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MAY 29 2013

PUBLIC SERVICE  
COMMISSION

May 28, 2013

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\*Also Licensed in Indiana

Re: *In the Matter of: The Application of  
Big Rivers Electric Corporation for a General  
Adjustment in Rates*, PSC Case No. 2012-00535

Dear Mr. Derouen:

Enclosed for filing are an original and ten copies of Big Rivers Electric Corporation's responses to Kentucky Industrial Utility Customers, Inc.'s third request for information in the above referenced matter. I certify that on this date, a copy of this letter and a copy of the responses were served on the persons listed on the attached service list by Federal Express.

Sincerely,



Tyson Kamuf

TAK/ej  
Enclosures

cc: Billie Richert  
Service List

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**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A GENERAL ADJUSTMENT IN RATES  
CASE NO. 2012-00535**

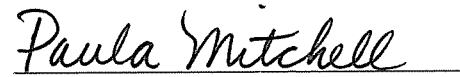
**VERIFICATION**

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

  
Robert W. Berry


COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

SUBSCRIBED AND SWORN TO before me by Robert W. Berry on this  
the 24<sup>th</sup> day of May, 2013.

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

**ORIGINAL**



Your Touchstone Energy® Cooperative 

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**In the Matter of:**

**APPLICATION OF BIG RIVERS )  
ELECTRIC CORPORATION FOR A ) Case No. 2012-00535  
GENERAL ADJUSTMENT IN RATES )**

**Response of Big Rivers Electric Corporation  
to the Kentucky Industrial Utility Customers'  
Supplemental Request for Information  
dated May 3, 2013**

**FILED: May 29, 2013**

**ORIGINAL**

BIG RIVERS ELECTRIC CORPORATION

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A GENERAL ADJUSTMENT IN RATES  
CASE NO. 2012-00535

Response to the Kentucky Industrial Commission Staff's  
Supplemental Request for Information  
dated May 3, 2013

May 29, 2013

1 Item 1) *On April 29, 2013 Century Aluminum issued a press release*  
2 *stating the following:*

3

4 *Century Aluminum of Kentucky, a wholly owned subsidiary of*  
5 *Century Aluminum Company (NASDAQ: CENX), Kenergy Corp.*  
6 *and Big Rivers Electric Corp. today announces that they have*  
7 *reached a tentative agreement on the framework for providing*  
8 *market priced power to the Hawesville smelter. Under the*  
9 *arrangement, the electric cooperatives would purchase power*  
10 *on the open market and pass it through to Century at the*  
11 *market price plus additional costs incurred by them. The*  
12 *arrangement is intended to have no impact on the current rate*  
13 *proposal of Big Rivers or the related flow-through rate*  
14 *proposal of Kenergy, each currently pending before the*  
15 *Kentucky Public Service Commission. The framework is*  
16 *subject to the negotiation of definitive agreements and*  
17 *approvals from various third parties, including the boards of*  
18 *directors of all parties, the KPSC, the Rural Utilities Service*  
19 *and others. The parties intend to move as expeditiously as*  
20 *possible to finalize the agreement in advance of the expiration*  
21 *of the current power contract on August 20, 2013.*

22

- 23 a. *Please provide a copy of the tentative agreement(s).*
- 24 b. *Please indicate if the Company agrees with Century that*  
25 *the “arrangement is intended to have no impact on the*  
26 *current rate proposal of Big Rivers” pending before the*  
27 *Commission. Please explain what factors the Company*  
28 *considered in reaching this conclusion.*

**BIG RIVERS ELECTRIC CORPORATION**  
**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION**  
**FOR A GENERAL ADJUSTMENT IN RATES**  
**CASE NO. 2012-00535**

**Response to the Kentucky Industrial Commission Staff's**  
**Supplemental Request for Information**  
**dated May 3, 2013**

