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JUN 23 2014

PUBLIC SERVICE
COMMISSION

June 20, 2014

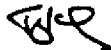
Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric
Corporation, P.S.C. Case No. 2014-00166

Dear Mr. Derouen:

Enclosed are an original and ten copies of Big Rivers Electric Corporation's Response to the Petition for Full Intervention filed jointly by Century Aluminum of Kentucky General Partnership and Century Aluminum Sebree LLC. I certify that on this date, a copy of this letter and a copy of the response were served on the persons listed on the attached service list by first-class mail.

Sincerely,



Tyson Kamuf

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Enclosures

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1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
3
4

5 In the Matter of:

6
7 THE 2014 INTEGRATED RESOURCE PLAN OF) CASE NO. 2014-00166
8 BIG RIVERS ELECTRIC CORPORATION)
9

10
11 **RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO THE PETITION FOR**
12 **FULL INTERVENTION FILED BY CENTURY ALUMINUM OF KENTUCKY**
13 **GENERAL PARTNERSHIP AND CENTURY ALUMINUM SEBREE LLC**
14

15 Comes now Big Rivers Electric Corporation (“Big Rivers”), through counsel, and hereby
16 submits its response to the Petition for Full Intervention (“Petition”) filed jointly by Century
17 Aluminum of Kentucky General Partnership and Century Aluminum Sebree LLC (together,
18 “Century”). Century’s Petition should be denied for the following reasons.

19 **I. Century does not have the requisite interest to satisfy the statutory limitation on**
20 **intervention.**

21 The Kentucky Public Service Commission (“Commission”) explained in a recent Big
22 Rivers case how it analyzes motions to intervene:

23 In analyzing the instant petition to intervene, the Commission finds that the only
24 person that has a statutory right to intervene is the AG, pursuant to KRS
25 367.150(8)(b). Intervention by all others is permissive and is within the sound
26 discretion of the Commission. In the recent unreported case of *EnviroPower,*
27 *LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007
28 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this
29 Commission retains power in its discretion to grant or deny a motion for
30 intervention, but that discretion is not unlimited. The Court then enumerated the
31 statutory and regulatory limits on the Commission's discretion in ruling on
32 motions for intervention. The statutory limitation, KRS 278.040(2), requires that
33 the person seeking intervention have an interest in the rates or service of a utility,
34 as those are the only two subjects under the jurisdiction of the Commission. The
35 regulatory limitation of 807 KAR 5:001, Section 4(11)(b) requires that a person
36 demonstrate a special interest in the proceeding which is not otherwise adequately
37 represented or that intervention is likely to present issues or develop facts that

1 assist the Commission in fully considering the matter without unduly
2 complicating or disrupting the proceedings.¹

3
4 Century's alleged interests are (i) "as a transmission customer," and (ii) as a potential purchaser
5 of the Coleman Generating Station."² Neither of these alleged interests satisfies the statutory
6 limitation on intervention.

7 **A. Century's alleged interest as a transmission customer does not satisfy the**
8 **statutory limitation on intervention.**

9 Century's asserted interest of being a transmission customer relates to its claims that (i)
10 the idling of the Coleman Generating Station ("Coleman") imposes "a significant risk that the
11 transmission system could not reliably deliver the full amount of power needed by the
12 Hawesville smelter"³; (ii) Big Rivers' refusal to agree to perform live-line transmission
13 maintenance "increased the risk that the Hawesville smelter would be curtailed;" and (iii) "Big
14 Rivers' resource plans will have a direct and substantial impact on the reliability and cost of
15 transmission service to both Century smelters."⁴ Interestingly, Century ignores the fact that its
16 alleged transmission reliability concerns relate to the regional transmission system, and are
17 within the control of the Midcontinent Independent System Operator, Inc. ("MISO") and the
18 Federal Energy Regulatory Commission ("FERC"), not Big Rivers⁵ or the Commission. Century
19 purchases transmission services from MISO, not Big Rivers. Century is also a member of
20 MISO, where it can make known its views not only on regional transmission expansion, but also

¹ Order dated April 17, 2013, in *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, PSC Case No. 2012-00535 (footnotes omitted); see also Order dated October 2, 2012, in *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, PSC Case No. 2012-00222.

² Century's Petition ¶ 3.

³ Century's Petition, page 2.

⁴ *Id.*

⁵ Big Rivers transferred functional control of its transmission system to MISO effective December 1, 2010, pursuant to the authority granted by the Commission in its order dated November 11, 2010, in Case No. 2010-00043.

