipment on
11 Century's smelting equipment, but Century is the party requesting implementation of the
12 protective relays. Presumably, it has analyzed the consequences of use of the protective relay
13 equipment and determined its installation and operation is in Century's best interests. Big
14 Rivers is indifferent to the installation or operation of the protective relay equipment as long as
15 the protections in favor of Big Rivers and Kenergy contained in the Protective Relays
16 Agreement are in effect, and system reliability is maintained.

17

18 **Witness)** Robert W. Berry

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1 **Item 13)** *Reference TE Berry at page 26, lines 17-20. Please provide details of all costs*
2 *incurred by Big Rivers related to the Century transaction to date and ongoing as these costs*
3 *are incurred.*

4
5 **Response)** Attached please find a summary of those costs through the date of the last
6 Transaction Cost report related to the proposed transaction. In accordance with the
7 Reimbursement Agreement, Century has reimbursed Big Rivers and Kenergy for all third-party
8 costs associated with the proposed transaction.

9
10
11 **Witness)** Robert W. Berry

12

Eight Report

TRANSACTION COST DETAIL REPORT FOR THE MONTH ENDING MAY 31, 2013

Entity Providing Service	ACTUAL EXPENSES			EXPECTED EXPENSES		
	May 2013	2013 Year-To-Date	Project-To-Date	June 2013	June 15 to July 15	Total Escrow Balance Required
Sullivan, MountJoy, Stainback & Miller	13,134.00	43,540.27	70,216.18	13,000.00	6,000.00	19,000.00
Orrick	249,719.37	627,720.18	870,114.49	200,000.00	100,000.00	300,000.00
MISO		-	70,000.00	-	-	-
Dorsey, King, Gray, Norment (Chris Hopgood)	4,950.00	27,156.09	41,652.31	5,000.00	3,000.00	8,000.00
Dinsmore Shohl	16,015.45	60,442.45	139,227.55	40,000.00	25,000.00	65,000.00
MISO Consultant (Kenergy)		-	-	-	-	-
Kenergy (Travel and Expenses)	(156.12)	2,918.43	6,313.62	-	-	-
Big Rivers (Travel and Expenses)	390.54	2,800.01	2,899.69	-	-	-
	284,053.24	764,577.43	1,200,423.84	258,000.00	134,000.00	392,000.00

Project to Date Escrow Deposits	1,321,826.50
Add: Escrow Account Interest Earned	48.66
Less: Project to Date Actual Reimbursements	(916,370.60)
Prior Month Remaining Balance	405,504.56
Less: Current Month Actual Reimbursements	(284,053.24)
Plus: Payment Required from Century to Escrow	270,548.68
Current Escrow Balance Required	392,000.00

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1 **Item 14)** *Reference TE Berry at page 27, lines 1-18.*

2 *a. Please describe any and all electric services and financial transmission*
3 *rights Big Rivers has purchased to deliver to Century Kentucky.*

4 *b. Please describe any financial transmission rights that Big Rivers*
5 *currently has that are being dedicated to Century Kentucky as a result of*
6 *this agreement.*

7

8 **Response)**

9 a. Big Rivers has not purchased any electric services nor associated financial
10 transmission rights specifically for delivery to Century. The financial
11 transmission rights currently held by Big Rivers were awarded to Big
12 Rivers at the time it became a member of MISO, based upon Big Rivers'
13 historical system load, including Century.

14 b. Under MISO's tariffs, the Market Participant for Kenergy is entitled to a
15 pro-rata share of Big Rivers' total ARR revenues and costs, based on peak
16 demand. Big Rivers is the initial Market Participant under the Century
17 arrangement proposed in this filing, which provides that Century will be

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1 entitled to the same pro-rata share of Big Rivers' total ARR revenues and
2 costs, based on peak demand.

3

4

5 **Witness)** Robert W. Berry

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1 **Item 15)** *Reference TE Berry at page 28, lines 18 – 22. Please provide a detailed*
2 *description of the "Century's specified financial transmission rights."*

3

4 **Response)** Century's specific financial transmission rights will not be known in detail until
5 applicable operating dates have passed and MISO issues associated settlement statements. But
6 please see Big Rivers' response to KIUC 1-14.