**May 29, 2013**

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**Response)**

- a. Please see the attached non-binding term sheet, which forms the tentative framework for the market power and bilateral contract transaction referenced in the press release quoted above. Big Rivers, Kenergy and Century are currently working on translating the non-binding term sheet into definitive legal contracts for the arrangement; however, the documents are still in the development stage. Upon completion, the final definitive documents will be submitted for review, approvals and consents to the Commission, as well as the USDA-RUS and others.
- b. Big Rivers agrees that the arrangement is intended to have no material impact on the current rate proposal of Big Rivers. When negotiating the terms of the arrangement, Big Rivers strictly adhered to the principle that its Members would not pay any unreimbursed costs resulting from entry into the transaction with Century, subject to a credit for transmission revenues paid to Big Rivers if it has to run the Coleman Generating Station for reliability purposes. The term sheet is structured such that all costs incurred by Big Rivers and Kenergy resulting from entry into the transaction will be reimbursed by Century, subject to a credit for transmission

**BIG RIVERS ELECTRIC CORPORATION**  
**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION**  
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**dated May 3, 2013**

**May 29, 2013**

1 revenues paid to Big Rivers if Big Rivers must run the Coleman  
2 Generation Station for reliability purposes.

3

4

5 **Witness)** Robert W. Berry

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**SUMMARY  
OF  
TERMS AND CONDITIONS  
FOR  
POST-TERMINATION  
POWER SUPPLY ARRANGEMENTS  
INVOLVING  
KENERGY CORPORATION,  
CENTURY ALUMINUM COMPANY,  
CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP,  
and  
BIG RIVERS ELECTRIC CORPORATION**

## SUMMARY OF TERMS AND CONDITIONS

*The following summary of terms and conditions is intended for discussion purposes only, and nothing herein shall be deemed to amend, waive or discharge any of the respective rights or obligations of the parties involved under any existing agreements. This summary of terms and conditions is not intended to constitute an agreement or offer to enter into any agreement. No obligation of Kenergy, Big Rivers, Century or Century Parent shall be created or inferred from this summary or any communication among the parties, oral or written, concerning the subject matter of this summary other than the confidentiality arrangements among the parties and their advisors entered into in connection with the parties' consideration of the proposed transaction, each of which shall continue in full force and effect. Any other binding obligation of the parties with respect to a transaction shall be set forth in Definitive Documents as defined below.*

### I. PARTIES AND INTERESTED PERSONS

- A. Kenergy: Kenergy Corp., a Kentucky cooperative corporation
- B. Big Rivers: Big Rivers Electric Corporation, a Kentucky electric generation and transmission cooperative
- C. Century: Century Aluminum of Kentucky General Partnership
- D. Century Parent: Century Aluminum Company
- E. Members:
  - 1. Kenergy;
  - 2. Jackson Purchase Energy Corporation; and
  - 3. Meade County Rural Electric Cooperative Corporation.

### II. DEFINITIONS

- A. ARR: Auction revenue rights as defined in the MISO Tariff.
- B. 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 for Kenergy for resale to Century under the Electric Service Agreement.
- C. Base Load: The maximum amount (MW) that can be reliably delivered to the Hawesville node, as determined by MISO prior to the Effective Date, with the Coleman Generation Station idled; provided such amount (i) shall be increased if Big Rivers commences operation of one or more units at the Coleman Generation Station for its own purposes and MISO determines the increase will not create a reliability issue; and (ii) may not exceed 482 MW with or without any Curtailable Load. On request by Century, Big Rivers will

request MISO to determine whether the Base Load may be increased if one or more units of Coleman are operated as other than must-run units.

