

Edward T. Depp  
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November 19, 2013

**Via Hand Delivery**

Hon. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

RECEIVED

NOV 20 2013

PUBLIC SERVICE  
COMMISSION

***Re: In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order***

Dear Mr. Derouen:

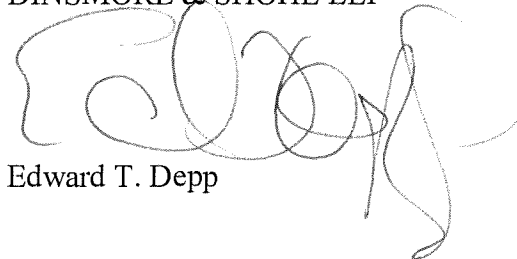
With this letter I am enclosing one (1) original and eleven (11) copies of: (i) the Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order; and (ii) an accompanying Motion for Incorporation by Reference.

Please return a file-stamped copy to our courier.

Thank you, and if you have any questions, please call me.

Sincerely,

DINSMORE & SHOHL LLP



Edward T. Depp

ETD/jan  
Enclosure

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

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)  
)

Case No. 2013-\_\_\_\_\_

APPLICATION  
and  
EXHIBITS

FILED: November 19, 2013

RECEIVED

NOV 20 2013

PUBLIC SERVICE  
COMMISSION

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY  
3  
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5 In the Matter of:

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7 Joint Application of Kenergy Corp. )  
8 and Big Rivers Electric Corporation )  
9 for Approval of Contracts and for ) Case No. 2013-\_\_\_\_  
10 A Declaratory Order )  
11  
12

13 **JOINT APPLICATION AND REQUEST FOR EXPEDITED REVIEW**  
14

15 Kenergy Corp. (“Kenergy”) and Big Rivers Electric Corporation (“Big Rivers”)  
16 jointly submit this application (this “Application”) seeking an order of the Kentucky  
17 Public Service Commission (the “Commission”) granting: (i) approval of electric service  
18 arrangements (the “Century Sebree Transaction”) between and among Kenergy, Big  
19 Rivers, Century Aluminum Company (“Century Parent”) and Century Aluminum Sebree  
20 LLC (“Century Sebree” and, together with Century Parent, “Century”); (ii) alternate  
21 electric service arrangements between and among Kenergy, Big Rivers and Century  
22 Sebree for electric service for non-smelting purposes to the Century Sebree smelter  
23 facility (the “Sebree Smelter”); and (iii) a declaratory order confirming that in the  
24 absence of appropriate, approved contractual arrangements being in effect for electric  
25 service to the Sebree Smelter for the period beginning immediately after 11:00 p.m.  
26 Central Time on January 31, 2014, Kenergy and Big Rivers have the right to disconnect  
27 service to the Sebree Smelter at 11:00 p.m. Central Time on January 31, 2014. For the  
28 reasons stated in paragraph 15 of this Application, Kenergy and Big Rivers seek  
29 expedited review of this Application.  
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I. FILING REQUIREMENTS

1. Kenergy is a non-profit electric cooperative organized under KRS Chapter 279. Kenergy is engaged in the business of distributing retail electric power to member customers in the Kentucky counties of Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Webster, Breckinridge, Union, Crittenden, Caldwell, Lyon, and Livingston. Kenergy’s post office address is P.O. Box 18, Henderson, Kentucky, 42419-0018. Kenergy’s street address is 6402 Old Corydon Road, Henderson, Kentucky, 42420. Its electronic mail address is KPSC@kenergycorp.com. Kenergy is the consolidation successor of Green River Electric Corporation and Henderson Union Electric Cooperative Corp. A copy of the articles of consolidation is filed in P.S.C. Case No. 99-136.

2. Big Rivers is a member-owned, not-for-profit, generation and transmission cooperative headquartered in Henderson, Kentucky. Big Rivers provides wholesale electric power and services to three distribution cooperative members, one of which is Kenergy. Big Rivers’ post office address is P.O. Box 24, Henderson, Kentucky, 42419-0024. Big Rivers’ street address is 201 Third Street, Henderson, Kentucky, 42419-0024. Its electronic mail address is regulatory@bigrivers.com. A copy of the articles of incorporation and all amendments thereto are attached as Exhibit 14 to the *Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, P.S.C. Case No. 2012-00492.





1 Alcan and Alcan Corporation had “made a business judgment in good faith to terminate  
2 and cease all aluminum smelting at the Sebree Smelter . . . .” (*Id.*) The 2009 Retail  
3 Agreement, as assigned by Alcan and assumed by Century Sebree, remains subject to that  
4 notice of termination, as confirmed in a Letter of Representations and Agreements, dated  
5 as of June 1, 2013, by and among Big Rivers, Kenergy, Century Sebree and Century  
6 Parent.

7 6. Big Rivers is seeking rate relief from the Commission to replace the  
8 unmitigated revenue loss resulting from termination by Century Sebree of the 2009 Retail  
9 Agreement. See Statutory Notice and *Application of Big Rivers Electric Corp. for a*  
10 *General Adjustment in Rates*, Ky. P.S.C. Case No. 2013-00199 (June 28, 2013)(the  
11 “Century Sebree Case”).

12 7. In an attempt to find an alternative to Century ceasing all smelting  
13 operations at the Sebree Smelter on January 31, 2014, Kenergy, Big Rivers and Century  
14 Sebree have been negotiating, off and on, from approximately September 15, 2013, in an  
15 attempt to arrange for the procurement and delivery of a market-priced power supply for  
16 Century Sebree following the termination of the 2009 Retail Agreement. Century has  
17 said that such an arrangement will provide it more affordable electric power, thereby  
18 enabling it to continue smelting operations at the Sebree Smelter.

19 8. As a result of those negotiations, Kenergy, Big Rivers, and Century have  
20 reached an agreement regarding certain terms and conditions for electric service,  
21 previously denominated herein as the Century Sebree Transaction, by which Century  
22 Sebree will be able to continue smelting operations at the Sebree Smelter following  
23 termination of the 2009 Retail Agreement. Those terms and conditions and the definitive

1 agreements documenting the proposed Century Sebree Transaction are summarized in  
2 more detail below and in the accompanying testimony, and are almost identical  
3 substantively to the terms and conditions of the transaction documents approved by the  
4 Commission in its order dated August 14, 2013, in Case No. 2013-00221<sup>3</sup> (the “Century  
5 Hawesville Order,” a copy of which is attached to this Application as Exhibit 2) for  
6 electric service to the Hawesville smelter owned by Century Aluminum of Kentucky  
7 General Partnership (the “Century Hawesville Transaction”).

8

9 **III. THE POST-TERMINATION ELECTRIC SERVICE AUTHORITY**

10 **A. Summary of Relief Requested.**

11 9. All legal authority for Kenergy to provide electric service to the Sebree  
12 Smelter will terminate at 11:00 p.m. Central Time on Friday, January 31, 2014 (the  
13 “Termination Date”), when the 2009 Retail Agreement terminates. Kenergy and Big  
14 Rivers request the following action from the Commission to give Kenergy and Big Rivers  
15 the authority they require to respond appropriately to Century Sebree’s termination of the  
16 2009 Retail Agreement on the Termination Date:

17 (a) Approval of the Definitive Agreements for the Century Sebree  
18 Transaction. The Century Sebree Transaction definitive agreements, summarized below  
19 and described in detail in the testimonies of Gregory J. Starheim (the “Starheim  
20 Testimony,” Application Exhibit 3) and Robert W. Berry (the “Berry Testimony,”  
21 Application Exhibit 4), provide the legal authority for retail electric service for smelting  
22 operations at the Sebree Smelter to continue from and after the Termination Date until the

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<sup>3</sup> *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, P.S.C. Case No. 2013-00221.

1 Electric Service Agreement terminates, including in the circumstances where Century  
2 Sebree terminates the Electric Service Agreement on 60 days written notice.

3 (b) Approval of the Alternate Service Agreement and the Wholesale Letter  
4 Agreement. The Alternate Service Agreement, summarized below and also described in  
5 detail in the Starheim Testimony, provides the legal authority for up to 10,000 kilowatts  
6 of retail electric service to the Sebree Smelter if the Century Sebree Transaction does not  
7 become effective on the Termination Date, or the Century Sebree Transaction is  
8 terminated, and Century Sebree requires electric service at the Sebree Smelter for non-  
9 smelting operations. The Letter Agreement is the standard form of supplement to the  
10 Kenergy-Big Rivers wholesale power arrangements in which Big Rivers commits to the  
11 power supply requirements for the Alternate Service Agreement.

12 (c) Issuance of a Declaratory Order Authorizing Disconnection of Electric  
13 Service to the Sebree Smelter. Kenergy and Big Rivers seek a declaratory order pursuant  
14 to 807 KAR 5:001, Section 18, confirming their authority to physically disconnect  
15 electric service to the Sebree Smelter if they have no legal authority to provide electric  
16 service to the Sebree Smelter on the Termination Date.

17 **B. Definitive Agreements for the Century Sebree Transaction.**

18 10. The definitive agreements for the Century Sebree Transaction consist of  
19 the following eight agreements as the “Transaction Documents” in the Electric Service  
20 Agreement (Exhibit 5) (*See* Section 1.1.94):

21 (a) Electric Service Agreement – A retail electric service agreement between  
22 Kenergy and Century Sebree for the sale of electricity, electric capacity and electricity-  
23 related ancillary services, including transmission services, by Kenergy to Century Sebree.

1 The agreement is intended to remain in place without regard to who is acting as the  
2 “Market Participant,” which purchases these services from MISO or pursuant to bilateral  
3 contracts for resale to Kenergy for delivery to Century Sebree. This agreement is  
4 discussed in more detail in the Starheim Testimony. A true and accurate copy of this  
5 agreement is attached hereto as Exhibit 5. Kenergy requests Commission approval of the  
6 Electric Service Agreement. To facilitate review of the Electric Service Agreement, a  
7 document comparing it against the same document in the Century Hawesville  
8 Transaction is attached hereto as Exhibit 6.

9 (b) Arrangement and Procurement Agreement – The power arrangement and  
10 procurement agreement entered into between Big Rivers and Kenergy pursuant to which  
11 Big Rivers arranges and procures electricity, electric capacity and electricity-related  
12 ancillary services while it serves as the Market Participant. Under the agreement, Big  
13 Rivers will procure these services for Kenergy for resale to Century Sebree under the  
14 Electric Service Agreement. The agreement terminates if Big Rivers is no longer the  
15 Market Participant. As a result, this could be a short-term or long-term agreement. This  
16 agreement is discussed in more detail in the Berry Testimony. A true and accurate copy  
17 of this agreement is attached hereto as Exhibit 7. Kenergy and Big Rivers request  
18 Commission approval of the Arrangement Agreement. To facilitate review of the  
19 Arrangement Agreement, a document comparing it against the same document in the  
20 Century Hawesville Transaction is attached hereto as Exhibit 8.

21 (c) Direct Agreement – An agreement between Big Rivers and Century  
22 Sebree relating to direct, bilateral obligations to each other in connection with the  
23 Transaction, such as Century Sebree’s obligations to reimburse Big Rivers’ costs relating

1 to any must-run conditions at any owned or leased generation facility required to be  
2 operated for reliability purposes in consequence of the operation or existence of the  
3 Sebree Smelter or the Century Sebree Transaction. This agreement will remain in effect  
4 even if Big Rivers is no longer acting as the Market Participant and the Arrangement  
5 Agreement is terminated. This agreement is discussed in more detail in the Berry  
6 Testimony. A true and accurate copy of this agreement is attached hereto as Exhibit 9.  
7 Big Rivers requests Commission approval of the Direct Agreement. To facilitate review  
8 of the Direct Agreement, a document comparing it against the same document in the  
9 Century Hawesville Transaction is attached hereto as Exhibit 10.

10 (d) Protective Relays Agreement – An agreement entered into between and  
11 among Big Rivers, Kenergy, and Century Sebree to protect Big Rivers and Kenergy from  
12 risks and obligations relating to the ownership, design, development, purchase,  
13 installation, operation and maintenance of any protective relay equipment, including any  
14 special protective system, that Century Sebree may install in the future relating to the  
15 Sebree Smelter. This agreement is discussed in more detail in the Berry Testimony. A  
16 true and accurate copy of this agreement is attached hereto as Exhibit 11. Big Rivers  
17 does not believe the Protective Relays Agreement requires Commission approval. It  
18 provides protections to Kenergy and Big Rivers for activities Century Sebree may choose  
19 to conduct on its own property, and must be effective as a condition to Century Sebree  
20 receiving electric service under the Electric Service Agreement. To facilitate review of  
21 the Protective Relays Agreement, a document comparing it against the same document in  
22 the Century Hawesville Transaction is attached hereto as Exhibit 12.

1           (e)     Tax Indemnity Agreement – Agreement between Kenergy, and Century  
2     Sebree and Century Parent to indemnify Kenergy on an after-tax basis from any tax  
3     liability or other tax costs incurred by it as a result of the Century Sebree Transaction.  
4     This agreement is discussed in more detail in the Starheim Testimony. A true and  
5     accurate copy of this agreement is attached hereto as Exhibit 13. Kenergy does not  
6     believe the Tax Indemnity Agreement requires Commission approval. It satisfies an  
7     indemnity requirement of the Electric Service Agreement, which the Commission is  
8     being asked to approve. To facilitate review of the Tax Indemnity Agreement, a  
9     document comparing it against the same document in the Century Hawesville  
10    Transaction is attached hereto as Exhibit 14.

11           (f)     Guarantee of Century Parent – Agreement of Century Parent in favor of  
12    Kenergy and Big Rivers. Under the agreement, Century Parent will unconditionally and  
13    irrevocably guarantee the prompt payment and performance obligations of Century  
14    Sebree under the Electric Service Agreement, the Direct Agreement, the Tax Indemnity  
15    Agreement and any other Transaction Document, including the obligations of Century  
16    Sebree relating to the payment of money to Kenergy or Big Rivers. This agreement is  
17    discussed in more detail in the Berry Testimony. A true and accurate copy of this  
18    agreement is attached hereto as Exhibit 15. Big Rivers does not believe this Guarantee of  
19    Century Parent requires Commission approval. This document satisfies credit security  
20    requirements of the Electric Service Agreement, the Arrangement Agreement and the  
21    Direct Agreement, which the Commission is being asked to approve. To facilitate review  
22    of the Century Parent Guarantee agreement, a document comparing it against the same  
23    document in the Century Hawesville Transaction is attached hereto as Exhibit 16.

1           (g)     Lockbox Agreement – The Lockbox Agreement relates to Century  
2     Sebree’s obligation to pay certain amounts due under the Electric Service Agreement to a  
3     depository bank. Century Sebree will make payments to a lockbox with Old National  
4     Trust (“ONT”), which will separate amounts owed to each of Kenergy and Big Rivers.  
5     ONT will disburse all amounts in the lockbox account each month. A true and accurate  
6     copy of this agreement is attached hereto as Exhibit 17. Big Rivers and Kenergy do not  
7     believe the Lockbox Agreement requires Commission approval. This document satisfies  
8     credit security requirements of the Electric Service Agreement, the Arrangement  
9     Agreement, and the Direct Agreement, which the Commission is being asked to approve.  
10    To facilitate review of the Lockbox Agreement, a document comparing it against the  
11    same document in the Century Hawesville Transaction is attached hereto as Exhibit 18.

12           (h)     Load Curtailment Agreement – The Load Curtailment Agreement is an  
13    agreement between and among Big Rivers, Kenergy and Century Sebree regarding the  
14    right of MISO, any other Governmental Authority with jurisdiction over reliability or the  
15    local balancing authority, Big Rivers, to curtail Century Sebree’s load in circumstances  
16    where a curtailment is ordered in the service territory of Big Rivers’ members and if such  
17    curtailment of Century would or is anticipated to prevent, counter or reduce the effects of,  
18    the conditions or circumstances giving rise to the Curtailment Event that has occurred or  
19    is reasonably likely to occur. A true and accurate copy of this agreement is attached  
20    hereto as Exhibit 23. While the Commission’s jurisdiction over this agreement is not  
21    entirely clear, the applicants are submitting this agreement along with the other  
22    agreements for Commission review and determination.



1           11.     The Century Sebree Transaction should be approved for the reasons stated  
2 in this Application, in the testimonies of Mr. Starheim and Mr. Berry, and by the  
3 Commission in the Century Hawesville Order approving the Century Hawesville  
4 Transaction. Approval by the Commission of the Century Sebree Transaction is  
5 authorized by KRS 278.160(1) and 807 KAR 5:011, Section 13.

6                                   **C.     Alternate Service Agreement**

7           12.     The Alternate Service Agreement (Exhibit 19) is entered into between  
8 Kenergy and Century Sebree to provide retail electric service for non-smelting operations  
9 at the Sebree Smelter. This agreement, based upon Kenergy's standard form of large  
10 industrial agreement, provides up to only 10,000 kW of demand. The Alternate Service  
11 Agreement is required to support non-smelting operations at the Sebree Smelter if  
12 smelting operations have ceased. It could be required on January 31, 2014, if Century  
13 Sebree ceases smelting operations on that date, or at the termination of the Electric  
14 Service Agreement, which can occur on only 60 days' notice. The Letter Agreement  
15 (Exhibit 20) is the standard form of wholesale power contract supplement between Big  
16 Rivers and Kenergy that provides the wholesale support for the Alternate Service  
17 Agreement. Kenergy requests approval by the Commission of the Alternate Service  
18 Agreement, and Kenergy and Big Rivers request approval by the Commission of the  
19 Letter Agreement. To facilitate review of the Alternate Service Agreement and the Letter  
20 Agreement, documents comparing them against the same documents in the Century  
21 Hawesville Transaction are attached hereto as Exhibits 21 and 22, respectively.

22           13.     The Alternate Service Agreement and the Letter Agreement should be  
23 approved for the reasons stated in this Application, in the testimonies of Mr. Starheim  
24 and Mr. Berry, and by the Commission in the Century Hawesville Order approving the

1 Century Hawesville Transaction. Approval by the Commission of the Alternate Service  
2 Agreement and the Letter Agreement is authorized by KRS 278.160(1) and 807 KAR  
3 5:011, Section 13.

4 **D. Issuance of a Declaratory Order Authorizing Disconnection of Electric**  
5 **Service to the Sebree Smelter.**

6 14. If for any reason neither the Century Sebree Transaction nor the Alternate  
7 Service Agreement is in effect as of the Termination Date, and there is no other legal  
8 authority for retail and wholesale service to the Sebree Smelter, Kenergy will have no  
9 legal authority to continue to provide retail electric service to the Sebree Smelter, and Big  
10 Rivers will have no legal authority to continue to provide a wholesale power supply to  
11 Kenergy to support retail electric service to the Sebree Smelter. Under those  
12 circumstances and for the reasons described in more detail in the testimonies of Mr.  
13 Starheim and Mr. Berry, retail electric service to the Sebree Smelter must be physically  
14 disconnected to terminate service pursuant to the terms of the agreements approved in the  
15 Commission's March 6, 2009 order in the Unwind Transaction Case and 807 KAR 5:006  
16 Section 15. Kenergy and Big Rivers seek a declaratory order pursuant to 807 KAR  
17 5:001, Section 18, confirming their authority to physically disconnect electric service to  
18 the Sebree Smelter under those circumstances.

19

20 **IV. NEED FOR EXPEDITED REVIEW OF THIS APPLICATION**

21 15. Kenergy and Big Rivers seek expedited review of this Application for the  
22 following, compelling reasons:

1           (a)     The Termination Date is approximately two months away. There is no  
2 legal authority for electric service at any level to be provided by Kenergy to Century  
3 Sebree, or Big Rivers to Kenergy for delivery to Century Sebree on and after the  
4 Termination Date. This situation must be resolved promptly.

5           (b)     Kenergy and Big Rivers have been working hard, in good faith, to  
6 complete negotiation of the Century Sebree Transaction and drafting of the related, very  
7 complex definitive agreements. They do not believe the Century Sebree Transaction  
8 could have been completed faster and filed with the Commission any sooner under the  
9 circumstances, even though the documents for this transaction are substantially similar to  
10 the documents for the Century Hawesville Transaction.

11           (c)     Providing service to a load the size of the Sebree Smelter smelting load is  
12 a complicated task involving significant risks to Kenergy and Big Rivers. The magnitude  
13 of the smelting load, and the associated monthly bill for electric service exceeding  
14 \$10,000,000 make detailed contractual arrangements, including extensive credit  
15 protections, an absolute necessity. Those arrangements cannot be negotiated and put in  
16 place at the last moment to avoid disconnecting service to the Sebree Smelter. Part of  
17 this process also includes the approvals Big Rivers must obtain to be authorized by its  
18 creditors to enter into a transaction with Kenergy for Century Sebree. The process  
19 established by the Loan Contract between Big Rivers and the Rural Utilities Service  
20 (“RUS”) allows the RUS 60 days in which to decide whether to hold up a transaction for  
21 further review.

22           (d)     The regulatory process before the Commission as established by law and  
23 impacted by practical considerations is time-consuming. Without expedited treatment,

1 Kenergy and Big Rivers would not expect this process to be completed prior to the  
2 Termination Date, despite the fact that almost all of the documents are substantively  
3 identical to the Century Hawesville Transaction, and the Commission and the expected  
4 intervenors are well familiar with that transaction.

5 (e) Each element of relief requested by them in this Application is critical to  
6 equipping Kenergy and Big Rivers to be prepared to respond to the Termination Date.

7 (f) Maintaining the smelting operations at the Sebree Smelter, and the  
8 associated jobs and positive economic benefits for the region is clearly a public policy  
9 objective of state and local government.

10

11

## V. CONCLUSION

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16. For the reasons stated in this Application, including the attached exhibits  
and testimony, the Commission should act on an expedited basis to issue an order  
granting the following relief to Kenergy and Big Rivers:

15

16

(1) Approval of the Electric Service Agreement, Arrangement Agreement,  
and Direct Agreement;

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(2) Adoption of a finding that the attached Protective Relays Agreement, Tax  
Indemnity Agreement, Guarantee of Century Parent, and Lockbox Agreement do not  
need to be filed or approved pursuant to 807 KAR 5:011, Section 13, or, in the  
alternative, approval of these agreements pursuant to 807 KAR 5:011, Section 13;

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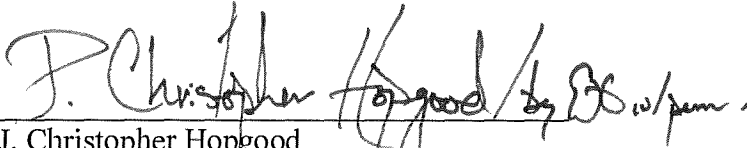
(3) A finding by the Commission regarding whether or not it has jurisdiction  
over the Load Curtailment Agreement, and if the Commission determines that its  
approval of this agreement is required, approval of the agreement;

1 (4) Approval of the Alternate Service Agreement and the Letter Agreement;  
2 and


3 (5) Issuance of a declaratory order finding that unless the Commission has  
4 otherwise authorized Kenergy to provide retail electric service to the Sebree Smelter on  
5 fair, just and reasonable terms, and made such other authorizations as are required for Big  
6 Rivers or any other wholesale supplier to provide the wholesale power supply required by  
7 Kenergy to provide that retail electric service, Kenergy and Big Rivers have the authority  
8 under the terms of the agreements approved in the Commission's March 6, 2009 order in  
9 the Unwind Transaction Case and pursuant to 807 KAR 5:006 Section 15 or other law to  
10 disconnect electric service to the Sebree Smelter at 11:00 p.m. Central Standard Time on  
11 January 31, 2014.

12 On this the 19<sup>th</sup> day of November, 2013.

13 Respectfully submitted,

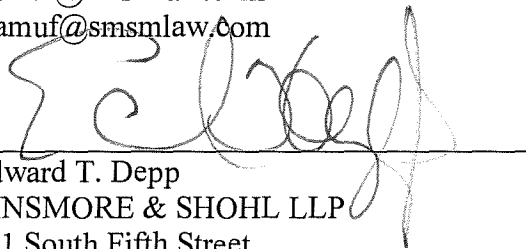
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17 J. Christopher Hopgood  
18 DORSEY, GRAY, NORMENT & HOPGOOD  
19 318 Second Street  
20 Henderson, Kentucky 42420  
21 Phone: (270) 826-3965  
22 Facsimile: (270) 683-6694  
23 chopgood@dkgnlaw.com  
24

25 Counsel for Kenergy Corp.

26   
27  
28  
29 James M. Miller  
30 Tyson Kamuf  
31 SULLIVAN, MOUNTJOY, STAINBACK &  
32 MILLER, P.S.C.

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tip.depp@dinsmore.com

Counsel for Big Rivers Electric Corporation

VERIFICATION

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I, Gregory J. Starheim, President and Chief Executive Officer of Kenergy Corp., hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 19<sup>th</sup> day of November, 2013.



Gregory J. Starheim  
President and CEO  
Kenergy Corp.

COMMONWEALTH OF KENTUCKY     )  
COUNTY OF HENDERSON            )

The foregoing verification statement was SUBSCRIBED AND SWORN to before me by Gregory J. Starheim, President and Chief Executive Officer, Kenergy Corp., on this the 19<sup>th</sup> day of November, 2013.

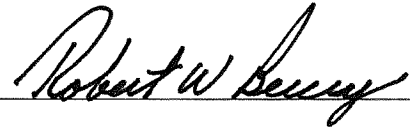


Notary Public, Ky.  
My commission expires: 7/28/2016

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VERIFICATION

I, Robert W. Berry, Chief Operating Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 17<sup>th</sup> day of November, 2013.



Robert W. Berry  
Chief Operating Officer  
Big Rivers Electric Corporation

COMMONWEALTH OF KENTUCKY     )  
COUNTY OF HENDERSON            )

The foregoing verification statement was SUBSCRIBED AND SWORN to before me by Robert W. Berry, Chief Operating Officer for Big Rivers Electric Corporation, on this the 17<sup>th</sup> day of November, 2013.



Notary Public, Ky.  
My commission expires: \_\_\_\_\_

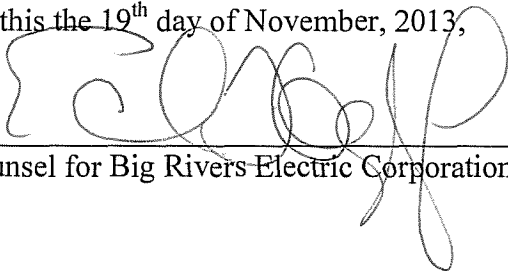


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**CERTIFICATE OF SERVICE**

I certify that a true and accurate courtesy copy of the foregoing Application has been provided by Federal Express or by hand delivery upon the persons listed on the attached service list, on the date this Application is filed with the Kentucky Public Service Commission or the following day. The inclusion of any individual or entity in this courtesy service list does not constitute a concession that the individual or entity is, or should be, a party to this proceeding.

On this the 19<sup>th</sup> day of November, 2013,

A handwritten signature in black ink, consisting of several loops and flourishes, positioned above a horizontal line.

Counsel for Big Rivers Electric Corporation

## Certificate of Service

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Robert A. Weishaar, Jr.  
McNees Wallace & Nurick LLC  
777 North Capitol Street, NE, Ste. 401  
Washington, DC 20002-4292

*Table of Contents to Exhibits*

<u>Exhibit</u>	<u>Document</u>
1	Letter dated January 31, 2013, from Jack Miller to Gregory J. Starheim
2	August 14, 2013 Order of the Public Service Commission in Case No. 2013-00221
3	Testimony of Gregory J. Starheim, President and CEO, Kenergy Corp.
4	Testimony of Robert W. Berry, Chief Operating Officer, Big Rivers Electric Corporation
5	Electric Service Agreement
6	Comparison of Electric Service Agreements
7	Arrangement and Procurement Agreement
8	Comparison of Arrangement and Procurement Agreements
9	Direct Agreement
10	Comparison of Direct Agreements
11	Protective Relays Agreement
12	Comparison of Protective Relays Agreements
13	Tax Indemnity Agreement
14	Comparison of Tax Indemnity Agreements
15	Guarantee of Century Parent
16	Comparison of Guarantees of Century Parent
17	Lockbox Agreement
18	Comparison of Lockbox Agreements
19	Alternate Service Agreement

20	Wholesale Letter Agreement
21	Comparison of Alternate Service Agreements
22	Comparison of Wholesale Letter Agreements
23	Load Curtailment Agreement



**ALCAN PRIMARY PRODUCTS CORPORATION**

January 31, 2013

Mr. Gregory Starheim  
President and CEO  
Kenergy Corp.  
Post Office Box 18  
Henderson, Kentucky 42419

Mr. Mark Bailey  
President and CEO  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

Re: Retail Electric Service Agreement  
**NOTICE OF TERMINATION**

Gentlemen:

This letter constitutes written Notice of Termination, in accordance with Section 7.3.1 of the Retail Electric Service Agreement, dated July 1, 2009 ("**Agreement**"), between Alcan Primary Products Corporation ("**APPC**"), a wholly-owned subsidiary of Alcan Corporation, and Kenergy Corp. ("**Kenergy**"). APPC is the owner and operator of the aluminum smelter located in Robards, Kentucky (the "**Sebree Smelter**").

On January 15, 2013, Big Rivers Electric Corporation ("**Big Rivers**") filed an Application with the Kentucky Public Service Commission (the "**KPSC**") for an increase in base rates (the "**Application**"). According to Big Rivers, the Application, if approved, would result in a rate increase of nearly 16%. There is already substantial doubt that the Sebree Smelter is sustainable at the current rate being charged to APPC. The increase contemplated by Application would remove all doubt whatsoever and ensure that the Sebree Smelter is unprofitable and therefore unsustainable. Under the circumstances, APPC has no choice but to furnish this Notice of Termination.

As you are aware, Section 7.3.1 of the Agreement requires the President of Alcan Corporation, the corporate parent of APPC, to represent and warrant that (i) the decision to give this Notice of Termination reflects a business judgment made in good faith to terminate and cease all aluminum smelting operations at the Sebree Smelter, and (ii) it has no current intention of re-commencing smelting operations at the Sebree Smelter. Under the present

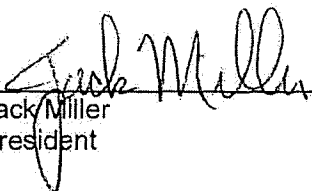
circumstances, Mr. Timothy Guerra, the President of Alcan Corporation, makes those representations and warranties in the Certificate attached hereto.

I am advised that, notwithstanding the notice of Century Aluminum of Kentucky ("**Century**") on August 20, 2012 to terminate its Retail Electric Service Agreement, dated July 1, 2009, Big Rivers and Kenergy have entered into negotiations with Century to waive the obligations of Section 7.3.1 of the Agreement and to otherwise assist Century to access market power in order to keep Century's Hawesville, Kentucky smelter open beyond August 20, 2013. Big Rivers and Kenergy have consistently and routinely indicated that they would keep the Sebree Smelter and Century's Hawesville smelter on equal footing in terms of their respective agreements. Therefore, in the event APPC decides in the future that market power might be an option to keep the Sebree Smelter operational, APPC would expect the same accommodations from Big Rivers and Kenergy on terms no less favorable than those offered to Century.

APPC appreciates the recent efforts of Big Rivers in offering proposals that would restructure the rate formula and other basic terms and conditions of the Agreement. While we are not in agreement at the present time, we welcome continuation of those discussions during the pendency of the rate case in hopes of reaching a mutually acceptable accord. We believe that further discussions would not be inconsistent with this Notice of Termination and indeed are appropriate in order to find ways to retain the jobs and preserve the economic benefits of those jobs for the Commonwealth of Kentucky.

Should you have any questions about this Notice of Termination, please do not hesitate to contact me or any of my colleagues listed below.

**ALCAN PRIMARY PRODUCTS CORPORATION**

By:   
\_\_\_\_\_  
Jack Miller  
President

cc: Mr. Serge Gosselin  
Mr. Donald P. Seberger

ALCAN CORPORATION

8770 West Bryn Mawr Avenue  
Chicago, Illinois 60631

Office of the President

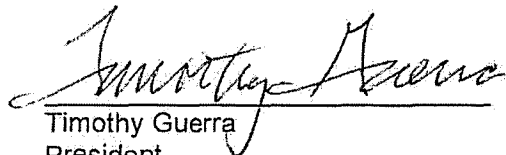
*CERTIFICATE*

The undersigned, Timothy Guerra, a resident of the State of Illinois, hereby represents and warrants that:

1. He is the duly elected President of Alcan Corporation, a Texas corporation (the "**Company**");
2. The Company is the owner of 100% of the issued and outstanding stock of Alcan Primary Products Corporation, a Texas corporation ("**APPC**"). APPC is the owner and operator of the aluminum smelter located in Robards, Kentucky (the "**Sebree Smelter**").
3. By letter dated and delivered concurrently herewith, APPC has furnished written Notice of Termination in accordance with Section 7.3.1 of the Retail Electric Service Agreement, dated July 1, 2009 ("**Agreement**"), between APPC and Kenergy Corp. (the "**Notice of Termination**").
4. The decision to furnish the Notice of Termination reflects APPC's and the Company's business judgment made in good faith to terminate and cease all aluminum smelting operations at the Sebree Smelter and that they have no current intention of recommencing operations at that location.

Dated as of the 31st day of January, 2013.

By:



Timothy Guerra  
President  
ALCAN CORPORATION





COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On June 12, 2013, Kenergy Corp. ("Kenergy") and Big Rivers Electric Corporation "Big Rivers") (collectively "Applicants") jointly filed an application for approval of certain new contracts for electric service to Century Aluminum of Kentucky General Partnership ("Century Kentucky") commencing on and after August 20, 2013. The application included the Applicants' direct testimony, as well as new contracts, as described below, to replace the existing 2009 contracts with Century Kentucky. The 2009 contracts with Century Kentucky were entered into upon the July 16, 2009 closing of Big Rivers' unwind transaction whereby Big Rivers re-acquired operational control of its generating plants.<sup>1</sup>

The application includes nine agreements, referred to herein as the Century Transaction Agreements, for electric service to Century Kentucky of up to 482 MW for operating the Hawesville aluminum smelter. There are also two additional agreements, referred to herein as Alternate Service Agreements, that are to be effective for electric

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<sup>1</sup> Case No. 2007-00455, *The Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts, and of E.On U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc. for Approval of Transactions* (PSC Ky. March 6, 2009).

service to Century Kentucky for up to 10 MW only in the event that it ceases smelting operations. Finally, the application includes a request that the Commission issue a declaratory order confirming the Applicants' authority to terminate electric service to Century Kentucky on August 20, 2013 in the event that neither the Century Transaction Agreements nor the Alternate Service Agreements are in effect as of that date. The Applicants request the Commission to approve all of the new contract agreements as filed, without any changes or modifications, and to issue the declaratory order, as discussed in detail below.

Intervention was requested by, and granted to Century Kentucky, the Rate Intervention Division of the Attorney General's Office ("AG"), Jackson Purchase Energy Corporation ("Jackson Purchase"), Meade County RECC ("Meade RECC"), and Kentucky Industrial Utility Customers, Inc. ("KIUC"). The Commission established a procedural schedule that provided for discovery on the Applicants, intervenor testimony or comments in lieu of testimony, rebuttal testimony by Applicants, an evidentiary hearing on July 30, 2013, and post-hearing briefs. The case now stands submitted for a decision.

### **BACKGROUND**

Big Rivers is a rural electric cooperative corporation organized pursuant to KRS Chapter 279. Big Rivers owns electric generation and transmission facilities and purchases, transmits, and sells electricity at wholesale, and it is a utility subject to the Commission's jurisdiction under KRS Chapter 278. Big Rivers exists for the principal purpose of providing the wholesale electricity requirements of its three member distribution cooperatives, Kenegy, Jackson Purchase, and Meade RECC. Big Rivers is

owned by these three member cooperatives and they in turn provide retail electric service to approximately 113,000 customers located in 22 western Kentucky counties.

Century Kentucky is a subsidiary of Century Aluminum Company ("Century Aluminum"). Century Kentucky operates an aluminum smelter in Hawesville, Kentucky.<sup>2</sup> Due to the nature of the smelting process, Century Kentucky requires a significant quantity of firm, reliable power in the amount of 482 MW which it consumes on a round-the-clock basis at a 98 percent load factor. The current annual cost of electricity at Century Kentucky is \$206 million, and this accounts for almost 40 percent of its cost to produce aluminum.

From approximately 1970 through 1998, Big Rivers had a full power requirements contract with Kenergy and Kenergy's predecessor, Green River Electric Corporation, which required Big Rivers to supply the entire electric load of Century Kentucky. In conjunction with a 1998 reorganization plan allowing Big Rivers to emerge from bankruptcy, it leased its generating assets for 25 years to Western Kentucky Energy Corp., an unregulated affiliate of Louisville Gas & Electric Company ("LG&E"). The reorganization plan also included an agreement for Big Rivers to purchase from LG&E Energy Marketing, Inc. ("LEM"), an unregulated power marketing affiliate of LG&E, certain quantities of power sufficient to supply all of Big Rivers' distribution cooperatives' retail customers, except Century Kentucky and one other aluminum smelter.

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<sup>2</sup> Century Kentucky's parent, Century Aluminum, recently purchased from Rio Tinto Alcan, Inc. the aluminum smelter located in Sebree, Kentucky, and operates that smelter through a subsidiary known as Century Aluminum Sebree LLC. The power supply contracts for that facility are not at issue in this case.

Between 1998 and July 2009, approximately 70 percent of the power consumed by Century Kentucky was purchased by Kenergy (or its predecessor) directly from LEM, with Kenergy arranging for, and reserving, transmission service on Big Rivers' transmission system. The power Kenergy purchased from LEM for Century Kentucky was at fixed contract prices and was known as Tier 1 and Tier 2 power. Big Rivers had no obligations to supply, and did not supply, the Tier 1 or Tier 2 power. The portion of Century Kentucky's load not secured through Kenergy's contract with LEM was known as Tier 3 power, and Tier 3 power was secured by Kenergy in the wholesale power market at market-based prices for resale to Century Kentucky. The Kenergy power contract with LEM for Tier 1 and Tier 2 power for Century Kentucky was to expire at the end of 2010, with 100 percent of Century Kentucky's power requirements purchased by Kenergy at market prices after 2010.

Century Kentucky entered into the 1998 arrangement to purchase a mix of power from LEM and from the market through 2010, followed by all market power purchases, with the expectation that after 2010 the market-based power prices would be less than the LEM prices, which were substantially tied to Big Rivers' system generation. However, by late 2007, the market-based power prices paid by Century Kentucky were in the range of \$50 to \$60 MWh, whereas the LEM supplied power was priced at half or less, in the range of \$25 MWh. In an effort to maintain its economic viability, Century Kentucky actively supported Big Rivers' efforts to reacquire control of its generating facilities by terminating the 1998 lease agreement and then contracting with Kenergy to have Big Rivers supply the majority of Century Kentucky's power requirements. That

transaction, known as the "Unwind Transaction," was approved by the Commission on March 6, 2009.<sup>3</sup>

The Unwind Transaction included the 2009 contracts obligating Big Rivers to become Kenergy's wholesale power supplier for retail service to Century Kentucky. This contractual obligation for Big Rivers to supply Century Kentucky was separate and apart from Big Rivers' existing obligation under the full power requirements contract with Kenergy to supply all of Kenergy's non-smelter customers. Big Rivers' contractual obligations under the 2009 contracts were for the contract term ending December 31, 2023. However, Century Aluminum could terminate the 2009 contracts at any time upon providing a 12-month written notice that it had made a business decision to cease smelting operations at Century Kentucky. On August 20, 2012, Century Aluminum did issue such a notice that it would cease smelting operations at Century Kentucky on August 20, 2013.

Following the August 20, 2012 notice that Century Kentucky would close 12 months thereafter, the Applicants and Century Kentucky commenced negotiations in September 2012 to discuss an alternative power supply arrangement. Those discussions continued into June 2013, resulting in the Century Transaction Agreements as filed in this proceeding on June 12, 2013.

### **CENTURY TRANSACTION AGREEMENTS**

The nine Century Transaction Agreements are as follows:

1. Electric Service Agreement - A retail electric service agreement between Kenergy and Century Kentucky for the sale of electricity, electric capacity, and

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<sup>3</sup> *Id.*

electricity-related ancillary services, including transmission services, by Kenergy to Century Kentucky for operating its aluminum smelter.

2. Arrangement Agreement - The power arrangement and procurement agreement entered into between Big Rivers and Kenergy pursuant to which Big Rivers arranges and procures electricity, electric capacity, and electricity-related ancillary services while it serves as the Market Participant. Under the Arrangement Agreement, Big Rivers will procure these services for Kenergy for resale to Century Kentucky under the Electric Service Agreement. The Arrangement Agreement terminates if Big Rivers is no longer the Market Participant.

3. Direct Agreement - An agreement between Big Rivers and Century Kentucky relating to direct, bilateral obligations to each other in connection with the Century Transaction Agreements, such as Century Kentucky's obligations to reimburse Big Rivers' costs relating to must-run conditions at the Coleman Generation Station, if any. The Direct Agreement will remain in effect even if Big Rivers is no longer acting as the Market Participant and the Arrangement Agreement is terminated.

4. Capacitor Agreement - An agreement entered into between and among Big Rivers, Kenergy, and Century Kentucky to protect Big Rivers and Kenergy from risks and obligations relating to the design, development, purchase, installation, operation, and maintenance of the capacitor additions at the Hawesville smelter.

5. Protective Relays Agreement - An agreement entered into between and among Big Rivers, Kenergy, and Century Kentucky to protect Big Rivers and Kenergy from risks and obligations relating to the design, development, purchase, installation, operation and maintenance of the protective relay equipment at the Hawesville smelter.

6. Tax Indemnity Agreement - Agreement between and among Kenergy, Century Kentucky and Century Aluminum to indemnify Kenergy on an after-tax basis from any tax liability or other tax costs incurred by it as a result of the Century Transaction Agreements.

7. Guarantee of Century Parent - Agreement of Century Aluminum in favor of Kenergy and Big Rivers. Under this agreement, Century Aluminum will unconditionally and irrevocably guarantee the prompt payment and performance obligations of Century Kentucky under the Electric Service Agreement, the Direct Agreement, the Tax Indemnity Agreement and any other of the Century Transaction Agreements, including the obligations of Century Kentucky relating to the payment of money to Kenergy or Big Rivers.

8. Capacitor Additions and Protective Relays Guarantee - Agreement made by Century Aluminum in favor of Kenergy and Big Rivers whereby Century Aluminum will unconditionally and irrevocably guarantee the prompt payment and performance of the obligations of Century Kentucky under the Capacitor Agreement and the Protective Relays Agreement. A separate guarantee was entered into for the Capacitor Agreement and the Protective Relays Agreement because these two agreements were to be executed in advance of the other Century Transaction Agreements to facilitate the installation of the capacitor and protective relay equipment as soon as possible.

9. Lockbox Agreement - The Lockbox Agreement relates to Century Kentucky's obligation to pay certain amounts due under the Electric Service Agreement to a depository bank. Century Kentucky will make payments to a lockbox with Old



National Bank, which will separate amounts owed to Kenergy and Big Rivers and will disburse all amounts in the lockbox account each month.

The Applicants request approval for three of the Century Transaction Agreements, the Electric Service Agreement, the Arrangement Agreement, and the Direct Agreement, while asserting that the remaining six Century Transaction Agreements do not need Commission approval. In the alternative, the Applicants request approval of the remaining six agreements if the Commission determines that approval is needed.

### **ALTERNATE SERVICE AGREEMENTS**

The two Alternate Service Agreements are as follows:

1. Alternate Service Agreement between Kenergy and Century Kentucky – The Alternate Service Agreement allows Kenergy to provide retail electric service for non-smelting operations at the Hawesville Smelter if Century Kentucky ceases smelting operations at the facility on August 20, 2013 or at the termination of the Electric Service Agreement upon a 60-day notice by Century Kentucky. Pursuant to this agreement, Kenergy is required to provide, and Century Kentucky is allowed to receive, up to 10 MW of load to support non-smelting purposes, such as security, maintenance, and safety activities.

2. The Letter Agreement – The Letter Agreement is a standard form of wholesale power agreement supplement between Big Rivers and Kenergy by which Big Rivers provides the wholesale power supply support for the 10 MW to be supplied in the event that the Alternate Service Agreement becomes effective.

## COLEMAN STATION MUST-RUN STATUS

Big Rivers owns and operates four generating stations, including the Coleman Station in Hancock County, Kentucky. The Coleman Station consists of three coal fired steam turbines that entered commercial operation between 1969 and 1972. With a combined net capability of 443 MW, the Coleman Station is located next to the Century Kentucky smelter. As a result of the decision by Century Kentucky to terminate its 2009 contracts, Big Rivers will no longer have an immediate market for the 482 MW of power that up to now has been sold to Century Kentucky. Since the cost of generation produced by the Coleman Station is among the highest on the Big Rivers' system, Big Rivers decided to idle the Coleman Station at least through May 2015, or until market power prices equal or exceed the generation costs at Coleman Station.

However, as a member of the regional transmission organization known as the Midcontinent Independent System Operator ("MISO"),<sup>4</sup> Big Rivers was required to submit its plan to idle the Coleman Station to MISO for review and approval to ensure that such plan does not adversely impact the reliability of the regional transmission system that is under MISO's functional control. MISO is a regional reliability coordinator and it performs planning and outage maintenance functions designed to ensure that the transmission system under its control can withstand the impact of the closure of a generating facility. Subsequent to submission of Big Rivers' plan to idle the Coleman Station, MISO determined that its transmission system could reliably supply a firm load

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<sup>4</sup> The Commission approved Big Rivers' request to transfer functional control of its transmission system to MISO in Case No. 2010-00043, Application of Big Rivers Electric Corporation For Approval to Transfer Functional Control of Its Transmission System to Midwest Independent Transmission System Operator, Inc. (Ky. PSC Nov. 1, 2010).

at Century Kentucky of only 338 MW, and that load above that level would have to be interruptible.

Due to the nature of Century Kentucky's smelting operations, it is essential to its economic viability that it be able to operate at a firm load of 482 MW. For Century Kentucky to operate at a firm load of 482 MW, MISO has determined that the Coleman Station must be open and available to generate power when needed for reliability purposes. Thus, MISO has designated the Coleman Station as a System Support Resource ("SSR"), placing it in a must-run status. The resulting costs for having to keep the Coleman Station in a must-run status will be assessed by MISO to the transmission users that benefit from the increased reliability, and the amounts collected will be paid to Big Rivers. Under the Century Transaction Agreements, Century Kentucky has agreed to reimburse Big Rivers for the SSR costs it incurs in connection with the Coleman Station's SSR status.

Century Kentucky believes that paying the additional costs associated with the must-run status of the Coleman Station would make the smelting operations uneconomical. In an effort to avoid this situation, Century Kentucky is in the process of adding capacitors and protective relays at its smelter to allow it to safely withstand some level of interruption to its power supply. Due to the length of time necessary to acquire and install this additional equipment, Century Kentucky has agreed that the Coleman Station should be in SSR status and Century Kentucky will pay the resulting costs, but only through May 30, 2014. Because the costs assessed by MISO in connection with a generating facility being in SSR status include budgeted capital expenditures, Century

Kentucky is unwilling to commit to paying capital expenditures beyond May 30, 2014 that will include relatively costly environmental retrofits at the Coleman Station.

As part of the agreements between the Applicants and Century Kentucky, Kenergy will reserve, and Century Kentucky will pay for, all transmission service needed to serve its load. The cost for transmission service is estimated to be \$7.7 million annually. However, for the length of time that the Coleman Station is in SSR status and such costs are being paid by Century Kentucky, the cost of transmission service will be credited against the SSR costs. Although it would have been of greater benefit to retail customers if these transmission revenues had not been credited against the Coleman Station SSR costs, we recognize that the crediting will not result in any incremental costs to retail customers. Based on this finding, the Commission will approve the crediting of the transmission revenues against the Coleman Station must-run costs.

#### **PARTIES' POSITIONS ON THE NEW CONTRACT AGREEMENTS**

Century Kentucky requests the Commission to approve all of the new contract agreements as filed, with no changes or modifications, but also requests that findings be made that would require Big Rivers to perform planned maintenance on three of its transmission lines while the facilities are energized, rather than first de-energizing the facilities before performing the planned maintenance. Working on energized transmission facilities is referred to herein as "live line maintenance." The AG claims that the Century Transaction Agreements must be rejected as contrary to Kentucky law because they allow for "retail wheeling." KIUC requests the Commission to approve the Century Transaction Agreements, but only if they are modified to require periodic reporting of revenues and expenses associated with the transactions and a provision for

the future payment by Century Kentucky of a share of the capital investment in Big Rivers' existing generating facilities. Such payment for existing facilities which are no longer used by a customer is known as "stranded cost payments." Each of these issues is discussed below.

### **LIVE LINE MAINTENANCE**

Century Kentucky claims that if the Coleman Station must run, the additional cost that it would incur causes its power supply to be priced at above-market rates and this would adversely impact its economic viability. While Century Kentucky is willing to accept the SSR costs for Coleman Station through May 30, 2014, it is unwilling to do so beyond that date. The Coleman Station SSR costs include necessary future capital investments at the generating facilities, and Big Rivers has agreed to submit to MISO a reduced capital budget for the Coleman Station through May 2014. Thereafter, there will be greater capital expenditures at the Coleman Station, including the need to fund anticipated environmental equipment required for compliance with the Environmental Protection Agency's Mercury and Air Toxics Standard (commonly known as "MATS"). Absent the operation of the Coleman Station, MISO has indicated that Century Kentucky can operate at a firm power level of 338 MW, with any power consumed over that level being subject to interruption due to a transmission outage, either planned or forced.

In an effort to avoid having to pay the Coleman Station SSR cost, and to reduce the potential risk of an interruption to its power supply, Century Kentucky has requested the Commission to make a finding that it is good and proper utility practice for Big Rivers to perform planned maintenance on three transmission lines while the lines are

energized. Although Century Kentucky spent eight months negotiating the Century Transaction Agreements that are proposed for approval in this case, it did not raise the issue of live line maintenance with the Applicants until shortly before the contracts were filed here on June 12, 2013. Century Kentucky raised the live line maintenance issue, arguing that its use will not increase costs to Big Rivers because the new contracts provide that Century Kentucky will pay for any such incremental costs and that no contract provision would need to be changed to accommodate live line maintenance. Big Rivers flatly rejected the proposal, citing a belief that live line maintenance was much more dangerous than performing planned maintenance on de-energized transmission lines, which has been Big Rivers' historic practice. Despite Big Rivers' rejection of live line maintenance, Century Kentucky advised the Applicants that the contracts as then negotiated should nonetheless be filed with the Commission for approval. Century Kentucky has provided expert testimony to show that live line maintenance on transmission lines is performed by other utilities, including some in Kentucky, and that such maintenance is in accord with good utility practice. To further support its proposal, Century Kentucky references the Commission's regulation, 807 KAR 5:041, Section 5(1), which requires electric utilities to "make all reasonable efforts to prevent interruptions of service, and . . . to reestablish service with the shortest possible delay."

Big Rivers defends its rejection of live line maintenance based on its position that live line maintenance is a more dangerous practice which creates greater safety concerns for both its employees and contractors, as well as increased liability to Big Rivers. Big Rivers denies that live line maintenance is needed for reliability purposes,

noting that Century Kentucky can operate at its maximum firm load of 482 MW as long as the Coleman Station is operating under an SSR agreement. Big Rivers also states that even if its planned maintenance is performed while the transmission lines are live, a portion of one line extends into Indiana and the utility responsible for that portion has not agreed to perform live line work. In addition, those transmission lines are subject to forced outages which, when they occur, will prevent Century Kentucky from operating at 482 MW without an SSR agreement for the Coleman Station. The voluntary decision by Century Kentucky to refuse to pay the SSR costs for the Coleman Station beyond May 2014 renders the live line maintenance issue one of economics, not reliability, according to Big Rivers.

To the Commission's knowledge, this is the first time that the issue of live line maintenance has been raised in a contested proceeding. While the evidence before us shows that live line transmission maintenance is consistent with good and reasonable utility practice, so too is de-energized transmission line maintenance. Big Rivers has historically performed its maintenance on de-energized transmission lines, and it now expresses safety and liability concerns arising from live line transmission maintenance. While our regulation, 807 KAR 5:041, Section 5(1), is intended to prevent unnecessary interruptions of electric service and to reduce interruptions that do occur to the shortest possible time, that regulation does not expressly require an electric utility to perform live line maintenance.

Century Kentucky has the ability to operate its smelter at a firm load of 482 MW while incurring the SSR cost for the Coleman Station. Thus, Big Rivers is correct in its characterization of this issue as one of economics, not reliability. To the extent that

Century Kentucky believes that live line transmission maintenance is essential to its economic viability, this issue should have been a critical part of its negotiations with the Applicants. Had Century Kentucky raised this issue sooner in those negotiations, it is possible that this issue could have been resolved among those parties. At the request of the Applicants and Century Kentucky, we have processed this very complex case on an expedited schedule to ensure that Century Kentucky has a supply of electric power for its smelter operations on and after August 20, 2013.

We accepted for review the Century Transaction Agreements as filed on June 12, 2013 with the belief and understanding that each of the parties to those agreements – Big Rivers, Kenergy, Century Kentucky, and Century Aluminum – was in agreement with all of the terms and conditions contained therein. It was not until July 19, 2013, over five weeks thereafter, that Century Kentucky's testimony asserted that the agreements did not address what it believes to be a critical issue and that the Commission should effectively revise the agreements, which had been negotiated over an eight-plus month period, to benefit Century Kentucky. Based on the record before us, the Commission declines Century Kentucky's request to require Big Rivers, over its objections, to perform live line maintenance on three of its transmission lines. The issue of live line maintenance is one that the parties to the Century Transaction Agreements must resolve among themselves.

#### **RETAIL WHEELING**

The AG argues that the Commission must reject the Century Transaction Agreements because they authorize retail wheeling and will create a deregulated electric supply arrangement for one customer in violation of Kentucky statutes. The AG,



citing a 2000 Legislative Research Report,<sup>5</sup> defines retail wheeling as the transmission of electricity from a wholesale supplier to a retail customer by a third party and argues that this violates Kentucky law. The Commission finds no merit in the AG's argument.

Pursuant to the Century Transaction Agreements, Big Rivers will no longer have a contractual obligation to use its generating resources to supply power to Kenergy for resale to Century Kentucky. However, Kenergy will continue, as it has always been, to be the retail electric supplier providing retail electric service to Century Kentucky.<sup>6</sup> Kenergy will continue to have the exclusive right to furnish, and will furnish, electric service to Century Kentucky's electric facilities as provided for under the provisions of the Territorial Boundary Act, KRS 278.016 to 278.018. As the retail electric supplier, Kenergy will secure power for Century Kentucky from the wholesale power market or by entering into bilateral contracts for power. Kenergy similarly secures power for all of its other retail customers, except that the source of the power secured for all other customers is determined by Big Rivers rather than by Kenergy. There is nothing in KRS Chapter 278 that prohibits Kenergy from securing power from a source other than Big Rivers.

Kenergy owns no transmission facilities, so all of the power it secures for all of its customers is transmitted (i.e. is "wheeled") over Big Rivers' transmission facilities. Under the Century Transaction Agreements, Century Kentucky will not have a unilateral right to enter into power contracts with wholesale power suppliers. Rather, Kenergy will

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<sup>5</sup> Restructuring Kentucky's Electric Utility Industry: An Assessment of And Recommendation for Future Action in Kentucky, Final Report of Special Task Force on Electric Restructuring, LRC Research Report No. 299 (Sept. 2000).

<sup>6</sup> KRS 278.010(4) defines "retail electric supplier" as "any person . . . engaged in the furnishing of retail electric service," while KRS 278.010(7) defines "retail electric service" to be "electric service furnished to a consumer for ultimate consumption."

enter into all power contracts to supply Century Kentucky, just as Kenergy currently enters into all power contracts to supply all of its customers other than Century Kentucky. Between 1998 and July 2009, Kenergy was responsible for purchasing power directly from LEM and the wholesale market for service to Century Kentucky. The Century Transaction Agreements provide for Kenergy to now resume that same responsibility by purchasing power directly from the wholesale market to enable Kenergy to serve Century Kentucky. Under the MISO market rules, only an entity designated as a Market Participant is authorized to purchase power in the MISO market, and Big Rivers will, by contract, perform the duties as the Market Participant for the foreseeable future. Kenergy may at some time in the future assume the role of Market Participant, or some third party may do so under the provisions of the Century Transaction Agreements.

The duties and responsibilities to be performed by Kenergy for Century Kentucky do not violate any provision of KRS Chapter 278 and do not result in any deregulation of electric service in Kentucky. The Century Transaction Agreements merely create an arrangement for a retail electric supplier, Kenergy, to secure a supply of electricity to serve a retail customer, Century Kentucky, as required by the Territorial Boundary Act.

#### **REVENUE AND EXPENSE REPORTING**

KIUC recommends that the Century Transaction Agreements be conditionally approved, noting that it is in everyone's best interest for Century Kentucky to continue to operate.<sup>7</sup> However, KIUC suggests that a procedure is needed to ensure that the remaining non-smelter customers do not incur additional costs to subsidize Century

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<sup>7</sup> Main Brief of Kentucky Industrial Utility Customers, Inc. ("KIUC Brief") at 1.

Kentucky on and after August 20, 2013.<sup>8</sup> To ensure that Big Rivers' rates remain fair, just, and reasonable and there is no subsidization,<sup>9</sup> KIUC recommends that the Commission review and audit the revenues received and the expenses incurred by Big Rivers and Kenergy relating to the Century Transaction Agreements. KIUC also recommends that Big Rivers and Kenergy be required to file monthly reports with the Commission, with copies to the parties to this proceeding, detailing their respective revenues and expenses for each component of the new agreements.<sup>10</sup>

Big Rivers and Kenergy contend that the proposed Century Transaction Agreements comply with Kentucky's regulatory and statutory framework<sup>11</sup> and that the agreements benefit Big Rivers and Kenergy's members as well as the economy of Western Kentucky.<sup>12</sup> Big Rivers and Kenergy maintain that the Century Transaction Agreements protect their remaining customers from the significant negative economic consequences that would arise if Century Kentucky were to cease smelting operations, pointing out that the remaining customers would experience no more exposure to risks and costs under the Century Transaction Agreements than would be experienced if Century Kentucky ceased smelting operations.<sup>13</sup>

Big Rivers and Kenergy oppose KIUC's reporting requirements, noting that they have already committed to taking the necessary actions before the Commission to

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<sup>8</sup> Direct Testimony and Exhibits of Lane Kollen ("Kollen Testimony") at 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Joint Post-Hearing Brief of Kenergy Corp. and Big Rivers Electric Corporation ("Big Rivers/Kenergy Brief") at 9.

<sup>12</sup> Big Rivers/Kenergy Brief at 10.

<sup>13</sup> Big Rivers/Kenergy Brief at 11,13.

ensure that any benefits received as a result of the Century Transaction Agreements flow through to their members. Big Rivers and Kenergy contend that, as entities regulated by the Commission, the Commission will be able to address the revenues and costs associated with this transaction in Big Rivers' pending base rate case involving the loss of the Century Kentucky load, Case No. 2012-00535, Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates (Ky. PSC filed Jan. 16, 2013), without imposing any of KIUC's conditions on the instant transaction.<sup>14</sup>

Century Kentucky, likewise, claims that the proposed Century Transaction Agreements are fair, just, and reasonable and should be approved unconditionally and without modification.<sup>15</sup>

The Commission finds merit in KIUC's request for the establishment of reporting requirements. The reporting of revenues and expenses is reasonable and will ensure that the Commission and the public are able to see the financial impacts of the Century Transaction Agreements on two regulated utilities. In addition, the reporting will enable the Commission to have continuing oversight of the impacts of these agreements on Big Rivers, its members, and their non-smelter customers. However, we find that quarterly reporting is reasonable and will provide meaningful financial information relating to the agreements. Therefore, we will require Big Rivers and Kenergy to file financial reports on a quarterly basis detailing their respective revenues and expenses for each component of the Century Transaction Agreements.<sup>16</sup>

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<sup>14</sup> Big Rivers/Kenergy Brief at 15.

<sup>15</sup> Post-Hearing Brief of Century Aluminum of Kentucky General Partnership ("Century Brief") at 1.

<sup>16</sup> *Id.*

## STRANDED COST PAYMENTS

KIUC also recommends that the Commission reserve its authority to prospectively establish a just and reasonable market access charge as a way to mitigate the rate impacts on Big Rivers' non-smelter customers. This charge would recover from Century Kentucky the stranded fixed costs that result from its being allowed to obtain market pricing for power.<sup>17</sup> KIUC asserts that Big Rivers sized its system and incurred the investments in power plants to serve Century Kentucky,<sup>18</sup> and Century Aluminum's decision to terminate the 2009 power contracts will leave Big Rivers with significant excess generating capacity that would not be used or useful in providing service to its remaining customers.<sup>19</sup> KIUC contends that the decision to terminate Century Kentucky's 2009 power contracts has already resulted in a request by Big Rivers to significantly increase its electric rates to recover the loss of revenues from Century Kentucky.<sup>20</sup> While the non-smelter customers face significant rate increases, KIUC points out that Century Kentucky will see an annual reduction of 30 percent in its power bill, or approximately \$61.2 million,<sup>21</sup> as a direct result of terminating its 2009 power contracts and entering into the proposed Century Transaction Agreements with Big Rivers and Kenergy,

KIUC asserts that the proposed Century Transaction Agreements fail to address any scenario in which Century Kentucky would be obligated to pay a portion of the

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<sup>17</sup> KIUC Brief at 11.

<sup>18</sup> Direct Testimony and Exhibits of Lane Kollen ("Kollen Testimony") at 13.

<sup>19</sup> KIUC Brief at 4.

<sup>20</sup> Kollen Testimony at 6-7, and KIUC Brief at 8.

<sup>21</sup> KIUC Brief at 6.

stranded fixed costs related to the generating capacity that was built to serve Century Kentucky should it become profitable in the future.<sup>22</sup> KIUC argues that because Century Kentucky caused the problems, it should be required to pay for the excess capacity in the form of a market access charge if its economic viability and profitability improves in the future.<sup>23</sup> KIUC suggests that Century Kentucky could become profitable in the near future and would then be able to pay a market access charge and share in the burden of paying for the excess generating capacity it caused.<sup>24</sup> KIUC also recommends that the payment of a market access charge by Century Kentucky is just one part of its proposed plan to reduce the adverse rate impacts on non-smelter customers; the other part would require a "workout plan" that includes debt restructuring by Big Rivers' creditors.

Big Rivers and Kenergy argue that the Century Transaction Agreements should be approved as filed and without the imposition of any conditions.<sup>25</sup> Big Rivers specifically contends that KIUC's proposal of a workout plan is substantively flawed because there is not sufficient time, it requires unrealistic creditor concessions, and it violates Big Rivers' philosophy of honoring its commitments.<sup>26</sup>

Century Kentucky states that the Century Transaction Agreements were a product of extensive negotiations in order to provide it an opportunity to continue smelting operations beyond August 19, 2013 and requests the agreements be approved

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<sup>22</sup> KIUC Brief at 4.

<sup>23</sup> Kollen Testimony at 14.

<sup>24</sup> KIUC Brief at 7-8.

<sup>25</sup> Big Rivers/Kenergy Brief at 15.

<sup>26</sup> Big Rivers/Kenergy Brief at 16.

as filed without modification. Century Kentucky believes that the proposed agreements strike a fair balance between not imposing any costs on the other Big Rivers' customers and providing Century Kentucky the ability to maintain its viability by accessing competitive, market-based prices for power.<sup>27</sup> Indeed, Century Kentucky points out that the proposed transaction will provide a net benefit to Big Rivers' non-smelter customers as compared to an outcome involving Century Kentucky's closure.<sup>28</sup>

Century Kentucky argues that the conditions recommended by KIUC, particularly the market access charge, would undermine the purpose of the Century Transaction Agreements, which is to provide it an opportunity to be viable over the long term.<sup>29</sup> Century Kentucky indicates that, even with market-priced power, the Hawesville smelter will operate in the short-term at break-even margins.<sup>30</sup> Moreover, Century Kentucky asserts that its smelter has experienced substantial under-investment in recent years and any future profits should be available to allow for reinvestments in the facility to keep the smelter competitive.<sup>31</sup>

Century Kentucky also contends that the market access charge would be a fundamental, retroactive change to the Commission-approved 2009 power contracts. Century Kentucky notes that although those contracts included a 12-month termination notice, there were no provisions imposing an exit fee for termination prior to the 2023

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<sup>27</sup> Century Brief at 2.

<sup>28</sup> *Id.*

<sup>29</sup> Century Brief at 14.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

expiration of the contracts.<sup>32</sup> Century Kentucky argues that any assessment of a market access charge would violate the 2009 power contracts and could not be considered fair, just, and reasonable.<sup>33</sup>

Having reviewed the issue and being otherwise sufficiently advised, the Commission finds that KIUC's recommendation to conditionally approve the Century Transaction Agreements subject to a future market access charge is not reasonable. The proposed contracts were a product of extensive and good faith negotiations among Big Rivers, Kenergy, Century Kentucky and Century Aluminum with the goal of keeping the Hawesville smelter viable while not subjecting the remaining customers to any additional incremental costs after August 19, 2013 due to Kenergy's continuing to serve Century Kentucky or Big Rivers serving as the Market Participant. The Commission is of the opinion that the proposed Century Transaction Agreements achieves this delicate balance and that the imposition of a market access fee would jeopardize the balance reached by the proposed agreements.

#### **DECLARATORY ORDER**

The Applicants state that as a result of Century Aluminum's voluntary termination of Century Kentucky's current 2009 power contracts effective at midnight on August 19, 2013, there will be no tariffs or rates on file with the Commission under which the Applicants can legally provide electric service to Century Kentucky and, therefore, electric service must be discontinued. Although Century Kentucky did not address this issue in its filed testimony, its post-hearing brief argues that there is "substantial legal uncertainty" as to the request to discontinue service, and that Kenergy's obligations

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<sup>32</sup> *Id.*

<sup>33</sup> Century Brief at 15.



under the Territorial Boundary Act creates a statutory obligation for it to continue serving Century Kentucky.<sup>34</sup>

The Commission finds that, as the Applicants correctly note, KRS 278.160(1) requires each utility to file with the Commission "schedules showing all rates and conditions for service established by it and collected or enforced." Electric service to Century Kentucky is now being provided under the terms of the 2009 power contracts which are on file with the Commission. It was Century Aluminum that made a voluntary business decision on August 20, 2012 to terminate Century Kentucky's 2009 power contracts, sending notice that it "had made a business judgment in good faith to terminate and cease all aluminum smelting at the Hawesville smelter and has no current intention of recommending smelting operations at the Hawesville smelter." Thus, Century Aluminum has requested that electric service to the Hawesville smelter be terminated as of midnight on August 19, 2013. Since issuing that request, Century Aluminum has not rescinded its request to terminate service. Based on our decision herein to approve the Century Transaction Agreements, we fully expect those contracts to be executed before August 20, 2013, and for Century Kentucky to continue its smelting operations under the new contracts for electric service. However, if Century Aluminum and Century Kentucky decide to not sign the new contracts, or if for any other reason the new contracts do not become effective on August 20, 2013, Kenergy must honor Century Aluminum's written request to terminate Century Kentucky's 2009 power contracts. Absent the execution of the new contracts, there will be no tariffs or rates to serve Century Kentucky on and after August 20, 2013, and Kenergy will have no choice but to terminate electric service to Century Kentucky.

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<sup>34</sup> Century Kentucky Post-hearing Brief at 18-19.

### **KIUC MOTION FOR ADMINISTRATIVE NOTICE**

On August 8, 2013, KIUC filed a motion requesting the Commission to take administrative notice of the testimony filed in a case before the Ohio Public Utilities Commission on August 6, 2013. That testimony, a copy of which was attached to the KIUC motion, addresses aluminum prices forecasted for several years in the future. KIUC supports its motion by citing KRS 13B.090(5), and states that the proffered testimony is relevant to the issue of whether Century Kentucky's smelter operations will be profitable in the future so as to enable Century Kentucky to pay for some of the stranded cost of Big Rivers' generating facilities. Objections to KIUC's motion were filed by the Applicants and by Century Kentucky, and KIUC filed a reply asserting that it could not have filed this testimony earlier due to the expedited procedural schedule established for this case.

The Commission finds that KRS 13B.090(5) authorizes administrative agencies that operate under the hearing procedures contained in KRS chapter 13B to "take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's specialized knowledge." At the outset, we note that hearings conducted by the Commission are exempt from the provisions of KRS Chapter 13B.<sup>35</sup> However, we have promulgated a regulation, 807 KAR 5:001, Section 11(4), which allows a document to be received after the close of the testimony with the Commission's express authorization. Here, KIUC seeks administrative notice of the proffered testimony on forecasted aluminum prices for the purpose of demonstrating the truth of that testimony, but KIUC has not shown that those forecasted aluminum prices are accurate and not in dispute. Taking administrative notice as requested by KIUC

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<sup>35</sup> See KRS 13B.020(3)(d)3.a.

would violate the procedural due process rights of other parties to this case by denying them an opportunity to cross-examine the forecast set forth in the proffered testimony.

### **SUMMARY OF FINDINGS**

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that Century Kentucky exercised its right under the existing 2009 contracts to cease business operations at the Hawesville smelter on August 20, 2013. Since that time, in an effort to preserve almost 700 direct jobs at the Hawesville smelter, the Applicants have engaged in extensive negotiations with Century Aluminum and Century Kentucky. Those negotiations resulted in the documents before us today. The Century Transaction Agreements are designed to provide Century Kentucky an opportunity to continue operating the Hawesville smelter, which will provide significant benefits to the western Kentucky economy, while the Alternate Service Agreements are designed to provide a minimum supply of power in the event that Century Kentucky ceases its smelting operations. The Commission finds that the Century Transaction Agreements and the Alternate Service Agreements are reasonable and all of the agreements should be approved as filed.

The Commission notes that some of the agreements that we approve by this Order include provisions for arbitration or court actions to resolve certain disputes that may arise among the parties to those agreements. We take this opportunity to remind the Applicants, as well as Century Aluminum and Century Kentucky, that under KRS 278.040(2), the Commission has "exclusive jurisdiction over the regulation of rates and service of utilities," and under KRS 278.160(1), the Commission has "original jurisdiction over complaints as to the rates or service of any utility." Thus, any dispute relating to

rates or service that may arise under the agreements approved in this Order should be filed here for our review and resolution.

IT IS THEREFORE ORDERED that:

1. The Century Transaction Agreements are approved for service on and after August 20, 2013.

2. The Alternate Service Agreements are approved for service on and after August 20, 2013 to be effective only in the event that the Century Transaction Agreements are not executed by the parties thereto by August 20, 2013 or, if they are executed, they are terminated earlier than December 31, 2023.

3. The Applicants' request for a declaratory order is granted as discussed in the findings above.

4. The Commission retains all jurisdiction under KRS Chapter 278 relating to the rates and service to be provided by Kenergy to Century Kentucky under the Century Transaction Agreements, including the jurisdiction to resolve all rate and service disputes arising under each of the agreements approved by this Order.

5. Big Rivers and Kenergy shall individually file within 45 days of the end of each calendar quarter a report detailing the revenues and expenses incurred by each in connection with each component of the Century Transaction Agreements.

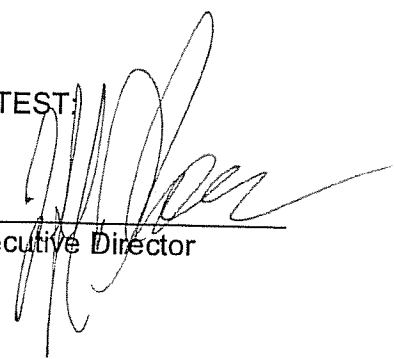
6. Big Rivers and Kenergy shall file, within 15 days of the date of this Order, executed copies of the Century Transaction Agreements and the Alternate Service Agreements.

7. Any documents filed pursuant to ordering paragraph 5 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

By the Commission

ENTERED
AUG 14 2013
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

Case No. 2013-00221

Exhibit 2

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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-\_\_\_\_

**DIRECT TESTIMONY**  
**OF**  
**GREGORY J. STARHEIM**  
**PRESIDENT and CHIEF EXECUTIVE OFFICER**  
  
**ON BEHALF OF**  
**KENERGY CORP.**

**FILED:     November 19, 2013**



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**DIRECT TESTIMONY  
OF  
GREGORY J. STARHEIM**

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**DIRECT TESTIMONY  
OF  
GREGORY STARHEIM**

5 **I. INTRODUCTION**

6

7 **Q. State your name, occupation and business address.**

8 A. My name is Gregory J. Starheim. I am the President and Chief  
9 Executive Officer of Kenergy Corp., Post Office Box 18, Henderson, KY  
10 42419. I have held these positions since July 9, 2012. Prior to serving  
11 in these capacities, I held the position of Chief Executive Officer and  
12 General Manager at the Delaware County Electric Cooperative and its  
13 affiliated subsidiaries for eight years.

14 **Q. Have you previously testified before the Kentucky Public  
15 Service Commission (the “Commission”)?**

16 A. Yes. I testified in *In the Matter of: Joint Application of Kenergy Corp.  
17 and Big Rivers Electric Corporation for Approval of Contracts and for a  
18 Declaratory Order*, P.S.C. Case No. 2013-00221 (the “Century  
19 Hawesville Case”).

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24 **II. PURPOSE OF TESTIMONY**

25

26 **Q. What is the purpose of your testimony?**

1 A. The purpose of my testimony is to explain to the Commission why it is  
2 in the best interests of Kenergy and its members for the Commission to  
3 approve the proposed power supply arrangements (the “Century  
4 Sebree Transaction”) between and among Kenergy, Big Rivers Electric  
5 Corporation (“Big Rivers”), Century Aluminum Sebree LLC (“Century  
6 Sebree”), and Century Aluminum Company (“Century Parent,” and  
7 together with Century Sebree, “Century”) to provide retail electric  
8 service to Century Sebree’s aluminum smelter in Sebree, Kentucky,  
9 after its existing electric service arrangements terminate on January  
10 31, 2014. I will also provide details related to the Electric Service  
11 Agreement and Tax Indemnity Agreement between Kenergy and  
12 Century Sebree. I will also address the impact of the Century Sebree  
13 Transaction on Kenergy, along with the reasons why the Century  
14 Sebree Transaction must be approved before January 31, 2014.

15 **Q. Are you sponsoring any exhibits?**

16 A. Yes. I am sponsoring the Century Sebree termination notice attached  
17 as Exhibit 1 to the application, and I refer to several other exhibits to  
18 the application in my testimony.

19

20 **III. THE CENTURY SEBREE TRANSACTION**

21

22 **Q. Are you familiar with the proposed Century Sebree**  
23 **Transaction?**

24 A. Yes. I received notice from Alcan Primary Products Corporation  
25 (“Alcan”), which then owned the Sebree smelter, January 31, 2013, of  
26 Alcan’s intent to terminate its existing Retail Electric Service  
27 Agreement with Kenergy and cease smelting operations at the Sebree

1 smelter. A copy of that notice is attached as Exhibit 1 to the  
2 application in this matter, and I incorporate it here by reference.  
3 Alcan represented to Kenergy that it might keep the Sebree smelter in  
4 operation if Kenergy could provide the company with power supply  
5 from the wholesale power market, along the lines of what was being  
6 offered to Century Hawesville, rather than from Big Rivers.  
7 Because of the anticipated adverse economic impact that the closure of  
8 the Sebree smelter would have on Kenergy and its members, as well as  
9 Henderson and the surrounding counties, I have been involved in  
10 efforts to explore how Kenergy might be able to accommodate Alcan's  
11 (now Century Sebree's) request for "market priced power" so that it  
12 might continue operations. Alcan sold its interest in the Sebree  
13 smelting facility to Century Sebree on June 1, 2013, and Century  
14 Sebree stepped into Alcan's shoes at that point.

15 **Q. What role have you played in these efforts?**

16 A. Over the past year, I acted on Kenergy's behalf as its principal  
17 negotiator of the transaction among Kenergy, Big Rivers, Century  
18 Parent, and Century Aluminum of Kentucky General Partnership  
19 ("Century Hawesville") that was reviewed and approved by the  
20 Commission in the Century Hawesville Case. That transaction, which  
21 I will refer to in my testimony as the "Century Hawesville  
22 Transaction," is the arrangement by which Kenergy provides retail  
23 electric service to Century Hawesville at market-based rates. I would  
24 note that the August 14, 2013 order of the Commission in the Century  
25 Hawesville Case granting the authority required for the Century

1 Hawesville Transaction to be consummated has been appealed to the  
2 Franklin Circuit Court by Kentucky Industrial Utility Customers, Inc.,  
3 one of the parties in the Century Hawesville Case.

4 Over the past few weeks, I have also acted on Kenergy's behalf as its  
5 principal negotiator of a transaction, nearly identical substantively to  
6 the Century Hawesville Transaction, among Kenergy, Century Parent,  
7 and Century Sebree. That transaction, which I will refer to in my  
8 testimony as the "Century Sebree Transaction," provides the basis for  
9 Kenergy to provide retail electric service to Century Sebree, and Big  
10 Rivers to assume the same roles in the Century Sebree Transaction  
11 that it performs in the Century Hawesville Transaction. The Century  
12 Sebree Transaction will be effectuated pursuant to the agreements  
13 attached as Exhibits 5, 7, 9, 11, 13, 15, 17, 19, 20 and 23 of the  
14 application (the "Century Sebree Transaction Documents").

15 **Q. Please identify the various agreements that constitute the**  
16 **Century Sebree Transaction Documents.**

17 A. There are eight agreements out of the ten Century Sebree Transaction  
18 Documents that embody substantially all of the terms and conditions  
19 relating to the proposed service to Century Sebree for its smelting  
20 operations. Those agreements are as follows:

- 21 1. ***Electric Service Agreement***, by and between Kenergy  
22 and Century Sebree;
- 23 2. ***Arrangement and Procurement Agreement***, by and  
24 between Big Rivers and Kenergy;

- 1                   3.     **Direct Agreement**, by and between Big Rivers and  
2                   Century Sebree;  
3                   4.     **Tax Indemnity Agreement**, by and among Kenergy,  
4                   Century Sebree and Century Parent;  
5                   5.     **Guarantee**, by Century Parent in favor of Kenergy and  
6                   Big Rivers, relating to Century Sebree’s obligations under  
7                   the Century Sebree Transaction Documents;  
8                   6.     **Lockbox Agreement**, by and among Century Sebree,  
9                   Kenergy, Big Rivers, and a depository bank;  
10                  7.     **Protective Relays Agreement**, by and among Kenergy  
11                  Big Rivers, and Century Sebree; and  
12                  8.     **Load Curtailment Agreement**, by and among Big  
13                  Rivers, Kenergy and Century Sebree relating to  
14                  curtailment of Century Sebree’s load in circumstances  
15                  determined necessary by MISO or other reliability  
16                  coordinators, including load balancing authorities, such as  
17                  Big Rivers.

18   **Q.    Which of the Century Sebree Transaction Documents will you**  
19   **discuss in your testimony?**

20   A.    I will specifically address the Electric Service Agreement and the Tax  
21   Indemnity Agreement. Mr. Berry addresses the remaining agreements  
22   in his testimony.

23

24   **Electric Service Agreement**

25   **Q.    Are you familiar with the Electric Service Agreement?**

26   A.    Yes.

1 **Q. Can you please describe the nature of the Electric Service**  
2 **Agreement?**

3 A. The Electric Service Agreement is a retail contract between Kenergy  
4 and Century Sebree that sets forth the terms by which Kenergy will  
5 resell electricity and electricity-related ancillary services to Century  
6 Sebree. Under that agreement, Kenergy will supply and deliver—and  
7 Century Sebree will purchase—electric energy and related services.  
8 The Electric Service Agreement contemplates that Kenergy will obtain  
9 this electric energy and these related services pursuant to one or more  
10 contracts—entered into with Century Sebree’s consent—between  
11 Kenergy and a Market Participant in the market operated by the  
12 Midcontinent Independent System Operator, Inc. (“MISO”). The  
13 Market Participant will acquire electric services from the wholesale  
14 electric market for Kenergy to resell to Century Sebree. These services  
15 may include electric services procured pursuant to bilateral contracts.

16 **Q. How will Kenergy obtain the electric services necessary to**  
17 **serve Century Sebree’s load?**

18 A. Initially, Big Rivers will act as this provider, which is referred to as the  
19 “Market Participant” under the Century Sebree Transaction  
20 documents, pursuant to the Arrangement and Procurement Agreement  
21 with Kenergy (the “Arrangement Agreement,” and together with the  
22 Electric Service Agreement, the “Principal Agreements”). The  
23 Principal Agreements contemplate that Big Rivers will initially obtain  
24 these electric services from the MISO markets on behalf of Kenergy for  
25 delivery to Century Sebree.

26 Although Mr. Berry addresses the Arrangement Agreement more  
27 extensively in his testimony, I will explain that, under the

1 Arrangement Agreement, Big Rivers (as the initial Market  
2 Participant) will use reasonable commercial efforts to procure electric  
3 energy, related services, and any other services required and invoiced  
4 by MISO from the MISO markets. Big Rivers will resell this electric  
5 energy and services to Kenergy pursuant to the terms of the  
6 Arrangement Agreement. Kenergy will then, in turn, resell this  
7 electric energy and services to Century Sebree pursuant to the terms of  
8 the Electric Service Agreement.

9 Big Rivers, however, may not remain the Market Participant for all  
10 time. Subject to Century Sebree's consent, Kenergy may elect, in the  
11 future, to become the Market Participant itself. Likewise, Century  
12 Sebree may designate an alternative Market Participant (other than  
13 Kenergy or Big Rivers), subject to Kenergy's consent, which cannot be  
14 unreasonably withheld. If Century Sebree designates its own  
15 alternative Market Participant, it must give Kenergy and Big Rivers at  
16 least 120 days' prior written notice of the appointment of a new Market  
17 Participant and cover Kenergy's costs in connection with appointing a  
18 new Market Participant. Century Sebree must also demonstrate to  
19 Kenergy that the arrangements with the new Market Participant do  
20 not increase Kenergy's risks compared to the risks to Kenergy under  
21 the Arrangement Agreement and provide Kenergy with such  
22 additional information that Kenergy reasonably requests.

23 Although the Principal Agreements were drafted on the presumption  
24 that Big Rivers and the Century Sebree delivery point would be part of  
25 the MISO, the Principal Agreements also provide that Big Rivers or  
26 Kenergy may elect to join or become a member of a regional  
27 transmission operator ("RTO") or independent system operator ("ISO")



1 other than the MISO or elect to withdraw as a member of MISO. As  
2 you know, Big Rivers is a current member of MISO, but if such an  
3 election is made, the applicants will, to the extent necessary, negotiate  
4 in good faith to modify the terms of the Century Sebree Transaction  
5 documents to preserve their purposes and intent.

6 **Q. Will Century Sebree's load be served, then, from the Big Rivers  
7 commercial pricing node within MISO?**

8 A. No. Big Rivers has already established a separate commercial pricing  
9 (CP) node—the Sebree Node—within MISO specifically for the  
10 Century Sebree smelter. The Sebree Node is separate from Big River's  
11 MISO commercial pricing node. This separates the Century Sebree  
12 load commercially from the Big Rivers commercial pricing node in  
13 MISO. If Big Rivers is replaced as the Market Participant, Big Rivers  
14 will transfer the Sebree Node to the new Market Participant.

15 **Q. What costs are involved in the Electric Service Agreement, and  
16 what party shall bear those costs?**

17 A. Article 4 of the Electric Service Agreement provides a comprehensive  
18 list of charges that Century Sebree has agreed to pay, including among  
19 others regional transmission organization charges, bilateral contract  
20 charges, excess reactive demand charges, and a monthly retail fee  
21 based on the volume of metered use. Where appropriate, Century  
22 Sebree's payments to Kenergy are passed through to Big Rivers.  
23 In addition, Century Sebree is obligated to pay Kenergy certain  
24 amounts not passed-through to Big Rivers, including amounts due and  
25 payable to Kenergy under the Tax Indemnity Agreement, and  
26 Kenergy's internal and direct costs of serving the Sebree Smelter (such  
27 as regulatory fees, and audit compliance costs).

1 In short, we structured this to help ensure that the costs imposed by  
2 the Century Sebree Transaction would be borne by Century Sebree  
3 and not Kenergy, Big Rivers or its other members, or any of their  
4 ratepayers.

5 **Q. Is Kenergy's retail adder or customer charge decreasing as a**  
6 **result of the Century Sebree Transaction?**

7 A. No. Pursuant to Section 4.5 of the Electric Service Agreement,  
8 Kenergy's retail fee will continue to be calculated as \$2,614 per month,  
9 plus the product of \$0.000045 per kWh and the energy delivered to  
10 Century Sebree.

11 **Q. Does the Electric Service Agreement protect Kenergy against**  
12 **the risks of providing electric service to Century Sebree?**

13 A. Yes. The Electric Service Agreement requires that Century Sebree  
14 provide letters of credit, cash collateral or other credit support that is  
15 acceptable to Kenergy to secure the performance of its obligations  
16 under the agreement, including its payment and indemnity  
17 obligations, but without duplication of credit posted to others for the  
18 same liability. In fact, Kenergy's obligation to enter into any  
19 contractual arrangements with a new Market Participant or any  
20 bilateral power supplier is conditioned upon Century Sebree's consent  
21 and provision of financial assurances reasonably required to hold  
22 Kenergy harmless for Century Sebree's related obligations.  
23 Similar protections are also addressed in the Arrangement Agreement  
24 between Kenergy and Big Rivers, as well as the Direct Agreement  
25 between Big Rivers and Century Sebree. Mr. Berry addresses this  
26 aspect of those agreements in his testimony.

1 Century Sebree is also indemnifying Kenergy from and against any tax  
2 liability that could result from this Century Sebree Transaction. That  
3 obligation is memorialized in the Tax Indemnity Agreement that I  
4 discuss in further detail below.

5 In addition, Century Parent is guaranteeing Century Sebree's  
6 obligations. This obligation is memorialized in the Guarantee that is  
7 discussed in more detail the testimony of Mr. Berry.

8 **Q. How would you compare the mechanics of the Electric Service**  
9 **Agreement to the purchase of "Market Energy" under the**  
10 **terminating Retail Electric Service Agreement between**  
11 **Kenergy and Century Sebree?**

12 A. The electric service arrangements under the Electric Service  
13 Agreement and Arrangement Agreement are very similar to the  
14 purchase of "Market Energy" under the July 1, 2009 Retail Electric  
15 Service Agreement between Kenergy and Century Sebree (as amended,  
16 the "2009 Retail Agreement").

17 Pursuant to Section 2.3.2(c) of the 2009 Retail Agreement, Kenergy  
18 was required to—upon Century Sebree's request—use commercially  
19 reasonable efforts to acquire energy from either Big Rivers or one or  
20 more other third-party suppliers for resale to Century Sebree. Any  
21 request by Century Sebree was required to specify the amount and  
22 duration of energy, price, and all other material terms and conditions.  
23 Century Sebree was then obligated to pay to Kenergy all amounts that  
24 Kenergy is obligated to pay to the supplier(s) of that energy. Pursuant  
25 to the Electric Service Agreement, Century Sebree is similarly  
26 obligated to pay to Kenergy all costs incurred by Kenergy for the  
27 electric services acquired for Century Sebree.

1 The agreements are also similar insofar as Kenergy is obligated to  
2 deliver to Century Sebree only those amounts of energy received from  
3 its supplier(s), net of applicable losses. Kenergy will not be in default  
4 under any provision of the Electric Service Agreement, nor will it have  
5 any liability to Century Sebree if the non-delivery of that energy  
6 results from the failure of a third-party supplier to deliver the full  
7 amount of energy and Kenergy has assigned (to Century Sebree) its  
8 rights and remedies against the third-party supplier.

9 The agreements also contain similar financial security protections for  
10 Kenergy, as described above.

11 **Q. How do the terms of the Electric Service Agreement in the**  
12 **Century Sebree Transaction differ from the terms of the**  
13 **Electric Service Agreement in the Century Hawesville**  
14 **Transaction?**

15 A. The principal substantive differences from the Century Hawesville  
16 Transaction related to the fact that MISO has advised Big Rivers that,  
17 at least initially, operation of the Wilson Generating Station or any  
18 other Big Rivers' generating resource will not be required. As a result,  
19 there will not be an SSR Agreement required initially. Mr. Berry  
20 explains this in greater detail in his testimony.

21  
22 **Tax Indemnity Agreement**

23 **Q. Are you familiar with the Tax Indemnity Agreement?**

24 A. Yes.

25 **Q. Can you please provide a general description of the Tax**  
26 **Indemnity Agreement?**

1 A. This is a contract between Kenergy, Century Sebree, and Century  
2 Parent that insulates Kenergy from the risk of incurring any  
3 additional tax liabilities if the Century Sebree Transaction causes  
4 Kenergy to lose its status as an entity exempt from federal, state, or  
5 local tax. If the Century Sebree Transaction results in a change in  
6 Kenergy's tax status and Kenergy incurs costs as a result, Century  
7 Sebree agrees to hold Kenergy harmless on an after-tax basis from and  
8 against all of those costs.

9 The Tax Indemnity Agreement also permits Kenergy to seek a tax  
10 ruling on any potential impact the Century Sebree Transaction may  
11 have on its tax exempt status. If Kenergy chooses to seek such a  
12 ruling, Century Sebree will pay all associated costs and expenses, as  
13 long as Century Sebree is consulted in advance.

14 **Q. How do the terms of the Tax Indemnity Agreement in the**  
15 **Century Sebree Transaction differ from the terms of the Tax**  
16 **Indemnity Agreement in the Century Hawesville Transaction?**

17 A. No substantive differences exist between the Tax Indemnity  
18 Agreement for the Century Sebree Transaction as compared to the  
19 Century Hawesville Transaction.

20

21 **IV. THE IMPACT OF THE CENTURY SEBREE TRANSACTION ON**  
22 **KENERGY**

23

24 **Q. What was done to determine whether Kenergy could supply**  
25 **Century Sebree with power from the wholesale market?**

26 A. Although Kenergy has an all requirements contract with Big Rivers,  
27 there is an exception for the aluminum smelters (including Century

1           Sebree). Engineering studies were performed to determine constraints  
2           relative to transmission capacity serving the Sebree smelter. As Big  
3           Rivers is a member of MISO, official requests were made to MISO to  
4           determine the amount of power that could be delivered with Big  
5           Rivers' Wilson Generating Station in idled condition.

6       **Q.    Why did Kenergy support the decision to provide Century  
7           Sebree's power supply from the wholesale market?**

8       A.    First, Century Sebree is a member of Kenergy, and it is Kenergy's  
9           business objective to serve all of its members in an economic and  
10          responsible manner. Second, as noted above, the closure of the Sebree  
11          smelter would negatively impact many Kenergy members (both  
12          directly and indirectly) and would have an adverse effect on the local  
13          economy. Kenergy is further motivated to work with Century Sebree  
14          to keep the Sebree smelter in operation to protect against any negative  
15          impact that plant closure could have on Kenergy's growth projects in  
16          its service territory.

17       **Q.    Is Kenergy exposed to generation risk or market price risk for  
18           electric services as a result of the Century Sebree Transaction?**

19       A.    No. All of the electric services to be resold by Kenergy will be  
20          purchased from the Market Participant (or bilateral contract  
21          counterparty, if Kenergy is the Market Participant) under the Electric  
22          Services Agreement. Pursuant to Section 2.7 of the Electric Service  
23          Agreement, to the extent a person has a corresponding or related  
24          obligation to Kenergy with respect to any matter, Kenergy's  
25          performance of an obligation with respect to that matter (whether  
26          under the Electric Service Agreement or any other Century Sebree  
27          Transaction Document) is subject to and conditioned upon that

1 person's performance of that corresponding or related obligation to  
2 Kenergy. Consequently, Kenergy will not bear generation risk as a  
3 result of the Century Sebree Transaction.

4 Likewise, Century Sebree is obligated under the Electric Service  
5 Agreement to pay Kenergy all of Kenergy's costs of purchasing those  
6 electric services, and Century Sebree's obligation is back-stopped by  
7 the Parent Guarantee. Therefore, Kenergy will not bear market price  
8 risk as a result of the Century Sebree Transaction.

9 **Q. Is Kenergy exposed to disputes between Century Sebree and**  
10 **bilateral counterparties or Market Participants as a result of**  
11 **the Transaction?**

12 A. Kenergy is protected against any of those disputes, as well.

13 As noted above, the Electric Service Agreement is structured so that  
14 each of Kenergy's obligations in connection with the Century Sebree  
15 Transaction is conditioned on the performance of any related  
16 obligation(s) owed to Kenergy. Moreover, either the Market  
17 Participant or Century Sebree may directly enforce any obligation  
18 arising from the Principal Agreements, thereby decreasing the  
19 possibility that Kenergy will be involved in disputes between those  
20 parties. In essence, these agreements create what amounts to a pass-  
21 through arrangement for the obligations between Century Sebree and  
22 the Market Participant.

23 Additionally, Century Sebree has undertaken certain release and  
24 indemnification obligations that will protect Kenergy against potential  
25 disputes between Century Sebree and Big Rivers, the Market  
26 Participant (if different), and bilateral counterparties (if Kenergy is the  
27 Market Participant). For example, Century Sebree has released

1 Kenergy from all claims Century Sebree may have against Kenergy if  
2 Big Rivers, the Market Participant (if different), or a bilateral contract  
3 counterparty (if Kenergy is the Market Participant) fails to satisfy its  
4 obligations under any Transaction Document or bilateral contract, as  
5 applicable. Century Sebree has also agreed to indemnify, hold  
6 harmless, and defend Kenergy against all claims that those same  
7 parties may assert against Kenergy in connection with any of their  
8 failure to perform pursuant to any Century Sebree Transaction  
9 Document or bilateral contract, as applicable, provided that Kenergy  
10 assigns its related rights to Century Sebree in accordance with the  
11 terms of the Electric Service Agreement.

12 The Electric Service Agreement also provides that each market  
13 agreement and bilateral contract must contain provisions that are  
14 substantially similar to these in order to further insulate Kenergy  
15 against disputes between Century Sebree and Big Rivers, the Market  
16 Participant (if different), and bilateral counterparties (if Kenergy is the  
17 Market Participant).

18 **Q. How does Kenergy protect itself from Century Sebree's credit  
19 risk?**

20 A. Kenergy has two levels of protection against any credit risk posed by  
21 Century Sebree. On the first level, the Electric Service Agreement  
22 requires Century Sebree to provide credit support to Kenergy in  
23 amounts Kenergy estimates to become due and payable: (i) to Kenergy  
24 for a period of two succeeding months of electric service; (ii) with  
25 respect to taxes payable by Century Sebree for the benefit of Kenergy;  
26 and (iii) for other costs to be incurred by Kenergy as a result of any  
27 Century Sebree Transaction Document. On the second level, Century



1 Parent has provided Kenergy and Big Rivers with a guarantee of  
2 payment and performance for all obligations of Century Sebree under  
3 the Transaction Documents. That guarantee extends to cover payment  
4 and performance of all of Century Sebree's obligations not just to  
5 Kenergy and Big Rivers, but also to the Market Participant (if  
6 different) or any party to a bilateral contract entered for Century  
7 Sebree's benefit.

8 **Q. Pursuant to the terms of the Transaction Documents, who pays**  
9 **for the costs Kenergy incurs to others in connection with the**  
10 **Century Sebree Transaction?**

11 A. Century Sebree does. Pursuant to Article 4 of the Electric Service  
12 Agreement, Century Sebree must pay all of Kenergy's costs of  
13 supplying and delivering electric services to Century Sebree under that  
14 agreement. Those costs include: (i) any security that must be provided  
15 to any person (including the RTO or ISO of which the Market  
16 Participant is a member, as well as any bilateral contract  
17 counterparty(ies)); (ii) liabilities for which Century Sebree indemnifies  
18 Kenergy; and (iii) all other out-of-pocket costs payable by Kenergy to  
19 another person or entity in connection with the Century Sebree  
20 Transaction.

21 **Q. Has Kenergy incurred out-of-pocket costs related to**  
22 **negotiating and seeking approval of the Century Sebree**  
23 **Transaction?**

24 A. Yes. Kenergy has incurred and is incurring costs related to the  
25 negotiation and approval of the Century Sebree Transaction, and  
26 Century Sebree is reimbursing those costs on a monthly basis under  
27 the terms of an existing cost reimbursement agreement.