7

8

9 **Witness)** Robert W. Berry

10

11

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1 **Item 16(1))** *Reference TE Berry at page 29, lines 7-21. Please provide a detailed*
2 *description of the following:*

3 *a. Applicable RTO charges and related MISO tariff sections involved with*
4 *these charges;*

5 *b. Any estimate or analysis performed by Big Rivers to estimate the portion*
6 *of SSR costs that would be assigned to the Hawesville Smelter node; and*

7 *c. Big Rivers' estimates of costs related to specific transmission upgrades*
8 *applicable to the Hawesville Smelter node.*

9
10 **Response)**

11 a. Big Rivers, as noted in the agreements, will be passing through to Century
12 all costs incurred from Big Rivers' participation in the MISO market for
13 Kenergy to serve Century. Because of the complexities of the market, a
14 detailed description of the RTO charges is not feasible. Century will incur
15 costs under a number of MISO tariff provisions. The current MISO tariff
16 contains more than 5,400 pages and is available at the following MISO
17 web address:
18 <https://www.misoenergy.org/Library/Tariff/Pages/Tariff.aspx>. MISO also

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1 has Business Practices Manuals (BPMs) available on its website which
2 help to explain MISO operations and billing. MISO BPMs are available at
3 the following website:

4 [https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/Bu-
sinessPracticesManuals.aspx](https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/Bu-
5 sinessPracticesManuals.aspx).

6 All MISO costs relating to the proposed transaction will be passed
7 through to Century, regardless of type, thus Big Rivers' Members will not
8 bear any risks associated with the charges.

- 9 b. MISO estimated in Big Rivers' Attachment Y-2 study request for
10 Coleman Station that the Big Rivers Local Balancing Authority (LBA)
11 would be responsible for 91.63% of costs under a potential SSR
12 agreement, but this study is non-binding. Century has agreed in the
13 proposed contracts to cover not only Century's SSR costs, but also the
14 costs allocated to Big Rivers' existing nodes, thus 100% of the SSR costs
15 allocated to Big Rivers' LBA will be paid by Century. Please see the
16 Confidential must run analysis provided in response to AG 1-1.
- 17 c. MISO has not identified any specific transmission upgrades applicable to
18 the Hawesville Node under the proposed transaction.

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1

2 **Witness)** Robert W. Berry

3

4

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1 **Item 16(2))** *Reference TE Berry at page 30, line 19 to page 31, line 3. Please provide any*
2 *analysis Big Rivers has performed in developing the Excess Reactive Demand Charge and*
3 *any analysis of estimate of the related MISO charges per kilovar.*

4
5 **Response)** Under Section 4.2 of the Electric Service Agreement, Century will be obligated
6 to pay the cost of ancillary services, including reactive power, required to be provided by
7 MISO in connection with Electric Services provided to Century under that agreement. The
8 Excess Reactive Demand Charge under Section 4.4 of that agreement is a charge in addition to
9 the one under Section 4.2, and it is designed to incentivize Century to maintain compliance
10 with its covenant set forth in Section 2.5 of that agreement. That section provides that Century
11 must "use reasonable commercial efforts to maintain a power factor at the Delivery Point as
12 nearly as practicable between unity and 0.95 leading or lagging with respect to maximum
13 electric demand incurred by Century during any Billing Month." The specific calculations in
14 the formula are based on the incentive charge in the 2009 agreements. The only difference in
15 the calculation reflects a tightening of Century's obligation to maintain a power factor not less
16 than 0.95 as opposed to 0.90.

17
18 **Witness)** Robert W. Berry

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1 Item 17) *Reference TE Berry at page 43, line 7 to page 44, line 15. Please provide*
2 *information related to the following:*

3 a. *Please provide the details regarding Big Rivers' estimate that*
4 *transmission revenue attributable to Century will be approximately \$7.7*
5 *million a year, including any analysis conducted and related*
6 *workpapers.*

7 b. *If Century were to buy transmission service directly from MISO, please*
8 *describe the amount of transmission revenue and the SSR costs that*
9 *Century would pay compared to the amount they will pay under the*
10 *Direct Agreement using estimates.*

11 c. *Please describe in detail, with explicit mathematical expressions, exactly*
12 *how SSR costs assigned to Century are offset by Century's transmission*
13 *revenue.*

14

15 Response)

16 a. At the time my direct testimony was filed the Big Rivers transmission rate
17 as reflected on its Attachment O was \$1.87 / MWh. It was assumed

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1 Century would operate at its historical level of 482 MW at a 98% load
2 factor.

3 482 MW x 8760 hrs. x .98 load factor x \$1.87 = \$7,737,824

4 b. Century will be required to purchase the transmission service from
5 Kenergy, which purchases the transmission service from the MISO Market
6 Participant. The Big Rivers transmission rate is the same regardless of
7 who purchases this service; therefore, the transmission revenue paid by
8 Century and received by Big Rivers is the same regardless of the Market
9 Participant.