- D. Capacitor Additions: The amount of capacitors (MVARs) that are needed to provide voltage support for the Base Load or, if applicable, for the Base Load plus Curtailable Load with the Coleman Generation Station idled.
- E. Capacitor Agreement: An agreement entered into by Big Rivers, Century and Century Parent relating to obligations for the design, development, purchase, installation, operation and maintenance of the Capacitor Additions and the Protective Relays and risk allocation relating thereto.
- F. Capacitor Costs: The costs to design, develop, purchase, install and operate and maintain the Capacitor Additions.
- G. Closing Date: The date upon which the Definitive Documents are executed and delivered.
- H. Costs related to Century's operation: In the context of the specific costs referenced, this shall mean those costs of Big Rivers or Kenergy to the extent that such costs relate to the operation of Century. For the avoidance of doubt, this definition includes (i) a proportionate share of costs that are incurred to serve Century and other loads, and (ii) costs that relate only to Century's operation. The parties shall provide a non-exclusive list of examples in the applicable Definitive Documents of specific costs, types of costs, and the bases for determining Century's proportionate share of such costs.
- I. Curtailable Load: The maximum amount of additional load (MW) at the Hawesville node above the Base Load that can be served, as determined by MISO, with the installation of Protective Relays at the Hawesville Smelter, up to 482 MW.
- J. 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.
- K. Definitive Documents: Documents mutually satisfactory to Kenergy, Big Rivers and Century, containing covenants, agreements, representations, warranties and closing conditions customary for transactions of the types contemplated herein, including without limitation, covenants, agreements, representations, warranties, indemnities, defaults and closing conditions of the types described or

referred to in this Summary of Terms and Conditions.

Definitive Documents shall include:

- a) Electric Service Agreement;
- b) Arrangement Agreement;
- c) Direct Agreement;
- d) Capacitor Agreement;
- e) Protective Relays Agreement;
- f) Tax Indemnity Agreement between Kenergy and Century; and
- g) Parent Guarantee of Century Parent.

- L. Delivery Point: The meters serving Century's Hawesville smelter facility or other delivery point mutually agreeable to Kenergy, Big Rivers and Century.
- M. Direct Agreement: An agreement between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with the Transaction.
- N. Effective Date: The date on which the conditions set forth in paragraph XII below are satisfied; *provided* that the Capacitor and Relay Agreement may be entered into and performance by the parties of their obligations thereunder may commence prior to the Effective Date.
- O. Electric Service Agreement: A retail electric service agreement for the sale of electricity, electric capacity and electricity-related ancillary services, including transmission services, by Kenergy to Century.
- P. FTR: Financial Transmission Rights as defined in the MISO Tariff.
- Q. Hawesville Node: A Node (as defined in the MISO Tariff) located at the Delivery Point and used solely for delivery and sale of electricity under the Transaction for the benefit of Century.
- R. KPSC: Kentucky Public Service Commission
- S. Maximum Load: 482 megawatts.
- T. MW: Megawatts

U.	MISO:	The Midwest Independent Transmission System Operator, Inc.
V.	MISO Tariff:	The MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, as amended and in effect from time to time.
W.	Must run cost or SSR cost	Means the net costs, as determined and allocated by MISO to the Hawesville Node or any other Node of Big Rivers, if Big Rivers is required by MISO to operate any Coleman unit as a condition for reliability of delivery if Century operates above the Base Load and, if applicable, the Curtailable Load, including, in the circumstances described in paragraph VII (D), capital costs incurred after the date of a restart of any such unit.
X.	NERC:	North American Electric Reliability Corporation
Y.	Paid by Century:	Means paid directly or indirectly by Century for transmission services under the Electric Service Agreement to the extent received by Big Rivers.
Z.	Protective Relays Agreement:	An agreement entered into by Big Rivers, Century and Century Parent relating to obligations for the design, development, purchase, installation, operation and maintenance of the Protective Relays and risk allocation relating thereto.
AA.	Protective Relays:	Protective relays installed pursuant to the Capacitor and Relay Agreement
BB.	Prime Rate:	The rate of interest published in <i>The Wall Street Journal</i> from time to time as the “prime rate.”
CC.	Real Time Market:	The Real Time Energy and Operating Reserve Market established under the MISO Tariff for the purchase of electricity.
DD.	RTO:	Regional transmission organization
EE.	SERC	SERC Corporation
FF.	Service Period:	The period from the midnight following the later of the Effective Date and 12:00:00 a.m. on August 19, 2013, through December 31, 2023, subject to earlier termination of the Electric Service Agreement in accordance with the provisions thereof, provided that the Service Period automatically shall be extended for additional one year periods on each December 31 <sup>st</sup> following December 31,

2023 if neither party to the Electric Service Agreement gives at least one year's prior notice to the other party of its election not to extend the Service Period.