1 **Q. Will the decision to allow Century Sebree to operate in this**  
2 **manner adversely affect Kenergy?**

3 A. No. If providing Century Sebree market power supply results in the  
4 Sebree smelter remaining in operation, then the decision will affect  
5 Kenergy in a positive way for the reasons described above. Kenergy  
6 does not envision any adverse impact of allowing Century Sebree to  
7 operate with market power supply because Kenergy anticipates  
8 recovering all costs associated with providing this service. In addition,  
9 Century Sebree will continue to pay a modest contribution to Kenergy  
10 equity consistent with Kenergy's historical adder and the requirements  
11 applicable to all cooperative members.

12 **Q. Will the decision to allow Century Sebree to operate in this**  
13 **manner have an adverse impact on the rates of Kenergy**  
14 **members?**

15 A. No. In light of Century Sebree's termination of its existing power  
16 arrangements, the alternative to the Century Sebree Transaction was  
17 Century Sebree's cessation of smelting operations at the Sebree  
18 smelter. Consequently, the Century Sebree load will be lost from the  
19 system whether or not the Century Sebree Transaction is finalized.  
20 But while Kenergy members were faced with rate increases because of  
21 Century Sebree leaving the Big Rivers system, the Kenergy board  
22 made it clear from the beginning that any solution to Century Sebree's  
23 problem must not have any negative effect on Kenergy's other  
24 members above and beyond the increase necessary to replace the load.

25 **Q. Has Kenergy's board approved the Century Sebree**  
26 **Transaction?**

1 A. Kenergy's board of directors has approved the Century Sebree  
2 Transaction.

3 **Q. Will the Century Sebree Transaction have any impact on the**  
4 **Commission's jurisdiction over Kenergy?**

5 A. No. Although I am not a lawyer, it is my understanding that Kenergy  
6 will continue to be subject to the Commission's jurisdiction and  
7 authority. Kenergy's role in the Century Sebree Transaction will  
8 remain very similar to its existing role under the 2009 Retail  
9 Agreement; as well as its role in the Century Hawesville Transaction.  
10 Kenergy will be retail electric supplier of energy to Century Sebree. In  
11 short, Kenergy will simply be purchasing electricity and related  
12 services from the Market Participant or bilateral counterparties (if  
13 Kenergy becomes the Market Participant) and then reselling the same  
14 electricity and services to Century Sebree. Put another way, the  
15 Commission's statement of its jurisdiction in the August 14, 2013 order  
16 in the Century Hawesville Case is consistent with my understanding of  
17 the Commission's jurisdiction.

18

19 **V. THE CENTURY SEBREE TRANSACTION MUST BE**  
20 **APPROVED BEFORE JANUARY 31, 2014**

21

22 **Q. What would happen if the Commission does not approve the**  
23 **Century Sebree Transaction before January 31, 2014?**

24 A. If the Century Sebree Transaction is not approved prior to January 31,  
25 2014, Kenergy will need to terminate service to Century Sebree at that  
26 time. The 2009 Retail Agreement is the only mechanism by which  
27 Kenergy is currently able to serve Century Sebree, and when that

1 agreement terminates on January 31, 2014, service must be  
2 terminated as well. Moreover, it is my understanding that the nature  
3 of aluminum smelting operations makes it extraordinarily expensive to  
4 restart smelting operations once they have been shut down. Even loss  
5 of load to a smelter for a few hours can “freeze” the smelting process,  
6 causing tens of millions of dollars in damages. So, our obvious  
7 preference is to avoid that scenario by securing Commission approval  
8 of the Century Sebree Transaction prior to January 31, 2014. And  
9 although we recognize that January 31, 2014, is quickly approaching,  
10 we have worked as expeditiously as possible to finalize the terms of the  
11 Century Sebree Transaction and make this filing as soon as possible  
12 upon completion of that task.

13 Nevertheless, if the Century Sebree Transaction is not approved before  
14 January 31, 2014, Kenergy and Big Rivers are requesting that the  
15 Commission declare that service to Century Sebree may be terminated  
16 at that time.

17 **Q. Is there an Alternate Service Agreement by which the parties**  
18 **propose Century Sebree be served absent approval of the**  
19 **Century Sebree Transaction before January 31, 2014?**

20 A. Yes, but it is important to understand that the Alternate Service  
21 Agreement does not protect against closure of the Sebree smelting  
22 operations. The Alternate Service Agreement (attached as Exhibit 21  
23 to the application and incorporated herein by reference) is designed to  
24 provide Century Sebree no more than 10 MW of electricity to support  
25 Century Sebree’s non-smelting operations at the Sebree Smelter.

26 **Q. So, is the Alternate Service Agreement a substitute for the**  
27 **Century Sebree Transaction?**

1 A. No. The Alternate Service Agreement would not allow for the  
2 provision of greater than 10 MW of power to Century Sebree for non-  
3 smelting operations, so it provides dramatically less than the 378 MW  
4 Century Sebree expects is required to sustain the current Century  
5 Sebree smelting operations. The Alternate Service Agreement simply  
6 provides electric service for non-smelting activities at the Sebree  
7 Smelter, such as security, maintenance and safety activities, that must  
8 continue even after smelting operations cease. So this agreement  
9 needs to be in place immediately in case it is needed on January 31,  
10 2014, or, if the Electric Service Agreement becomes effective, at some  
11 point in the future after the Electric Service Agreement is terminated  
12 by Century Sebree on 60 days' prior notice. In either case, the goal of  
13 the Alternate Service Agreement is to permit Century Sebree to  
14 receive up to 10 MW in order to keep non-smelting operations active at  
15 the Sebree site.

16  
17  
18  
19

20 **VI. CONCLUSION**

21

22 **Q. Why should the Commission approve the Century Sebree**  
23 **Transaction?**

24 A. As noted above, the Century Sebree Transaction provides Century  
25 Sebree with the market-priced power supply it says it needs to keep  
26 the Sebree smelter in operation. Helping Century Sebree achieve this  
27 result is beneficial to Kenergy, its members, and in a broader sense,

1 the regional economy of Western Kentucky. The Century Sebree  
2 Transaction is designed so Kenergy should not incur costs that are not  
3 also ultimately the obligation of Century Sebree to pay, and it will not  
4 impact Kenergy's retail rates.

5 Without approval of the Century Sebree Transaction before January  
6 31, 2014, however, Kenergy will have no way to protect against the  
7 potential for the adverse economic impact that cessation of smelting  
8 operations in Sebree would cause for Kenergy's members and the  
9 broader regional economy. This is an extremely unusual scenario  
10 facing Kenergy, Big Rivers, our members, and Century Sebree.

11 Consequently, it is imperative that the Commission expeditiously  
12 approve the Century Sebree Transaction, including the Alternate  
13 Service Agreement and issue a declaratory order permitting the  
14 termination of service to Century Sebree on January 31, 2014, if for  
15 any reason those agreements are not in effect on January 31, 2014.

16 The Century Sebree Transaction documents for which approval is  
17 sought should be approved for the same reasons the Commission  
18 approved the Century Hawesville Transaction documents in its August  
19 14, 2013 order in the Century Hawesville Case.

20 **Q. Does this conclude your testimony?**

21 **A. Yes.**

22



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 ) Case No. 2013-\_\_\_\_  
A Declaratory Order )

**DIRECT TESTIMONY**

**OF**

**ROBERT W. BERRY  
CHIEF OPERATING OFFICER**

**ON BEHALF OF**

**BIG RIVERS ELECTRIC CORPORATION**

**FILED: November 19, 2013**



DIRECT TESTIMONY  
OF  
ROBERT W. BERRY

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**DIRECT TESTIMONY  
OF  
ROBERT W. BERRY**

1  
2  
3  
4

5 **I. INTRODUCTION**

6

7 **Q. Please state your name, business address, and position.**

8 A. My name is Robert W. Berry. I am employed by Big Rivers Electric  
9 Corporation (“Big Rivers”), 201 Third Street, Henderson, Kentucky 42420 as its  
10 Chief Operating Officer. I have held this position since February 1, 2013. Prior  
11 to that I held the position of Vice President of Production, a position I had held  
12 since July 2009, upon the closing of the transaction that unwound Big Rivers’  
13 1998 lease with E.ON U.S., LLC and its affiliates (the “Unwind Transaction”).  
14 The Unwind Transaction is described in detail in Case No. 2007-00455. Prior to  
15 the closing of the Unwind Transaction, I was employed by Western Kentucky  
16 Energy Corporation (“WKE”) for 11 years beginning as a Maintenance Manager  
17 in 1998. I held the position of Plant Manager of the Coleman Generating Station  
18 from 2000 until 2003 at which time I became the Plant Manager of the Sebree  
19 Generating Station. Altogether, I have over 32 years of experience in this system,  
20 having worked for both Big Rivers and WKE.

21 **Q. Have you previously testified before the Kentucky Public Service  
22 Commission (the “Commission”)?**

23 A. Yes. I testified most recently on behalf of Big Rivers in its 2011 general rate  
24 case, Case No. 2011-00036, its 2012 Environmental Compliance Plan case, Case  
25 No. 2012-00063, its 2012 general rate case, Case No. 2012-00535, its 2013 rate

1 case, Case No. 2013-00199 and in *In the Matter of: Joint Application of Kenergy*  
2 *Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a*  
3 *Declaratory Order*, P.S.C. Case No. 2013-00221 (the “Century Hawesville  
4 Case”).

5  
6 **II. OVERVIEW OF TESTIMONY**

7  
8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to provide additional details about the power  
10 procurement and supply transactions (the “Century Sebree Transaction”)  
11 presented here for approval by the Commission.

12 Over the past year, I acted on Big Rivers’ behalf as its principal negotiator of the  
13 transaction among Kenergy Corp. (“Kenergy”), Big Rivers, Century Aluminum  
14 Company (“Century Parent”), and Century Aluminum of Kentucky General  
15 Partnership (“Century Hawesville”). That transaction, which I will refer to in my  
16 testimony as the Century Hawesville Transaction, is the arrangement by which  
17 Kenergy provides retail electric service to Century Hawesville at market-based  
18 rates, and Big Rivers acts as the initial Market Participant for transactions in the  
19 Midcontinent Independent System Operator, Inc. (“MISO”) market, and the  
20 transmission provider. The agreements documenting the Century Hawesville  
21 Transaction were approved by the Commission in the Century Hawesville Case. I  
22 would note that the August 14, 2013 order of the Commission in the Century  
23 Hawesville Case granting the authority required for the Century Hawesville  
24 Transaction to be consummated has been appealed to the Franklin Circuit Court

1 by Kentucky Industrial Utility Customers, Inc., one of the parties in the Century  
2 Hawesville Case.

3 Over the past several weeks, I have also acted on Big Rivers' behalf as its  
4 principal negotiator of a transaction, nearly identical substantively to the Century  
5 Hawesville Transaction, among Kenergy, Century Parent, and Century Aluminum  
6 Sebree LLC ("Century Sebree," and together with Century Parent, "Century").

7 That transaction, which I will refer to in my testimony as the "Century Sebree  
8 Transaction," provides the basis for Kenergy to provide retail electric service to  
9 Century Sebree, and Big Rivers to assume the same roles in the Century Sebree  
10 Transaction that it performs in the Century Hawesville Transaction.

11 Based on my personal knowledge as a direct participant in the Century Sebree  
12 Transaction negotiations, I will discuss in greater detail the Century Sebree  
13 Transaction generally, as well as the Arrangement and Procurement Agreement,  
14 the Direct Agreement, the Protective Relays Agreement, the Guarantee of Century  
15 Parent, the Lockbox Agreement and the Load Curtailment Agreement. I will also  
16 testify about the impact of the Century Sebree Transaction on Big Rivers.

17 **Q. Are you sponsoring any exhibits?**

18 A. Yes, I am sponsoring the eight contracts that comprise the portion of the Century  
19 Sebree Transaction related to Century Sebree's smelting operation, each described  
20 in more detail in Section IV below, and the Letter Agreement attached as Exhibit  
21 20 to this application.

22

23

1 **Q. Please provide an overview of your testimony.**

2 A. In Section III of my testimony, I provide an overview of the Century Sebree  
3 Transaction structure, the involvement of the markets operated by MISO, and the  
4 Century Sebree Transaction's anticipated impacts on Big Rivers' D. B. Wilson  
5 Plant ("Wilson"), a coal-fired steam electric generating plant located near  
6 Matanzas, Kentucky.

7 In Section IV, I briefly describe each of the agreements listed above and explain  
8 how they relate to the Century Sebree Transaction as a whole.

9 In Section V, I explain in more detail the manner in which Big Rivers will provide  
10 electric services to Kenergy for resale to Century Sebree under the Century  
11 Sebree Transaction. Specifically, I will address the contracts that primarily  
12 govern Big Rivers' role in the Century Sebree Transaction.

13 In Section VI, I will address how the parties have negotiated responsibility for  
14 various costs in the Century Sebree Transaction, including the costs of the  
15 negotiation and approval process. I will also address how the Century Sebree  
16 Transaction addresses potential sales of surplus energy.

17 In Section VII, I will discuss the conditions to entering the Century Sebree  
18 Transaction, the circumstances under which it may be terminated, and the effect  
19 of any termination.

20 In Section VIII, I will summarize my views on the impact of the Century Sebree  
21 Transaction on Big Rivers, also describing why the Century Sebree Transaction  
22 will not affect the Commission's jurisdiction over the rates of Big Rivers or its  
23 members. I conclude my testimony in Section IX.

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**III. THE CENTURY SEBREE TRANSACTION**

**Q. What is the purpose of this portion of your testimony?**

A. In this portion of my testimony, I will provide an overview of the Century Sebree Transaction and some of the effects of entering into the Century Sebree Transaction. I will provide additional details later in my testimony.

**Q. Are you familiar with Century Sebree’s existing power supply arrangements with Big Rivers and Kenergy?**

A. Yes.

**Q. Please describe Century’s existing power supply arrangements with Big Rivers and Kenergy.**

A. Kenergy currently delivers retail electric energy and related services, such as capacity, transmission, and ancillary services (collectively, “Electric Services”), to Century Sebree for use at its Sebree Smelter, under the Retail Electric Service Agreement, dated as of July 1, 2009 (as amended, the “2009 Retail Agreement”). Kenergy currently purchases those Electric Services at wholesale from Big Rivers pursuant to the Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the “2009 Wholesale Agreement”). Big Rivers supplies the Electric Services sold to Kenergy for service to Century Sebree through Big Rivers’ generating facilities and purchased power arrangements, albeit indirectly through Big Rivers’ participation in the MISO market. The 2009 Retail Agreement and

1 the 2009 Wholesale Agreement were both approved by the Commission in Case  
2 No. 2007-00455.

3 **Q. Are you familiar with the Century Sebree Transaction?**

4 A. Yes, I am familiar with the Century Sebree Transaction and its various  
5 agreements to the extent that they implicate Big Rivers.

6 **Q. Please describe how, pursuant to the Century Sebree Transaction, Big Rivers  
7 will provide Electric Services to Kenergy for resale to Century Sebree.**

8 A. Big Rivers will sell Electric Services to Kenergy under special contracts.  
9 Kenergy in turn will resell Electric Services to Century under special contracts.

10 **Q. Will the Century Sebree Transaction replace the 2009 Retail Agreement and  
11 2009 Wholesale Agreement involving Kenergy, Big Rivers, and Century?**

12 A. Yes, the Century Sebree Transaction will replace these arrangements. Century  
13 Sebree acquired the Century Sebree assets, including the 2009 Retail Agreement,  
14 from Alcan Primary Products Corporation ("Alcan") on June 1, 2013. Alcan  
15 notified Kenergy on January 31, 2013 of termination of the 2009 Retail  
16 Agreement. At that time Big Rivers and Century Hawesville were negotiating the  
17 Century Hawesville Transaction. Alcan said that it would like to discuss whether  
18 a transaction similar to the transaction being offered to Century Hawesville would  
19 allow it to avoid closing its smelter. Century raised the same issue after it entered  
20 into agreements to acquire the Alcan smelting assets. Century Sebree did not  
21 want to pursue the Century Sebree Transaction until after the Century Hawesville  
22 Transaction closed on August 19, 2013. Then Century asked Kenergy and Big  
23 Rivers to propose a similar arrangement for Century Sebree. Century, Kenergy,

1 and Big Rivers thereafter commenced negotiating new power supply  
2 arrangements for Century Sebree. The Century Sebree Transaction embodies  
3 these negotiated arrangements, but the agreements will not become effective until  
4 the termination of the existing agreements.

5 **Q. Please describe the basic structure of the Century Sebree Transaction.**

6 A. The Century Sebree Transaction is intended to provide Century Sebree's Sebree  
7 smelter with Electric Services purchased from a wholesale electric market (such  
8 as the MISO market) or pursuant to bilateral contracts with third parties (each, a  
9 "Bilateral Contract"). The Century Sebree Transaction is nearly identical  
10 substantively to the Century Hawesville Transaction approved by the Commission  
11 in its August 14, 2013 order in the Century Hawesville Case.

12 Big Rivers will no longer have an obligation to supply Electric Services to  
13 Century Sebree from its generation facilities or from any purchase power  
14 arrangement not specifically intended to provide Electric Services to Kenergy for  
15 delivery to Century Sebree. Because Big Rivers will no longer have this  
16 obligation, it will change how it operates Wilson Station.

17 Kenergy retains its role as the sole retail provider of Electric Services to Century.

18 Kenergy will obtain the Electric Services delivered to Century Sebree from a  
19 market participant (as defined in the MISO Tariff, a "Market Participant"), as  
20 described below.

21 **Q. How is the Market Participant determined?**

22 A. Big Rivers will serve as the initial Market Participant. In the future, Kenergy may  
23 elect to become the Market Participant. Alternatively, Century Sebree may



1 appoint an entity other than Big Rivers to be the Market Participant, provided that  
2 it demonstrates to Kenergy that arrangements with the new Market Participant do  
3 not increase Kenergy's financial or operational risks compared to the risks to  
4 Kenergy under the Arrangement Agreement. If an entity other than Big Rivers  
5 serves as Market Participant in the future, Kenergy will execute a separate  
6 "Market Agreement" with that entity. Mr. Starheim describes these options in  
7 more detail in his testimony.

8 **Q. Does the Century Sebree Transaction result in an increase in Century**  
9 **Sebree's Load?**

10 A. No. The maximum scheduled load permitted under the Century Sebree  
11 Transaction is 378 megawatts. The Century Sebree Transaction documents also  
12 permit Century Sebree to have up to 10 megawatts of imbalance energy above the  
13 378 megawatts.

14 **Q. Please elaborate on how the Century Sebree Transaction will impact Big**  
15 **Rivers' participation in MISO.**

16 A. The Century Sebree Transaction will not change Big Rivers' status within MISO,  
17 but Big Rivers has established with MISO a new commercial pricing "node" (as  
18 defined in the MISO Tariff) for Century Sebree (the "Sebree Node"). If an entity  
19 other than Big Rivers becomes the Market Participant, Big Rivers will transfer the  
20 Sebree Node to the new Market Participant. In the future, Big Rivers or Kenergy  
21 may elect to join or become a member of a regional transmission operator  
22 ("RTO") or an independent system operator ("ISO") other than MISO, or Big  
23 Rivers may elect to withdraw as a member of MISO and not elect to join or

1 become a member of another RTO or ISO. If this occurs, Kenergy, Big Rivers,  
2 and Century Sebree will, to the extent necessary, modify in good faith the terms  
3 and provisions of the Century Sebree Transaction documents to preserve their  
4 purposes and intent.

5 **Q. Will the Century Sebree Transaction impact the operation of any Big Rivers**  
6 **generating stations or units?**

7 A. As a result of the notice of termination of the 2009 Retail Agreement, Big Rivers  
8 has sought permission from MISO to idle Wilson Station. Based upon the MISO  
9 Attachment Y2 study on Wilson Station, which Big Rivers is in the process of  
10 converting to a final Attachment Y Study, Wilson Station will not be required by  
11 MISO to operate for system reliability purposes in the period following the  
12 closing of the Century Sebree Transaction. Accordingly, Big Rivers plans to idle  
13 Wilson Station immediately following the closing of the Century Sebree  
14 Transaction on January 31, 2014. A public redacted copy of the Attachment Y2  
15 Study is attached to my testimony as Exhibit RWB-1. If MISO or any other  
16 governmental authority with jurisdiction over reliability ever determines that any  
17 owned or leased generation facility of Big Rivers is required to operate for  
18 reliability purposes, Big Rivers and MISO, or the applicable governmental  
19 authority, will negotiate and enter into a System Support Resources (“SSR”)  
20 Agreement. Among other things, a SSR Agreement would describe what nodes  
21 will be obligated to pay costs, if any, associated with the potential must-run  
22 condition of any such owned or leased generation facility (the “Reliability  
23 Costs”). The Century Sebree Transaction documents contemplate this possibility,

1 and provide for it with specific provisions to address how any Reliability Costs  
2 would be paid.

3 To avoid triggering a SSR Agreement, Century Sebree may keep its load in an  
4 amount less than the level that would result in the need for a SSR Agreement (the  
5 “Base Load”), plus an additional load that may be made available to Century  
6 Sebree upon confirmation by MISO in the event Century Sebree decides to install  
7 protective relays at the Sebree Smelter. In that circumstance, Century Sebree  
8 would have the ability to curtail that additional load through the use of protective  
9 relays, as directed by governmental authorities regulating reliability (the  
10 “Curtable Load”). In combination, the Base Load and Curtable Load are  
11 subject to a maximum scheduled load of 378 megawatts, together with up to 10  
12 megawatts of imbalance energy.

13 **Q. Does the Century Sebree Transaction require approval as a financing**  
14 **transaction pursuant to KRS 278.300?**

15 A. No. It is my understanding that Big Rivers’ agreement to purchase electric energy  
16 from the MISO Day-Ahead market does not constitute the kind of “financing”  
17 transaction that is subject to the approval requirements of KRS 278.300. Because  
18 purchases will be made in the Day-Ahead market, the payment obligations will  
19 not resemble the types of long-term “take or pay” commitments that the  
20 Commission has previously treated as “financings.” This conclusion is reinforced  
21 by the fact that the parties have negotiated significant credit support for Big  
22 Rivers’ and Kenergy’s market obligations.

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**IV. THE CENTURY SEBREE TRANSACTION DOCUMENTS**

**Q. What is the purpose of this portion of your testimony?**

A. In this portion of my testimony, I will describe the agreements entered into by and among Century, Kenergy, and Big Rivers to effectuate the Century Sebree Transaction.

**Q. What agreements will govern the relationships between and among Century, Kenergy, and Big Rivers relating to provision of electric service to Century Sebree’s smelting operation?**

A. There are eight agreements in the Century Sebree Transaction that embody the terms and conditions relating to electric power service for aluminum smelting at Century Sebree. Those agreements are as follows:

1. Electric Service Agreement, by and between Kenergy and Century Sebree (a true and accurate copy of which is attached to the application as Exhibit 5);
2. Arrangement and Procurement Agreement (the “Arrangement Agreement”), by and between Kenergy and Big Rivers (a true and accurate copy of which is attached to the application as Exhibit 7);
3. Direct Agreement, by and between Big Rivers and Century Sebree (a true and accurate copy of which is attached to the application as Exhibit 9);

- 1 4. *Tax Indemnity Agreement*, by and among Kenergy, Century Parent,  
2 and Century Sebree (a true and accurate copy of which is attached to  
3 the application as Exhibit 13);
- 4 5. *Guarantee*, by Century Parent in favor of Kenergy and Big Rivers,  
5 relating to Century Sebree's obligations under the Century Sebree  
6 Transaction documents (a true and accurate copy of which is attached  
7 to the application as Exhibit 15);
- 8 6. *Lockbox Agreement*, by and among Century Sebree, Kenergy, Big  
9 Rivers, and a depository bank (a true and accurate copy of which is  
10 attached to the application as Exhibit 17);
- 11 7. *Protective Relays Agreement*, by and among Kenergy, Big Rivers, and  
12 Century Sebree (a true and accurate copy of which is attached to the  
13 application as Exhibit 11); and
- 14 8. *Load Curtailment Agreement* between and among Big Rivers,  
15 Kenergy and Century Sebree relating to curtailment of Century  
16 Sebree's load in circumstances determined necessary by MISO or  
17 other reliability coordinators, including local balancing authorities,  
18 such as Big Rivers (a true and accurate copy of which is attached to  
19 the application as Exhibit 23).

20 **Q. How are Kenergy's, Big Rivers', and Century's respective obligations under**  
21 **the Century Sebree Transaction documents related?**

22 A. The Century Sebree Transaction documents are structured so that: (i) each  
23 obligation of Kenergy to Big Rivers pursuant to the Arrangement Agreement is

1 conditioned on the performance by Century Sebree of its obligations to Kenergy  
2 under the Electric Service Agreement, and (ii) each obligation of Kenergy to  
3 Century Sebree under the Electric Service Agreement is conditioned on the  
4 performance by Big Rivers of its obligations to Kenergy under the Arrangement  
5 Agreement.

6 **Q. Are you familiar with and able to testify about the Arrangement Agreement  
7 that is part of the Century Sebree Transaction?**

8 A. Yes.

9 **Q. Can you please describe the nature of the Arrangement Agreement?**

10 A. The Arrangement Agreement is a contract between Kenergy and Big Rivers that  
11 will coordinate those companies' efforts to acquire Electric Services from the  
12 wholesale market for resale to Century Sebree. As Mr. Starheim has testified,  
13 Kenergy has agreed to sell and deliver Electric Services to Century Sebree  
14 pursuant to the Electric Service Agreement between those two parties. Big Rivers  
15 will not generate the power to be used by Century Sebree but will instead serve  
16 (at least initially) as the Market Participant to secure power from the wholesale  
17 market for resale to Kenergy to provide to Century Sebree under the Electric  
18 Service Agreement.

19 Pursuant to the Arrangement Agreement, Big Rivers will serve as the Market  
20 Participant in the MISO Day Ahead Market and purchase or sell imbalance  
21 energy in the Real Time Market. Big Rivers will procure these Electric Services  
22 for Kenergy for resale to Century Sebree under the Electric Service Agreement.  
23 In its role as Market Participant, Big Rivers will also serve as the scheduling

1 agent for the electricity, electric capacity, and electricity-related ancillary services  
2 required under the Electric Service Agreement during the term of the  
3 Arrangement Agreement. To facilitate review of the Arrangement Agreement, a  
4 document comparing it against the same document in the Century Hawesville  
5 Transaction is attached to the Application in this matter as Exhibit 8.

6 **Q. Are you familiar with the Direct Agreement?**

7 A. Yes.

8 **Q. Can you please provide a general description of the Direct Agreement?**

9 A. The Direct Agreement is a contract between Big Rivers and Century Sebree  
10 relating to direct, bilateral obligations to each other in connection with the  
11 Century Sebree Transaction, such as Century Sebree's obligations to reimburse  
12 Big Rivers for Reliability Costs, if there is ever a SSR Agreement required,  
13 together with any other costs incurred by Big Rivers' owned or leased generating  
14 facilities in consequence of the operation or existence of the Sebree Smelter or the  
15 Century Sebree Transaction. All other out-of-pocket costs incurred by Big Rivers  
16 in connection with the operation of the Sebree Smelter are recovered under the  
17 agreement as are other internal costs of Big Rivers relating to ongoing  
18 management of the transaction. The Direct Agreement will remain in effect even  
19 if Big Rivers is no longer acting as the Market Participant and the Arrangement  
20 Agreement is terminated. To facilitate review of the Direct Agreement, a  
21 document comparing it against the same document in the Century Hawesville  
22 Transaction is attached to the Application in this matter as Exhibit 10.

23

1 **Q. Are you familiar with the Protective Relays Agreement?**

2 A. Yes.

3 **Q. Can you please provide a general description of the Protective Relays**  
4 **Agreement?**

5 A. This is a contract between Century Sebree, Kenergy, and Big Rivers to protect  
6 Big Rivers and Kenergy from risks and obligations relating to the design,  
7 development, purchase, installation, operation and maintenance of any protective  
8 relay additions that Century Sebree elects to install at the Sebree Smelter.

9 Pursuant to the Protective Relays Agreement, if Century Sebree elects to install  
10 protective relays at the Sebree Smelter, it will design, develop, purchase, own and  
11 install protective relays in order to support curtailment of Century Sebree's  
12 requirements for Electric Services in certain circumstances. Century Sebree will  
13 be responsible for all related work, including the development of the  
14 specifications and the installation of the protective relays in accordance with law,  
15 electrical standards and prudent utility practice. Although Century Sebree will  
16 not install protective relays initially, this agreement will govern any future  
17 installation of protective relays.

18 In addition, if Century Sebree makes that election, Kenergy, Big Rivers, and  
19 Century Sebree have agreed to cooperate to submit to MISO and, if necessary, to  
20 SERC a mutually agreeable proposal that (a) Century Sebree be permitted to  
21 receive the Curtailable Load, (b) when required to maintain electrical reliability,  
22 authorize third parties be permitted to direct activation of the protective relays to  
23 curtail Century Sebree's load at the Sebree Smelter, (c) any such direction shall be



1 specified, agreed to, and communicated to Big Rivers, and (d) Big Rivers shall  
2 provide notice to Century Sebree of such communications. To facilitate review of  
3 the Protective Relays Agreement, a document comparing it against the same  
4 document in the Century Hawesville Transaction is attached to the Application in  
5 this matter as Exhibit 12.

6 **Q. Are you familiar with the Century Parent Guarantee?**

7 A. Yes.

8 **Q. Can you please provide a general description of the Guarantee?**

9 A. This is a contract between Century Parent, Kenergy, and Big Rivers by which  
10 Century Parent unconditionally and irrevocably guarantees, as a primary obligor  
11 and not merely as a surety, the prompt payment and performance obligations of  
12 Century Sebree under the Electric Service Agreement, the Direct Agreement, the  
13 Tax Indemnity Agreement, and all other Century Sebree Transaction documents.  
14 This guarantee extends to all obligations of Century Sebree relating to the  
15 payment of money to Kenergy or Big Rivers, and is continuing, absolute, and  
16 unconditional guarantee of payment and performance. Execution of the  
17 Guarantee is a condition precedent to the closing of the Century Sebree  
18 Transaction. To facilitate review of the Century Parent Guarantee agreement, a  
19 document comparing it against the same document in the Century Hawesville  
20 Transaction is attached to the Application in this matter as Exhibit 16.

21 **Q. Are you familiar with the Lockbox Agreement?**

22 A. Yes.

23

1 **Q. Can you please provide a general description of the Lockbox Agreement?**

2 A. The Lockbox Agreement relates to Century Sebree's obligation to pay certain  
3 amounts due under the Electric Service Agreement to a depository bank. Century  
4 Sebree will make payments to a lockbox with Old National Trust ("ONT"), which  
5 will separate amounts owed to each of Kenergy and Big Rivers. ONT will  
6 disburse all amounts in the lockbox account each month. To facilitate review of  
7 the Lockbox Agreement, a document comparing it against the same document in  
8 the Century Hawesville Transaction is attached to the Application in this matter as  
9 Exhibit 18.

10 **Q. Are you familiar with the Load Curtailment Agreement?**

11 A. Yes.

12 **Q. Can you please provide a general description of the Load Curtailment  
13 Agreement?**

14 A. The Load Curtailment Agreement relates to acknowledgement that Big Rivers, as  
15 the local balancing authority, has the right to curtail Century Sebree in specified  
16 circumstances. Big Rivers has this right in the event that (a) MISO, (b) any other  
17 applicable RTO or ISO, (c) any Governmental Authority with the requisite  
18 jurisdiction, or (d) any local balancing authority, including Big Rivers, curtails,  
19 suspends or reduces or directs or causes the curtailment, suspension or reduction,  
20 in whole or in part, of load or the delivery of electric services in the area subject  
21 to the local balancing authority encompassing service territory of any Big Rivers'  
22 member. Entry into this agreement is a condition to the effective date of Electric

1 Service to Century Sebree under the Electric Service Agreement. The Load  
2 Curtailment Agreement is attached to the Application in this matter as Exhibit 23.

3 **Q Are there other agreements for which Kenergy and Big Rivers are seeking**  
4 **Commission approval in the application?**

5 A. Yes. Kenergy is seeking approval for the Alternate Service Agreement, as is  
6 described in the application and in Mr. Starheim's testimony. The Alternate  
7 Service Agreement is a retail service agreement by which Kenergy can provide  
8 retail electric service to Kenergy for up to 10 megawatts of load for non-smelting  
9 purposes. Big Rivers seeks Commission approval for the "Letter Agreement"  
10 attached to the application as Exhibit 22, and incorporated herein by reference.  
11 The Letter Agreement is the agreement between Big Rivers and Kenergy by  
12 which Big Rivers provides the wholesale power supply support for the Alternate  
13 Service Agreement. The forms of the Alternate Service Agreement and the Letter  
14 Agreement are representative of the forms used by Kenergy and Big Rivers in  
15 connection with Kenergy's retail service to many other large industrial customers.  
16 To facilitate review of the Alternate Service Agreement and the Letter  
17 Agreement, documents comparing them against the same documents in the  
18 Century Hawesville Transaction are attached to the Application in this matter as  
19 Exhibits 23 and 24, respectively.

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1 **V. DETAILS OF THE PROVISION OF ELECTRIC SERVICES TO**  
2 **CENTURY SEBREE PURSUANT TO THE CENTURY SEBREE**  
3 **TRANSACTION**

4

5 **Q. What is the purpose of this portion of your testimony?**

6 A. The purpose of this portion of my testimony is to explain the manner in which Big  
7 Rivers will provide Electric Services to Kenergy for resale to Century Sebree  
8 pursuant to the Century Sebree Transaction. In particular, I will provide  
9 additional details about the Arrangement Agreement and Direct Agreement.

10 **Q. What is the purpose of the Arrangement Agreement between Kenergy and**  
11 **Big Rivers?**

12 A. The Arrangement Agreement specifies the charges, terms, and conditions  
13 pursuant to which Big Rivers will resell Electric Services to Kenergy for delivery  
14 to Century Sebree for use at the Sebree Smelter. The service period under the  
15 Arrangement Agreement will begin on January 31, 2014, upon the termination of  
16 the 2009 Retail Agreement, and will continue through December 31, 2023 unless  
17 the Arrangement Agreement is terminated early or its term is automatically  
18 extended. The Arrangement Agreement and Electric Service Agreement will  
19 replace the terminated 2009 Wholesale Agreement and 2009 Retail Agreement,  
20 respectively, as the contractual arrangements by which Kenergy obtains power to  
21 serve Century Sebree's Sebree Smelter.

22 **Q. How are Century Sebree's power requirements for the Sebree Smelter**  
23 **currently met?**

24 A. As I described previously, Kenergy currently supplies and delivers Electric  
25 Services to Century Sebree's Sebree Smelter pursuant to the 2009 Retail

1 Agreement. Under the 2009 Wholesale Agreement, Kenergy purchases from Big  
2 Rivers wholesale Electric Services for resale to Century Sebree. These  
3 agreements were approved by the Commission in Case No. 2007-00455. Century  
4 Sebree gave notice of termination of the 2009 Retail Agreement on January 31,  
5 2013, and that termination will occur at 11:00 p.m. CST on January 31, 2014.  
6 The parties have agreed to this precise date and time to facilitate transactions with  
7 MISO.

8 **Q. How will the power requirements of Century Sebree's Sebree Smelter be met**  
9 **under the Arrangement Agreement?**

10 A. Under Section 2.3 of the Arrangement Agreement, Big Rivers is obligated, during  
11 the service period, to use reasonable commercial efforts to acquire the Base Load  
12 and, if applicable, the Curtailable Load, for resale to Kenergy for delivery to  
13 Century Sebree under the Electric Service Agreement. The Base Load plus the  
14 Curtailable Load may not exceed 378 megawatts, plus an additional 10 megawatts  
15 of imbalance energy, and must not create any electric reliability issue. Big Rivers  
16 will procure this energy and other required Electric Services in a MISO market or  
17 a similar centralized wholesale electric market or under a Bilateral Contract.

18 **Q. How are deliveries of energy scheduled pursuant to the Arrangement**  
19 **Agreement?**

20 A. Under Section 3.3 of the Arrangement Agreement, Kenergy or its designee must  
21 schedule all required Electric Services with Big Rivers or its designee. Big Rivers  
22 then will schedule the Base Load and, if applicable, the Curtailable Load in  
23 MISO's Day Ahead Energy and Operating Reserve Market prior to the date of

1 delivery of those Electric Services, unless Kenergy notifies Big Rivers of an  
2 alternative schedule. Kenergy must provide prompt notice to Big Rivers of any  
3 revisions to Century Sebree's schedule. The scheduled energy may not exceed  
4 the Base Load and, if applicable, the Curtailable Load without the prior consent of  
5 Kenergy and Big Rivers.

6 **Q. Turning now to the Direct Agreement, why has Big Rivers entered into this**  
7 **agreement with Century Sebree?**

8 A. Big Rivers has entered into the Direct Agreement with Century Sebree in order to  
9 coordinate the complex relationships that are created by the other Century Sebree  
10 Transaction documents, and to protect Big Rivers against exposure to certain  
11 potential costs. Generally speaking, the Direct Agreement provides for the  
12 creation of direct obligations running between Big Rivers and Century Sebree.

13 **Q. How does the Direct Agreement create direct obligations between Big Rivers**  
14 **and Century Sebree?**

15 A. Pursuant to Sections 3.1 and 3.2 of the Direct Agreement, Century Sebree and Big  
16 Rivers agree to fully perform and discharge their respective obligations under the  
17 various Century Sebree Transaction documents. Among other matters, these  
18 sections limit each party's ability to modify the Century Sebree Transaction  
19 documents, to waive Kenergy's performance of its obligations under the Century  
20 Sebree Transaction documents, or to rely upon waivers granted by Kenergy.  
21 These sections help to ensure that Century Sebree is obligated to Big Rivers to  
22 perform its obligations under the Electric Service Agreement, and that Big Rivers

1 is obligated to Century Sebree to perform its obligations under the Arrangement  
2 Agreement.

3 Furthermore, Sections 5.1 and 5.2 provide for reciprocal cure rights for Big  
4 Rivers and Century Sebree. These sections are intended to provide additional  
5 protection against termination of the Century Sebree Transaction resulting from  
6 breach or default. Big Rivers and Kenergy may each attempt to cure a breach or  
7 default of the other parties to the Century Sebree Transaction under certain  
8 circumstances, as long as those efforts do not materially interfere with a party's  
9 efforts to cure its own breach or default.

10 The Direct Agreement also contains provisions addressing the rights and  
11 obligations of Big Rivers relating to any SSR Agreement that may arise in the  
12 future, Reliability Costs, other costs of Big Rivers, an election by Big Rivers or  
13 Kenergy to join a RTO or ISO other than MISO or to not be a member of any  
14 RTO or ISO, credit support to be provided by Century Sebree, and direct payment  
15 obligations from Century Sebree to Big Rivers.

16  
17 **VI. SALES, FEES, CHARGES, AND PAYMENTS**

18  
19 **Q. What is the purpose of this portion of your testimony?**

20 **A.** In this portion of my testimony, I will address how the parties have negotiated  
21 various costs in the Century Sebree Transaction, including the costs of the  
22 negotiation itself. I will also address how the Century Sebree Transaction  
23 addresses potential sales of surplus energy.

1 **Q. Has Big Rivers incurred out-of-pocket costs related to negotiating and**  
2 **seeking approval of the Century Sebree Transaction?**

3 A. Yes. Big Rivers has incurred and is incurring costs related to the negotiation and  
4 approval of the Century Sebree Transaction, and Century Sebree is reimbursing  
5 those costs on a monthly basis under the terms of an existing cost reimbursement  
6 agreement.

7 **Q. Are there any provisions in the Century Sebree Transaction documents for**  
8 **resale of energy by Big Rivers that otherwise would be deliverable to**  
9 **Century Sebree?**

10 A. Yes. Big Rivers has agreed that it will use commercially reasonable efforts to  
11 sell, when surplus to Century Sebree's requirements ("Surplus Sales"): (1)  
12 Electric Services which Century Sebree has purchased or is committed to  
13 purchase and that otherwise would be deliverable to Century Sebree, or (2)  
14 specified financial transmission rights of Century Sebree. Surplus Sales include  
15 sales made by Big Rivers in connection with Century Sebree's inability—for  
16 "Uncontrollable Force" reasons (as defined in the Century Sebree Transaction  
17 documents) — to receive and consume any Electric Services purchased by Big  
18 Rivers under a Bilateral Contract for resale to Kenergy under the Arrangement  
19 Agreement and delivery (by Kenergy) to Century Sebree under the Electric  
20 Service Agreement. These sales are subject to restrictions and conditions set forth  
21 in the Arrangement Agreement. I will describe these restrictions and conditions  
22 later in my testimony.



1 **Q. How does the Arrangement Agreement calculate and apply Surplus Sales**  
2 **proceeds?**

3 A. The “Net Proceeds” of any Surplus Sales will be credited by Big Rivers against  
4 the applicable item in the monthly charges billed under the Arrangement  
5 Agreement. The “Net Proceeds” are the proceeds of a sale or transfer, net of: (i)  
6 the cost of the item sold and net of transaction costs, whenever incurred; and (ii)  
7 taxes.

8 **Q. How are Kenergy’s (and, by extension, Century Sebree’s) payment**  
9 **obligations structured under the Century Sebree Transaction documents?**

10 A. Kenergy’s payment obligations under the Arrangement Agreement, and Century  
11 Sebree’s payment obligations under the Electric Service Agreement, are  
12 composed of several charges for the provision of Electric Services. A portion of  
13 these charges are billed weekly and a portion is billed monthly. These charges are  
14 designed to include all of Big Rivers’ and Kenergy’s costs of arranging,  
15 procuring, and delivering the Electric Services provided under the Century Sebree  
16 Transaction documents. These charges do not include any item that would result  
17 in a duplicative payment for a particular charge if Big Rivers or Kenergy would  
18 not be liable for the duplicative amount. As described in more detail below, the  
19 categories of charges under the Century Sebree Transaction documents are: (1)  
20 the Applicable RTO Charge, which may include a credit for Century Sebree’s  
21 specified financial transmission rights, (2) the Bilateral Charge, (3) the Excess  
22 Reactive Demand Charge, (4) the Retail Fee, payable exclusively under the  
23 Electric Service Agreement, and (5) other charges specified and certain taxes.

1 These charges, as may be offset by a credit for Century Sebree's specified  
2 financial transmission rights or the Net Proceeds of Surplus Sales, will be paid by  
3 Century Sebree to Kenergy, which will in turn pay the collected amounts (less the  
4 Retail Fee and any other charges not passed through to Big Rivers, as I will  
5 describe later in my testimony) to Big Rivers under the Arrangement Agreement.

6 **Q. Please describe the Applicable RTO Charge.**

7 A. The Applicable RTO Charge consists of all charges invoiced to Big Rivers by  
8 MISO, or other applicable RTO or ISO, on a pass-through basis for all Electric  
9 Services purchased by Kenergy under the Arrangement Agreement. These  
10 charges include (1) all activity listed on the settlement statement of MISO, or  
11 other applicable RTO or ISO, for the Sebree Smelter node, including Reliability  
12 Costs relating to that node, (2) all activity for transmission services associated  
13 with that node, (3) all activity relating to the planning year (or other applicable  
14 period) of MISO, or other applicable RTO or ISO, that is attributable to that node,  
15 (4) costs relating to specified transmission upgrades attributable to that node that  
16 otherwise relate to Century Sebree's operation of the Sebree Smelter, and (5) any  
17 credit for revenue resulting from the sale of financial transmission rights of  
18 Century Sebree specified in the agreement.

19 The Applicable RTO Charge does not include charges associated with Electric  
20 Services purchased on Century Sebree's behalf pursuant to a Bilateral Contract.

21 It also does not include any other amounts payable by Big Rivers to serve  
22 Kenergy (for the benefit of Century Sebree, pursuant to the Electric Service  
23 Agreement) as provided under the Arrangement Agreement. Other amounts

1 chargeable to Century Sebree under the Century Sebree Transaction not  
2 constituting Applicable RTO Charges are covered in other charges, described  
3 below.

4 **Q. Please describe the Bilateral Charge.**

5 A. The Bilateral Charge includes all charges to Big Rivers under a Bilateral Contract  
6 with respect to Electric Services provided under the Arrangement Agreement.  
7 The Bilateral Charge also includes all other costs of Big Rivers or Kenergy for the  
8 benefit of Century Sebree relating to a Bilateral Contract of that type, including  
9 any separate charges for transaction fees (including broker fees), transmission  
10 services, ancillary services and related services, whenever incurred (including  
11 financial transmission rights, transmission congestion charges and similar costs or  
12 expenses).

13 **Q. Please describe the Excess Reactive Demand Charge and how it is calculated.**

14 A. The Excess Reactive Demand Charge will apply if the maximum metered reactive  
15 demand of Century Sebree during a billing month exceeds a level of kilovars  
16 specified in the Arrangement Agreement. The charge is \$0.1433 per kilovar in  
17 excess of that specified level. This is consistent with the current contract rate and  
18 the rate used in the Century Hawesville Transaction.

19 **Q. Please describe the Retail Fee and how it is calculated.**

20 A. The Electric Service Agreement requires Century Sebree to pay a Retail Fee to  
21 Kenergy that is not passed through to Big Rivers under the Arrangement  
22 Agreement. The Retail Fee is a fixed fee per month specified in the Electric  
23 Service Agreement, plus \$0.000045 per kilowatt-hour of energy metered at the

1           Sebree Smelter node. This is the same as the current contract rate and the rate  
2           used in the Century Hawesville Transaction.

3   **Q.   Please describe the other charges payable under the Century Sebree**  
4   **Transaction documents.**

5   A.   Kenergy's payment obligations under the Arrangement Agreement, and Century  
6   Sebree's payment obligations under the Electric Service Agreement, also include  
7   the following charges:

8       (1) costs of Big Rivers arising from any tax liability of Big Rivers resulting from  
9           Surplus Sales;

10      (2) costs of Big Rivers or Kenergy arising from compliance with applicable  
11          renewable portfolio standards and environmental laws relating to Century  
12          Sebree's operations;

13      (3) costs of Big Rivers or Kenergy arising from compliance with applicable laws  
14          relating to power sales including hedging arrangements and the provisions of  
15          the Dodd-Frank Act;

16      (4) costs of Big Rivers arising from a requirement to pay invoices from the  
17          applicable RTO or ISO on a frequency greater than monthly, costs of Big  
18          Rivers or Kenergy arising from the appointment of a new Market Participant;

19      (5) charges for any other services required to be purchased by Big Rivers or  
20          Kenergy to provide the services under the Century Sebree Transaction  
21          documents;

22      (6) costs of Big Rivers or Kenergy associated with the Sebree Smelter node  
23          ceasing to be located in MISO, or any other RTO or ISO, in connection with

- 1 an election made by Big Rivers or Kenergy under the Century Sebree
- 2 Transaction documents;
- 3 (7) costs associated with the appointment of a new Market Participant;
- 4 (8) other out-of-pocket costs payable by Big Rivers or Kenergy which are
- 5 incurred or committed to by Big Rivers or Kenergy in connection with or arising
- 6 out of the Century Sebree Transaction, including liabilities for which Big Rivers
- 7 or Kenergy are indemnified under the agreements and any security necessary to
- 8 be provided to any person or entity (including MISO, or other RTO or ISO of
- 9 which Big Rivers is a member, or a counterparty to a Bilateral Contract) arising
- 10 out of the Century Sebree Transaction; and
- 11 (9) a charge for use of imbalance energy in excess of 10 MW.

12 Also, as I previously described, the Direct Agreement provides for the  
13 reimbursement to Big Rivers of specified costs relating to the transaction,  
14 including Reliability Costs and other costs. These reimbursable costs also include  
15 the cost of 1.25 full-time-equivalent employees of Big Rivers with respect to the  
16 period during which it acts as the Market Participant, and the cost of 0.5 full-time-  
17 employee with respect to other times, to assist in the administration of Big Rivers'  
18 duties under the Arrangement Agreement and the other Century Sebree  
19 Transaction documents. In addition to the charges I have already described in my  
20 answer to this question, Century Sebree has certain payment obligations to  
21 Kenergy under the Electric Service Agreement that are not passed through to Big  
22 Rivers. Mr. Starheim has addressed these obligations in his testimony.

1 **Q. Please describe the taxes payable under the Century Sebree Transaction**  
2 **documents.**

3 A. No state or local sales, excise, gross receipts or other taxes are included in the  
4 specific charges and credits set forth in the Century Sebree Transaction  
5 documents. However, Century Sebree (and Kenergy) are obligated to pay, or  
6 cause to be paid, to Big Rivers any of those taxes which are or in the future  
7 become applicable to the Electric Services delivered to Century Sebree pursuant  
8 to the Century Sebree Transaction documents.

9 **Q. Is there any limit in the Century Sebree Transaction documents on the**  
10 **ability of Big Rivers or Century Sebree to seek rate changes?**

11 A. Yes. The Century Sebree Transaction Documents prohibit Kenergy, Big Rivers,  
12 and Century from supporting or seeking, directly or indirectly, from any  
13 governmental authority, including the Commission, any challenge to or change in  
14 the rates, charges, or other terms and conditions set forth in the Century Sebree  
15 Transaction documents.

16 **Q. Please describe the credit support for the Century Sebree Transaction.**

17 A. Credit support is required under the Century Sebree Transaction documents.  
18 These agreements require Century Sebree (and require Kenergy to cause Century  
19 Sebree) to provide and maintain credit support in specified forms to persons  
20 designated by Big Rivers in amounts (without duplication) (1) reasonably  
21 estimated by Big Rivers to become due and payable to it under the Arrangement  
22 Agreement and Direct Agreement for a period of two succeeding months, (2)  
23 estimated by Kenergy to become due and payable to it under the Electric Service

1 Agreement for a period of two succeeding months, (3) required by or for the  
2 benefit of MISO, or any RTO or ISO (without regard to Big Rivers acting as the  
3 Market Participant), or under any Bilateral Contract without the requirement for  
4 Big Rivers to provide credit support or be liable to any counterparty, with respect  
5 to the provision of Electric Services under the Arrangement Agreement, (4) which  
6 Kenergy or Big Rivers estimate reasonably could become due with respect to  
7 taxes payable by Century Sebree for the benefit of Kenergy or Big Rivers, and (5)  
8 which Kenergy estimates reasonably could become due and payable by Kenergy  
9 as a result of any Century Sebree Transaction document. With respect to any  
10 period for which Big Rivers is not or was not the Market Participant, this credit  
11 support will also include any amounts estimated by Kenergy to be required as  
12 security by it, Big Rivers, the Market Participant or the applicable RTO or ISO.  
13 Additionally, Century Sebree is obligated to cause Century Parent to guarantee to  
14 Kenergy and Big Rivers the payment, performance, and all other obligations of  
15 Century Sebree under the Century Sebree Transaction documents, as well as to  
16 guarantee to the Market Participant or any party to a Bilateral Contract the  
17 payment, performance, and all other obligations of Century Sebree under any  
18 Market Agreement with those entities.

1 **VII. CONDITIONS AND TERMINATION**

2

3 **Q. What is the purpose of this portion of your testimony?**

4 A. In this portion of my testimony, I will describe the termination provisions of the  
5 Century Sebree Transaction documents, and describe the need for the declaratory  
6 order Big Rivers and Kenergy request in the application.

7 **Q. When do the Arrangement Agreement and Electric Service Agreement  
8 documents terminate?**

9 A. Those agreements will terminate on December 31, 2023 unless a contract is  
10 terminated early or its term is automatically extended. Early termination is  
11 permitted under each contract in limited circumstances, both before and after the  
12 Effective Date. The terms of the contracts will automatically extend for one year  
13 periods on each December 31st after December 31, 2023, until a party gives at  
14 least one year's prior notice of its election for the agreement to expire on a  
15 specified December 31. **Further**, the Arrangement Agreement will automatically  
16 terminate (1) following an effective termination by Century Sebree of the Electric  
17 Service Agreement, or (2) when Big Rivers is no longer acting as the Market  
18 Participant. As discussed below, however, certain provisions that customarily  
19 survive termination will survive termination of the contract, including obligations  
20 related to reliability.

21 **Q. When will the Direct Agreement, Protective Relays Agreement and Load  
22 Curtailment Agreement terminate?**



1 A. Those agreements do not contain any express termination date. Each agreement  
2 is intended to continue until no longer required to protect Big Rivers and, with  
3 respect to the latter two documents, Kenergy.

4 **Q. What are the conditions to the effectiveness of Kenergy's, Big Rivers', and**  
5 **Century's obligations regarding Electric Services under the Arrangement**  
6 **Agreement and Electric Service Agreement?**

7 A. Article 6 of the Electric Service Agreement sets forth the terms and conditions  
8 relating to the date on which the obligations of the parties regarding the  
9 commencement of the provision of Electric Services under the Electric Service  
10 Agreement. Conditions to the Effective Date include customary conditions for  
11 transactions of this type, including conditions regarding accuracy of the  
12 representations and warranties of the parties, provision of required credit support,  
13 due authorization of the Century Sebree Transaction documents by the parties  
14 thereto and of required consents and approvals. One change from the Century  
15 Hawesville Transaction documents is that there is no condition relating to  
16 approval of the SSR Agreement as none is initially contemplated.

17 **Q. How may the Electric Service Agreement and Arrangement Agreement be**  
18 **terminated prior to becoming effective?**

19 A. Prior to the Effective Date, any party to each of those agreements may terminate  
20 the applicable agreement without cost or penalty by written notice (1) if any  
21 conditions to the Effective Date are not satisfied in full or waived on or before  
22 11:00 p.m. Central Standard Time on January 31, 2014, or (2) if the Commission  
23 and any other governmental authority required to approve the Century Sebree

1 Transaction makes a final and unappealable ruling that disapproves or changes  
2 material terms of any Century Sebree Transaction document.

3 In addition, prior to the Effective Date, either Kenergy or Big Rivers may  
4 terminate the Arrangement Agreement without cost or penalty by written notice if  
5 the Electric Service Agreement is terminated prior to the Effective Date in  
6 accordance with its terms.

7 **Q. Please describe the provisions governing termination after the Effective Date.**

8 A. Once the Electric Service Agreement and Arrangement Agreement have  
9 become effective with respect to the provision of Electric Services: (1) the  
10 Arrangement Agreement terminates if Big Rivers is no longer the Market  
11 Participant; (2) the Electric Service Agreement may be terminated by Century  
12 Sebree upon 60 days prior written notice, (3) either of those agreements may be  
13 terminated by written notice of a non-defaulting party following the occurrence  
14 and during the continuation of any Event of Default thereunder, or if a  
15 governmental authority required to approve the Century Sebree Transaction  
16 disapproves or changes a material term of the Century Sebree Transaction  
17 documents.

18 **Q. If the Electric Service Agreement or Arrangement Agreement is terminated,  
19 do any contractual provisions survive termination?**

20 A. Yes. The following provisions will survive termination of the contracts to the full  
21 extent necessary for their enforcement and the protection of the party in whose  
22 favor they run: (1) each provision of those agreements providing for payment for  
23 electric services and any other amounts due thereunder; (2) assignment of the

1 right to collect and enforce collection of amounts due; and (3) the provision,  
2 replenishment or maintenance of credit support required thereunder or related to  
3 remedies for default, damage claims, indemnification or payment of other  
4 liabilities. Also, acknowledgements regarding Big Rivers' absence of an  
5 obligation to serve Century Sebree from Big Rivers' own generations and  
6 purchase power resources survives as does Century Sebree's acknowledgement  
7 that it is not entitled to tariff service from Kenergy.

8 **Q. If the Century Sebree Transaction is terminated, will Big Rivers have any**  
9 **obligation to produce, obtain, or sell electric power for use by Century**  
10 **Sebree?**

11 A. Century Sebree, Kenergy, and Big Rivers have agreed that Big Rivers has no  
12 obligation to serve or supply any Electric Services from Big Rivers' power supply  
13 resources for the benefit of all or a portion of the Sebree Smelter or any affiliates,  
14 spin-offs, or successors of Century Sebree during the service period of the  
15 Century Sebree Transaction documents or thereafter, other than as provided in the  
16 Arrangement Agreement for the purchase of Electric Services in the centralized  
17 wholesale electric markets of MISO, or other applicable RTO or ISO, or from a  
18 counterparty to a Bilateral Contract.

19 **Q Please explain the request of Kenergy and Big Rivers for a declaratory order.**

20 A. As stated in the application, if for any reason neither the Century Sebree  
21 Transaction nor the Alternate Service Agreement is in effect as of the Termination  
22 Date, and there is no other legal authority for retail and wholesale service to the  
23 Sebree Smelter, Kenergy will have no legal authority to continue to provide retail

1 electric service to the Sebree Smelter, and Big Rivers will have no legal authority  
2 to continue to provide a wholesale power supply to Kenergy to support retail  
3 electric service to the Sebree Smelter. Under those circumstances, my  
4 understanding is that both Kenergy and Big Rivers would be prohibited by law  
5 from continuing to provide service to the Sebree Smelter. There would be no  
6 basis for Kenergy to charge Century Sebree for electric service, and Kenergy and  
7 Big Rivers would have no agreement in effect between them on the basis of which  
8 a wholesale power supply for service to Century Sebree could be provided, sold  
9 or purchased. Kenergy and Big Rivers may not know until the last minute  
10 whether they can provide electric service to Century Sebree. For these reasons,  
11 Kenergy and Big Rivers must be in a position to physically disconnect service to  
12 the Sebree Smelter if circumstances require it.

13 **Q. You have stated that the terms of the Century Sebree Transaction documents**  
14 **are very similar to the terms of the Century Hawesville Transaction**  
15 **documents. Please explain the substantive differences between the two sets of**  
16 **documents.**

17 A. The principal substantive differences between the two sets of documents relate to  
18 the fact that no SSR Agreement is initially contemplated as a result of the idling  
19 of Wilson. In addition, MISO has made known to Big Rivers that operation of the  
20 Sebree Smelter could have a result on Big Rivers' generation resources other than  
21 Wilson. As a result, description of matters relating to reliability, and potential  
22 sources of Reliability Costs, relate more broadly to Big Rivers' generation  
23 resources as opposed to just Wilson. Also, the Load Curtailment Agreement is

1 being entered into as a condition to the Effective Date of electric service to  
2 Century Sebree to protect Big Rivers' Members from any load curtailment  
3 required as a result of the Century Sebree smelter continuing to operate. MISO  
4 requires a similar agreement for the Century Hawesville Transaction if the SSR  
5 Agreement is to be terminated, but MISO had not made this known at the time the  
6 Century Hawesville Transaction documents were entered into.

7 Additionally, the Protective Relays Agreement is being entered into to give  
8 Century Sebree the option of installing protective relays at the Sebree Smelter in  
9 the future, and to protect Big Rivers in the event Century Sebree determines to do  
10 that. Century has not decided whether to install protective relay equipment in  
11 connection with the Sebree Smelter. This is different from the circumstance in  
12 the Century Hawesville Transaction because in that transaction the Protective  
13 Relays Agreement was entered into to facilitate the installation of protective  
14 relays at the Hawesville Smelter as soon as practicable. Relatedly, Century  
15 Sebree's obligations under the Protective Relays Agreement are guaranteed by  
16 Century Parent pursuant to the Guarantee of Century Parent guaranteeing Century  
17 Sebree's obligations under the other Century Sebree Transaction Documents, and  
18 not under a separate guarantee of Century Parent as was the case in the Century  
19 Hawesville Transaction because the Protective Relays Agreement is not being  
20 entered into prior to the entry into other Transaction Documents.

21 Finally, Big Rivers will recover some additional costs relating to differences  
22 between the Century Sebree Transaction and the Century Hawesville Transaction,  
23 including internal costs of Big Rivers in connection with the ongoing

1 management of the Century Sebree Transaction and the cost of MISO zonal  
2 resource credits relating to the idling of Wilson and the Century Sebree  
3 Transaction.

4  
5 **VIII. THE IMPACT OF THE CENTURY SEBREE TRANSACTION ON BIG**  
6 **RIVERS**

7  
8 **Q. What is the purpose of this portion of your testimony?**

9 A. In this portion of my testimony, I will summarize my views on the impact of the  
10 Century Sebree Transaction on Big Rivers.

11 **Q. Does Big Rivers approve of the Century Sebree Transaction?**

12 A. Yes. Big Rivers has agreed to all relevant contracts in the Century Sebree  
13 Transaction and has determined that it is the best resolution of a difficult situation.  
14 The Century Sebree Transaction is the culmination of months of negotiations  
15 among Kenergy, Big Rivers, Century and Century Hawesville on the Century  
16 Hawesville Transaction, followed by weeks of negotiations to adapt the  
17 documents from that transaction to fit the Century Sebree circumstances. In  
18 addition, Big Rivers consulted with third parties such as MISO to ensure that the  
19 Century Sebree Transaction is both feasible and desirable.

20 **Q. Will the decision to source power for Century Sebree's Sebree Smelter from**  
21 **the wholesale market adversely affect Big Rivers?**

22 A. No. Big Rivers will continue transmitting electric power to Kenergy for resale to  
23 Century Sebree, although it will no longer be generating electric power for  
24 Century Sebree's use.

1 **Q. Could you please estimate the effect of the proposed Century Sebree**  
 2 **Transaction on Big Rivers' revenue?**

3 A. If the Transaction receives the necessary approvals and all parties execute the  
 4 agreements, the following table identifies the revenue Big Rivers will receive that  
 5 is not included in Case No. 2013-00199 which is currently before the  
 6 Commission:

1	<b>Big Rivers Electric Corporation</b>	
2	<b>Century Sebree - Incremental Revenue Estimate</b>	
4		
5		<b>Annual</b>
6	<b>General &amp; Administrative Revenue</b>	<b>Fees</b>
7	ACES Power Marketing	\$ 531,184
8	NERC	32,630
9	National Renewables Cooperative (NRCO)	26,100
10	PSC Assessment (paid to Ky State Treasurer)	191,480
11	SERC	40,160
12		
13		
14	<b>Total Annual Revenue While Century Sebree's</b>	
15	<b>Load is Considered Sales for Big Rivers</b>	<b>\$ 821,554</b>
16		
17		
18	<b>Realized Annual Revenue Estimate for Century Sebree</b>	
19	Total Schedule 1 Revenue to BREC	\$ 783,943
20	Total Schedule 2 Revenue to BREC*	\$ 199,250
21	Total Schedule 9 Revenue to BREC	\$5,735,942
22		
23	<b>Total Realized Transmission and Ancillary</b>	
24	<b>Service Revenue</b>	<b>\$6,719,135</b>

7 \* Assume we will only receive 48% because of unit shutdowns. MISO  
 25 cannot confirm the exact amount at this time.

8

9

1 **Q Does Century Sebree receive a credit against its Reliability Costs obligation**  
2 **under the Direct Agreement for revenues received by Big Rivers for**  
3 **Transmission Services that are part of the Century Sebree Transaction, and**  
4 **if so, why is that reasonable?**

5 A. First, the parties' current expectation is that there will be no SSR Agreement  
6 required at the commencement of the Century Sebree Transaction, as there was  
7 under the Century Hawesville Transaction. But if there ever is a SSR Agreement  
8 as referenced in the Direct Agreement, under Section 4.1(a) of the Direct  
9 Agreement, the amount that Century Sebree is required to pay for Reliability  
10 Costs is reduced by revenues received by Big Rivers from or on behalf of Century  
11 Sebree for transmission services Big Rivers provides in the applicable  
12 transmission tariff, in addition to revenues received from other entities based on  
13 allocations of responsibility for the related Reliability Costs by an RTO or ISO.  
14 Big Rivers estimates that the transmission revenue attributable to Century Sebree  
15 will be approximately \$5.7 million on an annual basis assuming a load of 378  
16 MW. While we currently understand from Century Sebree that it expects to  
17 operate in a manner that eliminates the need for an SSR Agreement or the  
18 incurrence of Reliability Costs, the uncertainties associated with MISO studies on  
19 that subject and other issues require that Big Rivers plan for the contingency that  
20 MISO could at some point require that any of Big Rivers' owned or leased  
21 generation facilities operate for reliability purposes in consequence of the  
22 operation or existence of the Sebree Smelter or the Century Sebree Transaction,  
23 and I expect that would require a SSR Agreement or the incurrence of Reliability



1 Costs. If that happens, offsetting transmission revenue against Century Sebree's  
2 Reliability Costs obligation is reasonable as proposed in the Transaction  
3 documents because it will potentially allow the Sebree Smelter to remain in  
4 operation. Big Rivers will receive no transmission revenue from Century Sebree  
5 if it terminates smelting operations at the Sebree Smelter. The advantage  
6 Kenergy and Big Rivers negotiated in the Century Sebree Transaction is that Big  
7 Rivers will receive the Century Sebree transmission revenue when there is no  
8 requirement for a SSR Agreement. Whether or not a SSR Agreement will be  
9 required depends upon the results of MISO studies and the business requirements  
10 of Century Sebree.

11 **Q. Will the decision to allow Century Sebree's Sebree Smelter to operate with**  
12 **power purchased from the wholesale market have an adverse impact on the**  
13 **rates of Big Rivers' members?**

14 A. Century Sebree's termination of the 2009 Retail Agreement and the  
15 corresponding effect on the demand for Big Rivers' electric power generation  
16 made rate increases to Big Rivers' members unavoidable. Those rate increases  
17 are already being addressed in Big Rivers' pending rate case, P.S.C. Ky. Case No.  
18 2013-00199. The Century Sebree Transaction is not anticipated to have an  
19 adverse impact on Big Rivers' rates beyond what would have been experienced if  
20 Century had ceased smelting operations. Assuming that the Century Sebree  
21 Transaction closes, and Century Sebree continues smelting operations, Big Rivers  
22 and its members will benefit to some degree from receipt of transmission

1 revenues from Century Sebree if there is no SSR Agreement, or elimination of  
2 severance costs if there is a SSR Agreement.

3 The question of who would bear the costs of Century Sebree “going to market  
4 pricing” was central to the negotiations of the Century Hawesville Transaction  
5 and the Century Sebree Transaction. Big Rivers was adamant that any solution  
6 could not impose additional costs or risks on Big Rivers or its members, and as  
7 Mr. Starheim has testified, Kenergy took a similar hard-line position.

8 Consequently, Big Rivers and Kenergy were careful to protect their members and  
9 rate payers from the costs and risks of the power for Century Sebree being  
10 sourced from the wholesale electric power market. Offsetting the Century Sebree  
11 transmission revenue against Reliability Costs puts Big Rivers and its members in  
12 no worse position than they would have been if Century Sebree ceased smelting  
13 operations.

14 **Q. Have Big Rivers’ board of directors and creditors approved this transaction?**

15 A. Big Rivers’ board of directors has approved the Century Sebree Transaction,  
16 including the Letter Agreement and seeking the declaratory relief requested in the  
17 application. Big Rivers has planned for the requirements of its creditors to enter  
18 into a transaction with Kenergy for Century Sebree. The process established by  
19 the Loan Contract between Big Rivers and the Rural Utilities Service (“RUS”)  
20 allows the RUS 60 days in which to decide whether to hold up a transaction for  
21 further review. That review was initiated on the same day the application in this  
22 matter was filed with the Commission. Big Rivers eliminated other creditor issues  
23 in advance of filing the Century Hawesville Transaction documents with the

1 Commission, including supplementing language in the Amended and Restated  
2 Revolving Credit Agreement between Big Rivers and the National Rural Utilities  
3 Cooperative Finance Corporation that was approved by the Commission in P.S.C.  
4 Case No. 2013-00125<sup>1</sup>. That supplemental language eliminated a credit  
5 agreement default issue that would otherwise have prevented Big Rivers from  
6 entering into the Century Hawesville Transaction, or the Century Sebree  
7 Transaction. There are no other creditor approvals or consents that Big Rivers  
8 will require for the Century Sebree Transaction.

9 **Q. What would be the consequences of not entering into the Century Sebree**  
10 **Transaction?**

11 A. Century Sebree has already sent its notice of termination of the 2009 Retail  
12 Agreement, so that contract will terminate effective January 31, 2014. If the  
13 Century Sebree Transaction is not in place, Big Rivers will have no legal  
14 authority to provide Electric Services to Kenergy for service to Century Sebree,  
15 even if the Sebree Smelter requires electric service only for non-smelting  
16 purposes following cessation of smelting operations. As a result, the Sebree  
17 Smelter would be forced to cease all electric consumption and production  
18 operations, causing significant negative economic consequences for the region—  
19 especially Century Sebree’s employees, many of whom are served on a retail  
20 residential basis with electric power generated by Big Rivers.

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<sup>1</sup> *In the Matter of: The Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, P.S.C. Case No. 2013-00125; see also Verified Motion to Supplement Filing dated May 14, 2013.

1 **Q. Will Commission approval of the Century Sebree Transaction affect its**  
2 **jurisdiction over Big Rivers' rates?**

3 A. Absolutely not. Big Rivers and Kenergy addressed this issue in some detail in the  
4 Century Hawesville Case. The rates set by Big Rivers and its members will  
5 continue to be subject to Commission approval. As I previously described, the  
6 Century Sebree Transaction establishes contractual obligations by which Kenergy  
7 will provide Electric Services at retail to Century Sebree using energy obtained  
8 pursuant to one or more contracts by and between Kenergy and a provider of  
9 wholesale Electric Services from a centralized wholesale electric market. Big  
10 Rivers will initially act as that Market Participant pursuant to the Arrangement  
11 Agreement. The proposed Century Sebree Transaction is similar to the  
12 obligations established pursuant to the 2009 Retail Agreement and the 2009  
13 Wholesale Agreement, which were approved by the Commission in Case No.  
14 2007-00455. In short, the Century Sebree Transaction will not affect the  
15 Commission's jurisdiction or authority over the rates charged by Big Rivers or its  
16 members. The Commission's statement in the August 14, 2013 order in the  
17 Century Hawesville Case respecting its jurisdiction is consistent with my  
18 understanding of the Commission's jurisdiction.

19  
20  
21  
22

1 **IX. CONCLUSION**

2

3 **Q. Do you have any further comments regarding the Century Sebree**  
4 **Transaction documents?**

5 A. Yes. The terms and conditions of the Century Sebree Transaction are reasonable  
6 and will provide benefits to Kenergy, Big Rivers, Century Sebree, and Big  
7 Rivers' other members and ratepayers. The economic benefits of Century  
8 Sebree's smelting operation are important to Big Rivers' members and the  
9 economy of Western Kentucky. The Century Sebree Transaction documents are  
10 drafted to enable Century Sebree to continue its current operations without  
11 imposing adverse consequences on Big Rivers, its members, or their ratepayers.  
12 Century Sebree has agreed to pay Big Rivers any additional out-of-pocket costs it  
13 incurs or commits to related to the Century Sebree Transaction. The Century  
14 Sebree Transaction documents for which approval is sought should be approved  
15 for the same reasons the Commission approved the Century Hawesville  
16 Transaction documents in its August 14, 2013 order in the Century Hawesville  
17 Case.

18 **Q. Do you have any closing comments?**

19 A. Yes. Big Rivers negotiated with Kenergy and Century with a primary goal being  
20 to ensure that the Century Sebree Transaction would cause no adverse overall  
21 impact to Big Rivers' operations or revenues. The Century Sebree Transaction  
22 was structured to avoid Big Rivers' members having to bear any incremental costs  
23 associated with Century Sebree obtaining electric generation from the wholesale

1 market. The Century Sebree Transaction is reasonable and should be approved by  
2 the Commission, along with the other relief requested in the application by Big  
3 Rivers and Kenergy.

4 **Q. Does this conclude your testimony?**

5 **A. Yes.**

**Attachment Y-2 Study  
Wilson Unit 1: 417 MW Coal  
35 Month Suspension  
2/1/2014 – 1/1/2017**

# **ATTACHMENT Y-2 STUDY REPORT**

September 26, 2013

Contains Confidential Information

Do Not Release

**CONFIDENTIAL**

This document contains confidential information and should only be shared with direct recipients on a need to know basis. All contents of the following document are confidential and proprietary to MISO. Information cannot be shared with outsiders without explicit authorization.

**Exhibit RWB-1**

## **EXECUTIVE SUMMARY**

MISO received an Attachment Y2- Request for Non-Binding Study Regarding Potential SSR Status from Big Rivers Electric Corporation (BREC) on June 18, 2013. The request was for suspension of Wilson Unit 1 from February 1, 2014 until January 1, 2017. The results of the Attachment Y-2 study are not definitive and the analysis is intended to provide information to the Market Participant (MP) to assist them in evaluating their options.

After review of the Transmission System reliability impacts as provided for under Section 38.2.7 of MISO's Open Access Transmission, Energy & Operating Reserve Markets Tariff ("Tariff"), no unresolved reliability issue was identified that would require Wilson generating station Unit 1 to be designated as a System Support Resource (SSR) unit.



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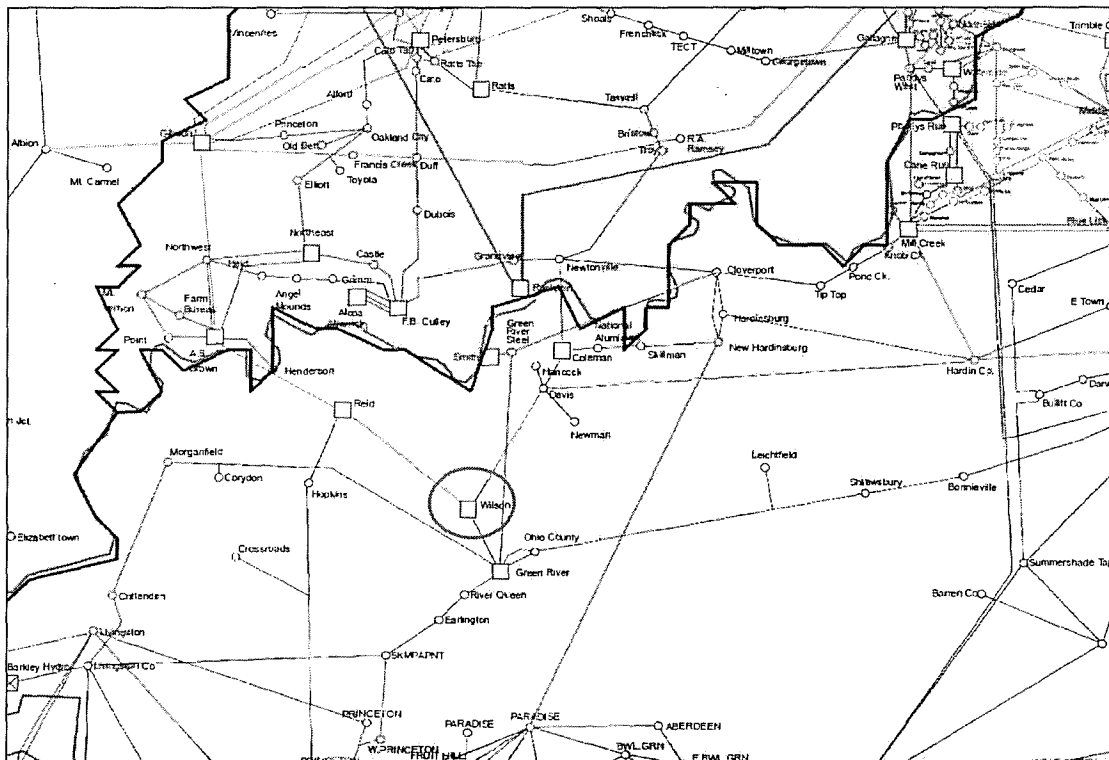
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# I. INTRODUCTION

Big Rivers Electric Corporation, submitted an Attachment Y-2 “Request for Non-Binding Study Regarding Potential SSR Status” to MISO for the consideration of suspending the generating station effective from February 1st, 2014 to February 1st, 2017. The Attachment Y-2 Request is for an informational study to evaluate the potential for a unit to be designated as an SSR and does not commit the Market Participant to proceed with plans to Retire or Suspend. The purpose of this study is to assess the reliability impacts from the potential suspension of the Wilson Station coal generation located in Centertown, KY. The analysis included the evaluation of various scenarios that considered the status of nearby Coleman and Green generating plants as well as the impact of large industrial customer load in the area.

**Table 1: Units Requesting Retirement/Suspension**

Power Flow Area	Unit Description	Total MW	Start Date of Retirement/Suspension	Return to Service Date from Suspension
Big Rivers Electric Corporation	Wilson Unit 1	417	02/01/2014	02/01/2017



**Figure 1: General Location of Wilson Station**

## II. STUDY OBJECTIVES

Under Section 38.2.7 the MISO Tariff, System Support Resource (SSR) procedures provide a mechanism for MISO to enter into agreements with Market Participants (MP) that own or operate Generation Resources or Synchronous Condenser Units (SCUs) that have requested to either Retire or Suspend, but are required to maintain system reliability.

The principal objective of an Attachment Y-2 study is to determine if the unit(s) for which a change in status is requested is necessary for system reliability based on the criteria set forth in the MISO Business Practices Manuals. The study work included monitoring and identifying the steady state branch/voltage violations on transmission facilities due to the unavailability of the Generation Resource or SCU. The relevant MISO Transmission Owner and/or regional reliability criteria are used for monitoring such violations.

## III. MODELS AND ASSUMPTIONS

Corresponding to the anticipated suspension of the Wilson Unit1, the following power system analysis models were used for the study:

- 2014 Summer Peak

The Attachment Y2 study models were created in accordance with the MISO Transmission Planning Business Practice Manual (BPM-020-r9) Section 6.2.2. This includes creating a set of Security Constrained Economic Dispatch (SCED) models from each source model in which the units being studied are taken out of service to represent the “After” retirement scenario. To create the “Before” retirement scenario, generation in MISO was scaled down in each model and then the to-be-retired unit was fully dispatched.

### a. Model Assumptions

1. None

### b. Transmission Projects

1. None

### c. Monitoring and Contingencies

Monitor: BREC(Big Rivers Electric Corporation), SIPC(Southern Illinois Power Cooperative), SIGE(Southern Indiana Gas & Electric Company)(Vectren) , HE(Hoosier Energy), DEI(Duke Energy Indiana), LGEE(Louisville Gas and Electric Company) and TVA(Tennessee Valley Authority) Control Areas 69 kV – 999 kV

Contingencies: BREC, SIPC, SIGE, DEI, LGEE and TVA NERC Category B, C1, C2 & C5 for 100 kV and above facilities. Category B 69 kV contingencies adjacent to the generator were also studied. Category C3's in BREC area were studied as well.

## IV. STUDY CRITERIA AND METHODOLOGY

PSS/E and MUST were used to perform AC contingency analysis. Cases were solved with automatic control of LTCs, phase shifters, DC taps, switched shunts enabled (regulating), and area interchange disabled. Contingency analysis was performed on before and after cases. The results were compared to find if there were any criteria violations due to the unit(s) change of status.

### a. Steady State Thermal and Voltage Criteria

#### Transmission Owners Planning Criteria

BREC Transmission Planning Criteria applied for the thermal analysis:

- For system-intact, B, & C contingencies, all thermal loadings exceeding 100% of the normal rating for BREC System

BREC Transmission Planning Criteria applied for the voltage analysis:

- For system-intact, >60 kV substation voltages less than 95% or above 105%
- For Category B and C contingencies
  - 69 kV substation voltages less than 91.7% or above 105.8%
  - >69 kV substation voltages less than 92% or above 105%

DEI Transmission Planning Criteria applied for the thermal analysis:

- For system-intact, all thermal loadings exceeding 100% of the continuous thermal loading capability for DEI System
- For B & C contingencies, all thermal loadings exceeding 100% of the emergency loading capability for DEI System

DEI Transmission Planning Criteria applied for the voltage analysis:

- For system-intact
  - 345 kV substation voltages less than 95% or above 105%
  - 230 kV substation voltages less than 95% or above 107%
  - 138 kV substation voltages less than 95% or above 105%
  - 132 kV substation voltages less than 95% or above 107.5%
  - 69 kV substation voltages less than 95% or above 105%
  - 66 kV substation voltages less than 95% or above 107.5%
- For Category B and C contingencies
  - 345 kV substation voltages less than 90% or above 105%
  - 230 kV substation voltages less than 90% or above 107%
  - 138 kV substation voltages less than 90% or above 105%
  - 132 kV substation voltages less than 90% or above 107.5%
  - 69 kV substation voltages less than 90% or above 105%
  - 66 kV substation voltages less than 90% or above 107.5%

SIPC Transmission Planning Criteria applied for the thermal analysis:

- For system-intact, B, & C contingencies, all thermal loadings exceeding 100% of the normal rating for SIPC System

SIPC Transmission Planning Criteria applied for the voltage analysis:

- For system-intact, >60 kV substation voltages less than 95% or above 105%
- For Category B and C contingencies, >60 kV substation voltages less than 91% or above 109%

SIGE Transmission Planning Criteria applied for the thermal analysis:

- For system-untact, Category B, & C contingencies, all thermal loadings exceeding 100% of the normal rating

SIGE Transmission Planning Criteria applied for the voltage analysis:

- For system-intact, >60 kV substation voltages less than 95% or above 105%
- For Category B and C contingencies, >60 kV substation voltages less than 90% or above 110%

HE Transmission Planning Criteria applied for the thermal analysis:

- For system-untact, Category B, & C contingencies, all thermal loadings exceeding 100% of the normal rating

HE Transmission Planning Criteria applied for the voltage analysis:

- For system-intact, >60 kV substation voltages less than 95% or above 105%
- For Category B and C contingencies, >60 kV substation voltages less than 90% or above 110%

LGEE Transmission Planning Criteria applied for the thermal analysis:

- For system-untact, Category B, & C contingencies, all thermal loadings exceeding 100% of the normal rating

LGEE Transmission Planning Criteria applied for the voltage analysis:

- For system-intact, >60 kV substation voltages less than 95% or above 105%
- For Category B and C contingencies, >60 kV substation voltages less than 90% or above 110%

TVA Transmission Planning Criteria applied for the thermal analysis:

- For system-untact, Category B, & C contingencies, all thermal loadings exceeding 100% of the normal rating

TVA Transmission Planning Criteria applied for the voltage analysis:

- For system-intact, >60 kV substation voltages less than 95% or above 105%

- For Category B and C contingencies, >60 kV substation voltages less than 90% or above 110%

**b. MISO Transmission Planning BPM - SSR Criteria**

As specified in the MISO BPM-020-r6, the System Support Resource criteria for determining if an identified facility is impacted by the generator change of status will be:

- Under system intact and category B contingencies, branch thermal violations are only valid if the flow increase on the element in the “after” retirement scenario is equal to or greater than:
  - a) 5% of the “to-be-retired” unit(s) MW amount (i.e. 5% PTDF) for a “base” violation compared with the “before” retirement scenario, or
  - b) 3% of the “to-be-retired” unit(s) amount (i.e. 3% OTDF) for a “contingency” violation compared with the “before” retirement scenario.
- Under system intact and category B contingencies, high and low voltage violations are only valid if the change in voltage is greater than 1% as compared to the “before” retirement voltage calculation.

**c. Contingencies**

A subset of the MISO Transmission Expansion Plan (MTEP) contingencies in BREC and neighbor control area was used for AC contingency analysis.

The following NERC Categories of contingencies were evaluated:

1. Category A when the system is under normal conditions.
2. Category B contingencies resulting in the loss of a single element.
3. Category C contingencies resulting in the loss of two or more (multiple) elements.

**d. Steady State Performance Analysis**

AC contingency analysis will be performed using Siemens MUST and PSS/E.

Contingency analysis will be performed on before and after cases. Results will be compared to find if there are any criteria violations due to the suspension of study units.

The requested study scenarios are listed in Table below.

Scenario	Green Generators Laid-up	Coleman Generator Laid-up	Century Load(MW)	Alcan Load(MW)
1A	N	N	482 - Note A1	368 (per MECT) + 22
1B	N	N	482 - Note A1	0 – Note B
2A	N	Y	Base Load – Note A2	368 (per MECT) + 22
2B	N	Y	Base Load – Note A2	0 – Note B
2C	N	Y	0 (per MECT)	368 (per MECT) + 22
2D	N	Y	0 (per MECT)	0 – Note B

Note

- The demand and energy forecasts submitted to MISO on November 1, 2012, via the New MECT tool reflect
- Century load dropping from 482 MW at a 0.98 load factor on August 19, 2013 to 0 MW on August 20, 2013
- Alcan load at 368 MW at a 0.98 load factor. However, for
  - Scenarios 1A and 2A add 22 MW to Alcan for a total of 390 MW at a 0.98 load factor

Note A1

- Add a Century load of 482 MW at a 0.98 load factor continuing after August 19, 2013 to the demand and energy forecasts submitted to MISO on November 1, 2012 via the New MECT tool. The load shape is a flat line.

Note A2

- The Load level determined in Coleman SSR study will be used to exclude reliability constraints caused by Coleman Units Suspension.

Note B

- Subtract an Alcan load of 358 MW at a 0.98 load factor after January 30, 2014 from the demand and energy forecasts submitted to MISO on November 1, 2012 via the New MECT tool. The load shape is a flat line.
- Green 1 and 2 generators are CPNodes BREC.GREEN1 and BREC.GREEN2
- Coleman 1, 2 and 3 generators are CPNodes BREC.COLE1, BREC.COLE2 and BREC.COLE3
- Century Load is presently represented at the following EPNodes under the BREC.BREC CPNode.
  - L BREC COLEMABR NSA0
  - L BREC COLEMABR NSA1
  - L BREC COLEMABR NSA2
  - L BREC COLEMABR NSA3
  - L BREC COLEMABR NSA4
- Based on MISO Commercial Model changes requested by Big Rivers on March 15, the above Century nodes will be aggregated on Aug 20, 2013 to create a new CPNode called BREC.CENTURY under separate AO: BR\_CENTAO
- Alcan Load is presently represented at the following EPNodes under the BREC.BREC CPNode
  - L BREC REID ALC1
  - L BREC REID ALC2
  - L BREC REID ALC3
  - L BREC REID ALC8

## V. STUDY RESULTS

### a. Branch Results (Appendix A Table 1a)

All the requested scenarios were studied. Only one limiting element was identified in scenario 2B.

Table 1a in Appendix A shows contingent conditions causing branch criteria violations without Wilson Unit 1. Contingent events causing branch violations include NERC Categories B, C1, C2, and C3.

Table below shows the only Category B constraint identified. Redispatch of nearby generation provides mitigation for the overload of Reid-Davis 161kV line that results from the contingency.

Scenario	Contingency	Limiting Element	Rating	Wilson Off ContMW	Wilson Off BaseFlow	Wilson Off Loading%	Wilson On ContMW	Wilson On BaseFlow	Wilson On Loading%	OTDF
2014SP_2B	[REDACTED]	Reid-Davis 161	335	342.3	218.5	102.2	315.6	217.4	94.2	6.4
2014SP_2B	[REDACTED]	Reid-Davis 161	335	342.3	218.5	102.2	315.6	217.4	94.2	6.4
2014SP_2B	[REDACTED]	Reid-Davis 161	335	353.9	218.5	105.6	332.4	217.4	99.2	5.2

### b. Voltage Results (Appendix A Table 1b)

Table 1b in Appendix A shows contingent conditions causing criteria violations without Wilson Unit 1. Contingent events causing voltage criteria violations include NERC Categories B, C1, C2, and C3. The voltage violation listed in Table 1b are either pre-existing violation or not caused by Wilson Unit 1 suspension. No voltage violation caused by Wilson Unit 1 suspension was identified.

## VI. ALTERNATIVES ANALYSIS

### a. New Generation or Generation Redispatch

A generation redispatch solution was identified to mitigate the thermal constraints identified in this study. Reduction of output from the Green station by 89.6MW provides sufficient relief of the post-contingency overload of the Reid – Davis 161kV line.

### b. System Reconfiguration and Operation Guidelines

No system reconfiguration is necessary

### c. Demand Response or Load Curtailment

No demand response alternative is necessary.

### d. Transmission Projects

No Transmission System reinforcements have been identified.



## **VII. CONCLUSION**

The study of the suspension of the Wilson Generating Station Unit 1 for Transmission System reliability impacts identified no issues that require the need for a System Support Resource (SSR) agreement for the Wilson Unit 1 for the specified scenarios.

After being reviewed for Transmission System reliability impacts as provided for under Section 38.2.7 of MISO's Open Access Transmission, Energy & Operating Reserve Markets Tariff ("Tariff"), no unresolved reliability issue was identified that would require the Wilson generating station Unit1 to be designated as a System Support Resource (SSR) unit.

## **VIII. APPENDICES**

### **Appendix A: Steady-State AC Contingency Results**

Table 1a: Branch Results

Table 1b: Voltage Results











Contingency	Limiting Element			BREC Wilson Off		BREC Wilson On		Unit Impact			BREC ID	CTG	Contingency File	MISO Comments	BIDE Comments		
	From Bus	To Bus	Ckt	Type	Rating	Cont MW	BaseFlw	Loading	Cont MW	BaseFlw						Loading	Off-Mean
Mean	Contingency Description	**	**	**			%		%	%		(% 5)	(% 5)				
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	
10000000	10000000	140 2200 01	10000000	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	140 2200 01	caused by study generator; can be mitigated by load shed	

Exhibit RWB-1











MISO BREC Wilson Attachment Y Study - Compare Voltage Results  
 CONFIDENTIAL / CEH

Contingency			Limiting Element				NREC Wilson 2017				BREC Wilson 2017			VOLL Impact		Contingency File	MISO Comments	BIOC Comments
Modal	Wmon	Contingency Description	Bus	Area	Zone	Low Limit	Opp Limit	Cont Volt	Base Volt	Viol	Cont Volt	Base Volt	Viol	VOLL (a0 01)	RW ID			
2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	2017-01-01	caused by study generator	





# **ELECTRIC SERVICE AGREEMENT**

Dated as of January [ ], 2014,

by and between

**KENERGY CORP.**

and

**CENTURY ALUMINUM SEBREE LLC**

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## ELECTRIC SERVICE AGREEMENT

This ELECTRIC SERVICE AGREEMENT (this "Agreement") is dated as of January [ ], 2014, and made by and between KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and CENTURY ALUMINUM SEBREE, a Delaware limited liability company ("Century"). Kenergy and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy currently supplies and delivers retail electric energy and related services to Century, the owner and operator of an aluminum reduction plant in Robards, Kentucky (as further defined below, the "Sebree Smelter"), pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the "Existing Retail Agreement").

B. Century acquired its interests in the Sebree Smelter and the Existing Retail Agreement from Alcan Primary Products Corporation, a Texas corporation ("Alcan"), pursuant to an Asset Sale Agreement, dated April 28, 2013, and an Assignment and Assumption Agreement, dated as of June 1, 2013.

C. Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers Electric Corporation, a Kentucky electric generation and transmission cooperative of which Kenergy is a member ("Big Rivers"), pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the "Existing Wholesale Agreement").

D. Alcan gave notice of termination of the Existing Retail Agreement, dated January 31, 2013, and effective as of January 31, 2014 (the "Notice of Termination"). The Existing Retail Agreement, as assigned by Alcan and assumed by Century, remains subject to the Notice of Termination, as confirmed in a Letter of Representations and Agreements, dated as of June 1, 2013, by and among Big Rivers, Kenergy, Century and Century Aluminum Company, a Delaware corporation, and the direct or indirect parent of Century ("Century Parent").

E. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services obtained from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth herein.

F. In connection with and as a condition to entry into this Agreement, Kenergy and Big Rivers have agreed to enter into the Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"), to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in Article 1, unless stated otherwise or the context requires otherwise.

1.1.1 AAA Rules: As defined in Section 16.2.

1.1.2 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.3 Affiliate: With respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For avoidance of doubt, Kenergy and the other Members are not Affiliates of Big Rivers.

1.1.4 Agreement: As defined in the preamble to this Agreement.

1.1.5 Alcan: As defined in the Recitals.

1.1.6 Ancillary Services: Those generation-based ancillary services, that are necessary to support among other things capacity, reactive supply and voltage control, as well as the transmission of Energy from resources to loads while maintaining reliable operations of the applicable transmission system in accordance with Good Utility Practice, as set forth and described in the Tariff or, if applicable, any Bilateral Tariff.

1.1.7 Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

1.1.8 Applicable RTO Charges: As defined in Section 4.2.

1.1.9 ARR: Auction Revenue Rights as defined in the MISO Tariff, or any similar items under the Tariff.

1.1.10 Arrangement Agreement: As defined in the Recitals.

1.1.11 Base Load: The “Base Load” shall be determined by the following, as applicable:

(a) The maximum amount of Load (not to exceed 378 MW), that may be reliably delivered to the Sebree Node without any Governmental Authority with jurisdiction for reliability requiring Big Rivers to operate any owned or leased generation facility to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction;

(b) The “Base Load” may be increased (not to exceed 378 MW) by notice from Century to Kenergy and Big Rivers if such increase does not create a reliability issue, as determined by any Governmental Authority with jurisdiction over electric reliability. As of the date of hereof, the Parties are unaware of any Governmental Authority with jurisdiction over electric reliability with respect to an increase in the Base Load other than FERC and MISO;

(c) If a SSR Agreement is in effect, the “Base Load” shall be the maximum amount of Load as confirmed or approved by the applicable RTO or ISO (not to exceed 378 MW);

(d) The Base Load shall be 378 MW if Big Rivers is operating the Wilson Generating Station for any reason other than an requirement by MISO to operate for reliability; and

(e) In all other circumstances, the “Base Load” shall be zero.

1.1.12 Big Rivers: As defined in the Recitals.

1.1.13 Bilateral Charges: As defined in Section 4.3.

1.1.14 Bilateral Contract: A contractual arrangement between the Market Participant and a Bilateral Counterparty pursuant to which Kenergy, through the Market Agreement, obtains a right or obligation to purchase at the Delivery Point any Electric Services for resale to Century based upon generation resources or contract resources of such Bilateral Counterparty.

1.1.15 Bilateral Counterparty: As defined in Section 2.4.

1.1.16 Bilateral Tariff: The open access transmission or markets tariff or similar construct applicable to a transaction with a Bilateral Counterparty.

1.1.17 Billing Month: Each calendar month during the Service Period.

1.1.18 Business Day: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

1.1.19 Century: As defined in the preamble to this Agreement.

1.1.20 Century Guarantee: As defined in Section 14.3.2.

1.1.21 Century Parent: As defined in the Recitals.

1.1.22 Century Substation: Century's electrical substation located adjacent to the Sebree Smelter.

1.1.23 Century Transmission Rights: All allocations from MISO of FTRs or ARRs resulting from service by Big Rivers to Kenergy under the Arrangement Agreement or other Market Agreement and service by Kenergy to Century under this Agreement or a Market Agreement and FTRs purchased by Century.

1.1.24 Costs: In the context of the specific costs referenced, "Costs" shall mean those costs of Kenergy to the extent that such costs relate to the operation of Century. For the avoidance of doubt, "Costs" include (i) Century's proportionate share of costs that are incurred by Kenergy to serve both Century and other loads, and (ii) costs incurred by Kenergy that relate only to Century's operation. Costs listed in Exhibit B shall be proportionately allocated as provided therein, or using the method applicable from time to time for calculation of bills (if the calculation method has changed from that shown in Exhibit B).

1.1.25 Curtailable Load: The maximum amount of additional Load at the Sebree Node above the Base Load that may be served on a reliable basis as confirmed or approved by MISO (or, if applicable, by another RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located) accounting for the effect of any Protective Relays installed at the Sebree Smelter, *provided*, that such amount shall be zero if such confirmation or approval is not given; *provided further*, that the Base Load plus the Curtailable Load may not exceed 378 MW, on a scheduled basis, and 388 MW at any time.

1.1.26 Day Ahead Market: The Day Ahead Energy and Operating Reserve Market established under the MISO Tariff for the purchase of electricity and electricity-related ancillary services or, if the Sebree Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for purchases of the applicable Electric Services prior to the date of delivery.

1.1.27 Delivery Point: The existing set of meters at the Robert A. Reid substation located in Robards, Kentucky or such other point of delivery mutually agreed by the Parties and Big Rivers. At Century's request, the Delivery Point may be moved to the Century Substation if permitted by the applicable RTO and Century pays all costs incurred in connection therewith.

1.1.28 Direct Agreement: The Direct Agreement, dated as of the date hereof, by and between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with the Transaction.

1.1.29 Dodd-Frank Act: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203 (signed into law July 21, 2010)) and all requests,

rules, regulations, guidelines or directives (whether or not having the force of law) of a Governmental Authority in connection therewith.