10 c. Please see the confidential response to AG 1-1 for the must run analysis.

11

12

13 **Witness)** Robert W. Berry

14

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1 **Item 18)** *Reference paragraph 15.1 of the Electric Service Agreement at Appendix 4 of*
2 *the Application. Regarding paragraph 15.1.7, please explain each circumstance that would*
3 *trigger default under this paragraph and, specifically, the parties whose action or*
4 *involuntary proceedings against whom could trigger this paragraph.*

5

6 **Response)** Section 15.1.7 of the Electric Service Agreement provides that “Any filing of a
7 petition in bankruptcy or insolvency, or for reorganization or arrangement under any
8 bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or
9 otherwise or the commencement of involuntary proceedings under any such laws by a Party
10 and such petition has not been withdrawn or dismissed within 60 days after filing” is an Event
11 of Default under the agreement. This provision is applicable only to a Party. Party is defined
12 in the agreement to include Kenergy or Century.

13 This section may be applicable in two general circumstances. First, “[a]ny
14 filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any
15 bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or
16 otherwise . . . by a Party” would be an Event of Default. In these circumstances, the Event of
17 Default would be triggered by the voluntary action of Kenergy or Century. If either Kenergy
18 or Century voluntarily filed a petition in bankruptcy or insolvency, filed a petition for

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1 reorganization or arrangement under any bankruptcy or insolvency laws or took advantage of
2 the protections of any bankruptcy or insolvency laws, then an Event of Default would occur
3 under the agreement.

4 Second, "the commencement of involuntary proceedings under any such laws
5 by a Party and such petition has not been withdrawn or dismissed within 60 days after filing"
6 would be an Event of Default under the agreement. In these circumstances, the Event of
7 Default would be triggered by action of a party or parties other than Kenergy or Century,
8 individually. If proceedings under any bankruptcy or insolvency laws were commenced
9 against Kenergy or Century involuntarily by a party or parties other than Kenergy or Century
10 and the petition was not withdrawn or dismissed within 60 days after filing, then an Event of
11 Default would occur under the agreement. Under the U.S. Bankruptcy Code, the principal
12 criteria determining whether an involuntary petition may be properly filed requires not less
13 than three creditors with monetary claims that are due and unpaid, not contingent or subject of
14 a bona fine dispute, in each case, above a deminimis amount. The purpose of the 60 days is to
15 permit the applicable Party to challenge the involuntary filing and have the proceeding
16 dismissed.

17

18

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1 **Witnesses)** Gregory J. Starheim and
2 Counsel

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1 Item 19) *Reference paragraph 4.1 of the Direct Agreement at Appendix 6 of the*
2 *Application. Presuming approval by the Commission and execution of this agreement by the*
3 *parties, please answer and provide information related to the following:*

- 4 a. *If Big Rivers' other market locations are required by MISO to pay a*
5 *share of the SSR costs, does this reduce Century's payment obligations*
6 *(paragraph 4.1.(a)(ii)2)?*
- 7 b. *If Century's SSR costs are less than Century's transmission revenue*
8 *allocation, what would Century pay if anything (paragraph 4.1(a)(ii)1)?*
- 9 c. *If Century's SSR costs are less than Century's transmission revenue*
10 *allocation (paragraph 4.1(a)(ii)1) would Big Rivers be obligated to pay*
11 *Century?*
- 12 d. *Please explain how Century's compensation for its use of the*
13 *transmission system is the same or different under paragraph than if*
14 *Century were to directly take MISO transmission service and Big Rivers*
15 *were to recover its transmission costs through the MISO tariff?*
- 16 e. *With respect to the response to d. above, please explain whether the*
17 *approach reflected in paragraph 4.1 is more or less beneficial to Big*

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1 *Rivers' customers? Please provide specific quantification of the benefits,*
2 *including relevant workpapers.*

3
4 **Response)**

5 a. Currently Big Rivers only has one node in MISO but has applied to have a
6 new node for the Hawesville smelter. In the future, if Big Rivers has other
7 nodes in MISO, Century's payment obligations are not reduced. Under
8 Section 4.1(a)(ii)(2) of the Direct Agreement, the amount Century is
9 obligated to pay in respect of SSR Costs is reduced by "revenues received
10 from other Persons based on allocations of responsibility for the related
11 SSR Costs by an RTO or ISO." This means that if the applicable RTO or
12 ISO determines that an amount that would otherwise qualify as an SSR
13 Cost under the Direct Agreement should be paid by another Person and
14 such other Person pays such amount and Big Rivers receives such amount,
15 then Century is not obligated to pay Big Rivers that amount as SSR Costs.
16 Otherwise, there is no reduction in amounts payable by Century under
17 Section 4.1(a) of the Direct Agreement other than as provided in that
18 subsection.