GG. SSR Agreement An agreement entered into with MISO relating to the must-run condition of the Coleman Generating Station.

HH. Transaction: The transactions contemplated by this Summary of Terms and Conditions pursuant to the Definitive Documents.

### III. STRUCTURE

A. General: During the Service Period, Kenergy will use reasonable commercial efforts to acquire, as applicable, the Base Load or the Base Load plus the Curtailable Load, or the Maximum Load from the Day Ahead Market for use in operation of Century's Hawesville, Kentucky smelter facility at the Delivery Point, upon the request of Century specifying (i) the amount and duration of electricity desired, and (ii) other material terms and conditions, if any. Imbalance requirements, including up to 10 MW above the Base Load, Base Load plus Curtailable Load or Maximum Load, as applicable, will be obtained in the Real Time Market.

B. MISO Market Participant: At least initially, Big Rivers will act as the Market Participant (as defined in the MISO Tariff) and, under the Arrangement Agreement, will use reasonable commercial efforts to arrange to purchase the electricity, electric capacity, electricity-related ancillary services and any other services required and invoiced by MISO on behalf of Kenergy for resale to Century under the Electric Service Agreement. In the future, Kenergy may elect, subject to the consent and approval of Century in its sole discretion, to become the Market Participant itself at the Hawesville Node with respect to electrical service to Century, subject to terms and conditions specified in the Definitive Documents. Further, Century may designate an alternative Market Participant (other than Kenergy) subject to Kenergy's consent, which shall not be unreasonably withheld. 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 a new Market Participant.

C. Definitive Documents: The transactions contemplated in this Summary of Terms and Conditions will be effectuated pursuant to the

## Definitive Documents.

### D. Election to Join Alternative RTO:

Big Rivers or Kenergy, as applicable, may, in its sole discretion, elect to join or become a member of an RTO other than MISO or elect to withdraw as a member of MISO. The Hawesville Node may remain in MISO if (i) requested by Century, and (ii) permitted by the RTO, (iii) Century is responsible for any additional costs resulting from the Hawesville 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 another RTO. In such case any terms used herein that relate to MISO, the MISO Tariff or the terms therein shall be deemed amended, as applicable, to incorporate the correlative terms with respect to such other RTO or such other RTO's applicable tariff. If necessary, the parties agree to modify in good faith the terms and provisions of the Definitive Documents to conform them to the requirements of such other RTO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Definitive Documents.

Big Rivers will (i) provide Century one year's notice before leaving MISO; (ii) provide Century with notice of a Big Rivers' management's recommendation to Big Rivers' board of directors that Big Rivers terminate its membership in MISO (subject to confidentiality provisions of the agreement); (iii) if not publicly available, provide Century with a copy of the annual notices required by the KPSC regarding the cost to Big Rivers of being a member in MISO; and (iv) allow Century to participate in meetings or conference calls with MISO regarding matters affecting amounts payable by Century under this paragraph III(D).

## IV. ELECTRIC SERVICE AGREEMENT

### A. Power Supply:

The electricity and electricity-related ancillary services acquired by Kenergy for resale to Century under the Electric Service Agreement will be supplied, by purchases in the Day Ahead Market or with imbalance requirements obtained in the Real Time Market. Capacity will be purchased through the Market Participant at the request of Century in the applicable MISO market. Century may request that electricity, capacity and ancillary services be sourced through bilateral contracts with third party suppliers selected by Century, subject to Kenergy's satisfaction, in its sole discretion, only as to the financial security arrangements for and the elimination of risk to

Kenergy associated with such bilateral contracts.