1.1.30 Effective Date: As defined in Section 6.1.

1.1.31 Electric Services: Electric services, including capacity and associated Energy, Transmission Services, Ancillary Services and other services required in connection therewith, including services as may be required by any RTO, ISO, Transmission Provider or Reliability Coordinator, and transmission or ancillary services of a Bilateral Counterparty under a Bilateral Tariff.

1.1.32 Energy: The flow of electricity denominated in kWh or MWh.

1.1.33 ERO: Electric Reliability Organization, as defined in the Federal Power Act.

1.1.34 Event of Default: As defined in Section 15.1.

1.1.35 Excess Energy Rate: The greater of (i) \$250 per MWh, and (ii) a price equal to 110% of the highest Hourly all-inclusive cost incurred by Kenergy or the Market Participant, as applicable, to acquire such Energy, and the separate cost, if any, whenever determined, of transmission services and related services required to transmit any Energy over 388 MW to the Delivery Point and including any imbalance charges or other costs arising from the failure of the supplier of such Energy to deliver such Energy.

1.1.36 Excess Reactive Demand Charge: As defined in Section 4.4.

1.1.37 Existing Retail Agreement: As defined in the Recitals.

1.1.38 Existing Wholesale Agreement: As defined in the Recitals.

1.1.39 FERC: Federal Energy Regulatory Commission.

1.1.40 FTR: Financial Transmission Rights as defined in the MISO Tariff, or any similar items under the Tariff.

1.1.41 Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.

1.1.42 Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority,



body or entity having legal jurisdiction over the matter or Person in question, a RTO (including MISO as of the Effective Date) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC; provided, however that the RUS is not a Governmental Authority for purposes of this Agreement.

1.1.43 Hedging Arrangements: Any contractual arrangements entered into as hedging or derivative arrangements, including any transactions regulated under the Dodd-Frank Act.

1.1.44 Hour or Hourly: A clock hour or per clock hour, respectively.

1.1.45 ICDR: As defined in Section 16.2.

1.1.46 Indemnified Liability: As defined in Section 13.1.

1.1.47 Indemnified Person: As defined in Section 13.1.

1.1.48 Indemnifying Party: As defined in Section 13.1.

1.1.49 ISO: An Independent System Operator, as defined and approved by the FERC.

1.1.50 Kenergy: As defined in the preamble to this Agreement.

1.1.51 KPSC: Kentucky Public Service Commission.

1.1.52 kW: Kilowatt.

1.1.53 kWh: Kilowatt-hour.

1.1.54 Load: The Hourly interval meter data measured in MWhs at the Sebree Smelter.

1.1.55 Load Curtailment Agreement: The Load Curtailment Agreement, dated as of the date hereof, among Big Rivers, Kenergy and Century.

1.1.56 Lockbox Agreement: The Security and Lockbox Agreement to be entered into by and among Century, Kenergy, the Market Participant and a depository bank prior to the Effective Date with respect to the payment of certain amounts due by Century to Kenergy under this Agreement.

1.1.57 Market Agreement: A contractual arrangement between Kenergy and a Market Participant relating to the purchase of Electric Services for resale by Kenergy to Century. As of the Effective Date, the Arrangement Agreement shall be a Market Agreement.

1.1.58 Market Participant: Big Rivers, in its capacity as the procurer of Electric Services under the Tariff or from a Bilateral Counterparty for resale to Kenergy for resale

to Century pursuant to this Agreement, during the term of the Arrangement Agreement and, thereafter, the counterparty to any other Market Agreement with Kenergy.

1.1.59 Members: The members of Big Rivers. As of the date hereof, the Members of Big Rivers are Jackson Purchase Energy Corporation, Kenergy, and Meade County Rural Electric Cooperative Corporation.

1.1.60 MISO: The Midcontinent Independent System Operator, Inc.

1.1.61 MISO Tariff: The MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.

1.1.62 Monthly Charge: As defined in Section 4.1.

1.1.63 MW: Megawatt.

1.1.64 MWh: Megawatt-hour.

1.1.65 NERC: North American Electric Reliability Corporation.

1.1.66 Net Proceeds: The proceeds of a sale or transfer, net of the cost of the item sold and net of transaction costs, whenever incurred, and taxes.

1.1.67 Notice of Termination: As defined in the Recitals.

1.1.68 Party or Parties: As defined in the preamble to this Agreement.

1.1.69 Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization, other legal entity, RUS or Governmental Authority.

1.1.70 Post-Termination Service Agreement: An agreement in the form of Exhibit A for the provision of Electric Services to serve Century's non-smelting electric requirements following a termination of this Agreement pursuant to Section 7.3, which agreement shall have been approved on or prior to the Effective Date by all Persons whose consent or approval is required in connection with the entry into or effectiveness of such agreement, including the KPSC, following the end of the Service Period. Such agreement shall provide that the Load of Century served thereunder shall not exceed 10 MW.

1.1.71 Potential Tax Liability: As defined in Section 14.3.1(a).

1.1.72 Prime Rate: The then-effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties and Big Rivers shall agree on a mutually acceptable alternative source for that rate.

1.1.73 Protective Relays: As defined in the Protective Relays Agreement.

1.1.74 Protective Relays Agreement: The Protective Relays Agreement, dated as of the date hereof, by and among Big Rivers, Kenergy and Century.

1.1.75 Real Time Market: The Real Time Energy and Operating Reserve Market established under the MISO Tariff or, if the Sebree Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for real time purchases of the applicable Electric Services.

1.1.76 Reliability Coordinator: As defined by NERC. As of the Effective Date, the Reliability Coordinator is MISO.

1.1.77 Reliability Costs: Any (a) costs that are not reimbursed to Big Rivers relating to any of its owned or leased generation facilities, including the Wilson Generation Station, required by the applicable RTO or ISO to be operated for reliability purposes to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction, and (b) costs, as determined and allocated by the RTO or ISO in which Big Rivers is a member, to the Sebree Node or any other Node (as defined in the MISO Tariff) of Big Rivers, if Big Rivers is required by the RTO or ISO of which Big Rivers is a member to operate any of its owned or leased generation facilities to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction, including the Wilson Generation Station, for reliability purposes, including: (i) in circumstances where the RTO or ISO of which Big Rivers is a member requires Big Rivers to take any of its owned or leased generation facilities out of an idled or retirement status for reliability, all costs incurred in connection with any restart, dispatch, redispatch, otherwise making any of its owned or leased generation facilities available for reliability purposes and the operation and maintenance of such generation facility after the date of restart, and (ii) the net Cost of purchasing any replacement Electric Services following an unscheduled outage or real time de-rate of any such generation facility required to be operated for reliability purposes.

1.1.78 Retail Fee: As defined in Section 4.5.

1.1.79 RTO: Regional transmission organization as defined and approved by FERC.

1.1.80 RTO Transmission Upgrades: MISO Transmission Expansion Plan or Multi-Value Projects (each as defined in the MISO Tariff) or similar transmission facilities upgrades, improvements or expansion projects of any RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located.

1.1.81 RUS: United States Department of Agriculture Rural Utilities Service.

1.1.82 Sebree Node: A Commercial Pricing Node (as defined in the Tariff) located at the Delivery Point and used solely for delivery and sale of Electric Services for the benefit of the Sebree Smelter; *provided*, that if the Sebree Node does not remain in MISO in accordance with Section 3.5.2, then the “Sebree Node” shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.

1.1.83 Sebree Smelter: The aluminum reduction plant owned and operated by Century and located in Robards, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

1.1.84 SERC: SERC Reliability Corporation, a regional reliability organization.

1.1.85 Service Period: As defined in Section 2.1.

1.1.86 SSR Agreement: An agreement, including a System Support Resources Agreement, entered into with the RTO or ISO of which Big Rivers is a member relating to the Reliability Costs relating to or arising out of any owned or leased generation facility of Big Rivers other than any such facility subject to a SSR Agreement to support the operation of the aluminum reduction plant located in Hawesville, Kentucky.

1.1.87 Surplus Sales: As defined in Section 10.1.1.

1.1.88 System Emergency: Any cessation or reduction in the provision or delivery of Electric Services by Kenergy due in whole or in part to: (a) a disconnection of all or a portion of Big Rivers' or Kenergy's system from the transmission grid (other than as a direct result of Big Rivers' or Kenergy's gross negligence or willful misconduct), (b) a system emergency on the transmission grid, (c) the occurrence of a condition or situation where the delivery of Energy to a transmission grid with which Big Rivers is directly interconnected or the making available of electric generation services, Transmission Services or Ancillary Services that could cause (i) harm to life or limb or imminent serious threat of harm to life or limb, (ii) material damage to Big Rivers' or Kenergy's system or any material component thereof or imminent danger of material damage to property, or (iii) other dangerous occurrences that Big Rivers or Kenergy believes, in the exercise of Good Utility Practice, should be prevented or curtailed, or (d) any events similar to the foregoing that result in cessation or reduction of service under (i) the Day Ahead Market or the Real Time Market, or (ii) a Bilateral Contract.

1.1.89 System Resources:

(a) Big Rivers' owned or leased electric generation facilities,

(b) Big Rivers' contract with the Southeastern Power Administration (Contract No. 89-00-1501-637), or

(c) Big Rivers' contractual arrangements relating to Electric Services, in effect currently or that become effective in the future, which were not entered into specifically for the purpose of serving the Sebree Smelter.

1.1.90 Tariff: Big Rivers' Open Access Transmission Tariff or, if Big Rivers is a member of a RTO or ISO, such RTO's or ISO's open access transmission or market tariff, as filed with and approved by FERC. As of the date hereof, the MISO Tariff is the Tariff.

1.1.91 Tax Indemnity Agreement: The Tax Indemnity Agreement, dated as of the date hereof, by and between Kenergy and Century.

1.1.92 Term: As defined in Section 7.1.

1.1.93 Transaction: The transactions by and between or among one or more of Kenergy, Big Rivers, Century, any Market Participant or any Bilateral Counterparty related to the supply of Electric Services to Century under this Agreement and the other Transaction Documents.

1.1.94 Transaction Documents: This Agreement, the Arrangement Agreement or any other Market Agreement, the Direct Agreement, the Load Curtailment Agreement, the Tax Indemnity Agreement, the Protective Relays Agreement, any SSR Agreement, the Century Guarantee and any other agreements entered into on the date hereof or in the future between or among the Parties or Big Rivers relating to the Transaction.

1.1.95 Transmission Provider: A Person accepted by FERC as such in any tariff relating to Transmission Services.

1.1.96 Transmission Services: Transmission services as described in the Tariff or, if applicable, the Bilateral Tariff, as needed to support the transactions contemplated by this Agreement.

1.1.97 Uncontrollable Force: Any cause beyond the control of the Party unable, in whole or in part, to perform its obligations under this Agreement that, despite exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and that, despite the exercise of due diligence, it has been unable to overcome. Examples of events that may constitute the basis of an event that constitutes an "Uncontrollable Force" include: acts of God; strikes, slowdowns or labor disputes; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of any Governmental Authority; civil or military disturbances; explosions, breakage of or accident to machinery, equipment or transmission lines; inability of a Party to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of Governmental Authorities, civil or military (so long as the Party claiming an Uncontrollable Force has not applied for or assisted in the application for such action); transmission constraints or System Emergencies; a forced outage of a generating unit or units preventing the physical delivery of Energy to Kenergy for resale to Century; declaration of an "Uncontrollable Force" under the Arrangement Agreement or an event of force majeure under the Tariff or the Bilateral Tariff, as applicable, any Market Agreement or any Bilateral Contract and any other forces that are not reasonably within the control of the Party claiming suspension. "Uncontrollable Forces" do not include an insufficiency of funds or decline in credit ratings or customary, expected or routine maintenance or repair of plant or equipment. Nothing contained herein shall be construed to obligate a Party to prevent or to settle a labor dispute against its will.

1.1.98 Wilson Generation Station: Big Rivers' D.B. Wilson Station, a single coal-fired steam electric generating unit located in Centertown, Kentucky.

1.1.99 ZRC: Zonal Resource Credits as defined in the MISO Tariff, or any similar items under the Tariff.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and *vice versa*; (c) references to “Recitals,” “Articles,” “Sections,” “Exhibits” or “Schedules” are to the recitals, articles, sections, exhibits or schedules of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person’s authorized agents, permitted successors and assigns in such capacity; (e) the words “herein,” “hereof” and “hereunder” will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits and schedules hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented, substituted, renewed or replaced as of such time; (i) the masculine will include the feminine and neuter and *vice versa*; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day that is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; (o) all references to the word “or” shall not be exclusive; and (p) all references to a Governmental Authority shall include any successor to all or a portion of such Governmental Authority’s authority. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

## ARTICLE 2

### ELECTRIC SERVICES AND RATES

2.1 Service Period Obligations. In accordance with the terms and conditions of this Agreement, Kenergy will supply, and Century will purchase, Electric Services for a period beginning at 11:00:00 p.m. on the later of (a) the day immediately following the Effective Date and (b) January 31, 2014, and continuing until 10:59:59 p.m. on December 31, 2023, unless the Parties’ respective obligations to supply and purchase Electric Services are terminated earlier pursuant to the terms and conditions of this Agreement; *provided*, that such period may be extended pursuant to Section 7.1 (the “Service Period”).

2.2 Characteristics of Service. Electric service to be supplied by Kenergy to Century under this Agreement shall be nominally three-phase, sixty cycle at 161,000 volts or as otherwise agreed to by the Parties and Big Rivers. The Parties and Big Rivers will mutually agree on limits

of the regulation of voltage but at no time may such regulation of such limits be inconsistent with standards required by applicable Governmental Authorities or any other organizations that establish applicable reliability and electric operation standards.

2.3 Delivery Obligation. During the Service Period, Kenergy will deliver, or cause to be delivered, Electric Services in accordance with the terms and conditions of this Agreement at the Delivery Point.

2.3.1 Energy. Kenergy will use reasonable commercial efforts to acquire the Base Load and, if applicable, the Curtailable Load, for resale to Century to meet the Load of the Sebree Smelter at the Delivery Point. Schedules submitted by Century may not exceed Base Load plus any applicable Curtailable Load and in any event not more than 378 MW. Total usage is limited to the Base Load amount if there is no Curtailable Load; *provided, however*, that if there is Curtailable Load, then usage may exceed scheduled load by up to 10 MW (supplied as imbalance Energy) but not to exceed 388 MW. Century acknowledges and agrees that any such excess over 388 MW shall be charged to Century at the Excess Energy Rate; *provided*, that payment of the charge under Section 4.6.9 shall not be deemed to be a waiver of the restrictions herein on Century's Load not exceeding the scheduled Load. Kenergy will acquire the Energy for resale to Century to meet Kenergy's obligations under this Agreement through purchases of Energy through a Market Agreement with the Market Participant if Kenergy is not the Market Participant.

2.3.2 Other Electric Services. Kenergy will obtain Electric Services other than Energy as required and directed by Century through the Market Participant under a Market Agreement with respect to the purchase of such Electric Services (a) in the applicable market of the RTO or ISO of which the Market Participant is a member, or (b) through a Bilateral Contract.

2.3.3 Each Market Agreement must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Market Participant, (c) not require Kenergy to purchase Electric Services from a Person other than the Market Participant except during periods when Kenergy is the Market Participant, and (d) not result in Kenergy paying the Market Participant prior to the time Century pays Kenergy for any amounts due or otherwise expose Kenergy to any greater financial risks than those agreed to by Kenergy under the Arrangement Agreement.

2.4 Bilateral Purchases. Upon request by Century, Kenergy shall use reasonable commercial efforts to acquire specified Electric Services through the Market Participant from specified Persons ("Bilateral Counterparties") for resale under the Market Agreement by the Market Participant to Kenergy for resale to Century. Century must specify in any such request (i) the identity of the Bilateral Counterparty, (ii) the requested amount and duration of such Electric Services, and (iii) desired pricing and other material terms and conditions.

2.4.1 Kenergy's obligation to direct the Market Participant to enter into any Bilateral Contract will be conditioned upon (a) Kenergy's prior receipt of a written notification from Century setting forth Century's consent to the execution, delivery and

performance of such Bilateral Contract, and (b) Kenergy's satisfaction, in its sole discretion, only as to financial security arrangements and the elimination of risk to Kenergy associated with the Bilateral Contract and the Market Participant's arrangements with the Bilateral Counterparty. For the avoidance of doubt, any Bilateral Contract must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Bilateral Counterparty, (c) not require Kenergy to purchase Electric Services from a Person other than the Market Participant, except during periods when Kenergy is the Market Participant, and (d) not result in Kenergy paying the Market Participant prior to the time Century pays Kenergy for any amounts due.

2.4.2 Promptly following request by Century pursuant to Section 2.4.1, Kenergy shall request that the Market Participant arrange or have arranged all Transmission Services and Ancillary Services necessary to transmit the Energy the Market Participant obtains under a Bilateral Contract to the Delivery Point. The amount of Energy transmitted from the source to the Delivery Point shall be adjusted to reflect the application of any system loss factor unless otherwise addressed in the terms and conditions of the applicable Bilateral Contract. Century acknowledges and agrees that Kenergy shall have no liability to Century for the failure of the Market Participant to procure Transmission Services and Ancillary Services.

2.4.3 The provisions herein relating to Surplus Sales shall apply if Century is unable to receive and consume any Electric Services purchased by Kenergy under a Bilateral Contract because of an Uncontrollable Force.

2.4.4 Century shall not enter into a Bilateral Contract for the purpose of reselling Electric Services purchased thereunder as Surplus Sales.

2.5 Power Factor. Century shall use reasonable commercial efforts to maintain a power factor at the Delivery Point as nearly as practicable between unity and 0.95 leading or lagging with respect to maximum electric demand incurred by Century during any Billing Month.

2.6 Title and Risk of Loss. Title to and risk of loss with respect to all Electric Services provided by Kenergy to Century pursuant to this Agreement will pass from Kenergy to and rest in Century at the Delivery Point. After title passes to Century, Century will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby.

2.7 Performance by Kenergy. Century acknowledges and agrees that, to the extent a Person has a corresponding or related obligation to Kenergy with respect to any matter, Kenergy's performance of an obligation with respect to such matter under this Agreement or any other Transaction Document is subject to and conditioned upon such Person's performance of such corresponding or related obligation to Kenergy. Subject only to performance by a Person of its obligations to Kenergy, Kenergy shall perform its obligations under this Agreement and the other Transaction Documents to which it is a party. Century acknowledges and agrees that such Person with an obligation to Kenergy may enforce an obligation of Century under this



Agreement or any other Transaction Document that corresponds or relates to the obligation of Kenergy to such Person. For example, with respect to a purchase of Energy under a Bilateral Contract, Kenergy shall be obligated to deliver to Century only those amounts of Energy received by Kenergy from the Market Participant, net of applicable losses of Energy. Kenergy will not be in default under any provision of this Agreement nor will it have any liability to Century if the non-delivery of Energy to be purchased by Kenergy sourced under a Bilateral Contract is due to a failure by the Market Participant or the Bilateral Counterparty to deliver the full amount of such Energy required under the Market Agreement or the Bilateral Contract, as applicable; *provided*, that Kenergy has assigned to Century Kenergy's rights and remedies against the Market Participant or Bilateral Counterparty under such agreement.

2.8 Limitation on Use. Subject to Section 3.3.2, Century shall use the Electric Services delivered to and purchased by Century under this Agreement solely for purposes of operating the Sebree Smelter.

### ARTICLE 3

#### MARKET PARTICIPATION AND SCHEDULING

##### 3.1 Market Participant.

3.1.1 Big Rivers shall act as the initial Market Participant in connection with the Transaction and, pursuant to the Arrangement Agreement, shall use reasonable commercial efforts to arrange and procure the Electric Services required by Century on behalf of Kenergy for resale to Century hereunder.

3.1.2 Kenergy may elect to become the Market Participant. Kenergy's election will not become effective, however, until Century provides written notice of its consent and approval, granted or withheld in Century's sole discretion, of Kenergy becoming the Market Participant.

3.1.3 At any time during the Service Period, Century may appoint a Person to be the Market Participant. Century shall provide Kenergy with information describing in reasonable detail that the proposed arrangements with the new Market Participant do not increase Kenergy's risks compared to the Arrangement Agreement. Such Person shall not become the Market Participant until Kenergy provides written notice of its consent and approval, which shall not be unreasonably withheld or delayed, to such Person becoming the Market Participant. Century also shall provide Kenergy with such additional information as Kenergy reasonably may request in connection therewith. Century shall give Kenergy and, if the Arrangement Agreement is in effect, Big Rivers not less than 120 days' prior written notice of the appointment of such Person to be the new Market Participant. Kenergy shall use reasonable commercial efforts to obtain any necessary approvals or consents in connection with any entry into a Market Agreement with a new Market Participant. Century shall be responsible for any Costs to Kenergy resulting from a change in the Market Participant.

3.1.4 For the avoidance of doubt, a Person acting as the Market Participant shall remain in that capacity, notwithstanding any election under Section 3.1.2 or appointment under Section 3.1.3 of a different Person as a Market Participant, until the consent and approval required from a Party under this Section 3.1 is obtained.

3.1.5 Century acknowledges and agrees that (i) Kenergy shall have no liability under this Agreement or otherwise in connection with or arising out of the absence of any Person acting as the Market Participant during any period in which a Person previously acting as the Market Participant ceases to act in that capacity and another Person is not yet acting in that capacity in accordance with this Section 3.1, (ii) no Person may become the Market Participant if any authorization or approval, consent or other action by, or notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, required to be obtained, given, accomplished or renewed for such Person to act in such capacity, shall not have been obtained, given, accomplished or renewed and be in full force and effect.

3.2 Base Load. The Base Load may be modified only as provided in Section 1.1.11.

3.3 Scheduling.

3.3.1 Century shall provide a schedule, on an Hourly basis, of all required Electric Services to Kenergy or its designee; *provided* that, commencing on the day following the Effective Date, Kenergy will schedule with the Market Participant the Base Load and, if applicable, the Curtailable Load as the Hourly Load of Century in the Day Ahead Market unless Century provides notice to Kenergy of an alternative schedule not later than 8:00 a.m. on the Business Day prior to the day of delivery.

3.3.2 Century promptly, and no later than sixty (60) minutes prior to any applicable deadline under any applicable RTO or ISO scheduling guidelines, shall notify Kenergy of any revisions to Century's schedule by providing Kenergy with a revised schedule in compliance with the other terms and conditions of this Agreement, and Kenergy shall submit such revised schedule to the Market Participant for its submission to the applicable RTO or ISO within such scheduling guidelines. Century may not intentionally reduce its Load to resell on a short-term basis any Electric Services purchased by Century; *provided* Century may offer and sell interruption and demand reduction services. For avoidance of doubt and notwithstanding any other provision, Century may resell or cause to be resold Electric Services it has purchased or committed to purchase if Century idles significant smelting capacity at the Sebree Smelter, including one potline or more.

3.4 Transmission Rights. Century shall direct Kenergy to instruct the Market Participant to request, schedule, or sell the Century Transmission Rights in such time and amounts specified at least three Business Days prior to the applicable deadline. Century shall be entitled to the Net Proceeds of the sale of any Century Transmission Rights in the form of a credit to amounts otherwise owing from the Market Participant to MISO in respect of Electric Services purchased by Century under this Agreement.

### 3.5 Transition to Another RTO or ISO.

3.5.1 This Agreement and the other Transaction Documents have been drafted by the Parties and Big Rivers under the presumption that, during the Service Period, the Sebree Node is located in MISO and Big Rivers is a member of MISO. Century acknowledges and agrees that Kenergy or Big Rivers, as applicable, may, in its sole discretion, elect to join or become a member of a RTO or ISO other than MISO or elect to withdraw as a member of MISO and not be a member of any RTO or ISO. In such circumstances, the Parties and the Market Participant agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

3.5.2 The Sebree Node may remain in MISO if (a) requested by Century, (b) permitted by both the new RTO or ISO and MISO, (c) Century is responsible for any Costs resulting from the Sebree Node remaining in MISO, and (d) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO. In such case, any terms used herein that relate to the RTO or ISO of which the Market Participant is a member or its tariff shall be deemed amended, as applicable to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

3.5.3 Century acknowledges and agrees that if at any time the Sebree Node is no longer part of any RTO or ISO, then the Electric Services provided hereunder shall be provided exclusively pursuant to Section 2.4, which shall include arrangements for imbalance Energy.

### 3.6 Forecasts.

3.6.1 Century shall provide Kenergy a forecast of its Load at the Sebree Node in accordance with the requirements of (a) Module E (Resource Adequacy) of the MISO Tariff, so long as the Sebree Node is located in MISO, or (b) the resource adequacy provisions of the tariff of the RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located, in each case, at least five Business Days prior to the deadline therefor set forth in the applicable tariff. This forecast currently includes a peak forecast for Century's Load at the Sebree Node for the succeeding 36 months, or for such other term as reasonably requested by Kenergy or as required by the RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located, the RTO or ISO of which the Market Participant is a member or the Tariff. The obligations of Century under this Section shall survive appointment of a new Market Participant under Section 3.1.

3.6.2 Century shall respond on or prior to the fifth Business Day to any requests made by Kenergy to Century for data, forecasts, projections or other information necessary or reasonably appropriate for Kenergy or the Market Participant to comply with

requests or requirements of the RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located, the RTO or ISO of which the Market Participant is a member, other Governmental Authorities or the Tariff. The obligations of Century under this Section shall survive appointment of a new Market Participant under Section 3.1.

## ARTICLE 4

### CHARGES AND CREDITS

4.1 Monthly Charge. Century shall pay Kenergy the following (the “Monthly Charge”) for the Electric Services provided or made available under this Agreement and for other amounts owing to Kenergy under this Agreement, without duplication, including:

- 4.1.1 Applicable RTO Charges calculated pursuant to Section 4.2;
- 4.1.2 *plus* the Bilateral Charges calculated pursuant to Section 4.3;
- 4.1.3 *plus* the Excess Reactive Demand Charge calculated pursuant to Section 4.4;
- 4.1.4 *plus* the Retail Fee calculated pursuant to Section 4.5;
- 4.1.5 *plus* other amounts calculated pursuant to Section 4.6; and
- 4.1.6 *plus* taxes calculated pursuant to Section 4.7.

4.2 Applicable RTO Charges. Charges and credits of the applicable RTO or ISO invoiced to Kenergy by the Market Participant on a pass-through basis for all Electric Services purchased by Kenergy at the Sebree Node under a Market Agreement, other than Electric Services purchased by the Market Participant under a Bilateral Contract, and any other RTO or ISO charges payable by Kenergy for the benefit of Century under a Market Agreement (the “Applicable RTO Charges”), whenever invoiced, including:

- 4.2.1 All activity listed on the settlement statement of the applicable RTO or ISO attributed by such RTO or ISO to the Sebree Node, including Reliability Costs relating to the Sebree Node;
- 4.2.2 All activity for Transmission Services attributed by the applicable RTO or ISO to the Sebree Node, including, if applicable, activity during the portion of a month during the Service Period;
- 4.2.3 All activity relating to the planning year (or other applicable period) of the applicable RTO or ISO that is attributed by such RTO or ISO to the Sebree Node, including planning activity relating to ZRCs, ARRs and FTRs;

4.2.4 Costs relating to RTO Transmission Upgrades attributed by such RTO or ISO to the Sebree Node that otherwise relate to Century's operation of the Sebree Smelter; and

4.2.5 Any credit for revenue resulting from the sale of the Century Transmission Rights.

4.3 Bilateral Charges. Any charges to a Market Participant under a Bilateral Contract with respect to Electric Services or other Costs for the benefit of Century, including any and all separate charges for transaction fees (including broker fees), transmission services, Ancillary Services and related services, whenever incurred (including financial transmission rights, transmission congestion charges and similar Costs or expenses) (collectively, "Bilateral Charges").

4.4 Excess Reactive Demand Charge. For any Billing Month, the "Excess Reactive Demand Charge", if any, shall be the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, between:

4.4.1 the maximum metered reactive demand of Century during the Billing Month, and

4.4.2 an amount of kilovars equal to the sum of:

(a) the product of (A) 0.3287, and (B) the maximum hourly demand during a Billing Month, denominated in kW, associated with Energy provided by Kenergy for resale to Century, and

(b) 54,114.

4.5 Retail Fee. For any Billing Month, the "Retail Fee" shall be an amount equal to the sum of:

4.5.1 the product of:

(a) \$0.000045 per kWh, and

(b) the Energy metered at the Sebree Node, and

4.5.2 \$2,614 per month.

4.6 Other Amounts. For any Billing Month:

4.6.1 Any amounts due and payable to Kenergy under the Tax Indemnity Agreement.

4.6.2 Costs charged to Kenergy under the Arrangement Agreement, including any tax liability of Big Rivers resulting from Surplus Sales.

4.6.3 Costs arising under Section 10.2 relating to compliance with Applicable Laws relating to the environment.

4.6.4 Costs arising under Section 10.3 relating to compliance with Hedging Arrangements.

4.6.5 Internal and direct Costs incurred in serving Century, including Costs associated with fees of the KPSC, Costs of Kenergy's compliance with Section 14.2, Costs associated with any Person other than Big Rivers, including Kenergy, serving as Market Participant, including charges by the RTO to establish or maintain the Sebree Node if Kenergy is the Market Participant.

4.6.6 Costs arising under Section 3.1.3 relating to the appointment of a new Market Participant.

4.6.7 Charges for any other services required to be purchased by Kenergy to serve Century.

4.6.8 Costs associated with the Sebree Node exiting an RTO or ISO in connection with an election made by Big Rivers or Kenergy pursuant to Section 3.5.2.

4.6.9 The Excess Energy Rate multiplied by the amount of Energy in excess of 388 MW in any Hour.

4.6.10 Any amounts charged to Kenergy by a Market Participant under a Market Agreement.

4.6.11 Other out-of-pocket Costs payable by Kenergy to another Person that are incurred or committed to by Kenergy in connection with or arising out of the Transaction, including (a) Indemnified Liabilities, (b) any security necessary to be provided to any Person (including the RTO or ISO of which the Market Participant is a member or a Bilateral Counterparty) arising out of the Transaction, and (c) the Costs to pursue any approval or consent under Section 7.2.2; *provided*, that Costs referenced on Exhibit B shall be allocated as provided therein.

4.7 Taxes. No state or local sales, excise, gross receipts or other taxes are included in the charges and credits set forth in this Article 4. Century shall pay or cause to be paid any such taxes that are now or hereafter become applicable to the sale of Electric Services to Century under this Agreement.

4.8 No Duplication. Subject to the provisions of Section 5.4, the Monthly Charge shall not include any item that would result in a duplicative payment for a particular charge if Kenergy would not be liable for the duplicative amount.

## ARTICLE 5

### BILLING

5.1 Market Invoices. Kenergy shall bill Century, or cause Century to be billed, on or before the third Business Day following receipt by Kenergy of an invoice from the Market Participant for any amounts invoiced with respect to service to Kenergy on behalf of Century plus any other amounts then due and owing for any portion of the Electric Services or other amounts payable by Kenergy under a Market Agreement or any other Transaction Document. Century shall pay Kenergy for such amounts in immediately available funds to an account designated by Kenergy or its designee on the second Business Day following Century's receipt of the bill under this Section. For the convenience of the Parties, and to facilitate Kenergy's obligations to the Market Participant, Kenergy may assign to the Market Participant its right to receive any payments from Century pursuant to this Section 5.1 and Kenergy's rights to collect and enforce the collection of such amounts due from Century.

5.2 Monthly Invoices for other Amounts. Kenergy shall bill Century on or before the 15th Business Day of each month for the Monthly Charge (other than the charges billed pursuant to Section 5.1) as calculated pursuant to Article 4 plus any other amounts then due and owing pursuant to this Agreement. Century shall pay Kenergy such portion of the Monthly Charge and any other amounts due and owing to Kenergy in immediately available funds to an account designated in the Lockbox Agreement on the Business Day following the 24th day of the month following the Billing Month or such earlier date of such month on which the Members' payment to Big Rivers is due.

5.3 Default Interest. If any invoice rendered by Kenergy (or the Market Participant or Big Rivers on behalf of Kenergy) is not paid on the due date, interest will accrue and become payable by Century to Kenergy on all unpaid amounts at a rate of one percent over the Prime Rate commencing on the first day after the due date; *provided*, that if interest in respect of any such unpaid amount accrues interest at a different rate to another Person, the applicable default interest rate shall be such different rate payable to the Person to which such unpaid amounts are owed.

5.4 Payments Under Protest. If any portion of any statement is disputed by Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Kenergy shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made; *provided*, that interest payable with respect to any amounts refunded to Kenergy shall be based on the interest paid to Kenergy, if any, by the payor on a pass-through basis. If the amount to be refunded to Century relates to amounts paid to the Market Participant, Big Rivers or another Person other than Kenergy, then Kenergy will refund such amounts promptly upon receipt of the refund of such amount.

5.5 Release and Indemnification.

5.5.1 Century (a) shall release Kenergy from any and all claims Century may have against Kenergy for the failure of (i) Big Rivers, (ii) the Market Participant (unless Kenergy is the Market Participant); or (iii) a Bilateral Counterparty, to satisfy its obligations under a Market Agreement, any other Transaction Document or a Bilateral Contract, as applicable, and (b) shall indemnify, hold harmless and defend Kenergy from and against any and all claims Big Rivers or a Market Participant may assert against Kenergy in connection with any failure by Big Rivers or the Market Participant to perform under a Market Agreement or any other Transaction Document, as applicable, if Kenergy elects to assign its rights in connection therewith pursuant to Section 5.5.2.

5.5.2 If Big Rivers or the Market Participant shall default under the Market Agreement, Kenergy may deliver to Century (a) a power-of-attorney with full power of substitution that shall designate Century or its designee as Kenergy's attorney-in-fact (that shall be coupled with an interest and irrevocable) for purposes of negotiating and prosecuting any and all claims Kenergy may have against Big Rivers or the Market Participant for a failure of Big Rivers or the Market Participant to satisfy its obligations under a Market Agreement and to file or prosecute any claim, litigation, suit or proceeding before any Governmental Authority in the name of Kenergy or in its own name, or take such other action otherwise deemed appropriate by Century for the purposes of obtaining legal or equitable relief as a result of the failure of Big Rivers or the Market Participant to satisfy its obligations under the Market Agreement and to compromise, settle, or adjust any suit, action or proceeding related to the failure of Big Rivers or the Market Participant, as applicable, to satisfy such obligations and to give such discharges or releases as Century may deem appropriate, and (b) an assignment conveying to Century all of Kenergy's right, title and interest in and to any legal, equitable or other relief, including the recovery of damages and the grant of injunctive relief or other remedies to which Kenergy may be entitled with respect to the failure of Big Rivers or the Market Participant to satisfy its obligations under a Market Agreement. The power-of-attorney and the assignment shall be in form and substance reasonably satisfactory to Century and shall be legally effective and enforceable under Kentucky or other Applicable Law.

5.6 No Waiver. No payment made by Century pursuant to this Article 5 will constitute a waiver of any right of Century to contest the correctness of any charge or credit.

ARTICLE 6

EFFECTIVE DATE AND CONDITIONS

6.1 Effective Date. The obligations of the Parties under Article 2, Article 3, Article 4, Article 5, Section 7.3, Article 8, Article 9, Article 10, Article 11, Article 12, Article 14, and Article 15 shall not commence until the Effective Date. The "Effective Date" will occur on the first date each of the conditions set forth in Section 6.2 has been satisfied in full or waived in writing by the Party in whose favor such condition exists (to the extent one or more conditions is subject to being waived).



6.2 Conditions to Occurrence of Effective Date. The following shall be conditions to the occurrence of the Effective Date:

6.2.1 The meters at the substation of the Robert A. Reid substation at the Sebree generation station shall be a Commercial Pricing Node (as defined in the MISO Tariff).

6.2.2 Each of the representations and warranties of the Parties contained in this Agreement and the representations and warranties of Big Rivers and Kenergy in the Arrangement Agreement will be true and correct as of the date hereof and the Effective Date (as though such representations and warranties were made at and as of the date hereof and the Effective Date), and each of the Parties shall have received a certificate to such effect from the other Party with respect to the other Party's representations and warranties in this Agreement and Century shall have received a certificate to such effect from Kenergy and Big Rivers in respect of their respective representations and warranties in the Arrangement Agreement.

6.2.3 Each of the documents and agreements set forth in Schedule 6.2.3 will have been duly authorized, executed and delivered by the parties thereto, and all conditions precedent to the effectiveness of such agreements will have been satisfied or waived, and shall, if effective on the date of the execution of this instrument amended after the date hereof and prior to the Effective Date, be acceptable in form and substance to the Parties.

6.2.4 The Century Guarantee will have been duly authorized, executed and delivered by Century Parent and be in full force and effect.

6.2.5 Any credit support required to be provided by Century on the Effective Date pursuant to Section 14.3 shall have been provided.

6.2.6 No authorization or approval or other action by, and no notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, will be necessary prior to the commencement of the Service Period for the execution, delivery and performance by the Parties to each Transaction Document to which it is a party, other than (i) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and which are routine in nature or which cannot be obtained, or are not normally applied for, prior to the time they are required and which Kenergy has no reason to believe will not be timely obtained and in each case which do not prevent provision of Electric Services as described herein, and (ii) with respect to the approval of any Governmental Authority, on the Effective Date, such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; *provided*, that Century acknowledges and agrees that Kenergy may in its sole discretion discontinue the provision of Electric Services hereunder if any such approvals required by clause (ii) of this Section are overturned or otherwise disapproved by the applicable Governmental Authority subsequent to the Effective Date.

6.2.7 The consent of RUS and each of Kenergy's secured creditors to the Transaction and to all arrangements and agreements contemplated in connection therewith will have been duly issued and received and will be in full force and effect; all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date.

6.3 Efforts to Satisfy Conditions to Effective Date. Each of the Parties shall use reasonable commercial efforts and act in good faith to satisfy all of the conditions set forth in Section 6.2 at the earliest practicable date (other than those that the applicable Party agrees to waive). At such time as Kenergy or Century believes such conditions have been satisfied, such Party shall notify the other Party in writing. The obligations of the Parties under this Section 6.3 will continue until the earlier of (a) such time as this Agreement terminates pursuant to Section 7.2, and (b) the Effective Date.

## ARTICLE 7

### TERM AND TERMINATION

7.1 Term. Subject to Section 6.1, this Agreement will become binding on the Parties on the date of execution and delivery by the Parties and will remain in full force and effect until 10:59:59 p.m. on December 31, 2023, unless earlier terminated pursuant to the terms and conditions hereof (the "Term"). The Term will be automatically extended for additional one year periods on each December 31<sup>st</sup> thereafter until a Party gives at least one year's prior notice to the other Party and Big Rivers of its election for the Agreement to expire at 10:59:59 on a specified December 31<sup>st</sup>.

7.2 Termination Prior to Effective Date. This Agreement may be terminated without cost or penalty prior to the occurrence of the Effective Date in accordance with this Section 7.2.

7.2.1 Termination for Failure to Satisfy Conditions to Effective Date. Either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party upon the failure of the conditions in Section 6.2 to be satisfied in full or waived by the Person in whose favor the condition exists on or before 10:59:59 p.m. on January 31, 2014.

7.2.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approvals for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Big Rivers no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.2.3 Service Following Termination Prior to Effective Date. Century acknowledges and agrees that Kenergy may not provide Electric Services to Century on or after 10:59:59 p.m. on January 31, 2014 unless the KPSC approves the provision of Electric Services to Century under a new or existing tariff and pursuant to a new contract entered into between Kenergy and Century.

7.3 Termination After the Effective Date. This Agreement may be terminated after the occurrence of the Effective Date in accordance with this Section 7.3.

7.3.1 Termination for Convenience by Century.

(a) Century may terminate this Agreement as of a date not less than 60 days from the date it provides written notice to Kenergy and Big Rivers of the termination of this Agreement.

(b) If Century requests to purchase Electric Services from Kenergy to serve its non-smelting requirements following a termination pursuant to this Section 7.3.1, then such Electric Services will be provided under the Post-Termination Service Agreement.

7.3.2 Termination for Event of Default. This Agreement may be terminated following the occurrence and during the continuation of an Event of Default pursuant to Article 15.

7.3.3 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approval for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Big Rivers no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision, or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.4 Effect of Termination. Termination of this Agreement will terminate the Transaction Documents listed on Exhibit C, other than obligations of the Parties under such Transaction Documents that survive termination.

## ARTICLE 8

### METERING

8.1 Metering Facilities. Kenergy will provide or cause to be provided metering facilities at the Delivery Point that measure Hourly kW, kWh, kilovars, kilovar-hours and voltage-hours.

8.2 Reading. Kenergy will read or cause to be read the meters at the Delivery Point on the last date of each month (or such other date as may be agreed upon by the Parties).

8.3 Testing. Kenergy will test, or cause to be tested, the calibration of the meters at the Delivery Point by comparison of accurate standards at least once every twelve months (or more often if so required by Applicable Law) and will give Century not less than five Business Days' prior notice of such testing. Century will have the right to observe and participate in all meter tests. Meters registering not more than plus or minus 1% inaccurate will be deemed to be accurate (unless Applicable Law establishes a standard more stringent than 1%, in which case, the more stringent standard will apply). The reading of any meter that will have been disclosed by tests to be inaccurate will be corrected for the 60 days before such tests (or for such shorter period if applicable) in accordance with the percentage of inaccuracy found by such tests. If any meter should fail to register for any period, the Parties and Big Rivers will make mutually agreed upon estimates for such period from the best information available. If Century requests a special meter test, Kenergy shall cause such test to be conducted; *provided, however*, that if any special meter test made at the request of Century discloses that the meters are not more than plus or minus 1% inaccurate, Century shall reimburse Kenergy for the reasonable Cost of such test. In all other respects, meters through which Kenergy delivers Energy to Century shall be installed, operated, maintained and tested in accordance with all Applicable Law and Good Utility Practice.

## ARTICLE 9

### OPERATIONAL MATTERS

9.1 Operations and Operational Responsibility. In carrying out the requirements of this Agreement, each Party will comply with the reliability criteria, standards, guidelines and operating procedures of a FERC-approved ERO, SERC, Applicable Law and any applicable RTO, and neither Party will be required to take any action in violation of any thereof.

9.1.1 Kenergy will operate and maintain or cause to be operated and maintained any facilities owned by it on the premises of Century.

9.1.2 Century will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it, including any Protective Relays.

9.2 Facilities Provided by Kenergy. Kenergy has caused to be furnished and installed, or shall cause to be furnished or installed, at the Delivery Point, all of the facilities required for the delivery of Energy to the Delivery Point, as well as the 161 kilovolt transmission lines required between the Delivery Point and the Century Substation. Kenergy shall install and maintain, or shall cause to be installed and maintained, at the Delivery Point, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment but excluding any Protective Relays, necessary to deliver Energy to Century at the Delivery Point. Kenergy will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Good Utility Practice, to the

extent necessary to assure sufficient capability to take and use the Electric Services to be delivered by Kenergy to Century as provided for in this Agreement. For the avoidance of doubt, nothing herein shall obligate Kenergy to furnish, install, operate or maintain any equipment other than that at the Delivery Point in connection with the delivery of the Electric Services to Century hereunder.

### 9.3 Facilities Provided by Century.

9.3.1 Century has provided or shall provide, without cost to Kenergy or Big Rivers all easements for rights-of-way upon Century's property at the Sebree Smelter (at such locations and of such dimensions as may be mutually agreed upon) for Big Rivers' transmission lines and for any Kenergy distribution lines.

9.3.2 Century has furnished and installed, shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use Energy purchased hereunder at and from the Century Substation, including any Protective Relays and such protective devices as may be reasonably necessary to protect Big Rivers' transmission system from disturbance caused by Century. Additional plans for equipment to be installed for such protection of the facilities of Kenergy or Big Rivers shall be submitted to Kenergy and Big Rivers for prior approval.

9.4 Curtailment. Century acknowledges and agrees that, if Big Rivers determines in accordance with Good Utility Practice, or in compliance with any FERC-approved ERO, SERC, Applicable Law and other regulation, any applicable RTO, or other applicable operating criteria or rules, that a System Emergency has occurred or is imminent, and after suspending or reducing deliveries to Persons purchasing interruptible Energy from Big Rivers, Kenergy may suspend or reduce the delivery of Energy hereunder and may cease to make available in whole or in part the Electric Services, in each case to the extent caused by, or that Kenergy or Big Rivers determines necessary or prudent under the circumstances to prevent or attempt to prevent, or counter or reduce the effects of, such System Emergency. Subject to the Load Curtailment Agreement, Century acknowledges and agrees that any curtailment caused by a System Emergency (or for any other reason) that cannot be avoided after the suspension or reduction of deliveries to Persons purchasing interruptible Energy from Big Rivers will be effected in a non-discriminatory manner consistent with the Tariff. Kenergy shall request Big Rivers to notify Century as to the occurrence or threatened occurrence of any System Emergency or other event that may require curtailment, its cause and its impact on the provision of Electric Services under this Agreement, as soon as practicable. Kenergy will not be obligated to supply Electric Services to Century to the extent suspended or curtailed as a result of the System Emergency.

9.5 Ownership and Removal of Equipment. Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed, by either of the Parties hereto (or by Big Rivers) on or in the premises of the other Party (or Big Rivers) to deliver or receive service under this Agreement shall be and remain the property of the Party (or Big Rivers) owning and installing such equipment, apparatus, devices or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement or any extension thereof, the owner (including, if applicable, Big Rivers) of any equipment, apparatus, devices or facilities on the property of a Party shall have

the right to enter upon the premises of that Party, and shall, within a reasonable time and at the sole expense of the owner, remove such equipment, apparatus, devices or facilities.

9.6 Right of Access. Century grants the duly authorized agents and employees of Kenergy and Big Rivers the right to reasonable access to the premises of Century to the extent reasonably required for the purposes of installing, repairing, inspecting, testing, renewing or exchanging any or all of its equipment located on the premises of Century, for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Kenergy or Big Rivers shall make reasonable advance arrangements before entering the premises of Century.

9.6.1 Century shall use reasonable commercial efforts to properly protect the property of Kenergy or Big Rivers, located on its premises, and shall permit no Person to inspect or adjust the wiring and apparatus of Kenergy (or Big Rivers) except with Kenergy's or Big Rivers' consent, as applicable. Neither Party assumes the duty or responsibility of inspecting the wiring or apparatus of the other Party.

9.6.2 Century grants to Kenergy and its agents and employees a license to enter the Century Substation and upon Century's easements and rights-of-way to accomplish the purposes of this Agreement, *provided* that reasonable advance arrangements appropriate under the circumstances are made.

## ARTICLE 10

### COVENANTS

#### 10.1 Surplus Sales.

10.1.1 Century may request that Kenergy direct the Market Participant to sell (a) any Electric Services that Century has committed to purchase, or (b) Century Transmission Rights, in each case, that are surplus to Century's requirements by delivering prior written notice to Kenergy and the Market Participant identifying the Electric Services to be sold and the associated times and duration of the requested sales ("Surplus Sales"). The Net Proceeds of any Surplus Sales will be credited by Kenergy or the Market Participant, as applicable, against the related item in the Monthly Charges. Century acknowledges and agrees that (i) Kenergy shall have no liability to any Person in connection with or arising out of the Market Participant's (unless Kenergy is the Market Participant) or a Bilateral Counterparty's (if Kenergy is the Market Participant) failure to make, manner of making or other handling or execution of a direction to execute Surplus Sales; *provided* that Kenergy has directed the Market Participant with respect to such Surplus Sales in accordance with Century's request pursuant to this Section, and (ii) Century shall provide notice of any such request to the Market Participant simultaneously with Century's provision of such request to Kenergy under this Section 10.1.1.

10.1.2 Any request by Century pursuant to this Section 10.1 shall be irrevocable following the Market Participant's entry into contractual obligations relating to any such Surplus Sales.

10.1.3 For the avoidance of doubt, nothing in this Section 10.1 shall relieve Century of its obligation for any portion of the Monthly Charge pursuant to Article 4.

10.2 Compliance with Environmental Laws. Century shall be responsible for Costs related to Century's operation, incurred by Kenergy to comply with (i) state or federal renewable energy portfolio or similar standards or (ii) Applicable Laws relating to the environment. For avoidance of doubt, such Costs of Kenergy to comply with environmental laws and regulation would include, because Century does not use any Kenergy-owned facilities, only charges or requirements imposed based on Kenergy's retail sales or the number of Kenergy's retail electric customers. To the extent permitted by Applicable Law, Century may self-comply with the provisions of this Section by purchasing its proportionate share of renewable energy.

10.3 Compliance with Applicable Laws Relating to Hedging Arrangements. Century shall be responsible for Costs related to Century's operation incurred by Kenergy to comply with Applicable Laws relating to sales pursuant to this Article, including Hedging Arrangements and the Dodd-Frank Act and any rules and regulations of any Governmental Authority, applicable to any Hedging Arrangements entered into by the Market Participant or any other Person in connection with Kenergy's provision of Electric Services to Century hereunder.

10.4 Electric Services for Sebree Smelter Only. Century shall consume all Energy purchased by and delivered to the Sebree Smelter under this Agreement in connection with the operation of its Sebree Smelter, except as expressly permitted pursuant to this Agreement. Century acknowledges and agrees that it is not entitled to any Electric Services under any tariff of Kenergy, but, rather, is entitled to such Electric Services only pursuant to a contract entered into with Kenergy. Century further acknowledges and agrees that it will not request or seek for Big Rivers to have an obligation to supply Electric Services (to Kenergy or otherwise) for delivery to Century from Big Rivers' System Resources; *provided*, for avoidance of doubt this does not include Transmission Services.

10.5 Entry into Market Agreement. Kenergy will not enter into any Market Agreement without the prior written consent of Century.

## ARTICLE 11

### UNCONTROLLABLE FORCES

11.1 Occurrence of an Uncontrollable Force. No Party will be considered to be in breach or default in the performance of any of its obligations under this Agreement if the failure of performance is due to an Uncontrollable Force, except as otherwise provided in this Article. If either Party is unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties, to the extent that they are affected by such Uncontrollable Force, will be suspended during the continuance of any inability so caused, but for no longer period. A Party will not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful acts or omissions.

11.2 Mitigation. A Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability as

promptly as reasonably possible. Nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

11.3 Notice of Uncontrollable Force. A Party shall notify the other Party at the earliest practicable time following (i) the occurrence of any Uncontrollable Force that renders such Party incapable of performing hereunder or (ii) the time at which such Party has reason to expect that such an Uncontrollable Force is imminent. Kenergy also shall notify Century if it receives notice from the Market Participant that the Market Participant anticipates that it will be unable to perform its obligations to Kenergy under any contract or agreement that affects Kenergy's performance under this Agreement due to an Uncontrollable Force and Century is not an additional addressee of such notice.

11.4 Payment Obligations. Notwithstanding anything in this Agreement to the contrary, the occurrence of an Uncontrollable Force shall not relieve Century of its payment obligations under Article 4, including its payment obligations with respect to any portion of the Monthly Charge. CENTURY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF SECTION 10.1 (SURPLUS SALES) SHALL CONSTITUTE CENTURY'S SOLE AND EXCLUSIVE REMEDIES IF CENTURY IS UNABLE TO RECEIVE ENERGY INCLUDING IF THAT INABILITY IS CAUSED BY AN UNCONTROLLABLE FORCE.

## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Kenergy. Kenergy hereby represents and warrants to Century as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.1.1 Kenergy is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligation hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the Term hereof.

12.1.2 The execution, delivery and performance of this Agreement by Kenergy have been duly and effectively authorized by all requisite corporate action.

12.1.3 This Agreement and the other Transaction Documents to which it is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Kenergy in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.1.4 The execution and delivery of this Agreement by Kenergy and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Kenergy or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material



contract, agreement or instrument to which Kenergy is a party or by which it, or its property, is bound.

12.1.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Kenergy is subject is required for the due execution, delivery or performance by it of this Agreement and the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Kenergy has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Kenergy that have not been satisfied or irrevocably waived.

12.1.6 There is no pending or, to Kenergy's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Kenergy to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.1.7 Kenergy is not aware of Costs to comply with Section 10.2 as of the Effective Date.

12.2 Representations and Warranties of Century. Century hereby represents and warrants to Kenergy as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.2.1 Century is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and under any other Transaction Documents to which it is a party, and to carry on its business as it is now being conducted and as it is contemplated hereunder and thereunder to be conducted during the Term hereof.

12.2.2 The execution, delivery and performance by Century of this Agreement and the other Transaction Documents to which it is a party have been duly and effectively authorized by all requisite limited liability company action.

12.2.3 This Agreement and the other Transaction Documents to which Century is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Century in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.2.4 The execution and delivery of this Agreement by Century and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Century or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Century is a party or by which it, or its property, is bound.

12.2.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Century is subject is required for the due execution, delivery or performance by it of this Agreement or the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Century has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Century that have not been satisfied or irrevocably waived.

12.2.6 There is no pending or, to Century's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Century to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.2.7 Century is not aware of Costs to comply with Section 10.2 as of the Effective Date.

## ARTICLE 13

### INDEMNIFICATION

13.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, each Party (in such capacity, an “Indemnifying Party”) hereby agrees that it will pay, and will protect, indemnify, and hold harmless the other Party and its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an “Indemnified Person”), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject arising out of or relating to the performance or failure to perform its obligations under this Agreement, any other Transaction Documents to which it is a party or any Market Agreement or Bilateral Contract (each, an “Indemnified Liability”), and any actual or prospective claim, litigation, investigation or proceeding relating thereto, whether based on contract, tort or any other theory, and regardless of whether any Indemnified Person is a party thereto, including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 13.1.

13.2 Primary Indemnity. Except to the extent there is insurance coverage available no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of an Indemnifying Party under this Agreement.

#### 13.3 Payments.

13.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify the Indemnifying Party in a timely manner of any such amounts payable by the Indemnifying Party hereunder; *provided*, that any failure to provide such notice shall not affect the Indemnifying Party’s obligations under this Article 13.

13.3.2 Any amounts payable by an Indemnifying Party pursuant to this Article 13 shall be payable within the later to occur of (i) ten (10) Business Days after the Indemnifying Party receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which the Indemnifying Party’s indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

13.4 Survival. The provisions of this Article 13 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

13.5 Subrogation. Upon payment by an Indemnifying Party pursuant to this Article 13 of any claim under Section 13.1 in respect of any Indemnified Liability, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of the Indemnifying Party cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

## ARTICLE 14

### ADDITIONAL AGREEMENTS

#### 14.1 Regulatory Proceedings.

14.1.1 Proceedings That Affect Rates. Neither Kenergy nor Century will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rates and charges set forth in this Agreement or other terms and conditions set forth herein.

14.1.2 KPSC Jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Kenergy, Big Rivers or the rates, terms and conditions of the provision of Electric Services to Century.

14.2 Audit Rights. Kenergy will permit Century to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy reasonably relating to its service to Century under this Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Century under this Agreement for a period of three years beyond the date of the service. Nothing in this Section 14.2 shall obligate Kenergy to disclose attorney-client privileged information.

14.3 Century Credit Support. Century shall provide the following credit support for its obligations under this Agreement and other Transaction Documents:

14.3.1 Century shall provide and maintain credit support in the form of one of the following as elected by Century (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Kenergy, Big Rivers and any other Person entitled to benefit therefrom, in their sole discretion, or (iii) other credit support acceptable to Kenergy, Big Rivers and any other Person entitled to the benefit thereof, in each case, in an amount equal to the sum of the following, without duplication:

- (a) With respect to any period for which Big Rivers is or was the Market Participant, the amounts reasonably estimated by Kenergy, without duplication, with respect to (i) Century's obligations under this Agreement for a period not longer than the payment terms required by each supplier to Kenergy, (ii) any security required by or for the benefit of any applicable RTO or ISO (without regard to Big Rivers acting as the Market Participant), (iii) any security

required by any counterparty to a Bilateral Contract, and (iv) any amount that Kenergy estimates reasonably (A) could be due with respect to taxes payable by Century for the benefit of Kenergy or Big Rivers as a result of this Agreement or (B) could become due and payable by Kenergy as a result of this Agreement or any other Transaction Document, including with respect to taxes payable by Century for the benefit of Kenergy under the Tax Indemnity Agreement or any other Transaction Document (“Potential Tax Liability”). For the avoidance of doubt, security required pursuant to this paragraph, but relating to the period when Big Rivers was acting as the Market Participant, may extend beyond the period when Big Rivers is the Market Participant or the underlying agreement terminates and may be required to be provided directly to the Person benefiting therefrom;

(b) With respect to any period for which Big Rivers is not or was not the Market Participant, any amounts estimated by Kenergy to be required by it, Big Rivers, the Market Participant or the applicable RTO or ISO as security. For the avoidance of doubt, (i) security required pursuant to this paragraph, but relating to the period when such Market Participant was acting as the Market Participant, may extend beyond the period when such Market Participant is no longer the Market Participant or the applicable RTO or ISO is no longer the RTO or ISO of which the Market Participant is a member, and (ii) the Market Participant may require security to be provided directly to the Person benefiting therefrom;

(c) Any amount that a Bilateral Contract requires to be maintained for the benefit of the parties to such Bilateral Contract other than Century; and

(d) For the avoidance of doubt, Century shall provide any credit support required by this Section 14.3 to the Person designated by Kenergy but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

14.3.2 In addition to any other credit provided herein or any other Transaction Document:

(a) Century shall cause Century Parent to guarantee to Kenergy and Big Rivers the payment, performance and all other obligations of Century under this Agreement or any Transaction Document that may become due and owing to Kenergy or Big Rivers, including Potential Tax Liability, pursuant to a Guarantee Agreement executed by Century Parent in favor of Kenergy and Big Rivers that shall be satisfactory in form and substance to Kenergy and Big Rivers (the “Century Guarantee”). At the request of Big Rivers or Kenergy, Century will maintain the Century Guarantee until closure of all applicable tax years of Big Rivers. At the request of Century, Kenergy shall request that Big Rivers provide Century with information as to the amount and calculation of the estimated Potential Tax Liability and documentation in support thereof.

(b) Century shall cause Century Parent to guarantee to the Market Participant or any party to a Bilateral Contract the payment, performance and all other obligations of Century under any agreements with such Persons that may become due and owing to any of them pursuant to a guarantee agreement executed by Century Parent in favor of such Person, that shall be satisfactory in form and substance to them.

14.3.3 Following the accessing by any Person entitled to the security provided by Century to pay amounts due and owing but unpaid by Century under any Transaction Document, Century shall promptly, but in no event more than three Business Days following any accessing of the security, replenish such security to the amounts required by Section 14.3.

14.4 Post-Termination Obligation. Upon termination of this Agreement in the circumstances described in Section 7.3.1(b), and subject to Section 14.5, neither Kenergy nor Big Rivers will have any contractual obligation under this Agreement to supply any Electric Services to Century other than pursuant to a Post-Termination Service Agreement. In all other circumstances, (a) Century acknowledges and agrees that Kenergy will not have any contractual obligation to supply Electric Services to Century or any of its Affiliates with respect to the Sebree Smelter or its portion thereof, and (b) Century would need to negotiate a new arrangement with Kenergy for the provision of Electric Services.

14.5 Right to Supply from Big Rivers. Century acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the Sebree Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter other than as provided in the Arrangement Agreement for the purchase of Electric Services in the Day Ahead Market or the Real Time Market or from a Bilateral Counterparty.

## ARTICLE 15

### EVENTS OF DEFAULT; REMEDIES

15.1 Events of Default. Each of the following constitutes an “Event of Default” under this Agreement:

15.1.1 Failure by Century to make any scheduled payment in accordance with this Agreement;

15.1.2 Failure by Century for three or more Business Days to maintain any security required by Section 14.3;

15. Failure of a Party to perform any material duty imposed on it by this Agreement (other than a failure to make a payment when due) within 30 days following the non-performing Party’s receipt of written notice of the non-performing Party’s breach of its duty hereunder;

15.1.4 Failure by a Party to pay any amounts under this Agreement or any Transaction Document within three Business Days following the non-performing Party's receipt of written notice of the non-performing Party's default in its payment obligation, except as provided in Section 15.1.1;

15.1.5 Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article 17;

15.1.6 The occurrence and continuance of an "Event of Default" under any Transaction Document;

15.1.7 Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws by a Party and such petition has not been withdrawn or dismissed within 60 days after filing;

15.1.8 Assignment by a Party for the benefit of its creditors; or

15.1.9 Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment.

15.2 Remedies, General. Except as otherwise provided in this Agreement, following the occurrence and during the continuance of an Event of Default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity. Unless otherwise provided herein, remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy and nothing contained in this Agreement may be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein provided that:

15.2.1 UNDER NO CIRCUMSTANCE WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER TO THE OTHER PARTY, ITS AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS WHETHER IN TORT, CONTRACT OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

15.2.2 If Century fails to pay any invoice rendered by or on behalf of Kenergy within the time prescribed in Section 5.1 or Section 5.2, Kenergy may discontinue delivery of any or all Electric Services hereunder upon not less than 72 Hours prior written notice to Century and Big Rivers of its intention to do so unless Century has cured such

default within those 72 Hours. Kenergy's discontinuance of such service for non-payment will not in any way affect, diminish or limit the obligations of Century to make all payments required under this Agreement or any other Transaction Document, as and when due. For the convenience of the Parties, and to facilitate satisfaction of Kenergy's obligation to Big Rivers, Century hereby acknowledges and consents to the assignment by Kenergy to Big Rivers of its right to receive such payment from Century under this Agreement while Big Rivers is the Market Participant (other than with respect to the Retail Fee or otherwise incurred by Kenergy and not related to Big Rivers) and Kenergy's rights to collect and enforce collection of such amounts due from Century. If Big Rivers owes credits or funds to Kenergy for the benefit of Century, Kenergy hereby assigns such credits or funds to Century and shall cooperate with and assist Century with respect to any collections of any such amounts due from Big Rivers to Kenergy; *provided*, that Century shall reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

15.2.3 Unless otherwise provided herein, if a Party is in breach of its obligations under this Agreement but such breach does not constitute, or would not with the passage of time or the giving of notice constitute, an Event of Default and this Agreement does not provide any other remedy therefor, if such breach has not been cured by the breaching Party within 60 days after receiving written notice from the non-breaching Party setting forth, in reasonable detail, the nature of such breach, the non-breaching Party may commence dispute resolution with respect to such breach and exercise its rights under Article 16, but will not be entitled to terminate, or seek to terminate, this Agreement, or suspend performance of its obligations and duties hereunder as a result of such breach.

## ARTICLE 16

### DISPUTE RESOLUTION

16.1 Resolution Meetings. If a dispute arises between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, either Party may request in writing a meeting among an authorized representative of each of the Parties and the Market Participant to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten days or such shorter or longer time as agreed upon by the Parties of the request. Nothing in this Section 16.1 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement.

16.2 Arbitration. Absent resolution of the dispute pursuant to Section 16.1, and subject to a minimum amount in controversy of \$100,000.00, the Parties shall submit the matter to be settled, subject to Section 16.2.7, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution ("ICDR") of the American Arbitration Association (the "AAA Rules"), in accordance with the following terms and conditions:

16.2.1 In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.



16.2.2 The ICDR shall administer the arbitration.

16.2.3 The seat of arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

16.2.4 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two party-nominated arbitrators to agree on an arbitrator in accordance with Section 16.2.4(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 16.2.4(a) and 16.2.4(b), each arbitrator selected pursuant to this Section 16.2.4 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed by, a consultant to or received compensation from any Party in the past.

16.2.5 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, and including, but not limited to, specific performance and injunctive relief, whether interim or final, and any such relief and any interim, provisional or conservatory measure ordered by the arbitration tribunal may be specifically enforced by any court of competent jurisdiction.

16.2.6 The losing Party shall pay the fees and costs of the prevailing Party or as allocated by the arbitration tribunal if all relief sought by one Party is not granted.

16.2.7 The award of the arbitration tribunal shall be subject to appeal to, or requests for rehearing by, a court in accordance with Section 18.2.

16.2.8 The award of the arbitration tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any

such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

16.2.9 Except for arbitration proceedings pursuant to this Section 16.2, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 18.2, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

16.3 RTO or ISO Disputes. Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable with respect to the provision of Electric Services to the Sebree Node or otherwise payable in respect of the provision of Electric Services hereunder shall be binding on the Parties. Nothing in this provision is intended to impair the rights of either Party to pursue any action through MISO's (or the applicable RTO's or ISO's) dispute resolution process or at the FERC.

## ARTICLE 17

### GENERAL PROVISIONS/SUCCESSORS AND ASSIGNS

17.1 Binding Nature. This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Party, except as provided in Section 17.4, and except that, subject to satisfaction of the conditions of Section 17.2, assignment may be made by either Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

17.2 Limitation on Assignment. Subject to Section 17.4, in no event may either Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Party or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

17.3 Duties. No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted

assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

17.4 Financing Lien. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

## ARTICLE 18

### MISCELLANEOUS

18.1 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

18.2 Jurisdiction. Subject to Section 16.2, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes; *provided* that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in Section 16.2 or this Section prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 16.2, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 18.6, and agrees that such service shall be, for all purposes, good and sufficient.

18.3 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

#### 18.4 Amendments.

18.4.1 This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties.

18.4.2 The Parties acknowledge and agree that nothing in this Agreement shall limit the right of Big Rivers to file changes to the Tariff, or limit the right of any Party to challenge any aspect of the Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

18.5 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement; *provided*, that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

18.6 Notices. A notice, consent, approval or other communication under this Agreement must be in writing, addressed to the Person to whom it is to be delivered at such Person's address shown below and (a) personally delivered (including delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile, with a duplicate notice sent by a nationally recognized overnight courier service, *provided, however*, that (i) a notice given pursuant to Section 3.3.2 may be given by telephone to be followed as soon as reasonably practicable by written notice as described herein and (ii) a notice of Uncontrollable Force shall be given by whatever means is available followed by notice in writing as described herein as soon as reasonably practicable; *provided, further*, that notices given pursuant to Section 5.1 and Section 5.2 may be given by electronic message at such addresses as each Party may provide to the other Party by any other method of notice permitted by this Section. A notice given to a Person in accordance with this Section 18.6 will be deemed to have been delivered (a) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (b) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 18.6, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party, in accordance with this Section 18.6, with copies of all such notices to Big Rivers to the address set forth below, in the same manner as notice is otherwise given hereunder. Simultaneously with a Party's giving of any notice required or permitted to be given hereunder from one Party to another Party, such Party shall give such notice to the Market Participant using the same method of delivery used to provide such notice to the other Party.

If to Kenergy:

Kenergy Corp.  
P.O. Box 18  
Henderson, Kentucky 42419-0018  
Attn: President and CEO  
Facsimile: (270) 685-2279

with a copy to:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO

Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
9404 State Route 2096  
Robards, Kentucky 42420

Attn: Plant Manager  
Facsimile: (270) 521-7305

With a copy to: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Facsimile: (312) 696-3102

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

For notices pursuant to Section 15.1:

If to Kenergy: Kenergy Corp.  
P.O. Box 18  
Henderson, Kentucky 42419-0018  
Attn: President and CEO  
Facsimile: (270) 685-2279

With a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
9404 State Route 2096  
Robards, Kentucky 42420

Attn: Plant Manager  
Facsimile: (270) 521-7305

18.7 Severability. If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment will not affect, impair or invalidate the remainder of this Agreement but

will be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, unless the loss or failure of such clause, sentence, paragraph or part of this Agreement materially adversely affects the benefit of the bargain to be received by either or both of the Parties, in which event the Parties shall promptly meet and use their good faith best efforts to renegotiate this Agreement in such a fashion as will restore the relative rights and benefits of both Parties or, absent such renegotiation, the Party that was so materially adversely affected will be entitled, in its discretion, to terminate this Agreement.

18.8 Survival. Sections 10.4, 14.4 and 14.5 shall survive termination of this Agreement. Each provision of this Agreement providing for payment for Electric Services and any other amounts due hereunder, assignment of the right to collect and enforce collection of amounts due, the provision, replenishment or maintenance of credit support required hereunder or related to remedies for default, damage claims, indemnification or payment of other liabilities also shall survive termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

18.9 Merger. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the matters addressed herein and supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

18.10 Further Assurances. The Parties shall execute such additional documents and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

18.11 Counterparts. This Agreement may be executed in any number of counterparts that together will constitute but one and the same instrument and each counterpart will have the same force and effect as if they were one original.

18.12 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard or care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement other than Big Rivers. Big Rivers shall be an express third party beneficiary of this Agreement and may enforce the provisions hereof during the period of any survival obligations for its benefit pursuant to Section 18.8.

18.13 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

18.14 No Agency. This Agreement is not intended, and may not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or otherwise bind, the other Party.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

CENTURY ALUMINUM SEBREE LLC

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 6.2.3**  
**LISTING OF CERTAIN TRANSACTION DOCUMENTS**

1. This Agreement
2. Arrangement Agreement
3. Direct Agreement
4. Load Curtailment Agreement
5. Century Guarantee
6. Protective Relays Agreement
7. Tax Indemnity Agreement
8. Lockbox Agreement



**EXHIBIT A**  
**FORM OF POST-TERMINATION SERVICE AGREEMENT**

**EXHIBIT B**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges change:

1. ACES Fee – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum – Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
4. NRCO – Cost Differential between organization classification, if applicable, due to Century’s inclusion in Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission – Pro-rata share of Big Rivers’ intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees – Tons of emissions related to any owned or leased generating facility that any Governmental Authority with jurisdiction for reliability requires Big Rivers to operate to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction.
9. KAEC – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Cases – Century will not be charged costs for Big Rivers rate cases with the KPSC.

The foregoing costs may apply to Kenergy if Kenergy is the Market Participant. If Kenergy is not the Market Participant then the following apply to Kenergy:

1. Public Service Commission – Taxes based on pro-rata share of Kenergy’s revenue from Century.
2. KPSC Rate Cases – Century will not be charged costs for Kenergy rate cases with the KPSC.

**EXHIBIT C**  
**TRANSACTION DOCUMENTS CO-TERMINOUSLY TERMINATED**

- Arrangement Agreement

# ELECTRIC SERVICE AGREEMENT

Dated as of ~~August 19, 2013~~, January 1, 2014,

by and between

**KENERGY CORP.**

and

**~~CENTURY ALUMINUM OF KENTUCKY GENERAL~~  
~~PARTNERSHIP~~ SEBREE LLC**

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SCHEDULES:

Schedule 6.2.3                      Listing of Certain Transaction Documents

EXHIBITS:

Exhibit A                              Form of Post-Termination Service Agreement  
 Exhibit B                              Allocation of Specified Costs  
 Exhibit C                              Transaction Documents Co-Terminously Terminated



## ELECTRIC SERVICE AGREEMENT

This ELECTRIC SERVICE AGREEMENT (this "Agreement") is dated as of ~~August 19, 2013,~~ January 1, 2014, and made by and between KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership SEBREE, a Delaware limited liability company ("Century"). Kenergy and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy currently supplies and delivers retail electric energy and related services to Century, the owner and operator of an aluminum reduction plant in Hawesville Robards, Kentucky (as further defined below, the "Sebree Smelter"), pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the "Existing Retail Agreement").

B. Century acquired its interests in the Sebree Smelter and the Existing Retail Agreement from Alcan Primary Products Corporation, a Texas corporation ("Alcan"), pursuant to an Asset Sale Agreement, dated April 28, 2013, and an Assignment and Assumption Agreement, dated as of June 1, 2013.

C. Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers Electric Corporation, a Kentucky electric generation and transmission cooperative of which Kenergy is a member ("Big Rivers"), pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the "Existing Wholesale Agreement").

D. Century Alcan gave notice of termination of the Existing Retail Agreement on August 20, 2012, dated January 31, 2013, and effective as of January 31, 2014 (the "Notice of Termination"). The Existing Retail Agreement, as assigned by Alcan and assumed by Century, remains subject to the Notice of Termination, as confirmed in a Letter of Representations and Agreements, dated as of June 1, 2013, by and among Big Rivers, Kenergy, Century and Century Aluminum Company, a Delaware corporation, and the direct or indirect parent of Century ("Century Parent").

E. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services obtained from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth herein.

F. In connection with and as a condition to entry into this Agreement, Kenergy and Big Rivers have agreed to enter into the Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"), to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in Article 1, unless stated otherwise or the context requires otherwise.

1.1.1 AAA Rules: As defined in Section 16.2.

1.1.2 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.3 Affiliate: With respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For avoidance of doubt, Kenergy and the other Members are not Affiliates of Big Rivers.

1.1.4 Agreement: As defined in the preamble to this Agreement.

**1.1.5 Alcan: As defined in the Recitals.**

**1.1.6** ~~1.1.5~~ Ancillary Services: Those generation-based ancillary services, that are necessary to support among other things capacity, reactive supply and voltage control, as well as the transmission of Energy from resources to loads while maintaining reliable operations of the applicable transmission system in accordance with Good Utility Practice, as set forth and described in the Tariff or, if applicable, any Bilateral Tariff.

**1.1.7** ~~1.1.6~~ Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

**1.1.8** ~~1.1.7~~ Applicable RTO Charges: As defined in Section 4.2.

**1.1.9** ~~1.1.8~~ ARR: Auction Revenue Rights as defined in the MISO Tariff, or any similar items under the Tariff.

**1.1.10** ~~1.1.9~~ Arrangement Agreement: As defined in the Recitals.

1.1.11 *Base Load: The “Base Load” shall be determined by the following, as applicable:*

(a) *The maximum amount of Load (not to exceed 378 MW), that may be reliably delivered to the **Sebree Node without any Governmental Authority with jurisdiction for reliability requiring Big Rivers to operate any owned or leased generation facility to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction;***

(b) ~~1.1.10 Base Load: The “Base Load” shall be determined by the following, as applicable: (a) The maximum amount of Load (not to exceed 482 MW), that may be reliably delivered to the Hawesville Node, as confirmed or approved by MISO, in circumstances where Big Rivers has idled the Coleman Generation Station. (b) The “Base Load” may be increased (not to exceed 482~~**378** ~~MW) by notice from Century to Kenergy and Big Rivers if such increase does not create a reliability issue, as determined by any Governmental Authority with jurisdiction over electric reliability. As of the date of this Agreement~~**hereof**~~, the Parties are unaware of any Governmental Authority with jurisdiction over electric reliability with respect to an increase in the Base Load other than FERC and MISO. (c);~~

(c) If a SSR Agreement is in effect, the “Base Load” shall be the maximum amount of Load as confirmed or approved by the applicable RTO or ISO (not to exceed 482 MW); ~~(d) The Base Load shall be 482~~**378 MW**~~);~~

(d) ~~The Base Load shall be 378~~ **The Base Load shall be 378** MW if Big Rivers is operating all three units at the ~~Coleman~~**the Wilson** Generating Station for any reason other than an requirement by MISO to operate for reliability. ~~(e) The Base Load shall be determined by the applicable RTO or ISO (up to 482 MW) if Big Rivers operates less than all three units of the Coleman Generation Station for any reason other than a requirement by the RTO or ISO to operate for reliability even if the remaining units are operated under an SSR Agreement. (f); and~~

(e) In all other circumstances, the “Base Load” shall be zero.

1.1.12 ~~1.1.11~~ Big Rivers: As defined in the Recitals.

1.1.13 ~~1.1.12~~ Bilateral Charges: As defined in Section 4.3.

1.1.14 ~~1.1.13~~ Bilateral Contract: A contractual arrangement between the Market Participant and a Bilateral Counterparty pursuant to which Kenergy, through the Market Agreement, obtains a right or obligation to purchase at the Delivery Point any Electric Services for resale to Century based upon generation resources or contract resources of such Bilateral Counterparty.

1.1.15 ~~1.1.14~~ Bilateral Counterparty: As defined in Section 2.4.

~~1.1.16~~ ~~1.1.15~~ Bilateral Tariff: The open access transmission or markets tariff or similar construct applicable to a transaction with a Bilateral Counterparty.

~~1.1.17~~ ~~1.1.16~~ Billing Month: Each calendar month during the Service Period.

~~1.1.18~~ ~~1.1.17~~ Business Day: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

~~1.1.18~~ Capacitor Additions: ~~As defined in the Capacitor Agreement.~~

~~1.1.19~~ Capacitor Additions and Protective Relays Guarantee: ~~The Capacitor Additions and Protective Relays Guarantee, dated as of August 12, 2013, by Century Parent, in favor of Big Rivers and Kenergy, relating to the Capacitor Agreement and the Protective Relays Agreement.~~

~~1.1.20~~ Capacitor Agreement: ~~The Capacitor Agreement, dated as of August 12, 2013, by and among Big Rivers, Kenergy and Century.~~

~~1.1.19~~ ~~1.1.21~~ Century: As defined in the preamble to this Agreement.

~~1.1.20~~ ~~1.1.22~~ Century Guarantee: As defined in Section 14.3.2.

~~1.1.21~~ ~~1.1.23~~ Century Parent: ~~Century Aluminum Company, a Delaware corporation, and the indirect parent of Century~~ **As defined in the Recitals.**

~~1.1.22~~ ~~1.1.24~~ Century Substation: Century's electrical substation located adjacent to the Hawesville Sebree Smelter.

~~1.1.23~~ ~~1.1.25~~ Century Transmission Rights: All allocations from MISO of FTRs or ARRs resulting from service by Big Rivers to Kenergy under the Arrangement Agreement or other Market Agreement and service by Kenergy to Century under this Agreement or a Market Agreement and FTRs purchased by Century.

~~1.1.26~~ Coleman Generation Station: ~~Big Rivers' Kenneth C. Coleman Plant, a three unit, coal-fired steam electric generating unit located near Hawesville, Kentucky.~~

~~1.1.24~~ ~~1.1.27~~ Costs: In the context of the specific costs referenced, "Costs" shall mean those costs of Kenergy to the extent that such costs relate to the operation of Century. For the avoidance of doubt, "Costs" include (i) Century's proportionate share of costs that are incurred by Kenergy to serve both Century and other loads, and (ii) costs incurred by Kenergy that relate only to Century's operation. Costs listed in Exhibit B shall be proportionately allocated as provided therein, or using the method applicable from time to time for calculation of bills (if the calculation method has changed from that shown in Exhibit B).

~~1.1.25~~ ~~1.1.28~~ Curtaillable Load: The maximum amount of additional Load at the Hawesville Sebree Node above the Base Load that may be served on a reliable basis as

confirmed or approved by MISO (or, if applicable, by another RTO or ISO, or Transmission Provider for the service area, in which the Hawesville~~Sebree~~ Node is located) ~~assuming~~accounting for the installation~~effect~~ of any Protective Relays installed at the Hawesville~~Sebree~~ Smelter, *provided*, that such amount shall be zero if such confirmation or approval is not given; *provided further*, that the Base Load plus the Curtailable Load may not exceed ~~482~~378 MW, on a scheduled basis, and ~~492~~388 MW at any time.

1.1.26 ~~1.1.29~~ Day Ahead Market: The Day Ahead Energy and Operating Reserve Market established under the MISO Tariff for the purchase of electricity and electricity-related ancillary services or, if the Hawesville~~Sebree~~ Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for purchases of the applicable Electric Services prior to the date of delivery.

1.1.27 ~~1.1.30~~ Delivery Point: The existing set of meters at the Robert A. Reid substation of the ~~Coleman Generation Station~~ located in Robards, Kentucky or such other point of delivery mutually agreed by the Parties and Big Rivers. At Century's request, the Delivery Point may be moved to the Century Substation if permitted by the applicable RTO and Century pays all costs incurred in connection therewith.

1.1.28 ~~1.1.31~~ Direct Agreement: The Direct Agreement, dated as of the date hereof, by and between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with the Transaction.

1.1.29 ~~1.1.32~~ Dodd-Frank Act: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203 (signed into law July 21, 2010)) and all requests, rules, regulations, guidelines or directives (whether or not having the force of law) of a Governmental Authority in connection therewith.

1.1.30 ~~1.1.33~~ Effective Date: As defined in Section 6.1.

1.1.31 ~~1.1.34~~ Electric Services: Electric services, including capacity and associated Energy, Transmission Services, Ancillary Services and other services required in connection therewith, including services as may be required by any RTO, ISO, Transmission Provider or Reliability Coordinator, and transmission or ancillary services of a Bilateral Counterparty under a Bilateral Tariff.

1.1.32 ~~1.1.35~~ Energy: The flow of electricity denominated in kWh or MWh.

1.1.33 ~~1.1.36~~ ERO: Electric Reliability Organization, as defined in the Federal Power Act.

1.1.34 ~~1.1.37~~ Event of Default: As defined in Section 15.1.

1.1.35 ~~1.1.38~~ Excess Energy Rate: The greater of (i) \$250 per MWh, and (ii) a price equal to 110% of the highest Hourly all-inclusive cost incurred by Kenergy or the Market Participant, as applicable, to acquire such Energy, and the separate cost, if any, whenever determined, of transmission services and related services required to transmit any

Energy over ~~492~~**388** MW to the Delivery Point and including any imbalance charges or other costs arising from the failure of the supplier of such Energy to deliver such Energy.

**1.1.36** ~~1.1.39~~ Excess Reactive Demand Charge: As defined in Section 4.4.

**1.1.37** ~~1.1.40~~ Existing Retail Agreement: As defined in the Recitals.

**1.1.38** ~~1.1.41~~ Existing Wholesale Agreement: As defined in the Recitals.

**1.1.39** ~~1.1.42~~ FERC: Federal Energy Regulatory Commission.

**1.1.40** ~~1.1.43~~ FTR: Financial Transmission Rights as defined in the MISO Tariff, or any similar items under the Tariff.

**1.1.41** ~~1.1.44~~ Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.

**1.1.42** ~~1.1.45~~ Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, a RTO (including MISO as of the Effective Date) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC; provided, however that the RUS is not a Governmental Authority for purposes of this Agreement.

~~1.1.46 Hawesville Node: A Commercial Pricing Node (as defined in the Tariff) located at the Delivery Point and used solely for delivery and sale of Electric Services for the benefit of the Hawesville Smelter; provided, that if the Hawesville Node does not remain in MISO in accordance with Section 3.5.2, then the "Hawesville Node" shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.~~

~~1.1.47 Hawesville Smelter: The aluminum reduction plant owned and operated by Century and located in Hawesville, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.~~

**1.1.43** ~~1.1.48~~ Hedging Arrangements: Any contractual arrangements entered into as hedging or derivative arrangements, including any transactions regulated under the Dodd-Frank Act.

**1.1.44** ~~1.1.49~~ Hour or Hourly: A clock hour or per clock hour, respectively.

**1.1.45** ~~1.1.50~~ ICDR: As defined in Section 16.2.

1.1.46 ~~1.1.51~~ Indemnified Liability: As defined in Section 13.1.

1.1.47 ~~1.1.52~~ Indemnified Person: As defined in Section 13.1.

1.1.48 ~~1.1.53~~ Indemnifying Party: As defined in Section 13.1.

1.1.49 ~~1.1.54~~ ISO: An Independent System Operator, as defined and approved by the FERC.

1.1.50 ~~1.1.55~~ Kenergy: As defined in the preamble to this Agreement.

1.1.51 ~~1.1.56~~ KPSC: Kentucky Public Service Commission.

1.1.52 ~~1.1.57~~ kW: Kilowatt.

1.1.53 ~~1.1.58~~ kWh: Kilowatt-hour.

1.1.54 ~~1.1.59~~ Load: The Hourly interval meter data measured in MWhs at the Hawesville ~~Sebree~~ Smelter.

**1.1.55 Load Curtailment Agreement: The Load Curtailment Agreement, dated as of the date hereof, among Big Rivers, Kenergy and Century.**

1.1.56 ~~1.1.60~~ Lockbox Agreement: The Security and Lockbox Agreement to be entered into by and among Century, Kenergy, the Market Participant and a depository bank prior to the Effective Date with respect to the payment of certain amounts due by Century to Kenergy under this Agreement.

1.1.57 ~~1.1.61~~ Market Agreement: A contractual arrangement between Kenergy and a Market Participant relating to the purchase of Electric Services for resale by Kenergy to Century. As of the Effective Date, the Arrangement Agreement shall be a Market Agreement.

1.1.58 ~~1.1.62~~ Market Participant: Big Rivers, in its capacity as the procurer of Electric Services under the Tariff or from a Bilateral Counterparty for resale to Kenergy for resale to Century pursuant to this Agreement, during the term of the Arrangement Agreement and, thereafter, the counterparty to any other Market Agreement with Kenergy.

1.1.59 ~~1.1.63~~ Members: The members of Big Rivers. As of the date hereof, the Members of Big Rivers are Jackson Purchase Energy Corporation, Kenergy, and Meade County Rural Electric Cooperative Corporation.

1.1.60 ~~1.1.64~~ MISO: The Midcontinent Independent ~~Transmission~~ System Operator, Inc.

1.1.61 ~~1.1.65~~ MISO Tariff: The MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.

1.1.62 ~~1.1.66~~ Monthly Charge: As defined in Section 4.1.

**1.1.63** ~~1.1.67~~ **MW**: Megawatt.

**1.1.64** ~~1.1.68~~ **MWh**: Megawatt-hour.

**1.1.65** ~~1.1.69~~ **NERC**: North American Electric Reliability Corporation.

**1.1.66** ~~1.1.70~~ **Net Proceeds**: The proceeds of a sale or transfer, net of the cost of the item sold and net of transaction costs, whenever incurred, and taxes.

**1.1.67** **Notice of Termination: As defined in the Recitals.**

**1.1.68** ~~1.1.71~~ **Party or Parties**: As defined in the preamble to this Agreement.

**1.1.69** ~~1.1.72~~ **Person**: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization, other legal entity, RUS or Governmental Authority.

**1.1.70** ~~1.1.73~~ **Post-Termination Service Agreement**: An agreement in the form of Exhibit A for the provision of Electric Services to serve Century's non-smelting electric requirements following a termination of this Agreement pursuant to Section 7.3, which agreement shall have been approved on or prior to the Effective Date by all Persons whose consent or approval is required in connection with the entry into or effectiveness of such agreement, including the KPSC, following the end of the Service Period. Such agreement shall provide that the Load of Century served thereunder shall not exceed 10 MW.

**1.1.71** ~~1.1.74~~ **Potential Tax Liability**: As defined in Section 14.3.1(a).

**1.1.72** ~~1.1.75~~ **Prime Rate**: The then-effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties and Big Rivers shall agree on a mutually acceptable alternative source for that rate.

**1.1.73** ~~1.1.76~~ **Protective Relays**: As defined in the Protective Relays Agreement.

**1.1.74** ~~1.1.77~~ **Protective Relays Agreement**: The Protective Relays Agreement, dated as of August 12, 2013, **the date hereof**, by and among Big Rivers, Kenergy and Century.

**1.1.75** ~~1.1.78~~ **Real Time Market**: The Real Time Energy and Operating Reserve Market established under the MISO Tariff or, if the Hawesville ~~Sebree~~ Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for real time purchases of the applicable Electric Services.

**1.1.76** ~~1.1.79~~ **Reliability Coordinator**: As defined by NERC. As of the Effective Date, the Reliability Coordinator is MISO.



**1.1.77 Reliability Costs: Any (a) costs that are not reimbursed to Big Rivers relating to any of its owned or leased generation facilities, including the Wilson Generation Station, required by the applicable RTO or ISO to be operated for reliability purposes to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction, and (b) costs, as determined and allocated by the RTO or ISO in which Big Rivers is a member, to the Sebree Node or any other Node (as defined in the MISO Tariff) of Big Rivers, if Big Rivers is required by the RTO or ISO of which Big Rivers is a member to operate any of its owned or leased generation facilities to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction, including the Wilson Generation Station, for reliability purposes, including: (i) in circumstances where the RTO or ISO of which Big Rivers is a member requires Big Rivers to take any of its owned or leased generation facilities out of an idled or retirement status for reliability, all costs incurred in connection with any restart, dispatch, redispatch, otherwise making any of its owned or leased generation facilities available for reliability purposes and the operation and maintenance of such generation facility after the date of restart, and (ii) the net Cost of purchasing any replacement Electric Services following an unscheduled outage or real time de-rate of any such generation facility required to be operated for reliability purposes.**

**1.1.78** ~~1.1.80~~ **Retail Fee:** As defined in Section 4.5.

**1.1.79** ~~1.1.81~~ **RTO:** Regional transmission organization as defined and approved by FERC.

**1.1.80** ~~1.1.82~~ **RTO Transmission Upgrades:** MISO Transmission Expansion Plan or Multi-Value Projects (each as defined in the MISO Tariff) or similar transmission facilities upgrades, improvements or expansion projects of any RTO or ISO, or Transmission Provider for the service area, in which the ~~Hawesville~~ **Sebree** Node is located.

**1.1.81** ~~1.1.83~~ **RUS:** United States Department of Agriculture Rural Utilities Service.

**1.1.82 Sebree Node: A Commercial Pricing Node (as defined in the Tariff) located at the Delivery Point and used solely for delivery and sale of Electric Services for the benefit of the Sebree Smelter; provided, that if the Sebree Node does not remain in MISO in accordance with Section 3.5.2, then the "Sebree Node" shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.**

**1.1.83 Sebree Smelter: The aluminum reduction plant owned and operated by Century and located in Robards, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.**

1.1.84 **SERC:** SERC Reliability Corporation, a regional reliability organization.

1.1.85 **Service Period:** As defined in Section 2.1.

1.1.86 **SSR Agreement:** An agreement, including a System Support Resources Agreement, entered into with the RTO or ISO of which Big Rivers is a member relating to

the SSR Costs of the Coleman Generation Station Reliability Costs relating to or arising out of any owned or leased generation facility of Big Rivers other than any such facility subject to a SSR Agreement to support the operation of the aluminum reduction plant located in Hawesville, Kentucky.

~~1.1.87 SSR Costs: If and only to the extent that Century operates above the Base Load as defined in Section 1.1.10 and, if applicable, the Curtailable Load, or if any Coleman unit is designated as an SSR by the applicable RTO or ISO then “SSR Costs” shall mean (a) any costs that are not reimbursed to Big Rivers relating to any unit of the Coleman Generation Station required by the applicable RTO or ISO to be operated for reliability purposes for that reason, and (b) the costs, as determined and allocated by the RTO or ISO in which Big Rivers is a member, to the Hawesville Node or any other Node (as defined in the MISO Tariff) of Big Rivers, if Big Rivers is required by the RTO or ISO of which Big Rivers is a member requires for that reason to operate any unit of the Coleman Generation Station for reliability, including, (i) in circumstances where the RTO or ISO of which Big Rivers is a member requires Big Rivers to take the Coleman Generation Station out of an idled status for reliability, all costs incurred in connection with any restart and the operation of any such unit after the date of restart, and (ii) the net Cost of purchasing any replacement Electric Services following an unscheduled outage or real-time de-rate of a unit of the Coleman Generation Station required to be operated for reliability purposes.~~

1.1.87 ~~1.1.88~~ Surplus Sales: As defined in Section 10.1.1.

1.1.88 ~~1.1.89~~ System Emergency: Any cessation or reduction in the provision or delivery of Electric Services by Kenergy due in whole or in part to: (a) a disconnection of all or a portion of Big Rivers’ or Kenergy’s system from the transmission grid (other than as a direct result of Big Rivers’ or Kenergy’s gross negligence or willful misconduct), (b) a system emergency on the transmission grid, (c) the occurrence of a condition or situation where the delivery of Energy to a transmission grid with which Big Rivers is directly interconnected or the making available of electric generation services, Transmission Services or Ancillary Services that could cause (i) harm to life or limb or imminent serious threat of harm to life or limb, (ii) material damage to Big Rivers’ or Kenergy’s system or any material component thereof or imminent danger of material damage to property, or (iii) other dangerous occurrences that Big Rivers or Kenergy believes, in the exercise of Good Utility Practice, should be prevented or curtailed, or (d) any events similar to the foregoing that result in cessation or reduction of service under (i) the Day Ahead Market or the Real Time Market, or (ii) a Bilateral Contract.

1.1.89 ~~1.1.90~~ System Resources:

- (a) Big Rivers’ owned or leased electric generation facilities,
- (b) Big Rivers’ contract with the Southeastern Power Administration (Contract No. 89-00-1501-637), or

(c) Big Rivers' contractual arrangements relating to Electric Services, in effect currently or that become effective in the future, which were not entered into specifically for the purpose of serving the ~~Hawesville~~Sebree Smelter.

**1.1.90** ~~1.1.91~~ Tariff: Big Rivers' Open Access Transmission Tariff or, if Big Rivers is a member of a RTO or ISO, such RTO's or ISO's open access transmission or market tariff, as filed with and approved by FERC. As of the date hereof, the MISO Tariff is the Tariff.

**1.1.91** ~~1.1.92~~ Tax Indemnity Agreement: The Tax Indemnity Agreement, dated as of the date hereof, by and between Kenergy and Century.

**1.1.92** ~~1.1.93~~ Term: As defined in Section 7.1.

**1.1.93** ~~1.1.94~~ Transaction: The transactions by and between or among one or more of Kenergy, Big Rivers, Century, any Market Participant or any Bilateral Counterparty related to the supply of Electric Services to Century under this Agreement and the other Transaction Documents.

**1.1.94** ~~1.1.95~~ Transaction Documents: This Agreement, the Arrangement Agreement or any other Market Agreement, the Direct Agreement, the ~~Capacitor~~Load Curtailment Agreement, ~~the Tax Indemnity~~ Agreement, the Protective Relays Agreement, any SSR Agreement, the Century Guarantee, ~~the Capacitor Additions and Protective Relays Guarantee, the Tax Indemnity Agreement~~ and any other agreements entered into on the date hereof or in the future between or among the Parties or Big Rivers relating to the Transaction.

**1.1.95** ~~1.1.96~~ Transmission Provider: A Person accepted by FERC as such in any tariff relating to Transmission Services.

**1.1.96** ~~1.1.97~~ Transmission Services: Transmission services as described in the Tariff or, if applicable, the Bilateral Tariff, as needed to support the transactions contemplated by this Agreement.

**1.1.97** ~~1.1.98~~ Uncontrollable Force: Any cause beyond the control of the Party unable, in whole or in part, to perform its obligations under this Agreement that, despite exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and that, despite the exercise of due diligence, it has been unable to overcome. Examples of events that may constitute the basis of an event that constitutes an "Uncontrollable Force" include: acts of God; strikes, slowdowns or labor disputes; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of any Governmental Authority; civil or military disturbances; explosions, breakage of or accident to machinery, equipment or transmission lines; inability of a Party to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of Governmental Authorities, civil or military (so long as the Party claiming an Uncontrollable Force has not applied for or assisted in the application for such action); transmission constraints or System Emergencies; a forced outage of a generating unit or units preventing

the physical delivery of Energy to Kenergy for resale to Century; declaration of an “Uncontrollable Force” under the Arrangement Agreement or an event of force majeure under the Tariff or the Bilateral Tariff, as applicable, any Market Agreement or any Bilateral Contract and any other forces that are not reasonably within the control of the Party claiming suspension. “Uncontrollable Forces” do not include an insufficiency of funds or decline in credit ratings or customary, expected or routine maintenance or repair of plant or equipment. Nothing contained herein shall be construed to obligate a Party to prevent or to settle a labor dispute against its will.

**1.1.98 Wilson Generation Station: Big Rivers’ D.B. Wilson Station, a single coal-fired steam electric generating unit located in Centertown, Kentucky.**

1.1.99 ZRC: Zonal Resource Credits as defined in the MISO Tariff, or any similar items under the Tariff.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and *vice versa*; (c) references to “Recitals,” “Articles,” “Sections,” “Exhibits” or “Schedules” are to the recitals, articles, sections, exhibits or schedules of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person’s authorized agents, permitted successors and assigns in such capacity; (e) the words “herein,” “hereof” and “hereunder” will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits and schedules hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented, substituted, renewed or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day that is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; (o) all references to the word “or” shall not be exclusive; and (p) all references to a Governmental Authority shall include any successor to all or a portion of such Governmental Authority’s authority. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

## ARTICLE 2

### ELECTRIC SERVICES AND RATES

2.1 Service Period Obligations. In accordance with the terms and conditions of this Agreement, Kenergy will supply, and Century will purchase, Electric Services for a period beginning at ~~11:00:00 a.m. midnight~~ on the later of (a) the day immediately following the Effective Date and (b) ~~August 20, 2013,~~ January 31, 2014, and continuing until ~~10:59:59 p.m.~~ on December 31, 2023, unless the Parties' respective obligations to supply and purchase Electric Services are terminated earlier pursuant to the terms and conditions of this Agreement; *provided*, that such period may be extended pursuant to Section 7.1 (the "Service Period").