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- 1 b. If the SSR Costs, for any month, prior to application of Section
2 4.1(a)(ii)(1) are equal to or lesser than the amount calculated under that
3 section, then the amount Century is required to pay in respect of SSR
4 Costs for the applicable period would be zero for that month.
- 5 c. No. Century is not entitled to a payment from Big Rivers in respect of that
6 circumstance under the proposed documents. The excess is carried over as
7 a credit against future months during the SSR period, but at the end of the
8 SSR period, any remaining excess belongs to Big Rivers. See Section
9 4.1(a)(ii).
- 10 d. In all cases, Century is paying Kenergy for Transmission Services under
11 the MISO Tariff. (See Sections 4.2.2 and 4.2.4 of the Arrangement
12 Agreement and Sections 4.2.2 and 4.2.4 of the Electric Service
13 Agreement.) This is the same regardless of who the Market Participant is.
14 The credit in Section 4.1(a)(ii) of the Direct Agreement is simply an offset
15 to SSR Costs Century has otherwise agreed to. In an ordinary application
16 of the MISO Tariff, Century would never be responsible for SSR Costs
17 charged to a node other than the Hawesville Node (e.g., the Big Rivers
18 Node). Big Rivers is requiring Century to pay costs charged to Big

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1 Rivers' Node as a result of the proposed transaction even if the ordinary
2 application of the MISO Tariff would not charge these costs to Century.
3 As part of the agreements among the parties, Big Rivers agreed to offset
4 against these additional revenues Big Rivers receives from Century for
5 Transmission Services. So, the transaction is different from other ordinary
6 arrangements due to the additional amounts Century has agreed to pay
7 under the Direct Agreement under Section 4.1(a) and (d), subject to the
8 credits provided in Section 4.1(a)(ii). Century must acquire transmission
9 services through Kenergy, its retail electric supplier.

10 e. First, as noted in the response to subparagraph d. of this information request, Century
11 must acquire transmission services through Kenergy, its retail electric supplier. The Direct
12 Agreement provides no financial gain to Big Rivers. Section 4.1 of the Direct Agreement is
13 intended to protect Big Rivers and its Members from any incremental costs of the transaction.
14 Overall, Big Rivers believes that the proposed transaction, including the additional payment
15 obligations of Century under Section 4.1(a) and (d) of the Direct Agreement subject to the
16 offsets set forth in Section 4.1(a)(ii), are more beneficial to the economy of Western Kentucky
17 than the absence of the transaction and the closure of the Hawesville Smelter. Please also see
18 Big Rivers' response to subparagraph d., above.

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1

2

3 **Witness)** Robert W. Berry

4

5

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1 Item 20) *Reference the Rebuttal Testimony of Robert W. Berry in Case No. 2012-00535*
2 *at p. 20, lines 10-13, wherein he states: "At the time of filing of this rebuttal testimony MISO*
3 *had not identified what Century's Base Load would be, and Century has accordingly not*
4 *been in a position to state whether it will or will not operate if a SSR Agreement is required."*

5 a. *Please provide all communications, correspondence, requests for*
6 *analysis, analytic reports and any other documents between MISO and*
7 *Big Rivers relevant to Century's base load or the transmission costs to*
8 *serve Century. Please consider this an ongoing request for information.*

9 b. *Do the Joint Applicants, Big Rivers and Kenergy, have an agreement*
10 *with Century or not?*

11 c. *Even presuming the Commission approves the proposed agreements*
12 *according to the expedited schedule sought by the Joint Applicants, is*
13 *there a possibility that Century will not sign the agreements and will*
14 *cease operating its Hawesville Smelter?*

15 d. *If the answer to c. is yes, please provide all scenarios under which*
16 *Century may change its mind and not sign the agreements.*

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- 1 e. *Please provide any written communications between and among the*
2 *Joint Applicants and Century regarding the terms under which final*
3 *execution of the agreements will occur.*
- 4 f. *Since the date of Berry's Rebuttal Testimony referenced above, has*
5 *MISO identified what Century's Base Load will be or has there been any*
6 *other information updating this issue?*