1 MISO-wide transmission expansion planning. The reliability of the regional transmission system
2 is not a subject for a Big Rivers Integrated Resource Plan (“IRP”) review proceeding, and as
3 such, Century’s interest in the reliability of the regional transmission system is not a relevant
4 interest.

5 Moreover, there is no transmission reliability issue created by the idling of Coleman.
6 Century designed, installed and paid for a Special Protective Scheme (“SPS”) system at its
7 Hawesville smelter that assures the reliability of the transmission system, and was the basis on
8 which MISO terminated the System Support Resource (“SSR”) status of Coleman. Century has
9 testified that once it had its SPS system in place it would tell Big Rivers that it wanted the SSR
10 terminated, and it would be prepared to operate voluntarily with the resulting curtailment risk.⁶
11 That is what has occurred. If there was a transmission reliability issue, MISO would require Big
12 Rivers to continue to operate Coleman.

13 The Commission has already twice declined Century’s exhortations to force Big Rivers to
14 perform live-line transmission maintenance, finding that the subject is one for private contract
15 negotiations.⁷ The interest of Century in a subject that the Commission will not hear is
16 obviously not a relevant interest that supports intervention in an IRP review proceeding.

17 Century’s claim that “Big Rivers’ resource plans will have a direct and substantial impact
18 on the reliability and cost of transmission service to both Century smelters” is likewise not a
19 relevant interest. Again, the reliability of the regional transmission system is a subject within the
20 control of MISO and FERC and not a Big Rivers IRP review proceeding. Big Rivers’
21 transmission rates are not under review in this case, and are not even under the Commission’s

⁶ *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, transcript of July 30, 2013 hearing, 16:57 p.m.-16:59 p.m.

⁷ Order dated August 14, 2013, in Case No. 2013-00221 at pp. 12-13; order dated January 30, 2014, in Case No. 2013-00413 at p. 18.

1 jurisdiction, as those rates are established pursuant to the MISO tariff and are approved by
2 FERC.

3 As such, Century's asserted interest of being a transmission customer does not satisfy the
4 statutory limitation on intervention.

5 **B. Century's alleged interest as a potential purchaser of Coleman does not satisfy**
6 **the statutory limitation on intervention.**

7 Century's other alleged interest is of being a potential purchaser of Coleman. If Century
8 is seriously interested in purchasing Coleman, its interests are: (i) forcing sale of Coleman to the
9 exclusion of all other alternatives under Big Rivers' load loss mitigation plan for dealing with
10 Coleman; (ii) causing the sale to take place on terms that are the most advantageous for the
11 buyer; and (iii) assuring that it is the purchaser. Using this IRP review proceeding as a
12 leveraging tool for a potential private commercial negotiation is not dissimilar to tactics it has
13 used before. In February of 2013, Century suspended negotiations on the contracts under which
14 it now receives electric service to present legislation to the General Assembly that the sponsor in
15 the House of Representatives candidly described as being designed to give Century more
16 bargaining power in its negotiations of those contracts.⁸ Century's potential interest in
17 purchasing Coleman under circumstances and on terms that disfavor Big Rivers' members is not
18 a proper interest for granting Century intervention in this IRP proceeding.

19 In response to EnviroPower's petition to intervene in an East Kentucky Power
20 Cooperative proceeding, the Commission ruled:

21 EnviroPower is not a customer of East Kentucky Power, but is an unsuccessful
22 bidder in a competitive power solicitation. To the extent that EnviroPower seeks
23 assurance that its bid was properly evaluated, its interests coincide with those of
24 East Kentucky Power's ratepayers. However, EnviroPower clearly has a

⁸ Comments of Representative Tommy Thompson before the House Standing Committee on Natural Resources and Environment, February 14, 2013.

1 pecuniary interest to challenge any bid evaluation process that results in the
2 rejection of its bid and that interest does not coincide with the interests of
3 ratepayers. Under these circumstances, the Commission finds that EnviroPower's
4 request for full intervention should be denied⁹

5
6 Century's pecuniary desires in this proceeding similarly do not coincide with the interests of
7 ratepayers, and the Commission should find that Century does not have a legitimate interest
8 entitling it to intervene.

9 **II. Century does not have the requisite special interest to satisfy the regulatory**
10 **limitation on intervention.**

11 As noted above, the regulatory limitation on intervention "requires that a person
12 demonstrate a special interest in the proceeding which is not otherwise adequately represented or
13 that intervention is likely to present issues or develop facts that assist the Commission in fully
14 considering the matter without unduly complicating or disrupting the proceedings."¹⁰ Century's
15 asserted interest in regional transmission reliability is no different than the millions of other
16 customers in the 15 states and 1 Canadian province in the MISO footprint,¹¹ and as explained
17 above, Century's pecuniary desires as a potential purchaser of Coleman are contrary to the
18 interests of the remaining ratepayers on the Big Rivers system. As such, Century has no
19 legitimate special interest in this proceeding sufficient to satisfy the regulatory limitation on
20 intervention.