2.2 Characteristics of Service. Electric service to be supplied by Kenergy to Century under this Agreement shall be nominally three-phase, sixty cycle at 161,000 volts or as otherwise agreed to by the Parties and Big Rivers. The Parties and Big Rivers will mutually agree on limits of the regulation of voltage but at no time may such regulation of such limits be inconsistent with standards required by applicable Governmental Authorities or any other organizations that establish applicable reliability and electric operation standards.

2.3 Delivery Obligation. During the Service Period, Kenergy will deliver, or cause to be delivered, Electric Services in accordance with the terms and conditions of this Agreement at the Delivery Point.

2.3.1 Energy. Kenergy will use reasonable commercial efforts to acquire the Base Load and, if applicable, the Curtailable Load, for resale to Century to meet the Load of the ~~Hawesville~~ Sebree Smelter at the Delivery Point. Schedules submitted by Century may not exceed Base Load plus any applicable Curtailable Load and in any event not more than ~~482378~~ MW. Total usage is limited to the Base Load amount if there is no Curtailable Load; *provided, however*, that if there is Curtailable Load, then usage may exceed scheduled load by up to 10 MW (supplied as imbalance Energy) but not to exceed ~~492388~~ MW. Century acknowledges and agrees that any such excess over ~~492388~~ MW shall be charged to Century at the Excess Energy Rate; *provided*, that payment of the charge under Section 4.6.9 shall not be deemed to be a waiver of the restrictions herein on Century's Load not exceeding the scheduled Load. Kenergy will acquire the Energy for resale to Century to meet Kenergy's obligations under this Agreement through purchases of Energy through a Market Agreement with the Market Participant if Kenergy is not the Market Participant.

2.3.2 Other Electric Services. Kenergy will obtain Electric Services other than Energy as required and directed by Century through the Market Participant under a Market Agreement with respect to the purchase of such Electric Services (a) in the applicable market of the RTO or ISO of which the Market Participant is a member, or (b) through a Bilateral Contract.

2.3.3 Each Market Agreement must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Market Participant, (c) not require Kenergy to purchase Electric Services from a Person other than the Market Participant except during periods when Kenergy is the

Market Participant, and (d) not result in Kenergy paying the Market Participant prior to the time Century pays Kenergy for any amounts due or otherwise expose Kenergy to any greater financial risks than those agreed to by Kenergy under the Arrangement Agreement.

2.4 Bilateral Purchases. Upon request by Century, Kenergy shall use reasonable commercial efforts to acquire specified Electric Services through the Market Participant from specified Persons ("Bilateral Counterparties") for resale under the Market Agreement by the Market Participant to Kenergy for resale to Century. Century must specify in any such request (i) the identity of the Bilateral Counterparty, (ii) the requested amount and duration of such Electric Services, and (iii) desired pricing and other material terms and conditions.

2.4.1 Kenergy's obligation to direct the Market Participant to enter into any Bilateral Contract will be conditioned upon (a) Kenergy's prior receipt of a written notification from Century setting forth Century's consent to the execution, delivery and performance of such Bilateral Contract, and (b) Kenergy's satisfaction, in its sole discretion, only as to financial security arrangements and the elimination of risk to Kenergy associated with the Bilateral Contract and the Market Participant's arrangements with the Bilateral Counterparty. For the avoidance of doubt, any Bilateral Contract must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Bilateral Counterparty, (c) not require Kenergy to purchase Electric Services from a Person other than the Market Participant, except during periods when Kenergy is the Market Participant, and (d) not result in Kenergy paying the Market Participant prior to the time Century pays Kenergy for any amounts due.

2.4.2 Promptly following request by Century pursuant to Section 2.4.1, Kenergy shall request that the Market Participant arrange or have arranged all Transmission Services and Ancillary Services necessary to transmit the Energy the Market Participant obtains under a Bilateral Contract to the Delivery Point. The amount of Energy transmitted from the source to the Delivery Point shall be adjusted to reflect the application of any system loss factor unless otherwise addressed in the terms and conditions of the applicable Bilateral Contract. Century acknowledges and agrees that Kenergy shall have no liability to Century for the failure of the Market Participant to procure Transmission Services and Ancillary Services.

2.4.3 The provisions herein relating to Surplus Sales shall apply if Century is unable to receive and consume any Electric Services purchased by Kenergy under a Bilateral Contract because of an Uncontrollable Force.

2.4.4 Century shall not enter into a Bilateral Contract for the purpose of reselling Electric Services purchased thereunder as Surplus Sales.

2.5 Power Factor. Century shall use reasonable commercial efforts to maintain a power factor at the Delivery Point as nearly as practicable between unity and 0.95 leading or lagging with respect to maximum electric demand incurred by Century during any Billing Month.

2.6 Title and Risk of Loss. Title to and risk of loss with respect to all Electric Services provided by Kenergy to Century pursuant to this Agreement will pass from Kenergy to and rest in

Century at the Delivery Point. After title passes to Century, Century will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby.

2.7 Performance by Kenergy. Century acknowledges and agrees that, to the extent a Person has a corresponding or related obligation to Kenergy with respect to any matter, Kenergy's performance of an obligation with respect to such matter under this Agreement or any other Transaction Document is subject to and conditioned upon such Person's performance of such corresponding or related obligation to Kenergy. Subject only to performance by a Person of its obligations to Kenergy, Kenergy shall perform its obligations under this Agreement and the other Transaction Documents to which it is a party. Century acknowledges and agrees that such Person with an obligation to Kenergy may enforce an obligation of Century under this Agreement or any other Transaction Document that corresponds or relates to the obligation of Kenergy to such Person. For example, with respect to a purchase of Energy under a Bilateral Contract, Kenergy shall be obligated to deliver to Century only those amounts of Energy received by Kenergy from the Market Participant, net of applicable losses of Energy. Kenergy will not be in default under any provision of this Agreement nor will it have any liability to Century if the non-delivery of Energy to be purchased by Kenergy sourced under a Bilateral Contract is due to a failure by the Market Participant or the Bilateral Counterparty to deliver the full amount of such Energy required under the Market Agreement or the Bilateral Contract, as applicable; *provided*, that Kenergy has assigned to Century Kenergy's rights and remedies against the Market Participant or Bilateral Counterparty under such agreement.

2.8 Limitation on Use. Subject to Section 3.3.2, Century shall use the Electric Services delivered to and purchased by Century under this Agreement solely for purposes of operating the ~~Hawesville~~Sebree Smelter.

## ARTICLE 3

### MARKET PARTICIPATION AND SCHEDULING

#### 3.1 Market Participant.

3.1.1 Big Rivers shall act as the initial Market Participant in connection with the Transaction and, pursuant to the Arrangement Agreement, shall use reasonable commercial efforts to arrange and procure the Electric Services required by Century on behalf of Kenergy for resale to Century hereunder.

3.1.2 Kenergy may elect to become the Market Participant. Kenergy's election will not become effective, however, until Century provides written notice of its consent and approval, granted or withheld in Century's sole discretion, of Kenergy becoming the Market Participant.

3.1.3 At any time during the Service Period, Century may appoint a Person to be the Market Participant. Century shall provide Kenergy with information describing in reasonable detail that the proposed arrangements with the new Market Participant do not increase Kenergy's risks compared to the Arrangement Agreement. Such Person shall not become the Market Participant until Kenergy provides written notice of its consent and

approval, which shall not be unreasonably withheld or delayed, to such Person becoming the Market Participant. Century also shall provide Kenergy with such additional information as Kenergy reasonably may request in connection therewith. Century shall give Kenergy and, if the Arrangement Agreement is in effect, Big Rivers not less than 120 days' prior written notice of the appointment of such Person to be the new Market Participant. Kenergy shall use reasonable commercial efforts to obtain any necessary approvals or consents in connection with any entry into a Market Agreement with a new Market Participant. Century shall be responsible for any Costs to Kenergy resulting from a change in the Market Participant.

3.1.4 For the avoidance of doubt, a Person acting as the Market Participant shall remain in that capacity, notwithstanding any election under Section 3.1.2 or appointment under Section 3.1.3 of a different Person as a Market Participant, until the consent and approval required from a Party under this Section 3.1 is obtained.

3.1.5 Century acknowledges and agrees that (i) Kenergy shall have no liability under this Agreement or otherwise in connection with or arising out of the absence of any Person acting as the Market Participant during any period in which a Person previously acting as the Market Participant ceases to act in that capacity and another Person is not yet acting in that capacity in accordance with this Section 3.1, (ii) no Person may become the Market Participant if any authorization or approval, consent or other action by, or notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, required to be obtained, given, accomplished or renewed for such Person to act in such capacity, shall not have been obtained, given, accomplished or renewed and be in full force and effect.

3.2 Base Load. The Base Load may be modified only as provided in section ~~4.1.10~~ Section 1.1.11.

3.3 Scheduling.

3.3.1 Century shall provide a schedule, on an Hourly basis, of all required Electric Services to Kenergy or its designee; *provided* that, commencing on the day following the Effective Date, Kenergy will schedule with the Market Participant the Base Load and, if applicable, the Curtailable Load as the Hourly Load of Century in the Day Ahead Market unless Century provides notice to Kenergy of an alternative schedule not later than 8:00 a.m. on the Business Day prior to the day of delivery.

3.3.2 Century promptly, and no later than sixty (60) minutes prior to any applicable deadline under any applicable RTO or ISO scheduling guidelines, shall notify Kenergy of any revisions to Century's schedule by providing Kenergy with a revised schedule in compliance with the other terms and conditions of this Agreement, and Kenergy shall submit such revised schedule to the Market Participant for its submission to the applicable RTO or ISO within such scheduling guidelines. Century may not intentionally reduce its Load to resell on a short-term basis any Electric Services purchased by Century; *provided* Century may offer and sell interruption and demand reduction services. For avoidance of doubt and notwithstanding any other provision, Century may resell or cause to



be resold Electric Services it has purchased or committed to purchase if Century idles significant smelting capacity at the HawesvilleSebree Smelter, including one potline or more.

3.4 Transmission Rights. Century shall direct Kenergy to instruct the Market Participant to request, schedule, or sell the Century Transmission Rights in such time and amounts specified at least three Business Days prior to the applicable deadline. Century shall be entitled to the Net Proceeds of the sale of any Century Transmission Rights in the form of a credit to amounts otherwise owing from the Market Participant to MISO in respect of Electric Services purchased by Century under this Agreement.

3.5 Transition to Another RTO or ISO.

3.5.1 This Agreement and the other Transaction Documents have been drafted by the Parties and Big Rivers under the presumption that, during the Service Period, the HawesvilleSebree Node is located in MISO and Big Rivers is a member of MISO. Century acknowledges and agrees that Kenergy or Big Rivers, as applicable, may, in its sole discretion, elect to join or become a member of a RTO or ISO other than MISO or elect to withdraw as a member of MISO and not be a member of any RTO or ISO. —In such circumstances, the Parties and the Market Participant agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

3.5.2 The HawesvilleSebree Node may remain in MISO if (a) requested by Century, (b) permitted by both the new RTO or ISO and MISO, (c) Century is responsible for any Costs resulting from the HawesvilleSebree Node remaining in MISO, and (d) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO. In such case, any terms used herein that relate to the RTO or ISO of which the Market Participant is a member or its tariff shall be deemed amended, as applicable to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

3.5.3 Century acknowledges and agrees that if at any time the HawesvilleSebree Node is no longer part of any RTO or ISO, then the Electric Services provided hereunder shall be provided exclusively pursuant to Section 2.4, which shall include arrangements for imbalance Energy.

3.6 Forecasts.

3.6.1 Century shall provide Kenergy a forecast of its Load at the HawesvilleSebree Node in accordance with the requirements of (a) Module E (Resource Adequacy) of the MISO Tariff, so long as the HawesvilleSebree Node is located in MISO, or (b) the resource adequacy provisions of the tariff of the RTO or ISO, or Transmission Provider for the service area, in which the HawesvilleSebree Node is located, in each case,

at least five Business Days prior to the deadline therefor set forth in the applicable tariff. This forecast currently includes a peak forecast for Century's Load at the HawesvilleSebree Node for the succeeding 36 months, or for such other term as reasonably requested by Kenergy or as required by the RTO or ISO, or Transmission Provider for the service area, in which the HawesvilleSebree Node is located, the RTO or ISO of which the Market Participant is a member or the Tariff. The obligations of Century under this Section shall survive appointment of a new Market Participant under Section 3.1.

3.6.2 Century shall respond on or prior to the fifth Business Day to any requests made by Kenergy to Century for data, forecasts, projections or other information necessary or reasonably appropriate for Kenergy or the Market Participant to comply with requests or requirements of the RTO or ISO, or Transmission Provider for the service area, in which the HawesvilleSebree Node is located, the RTO or ISO of which the Market Participant is a member, other Governmental Authorities or the Tariff. The obligations of Century under this Section shall survive appointment of a new Market Participant under Section 3.1.

## ARTICLE 4

### CHARGES AND CREDITS

4.1 Monthly Charge. Century shall pay Kenergy the following (the "Monthly Charge") for the Electric Services provided or made available under this Agreement and for other amounts owing to Kenergy under this Agreement, without duplication, including:

- 4.1.1 Applicable RTO Charges calculated pursuant to Section 4.2;
- 4.1.2 *plus* the Bilateral Charges calculated pursuant to Section 4.3;
- 4.1.3 *plus* the Excess Reactive Demand Charge calculated pursuant to Section 4.4;
- 4.1.4 *plus* the Retail Fee calculated pursuant to Section 4.5;
- 4.1.5 *plus* other amounts calculated pursuant to Section 4.6; and
- 4.1.6 *plus* taxes calculated pursuant to Section 4.7.

4.2 Applicable RTO Charges. Charges and credits of the applicable RTO or ISO invoiced to Kenergy by the Market Participant on a pass-through basis for all Electric Services purchased by Kenergy at the HawesvilleSebree Node under a Market Agreement, other than Electric Services purchased by the Market Participant under a Bilateral Contract, and any other RTO or ISO charges payable by Kenergy for the benefit of Century under a Market Agreement (the "Applicable RTO Charges"), whenever invoiced, including:

4.2.1 All activity listed on the settlement statement of the applicable RTO or ISO attributed by such RTO or ISO to the HawesvilleSebree Node, including SSRReliability Costs relating to the HawesvilleSebree Node;

4.2.2 All activity for Transmission Services attributed by the applicable RTO or ISO to the HawesvilleSebree Node, including, if applicable, activity during the portion of a month during the Service Period;

4.2.3 All activity relating to the planning year (or other applicable period) of the applicable RTO or ISO that is attributed by such RTO or ISO to the HawesvilleSebree Node, including planning activity relating to ZRCs, ARRs and FTRs;

4.2.4 Costs relating to RTO Transmission Upgrades attributed by such RTO or ISO to the HawesvilleSebree Node that otherwise relate to Century's operation of the HawesvilleSebree Smelter; and

4.2.5 Any credit for revenue resulting from the sale of the Century Transmission Rights.

4.3 Bilateral Charges. Any charges to a Market Participant under a Bilateral Contract with respect to Electric Services or other Costs for the benefit of Century, including any and all separate charges for transaction fees (including broker fees), transmission services, Ancillary Services and related services, whenever incurred (including financial transmission rights, transmission congestion charges and similar Costs or expenses) (collectively, "Bilateral Charges").

4.4 Excess Reactive Demand Charge. For any Billing Month, the "Excess Reactive Demand Charge", if any, shall be the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, between:

4.4.1 the maximum metered reactive demand of Century during the Billing Month, and

4.4.2 an amount of kilovars equal to the sum of:

(a) the product of (A) 0.3287, and (B) the maximum hourly demand during a Billing Month, denominated in kW, associated with Energy provided by Kenergy for resale to Century, and

(b) ~~74,005.~~ 54,114.

4.5 Retail Fee. For any Billing Month, the "Retail Fee" shall be an amount equal to the sum of:

4.5.1 the product of:

(a) \$0.000045 per kWh, and

(b) the Energy metered at the HawesvilleSebree Node, and

4.5.2 \$2,614 per month.

4.6 Other Amounts. For any Billing Month:

4.6.1 Any amounts due and payable to Kenergy under the Tax Indemnity Agreement.

4.6.2 Costs charged to Kenergy under the Arrangement Agreement, including any tax liability of Big Rivers resulting from Surplus Sales.

4.6.3 Costs arising under Section 10.2 relating to compliance with Applicable Laws relating to the environment.

4.6.4 Costs arising under Section 10.3 relating to compliance with Hedging Arrangements.

4.6.5 Internal and direct Costs incurred in serving Century, including Costs associated with fees of the KPSC, Costs of Kenergy's compliance with Section 14.2, Costs associated with any Person other than Big Rivers, including Kenergy, serving as Market Participant, including charges by the RTO to establish or maintain the HawesvilleSebree Node if Kenergy is the Market Participant.

4.6.6 Costs arising under Section 3.1.3 relating to the appointment of a new Market Participant.

4.6.7 Charges for any other services required to be purchased by Kenergy to serve Century.

4.6.8 Costs associated with the HawesvilleSebree Node exiting an RTO or ISO in connection with an election made by Big Rivers or Kenergy pursuant to Section 3.5.2.

4.6.9 The Excess Energy Rate multiplied by the amount of Energy in excess of 492388 MW in any Hour.

4.6.10 Any amounts charged to Kenergy by a Market Participant under a Market Agreement.

4.6.11 Other out-of-pocket Costs payable by Kenergy to another Person that are incurred or committed to by Kenergy in connection with or arising out of the Transaction, including (a) Indemnified Liabilities, (b) any security necessary to be provided to any Person (including the RTO or ISO of which the Market Participant is a member or a Bilateral Counterparty) arising out of the Transaction, and (c) the Costs to pursue any approval or consent under Section 7.2.2; *provided*, that Costs referenced on Exhibit B shall be allocated as provided therein.

4.7 Taxes. No state or local sales, excise, gross receipts or other taxes are included in the charges and credits set forth in this Article 4. Century shall pay or cause to be paid any such taxes that are now or hereafter become applicable to the sale of Electric Services to Century under this Agreement.

4.8 No Duplication. Subject to the provisions of Section 5.4, the Monthly Charge shall not include any item that would result in a duplicative payment for a particular charge if Kenergy would not be liable for the duplicative amount.

## ARTICLE 5

### BILLING

5.1 Market Invoices. Kenergy shall bill Century, or cause Century to be billed, on or before the third Business Day following receipt by Kenergy of an invoice from the Market Participant for any amounts invoiced with respect to service to Kenergy on behalf of Century plus any other amounts then due and owing for any portion of the Electric Services or other amounts payable by Kenergy under a Market Agreement or any other Transaction Document. Century shall pay Kenergy for such amounts in immediately available funds to an account designated by Kenergy or its designee on the second Business Day following Century's receipt of the bill under this Section. For the convenience of the Parties, and to facilitate Kenergy's obligations to the Market Participant, Kenergy may assign to the Market Participant its right to receive any payments from Century pursuant to this Section 5.1 and Kenergy's rights to collect and enforce the collection of such amounts due from Century.

5.2 Monthly Invoices for other Amounts. Kenergy shall bill Century on or before the 15th Business Day of each month for the Monthly Charge (other than the charges billed pursuant to Section 5.1) as calculated pursuant to Article 4 plus any other amounts then due and owing pursuant to this Agreement. Century shall pay Kenergy such portion of the Monthly Charge and any other amounts due and owing to Kenergy in immediately available funds to an account designated in the Lockbox Agreement on the Business Day following the 24th day of the month following the Billing Month or such earlier date of such month on which the Members' payment to Big Rivers is due.

5.3 Default Interest. If any invoice rendered by Kenergy (or the Market Participant or Big Rivers on behalf of Kenergy) is not paid on the due date, interest will accrue and become payable by Century to Kenergy on all unpaid amounts at a rate of one percent over the Prime Rate commencing on the first day after the due date; *provided*, that if interest in respect of any such unpaid amount accrues interest at a different rate to another Person, the applicable default interest rate shall be such different rate payable to the Person to which such unpaid amounts are owed.

5.4 Payments Under Protest. If any portion of any statement is disputed by Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Kenergy shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made; *provided*, that interest payable with respect to any amounts refunded to Kenergy shall be based on the interest paid to Kenergy, if any, by the payor on a pass-through basis. If the amount to be refunded to Century relates to amounts paid to the Market Participant, Big Rivers or another Person other than Kenergy, then Kenergy will refund such amounts promptly upon receipt of the refund of such amount.

5.5 Release and Indemnification.

5.5.1 Century (a) shall release Kenergy from any and all claims Century may have against Kenergy for the failure of (i) Big Rivers, (ii) the Market Participant (unless Kenergy is the Market Participant); or (iii) a Bilateral Counterparty, to satisfy its obligations under a Market Agreement, any other Transaction Document or a Bilateral Contract, as applicable, and (b) shall indemnify, hold harmless and defend Kenergy from and against any and all claims Big Rivers or a Market Participant may assert against Kenergy in connection with any failure by Big Rivers or the Market Participant to perform under a Market Agreement or any other Transaction Document, as applicable, if Kenergy elects to assign its rights in connection therewith pursuant to Section 5.5.2.

5.5.2 If Big Rivers or the Market Participant shall default under the Market Agreement, Kenergy may deliver to Century (a) a power-of-attorney with full power of substitution that shall designate Century or its designee as Kenergy's attorney-in-fact (that shall be coupled with an interest and irrevocable) for purposes of negotiating and prosecuting any and all claims Kenergy may have against Big Rivers or the Market Participant for a failure of Big Rivers or the Market Participant to satisfy its obligations under a Market Agreement and to file or prosecute any claim, litigation, suit or proceeding before any Governmental Authority in the name of Kenergy or in its own name, or take such other action otherwise deemed appropriate by Century for the purposes of obtaining legal or equitable relief as a result of the failure of Big Rivers or the Market Participant to satisfy its obligations under the Market Agreement and to compromise, settle, or adjust any suit, action or proceeding related to the failure of Big Rivers or the Market Participant, as applicable, to satisfy such obligations and to give such discharges or releases as Century may deem appropriate, and (b) an assignment conveying to Century all of Kenergy's right, title and interest in and to any legal, equitable or other relief, including the recovery of damages and the grant of injunctive relief or other remedies to which Kenergy may be entitled with respect to the failure of Big Rivers or the Market Participant to satisfy its obligations under a Market Agreement. The power-of-attorney and the assignment shall be in form and substance reasonably satisfactory to Century and shall be legally effective and enforceable under Kentucky or other Applicable Law.

5.6 No Waiver. No payment made by Century pursuant to this Article 5 will constitute a waiver of any right of Century to contest the correctness of any charge or credit.

ARTICLE 6

EFFECTIVE DATE AND CONDITIONS

6.1 Effective Date. The obligations of the Parties under Article 2, Article 3, Article 4, Article 5, Section 7.3, Article 8, Article 9, Article 10, Article 11, Article 12, Article 14, and Article 15 shall not commence until the Effective Date. The "Effective Date" will occur on the first date each of the conditions set forth in Section 6.2 has been satisfied in full or waived in writing by the Party in whose favor such condition exists (to the extent one or more conditions is subject to being waived).

6.2 Conditions to Occurrence of Effective Date. Subject to 6.2.8, ~~the~~The following shall be conditions to the occurrence of the Effective Date:

6.2.1 The meters at the substation of the ~~Coleman Generation Station~~Robert A. Reid substation at the Sebree generation station shall be a Commercial Pricing Node (as defined in the MISO Tariff).

6.2.2 Each of the representations and warranties of the Parties contained in this Agreement and the representations and warranties of Big Rivers and Kenergy in the Arrangement Agreement will be true and correct as of the date hereof and the Effective Date (as though such representations and warranties were made at and as of the date hereof and the Effective Date), and each of the Parties shall have received a certificate to such effect from the other Party with respect to the other Party's representations and warranties in this Agreement and Century shall have received a certificate to such effect from Kenergy and Big Rivers in respect of their respective representations and warranties in the Arrangement Agreement.

6.2.3 Each of the documents and agreements set forth in Schedule 6.2.3 will have been duly authorized, executed and delivered by the parties thereto, and all conditions precedent to the effectiveness of such agreements will have been satisfied or waived, and shall, if effective on the date of the execution of this instrument amended after the date hereof and prior to the Effective Date, be acceptable in form and substance to the Parties.

6.2.4 The Century Guarantee and the Capacitor Additions and Protective Relays Guarantee will have been duly authorized, executed and delivered by Century Parent and be in full force and effect.

6.2.5 Any credit support required to be provided by Century on the Effective Date pursuant to Section 14.3 shall have been provided.

6.2.6 ~~Except as specified in subsections 6.2.8, no~~No authorization or approval or other action by, and no notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, will be necessary prior to the commencement of the Service Period for the execution, delivery and performance by the Parties to each Transaction Document to which it is a party, other than (i) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and which are routine in nature or which cannot be obtained, or are not normally applied for, prior to the time they are required and which Kenergy has no reason to believe will not be timely obtained and in each case which do not prevent provision of Electric Services as described herein, and (ii) with respect to the approval of any Governmental Authority, on the Effective Date, such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; *provided*, that Century acknowledges and agrees that Kenergy may in its sole discretion discontinue the provision of Electric Services hereunder if any such approvals required by clause (ii) of this Section are overturned or otherwise disapproved by the applicable Governmental Authority subsequent to the Effective Date.

6.2.7 The consent of RUS and each of Kenergy's secured creditors to the Transaction and to all arrangements and agreements contemplated in connection therewith will have been duly issued and received and will be in full force and effect; all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date.

~~6.2.8 Each authorization, approval, action, notice, registration, license, permit, agreement, consent, filing or declaration with MISO, NERC, SERC or any other Governmental Authority regarding (a) the installation, ownership or operation and maintenance of the Capacitor Additions or the Protective Relays, and (b) an obligation of Big Rivers to operate and maintain, dispatch or make available the Coleman Generation Station and the recovery by Big Rivers of all SSR Costs, shall be satisfactory to each of Kenergy, Big Rivers and Century, each in its sole discretion, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; provided, that neither (i) the failure of the FERC to issue an order approving a SSR Agreement or proposed SSR Agreement, nor (ii) the failure of SERC or MISO to provide any necessary approval of the effectuation of the arrangements contemplated by the Protective Relay Agreement, shall delay the Effective Date.~~

6.3 Efforts to Satisfy Conditions to Effective Date. Each of the Parties shall use reasonable commercial efforts and act in good faith to satisfy all of the conditions set forth in Section 6.2 at the earliest practicable date (other than those that the applicable Party agrees to waive). At such time as Kenergy or Century believes such conditions have been satisfied, such Party shall notify the other Party in writing. The obligations of the Parties under this Section 6.3 will continue until the earlier of (a) such time as this Agreement terminates pursuant to Section 7.2, and (b) the Effective Date.

## ARTICLE 7

### TERM AND TERMINATION

7.1 Term. Subject to Section 6.1, this Agreement will become binding on the Parties on the date of execution and delivery by the Parties and will remain in full force and effect until ~~++10:59:59 p.m. on December 31, 2023,~~ unless earlier terminated pursuant to the terms and conditions hereof (the "Term"). The Term will be automatically extended for additional one year periods on each December 31<sup>st</sup> thereafter until a Party gives at least one year's prior notice to the other Party and Big Rivers of its election for the Agreement to expire at ~~++10:59:59~~ on a specified December 31<sup>st</sup>.

7.2 Termination Prior to Effective Date. This Agreement may be terminated without cost or penalty prior to the occurrence of the Effective Date in accordance with this Section 7.2.

7.2.1 Termination for Failure to Satisfy Conditions to Effective Date. Either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party upon the failure of the conditions in Section 6.2 to be satisfied in full or waived by the Person in whose favor the condition exists on or before ~~++10:59:59 p.m. on August 19, 2013.~~ January 31, 2014.



7.2.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approvals for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Big Rivers no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.2.3 Service Following Termination Prior to Effective Date. Century acknowledges and agrees that Kenergy may not provide Electric Services to Century on or after ~~11:59:59 p.m. on August 19, 2013~~ **January 31, 2014** unless the KPSC approves the provision of Electric Services to Century under a new or existing tariff and pursuant to a new contract entered into between Kenergy and Century.

7.3 Termination After the Effective Date. This Agreement may be terminated after the occurrence of the Effective Date in accordance with this Section 7.3.

7.3.1 Termination for Convenience by Century.

(a) Century may terminate this Agreement as of a date not less than 60 days from the date it provides written notice to Kenergy and Big Rivers of the termination of this Agreement.

(b) If Century requests to purchase Electric Services from Kenergy to serve its non-smelting requirements following a termination pursuant to this Section 7.3.1, then such Electric Services will be provided under the Post-Termination Service Agreement.

7.3.2 Termination for Event of Default. This Agreement may be terminated following the occurrence and during the continuation of an Event of Default pursuant to Article 15.

7.3.3 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approval for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Big Rivers no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision, or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.4 Effect of Termination. Termination of this Agreement will terminate the Transaction Documents listed on Exhibit C, other than obligations of the Parties under such Transaction Documents that survive termination.

## ARTICLE 8

### METERING

8.1 Metering Facilities. Kenergy will provide or cause to be provided metering facilities at the Delivery Point that measure Hourly kW, kWh, kilovars, kilovar-hours and voltage-hours.

8.2 Reading. Kenergy will read or cause to be read the meters at the Delivery Point on the last date of each month (or such other date as may be agreed upon by the Parties).

8.3 Testing. Kenergy will test, or cause to be tested, the calibration of the meters at the Delivery Point by comparison of accurate standards at least once every twelve months (or more often if so required by Applicable Law) and will give Century not less than five Business Days' prior notice of such testing. Century will have the right to observe and participate in all meter tests. Meters registering not more than plus or minus 1% inaccurate will be deemed to be accurate (unless Applicable Law establishes a standard more stringent than 1%, in which case, the more stringent standard will apply). The reading of any meter that will have been disclosed by tests to be inaccurate will be corrected for the 60 days before such tests (or for such shorter period if applicable) in accordance with the percentage of inaccuracy found by such tests. If any meter should fail to register for any period, the Parties and Big Rivers will make mutually agreed upon estimates for such period from the best information available. If Century requests a special meter test, Kenergy shall cause such test to be conducted; *provided, however*, that if any special meter test made at the request of Century discloses that the meters are not more than plus or minus 1% inaccurate, Century shall reimburse Kenergy for the reasonable Cost of such test. In all other respects, meters through which Kenergy delivers Energy to Century shall be installed, operated, maintained and tested in accordance with all Applicable Law and Good Utility Practice.

## ARTICLE 9

### OPERATIONAL MATTERS

9.1 Operations and Operational Responsibility. In carrying out the requirements of this Agreement, each Party will comply with the reliability criteria, standards, guidelines and operating procedures of a FERC-approved ERO, SERC, Applicable Law and any applicable RTO, and neither Party will be required to take any action in violation of any thereof.

9.1.1 Kenergy will operate and maintain or cause to be operated and maintained any facilities owned by it on the premises of Century.

9.1.2 Century will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it, including ~~the Capacitor Additions and~~ the any Protective Relays.

9.2 Facilities Provided by Kenergy. Kenergy has caused to be furnished and installed, or shall cause to be furnished or installed, **at the Delivery Point**, all of the facilities required for the delivery of Energy to the Delivery Point, as well as the 161 kilovolt transmission lines required between the Delivery Point and the Century Substation. Kenergy shall install and maintain, or shall cause to be installed and maintained, **at the Delivery Point**, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment but excluding ~~the Capacitor Additions and the~~any Protective Relays, necessary to deliver Energy to Century at the Delivery Point. Kenergy will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Good Utility Practice, to the extent necessary to assure sufficient capability to take and use the Electric Services to be delivered by Kenergy to Century as provided for in this Agreement. **For the avoidance of doubt, nothing herein shall obligate Kenergy to furnish, install, operate or maintain any equipment other than that at the Delivery Point in connection with the delivery of the Electric Services to Century hereunder.**

9.3 Facilities Provided by Century.

9.3.1 Century has provided or shall provide, without cost to Kenergy or Big Rivers all easements for rights-of-way upon Century's property at the ~~Hawesville~~Sebree Smelter (at such locations and of such dimensions as may be mutually agreed upon) for Big Rivers' transmission lines and for any Kenergy distribution lines.

9.3.2 Century has furnished and installed, shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use Energy purchased hereunder at and from the Century Substation, including ~~(a) the~~any Protective Relays and such protective devices as may be reasonably necessary to protect Big Rivers' transmission system from disturbance caused by Century, ~~and (b) the Capacitor Additions.~~ Additional plans for equipment to be installed for such protection of the facilities of Kenergy or Big Rivers shall be submitted to Kenergy and Big Rivers for prior approval.

9.4 Curtailement. Century acknowledges and agrees that, if Big Rivers determines in accordance with Good Utility Practice, or in compliance with any FERC-approved ERO, SERC, Applicable Law and other regulation, any applicable RTO, or other applicable operating criteria or rules, that a System Emergency has occurred or is imminent, and after suspending or reducing deliveries to Persons purchasing interruptible Energy from Big Rivers, Kenergy may suspend or reduce the delivery of Energy hereunder and may cease to make available in whole or in part the Electric Services, in each case to the extent caused by, or that Kenergy or Big Rivers determines necessary or prudent under the circumstances to prevent or attempt to prevent, or counter or reduce the effects of, such System Emergency. **Subject to the Load Curtailement Agreement,** Century acknowledges and agrees that any curtailment caused by a System Emergency (or for any other reason) that cannot be avoided after the suspension or reduction of deliveries to Persons purchasing interruptible Energy from Big Rivers will be effected in a non-discriminatory manner consistent with the Tariff. Kenergy shall request Big Rivers to notify Century as to the occurrence or threatened occurrence of any System Emergency or other event that may require curtailment, its cause and its impact on the provision of Electric Services under this Agreement, as soon as

practicable. Kenergy will not be obligated to supply Electric Services to Century to the extent suspended or curtailed as a result of the System Emergency.

9.5 Ownership and Removal of Equipment. Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed, by either of the Parties hereto (or by Big Rivers) on or in the premises of the other Party (or Big Rivers) to deliver or receive service under this Agreement shall be and remain the property of the Party (or Big Rivers) owning and installing such equipment, apparatus, devices or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement or any extension thereof, the owner (including, if applicable, Big Rivers) of any equipment, apparatus, devices or facilities on the property of a Party shall have the right to enter upon the premises of that Party, and shall, within a reasonable time and at the sole expense of the owner, remove such equipment, apparatus, devices or facilities.

9.6 Right of Access. Century grants the duly authorized agents and employees of Kenergy and Big Rivers the right to reasonable access to the premises of Century to the extent reasonably required for the purposes of installing, repairing, inspecting, testing, renewing or exchanging any or all of its equipment located on the premises of Century, for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Kenergy or Big Rivers shall make reasonable advance arrangements before entering the premises of Century.

9.6.1 Century shall use reasonable commercial efforts to properly protect the property of Kenergy or Big Rivers, located on its premises, and shall permit no Person to inspect or adjust the wiring and apparatus of Kenergy (or Big Rivers) except with Kenergy's or Big Rivers' consent, as applicable. Neither Party assumes the duty or responsibility of inspecting the wiring or apparatus of the other Party.

9.6.2 Century grants to Kenergy and its agents and employees a license to enter the Century Substation and upon Century's easements and rights-of-way to accomplish the purposes of this Agreement, *provided* that reasonable advance arrangements appropriate under the circumstances are made.

## ARTICLE 10

### COVENANTS

#### 10.1 Surplus Sales.

10.1.1 Century may request that Kenergy direct the Market Participant to sell (a) any Electric Services that Century has committed to purchase, or (b) Century Transmission Rights, in each case, that are surplus to Century's requirements by delivering prior written notice to Kenergy and the Market Participant identifying the Electric Services to be sold and the associated times and duration of the requested sales ("Surplus Sales"). The Net Proceeds of any Surplus Sales will be credited by Kenergy or the Market Participant, as applicable, against the related item in the Monthly Charges. Century acknowledges and agrees that (i) Kenergy shall have no liability to any Person in connection with or arising out

of the Market Participant's (unless Kenergy is the Market Participant) or a Bilateral Counterparty's (if Kenergy is the Market Participant) failure to make, manner of making or other handling or execution of a direction to execute Surplus Sales; *provided* that Kenergy has directed the Market Participant with respect to such Surplus Sales in accordance with Century's request pursuant to this Section, and (ii) Century shall provide notice of any such request to the Market Participant simultaneously with Century's provision of such request to Kenergy under this Section 10.1.1.

10.1.2 Any request by Century pursuant to this Section 10.1 shall be irrevocable following the Market Participant's entry into contractual obligations relating to any such Surplus Sales.

10.1.3 For the avoidance of doubt, nothing in this Section 10.1 shall relieve Century of its obligation for any portion of the Monthly Charge pursuant to Article 4.

10.2 Compliance with Environmental Laws. Century shall be responsible for Costs related to Century's operation, incurred by Kenergy to comply with (i) state or federal renewable energy portfolio or similar standards or (ii) Applicable Laws relating to the environment. For avoidance of doubt, such Costs of Kenergy to comply with environmental laws and regulation would include, because Century does not use any Kenergy-owned facilities, only charges or requirements imposed based on Kenergy's retail sales or the number of Kenergy's retail electric customers. To the extent permitted by Applicable Law, Century may self-comply with the provisions of this Section by purchasing its proportionate share of renewable energy.

10.3 Compliance with Applicable Laws Relating to Hedging Arrangements. Century shall be responsible for Costs related to Century's operation incurred by Kenergy to comply with Applicable Laws relating to sales pursuant to this Article, including Hedging Arrangements and the Dodd-Frank Act and any rules and regulations of any Governmental Authority, applicable to any Hedging Arrangements entered into by the Market Participant or any other Person in connection with Kenergy's provision of Electric Services to Century hereunder.

10.4 Electric Services for Hawesville~~Sebree~~ Smelter Only. Century shall consume all Energy purchased by and delivered to the Hawesville~~Sebree~~ Smelter under this Agreement in connection with the operation of its Hawesville~~Sebree~~ Smelter, except as expressly permitted pursuant to this Agreement. Century acknowledges and agrees that it is not entitled to any Electric Services under any tariff of Kenergy, but, rather, is entitled to such Electric Services only pursuant to a contract entered into with Kenergy. ~~Century further acknowledges and agrees that Kenergy will clarify its existing tariffs to this end and that Century shall not challenge or protest any Kenergy filings to make such changes.~~ Century further acknowledges and agrees that it will not request or seek for Big Rivers to have an obligation to supply Electric Services (to Kenergy or otherwise) for delivery to Century from Big Rivers' System Resources; *provided*, for avoidance of doubt this does not include Transmission Services.

10.5 Entry into Market Agreement. Kenergy will not enter into any Market Agreement without the prior written consent of Century.

## ARTICLE 11

### UNCONTROLLABLE FORCES

11.1 Occurrence of an Uncontrollable Force. No Party will be considered to be in breach or default in the performance of any of its obligations under this Agreement if the failure of performance is due to an Uncontrollable Force, except as otherwise provided in this Article. If either Party is unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties, to the extent that they are affected by such Uncontrollable Force, will be suspended during the continuance of any inability so caused, but for no longer period. A Party will not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful acts or omissions.

11.2 Mitigation. A Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability as promptly as reasonably possible. Nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

11.3 Notice of Uncontrollable Force. A Party shall notify the other Party at the earliest practicable time following (i) the occurrence of any Uncontrollable Force that renders such Party incapable of performing hereunder or (ii) the time at which such Party has reason to expect that such an Uncontrollable Force is imminent. Kenergy also shall notify Century if it receives notice from the Market Participant that the Market Participant anticipates that it will be unable to perform its obligations to Kenergy under any contract or agreement that affects Kenergy's performance under this Agreement due to an Uncontrollable Force and Century is not an additional addressee of such notice.

11.4 Payment Obligations. Notwithstanding anything in this Agreement to the contrary, the occurrence of an Uncontrollable Force shall not relieve Century of its payment obligations under Article 4, including its payment obligations with respect to any portion of the Monthly Charge. CENTURY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF SECTION 10.1 (SURPLUS SALES) SHALL CONSTITUTE CENTURY'S SOLE AND EXCLUSIVE REMEDIES IF CENTURY IS UNABLE TO RECEIVE ENERGY INCLUDING IF THAT INABILITY IS CAUSED BY AN UNCONTROLLABLE FORCE.

## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Kenergy. Kenergy hereby represents and warrants to Century as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.1.1 Kenergy is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligation

hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the Term hereof.

12.1.2 The execution, delivery and performance of this Agreement by Kenergy have been duly and effectively authorized by all requisite corporate action.

12.1.3 This Agreement and the other Transaction Documents to which it is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Kenergy in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.1.4 The execution and delivery of this Agreement by Kenergy and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Kenergy or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Kenergy is a party or by which it, or its property, is bound.

12.1.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Kenergy is subject is required for the due execution, delivery or performance by it of this Agreement and the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Kenergy has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein; and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Kenergy that have not been satisfied or irrevocably waived.

12.1.6 There is no pending or, to Kenergy's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Kenergy to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.1.7 Kenergy is not aware of Costs to comply with Section 10.2 as of the Effective Date.

12.2 Representations and Warranties of Century. Century hereby represents and warrants to Kenergy as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.2.1 Century is a ~~general partnership~~ limited liability company duly organized and validly existing and in good standing under the laws of the Commonwealth ~~Kentucky~~ State of Delaware and is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and under any other Transaction Documents to which it is a party, and to carry on its business as it is now being conducted and as it is contemplated hereunder and thereunder to be conducted during the Term hereof.

12.2.2 The execution, delivery and performance by Century of this Agreement and the other Transaction Documents to which it is a party have been duly and effectively authorized by all requisite partner limited liability company action.

12.2.3 This Agreement and the other Transaction Documents to which Century is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Century in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.2.4 The execution and delivery of this Agreement by Century and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Century or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Century is a party or by which it, or its property, is bound.

12.2.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Century is subject is required for the due execution, delivery or performance by it of this Agreement or the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Century has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Century that have not been satisfied or irrevocably waived.



12.2.6 There is no pending or, to Century's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Century to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.2.7 Century is not aware of Costs to comply with Section 10.2 as of the Effective Date.

## ARTICLE 13

### INDEMNIFICATION

13.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, each Party (in such capacity, an "Indemnifying Party") hereby agrees that it will pay, and will protect, indemnify, and hold harmless the other Party and its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject arising out of or relating to the performance or failure to perform its obligations under this Agreement, any other Transaction Documents to which it is a party or any Market Agreement or Bilateral Contract (each, an "Indemnified Liability"), and any actual or prospective claim, litigation, investigation or proceeding relating thereto, whether based on contract, tort or any other theory, and regardless of whether any Indemnified Person is a party thereto, including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 13.1.

13.2 Primary Indemnity. Except to the extent there is insurance coverage available no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of an Indemnifying Party under this Agreement.

### 13.3 Payments.

13.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify the Indemnifying Party in a timely manner of any such amounts payable by the Indemnifying Party hereunder; *provided*, that any failure to provide such notice shall not affect the Indemnifying Party's obligations under this Article 13.

13.3.2 Any amounts payable by an Indemnifying Party pursuant to this Article 13 shall be payable within the later to occur of (i) ten (10) Business Days after the Indemnifying Party receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which the Indemnifying Party's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

13.4 Survival. The provisions of this Article 13 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

13.5 Subrogation. Upon payment by an Indemnifying Party pursuant to this Article 13 of any claim under Section 13.1 in respect of any Indemnified Liability, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of the Indemnifying Party cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

## ARTICLE 14

### ADDITIONAL AGREEMENTS

#### 14.1 Regulatory Proceedings.

14.1.1 Proceedings That Affect Rates. Neither Kenergy nor Century will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rates and charges set forth in this Agreement or other terms and conditions set forth herein.

14.1.2 KPSC Jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Kenergy, Big Rivers or the rates, terms and conditions of the provision of Electric Services to Century.

14.2 Audit Rights. Kenergy will permit Century to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy reasonably relating to its service to Century under this Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Century under this Agreement for a period of three years beyond the date of the service. Nothing in this Section 14.2 shall obligate Kenergy to disclose attorney-client privileged information.

14.3 Century Credit Support. Century shall provide the following credit support for its obligations under this Agreement and other Transaction Documents:

14.3.1 Century shall provide and maintain credit support in the form of one of the following as elected by Century (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Kenergy, Big Rivers and any other Person entitled to benefit therefrom, in their sole

discretion, or (iii) other credit support acceptable to Kenergy, Big Rivers and any other Person entitled to the benefit thereof, in each case, in an amount equal to the sum of the following, without duplication:

(a) With respect to any period for which Big Rivers is or was the Market Participant, the amounts reasonably estimated by Kenergy, without duplication, with respect to (i) Century's obligations under this Agreement for a period not longer than the payment terms required by each supplier to Kenergy, (ii) any security required by or for the benefit of any applicable RTO or ISO (without regard to Big Rivers acting as the Market Participant), (iii) any security required by any counterparty to a Bilateral Contract, and (iv) any amount that Kenergy estimates reasonably (A) could be due with respect to taxes payable by Century for the benefit of Kenergy or Big Rivers as a result of this Agreement or (B) could become due and payable by Kenergy as a result of this Agreement or any other Transaction Document, including with respect to taxes payable by Century for the benefit of Kenergy under the Tax Indemnity Agreement or any other Transaction Document ("Potential Tax Liability"). For the avoidance of doubt, security required pursuant to this paragraph, but relating to the period when Big Rivers was acting as the Market Participant, may extend beyond the period when Big Rivers is the Market Participant or the underlying agreement terminates and may be required to be provided directly to the Person benefiting therefrom;

(b) With respect to any period for which Big Rivers is not or was not the Market Participant, any amounts estimated by Kenergy to be required by it, Big Rivers, the Market Participant or the applicable RTO or ISO as security. For the avoidance of doubt, (i) security required pursuant to this paragraph, but relating to the period when such Market Participant was acting as the Market Participant, may extend beyond the period when such Market Participant is no longer the Market Participant or the applicable RTO or ISO is no longer the RTO or ISO of which the Market Participant is a member, and (ii) the Market Participant may require security to be provided directly to the Person benefiting therefrom;

(c) Any amount that a Bilateral Contract requires to be maintained for the benefit of the parties to such Bilateral Contract other than Century; and

(d) For the avoidance of doubt, Century shall provide any credit support required by this Section 14.3 to the Person designated by Kenergy but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

14.3.2 In addition to any other credit provided herein or any other Transaction Document:

(a) Century shall cause Century Parent to guarantee to Kenergy and Big Rivers the payment, performance and all other obligations of Century under this Agreement or any Transaction Document that may become due and owing to Kenergy or Big Rivers, including Potential Tax Liability, pursuant to a Guarantee

Agreement executed by Century Parent in favor of Kenergy and Big Rivers that shall be satisfactory in form and substance to Kenergy and Big Rivers (the “Century Guarantee”). At the request of Big Rivers or Kenergy, Century will maintain the Century Guarantee until closure of all applicable tax years of Big Rivers. At the request of Century, Kenergy shall request that Big Rivers provide Century with information as to the amount and calculation of the estimated Potential Tax Liability and documentation in support thereof.

(b) Century shall cause Century Parent to guarantee to the Market Participant or any party to a Bilateral Contract the payment, performance and all other obligations of Century under any agreements with such Persons that may become due and owing to any of them pursuant to a guarantee agreement executed by Century Parent in favor of such Person, that shall be satisfactory in form and substance to them.

14.3.3 Following the accessing by any Person entitled to the security provided by Century to pay amounts due and owing but unpaid by Century under any Transaction Document, Century shall promptly, but in no event more than three Business Days following any accessing of the security, replenish such security to the amounts required by Section 14.3.

14.4 Post-Termination Obligation. Upon termination of this Agreement in the circumstances described in Section 7.3.1(b), and subject to Section 14.5, neither Kenergy nor Big Rivers will have any contractual obligation under this Agreement to supply any Electric Services to Century other than pursuant to a Post-Termination Service Agreement. In all other circumstances, (a) Century acknowledges and agrees that Kenergy will not have any contractual obligation to supply Electric Services to Century or any of its Affiliates with respect to the ~~Hawesville~~Sebree Smelter or its portion thereof, and (b) Century would need to negotiate a new arrangement with Kenergy for the provision of Electric Services.

14.5 Right to Supply from Big Rivers. Century acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the ~~Hawesville~~Sebree Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter other than as provided in the Arrangement Agreement for the purchase of Electric Services in the Day Ahead Market or the Real Time Market or from a Bilateral Counterparty; ~~provided, that Century Parent or an affiliate of Century may seek a contractual service arrangement, with Big Rivers and Kenergy with respect to the Sebree smelter.~~

## ARTICLE 15

### EVENTS OF DEFAULT; REMEDIES

15.1 Events of Default. Each of the following constitutes an “Event of Default” under this Agreement:

15.1.1 Failure by Century to make any scheduled payment in accordance with this Agreement;

15.1.2 Failure by Century for three or more Business Days to maintain any security required by Section 14.3;

15.1.3 Failure of a Party to perform any material duty imposed on it by this Agreement (other than a failure to make a payment when due) within 30 days following the non-performing Party's receipt of written notice of the non-performing Party's breach of its duty hereunder;

15.1.4 Failure by a Party to pay any amounts under this Agreement or any Transaction Document within three Business Days following the non-performing Party's receipt of written notice of the non-performing Party's default in its payment obligation, except as provided in Section 15.1.1;

15.1.5 Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article 17;

15.1.6 The occurrence and continuance of an "Event of Default" under any Transaction Document;

15.1.7 Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws by a Party and such petition has not been withdrawn or dismissed within 60 days after filing;

15.1.8 Assignment by a Party for the benefit of its creditors; or

15.1.9 Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment.

15.2 Remedies, General. Except as otherwise provided in this Agreement, following the occurrence and during the continuance of an Event of Default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity. Unless otherwise provided herein, remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy and nothing contained in this Agreement may be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein provided that:

15.2.1 UNDER NO CIRCUMSTANCE WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER TO THE OTHER PARTY, ITS AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS WHETHER IN TORT, CONTRACT OR OTHERWISE FOR ANY SPECIAL,

INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

15.2.2 If Century fails to pay any invoice rendered by or on behalf of Kenergy within the time prescribed in Section 5.1 or Section 5.2, Kenergy may discontinue delivery of any or all Electric Services hereunder upon not less than 72 Hours prior written notice to Century and Big Rivers of its intention to do so unless Century has cured such default within those 72 Hours. Kenergy's discontinuance of such service for non-payment will not in any way affect, diminish or limit the obligations of Century to make all payments required under this Agreement or any other Transaction Document, as and when due. For the convenience of the Parties, and to facilitate satisfaction of Kenergy's obligation to Big Rivers, Century hereby acknowledges and consents to the assignment by Kenergy to Big Rivers of its right to receive such payment from Century under this Agreement while Big Rivers is the Market Participant (other than with respect to the Retail Fee or otherwise incurred by Kenergy and not related to Big Rivers) and Kenergy's rights to collect and enforce collection of such amounts due from Century. If Big Rivers owes credits or funds to Kenergy for the benefit of Century, Kenergy hereby assigns such credits or funds to Century and shall cooperate with and assist Century with respect to any collections of any such amounts due from Big Rivers to Kenergy; *provided*, that Century shall reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

15.2.3 Unless otherwise provided herein, if a Party is in breach of its obligations under this Agreement but such breach does not constitute, or would not with the passage of time or the giving of notice constitute, an Event of Default and this Agreement does not provide any other remedy therefor, if such breach has not been cured by the breaching Party within 60 days after receiving written notice from the non-breaching Party setting forth, in reasonable detail, the nature of such breach, the non-breaching Party may commence dispute resolution with respect to such breach and exercise its rights under Article 16, but will not be entitled to terminate, or seek to terminate, this Agreement, or suspend performance of its obligations and duties hereunder as a result of such breach.

## ARTICLE 16

### DISPUTE RESOLUTION

16.1 Resolution Meetings. If a dispute arises between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, either Party may request in writing a meeting among an authorized representative of each of the Parties and the Market Participant to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten days or such shorter or longer time as agreed upon by the Parties of the request. Nothing in this Section 16.1 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement.

16.2 Arbitration. Absent resolution of the dispute pursuant to Section 16.1, and subject to a minimum amount in controversy of \$100,000.00, the Parties shall submit the matter to be settled, subject to Section 16.2.7, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution (“ICDR”) of the American Arbitration Association (the “AAA Rules”), in accordance with the following terms and conditions:

16.2.1 In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

16.2.2 The ICDR shall administer the arbitration.

16.2.3 The seat of arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

16.2.4 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two party-nominated arbitrators to agree on an arbitrator in accordance with Section 16.2.4(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 16.2.4(a) and 16.2.4(b), each arbitrator selected pursuant to this Section 16.2.4 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed by, a consultant to or received compensation from any Party in the past.

16.2.5 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, and including, but not limited to, specific performance and injunctive relief, whether interim or final, and any such relief and any interim, provisional or conservatory measure ordered by the ~~arbitral~~ arbitration tribunal may be specifically enforced by any court of competent jurisdiction.

16.2.6 The losing Party shall pay the fees and costs of the prevailing Party or as allocated by the arbitration tribunal if all relief sought by one Party is not granted.

16.2.7 The award of the ~~arbitral~~arbitration tribunal shall be subject to appeal to, or requests for rehearing by, a court in accordance with Section 18.2.

16.2.8 The award of the arbitration tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

16.2.9 Except for arbitration proceedings pursuant to this Section 16.2, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 18.2, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

16.3 RTO or ISO Disputes. Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable with respect to the provision of Electric Services to the Hawesville Sebree Node or otherwise payable in respect of the provision of Electric Services hereunder shall be binding on the Parties. Nothing in this provision is intended to impair the rights of either Party to pursue any action through MISO's (or the applicable RTO's or ISO's) dispute resolution process or at the FERC.

## ARTICLE 17

### GENERAL PROVISIONS/SUCCESSORS AND ASSIGNS

17.1 Binding Nature. This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Party, except as provided in Section 17.4, and except that, subject to satisfaction of the conditions of Section 17.2, assignment may be made by either Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

17.2 Limitation on Assignment. Subject to Section 17.4, in no event may either Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable



satisfaction of the non-assigning Party or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

17.3 Duties. No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

17.4 Financing Lien. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

## ARTICLE 18

### MISCELLANEOUS

18.1 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

18.2 Jurisdiction. Subject to Section 16.2, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes; *provided* that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in Section 16.2 or this Section prohibits a Party from referring to FEREC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 16.2, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 18.6, and agrees that such service shall be, for all purposes, good and sufficient.

18.3 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

18.4 Amendments.

18.4.1 This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties.

18.4.2 The Parties acknowledge and agree that nothing in this Agreement shall limit the right of Big Rivers to file changes to the Tariff, or limit the right of any Party to challenge any aspect of the Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

18.5 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement; *provided*, that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

18.6 Notices. A notice, consent, approval or other communication under this Agreement must be in writing, addressed to the Person to whom it is to be delivered at such Person's address shown below and (a) personally delivered (including delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile, with a duplicate notice sent by a nationally recognized overnight courier service, *provided, however*, that (i) a notice given pursuant to Section 3.3.2 may be given by telephone to be followed as soon as reasonably practicable by written notice as described herein and (ii) a notice of Uncontrollable Force shall be given by whatever means is available followed by notice in writing as described herein as soon as reasonably practicable; *provided, further*, that notices given pursuant to Section 5.1 and Section 5.2 may be given by electronic message at such addresses as each Party may provide to the other Party by any other method of notice permitted by this Section. A notice given to a Person in accordance with this Section 18.6 will be deemed to have been delivered (a) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (b) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 18.6, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party, in accordance with this Section 18.6, with copies of all such notices to Big Rivers to the address set forth below, in the same manner as notice is otherwise given hereunder. Simultaneously with a Party's giving of any notice required or permitted to be given hereunder from one Party to another Party, such Party shall give such notice to the Market Participant using the same method of delivery used to provide such notice to the other Party.

If to Kenergy: Kenergy Corp.  
~~6402 Old Corydon Road~~P.O. Box 18  
Henderson, Kentucky 4242042419-0018  
Attn: President and CEO  
Facsimile: (270) 826-3999685-2279

with a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
~~P.O. Box 500~~  
9404 State Route 271 North2096  
HawesvilleRobards, Kentucky 4234842420  
  
Attn: Plant Manager  
Facsimile: (270) 852-2882521-7305

With a copy to: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Facsimile: (312) 696-3102

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

For notices pursuant to Section 15.1:

If to Kenergy: Kenergy Corp.  
~~6402 Old Corydon Road~~P.O. Box 18  
Henderson, Kentucky 4242042419-0018  
Attn: President and CEO  
Facsimile: (270) 826-3999685-2279

With a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
P.O. Box 500  
9404 State Route 271 North 2096  
Hawesville Robards, Kentucky 42348 42420

Attn: Plant Manager  
Facsimile: (270) 852-2882 521-7305

18.7 Severability. If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment will not affect, impair or invalidate the remainder of this Agreement but will be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, unless the loss or failure of such clause, sentence, paragraph or part of this Agreement materially adversely affects the benefit of the bargain to be received by either or both of the Parties, in which event the Parties shall promptly meet and use their good faith best efforts to renegotiate this Agreement in such a fashion as will restore the relative rights and benefits of both Parties or, absent such renegotiation, the Party that was so materially adversely affected will be entitled, in its discretion, to terminate this Agreement.

18.8 Survival. Sections 10.4, 14.4 and 14.5 shall survive termination of this Agreement. Each provision of this Agreement providing for payment for Electric Services and any other amounts due hereunder, assignment of the right to collect and enforce collection of amounts due, the provision, replenishment or maintenance of credit support required hereunder or related remedies for default, damage claims, indemnification or payment of other liabilities also shall survive termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

18.9 Merger. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the matters addressed herein and supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

18.10 Further Assurances. The Parties shall execute such additional documents and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

18.11 Counterparts. This Agreement may be executed in any number of counterparts that together will constitute but one and the same instrument and each counterpart will have the same force and effect as if they were one original.

18.12 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard or care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement other than Big Rivers. Big Rivers shall be an express third party beneficiary of this Agreement and may enforce the provisions hereof during the period of any survival obligations for its benefit pursuant to Section 18.8.

18.13 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

18.14 No Agency. This Agreement is not intended, and may not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or otherwise bind, the other Party.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

~~CENTURY ALUMINUM OF KENTUCKY~~  
~~GENERAL PARTNERSHIP~~ **SEBREE LLC**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 6.2.3**  
**LISTING OF CERTAIN TRANSACTION DOCUMENTS**

1. This Agreement
2. Arrangement Agreement
3. Direct Agreement
4. Capacitor Load Curtailment Agreement
- 5. Century Guarantee**
- ~~6. 5-Protective Relays Agreement~~
- ~~6. Century Guarantee~~
- ~~7. Capacitor Additions and Protective Relays Guarantee~~
- ~~7. 8-Tax Indemnity Agreement~~
- ~~8. 9-Lockbox Agreement~~

**EXHIBIT A**  
**FORM OF POST-TERMINATION SERVICE AGREEMENT**



**EXHIBIT B**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges change:

1. ACES Fee – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum – Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
4. NRCO – Cost Differential between organization classification, if applicable, due to Century’s inclusion in Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission – Pro-rata share of Big Rivers’ intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (~~LESS~~less HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees – Tons of emissions related to ~~Coleman Station during SSR operation~~any owned or leased generating facility that any Governmental Authority with jurisdiction for reliability requires Big Rivers to operate to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction.
9. KAEC – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Cases – Century will not be charged costs for Big Rivers rate cases with the KPSC.

The foregoing costs may apply to Kenergy if Kenergy is the Market Participant. If Kenergy is not the Market Participant then the following apply to Kenergy:

1. Public Service Commission – Taxes based on pro-rata share of Kenergy’s revenue from Century.
2. KPSC Rate Cases – Century will not be charged costs for Kenergy rate cases with the KPSC.

**EXHIBIT C**  
**TRANSACTION DOCUMENTS CO-TERMINOUSLY TERMINATED**

- ~~Arrangement and Procurement Agreement By and Between Big Rivers Electric Corporation and Kenergy Corporation.~~



# **ARRANGEMENT AND PROCUREMENT AGREEMENT**

Dated as of January [ ], 2014,

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

**KENERGY CORP.**

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## ARRANGEMENT AND PROCUREMENT AGREEMENT

This ARRANGEMENT AND PROCUREMENT AGREEMENT (this "Agreement") is dated as of January [ ], 2014, and made by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers") and KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"). Kenergy and Big Rivers are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy currently supplies and delivers retail electric energy and related services to Century Aluminum Sebree LLC, a Delaware limited liability company ("Century"), the owner and operator of an aluminum reduction plant in Robards, Kentucky (as further defined below, the "Sebree Smelter"), pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the "Existing Retail Agreement").

B. Century acquired its interests in the Sebree Smelter and the Existing Retail Agreement from Alcan Primary Products Corporation, a Texas corporation ("Alcan"), pursuant to an Asset Sale Agreement, dated April 28, 2013, and an Assignment and Assumption Agreement, dated as of June 1, 2013.

C. Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers, an electric generation and transmission cooperative of which Kenergy is a member, pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the "Existing Wholesale Agreement").

C. Alcan gave notice of termination of the Existing Retail Agreement, dated January 31, 2013, and effective as of January 31, 2014 (the "Notice of Termination"). The Existing Retail Agreement, as assigned by Alcan and assumed by Century, remains subject to the Notice of Termination, as confirmed in a Letter of Representations and Agreements, dated as of June 1, 2013, by and among Big Rivers, Kenergy, Century and Century Aluminum Company, a Delaware corporation, and the direct or indirect parent of Century ("Century Parent").

D. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services obtained from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth in the Electric Service Agreement, dated as of the date hereof, between Kenergy and Century (the "Electric Service Agreement").

E. In connection with and as a condition to Kenergy's entry into the Electric Service Agreement, Kenergy and Big Rivers have agreed to enter into this Agreement, to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century under the Electric Service Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in Article 1, unless stated otherwise or the context requires otherwise.

1.1.1 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.2 Affiliate: With respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For avoidance of doubt, Kenergy and the other Members are not Affiliates of Big Rivers.

1.1.3 Agreement: As defined in the preamble to this Agreement.

1.1.4 Alcan: As defined in the Recitals.

1.1.5 Ancillary Services: Those generation-based ancillary services, that are necessary to support among other things capacity, reactive supply and voltage control, as well as the transmission of Energy from resources to loads while maintaining reliable operations of the applicable transmission system in accordance with Good Utility Practice, as set forth and described in the Tariff or, if applicable, any Bilateral Tariff.

1.1.6 Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

1.1.7 Applicable RTO Charges: As defined in Section 4.2.

1.1.8 ARR: Auction Revenue Rights as defined in the MISO Tariff, or any similar items under the Tariff.

1.1.9 Base Load: The "Base Load" shall be determined by the following, as applicable:

(a) The maximum amount of Load (not to exceed 378 MW), that may be reliably delivered to the Sebree Node without any Governmental Authority with jurisdiction for reliability requiring Big Rivers to operate any owned or leased generation facility to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction;

(b) The “Base Load” may be increased (not to exceed 378 MW) by notice from Century to Kenergy and Big Rivers if such increase does not create a reliability issue, as determined by any Governmental Authority with jurisdiction over electric reliability. As of the date hereof, the Parties are unaware of any Governmental Authority with jurisdiction over electric reliability with respect to an increase in the Base Load other than FERC and MISO;

(c) If a SSR Agreement is in effect, the “Base Load” shall be the maximum amount of Load as confirmed or approved by the applicable RTO or ISO (not to exceed 378 MW);

(d) The Base Load shall be 378 MW if Big Rivers is operating the Wilson Generation Station for any reason other than an requirement by MISO to operate for reliability; and

(e) In all other circumstances, the “Base Load” shall be zero.

1.1.10 Big Rivers: As defined in the preamble to this Agreement.

1.1.11 Bilateral Charges: As defined in Section 4.3.

1.1.12 Bilateral Contract: A contractual arrangement between Big Rivers, acting as the Market Participant, and a Bilateral Counterparty pursuant to which Big Rivers obtains a right or obligation to purchase at the Delivery Point any Electric Services for resale to Kenergy pursuant to this Agreement for delivery to Century pursuant to the Electric Service Agreement based upon generation resources or contract resources of such Bilateral Counterparty.

1.1.13 Bilateral Counterparty: As defined in Section 2.4.

1.1.14 Bilateral Tariff: The open access transmission or markets tariff or similar construct applicable to a transaction with a Bilateral Counterparty.

1.1.15 Billing Month: Each calendar month during the Service Period.

1.1.16 Business Day: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

1.1.17 Century: As defined in the Recitals.

1.1.18 Century Guarantee: As defined in the Electric Service Agreement.

1.1.19 Century Parent: As defined in the Recitals.

1.1.20 Century Substation: Century's electrical substation located adjacent to the Sebree Smelter.

1.1.21 Century Transmission Rights: All allocations from MISO of FTRs or ARRs resulting from service by Big Rivers to Kenergy under this Agreement and service by Kenergy to Century under the Electric Service Agreement and FTRs purchased by Century.

1.1.22 Costs: In the context of the specific costs referenced, "Costs" shall mean those costs of Big Rivers to the extent that such costs relate to the operation of Century. For the avoidance of doubt, "Costs" include (i) Century's proportionate share of costs that are incurred by Big Rivers to serve both Century and other loads, and (ii) costs incurred by Big Rivers that relate only to Century's operation. Costs listed in Exhibit A shall be proportionately allocated as provided therein, or using the method applicable from time to time for calculation of bills (if the calculation method has changed from that shown in Exhibit A).

1.1.23 Curtailable Load: The maximum amount of additional Load at the Sebree Node above the Base Load that may be served on a reliable basis, as confirmed or approved by MISO (or, if applicable, by another RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located) accounting for the effect of any Protective Relays installed at the Sebree Smelter, *provided*, that such amount shall be zero if such confirmation or approval is not given; *provided, further*, that the Base Load plus the Curtailable Load may not exceed 378 MW, on a scheduled basis, and 388 MW at any time.

1.1.24 Day Ahead Market: The Day Ahead Energy and Operating Reserve Market established under the MISO Tariff for the purchase of electricity and electricity-related ancillary services or, if the Sebree Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for purchases of the applicable Electric Services prior to the date of delivery.

1.1.25 Delivery Point: The existing set of meters at the Robert A. Reid substation located in Robards, Kentucky or such other point of delivery mutually agreed by the Parties and Century. At Century's request, the Delivery Point may be moved to the Century Substation if permitted by the applicable RTO and Century pays all costs incurred in connection therewith.

1.1.26 Direct Agreement: The Direct Agreement, dated as of the date hereof, by and between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with the Transaction.

1.1.27 Dodd-Frank Act: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203 (signed into law July 21, 2010)) and all requests, rules, regulations, guidelines or directives (whether or not having the force of law) of a Governmental Authority in connection therewith.

1.1.28 Effective Date: As defined in Section 6.1.

1.1.29 Electric Service Agreement: As defined in the Recitals.

1.1.30 Electric Services: Electric services, including capacity and associated Energy, Transmission Services, Ancillary Services and other services required in connection therewith, including services as may be required by any RTO, ISO, Transmission Provider or Reliability Coordinator, and transmission or ancillary services of a Bilateral Counterparty under a Bilateral Tariff.

1.1.31 Energy: The flow of electricity denominated in kWh or MWh.

1.1.32 ERO: Electric Reliability Organization, as defined in the Federal Power Act.

1.1.33 Event of Default: As defined in Section 15.1.

1.1.34 Excess Energy Rate: The greater of (i) \$250 per MWh, and (ii) a price equal to 110% of the highest Hourly all-inclusive cost incurred by Big Rivers to acquire such Energy, and the separate cost, if any, whenever determined, of transmission services and related services required to transmit any Energy over 388 MW to the Delivery Point and including any imbalance charges or other costs arising from the failure of the supplier of such Energy to deliver such Energy.

1.1.35 Excess Reactive Demand Charge: As defined in Section 4.4.

1.1.36 Existing Retail Agreement: As defined in the Recitals.

1.1.37 Existing Wholesale Agreement: As defined in the Recitals.

1.1.38 FERC: Federal Energy Regulatory Commission.

1.1.39 FTR: Financial Transmission Rights as defined in the MISO Tariff, or any similar items under the Tariff.

1.1.40 Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.

1.1.41 Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, a RTO

(including MISO as of the Effective Date) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC; *provided, however* that the RUS is not a Governmental Authority for purposes of this Agreement.

1.1.42 Hedging Arrangements: Any contractual arrangements entered into as hedging or derivative arrangements, including any transactions regulated under the Dodd-Frank Act.

1.1.43 Hour or Hourly: A clock hour or per clock hour, respectively.

1.1.44 Indemnified Liability: As defined in Section 13.1.

1.1.45 Indemnified Person: As defined in Section 13.1.

1.1.46 Indemnifying Party: As defined in Section 13.1.

1.1.47 ISO: An Independent System Operator, as defined and approved by the FERC.

1.1.48 Kenergy: As defined in the preamble to this Agreement.

1.1.49 KPSC: Kentucky Public Service Commission.

1.1.50 kW: Kilowatt.

1.1.51 kWh: Kilowatt-hour.

1.1.52 Load: The Hourly interval meter data measured in MWhs at the Sebree Smelter.

1.1.53 Load Curtailment Agreement: The Load Curtailment Agreement, dated as of the date hereof, among Big Rivers, Kenergy and Century.

1.1.54 Lockbox Agreement: The Security and Lockbox Agreement to be entered into by and among Century, Kenergy, Big Rivers and a depository bank prior to the Effective Date with respect to the payment of certain amounts due by Kenergy to Big Rivers hereunder.

1.1.55 Market Participant: Big Rivers, in its capacity as the procurer of Electric Services under the Tariff or from a Bilateral Counterparty for resale to Kenergy pursuant to this Agreement for resale to Century pursuant to the Electric Service Agreement, prior to termination of this Agreement pursuant to Article 7, and, thereafter, the counterparty to any other contractual arrangement with Kenergy relating to the purchase of Electric Services from the wholesale electric market, including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century.

1.1.56 Members: The members of Big Rivers. As of the date hereof, the Members of Big Rivers are Jackson Purchase Energy Corporation, Kenergy, and Meade County Rural Electric Cooperative Corporation.

1.1.57 MISO: The Midcontinent Independent System Operator, Inc.

1.1.58 MISO Tariff: The MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.

1.1.59 Monthly Charge: As defined in Section 4.1.

1.1.60 MW: Megawatt.

1.1.61 MWh: Megawatt-hour.

1.1.62 NERC: North American Electric Reliability Corporation.

1.1.63 Net ARR/FTR Proceeds: The sum of ARR revenues, as determined by the applicable ISO or RTO, offset for applicable ARR and FTR uplift amounts and applicable administrative fees charged by the applicable ISO or RTO. FTR charges or credits related to auction and settlement activities will be allocated to Century for the positions Century directs Big Rivers to pursue on their behalf. Century's pro-rata share of Net ARR/FTR Proceeds will be calculated by taking Century's load at Big Rivers' annual system peak divided by Big Rivers' annual system peak, multiplied by the Net ARR/FTR Proceeds received by Big Rivers on a monthly basis from MISO.

1.1.64 Net Proceeds: The proceeds of a sale or transfer, net of the cost of the item sold and net of transaction costs, whenever incurred, and taxes.

1.1.65 Party or Parties: As defined in the preamble to this Agreement.

1.1.66 Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization, other legal entity, RUS or Governmental Authority.

1.1.67 Prime Rate: The then-effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties and Big Rivers shall agree on a mutually acceptable alternative source for that rate.

1.1.68 Protective Relays: As defined in the Protective Relays Agreement.

1.1.69 Protective Relays Agreement: The Protective Relays Agreement, dated as of the date hereof, by and among Big Rivers, Kenergy and Century.

1.1.70 Real Time Market: The Real Time Energy and Operating Reserve Market established under the MISO Tariff or, if the Sebree Node is located in a different RTO or

ISO, any similar organized central market in such other RTO or ISO for real time purchases of the applicable Electric Services.

1.1.71 Reliability Coordinator: As defined by NERC. As of the Effective Date, the Reliability Coordinator is MISO.

1.1.72 Reliability Costs: As defined in the Electric Service Agreement.

1.1.73 Retail Fee: As defined in the Electric Service Agreement.

1.1.74 RTO: Regional transmission organization as defined and approved by FERC.

1.1.75 RTO Transmission Upgrades: MISO Transmission Expansion Plan or Multi-Value Projects (each as defined in the MISO Tariff) or similar transmission facilities upgrades, improvements or expansion projects of any RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located.

1.1.76 RUS: United States Department of Agriculture Rural Utilities Service.

1.1.77 Sebree Node: A Commercial Pricing Node (as defined in the Tariff) located at the Delivery Point and used solely for delivery and sale of Electric Services for the benefit of the Sebree Smelter; *provided*, that if the Sebree Node does not remain in MISO in accordance with Section 3.5.2, then the “Sebree Node” shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.

1.1.78 Sebree Smelter: The aluminum reduction plant owned and operated by Century and located in Robards, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

1.1.79 SERC: SERC Reliability Corporation, a regional reliability organization.

1.1.80 Service Period: As defined in Section 2.1.

1.1.81 SSR Agreement: An agreement, including a System Support Resources Agreement, entered into with the RTO or ISO of which Big Rivers is a member relating to the Reliability Costs relating to or arising out of any owned or leased generation facility of Big Rivers other than any such facility subject to a SSR Agreement to support the operation of the aluminum reduction plant located in Hawesville, Kentucky.

1.1.82 Surplus Sales: As defined in Section 10.1.1.

1.1.83 System Emergency: Any cessation or reduction in the provision or delivery of Electric Services by Big Rivers due in whole or in part to: (a) a disconnection of all or a portion of Big Rivers’ or Kenergy’s system from the transmission grid (other than as a direct result of Big Rivers’ or Kenergy’s gross negligence or willful misconduct), (b) a system emergency on the transmission grid, (c) the occurrence of a condition or situation where the delivery of Energy to a transmission grid with which Big



Rivers is directly interconnected or the making available of electric generation services, Transmission Services or Ancillary Services that could cause (i) harm to life or limb or imminent serious threat of harm to life or limb, (ii) material damage to Big Rivers' or Kenergy's system or any material component thereof or imminent danger of material damage to property, or (iii) other dangerous occurrences that Big Rivers or Kenergy believes, in the exercise of Good Utility Practice, should be prevented or curtailed, or (d) any events similar to the foregoing that result in cessation or reduction of service under (i) the Day Ahead Market or the Real Time Market, or (ii) a Bilateral Contract.

1.1.84 System Resources: An obligation to supply Electric Services from:

- (a) Big Rivers' owned or leased electric generation facilities;
- (b) Big Rivers' contract with the Southeastern Power Administration (Contract No. 89-00-1501-637); or
- (c) Big Rivers' contractual arrangements relating to Electric Services, in effect currently or that become effective in the future, which were not entered into specifically for the purpose of serving the Sebree Smelter.

1.1.85 Tariff: Big Rivers' Open Access Transmission Tariff or, if Big Rivers is a member of a RTO or ISO, such RTO's or ISO's open access transmission or market tariff, as filed with and approved by FERC. As of the date hereof, the MISO Tariff is the Tariff.

1.1.86 Tax Indemnity Agreement: The Tax Indemnity Agreement, dated as of the date hereof, by and between Kenergy and Century.

1.1.87 Term: As defined in Section 7.1.

1.1.88 Transaction: The transactions by and between or among one or more of Kenergy, Big Rivers, Century, any Market Participant or any Bilateral Counterparty related to the supply of Electric Services to Century under the Electric Service Agreement and the other Transaction Documents.

1.1.89 Transaction Documents: This Agreement, the Electric Service Agreement, the Direct Agreement, the Load Curtailment Agreement, the Tax Indemnity Agreement, the Protective Relays Agreement, any SSR Agreement, the Century Guarantee and any other agreements entered into on the date hereof or in the future between or among the Parties or Century relating to the Transaction.

1.1.90 Transmission Provider: A Person accepted by FERC as such in any tariff relating to Transmission Services.

1.1.91 Transmission Services: Transmission services as described in the Tariff or, if applicable, the Bilateral Tariff, as needed to support the transactions contemplated by this Agreement.

1.1.92 Uncontrollable Force: Any cause beyond the control of the Party unable, in whole or in part, to perform its obligations under this Agreement that, despite exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and that, despite the exercise of due diligence, it has been unable to overcome. Examples of events that may constitute the basis of an event that constitutes an “Uncontrollable Force” include: acts of God; strikes, slowdowns or labor disputes; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of any Governmental Authority; civil or military disturbances; explosions, breakage of or accident to machinery, equipment or transmission lines; inability of a Party to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of Governmental Authorities, civil or military (so long as the Party claiming an Uncontrollable Force has not applied for or assisted in the application for such action); transmission constraints or System Emergencies; a forced outage of a generating unit or units preventing the physical delivery of Energy to Kenergy for resale to Century; declaration of an “Uncontrollable Force” under the Electric Service Agreement or an event of force majeure under the Tariff or the Bilateral Tariff, as applicable, or any Bilateral Contract and any other forces that are not reasonably within the control of the Party claiming suspension. “Uncontrollable Forces” do not include an insufficiency of funds or decline in credit ratings or customary, expected or routine maintenance or repair of plant or equipment. Nothing contained herein shall be construed to obligate a Party to prevent or to settle a labor dispute against its will.

1.1.93 Wilson Generation Station: Big Rivers’ D.B. Wilson Station, a single unit, coal-fired steam electric generating unit located in Centertown, Kentucky.

1.1.94 ZRC: Zonal Resource Credits as defined in the MISO Tariff, or any similar items under the Tariff.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and *vice versa*; (c) references to “Recitals,” “Articles,” “Sections,” “Exhibits” or “Schedules” are to the recitals, articles, sections, exhibits or schedules of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person’s authorized agents, permitted successors and assigns in such capacity; (e) the words “herein,” “hereof” and “hereunder” will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits and schedules hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented, substituted, renewed or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken

or performed on any day that is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; (o) all references to the word “or” shall not be exclusive; and (p) all references to a Governmental Authority shall include any successor to all or a portion of such Governmental Authority’s authority. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

## ARTICLE 2

### ELECTRIC SERVICES AND RATES

2.1 Service Period Obligations. In accordance with the terms and conditions of this Agreement, Big Rivers will sell and deliver, and Kenergy will purchase, Electric Services for delivery to Century under the Electric Service Agreement for a period beginning at 11:00:00 p.m. on the later of (a) the day immediately following the Effective Date and (b) January 31, 2014, and continuing until 10:59:59 p.m. on December 31, 2023, unless the Parties’ respective obligations to supply and purchase Electric Services are terminated earlier pursuant to the terms and conditions of this Agreement; *provided*, that such period may be extended pursuant to Section 7.1 (the “Service Period”).

2.2 Characteristics of Service. Electric service to be supplied by Big Rivers to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement shall be nominally three-phase, sixty-cycle at 161,000 volts or as otherwise agreed to by the Parties and Century. The Parties and Century will mutually agree on limits of the regulation of voltage but at no time may such regulation of such limits be inconsistent with standards required by applicable Governmental Authorities or any other organizations that establish applicable reliability and electric operation standards.

2.3 Delivery Obligation. During the Service Period, Big Rivers will deliver, or cause to be delivered, Electric Services in accordance with the terms and conditions of this Agreement at the Delivery Point.

2.3.1 Energy. Big Rivers will use reasonable commercial efforts to acquire the Base Load and, if applicable, the Curtailable Load, for resale to Kenergy under this Agreement for resale to Century under the Electric Service Agreement to meet the Load of the Sebree Smelter at the Delivery Point. Schedules submitted by Kenergy on behalf of Century may not exceed Base Load plus any applicable Curtailable Load and in any event not more than 378 MW. Total usage is limited to the Base Load amount if there is no Curtailable Load; *provided, however*, that if there is Curtailable Load, then usage may exceed scheduled load by up to 10 MW (supplied as imbalance Energy) but not to exceed 388 MW. Kenergy acknowledges and agrees that any such excess over 388 MW shall be charged to Kenergy at the Excess Energy Rate; *provided*, that payment of the charge under Section 4.6.9 shall not be deemed to be a waiver of the restrictions herein on

Century's Load not exceeding the scheduled Load. Big Rivers will procure the Energy for resale to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement (a) under a Bilateral Contract pursuant to Section 2.4, (b) in the Day Ahead Market if scheduled in accordance with Article III, or (c) if not pursuant to clause (a) or (b), in the Real Time Market.

2.3.2 Other Electric Services. Big Rivers will obtain Electric Services other than Energy as required and directed by Kenergy, pursuant to direction from Century to Kenergy and Big Rivers under the Electric Service Agreement, with respect to the purchase of such Electric Services (a) in the applicable market of the RTO or ISO of which Big Rivers is a member, or (b) through a Bilateral Contract.

2.4 Bilateral Purchases. Upon request by Kenergy following notice from Century under the Electric Service Agreement, Big Rivers shall use reasonable commercial efforts to acquire specified Electric Services from specified Persons ("Bilateral Counterparties") for resale hereunder to Kenergy for delivery to Century under the Electric Service Agreement. Kenergy must specify in any such request (i) the identity of the Bilateral Counterparty, (ii) the requested amount and duration of such Electric Services, and (iii) desired pricing and other material terms and conditions.

2.4.1 Big Rivers' obligation to enter into any Bilateral Contract will be conditioned upon (a) Big Rivers' prior receipt of a written notification from Century to Kenergy and Big Rivers setting forth Century's consent to the execution, delivery and performance of such Bilateral Contract, and (b) Big Rivers' satisfaction in its sole discretion, only as to financial security arrangements and the elimination of risk to Big Rivers associated with the Bilateral Contract and the arrangements with the Bilateral Counterparty. For the avoidance of doubt, any Bilateral Contract must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Bilateral Counterparty, (c) not require Kenergy to purchase Electric Services from a Person other than Big Rivers, except during periods when Kenergy is the Market Participant, and (d) not result in Big Rivers paying the Bilateral Counterparty prior to the time Big Rivers is paid under this Agreement for any related amounts due.

2.4.2 Promptly following request by Century to Kenergy and Big Rivers pursuant to Section 2.4.1, Big Rivers shall arrange or have arranged all Transmission Services and Ancillary Services necessary to transmit the Energy Big Rivers obtains under a Bilateral Contract to the Delivery Point. The amount of Energy transmitted from the source to the Delivery Point shall be adjusted to reflect the application of any system loss factor unless otherwise addressed in the terms and conditions of the applicable Bilateral Contract.

2.4.3 The provisions herein relating to Surplus Sales shall apply if Century is unable to receive and consume any Electric Services, or Big Rivers is unable to deliver such Electric Services purchased by Big Rivers under a Bilateral Contract for resale to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement because of an Uncontrollable Force.

2.5 [Reserved.]

2.6 Title and Risk of Loss. Title to and risk of loss with respect to all Electric Services provided by Big Rivers to Kenergy under this Agreement for delivery to Century pursuant to the Electric Service Agreement will pass from Big Rivers to and rest in Kenergy when the same is made available by Big Rivers at the Delivery Point. Until title passes, Big Rivers will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby. After title passes to Century, Big Rivers acknowledges and agrees that Kenergy will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby.

2.7 Performance by the Parties. Each Party acknowledges and agrees that, to the extent a Person has a corresponding or related obligation to the other Party under a Transaction Document, such other Party's performance of an obligation with respect to such matter under this Agreement or any other Transaction Document is subject to and conditioned upon such Person's performance of such corresponding or related obligation to such other Party. Subject only to performance by a Person with an obligation to such other Party of its obligations to such other Party, such other Party shall perform its obligations under this Agreement and the other Transaction Documents to which it is a party. Each Party acknowledges and agrees that such Person with an obligation to the other Party may enforce an obligation of such Party under this Agreement or any other Transaction Document that corresponds or relates to the obligation of the first Party to such Person. For example, with respect to a purchase of Energy under a Bilateral Contract, Big Rivers shall be obligated to deliver to Kenergy only those amounts of Energy received by Big Rivers, net of applicable losses of Energy. Big Rivers will not be in default under any provision of this Agreement nor will it have any liability to Century or Kenergy if the non-delivery of Energy to be purchased by Kenergy hereunder sourced under a Bilateral Contract is due to a failure by the Bilateral Counterparty to deliver the full amount of such Energy required under the Bilateral Contract; *provided*, that Big Rivers has assigned to Kenergy the rights and remedies of Big Rivers against the Bilateral Counterparty under such agreement, for Kenergy's assignment of such rights and remedies to Century pursuant to the Electric Service Agreement.

### ARTICLE 3

#### MARKET PARTICIPATION AND SCHEDULING

##### 3.1 Market Participant.

3.1.1 Big Rivers shall act as the initial Market Participant with respect to the Electric Service Agreement in connection with the Transaction and, pursuant to this Agreement, shall use reasonable commercial efforts to arrange and procure the Electric Services required by Kenergy for delivery to Century under the Electric Service Agreement.

3.1.2 Big Rivers acknowledges and agrees that, subject to Section 18.8, Kenergy may elect to become the Market Participant, subject to Century's consent and approval.

3.1.3 Big Rivers acknowledges and agrees that, subject to Section 18.8, at any time during the Service Period, Century may appoint a Person to be the Market Participant under the Electric Services Agreement, subject to Kenergy's consent and approval, which shall not be unreasonably withheld or delayed. Big Rivers further acknowledges that Century shall give Kenergy and Big Rivers not less than 120 days' prior written notice of the appointment of such Person to be the new Market Participant. Kenergy shall be responsible for any Costs to Big Rivers resulting from Big Rivers no longer being the Market Participant with respect to the Electric Services Agreement. Big Rivers shall transfer ownership of the Sebree Node to the new Market Participant.

3.1.4 Big Rivers further acknowledges and agrees that, for the avoidance of doubt, a Person acting as the Market Participant shall remain in that capacity, notwithstanding any election under Section 3.1.2 of the Electric Service Agreement or appointment under Section 3.1.3 of the Electric Service Agreement of a different Person as a Market Participant, until the consent and approval required from the applicable Party under Section 3.1 of the Electric Service Agreement is obtained.

3.1.5 Kenergy acknowledges and agrees that Big Rivers shall have no liability under this Agreement or otherwise in connection with or arising out of the absence of any Person acting as the Market Participant during any period in which a Person previously acting as the Market Participant ceases to act in that capacity and another Person is not yet acting in that capacity in accordance with Section 3.1 of the Electric Service Agreement.

3.2 Base Load. The Base Load may be modified only as provided in Section 1.1.9.

3.3 Scheduling.

3.3.1 Kenergy or its designee shall provide or cause to be provided a schedule, on an Hourly basis, of all required Electric Services to Big Rivers or its designee; *provided*, that commencing on the day following the Effective Date, Big Rivers will schedule the Base Load and, if applicable, the Curtailable Load as the Hourly Load of Century in the Day Ahead Market unless Kenergy provides or causes to be provided notice to Big Rivers of an alternative schedule not later than 8:00 a.m. on the Business Day prior to the day of delivery.

3.3.2 Kenergy promptly, and no later than sixty (60) minutes prior to any applicable deadline under any applicable RTO or ISO scheduling guidelines, shall notify Big Rivers or cause Big Rivers to be notified of any revisions to Century's schedule by providing Big Rivers with a revised schedule in compliance with the other terms and conditions of this Agreement, and Big Rivers shall submit such revised schedule to the applicable RTO or ISO within such scheduling guidelines.

3.4 Transmission Rights. Kenergy or its designee shall have the right to direct Big Rivers or cause Big Rivers to be directed to request, schedule or sell the Century Transmission Rights in such time and amounts specified at least three Business Days prior to the applicable deadline. Kenergy, for the benefit of Century, shall be entitled to the Net ARR/FTR Proceeds of

the sale of any Century Transmission Rights in the form of a credit to amounts otherwise owing from Big Rivers to MISO in respect of Electric Services purchased by Kenergy under this Agreement for delivery to Century under the Electric Service Agreement.

### 3.5 Transition to Another RTO or ISO.

3.5.1 This Agreement and the other Transaction Documents have been drafted by the Parties and Century under the presumption that, during the Service Period, the Sebree Node is located in MISO and Big Rivers is a member of MISO. Kenergy or Big Rivers may, each in its sole discretion, elect to join or become a member of a RTO or ISO other than MISO or elect to withdraw as a member of MISO and not be a member of any RTO or ISO. In such circumstances, the Parties and Century agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

3.5.2 The Parties acknowledge and agree that Sebree Node may remain in MISO if (a) requested by Century, (b) permitted by both the new RTO or ISO and MISO, (c) Century is responsible for any Costs resulting from the Sebree Node remaining in MISO, and (d) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO. In such case, any terms used herein that relate to the RTO or ISO of which Big Rivers is a member or its tariff shall be deemed amended, as applicable, to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

3.5.3 Each Party acknowledges and agrees that if at any time the Sebree Node is no longer part of any RTO or ISO, then the Electric Services provided hereunder shall be provided exclusively pursuant to Section 2.4, which shall include arrangements for imbalance Energy.

### 3.6 Forecasts.

3.6.1 Kenergy shall provide, or cause to be provided, to Big Rivers a forecast of Century's Load at the Sebree Node in accordance with the requirements of (a) Module E (Resource Adequacy) of the MISO Tariff, so long as the Sebree Node is located in MISO, or (b) the resource adequacy provisions of the tariff of the RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located, in each case, at least five Business Days prior to the deadline therefor set forth in the applicable tariff. This forecast currently includes a peak forecast for Century's Load at the Sebree Node for the succeeding 36 months, or for such other term as reasonably requested by Big Rivers or as required by the RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located, the RTO or ISO of which Big Rivers is a member or the Tariff.

3.6.2 Kenergy shall respond on or prior to the fifth Business Day to any requests made by Big Rivers to Kenergy for data, forecasts, projections or other information necessary or reasonably appropriate for Big Rivers to comply with requests or requirements of the RTO or ISO, or Transmission Provider for the service area, in which the Sebree Node is located, the RTO or ISO of which Big Rivers is a member, other Governmental Authorities or the Tariff. The obligations of Kenergy under this Section shall survive termination of this Agreement.

## ARTICLE 4

### CHARGES AND CREDITS

4.1 Monthly Charge. Kenergy shall pay Big Rivers the following (the “Monthly Charge”) for the Electric Services provided or made available under this Agreement and for other amounts owing to Big Rivers under this Agreement, without duplication, including:

- 4.1.1 Applicable RTO Charges calculated pursuant to Section 4.2;
- 4.1.2 *plus* the Bilateral Charges calculated pursuant to Section 4.3;
- 4.1.3 *plus* the Excess Reactive Demand Charge calculated pursuant to Section 4.4;
- 4.1.4 *plus* other amounts calculated pursuant to Section 4.5; and
- 4.1.5 *plus* taxes calculated pursuant to Section 4.6.

4.2 Applicable RTO Charges. Charges and credits invoiced to Big Rivers by the applicable RTO or ISO on a pass-through basis for all Electric Services purchased by Kenergy at the Sebree Node hereunder, other than Electric Services purchased by Big Rivers under a Bilateral Contract, and any other RTO or ISO charges payable by Big Rivers for the benefit of Century under the Electric Service Agreement (the “Applicable RTO Charges”), whenever invoiced, including:

- 4.2.1 All activity listed on the settlement statement of the applicable RTO or ISO attributed by such RTO or ISO to the Sebree Node, including Reliability Costs relating to the Sebree Node;
- 4.2.2 All activity for Transmission Services attributed by the applicable RTO or ISO to the Sebree Node, including, if applicable, activity during the portion of a month during the Service Period;
- 4.2.3 All activity relating to the planning year (or other applicable period) of the applicable RTO or ISO that is attributed by such RTO or ISO to the Sebree Node, including planning activity relating to ZRCs, ARRs and FTRs;



4.2.4 Costs relating to RTO Transmission Upgrades attributed by such RTO or ISO to the Sebree Node that otherwise relate to Century's operation of the Sebree Smelter; and

4.2.5 Any credit for Net ARR/FTR Proceeds resulting from the sale of the Century Transmission Rights.

4.3 Bilateral Charges. Any charges to Big Rivers under a Bilateral Contract with respect to Electric Services or other Costs for the benefit of Kenergy with respect to Century, including any and all separate charges for transaction fees (including broker fees), Transmission Services, Ancillary Services and related services, whenever incurred (including financial transmission rights, transmission congestion charges and similar Costs or expenses) (collectively, "Bilateral Charges").

4.4 Excess Reactive Demand Charge. For any Billing Month, the "Excess Reactive Demand Charge", if any, shall be the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, between:

4.4.1 the maximum metered reactive demand of Century during the Billing Month, and

4.4.2 an amount of kilovars equal to the sum of:

(a) the product of (A) 0.3287, and (B) the maximum hourly demand during a Billing Month, denominated in kW, associated with Energy provided by Kenergy for resale to Century, and

(b) 54,114.

4.5 Other Amounts. For any Billing Month:

4.5.1 Costs arising from any tax liability of Big Rivers resulting from Surplus Sales.

4.5.2 Costs arising under Section 10.2 relating to compliance with Applicable Laws relating to the environment.

4.5.3 Costs arising under Section 10.3 relating to compliance with Hedging Arrangements.

4.5.4 Costs arising from a requirement to pay invoices from the applicable RTO or ISO on a frequency greater than the periodicity set forth in Section 5.1.

4.5.5 Costs arising under Section 3.1.3 relating to the appointment of a new Market Participant.

4.5.6 Charges for any other services required to be purchased by Big Rivers to provide the services hereunder to Kenergy for the benefit of Century, including any

energy advisory services for scheduling, awards and settlements (including such services provided by ACES (formerly ACES Power Marketing)).

4.5.7 Costs associated with the Sebree Node exiting an RTO or ISO in connection with an election made by Big Rivers or Century pursuant to Section 3.5.2.

4.5.8 The Excess Energy Rate multiplied by the amount of Energy in excess of 388 MW in any Hour.

4.5.9 Other out-of-pocket Costs payable by Big Rivers to another Person that are incurred or committed to by Big Rivers in connection with or arising out of the Transaction, including (a) Indemnified Liabilities, (b) any security necessary to be provided to any Person (including the RTO or ISO of which Big Rivers is a member or a Bilateral Counterparty) arising out of the Transaction, and (c) the Costs to pursue any approval or consent under Section 7.2.2; *provided*, that Costs referenced on Exhibit A shall be allocated as provided therein; *provided, further*, that Big Rivers shall not voluntarily enter into any contractual commitment for Costs referred to in this Section for any period in excess of one (1) year without the consent of Century.

4.6 Taxes. No state or local sales, excise, gross receipts or other taxes are included in the charges and credits set forth in this Article 4. Kenergy shall pay or cause to be paid any such taxes that are now or hereafter become applicable to the resale of Electric Services to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement.

4.7 No Duplication. Subject to the provisions of Section 5.4, the Monthly Charge shall not include any item that would result in a duplicative payment for a particular charge if Big Rivers would not be liable for the duplicative amount.

## ARTICLE 5

### BILLING

5.1 Market Invoices. Big Rivers shall bill Kenergy, on or before the third Business Day following receipt by Big Rivers of an invoice from the applicable RTO or ISO for any amounts invoiced with respect to service to Big Rivers on behalf of Kenergy for the benefit of Century plus any other amounts then due and owing for any portion of the Electric Services or other amounts payable by Kenergy with respect to the applicable RTO or ISO. Kenergy shall pay or cause to be paid to Big Rivers such amounts in immediately available funds to an account designated by Big Rivers or its designee on the second Business Day following Kenergy's receipt of the bill under this Section. For the convenience of the Parties, and to facilitate Kenergy's obligations to Big Rivers, Kenergy has assigned its right to receive any payments from Century pursuant to Section 5.1 of the Electric Service Agreement and Kenergy's rights to collect and enforce the collection of such amounts due from Century pursuant to the Lockbox Agreement.

5.2 Monthly Invoices for other Amounts. Big Rivers shall bill Kenergy on or before the fifteenth (15th) Business Day of each month for the Monthly Charge (other than the charges billed pursuant to Section 5.1) as calculated pursuant to Article 4 plus any other amounts then due and owing pursuant to this Agreement or any other Transaction Document. Kenergy shall pay or cause to be paid to Big Rivers such portion of the Monthly Charge and any other amounts due and owing to Kenergy in immediately available funds to an account designated in the Lockbox Agreement on the Business Day following the 24th day of the month following the Billing Month or such earlier date of such month on which the Members' payment to Big Rivers is due.