7 Response)

- 8 a. Big Rivers objects to this information request on the grounds that it is
9 overly broad and burdensome. Notwithstanding this objection, please see
10 the documents produced by Big Rivers in response to KIUC 1-11.
- 11 b. At the time of the submission of the documents to the Commission, the
12 parties did know that additional information would be obtained from
13 MISO thereafter regarding the amount of the Base Load. Century has an
14 election whether Century operates the Hawesville Smelter at the Base
15 Load (at whatever amount MISO determines that to be) or a lesser load or
16 operates the Hawesville Smelter at a higher level that requires Plant
17 Coleman to be designated as a SSR. The proposed documents permit
18 Century either option during the term of the contracts and permit it to

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1 change its election thereafter, assuming Century pays all amounts required
2 under the proposed transaction documents. But the documents submitted
3 to the Commission in this matter will not be signed until the closing. As
4 none of the agreements have been executed, any party thereto can elect not
5 to execute the agreements and not proceed with the transaction.

6 c. Yes. Consistent with the approach taken by the parties in connection with
7 the Commission's approval of the 2009 agreement, the parties submitted
8 the proposed transaction documents to the Commission unexecuted, but in
9 final form for approval. The principal reason for this approach is to permit
10 the parties to comprehensively address changes required prior to the
11 commencement of service thereunder, including any changes required by
12 the Commission. As none of the agreements have been executed, any
13 party thereto can elect not to execute the agreements and not proceed with
14 the transaction.

15 d. Big Rivers cannot speculate about all possible scenarios under which
16 Century may change its mind and not execute the proposed agreements.

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- e. Please see the documents produced by Big Rivers in response to KIUC 1-11. Please also see Section 6.2 of both the Electric Service Agreement and the Arrangement Agreement.
- f. MISO continues to evaluate the Base Load amount allowed for Century to operate without the Coleman plant operating. Discussions are continuing with all affected utilities to determine and verify the Base Load.

Witness) Robert W. Berry

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1 Item 21) *Reference PSC Staff's First Data Request to Big Rivers Item 57 in Case No.*
2 *2007-00455 (February 1, 2008) ("the Unwind Case") and Big Rivers Response thereto (filed*
3 *on February 14, 2008):*

4

5 *Item 57) Explain whether or not Big Rivers considered requiring the*
6 *smelters to pay, by December 31, 2010, the full cost of the transmission*
7 *facilities authorized in Case No. 2007-00177, with some portion of that cost*
8 *credited back to the smelters in each year that they remain in operation*
9 *between 2011 and the expiration date of their rate contracts in 2023?*

10

11 *Response)*

12 *Yes. Big Rivers did consider charging the Smelters with the phase two*
13 *transmission cost and providing a credit back to the Smelters over the life of*
14 *the contract. Big Rivers decided this method of dealing with the additional*
15 *transmission cost would provide a platform for the Smelters to negotiate for a*
16 *portion of future off-system sales, if they were to exit before the expiration of*
17 *their contract. If a Smelter terminates its contract early, Big Rivers will take*
18 *the surplus energy to the market and apply the additional revenue that it*

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1 *receives above the Smelter contract price to offset future rate increases to its*
2 *Members.*

3 *It is impossible to look at only one aspect of the Smelter*
4 *Agreements and decide if a different approach should have been taken. The*
5 *entire agreements must be viewed as a whole.*

6
7 *Witness) C. William Blackburn*

8
9 *Regarding the foregoing question and response, please answer the following questions:*

- 10 a. *Please confirm that the agreements resulting from the Unwind Case did*
11 *not include an exit fee or other penalty if the Smelters decided to exit*
12 *before 2023, as Century has done.*
- 13 b. *In the negotiations resulting in the proposed agreements in this matter,*
14 *did Big Rivers consider requiring Century to pay the full cost of the*
15 *transmission facilities that Century will require to remain in operation?*
- 16 c. *If no to b., why did Big Rivers elect to not follow the Commission's*
17 *direction as reflected above?*

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- 1 d. *In the negotiations resulting in the proposed agreements in this matter,*
2 *did Big Rivers consider terms that would incentivize Century to continue*
3 *the operation of the Hawesville Smelter or otherwise subject Century to*
4 *an exit fee if it closes the Hawesville Smelter before 2023?*
- 5 e. *If no to d., why not?*
- 6 f. *What is the termination date for each of the agreements proposed and*
7 *why was that termination date chosen?*
- 8 g. *Does Big Rivers advocate the same position in this matter, as reflected in*
9 *the response to Item 57 propounded by the Commission in the Unwind*
10 *Case, specifically that the Commission must take the entire agreements*
11 *as a whole and not look at the specific aspects? Please explain in detail.*