B. Scheduling, Load and Load Factor:

Pursuant to the MISO Tariff, Century shall schedule, on an hourly basis, all required electricity, electric capacity and electricity-related ancillary services with Kenergy or its designee; *provided* that Kenergy will schedule, as applicable, the Base Load or the Base Load plus the Curtailable Load or the Maximum Load as the hourly load in the MISO Day Ahead Market unless Century provides notice in a manner acceptable to Kenergy of an alternative schedule not less than 8:00 a.m. on the day for submitting such schedule to MISO pursuant to MISO Tariff. Century's schedule may not exceed, as applicable, the Base Load, the Base Load plus the Curtailable Load or the Maximum Load without the prior consent of Kenergy and, if the Arrangement Agreement is in effect, Big Rivers. In addition, Century promptly, and within the MISO scheduling guidelines, shall notify Kenergy and, if applicable, Big Rivers of any anticipated changes in load factor or any material changes in load. Century may not reduce its load to resell electricity or related services in the Real Time Market; *provided*, Century may offer and sell interruption and demand reduction services in any manner allowed.

C. Charges to Century:

Charges and Credits to Century for the Base Load amount and, if applicable, the Curtailable Load amount or Maximum Load amount shall include, without duplication:

1. On a pass-through basis, the market cost of all electricity, electric capacity and electricity-related ancillary services, including transmission services to the Hawesville Node, and any other services, required to be purchased by Kenergy to serve Century;
2. A credit for any revenue resulting from the ownership, sale or trade of ARRs or FTRs under paragraph IV(f);
3. An amount equal to Kenergy's internal and direct costs incurred in serving Century, including KPSC fees and a nominal net margin roughly equivalent to Kenergy's historical net margin attributable to service to Century, provided Century shall have the right to audit such costs;
4. Costs associated with any entity or person other than Big Rivers serving as Market Participant, including charges by MISO to establish or maintain



the Hawesville Node if Kenergy is the Market Participant;

5. Costs related to Century's operation, incurred by Kenergy to comply with (i) state or federal renewable energy portfolio or similar standards or (ii) environmental laws or regulations. 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 sales or number of customers. To the extent permitted by applicable law, Century may self-comply by purchasing its proportionate share of renewable energy. The parties acknowledge that they are not aware of any such costs as of the Effective Date;
6. Charges to Kenergy for MISO Transmission Expansion Plan (MTEP) or Multi-Value Projects (MVP) costs that relate solely and directly to Century's operation;
7. To the extent not covered under clause (1) above, charges to Kenergy from any third party to Kenergy for providing services to Century and any other costs chargeable to Kenergy arising out of any bilateral contract which Century has approved;
8. Costs related to Century's operation incurred by Kenergy to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act;
9. Monthly charges with respect to items charged to Kenergy under the Arrangement Agreement;
10. An excess reactive demand charge equal to the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, of (a) the maximum metered reactive demand of Century during any billing month, minus (b) the amount of kilovars equal to the product of 0.3287 times the maximum hourly demand during the billing month, expressed in kilowatts, plus 74,005 kilovars;
11. Other direct costs of Kenergy incurred or committed to by Kenergy related to Century's operation; and