5.3 Default Interest. If any invoice rendered by Big Rivers is not paid on the due date, interest will accrue and become payable by Kenergy to Big Rivers on all unpaid amounts at a rate of one percent over the Prime Rate commencing on the first day after the due date and accruing on each day thereafter until the date such amount is paid; *provided*, that if interest in respect of any such unpaid amount accrues interest at a different rate to another Person, the applicable default interest rate shall be such different rate payable to the Person to which such unpaid amounts are owed.

5.4 Payments Under Protest. If any portion of any statement is disputed by Kenergy or Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Big Rivers shall promptly cause to be refunded to Kenergy (or to Century on behalf of Kenergy, as applicable) the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made; *provided*, that, if applicable, interest payable with respect to any amounts refunded to Big Rivers shall be based on the interest paid to Big Rivers, if any, by the payor on a pass-through basis. If the amount to be refunded to Kenergy relates to amounts paid to a Person (other than Big Rivers), then Big Rivers will refund such amounts promptly upon receipt of the refund of such amount.

5.5 Release and Indemnification.

5.5.1 Big Rivers (a) shall release Kenergy from any and all claims Big Rivers may have against Kenergy for the failure of Century to satisfy its obligations under the Electric Service Agreement, and (b) shall indemnify, hold harmless and defend Kenergy from and against any and all claims Century may assert against Kenergy in connection with any failure by Century to perform under the Electric Service Agreement, if Kenergy elects to assign its rights in connection therewith pursuant to Section 5.5.2.

5.5.2 If Century shall default under the Electric Service Agreement, Kenergy may deliver to Big Rivers (a) a power-of-attorney with full power of substitution that shall designate Big Rivers or its designee as Kenergy's attorney-in-fact (that shall be coupled with an interest and irrevocable) for purposes of negotiating and prosecuting any and all claims Kenergy may have against Century for a failure of Century to satisfy its obligations under the Electric Service Agreement and to file or prosecute any claim, litigation, suit or proceeding before any Governmental Authority in the name of Kenergy or in its own name, or take such other action otherwise deemed appropriate by Big Rivers for the purposes of obtaining legal or equitable relief as a result of the failure of Century

to satisfy its obligations under the Electric Service Agreement and to compromise, settle, or adjust any suit, action or proceeding related to the failure of Century to satisfy such obligations and to give such discharges or releases as Big Rivers may deem appropriate, and (b) an assignment conveying to Big Rivers all of Kenergy's right, title and interest in and to any legal, equitable or other relief, including the recovery of damages and the grant of injunctive relief or other remedies to which Kenergy may be entitled with respect to the failure of Century to satisfy its obligations under the Electric Service Agreement. The power-of-attorney and the assignment shall be in form and substance reasonably satisfactory to Big Rivers and shall be legally effective and enforceable under Kentucky or other Applicable Law.

5.6 No Waiver. No payment made by Kenergy (or Century on Kenergy's behalf) pursuant to this Article 5 will constitute a waiver of any right of Kenergy (or Century) to contest the correctness of any charge or credit.

## ARTICLE 6

### EFFECTIVE DATE AND CONDITIONS

6.1 Effective Date. The obligations of the Parties under Article 2, Article 3, Article 4, Article 5, Section 7.3, Article 8, Article 9, Article 10, Article 11, Article 12, Article 14, and Article 15 shall not commence until the Effective Date. The "Effective Date" will occur on the first date each of the conditions set forth in Section 6.2 has been satisfied in full or waived in writing by the Party in whose favor such condition exists (to the extent one or more conditions is subject to being waived).

6.2 Conditions to Occurrence of Effective Date. The following shall be conditions to the occurrence of the Effective Date:

6.2.1 The meters at the substation of the Robert A. Reid substation at the Sebree generation station shall be a Commercial Pricing Node (as defined in the MISO Tariff).

6.2.2 Each of the representations and warranties of the Parties contained in this Agreement and the representations and warranties of Kenergy and Century in the Electric Service Agreement will be true and correct as of the date hereof and the Effective Date (as though such representations and warranties were made at and as of the date hereof and the Effective Date), and each of the Parties shall have received a certificate to such effect from the other Party with respect to the other Party's representations and warranties in this Agreement and Big Rivers shall have received a certificate to such effect from Kenergy and Century in respect of their respective representations and warranties in the Electric Service Agreement.

6.2.3 Each of the documents and agreements set forth in Schedule 6.2.3 will have been duly authorized, executed and delivered by the parties thereto, and all conditions precedent to the effectiveness of such agreements will have been satisfied or waived, and shall, if effective on the date of the execution of this instrument amended

after the date hereof and prior to the Effective Date, be acceptable in form and substance to the Parties.

6.2.4 The Century Guarantee will have been duly authorized, executed and delivered by Century Parent and be in full force and effect.

6.2.5 Any credit support required to be provided by Century on the Effective Date pursuant to Section 14.3, the Direct Agreement or the Electric Service Agreement shall have been provided.

6.2.6 No authorization or approval or other action by, and no notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, will be necessary prior to the commencement of the Service Period for the execution, delivery and performance by the Parties to each Transaction Document to which it is a party, other than (i) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and which are routine in nature or which cannot be obtained, or are not normally applied for, prior to the time they are required and which the Party who is required to obtain such item has no reason to believe will not be timely obtained and in each case which do not prevent provision of Electric Services as described herein, and (ii) with respect to the approval of any Governmental Authority, on the Effective Date, such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; *provided*, that Kenergy acknowledges and agrees that Big Rivers may in its sole discretion discontinue the provision of Electric Services hereunder if any such approvals required by clause (ii) of this Section are overturned or otherwise disapproved by the applicable Governmental Authority subsequent to the Effective Date.

6.2.7 The consent of RUS, each of Kenergy's secured creditors and each of Big Rivers' secured creditors to the Transaction and to all arrangements and agreements contemplated in connection therewith will have been duly issued and received and will be in full force and effect; all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date.

6.3 Efforts to Satisfy Conditions to Effective Date. Each of the Parties shall use reasonable commercial efforts and act in good faith to satisfy all of the conditions set forth in Section 6.2 at the earliest practicable date (other than those that the applicable Party agrees to waive). At such time as Kenergy or Big Rivers believes such conditions have been satisfied, such Party shall notify the other Party in writing. The obligations of the Parties under this Section 6.3 will continue until the earlier of (a) such time as this Agreement terminates pursuant to Section 7.2, and (b) the Effective Date.

## ARTICLE 7

### TERM AND TERMINATION

7.1 Term. Subject to Section 6.1, this Agreement will become binding on the Parties on the date of execution and delivery by the Parties and will remain in full force and effect until 10:59:59 p.m. on December 31, 2023, unless earlier terminated pursuant to the terms and conditions hereof (the "Term"). The Term will be automatically extended for additional one year periods on each December 31<sup>st</sup> thereafter until a Party gives at least one year's prior notice to the other Party and Century of its election for the Agreement to expire at 10:59:59 on a specified December 31.

7.2 Termination Prior to Effective Date. This Agreement may be terminated without cost or penalty prior to the occurrence of the Effective Date in accordance with this Section 7.2.

7.2.1 Termination for Failure to Satisfy Conditions to Effective Date. Either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party upon the failure of the conditions in Section 6.2 to be satisfied in full or waived by the Person in whose favor the condition exists on or before 10:59:59 p.m. on January 31, 2014.

7.2.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approvals for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Century no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.2.3 Termination Pursuant to a Century Termination. Either party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party following termination of the Electric Service Agreement pursuant to and in accordance with Section 7.2 of the Electric Service Agreement.

7.3 Termination After the Effective Date. This Agreement may be terminated after the occurrence of the Effective Date in accordance with this Section 7.3.

7.3.1 Termination for Event of Default. This Agreement may be terminated following the occurrence and during the continuation of an Event of Default pursuant to Article 15.

7.3.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approval for the Transaction that disapproves or changes material terms of this

Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Century no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.3.3 Termination for Market Participant. Subject to Section 18.8, this Agreement shall terminate upon Big Rivers no longer acting as the Market Participant with respect to the Electric Services Agreement.

7.4 Automatic Termination. Notwithstanding Sections 7.2 and 7.3, this Agreement shall terminate automatically when the Electric Service Agreement terminates if Century terminates the Electric Service Agreement pursuant to and in accordance with Article 7 thereof.

7.5 Effect of Termination. Subject to Section 18.8, neither Party will have any obligations to the other Party following termination hereof, other than obligations of the Parties under such Transaction Documents which survive termination.

## ARTICLE 8

### METERING

8.1 Metering Facilities. Big Rivers will provide or cause to be provided metering facilities at the Delivery Point that measure Hourly kW, kWh, kilovars, kilovar-hours and voltage-hours.

8.2 Reading. Big Rivers will read or cause to be read the meters at the Delivery Point on the last date of each month (or such other date as may be agreed upon by the Parties).

8.3 Testing. Big Rivers will test, or cause to be tested, the calibration of the meters at the Delivery Point by comparison of accurate standards at least once every twelve months (or more often if so required by Applicable Law) and will give Kenergy and Century not less than five Business Days' prior notice of such testing. Kenergy and Century will have the right to observe and participate in all meter tests. Meters registering not more than plus or minus 1% inaccurate will be deemed to be accurate (unless Applicable Law establishes a standard more stringent than 1%, in which case, the more stringent standard will apply). The reading of any meter that will have been disclosed by tests to be inaccurate will be corrected for the 60 days before such tests (or for such shorter period if applicable) in accordance with the percentage of inaccuracy found by such tests. If any meter should fail to register for any period, the Parties and Century will make mutually agreed upon estimates for such period from the best information available. If Kenergy or Century requests a special meter test, Big Rivers shall cause such test to be conducted; *provided, however*, that if any special meter test made at the request of Century or Kenergy discloses that the meters are not more than plus or minus 1% inaccurate, Kenergy or Century, as applicable, shall reimburse Big Rivers for the reasonable Cost of such test. In all

other respects, meters through which Big Rivers delivers Energy to Kenergy for resale to Century under the Electric Service Agreement shall be installed, operated, maintained and tested in accordance with all Applicable Law and Good Utility Practice.

## ARTICLE 9

### OPERATIONAL MATTERS

9.1 Operations and Operational Responsibility. In carrying out the requirements of this Agreement, each Party will comply with the reliability criteria, standards, guidelines and operating procedures of a FERC-approved ERO, SERC, Applicable Law and any applicable RTO, and neither Party will be required to take any action in violation of any thereof.

9.1.1 Big Rivers will operate and maintain or cause to be operated and maintained any facilities owned by it on the premises of Kenergy or Century.

9.1.2 Kenergy will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it.

9.2 Installation and Maintenance of Interconnection Equipment. Big Rivers has caused to be furnished and installed, or shall cause to be furnished or installed, all of the facilities required for the delivery of Energy to the Delivery Point, as well as the 161 kilovolt transmission lines required between the Delivery Point and the Century Substation. Big Rivers shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment but excluding any Protective Relays, necessary to enable Kenergy to deliver Energy to Century at the Delivery Point. Big Rivers will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Good Utility Practice, to the extent necessary to assure sufficient capability to take and use the Electric Services to be delivered by Big Rivers to Kenergy hereunder for resale to Century under the Electric Service Agreement. For the avoidance of doubt, nothing herein shall obligate Big Rivers to furnish, install, operate or maintain any equipment owned by Persons other than Big Rivers in connection with the provision of Electric Services to Kenergy hereunder for delivery to Century under the Electric Service Agreement.

9.3 [Reserved.]

9.4 Curtailment by Big Rivers. If Big Rivers determines in accordance with Good Utility Practice, or in compliance with any FERC-approved ERO, SERC, Applicable Law and other regulation, any applicable RTO or ISO, Reliability Coordinator or other applicable operating criteria or rules, that a System Emergency has occurred or is imminent, and after suspending or reducing deliveries to Persons purchasing interruptible Energy from Big Rivers, Big Rivers may suspend or reduce the delivery of Energy hereunder and may cease to make available in whole or in part the Electric Services, in each case to the extent caused by, or that Big Rivers determines necessary or prudent under the circumstances to prevent or attempt to prevent, or counter or reduce the effects of, such System Emergency. Subject to the Load



Curtailment Agreement, any curtailment caused by a System Emergency (or for any other reason) that cannot be avoided after the suspension or reduction of deliveries to Persons purchasing interruptible Energy from Big Rivers will be effected in a non-discriminatory manner consistent with the Tariff. Big Rivers shall notify Kenergy and Century as to the occurrence or threatened occurrence of any System Emergency or other event that may require curtailment, its cause and its impact on the provision of Electric Services under this Agreement, as soon as practicable. Big Rivers will not be obligated to supply Electric Services to Kenergy hereunder for resale to Century under the Electric Service Agreement to the extent suspended or curtailed as a result of the System Emergency.

9.5 Ownership and Removal of Equipment. Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed, by either of the Parties hereto (or by Century) on or in the premises of the other Party (or Century) to deliver or receive service under this Agreement shall be and remain the property of the Party (or Century) owning and installing such equipment, apparatus, devices or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement or any extension thereof, the owner (including, if applicable, Century) of any equipment, apparatus, devices or facilities on the property of a Party shall have the right to enter upon the premises of that Party, and shall, within a reasonable time and at the sole expense of the owner, remove such equipment, apparatus, devices or facilities.

9.6 Right of Access. Big Rivers acknowledges that pursuant to the Electric Service Agreement, Century grants the duly authorized agents and employees of Kenergy and Big Rivers the right to reasonable access to the premises of Century to the extent reasonably required for the purposes of installing, repairing, inspecting, testing, renewing or exchanging any or all of its equipment located on the premises of Century, for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Kenergy or Big Rivers shall make reasonable advance arrangements before entering the premises of Century.

9.6.1 Kenergy shall direct Century to use reasonable commercial efforts to properly protect the property of Kenergy or Big Rivers, located on the premises of Century, and to permit no Person to inspect or adjust the wiring and apparatus of Kenergy or Big Rivers except with Kenergy's or Big Rivers' consent, as applicable. Neither Party assumes the duty or responsibility of inspecting the wiring or apparatus of the other Party.

9.6.2 Kenergy hereby grants to Big Rivers Kenergy's rights from Century for a license to enter the Century Substation and upon Century's easements and rights-of-way to accomplish the purposes of this Agreement, provided that reasonable advance arrangements appropriate under the circumstances are made.

## ARTICLE 10

### COVENANTS

#### 10.1 Surplus Sales.

10.1.1 Big Rivers acknowledges and agrees that Century may request that Kenergy direct Big Rivers to sell (a) any Electric Services that Century is committed to purchase, or (b) Century Transmission Rights, in each case, that are surplus to Century's requirements by delivering prior written notice to Kenergy and Big Rivers identifying the Electric Services to be sold and the associated times and duration of the requested sales ("Surplus Sales"). The Net Proceeds of any Surplus Sales will be credited by Big Rivers against the related item in the Monthly Charges. Kenergy acknowledges and agrees that Big Rivers shall have no liability to any Person in connection with or arising out of Big Rivers' failure to make, manner of making or other handling or execution of a direction to execute Surplus Sales; *provided*, that Big Rivers has used commercially reasonable efforts with respect to such Surplus Sales in accordance with Kenergy's direction pursuant to this Section.

10.1.2 Any request to Big Rivers pursuant to this Section 10.1 or Section 10.1 of the Electric Service Agreement shall be irrevocable following the Big Rivers' entry into contractual obligations relating to any such Surplus Sales.

10.1.3 For the avoidance of doubt, nothing in this Section 10.1 shall relieve Kenergy of its obligation for any portion of the Monthly Charge pursuant to Article 4.

10.2 Compliance with Environmental Laws. Kenergy shall be responsible for Costs related to Century's operation, incurred by Big Rivers to comply with (i) state or federal renewable energy portfolio or similar standards or (ii) Applicable Laws relating to the environment. For avoidance of doubt, such Costs of Big Rivers to comply with environmental laws and regulation would not include compliance costs at Big Rivers' generation facilities, including Wilson Generation Station (other than Reliability Costs). Big Rivers acknowledges that pursuant to the Electric Service Agreement, to the extent permitted by Applicable Law, Century may self-comply with the provisions of this Section by purchasing its proportionate share of renewable energy.

10.3 Compliance with Applicable Laws Relating to Hedging Arrangements. Kenergy shall be responsible for Costs related to Century's operation incurred by Big Rivers to comply with Applicable Laws relating to sales pursuant to this Article, including Hedging Arrangements and the Dodd-Frank Act and any rules and regulations of any Governmental Authority, applicable to any Hedging Arrangements entered into by Big Rivers or any other Person in connection with Big Rivers' provision of Electric Services to Kenergy hereunder for resale to Century under the Electric Service Agreement;

10.4 Electric Service Agreement. Kenergy covenants that:

10.4.1 It will at all times fully perform and discharge all of its obligations under the Electric Service Agreement;

10.4.2 It will not resell any Electric Services purchased from Big Rivers under this Agreement, except as expressly permitted in this Agreement and the Electric Service Agreement or with the prior written consent of Big Rivers, in Big Rivers' sole discretion and it shall require that any Energy that Kenergy purchases from Big Rivers under this Agreement and resells to Century under the Electric Service Agreement must be consumed by Century in connection with its operation of the Sebree Smelter;

10.4.3 It will not take any action or support any action by other Persons that in any manner would impede Kenergy's ability to fulfill its obligations to Big Rivers under this Agreement nor will it amend or modify the Electric Service Agreement, including with respect to (i) the rates, terms and conditions for service; (ii) Century's payment obligations; or (iii) the term of the Electric Service Agreement, in each case without the prior written consent of Big Rivers;

10.4.4 It will not waive compliance by Century with any of its obligations under the Electric Service Agreement, fail to fully enforce the Electric Service Agreement against Century, or act in any manner that would adversely affect Kenergy's ability to fulfill its obligations under this Agreement;

10.4.5 It will provide to Big Rivers all notices of default received or sent by Kenergy pursuant to the Electric Service Agreement;

10.4.6 It will not terminate the Electric Service Agreement if the termination would be a breach by Kenergy thereof (including rejection of the agreement in a bankruptcy or reorganization proceeding);

10.4.7 It will not terminate the Electric Service Agreement for breach by Century without providing Big Rivers notice of such Century breach and a reasonable opportunity for Big Rivers to cure such Century breach, if it should elect, in its sole discretion, to do so. Big Rivers' opportunity to cure will extend, at a minimum, for a period of not less than ten (10) Business Days after the later of (i) the applicable period of time available for a cure by Century under the Electric Service Agreement, or (ii) notice of the breach by Century is delivered by Kenergy to Big Rivers; and

10.4.8 It will not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Electric Service Agreement to any Person without (i) subject to Section 17.4, first obtaining the written consent of Big Rivers, which consent shall not be unreasonably withheld or delayed, and (ii) causing the transferee of the Electric Service Agreement to assume and agree to perform all of Kenergy's obligations under this Agreement which arise following that assignment or transfer.

## ARTICLE 11

### UNCONTROLLABLE FORCES

11.1 Occurrence of an Uncontrollable Force. No Party will be considered to be in breach or default in the performance of any of its obligations under this Agreement if the failure of performance is due to an Uncontrollable Force, except as otherwise provided in this Article.

If either Party is unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties, to the extent that they are affected by such Uncontrollable Force, will be suspended during the continuance of any inability so caused, but for no longer period. A Party will not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful acts or omissions.

11.2 Mitigation. A Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability as promptly as reasonably possible. Nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

11.3 Notice of Uncontrollable Force. A Party shall notify the other Party at the earliest practicable time following (i) the occurrence of any Uncontrollable Force that renders such Party incapable of performing hereunder or (ii) the time at which such Party has reason to expect that such an Uncontrollable Force is imminent. Kenergy also shall notify Big Rivers if it receives notice from Century that Century anticipates that it will be unable to perform its obligations to Kenergy under any contract or agreement that affects Kenergy's performance under this Agreement due to an Uncontrollable Force and Big Rivers is not an additional addressee of such notice.

11.4 Payment Obligations. Notwithstanding anything in this Agreement to the contrary, the occurrence of an Uncontrollable Force shall not relieve Kenergy of its payment obligations under Article 4, including its payment obligations with respect to any portion of the Monthly Charge. KENERGY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF SECTION 10.1 (SURPLUS SALES) SHALL CONSTITUTE KENERGY'S SOLE AND EXCLUSIVE REMEDIES IF CENTURY IS UNABLE TO RECEIVE ENERGY INCLUDING IF THAT INABILITY IS CAUSED BY AN UNCONTROLLABLE FORCE.

## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Kenergy. Kenergy hereby represents and warrants to Big Rivers as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.1.1 Kenergy is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligation hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the Term hereof.

12.1.2 The execution, delivery and performance of this Agreement by Kenergy have been duly and effectively authorized by all requisite corporate action.

12.1.3 This Agreement and the other Transaction Documents to which it is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Kenergy in accordance with the terms hereof, except as enforceability may be

limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.1.4 The execution and delivery of this Agreement by Kenergy and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Kenergy or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Kenergy is a party or by which it, or its property, is bound.

12.1.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Kenergy is subject is required for the due execution, delivery or performance by it of this Agreement and the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Kenergy has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Kenergy that have not been satisfied or irrevocably waived.

12.1.6 There is no pending or, to Kenergy's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Kenergy to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.1.7 Kenergy is not aware of Costs to comply with Section 10.2 as of the Effective Date.

12.2 Representations and Warranties of Big Rivers. Big Rivers hereby represents and warrants to Kenergy as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.2.1 Big Rivers is an electric generation and transmission cooperative duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and

the other Transaction Documents to which it is a party, to perform its obligations hereunder and under any other Transaction Documents to which it is a party, and to carry on its business as it is now being conducted and as it is contemplated hereunder and thereunder to be conducted during the Term hereof.

12.2.2 The execution, delivery and performance by Big Rivers of this Agreement and the other Transaction Documents to which it is a party have been duly and effectively authorized by all requisite partner action.

12.2.3 This Agreement and the other Transaction Documents to which Big Rivers is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Big Rivers in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.2.4 The execution and delivery of this Agreement by Big Rivers and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Big Rivers or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Big Rivers is a party or by which it, or its property, is bound.

12.2.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Big Rivers is subject is required for the due execution, delivery or performance by it of this Agreement or the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Big Rivers has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Big Rivers that have not been satisfied or irrevocably waived.

12.2.6 There is no pending or, to Big Rivers' knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Big Rivers to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the

Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.2.7 Big Rivers is not aware of Costs to comply with Section 10.2 as of the Effective Date.

## ARTICLE 13

### INDEMNIFICATION

13.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, each Party (in such capacity, an “Indemnifying Party”) hereby agrees that it will pay, and will protect, indemnify, and hold harmless the other Party and its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an “Indemnified Person”), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject arising out of or relating to the performance or failure to perform its obligations under this Agreement, any other Transaction Documents to which it is a party or any Bilateral Contract (each, an “Indemnified Liability”), and any actual or prospective claim, litigation, investigation or proceeding relating thereto, whether based on contract, tort or any other theory, and regardless of whether any Indemnified Person is a party thereto, including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 13.1.

13.2 Primary Indemnity. Except to the extent that there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of an Indemnifying Party under this Agreement.

13.3 Payments.

13.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify the Indemnifying Party in a timely manner of any such amounts payable by the Indemnifying Party hereunder; provided, that any failure to provide such notice shall not affect the Indemnifying Party’s obligations under this Article 13.

13.3.2 Any amounts payable by an Indemnifying Party pursuant to this Article 13 shall be payable within the later to occur of (i) ten (10) Business Days after the Indemnifying Party receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which the Indemnifying

Party's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

13.4 Survival. The provisions of this Article 13 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

13.5 Subrogation. Upon payment by an Indemnifying Party pursuant to this Article 13 of any claim under Section 13.1 in respect of any Indemnified Liability, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of the Indemnifying Party cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

## ARTICLE 14

### ADDITIONAL AGREEMENTS

14.1 Regulatory Proceedings.

14.1.1 Proceedings That Affect Rates. Neither Kenergy nor Big Rivers will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rates and charges set forth in this Agreement or other terms and conditions set forth herein.

14.1.2 KPSC Jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Kenergy, Big Rivers or the rates, terms and conditions of the provision of Electric Services to Century.

14.2 Audit Rights.

14.2.1 Kenergy will permit Big Rivers to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy reasonably relating to its service to Century under the Electric Service Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Century under the Electric Service Agreement for a period of three years beyond the date of the service.

14.2.2 Big Rivers will permit Kenergy and Century to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Big Rivers reasonably relating to its service to Kenergy under this Agreement, including scheduled deliveries, meter records, billing records, records related to payments made by Kenergy or Century to Big Rivers pursuant to the assignment described in Section 5.1, and such other documents related to payment for and determination of the amount of Electric Services supplied by Big Rivers and delivered to Kenergy for resale and delivery to Century and the appropriate classification of such Energy. Big Rivers shall retain all documentation applicable to service to Kenergy under this Agreement for a period of three years.



14.2.3 Nothing in this Section 14.2 shall obligate a Party to disclose attorney-client privileged information.

14.3 Credit Support.

14.3.1 Kenergy shall cause Century to provide and maintain credit support in the form, at Century's election, of (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Big Rivers in its sole discretion, or (iii) other credit support acceptable to Big Rivers in its sole discretion, in each case, in an amount equal to the sum of the following:

(a) amounts reasonably estimated by Big Rivers to become due and payable to Big Rivers under this Agreement for a period of the two succeeding months; and

(b) the amount (without duplication) of any credit support required to be provided and maintained under Section 14.3 of the Electric Service Agreement for the benefit of Big Rivers.

14.3.2 Kenergy shall cause Century to provide and maintain additional credit support in the form required by any RTO or ISO and in the amount (a) determined by Big Rivers with respect to the provision of Electric Services to Kenergy hereunder for delivery to Century under the Electric Service Agreement, and (b) required under any Bilateral Contract for the purchase by Kenergy of any Electric Services hereunder for delivery to Century under the Electric Service Agreement, without the requirement for Big Rivers to provide credit support or be liable to the Bilateral Counterparty.

14.3.3 Kenergy shall cause Century to provide any credit support required by this Section 14.3 to the Person designated by Big Rivers but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

14.4 Right to Supply from Big Rivers. Kenergy acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the Sebree Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter other than as provided in this Agreement for the purchase of Electric Services in the Day Ahead Market or the Real Time Market or from a Bilateral Counterparty.

## ARTICLE 15

### EVENTS OF DEFAULT; REMEDIES

15.1 Events of Default. Each of the following constitutes an "Event of Default" under this Agreement:

15.1.1 Failure by a Party to make any scheduled payment in accordance with this Agreement;

15.1.2 Failure by Century for three or more Business Days to maintain any security required by Section 14.3;

15.1.3 Failure of a Party to perform any material duty imposed on it by this Agreement (other than a failure to make a payment when due) within 30 days following the non-performing Party's receipt of written notice of the non-performing Party's breach of its duty hereunder;

15.1.4 Failure by a Party to pay any amounts under this Agreement or any Transaction Document within three Business Days following the non-performing Party's receipt of written notice of the non-performing Party's default in its payment obligation, except as provided in Section 15.1.1;

15.1.5 Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article 17;

15.1.6 The occurrence and continuance of an "Event of Default" under any Transaction Document, including the Electric Service Agreement;

15.1.7 Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws by a Party and such petition has not been withdrawn or dismissed within 60 days after filing;

15.1.8 Assignment by a Party for the benefit of its creditors; or

15.1.9 Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment.

15.2 Remedies, General. Except as otherwise provided in this Agreement, following the occurrence and during the continuance of an Event of Default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity; *provided*, that if Big Rivers is the non-defaulting Party, it may elect to terminate this Agreement upon three (3) Business Days' prior written notice to the other Party and Century, or to seek enforcement of its terms at law or in equity. Unless otherwise provided herein, remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy and nothing contained in this Agreement may be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein provided that:

15.2.1 UNDER NO CIRCUMSTANCE WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER TO THE OTHER PARTY, ITS AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS WHETHER IN TORT, CONTRACT OR OTHERWISE

FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

15.2.2 Kenergy acknowledges and agrees that, if Kenergy or Century fails to pay any monthly invoice rendered by or on behalf of Kenergy with respect to service to Century within the time prescribed in Section 5.1 or Section 5.2 of the Electric Service Agreement, Big Rivers may discontinue delivery of any or all Electric Services thereunder upon not less than 72 Hours prior written notice to Kenergy and Century of its intention to do so unless Kenergy or Century has cured such default within those 72 Hours. Kenergy further acknowledges and agrees that Big Rivers' discontinuance of such service thereunder for non-payment will not in any way affect, diminish or limit the obligations of Kenergy or Century, as applicable, to make all payments required any Transaction Document, as and when due. For the convenience of the Parties, and to facilitate satisfaction of Kenergy's obligation to Big Rivers, Kenergy hereby assigns to Big Rivers its right to receive payments from Century under the Electric Service Agreement (other than with respect to the Retail Fee or otherwise incurred by Kenergy and not related to Big Rivers) and Kenergy's rights to collect and enforce collection of such amounts due from Century. Big Rivers acknowledges and agrees that Kenergy has assigned to Century credits or funds that Big Rivers owes to Kenergy for the benefit of Century and Kenergy has agreed to cooperate with and assist Century with respect to any collections of any such amounts due from Big Rivers to Kenergy; *provided*, that Century has agreed to reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

15.2.3 Unless otherwise provided herein, if a Party is in breach of its obligations under this Agreement but such breach does not constitute, or would not with the passage of time or the giving of notice constitute, an Event of Default and this Agreement does not provide any other remedy therefor, if such breach has not been cured by the breaching Party within 60 days after receiving written notice from the non-breaching Party setting forth, in reasonable detail, the nature of such breach, the non-breaching Party may commence dispute resolution with respect to such breach and exercise its rights under Article 16, but will not be entitled to terminate, or seek to terminate, this Agreement, or suspend performance of its obligations and duties hereunder as a result of such breach.

## ARTICLE 16

### DISPUTE RESOLUTION

16.1 Resolution Meetings. If a dispute arises between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, either Party may request in writing a meeting among an authorized representative of each of the Parties and Century to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten

days or such shorter or longer time as agreed upon by the Parties of the request. Nothing in this Section 16.1 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement. Nothing in this Section shall prevent a Party, where delay in doing so could result in irreparable harm, from seeking interim, provisional or conservatory measures in accordance with Section 18.2, and any such request shall not be deemed incompatible with this Agreement.

16.2 Unresolved Disputes. Absent resolution of the dispute pursuant to Section 16.1, each Party may pursue all remedies available to it at law or in equity from a court or other Governmental Authority in accordance with Section 18.2.

16.3 RTO or ISO Disputes. Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable with respect to the provision of Electric Services to the Sebree Node or otherwise payable in respect of the provision of Electric Services hereunder shall be binding on the Parties. Nothing in this provision is intended to impair the rights of either Party to pursue any action through MISO's (or the applicable RTO's or ISO's) dispute resolution process or at the FERC.

## ARTICLE 17

### GENERAL PROVISIONS/SUCCESSORS AND ASSIGNS

17.1 Binding Nature. This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Party, except as provided in Section 17.4, and except that, subject to satisfaction of the conditions of Section 17.2, assignment may be made by either Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

17.2 Limitation on Assignment. Subject to Section 17.4, in no event may either Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Party or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

17.3 Duties. No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

17.4 Financing Lien. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

## ARTICLE 18

### MISCELLANEOUS

18.1 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

18.2 Jurisdiction. Subject to Article 16, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes; *provided*, that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in Article 16 or this Section prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any action or proceeding arising under or relating to this Agreement, at the address set forth in Section 18.6, and agrees that such service shall be, for all purposes, good and sufficient.

18.3 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

#### 18.4 Amendments.

18.4.1 This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties.

18.4.2 The Parties acknowledge and agree that nothing in this Agreement shall limit the right of Big Rivers to file changes to the Tariff, or limit the right of any Party to challenge any aspect of the Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

18.5 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement; *provided*, that no Party will be obligated to expend



9404 State Route 2096  
Robards, Kentucky 42420  
Attn: Plant Manager  
Facsimile: (270) 521-7305

With a copy to: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Facsimile: (312) 696-3102

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

For notices pursuant to Section 15.1:

If to Kenergy: Kenergy Corp.  
P.O. Box 18  
Henderson, Kentucky 42419-0018  
Attn: President and CEO  
Facsimile: (270) 685-2279

With a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
9404 State Route 2096  
Robards, Kentucky 42420  
Attn: Plant Manager  
Facsimile: (270) 521-7305

18.7 Severability. If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment will not affect, impair or invalidate the remainder of this Agreement but will be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, unless the loss or failure of such clause, sentence, paragraph or part of this Agreement materially adversely affects the benefit of the bargain to be received by either or both of the Parties, in which event the Parties shall promptly meet and use their good faith best efforts to renegotiate this Agreement in such a

fashion as will restore the relative rights and benefits of both Parties or, absent such renegotiation, the Party that was so materially adversely affected will be entitled, in its discretion, to terminate this Agreement.

18.8 Survival. Section 14.4, and prior to termination of the Electric Service Agreement, Article 9, shall survive termination of this Agreement. Each provision of this Agreement providing for payment for Electric Services and any other amounts due hereunder, assignment of the right to collect and enforce collection of amounts due, the provision, replenishment or maintenance of credit support required hereunder or related to remedies for default, damage claims, indemnification or payment of other liabilities also shall survive termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

18.9 Merger. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the matters addressed herein and supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

18.10 Further Assurances. The Parties shall execute such additional documents and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

18.11 Counterparts. This Agreement may be executed in any number of counterparts, that together will constitute but one and the same instrument and each counterpart will have the same force and effect as if they were one original.

18.12 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard or care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement other than Century. Century shall be an express third party beneficiary of this Agreement and may enforce the provisions hereof during the period of any survival obligations for its benefit pursuant to Section 18.8.

18.13 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

18.14 No Agency. This Agreement is not intended, and may not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or otherwise bind, the other Party.

[Signatures Follow on Next Page]



IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

**SCHEDULE 6.2.3**  
**LISTING OF CERTAIN TRANSACTION DOCUMENTS**

1. This Agreement
2. Electric Service Agreement
3. Direct Agreement
4. Load Curtailment Agreement
5. Century Guarantee
6. Protective Relays Agreement
7. Tax Indemnity Agreement
8. Lockbox Agreement

**EXHIBIT A**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges change:

1. ACES Fee – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum – Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
4. NRCO – Cost Differential between organization classification, if applicable, due to Century’s inclusion in Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission – Pro-rata share of Big Rivers’ intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees – Tons of emissions related to any owned or leased generating facility that any Governmental Authority with jurisdiction for reliability requires Big Rivers to operate to reliably serve the Load or in consequence of the operation of the Sebree Smelter or the Transaction.
9. KAEC – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Cases – Century will not be charged costs for Big Rivers rate cases with the KPSC.



# ARRANGEMENT AND PROCUREMENT AGREEMENT

Dated as of ~~August 19, 2013~~, January [ ], 2014,

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

**KENERGY CORP.**

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## ARRANGEMENT AND PROCUREMENT AGREEMENT

This ARRANGEMENT AND PROCUREMENT AGREEMENT (this “Agreement”) is dated as of ~~August 19, 2013,~~ January 1, 2014, and made by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative (“Big Rivers”) and KENERGY CORP., a Kentucky electric cooperative corporation (“Kenergy”). Kenergy and Big Rivers are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

### RECITALS

A. Kenergy currently supplies and delivers retail electric energy and related services to Century Aluminum of Kentucky General Partnership, a Kentucky general partnership Sebree LLC, a Delaware limited liability company (“Century”), the owner and operator of an aluminum reduction plant in Hawesville Robards, Kentucky (as further defined below, the “Sebree Smelter”), pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the “Existing Retail Agreement”).

B. Century acquired its interests in the Sebree Smelter and the Existing Retail Agreement from Alcan Primary Products Corporation, a Texas corporation (“Alcan”), pursuant to an Asset Sale Agreement, dated April 28, 2013, and an Assignment and Assumption Agreement, dated as of June 1, 2013.

C. Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers, an electric generation and transmission cooperative of which Kenergy is a member, pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the “Existing Wholesale Agreement”).

C. Century Alcan gave notice of termination of the Existing Retail Agreement on August 20, 2012, dated January 31, 2013, and effective as of January 31, 2014 (the “Notice of Termination”). The Existing Retail Agreement, as assigned by Alcan and assumed by Century, remains subject to the Notice of Termination, as confirmed in a Letter of Representations and Agreements, dated as of June 1, 2013, by and among Big Rivers, Kenergy, Century and Century Aluminum Company, a Delaware corporation, and the direct or indirect parent of Century (“Century Parent”).

D. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services obtained from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth in the Electric Service Agreement, dated as of the date hereof, between Kenergy and Century (the “Electric Service Agreement”).

E. In connection with and as a condition to Kenergy’s entry into the Electric Service Agreement, Kenergy and Big Rivers have agreed to enter into this Agreement, to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century under the Electric Service Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in Article 1, unless stated otherwise or the context requires otherwise.

1.1.1 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.2 Affiliate: With respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For avoidance of doubt, Kenergy and the other Members are not Affiliates of Big Rivers.

1.1.3 Agreement: As defined in the preamble to this Agreement.

**1.1.4 Alcan: As defined in the Recitals.**

**1.1.5** ~~1.1.4~~ Ancillary Services: Those generation-based ancillary services, that are necessary to support among other things capacity, reactive supply and voltage control, as well as the transmission of Energy from resources to loads while maintaining reliable operations of the applicable transmission system in accordance with Good Utility Practice, as set forth and described in the Tariff or, if applicable, any Bilateral Tariff.

**1.1.6** ~~1.1.5~~ Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

**1.1.7** ~~1.1.6~~ Applicable RTO Charges: As defined in Section 4.2.

**1.1.8** ~~1.1.7~~ ARR: Auction Revenue Rights as defined in the MISO Tariff, or any similar items under the Tariff.

**1.1.9** Base Load: *The "Base Load" shall be determined by the following, as applicable:*

(a) The maximum amount of Load (not to exceed 378 MW) that may be reliably delivered to the Sebree Node without any Governmental Authority with jurisdiction for reliability requiring Big Rivers to operate any owned or leased generation facility to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction;

(b) 1.1.8 Base Load: The "Base Load" shall be determined by the following, as applicable: (a) The maximum amount of Load (not to exceed 482 MW) that may be reliably delivered to the Hawesville Node, as confirmed or approved by MISO, in circumstances where Big Rivers has idled the Coleman Generation Station. (b) The "Base Load" may be increased (not to exceed 482 378 MW) by notice from Century to Kenergy and Big Rivers if such increase does not create a reliability issue, as determined by any Governmental Authority with jurisdiction over electric reliability. As of the date of this Agreement hereof, the Parties are unaware of any Governmental Authority with jurisdiction over electric reliability with respect to an increase in the Base Load other than FERC and MISO. (c) If a SSR Agreement is in effect, the "Base Load" shall be the maximum amount of Load as confirmed or approved by the applicable RTO or ISO (not to exceed 482 MW); (d) The Base Load shall be 482 MW if Big Rivers is operating all three units at the Coleman Generating Station for any reason other than a requirement by MISO to operate for reliability. (e) The Base Load shall be determined by the applicable RTO or ISO (up to 482 MW) if Big Rivers operates less than all three units of the Coleman Generation Station for any reason other than a requirement by the RTO or ISO to operate for reliability even if the remaining units are operated under an SSR Agreement. (f) In all other circumstances, the "Base Load" shall be zero. ;

(c) If a SSR Agreement is in effect, the "Base Load" shall be the maximum amount of Load as confirmed or approved by the applicable RTO or ISO (not to exceed 378 MW);

(d) The Base Load shall be 378 MW if Big Rivers is operating the Wilson Generation Station for any reason other than a requirement by MISO to operate for reliability; and

(e) In all other circumstances, the "Base Load" shall be zero.

1.1.10 1.1.9 Big Rivers: As defined in the preamble to this Agreement.

1.1.11 1.1.10 Bilateral Charges: As defined in Section 4.3.

1.1.12 1.1.11 Bilateral Contract: A contractual arrangement between Big Rivers, acting as the Market Participant, and a Bilateral Counterparty pursuant to which Big Rivers obtains a right or obligation to purchase at the Delivery Point any Electric Services for resale to Kenergy pursuant to this Agreement for delivery to Century pursuant to the Electric Service Agreement based upon generation resources or contract resources of such Bilateral Counterparty.

**1.1.13** ~~1.1.12~~ **Bilateral Counterparty**: As defined in Section 2.4.

**1.1.14** ~~1.1.13~~ **Bilateral Tariff**: The open access transmission or markets tariff or similar construct applicable to a transaction with a Bilateral Counterparty.

**1.1.15** ~~1.1.14~~ **Billing Month**: Each calendar month during the Service Period.

**1.1.16** ~~1.1.15~~ **Business Day**: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

~~1.1.16~~ **Capacitor Additions**: As defined in the Capacitor Agreement.

~~1.1.17~~ **Capacitor Additions and Protective Relays Guarantee**: The Capacitor Additions and Protective Relays Guarantee, dated as of August 12, 2013, by Century Parent, in favor of Big Rivers and Kenergy, relating to the Capacitor Agreement and the Protective Relays Agreement.

~~1.1.18~~ **Capacitor Agreement**: The Capacitor Agreement, dated as of August 12, 2013, by and among Big Rivers, Kenergy and Century.

**1.1.17** ~~1.1.19~~ **Century**: As defined in the Recitals.

**1.1.18** ~~1.1.20~~ **Century Guarantee**: As defined in the Electric Service Agreement.

**1.1.19** ~~1.1.21~~ **Century Parent**: *Century Aluminum Company, a Delaware corporation, and the indirect parent of Century* **As defined in the Recitals.**

**1.1.20** ~~1.1.22~~ **Century Substation**: Century's electrical substation located adjacent to the Hawesville **Sebree** Smelter.

**1.1.21** ~~1.1.23~~ **Century Transmission Rights**: All allocations from MISO of FTRs or ARRs resulting from service by Big Rivers to Kenergy under this Agreement and service by Kenergy to Century under the Electric Service Agreement and FTRs purchased by Century.

~~1.1.24~~ **Coleman Generation Station**: *Big Rivers' Kenneth C. Coleman Plant, a three unit, coal fired steam electric generating unit located near Hawesville, Kentucky.*

**1.1.22** ~~1.1.25~~ **Costs**: In the context of the specific costs referenced, "Costs" shall mean those costs of Big Rivers to the extent that such costs relate to the operation of Century. For the avoidance of doubt, "Costs" include (i) Century's proportionate share of costs that are incurred by Big Rivers to serve both Century and other loads, and (ii) costs incurred by Big Rivers that relate only to Century's operation. Costs listed in **Exhibit A** shall be proportionately allocated as provided therein, or using the method applicable from time to time for calculation of bills (if the calculation method has changed from that shown in **Exhibit A**).

**1.1.23** ~~4.1.26~~ Curtailable Load: The maximum amount of additional Load at the Hawesville ~~Sebree~~ Node above the Base Load that may be served on a reliable basis, as confirmed or approved by MISO (or, if applicable, by another RTO or ISO, or Transmission Provider for the service area, in which the Hawesville ~~Sebree~~ Node is located) ~~assuming~~ **accounting for** the installation ~~effect of any~~ Protective Relays **installed** at the Hawesville ~~Sebree~~ Smelter, *provided*, that such amount shall be zero if such confirmation or approval is not given; *provided, further*, that the Base Load plus the Curtailable Load may not exceed ~~482~~**378** MW, on a scheduled basis, and ~~492~~**388** MW at any time.

**1.1.24** ~~4.1.27~~ Day Ahead Market: The Day Ahead Energy and Operating Reserve Market established under the MISO Tariff for the purchase of electricity and electricity-related ancillary services or, if the Hawesville ~~Sebree~~ Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for purchases of the applicable Electric Services prior to the date of delivery.

**1.1.25** ~~4.1.28~~ Delivery Point: The existing set of meters at the **Robert A. Reid** substation of the Coleman Generation Station **located in Robards, Kentucky** or such other point of delivery mutually agreed by the Parties and Century. At Century's request, the Delivery Point may be moved to the Century Substation if permitted by the applicable RTO and Century pays all costs incurred in connection therewith.

**1.1.26** ~~4.1.29~~ Direct Agreement: The Direct Agreement, dated as of the date hereof, by and between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with the Transaction.

**1.1.27** ~~4.1.30~~ Dodd-Frank Act: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203 (signed into law July 21, 2010)) and all requests, rules, regulations, guidelines or directives (whether or not having the force of law) of a Governmental Authority in connection therewith.

**1.1.28** ~~4.1.31~~ Effective Date: As defined in Section 6.1.

**1.1.29** ~~4.1.32~~ Electric Service Agreement: As defined in the Recitals.

**1.1.30** ~~4.1.33~~ Electric Services: Electric services, including capacity and associated Energy, Transmission Services, Ancillary Services and other services required in connection therewith, including services as may be required by any RTO, ISO, Transmission Provider or Reliability Coordinator, and transmission or ancillary services of a Bilateral Counterparty under a Bilateral Tariff.

**1.1.31** ~~4.1.34~~ Energy: The flow of electricity denominated in kWh or MWh.

**1.1.32** ~~4.1.35~~ ERO: Electric Reliability Organization, as defined in the Federal Power Act.

**1.1.33** ~~4.1.36~~ Event of Default: As defined in Section 15.1.

**1.1.34** ~~1.1.37~~ Excess Energy Rate: The greater of (i) \$250 per MWh, and (ii) a price equal to 110% of the highest Hourly all-inclusive cost incurred by Big Rivers to acquire such Energy, and the separate cost, if any, whenever determined, of transmission services and related services required to transmit any Energy over ~~492~~**388** MW to the Delivery Point and including any imbalance charges or other costs arising from the failure of the supplier of such Energy to deliver such Energy.

**1.1.35** ~~1.1.38~~ Excess Reactive Demand Charge: As defined in Section 4.4.

**1.1.36** ~~1.1.39~~ Existing Retail Agreement: As defined in the Recitals.

**1.1.37** ~~1.1.40~~ Existing Wholesale Agreement: As defined in the Recitals.

**1.1.38** ~~1.1.41~~ FERC: Federal Energy Regulatory Commission.

**1.1.39** ~~1.1.42~~ FTR: Financial Transmission Rights as defined in the MISO Tariff, or any similar items under the Tariff.

**1.1.40** ~~1.1.43~~ Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.

**1.1.41** ~~1.1.44~~ Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, a RTO (including MISO as of the Effective Date) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC; *provided, however* that the RUS is not a Governmental Authority for purposes of this Agreement.

~~1.1.45 Hawesville Node: A Commercial Pricing Node (as defined in the Tariff) located at the Delivery Point and used solely for delivery and sale of Electric Services for the benefit of the Hawesville Smelter; provided, that if the Hawesville Node does not remain in MISO in accordance with Section 3.5.2, then the "Hawesville Node" shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.~~

~~1.1.46 Hawesville Smelter: The aluminum reduction plant owned and operated by Century and located in Hawesville, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.~~

**1.1.42** ~~1.1.47~~ Hedging Arrangements: Any contractual arrangements entered into as hedging or derivative arrangements, including any transactions regulated under the Dodd-Frank Act.

~~1.1.43~~ ~~1.1.48~~ Hour or Hourly: A clock hour or per clock hour, respectively.

~~1.1.44~~ ~~1.1.49~~ Indemnified Liability: As defined in Section 13.1.

~~1.1.45~~ ~~1.1.50~~ Indemnified Person: As defined in Section 13.1.

~~1.1.46~~ ~~1.1.51~~ Indemnifying Party: As defined in Section 13.1.

~~1.1.47~~ ~~1.1.52~~ ISO: An Independent System Operator, as defined and approved by the FERC.

~~1.1.48~~ ~~1.1.53~~ Kenergy: As defined in the preamble to this Agreement.

~~1.1.49~~ ~~1.1.54~~ KPSC: Kentucky Public Service Commission.

~~1.1.50~~ ~~1.1.55~~ kW: Kilowatt.

~~1.1.51~~ ~~1.1.56~~ kWh: Kilowatt-hour.

~~1.1.52~~ ~~1.1.57~~ Load: The Hourly interval meter data measured in MWhs at the Hawesville ~~Sebree~~ Smelter.

**1.1.53 Load Curtailment Agreement: The Load Curtailment Agreement, dated as of the date hereof, among Big Rivers, Kenergy and Century.**

~~1.1.54~~ ~~1.1.58~~ Lockbox Agreement: The Security and Lockbox Agreement to be entered into by and among Century, Kenergy, Big Rivers and a depository bank prior to the Effective Date with respect to the payment of certain amounts due by Kenergy to Big Rivers hereunder.

~~1.1.55~~ ~~1.1.59~~ Market Participant: Big Rivers, in its capacity as the procurer of Electric Services under the Tariff or from a Bilateral Counterparty for resale to Kenergy pursuant to this Agreement for resale to Century pursuant to the Electric Service Agreement, prior to termination of this Agreement pursuant to Article 7, and, thereafter, the counterparty to any other contractual arrangement with Kenergy relating to the purchase of Electric Services from the wholesale electric market, including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century.

~~1.1.56~~ ~~1.1.60~~ Members: The members of Big Rivers. As of the date hereof, the Members of Big Rivers are Jackson Purchase Energy Corporation, Kenergy, and Meade County Rural Electric Cooperative Corporation.

~~1.1.57~~ ~~1.1.61~~ MISO: The Midcontinent Independent ~~Transmission~~ System Operator, Inc.

~~1.1.58~~ ~~1.1.62~~ MISO Tariff: The MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.

~~1.1.59~~ ~~1.1.63~~ Monthly Charge: As defined in Section 4.1.



1.1.60 ~~1.1.64~~ MW: Megawatt.

1.1.61 ~~1.1.65~~ MWh: Megawatt-hour.

1.1.62 ~~1.1.66~~ NERC: North American Electric Reliability Corporation.

1.1.63 ~~1.1.67~~ Net ARR/FTR Proceeds: The sum of ARR revenues, as determined by the applicable ISO or RTO, offset for applicable ARR and FTR uplift amounts and applicable administrative fees charged by the applicable ISO or RTO. FTR charges or credits related to auction and settlement activities will be allocated to Century for the positions Century directs Big Rivers to pursue on their behalf. Century's pro-rata share of Net ARR/FTR Proceeds will be calculated by taking Century's load at Big Rivers' annual system peak divided by Big Rivers' annual system peak, multiplied by the Net ARR/FTR Proceeds received by Big Rivers on a monthly basis from MISO.

1.1.64 ~~1.1.68~~ Net Proceeds: The proceeds of a sale or transfer, net of the cost of the item sold and net of transaction costs, whenever incurred, and taxes.

1.1.65 ~~1.1.69~~ Party or Parties: As defined in the preamble to this Agreement.

1.1.66 ~~1.1.70~~ Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization, other legal entity, RUS or Governmental Authority.

1.1.67 ~~1.1.71~~ Prime Rate: The then-effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties and Big Rivers shall agree on a mutually acceptable alternative source for that rate.

1.1.68 ~~1.1.72~~ Protective Relays: As defined in the Protective Relays Agreement.

1.1.69 ~~1.1.73~~ Protective Relays Agreement: The Protective Relays Agreement, dated as of August 12, 2013, the date hereof, by and among Big Rivers, Kenergy and Century.

1.1.70 ~~1.1.74~~ Real Time Market: The Real Time Energy and Operating Reserve Market established under the MISO Tariff or, if the Hawesville ~~Hawesville~~ Sebree Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for real time purchases of the applicable Electric Services.

1.1.71 ~~1.1.75~~ Reliability Coordinator: As defined by NERC. As of the Effective Date, the Reliability Coordinator is MISO.

1.1.72 Reliability Costs: As defined in the Electric Service Agreement.

1.1.73 ~~1.1.76~~ Retail Fee: As defined in the Electric Service Agreement.

~~1.1.74~~ ~~1.1.77~~ RTO: Regional transmission organization as defined and approved by FERC.

~~1.1.75~~ ~~1.1.78~~ RTO Transmission Upgrades: MISO Transmission Expansion Plan or Multi-Value Projects (each as defined in the MISO Tariff) or similar transmission facilities upgrades, improvements or expansion projects of any RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Sebree Node is located.

~~1.1.76~~ ~~1.1.79~~ RUS: United States Department of Agriculture Rural Utilities Service.

~~1.1.77~~ Sebree Node: *A Commercial Pricing Node (as defined in the Tariff) located at the Delivery Point and used solely for delivery and sale of Electric Services for the benefit of the **Sebree** Smelter; provided, that if the **Sebree** Node does not remain in MISO in accordance with Section 3.5.2, then the “**Sebree** Node” shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.*

~~1.1.78~~ Sebree Smelter: The aluminum reduction plant owned and operated by Century and located in Robards, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

~~1.1.79~~ ~~1.1.80~~ SERC: SERC Reliability Corporation, a regional reliability organization.

~~1.1.80~~ ~~1.1.81~~ Service Period: As defined in Section 2.1.

~~1.1.81~~ ~~1.1.82~~ SSR Agreement: An agreement, including a System Support Resources Agreement, entered into with the RTO or ISO of which Big Rivers is a member relating to the SSR Costs of the Coleman Generation Station. Reliability Costs relating to or arising out of any owned or leased generation facility of Big Rivers other than any such facility subject to a SSR Agreement to support the operation of the aluminum reduction plant located in Hawesville, Kentucky.

~~1.1.83~~ SSR Costs: If and only to the extent that Century operates above the Base Load as defined in Section 1.1.10 and, if applicable, the Curtailable Load, or if any Coleman unit is designated as an SSR by the applicable RTO or ISO then “SSR Costs” shall mean (a) any costs that are not reimbursed to Big Rivers relating to any unit of the Coleman Generation Station required by the applicable RTO or ISO to be operated for reliability purposes for that reason, and (b) the costs, as determined and allocated by the RTO or ISO in which Big Rivers is a member, to the Hawesville Node or any other Node (as defined in the MISO Tariff) of Big Rivers, if Big Rivers is required by the RTO or ISO of which Big Rivers is a member requires for that reason to operate any unit of the Coleman Generation Station for reliability, including, (i) in circumstances where the RTO or ISO of which Big Rivers is a member requires Big Rivers to take the Coleman Generation Station out of an idled status for reliability, all costs incurred in connection with any restart and the operation of any such unit after the date of restart, and (ii) the net Cost of purchasing any replacement Electric Services following an unscheduled outage or real

~~time de rate of a unit of the Coleman Generation Station required to be operated for reliability purposes.~~

~~1.1.82~~ 1.1.84 Surplus Sales: As defined in Section 10.1.1.

~~1.1.83~~ 1.1.85 System Emergency: Any cessation or reduction in the provision or delivery of Electric Services by Big Rivers due in whole or in part to: (a) a disconnection of all or a portion of Big Rivers' or Kenergy's system from the transmission grid (other than as a direct result of Big Rivers' or Kenergy's gross negligence or willful misconduct), (b) a system emergency on the transmission grid, (c) the occurrence of a condition or situation where the delivery of Energy to a transmission grid with which Big Rivers is directly interconnected or the making available of electric generation services, Transmission Services or Ancillary Services that could cause (i) harm to life or limb or imminent serious threat of harm to life or limb, (ii) material damage to Big Rivers' or Kenergy's system or any material component thereof or imminent danger of material damage to property, or (iii) other dangerous occurrences that Big Rivers or Kenergy believes, in the exercise of Good Utility Practice, should be prevented or curtailed, or (d) any events similar to the foregoing that result in cessation or reduction of service under (i) the Day Ahead Market or the Real Time Market, or (ii) a Bilateral Contract.

~~1.1.84~~ 1.1.86 System Resources: An obligation to supply Electric Services from:

- (a) Big Rivers' owned or leased electric generation facilities;
- (b) Big Rivers' contract with the Southeastern Power Administration (Contract No. 89-00-1501-637); or
- (c) Big Rivers' contractual arrangements relating to Electric Services, in effect currently or that become effective in the future, which were not entered into specifically for the purpose of serving the ~~Hawesville~~ Sebree Smelter.

~~1.1.85~~ 1.1.87 Tariff: Big Rivers' Open Access Transmission Tariff or, if Big Rivers is a member of a RTO or ISO, such RTO's or ISO's open access transmission or market tariff, as filed with and approved by FERC. As of the date hereof, the MISO Tariff is the Tariff.

~~1.1.86~~ 1.1.88 Tax Indemnity Agreement: The Tax Indemnity Agreement, dated as of the date hereof, by and between Kenergy and Century.

~~1.1.87~~ 1.1.89 Term: As defined in Section 7.1.

~~1.1.88~~ 1.1.90 Transaction: The transactions by and between or among one or more of Kenergy, Big Rivers, Century, any Market Participant or any Bilateral Counterparty related to the supply of Electric Services to Century under the Electric Service Agreement and the other Transaction Documents.

~~1.1.89~~ 1.1.91 Transaction Documents: This Agreement, the Electric Service Agreement, the Direct Agreement, the ~~Capacitor~~ Load Curtailment Agreement, ~~the Tax~~

~~Indemnity~~ Agreement, the Protective Relays Agreement, any SSR Agreement, the Century Guarantee, the Capacitor Additions and Protective Relays Guarantee, ~~the Tax Indemnity Agreement~~ and any other agreements entered into on the date hereof or in the future between or among the Parties or Century relating to the Transaction.

**1.1.90** ~~1.1.92~~ **Transmission Provider**: A Person accepted by FERC as such in any tariff relating to Transmission Services.

**1.1.91** ~~1.1.93~~ **Transmission Services**: Transmission services as described in the Tariff or, if applicable, the Bilateral Tariff, as needed to support the transactions contemplated by this Agreement.

**1.1.92** ~~1.1.94~~ **Uncontrollable Force**: Any cause beyond the control of the Party unable, in whole or in part, to perform its obligations under this Agreement that, despite exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and that, despite the exercise of due diligence, it has been unable to overcome. Examples of events that may constitute the basis of an event that constitutes an “Uncontrollable Force” include: acts of God; strikes, slowdowns or labor disputes; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of any Governmental Authority; civil or military disturbances; explosions, breakage of or accident to machinery, equipment or transmission lines; inability of a Party to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of Governmental Authorities, civil or military (so long as the Party claiming an Uncontrollable Force has not applied for or assisted in the application for such action); transmission constraints or System Emergencies; a forced outage of a generating unit or units preventing the physical delivery of Energy to Kenergy for resale to Century; declaration of an “Uncontrollable Force” under the Electric Service Agreement or an event of force majeure under the Tariff or the Bilateral Tariff, as applicable, or any Bilateral Contract and any other forces that are not reasonably within the control of the Party claiming suspension. “Uncontrollable Forces” do not include an insufficiency of funds or decline in credit ratings or customary, expected or routine maintenance or repair of plant or equipment. Nothing contained herein shall be construed to obligate a Party to prevent or to settle a labor dispute against its will.

**1.1.93 Wilson Generation Station: Big Rivers’ D.B. Wilson Station, a single unit, coal-fired steam electric generating unit located in Centertown, Kentucky,**

**1.1.94** ~~1.1.95~~ **ZRC**: Zonal Resource Credits as defined in the MISO Tariff, or any similar items under the Tariff.

1.2 **Rules of Interpretation**. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and *vice versa*; (c) references to “Recitals,” “Articles,” “Sections,” “Exhibits” or “Schedules” are to the recitals, articles, sections, exhibits or schedules of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person’s

authorized agents, permitted successors and assigns in such capacity; (e) the words “herein,” “hereof” and “hereunder” will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits and schedules hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented, substituted, renewed or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day that is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; (o) all references to the word “or” shall not be exclusive; and (p) all references to a Governmental Authority shall include any successor to all or a portion of such Governmental Authority’s authority. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

## ARTICLE 2

### ELECTRIC SERVICES AND RATES

2.1 Service Period Obligations. In accordance with the terms and conditions of this Agreement, Big Rivers will sell and deliver, and Kenergy will purchase, Electric Services for delivery to Century under the Electric Service Agreement for a period beginning at ~~11:00:00 a.m. midnight~~ on the later of (a) the day immediately following the Effective Date and (b) ~~August 20, 2013,~~ January 31, 2014, and continuing until ~~10:59:59 p.m.~~ on December 31, 2023, unless the Parties’ respective obligations to supply and purchase Electric Services are terminated earlier pursuant to the terms and conditions of this Agreement; *provided*, that such period may be extended pursuant to Section 7.1 (the “Service Period”).

2.2 Characteristics of Service. Electric service to be supplied by Big Rivers to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement shall be nominally three-phase, sixty-cycle at 161,000 volts or as otherwise agreed to by the Parties and Century. The Parties and Century will mutually agree on limits of the regulation of voltage but at no time may such regulation of such limits be inconsistent with standards required by applicable Governmental Authorities or any other organizations that establish applicable reliability and electric operation standards.

2.3 Delivery Obligation. During the Service Period, Big Rivers will deliver, or cause to be delivered, Electric Services in accordance with the terms and conditions of this Agreement at the Delivery Point.

2.3.1 Energy. Big Rivers will use reasonable commercial efforts to acquire the Base Load and, if applicable, the Curtailable Load, for resale to Kenergy under this Agreement for resale to Century under the Electric Service Agreement to meet the Load of the Hawesville ~~Sebree~~ Smelter at the Delivery Point. Schedules submitted by Kenergy on behalf of Century may not exceed Base Load plus any applicable Curtailable Load and in any event not more than ~~482~~378 MW. Total usage is limited to the Base Load amount if there is no Curtailable Load; *provided, however*, that if there is Curtailable Load, then usage may exceed scheduled load by up to 10 MW (supplied as imbalance Energy) but not to exceed ~~492~~388 MW. Kenergy acknowledges and agrees that any such excess over ~~492~~388 MW shall be charged to Kenergy at the Excess Energy Rate; *provided*, that payment of the charge under Section 4.6.9 shall not be deemed to be a waiver of the restrictions herein on Century's Load not exceeding the scheduled Load. Big Rivers will procure the Energy for resale to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement (a) under a Bilateral Contract pursuant to Section 2.4, (b) in the Day Ahead Market if scheduled in accordance with Article III, or (c) if not pursuant to clause (a) or (b), in the Real Time Market.

2.3.2 Other Electric Services. Big Rivers will obtain Electric Services other than Energy as required and directed by Kenergy, pursuant to direction from Century to Kenergy and Big Rivers under the Electric Service Agreement, with respect to the purchase of such Electric Services (a) in the applicable market of the RTO or ISO of which Big Rivers is a member, or (b) through a Bilateral Contract.

2.4 Bilateral Purchases. Upon request by Kenergy following notice from Century under the Electric Service Agreement, Big Rivers shall use reasonable commercial efforts to acquire specified Electric Services from specified Persons ("Bilateral Counterparties") for resale hereunder to Kenergy for delivery to Century under the Electric Service Agreement. Kenergy must specify in any such request (i) the identity of the Bilateral Counterparty, (ii) the requested amount and duration of such Electric Services, and (iii) desired pricing and other material terms and conditions.

2.4.1 Big Rivers' obligation to enter into any Bilateral Contract will be conditioned upon (a) Big Rivers' prior receipt of a written notification from Century to Kenergy and Big Rivers setting forth Century's consent to the execution, delivery and performance of such Bilateral Contract, and (b) Big Rivers' satisfaction in its sole discretion, only as to financial security arrangements and the elimination of risk to Big Rivers associated with the Bilateral Contract and the arrangements with the Bilateral Counterparty. For the avoidance of doubt, any Bilateral Contract must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Bilateral Counterparty, (c) not require Kenergy to purchase Electric Services from a Person other than Big Rivers, except during periods when Kenergy is the Market Participant, and (d) not result in Big Rivers paying the Bilateral Counterparty prior to the time Big Rivers is paid under this Agreement for any related amounts due.

2.4.2 Promptly following request by Century to Kenergy and Big Rivers pursuant to Section 2.4.1, Big Rivers shall arrange or have arranged all Transmission Services and

Ancillary Services necessary to transmit the Energy Big Rivers obtains under a Bilateral Contract to the Delivery Point. The amount of Energy transmitted from the source to the Delivery Point shall be adjusted to reflect the application of any system loss factor unless otherwise addressed in the terms and conditions of the applicable Bilateral Contract.

2.4.3 The provisions herein relating to Surplus Sales shall apply if Century is unable to receive and consume any Electric Services, or Big Rivers is unable to deliver such Electric Services purchased by Big Rivers under a Bilateral Contract for resale to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement because of an Uncontrollable Force.

2.5 [Reserved.]

2.6 Title and Risk of Loss. Title to and risk of loss with respect to all Electric Services provided by Big Rivers to Kenergy under this Agreement for delivery to Century pursuant to the Electric Service Agreement will pass from Big Rivers to and rest in Kenergy when the same is made available by Big Rivers at the Delivery Point. Until title passes, Big Rivers will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby. After title passes to Century, Big Rivers acknowledges and agrees that Kenergy will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby.

2.7 Performance by the Parties. Each Party acknowledges and agrees that, to the extent a Person has a corresponding or related obligation to the other Party under a Transaction Document, such other Party's performance of an obligation with respect to such matter under this Agreement or any other Transaction Document is subject to and conditioned upon such Person's performance of such corresponding or related obligation to such other Party. Subject only to performance by a Person with an obligation to such other Party of its obligations to such other Party, such other Party shall perform its obligations under this Agreement and the other Transaction Documents to which it is a party. Each Party acknowledges and agrees that such Person with an obligation to the other Party may enforce an obligation of such Party under this Agreement or any other Transaction Document that corresponds or relates to the obligation of the first Party to such Person. For example, with respect to a purchase of Energy under a Bilateral Contract, Big Rivers shall be obligated to deliver to Kenergy only those amounts of Energy received by Big Rivers, net of applicable losses of Energy. Big Rivers will not be in default under any provision of this Agreement nor will it have any liability to Century or Kenergy if the non-delivery of Energy to be purchased by Kenergy hereunder sourced under a Bilateral Contract is due to a failure by the Bilateral Counterparty to deliver the full amount of such Energy required under the Bilateral Contract; *provided*, that Big Rivers has assigned to Kenergy the rights and remedies of Big Rivers against the Bilateral Counterparty under such agreement, for Kenergy's assignment of such rights and remedies to Century pursuant to the Electric Service Agreement.

## ARTICLE 3

### MARKET PARTICIPATION AND SCHEDULING

#### 3.1 Market Participant.

3.1.1 Big Rivers shall act as the initial Market Participant with respect to the Electric Service Agreement in connection with the Transaction and, pursuant to this Agreement, shall use reasonable commercial efforts to arrange and procure the Electric Services required by Kenergy for delivery to Century under the Electric Service Agreement.

3.1.2 Big Rivers acknowledges and agrees that, subject to Section 18.8, Kenergy may elect to become the Market Participant, subject to Century's consent and approval.

3.1.3 Big Rivers acknowledges and agrees that, subject to Section 18.8, at any time during the Service Period, Century may appoint a Person to be the Market Participant under the Electric Services Agreement, subject to Kenergy's consent and approval, which shall not be unreasonably withheld or delayed. Big Rivers further acknowledges that Century shall give Kenergy and Big Rivers not less than 120 days' prior written notice of the appointment of such Person to be the new Market Participant. Kenergy shall be responsible for any Costs to Big Rivers resulting from Big Rivers no longer being the Market Participant with respect to the Electric Services Agreement. Big Rivers shall transfer ownership of the Hawesville ~~Hawesville~~ Sebree Node to the new Market Participant.

3.1.4 Big Rivers further acknowledges and agrees that, for the avoidance of doubt, a Person acting as the Market Participant shall remain in that capacity, notwithstanding any election under Section 3.1.2 of the Electric Service Agreement or appointment under Section 3.1.3 of the Electric Service Agreement of a different Person as a Market Participant, until the consent and approval required from the applicable Party under Section 3.1 of the Electric Service Agreement is obtained.

3.1.5 Kenergy acknowledges and agrees that Big Rivers shall have no liability under this Agreement or otherwise in connection with or arising out of the absence of any Person acting as the Market Participant during any period in which a Person previously acting as the Market Participant ceases to act in that capacity and another Person is not yet acting in that capacity in accordance with Section 3.1 of the Electric Service Agreement.

3.2 Base Load. The Base Load may be modified only as provided in Section ~~1.1.10.1.1.9.~~ 1.1.9.

#### 3.3 Scheduling.

3.3.1 Kenergy or its designee shall provide or cause to be provided a schedule, on an Hourly basis, of all required Electric Services to Big Rivers or its designee; *provided*, that commencing on the day following the Effective Date, Big Rivers will schedule the Base Load and, if applicable, the Curtailable Load as the Hourly Load of Century in the Day Ahead Market unless Kenergy provides or causes to be provided notice to Big Rivers



of an alternative schedule not later than 8:00 a.m. on the Business Day prior to the day of delivery.

3.3.2 Kenergy promptly, and no later than sixty (60) minutes prior to any applicable deadline under any applicable RTO or ISO scheduling guidelines, shall notify Big Rivers or cause Big Rivers to be notified of any revisions to Century's schedule by providing Big Rivers with a revised schedule in compliance with the other terms and conditions of this Agreement, and Big Rivers shall submit such revised schedule to the applicable RTO or ISO within such scheduling guidelines.

3.4 Transmission Rights. Kenergy or its designee shall have the right to direct Big Rivers or cause Big Rivers to be directed to request, schedule or sell the Century Transmission Rights in such time and amounts specified at least three Business Days prior to the applicable deadline. Kenergy, for the benefit of Century, shall be entitled to the Net ARR/FTR Proceeds of the sale of any Century Transmission Rights in the form of a credit to amounts otherwise owing from Big Rivers to MISO in respect of Electric Services purchased by Kenergy under this Agreement for delivery to Century under the Electric Service Agreement.

3.5 Transition to Another RTO or ISO.

3.5.1 This Agreement and the other Transaction Documents have been drafted by the Parties and Century under the presumption that, during the Service Period, the ~~Hawesville~~Sebree Node is located in MISO and Big Rivers is a member of MISO. Kenergy or Big Rivers may, each in its sole discretion, elect to join or become a member of a RTO or ISO other than MISO or elect to withdraw as a member of MISO and not be a member of any RTO or ISO. In such circumstances, the Parties and Century agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

3.5.2 The Parties acknowledge and agree that ~~Hawesville~~Sebree Node may remain in MISO if (a) requested by Century, (b) permitted by both the new RTO or ISO and MISO, (c) Century is responsible for any Costs resulting from the ~~Hawesville~~Sebree Node remaining in MISO, and (d) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO. In such case, any terms used herein that relate to the RTO or ISO of which Big Rivers is a member or its tariff shall be deemed amended, as applicable, to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

3.5.3 Each Party acknowledges and agrees that if at any time the ~~Hawesville~~Sebree Node is no longer part of any RTO or ISO, then the Electric Services provided hereunder shall be provided exclusively pursuant to Section 2.4, which shall include arrangements for imbalance Energy.

3.6 Forecasts.

3.6.1 Kenergy shall provide, or cause to be provided, to Big Rivers a forecast of Century's Load at the Hawesville Sebree Node in accordance with the requirements of (a) Module E (Resource Adequacy) of the MISO Tariff, so long as the Hawesville Sebree Node is located in MISO, or (b) the resource adequacy provisions of the tariff of the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Sebree Node is located, in each case, at least five Business Days prior to the deadline therefor set forth in the applicable tariff. This forecast currently includes a peak forecast for Century's Load at the Hawesville Sebree Node for the succeeding 36 months, or for such other term as reasonably requested by Big Rivers or as required by the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Sebree Node is located, the RTO or ISO of which Big Rivers is a member or the Tariff.

3.6.2 Kenergy shall respond on or prior to the fifth Business Day to any requests made by Big Rivers to Kenergy for data, forecasts, projections or other information necessary or reasonably appropriate for Big Rivers to comply with requests or requirements of the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Sebree Node is located, the RTO or ISO of which Big Rivers is a member, other Governmental Authorities or the Tariff. The obligations of Kenergy under this Section shall survive termination of this Agreement.

ARTICLE 4

CHARGES AND CREDITS

4.1 Monthly Charge. Kenergy shall pay Big Rivers the following (the "Monthly Charge") for the Electric Services provided or made available under this Agreement and for other amounts owing to Big Rivers under this Agreement, without duplication, including:

- 4.1.1 Applicable RTO Charges calculated pursuant to Section 4.2;
- 4.1.2 *plus* the Bilateral Charges calculated pursuant to Section 4.3;
- 4.1.3 *plus* the Excess Reactive Demand Charge calculated pursuant to Section 4.4;
- 4.1.4 *plus* other amounts calculated pursuant to Section 4.5; and
- 4.1.5 *plus* taxes calculated pursuant to Section 4.6.

4.2 Applicable RTO Charges. Charges and credits invoiced to Big Rivers by the applicable RTO or ISO on a pass-through basis for all Electric Services purchased by Kenergy at the Hawesville Sebree Node hereunder, other than Electric Services purchased by Big Rivers under a Bilateral Contract, and any other RTO or ISO charges payable by Big Rivers for the benefit of Century under the Electric Service Agreement (the "Applicable RTO Charges"), whenever invoiced, including:

4.2.1 All activity listed on the settlement statement of the applicable RTO or ISO attributed by such RTO or ISO to the Hawesville Sebree Node, including ~~SSR~~ Reliability Costs relating to the Hawesville Sebree Node;

4.2.2 All activity for Transmission Services attributed by the applicable RTO or ISO to the Hawesville Sebree Node, including, if applicable, activity during the portion of a month during the Service Period;

4.2.3 All activity relating to the planning year (or other applicable period) of the applicable RTO or ISO that is attributed by such RTO or ISO to the Hawesville Sebree Node, including planning activity relating to ZRCs, ARR and FTRs;

4.2.4 Costs relating to RTO Transmission Upgrades attributed by such RTO or ISO to the Hawesville Sebree Node that otherwise relate to Century's operation of the Hawesville Sebree Smelter; and

4.2.5 Any credit for Net ARR/FTR Proceeds resulting from the sale of the Century Transmission Rights.

4.3 Bilateral Charges. Any charges to Big Rivers under a Bilateral Contract with respect to Electric Services or other Costs for the benefit of Kenergy with respect to Century, including any and all separate charges for transaction fees (including broker fees), Transmission Services, Ancillary Services and related services, whenever incurred (including financial transmission rights, transmission congestion charges and similar Costs or expenses) (collectively, "Bilateral Charges").

4.4 Excess Reactive Demand Charge. For any Billing Month, the "Excess Reactive Demand Charge", if any, shall be the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, between:

4.4.1 the maximum metered reactive demand of Century during the Billing Month, and

4.4.2 an amount of kilovars equal to the sum of:

(a) the product of (A) 0.3287, and (B) the maximum hourly demand during a Billing Month, denominated in kW, associated with Energy provided by Kenergy for resale to Century, and

(b) ~~74,005~~ 54,114.

4.5 Other Amounts. For any Billing Month:

4.5.1 Costs arising from any tax liability of Big Rivers resulting from Surplus Sales.

4.5.2 Costs arising under Section 10.2 relating to compliance with Applicable Laws relating to the environment.

4.5.3 Costs arising under Section 10.3 relating to compliance with Hedging Arrangements.

4.5.4 Costs arising from a requirement to pay invoices from the applicable RTO or ISO on a frequency greater than the periodicity set forth in Section 5.1.

4.5.5 Costs arising under Section 3.1.3 relating to the appointment of a new Market Participant.

4.5.6 Charges for any other services required to be purchased by Big Rivers to provide the services hereunder to Kenergy for the benefit of Century, including any energy advisory services for scheduling, awards and settlements (including such services provided by ACES (formerly ACES Power Marketing)).

4.5.7 Costs associated with the Hawesville ~~Hawesville~~ Sebree Node exiting an RTO or ISO in connection with an election made by Big Rivers or Century pursuant to Section 3.5.2.

4.5.8 The Excess Energy Rate multiplied by the amount of Energy in excess of ~~492~~ 388 MW in any Hour.

~~4.5.9 The cost of one-quarter (0.25) full-time equivalent employee of Big Rivers, to assist in the administration of Big Rivers' duties under this Agreement and the other Transaction Documents.~~

4.5.9 ~~4.5.10~~ Other out-of-pocket Costs payable by Big Rivers to another Person that are incurred or committed to by Big Rivers in connection with or arising out of the Transaction, including (a) Indemnified Liabilities, (b) any security necessary to be provided to any Person (including the RTO or ISO of which Big Rivers is a member or a Bilateral Counterparty) arising out of the Transaction, and (c) the Costs to pursue any approval or consent under Section 7.2.2; *provided*, that Costs referenced on Exhibit A shall be allocated as provided therein; *provided, further*, that Big Rivers shall not voluntarily enter into any contractual commitment for Costs referred to in this Section for any period in excess of one (1) year without the consent of Century.

4.6 Taxes. No state or local sales, excise, gross receipts or other taxes are included in the charges and credits set forth in this Article 4. Kenergy shall pay or cause to be paid any such taxes that are now or hereafter become applicable to the resale of Electric Services to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement.

4.7 No Duplication. Subject to the provisions of Section 5.4, the Monthly Charge shall not include any item that would result in a duplicative payment for a particular charge if Big Rivers would not be liable for the duplicative amount.

## ARTICLE 5

### BILLING

5.1 Market Invoices. Big Rivers shall bill Kenergy, on or before the third Business Day following receipt by Big Rivers of an invoice from the applicable RTO or ISO for any amounts invoiced with respect to service to Big Rivers on behalf of Kenergy for the benefit of Century plus any other amounts then due and owing for any portion of the Electric Services or other amounts payable by Kenergy with respect to the applicable RTO or ISO. Kenergy shall pay or cause to be paid to Big Rivers such amounts in immediately available funds to an account designated by Big Rivers or its designee on the second Business Day following Kenergy's receipt of the bill under this Section. For the convenience of the Parties, and to facilitate Kenergy's obligations to Big Rivers, Kenergy has assigned its right to receive any payments from Century pursuant to Section 5.1 of the Electric Service Agreement and Kenergy's rights to collect and enforce the collection of such amounts due from Century pursuant to the Lockbox Agreement.

5.2 Monthly Invoices for other Amounts. Big Rivers shall bill Kenergy on or before the fifteenth (15th) Business Day of each month for the Monthly Charge (other than the charges billed pursuant to Section 5.1) as calculated pursuant to Article 4 plus any other amounts then due and owing pursuant to this Agreement or any other Transaction Document. Kenergy shall pay or cause to be paid to Big Rivers such portion of the Monthly Charge and any other amounts due and owing to Kenergy in immediately available funds to an account designated in the Lockbox Agreement on the Business Day following the 24th day of the month following the Billing Month or such earlier date of such month on which the Members' payment to Big Rivers is due.

5.3 Default Interest. If any invoice rendered by Big Rivers is not paid on the due date, interest will accrue and become payable by Kenergy to Big Rivers on all unpaid amounts at a rate of one percent over the Prime Rate commencing on the first day after the due date and accruing on each day thereafter until the date such amount is paid; *provided*, that if interest in respect of any such unpaid amount accrues interest at a different rate to another Person, the applicable default interest rate shall be such different rate payable to the Person to which such unpaid amounts are owed.

5.4 Payments Under Protest. If any portion of any statement is disputed by Kenergy or Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Big Rivers shall promptly cause to be refunded to Kenergy (or to Century on behalf of Kenergy, as applicable) the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made; *provided*, that, if applicable, interest payable with respect to any amounts refunded to Big Rivers shall be based on the interest paid to Big Rivers, if any, by the payor on a pass-through basis. If the amount to be refunded to Kenergy relates to amounts paid to a Person (other than Big Rivers), then Big Rivers will refund such amounts promptly upon receipt of the refund of such amount.

5.5 Release and Indemnification.

5.5.1 Big Rivers (a) shall release Kenergy from any and all claims Big Rivers may have against Kenergy for the failure of Century to satisfy its obligations under the Electric Service Agreement, and (b) shall indemnify, hold harmless and defend Kenergy from and against any and all claims Century may assert against Kenergy in connection with any failure by Century to perform under the Electric Service Agreement, if Kenergy elects to assign its rights in connection therewith pursuant to Section 5.5.2.

5.5.2 If Century shall default under the Electric Service Agreement, Kenergy may deliver to Big Rivers (a) a power-of-attorney with full power of substitution that shall designate Big Rivers or its designee as Kenergy's attorney-in-fact (that shall be coupled with an interest and irrevocable) for purposes of negotiating and prosecuting any and all claims Kenergy may have against Century for a failure of Century to satisfy its obligations under the Electric Service Agreement and to file or prosecute any claim, litigation, suit or proceeding before any Governmental Authority in the name of Kenergy or in its own name, or take such other action otherwise deemed appropriate by Big Rivers for the purposes of obtaining legal or equitable relief as a result of the failure of Century to satisfy its obligations under the Electric Service Agreement and to compromise, settle, or adjust any suit, action or proceeding related to the failure of Century to satisfy such obligations and to give such discharges or releases as Big Rivers may deem appropriate, and (b) an assignment conveying to Big Rivers all of Kenergy's right, title and interest in and to any legal, equitable or other relief, including the recovery of damages and the grant of injunctive relief or other remedies to which Kenergy may be entitled with respect to the failure of Century to satisfy its obligations under the Electric Service Agreement. The power-of-attorney and the assignment shall be in form and substance reasonably satisfactory to Big Rivers and shall be legally effective and enforceable under Kentucky or other Applicable Law.

5.6 No Waiver. No payment made by Kenergy (or Century on Kenergy's behalf) pursuant to this Article 5 will constitute a waiver of any right of Kenergy (or Century) to contest the correctness of any charge or credit.

ARTICLE 6

EFFECTIVE DATE AND CONDITIONS

6.1 Effective Date. The obligations of the Parties under Article 2, Article 3, Article 4, Article 5, Section 7.3, Article 8, Article 9, Article 10, Article 11, Article 12, Article 14, and Article 15 shall not commence until the Effective Date. The "Effective Date" will occur on the first date each of the conditions set forth in Section 6.2 has been satisfied in full or waived in writing by the Party in whose favor such condition exists (to the extent one or more conditions is subject to being waived).

6.2 Conditions to Occurrence of Effective Date. ~~Subject to Subsection 6.2.8, the~~ The following shall be conditions to the occurrence of the Effective Date:

6.2.1 The meters at the substation of the ~~Coleman Generation Station~~ Robert A. Reid substation at the Sebree generation station shall be a Commercial Pricing Node (as defined in the MISO Tariff).

6.2.2 Each of the representations and warranties of the Parties contained in this Agreement and the representations and warranties of Kenergy and Century in the Electric Service Agreement will be true and correct as of the date hereof and the Effective Date (as though such representations and warranties were made at and as of the date hereof and the Effective Date), and each of the Parties shall have received a certificate to such effect from the other Party with respect to the other Party's representations and warranties in this Agreement and Big Rivers shall have received a certificate to such effect from Kenergy and Century in respect of their respective representations and warranties in the Electric Service Agreement.

6.2.3 Each of the documents and agreements set forth in Schedule 6.2.3 will have been duly authorized, executed and delivered by the parties thereto, and all conditions precedent to the effectiveness of such agreements will have been satisfied or waived, and shall, if effective on the date of the execution of this instrument amended after the date hereof and prior to the Effective Date, be acceptable in form and substance to the Parties.

6.2.4 The Century Guarantee and the Capacitor Additions and Protective Relays Guarantee will have been duly authorized, executed and delivered by Century Parent and be in full force and effect.

6.2.5 Any credit support required to be provided by Century on the Effective Date pursuant to Section 14.3, the Direct Agreement or the Electric Service Agreement shall have been provided.

6.2.6 ~~Except as specified in Subsection 6.2.8, no~~ No authorization or approval or other action by, and no notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, will be necessary prior to the commencement of the Service Period for the execution, delivery and performance by the Parties to each Transaction Document to which it is a party, other than (i) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and which are routine in nature or which cannot be obtained, or are not normally applied for, prior to the time they are required and which the Party who is required to obtain such item has no reason to believe will not be timely obtained and in each case which do not prevent provision of Electric Services as described herein, and (ii) with respect to the approval of any Governmental Authority, on the Effective Date, such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; *provided*, that Kenergy acknowledges and agrees that Big Rivers may in its sole discretion discontinue the provision of Electric Services hereunder if any such approvals required by clause (ii) of this Section are overturned or otherwise disapproved by the applicable Governmental Authority subsequent to the Effective Date.

6.2.7 The consent of RUS, each of Kenergy's secured creditors and each of Big Rivers' secured creditors to the Transaction and to all arrangements and agreements contemplated in connection therewith will have been duly issued and received and will be in full force and effect; all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date.

~~6.2.8 Each authorization, approval, action, notice, registration, license, permit, agreement, consent, filing or declaration with MISO, NERC, SERC or any other Governmental Authority regarding (a) the installation, ownership or operation and maintenance of the Capacitor Additions or the Protective Relays, and (b) an obligation of Big Rivers to operate and maintain, dispatch or make available the Coleman Generation Station and the recovery by Big Rivers of all SSR Costs, shall be satisfactory to each of Kenergy, Big Rivers and Century, each in its sole discretion, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; provided, that neither (i) the failure of the FERC to issue an order approving a SSR Agreement or proposed SSR Agreement, nor (ii) the failure of SERC or MISO to provide any necessary approval of the effectuation of the arrangements contemplated by the Protective Relay Agreement, shall delay the Effective Date.~~

6.3 Efforts to Satisfy Conditions to Effective Date. Each of the Parties shall use reasonable commercial efforts and act in good faith to satisfy all of the conditions set forth in Section 6.2 at the earliest practicable date (other than those that the applicable Party agrees to waive). At such time as Kenergy or Big Rivers believes such conditions have been satisfied, such Party shall notify the other Party in writing. The obligations of the Parties under this Section 6.3 will continue until the earlier of (a) such time as this Agreement terminates pursuant to Section 7.2, and (b) the Effective Date.

## ARTICLE 7

### TERM AND TERMINATION

7.1 Term. Subject to Section 6.1, this Agreement will become binding on the Parties on the date of execution and delivery by the Parties and will remain in full force and effect until ~~10:59:59 p.m. on December 31, 2023~~, unless earlier terminated pursuant to the terms and conditions hereof (the "Term"). The Term will be automatically extended for additional one year periods on each December 31<sup>st</sup> thereafter until a Party gives at least one year's prior notice to the other Party and Century of its election for the Agreement to expire at ~~10:59:59~~ on a specified December 31.

7.2 Termination Prior to Effective Date. This Agreement may be terminated without cost or penalty prior to the occurrence of the Effective Date in accordance with this Section 7.2.

7.2.1 Termination for Failure to Satisfy Conditions to Effective Date. Either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party upon the failure of the conditions in Section 6.2 to be satisfied in full or waived by the Person in whose favor the condition exists on or before ~~10:59:59 p.m. on August 19, 2013~~. January 31, 2014.



7.2.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approvals for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Century no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.2.3 Termination Pursuant to a Century Termination. Either party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party following termination of the Electric Service Agreement pursuant to and in accordance with Section 7.2 of the Electric Service Agreement.

7.3 Termination After the Effective Date. This Agreement may be terminated after the occurrence of the Effective Date in accordance with this Section 7.3.

7.3.1 Termination for Event of Default. This Agreement may be terminated following the occurrence and during the continuation of an Event of Default pursuant to Article 15.

7.3.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approval for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Century no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.3.3 Termination for Market Participant. Subject to Section 18.8, this Agreement shall terminate upon Big Rivers no longer acting as the Market Participant with respect to the Electric Services Agreement.

7.4 Automatic Termination. Notwithstanding Sections 7.2 and 7.3, this Agreement shall terminate automatically when the Electric Service Agreement terminates if Century terminates the Electric Service Agreement pursuant to and in accordance with Article 7 thereof.

7.5 Effect of Termination. Subject to Section 18.8, neither Party will have any obligations to the other Party following termination hereof, other than obligations of the Parties under such Transaction Documents which survive termination.

## ARTICLE 8

### METERING

8.1 Metering Facilities. Big Rivers will provide or cause to be provided metering facilities at the Delivery Point that measure Hourly kW, kWh, kilovars, kilovar-hours and voltage-hours.

8.2 Reading. Big Rivers will read or cause to be read the meters at the Delivery Point on the last date of each month (or such other date as may be agreed upon by the Parties).

8.3 Testing. Big Rivers will test, or cause to be tested, the calibration of the meters at the Delivery Point by comparison of accurate standards at least once every twelve months (or more often if so required by Applicable Law) and will give Kenergy and Century not less than five Business Days' prior notice of such testing. Kenergy and Century will have the right to observe and participate in all meter tests. Meters registering not more than plus or minus 1% inaccurate will be deemed to be accurate (unless Applicable Law establishes a standard more stringent than 1%, in which case, the more stringent standard will apply). The reading of any meter that will have been disclosed by tests to be inaccurate will be corrected for the 60 days before such tests (or for such shorter period if applicable) in accordance with the percentage of inaccuracy found by such tests. If any meter should fail to register for any period, the Parties and Century will make mutually agreed upon estimates for such period from the best information available. If Kenergy or Century requests a special meter test, Big Rivers shall cause such test to be conducted; *provided, however*, that if any special meter test made at the request of Century or Kenergy discloses that the meters are not more than plus or minus 1% inaccurate, Kenergy or Century, as applicable, shall reimburse Big Rivers for the reasonable Cost of such test. In all other respects, meters through which Big Rivers delivers Energy to Kenergy for resale to Century under the Electric Service Agreement shall be installed, operated, maintained and tested in accordance with all Applicable Law and Good Utility Practice.

## ARTICLE 9

### OPERATIONAL MATTERS

9.1 Operations and Operational Responsibility. In carrying out the requirements of this Agreement, each Party will comply with the reliability criteria, standards, guidelines and operating procedures of a FERC-approved ERO, SERC, Applicable Law and any applicable RTO, and neither Party will be required to take any action in violation of any thereof.

9.1.1 Big Rivers will operate and maintain or cause to be operated and maintained any facilities owned by it on the premises of Kenergy or Century.

9.1.2 Kenergy will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it.

9.2 Installation and Maintenance of Interconnection Equipment. Big Rivers has caused to be furnished and installed, or shall cause to be furnished or installed, all of the facilities required for the delivery of Energy to the Delivery Point, as well as the 161 kilovolt transmission lines

required between the Delivery Point and the Century Substation. Big Rivers shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment but excluding the Capacitor Additions and the any Protective Relays, necessary to enable Kenergy to deliver Energy to Century at the Delivery Point. Big Rivers will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Good Utility Practice, to the extent necessary to assure sufficient capability to take and use the Electric Services to be delivered by Big Rivers to Kenergy hereunder for resale to Century under the Electric Service Agreement. **For the avoidance of doubt, nothing herein shall obligate Big Rivers to furnish, install, operate or maintain any equipment owned by Persons other than Big Rivers in connection with the provision of Electric Services to Kenergy hereunder for delivery to Century under the Electric Service Agreement.**

9.3 [Reserved.]

9.4 Curtailment by Big Rivers. If Big Rivers determines in accordance with Good Utility Practice, or in compliance with any FERC-approved ERO, SERC, Applicable Law and other regulation, any applicable RTO or ISO, Reliability Coordinator or other applicable operating criteria or rules, that a System Emergency has occurred or is imminent, and after suspending or reducing deliveries to Persons purchasing interruptible Energy from Big Rivers, Big Rivers may suspend or reduce the delivery of Energy hereunder and may cease to make available in whole or in part the Electric Services, in each case to the extent caused by, or that Big Rivers determines necessary or prudent under the circumstances to prevent or attempt to prevent, or counter or reduce the effects of, such System Emergency. Any Subject to the Load Curtailment Agreement, any curtailment caused by a System Emergency (or for any other reason) that cannot be avoided after the suspension or reduction of deliveries to Persons purchasing interruptible Energy from Big Rivers will be effected in a non-discriminatory manner consistent with the Tariff. Big Rivers shall notify Kenergy and Century as to the occurrence or threatened occurrence of any System Emergency or other event that may require curtailment, its cause and its impact on the provision of Electric Services under this Agreement, as soon as practicable. Big Rivers will not be obligated to supply Electric Services to Kenergy hereunder for resale to Century under the Electric Service Agreement to the extent suspended or curtailed as a result of the System Emergency.

9.5 Ownership and Removal of Equipment. Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed, by either of the Parties hereto (or by Century) on or in the premises of the other Party (or Century) to deliver or receive service under this Agreement shall be and remain the property of the Party (or Century) owning and installing such equipment, apparatus, devices or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement or any extension thereof, the owner (including, if applicable, Century) of any equipment, apparatus, devices or facilities on the property of a Party shall have the right to enter upon the premises of that Party, and shall, within a reasonable time and at the sole expense of the owner, remove such equipment, apparatus, devices or facilities.

9.6 Right of Access. Big Rivers acknowledges that pursuant to the Electric Service Agreement, Century grants the duly authorized agents and employees of Kenergy and Big Rivers

the right to reasonable access to the premises of Century to the extent reasonably required for the purposes of installing, repairing, inspecting, testing, renewing or exchanging any or all of its equipment located on the premises of Century, for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Kenergy or Big Rivers shall make reasonable advance arrangements before entering the premises of Century.

9.6.1 Kenergy shall direct Century to use reasonable commercial efforts to properly protect the property of Kenergy or Big Rivers, located on the premises of Century, and to permit no Person to inspect or adjust the wiring and apparatus of Kenergy or Big Rivers except with Kenergy's or Big Rivers' consent, as applicable. Neither Party assumes the duty or responsibility of inspecting the wiring or apparatus of the other Party.

9.6.2 Kenergy hereby grants to Big Rivers Kenergy's rights from Century for a license to enter the Century Substation and upon Century's easements and rights-of-way to accomplish the purposes of this Agreement, provided that reasonable advance arrangements appropriate under the circumstances are made.

## ARTICLE 10

### COVENANTS

#### 10.1 Surplus Sales.

10.1.1 Big Rivers acknowledges and agrees that Century may request that Kenergy direct Big Rivers to sell (a) any Electric Services that Century is committed to purchase, or (b) Century Transmission Rights, in each case, that are surplus to Century's requirements by delivering prior written notice to Kenergy and Big Rivers identifying the Electric Services to be sold and the associated times and duration of the requested sales ("Surplus Sales"). The Net Proceeds of any Surplus Sales will be credited by Big Rivers against the related item in the Monthly Charges. Kenergy acknowledges and agrees that Big Rivers shall have no liability to any Person in connection with or arising out of Big Rivers' failure to make, manner of making or other handling or execution of a direction to execute Surplus Sales; *provided*, that Big Rivers has used commercially reasonable efforts with respect to such Surplus Sales in accordance with Kenergy's direction pursuant to this Section.

10.1.2 Any request to Big Rivers pursuant to this Section 10.1 or Section 10.1 of the Electric Service Agreement shall be irrevocable following the Big Rivers' entry into contractual obligations relating to any such Surplus Sales.

10.1.3 For the avoidance of doubt, nothing in this Section 10.1 shall relieve Kenergy of its obligation for any portion of the Monthly Charge pursuant to Article 4.

10.2 Compliance with Environmental Laws. Kenergy shall be responsible for Costs related to Century's operation, incurred by Big Rivers to comply with (i) state or federal renewable energy portfolio or similar standards or (ii) Applicable Laws relating to the environment. For avoidance of doubt, such Costs of Big Rivers to comply with environmental laws and regulation would not include compliance costs at Big Rivers' generation facilities, including ~~Coleman~~ Wilson Generation Station (other than ~~SSR~~ Reliability Costs). Big Rivers acknowledges that pursuant to

the Electric Service Agreement, to the extent permitted by Applicable Law, Century may self-comply with the provisions of this Section by purchasing its proportionate share of renewable energy.