12
13 **Response)**

- 14 a. The agreements resulting from the Unwind Case do not include an exit fee
15 or other penalty for termination of the Retail Electric Service Agreement
16 between Kenergy and Century prior to the end of its stated term.
- 17 b. As described in the information request response by Big Rivers in Case
18 No. 2007-00455 quoted above, in the negotiations resulting in the

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1 agreements that were approved by the Commission Big Rivers did
2 consider, but rejected, requiring Century to pay the full cost of the
3 transmission facilities authorized in Case No. 2007-00177. As a result,
4 those contracts have no provision for an exit fee or transmission costs
5 payment. Big Rivers had no basis for "requiring" Century to pay any of
6 those costs upon termination of its Retail Service Agreement, and the
7 subject was not discussed in the negotiation of the contracts that are before
8 the Commission in this case.

9 c. Big Rivers has not identified any Commission "direction" on this subject
10 in the text of this information request. The Commission approved the
11 smelter contracts in Case No. 2007-00455 without imposing any
12 conditions related to this subject. In any event, the Commission speaks
13 through its orders, not its information requests.

14 d. Big Rivers considered access through Kenergy to market-based pricing to
15 be an incentive for Century to continue its smelting operations in
16 Hawesville. Big Rivers did not seek an exit fee in the negotiation of the
17 contracts submitted for approval in this matter because it saw no prospect

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1 for negotiation of a fee that had not been sought or required in the existing
2 Century agreements.

3 e. Please see the response to d, above.

4 f. **Electric Service Agreement:** The termination date of the Electric Service
5 Agreement is December 31, 2023, subject to an evergreen renewal for
6 additional one year periods until either party provides the other not less
7 than one year's prior written notice of termination as of the end of a year.
8 The original stated term of December 31, 2023 was selected simply
9 because that is the stated end date of the 2009 agreements among the
10 parties. The parties added the evergreen renewal in the hopes that, if the
11 proposed agreements are working in a manner desired by all parties, no
12 additional contractual negotiations would be required and the
13 arrangements could continue in effect until either party elects to terminate
14 the arrangement. Customary provisions that survive termination (e.g.,
15 indemnification obligations and continuing obligations to complete
16 payment for services performed) continue in effect even following
17 termination.

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1 **Arrangement Agreement:** The Arrangement Agreement has a term that
2 is coterminous to the term of the Electric Service Agreement with the
3 exception that the Arrangement Agreement terminates if Big Rivers is no
4 longer the Market Participant. Similar to the Electric Service Agreement,
5 the Arrangement Agreement has customary provisions that survive
6 termination.

7 **Direct Agreement, Capacitor Agreement, Protective Relays
8 Agreement, Guarantee, and Capacitor and Protective Relays**

9 **Guarantee:** Each of these agreements do not have a stated termination
10 date due to the nature of their obligations being, at their essence, an
11 obligation by Century or Century Aluminum Company to compensate Big
12 Rivers or Kenergy, or both, for costs incurred associated with the
13 transaction together with other obligations not intended to terminate (*e.g.*,
14 the acknowledgement in Section 3.7 of the Direct Agreement). As a
15 result, termination of each of these documents is not tied to the
16 effectiveness of the Electric Service Agreement. Section 2.15 of the
17 Capacitor Agreement and Section 2.16 of the Protective Relays

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1 Agreement do specify sections that terminate upon permanent cessation of
2 smelting operations at the Hawesville Smelter.

3 **Tax Indemnity Agreement:** The Tax Indemnity Agreement does not
4 have a stated termination date either but Section 2.3 of the agreement
5 limits the time for making a claim thereunder for tax assessments to 180
6 days following the expiration of the statute of limitation and, for other
7 costs, within 180 days after incurrence of the costs.

8 **Lockbox Agreement:** Paragraph 12 of the Lockbox Agreement provides
9 for termination by Big Rivers upon satisfaction of all obligations
10 thereunder or otherwise by election by Big Rivers and for termination by
11 the Depository Bank following a specified notice to the parties.

12 g. Big Rivers believes that the reasonableness of a contract should be based
13 upon consideration of all the terms of the contract, as a whole.