12. Any other amounts due and owing to Kenergy under the Definitive Documents, including pursuant to paragraph IV.D below and applicable taxes.
- D. Responsibility for Certain Costs: Century will hold Kenergy harmless from all direct costs, expenses, liabilities, claims or similar consequences relating to, without duplication of amounts due under paragraph IV.C above:
1. Security requirements to a third party for the purchase of electricity or electrical ancillary services to supply the Century load; and
  2. Claims of bilateral power suppliers for electricity, electric capacity or electrical ancillary services for resale to Century under the Transaction.
- E. Performance by Kenergy: To the extent that another entity has an obligation to Kenergy for the provision of service to Century, Kenergy's performance of its obligation is subject to and conditioned upon the performance by such entity to Kenergy of its corresponding or related obligation. Subject only to performance by Big Rivers or such other entity that has an obligation to Kenergy, Kenergy shall have an obligation to Century to perform under this agreement.
- F. Term: The obligation of Kenergy to supply electricity, electric capacity and electricity-related ancillary services to Century pursuant to the Electric Service Agreement will terminate at the end of the Service Period, unless terminated earlier pursuant to terms thereof.
- G. Billing; Payment: Kenergy shall invoice Century with the same periodicity as the Market Participant invoices Kenergy. If any portion of any invoice is disputed by Century, the disputed amount must be paid, under protest, when due. Late payments or refunded amounts will bear interest at the Prime Rate plus 1 percent. The security for such payments is described in paragraph XI.
- H. Termination: The Electric Service Agreement may be terminated in the following circumstances:
1. By either party if the conditions precedent in paragraph XI herein to the effectiveness of the agreement are not satisfied by 11:59:59 p.m. on August 19, 2013;

2. By either party if the KPSC final order relating to the Transactions disapproves or changes material terms or conditions of the Definitive Documents;
3. By a non-defaulting party following an Event of Default; or
4. By Century in its sole discretion on 60 days prior written notice to Kenergy of such termination; provided, that if Century requests to purchase energy from Kenergy to serve its non-smelting load in connection with Century's termination of smelting operations at the Hawesville facility, then such service will be provided under the separate service agreement attached to the Electric Service Agreement which shall be approved, if necessary, by the KPSC and RUS as part of the Definitive Documents.

Termination of the Electric Service Agreement will also terminate all other Definitive Documents and the parties' obligations under all Definitive Agreements will terminate, except as provided in paragraph XIII. B.

I. Events of Default:

Events of default under the Electric Service Agreement shall be:

1. Failure to make a scheduled payment for electricity or electricity-related ancillary services;
2. Failure to maintain the security arrangements described in paragraph XI for 3 business days;
3. Failure to pay any other amounts due within 3 business days following written notice;
4. Failure to perform a material non-payment obligation within 30 days following written notice;
5. The occurrence of an event of default under the Arrangement Agreement, the Direct Agreement or the Tax Indemnity Agreement or other Definitive Document;
6. Assignment of the agreement other than as permitted thereunder; or
7. Certain bankruptcy or insolvency events.

With respect to Kenergy's remedies following an Event of Default, Kenergy may not terminate the Electric Service Agreement as a result of Century's failure to make a scheduled payment if Century cures such default before the third business day following such payment default.

- J. FTR/ARR Rights: Century shall have the rights to all FTRs or ARRs resulting from Big Rivers' and/or Kenergy's service to Century; Century shall have the right to direct the Market Participant to request, schedule, and sell such FTRs and ARRs and shall retain all revenues from such FTRs or ARRs.
- K. Power Factor: Century shall use commercially reasonable efforts, including use of capacitors installed under the Capacitor Agreement, to maintain a power factor at the Delivery Point that is as nearly as practicable between unity and 0.95.
- L. Assignment and Assumption: Century will not have the right to assign its rights or obligations under the Electric Service Agreement without the consent of Kenergy, except to a successor. A successor shall be an entity that acquires all or substantially all of the assets or equity of the assigning entity or that merges with such assigning entity and which demonstrates, to the reasonable satisfaction of Kenergy, that it has adequate financial capacity to perform Century's obligations under the agreement. Any such successor must agree to assume all rights and obligations of the assignor under such Electric Service Agreement. Any assignment will not relieve an assignor or guarantor of its obligations under or with respect to an Electric Service Agreement or other obligations under the Definitive Documents without the consent of Kenergy, which consent will be granted in its sole discretion.
- M. Representations and Warranties: The parties will make customary representations and warranties as of the Closing Date and the Effective Date.
- N. Indemnification; Force Majeure: The Electric Service Agreement will contain mutual indemnification and force majeure provisions (i) customary for a transaction of this type, and (ii) clarifying that Century shall be responsible for all costs, liabilities, claims or similar consequences relating to the Protective Relays or the Capacitor Additions. The definition of force majeure will not include an insufficiency of funds, a decline in credit ratings or Century's failure to maintain the security described in paragraph XI hereof.