10.3 Compliance with Applicable Laws Relating to Hedging Arrangements. Kenergy shall be responsible for Costs related to Century's operation incurred by Big Rivers to comply with Applicable Laws relating to sales pursuant to this Article, including Hedging Arrangements and the Dodd-Frank Act and any rules and regulations of any Governmental Authority, applicable to any Hedging Arrangements entered into by Big Rivers or any other Person in connection with Big Rivers' provision of Electric Services to Kenergy hereunder for resale to Century under the Electric Service Agreement;

10.4 Electric Service Agreement. Kenergy covenants that:

10.4.1 It will at all times fully perform and discharge all of its obligations under the Electric Service Agreement;

10.4.2 It will not resell any Electric Services purchased from Big Rivers under this Agreement, except as expressly permitted in this Agreement and the Electric Service Agreement or with the prior written consent of Big Rivers, in Big Rivers' sole discretion and it shall require that any Energy that Kenergy purchases from Big Rivers under this Agreement and resells to Century under the Electric Service Agreement must be consumed by Century in connection with its operation of the ~~Hawesville~~ Sebree Smelter;

10.4.3 It will not take any action or support any action by other Persons that in any manner would impede Kenergy's ability to fulfill its obligations to Big Rivers under this Agreement nor will it amend or modify the Electric Service Agreement, including with respect to (i) the rates, terms and conditions for service; (ii) Century's payment obligations; or (iii) the term of the Electric Service Agreement, in each case without the prior written consent of Big Rivers;

10.4.4 It will not waive compliance by Century with any of its obligations under the Electric Service Agreement, fail to fully enforce the Electric Service Agreement against Century, or act in any manner that would adversely affect Kenergy's ability to fulfill its obligations under this Agreement;

10.4.5 It will provide to Big Rivers all notices of default received or sent by Kenergy pursuant to the Electric Service Agreement;

10.4.6 It will not terminate the Electric Service Agreement if the termination would be a breach by Kenergy thereof (including rejection of the agreement in a bankruptcy or reorganization proceeding);

10.4.7 It will not terminate the Electric Service Agreement for breach by Century without providing Big Rivers notice of such Century breach and a reasonable opportunity for Big Rivers to cure such Century breach, if it should elect, in its sole discretion, to do so. Big Rivers' opportunity to cure will extend, at a minimum, for a period of not less than ten (10) Business Days after the later of (i) the applicable period of time available for a cure by

Century under the Electric Service Agreement, or (ii) notice of the breach by Century is delivered by Kenergy to Big Rivers; and

10.4.8 It will not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Electric Service Agreement to any Person without (i) subject to Section 17.4, first obtaining the written consent of Big Rivers, which consent shall not be unreasonably withheld or delayed, and (ii) causing the transferee of the Electric Service Agreement to assume and agree to perform all of Kenergy's obligations under this Agreement which arise following that assignment or transfer.

## ARTICLE 11

### UNCONTROLLABLE FORCES

11.1 Occurrence of an Uncontrollable Force. No Party will be considered to be in breach or default in the performance of any of its obligations under this Agreement if the failure of performance is due to an Uncontrollable Force, except as otherwise provided in this Article. If either Party is unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties, to the extent that they are affected by such Uncontrollable Force, will be suspended during the continuance of any inability so caused, but for no longer period. A Party will not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful acts or omissions.

11.2 Mitigation. A Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability as promptly as reasonably possible. Nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

11.3 Notice of Uncontrollable Force. A Party shall notify the other Party at the earliest practicable time following (i) the occurrence of any Uncontrollable Force that renders such Party incapable of performing hereunder or (ii) the time at which such Party has reason to expect that such an Uncontrollable Force is imminent. Kenergy also shall notify Big Rivers if it receives notice from Century that Century anticipates that it will be unable to perform its obligations to Kenergy under any contract or agreement that affects Kenergy's performance under this Agreement due to an Uncontrollable Force and Big Rivers is not an additional addressee of such notice.

11.4 Payment Obligations. Notwithstanding anything in this Agreement to the contrary, the occurrence of an Uncontrollable Force shall not relieve Kenergy of its payment obligations under Article 4, including its payment obligations with respect to any portion of the Monthly Charge. KENERGY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF SECTION 10.1 (SURPLUS SALES) SHALL CONSTITUTE KENERGY'S SOLE AND EXCLUSIVE REMEDIES IF CENTURY IS UNABLE TO RECEIVE ENERGY INCLUDING IF THAT INABILITY IS CAUSED BY AN UNCONTROLLABLE FORCE.

## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Kenergy. Kenergy hereby represents and warrants to Big Rivers as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.1.1 Kenergy is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligation hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the Term hereof.

12.1.2 The execution, delivery and performance of this Agreement by Kenergy have been duly and effectively authorized by all requisite corporate action.

12.1.3 This Agreement and the other Transaction Documents to which it is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Kenergy in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.1.4 The execution and delivery of this Agreement by Kenergy and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Kenergy or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Kenergy is a party or by which it, or its property, is bound.

12.1.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Kenergy is subject is required for the due execution, delivery or performance by it of this Agreement and the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Kenergy has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Kenergy that have not been satisfied or irrevocably waived.

12.1.6 There is no pending or, to Kenergy's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Kenergy to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.1.7 Kenergy is not aware of Costs to comply with Section 10.2 as of the Effective Date.

12.2 Representations and Warranties of Big Rivers. Big Rivers hereby represents and warrants to Kenergy as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.2.1 Big Rivers is an electric generation and transmission cooperative duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and under any other Transaction Documents to which it is a party, and to carry on its business as it is now being conducted and as it is contemplated hereunder and thereunder to be conducted during the Term hereof.

12.2.2 The execution, delivery and performance by Big Rivers of this Agreement and the other Transaction Documents to which it is a party have been duly and effectively authorized by all requisite partner action.

12.2.3 This Agreement and the other Transaction Documents to which Big Rivers is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Big Rivers in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.2.4 The execution and delivery of this Agreement by Big Rivers and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Big Rivers or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Big Rivers is a party or by which it, or its property, is bound.

12.2.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Big Rivers is subject is required for the due execution, delivery or performance by it of this Agreement or the other Transaction Documents to which it is a party, other than (a) as may be required



under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Big Rivers has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Big Rivers that have not been satisfied or irrevocably waived.

12.2.6 There is no pending or, to Big Rivers' knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Big Rivers to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.2.7 Big Rivers is not aware of Costs to comply with Section 10.2 as of the Effective Date.

## ARTICLE 13

### INDEMNIFICATION

13.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, each Party (in such capacity, an "Indemnifying Party") hereby agrees that it will pay, and will protect, indemnify, and hold harmless the other Party and its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject arising out of or relating to the performance or failure to perform its obligations under this Agreement, any other Transaction Documents to which it is a party or any Bilateral Contract (each, an "Indemnified Liability"), and any actual or prospective claim, litigation, investigation or proceeding relating thereto, whether based on contract, tort or any other theory, and regardless of whether any Indemnified Person is a party thereto, including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 13.1.

13.2 Primary Indemnity. Except to the extent that there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or

reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of an Indemnifying Party under this Agreement.

### 13.3 Payments.

13.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify the Indemnifying Party in a timely manner of any such amounts payable by the Indemnifying Party hereunder; provided, that any failure to provide such notice shall not affect the Indemnifying Party's obligations under this Article 13.

13.3.2 Any amounts payable by an Indemnifying Party pursuant to this Article 13 shall be payable within the later to occur of (i) ten (10) Business Days after the Indemnifying Party receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which the Indemnifying Party's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

13.4 Survival. The provisions of this Article 13 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

13.5 Subrogation. Upon payment by an Indemnifying Party pursuant to this Article 13 of any claim under Section 13.1 in respect of any Indemnified Liability, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of the Indemnifying Party cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

## ARTICLE 14

### ADDITIONAL AGREEMENTS

#### 14.1 Regulatory Proceedings.

14.1.1 Proceedings That Affect Rates. Neither Kenergy nor Big Rivers will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rates and charges set forth in this Agreement or other terms and conditions set forth herein.

14.1.2 KPSC Jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Kenergy, Big Rivers or the rates, terms and conditions of the provision of Electric Services to Century.

## 14.2 Audit Rights.

14.2.1 Kenergy will permit Big Rivers to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy reasonably relating to its service to Century under the Electric Service Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Century under the Electric Service Agreement for a period of three years beyond the date of the service.

14.2.2 Big Rivers will permit Kenergy and Century to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Big Rivers reasonably relating to its service to Kenergy under this Agreement, including scheduled deliveries, meter records, billing records, records related to payments made by Kenergy or Century to Big Rivers pursuant to the assignment described in Section 5.1, and such other documents related to payment for and determination of the amount of Electric Services supplied by Big Rivers and delivered to Kenergy for resale and delivery to Century and the appropriate classification of such Energy. Big Rivers shall retain all documentation applicable to service to Kenergy under this Agreement for a period of three years.

14.2.3 Nothing in this Section 14.2 shall obligate a Party to disclose attorney-client privileged information.

## 14.3 Credit Support.

14.3.1 Kenergy shall cause Century to provide and maintain credit support in the form, at Century's election, of (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Big Rivers in its sole discretion, or (iii) other credit support acceptable to Big Rivers in its sole discretion, in each case, in an amount equal to the sum of the following:

(a) amounts reasonably estimated by Big Rivers to become due and payable to Big Rivers under this Agreement for a period of the two succeeding months; and

(b) the amount (without duplication) of any credit support required to be provided and maintained under Section 14.3 of the Electric Service Agreement for the benefit of Big Rivers.

14.3.2 Kenergy shall cause Century to provide and maintain additional credit support in the form required by any RTO or ISO and in the amount (a) determined by Big Rivers with respect to the provision of Electric Services to Kenergy hereunder for delivery to Century under the Electric Service Agreement, and (b) required under any Bilateral Contract for the purchase by Kenergy of any Electric Services hereunder for delivery to Century under the Electric Service Agreement, without the requirement for Big Rivers to provide credit support or be liable to the Bilateral Counterparty.

14.3.3 Kenergy shall cause Century to provide any credit support required by this Section 14.3 to the Person designated by Big Rivers but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

14.4 Right to Supply from Big Rivers. Kenergy acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the Hawesville ~~Sebree~~ Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter other than as provided in this Agreement for the purchase of Electric Services in the Day Ahead Market or the Real Time Market or from a Bilateral Counterparty; ~~provided, that Century Parent or an affiliate of Century may seek a contractual service arrangement with Big Rivers and Kenergy with respect to the Sebree smelter.~~

## ARTICLE 15

### EVENTS OF DEFAULT; REMEDIES

15.1 Events of Default. Each of the following constitutes an “Event of Default” under this Agreement:

15.1.1 Failure by a Party to make any scheduled payment in accordance with this Agreement;

15.1.2 Failure by Century for three or more Business Days to maintain any security required by Section 14.3;

15.1.3 Failure of a Party to perform any material duty imposed on it by this Agreement (other than a failure to make a payment when due) within 30 days following the non-performing Party’s receipt of written notice of the non-performing Party’s breach of its duty hereunder;

15.1.4 Failure by a Party to pay any amounts under this Agreement or any Transaction Document within three Business Days following the non-performing Party’s receipt of written notice of the non-performing Party’s default in its payment obligation, except as provided in Section 15.1.1;

15.1.5 Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article 17;

15.1.6 The occurrence and continuance of an “Event of Default” under any Transaction Document, including the Electric Service Agreement;

15.1.7 Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws by a Party and such petition has not been withdrawn or dismissed within 60 days after filing;

15.1.8 Assignment by a Party for the benefit of its creditors; or

15.1.9 Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment.

15.2 Remedies, General. Except as otherwise provided in this Agreement, following the occurrence and during the continuance of an Event of Default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity; *provided*, that if Big Rivers is the non-defaulting Party, it may elect to terminate this Agreement upon three (3) Business Days' prior written notice to the other Party and Century, or to seek enforcement of its terms at law or in equity. Unless otherwise provided herein, remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy and nothing contained in this Agreement may be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein provided that:

15.2.1 UNDER NO CIRCUMSTANCE WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER TO THE OTHER PARTY, ITS AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS WHETHER IN TORT, CONTRACT OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

15.2.2 Kenergy acknowledges and agrees that, if Kenergy or Century fails to pay any monthly invoice rendered by or on behalf of Kenergy with respect to service to Century within the time prescribed in Section 5.1 or Section 5.2 of the Electric Service Agreement, Big Rivers may discontinue delivery of any or all Electric Services thereunder upon not less than 72 Hours prior written notice to Kenergy and Century of its intention to do so unless Kenergy or Century has cured such default within those 72 Hours. Kenergy further acknowledges and agrees that Big Rivers' discontinuance of such service thereunder for non-payment will not in any way affect, diminish or limit the obligations of Kenergy or Century, as applicable, to make all payments required any Transaction Document, as and when due. For the convenience of the Parties, and to facilitate satisfaction of Kenergy's obligation to Big Rivers, Kenergy hereby assigns to Big Rivers its right to receive payments from Century under the Electric Service Agreement (other than with respect to the Retail Fee or otherwise incurred by Kenergy and not related to Big Rivers) and Kenergy's rights to collect and enforce collection of such amounts due from Century. Big Rivers acknowledges and agrees that Kenergy has assigned to Century credits or funds that Big Rivers owes to Kenergy for the benefit of Century and Kenergy has agreed to cooperate with and assist Century with respect to any collections of any such amounts due from Big Rivers to Kenergy; *provided*, that Century has agreed to reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

15.2.3 Unless otherwise provided herein, if a Party is in breach of its obligations under this Agreement but such breach does not constitute, or would not with the passage of time or the giving of notice constitute, an Event of Default and this Agreement does not provide any other remedy therefor, if such breach has not been cured by the breaching Party within 60 days after receiving written notice from the non-breaching Party setting forth, in reasonable detail, the nature of such breach, the non-breaching Party may commence dispute resolution with respect to such breach and exercise its rights under Article 16, but will not be entitled to terminate, or seek to terminate, this Agreement, or suspend performance of its obligations and duties hereunder as a result of such breach.

## ARTICLE 16

### DISPUTE RESOLUTION

16.1 Resolution Meetings. If a dispute arises between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, either Party may request in writing a meeting among an authorized representative of each of the Parties and Century to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten days or such shorter or longer time as agreed upon by the Parties of the request. Nothing in this Section 16.1 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement. Nothing in this Section shall prevent a Party, where delay in doing so could result in irreparable harm, from seeking interim, provisional or conservatory measures in accordance with Section 18.2, and any such request shall not be deemed incompatible with this Agreement.

16.2 Unresolved Disputes. Absent resolution of the dispute pursuant to Section 16.1, each Party may pursue all remedies available to it at law or in equity from a court or other Governmental Authority in accordance with Section 18.2.

16.3 RTO or ISO Disputes. Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable with respect to the provision of Electric Services to the Hawesville ~~Sebree~~ Node or otherwise payable in respect of the provision of Electric Services hereunder shall be binding on the Parties. Nothing in this provision is intended to impair the rights of either Party to pursue any action through MISO's (or the applicable RTO's or ISO's) dispute resolution process or at the FERC.

## ARTICLE 17

### GENERAL PROVISIONS/SUCCESSORS AND ASSIGNS

17.1 Binding Nature. This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Party, except as provided in Section 17.4, and except that, subject to satisfaction of the conditions of Section 17.2, assignment may be made by either Party to such Person as acquires all or substantially all the assets of the assigning

Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

17.2 Limitation on Assignment. Subject to Section 17.4, in no event may either Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Party or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

17.3 Duties. No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

17.4 Financing Lien. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

## ARTICLE 18

### MISCELLANEOUS

18.1 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

18.2 Jurisdiction. Subject to Article 16, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes; *provided*, that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in Article 16 or this Section prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any action or proceeding arising under or relating to this Agreement, at the address set forth in Section 18.6, and agrees that such service shall be, for all purposes, good and sufficient.

18.3 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

18.4 Amendments.

18.4.1 This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties.

18.4.2 The Parties acknowledge and agree that nothing in this Agreement shall limit the right of Big Rivers to file changes to the Tariff, or limit the right of any Party to challenge any aspect of the Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

18.5 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement; *provided*, that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

18.6 Notices. A notice, consent, approval or other communication under this Agreement must be in writing, addressed to the Person to whom it is to be delivered at such Person's address shown below and (a) personally delivered (including delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile, with a duplicate notice sent by a nationally recognized overnight courier service, *provided, however*, that (i) a notice given pursuant to Section 3.3.2 may be given by telephone to be followed as soon as reasonably practicable by written notice as described herein and (ii) a notice of Uncontrollable Force shall be given by whatever means is available followed by notice in writing as described herein as soon as reasonably practicable; *provided, further*, that notices given pursuant to Section 5.1 and Section 5.2 may be given by electronic message at such addresses as each Party may provide to the other Party by any other method of notice permitted by this Section. A notice given to a Person in accordance with this Section 18.6 will be deemed to have been delivered (a) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (b) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 18.6, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party, in accordance with this Section 18.6, with copies of all such notices to Century to the address set forth below, in



the same manner as notice is otherwise given hereunder. Simultaneously with a Party's giving of any notice required or permitted to be given hereunder from one Party to another Party, such Party shall give such notice to Century using the same method of delivery used to provide such notice to the other Party.

If to Kenergy: Kenergy Corp.  
~~6402 Old Corydon Road~~P.O. Box 18  
Henderson, Kentucky ~~42420~~42419-0018  
Attn: President and CEO  
Facsimile: (270) ~~826-3999~~685-2279

with a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
~~P.O. Box 500~~  
9404 State Route ~~271 North~~2096  
~~Hawesville~~Robards, Kentucky ~~42348~~42420  
Attn: Plant Manager  
Facsimile: (270) ~~852-2882~~521-7305

With a copy to: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Facsimile: (312) 696-3102

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

For notices pursuant to Section 15.1:

If to Kenergy: Kenergy Corp.  
~~6402 Old Corydon Road~~P.O. Box 18  
Henderson, Kentucky ~~42420~~42419-0018  
Attn: President and CEO  
Facsimile: (270) ~~826-3999~~685-2279

With a copy to: Big Rivers Electric Corporation  
201 Third Street

Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
~~P.O. Box 500~~  
9404 State Route ~~271~~ North 2096  
~~Hawesville~~ Robards, Kentucky ~~42348~~ 42420  
Attn: Plant Manager  
Facsimile: (270) ~~852-2882~~ 521-7305

18.7 Severability. If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment will not affect, impair or invalidate the remainder of this Agreement but will be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, unless the loss or failure of such clause, sentence, paragraph or part of this Agreement materially adversely affects the benefit of the bargain to be received by either or both of the Parties, in which event the Parties shall promptly meet and use their good faith best efforts to renegotiate this Agreement in such a fashion as will restore the relative rights and benefits of both Parties or, absent such renegotiation, the Party that was so materially adversely affected will be entitled, in its discretion, to terminate this Agreement.

18.8 Survival. Section 14.4, and prior to termination of the Electric Service Agreement, Article 9, shall survive termination of this Agreement. Each provision of this Agreement providing for payment for Electric Services and any other amounts due hereunder, assignment of the right to collect and enforce collection of amounts due, the provision, replenishment or maintenance of credit support required hereunder or related to remedies for default, damage claims, indemnification or payment of other liabilities also shall survive termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

18.9 Merger. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the matters addressed herein and supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

18.10 Further Assurances. The Parties shall execute such additional documents and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

18.11 Counterparts. This Agreement may be executed in any number of counterparts, that together will constitute but one and the same instrument and each counterpart will have the same force and effect as if they were one original.

18.12 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard or care with reference to, or any liability to, or any benefit for, any Person

not a Party to this Agreement other than Century. Century shall be an express third party beneficiary of this Agreement and may enforce the provisions hereof during the period of any survival obligations for its benefit pursuant to Section 18.8.

18.13 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

18.14 No Agency. This Agreement is not intended, and may not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or otherwise bind, the other Party.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

**SCHEDULE 6.2.3  
LISTING OF CERTAIN TRANSACTION DOCUMENTS**

1. This Agreement
2. Electric Service Agreement
3. Direct Agreement
4. ~~Capacitor~~ **Load Curtailment** Agreement
- 5. Century Guarantee**
- ~~6. 5-~~Protective Relays Agreement
- ~~6. Century Guarantee~~
- ~~7. Capacitor Additions and Protective Relays Guarantee~~
- ~~7. 8-~~Tax Indemnity Agreement
- ~~8. 9-~~Lockbox Agreement

**EXHIBIT A**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges change:

1. ACES Fee – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum – Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
4. NRCO – Cost Differential between organization classification, if applicable, due to Century’s inclusion in Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission – Pro-rata share of Big Rivers’ intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (~~LESS~~less HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees – Tons of emissions related to ~~Coleman Station during SSR operation~~ any owned or leased generating facility that any Governmental Authority with jurisdiction for reliability requires Big Rivers to operate to reliably serve the Load or in consequence of the operation of the Sebree Smelter or the Transaction.
9. KAEC – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Cases – Century will not be charged costs for Big Rivers rate cases with the KPSC.



**DIRECT AGREEMENT**

Dated as of January [ ], 2014

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

**CENTURY ALUMINUM SEBREE LLC**

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## DIRECT AGREEMENT

This DIRECT AGREEMENT ("Agreement") is made and entered into as of January [ ], 2014, by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers"), and CENTURY ALUMINUM SEBREE LLC, a Delaware limited liability company ("Century"). Big Rivers and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy Corp., a Kentucky electric cooperative corporation and a member of Big Rivers ("Kenergy"), currently supplies and delivers retail electric energy and related services to Century, the owner and operator of an aluminum reduction plant in Robards, Kentucky, pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the "Existing Retail Agreement").

B. Century acquired its interests in the Sebree Smelter and the Existing Retail Agreement from Alcan Primary Products Corporation, a Texas corporation ("Alcan"), pursuant to an Asset Sale Agreement, dated April 28, 2013, and an Assignment and Assumption Agreement, dated as of June 1, 2013.

C. Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers, pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the "Existing Wholesale Agreement").

D. Alcan gave notice of termination of the Existing Retail Agreement, dated January 31, 2013, and effective January 31, 2014 (the "Notice of Termination"). The Existing Retail Agreement, as assigned by Alcan and assumed by Century, remains subject to the Notice of Termination, as confirmed in a Letter of Representations and Agreements, dated as of June 1, 2013, by and among Big Rivers, Kenergy, Century and Century Aluminum Company, a Delaware corporation, and the direct or indirect parent of Century ("Century Parent").

E. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth in the Electric Service Agreement, dated as of the date hereof (as amended, the "Electric Service Agreement").

F. In connection with and as a condition to entry into the Electric Service Agreement, Kenergy and Big Rivers have agreed to enter into the Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"), to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, for resale by Kenergy to Century.

G. The Parties desire to set forth in this Agreement certain obligations owed to each other that will survive the appointment and approval of a Market Participant other than Big Rivers and termination of the Arrangement Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

1. Definitions; Rules of Interpretations. Capitalized terms used in this Agreement and not defined herein have the meanings assigned to those terms in the Electric Service Agreement; *provided*, that if the Electric Service Agreement is terminated prior to the satisfaction in full of all obligations of the Parties hereunder, capitalized terms defined by reference to the Electric Service Agreement shall have the meanings at the time of termination; *provided further*, that the definition of “Costs” herein shall refer to costs of Big Rivers and not Kenergy and the Exhibit A hereto will supplant the reference to Exhibit B in the Electric Service Agreement. The rules of interpretation set forth in Section 1.2 of the Electric Service Agreement shall apply to this Agreement as though fully set forth herein. References to any SSR Agreement herein shall include any SSR Agreement entered into in substitution or replacement of a SSR Agreement that is expiring in accordance with its terms.

2. Effectiveness. This Agreement shall commence on the date first written above, provided that the obligations of the Parties under Section 3 and Section 5 shall not commence until the Effective Date.

3. Covenants and Agreements.

3.1 Electric Service Agreement. Century shall (a) fully perform and discharge all of its obligations under the Electric Service Agreement unless excused in accordance with the terms thereof; (b) not act or rely upon any written or oral waivers granted by Kenergy of Century’s performance under or compliance with provisions of the Electric Service Agreement that could be reasonably expected to materially adversely affect Big Rivers’ rights or interests under this Agreement or the Arrangement Agreement without the prior written consent of Big Rivers; (c) so long as the Arrangement Agreement is in effect, (i) not waive the performance and discharge by Kenergy of its material obligations under the Electric Service Agreement without the prior written consent of Big Rivers; (ii) not amend or modify the Electric Service Agreement without the prior written consent of Big Rivers; (iii) not terminate or repudiate the Electric Service Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Century) other than in accordance with the provisions thereof without the prior written consent of Big Rivers; and (iv) make payments pursuant to the Electric Service Agreement when due and in accordance therewith for so long as such agreement exists; (d) not take any action or support any action by others that in any manner would impede Century’s ability to fulfill its obligations to Kenergy or Big Rivers under the Electric Service Agreement, this Agreement or any other Transaction Document to which it is a party or act in any manner that could reasonably be expected to materially adversely affect its ability to perform or discharge its obligations under this Agreement; (e) provide Big Rivers with a copy of all notices sent to Kenergy pursuant to the Electric Service Agreement; and (f) not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Electric Service Agreement except in accordance with Article 17 thereof; *provided*, that any transfer or assignment pursuant to Article 17 thereof that requires the consent or approval of Kenergy also shall require the consent of Big Rivers.

3.2 Arrangement Agreement. Big Rivers shall (a) fully perform and discharge all of its obligations under the Arrangement Agreement unless excused in accordance with the terms thereof; (b) not act or rely upon any written or oral waivers granted by Kenergy of Big Rivers' performance under or compliance with provisions of the Arrangement Agreement that could be reasonably expected to materially adversely affect Century's rights or interests under the Electric Service Agreement without the prior written consent of Century; (c) enforce the performance and discharge by Kenergy of its material obligations under the Arrangement Agreement and not waive the performance and discharge by Kenergy of its material obligations thereunder; (d) not amend or modify the Arrangement Agreement without the prior written consent of Century; (e) not terminate or repudiate the Arrangement Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Big Rivers) other than in accordance with the provisions thereof; (f) not take any action or support any action by others that in any manner would impede Big Rivers' ability to fulfill its obligations to Kenergy or Century under the Arrangement Agreement, this Agreement or any other Transaction Document to which it is a party or act in any manner that could reasonably be expected to materially adversely affect its ability to perform or discharge its obligations under this Agreement; (g) provide Century with a copy of all notices sent to Kenergy pursuant to the Arrangement Agreement; and (h) not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Arrangement Agreement except in accordance with Article 17 thereof; *provided*, that any transfer or assignment pursuant to Article 17 thereof that requires the consent or approval of Kenergy also shall require the consent of Century.

3.3 Operation of Generation Facilities for Reliability Purposes.

(a) The Parties acknowledge that Big Rivers may after the date hereof enter into an SSR Agreement or incur Reliability Costs regarding the obligation of Big Rivers to restart, operate and maintain, dispatch, re-dispatch or make available an owned or leased generation facility, including the Wilson Generation Station, if operation of any such generation facility is required by any Governmental Authority with jurisdiction for reliability to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction, until such time as the applicable Governmental Authority determines such generation facility is not required to be operated for reliability purposes. Reliability Costs shall include all of the resulting capital costs incurred to restart such generation facility and all of the resulting capital costs incurred after the date of such restart, charged by the applicable RTO or ISO, as if Century had requested that Big Rivers enter into a SSR Agreement with the applicable RTO or ISO under the Tariff with respect to such generation facility. "Capital costs" shall mean any costs required to be capitalized pursuant to applicable Accounting Principles. Big Rivers shall maintain any SSR Agreement, and seek its termination, in accordance with this Agreement and the SSR Agreement.

(b) In any negotiation of any SSR Agreement with the applicable RTO or ISO, each Party shall provide the other with a reasonable opportunity to review and comment on all material information, proposals and submittals made to the applicable RTO or ISO in such negotiation. Big Rivers and Kenergy shall not limit or prohibit Century's ability to discuss or engage with the applicable RTO or ISO regarding issues arising under any SSR Agreement as it pertains to Century. Big Rivers agrees that it will not enter into any SSR Agreement without

Century's consent, *provided, however*, that if Century fails to consent, then Century shall limit its Load to not more than the Base Load plus, if applicable, the Curtailable Load.

(c) Big Rivers will use reasonable commercial efforts to structure any SSR Agreement to permit Big Rivers to request termination of the SSR Agreement following 30 days' notice by Big Rivers to the applicable RTO or ISO, or by the applicable RTO or ISO to Big Rivers, that an SSR Agreement is no longer required or after confirmation by Century that it will operate at or below the Base Load plus, if applicable, the Curtailable Load effective immediately prior to and following termination of the SSR Agreement. Big Rivers will request from MISO the allocation and recovery of the costs of any SSR Agreement on the basis of consumption of energy at the time of peak demand.

(d) During the term of any SSR Agreement, if a major failure, casualty or mechanical breakdown occurs at any owned or leased generation facility operated to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction, Century shall become responsible for the capital repair Costs of any such generation facilities, but not to exceed Big Rivers' property casualty insurance deductible with respect to such major failure, casualty or breakdown. Big Rivers covenants that the deductible for the property casualty insurance policy for its generation facilities is \$1 million and shall not be increased during the term of this Agreement.

(e) Century acknowledges and agrees that, during the term of any SSR Agreement or otherwise, if Century's Load exceeds the Base Load plus, if applicable, the Curtailable Load, then Century must pay all Reliability Costs in accordance with this Agreement, or reduce its Load to a level not in excess of the Base Load plus, if applicable, the Curtailable Load.

(f) Subject to Section 4, Century acknowledges and agrees that (i) Big Rivers will charge Century for all Reliability Costs, subject only to the offsets set forth in Section 4.1(a)(i) and (ii) to the extent any such offsets are actually received by Big Rivers; (ii) Century shall be obligated to pay for all Reliability Costs during periods in which other Persons to whom the applicable RTO or ISO has preliminarily or definitively allocated responsibility for a portion of the Reliability Costs are not paying such costs, whether as a result of a challenge to a SSR Agreement or otherwise, and (iii) the absence, existence, effectiveness or unenforceability of an SSR Agreement shall not affect Century's obligation to pay Reliability Costs pursuant to Section 4 if operation of any owned or leased generation facility of Big Rivers is required by any Governmental Authority with jurisdiction for reliability to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction.

3.4 [Reserved].

3.5 [Reserved].

3.6 Alternative RTO or ISO.

(a) This Agreement and the other Transaction Documents have been drafted by the Parties and Kenergy under the presumption that, during the Service Period, the Sebree Node is located in MISO and Big Rivers is a member of MISO. If the Robert A. Reid

Substation and the Sebree Node are not located within the same RTO or ISO during the Service Term, then the Parties agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

(b) Century acknowledges and agrees that Kenergy or Big Rivers, as applicable, may, in its sole discretion, elect to join or become a member of a new RTO or ISO or elect to withdraw and not be a member of any RTO or ISO. The Sebree Node may remain in MISO if (i) requested by Century, (ii) permitted by MISO and the new RTO or ISO, (iii) Century is responsible for any costs resulting from the Sebree Node remaining in MISO, and (iv) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO or not being a member of any RTO or ISO. In each such case, any terms used herein that relate to MISO or the MISO Tariff shall be deemed amended, as applicable, to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO or the withdrawal of Kenergy or Big Rivers from any RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

(c) Big Rivers shall (i) provide Century one year's notice before leaving MISO; (ii) provide Century with notice of a recommendation by Big Rivers' management to Big Rivers' board of directors that Big Rivers terminate its membership in MISO (subject to any applicable confidentiality restrictions) promptly after the date the recommendation is made; (iii) if not publicly available, provide Century with a copy of the annual report required by the Kentucky Public Service Commission regarding the cost and benefit to Big Rivers of being a member in MISO (subject to any applicable confidentiality restrictions); and (iv) allow Century to participate in meetings or conference calls with MISO regarding matters affecting amounts payable by Century relating to leaving MISO.

(d) Century acknowledges and agrees if (i) Kenergy or Big Rivers, as applicable, in its sole discretion, elects to join or become a member of a new RTO or ISO or elects to withdraw and not become a member of any RTO or ISO, and (ii) Century is not permitted by either MISO or the new RTO or ISO to remain in MISO, then Century will be responsible for all costs associated with Century's exit from MISO, including any fees charged by MISO as a result of the exit.

3.7 Acknowledgement. Century acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the Sebree Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter.

3.8 Century Credit Support. Century shall provide and maintain credit support, at Big Rivers' election, in the form of one of the following, as selected by Century: (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Big Rivers in its sole discretion or (iii) other credit support acceptable to Big Rivers in its sole discretion, in each case, in an amount equal to

the sum of the following without duplication either in this Agreement or with regard to the Electric Service Agreement or any Market Agreement:

(a) amounts reasonably estimated by Big Rivers to become due and payable to Big Rivers under this Agreement during the two succeeding months; and

(b) the amount (without duplication) of any credit support required to be provided and maintained under Section 14.3 of the Electric Service Agreement for the benefit of Big Rivers.

Century shall provide any credit support required by this Section to the Person designated by Big Rivers and Kenergy but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

3.9 Additional Credit Support. Century shall provide and maintain additional credit support in the form required by any RTO or ISO and in the amount (a) determined by Big Rivers prior to termination of the Arrangement Agreement or, if after such termination, Kenergy with respect to the provision of Electric Services for resale to Century and (b) required under any Bilateral Contract for the purchase by Kenergy of any Electric Services for resale to Century, without the requirement for Big Rivers to provide credit support or be liable to the Bilateral Counterparty.

3.10 Right to Transmission Services. Notwithstanding any other provision in this Agreement or any Transaction Document, Big Rivers acknowledges and agrees that Century (through Kenergy or the Market Participant) shall be entitled to Transmission Services, on the same rates, terms and conditions as other transmission customers pursuant to the Tariff.

3.11 Audit Rights. Big Rivers will permit Century to audit, upon reasonable notice, at Century's own expense, at a mutually agreeable time, all information in the possession of Big Rivers relating to Big Rivers' service under the Arrangement Agreement to Kenergy for resale to Century, including scheduled deliveries, meter records, billing records, records related to payments to Big Rivers and such other documents related to payment for and determination of the amount of Electric Services supplied by Big Rivers and delivered to Kenergy for resale and delivery to Century. Big Rivers shall retain all documentation applicable to service to Kenergy under the Arrangement Agreement for a period of three years. Nothing in this Section shall obligate Big Rivers to provide attorney-client privileged information.

3.12 Imbalance Energy Limit. Century acknowledges and agrees that it will not consume more than 10 MW of energy above the Base Load plus, if applicable, the Curtailable Load.

3.13 Transmission Charges. The Parties acknowledge and agree that delivery of Electric Services from the Delivery Point to the Century Substation is network integration transmission service and Big Rivers will not charge any supplemental amount in addition to the charge for network integration transmission service for delivery of Electric Services to the Delivery Point for the transmission of Electric Services from the Delivery Point to the Century Substation.

3.14 Assignment of the Sebree Node. Big Rivers shall transfer the Sebree Node to any Person succeeding Big Rivers as the Market Participant.

4. Direct Payment Obligations.

4.1 Century shall pay Big Rivers all amounts owing to Big Rivers under this Agreement (the “Direct Payments”) including, without duplication either within this Agreement or with regard to the Electric Service Agreement or any Market Agreement, the following:

(a) All Reliability Costs incurred by Big Rivers, including under any regulation, order, directive or policy of a RTO or ISO that would be substantively similar to an SSR Agreement if the provisions of such regulation, order, directive or policy were implemented in an agreement with the RTO or ISO, and whether or not any SSR Agreement is then in effect or approved by any Governmental Authority, together with any Costs, including new capital expenditures, of Big Rivers when the operation of its owned or leased generation facility is required for reliability or in consequence of the operation or existence of the Sebree Smelter or the Transaction if Century’s Load exceeds the Base Load plus, if applicable, the Curtailable Load, including any such Costs that are not reimbursed as Reliability Costs, subject to the following:

(i) Century shall not be obligated to pay Big Rivers any Reliability Costs to the extent that (A) Century pays any such costs under the Electric Service Agreement to or for the benefit of the applicable RTO or ISO and (B) such applicable RTO or ISO then credits such amounts to Big Rivers and Big Rivers receives such amounts either directly in the form of a payment to Big Rivers or indirectly as a credit to amounts otherwise owing by Big Rivers to the applicable RTO or ISO on a statement of the applicable RTO or ISO;

(ii) The amount payable by Century for Reliability Costs for any Billing Month shall be reduced by:

(1) revenues received by Big Rivers for Transmission Services for such Billing Month paid by Century directly or indirectly under the Tariff, including revenues paid by Century which are received by Big Rivers pursuant to Subsection 4.1(a)(i), and

(2) revenues received from other Persons based on allocations of responsibility for the related Reliability Costs by an RTO or ISO;

If the portion of the Direct Payment relating to this Subsection (a) is negative as a result of the offsets in clauses (1) and (2) above, then such offsets will be carried forward and applied as a credit against any future Reliability Costs. Any accumulated offsets or credits accruing pursuant to this Subsection 4.1(a)(ii) shall be reduced to zero at the time of the termination or expiration of the SSR Agreement. Big Rivers shall thereafter have no obligation to pay to Century any offsets or credits accruing under this Subsection 4.1(a)(ii).

(b) Subject to Section 4.1(d)(ii), Century shall not be charged any Reliability Costs or, other Costs related to any owned or leased generation facility of Big Rivers required to be operated to reliably serve the Load or in consequence of the operation or existence

of the Sebree Smelter or the Transaction, if (i) Century operates at or below the Base Load plus, if applicable, the Curtailable Load; (ii) the applicable RTO or ISO terminates any SSR Agreement with respect to such generation facility; or (iii) Big Rivers continues operations or restarts operations of such generation facility for its own purposes.

(c) Century shall pay or reimburse Big Rivers for the Costs referred to in Sections 3.6(b)(iii) and 3.6(d) for which Century is responsible only to the extent these charges are charged by the applicable RTO or ISO to Big Rivers.

(d) Century shall reimburse Big Rivers for (i) all other third-party, out of pocket Costs of Big Rivers, (ii) the Cost of purchasing ZRCs from any Person for MISO Planning Year 2013/2014 that are required by MISO for the Load, after accounting for ZRCs necessary to satisfy Big Rivers' capacity obligations that will result from idling the Wilson Generation Station on February 1, 2014 and covering the period therefrom to and including May 31, 2014, and (iii) the Cost, including allocated internal overhead costs, of (A) 1.25 full-time-equivalent employees of Big Rivers with respect to the period in which Big Rivers is the Market Participant, or (B) 0.5 full-time-equivalent employee of Big Rivers with respect to the period in which Big Rivers is not the Market Participant.

4.2 Monthly Invoices. Big Rivers shall bill Century on or before the fifteenth Business Day of each Billing Month for the payments and charges due and payable by Century hereunder by delivery of a monthly invoice reflecting the payments and charges that accrued during the preceding month and unpaid amounts from prior monthly statements. Century shall pay Big Rivers such amounts in immediately available funds to an account designated by Big Rivers on the Business Day following the 24th day of the month following the Billing Month.

4.3 Default Interest. If any monthly invoice rendered by Big Rivers to Century is not paid on the due date, interest will accrue and become payable by Century to Big Rivers on all unpaid amounts at a rate of one percentage point over the Prime Rate commencing on the first day after the due date and accruing on each day thereafter until the date such payment is made.

4.4 Payments Under Protest; No Waiver. If any portion of any monthly invoice hereunder is disputed by Century, Century shall pay the disputed amount, under protest, when due. If the disputed amount of the payment is found to be incorrect, Big Rivers shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made. No payment made by Century pursuant to this Section shall constitute a waiver of any right of Century to contest the correctness of any charge or credit reflected in a Big Rivers' invoice.

4.5 Acknowledgements Regarding Payment Term. Century acknowledges and agrees that Big Rivers shall be entitled to Direct Payments without regard to the status or effectiveness of the Electric Service Agreement, the Arrangement Agreement or any other Transaction Document.



5. Cure Rights.

5.1 Notwithstanding any provision contained in the Electric Service Agreement that affords Century the right to terminate the Electric Service Agreement upon any breach or default by Kenergy thereunder, Century shall provide Big Rivers a reasonable opportunity, exercisable in Big Rivers' sole discretion, to cure any such breach or default by Kenergy prior to exercising such termination rights, which opportunity shall extend, at a minimum, for a period of not less than ten (10) Business Days after the later of (i) the date of expiration of the applicable period of time (if any) available for a cure by Kenergy under the Electric Service Agreement, and (ii) the date on which notice of the breach or default by Kenergy is delivered by Century to Big Rivers. Century hereby consents to any attempt by Big Rivers to cure any breaches or defaults by Century under the Electric Service Agreement that may hereafter occur; *provided*, that Big Rivers does not materially interfere with Century's attempts (if any) to so cure such breaches or defaults.

5.2 Notwithstanding any provision contained in the Arrangement Agreement that affords Big Rivers the right to terminate the Arrangement Agreement upon any breach or default by Kenergy thereunder, Big Rivers shall provide Century a reasonable opportunity, exercisable in Century's sole discretion, to cure any such breach or default by Kenergy prior to exercising such termination rights, which opportunity shall extend, at a minimum, for a period of not less than ten (10) Business Days after the later of (i) the date of expiration of the applicable period of time (if any) available for a cure by Kenergy under the Arrangement Agreement, and (ii) the date on which notice of the breach or default by Kenergy is delivered by Big Rivers to Century. Big Rivers hereby consents to any attempt by Century to cure any breaches or defaults by Big Rivers under the Arrangement Agreement that may hereafter occur; *provided*, that Century does not materially interfere with Big Rivers' attempts (if any) to so cure such breaches or defaults.

6. Representations and Warranties.

6.1 Big Rivers. Big Rivers hereby represents and warrants to Century as follows:

(a) Big Rivers is an electric generation and transmission cooperative corporation duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the Arrangement Agreement, to perform its obligations hereunder and thereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

(b) Subject to Section 6.1(c), this Agreement, the Arrangement Agreement and other agreements entered into by Big Rivers in connection therewith constitute Big Rivers' valid and binding obligation enforceable against it in accordance with their terms, except as enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement and the Arrangement Agreement by Big Rivers have been duly and effectively authorized by all requisite corporate action.

(c) As of the Effective Date, all consents, approvals, authorizations, actions or orders, including without limitation, those that must be obtained from Governmental Authorities and the RUS, required for its authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement and the Arrangement Agreement have been obtained other than as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time, and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Big Rivers has no reason to believe will not be timely obtained.

(d) Subject to Section 6.1(c), its execution and delivery of this Agreement and the Arrangement Agreement, its consummation of the transactions contemplated by this Agreement and the Arrangement Agreement, and its fulfillment of and compliance with the terms and provisions hereof and thereof do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to it, or conflict with any of the terms, conditions or provisions of its Articles of Incorporation or Bylaws or any material instrument, mortgage, agreement, contract or restriction to which it is a party, or by which any of its properties are bound, or require the approval, consent or authorization of any federal, state or local court, or any of its creditors, or of any other Person, or give any party with rights under any such instrument, agreement, contract, mortgage, judgment, award, order or other restriction the right to terminate, modify or otherwise change its rights or obligations thereunder that has not been obtained.

6.2 Century. Century hereby represents and warrants to Big Rivers as follows:

(a) Century is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

(b) This Agreement, the Electric Service Agreement and other agreements entered into by Century in connection therewith constitute Century's valid and binding obligation enforceable against it in accordance with their terms, except as enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement and the Electric Service Agreement by Century have been duly and effectively authorized by all requisite limited liability company action.

(c) All consents, approvals, authorizations, actions or orders, including without limitation, those that must be obtained from governmental agencies or authorities, required for its authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement and the Arrangement Agreement have been obtained.

(d) Its execution and delivery of this Agreement and the Electric Service Agreement, its consummation of the transactions contemplated by this Agreement and the

Electric Service Agreement, and its fulfillment of and compliance with the terms and provisions hereof and thereof do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to it, or conflict with any of the terms, conditions or provisions of its limited liability company operating agreement or any material instrument, mortgage, agreement, contract or restriction to which it is a party, or by which any of its properties are bound, or require the approval, consent or authorization of any federal, state or local court, or any of its creditors, or of any other Person, or give any party with rights under any such instrument, agreement, contract, mortgage, judgment, award, order or other restriction the right to terminate, modify or otherwise change its rights or obligations thereunder that has not been obtained.

7. Indemnification. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, Century hereby agrees that it will pay, and will protect, indemnify, and hold harmless Big Rivers and each of its respective designees, agents and contractors (each, an “Indemnified Person”), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel but not including the expenses incurred by Big Rivers in connection with the preparation, negotiation, execution and delivery of this Agreement) to the extent not recovered under the Arrangement Agreement and to which such Indemnified Person may become subject arising out of or relating to any or all of the following (each, an “Indemnified Liability”): (a) the purchase and transmission of electricity, electric capacity or electrical ancillary services to the Delivery Point for resale to Century, (b) Bilateral Contracts, to which Century has agreed, for the purchase of electricity, electric capacity or electricity-related ancillary services for resale to Century, (c) any other amounts due and owing to Big Rivers under the Transaction Documents, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by Century or otherwise, and regardless of whether any Indemnified Person is a party thereto, such items (a) through (d) including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 7. Any claims under this Section 7 in respect of any Indemnified Liabilities are referred to herein, collectively, as “Indemnity Claims”. No Indemnified Person shall be obliged to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of Century under this Agreement.

#### 7.1 Payments.

(a) All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate, and all such sums and costs shall be immediately due and payable on demand. Each such Indemnified Person shall promptly notify Century in a timely manner of any such amounts payable by Century hereunder; *provided*, that any failure to provide such notice shall not affect Century’s obligations under this Section 7.

(b) Any amounts payable by Century pursuant to this Section 7 shall be payable within the later to occur of (i) ten (10) Business Days after Century receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which Century's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

7.2 Survival. The provisions of this Section 7 shall survive termination of this Agreement, and shall be in addition to any other rights and remedies of any Indemnified Person.

7.3 Subrogation. Upon payment of any Indemnity Claim by Century pursuant to this Section 7, Century, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of Century cooperate with Century and give at the request and expense of Century such further assurances as are necessary or advisable to enable Century vigorously to pursue such claims.

## 8. Miscellaneous.

8.1 Entire Agreement; Amendments; No Reliance. This Agreement, the Electric Service Agreement, the Arrangement Agreement and the other Transaction Documents constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in the foregoing documents.

8.2 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of an subsequent breach of the same or any other term, covenant or condition contained herein.

8.3 Notices. A notice, consent, approval or other communication under this Agreement must be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section, the

address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party in accordance with this Section:

If to Big Rivers:       Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 827-2558

If to Century:         Century Aluminum Company  
9404 State Route 2096  
Robards, Kentucky 42420  
Attn: Plant Manager  
Fax: (270) 521-7305

With copy to:         Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Fax: (312) 696-3102

8.4    Dispute Resolution.

(a)    Resolution Meetings. If a dispute arises concerning the terms or conditions of this Agreement, the duties or obligations of the Parties or the implementation, interpretation or breach thereof, either Party may request a meeting among authorized representatives of the other Party to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten (10) days or such shorter or longer time as agreed upon by the Parties. Nothing in this Section 8.4 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement.

(b)    Arbitration Generally. Absent resolution of the dispute pursuant to Section 8.4(a), and subject to a minimum amount in controversy of \$100,000.00, the Parties will submit the matter to be settled, subject to Section 8.7, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules (the "AAA Rules") then in effect of the ICDR of the American Arbitration Association, in accordance with the following terms and conditions:

(i)     In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

(ii)    The ICDR shall administer the arbitration.

(iii)   The seat of the arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration

(c) Arbitration Procedures. The following procedures shall govern the selection of arbitrators.

(i) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(ii) In the event of an inability by the two party-nominated arbitrators to agree on an arbitrator in accordance with Section 8.4(c)(i) the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(iii) Notwithstanding Sections 8.4(c)(i) and 8.4(c)(ii), each arbitrator selected pursuant to this Section 8.4(c) shall have substantial experience in the electric utility sector, and shall not have been employed by, a consultant to or received compensation from any Party in the past.

(d) Remedies and Relief.

(i) The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the arbitration tribunal may be specifically enforced by any court of competent jurisdiction.

(ii) The losing Party shall pay the fees and costs of the prevailing Party or as allocated by the arbitration tribunal if all relief sought by one Party is not granted.

(iii) The award of the arbitration tribunal shall be subject to appeal to, or requests for rehearing by, a court in accordance with Section 8.7.

(iv) The award of the arbitration tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

(e) Except for arbitration proceedings pursuant to this Section 8.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or

conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; provided, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures through the courts in accordance with Section 8.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

(f) Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable hereunder shall be binding on the Parties. The Parties acknowledge and agree that Century shall be responsible for pursuing any challenge to any amounts an RTO or ISO charges to a Market Participant or Kenergy that directly or indirectly is charged to Century.

8.5 Assignments and Transfers. No Party shall assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party, *provided, however*, that no prior consent shall be required with respect to an assignment to any person who is a permitted assignee of Century pursuant to and in accordance with the Electric Service Agreement or a permitted assignee of Big Rivers pursuant to and in accordance with the Arrangement Agreement. No assignment by Century pursuant to the preceding sentence shall relieve or release Century of or from its obligations under or with respect to this Agreement without the consent of Big Rivers, which consent will be granted in its sole discretion. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

8.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

8.7 Jurisdiction. The Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over each and every judicial action brought under or in relationship to this Agreement, *provided* that the subject matter of such dispute is not a matter reserved by law to the KPSC, or to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in this paragraph prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 8.4, or any action or proceeding arising under or relating to such arbitration, at the

address set forth in Section 8.3, and agrees that such service shall be, for all purposes, good and sufficient.

8.8 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement and the other Transaction Documents to which it is a party; *provided* that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

8.9 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties and their respective successors and permitted assigns.

8.10 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

8.11 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement, other than Kenergy which shall be a third party beneficiary hereof.

8.12 Kenergy Obligations Separate. Nothing contained in this Agreement shall obligate Century or Big Rivers for any obligations or liabilities of Kenergy, whether under or pursuant to the Electric Service Agreement, the Arrangement Agreement or otherwise.

8.13 No Direct Service. The Parties acknowledge that Big Rivers and Kenergy are entering into the Arrangement Agreement and Century and Kenergy are entering into the Electric Service Agreement which agreements contain the terms and conditions setting forth the wholesale arrangement and procurement of power by Big Rivers and the purchase of such power by Kenergy, and the corresponding retail sale of such power by Kenergy and the purchase of such power by Century. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers to sell directly to Century, or an agreement of Century to directly purchase from Big Rivers, any Electric Services.

[Signatures Follow on Next Page]



IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

CENTURY ALUMINUM SEBREE LLC

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges to Big Rivers change:

1. ACES Fee – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum – Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
4. NRCO – Cost Differential between organization classification, if applicable, due to Century’s inclusion in Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission – Pro-rata share of Big Rivers’ intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees – Tons of emissions related to any owned or leased generating facility that any Governmental Authority with jurisdiction for reliability requires Big Rivers to operate to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction.
9. KAEC – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Casts – Century will not be charged costs for Big Rivers rate cases with the KPSC.



**DIRECT AGREEMENT**

Dated as of ~~August 19, 2013~~ January [ ], 2014

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

~~CENTURY ALUMINUM OF KENTUCKY GENERAL  
PARTNERSHIP~~ SEBREE LLC

## DIRECT AGREEMENT

This DIRECT AGREEMENT ("Agreement") is made and entered into as of ~~August 19, 2013,~~ January [ ] , 2014, by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ~~SEBREE LLC, a Delaware limited liability company~~ ("Century"). Big Rivers and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy Corp., a Kentucky electric cooperative corporation and a member of Big Rivers ("Kenergy"), currently supplies and delivers retail electric energy and related services to Century, the owner and operator of an aluminum reduction plant in ~~Hawesville~~ Robards, Kentucky, pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the "Existing Retail Agreement").

**B. Century acquired its interests in the Sebree Smelter and the Existing Retail Agreement from Alcan Primary Products Corporation, a Texas corporation ("Alcan"), pursuant to an Asset Sale Agreement, dated April 28, 2013, and an Assignment and Assumption Agreement, dated as of June 1, 2013.**

~~C.~~ B-Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers, pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the "Existing Wholesale Agreement").

~~D.~~ C. Century ~~Alcan~~ gave notice of termination of the Existing Retail Agreement on ~~August 20, 2012,~~ dated January 31, 2013, and effective January 31, 2014 (the "Notice of Termination"). The Existing Retail Agreement, as assigned by Alcan and assumed by Century, remains subject to the Notice of Termination, as confirmed in a Letter of Representations and Agreements, dated as of June 1, 2013, by and among Big Rivers, Kenergy, Century and Century Aluminum Company, a Delaware corporation, and the direct or indirect parent of Century ("Century Parent").

~~E.~~ D-Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth in the Electric Service Agreement, dated as of the date hereof (as amended, the "Electric Service Agreement").

~~F.~~ E-In connection with and as a condition to entry into the Electric Service Agreement, Kenergy and Big Rivers have agreed to enter into the Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"), to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, for resale by Kenergy to Century.

G. ~~F.~~ The Parties desire to set forth in this Agreement certain obligations owed to each other that will survive the appointment and approval of a Market Participant other than Big Rivers and termination of the Arrangement Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

1. Definitions; Rules of Interpretations. Capitalized terms used in this Agreement and not defined herein have the meanings assigned to those terms in the Electric Service Agreement; *provided*, that if the Electric Service Agreement is terminated prior to the satisfaction in full of all obligations of the Parties hereunder, capitalized terms defined by reference to the Electric Service Agreement shall have the meanings at the time of termination; *provided further*, that the definition of "Costs" herein shall refer to costs of Big Rivers and not Kenergy and the Exhibit A hereto will supplant the reference to Exhibit B in the Electric Service Agreement. The rules of interpretation set forth in Section 1.2 of the Electric Service Agreement shall apply to this Agreement as though fully set forth herein. References to any SSR Agreement herein shall include any SSR Agreement entered into in substitution or replacement of a SSR Agreement that is expiring in accordance with its terms.

2. Effectiveness. This Agreement shall commence on the date first written above, provided that the obligations of the Parties under Section 3 and Section 5 shall not commence until the Effective Date.

3. Covenants and Agreements.

3.1 Electric Service Agreement. Century shall (a) fully perform and discharge all of its obligations under the Electric Service Agreement unless excused in accordance with the terms thereof; (b) not act or rely upon any written or oral waivers granted by Kenergy of Century's performance under or compliance with provisions of the Electric Service Agreement that could be reasonably expected to materially adversely affect Big Rivers' rights or interests under this Agreement or the Arrangement Agreement without the prior written consent of Big Rivers; (c) so long as the Arrangement Agreement is in effect, (i) not waive the performance and discharge by Kenergy of its material obligations under the Electric Service Agreement without the prior written consent of Big Rivers; (ii) not amend or modify the Electric Service Agreement without the prior written consent of Big Rivers; (iii) not terminate or repudiate the Electric Service Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Century) other than in accordance with the provisions thereof without the prior written consent of Big Rivers; and (iv) make payments pursuant to the Electric Service Agreement when due and in accordance therewith for so long as such agreement exists; (d) not take any action or support any action by others that in any manner would impede Century's ability to fulfill its obligations to Kenergy or Big Rivers under the Electric Service Agreement, this Agreement or any other Transaction Document to which it is a party or act in any manner that could reasonably be expected to materially adversely affect its ability to perform or discharge its obligations under this Agreement; (e) provide Big Rivers with a copy of all notices sent to Kenergy pursuant to the Electric Service

Agreement; and (f) not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Electric Service Agreement except in accordance with Article 17 thereof; *provided*, that any transfer or assignment pursuant to Article 17 thereof that requires the consent or approval of Kenergy also shall require the consent of Big Rivers.

3.2 Arrangement Agreement. Big Rivers shall (a) fully perform and discharge all of its obligations under the Arrangement Agreement unless excused in accordance with the terms thereof; (b) not act or rely upon any written or oral waivers granted by Kenergy of Big Rivers' performance under or compliance with provisions of the Arrangement Agreement that could be reasonably expected to materially adversely affect Century's rights or interests under the Electric Service Agreement without the prior written consent of Century; (c) enforce the performance and discharge by Kenergy of its material obligations under the Arrangement Agreement and not waive the performance and discharge by Kenergy of its material obligations thereunder; (d) not amend or modify the Arrangement Agreement without the prior written consent of Century; (e) not terminate or repudiate the Arrangement Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Big Rivers) other than in accordance with the provisions thereof; (f) not take any action or support any action by others that in any manner would impede Big Rivers' ability to fulfill its obligations to Kenergy or Century under the Arrangement Agreement, this Agreement or any other Transaction Document to which it is a party or act in any manner that could reasonably be expected to materially adversely affect its ability to perform or discharge its obligations under this Agreement; (g) provide Century with a copy of all notices sent to Kenergy pursuant to the Arrangement Agreement; and (h) not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Arrangement Agreement except in accordance with Article 17 thereof; *provided*, that any transfer or assignment pursuant to Article 17 thereof that requires the consent or approval of Kenergy also shall require the consent of Century.

3.3 ~~Coleman~~ Operation of Generation Station-Facilities for Reliability

Purposes.

(a) ~~As of~~ The Parties acknowledge that Big Rivers may after the date hereof, Big Rivers is pursuing or will have entered enter into an SSR Agreement (the "Initial SSR Agreement") or incur Reliability Costs regarding the obligation of Big Rivers to restart, operate and maintain, dispatch, re-dispatch or make available the ~~Coleman~~ Generation Station, until such time as MISO determines an SSR Agreement an owned or leased generation facility, including the Wilson Generation Station, if operation of any such generation facility is required by any Governmental Authority with jurisdiction for reliability to serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction, until such time as the applicable Governmental Authority determines such generation facility is not required, to be operated for reliability purposes. Reliability Costs shall include all of the resulting capital costs incurred to restart such generation facility and all of the resulting capital costs incurred after the date of such restart, charged by the applicable RTO or ISO, as if Century had requested that Big Rivers enter into a SSR Agreement with the applicable RTO or ISO under the Tariff with respect to such generation facility. "Capital costs" shall mean any costs required to be capitalized pursuant to applicable Accounting Principles. Big Rivers shall maintain ~~the Initial~~ any SSR Agreement, and seek its termination, in accordance with this Agreement and the ~~Initial~~ SSR Agreement.

(b) In any ~~MISO~~ negotiation of the Initial any SSR Agreement, Big Rivers with the applicable RTO or ISO, each Party shall provide ~~Century~~ the other with a reasonable opportunity to review and comment on all material information, proposals and submittals made by Big Rivers to ~~MISO~~ to the applicable RTO or ISO in such negotiation. Big Rivers and Kenergy shall not limit or prohibit Century's ability to discuss or engage with ~~MISO~~ the applicable RTO or ISO regarding issues arising under the Initial any SSR Agreement as it pertains to Century. Big Rivers agrees that it will not enter into the Initial any SSR Agreement without Century's consent, *provided, however*, that if Century fails to consent, then Century shall limit its Load to not more than the Base Load plus, if applicable, the Curtailable Load.

(c) Big Rivers will use reasonable commercial efforts to structure the Initial any SSR Agreement to permit Big Rivers to request termination of the SSR Agreement following 30 days' notice by Big Rivers to ~~MISO~~ the applicable RTO or ISO, or by ~~MISO~~ the applicable RTO or ISO to Big Rivers, that an SSR Agreement is no longer required or after confirmation by Century that it will operate at or below the Base Load plus, if applicable, the Curtailable Load effective immediately prior to and following termination of the SSR Agreement. Big Rivers will request and ~~advocate to~~ from ~~MISO~~ for the allocation and recovery of the costs of the Initial any SSR Agreement on the basis of ~~coincident~~ consumption of energy at the time of peak demands demand.

(d) ~~If the Initial SSR Agreement is not terminated effective as of May 30, 2014 or earlier, then thereafter (i) Century shall limit its Load to not more than the Base Load plus, if applicable, the Curtailable Load or (ii) Century shall pay all SSR Costs in accordance with this Agreement.~~

(d) ~~(e)~~ During the term of the Initial any SSR Agreement, if a major failure, casualty or mechanical breakdown occurs at ~~one or more units of the Coleman Generation Station designated as SSR units~~ any owned or leased generation facility operated to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction, Century shall become responsible for the lesser of (i) the capital repair Costs of the applicable units any such generation facilities, but not to exceed Big Rivers' property casualty insurance deductible with respect to such major failure, casualty or breakdown, or (ii) if less than three units of the Coleman Generation Station are required to operate under the Initial SSR Agreement, then the restart Costs of an idled unit of the Coleman Generation Station. Big Rivers covenants that the deductible for the property casualty insurance policy for ~~the Coleman Generation Station~~ its generation facilities is \$1 million and shall not be increased during the term of this Agreement.

(e) ~~(f)~~ Century acknowledges and agrees that, during the term of any SSR Agreement or otherwise, if Century's Load exceeds the Base Load plus, if applicable, the Curtailable Load, then Century must pay all SSR Reliability Costs in accordance with this Agreement, or reduce its Load to a level not in excess of the Base Load plus, if applicable, the Curtailable Load.

(f) ~~(g)~~ Subject to Section 4, Century acknowledges and agrees that (i) Big Rivers will charge Century for all SSR Reliability Costs, subject only to the offsets set forth in Section 4.1(a)(i) and (ii) to the extent any such offsets are actually received by Big Rivers; (ii)



Century shall be obligated to pay for all SSR Reliability Costs during periods in which other Persons to whom the applicable RTO or ISO has preliminarily or definitively allocated responsibility for a portion of the SSR Reliability Costs are not paying such costs, whether as a result of a challenge to a SSR Agreement or otherwise, and (iii) the absence, existence, effectiveness or unenforceability of an SSR Agreement shall not affect Century's obligation to pay SSR Reliability Costs pursuant to Section 4 if operation of the Coleman Generation Station any owned or leased generation facility of Big Rivers is required by any Governmental Authority with jurisdiction for reliability to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction.

3.4 Subsequent SSR Agreement Relating to Coleman Generation Station. ~~Subsequent to the period of the Initial SSR Agreement and following the idling of any unit of the Coleman Generation Station, if the Load of the Hawesville Smelter above the amount of the Base Load plus, if applicable, the amount of the Curtailable Load and thereby creates the need for a SSR Agreement as determined by the applicable RTO or ISO and, as a consequence of such increase, any RTO or ISO orders Big Rivers to restart, operate, maintain, and dispatch or make available any unit of the Coleman Generation Station for reliability purposes, then unless Century operates the Hawesville Smelter at the Base Load and, if applicable, the Curtailable Load, Century shall pay Big Rivers for all of the resulting SSR Costs incurred by Big Rivers, in accordance with Section 4, including all of the resulting capital costs incurred to restart any affected unit of the Coleman Generation Station and all of the resulting capital Costs incurred after the date of such restart, charged by the applicable RTO or ISO, as if Century had requested that Big Rivers enter into a SSR Agreement with the applicable RTO or ISO under the Tariff with respect to any unit of the Coleman Generation Station.~~ [Reserved].

3.5 Modification of SSR Agreement. ~~If Big Rivers restarts one or more of the Coleman Generation Station units for its own purpose while an SSR is in effect, Big Rivers will request MISO to modify the SSR agreement to eliminate the SSR status of the equivalent number of units. (Example: if two Coleman units are designated as SSR units and Big Rivers starts one Coleman Generation Station unit for its own purpose, Big Rivers would request MISO to amend the SSR Agreement to designate only one Coleman Generation Station unit as an SSR unit).~~ [Reserved].

### 3.6 Alternative RTO or ISO.

(a) This Agreement and the other Transaction Documents have been drafted by the Parties and Kenergy under the presumption that, during the Service Period, the Hawesville Sebree Node is located in MISO and Big Rivers is a member of MISO. If the Coleman Robert A. Reid Substation and the Hawesville Sebree Node are not located within the same RTO or ISO during the Service Term, then the Parties agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

(b) Century acknowledges and agrees that Kenergy or Big Rivers, as applicable, may, in its sole discretion, elect to join or become a member of a new RTO or ISO or elect to withdraw and not be a member of any RTO or ISO. The Hawesville Sebree Node may remain in MISO if (i) requested by Century, (ii) permitted by MISO and the new RTO or ISO, (iii)

Century is responsible for any costs resulting from the Hawesville ~~Sebree~~ Node remaining in MISO, and (iv) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO or not being a member of any RTO or ISO. In each such case, any terms used herein that relate to MISO or the MISO Tariff shall be deemed amended, as applicable, to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO or the withdrawal of Kenergy or Big Rivers from any RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

(c) Big Rivers shall (i) provide Century one year's notice before leaving MISO; (ii) provide Century with notice of a recommendation by Big Rivers' management to Big Rivers' board of directors that Big Rivers terminate its membership in MISO (subject to any applicable confidentiality restrictions) promptly after the date the recommendation is made; (iii) if not publicly available, provide Century with a copy of the annual report required by the Kentucky Public Service Commission regarding the cost and benefit to Big Rivers of being a member in MISO (subject to any applicable confidentiality restrictions); and (iv) allow Century to participate in meetings or conference calls with MISO regarding matters affecting amounts payable by Century relating to leaving MISO.

(d) Century acknowledges and agrees if (i) Kenergy or Big Rivers, as applicable, in its sole discretion, elects to join or become a member of a new RTO or ISO or elects to withdraw and not become a member of any RTO or ISO, and (ii) Century is not permitted by either MISO or the new RTO or ISO to remain in MISO, then Century will be responsible for all costs associated with Century's exit from MISO, including any fees charged by MISO as a result of the exit.

3.7 Acknowledgement. Century acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the Hawesville ~~Sebree~~ Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter; ~~provided, that Century Parent or an affiliate of Century may seek a contractual service arrangement with Big Rivers, through Kenergy, with respect to the Sebree smelter.~~

3.8 Century Credit Support. Century shall provide and maintain credit support, at Big Rivers' election, in the form of one of the following, as selected by Century: (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Big Rivers in its sole discretion or (iii) other credit support acceptable to Big Rivers in its sole discretion, in each case, in an amount equal to the sum of the following without duplication either in this Agreement or with regard to the Electric Service Agreement or any Market Agreement:

(a) amounts reasonably estimated by Big Rivers to become due and payable to Big Rivers under this Agreement during the two succeeding months; and

(b) the amount (without duplication) of any credit support required to be provided and maintained under Section 14.3 of the Electric Service Agreement for the benefit of Big Rivers.

Century shall provide any credit support required by this Section to the Person designated by Big Rivers and Kenergy but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

3.9 Additional Credit Support. Century shall provide and maintain additional credit support in the form required by any RTO or ISO and in the amount (a) determined by Big Rivers prior to termination of the Arrangement Agreement or, if after such termination, Kenergy with respect to the provision of Electric Services for resale to Century and (b) required under any Bilateral Contract for the purchase by Kenergy of any Electric Services for resale to Century, without the requirement for Big Rivers to provide credit support or be liable to the Bilateral Counterparty.

3.10 Right to Transmission Services. Notwithstanding any other provision in this Agreement or any Transaction Document, Big Rivers acknowledges and agrees that Century (through Kenergy or the Market Participant) shall be entitled to Transmission Services, on the same rates, terms and conditions as other transmission customers pursuant to the Tariff.

3.11 Audit Rights. Big Rivers will permit Century to audit, upon reasonable notice, at Century's own expense, at a mutually agreeable time, all information in the possession of Big Rivers relating to Big Rivers' service under the Arrangement Agreement to Kenergy for resale to Century, including scheduled deliveries, meter records, billing records, records related to payments to Big Rivers and such other documents related to payment for and determination of the amount of Electric Services supplied by Big Rivers and delivered to Kenergy for resale and delivery to Century. Big Rivers shall retain all documentation applicable to service to Kenergy under the Arrangement Agreement for a period of three years. Nothing in this Section shall obligate Big Rivers to provide attorney-client privileged information.

3.12 Imbalance Energy Limit. Century acknowledges and agrees that it will not consume more than 10 MW of energy above the Base Load plus, if applicable, the Curtailable Load.

3.13 Transmission Charges. The Parties acknowledge and agree that delivery of Electric Services from the Delivery Point to the Century Substation is network integration transmission service and Big Rivers will not charge any supplemental amount in addition to the charge for network integration transmission service for delivery of Electric Services to the Delivery Point for the transmission of Electric Services from the Delivery Point to the Century Substation.

3.14 Assignment of the HawesvilleSebree Node. Big Rivers shall transfer the ~~Hawesville~~Sebree Node to any Person succeeding Big Rivers as the Market Participant.

4. Direct Payment Obligations.

4.1 Century shall pay Big Rivers all amounts owing to Big Rivers under this Agreement (the "Direct Payments") including, without duplication either within this Agreement or with regard to the Electric Service Agreement or any Market Agreement, the following:

(a) All ~~SSR~~Reliability Costs incurred by Big Rivers, including under any regulation, order, directive or policy of a RTO or ISO that would be substantively similar to an SSR Agreement if the provisions of such regulation, order, directive or policy were implemented in an agreement with the RTO or ISO, and whether or not any SSR Agreement is then in effect or approved by any Governmental Authority, together with any Costs, including new capital expenditures ~~(except to the extent provided in clause (iii) below)~~, of Big Rivers when the operation of ~~such units of the Coleman Generation Station~~ its owned or leased generation facility is required for reliability or in consequence of the operation or existence of the Sebree Smelter or the Transaction if Century's Load exceeds the Base Load plus, if applicable, the Curtailable Load, including any such Costs that are not reimbursed as ~~SSR~~Reliability Costs, subject to the following:

(i) Century shall not be obligated to pay Big Rivers any SSRReliability Costs to the extent that (A) Century pays any such costs under the Electric Service Agreement to or for the benefit of the applicable RTO or ISO and (B) such applicable RTO or ISO then credits such amounts to Big Rivers and Big Rivers receives such amounts either directly in the form of a payment to Big Rivers or indirectly as a credit to amounts otherwise owing by Big Rivers to the applicable RTO or ISO on a statement of the applicable RTO or ISO;

(ii) The amount payable by Century for SSRReliability Costs for any Billing Month shall be reduced by:

(1) revenues received by Big Rivers for Transmission Services for such Billing Month paid by Century directly or indirectly under the Tariff, including revenues paid by Century which are received by Big Rivers pursuant to Subsection 4.1(a)(i), and

(2) revenues received from other Persons based on allocations of responsibility for the related SSRReliability Costs by an RTO or ISO;

If the portion of the Direct Payment relating to this Subsection (a) is negative as a result of the offsets in clauses (1) and (2) above, then such offsets will be carried forward and applied as a credit against any future SSRReliability Costs. Any accumulated offsets or credits accruing pursuant to this Subsection 4.1(a)(ii) shall be reduced to zero at the time of the termination or expiration of the SSR Agreement. Big Rivers shall thereafter have no obligation to pay to Century any offsets or credits accruing under this Subsection 4.1(a)(ii), ~~except as provided in Subsection 4.1(a)(iv) below.~~

~~(iii) The portion of the SSR Costs for the Initial SSR Agreement relating to scheduled capital expenditures for the period from September 1, 2013 to May 30, 2014 will be based on the budget approved by MISO. Such budget shall exclude capital and labor costs associated with an outage of Unit 1 of the Coleman Generation Station if MISO designates only two or fewer units of the Coleman Generation Station as required to operate for reliability~~

~~purposes. If applicable, any capital or other costs associated with the planned maintenance of Unit 1 will be budgeted no earlier than October 2013. "Capital costs" shall mean any costs required to be capitalized pursuant to applicable Accounting Principles.~~

~~(iv) — After termination of the Initial SSR Agreement, Big Rivers will credit to the next invoice to Century hereunder amounts received from other Persons for their allocated responsibility for SSR Costs but that Century previously paid to Big Rivers and that would otherwise result in duplicate recovery by Big Rivers of such amounts. If the amount to be refunded exceeds the next invoice issued hereunder, then Big Rivers shall refund such unapplied credit to Century.~~

~~(b) For the avoidance of doubt and notwithstanding any other provision herein~~**Subject to Section 4.1(d)(ii)**, Century shall not be charged any ~~SSR~~**Reliability** Costs or ~~any other Costs related to the Coleman Generation Station~~**any owned or leased generation facility of Big Rivers required to be operated to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction**, if (i) Century operates at or below the Base Load plus, if applicable, the Curtailable Load; (ii) ~~MISO~~**the applicable RTO or ISO** terminates the ~~any~~ SSR Agreement **with respect to such generation facility**; or (iii) Big Rivers continues operations or restarts operations of any units of the Coleman Generation Station such that the operation of no additional units of the Coleman Generation Station are required to support system reliability under an SSR Agreement **such generation facility for its own purposes**.

~~(c) Century shall pay or reimburse Big Rivers for the Costs referred to in Sections 3.6(b)(iii) and 3.6(d) for which Century is responsible only to the extent these charges are charged by MISO~~**the applicable RTO or ISO** to Big Rivers. Currently it is understood that these charges will be charged to the Market Participant.

~~(d) Century shall reimburse Big Rivers for (i) all other third-party, out of pocket Costs of Big Rivers incurred or committed to by Big Rivers related to the operation of the Hawesville Smelter, (ii) the Cost of purchasing ZRCs from any Person for MISO Planning Year 2013/2014 that are required by MISO for the Load, after accounting for ZRCs necessary to satisfy Big Rivers' capacity obligations that will result from idling the Wilson Generation Station on February 1, 2014 and covering the period therefrom to and including May 31, 2014, and (iii) the Cost, including allocated internal overhead costs, of (A) 1.25 full-time-equivalent employees of Big Rivers with respect to the period in which Big Rivers is the Market Participant, or (B) 0.5 full-time-equivalent employee of Big Rivers with respect to the period in which Big Rivers is not the Market Participant.~~

4.2 Monthly Invoices. Big Rivers shall bill Century on or before the fifteenth Business Day of each Billing Month for the payments and charges due and payable by Century hereunder by delivery of a monthly invoice reflecting the payments and charges that accrued during the preceding month and unpaid amounts from prior monthly statements. Century shall pay Big Rivers such amounts in immediately available funds to an account designated by Big Rivers on the Business Day following the 24th day of the month following the Billing Month.

4.3 Default Interest. If any monthly invoice rendered by Big Rivers to Century is not paid on the due date, interest will accrue and become payable by Century to Big Rivers on all

unpaid amounts at a rate of one percentage point over the Prime Rate commencing on the first day after the due date and accruing on each day thereafter until the date such payment is made.

4.4 Payments Under Protest; No Waiver. If any portion of any monthly invoice hereunder is disputed by Century, Century shall pay the disputed amount, under protest, when due. If the disputed amount of the payment is found to be incorrect, Big Rivers shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made. No payment made by Century pursuant to this Section shall constitute a waiver of any right of Century to contest the correctness of any charge or credit reflected in a Big Rivers' invoice.

4.5 Acknowledgements Regarding Payment Term. Century acknowledges and agrees that Big Rivers shall be entitled to Direct Payments without regard to the status or effectiveness of the Electric Service Agreement, the Arrangement Agreement or any other Transaction Document.

5. Cure Rights.

5.1 Notwithstanding any provision contained in the Electric Service Agreement that affords Century the right to terminate the Electric Service Agreement upon any breach or default by Kenergy thereunder, Century shall provide Big Rivers a reasonable opportunity, exercisable in Big Rivers' sole discretion, to cure any such breach or default by Kenergy prior to exercising such termination rights, which opportunity shall extend, at a minimum, for a period of not less than ten (10) Business Days after the later of (i) the date of expiration of the applicable period of time (if any) available for a cure by Kenergy under the Electric Service Agreement, and (ii) the date on which notice of the breach or default by Kenergy is delivered by Century to Big Rivers. Century hereby consents to any attempt by Big Rivers to cure any breaches or defaults by Century under the Electric Service Agreement that may hereafter occur; *provided*, that Big Rivers does not materially interfere with Century's attempts (if any) to so cure such breaches or defaults.

5.2 Notwithstanding any provision contained in the Arrangement Agreement that affords Big Rivers the right to terminate the Arrangement Agreement upon any breach or default by Kenergy thereunder, Big Rivers shall provide Century a reasonable opportunity, exercisable in Century's sole discretion, to cure any such breach or default by Kenergy prior to exercising such termination rights, which opportunity shall extend, at a minimum, for a period of not less than ten (10) Business Days after the later of (i) the date of expiration of the applicable period of time (if any) available for a cure by Kenergy under the Arrangement Agreement, and (ii) the date on which notice of the breach or default by Kenergy is delivered by Big Rivers to Century. Big Rivers hereby consents to any attempt by Century to cure any breaches or defaults by Big Rivers under the Arrangement Agreement that may hereafter occur; *provided*, that Century does not materially interfere with Big Rivers' attempts (if any) to so cure such breaches or defaults.

6. Representations and Warranties.

6.1 Big Rivers. Big Rivers hereby represents and warrants to Century as follows:

(a) Big Rivers is an electric generation and transmission cooperative corporation duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the Arrangement Agreement, to perform its obligations hereunder and thereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

(b) Subject to Section 6.1(c), this Agreement, the Arrangement Agreement and other agreements entered into by Big Rivers in connection therewith constitute Big Rivers' valid and binding obligation enforceable against it in accordance with their terms, except as enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement and the Arrangement Agreement by Big Rivers have been duly and effectively authorized by all requisite corporate action.

(c) As of the Effective Date, all consents, approvals, authorizations, actions or orders, including without limitation, those that must be obtained from Governmental Authorities and the RUS, required for its authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement and the Arrangement Agreement have been obtained other than as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time, and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Big Rivers has no reason to believe will not be timely obtained.

(d) Subject to Section 6.1(c), its execution and delivery of this Agreement and the Arrangement Agreement, its consummation of the transactions contemplated by this Agreement and the Arrangement Agreement, and its fulfillment of and compliance with the terms and provisions hereof and thereof do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to it, or conflict with any of the terms, conditions or provisions of its Articles of Incorporation or Bylaws or any material instrument, mortgage, agreement, contract or restriction to which it is a party, or by which any of its properties are bound, or require the approval, consent or authorization of any federal, state or local court, or any of its creditors, or of any other Person, or give any party with rights under any such instrument, agreement, contract, mortgage, judgment, award, order or other restriction the right to terminate, modify or otherwise change its rights or obligations thereunder that has not been obtained.

6.2 Century. Century hereby represents and warrants to Big Rivers as follows:

(a) Century is a ~~general partnership~~ limited liability company duly organized and validly existing and in good standing under the laws of the ~~Commonwealth of Kentucky~~ State of Delaware and is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

(b) This Agreement, the Electric Service Agreement and other agreements entered into by Century in connection therewith constitute Century's valid and binding

obligation enforceable against it in accordance with their terms, except as enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement and the Electric Service Agreement by Century have been duly and effectively authorized by all requisite partner limited liability company action.

(c) All consents, approvals, authorizations, actions or orders, including without limitation, those that must be obtained from governmental agencies or authorities, required for its authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement and the Arrangement Agreement have been obtained.

(d) Its execution and delivery of this Agreement and the Electric Service Agreement, its consummation of the transactions contemplated by this Agreement and the Electric Service Agreement, and its fulfillment of and compliance with the terms and provisions hereof and thereof do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to it, or conflict with any of the terms, conditions or provisions of its partnership limited liability company operating agreement or any material instrument, mortgage, agreement, contract or restriction to which it is a party, or by which any of its properties are bound, or require the approval, consent or authorization of any federal, state or local court, or any of its creditors, or of any other Person, or give any party with rights under any such instrument, agreement, contract, mortgage, judgment, award, order or other restriction the right to terminate, modify or otherwise change its rights or obligations thereunder that has not been obtained.

7. Indemnification. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, Century hereby agrees that it will pay, and will protect, indemnify, and hold harmless Big Rivers and each of its respective designees, agents and contractors (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel but not including the expenses incurred by Big Rivers in connection with the preparation, negotiation, execution and delivery of this Agreement) to the extent not recovered under the Arrangement Agreement and to which such Indemnified Person may become subject arising out of or relating to any or all of the following (each, an "Indemnified Liability"): (a) the purchase and transmission of electricity, electric capacity or electrical ancillary services to the Delivery Point for resale to Century, (b) Bilateral Contracts, to which Century has agreed, for the purchase of electricity, electric capacity or electricity-related ancillary services for resale to Century, (c) any other amounts due and owing to Big Rivers under the Transaction Documents, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by Century or otherwise, and regardless of whether any Indemnified Person is a party thereto, such items (a) through (d) including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 7. Any claims under this Section 7 in respect of any Indemnified Liabilities are referred to herein, collectively, as "Indemnity Claims". No Indemnified Person shall be obliged to pursue first any



recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of Century under this Agreement.

7.1 Payments.

(a) All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate, and all such sums and costs shall be immediately due and payable on demand. Each such Indemnified Person shall promptly notify Century in a timely manner of any such amounts payable by Century hereunder; *provided*, that any failure to provide such notice shall not affect Century's obligations under this Section 7.

(b) Any amounts payable by Century pursuant to this Section 7 shall be payable within the later to occur of (i) ten (10) Business Days after Century receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which Century's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

7.2 Survival. The provisions of this Section 7 shall survive termination of this Agreement, and shall be in addition to any other rights and remedies of any Indemnified Person.

7.3 Subrogation. Upon payment of any Indemnity Claim by Century pursuant to this Section 7, Century, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of Century cooperate with Century and give at the request and expense of Century such further assurances as are necessary or advisable to enable Century vigorously to pursue such claims.

8. Miscellaneous.

8.1 Entire Agreement; Amendments; No Reliance. This Agreement, the Electric Service Agreement, the Arrangement Agreement and the other Transaction Documents constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in the foregoing documents.

8.2 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of an subsequent breach of the same or any other term, covenant or condition contained herein.

8.3 Notices. A notice, consent, approval or other communication under this Agreement must be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a

nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party in accordance with this Section:

If to Big Rivers:           Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 827-2558

If to Century:            Century Aluminum Company  
~~P.O. Box 500~~  
9404 State Route ~~271~~ North  
~~Hawesville~~2096  
Robards, Kentucky ~~42348~~42420  
Attn: Plant Manager  
Fax: (270) ~~852-2882~~521-7305

With copy to:           Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 8.4 Dispute Resolution.

(a) Resolution Meetings. If a dispute arises concerning the terms or conditions of this Agreement, the duties or obligations of the Parties or the implementation, interpretation or breach thereof, either Party may request a meeting among authorized representatives of the other Party to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten (10) days or such shorter or longer time as agreed upon by the Parties. Nothing in this Section 8.4 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement.

(b) Arbitration Generally. Absent resolution of the dispute pursuant to Section 8.4(a), and subject to a minimum amount in controversy of \$100,000.00, the Parties will submit the matter to be settled, subject to Section 8.7, by binding arbitration by a tribunal of three

(3) arbitrators constituted and acting under the International Arbitration Rules (the “AAA Rules”) then in effect of the ICDR of the American Arbitration Association, in accordance with the following terms and conditions:

(i) In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

(ii) The ICDR shall administer the arbitration.

(iii) The seat of the arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration

(c) Arbitration Procedures. The following procedures shall govern the selection of arbitrators.

(i) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(ii) In the event of an inability by the two party-nominated arbitrators to agree on an arbitrator in accordance with Section 8.4(c)(i) the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(iii) Notwithstanding Sections 8.4(c)(i) and 8.4(c)(ii), each arbitrator selected pursuant to this Section 8.4(c) shall have substantial experience in the electric utility sector, and shall not have been employed by, a consultant to or received compensation from any Party in the past.

(d) Remedies and Relief.

(i) The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the ~~arbitral~~arbitration tribunal may be specifically enforced by any court of competent jurisdiction.

(ii) The losing Party shall pay the fees and costs of the prevailing Party or as allocated by the arbitration tribunal if all relief sought by one Party is not granted.

(iii) The award of the ~~arbitral~~arbitration tribunal shall be subject to appeal to, or requests for rehearing by, a court in accordance with Section 8.7.

(iv) The award of the arbitration tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

(e) Except for arbitration proceedings pursuant to this Section 8.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; provided, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures through the courts in accordance with Section 8.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

(f) Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable hereunder shall be binding on the Parties. The Parties acknowledge and agree that Century shall be responsible for pursuing any challenge to any amounts an RTO or ISO charges to a Market Participant or Kenergy that directly or indirectly is charged to Century.

8.5 Assignments and Transfers. No Party shall assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party, *provided, however*, that no prior consent shall be required with respect to an assignment to any person who is a permitted assignee of Century pursuant to and in accordance with the Electric Service Agreement or a permitted assignee of Big Rivers pursuant to and in accordance with the Arrangement Agreement. No assignment by Century pursuant to the preceding sentence shall relieve or release Century of or from its obligations under or with respect to this Agreement without the consent of Big Rivers, which consent will be granted in its sole discretion. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

8.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

8.7 Jurisdiction. The Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over each and every judicial action brought under or in relationship to this Agreement, *provided* that the subject matter of such dispute is not a matter reserved by law to the KPSC, or to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky),

and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in this paragraph prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 8.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 8.3, and agrees that such service shall be, for all purposes, good and sufficient.

8.8 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement and the other Transaction Documents to which it is a party; *provided* that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

8.9 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties and their respective successors and permitted assigns.

8.10 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

8.11 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement, other than Kenergy which shall be a third party beneficiary hereof.

8.12 Kenergy Obligations Separate. Nothing contained in this Agreement shall obligate Century or Big Rivers for any obligations or liabilities of Kenergy, whether under or pursuant to the Electric Service Agreement, the Arrangement Agreement or otherwise.

8.13 No Direct Service. The Parties acknowledge that Big Rivers and Kenergy are entering into the Arrangement Agreement and Century and Kenergy are entering into the Electric Service Agreement which agreements contain the terms and conditions setting forth the wholesale arrangement and procurement of power by Big Rivers and the purchase of such power by Kenergy, and the corresponding retail sale of such power by Kenergy and the purchase of such

power by Century. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers to sell directly to Century, or an agreement of Century to directly purchase from Big Rivers, any Electric Services.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

~~CENTURY ALUMINUM OF KENTUCKY~~  
~~GENERAL PARTNERSHIP~~ SEBREE LLC

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges to Big Rivers change:

1. ACES Fee – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum – Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
4. NRCO – Cost Differential between organization classification, if applicable, due to Century’s inclusion in Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission – Pro-rata share of Big Rivers’ intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees – Tons of emissions related to ~~Coleman Station during SSR operation~~ **any owned or leased generating facility that any Governmental Authority with jurisdiction for reliability requires Big Rivers to operate to reliably serve the Load or in consequence of the operation or existence of the Sebree Smelter or the Transaction.**
9. KAEC – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Casts – Century will not be charged costs for Big Rivers rate cases with the KPSC.





**PROTECTIVE RELAYS AGREEMENT**

Dated as of January [ ], 2014

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.**

and

**CENTURY ALUMINUM SEBREE LLC**

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## PROTECTIVE RELAYS AGREEMENT

This PROTECTIVE RELAYS AGREEMENT (“Agreement”) is made and entered into as of January [ ], 2014, by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative (“Big Rivers”), KENERGY CORP., a Kentucky electric cooperative corporation (“Kenergy”), and CENTURY ALUMINUM SEBREE LLC, a Delaware limited liability company (“Century”). Big Rivers, Kenergy and Century are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

### RECITALS

A. Century owns and operates an aluminum reduction plant in Robards, Kentucky (as further defined below, the “Sebree Smelter”) and purchases electric services pursuant to a Retail Electric Service Agreement, dated July 1, 2009, with Kenergy (the “Existing Agreement”).

B. Century acquired its interests in the Sebree Smelter and the Existing Agreement from Alcan Primary Products Corporation, a Texas corporation (“Alcan”), pursuant to an Asset Sale Agreement, dated April 28, 2013, and an Assignment and Assumption Agreement, dated as of June 1, 2013.

C. Alcan issued a notice of termination with respect to the Existing Agreement, dated January 31, 2013, and effective as of January 31, 2014 (the “Notice of Termination”). The Existing Agreement, as assigned by Alcan and assumed by Century, remains subject to the Notice of Termination, as confirmed in a Letter of Representations and Agreements, dated as of June 1, 2013, by and among Big Rivers, Kenergy, Century and Century Aluminum Company, a Delaware corporation, and the direct or indirect parent of Century (“Guarantor”).

D. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth in the Electric Service Agreement, dated as of the date hereof (as amended, the “Electric Service Agreement”).

E. In connection with and as a condition to entry into the Electric Service Agreement, Kenergy and Big Rivers have agreed to enter into the Arrangement and Procurement Agreement, dated as of the date hereof (the “Arrangement Agreement”), to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, for resale by Kenergy to Century.

F. It is a condition precedent to the “Effective Date” (as defined in the Electric Service Agreement and the Arrangement Agreement) that Century shall have authorized, executed and delivered this Agreement to Kenergy and Big Rivers.

G. The Parties desire to enter into this Agreement to set forth the Parties’ respective rights and obligations relating to protective relays and related equipment more particularly described in Exhibit A hereto (the “Protective Relays”).

H. Century intends that any Protective Relays installed would support curtailment of Century's requirements for electric services, in certain circumstances, served under the Electric Service Agreement.

I. In satisfaction of the condition of Big Rivers and Kenergy set forth herein to the effectiveness of this Agreement, and to the Effective Date, Guarantor is entering into a Guarantee, dated as of the date hereof, for the benefit of Big Rivers and Kenergy ("the Guarantee"), guaranteeing to Big Rivers and Kenergy the payment, performance and all other obligations of Century arising out of or relating to this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions; Rules of Interpretation. Capitalized terms used in this Agreement and not defined in this Section 1.1 or otherwise herein have the meanings assigned to those terms in the Electric Service Agreement; *provided*, that if the Electric Service Agreement is terminated prior to the satisfaction in full of all obligations of the Parties hereunder, capitalized terms defined by reference to the Electric Service Agreement shall have the meanings at the time of termination. The rules of interpretation set forth in Section 1.2 of the Electric Service Agreement shall apply to this Agreement as though fully set forth herein.

1.1.1 AAA Rules: As defined in Section 6.4.2.

1.1.2 Agreement: As defined in the preamble to this Agreement.

1.1.3 Alcan: As defined in the Recitals.

1.1.4 Approval: Any valid waiver, exemption, declaration, variance, franchise, permit, authorization, approval, consent, lease, ruling, tariff, rate, certification, license or similar order of or from, or filing or registration with, or notice to, or other action by, any Governmental Authority with jurisdiction over the matter in question.

1.1.5 Arrangement Agreement: As defined in the Recitals.

1.1.6 Big Rivers: As defined in the preamble to this Agreement.

1.1.7 Century: As defined in the preamble to this Agreement.

1.1.8 Dispute: Any and all disputes, controversies and claims between or among the Parties and arising under, relating to or in connection with, this Agreement, in any manner whatsoever, whether in contract, in tort, or otherwise, and including any dispute or controversy regarding the existence, validity or enforceability of this Agreement, and whether

brought by a Party or any of its parents, subsidiaries, affiliates, officers, directors or agents on the one hand, against a Party or any of its parents, subsidiaries, affiliates, officers, directors or agents, on the other hand.

- 1.1.9 Effective Date: As defined in the Recitals.
- 1.1.10 Electric Service Agreement: As defined in the Recitals.
- 1.1.11 Existing Agreement: As defined in the Recitals.
- 1.1.12 Guarantee: As defined in the Recitals.
- 1.1.13 Guarantor: As defined in the Recitals.
- 1.1.14 Harmonic Distortion: As defined in Section 5.1.
- 1.1.15 ICDR: As defined in Section 6.4.2.
- 1.1.16 Indemnified Liability: As defined in Section 3.1.
- 1.1.17 Indemnified Person: As defined in Section 3.1.
- 1.1.18 Kenergy: As defined in the preamble to this Agreement.
- 1.1.19 Notice of Termination: As defined in the Recitals.
- 1.1.20 Party or Parties: As defined in the preamble to this Agreement.
- 1.1.21 Phase Imbalance: As defined in Section 5.1.
- 1.1.22 Protective Relays: As defined in the Recitals.
- 1.1.23 Specifications: As defined in Section 2.4.
- 1.1.24 System Disturbance: As defined in Section 5.1.
- 1.1.25 Wholesale Transmission System: As defined in Section 5.1.
- 1.1.26 Work: As defined in Section 2.1.

## ARTICLE 2

### PROTECTIVE RELAYS

2.1 General. Century shall perform, or cause to be performed, all work and services necessary or appropriate to engineer, design, develop, procure, install, own, operate and maintain the Protective Relays (the "Work") in accordance with this Agreement and subject to the rights and obligations of Big Rivers and Kenergy set forth herein.

2.2 Standard of Care. Century shall perform the Work or cause the Work to be performed (a) in a professional, prudent, good and workman-like manner, (b) in a manner that minimizes to the extent commercially reasonable any adverse impact on the transmission facilities of Big Rivers and (c) in accordance with the terms of this Agreement, all Applicable Laws, all applicable Approvals of Governmental Authorities, consents of third parties obtained by any Party necessary in connection herewith, Good Utility Practice, including all applicable (i) engineering, environmental, construction and safety codes and standards, (ii) the terms of the insurance policies of Century relating to the Protective Relays, and (iii) the standards, rules and regulations of any Governmental Authority. If Big Rivers or Kenergy must obtain any consent from a third party relating to the Work, Big Rivers or Kenergy, as applicable, promptly shall notify Century of the need for such consent. Century shall not be responsible for performing any Work in accordance with any such consent until such consent has been obtained and the notice has been given to Century.

2.3 Schedule of Installation and Operation. Century may cause the Protective Relays to be installed and operational on or after the Effective Date . Failure of the Protective Relays to be installed and operational shall not (a) affect Century's obligations hereunder, (b) result in any liability of Kenergy or Big Rivers to Century or any other Person; or (c) delay the Effective Date . Notwithstanding anything herein to the contrary, each obligation of a Party hereunder that relates to the Work or the Specifications, or otherwise relate to the Protective Relays, shall not be effective prior to the time Century determines install the Protective Relays or otherwise undertake the Work.

2.4 Specifications. Century shall prepare or cause to be prepared all engineering and design drawings and specifications relating to the design, installation and operation and maintenance of the Protective Relays, including drawings, specifications and other documents necessary to (a) illustrate the scale and relationship of the components of the Protective Relays; (b) fix and describe engineering, structural, mechanical and electric systems of the Protective Relays; and (c) complete construction of the Protective Relays (collectively, the "Specifications"). Century shall submit the Specifications to Big Rivers in an electronic format designated by Big Rivers for its review and comment. Big Rivers shall use commercially reasonable efforts to review the Specifications expeditiously but in all cases within seven days of Big Rivers' receipt of the Specifications. Century shall accept and incorporate into the Specifications any comments of Big Rivers to the extent that such comments relate to compliance with the standards, rules and regulations of any Governmental Authority with jurisdiction relating to the Work.

2.5 No Approval or Reliance. As between Big Rivers and Kenergy, on one hand and Century on the other, with respect to any potential liability of Big Rivers for the Work or for the operation of the Protective Relays, Big Rivers' review of and comments with respect to the Specifications shall not constitute: (a) approval of the proposed Work or design of the Protective Relays or an evaluation or determination that the Specifications meet, or the Work or the proposed Protective Relays will meet or comply with, Section 2.2 or are otherwise suitable for their intended purpose; or (b) a waiver of, or release of Century from, any liability for errors or omissions related to or arising out of the Specifications, the Work or the Protective Relays. Century shall retain all documentation applicable to the Protective Relays for a period of three years following the earlier of (i) cessation of operation of the Protective Relays or (ii) the

termination of this Agreement. Century acknowledges and agrees that (A) Kenergy and Big Rivers are entering into this Agreement to accommodate Century's option to perform the Work if Century determines that the Protective Relays will serve Century's intended purpose, (B) neither Kenergy nor Big Rivers has undertaken or will undertake any evaluation or analysis as to whether the Protective Relays will have the results desired by Century, (C) neither Kenergy nor Big Rivers has any duty, fiduciary or otherwise, regarding the suitability of the Work or the Protective Relays for their intended purpose, including whether the Work or the Protective Relays will meet any applicable requirements of any Governmental Authority, and (D) it is not relying on Kenergy or Big Rivers for engineering, legal, regulatory, financial or other advice but instead is seeking and will rely on the advice of its own professionals and advisors for such matters.

2.6 Certification and Seal. All engineering work performed or caused to be performed by Century pursuant to Section 2.1 requiring certification shall be certified, and all Specifications requiring sealing shall be sealed, by professional engineers licensed and properly qualified to perform such engineering services in all appropriate jurisdictions.

2.7 Location and Access. The Protective Relays shall be located on the real property owned by Century and located behind Century's meter at the Sebree Smelter. Neither Big Rivers nor Kenergy shall have any obligation to provide access to real estate or otherwise make available to Century any space for the Protective Relays or the Work.