⁹ Order dated February 3, 2005, in *In the Matter of: The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Be Coal Fired Unit in Mason County, Kentucky*, PSC Case No. 2004-00423, at pp. 2-3.

¹⁰ Order dated April 17, 2013, in *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, PSC Case No. 2012-00535 (footnotes omitted); see also Order dated October 2, 2012, in *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, PSC Case No. 2012-00222.

¹¹ See

<https://www.misoenergy.org/Library/Repository/Communication%20Material/Corporate/Corporate%20Fact%20Sheet.pdf>

1 Moreover, Century is a member of Kentucky Industrial Utility Customers, Inc.
2 (“KIUC”),¹² who has been granted intervention.

3 Finally, Century has not shown that its intervention “is likely to present issues or develop
4 facts that assist the Commission in fully considering the matter without unduly complicating or
5 disrupting the proceedings.” In fact, Century has shown just the opposite. Century is once again
6 attempting to re-litigate the live-line maintenance issue decided in Case No. 2013-00221 and
7 Case No. 2013-00413. Although Century clearly misrepresents the Commission’s order in Case
8 No. 2013-00221,¹³ Century did ask the Commission in that case to compel Big Rivers to perform
9 live-line maintenance.¹⁴ Century’s request was denied.¹⁵ Century again raised the live-line
10 maintenance issue in Case No. 2013-00413, but again, the Commission declined to compel Big
11 Rivers to perform live-line maintenance.¹⁶ Century also unsuccessfully tried to convince FERC
12 to force Big Rivers to perform live-line maintenance.¹⁷

13 Century is similarly trying to use this IRP review proceeding to supplement or re-
14 negotiate the agreements approved by the Commission in Case No. 2013-00221. Although
15 Century voluntarily negotiated and signed those agreements, and it asked the Commission to
16 approve the agreements “without modification,”¹⁸ Century now claims that those agreements left
17 its Hawesville operation “at significant risk.”¹⁹ Allowing Century to intervene and to use an IRP

¹² See KIUC’s website: kiucenergy.com.

¹³ In Case No. 2013-00221, as well as in Case No. 2013-00413, the Commission found “both live-line and de-energized transmission line maintenance protocols to be consistent with good and reasonable utility practice.” (Order dated January 30, 2014, In Case No. 2013-00413 at p. 18.) It did not find, as Century alleges in its Petition, that live-line maintenance “was as safe as maintenance on de-energized lines.” Century’s Petition ¶ 3.

¹⁴ Order dated August 14, 2013, in Case No. 2013-00221 at pp. 12-13.

¹⁵ *Id.* at p. 15.

¹⁶ Order dated January 30, 2014, in Case No. 2013-00413 at p. 18.

¹⁷ *Midcontinent Independent System Operator, Inc.*, FERC Docket Nos. ER14-1391-000 and ER14-1392-000, Order Accepting Termination of Tariff Filings (April 30, 2014), ¶ 43 (holding, “We disagree with Century Aluminum and find that, based on the record, live-line maintenance is not necessary to alleviate the reliability issues caused by the suspension of the Coleman Units.”).

¹⁸ Century’s Post-Hearing Brief in Case No. 2013-00221 at p. 1.

¹⁹ Century Petition ¶ 3.


1 review to re-litigate the live-line maintenance issue or to gain leverage to supplement or re-
2 negotiate its contracts would clearly unduly complicate and disrupt the proceedings. In any
3 event, Century is contractually prohibited from seeking legislative or regulatory changes to its
4 current power supply agreements. Consequently, Century has not satisfied the regulatory
5 limitation on intervention, and its Petition should be denied.

6 **III. Conclusion.**

7 For the foregoing reasons, Century's Petition should be denied.

8 On this the 20th day of June, 2014.

9 Respectfully submitted,

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12 
13 _____
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25 *Counsel for Big Rivers Electric Corporation*

26
27
28 **Certificate of Service**

29
30 I certify that a true and accurate copy of the foregoing was served by Federal Express or
31 by regular mail upon the persons listed on the accompanying service list, on or before the date
32 this response is filed with the Kentucky Public Service Commission.

33
34 On this the 20th day of June, 2014,

35
36
37 
38 _____
Counsel for Big Rivers Electric Corporation