14

15

16 **Witness)** Robert W. Berry

17

18

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1 **Item 22)** *Regarding the SSR payments addressed in the proposed agreements, please*
2 *respond to the following and identify the specific agreement and paragraph underlying the*
3 *Joint Applicants' response:*

4 *a. Under the proposed agreement(s), will Century pay all the incremental*
5 *costs of operating Coleman?*

6 *b. Under the proposed agreement(s), will Century pay all the fixed O & M*
7 *costs of operating Coleman?*

8 *c. As defined or otherwise addressed by the agreement(s), explain the*
9 *difference, if any, between the incremental costs of operating Coleman*
10 *and the fixed O & M costs of operating Coleman.*

11 *d. Under the proposed agreement(s), will Century pay any of Big Rivers'*
12 *transmission costs if the incremental Coleman costs that Century pays*
13 *under the SSR agreement, if any, exceed Big Rivers' transmission costs*
14 *to serve Century? Please explain in detail.*

15

16 **Response)**

17 a. Section 4.1(a) of the Direct Agreement obligates Century to pay Big
18 Rivers all SSR Costs of Big Rivers when the operation of any unit of Plant

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1 Coleman is required for reliability purposes if Century's load exceeds the
2 Base Load, plus, if applicable, the Curtailable Load, including any costs
3 that do not fall within the definition of SSR Costs but which relate to this
4 condition. This would include incremental costs of operating Plant
5 Coleman. The amounts recovered under this section of the Direct
6 Agreement cannot be duplicative of other amounts recovered under the
7 transaction documents, most importantly the Applicable RTO Charges
8 under Section 4.2 of the Electric Service Agreement and Section 4.2 of the
9 Arrangement Agreement.

10 b. See response to part a., above. Big Rivers' understanding from MISO has
11 been that SSR Costs charged by MISO do not include interest,
12 depreciation, property taxes, insurance and the cost to buy back energy if a
13 "must-run" facility has an unscheduled outage. But Section 38.2.7 of the
14 MISO tariff states that the owner of the SSR unit will be compensated for
15 property taxes and insurance. This issue must be resolved with MISO in
16 the negotiation of the SSR Agreement. Under Section 4.1 of the Direct
17 Agreement, all unreimbursed fixed O&M costs of operating the Coleman

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1 plant under a SSR will be paid by Century with the exception of those
2 costs mentioned above.

3 c. See response to part b. above. Big Rivers' definition of fixed O&M costs
4 is the non-variable costs associated with the operation of the Coleman
5 plant, other than the excluded costs identified in the final SSR Agreement.
6 Big Rivers defines the incremental cost of operating Coleman as any cost
7 incurred by Big Rivers that it would not have incurred if Century ceased
8 smelting operations.

9 d. Under Section 4.2 of the Electric Service Agreement and Section 4.2 of
10 the Arrangement Agreement, Century is charged for Transmission
11 Services. Under Section 4.1 of the Direct Agreement, Century agrees to
12 pay all SSR Costs incurred by Big Rivers, together with any other
13 unreimbursed costs of Big Rivers when Plant Coleman is operated for
14 reliability purposes. Offsets to the amounts charged under this section are:
15 (i) amounts already charged and recovered by Big Rivers through the
16 Electric Service Agreement (Section 4.1(a)(i) of Direct Agreement); (ii)
17 amounts payable for Transmission Services to the extent received by Big
18 Rivers (Section 4.1(a)(ii)(1)); and (iii) amounts received by Big Rivers

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1 from RTO or ISO charges to others (Section 4.1(a)(ii)(2)). Century
2 continues to pay for Transmission Services pursuant to Section 4.2 of the
3 Electric Service Agreement and Section 4.2 of the Arrangement
4 Agreement in all circumstances. If a new Market Participant is appointed,
5 that Market Participant would provide Transmission Services for resale to
6 Century. Big Rivers would then recover its transmission costs from the
7 Market Participant for the Transmission Services required by Century
8 through the MISO Tariff.