2.8 Payments and Reimbursements. Century shall own the Protective Relays. Century shall directly pay for the Work and any other costs attributable to ownership of the Specifications, the Work and the Protective Relays. Century shall reimburse Big Rivers or Kenergy for all out-of-pocket costs and expenses incurred by Big Rivers or Kenergy, as applicable, relating to the Specifications, the Work and the Protective Relays within ten (10) Business Days of Century's receipt from Big Rivers or Kenergy, as applicable, of an invoice setting forth such costs in reasonable detail.

2.9 Coordination with Third-Parties. The Parties shall cooperate in good faith to submit to MISO and SERC, if applicable, a mutually agreeable proposal that: (a) Century be permitted to install Protective Relays to receive the Curtailable Load (as defined in the Electric Service Agreement); (b) permits when required to maintain electric reliability, MISO, NERC, SERC or any other Governmental Authority with jurisdiction over electric reliability to direct activation of the Protective Relays to curtail Century's load at the Sebree Smelter, down to the Base Load; (c) such direction shall be a specified, agreed communication to Big Rivers; and (d) Big Rivers shall promptly provide Century with notice of any such communication in procedures to be developed by the Parties. At Century's sole cost and expense, Big Rivers shall install and maintain communication equipment required by MISO or SERC to facilitate such communication. Except for the gross negligence or willful conduct by Big Rivers or Kenergy, Century acknowledges and agrees that neither Kenergy nor Big Rivers shall have any liability to any Person with respect to such communication equipment or Big Rivers' installation or operation thereof.

2.10 Approvals. Century shall obtain, or cause to be obtained, any and all Approvals necessary for the Work, including, if applicable, any and all Approvals required by SERC or

NERC, on or prior to the time such Approvals are required by Applicable Law to be duly obtained, given, accomplished or renewed, and all such Approvals shall be maintained in full force and effect and any conditions therein shall have been satisfied or waived. Century's obligations under this Section 2.10 shall include continuous compliance with all electric reliability standards, rules and regulations of SERC, NERC and FERC relating to the Work, including the ownership or operation and maintenance of the Protective Relays, or the performance of Century's obligations hereunder. Big Rivers and Kenergy shall cooperate with Century and support any requests for Approvals of Governmental Authorities required hereunder as long as Big Rivers and Kenergy have no objections to or concerns about the course of action proposed by Century with respect to any such Approval. Century shall be solely responsible for the contents of any such requests. Such cooperation shall include Big Rivers or Kenergy using reasonable commercial efforts to promptly submit on Century's behalf, if necessary, any request for such Approvals following completion thereof.

2.11 Protection of Persons and Property. Century shall be responsible for the safety and protection of its employees and agents and third parties, as well as its and their respective property, in connection with the performance of the Work. Century shall cause its employees and agents to comply with all safety programs relating to the Work. Other than due to its own gross negligence or willful conduct, neither Big Rivers nor Kenergy shall be held liable for any injury or death of any such Persons or any damage to any such personal property that may occur in connection with the performance of the Work.

2.12 Contractors. Notwithstanding any agreement with any contractor or subcontractor, as between Century, on one hand, and Big Rivers or Kenergy, on the other hand, Century is solely responsible for the Work and will not be excused from its obligations hereunder if any portion of the Work is defective, non-operational or not performed in accordance with the requirements of this Agreement. Century has complete and sole responsibility as a principal for its agents and all other Persons hired to perform or assist in performing the Work, including contractors.

2.13 No Agency. Nothing in this Agreement is intended by the Parties, and nothing in this Agreement shall be construed, to create an agency, partnership, joint venture or similar relationship between the Parties with respect to the Protective Relays or any Work.

2.14 Insurance. Century shall maintain (a) property insurance for the Protective Relays in an amount equal to the replacement cost thereof and (b) other insurance (including liability insurance) with respect to the Protective Relays and the Work in accordance with Good Utility Practice and Applicable Law. At the request of Big Rivers, Century shall provide information regarding the insurance program maintained by Century in connection with this Agreement, including certificates or other reasonable evidence of any required insurance coverage. The insurance coverage required to be maintained hereunder shall not limit, restrict or otherwise affect Century's liabilities in connection with this Agreement.

2.15 Guarantee. Century acknowledges and agrees that (a) the Guarantee has been entered into as a condition to the entry into this Agreement by Big Rivers and Kenergy, and (b) Century shall cause a Substitute Guarantee (as defined in the Guarantee) to be entered into in the circumstances required therefor under the Guarantee.



2.16 Cessation of Smelting Operations; Survival. The Parties acknowledge and agree that (a) Century may permanently cease smelting operations at the Sebree Smelter, including ceasing operation of the Protective Relays, and (b) in such case, Century's obligations under Sections 2.3, 2.4, 2.6, and 2.14, the first sentence of each of Sections 2.7 and 2.8, and Article 5 shall terminate.

### ARTICLE 3 INDEMNIFICATION

3.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, Century hereby agrees that it will pay, and will protect, indemnify, and hold harmless each of Big Rivers and Kenergy and each of its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject, excluding such losses, claims, damages, liabilities, costs and other expenses due to Big Rivers or Kenergy's gross negligence or willful conduct, whether incurred directly or incurred based on claims of third Persons, arising out of or relating to the Specifications, the Work or the Protective Relays, whether arising before or after the date hereof, including any or all of the following (each, an "Indemnified Liability"):

3.1.1 The execution or delivery of this Agreement, or any agreement or instrument contemplated hereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder, including all obligations relating to the Specifications, the Work or the Protective Relays;

3.1.2 Any environmental liability related to or arising out of the Work or the Protective Relays;

3.1.3 Any liability relating to the Protective Relays or this Agreement resulting from (a) entry into this Agreement prior to the satisfaction or waiver of the conditions to the Effective Date, or (b) failure of such conditions to be satisfied or waived;

3.1.4 Damage to or destruction of any plant, machinery or equipment of any Person, including (a) relating to or arising out of the failure, inoperability, or unavailability for their intended purpose of, the Protective Relays, or (b) due to the inaccuracy, faultiness or inadequacy in any respect of the Specifications or the Work;

3.1.5 Fines, penalties or other consequences resulting from the failure of the Protective Relays to perform their intended purpose, including assessments of Governmental Authorities, including NERC or SERC, or the failure to obtain or maintain, or satisfy any obligations relating to, any required Approval;

3.1.6 Any liability relating to or arising out of the installation or maintenance of the communication equipment to be installed pursuant to Section 2.9;

3.1.7 The out-of-pocket costs to obtain any consent of a third party necessary for the performance of the Work or the obligations of the Parties hereunder; or

3.1.8 Any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing Subsections 3.1.1 through 3.1.7, whether based on contract, tort or any other theory, whether brought by any third party or by Century or otherwise, and regardless of whether any Indemnified Person is a party thereto, such Subsections 3.1.1 through 3.1.7 including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with the recovery of costs under the provisions of this Section 3.1.

3.2 Primary Indemnity. Except to the extent there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of Century under this Agreement.

### 3.3 Payments.

3.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify Century in a timely manner of any such amounts payable by Century hereunder; *provided*, that any failure to provide such notice shall not affect Century's obligations under this Article 3.

3.3.2 Any amounts payable by Century pursuant to this Article 3, shall be payable within the later to occur of (i) ten (10) Business Days after Century receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which Century's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

3.3.3 If any portion of any amounts invoiced hereunder is disputed by Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Kenergy or Big Rivers, as applicable, shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made.

3.4 Survival. The provisions of this Article 3 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

3.5 Subrogation. Upon payment by Century pursuant to this Article 3 of any claim under Section 3.1 in respect of any Indemnified Liability, Century, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of Century cooperate with Century and give at the request and expense of Century such further assurances as are necessary or advisable to enable Century vigorously to pursue such claims.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to each other Party as of the date hereof as follows:

4.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Agreement.

4.2 Due Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by such Party, and assuming the due authorization, execution and delivery of this Agreement by each other Party, constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

4.3 No Violation. The execution and delivery of this Agreement by such Party and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to such Party or its organizational documents or by-laws, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

4.4 Approvals. Except as set forth on Exhibit B, no Approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which such Party is subject is required for the due execution, delivery or performance by it of this Agreement. There are no conditions to the effectiveness of this Agreement with respect to such Party that have not been satisfied or irrevocably waived.

4.5 Proceedings. There is no pending or, to such Party's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) questions the validity of this Agreement or the ability of such Party to perform its obligations hereunder, (b) affects or relates to any Approval relating to the Work or the Protective Relays, or (c) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

4.6 Independent Decision. Such Party has, independently and without reliance upon any other Party and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement.

## ARTICLE 5

### SYSTEM DISTURBANCES

5.1 General. Century shall not use the Protective Relays or perform the Work in such manner as to cause a "System Disturbance." A "System Disturbance" is a use of electric power and energy that directly or indirectly results in a risk of harm to any Person or material damage to or interference with the transmission system of a wholesale power supplier of Kenergy or the transmission system of Big Rivers (the "Wholesale Transmission System"), a system connected with the Wholesale Transmission System or facilities or other property in proximity to the Wholesale Transmission System, or the plant, facility, equipment or operations of any other Person served directly or indirectly from the Wholesale Transmission System. A System Disturbance includes, but is not limited to "Harmonic Distortion" and "Phase Imbalance." A "Harmonic Distortion" is a level of current harmonic total demand distortion measured at the Delivery Point that exceeds the limits on total demand distortion described in IEEE Standard 519, Section 10. A "Phase Imbalance" is a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at the Delivery Point.

5.2 Changes. Kenergy or Big Rivers may require and Century shall, at Century's expense, make such changes in the Protective Relays as may be reasonably necessary to eliminate System Disturbances. If Century's use of power and energy creates an imbalance between phases that causes a System Disturbance, and Century fails to make changes in the Protective Relays requested by Big Rivers or Kenergy to correct such condition, in addition to any other available remedies, Big Rivers or Kenergy may, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.

## ARTICLE 6

### MISCELLANEOUS

6.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in this Agreement.

6.2 Waiver. The waiver by a Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

6.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in

accordance with this Section 6.3 will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if such day is a Business Day, or otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 6.3, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party in accordance with this Section 6.3:

If to Big Rivers:      Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 827-2558

If to Kenergy:      Kenergy Corp.  
P.O. Box 18  
Henderson, Kentucky 42419-0018  
Attn: President and CEO  
Fax: (270) 685-2279

If to Century:      Century Aluminum Company  
9404 State Route 2096  
Robards, Kentucky 42420  
Attn: Plant Manager  
Fax: (270) 521-7305

With copy to:      Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 6.4 Dispute Resolution.

6.4.1 If a Dispute arises, a Party may request a meeting among authorized representatives of the Parties to discuss and attempt to reach a resolution of the Dispute. Such meeting will take place within ten (10) Business Days or such shorter or longer time as agreed upon by the Parties.

6.4.2 Absent resolution of the Dispute pursuant to Section 6.4.1, and subject to a minimum amount in controversy of \$100,000.00, the Parties shall submit the matter to be settled, subject to Section 6.4.9, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for

Dispute Resolution (“ICDR”) of the American Arbitration Association (the “AAA Rules”), in accordance with the following terms and conditions:

(a) In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

(b) The ICDR shall administer the arbitration.

(c) The seat of arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

6.4.3 Subject to Sections 6.4.1 and 6.4.2, any Party may pursue any remedy available at law or equity with respect to any dispute or breach under this Agreement. Nothing in this Agreement shall expand or reduce the jurisdiction of any Governmental Authority.

6.4.4 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two Party-nominated arbitrators to agree on an arbitrator in accordance with Section 6.4.4(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 6.4.4(a) and 6.4.4(b), each arbitrator selected pursuant to this Section 6.4.4 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed or been a consultant to any Party in the past.

6.4.5 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, and including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the arbitration tribunal may be specifically enforced by any court of competent jurisdiction.

6.4.6 The losing Party shall pay the fees and costs of the prevailing Party or as allocated by the arbitration tribunal if all relief sought by one Party is not granted.

6.4.7 The award of the arbitration tribunal shall be subject to appeal or requests for rehearing pursuant to Section 6.7.

6.4.8 The award of the arbitration tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

6.4.9 Except for arbitration proceedings pursuant to this Section 6.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any Dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 6.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

#### 6.5 Successors and Assigns.

6.5.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Parties, except as provided in Section 6.5.4, and except that, subject to satisfaction of the conditions of Section 6.5.2, assignment may be made by a Party to such Person as acquires all or substantially all the assets of the assigning Party or that merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

6.5.2 In no event may a Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Parties or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

6.5.3 No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

6.5.4 A Party may, without the approval of any other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of

trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

6.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

6.7 Jurisdiction. Subject to Section 6.4, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all Disputes, *provided* that the subject matter of such Dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related Disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section 6.7 and any claim that such action, suit or proceeding brought in accordance with this Section 6.7 has been brought in an inconvenient forum. Nothing in Section 6.4 or this Section 6.7 prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of any Governmental Authority over Kenergy or Big Rivers. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 6.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 6.3, and agrees that such service shall be, for all purposes, good and sufficient.

6.8 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit each other Party to fulfill its obligations under this Agreement; *provided* that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by any other Party. Where the consent, agreement, or approval of any Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where any Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to any Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

6.9 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

6.10 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

6.11 No Power Sales Commitment. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers or Kenergy to sell to Century,



or an agreement of Century to purchase from Big Rivers or Kenergy, any electric energy or ancillary or related services, including reactive power.

6.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM SEBREE LLC

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**PROTECTIVE RELAYS**

The Protective Relay System will be designed to allow reductions in load at the Sebree Smelter consistent with a MISO Operating Guide. It may require manual or automatically implemented system or a combination of both.

**EXHIBIT B**

**REQUIRED CONSENTS**

SERC approval is required only for a special protective system that affects the bulk electric system. No approval is required by MISO, but MISO will review this Agreement as part of its verification or confirmation of the Curtailable Load to be permitted under the Electric Service Agreement and Attachment Y to MISO's Open Access Transmission Tariff.

**PROTECTIVE RELAYS AGREEMENT**

Dated as of ~~August 12, 2013~~ January 1, 2014

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.**

and

**CENTURY ALUMINUM OF ~~KENTUCKY GENERAL PARTNERSHIP~~ SEBREE LLC**

## PROTECTIVE RELAYS AGREEMENT

This PROTECTIVE RELAYS AGREEMENT (“Agreement”) is made and entered into as of ~~August 12, 2013~~, January 1, 2014, by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative (“Big Rivers”), KENERGY CORP., a Kentucky electric cooperative corporation (“Kenergy”), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ~~SEBREE LLC, a Delaware limited liability company~~ (“Century”). Big Rivers, Kenergy and Century are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

### RECITALS

A. Century owns and operates an aluminum reduction plant in ~~Hawesville~~ Robards, Kentucky (as further defined below, the “Sebree Smelter”) and purchases electric services pursuant to a Retail Electric Service Agreement, dated July 1, 2009, with Kenergy (the “Existing Agreement”).

B. Century ~~issued a notice of termination with respect to the Existing Agreement, effective as of August 20,~~ acquired its interests in the Sebree Smelter and the Existing Agreement from Alcan Primary Products Corporation, a Texas corporation (“Alcan”), pursuant to an Asset Sale Agreement, dated April 28, 2013, and an Assignment and Assumption Agreement, dated as of June 1, 2013.

C. Alcan issued a notice of termination with respect to the Existing Agreement, dated January 31, 2013, and effective as of January 31, 2014 (the “Notice of Termination”). The Existing Agreement, as assigned by Alcan and assumed by Century, remains subject to the Notice of Termination, as confirmed in a Letter of Representations and Agreements, dated as of June 1, 2013, by and among Big Rivers, Kenergy, Century and Century Aluminum Company, a Delaware corporation, and the direct or indirect parent of Century (“Guarantor”).

D. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth in the Electric Service Agreement, dated as of the date hereof (as amended, the “Electric Service Agreement”)

E. In connection with and as a condition to entry into the Electric Service Agreement, Kenergy and Big Rivers have agreed to enter into the Arrangement and Procurement Agreement, dated as of the date hereof (the “Arrangement Agreement”), to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, for resale by Kenergy to Century.

**F. It is a condition precedent to the “Effective Date” (as defined in the Electric Service Agreement and the Arrangement Agreement) that Century shall have authorized, executed and delivered this Agreement to Kenergy and Big Rivers.**

**G. C. To facilitate entry into new electric service arrangements intended to be effective upon termination of the Existing Agreement (the “Transaction”), the Parties desire to enter into this Agreement to set forth the Parties’ respective rights and obligations relating to protective relays and related equipment more particularly described in Exhibit A hereto (the “Protective Relays”).**

**H. D. Century intends that the any Protective Relays will installed would support curtailment of Century’s requirements for electric services, in certain circumstances, served under an the Electric Service Agreement to be entered into between Century and Kenergy (the “Electric Service Agreement”) as part of the Transaction.**

**I. E. In satisfaction of the condition of Big Rivers and Kenergy set forth herein to the effectiveness of this Agreement, Century Aluminum Company, a Delaware corporation and the indirect owner of Century (“and to the Effective Date, Guarantor”), is entering into a Guarantee, dated as of the date hereof, for the benefit of Big Rivers and Kenergy (“the “Guarantee”), guaranteeing to Big Rivers and Kenergy the payment, performance and all other obligations of Century arising out of or relating to this Agreement.**

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS; RULES OF INTERPRETATION

1.1 **Definitions; Rules of Interpretation.** Capitalized terms when used in this Agreement **and not defined in this Section 1.1 or otherwise herein** have the meanings specified herein, including the definitions provided in this ~~Section 1.1~~, unless stated otherwise or the context requires otherwise **assigned to those terms in the Electric Service Agreement; provided, that if the Electric Service Agreement is terminated prior to the satisfaction in full of all obligations of the Parties hereunder, capitalized terms defined by reference to the Electric Service Agreement shall have the meanings at the time of termination. The rules of interpretation set forth in Section 1.2 of the Electric Service Agreement shall apply to this Agreement as though fully set forth herein.**

1.1.1 **AAA Rules:** As defined in Section 6.4.2.

1.1.2 **Accounting Principles:** Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the

generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

**1.1.2** ~~1.1.3~~ Agreement: As defined in the preamble to this Agreement.

**1.1.4** ~~Applicable Law~~: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

**1.1.3** Alcan: As defined in the Recitals.

**1.1.4** ~~1.1.5~~ Approval: Any valid waiver, exemption, declaration, variance, franchise, permit, authorization, approval, consent, lease, ruling, tariff, rate, certification, license or similar order of or from, or filing or registration with, or notice to, or other action by, any Governmental Authority with jurisdiction over the matter in question.

**1.1.5** ~~1.1.6~~ Arrangement Agreement: ~~An Arrangement and Procurement Agreement, to be entered into by Kenergy and Big Rivers, to facilitate Big Rivers' obtainment of electric energy and related services from the wholesale electric market including pursuant to bilateral contracts, for resale to Kenergy, for delivery to Century under the Electric Service Agreement.~~ As defined in the Recitals.

**1.1.6** ~~1.1.7~~ Big Rivers: As defined in the preamble to this Agreement.

**1.1.8** ~~Business Day~~: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

**1.1.7** ~~1.1.9~~ Century: As defined in the preamble to this Agreement.

**1.1.8** ~~1.1.10~~ Dispute: Any and all disputes, controversies and claims between or among the Parties and arising under, relating to or in connection with, this Agreement, in any manner whatsoever, whether in contract, in tort, or otherwise, and including any dispute or controversy regarding the existence, validity or enforceability of this Agreement, and whether brought by a Party or any of its parents, subsidiaries, affiliates, officers, directors or agents on the one hand, against a Party or any of its parents, subsidiaries, affiliates, officers, directors or agents, on the other hand.

**1.1.9** Effective Date: As defined in the Recitals.

**1.1.10** ~~1.1.11~~ Electric Service Agreement: As defined in the Recitals.

**1.1.11** ~~1.1.12~~ Existing Agreement: As defined in the Recitals.

~~1.1.13~~ FERC: Federal Energy Regulatory Commission.



~~1.1.14 Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.~~

~~1.1.15 Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, a RTO (including MISO) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC.~~

~~1.1.12~~ ~~1.1.16~~ Guarantee: As defined in the Recitals.

~~1.1.13~~ ~~1.1.17~~ Guarantor: As defined in the Recitals.

~~1.1.14~~ ~~1.1.18~~ Harmonic Distortion: As defined in Section 5.1.

~~1.1.19 Hawesville Smelter: The aluminum reduction plant owned and operated by Century and located in Hawesville, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.~~

~~1.1.15~~ ~~1.1.20~~ ICDR: As defined in Section 6.4.2.

~~1.1.16~~ ~~1.1.21~~ Indemnified Liability: As defined in Section 3.1.

~~1.1.17~~ ~~1.1.22~~ Indemnified Person: As defined in Section 3.1.

~~1.1.23 ISO: An Independent System Operator, as defined and approved by FERC.~~

~~1.1.18~~ ~~1.1.24~~ Kenergy: As defined in the preamble to this Agreement.

~~1.1.25 KPSC: Kentucky Public Service Commission.~~

~~1.1.26 MISO: The Midcontinent Independent Transmission System Operator, Inc.~~

~~1.1.27 NERC: North American Electric Reliability Corporation.~~

~~1.1.19~~ Notice of Termination: As defined in the Recitals.

~~1.1.20~~ ~~1.1.28~~ Party or Parties: As defined in the preamble to this Agreement.

~~1.1.29 Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization or Governmental Authority.~~

~~1.1.21 1.1.30 Phase Imbalance: As defined in Section 5.1.~~

~~1.1.31 Prime Rate: The then effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties shall agree on a mutually acceptable alternative source for that rate.~~

~~1.1.22 1.1.32 Protective Relays: As defined in the Recitals.~~

~~1.1.33 RTO: A regional transmission organization as defined and approved by FERC.~~

~~1.1.34 RUS: United States Department of Agriculture Rural Utilities Service.~~

~~1.1.35 SERC: SERC Reliability Corporation.~~

~~1.1.23 1.1.36 Specifications: As defined in Section 2.4.~~

~~1.1.24 1.1.37 System Disturbance: As defined in Section 5.1.~~

~~1.1.38 Transaction: As defined in the Recitals.~~

~~1.1.25 1.1.39 Wholesale Transmission System: As defined in Section 5.1.~~

~~1.1.26 1.1.40 Work: As defined in Section 2.1.~~

~~1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and vice versa; (c) references to "Articles," "Recitals," "Sections" or "Exhibits" are to the articles, recitals, sections or exhibits of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person's authorized agents, permitted successors and assigns in such capacity; (e) the words "herein," "hereof" and "hereunder" will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation" and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day that is not a Business Day, such action~~

~~or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; and (o) the word "or" shall not be exclusive. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.~~

## ARTICLE 2

### PROTECTIVE RELAYS

2.1 General. Century shall perform, or cause to be performed, all work and services necessary or appropriate to engineer, design, develop, procure, install, own, operate and maintain the Protective Relays (the "Work") in accordance with this Agreement and subject to the rights and obligations of Big Rivers and Kenergy set forth herein.

2.2 Standard of Care. Century shall perform the Work or cause the Work to be performed (a) in a professional, prudent, good and workman-like manner, (b) in a manner that minimizes to the extent commercially reasonable ~~the any~~ adverse impact on the transmission facilities of Big Rivers and (c) in accordance with the terms of this Agreement, all Applicable Laws, all applicable Approvals of Governmental Authorities, consents of third parties obtained by any Party necessary in connection herewith, Good Utility Practice, including all applicable (i) engineering, environmental, construction and safety codes and standards, (ii) the terms of the insurance policies of Century relating to the Protective Relays, and (iii) the standards, rules and regulations of any Governmental Authority. If Big Rivers or Kenergy must obtain any consent from a third party relating to the Work, Big Rivers or Kenergy, as applicable, promptly shall notify Century of the need for such consent. Century shall not be responsible for performing any Work in accordance with any such consent until such consent has been obtained and the notice has been given to Century.

2.3 Schedule of Installation and Operation. ~~Century shall use commercially reasonable efforts to may~~ cause the Protective Relays to be installed and operational on or prior to the effective date of Kenergy's obligation to provide electric services to Century pursuant to the Electric Service Agreement after the Effective Date. Failure of the Protective Relays to be installed and operational on or prior to such date shall not (a) affect Century's obligations hereunder, (b) result in any liability of Kenergy or Big Rivers to Century or any other Person; or (c) delay the effective date of Kenergy's or Big Rivers' obligation to provide electric services to Century pursuant to the Electric Service and the Arrangement Agreement. Effective Date. Notwithstanding anything herein to the contrary, each obligation of a Party hereunder that relates to the Work or the Specifications, or otherwise relate to the Protective Relays, shall not be effective prior to the time Century determines install the Protective Relays or otherwise undertake the Work.

2.4 Specifications. Century shall prepare or cause to be prepared all engineering and design drawings and specifications relating to the design, installation and operation and maintenance of the Protective Relays, including drawings, specifications and other documents

necessary to (a) illustrate the scale and relationship of the components of the Protective Relays; (b) fix and describe engineering, structural, mechanical and electric systems of the Protective Relays; and (c) complete construction of the Protective Relays (collectively, the "Specifications"). Century shall submit the Specifications to Big Rivers in an electronic format designated by Big Rivers for its review and comment. Big Rivers shall use commercially reasonable efforts to review the Specifications expeditiously but in all cases within seven days of Big Rivers' receipt of the Specifications. Century shall accept and incorporate into the Specifications any comments of Big Rivers to the extent that such comments relate to compliance with the standards, rules and regulations of any other Governmental Authority with jurisdiction relating to the Work.

2.5 No Approval or Reliance. As between Big Rivers and Kenergy, on one hand and Century on the other, with respect to any potential liability of Big Rivers for the Work or for the operation of the Protective Relays, Big Rivers' review of and comments with respect to the Specifications shall not constitute: (a) approval of the proposed Work or design of the Protective Relays or an evaluation or determination that the Specifications meet, or the Work or the proposed Protective Relays will meet or comply with, Section 2.2 or are otherwise suitable for their intended purpose; or (b) a waiver of, or release of Century from, any liability for errors or omissions related to or arising out of the Specifications, the Work or the Protective Relays. Century shall retain all documentation applicable to the Protective Relays for a period of three years following the earlier of (i) cessation of operation of the Protective Relays or (ii) the termination of this Agreement. Century acknowledges and agrees that (A) Kenergy and Big Rivers are entering into this Agreement to accommodate Century's ~~desire~~option to perform the Work ~~based on~~if Century's assessment determines that the Protective Relays will serve Century's intended purpose, (B) neither Kenergy nor Big Rivers has undertaken or will undertake any evaluation or analysis as to whether the Protective Relays will have the results desired by Century, (C) neither Kenergy nor Big Rivers has any duty, fiduciary or otherwise, regarding the suitability of the Work or the Protective Relays for their intended purpose, including whether the Work or the Protective Relays will meet any applicable requirements of any Governmental Authority, and (D) it is not relying on Kenergy or Big Rivers for engineering, legal, regulatory, financial or other advice but instead is seeking and will rely on the advice of its own professionals and advisors for such matters.

2.6 Certification and Seal. All engineering work performed or caused to be performed by Century pursuant to Section 2.1 requiring certification shall be certified, and all Specifications requiring sealing shall be sealed, by professional engineers licensed and properly qualified to perform such engineering services in all appropriate jurisdictions.

2.7 Location and Access. The Protective Relays shall be located on the real property owned by Century and located behind Century's meter at the ~~Hawesville~~Sebree Smelter. Neither Big Rivers nor Kenergy shall have any obligation to provide access to real estate or otherwise make available to Century any space for the Protective Relays or the Work.

2.8 Payments and Reimbursements. Century shall own the Protective Relays. Century shall directly pay for the Work and any other costs attributable to ownership of the Specifications, the Work and the Protective Relays. Century shall reimburse Big Rivers or Kenergy for all out-of-pocket costs and expenses incurred by Big Rivers or Kenergy, as

applicable, relating to the Specifications, the Work and the Protective Relays within ten (10) Business Days of Century's receipt from Big Rivers or Kenergy, as applicable, of an invoice setting forth such costs in reasonable detail.

2.9 Coordination with Third-Parties. The Parties shall cooperate in good faith to submit to MISO and SERC, if applicable, a mutually agreeable proposal that: (a) Century be permitted to install Protective Relays to receive ~~electric service under the Electric Service Agreement at capacities in excess of the maximum demand to be permitted under the~~ **Curtable Load (as defined in** the Electric Service Agreement, ~~without considering the Protective Relays or any other requirement that MISO may impose as a condition to exceeding such maximum demand;~~ **(b) permits** when required to maintain electric reliability, MISO, NERC, SERC or any other Governmental Authority with jurisdiction over electric reliability to direct activation of the Protective Relays to curtail Century's load at the Hawesville ~~Sebree~~ Smelter, down to the ~~maximum demand to be permitted under the Electric Service Agreement, without considering the Protective Relays~~ **Base Load**; (c) such direction shall be a specified, agreed communication to Big Rivers; and (d) Big Rivers shall promptly provide Century with notice of any such communication in procedures to be developed by the Parties. At Century's sole cost and expense, Big Rivers shall install and maintain communication equipment required by MISO or SERC to facilitate such communication. Except for the gross negligence or willful conduct by Big Rivers or Kenergy, Century acknowledges and agrees that neither Kenergy nor Big Rivers shall have any liability to any Person with respect to such communication equipment or Big Rivers' installation or operation thereof.

2.10 Approvals. Century shall obtain, or cause to be obtained, any and all Approvals necessary for the Work, including, if applicable, any and all Approvals required by SERC or NERC, on or prior to the time such Approvals are required by Applicable Law to be duly obtained, given, accomplished or renewed, and all such Approvals shall be maintained in full force and effect and any conditions therein shall have been satisfied or waived. Century's obligations under this Section 2.10 shall include continuous compliance with all electric reliability standards, rules and regulations of SERC, NERC and FERC relating to the Work, including the ownership or operation and maintenance of the Protective Relays, or the performance of Century's obligations hereunder. Big Rivers and Kenergy shall cooperate with Century and support any requests for Approvals of Governmental Authorities required hereunder as long as Big Rivers and Kenergy have no objections to or concerns about the course of action proposed by Century with respect to any such Approval. Century shall be solely responsible for the contents of any such requests. Such cooperation shall include Big Rivers or Kenergy using reasonable commercial efforts to promptly submit on Century's behalf, if necessary, any request for such Approvals following completion thereof.

2.11 Protection of Persons and Property. Century shall be responsible for the safety and protection of its employees and agents and third parties, as well as its and their respective property, in connection with the performance of the Work. Century shall cause its employees and agents to comply with all safety programs relating to the Work. Other than due to its own gross negligence or willful conduct, neither Big Rivers nor Kenergy shall be held liable for any injury or death of any such Persons or any damage to any such personal property that may occur in connection with the performance of the Work.

2.12 Contractors. Notwithstanding any agreement with any contractor or subcontractor, as between Century, on one hand, and Big Rivers or Kenergy, on the other hand, Century is solely responsible for the Work and will not be excused from its obligations hereunder if any portion of the Work is defective, non-operational or not performed in accordance with the requirements of this Agreement. Century has complete and sole responsibility as a principal for its agents and all other Persons hired to perform or assist in performing the Work, including contractors.

2.13 No Agency. Nothing in this Agreement is intended by the Parties, and nothing in this Agreement shall be construed, to create an agency, partnership, joint venture or similar relationship between the Parties with respect to the Protective Relays or any Work.

2.14 Insurance. Century shall maintain (a) property insurance for the Protective Relays in an amount equal to the replacement cost thereof and (b) other insurance (including liability insurance) with respect to the Protective Relays and the Work in accordance with Good Utility Practice and Applicable Law. At the request of Big Rivers, Century shall provide information regarding the insurance program maintained by Century in connection with this Agreement, including certificates or other reasonable evidence of any required insurance coverage. The insurance coverage required to be maintained hereunder shall not limit, restrict or otherwise affect Century's liabilities in connection with this Agreement.

2.15 Guarantee. Century acknowledges and agrees that (a) the Guarantee has been entered into as a condition to the entry into this Agreement by Big Rivers and Kenergy, and (b) Century shall cause a Substitute Guarantee (as defined in the Guarantee) to be entered into in the circumstances required therefor under the Guarantee.

2.16 Cessation of Smelting Operations; Survival. The Parties acknowledge and agree that (a) Century may permanently cease smelting operations at the ~~Hawesville~~Sebree Smelter, including ceasing operation of the Protective Relays, and (b) in such case, Century's obligations under Sections 2.3, 2.4, 2.6, and 2.14, the first sentence of each of Sections 2.7 and 2.8, and Article 5 shall terminate.

### ARTICLE 3

#### INDEMNIFICATION

3.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, Century hereby agrees that it will pay, and will protect, indemnify, and hold harmless each of Big Rivers and Kenergy and each of its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject, excluding such losses, claims, damages, liabilities, costs and other expenses due to Big Rivers or Kenergy's gross negligence or willful conduct, whether incurred directly or incurred based on claims of third Persons, arising

out of or relating to the Specifications, the Work or the Protective Relays, whether arising before or after the date hereof, including any or all of the following (each, an “Indemnified Liability”):

3.1.1 The execution or delivery of this Agreement, or any agreement or instrument contemplated hereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder, including all obligations relating to the Specifications, the Work or the Protective Relays;

3.1.2 Any environmental liability related to or arising out of the Work or the Protective Relays;

3.1.3 Any liability relating to the Protective Relays or this Agreement resulting from (a) entry into this Agreement prior to the satisfaction or waiver of the conditions to the obligations of Kenergy to commence service under the Electric Service Agreement, or (b) failure to enter into the Electric Service Agreement or Effective Date, or (b) failure of such conditions to be satisfied or waived;

3.1.4 Damage to or destruction of any plant, machinery or equipment of any Person, including (a) relating to or arising out of the failure, inoperability, or unavailability for their intended purpose of, the Protective Relays, or (b) due to the inaccuracy, faultiness or inadequacy in any respect of the Specifications or the Work;

3.1.5 Fines, penalties or other consequences resulting from the failure of the Protective Relays to perform their intended purpose, including assessments of Governmental Authorities, including NERC or SERC, or the failure to obtain or maintain, or satisfy any obligations relating to, any required Approval;

3.1.6 Any liability relating to or arising out of the installation or maintenance of the communication equipment to be installed pursuant to Section 2.9;

3.1.7 The out-of-pocket costs to obtain any consent of a third party necessary for the performance of the Work or the obligations of the Parties hereunder; or

3.1.8 Any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing Subsections 3.1.1 through 3.1.7, whether based on contract, tort or any other theory, whether brought by any third party or by Century or otherwise, and regardless of whether any Indemnified Person is a party thereto, such Subsections 3.1.1 through 3.1.7 including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with the recovery of costs under the provisions of this Section 3.1.

3.2 Primary Indemnity. Except to the extent there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of Century under this Agreement.

3.3 Payments.

3.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify Century in a timely manner of any such amounts payable by Century hereunder; *provided*, that any failure to provide such notice shall not affect Century's obligations under this Article 3.

3.3.2 Any amounts payable by Century pursuant to this Article 3, shall be payable within the later to occur of (i) ten (10) Business Days after Century receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which Century's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

3.3.3 If any portion of any amounts invoiced hereunder is disputed by Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Kenergy or Big Rivers, as applicable, shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made.

3.4 Survival. The provisions of this Article 3 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

3.5 Subrogation. Upon payment by Century pursuant to this Article 3 of any claim under Section 3.1 in respect of any Indemnified Liability, Century, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of Century cooperate with Century and give at the request and expense of Century such further assurances as are necessary or advisable to enable Century vigorously to pursue such claims.

ARTICLE 4

**REPRESENTATIONS AND WARRANTIES**

Each Party hereby represents and warrants to each other Party as of the date hereof as follows:

4.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Agreement.

4.2 Due Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by such Party, and assuming the due authorization, execution and delivery of this Agreement by each other Party, constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability



may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

4.3 No Violation. The execution and delivery of this Agreement by such Party and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to such Party or its organizational documents or by-laws, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

4.4 Approvals. Except as set forth on Exhibit B, no Approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which such Party is subject is required for the due execution, delivery or performance by it of this Agreement. There are no conditions to the effectiveness of this Agreement with respect to such Party that have not been satisfied or irrevocably waived.

4.5 Proceedings. There is no pending or, to such Party's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) questions the validity of this Agreement or the ability of such Party to perform its obligations hereunder, (b) affects or relates to any Approval relating to the Work or the Protective Relays, or (c) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

4.6 Independent Decision. Such Party has, independently and without reliance upon any other Party and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement.

## ARTICLE 5

### SYSTEM DISTURBANCES

5.1 General. Century shall not use the Protective Relays or perform the Work in such manner as to cause a "System Disturbance." A "System Disturbance" is a use of electric power and energy that directly or indirectly results in a risk of harm to any Person or material damage to or interference with the transmission system of a wholesale power supplier of Kenergy or the transmission system of Big Rivers (the "Wholesale Transmission System"), a system connected with the Wholesale Transmission System or facilities or other property in proximity to the Wholesale Transmission System, or the plant, facility, equipment or operations of any other Person served directly or indirectly from the Wholesale Transmission System. A System Disturbance includes, but is not limited to "Harmonic Distortion" and "Phase Imbalance." A "Harmonic Distortion" is a level of current harmonic total demand distortion measured at the Delivery Point that exceeds the limits on total demand distortion described in IEEE Standard 519, Section 10. A "Phase Imbalance" is a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at the Delivery Point.

5.2 Changes. Kenergy or Big Rivers may require and Century shall, at Century's expense, make such changes in the Protective Relays as may be reasonably necessary to eliminate System Disturbances. If Century's use of power and energy creates an imbalance between phases that causes a System Disturbance, and Century fails to make changes in the Protective Relays requested by Big Rivers or Kenergy to correct such condition, in addition to any other available remedies, Big Rivers or Kenergy may, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.

#### ARTICLE 6

#### MISCELLANEOUS

6.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in this Agreement.

6.2 Waiver. The waiver by a Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

6.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section 6.3 will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if such day is a Business Day, or otherwise on the next Business Day; *provided, however,* that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 6.3, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party in accordance with this Section 6.3:

If to Big Rivers:           Big Rivers Electric Corporation  
  201 Third Street  
  Henderson, Kentucky 42420  
  Attn: President and CEO  
  Fax: (270) 827-2558

If to Kenergy:             Kenergy Corp.

~~6402 Old Corydon Road~~P.O. Box 18  
Henderson, Kentucky  
~~42420~~42419-0018  
Attn: President and CEO  
Fax: (270) ~~826-3999~~685-2279

If to Century: Century Aluminum Company  
~~P.O. Box 500~~  
9404 State Route ~~271~~ North  
~~Hawesville~~2096  
Robards, Kentucky ~~42348~~42420  
Attn: Plant Manager  
Fax: (270) ~~852-2882~~521-7305

With copy to: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 6.4 Dispute Resolution.

6.4.1 If a Dispute arises, a Party may request a meeting among authorized representatives of the Parties to discuss and attempt to reach a resolution of the Dispute. Such meeting will take place within ten (10) Business Days or such shorter or longer time as agreed upon by the Parties.

6.4.2 Absent resolution of the Dispute pursuant to Section 6.4.1, and subject to a minimum amount in controversy of ~~\$100,00.00~~100,000.00, the Parties shall submit the matter to be settled, subject to Section 6.4.9, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution (“ICDR”) of the American Arbitration Association (the “AAA Rules”), in accordance with the following terms and conditions:

(a) In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

(b) The ICDR shall administer the arbitration.

(c) The seat of arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

6.4.3 Subject to Sections 6.4.1 and 6.4.2, any Party may pursue any remedy available at law or equity with respect to any dispute or breach under this Agreement. Nothing in this Agreement shall expand or reduce the jurisdiction of any Governmental Authority.

6.4.4 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two Party-nominated arbitrators to agree on an arbitrator in accordance with Section 6.4.4(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 6.4.4(a) and 6.4.4(b), each arbitrator selected pursuant to this Section 6.4.4 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed or been a consultant to any Party in the past.

6.4.5 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, and including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the ~~arbitral~~arbitration tribunal may be specifically enforced by any court of competent jurisdiction.

6.4.6 The losing Party shall pay the fees and costs of the prevailing Party or as allocated by the arbitration tribunal if all relief sought by one Party is not granted.

6.4.7 The award of the ~~arbitral~~arbitration tribunal shall be subject to appeal or requests for rehearing pursuant to Section 6.7.

6.4.8 The award of the arbitration tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

6.4.9 Except for arbitration proceedings pursuant to this Section 6.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any Dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance

with Section 6.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

6.5 Successors and Assigns.

6.5.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Parties, except as provided in Section 6.5.4, and except that, subject to satisfaction of the conditions of Section 6.5.2, assignment may be made by a Party to such Person as acquires all or substantially all the assets of the assigning Party or that merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

6.5.2 In no event may a Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Parties or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

6.5.3 No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

6.5.4 A Party may, without the approval of any other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

6.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

6.7 Jurisdiction. Subject to Section 6.4, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all Disputes, *provided* that the subject matter of such Dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related Disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section 6.7 and any claim that such action, suit or proceeding

brought in accordance with this Section 6.7 has been brought in an inconvenient forum. Nothing in Section 6.4 or this Section 6.7 prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of any Governmental Authority over Kenergy or Big Rivers. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 6.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 6.3, and agrees that such service shall be, for all purposes, good and sufficient.

6.8 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit each other Party to fulfill its obligations under this Agreement; *provided* that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by any other Party. Where the consent, agreement, or approval of any Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where any Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to any Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

6.9 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

6.10 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

6.11 No Power Sales Commitment. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers or Kenergy to sell to Century, or an agreement of Century to purchase from Big Rivers or Kenergy, any electric energy or ancillary or related services, including reactive power.

6.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

~~CENTURY ALUMINUM OF KENTUCKY~~  
~~GENERAL PARTNERSHIP~~ SEBREE LLC

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

### PROTECTIVE RELAYS

The Protective Relay System will be designed to allow reductions in load at the Hawesville ~~Sebree~~ Smelter consistent with a MISO Operating Guide ~~that is expected in July 2013.~~ It may require manual or automatically implemented system or a combination of both.



**EXHIBIT B**

**REQUIRED CONSENTS**

SERC approval is required only for a special protective system that affects the bulk electric system. No approval is required by MISO, but MISO will review this Agreement as part of its verification or confirmation of the Curtailable Load to be permitted under the Electric Service Agreement and Attachment Y to MISO's Open Access Transmission Tariff.

**TAX INDEMNITY AGREEMENT**

Dated as of January [ ], 2014

by and among

**KENERGY CORP.,**

**CENTURY ALUMINUM COMPANY**

and

**CENTURY ALUMINUM SEBREE LLC**

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## TAX INDEMNITY AGREEMENT

This TAX INDEMNITY AGREEMENT (this “Agreement”) is made and entered into as of January [ ], 2014, by KENERGY CORP., a Kentucky electric cooperative corporation (the “Indemnified Party”), CENTURY ALUMINUM COMPANY, a Delaware corporation (the “Century Parent”), and CENTURY ALUMINUM SEBREE LLC, a Delaware limited liability company and a wholly-owned direct or indirect subsidiary of Century Parent (“Century”). Each of Century and Century Parent are sometimes referred to herein collectively as the “Indemnifying Parties”, and individually as a “Indemnifying Party”. Each of the Indemnifying Parties and the Indemnified Party are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

### RECITALS

A. The Indemnified Party and Century have entered into an Electric Service Agreement, dated as of the date hereof (the “Electric Service Agreement”), under which the Indemnified Party shall provide Century retail electric service.

B. The Indemnifying Parties have agreed, subject to the terms and conditions of this Agreement, to jointly and severally indemnify and hold harmless the Indemnified Party on an after-tax basis for certain tax liabilities and other costs relating to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions; Rules of Interpretation. Capitalized terms used herein but not otherwise defined herein, including in this Section 1.1, are used as defined in the Electric Service Agreement. The rules of interpretation set forth in the Electric Service Agreement shall apply to this Agreement.

1.1.1 Agreement: As defined in the preamble to this Agreement.

1.1.2 Century: As defined in the preamble to this Agreement.

1.1.3 Century Parent: As defined in the preamble to this Agreement.

1.1.4 Electric Service Agreement: As defined in the Recitals.

1.1.5 Expenses: Any and all expenses related to accounting advisory services, tax advisory services, reasonable legal services, and other fees and expenses, in each case, for which the Indemnified Party is liable or has agreed to pay in connection with the failure of the Indemnified Party to maintain its status as an entity exempt from U.S.

federal, state or local income taxation as a result of the transactions under the Transaction Documents, including all expenses incurred under Section 2.5 and Section 2.7.

1.1.6 Indemnified Party: As defined in the preamble to this Agreement.

1.1.7 Indemnifying Party or Indemnifying Parties: As defined in the preamble to this Agreement.

1.1.8 Indemnity Claim: As defined in Section 2.1.

1.1.9 Indemnity Claim Notice: As defined in Section 2.2.2.

1.1.10 Net After-Tax Basis: With respect to any amount payable under Section 2.1, the amount payable will be increased to account for Taxes on the amount payable and additions under this Section 1.1.4, taking into account any Tax deduction, credit or loss that will be realized as a result of any payment by the Indemnified Party of an amount, including Taxes, with respect to which a payment to be received by the Indemnified Party is made under this Agreement.

1.1.11 Other Tax Status Costs: Any and all costs, fees or expenses incurred, or reductions in or failures to realize, revenues, reimbursements or other benefits reducible to money, in each case of the Indemnified Party resulting from, occurring in connection with, relating to or otherwise arising out of the Indemnified Party's failure to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents, including by way of example and not limitation, ineligibility for or reduction in Federal Emergency Management Agency assistance based on an Indemnified Party's failure to maintain its status as an entity exempt from U.S. federal income taxes.

1.1.12 Party or Parties: As defined in the preamble to this Agreement.

1.1.13 Tax or Taxes: All fees, taxes (including income taxes, franchise taxes, sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible)), levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to these taxes, now or hereafter imposed by any U.S. federal, state or local government or other taxing authority.

1.1.14 Tax Claim: As defined in Section 2.5.

## ARTICLE 2

### INDEMNIFICATION FOR CERTAIN TAXES

2.1 Indemnification. The Indemnifying Parties hereby, jointly and severally, agree to indemnify, defend and hold harmless the Indemnified Party and its successors, on a Net After-Tax Basis, from and against, any Taxes (after taking into account all applicable tax deductions, credits, exemptions and exclusions in the applicable tax year), Other Tax Status Costs and Expenses incurred by the Indemnified Party relating to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents (an "Indemnity Claim"). For the avoidance of doubt, any transaction under the Transaction Documents, without regard to degree or amount,

that relates to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation may give rise to an Indemnity Claim, including, without limitation, if the Indemnified Party has income from nonmembers due to other transactions but because of any transaction under the Transaction Documents fails to receive a sufficient percentage of its income from its members to meet losses and expenses (within the meaning of Section 501(c)(12)(A) of the Internal Revenue Code of 1986, as amended).

## 2.2 Procedures and Notice.

2.2.1 Notwithstanding anything to the contrary in this Agreement, the Indemnified Party will take reasonable efforts to deliver written notice to the Indemnifying Parties as early as possible in any tax year in which it projects that it will have an Indemnity Claim; *provided* that the failure to give such notice shall not limit the Indemnifying Parties' obligations hereunder. The Indemnified Party will discuss the basis and calculations for such Indemnity Claim with the Indemnifying Parties and provide the Indemnifying Parties with such information as they may reasonably request with respect to such Indemnity Claim (including, for the avoidance of doubt, the information set forth in the proviso to Section 2.2.2).

2.2.2 The Indemnified Party must deliver written notice of an Indemnity Claim accompanied by a written statement describing the Indemnity Claim in reasonable detail, stating the amount the Indemnified Party believes to be payable by the Indemnifying Parties on account thereof pursuant to the terms of this Agreement and providing the computation of the amount (an "Indemnity Claim Notice"); *provided* that, with respect to any Indemnity Claim that relates to whether the Indemnified Party failed to receive a sufficient percentage of its income from its members to meet losses and expenses (within the meaning of Section 501(c)(12)(A) of the Internal Revenue Code of 1986, as amended), the computation will include detail concerning the calculation of the Indemnified Party's total income, income from the Indemnified Party's activities as a market participant, pursuant to the Transaction Documents, and total income that is not collected from members for the sole purpose of meeting losses and expenses.

2.2.3 Any amount payable to the Indemnified Party pursuant to Section 2.1 shall be paid in immediately available funds to the Indemnified Party within ten (10) days after receipt of the Indemnity Claim Notice, without regard to the pendency of any dispute or action pursuant to Section 2.5 or Section 4.4. The Parties agree to make any payments necessary in order for the amounts received by the Indemnified Party in respect of any Indemnity Claim to equal the amounts of any final determination of any amounts payable hereunder.

2.3 Time Period for Asserting Indemnity Claims. Indemnity Claims may be made only by delivering an Indemnity Claim Notice to the Indemnifying Parties prior to the one hundred eightieth (180th) day following expiry of the relevant statute of limitations applicable to the assessment of Taxes indemnified hereunder; *provided* that Indemnity Claims for Expenses or Other Tax Status Costs may be made prior to the one hundred eightieth (180th) day following the date such Expenses or Other Tax Status Costs are incurred. For the avoidance of doubt, this Agreement shall survive the termination or expiration of the Electric Service Agreement or any other Transaction Documents until the time period for asserting any Indemnity Claims hereunder shall have expired.

2.4 Notice of Indemnity Claims. If any claim or demand for Taxes, Expenses or Other Tax Status Costs in respect of which indemnity may be sought against the Indemnifying Parties

pursuant to this Agreement is asserted against the Indemnified Party, the Indemnified Party promptly shall (a) notify the Indemnifying Parties of such claim or demand after receipt of such claim or demand and (b) give the Indemnifying Parties such information with respect thereto as the Indemnifying Parties may reasonably request; *provided* that the failure to give such notice within such period shall not limit the Indemnifying Parties' obligations hereunder.

2.5 Defense of Tax Claims. The Indemnified Party shall take such action in contesting such claim or demand as the Indemnifying Parties may request, including appeals, *provided* the Indemnified Party has not received a written opinion of independent tax counsel, selected by the Indemnified Party and reasonably satisfactory to the Indemnifying Party that there is no reasonable basis for the contest and the Indemnifying Party agrees to pay the Indemnified Party's costs of pursuing the contest. The Indemnifying Parties may, at their own expense, elect to assume the defense of any claim, suit, action, litigation or other proceeding (including any Tax audit) for Taxes in respect of which indemnity may be sought against the Indemnifying Parties pursuant to this Agreement (collectively, a "Tax Claim"); and, as between the Indemnified Party and the Indemnifying Parties, the Indemnifying Parties shall determine whether and in what manner to defend such Tax Claim and shall otherwise control all aspects of any defense of such Tax Claim; *provided* that, if the Indemnifying Party elects to assume the defense of a Tax Claim, it shall retain counsel reasonably satisfactory to the Indemnified Party; *provided further* that in the event that the Indemnified Party has been advised by independent counsel that having common counsel would present a conflict of interest or preclude the Indemnified Party from making certain legal defenses, then the Indemnified Party may retain separate counsel to defend it against the Tax Claim at the Indemnifying Parties' expense. Subject to the immediately preceding sentence, if the Indemnifying Parties elect to assume the defense of or otherwise participate in any such Tax Claim, each Party shall (i) cooperate in the defense or prosecution of any such Tax Claim, (ii) consult with and keep each other Party and its designated counsel reasonably informed with respect to such Tax Claim, (iii) furnish or cause to be furnished, records and information, or make employees available on a reasonable and mutually convenient basis to provide information as may be reasonably requested in connection therewith, and (iv) consider comments of and consult in good faith with each other Party; *provided* that nothing in this Section shall obligate a Party to disclose information that is subject to the attorney-client privilege. The Indemnified Party shall not settle any such Tax Claim or consent to the entry of any judgment with respect to Taxes indemnified hereunder without prior written notice to and consent of the Indemnifying Parties.

2.6 Tax Returns. The Indemnified Party agrees that it will not voluntarily elect to treat itself on any tax return as an entity not exempt from U.S. federal, state or local income taxation, and that it will not take a position or make a filing inconsistent with the foregoing in any litigation or investigation, or otherwise, without giving prior written notice to the Indemnifying Parties that describes the basis for taking such position or making such filing and consulting in good faith with the Indemnifying Parties prior to taking such action; *provided* that the failure to give such notice shall not limit the Indemnifying Parties' obligations hereunder.

2.7 Tax Ruling. At Century's sole cost and expense, the Indemnified Party may seek a tax ruling on any impact of the transactions under the Transaction Documents on the Indemnified Party's tax exempt status; *provided* that prior to seeking such tax ruling, the Indemnified Party shall consult (in good faith) with Century; *provided further* that, if the Indemnified Party seeks to become the Market Participant, the Indemnified Party shall (i) notify

Century thereof, and (ii) if requested by Century within thirty (30) Business Days of such notice, obtain an opinion of nationally recognized tax counsel regarding the potential impact of acting in this capacity and provide a copy of such opinion to Century prior to becoming the Market Participant.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

Except with respect to Section 3.6, each Party hereby represents and warrants to each other Party as of the date hereof as follows:

3.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Agreement.

3.2 Due Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by such Party, and assuming the due authorization, execution and delivery of this Agreement by each other Party, constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

3.3 No Violation. The execution and delivery of this Agreement by such Party and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to such Party or its organizational documents or by-laws, or (b) contravene the provisions of, or constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

3.4 Approvals. No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which such Party is subject is required for the due execution, delivery or performance by it of this Agreement. There are no conditions to the effectiveness of this Agreement with respect to such Party that have not been satisfied or irrevocably waived.

3.5 Proceedings. There is no pending or, to such Party's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority which: (a) questions the validity of this Agreement or the ability of such Party to perform its obligations hereunder, or (b) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

3.6 Knowledge. The Indemnified Party hereby represents and warrants to the Indemnifying Parties as of the date hereof that the Indemnified Party has no knowledge of any action or event, other than the Transaction or the "Transaction" (as such term is defined in the Electric Service Agreement, dated as of August 19, 2013, by and between the Indemnified Party

and Century Aluminum of Kentucky General Partnership, a Kentucky general partnership and a wholly-owned indirect subsidiary of Century Parent), that could reasonably be expected to lead to a Tax Claim, including any investigation, pending or threatened, before or by the Internal Revenue Service (or any state or local equivalent), any Governmental Authority against the Indemnified Party or its Affiliates.

3.7 Independent Decision. Such Party has, independently and without reliance upon any other Party and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement.

#### ARTICLE 4

##### MISCELLANEOUS

4.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in this Agreement.

4.2 Waiver. The waiver by a Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of a subsequent breach of the same or any other term, covenant or condition contained herein.

4.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section, the address of a Party is the address set out below or such other address which that Party may from time to time deliver by notice to the other Party in accordance with this Section:

If to the  
Indemnified Party: Kenergy Corp.  
P.O. Box 18  
Henderson, Kentucky 42419-0018  
Attn: President and CEO



Fax: (270) 685-2279

If to Century: Century Aluminum Company  
9404 State Route 2096  
Robards, Kentucky 42420  
Attn: Plant Manager  
Fax: (270) 521-7305

With copy to: Century Aluminum Company  
One South Wacker Drive Suite 1000  
Chicago, IL 60606  
Attn: General Counsel  
Fax: (312) 696-3102

If to Century Parent: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, IL 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 4.4 Dispute Resolution.

4.4.1 If a dispute arises, a Party may request a meeting among authorized representatives of the Parties to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten (10) Business Days or such shorter or longer time as agreed upon by the Parties.

4.4.2 Absent resolution of the dispute pursuant to Section 4.4.1, and subject to a minimum amount in controversy of \$1 million, the Parties shall submit the matter to be settled, subject to Section 4.4.9, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution (“ICDR”) of the American Arbitration Association (the “AAA Rules”), in accordance with the following terms and conditions:

4.4.3 In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

4.4.4 The ICDR shall administer the arbitration.

4.4.5 The seat of arbitration shall be Louisville, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

4.4.6 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in

accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two Party-nominated arbitrators to agree on an arbitrator in accordance with Section 4.4.6(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 4.4.6(a) and 4.4.6(b), each arbitrator selected pursuant to this Section 4.4.6 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed or been a consultant to any Party in the past.

4.4.7 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the arbitration tribunal may be specifically enforced by any court of competent jurisdiction.

4.4.8 The losing Party shall pay the fees and costs of the prevailing Party or as allocated by the arbitration tribunal if all relief sought by one Party is not granted.

4.4.9 The award of the arbitration tribunal shall be subject to appeal or requests for rehearing pursuant to Section 4.7.

4.4.10 The award of the arbitration tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court which has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

4.4.11 Except for arbitration proceedings pursuant to this Section 4.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 4.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

4.4.12 Notwithstanding the foregoing, each arbitrator will be instructed that (i) if the Indemnified Party voluntarily elects to be treated as an entity that is not exempt from U.S.

federal, state or local income taxation, or voluntarily takes a position on a tax return or makes a filing treating itself as not being so exempt, the mere acquiescence of the applicable taxing authority to such treatment or filing shall not be determinative of the applicable issue before the arbitrator and (ii) a position taken in a Tax Claim by the applicable taxing authority regarding the taxation of the Indemnified Party shall be determinative of the issue addressed in such Tax Claim for purposes of any determination by the arbitrator, but, for the avoidance of doubt, shall not preclude or limit any of the Indemnifying Parties rights under Section 2.5.

#### 4.5 Successors and Assigns.

4.5.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Parties, except as provided in Section 4.5.4, and except that, subject to satisfaction of the conditions of Section 4.5.2, assignment may be made by a Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

4.5.2 In no event may a Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Parties or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

4.5.3 No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

4.5.4 A Party may, without the approval of any other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

4.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

4.7 Jurisdiction. Subject to Section 4.4, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes, *provided* that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of

Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section 4.7 and any claim that such action, suit or proceeding brought in accordance with this Section 4.7 has been brought in an inconvenient forum. Nothing in Section 4.4 or this Section 4.7 prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 4.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 4.3, and agrees that such service shall be, for all purposes, good and sufficient.

4.8 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

4.9 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

*[Remainder of page intentionally left blank. Signatures follow.]*

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

CENTURY ALUMINUM SEBREE LLC

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

**TAX INDEMNITY AGREEMENT**

Dated as of ~~August 19, 2013~~ January [ ] 1, 2014

by and among

**KENERGY CORP.,**

**CENTURY ALUMINUM COMPANY**

and

**CENTURY ALUMINUM ~~OF KENTUCKY GENERAL PARTNERSHIP~~ SEBREE LLC**

## TAX INDEMNITY AGREEMENT

This TAX INDEMNITY AGREEMENT (this “Agreement”) is made and entered into as of ~~August 19, 2013,~~ January 1, 2014, by KENERGY CORP., a Kentucky electric cooperative corporation (the “Indemnified Party”), CENTURY ALUMINUM COMPANY, a Delaware corporation (the “Century Parent”), and ~~CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership~~ SEBREE LLC, a Delaware limited liability company and a wholly-owned direct or indirect subsidiary of Century Parent (“Century”). Each of Century and Century Parent are sometimes referred to herein collectively as the “Indemnifying Parties”, and individually as a “Indemnifying Party”. Each of the Indemnifying Parties and the Indemnified Party are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

### RECITALS

A. The Indemnified Party and Century have entered into an Electric Service Agreement, dated as of the date hereof (the “Electric Service Agreement”), under which the Indemnified Party shall provide Century retail electric service.

B. The Indemnifying Parties have agreed, subject to the terms and conditions of this Agreement, to jointly and severally indemnify and hold harmless the Indemnified Party on an after-tax basis for certain tax liabilities and other costs relating to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions; Rules of Interpretation. Capitalized terms used herein but not otherwise defined herein, including in this Section 1.1, are used as defined in the Electric Service Agreement. The rules of interpretation set forth in the Electric Service Agreement shall apply to this Agreement.

1.1.1 Agreement: As defined in the preamble to this Agreement.

1.1.2 Century: As defined in the preamble to this Agreement.

1.1.3 Century Parent: As defined in the preamble to this Agreement.

1.1.4 Electric Service Agreement: As defined in the Recitals.

1.1.5 Expenses: Any and all expenses related to accounting advisory services, tax advisory services, reasonable legal services, and other fees and expenses, in each case, for which the Indemnified Party is liable or has agreed to pay in connection with the failure of the Indemnified Party to maintain its status as an entity exempt from U.S.

federal, state or local income taxation as a result of the transactions under the Transaction Documents, including all expenses incurred under Section 2.5 and Section 2.7.

1.1.6 Indemnified Party: As defined in the preamble to this Agreement.

1.1.7 Indemnifying Party or Indemnifying Parties: As defined in the preamble to this Agreement.

1.1.8 Indemnity Claim: As defined in Section 2.1.

1.1.9 Indemnity Claim Notice: As defined in Section 2.2.2.

1.1.10 Net After-Tax Basis: With respect to any amount payable under Section 2.1, the amount payable will be increased to account for Taxes on the amount payable and additions under this Section 1.1.4, taking into account any Tax deduction, credit or loss that will be realized as a result of any payment by the Indemnified Party of an amount, including Taxes, with respect to which a payment to be received by the Indemnified Party is made under this Agreement.

1.1.11 Other Tax Status Costs: Any and all costs, fees or expenses incurred, or reductions in or failures to realize, revenues, reimbursements or other benefits reducible to money, in each case of the Indemnified Party resulting from, occurring in connection with, relating to or otherwise arising out of the Indemnified Party's failure to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents, including by way of example and not limitation, ineligibility for or reduction in Federal Emergency Management Agency assistance based on an Indemnified Party's failure to maintain its status as an entity exempt from U.S. federal income taxes.

1.1.12 Party or Parties: As defined in the preamble to this Agreement.

1.1.13 Tax or Taxes: All fees, taxes (including income taxes, franchise taxes, sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible)), levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to these taxes, now or hereafter imposed by any U.S. federal, state or local government or other taxing authority.

1.1.14 Tax Claim: As defined in Section 2.5.

## ARTICLE 2

### INDEMNIFICATION FOR CERTAIN TAXES

2.1 Indemnification. The Indemnifying Parties hereby, jointly and severally, agree to indemnify, defend and hold harmless the Indemnified Party and its successors, on a Net After-Tax Basis, from and against, any Taxes (after taking into account all applicable tax deductions, credits, exemptions and exclusions in the applicable tax year), Other Tax Status Costs and Expenses incurred by the Indemnified Party relating to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents (an "Indemnity Claim"). For the avoidance of doubt, any transaction under the Transaction Documents, without regard to degree



or amount, that relates to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation may give rise to an Indemnity Claim, including, without limitation, if the Indemnified Party has income from nonmembers due to other transactions but because of any transaction under the Transaction Documents fails to receive a sufficient percentage of its income from its members to meet losses and expenses (within the meaning of Section 501(c)(12)(A) of the Internal Revenue Code of 1986, as amended).

## 2.2 Procedures and Notice.

2.2.1 Notwithstanding anything to the contrary in this Agreement, the Indemnified Party will take reasonable efforts to deliver written notice to the Indemnifying Parties as early as possible in any tax year in which it projects that it will have an Indemnity Claim; *provided* that the failure to give such notice shall not limit the Indemnifying Parties' obligations hereunder. The Indemnified Party will discuss the basis and calculations for such Indemnity Claim with the Indemnifying Parties and provide the Indemnifying Parties with such information as they may reasonably request with respect to such Indemnity Claim (including, for the avoidance of doubt, the information set forth in the proviso to Section 2.2.2).

2.2.2 The Indemnified Party must deliver written notice of an Indemnity Claim accompanied by a written statement describing the Indemnity Claim in reasonable detail, stating the amount the Indemnified Party believes to be payable by the Indemnifying Parties on account thereof pursuant to the terms of this Agreement and providing the computation of the amount (an "Indemnity Claim Notice"); *provided* that, with respect to any Indemnity Claim that relates to whether the Indemnified Party failed to receive a sufficient percentage of its income from its members to meet losses and expenses (within the meaning of Section 501(c)(12)(A) of the Internal Revenue Code of 1986, as amended), the computation will include detail concerning the calculation of the Indemnified Party's total income, income from the Indemnified Party's activities as a market participant, pursuant to the Transaction Documents, and total income that is not collected from members for the sole purpose of meeting losses and expenses.

2.2.3 Any amount payable to the Indemnified Party pursuant to Section 2.1 shall be paid in immediately available funds to the Indemnified Party within ten (10) days after receipt of the Indemnity Claim Notice, without regard to the pendency of any dispute or action pursuant to Section 2.5 or Section 4.4. The Parties agree to make any payments necessary in order for the amounts received by the Indemnified Party in respect of any Indemnity Claim to equal the amounts of any final determination of any amounts payable hereunder.

2.3 Time Period for Asserting Indemnity Claims. Indemnity Claims may be made only by delivering an Indemnity Claim Notice to the Indemnifying Parties prior to the one hundred eightieth (180th) day following expiry of the relevant statute of limitations applicable to the assessment of Taxes indemnified hereunder; *provided* that Indemnity Claims for Expenses or Other Tax Status Costs may be made prior to the one hundred eightieth (180th) day following the date such Expenses or Other Tax Status Costs are incurred. For the avoidance of doubt, this Agreement shall survive the termination or expiration of the Electric Service Agreement or any other Transaction Documents until the time period for asserting any Indemnity Claims hereunder shall have expired.

2.4 Notice of Indemnity Claims. If any claim or demand for Taxes, Expenses or Other Tax Status Costs in respect of which indemnity may be sought against the Indemnifying Parties

pursuant to this Agreement is asserted against the Indemnified Party, the Indemnified Party promptly shall (a) notify the Indemnifying Parties of such claim or demand after receipt of such claim or demand and (b) give the Indemnifying Parties such information with respect thereto as the Indemnifying Parties may reasonably request; *provided* that the failure to give such notice within such period shall not limit the Indemnifying Parties' obligations hereunder.

2.5 Defense of Tax Claims. The Indemnified Party shall take such action in contesting such claim or demand as the Indemnifying Parties may request, including appeals, provided the Indemnified Party has not received a written opinion of independent tax counsel, selected by the Indemnified Party and reasonably satisfactory to the Indemnifying Party that there is no reasonable basis for the contest and the Indemnifying Party agrees to pay the Indemnified Party's costs of pursuing the contest. The Indemnifying Parties may, at their own expense, elect to assume the defense of any claim, suit, action, litigation or other proceeding (including any Tax audit) for Taxes in respect of which indemnity may be sought against the Indemnifying Parties pursuant to this Agreement (collectively, a "Tax Claim"); and, as between the Indemnified Party and the Indemnifying Parties, the Indemnifying Parties shall determine whether and in what manner to defend such Tax Claim and shall otherwise control all aspects of any defense of such Tax Claim; *provided* that, if the Indemnifying Party elects to assume the defense of a Tax Claim, it shall retain counsel reasonably satisfactory to the Indemnified Party; *provided further* that in the event that the Indemnified Party has been advised by independent counsel that having common counsel would present a conflict of interest or preclude the Indemnified Party from making certain legal defenses, then the Indemnified Party may retain separate counsel to defend it against the Tax Claim at the Indemnifying Parties' expense. Subject to the immediately preceding sentence, if the Indemnifying Parties elect to assume the defense of or otherwise participate in any such Tax Claim, each Party shall (i) cooperate in the defense or prosecution of any such Tax Claim, (ii) consult with and keep each other Party and its designated counsel reasonably informed with respect to such Tax Claim, (iii) furnish or cause to be furnished, records and information, or make employees available on a reasonable and mutually convenient basis to provide information as may be reasonably requested in connection therewith, and (iv) consider comments of and consult in good faith with each other Party; *provided* that nothing in this Section shall obligate a Party to disclose information that is subject to the attorney-client privilege. The Indemnified Party shall not settle any such Tax Claim or consent to the entry of any judgment with respect to Taxes indemnified hereunder without prior written notice to and consent of the Indemnifying Parties.

2.6 Tax Returns. The Indemnified Party agrees that it will not voluntarily elect to treat itself on any tax return as an entity not exempt from U.S. federal, state or local income taxation, and that it will not take a position or make a filing inconsistent with the foregoing in any litigation or investigation, or otherwise, without giving prior written notice to the Indemnifying Parties that describes the basis for taking such position or making such filing and consulting in good faith with the Indemnifying Parties prior to taking such action; *provided* that the failure to give such notice shall not limit the Indemnifying Parties' obligations hereunder.

2.7 Tax Ruling. At Century's sole cost and expense, the Indemnified Party may seek a tax ruling on any impact of the transactions under the Transaction Documents on the Indemnified Party's tax exempt status; *provided* that prior to seeking such tax ruling, the Indemnified Party shall consult (in good faith) with Century; *provided further* that, if the Indemnified Party seeks to become the Market Participant, the Indemnified Party shall (i) notify Century thereof, and (ii) if

requested by Century within thirty (30) Business Days of such notice, obtain an opinion of nationally recognized tax counsel regarding the potential impact of acting in this capacity and provide a copy of such opinion to Century prior to becoming the Market Participant.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

Except with respect to Section 3.6, each Party hereby represents and warrants to each other Party as of the date hereof as follows:

3.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Agreement.

3.2 Due Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by such Party, and assuming the due authorization, execution and delivery of this Agreement by each other Party, constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

3.3 No Violation. The execution and delivery of this Agreement by such Party and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to such Party or its organizational documents or by-laws, or (b) contravene the provisions of, or constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

3.4 Approvals. No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which such Party is subject is required for the due execution, delivery or performance by it of this Agreement. There are no conditions to the effectiveness of this Agreement with respect to such Party that have not been satisfied or irrevocably waived.

3.5 Proceedings. There is no pending or, to such Party's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority which: (a) questions the validity of this Agreement or the ability of such Party to perform its obligations hereunder, or (b) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

3.6 Knowledge. The Indemnified Party hereby represents and warrants to the Indemnifying Parties as of the date hereof that the Indemnified Party has no knowledge of any action or event, other than the Transaction or the "Transaction" (as such term is defined in the Electric Service Agreement, dated as of August 19, 2013, by and between the Indemnified Party and Century Aluminum of Kentucky General Partnership, a Kentucky

general partnership and a wholly-owned indirect subsidiary of Century Parent), that could reasonably be expected to lead to a Tax Claim, including any investigation, pending or threatened, before or by the Internal Revenue Service (or any state or local equivalent), any Governmental Authority against the Indemnified Party or its Affiliates.

3.7 Independent Decision. Such Party has, independently and without reliance upon any other Party and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement.

#### ARTICLE 4

##### MISCELLANEOUS

4.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in this Agreement.

4.2 Waiver. The waiver by a Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of a subsequent breach of the same or any other term, covenant or condition contained herein.

4.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section, the address of a Party is the address set out below or such other address which that Party may from time to time deliver by notice to the other Party in accordance with this Section:

If to the  
Indemnified Party: Kenergy Corp.  
6402 Old Corydon Road P.O. Box 18  
Henderson, Kentucky  
~~42420~~42419-0018  
Attn: President and CEO

Fax: (270) ~~826-3999~~685-2279

If to Century: Century Aluminum Company  
P.O. Box 500  
9404 State Route 271 North  
Hawesville2096  
Robards, Kentucky 4234842420  
Attn: Plant Manager  
Fax: (270) ~~852-2882~~521-7305

With copy to: Century Aluminum Company  
One South Wacker Drive Suite 1000  
Chicago, IL 60606  
Attn: General Counsel  
Fax: (312) 696-3102

If to Century Parent: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, IL 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 4.4 Dispute Resolution.

4.4.1 If a dispute arises, a Party may request a meeting among authorized representatives of the Parties to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten (10) Business Days or such shorter or longer time as agreed upon by the Parties.

4.4.2 Absent resolution of the dispute pursuant to Section 4.4.1, and subject to a minimum amount in controversy of \$1 million, the Parties shall submit the matter to be settled, subject to Section 4.4.9, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution (“ICDR”) of the American Arbitration Association (the “AAA Rules”), in accordance with the following terms and conditions:

4.4.3 In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

4.4.4 The ICDR shall administer the arbitration.

4.4.5 The seat of arbitration shall be Louisville, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

4.4.6 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two Party-nominated arbitrators to agree on an arbitrator in accordance with Section 4.4.6(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 4.4.6(a) and 4.4.6(b), each arbitrator selected pursuant to this Section 4.4.6 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed or been a consultant to any Party in the past.

4.4.7 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the ~~arbitral~~ arbitration tribunal may be specifically enforced by any court of competent jurisdiction.

4.4.8 The losing Party shall pay the fees and costs of the prevailing Party or as allocated by the arbitration tribunal if all relief sought by one Party is not granted.

4.4.9 The award of the ~~arbitral~~ arbitration tribunal shall be subject to appeal or requests for rehearing pursuant to Section 4.7.

4.4.10 The award of the arbitration tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court which has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

4.4.11 Except for arbitration proceedings pursuant to this Section 4.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 4.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

4.4.12 Notwithstanding the foregoing, each arbitrator will be instructed that (i) if the Indemnified Party voluntarily elects to be treated as an entity that is not exempt from U.S. federal, state or local income taxation, or voluntarily takes a position on a tax return or makes a filing treating itself as not being so exempt, the mere acquiescence of the applicable taxing authority to such treatment or filing shall not be determinative of the applicable issue before the arbitrator and (ii) a position taken in a Tax Claim by the applicable taxing authority regarding the taxation of the Indemnified Party shall be determinative of the issue addressed in such Tax Claim for purposes of any determination by the arbitrator, but, for the avoidance of doubt, shall not preclude or limit any of the Indemnifying Parties rights under Section 2.5.

#### 4.5 Successors and Assigns.

4.5.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Parties, except as provided in Section 4.5.4, and except that, subject to satisfaction of the conditions of Section 4.5.2, assignment may be made by a Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

4.5.2 In no event may a Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Parties or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

4.5.3 No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

4.5.4 A Party may, without the approval of any other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

4.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

4.7 Jurisdiction. Subject to Section 4.4, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes, *provided* that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system

(in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section 4.7 and any claim that such action, suit or proceeding brought in accordance with this Section 4.7 has been brought in an inconvenient forum. Nothing in Section 4.4 or this Section 4.7 prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 4.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 4.3, and agrees that such service shall be, for all purposes, good and sufficient.

4.8 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

4.9 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

*[Remainder of page intentionally left blank. Signatures follow.]*



IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

~~CENTURY ALUMINUM OF KENTUCKY-~~  
~~GENERAL PARTNERSHIP~~ SEBREE LLC

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

**GUARANTEE**

Dated as of January [ ], 2014

by and among

**CENTURY ALUMINUM COMPANY,**

**KENERGY CORP.**

and

**BIG RIVERS ELECTRIC CORPORATION**

---

## GUARANTEE

This GUARANTEE (this "Guarantee") is made and entered into as of January [ ], 2014 by CENTURY ALUMINUM COMPANY, a Delaware corporation (the "Guarantor"), in favor of KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers").

### RECITALS

A. Kenergy and Century Aluminum Sebree LLC, a Delaware limited liability company and a wholly owned direct or indirect subsidiary of the Guarantor ("Century"), have entered into an Electric Service Agreement, dated as of the date hereof (the "Electric Service Agreement"), under which Kenergy shall provide Century retail electric service.

B. Kenergy and Big Rivers have entered into an Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"), under which Big Rivers shall provide Kenergy wholesale electric service for resale to Century.

C. Big Rivers and Century have entered into a Direct Agreement, dated as of the date hereof (the "Direct Agreement"), under which they shall coordinate with respect to the performance of their respective obligations under the Electric Service Agreement and the Arrangement Agreement.

F. Century, Guarantor and Kenergy have entered into a Tax Indemnity Agreement, dated as of the date hereof (the "Tax Indemnity Agreement"), under which Century and Guarantor jointly and severally hold Kenergy harmless on an after-tax basis for costs relating to the failure of Kenergy to maintain its status as an entity exempt from federal, state or local income taxation as a result of the transactions under the Transaction Documents.

G. The Guarantor directly or indirectly owns all of the voting stock of Century, and will derive substantial benefits from the transactions contemplated by the Electric Service Agreement and Arrangement Agreement, which benefits are hereby acknowledged by the Guarantor.

H. It is a condition precedent to the closing of the transactions contemplated by the Electric Service Agreement that the Guarantor, simultaneously with the execution and delivery of the Transaction Documents dated the date hereof, shall have executed and delivered this Guarantee to Kenergy and Big Rivers.

I. The Guarantor desires to enter into this Guarantee in order to satisfy the condition precedent described in the preceding recital.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties, intending to be legally bound, hereby covenant and agree as follows:

1. Definitions; Rules of Construction. Capitalized terms used herein but not otherwise defined are used as defined in the Electric Service Agreement. The rules of interpretation set forth in the Electric Service Agreement shall apply to this Guarantee.

2. Guaranteed Obligations. As used herein, “Guaranteed Obligations” shall mean any and all of the obligations of Century under (i) the Electric Service Agreement, (ii) the Direct Agreement, (iii) the Tax Indemnity Agreement and (iv) any other Transaction Document, including (a) the obligations of Century relating to the payment of money to Kenergy or Big Rivers (or their permitted assignees), (b) any such obligations that would become due but for the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code, or (c) interest, fees and other charges whether or not a claim is allowed for such obligations in any such bankruptcy proceeding.

3. Guarantee. The Guarantor hereby unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, the prompt performance and payment in full when due, of all the Guaranteed Obligations. The Guarantor acknowledges that the Guaranteed Obligations may arise or be created, incurred or assumed at any time and from time to time and in such manner and such circumstances and with such terms and provisions as Century, Kenergy and Big Rivers may agree without notice or demand of any kind or nature whatsoever to, or the consent of, the Guarantor.

4. Preservation of Century’s Substantive Defenses. Notwithstanding any of Guarantor’s waivers hereunder, Kenergy and Big Rivers agree and acknowledge that Guarantor shall be entitled to assert (separately or jointly with Century) any substantive defenses, or claims in recoupment or setoff, with respect to the Guaranteed Obligations that Century would be entitled to assert against Kenergy or Big Rivers, including any claims or defenses that Century could assert by reason of the invalidity, illegality or unenforceability of any of the Transaction Documents. This Section 4 shall not permit Guarantor to assert any defenses in its own right, based on impairment of Guarantor’s rights of subrogation, reimbursement, exoneration, contribution or indemnification, or other suretyship principles.

5. Nature of Guarantee Continuing, Absolute and Unconditional.

(a) This Guarantee is and is intended to be a continuing guarantee of performance when due of the Guaranteed Obligations, and not of collection, and is independent of and in addition to any other guarantee, endorsement, collateral or other agreement held by Kenergy or Big Rivers therefor or with respect thereto, whether or not furnished by the Guarantor. The Guarantor hereby waives any right to require that any resort be had by Kenergy or Big Rivers to any other Person or to any of the security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of

Kenergy or Big Rivers in favor of Century or any other Person. All Guaranteed Obligations shall be conclusively presumed to have been created in reliance hereon.

(b) This Guarantee shall not be changed or affected by any representation, oral agreement, act or thing whatsoever, except as herein provided. This Guarantee is intended by the Guarantor to be the final, complete and exclusive expression of the agreement between the Guarantor and Kenergy and Big Rivers with respect to the subject matter hereof.

(c) The Guarantor hereby agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from the Guarantor, that the Guarantor will remain bound upon this Guarantee notwithstanding any extension, renewal or other alteration of any Guaranteed Obligation and the Guarantee herein made shall apply to the Guaranteed Obligations as so amended, renewed or altered.

(d) Subject to Section 4 above, the obligations of the Guarantor under this Guarantee are irrevocable, absolute and unconditional and the Guarantor hereby irrevocably waives any defense it may now have or hereafter acquire relating to:

(i) the failure of Kenergy or Big Rivers to assert any claim or demand or to exercise or enforce any right or remedy under the Transaction Documents, or against Century;

(ii) any extension, renewal or other alteration of, or any rescission, waiver, amendment or modification of, any term or provision of the Transaction Documents;

(iii) the settlement or compromise of any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or any subordination of the payment of all or any part thereof to the payment of any liability (whether due or not) of Century to its creditors, other than Kenergy or Big Rivers;

(iv) the application of any sums by whomsoever paid or howsoever realized to any liability of Century to Kenergy or Big Rivers regardless of what liabilities of Century remain unpaid;

(v) the act or failure to act in any manner referred to in this Guarantee which may deprive the Guarantor of its right to subrogation against Century to recover any payments made pursuant to this Guarantee;

(vi) any change, restructuring or termination of the organizational structure or existence of Century; or

(vii) any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

(e) The Guarantor's obligation hereunder is to perform the Guaranteed Obligations in full when due in accordance with the terms of the Transaction Documents, and

such obligation shall not be affected by any stay or extension of time for performance by Century resulting from any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended or replaced, or any similar federal or state law. Subject to Section 4, the obligations of the Guarantor hereunder are independent of the Guaranteed Obligations under or in respect of the Transaction Documents, and a separate action may be brought and prosecuted against the Guarantor to enforce this Guarantee, irrespective of whether any action is brought against Century or whether Century is joined in any such action.

6. Waivers and Acknowledgments.

(a) The Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand of performance or payment, notice of non-performance or non-payment, default, protest, acceleration or dishonor and any filing of claims with a court in the event of insolvency or bankruptcy of Century, any right to require a proceeding first against Century, protest, notice and all demands whatsoever and any requirement that Kenergy or Big Rivers protect, secure, perfect or insure any lien or any property subject thereto or exhaust any right or take any action against Century or any other Person.

(b) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guarantee and acknowledges that this Guarantee is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) The Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by Kenergy or Big Rivers that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of the Guarantor or other rights of the Guarantor to proceed against Century or any other Person and (ii) subject to Section 4, any defense based on any right of set off or counterclaim against or in respect of the obligations of the Guarantor hereunder.

(d) The Guarantor hereby unconditionally and irrevocably waives any duty on the part of Kenergy or Big Rivers to disclose to the Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Century now or hereafter known by Kenergy or Big Rivers.

(e) The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Transaction Documents and that the waivers set forth in Section 4, Section 5 and this Section 6 are knowingly made in contemplation of such benefits.

7. No Discharge or Diminishment of Guarantee. Except as provided in Section 4 above, the obligations of the Guarantor under this Guarantee shall not be subject to any reduction, limitation, impairment or termination for any reason (other than if the Guaranteed Obligations have been indefeasibly performed in full), including any claim of waiver, release, surrender, alteration or compromise of any of the Guaranteed Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of any discharge of Century from any of the Guaranteed Obligations in bankruptcy proceedings

or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor under this Guarantee shall not be discharged or impaired or otherwise affected by the failure of Kenergy or Big Rivers to assert any claim or demand or to enforce any remedy under any Transaction Document or any other agreement or otherwise, by any waiver or modification of any such agreement, by any default, waiver or delay, or by any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

8. Reinstatement. The Guarantor agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, with respect to any payment, or any part thereof, of principal of, interest on or any other amount with respect to the Guaranteed Obligations that is at any time rescinded or must otherwise be restored by Kenergy or Big Rivers upon the bankruptcy, insolvency or reorganization of Century or any other Person.

9. No Waiver; Remedies. No failure on the part of Kenergy or Big Rivers to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10. Covenant. The Guarantor covenants and agrees that, without the prior written consent of Kenergy and Big Rivers, so long as any part of the Guaranteed Obligations shall remain outstanding, the Guarantor shall not liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, or directly or indirectly convey, sell, lease, assign, transfer or otherwise dispose of the Sebree Smelter or all or substantially all of its property, assets or business, whether now owned or hereafter acquired, and shall preserve and maintain in full force and effect its legal existence and all of its rights, privileges and franchises necessary for the fulfillment of its obligations under this Guarantee. Kenergy and Big Rivers shall not withhold their prior written consent to any such liquidation or dissolution, or any such sale or other disposition of the Sebree Smelter or all or substantially all of the Guarantor's property and business, occurring in connection with a strategic restructuring of the Guarantor if (a) a wholly owned direct or indirect subsidiary of Guarantor has a ratio of debt to equity of no more than 3.0:1.0 and a net worth of not less than \$200 million (a "Substitute Guarantor") and executes in favor of Kenergy and Big Rivers, a substitute guarantee containing terms and conditions substantially the same as those contained herein (a "Substitute Guarantee"), and (b) the Substitute Guarantor shall provide to Kenergy and Big Rivers such reasonable legal opinions and other documentation as either Kenergy or Big Rivers shall reasonably request in connection therewith. Upon compliance with the provisions of Section 10(a) and (b) hereof, the Substitute Guarantor shall be the "Guarantor" for all purposes hereunder and the prior Guarantor shall be released from its obligations arising hereunder after the date on which the Substitute Guarantee shall be effective.

11. Representations and Warranties. The Guarantor hereby represents and warrants as of the date of execution and delivery of this Guarantee as follows:

(a) *Organization and Existence.* The Guarantor (i) is duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to transact business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified, including the Commonwealth of Kentucky; and (ii) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Guarantee.

(b) *Authorization, Execution and Binding Effect.* This Guarantee has been duly authorized, executed and delivered by the Guarantor, and assuming the due authorization, execution and delivery of this Guarantee by Kenergy and Big Rivers, constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *No Violation.* The execution and delivery of this Guarantee by the Guarantor and the compliance by the Guarantor with the terms and provisions hereof do not and will not (i) contravene any law applicable to the Guarantor or its organizational documents or by-laws, or (ii) contravene the provisions of, or constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor, or its property, is bound.

(d) *No Required Consents, Approvals or Conditions.* No authorization, consent, approval or other action by, and no notice to or filing or registration with, and no new license or permit from, any Person (including without limitation, any Governmental Authority) or under any law applicable to the Guarantor is required for the due execution, delivery or performance by the Guarantor of this Guarantee. There are no conditions to the effectiveness of this Guarantee that have not been satisfied or waived.

(e) *Absence of Litigation.* There is no pending or, to the Guarantor's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against the Guarantor or Century by any Person before any Governmental Authority which: (i) questions the validity of this Guarantee or the ability of the Guarantor to perform its obligations hereunder, or (ii) if determined adversely to the Guarantor, would materially adversely affect its ability to perform this Guarantee.

(f) *Independent Decision.* The Guarantor has, independently and without reliance upon Kenergy or Big Rivers and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guarantee.

12. Amendment. Except as otherwise expressly provided in this Guarantee, any provision of this Guarantee may be amended or modified only by an instrument in writing signed by the Guarantor, Kenergy and Big Rivers, and any provision of this Guarantee may be waived only by Kenergy and Big Rivers acting jointly.



13. Continuing Guarantee; Successors and Assigns. This Guarantee is a continuing Guarantee, shall survive termination or expiration of any or all of the Transaction Documents and shall remain in full force and effect until the payment in full of the Guaranteed Obligations, and shall be binding upon the Guarantor and its respective successors and assigns; *provided, however,* that the Guarantor may not assign or transfer any of its rights, benefits, obligations or duties hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of Kenergy and Big Rivers which consent shall not be unreasonably withheld, subject to Section 10. Any purported assignment in violation of this Section 13 shall be void. This Guarantee shall inure to the benefit of the respective successors and assigns of Kenergy and Big Rivers permitted under the Transaction Documents, and, in the event of any transfer or assignment of rights by Kenergy or Big Rivers, the rights and privileges herein conferred upon the transferring entity shall automatically extend to and be vested in such permitted transferee or assignee, all subject to the terms and conditions hereof.

14. Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given if (and then two Business Days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the Guarantor: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Facsimile: 312-696-3102  
Attention: General Counsel

If to Kenergy: Kenergy Corp.  
P.O. Box 18  
Henderson, Kentucky 42419-0018  
Facsimile: 270-685-2279  
Attention: President and CEO

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson, Kentucky 42419  
Facsimile: 270-827-2558  
Attention: President and CEO

Any party hereto may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any party hereto may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

15. Severability. Any term or provision of this Guarantee which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Guarantee or affecting the validity or enforceability of any of the terms or provisions of this Guarantee in any other jurisdiction.

16. Governing Law. This Guarantee shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules.

17. Disputes. If a dispute arises between or among the parties hereto concerning the terms or conditions of this Guarantee, the duties or obligations of the parties under this Guarantee, or the implementation, interpretation or breach of this Guarantee, the parties hereto shall be bound by the dispute resolution procedures set forth in Article 16, and the jurisdictional provisions set forth in Section 18.2, of the Electric Service Agreement as if such provisions were set forth fully herein and referred to the parties hereto.

18. Headings. The article and section headings contained in this Guarantee are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Guarantee.

19. Counterparts. This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Guarantee may execute this Guarantee by signing any such counterpart.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the Guarantor, Kenergy and Big Rivers have caused this Guarantee to be duly executed as of the day and year first written above.

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

**GUARANTEE**

Dated as of ~~August 19, 2013~~, January [ ], 2014

by and among

**CENTURY ALUMINUM COMPANY,**

**KENERGY CORP.**

and

**BIG RIVERS ELECTRIC CORPORATION**

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## GUARANTEE

This GUARANTEE (this “Guarantee”) is made and entered into as of ~~August 19, 2013~~, January [ ] 2014 by CENTURY ALUMINUM COMPANY, a Delaware corporation (the “Guarantor”), in favor of KENERGY CORP., a Kentucky electric cooperative corporation (“Kenergy”), and BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative (“Big Rivers”).

### RECITALS

A. Kenergy and Century Aluminum of ~~Kentucky General Partnership, a Kentucky general partnership~~ Sebree LLC, a Delaware limited liability company and a wholly owned direct or indirect subsidiary of the Guarantor (“Century”), have entered into an Electric Service Agreement, dated as of the date hereof (the “Electric Service Agreement”), under which Kenergy shall provide Century retail electric service.

B. Kenergy and Big Rivers have entered into an Arrangement and Procurement Agreement, dated as of the date hereof (the “Arrangement Agreement”), under which Big Rivers shall provide Kenergy wholesale electric service for resale to Century.

C. Big Rivers and Century have entered into a Direct Agreement, dated as of the date hereof (the “Direct Agreement”), under which they shall coordinate with respect to the performance of their respective obligations under the Electric Service Agreement and the Arrangement Agreement.

F. Century, Guarantor and Kenergy have entered into a Tax Indemnity Agreement, dated as of the date hereof (the “Tax Indemnity Agreement”), under which Century and Guarantor jointly and severally hold Kenergy harmless on an after-tax basis for costs relating to the failure of Kenergy to maintain its status as an entity exempt from federal, state or local income taxation as a result of the transactions under the Transaction Documents.

G. The Guarantor directly or indirectly owns all of the voting stock of Century, and will derive substantial benefits from the transactions contemplated by the Electric Service Agreement and Arrangement Agreement, which benefits are hereby acknowledged by the Guarantor.

H. It is a condition precedent to the closing of the transactions contemplated by the Electric Service Agreement that the Guarantor, simultaneously with the execution and delivery of the Transaction Documents dated the date hereof, shall have executed and delivered this Guarantee to Kenergy and Big Rivers.

I. The Guarantor desires to enter into this Guarantee in order to satisfy the condition precedent described in the preceding recital.

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1. Definitions; Rules of Construction. Capitalized terms used herein but not otherwise defined are used as defined in the Electric Service Agreement. The rules of interpretation set forth in the Electric Service Agreement shall apply to this Guarantee.

2. Guaranteed Obligations. As used herein, “Guaranteed Obligations” shall mean any and all of the obligations of Century under (i) the Electric Service Agreement, (ii) the Direct Agreement, (iii) the Tax Indemnity Agreement and (iv) any other Transaction Document, including (a) the obligations of Century relating to the payment of money to Kenergy or Big Rivers (or their permitted assignees), (b) any such obligations that would become due but for the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code, or (c) interest, fees and other charges whether or not a claim is allowed for such obligations in any such bankruptcy proceeding.

3. Guarantee. The Guarantor hereby unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, the prompt performance and payment in full when due, of all the Guaranteed Obligations. The Guarantor acknowledges that the Guaranteed Obligations may arise or be created, incurred or assumed at any time and from time to time and in such manner and such circumstances and with such terms and provisions as Century, Kenergy and Big Rivers may agree without notice or demand of any kind or nature whatsoever to, or the consent of, the Guarantor.

4. Preservation of Century’s Substantive Defenses. Notwithstanding any of Guarantor’s waivers hereunder, Kenergy and Big Rivers agree and acknowledge that Guarantor shall be entitled to assert (separately or jointly with Century) any substantive defenses, or claims in recoupment or setoff, with respect to the Guaranteed Obligations that Century would be entitled to assert against Kenergy or Big Rivers, including any claims or defenses that Century could assert by reason of the invalidity, illegality or unenforceability of any of the Transaction Documents. This Section 4 shall not permit Guarantor to assert any defenses in its own right, based on impairment of Guarantor’s rights of subrogation, reimbursement, exoneration, contribution or indemnification, or other suretyship principles.

5. Nature of Guarantee Continuing, Absolute and Unconditional.

(a) This Guarantee is and is intended to be a continuing guarantee of performance when due of the Guaranteed Obligations, and not of collection, and is independent of and in addition to any other guarantee, endorsement, collateral or other agreement held by Kenergy or Big Rivers therefor or with respect thereto, whether or not furnished by the Guarantor. The Guarantor hereby waives any right to require that any resort be had by Kenergy or Big Rivers to any other Person or to any of the security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of

Kenergy or Big Rivers in favor of Century or any other Person. All Guaranteed Obligations shall be conclusively presumed to have been created in reliance hereon.

(b) This Guarantee shall not be changed or affected by any representation, oral agreement, act or thing whatsoever, except as herein provided. This Guarantee is intended by the Guarantor to be the final, complete and exclusive expression of the agreement between the Guarantor and Kenergy and Big Rivers with respect to the subject matter hereof.

(c) The Guarantor hereby agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from the Guarantor, that the Guarantor will remain bound upon this Guarantee notwithstanding any extension, renewal or other alteration of any Guaranteed Obligation and the Guarantee herein made shall apply to the Guaranteed Obligations as so amended, renewed or altered.

(d) Subject to Section 4 above, the obligations of the Guarantor under this Guarantee are irrevocable, absolute and unconditional and the Guarantor hereby irrevocably waives any defense it may now have or hereafter acquire relating to:

(i) the failure of Kenergy or Big Rivers to assert any claim or demand or to exercise or enforce any right or remedy under the Transaction Documents, or against Century;

(ii) any extension, renewal or other alteration of, or any rescission, waiver, amendment or modification of, any term or provision of the Transaction Documents;

(iii) the settlement or compromise of any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or any subordination of the payment of all or any part thereof to the payment of any liability (whether due or not) of Century to its creditors, other than Kenergy or Big Rivers;

(iv) the application of any sums by whomsoever paid or howsoever realized to any liability of Century to Kenergy or Big Rivers regardless of what liabilities of Century remain unpaid;

(v) the act or failure to act in any manner referred to in this Guarantee which may deprive the Guarantor of its right to subrogation against Century to recover any payments made pursuant to this Guarantee;

(vi) any change, restructuring or termination of the organizational structure or existence of Century; or

(vii) any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

(e) The Guarantor's obligation hereunder is to perform the Guaranteed Obligations in full when due in accordance with the terms of the Transaction Documents, and

such obligation shall not be affected by any stay or extension of time for performance by Century resulting from any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended or replaced, or any similar federal or state law. Subject to Section 4, the obligations of the Guarantor hereunder are independent of the Guaranteed Obligations under or in respect of the Transaction Documents, and a separate action may be brought and prosecuted against the Guarantor to enforce this Guarantee, irrespective of whether any action is brought against Century or whether Century is joined in any such action.

6. Waivers and Acknowledgments.

(a) The Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand of performance or payment, notice of non-performance or non-payment, default, protest, acceleration or dishonor and any filing of claims with a court in the event of insolvency or bankruptcy of Century, any right to require a proceeding first against Century, protest, notice and all demands whatsoever and any requirement that Kenergy or Big Rivers protect, secure, perfect or insure any lien or any property subject thereto or exhaust any right or take any action against Century or any other Person.

(b) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guarantee and acknowledges that this Guarantee is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

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(d) The Guarantor hereby unconditionally and irrevocably waives any duty on the part of Kenergy or Big Rivers to disclose to the Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Century now or hereafter known by Kenergy or Big Rivers.

(e) The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Transaction Documents and that the waivers set forth in Section 4, Section 5 and this Section 6 are knowingly made in contemplation of such benefits.