9
10
11 **Witness)** Robert W. Berry

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1 **Item 23)** *Under the proposed agreement(s), what incentive does Century have to*
2 *quickly and properly install capacitors and other equipment necessary to allow Coleman to*
3 *idle under MISO reliability requirements? Please identify the specific agreement and*
4 *paragraph underlying the Joint Applicants' response.*

5

6 **Response)** Century is incentivized under Articles 3 and 4 of the Direct Agreement to
7 quickly and properly install capacitors and other equipment necessary to allow Coleman to idle
8 under MISO reliability requirements because Century will otherwise be obligated to either
9 limit its Load or pay SSR Costs under those articles. Under Section 3.3(d), “[i]f the Initial SSR
10 Agreement is not terminated effective as of May 30, 2014 or earlier, then thereafter (i) Century
11 shall limit its Load to not more than the Base Load plus, if applicable, the Curtailable Load or
12 (ii) Century shall pay all SSR Costs in accordance with this Agreement.” Under Section 3.3(f),
13 “Century acknowledges and agrees that, if Century’s Load exceeds the Base Load plus, if
14 applicable, the Curtailable Load, then Century must pay all SSR Costs in accordance with this
15 Agreement, or reduce its Load to a level not in excess of the Base Load plus, if applicable, the
16 Curtailable Load.” Under Section 4.1(b), “[f]or the avoidance of doubt and notwithstanding
17 any other provision herein, Century shall not be charged any SSR Costs or other Costs related
18 to the Coleman Generation Station, if: (i) Century operates at or below the Base Load plus, if

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1 applicable, the Curtailable Load; (ii) MISO terminates the SSR Agreement; or (iii) Big Rivers
2 continues operations or restarts operations of any units of the Coleman Generation Station such
3 that the operation of no additional units of the Coleman Generation Station are required to
4 support system reliability under an SSR Agreement.”

5

6

7 **Witness)** Robert W. Berry

8

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1 **Item 24)** *If Century makes the investment as proposed by the agreements, will Century*
2 *pay all of Big Rivers transmission costs to serve Century? Please identify the specific*
3 *agreement and paragraph underlying the Joint Applicants' response.*

4
5 **Response)** Century pays Kenergy for all charges for Transmission Services relating to
6 service to it under Sections 4.2.2 and 4.2.4 of each of the Electric Service Agreement and the
7 Arrangement Agreement without regard to whether Century installs or operates the capacitor
8 additions or the protective relay equipment. These sections cover both ordinary Transmission
9 Services and charges for transmission capital improvements allocated to the Hawesville Node.
10 So, as described in the response to AG1-19.d., amounts paid for Transmission Services are an
11 offset to SSR Costs above and beyond what Century otherwise would be required to pay
12 Kenergy for Transmission Services obtained from MISO.

13
14
15 **Witness)** Robert W. Berry
16

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1 Item 25) *If the Application and agreement(s) are approved and the agreements*
2 *finalized, does Big Rivers plan to seek or otherwise implement downward rate adjustments to*
3 *reflect any and all additional revenue resulting from the agreement(s)?*

4 a. *If yes, please explain how and when Big Rivers will do so.*

5 b. *If no, please confirm that Big Rivers will recover revenue relating to*
6 *serving Century via both the agreements and from its non-smelter rate*
7 *classes. Please explain the company's answer.*

8

9 Response)

10 a. Big Rivers plans to seek a downward rate adjustment if the net effect of
11 any positive revenue from the Century transaction improves Big Rivers'
12 margins to the point that it could reasonably do so.

13 b. Not applicable.

14

15

16 Witness) Robert W. Berry

17

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1 **Item 26)** *If the Application and agreement(s) are approved and the agreements*
2 *finalized, is there anything in the agreements to preclude Century from returning to Big*
3 *Rivers system for the delivery of wholesale power supply?*

4
5 **Response)** Yes. Under Section 14.4 of the Arrangement Agreement, Section 14.5 of the
6 Electric Service Agreement and Section 3.7 of the Direct Agreement, each of Kenergy and
7 Century, respectively, acknowledge and agree that "Big Rivers has no obligation to serve or
8 supply any Electric Services from System Resources for the benefit of all or a portion of the
9 Hawesville Smelter or any Affiliates, spin-offs or successors of Century during the Service
10 Period or thereafter other than as provided in this Agreement for the purchase of Electric
11 Services in the Day Ahead Market or the Real Time Market or from a Bilateral Counterparty;
12 provided, that Century Parent or an affiliate of Century may seek a contractual service
13 arrangement with Big Rivers and Kenergy with respect to the Sebree smelter." System
14 Resources are defined in those agreements to include all of Big Rivers' owned or leased
15 generating facilities and any power supply contract not entered into specifically to serve
16 Century at the Hawesville Smelter.

17 Century is not precluded from requesting transmission services through
18 Kenergy on a non-discriminatory basis under Section 3.10 of the Direct Agreement.

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1

2 **Witness)** Robert W. Berry

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