7. No Discharge or Diminishment of Guarantee. Except as provided in Section 4 above, the obligations of the Guarantor under this Guarantee shall not be subject to any reduction, limitation, impairment or termination for any reason (other than if the Guaranteed Obligations have been indefeasibly performed in full), including any claim of waiver, release, surrender, alteration or compromise of any of the Guaranteed Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of any discharge of Century from any of the Guaranteed Obligations in bankruptcy proceedings



or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor under this Guarantee shall not be discharged or impaired or otherwise affected by the failure of Kenergy or Big Rivers to assert any claim or demand or to enforce any remedy under any Transaction Document or any other agreement or otherwise, by any waiver or modification of any such agreement, by any default, waiver or delay, or by any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

8. Reinstatement. The Guarantor agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, with respect to any payment, or any part thereof, of principal of, interest on or any other amount with respect to the Guaranteed Obligations that is at any time rescinded or must otherwise be restored by Kenergy or Big Rivers upon the bankruptcy, insolvency or reorganization of Century or any other Person.

9. No Waiver; Remedies. No failure on the part of Kenergy or Big Rivers to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10. Covenant. The Guarantor covenants and agrees that, without the prior written consent of Kenergy and Big Rivers, so long as any part of the Guaranteed Obligations shall remain outstanding, the Guarantor shall not liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, or directly or indirectly convey, sell, lease, assign, transfer or otherwise dispose of the ~~Hawesville~~Sebree Smelter or all or substantially all of its property, assets or business, whether now owned or hereafter acquired, and shall preserve and maintain in full force and effect its legal existence and all of its rights, privileges and franchises necessary for the fulfillment of its obligations under this Guarantee. Kenergy and Big Rivers shall not withhold their prior written consent to any such liquidation or dissolution, or any such sale or other disposition of the ~~Hawesville~~Sebree Smelter or all or substantially all of the Guarantor's property and business, occurring in connection with a strategic restructuring of the Guarantor if (a) a wholly owned direct or indirect subsidiary of Guarantor has a ratio of debt to equity of no more than 3.0:1.0 and a net worth of not less than \$200 million (a "Substitute Guarantor") and executes in favor of Kenergy and Big Rivers, a substitute guarantee containing terms and conditions substantially the same as those contained herein (a "Substitute Guarantee"), and (b) the Substitute Guarantor shall provide to Kenergy and Big Rivers such reasonable legal opinions and other documentation as either Kenergy or Big Rivers shall reasonably request in connection therewith. Upon compliance with the provisions of Section 10(a) and (b) hereof, the Substitute Guarantor shall be the "Guarantor" for all purposes hereunder and the prior Guarantor shall be released from its obligations arising hereunder after the date on which the Substitute Guarantee shall be effective.

11. Representations and Warranties. The Guarantor hereby represents and warrants as of the date of execution and delivery of this Guarantee as follows:

(a) *Organization and Existence.* The Guarantor (i) is duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to transact business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified, including the Commonwealth of Kentucky; and (ii) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Guarantee.

(b) *Authorization, Execution and Binding Effect.* This Guarantee has been duly authorized, executed and delivered by the Guarantor, and assuming the due authorization, execution and delivery of this Guarantee by Kenergy and Big Rivers, constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *No Violation.* The execution and delivery of this Guarantee by the Guarantor and the compliance by the Guarantor with the terms and provisions hereof do not and will not (i) contravene any law applicable to the Guarantor or its organizational documents or by-laws, or (ii) contravene the provisions of, or constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor, or its property, is bound.

(d) *No Required Consents, Approvals or Conditions.* No authorization, consent, approval or other action by, and no notice to or filing or registration with, and no new license or permit from, any Person (including without limitation, any Governmental Authority) or under any law applicable to the Guarantor is required for the due execution, delivery or performance by the Guarantor of this Guarantee. There are no conditions to the effectiveness of this Guarantee that have not been satisfied or waived.

(e) *Absence of Litigation.* There is no pending or, to the Guarantor's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against the Guarantor or Century by any Person before any Governmental Authority which: (i) questions the validity of this Guarantee or the ability of the Guarantor to perform its obligations hereunder, or (ii) if determined adversely to the Guarantor, would materially adversely affect its ability to perform this Guarantee.

(f) *Independent Decision.* The Guarantor has, independently and without reliance upon Kenergy or Big Rivers and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guarantee.

12. Amendment. Except as otherwise expressly provided in this Guarantee, any provision of this Guarantee may be amended or modified only by an instrument in writing signed by the Guarantor, Kenergy and Big Rivers, and any provision of this Guarantee may be waived only by Kenergy and Big Rivers acting jointly.

13. Continuing Guarantee; Successors and Assigns. This Guarantee is a continuing Guarantee, shall survive termination or expiration of any or all of the Transaction Documents and shall remain in full force and effect until the payment in full of the Guaranteed Obligations, and shall be binding upon the Guarantor and its respective successors and assigns; *provided, however,* that the Guarantor may not assign or transfer any of its rights, benefits, obligations or duties hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of Kenergy and Big Rivers which consent shall not be unreasonably withheld, subject to Section 10. Any purported assignment in violation of this Section 13 shall be void. This Guarantee shall inure to the benefit of the respective successors and assigns of Kenergy and Big Rivers permitted under the Transaction Documents, and, in the event of any transfer or assignment of rights by Kenergy or Big Rivers, the rights and privileges herein conferred upon the transferring entity shall automatically extend to and be vested in such permitted transferee or assignee, all subject to the terms and conditions hereof.

14. Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given if (and then two Business Days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the Guarantor: Century Aluminum Company  
P.O. Box 500  
State Route 271  
Hawesville, Kentucky 42348  
**One South Wacker Drive**  
**Suite 1000**  
**Chicago, Illinois 60606**  
Facsimile: ~~270-852-2882~~**312-696-3102**  
Attention: ~~Plant Manager~~**General Counsel**

If to Kenergy: Kenergy Corp.  
6402 Old Corydon Road  
**P.O. Box 18**  
Henderson, Kentucky 42420**42419-0018**  
Facsimile: ~~270-826-3999~~**685-2279**  
Attention: President and CEO

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson, Kentucky 42419  
Facsimile: 270-827-2558  
Attention: President and CEO

Any party hereto may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, ~~telex~~, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be

deemed to have been duly given unless and until it actually is received by the intended recipient. Any party hereto may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

15. Severability. Any term or provision of this Guarantee which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Guarantee or affecting the validity or enforceability of any of the terms or provisions of this Guarantee in any other jurisdiction.

16. Governing Law. This Guarantee shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules.

17. Disputes. If a dispute arises between or among the parties hereto concerning the terms or conditions of this Guarantee, the duties or obligations of the parties under this Guarantee, or the implementation, interpretation or breach of this Guarantee, the parties hereto shall be bound by the dispute resolution procedures set forth in Article 16, and the jurisdictional provisions set forth in Section 18.2, of the Electric Service Agreement as if such provisions were set forth fully herein and referred to the parties hereto.

18. Headings. The article and section headings contained in this Guarantee are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Guarantee.

19. Counterparts. This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Guarantee may execute this Guarantee by signing any such counterpart.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the Guarantor, Kenergy and Big Rivers have caused this Guarantee to be duly executed as of the day and year first written above.

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

**SECURITY AND LOCK BOX AGREEMENT**

Dated as of January [ ], 2014

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.,**

**CENTURY ALUMINUM SEBREE LLC**

and

**OLD NATIONAL TRUST**

## SECURITY AND LOCK BOX AGREEMENT

This SECURITY AND LOCK BOX AGREEMENT, dated as of January [ ], 2014 (this "Lockbox Agreement"), is made by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative (together with its successors and assigns, "Big Rivers"), KENERGY CORP., a Kentucky electric cooperative corporation (together with its successors and assigns, "Kenergy"), CENTURY ALUMINUM SEBREE LLC, a Delaware limited liability company (together with its successors and assigns, "Century"), and OLD NATIONAL TRUST, of Evansville, Indiana (the "Depository Bank"). Big Rivers, Kenergy, Century and the Depository Bank are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### PRELIMINARY STATEMENTS

A. Reference is made to that certain Electric Service Agreement, dated the date hereof, between Kenergy and Century (as amended, modified or supplemented from time to time, the "Electric Service Agreement"), pursuant to which Kenergy is obligated to sell to Century and Century agrees to purchase from Kenergy retail electric service in accordance with the terms and conditions specified therein.

B. Reference is made to that certain Arrangement and Procurement Agreement, dated the date hereof, between Kenergy and Big Rivers, pursuant to which Big Rivers agrees to provide wholesale electric service to Kenergy for resale to Century under terms described therein (collectively the "Arrangement Agreement").

C. Reference is made to any additional agreements entered into from time to time, between Big Rivers and Kenergy that provide for the sale of wholesale electric service by Big Rivers to Kenergy (for resale by Kenergy to Century) which Big Rivers, Century and Kenergy agree, in writing, shall be covered by the terms of this Lockbox Agreement (collectively, the "Additional Big Rivers Agreements" and together with the Arrangement Agreement, the "Total Big Rivers Agreements").

D. Reference is made to any additional agreements entered into, from time to time between Kenergy and Century that provide for the sale to Century of additional retail electric service procured from the Big Rivers by Kenergy which Big Rivers, Century and Kenergy agree, in writing, shall be covered by the terms of this Lockbox Agreement (collectively, the "Additional Electric Service Agreements" and together with the Electric Service Agreement, the "Total Electric Service Agreements").

E. The Parties wish to provide security to Big Rivers for obligations arising to Big Rivers from Kenergy pursuant to the Total Big Rivers Agreements (the "Secured Obligations") and for the orderly application of all amounts owing by Century to Kenergy with respect to retail electric service pursuant to the Total Electric Service Agreements (collectively, the "Century Payments"), without setoff for any other amounts that may be owing from Kenergy to Century. Accordingly, Kenergy has agreed to establish, in the name of Kenergy, a bank account with the Depository Bank, which account shall be designated as, and hereinafter referred to as, the Lockbox Account (as hereinafter defined).

F. The Depository Bank has agreed to maintain the Lockbox Account pursuant to and in accordance with this Lockbox Agreement.

G. The Parties further understand and agree that Century's only responsibility under this Lockbox Agreement is to make Century Payments to the Depository Bank in accordance with the instructions set forth in Section 1 hereof (or such other instructions as may be subsequently agreed to by Big Rivers and Kenergy pursuant to this Lockbox Agreement and delivered to Century).

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Payments by Century. Unless otherwise agreed in writing, Big Rivers, Century and Kenergy hereby irrevocably agree that Century Payments shall be paid by wire transfer or through the Automated Clearing House (ACH) network to the Depository Bank for deposit in the Lockbox Account in accordance with Section 3 hereof and coincident with date payments are due and owing under the Total Big Rivers Agreements and the Total Electric Service Agreements applicable to this service. Big Rivers, Century and Kenergy agree that Century Payments shall be deemed to have been made to Kenergy and shall be credited toward Century's payment obligations under the Total Electric Service Agreements and satisfaction of Century's obligation to make Century Payments. Kenergy and Big Rivers agree that amounts received by the Depository Bank from Century shall be deemed to have been paid to Big Rivers by Kenergy, shall be thereafter the property of Big Rivers and shall be credited toward the Secured Obligations, subject to Section 3.

2. Lockbox Account. The Depository Bank has established account number \_\_\_\_\_ in the name "Kenergy Lockbox Account" (such account and any successor account are referred to as the "Lockbox Account") and the Depository Bank shall not change the name or account number without the prior written consent of Big Rivers. Big Rivers shall possess exclusive dominion and control, as a secured party, of the funds (and any and all proceeds therefrom) from time to time in the Lockbox Account. Neither Kenergy nor any person or entity claiming by, through or under Kenergy shall have any control over the use of, or any right to withdraw any amount from, the Lockbox Account, except that Big Rivers shall have the right to withdraw or direct the withdrawal of amounts from the Lockbox Account. The Depository Bank shall be entitled to rely on, and shall act in accordance with, all instructions given to it by Big Rivers with respect to the Lockbox Account and the funds therein without further consent by Kenergy.

3. Kenergy Fees. Prior to each day that Century deposits funds in the Lockbox Account or if such deposits are received by the Depository Bank after 12:00 noon, Henderson, Kentucky time, then the next business day, (a "Payment Day") Big Rivers will provide a notice in writing to the Depository Bank (the "Fee Notice"), setting forth the amount to be applied to Kenergy with respect to the Retail Fee (as defined in the Electric Service Agreement) for the month in which such Fee Notice is received (the "Kenergy Fees") and attaching copies of (i) the monthly statement provided by Kenergy to Century pursuant to the Total Electric Service Agreements and (ii) the monthly statement provided by Big Rivers to Kenergy pursuant to the Total Big Rivers Agreements. The Depository Bank shall be under no obligation to verify or confirm any of the information or calculations contained in any Fee



Notice. Concurrently with delivery of the Fee Notice to the Depository Bank, Big Rivers shall deliver a copy thereof to Kenergy and Century, but the effectiveness of any such Fee Notice, as it relates to the Depository Bank's obligations under this Section 3, shall not depend on the delivery thereof to the Depository Bank and Century.

4. Duties of the Depository Bank.

(a) The Depository Bank shall apply and credit to the Lockbox Account all wire transfers directed to such Lockbox Account, even though such wire transfers may identify the Lockbox Account as an account of Kenergy. Century shall direct Century Payments to the Depository Bank in accordance with the following instructions:

Account Name: Kenergy Lockbox Account (Century)  
Bank ABA No. 086300012  
Account No. \_\_\_\_\_  
Reference: Kenergy Corp. – Century Aluminum of Kentucky

The Depository Bank agrees (x) to maintain the Lockbox Account as a segregated account from Kenergy's other accounts, if any, maintained with the Depository Bank, (y) to refrain from commingling the funds deposited in the Lockbox Account with any other funds of Kenergy and (z) that the location of the Lockbox Account shall not be changed without the prior written consent of Big Rivers.

(b) On each Payment Day, the Depository Bank shall, on behalf of Kenergy, withdraw and distribute the following amounts from funds on deposit in the Lockbox Account in the following priority, and, in each case to the extent of the amount on deposit after giving effect to any prior withdrawal and distribution provided that prior to each application of funds, the Depository Bank shall have received from Big Rivers a Fee Notice for the month in which such distribution is to be made:

(i) to the Depository Bank, to pay fees, costs, expenses and indemnities as and when due to the Depository Bank on such Payment Day; then

(ii) to Kenergy in an amount equal to Kenergy Fees, pursuant to the following wire transfer instructions:

Bank: US Bank  
Bank ABA No. 042100175  
Account No. 145803863326  
Beneficiary: Kenergy - General Fund; and then

(iii) the remainder to Big Rivers, pursuant to the following wire transfer instructions:

Bank: Old National Trust, Evansville, IN  
Bank ABA No. 086300012  
Account No. 10585559

Beneficiary: Big Rivers Electric General Fund.

5. Assignment; Acknowledgement of Release; Grant of Security Interest; Remedies Upon Default.

(a) As security for Kenergy's obligations to Big Rivers under the Total Big Rivers Agreements and for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, Kenergy hereby assigns to Big Rivers all of its rights to receive Century Payments and all of its rights to collect and enforce collection of such amounts due from Century (collectively, the "Century Contract Rights"). Century hereby acknowledges and consents to such assignment, and further agrees that, in realizing its rights in respect of Century Contract Rights, Big Rivers may sell and foreclose on such rights separately and apart from the disposition in respect of the rest of the Total Electric Service Agreements. Kenergy agrees to cooperate with and assist Big Rivers with respect to any collections of amounts due from Century to Kenergy which are assigned to Big Rivers pursuant to this Section, provided that Big Rivers will reimburse Kenergy for any expenses it incurs in providing such cooperation and assistance. Kenergy represents and warrants to Big Rivers that such assigned payments and rights are not subject to any existing liens or encumbrances.

(b) Upon execution of this Lockbox Agreement by Kenergy and the execution by Kenergy of any and all UCC Financing Statements requested by Big Rivers as of the execution hereof, and so long as this Lockbox Agreement remains in effect, Big Rivers hereby releases Kenergy from further liability under the Total Big Rivers Agreements for any Century Payments assigned hereby, *provided* that such release does not relieve Kenergy of its other liabilities or responsibilities under each of the Total Big Rivers Agreements.

(c) To secure the performance by Kenergy of all its obligations under the Total Big Rivers Agreements, Kenergy hereby irrevocably pledges and/or assigns to Big Rivers, and grants to Big Rivers a security interest in (i) Century Contract Rights, (ii) all Century Payments, excluding the Retail Fee, (to the extent such Century Payments have not been previously assigned to Big Rivers by Kenergy) (iii) all of its right, title and interest in, to and under the Lockbox Account and all funds contained therein, and in all obligations of the Depository Bank to Kenergy with respect thereto and (iv) in all proceeds of the foregoing (such items in respect of which such security interest is given hereinafter collectively referred to as the "Collateral"). Upon the occurrence of a default by Kenergy under the Arrangement Agreement, Big Rivers may, in addition to exercising any of the remedies available to it under the Total Big Rivers Agreements,

(x) enforce its right to all or any portion of the Collateral by such appropriate judicial proceedings as it shall deem most effective to protect and enforce such right;

(y) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce its right to the Collateral, or any portion thereof, to the extent permitted by applicable law; or

(z) sell, assign or otherwise liquidate any or all of the Collateral and take possession of the proceeds of any such sale or liquidation.

(d) Following the occurrence of a default by Kenergy under any Total Big Rivers Agreement and the enforcement by Big Rivers of its rights with respect to the Collateral in accordance with clause (c) above, Big Rivers shall be entitled to retain the proceeds received from any such enforcement.

6. Indemnity. Big Rivers hereby agrees to indemnify and hold the Depository Bank harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable legal fees) (collectively, "Claims") with respect to the performance of this Lockbox Agreement unless such Claims arise from the Depository Bank's gross negligence or willful misconduct. Big Rivers further agrees, so long as Century pays all Century Payments to the Depository Bank, to pay, indemnify and hold Century harmless from and against any and all Claims of or against the Depository Bank with respect to the performance, interpretation, construction and enforcement of this Lockbox Agreement.

7. Fees and Expenses. Big Rivers hereby agrees that all fees and charges associated with the Lockbox Account as shall from time to time be mutually agreed upon by Big Rivers and the Depository Bank shall be included on a statement which the Depository Bank shall submit to Big Rivers. This statement shall set forth the fees and charges payable by Big Rivers for the applicable period and be accompanied by such supporting documentation as the Depository Bank shall deem reasonable. All fees and charges set forth in the statement described above shall be deducted from the Lockbox Account by Depository Bank.

8. Limitations on Liability of the Depository Bank. The Depository Bank undertakes to perform those duties as are expressly set forth herein and the other processing requirements as may be covered in any procedure agreement consented to by Kenergy and Big Rivers. Notwithstanding any other provisions of this Lockbox Agreement, it is agreed by the Parties that the Depository Bank shall not be liable for any action taken by it or any of its directors, officers, agents or employees in accordance with this Lockbox Agreement except for its or their own gross negligence or willful misconduct. In no event shall the Depository Bank be liable for losses or delays resulting from force majeure, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond the Depository Bank's reasonable control or for indirect, special or consequential damages.

9. Account Information. Upon the request of any party, the Depository Bank shall provide to each of Big Rivers and Kenergy statements summarizing the activity in the Lockbox Account. In addition, the Depository Bank will provide to each of Big Rivers and Kenergy copies of all information reasonably requested by either of them.

The Depository Bank may rely, and shall be protected in acting or refraining from acting, upon any notice (including but not limited to electronically confirmed facsimiles of such notice) reasonably believed by the Depository Bank to be genuine and to have been given by the proper Party or Parties.

The Depository Bank shall have no obligation to review or confirm that any actions taken pursuant to this Lockbox Agreement comply with any other agreement or document between the Big Rivers, Century and Kenergy or between any of them. The provisions of this paragraph shall survive termination of this Lockbox Agreement.

10. Waiver of Right of Set-Off. So long as any obligation of Kenergy to Big Rivers under this Lockbox Agreement remains outstanding, the Depository Bank waives, with respect to all of its existing and future claims against Kenergy or any affiliate thereof, all existing and future rights of set-off and banker's liens against the Lockbox Account and all items (and proceeds thereof) that come into its possession in connection with the Lockbox Account; *provided* that the Depository Bank retains the right to charge the Lockbox Account for all items deposited in and credited to the Lockbox Account after the date hereof and subsequently returned to the Depository Bank unpaid and for all fees and charges associated with such returned items.

11. Effectiveness; Integration; Amendments. This Lockbox Agreement shall be effective as of the date first written above, and the Depository Bank shall be in a position to process remittances to the Lockbox Account commencing the date hereof. This Lockbox Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter contained herein. To the extent that any other agreement or understanding, whether in writing or oral, relating to the matters referred to herein is inconsistent with this Lockbox Agreement, this Lockbox Agreement shall supersede such other agreement, including any procedures agreement and any other agreement between Kenergy and the Depository Bank relating to the collection of Century Payments. No provision of this Lockbox Agreement may be amended, modified or waived, except by a written instrument executed by the Parties. Any provision of this Lockbox Agreement which is or is declared illegal, invalid or unenforceable under any law or regulation shall not affect the legality, validity or enforceability of any other provisions hereof.

12. Termination. This Lockbox Agreement shall terminate on the earliest of (a) the date on which the Depository Bank receives a certificate of an authorized officer of Big Rivers to the effect that all Secured Obligations have been paid in full, (b) the date of termination of this Lockbox Agreement by Big Rivers (with the consent of Kenergy, which consent shall not be unreasonably withheld) upon 60 days prior written notice to the Depository Bank and to Kenergy or (c) the date of termination of this Lockbox Agreement by the Depository Bank (with the consent of Big Rivers, which consent shall not be unreasonably withheld) upon 60 days prior written notice to Kenergy and to Big Rivers, provided that such 60 day period shall be extended at the request of Big Rivers if a substitute depository bank cannot be established during such 60 day period. Upon termination of this Lockbox Agreement pursuant to this Section, Big Rivers shall be released from any and all liability and obligations with respect to such Lockbox Account or arising hereunder, and the Lockbox Account shall, at the option of Kenergy, be transferred to Kenergy's name and become an account from which Kenergy may withdraw any and all funds contained therein, or the account shall be closed.

13. Substitute Depository Bank. In the event that the Depository Bank resigns or is removed by the Parties (other than due to the occurrence of the events contemplated by clause (a) of Section 12 hereof), a substitute bank shall be nominated by Big Rivers which nominee shall be approved by Kenergy (with notice to be provided to Century). Such substitute

depository bank shall accept such appointment by executing a comparable Lockbox Agreement and shall thereafter succeed to all rights and responsibilities of the Depository Bank as therein provided.

14. Notices. All notices, requests or other communications given to Kenergy, Big Rivers or the Depository Bank shall be given in writing (including facsimile transmission or similar writing) at the address or facsimile number specified below:

Depository Bank:	Old National Trust 1 Main Street Evansville, Indiana 47708 Attn: Shannon Perry Facsimile: (812) 461-9204
Big Rivers:	Big Rivers Electric Corporation 201 Third Street Henderson, Kentucky 42419 Attn: Vice President, CFO Facsimile: (270) 827-2101
Kenergy:	Kenergy Corp. P.O. Box 18 Henderson, Kentucky 42419-0018 Attn: President and CEO Facsimile: (270) 685-2279
Century:	Century Aluminum Company 9404 State Route 2096 Robards, Kentucky 42420 Attn: Plant Manager Facsimile: (270) 521-7305

Any Party may change its address or facsimile number or notices hereunder by notice to each other Party hereunder. Each notice, request or other communication shall be effective (a) if given by facsimile transmission, when such facsimile is transmitted to the facsimile number specified in this Section, (b) if given by mail, two business days after such communication is deposited in the mail with first class postage prepaid, addressed as aforesaid or (c) if given by any other means, when delivered at the address specified in this Section.

15. Acknowledgment of Security Interest. By execution of this Lockbox Agreement the Depository Bank acknowledges and consents to the security interest granted by Kenergy to Big Rivers pursuant to Section 5. Kenergy agrees to promptly execute and deliver all further instruments and documents that may be necessary or which Big Rivers may in good faith reasonably request, in order to perfect and protect any pledge or security interest granted hereby, including, without limitation, such financing or continuation statements, or amendments thereto, as Big Rivers may reasonably request.

16. Governing Law. Except to the extent that federal law or the laws of the state in which the Depository Bank is located govern the Lockbox Account, this Lockbox Agreement shall be governed by, and interpreted in accordance with, the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules. For purposes of this Lockbox Agreement, the Commonwealth of Kentucky shall be deemed the bank's jurisdiction under the Kentucky Uniform Commercial Code.

17. Counterparts. This Lockbox Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, each of the Parties has caused this Lockbox Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

OLD NATIONAL TRUST

By: \_\_\_\_\_  
Name:  
Title:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

CENTURY ALUMINUM SEBREE

By: \_\_\_\_\_  
Name:  
Title:

**SECURITY AND LOCK BOX AGREEMENT**

Dated as of ~~August 19, 2013~~ January [ ], 2014

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.,**

**CENTURY ALUMINUM OF ~~KENTUCKY GENERAL PARTNERSHIP~~ SEBREE LLC**

and

**OLD NATIONAL ~~BANK~~ TRUST**



## SECURITY AND LOCK BOX AGREEMENT

This SECURITY AND LOCK BOX AGREEMENT, dated as of ~~August 19, 2013~~ January [ ] , 2014 (this "Lockbox Agreement"), is made by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative (together with its successors and assigns, "Big Rivers"), KENERGY CORP., a Kentucky electric cooperative corporation (together with its successors and assigns, "Kenergy") ~~and~~, CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, ~~a Kentucky general partnership~~ SEBREE LLC, a Delaware limited liability company (together with its successors and assigns, "Century"), and OLD NATIONAL BANK ~~TRUST~~, of Evansville, Indiana (the "Depository Bank"). Big Rivers, Kenergy, Century and the Depository Bank are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### PRELIMINARY STATEMENTS

A. Reference is made to that certain Electric Service Agreement, dated the date hereof, between Kenergy and Century (as amended, modified or supplemented from time to time, the "Electric Service Agreement"), pursuant to which Kenergy is obligated to sell to Century and Century agrees to purchase from Kenergy retail electric service in accordance with the terms and conditions specified therein.

B. Reference is made to that certain Arrangement and Procurement Agreement, dated the date hereof, between Kenergy and Big Rivers, pursuant to which Big Rivers agrees to provide wholesale electric service to Kenergy for resale to Century under terms described therein (collectively the "Arrangement Agreement").

C. Reference is made to any additional agreements entered into from time to time, between Big Rivers and Kenergy that provide for the sale of wholesale electric service by Big Rivers to Kenergy (for resale by Kenergy to Century) which Big Rivers, Century and Kenergy agree, in writing, shall be covered by the terms of this Lockbox Agreement (collectively, the "Additional Big Rivers Agreements" and together with the Arrangement Agreement, the "Total Big Rivers Agreements").

D. Reference is made to any additional agreements entered into, from time to time between Kenergy and Century that provide for the sale to Century of additional retail electric service procured from the Big Rivers by Kenergy which Big Rivers, Century and Kenergy agree, in writing, shall be covered by the terms of this Lockbox Agreement (collectively, the "Additional Electric Service Agreements" and together with the Electric Service Agreement, the "Total Electric Service Agreements").

E. ~~The parties hereto~~ Parties wish to provide security to Big Rivers for obligations arising to Big Rivers from Kenergy pursuant to the Total Big Rivers Agreements (the "Secured Obligations") and for the orderly application of all amounts owing by Century to Kenergy with respect to retail electric service pursuant to the Total Electric Service Agreements (collectively, the "Century Payments"), without setoff for any other amounts that may be owing from Kenergy to Century. Accordingly, Kenergy has agreed to establish, in the name of Kenergy, a bank

account with the Depository Bank, which account shall be designated as, and hereinafter referred to as, the Lockbox Account (as hereinafter defined).

F. The Depository Bank has agreed to maintain the Lockbox Account pursuant to and in accordance with this Lockbox Agreement.

G. The Parties further understand and agree that Century's only responsibility under this Lockbox Agreement is to make Century Payments to the Depository Bank in accordance with the instructions set forth in Section 1 hereof (or such other instructions as may be subsequently agreed to by Big Rivers and Kenergy pursuant to this Lockbox Agreement and delivered to Century).

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Payments by Century. Unless otherwise agreed in writing, Big Rivers, Century and Kenergy hereby irrevocably agree that Century Payments shall be paid by wire transfer or through the Automated Clearing House (ACH) network to the Depository Bank for deposit in the Lockbox Account in accordance with Section 3 hereof and coincident with date payments are due and owing under the Total Big Rivers Agreements and the Total Electric Service Agreements applicable to this service. Big Rivers, Century and Kenergy agree that Century Payments shall be deemed to have been made to Kenergy and shall be credited toward Century's payment obligations under the Total Electric Service Agreements and satisfaction of Century's obligation to make Century Payments. Kenergy and Big Rivers agree that amounts received by the Depository Bank from Century shall be deemed to have been paid to Big Rivers by Kenergy, shall be thereafter the property of Big Rivers and shall be credited toward the Secured Obligations, subject to Section 3.

2. Lockbox Account. The Depository Bank has established account number \_\_\_\_\_ in the name "Kenergy Lockbox Account" (such account and any successor account are referred to as the "Lockbox Account") and the Depository Bank shall not change the name or account number without the prior written consent of Big Rivers. Big Rivers shall possess exclusive dominion and control, as a secured party, of the funds (and any and all proceeds therefrom) from time to time in the Lockbox Account. Neither Kenergy nor any person or entity claiming by, through or under Kenergy shall have any control over the use of, or any right to withdraw any amount from, the Lockbox Account, except that Big Rivers shall have the right to withdraw or direct the withdrawal of amounts from the Lockbox Account. The Depository Bank shall be entitled to rely on, and shall act in accordance with, all instructions given to it by Big Rivers with respect to the Lockbox Account and the funds therein without further consent by Kenergy.

3. Kenergy Fees. Prior to each day that Century deposits funds in the Lockbox Account or if such deposits are received by the Depository Bank after 12:00 noon, Henderson, Kentucky time, then the next business day, (a "Payment Day") Big Rivers will provide a notice in writing to the Depository Bank (the "Fee Notice"), setting forth the amount to be applied to Kenergy with respect to the Retail Fee (as defined in the Electric Service Agreement) for the month in which such Fee Notice is received (the "Kenergy Fees") and attaching copies of (i) the monthly statement provided by Kenergy to Century pursuant to the



Bank: Old National Bank Trust, Evansville, IN  
Bank ABA No. 086300012  
Account No. 10585559  
Beneficiary: Big Rivers Electric General Fund.

5. Assignment; Acknowledgement of Release; Grant of Security Interest; Remedies Upon Default.

(a) As security for Kenergy's obligations to Big Rivers under the Total Big Rivers Agreements and for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, Kenergy hereby assigns to Big Rivers all of its rights to receive Century Payments and all of its rights to collect and enforce collection of such amounts due from Century (collectively, the "Century Contract Rights"). Century hereby acknowledges and consents to such assignment, and further agrees that, in realizing its rights in respect of Century Contract Rights, Big Rivers may sell and foreclose on such rights separately and apart from the disposition in respect of the rest of the Total Electric Service Agreements. Kenergy agrees to cooperate with and assist Big Rivers with respect to any collections of amounts due from Century to Kenergy which are assigned to Big Rivers pursuant to this Section, provided that Big Rivers will reimburse Kenergy for any expenses it incurs in providing such cooperation and assistance. Kenergy represents and warrants to Big Rivers that such assigned payments and rights are not subject to any existing liens or encumbrances.

(b) Upon execution of this Lockbox Agreement by Kenergy and the execution by Kenergy of any and all UCC Financing Statements requested by Big Rivers as of the execution hereof, and so long as this Lockbox Agreement remains in effect, Big Rivers hereby releases Kenergy from further liability under the Total Big Rivers Agreements for any Century Payments assigned hereby, *provided* that such release does not relieve Kenergy of its other liabilities or responsibilities under each of the Total Big Rivers Agreements.

(c) To secure the performance by Kenergy of all its obligations under the Total Big Rivers Agreements, Kenergy hereby irrevocably pledges and/or assigns to Big Rivers, and grants to Big Rivers a security interest in (i) Century Contract Rights, (ii) all Century Payments, excluding the Retail Fee, (to the extent such Century Payments have not been previously assigned to Big Rivers by Kenergy) (iii) all of its right, title and interest in, to and under the Lockbox Account and all funds contained therein, and in all obligations of the Depository Bank to Kenergy with respect thereto and (iv) in all proceeds of the foregoing (such items in respect of which such security interest is given hereinafter collectively referred to as the "Collateral"). Upon the occurrence of a default by Kenergy under the Arrangement Agreement, Big Rivers may, in addition to exercising any of the remedies available to it under the Total Big Rivers Agreements,

(x) enforce its right to all or any portion of the Collateral by such appropriate judicial proceedings as it shall deem most effective to protect and enforce such right;

(y) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce its right to the

Collateral, or any portion thereof, to the extent permitted by applicable law; or

(z) sell, assign or otherwise liquidate any or all of the Collateral and take possession of the proceeds of any such sale or liquidation.

(d) Following the occurrence of a default by Kenergy under any Total Big Rivers Agreement and the enforcement by Big Rivers of its rights with respect to the Collateral in accordance with clause (c) above, Big Rivers shall be entitled to retain the proceeds received from any such enforcement.

6. Indemnity. Big Rivers hereby agrees to indemnify and hold the Depository Bank harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable legal fees) (collectively, "Claims") with respect to the performance of this Lockbox Agreement unless such Claims arise from the Depository Bank's gross negligence or willful misconduct. Big Rivers further agrees, so long as Century pays all Century Payments to the Depository Bank, to pay, indemnify and hold Century harmless from and against any and all Claims of or against the Depository Bank with respect to the performance, interpretation, construction and enforcement of this Lockbox Agreement.

7. Fees and Expenses. Big Rivers hereby agrees that all fees and charges associated with the Lockbox Account as shall from time to time be mutually agreed upon by Big Rivers and the Depository Bank shall be included on a ~~monthly consolidated account analysis~~ statement which the Depository Bank shall submit to Big Rivers. This statement shall set forth the fees and charges payable by Big Rivers for ~~such month~~ the applicable period and be accompanied by such supporting documentation as the Depository Bank shall deem reasonable. All fees and charges set forth in the statement described above shall be deducted from the Lockbox Account by Depository Bank.

8. Limitations on Liability of the Depository Bank. The Depository Bank undertakes to perform those duties as are expressly set forth herein and the other processing requirements as may be covered in any procedure agreement consented to by Kenergy and Big Rivers. Notwithstanding any other provisions of this Lockbox Agreement, it is agreed by the Parties that the Depository Bank shall not be liable for any action taken by it or any of its directors, officers, agents or employees in accordance with this Lockbox Agreement except for its or their own gross negligence or willful misconduct. In no event shall the Depository Bank be liable for losses or delays resulting from force majeure, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond the Depository Bank's reasonable control or for indirect, special or consequential damages.

9. Account Information. Upon the request of any party, the Depository Bank shall provide to each of Big Rivers and Kenergy statements summarizing the activity in the Lockbox Account. In addition, the Depository Bank will provide to each of Big Rivers and Kenergy copies of all information reasonably requested by either of them.

The Depository Bank may rely, and shall be protected in acting or refraining from acting, upon any notice (including but not limited to electronically confirmed facsimiles of such notice) reasonably believed by the Depository Bank to be genuine and to have been given by the proper Party or Parties.

The Depository Bank shall have no obligation to review or confirm that any actions taken pursuant to this Lockbox Agreement comply with any other agreement or document between the Big Rivers, Century and Kenergy or between any of them. The provisions of this paragraph shall survive termination of this Lockbox Agreement.

10. Waiver of Right of Set-Off. So long as any obligation of Kenergy to Big Rivers under this Lockbox Agreement remains outstanding, the Depository Bank waives, with respect to all of its existing and future claims against Kenergy or any affiliate thereof, all existing and future rights of set-off and banker's liens against the Lockbox Account and all items (and proceeds thereof) that come into its possession in connection with the Lockbox Account; *provided* that the Depository Bank retains the right to charge the Lockbox Account for all items deposited in and credited to the Lockbox Account after the date hereof and subsequently returned to the Depository Bank unpaid and for all fees and charges associated with such returned items.

11. Effectiveness; Integration; Amendments. This Lockbox Agreement shall be effective as of the date first written above, and the Depository Bank shall be in a position to process remittances to the Lockbox Account commencing the date hereof. This Lockbox Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter contained herein. To the extent that any other agreement or understanding, whether in writing or oral, relating to the matters referred to herein is inconsistent with this Lockbox Agreement, this Lockbox Agreement shall supersede such other agreement, including any procedures agreement and any other agreement between Kenergy and the Depository Bank relating to the collection of Century Payments. No provision of this Lockbox Agreement may be amended, modified or waived, except by a written instrument executed by the Parties. Any provision of this Lockbox Agreement which is or is declared illegal, invalid or unenforceable under any law or regulation shall not affect the legality, validity or enforceability of any other provisions hereof.

12. Termination. This Lockbox Agreement shall terminate on the earliest of (a) the date on which the Depository Bank receives a certificate of an authorized officer of Big Rivers to the effect that all Secured Obligations have been paid in full, (b) the date of termination of this Lockbox Agreement by Big Rivers (with the consent of Kenergy, which consent shall not be unreasonably withheld) upon 60 days prior written notice to the Depository Bank and to Kenergy or (c) the date of termination of this Lockbox Agreement by the Depository Bank (with the consent of Big Rivers, which consent shall not be unreasonably withheld) upon 60 days prior written notice to Kenergy and to Big Rivers, provided that such 60 day period shall be extended at the request of Big Rivers if a substitute depository bank cannot be established during such 60 day period. Upon termination of this Lockbox Agreement pursuant to this Section, Big Rivers shall be released from any and all liability and obligations with respect to such Lockbox Account or arising hereunder, and the Lockbox Account shall, at the option of Kenergy, be transferred to Kenergy's name and become an account from which Kenergy may withdraw any and all funds contained therein, or the account shall be closed.

13. Substitute Depository Bank. In the event that the Depository Bank resigns or is removed by the Parties (other than due to the occurrence of the events contemplated by clause (a) of Section 12 hereof), a substitute bank shall be nominated by Big Rivers which nominee shall be approved by Kenergy (with notice to be provided to Century). Such substitute depository bank shall accept such appointment by executing a comparable Lockbox Agreement and shall thereafter succeed to all rights and responsibilities of the Depository Bank as therein provided.

14. Notices. All notices, requests or other communications given to Kenergy, Big Rivers or the Depository Bank shall be given in writing (including ~~telex~~, facsimile transmission or similar writing) at the address or ~~telex~~ or facsimile number specified below:

Depository Bank:	Old National Bank <del>Trust</del> 1 Main Street Evansville, Indiana 47708 Attn: <del>Anna Lee Tepool</del> <b>Shannon Perry</b> Facsimile: (812) 465-0123 <b>461-9204</b>
Big Rivers:	Big Rivers Electric Corporation 201 Third Street Henderson, Kentucky 42419 Attn: Vice President, CFO Facsimile: (270) 827-2101
Kenergy:	Kenergy Corp. P.O. Box 18 Henderson, Kentucky 42419-0018 Attn: President and CEO Facsimile: (270) 826 <del>685-3999</del> <b>2279</b>
Century:	Century Aluminum Company <del>P.O. Box 500</del> <b>9404</b> State Route 271 North <b>Hawesville 2096</b> <b>Robards</b> , Kentucky 42348 <b>42420</b> Attn: Plant Manager Facsimile: (270) 852 <del>521-2882</del> <b>7305</b>

Any Party may change its address or facsimile number or notices hereunder by notice to each other Party hereunder. Each notice, request or other communication shall be effective (a) if given by facsimile transmission, when such facsimile is transmitted to the facsimile number specified in this Section, (b) if given by mail, two business days after such communication is deposited in the mail with first class postage prepaid, addressed as aforesaid or (c) if given by any other means, when delivered at the address specified in this Section.

15. Acknowledgment of Security Interest. By execution of this Lockbox Agreement the Depository Bank acknowledges and consents to the security interest granted by

Kenergy to Big Rivers pursuant to Section 5. Kenergy agrees to promptly execute and deliver all further instruments and documents that may be necessary or which Big Rivers may in good faith reasonably request, in order to perfect and protect any pledge or security interest granted hereby, including, without limitation, such financing or continuation statements, or amendments thereto, as Big Rivers may reasonably request.

16. Governing Law. Except to the extent that federal law or the laws of the state in which the Depository Bank is located govern the Lockbox Account, this Lockbox Agreement shall be governed by, and interpreted in accordance with, the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules. For purposes of this Lockbox Agreement, the Commonwealth of Kentucky shall be deemed the bank's jurisdiction under the Kentucky Uniform Commercial Code.

17. Counterparts. This Lockbox Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

[Signatures Follow on Next Page]



IN WITNESS WHEREOF, each of the Parties has caused this Lockbox Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

~~OLD NATIONAL BANK~~TRUST

By: \_\_\_\_\_  
Name:  
Title:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

~~CENTURY ALUMINUM OF KENTUCKY~~  
~~GENERAL PARTNERSHIP~~SEBREE

By: \_\_\_\_\_  
Name:  
Title:

## ALTERNATE SERVICE AGREEMENT

**THIS AGREEMENT** for Purchase of Power ("Agreement") is made \_\_\_\_\_, 2014, between **KENERGY CORP.**, 6402 Old Corydon Road, Henderson, Kentucky 42420 (hereinafter called the "Seller"), and **CENTURY ALUMINUM SEBREE LLC** with a service address OF 9404 State Route 2096, Henderson, Kentucky 42452-9735, (hereinafter called the "Consumer").

Seller and Consumer are parties to a retail electric service agreement dated as of July 1, 2009 (the "2009 Agreement"), pursuant to which Seller provides Consumer electric service to Consumer's aluminum smelting facility located near Sebree, Kentucky.

Consumer notified Seller on January 31, 2013, that Consumer will terminate the 2009 Agreement on January 31, 2014 (the "Termination Date"), in accordance with the terms of the 2009 Agreement.

Seller and Consumer are negotiating an Electric Service Agreement proposed to be dated as of \_\_\_\_\_, 2014 (the "Electric Service Agreement") and related documents, pursuant to which Seller would provide Consumer retail electric service for aluminum smelting operations at Consumer's Sebree facility; and

Consumer desires to enter into an agreement for a power supply to the same facility for non-smelting operations that will become effective, at Consumer's election, concurrently with the termination date of the 2009 Agreement, or if the Electric Service Agreement is in effect on the Termination

Date, again at the election of the Consumer, on the termination date of the Electric Service Agreement.

Accordingly, Seller and Consumer agree as follows:

The Seller shall sell and deliver to the Consumer at the Delivery Point, as defined in Section 1.D. of this Agreement, and the Consumer shall purchase all of the electric power and energy, which the Consumer may need at the aforementioned service address for non-smelting operations, up to ten megawatts (the "Maximum Demand"), except as otherwise provided herein, upon the following terms:

1. **SERVICE CHARACTERISTICS**

- A. Service hereunder shall be alternating current, 3 phase, sixty cycles, nominal 161,000 volts.
- B. The Consumer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of power and shall not sell electric power and energy purchased hereunder. All electric consuming facilities of Consumer shall be connected on the load side of the metering facilities described in Section 1.21 of Addendum 1.
- C. The Consumer acknowledges that Seller's wholesale power supplier is transmitting electric power and energy to Seller for sale hereunder across the transmission system of Big Rivers Electric Corporation (the "Wholesale Transmission System").

D. "Delivery Point" shall be defined for purposes of this Agreement, which includes the exhibits and addenda attached hereto, as the existing set of meters at the Reid Station switchyard owned by Big Rivers Electric Corporation ("Big Rivers"), or such other point of delivery mutually agreed by the parties and Big Rivers.

2. **PAYMENT**

A. The Consumer shall pay the Seller for service hereunder on and after the "Service Commencement Date" (as defined in Section 6 of this Agreement) at the rates and upon the terms and conditions set forth in Seller's Schedule 35, as it may be amended from time to time. A copy of Seller's current Schedule 35 is attached to and made a part of this Agreement as Exhibit "A." If any terms in this Agreement conflict with any terms in Seller's tariff, the terms in this Agreement shall govern to the extent of the conflict. Notwithstanding any provision of Schedule 35 and irrespective of Consumer's requirements for or use of electric power and energy, the Billing Demand (as used in Schedule 35) shall be the higher of actual demand (defined as the customer's maximum integrated thirty-minute demand at such delivery point during each billing month, determined by meters which record at the end of each thirty-minute period the integrated kilowatt demand during the preceding thirty minutes) and 60% of the Maximum Demand per billing period (per month)("Contract Demand") until modified.

- B. **[RESERVED]**
- C. **[RESERVED]**
- D. Bills for service hereunder shall be paid by wire transfer at the office of the Seller at Kenergy Corp, 6402 Old Corydon Rd., Henderson, KY 42420.
- E. Such payments shall be due on the 25<sup>th</sup> day of each month for service furnished during the preceding monthly billing period.
- F. If the Consumer shall fail to make any such payment when due, the Seller may discontinue service to the Consumer upon giving fifteen (15) days' written notice to the Consumer of its intention so to do, provided, however, that such discontinuance of service shall not relieve the Consumer of any of its obligations under this Agreement.
- G. The Consumer agrees that if, at any time, the rate under which the Seller purchases electric service at wholesale is modified, the Seller may make, subject to Commission approval, an equivalent modification in the rate for service hereunder.
- H. Consumer's payment obligations under this Section 2 shall survive termination of this Agreement.

3. **MEMBERSHIP**

The Consumer shall remain a member of the Seller and be bound by such generally applicable rules and regulations as may from time to time be adopted by the Seller.

4. **CONTINUITY OF SERVICE**

The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective through act of God, governmental authority, action of the elements, public enemy, accident, strikes, labor trouble, required maintenance work, inability to secure right-of-way, or any other cause beyond the reasonable control of Seller, then Seller shall not be liable therefor or for damages caused thereby.

5. **RIGHT OF ACCESS**

Duly authorized representatives of the Seller shall be permitted to enter the Consumer's premises at all reasonable times in order to carry out the provisions hereof.

6. **TERM AND SERVICE COMMENCEMENT DATE**

This Agreement, except for the electric service obligations hereunder, shall become effective as provided in the Recitals and section 6A below, subject to receipt of the last of the approvals referred to below in Section 8, and shall remain in effect during the Term, as defined in this Agreement. The electric service obligations hereunder shall become effective, and the delivery of electric service under this Agreement shall commence (the "Service Commencement Date"), upon the occurrence or completion of the last of the following conditions:

- A. Receipt by Seller of written notice from Consumer to Seller of the Service Commencement Date requested by it, which date (i) shall be the later to occur of the Termination Date and the date on which the

Electric Service Agreement, if it becomes effective, terminates and smelting operations at Consumer's Hawesville facility cease, and (ii) shall be received by Seller no less than 15 calendar days before the specified Service Commencement Date;

- B. Consumer has notified Seller, in writing concurrently with the Service Commencement Date notice, which one of the four existing 161 kV transmission lines currently serving the Sebree smelter shall be used to provide service under this Agreement at 161 kV to Consumer's facility on and after the Service Commencement date, with the understanding that all remaining transmission lines will be de-energized by Seller's transmission provider;
- C. Provision by Consumer of the deposit or other guaranty required by Section 7 of this Agreement; and
- C. Performance by Consumer of any other obligations under this Agreement that are required as a condition of commencement of service.

The term of this Agreement shall be ten (10) years following the Service Commencement Date, and thereafter until and unless terminated by either party giving to the other three (3) months' notice in writing (the "Term").

7. **CONSUMER DEPOSIT**

- A. As security for payment of its monthly billing obligations, Consumer shall further be required to provide Seller a cash deposit or provide an irrevocable bank letter of credit representing two (2) months' estimated billing, which amount will be estimated by Seller and provided to

Consumer in writing no more than 10 days after receipt by Seller of Consumer's Service Commencement Date notice. The amount of this security for payment shall increase if the Maximum Demand increases, or if Seller's rates for service increase.

- B. Any cash deposit will earn interest in accordance with law, and interest earned will be paid annually to Consumer. Letters of credit must be approved in advance by Seller as to form and issuer. Annually the Parties shall adjust the deposit or bank letter of credit required by Paragraph 7A reasonably to reflect changes in the amounts of the obligations of Consumer secured by the deposit or bank letter(s) of credit.
- C. Consumer's obligations under this Section 7 shall survive termination of this Agreement to the extent necessary to provide security for payment of any outstanding monthly billing obligations that exist as of the date of termination.

8. **SUCCESSION AND APPROVAL**

This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the respective parties hereto and may be assigned by Consumer with the consent of Seller, which consent shall not be unreasonably withheld. Any assignment of this Agreement by Consumer shall not relieve Consumer of its obligations to Kenergy hereunder unless Consumer has been expressly relieved of those obligations by Kenergy, in writing. This Agreement shall not be effective unless (i) it is approved or accepted in writing by the Kentucky Public Service Commission ("KPSC"), and (ii) Seller's wholesale



agreement with Big Rivers regarding service to Consumer has received all approvals required by Seller's and Big Rivers' credit agreements, and is approved or accepted in writing by the KPSC.

9. **ADDENDA**

The addenda to this Agreement are attached hereto and incorporated herein as a part of this agreement for electric service.

10. **INDEMNIFICATION**

Consumer agrees to indemnify and hold Seller harmless from and against any and all claims, demands, damages, judgments, losses or expenses asserted against Seller by or on behalf of Big Rivers arising out of, related to or concerning damage to the Wholesale Transmission System, or any system or electric consuming facilities connected to the Wholesale Transmission System, resulting from Consumer's operations, activities or usage of electric power and energy hereunder.

11. **NOTICE TO BIG RIVERS**

Any notice from Consumer to Seller required by the terms of this Agreement shall be given concurrently to Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420, Attn: President and CEO, using the same methodology required by this Agreement for notice to Kenergy.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement all as of the day and year first above written.

**KENERGY CORP.**  
**Seller**

By \_\_\_\_\_

Printed Name Gregory J. Starheim

Title President and CEO

**CENTURY ALUMINUM SEBREE LLC**  
**Consumer**

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_



Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 2

Fifth Revised SHEET NO. 35

CANCELLING PSC NO. 2

Fourth Revised SHEET NO. 35

<b>CLASSIFICATION OF SERVICE</b> <b>Schedule 35 – Large Industrial Customers Served Under Special Contract</b> <b>(Dedicated Delivery Points) - (Class C)</b>
---

APPLICABLE

In all territory served.

AVAILABILITY OF SERVICE

This rate shall apply to existing large customers where service is provided through a dedicated delivery point connected to the transmission system of Big Rivers or other accessible system classified as Class C customers, or new customers executing special contracts approved by the Kentucky Public Service Commission.

TYPE OF SERVICE

The electric service furnished under this schedule will be three-phase sixty cycle, alternating current at available nominal voltage.

RATE

Customer Charge per Delivery Point \$100.00 per Month

Plus:

R Demand Charge per KW of Billing Demand in Month \$ 10.715

Plus:

Energy Charges:  
Per KWH \$ 0.033

Facilities Charge 1.38%

(times assigned dollars of Kenergy investment for facilities per month-see Sheet No.35B)

DETERMINATION OF BILLING DEMAND

The Billing Demand in kilowatts shall be the higher of: a) The customer's maximum integrated thirty-minute demand at such delivery point during each billing month, determined by meters which record at the end of each thirty-minute period the integrated kilowatt demand during the preceding thirty minutes; or b) the Contract Demand.

POWER FACTOR ADJUSTMENT

The customer agrees to maintain a power factor as nearly as practical to unity. Kenergy will permit the use of apparatus that shall result, during normal operation, in a power factor not lower than 90%. At Kenergy's option, in lieu of the customers providing the above corrective equipment when power factor is less than 90%, Kenergy may adjust the maximum measured demand for billing purposes in accordance with the following formula:

DATE OF ISSUE November 15, 2013  
Month / Date / Year

DATE EFFECTIVE August 20, 2013  
Month / Date / Year

ISSUED BY [Signature]  
(Signature of Officer)

TITLE President and CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2013-00035 DATED October 29, 2013

## ADDENDA TO ALTERNATE SERVICE AGREEMENT

### ADDENDUM 1

#### 1.10 Facilities to be Provided by Consumer.

1.11 Consumer has provided or shall provide, without cost to Seller or Big Rivers all easements for rights-of-way upon Consumer's property at the Sebree smelter (at such locations and of such dimensions as may be mutually agreed upon) for Big Rivers' transmission lines, and for any Kenergy distribution lines for service to Consumer.

Consumer has furnished and installed, shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased under the Agreement at and from Consumer's substation located adjacent to the Sebree smelter.

1.12 Except as provided in Section 1.20 of this Addendum, Consumer shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from Consumer's Substation, including but not limited to (i) such protective devices as may be reasonably necessary in the opinion of the Seller to protect the system of the Seller or the Wholesale Transmission System from disturbances caused by Consumer, (ii) voltage regulation capability in the Consumer-provided electrical facilities sufficient to meet the operating requirements of all Consumer's equipment over the full range of acceptable

transmission delivery voltage, and (iii) protection devices as needed to prevent damage to that equipment during voltage excursions outside of the full range of acceptable transmission delivery voltage. Plans for equipment to be installed for such protection shall be submitted to Seller for prior approval, which shall not be unreasonably withheld.

1.20 **Facilities to be Provided by Seller.**

1.21 Seller has caused to be furnished and installed, or shall cause to be furnished and installed, all of the facilities required for the delivery of electric power and energy to the Delivery Point, as well as the 161 kilovolt transmission lines required between the Delivery Point and Consumer's electrical substation that is designated by Consumer under Section 6.B. of the Agreement. Seller shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment, necessary to deliver electric power and energy to Consumer's Substation . Seller will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Prudent Utility Practice, to the extent necessary to assure sufficient capability to take and use the electric power and

energy delivered by Seller to Consumer as provided for in the Agreement.

1.22 Seller acknowledges Consumer's need, from time to time, to perform scheduled maintenance on its substation equipment, and agrees that upon minimum 30 days written notice it will arrange, or cause to be arranged, service during the period of the scheduled maintenance activities using one of the 161 kV transmission lines that was de-energized on the Service Commencement Date.

1.30 **Construction Standards.** Consumer shall construct and maintain any facilities it builds under an obligation created by this Agreement in accordance with applicable provisions of the National Electrical Safety Code of the American National Standards Institute (ANSI C2), and other applicable laws, codes and regulations, provided however Seller shall have no duty to inspect those facilities for conformance with such standards or have any responsibility for the means, methods or techniques employed by Consumer or its contractor in the construction of these facilities. Each party shall own, maintain and operate the facilities it purchases and installs.

1.40 **Electric Disturbances and Phase Balancing.**

- (a) Consumer shall not use the power and energy delivered under this Agreement in such manner as to cause a "System Disturbance." A System Disturbance is a use of electric power and energy which directly or indirectly results in a risk of harm to human beings or material damage to or interference with the transmission system of Seller's wholesale power supplier (the "Wholesale Transmission System"), a system connected with the Wholesale Transmission System or facilities or other property in

proximity to the Wholesale Transmission System, or the plant, facility, equipment or operations of any other customer served directly or indirectly from the Wholesale Transmission System. A System Disturbance includes, but is not limited to: (a) Harmonic Distortion: a level of current harmonic total demand distortion (TDD) measured at the Delivery Point that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and, (b) Phase Imbalance: a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at the Delivery Point.

- (b) Seller may require Consumer, at Consumer's expense, to make such changes in its system as may be reasonably necessary to eliminate System Disturbances. If Consumer's use of power and energy creates an imbalance between phases that causes a System Disturbance, and fails to make changes in its system requested by Seller to correct such condition, in addition to any other remedies it has Seller make, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.
- (c) Consumer shall maintain a power factor at the Delivery Point as nearly as practicable to unity. Power factor during normal operation may range from unity to ninety percent (90%). If Consumer's power factor is less than 90% at time of maximum load, Seller reserves the right to require Consumer to choose either (a) installation at Consumer's expense of equipment which will maintain a power factor of 90% or higher; or (b)

adjustment of the maximum monthly metered demand for billing purposes in accordance with the following formula:

$$\frac{\text{Maximum Actual Measured Kilowatts} \times 90\%}{\text{Power Factor (\%)}}$$

- (d) Consumer acknowledges and agrees that Seller shall have no responsibility for damage to any property, or to any equipment or devices connected to Consumer's electrical system on Consumer's side of the Delivery Point that results solely from acts or omissions of Consumer, its employees, agents, contractors or invitees, or malfunction of any equipment or devices connected to Consumer's electrical system on Consumer's side of the Delivery Point.

#### **ADDENDUM 2**

**[Reserved]**

#### **ADDENDUM 3**

**Force Majeure.** In the event performance of this Agreement is limited or prevented in whole or in part by Acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government (whether federal, state, or local, civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, or inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, civil or military), upon such party's giving notice and reasonably full particulars of such force



majeure or uncontrollable force, in writing or by telegraph to the other party within a reasonable time after the occurrence of the cause relied on, the party whose performance is so limited or prevented shall be excused, discharged and released from the performance to the extent such performance is limited or prevented, but only for the period when the performance is limited or prevented and thereafter all of the terms of this Agreement shall remain in effect except that the term of the agreement shall be extended for a period equal to the duration of the aforesaid force majeure. A minimum bill due during a billing period when a force majeure event occurs shall be prorated based upon the duration of the period of force majeure, but nothing contained herein shall excuse Consumer from the obligations of paying at the time provided herein, for any power consumed by it. In no event shall this Agreement subject either party to liability for consequential or incidental damages, or damages for loss of anticipated profits.

#### **ADDENDUM 4**

**Successors in Interest.** Consumer may with written approval of the Seller assign or transfer this Agreement and such approval shall not be unreasonably withheld. In such event such assignee or transferee shall assume all obligations or responsibilities of Consumer under this Agreement.

#### **ADDENDUM 5**

5.10 **Remedies of the Parties.** Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter. Except as specifically provided herein, this Agreement shall not be construed to abridge, limit,

or deprive either party of any remedy for breach of the provisions herein which would otherwise be available at law or equity.

5.20 **Reports and Information.** Consumer shall furnish to the Seller such reports and information concerning its operations as the Seller may reasonably request from time to time to allow Seller to perform its obligations or exercise its rights under the Agreement.

5.30 **Notices.** Any written notice, demand or request required or authorized under this Agreement shall be deemed properly given to or served on Seller if mailed to:

Kenergy Corp.,  
Attention: President & CEO  
Post Office Box 18  
Henderson, Kentucky 42419-0018

And concurrently to:

Big Rivers Electric Corporation  
Attention: President & CEO  
201 Third Street  
Henderson, KY 42420

Any such notice, demand or request shall be deemed properly given to or served on Consumer if mailed to:

Century Aluminum Sebree LLC  
c/o Plant Manager  
9404 State Route 2096  
Henderson, KY 42452-9735

And concurrently to:

Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel

5.40 **Jurisdiction and Venue.** The terms, covenants and conditions herein contained constitute the entire agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, provided, however, that service to the Consumer is subject to the provisions of the Articles of Consolidation and Bylaws of Seller and is subject to the lawful orders of the Kentucky Public Service Commission. All respective rights and obligations of the parties shall be governed by the laws of the State of Kentucky. Venue of any action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be Henderson County, Kentucky.

5.50 **Severability.** Should any provision or provisions of this Agreement be declared void or illegal by any court of competent jurisdiction, then such void or illegal provision or provisions shall be severed from this Agreement, and all other provisions hereof shall remain in full force and effect.

\_\_\_\_\_, 2014

Mr. Gregory J. Starheim  
Kenergy Corp.  
6402 Corydon Road  
P.O. Box 18  
Henderson, KY 42419-0018

Re: Retail Electric Service Agreement  
Century Aluminum of Kentucky General Partnership

Dear Greg:

This letter agreement ("*Letter Agreement*") will evidence Big Rivers' concurrence with the terms of Kenergy's electric service agreement with Century Aluminum Sebree LLC (the "*Retail Customer*") dated \_\_\_\_\_, 2014, a copy of which is attached hereto as Exhibit 1 (the "*Alternate Retail Agreement*"), and the agreement between Big Rivers and Kenergy with respect thereto.

(1) **Existing Agreement and Tariffs.** The terms and conditions of the June 11, 1962, wholesale power agreement, as amended, and Big Rivers' filed tariffs shall continue in full force and effect except as expressly modified by this Letter Agreement.

(2) **Additional Rights and Obligations of Big Rivers.** Big Rivers shall make available to Kenergy the electric power required during the term of the Alternate Retail Agreement to perform the power supply obligations assumed by Kenergy in the Alternate Retail Agreement, and Big Rivers shall have the benefit of Retail Customer's covenants in such agreement. Big Rivers will supply the facilities required to deliver power to the delivery point, as defined in the Alternate Retail Agreement, and to meter electrical usage by Retail Customer.

(3) **Obligations of Kenergy.** Kenergy shall take and pay for (i) electric power and energy delivered by Big Rivers in accordance with Big Rivers' Rate Schedule LIC, with demand and energy being measured in accordance with the Alternate Retail Agreement, and (ii) facilities charges incurred by Big Rivers in connection with extending service to the Retail Customer's delivery point. Kenergy will promptly forward to Big Rivers a copy of any notices received by Kenergy from the Retail Customer under the terms of the Alternate Retail Agreement.

(4) **Obligation of Kenergy for Minimum Billing Demand Charge.** Kenergy agrees to bill Retail Customer for any minimum billing demand charges in excess of measured demand.

Kenergy agrees to pay over to Big Rivers all funds actually collected under such billings. The terms of this paragraph do not affect the obligation of Kenergy to pay Big Rivers in accordance with Big Rivers' tariff as and when billed for the wholesale charges for electric power and energy actually consumed by Retail Customer.

(5) **Division of Any Partial Payments.** Kenergy will pay to Big Rivers a pro rata share of any partial payment made to Kenergy by or on behalf of Retail Customer.

(6) **Effective Date.** This Letter Agreement will become effective upon approval or acceptance by the Public Service Commission of Kentucky, and upon receipt of any consents or approvals required under Big Rivers' agreements with its creditors.

(7) **Entire Agreement and Amendment.** This Letter Agreement represents the entire agreement of the parties on the subject matter herein, and cannot be amended except in writing, duly authorized and signed by Big Rivers and Kenergy. The Alternate Retail Agreement cannot be amended without the written approval of Big Rivers. Big Rivers shall have the right to approve the terms and issuer(s) of the letter(s) of credit contemplated by the Alternate Retail Agreement to secure the obligations of the Retail Customer for termination charges.

(8) **Right to Supply from Big Rivers.** Kenergy acknowledges and agrees that Big Rivers has no obligation to serve or supply any wholesale electric services from its system resources for the benefit of all or a portion of the Hawesville smelter owned by Retail Customer, or any affiliates, spin-offs or successors of Retail Customer during the term of the Alternate Retail Agreement or thereafter other than as provided in this Letter Agreement.

If this Letter Agreement is acceptable to Kenergy, please indicate that acceptance by signing in the space provided and returning six signed counterparts to us.

Sincerely yours,  
BIG RIVERS ELECTRIC  
CORPORATION

---

Mark A. Bailey, President/CEO

ACCEPTED:

KENERGY CORP.

---

Gregory J. Starheim  
President/CEO

Date: \_\_\_\_\_, 2014

## ALTERNATE SERVICE AGREEMENT

**THIS AGREEMENT** for Purchase of Power ("Agreement") is made \_\_\_\_\_, ~~2013~~2014, between **KENERGY CORP.**, 6402 Old Corydon Road, Henderson, Kentucky 42420 (hereinafter called the "Seller"), and **CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**~~SEBREE LLC~~ with a service address and corporate address at ~~1627~~OF 9404 State Route 3543, ~~Hawesville, KY 42348~~2096, Henderson, Kentucky ~~42452-9735~~, (hereinafter called the "Consumer").

Seller and Consumer are parties to a retail electric service agreement dated as of July 1, 2009 (the "2009 Agreement"), pursuant to which Seller provides Consumer electric service to Consumer's aluminum smelting facility in ~~Hawesville~~located near Sebree, Kentucky.

Consumer notified Seller on ~~August 20, 2012~~January 31, 2013, that Consumer will terminate the 2009 Agreement on ~~August 20, 2013~~January 31, 2014 (the "Termination Date"), in accordance with the terms of the 2009 Agreement.

Seller and Consumer are negotiating an Electric Service Agreement proposed to be dated as of August 1, 2013 \_\_\_\_\_, 2014 (the "Electric Service Agreement") and related documents, pursuant to which Seller would provide Consumer retail electric service for aluminum smelting operations at Consumer's ~~Hawesville~~Sebree facility; and

Consumer desires to enter into an agreement for a power supply to the same facility for non-smelting operations that will become effective, at Consumer's election, concurrently with the termination date of the 2009 Agreement, or if the Electric Service Agreement is in effect on the Termination Date, again at the election of the Consumer, on the termination date of the Electric Service Agreement.

Accordingly, Seller and Consumer agree as follows:

The Seller shall sell and deliver to the Consumer at the Delivery Point, as defined in Section 1.D. of this Agreement, and the Consumer shall purchase all of the electric power and energy, which the Consumer may need at the aforementioned service address for non-smelting operations, up to ten megawatts (the "Maximum Demand"), except as otherwise provided herein, upon the following terms:

1. **SERVICE CHARACTERISTICS**

- A. Service hereunder shall be alternating current, 3 phase, sixty cycles, nominal 161,000 volts.
- B. The Consumer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of power and shall not sell electric power and energy purchased hereunder. All electric consuming facilities of Consumer shall be connected on the load side of the metering facilities described in Section 1.2221 of Addendum 1.



- C. The Consumer acknowledges that Seller's wholesale power supplier is transmitting electric power and energy to Seller for sale hereunder across the transmission system of Big Rivers Electric Corporation (the "Wholesale Transmission System").
- D. "Delivery Point" shall be defined for purposes of this Agreement, which includes the exhibits and addenda attached hereto, as the existing set of meters at the ~~Coleman~~ Reid Station switchyard owned by Big Rivers Electric Corporation ("Big Rivers"), or such other point of delivery mutually agreed by the parties and Big Rivers.

2. **PAYMENT**

- A. The Consumer shall pay the Seller for service hereunder on and after the "Service Commencement Date" (as defined in Section 6 of this Agreement) at the rates and upon the terms and conditions set forth in Seller's Schedule 35, as it may be amended from time to time. A copy of Seller's current Schedule 35 is attached to and made a part of this Agreement as Exhibit "A." If any terms in this Agreement conflict with any terms in Seller's tariff, the terms in this Agreement shall govern to the extent of the conflict. Notwithstanding any provision of Schedule 35 and irrespective of Consumer's requirements for or use of electric power and energy, the Billing Demand (as used in Schedule 35) shall be the higher of actual demand (defined as the customer's maximum integrated thirty-

minute demand at such delivery point during each billing month, determined by meters which record at the end of each thirty-minute period the integrated kilowatt demand during the preceding thirty minutes) and 60% of the Maximum Demand per billing period (per month)("Contract Demand") until modified.

- B. **[RESERVED]**
- C. **[RESERVED]**
- D. Bills for service hereunder shall be paid by wire transfer at the office of the Seller at Kenergy Corp, 6402 Old Corydon Rd., Henderson, KY 42420.
- E. Such payments shall be due on the 25<sup>th</sup> day of each month for service furnished during the preceding monthly billing period.
- F. If the Consumer shall fail to make any such payment when due, the Seller may discontinue service to the Consumer upon giving fifteen (15) days' written notice to the Consumer of its intention so to do, provided, however, that such discontinuance of service shall not relieve the Consumer of any of its obligations under this Agreement.
- G. The Consumer agrees that if, at any time, the rate under which the Seller purchases electric service at wholesale is modified, the Seller may make, subject to Commission approval, an equivalent modification in the rate for service hereunder.
- H. Consumer's payment obligations under this Section 2 shall survive termination of this Agreement.

3. **MEMBERSHIP**

The Consumer shall remain a member of the Seller and be bound by such generally applicable rules and regulations as may from time to time be adopted by the Seller.

4. **CONTINUITY OF SERVICE**

The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective through act of God, governmental authority, action of the elements, public enemy, accident, strikes, labor trouble, required maintenance work, inability to secure right-of-way, or any other cause beyond the reasonable control of Seller, then Seller shall not be liable therefor or for damages caused thereby.

5. **RIGHT OF ACCESS**

Duly authorized representatives of the Seller shall be permitted to enter the Consumer's premises at all reasonable times in order to carry out the provisions hereof.

6. **TERM AND SERVICE COMMENCEMENT DATE**

This Agreement, except for the electric service obligations hereunder, shall become effective as provided in the Recitals and section 6A below, subject to receipt of the last of the approvals referred to below in Section 8, and shall remain in effect during the Term, as defined in this Agreement. The electric service obligations hereunder shall become effective, and the delivery of electric service

under this Agreement shall commence (the "Service Commencement Date"), upon the occurrence or completion of the last of the following conditions:

- A. Receipt by Seller of written notice from Consumer to Seller of the Service Commencement Date requested by it, which date (i) shall be the later to occur of the Termination Date and the date on which the Electric Service Agreement, if it becomes effective, terminates and smelting operations at Consumer's Hawesville facility cease, and (ii) shall be received by Seller no less than 15 calendar days before the specified Service Commencement Date;
- B. Consumer has notified Seller, in writing concurrently with the Service Commencement Date notice, which one of the ~~five~~four existing 161 kV transmission lines currently serving the Hawesville~~Sebree~~ smelter shall be used to provide service under this Agreement at 161 kV to Consumer's facility on and after the Service Commencement date, with the understanding that all remaining transmission lines will be de-energized by Seller's transmission provider;
- C. Provision by Consumer of the deposit or other guaranty required by Section 7 of this Agreement; and
- C. Performance by Consumer of any other obligations under this Agreement that are required as a condition of commencement of service.

The term of this Agreement shall be ten (10) years following the Service Commencement Date, and thereafter until and unless terminated by either party giving to the other three (3) ~~months~~months' notice in writing (the "Term").

7. **CONSUMER DEPOSIT**

- A. As security for payment of its monthly billing obligations, Consumer shall further be required to provide Seller a cash deposit or provide an irrevocable bank letter of credit representing two (2) months' estimated billing, which amount will be estimated by Seller and provided to Consumer in writing no more than 10 days after receipt by Seller of Consumer's Service Commencement Date notice. The amount of this security for payment shall increase if the Maximum Demand increases, or if Seller's rates for service increase.
- B. Any cash deposit will earn interest in accordance with law, and interest earned will be paid annually to Consumer. Letters of credit must be approved in advance by Seller as to form and issuer. Annually the Parties shall adjust the deposit or bank letter of credit required by Paragraph 7A reasonably to reflect changes in the amounts of the obligations of Consumer secured by the deposit or bank letter(s) of credit.
- C. Consumer's obligations under this Section 7 shall survive termination of this Agreement to the extent necessary to provide security for payment of any outstanding monthly billing obligations that exist as of the date of termination.

8. **SUCCESSION AND APPROVAL**

This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the respective parties hereto and may be assigned by Consumer with the consent of Seller, which consent shall not

be unreasonably withheld. Any assignment of this Agreement by Consumer shall not relieve Consumer of its obligations to Kenergy hereunder unless Consumer has been expressly relieved of those obligations by Kenergy, in writing. This Agreement shall not be effective unless (i) it is approved or accepted in writing by the Kentucky Public Service Commission ("KPSC"), and (ii) Seller's wholesale agreement with Big Rivers regarding service to Consumer has received all approvals required by Seller's and Big Rivers' credit agreements, and is approved or accepted in writing by the KPSC.

9. **ADDENDA**

The addenda to this Agreement are attached hereto and incorporated herein as a part of this agreement for electric service.

10. **INDEMNIFICATION**

Consumer agrees to indemnify and hold Seller harmless from and against any and all claims, demands, damages, judgments, losses or expenses asserted against Seller by or on behalf of Big Rivers arising out of, related to or concerning damage to the Wholesale Transmission System, or any system or electric consuming facilities connected to the Wholesale Transmission System, resulting from Consumer's operations, activities or usage of electric power and energy hereunder.

11. **NOTICE TO BIG RIVERS**

Any notice from Consumer to Seller required by the terms of this Agreement shall be given concurrently to Big Rivers Electric Corporation, 201 Third Street,

Henderson, KY 42420, Attn: President and CEO, using the same methodology required by this Agreement for notice to Kenergy.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement all as of the day and year first above written.

**KENERGY CORP.**  
**Seller**

By \_\_\_\_\_

Printed Name Gregory J. Starheim

Title President and CEO

LLC

**CENTURY ALUMINUM OF KENTUCKYSEBREE**

**GENERAL PARTNERSHIP**  
**Consumer**

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

## **ADDENDA TO ALTERNATE SERVICE AGREEMENT**

### **ADDENDUM 1**

#### **1.10 Facilities to be Provided by Consumer.**

1.11 Consumer has provided or shall provide, without cost to Seller or Big Rivers all easements for rights-of-way upon Consumer's property at the ~~Hawesville~~Sebree smelter (at such locations and of such dimensions as may be mutually agreed upon) for Big Rivers' transmission lines, and for any Kenergy distribution lines for service to Consumer. Consumer has furnished and installed, shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased under the Agreement at and from Consumer's substation located adjacent to the ~~Hawesville~~Sebree smelter.

1.12 Except as provided in Section 1.20 of this Addendum, Consumer shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from Consumer's Substation, including but not limited to (i) such protective devices as may be reasonably necessary in the opinion of the Seller to protect the system of the Seller or the Wholesale Transmission System from disturbances caused by Consumer, (ii) voltage regulation capability in the Consumer-provided electrical facilities sufficient to meet the operating requirements of all



Consumer's equipment over the full range of acceptable transmission delivery voltage, and (iii) protection devices as needed to prevent damage to that equipment during voltage excursions outside of the full range of acceptable transmission delivery voltage. Plans for equipment to be installed for such protection shall be submitted to Seller for prior approval, which shall not be unreasonably withheld.

1.20 **Facilities to be Provided by Seller.**

1.21 Seller has caused to be furnished and installed, or shall cause to be furnished and installed, all of the facilities required for the delivery of electric power and energy to the Delivery Point, as well as the 161 kilovolt transmission lines required between the Delivery Point and Consumer's electrical substation that is designated by Consumer under Section 6.B. of the Agreement. Seller shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment, necessary to deliver electric power and energy to Consumer's Substation . Seller will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Prudent Utility Practice, to the extent necessary to assure sufficient capability to take and use the electric power and

energy delivered by Seller to Consumer as provided for in the Agreement.

1.22 Seller acknowledges Consumer's need, from time to time, to perform scheduled maintenance on its substation equipment, and agrees that upon minimum 30 days written notice it will arrange, or cause to be arranged, service during the period of the scheduled maintenance activities using one of the 161 kV transmission lines that was de-energized on the Service Commencement Date.

1.30 **Construction Standards.** Consumer shall construct and maintain any facilities it builds under an obligation created by this Agreement in accordance with applicable provisions of the National Electrical Safety Code of the American National Standards Institute (ANSI C2), and other applicable laws, codes and regulations, provided however Seller shall have no duty to inspect those facilities for conformance with such standards or have any responsibility for the means, methods or techniques employed by Consumer or its contractor in the construction of these facilities. Each party shall own, maintain and operate the facilities it purchases and installs.

1.40 **Electric Disturbances and Phase Balancing.**

- (a) Consumer shall not use the power and energy delivered under this Agreement in such manner as to cause a "System Disturbance." A System Disturbance is a use of electric power and energy which directly or indirectly results in a risk of harm to human beings or material damage to or interference with the transmission system of Seller's wholesale power supplier (the "Wholesale Transmission System"), a system connected with the Wholesale Transmission System or facilities or other property in

proximity to the Wholesale Transmission System, or the plant, facility, equipment or operations of any other customer served directly or indirectly from the Wholesale Transmission System. A System Disturbance includes, but is not limited to: (a) Harmonic Distortion: a level of current harmonic total demand distortion (TDD) measured at the Delivery Point that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and, (b) Phase Imbalance: a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at the Delivery Point.

- (b) Seller may require Consumer, at Consumer's expense, to make such changes in its system as may be reasonably necessary to eliminate System Disturbances. If Consumer's use of power and energy creates an imbalance between phases that causes a System Disturbance, and fails to make changes in its system requested by Seller to correct such condition, in addition to any other remedies it has Seller make, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.
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adjustment of the maximum monthly metered demand for billing purposes in accordance with the following formula:

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- (d) Consumer acknowledges and agrees that Seller shall have no responsibility for damage to any property, or to any equipment or devices connected to Consumer's electrical system on Consumer's side of the Delivery Point that results solely from acts or omissions of Consumer, its employees, agents, contractors or invitees, or malfunction of any equipment or devices connected to Consumer's electrical system on Consumer's side of the Delivery Point.

**ADDENDUM 2**

[Reserved]

**ADDENDUM 3**

**Force Majeure.** In the event performance of this Agreement is limited or prevented in whole or in part by Acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government (whether federal, state, or local, civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, or inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, civil or military), upon such party's giving notice and reasonably full particulars of such force

majeure or uncontrollable force, in writing or by telegraph to the other party within a reasonable time after the occurrence of the cause relied on, the party whose performance is so limited or prevented shall be excused, discharged and released from the performance to the extent such performance is limited or prevented, but only for the period when the performance is limited or prevented and thereafter all of the terms of this Agreement shall remain in effect except that the term of the agreement shall be extended for a period equal to the duration of the aforesaid force majeure. A minimum bill due during a billing period when a force majeure event occurs shall be prorated based upon the duration of the period of force majeure, but nothing contained herein shall excuse Consumer from the obligations of paying at the time provided herein, for any power consumed by it. In no event shall this Agreement subject either party to liability for consequential or incidental damages, or damages for loss of anticipated profits.

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**Successors in Interest.** Consumer may with written approval of the Seller assign or transfer this Agreement and such approval shall not be unreasonably withheld. In such event such assignee or transferee shall assume all obligations or responsibilities of Consumer under this Agreement.

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Attention: President & CEO  
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Henderson, Kentucky 42419-0018

And concurrently to:

Big Rivers Electric Corporation  
Attention: President & CEO  
201 Third Street  
Henderson, KY 42420

Any such notice, demand or request shall be deemed properly given to or served on Consumer if mailed to:

~~Century Aluminum of Kentucky General Partnership~~ Sebree LLC  
c/o Plant Manager  
~~16279404~~ State Route ~~35432096~~  
~~Hawesville~~ Henderson, KY 4234842452-9735

And concurrently to:

Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606

\_\_\_\_\_ Attn: General Counsel

5.40 **Jurisdiction and Venue.** The terms, covenants and conditions herein contained constitute the entire agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, provided, however, that service to the Consumer is subject to the provisions of the Articles of Consolidation and Bylaws of Seller and is subject to the lawful orders of the Kentucky Public Service Commission. All respective rights and obligations of the parties shall be governed by the laws of the State of Kentucky. Venue of any action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be Henderson County, Kentucky.

5.50 **Severability.** Should any provision or provisions of this Agreement be declared void or illegal by any court of competent jurisdiction, then such void or illegal provision or provisions shall be severed from this Agreement, and all other provisions hereof shall remain in full force and effect.





Alternate Retail Agreement, and (ii) facilities charges incurred by Big Rivers in connection with extending service to the Retail Customer's delivery point. Kenergy will promptly forward to Big Rivers a copy of any notices received by Kenergy from the Retail Customer under the terms of the Alternate Retail Agreement.

(4) **Obligation of Kenergy for Minimum Billing Demand Charge.** Kenergy agrees to bill Retail Customer for any minimum billing demand charges in excess of measured demand. Kenergy agrees to pay over to Big Rivers all funds actually collected under such billings. The terms of this paragraph do not affect the obligation of Kenergy to pay Big Rivers in accordance with Big Rivers' tariff as and when billed for the wholesale charges for electric power and energy actually consumed by Retail Customer.

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(6) **Effective Date.** This Letter Agreement will become effective upon approval or acceptance by the Public Service Commission of Kentucky, and upon receipt of any consents or approvals required under Big Rivers' agreements with its creditors.

(7) **Entire Agreement and Amendment.** This Letter Agreement represents the entire agreement of the parties on the subject matter herein, and cannot be amended except in writing, duly authorized and signed by Big Rivers and Kenergy. The Alternate Retail Agreement cannot be amended without the written approval of Big Rivers. Big Rivers shall have the right to approve the terms and issuer(s) of the letter(s) of credit contemplated by the Alternate Retail Agreement to secure the obligations of the Retail Customer for termination charges.

(8) **Right to Supply from Big Rivers.** Kenergy acknowledges and agrees that Big Rivers has no obligation to serve or supply any wholesale electric services from its system resources for the benefit of all or a portion of the Hawesville smelter owned by Retail Customer, or any affiliates, spin-offs or successors of Retail Customer during the term of the Alternate Retail Agreement or thereafter other than as provided in this Letter Agreement.

If this Letter Agreement is acceptable to Kenergy, please indicate that acceptance by signing in the space provided and returning six signed counterparts to us.

Sincerely yours,  
BIG RIVERS ELECTRIC  
CORPORATION

Mark A. Bailey, President/CEO

ACCEPTED:

KENERGY CORP.

---

Gregory J. Starheim  
President/CEO

Date: ~~August 19, 2013~~                     , 2014

# **LOAD CURTAILMENT AGREEMENT**

Dated as of January [ ], 2014

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.**

and

**CENTURY ALUMINUM SEBREE LLC**

## LOAD CURTAILMENT AGREEMENT

This LOAD CURTAILMENT AGREEMENT ("Agreement") is made and entered into as of January [ ], 2014, by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers"), KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and CENTURY ALUMINUM SEBREE LLC, a Delaware limited liability company ("Century"). Big Rivers, Kenergy and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Big Rivers is a member of Midcontinent Independent System Operator, Inc. ("MISO"), a regional transmission organization as defined and approved by the Federal Energy Regulatory Commission ("FERC").

B. From time to time, MISO, the reliability coordinator for the service territories served by Big Rivers' members, directs Big Rivers, the local balancing authority for such service territories, to curtail load or suspend or reduce the provision of electric services within all or a portion of its members' service territories.

C. Century owns and operates an aluminum reduction plant in Robards, Kentucky (the "Sebree Smelter") in Kenergy's service territory and will purchase electric services pursuant to an Electric Service Agreement, dated as of the date hereof, with Kenergy (the "Electric Service Agreement").

D. Kenergy will purchase wholesale electric energy and related services for resale to Century from Big Rivers pursuant to an Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"). In the future, Kenergy may purchase wholesale electric energy and related services from others under different agreements to serve Century under the Electric Service Agreement.

E. It is a condition precedent to the Effective Date (as defined in the Electric Service Agreement) that Century shall have authorized, executed and delivered this Agreement to Kenergy and Big Rivers.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

#### ARTICLE 1

##### DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms used and defined in this Agreement have the meanings specified herein. Capitalized terms used in this Agreement but not defined herein have the meanings given to such terms in the Electric Service Agreement. If the Electric Service

Agreement is terminated prior to the satisfaction in full of all obligations of the Parties hereunder, capitalized terms defined by reference to the Electric Service Agreement shall have the meanings at the time of termination.

1.2 Rules of Interpretation. The rules of interpretation set forth in Section 1.2 of the Electric Service Agreement shall apply as though fully set forth herein.

## ARTICLE 2

### TERM AND TERMINATION

2.1 Term. This Agreement will become binding on the Parties following execution and delivery as of the date hereof and will remain in full force and effect until terminated by mutual agreement of the Parties in writing.

## ARTICLE 3

### CURTAILMENT

3.1 Effect and Precedence. Notwithstanding anything to the contrary in any other Transaction Document, the Tariff or any other tariff or agreement among or between one or more of the Parties, the terms and conditions of this Agreement shall, during the term hereof (a) govern the curtailment of load or the suspension or reduction of the delivery of Energy and other Electric Services to Century as a result of a Curtailment Event (as defined in Section 3.2), (b) the consequences of any such events, and (c) in the event of a conflict with the terms or conditions of any other Transaction Document, the Tariff or any other tariff or agreement among or between one or more of the Parties, supersede, take precedence over and control over any such terms or conditions of any such other Transaction Documents, the Tariff or any other tariff or agreement. For the avoidance of doubt, the Parties intend that this Agreement result in Century's Load being curtailed prior to the curtailment of other Persons' loads as provided in Section 3.3.1.

3.2 Curtailment Event. A "Curtailment Event" shall have occurred if (a) MISO, (b) any other applicable RTO or ISO, if Big Rivers joins or is a member of another RTO or ISO, (c) any Governmental Authority having the requisite jurisdiction, or (d) any local balancing authority, curtails, suspends or reduces or directs or causes the curtailment, suspension or reduction, in whole or in part, of Load or the delivery of Electric Services in the area subject to the local balancing authority encompassing service territory of any Big Rivers' member. If Big Rivers is making the determination whether a Curtailment Event has occurred, Big Rivers shall make such determination in accordance with all Applicable Laws of a FERC-approved ERO, SERC or any applicable RTO, ISO or other Governmental Authority, or other applicable operating criteria or rules.

3.3 Curtailment.

3.3.1 Upon the occurrence of a Curtailment Event, Big Rivers may (i) curtail the load of the Sebree Smelter or otherwise suspend or reduce or cause the curtailment of load or the suspension or reduction of, in whole or in part, the delivery of Electric Services to Century under the Transaction Documents or otherwise, or (ii) cease to make available, or direct any other Market Participant, Kenergy, any Bilateral Counterparty or other Person, as applicable, to so

suspend, reduce or cease to make available, in whole or in part, any Electric Services to Century, in either case, without the need to curtail the load of any other Person, if such curtailment of Century would or is anticipated to prevent, counter or reduce the effects of, the conditions or circumstances giving rise to the Curtailment Event that has occurred or is reasonably likely to occur.

3.3.2 Notwithstanding anything to the contrary herein or in any other Transaction Document or other agreement among or between one or more Parties, Century will curtail its load and will not receive or seek delivery of Electric Services to the extent suspended or reduced, or attempted to be suspended or reduced, pursuant to this Agreement.

3.3.3 Neither Big Rivers nor Kenergy shall be liable for, and both shall be held harmless by Century for, any losses or damages suffered by Century or its affiliates related to or resulting or arising from any curtailment of load or suspension, reduction or cessation of the delivery of Energy or other Electric Services pursuant to this Agreement.

3.4 CENTURY ACKNOWLEDGEMENT OF PRECEDENCE OF CURTAILMENT. CENTURY ACKNOWLEDGES AND AGREES THAT (a) CENTURY BELIEVES THAT THIS AGREEMENT ECONOMICALLY BENEFITS IT BECAUSE ENTERING INTO THIS AGREEMENT IS A CONDITION PRECEDENT TO THE EFFECTIVE DATE OF SERVICE UNDER THE ELECTRIC SERVICE AGREEMENT, (b) FOR THIS REASON, CENTURY'S LOAD MAY BE CURTAILED OR THE DELIVERY OF ELECTRIC SERVICES SUSPENDED OR REDUCED EVEN IF NO OTHER LOAD SERVED BY OR THROUGH BIG RIVERS OR KENERGY IS CURTAILED AND NO OTHER ELECTRIC SERVICES TO A MEMBER OR CUSTOMER OF BIG RIVERS OR KENERGY ARE REDUCED OR SUSPENDED; (c) NONE OF CENTURY, CENTURY PARENT, OR ANY OF THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS WILL SUPPORT OR SEEK, DIRECTLY OR INDIRECTLY, FROM ANY GOVERNMENTAL AUTHORITY, INCLUDING MISO, ANY CHALLENGE OR CHANGE TO THE RIGHTS OF BIG RIVERS OR KENERGY TO CURTAIL, SUSPEND, REDUCE OR CEASE TO MAKE AVAILABLE ELECTRIC SERVICES ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. Nothing in this Section 3.4 shall limit the right of a Party to seek to enforce the terms of this Agreement pursuant to Section 6.6 as a result of the breach of, or a default under, this Agreement by the other Party.

3.5 Notice to and Curtailment by Century. Big Rivers shall notify Kenergy and Century as soon as practicable as to the occurrence or reasonable likelihood of any Curtailment Event, its cause and its impact on the provision of Electric Services under the Arrangement Agreement, the Electric Service Agreement or any Bilateral Contract. Big Rivers shall use reasonable efforts (a) to notify Century of the amount of any curtailment and the timeframe necessary to address, prevent, counter or reduce the effects of a Curtailment Event that has occurred or is reasonably likely to occur; (b) to provide Century the opportunity to curtail its load prior to Big Rivers or Kenergy taking any action pursuant to Section 3.3; and (c) to minimize the duration and amount of any curtailment; *provided*, that (i) nothing in this Section 3.5 shall prohibit Big Rivers and Kenergy from curtailing Century's load, or suspending or reducing deliveries of Energy or other Electric Services under the Arrangement Agreement, the Electric Services Agreement, or any Bilateral Contract, as applicable, if Big Rivers believes, in its sole

discretion, that delaying any such action would adversely impact the ability of Big Rivers or Kenergy to address, prevent, counter or reduce the effects of a Curtailment Event that has occurred or is reasonably likely to occur, (ii) no notification shall be required with respect to the operation of any special protection system or other automated system that may curtail load or suspend or reduce the delivery of any Electric Services, and (iii) the sole remedy for any breach or default of clause (c) above shall be the enforcement of any such obligation by the applicable Governmental Authority establishing the obligation relating to curtailment and no private right or cause of action in favor of any Person will arise as a result of any alleged or actual breach or default of Big Rivers' obligations under such clause.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to each other Party as of the date hereof as follows:

4.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Agreement.

4.2 Due Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by such Party, and assuming the due authorization, execution and delivery of this Agreement by each other Party, constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

4.3 No Violation. The execution and delivery of this Agreement by such Party and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to such Party or its organizational documents or by-laws, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

4.4 Approvals. Except as set forth on Exhibit A, no approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which such Party is subject is required for the due execution, delivery or performance by it of this Agreement. There are no conditions to the effectiveness of this Agreement with respect to such Party that have not been satisfied or irrevocably waived.

4.5 Proceedings. There is no pending or, to such Party's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) questions the validity of this Agreement or the ability of such Party to perform its obligations hereunder, (b) affects or relates to any approval,

authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, or (c) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

4.6 Independent Decision. Such Party has, independently and without reliance upon any other Party and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement.

## **ARTICLE 5**

### **INDEMNIFICATION**

5.1 General. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, Century hereby agrees that it will pay, and will protect, indemnify, and hold harmless each of Big Rivers and Kenergy and each of their respective members, designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject (excluding, with respect to any Indemnified Person, such losses, claims, damages, liabilities, costs and other expenses due to its gross negligence or willful conduct), whether incurred directly or incurred based on claims of third Persons, arising out of or relating to the performance or failure to perform under this Agreement, whether arising before or after the date hereof, including any or all of the following (each, an "Indemnified Liability"):

5.1.1 Damage to or destruction of any plant, machinery or equipment of any Person relating to or arising out of a curtailment of load or the suspension or reduction of Electric Services to Century pursuant to this Agreement;

5.1.2 Fines, penalties or other consequences resulting from a curtailment of load or the suspension or reduction of Electric Services to Century pursuant to this Agreement, including assessments of Governmental Authorities, including MISO, NERC or SERC, or the failure to obtain or maintain, or satisfy any obligations relating to, any required Approval;

5.1.3 The out-of-pocket costs to obtain any consent or approval of any Person necessary for the implementation of or performance under this Agreement; or

5.1.4 Any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing Subsections 5.1.1 through 5.1.3, whether based on contract, tort or any other theory, whether brought by any third party or by Century or otherwise, and regardless of whether any Indemnified Person is a party thereto, such Subsections 5.1.1 through 5.1.3 including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with the recovery of costs under the provisions of this Section 5.1



5.2 Primary Indemnity. Except to the extent there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of Century under this Agreement.

5.3 Payments.

5.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate plus two percent (2%). Each such Indemnified Person shall promptly notify Century in a timely manner of any such amounts payable by Century hereunder; *provided*, that any failure to provide such notice shall not affect Century's obligations under this Article 5.

5.3.2 Any amounts payable by Century pursuant to this Article 5, shall be payable within the later to occur of (i) ten (10) Business Days after Century receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which Century's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate plus two percent (2%) from and after such applicable date until paid in full.

5.3.3 If any portion of any amounts invoiced hereunder is disputed by Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, the applicable Indemnified Person shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate plus two percent (2%) commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made.

5.4 Survival. The provisions of this Article 5 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

5.5 Subrogation. Upon payment by Century pursuant to this Article 5 of any claim under Section 5.1 in respect of any Indemnified Liability, Century, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of Century cooperate with Century and give at the request and expense of Century such further assurances as are necessary or advisable to enable Century vigorously to pursue such claims.

## ARTICLE 6

### MISCELLANEOUS

6.1 Entire Agreement; Effect of Agreement; Century Parent Guarantee.

6.1.1 This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, with respect to the subject matter hereof. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied

upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in this Agreement.

6.1.2 Notwithstanding Section 6.1.1, except as expressly set forth herein, this Agreement shall not, and is not intended to be construed or interpreted to, alter, modify or amend or in any affect the terms, conditions, obligations, covenants, agreements, representations or warranties contained in the Arrangement Agreement, the Electric Service Agreement or any other Transaction Document. The Transaction Documents are hereby ratified and affirmed in all respects and shall continue in full force and effect.

6.1.3 This Agreement shall constitute a “Transaction Document” as such term is defined in the Electric Service Agreement, and as such, any and all of the obligations of Century hereunder are guaranteed by Century Aluminum Company, a Delaware corporation (“Century Parent”) pursuant to the Guarantee, made by and entered into as of the date hereof, by Century Parent in favor of Kenergy and Big Rivers (the “Guarantee”). By acknowledging and accepting this Agreement, Century Parent acknowledges and agrees that Century’s obligations hereunder shall be “Guaranteed Obligations” guaranteed by it under Section 2 of the Guarantee.

6.2 Waiver. The waiver by a Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

6.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person’s address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person’s address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person’s address. A notice given to a Person in accordance with this Section 6.3 will be deemed to have been delivered (i) if personally delivered to a Person’s address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person’s facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if such day is a Business Day, or otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person’s address. For the purpose of this Section 6.3, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party in accordance with this Section 6.3:

If to Big Rivers:           Big Rivers Electric Corporation  
  201 Third Street  
  Henderson, Kentucky 42420  
  Attn: President and CEO  
  Fax: (270) 827-2558

If to Kenergy:               Kenergy Corp.

6402 Old Corydon Road  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 826-3999

If to Century: Century Aluminum Company  
9404 State Route 2096  
Robards, KY 42420  
Attn: Plant Manager  
Fax: (270) 521-7305

With copy to: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 6.4 Successors and Assigns.

6.4.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by any Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Parties, except as provided in Section 6.4.4, and except that, subject to satisfaction of the conditions of Section 6.4.2, assignment may be made by a Party to such Person as acquires all or substantially all the assets of the assigning Party or that merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

6.4.2 In no event may a Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Parties or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

6.4.3 No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

6.4.4 A Party may, without the approval of any other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of

trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

6.5 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

6.6 Jurisdiction. The Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes, claims or controversies hereunder (“Disputes”), *provided* that the subject matter of such Dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section 6.6 and any claim that such action, suit or proceeding brought in accordance with this Section 6.6 has been brought in an inconvenient forum. Nothing in this Section 6.6 prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of any Governmental Authority over Kenergy or Big Rivers. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process at the address set forth in Section 6.3, and agrees that such service shall be, for all purposes, good and sufficient.

6.7 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

6.8 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

6.9 No Power Sales Commitment. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers or Kenergy to sell to Century, or an agreement of Century to purchase from Big Rivers or Kenergy, any electric energy or ancillary or related services, including reactive power.

6.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

CENTURY ALUMINUM SEBREE LLC

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and accepted for purposes of Section 6.1.3 hereof:

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**REQUIRED CONSENTS**

Approval by the Kentucky Public Service Commission, if the Kentucky Public Service Commission determines that its approval of this Agreement is required.