- O. Other Matters:
1. The Electric Service Agreement will provide service only to Century's Hawesville, Kentucky smelter facility. Century will not be entitled to service under any tariff of Kenergy.
  2. Century will acknowledge and agree that Big Rivers has no obligation to serve or supply power from its generating resources or, except as provided herein, under contract to Kenergy for the benefit of Century's Hawesville smelter or its affiliates, spin-offs or successors during the Service Period or thereafter; provided this agreement will not limit the ability of Century to seek a contractual service arrangement with Big Rivers with respect to the Sebree smelter if it is acquired by Century or Century's Parent.
  3. Century will acknowledge and agree that Kenergy will not have any contractual obligation to supply electricity, electric capacity or electricity related ancillary services to Century's Hawesville smelter or its affiliates or spin-offs following termination of the Service Period; provided this agreement will not limit the ability of Century to seek a contractual service arrangement with Kenergy with respect to the Sebree smelter if it is acquired by Century or Century's Parent.
  4. Century will acknowledge and agree that Kenergy may discontinue delivery of any or all electricity, electric capacity or electricity-related ancillary services upon three business days' prior notice to Century if Century fails to pay any invoice within the time prescribed for payment thereof.
  5. Century will grant Kenergy and its representatives reasonable access to Century's Hawesville smelter facility to the extent reasonably required for the purposes of installing, repairing or testing necessary equipment.

P. Third Party Beneficiary: Big Rivers will be an express third party beneficiary of the Electric Service Agreement and may enforce the provisions thereof during the period of any survival of obligations to it under paragraph XIII(B) below.

## V. ARRANGEMENT AGREEMENT

- A. General: The electricity and electricity-related ancillary services required by Kenergy for resale to Century under the Electric Service Agreement will be supplied, by purchases by Big Rivers as Market Participant in the Day Ahead Market, and imbalance energy will be purchased or sold in the Real Time Market, for resale to Kenergy for service to Century. Capacity will be purchased in the applicable MISO market. Century may request that the electricity, capacity and ancillary services be sourced through bilateral contracts with third party suppliers selected by Century, subject to Big Rivers' satisfaction, in its sole discretion, only as to the financial security arrangements and elimination of risk to Big Rivers of such bilateral contracts.
- B. Delivery Point: Before March 15, 2013, Big Rivers will apply for Hawesville Node, which Deliver Point shall be owned by Big Rivers for so long as it is the Market Participant and transferred to any successor Market Participant under the Transaction Documents.
- C. Designation: Kenergy will designate Big Rivers to act as the scheduling agent for the electricity, electric capacity and electricity-related ancillary services required under the Electric Service Agreement during the term of the Arrangement Agreement.
- D. Scheduling, Load and Load Factor: Kenergy or its designee shall schedule, on an hourly basis, all required electricity, electric capacity and electricity-related ancillary services with Big Rivers or its designee; provided that Big Rivers will schedule, as applicable, the Base Load, Base Load plus Curtailable Load or the Maximum Load as an hourly load in the MISO Day Ahead Market unless Century provides notice in a manner acceptable to Big Rivers of an alternative schedule not less than 8:00 a.m. on the day for submitting such schedule to MISO pursuant to MISO Tariff. This schedule may not exceed, as applicable, the Base Load or Base Load plus Curtailable Load or the Maximum Load without the prior consent of Big Rivers.
- E. Charges to Kenergy: Charges to Kenergy for the Base Load amount and, if applicable, the Curtailable Load amount or Maximum amount shall be, without duplication:
1. On a pass-through basis, the market cost of all electricity, electric capacity and electricity-related ancillary services, required to be purchased by Big

Rivers to serve Kenergy for the benefit of Century;

2. Charges for transmission service to the Hawesville Node;
3. 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) environmental laws or regulations. For the avoidance of doubt, such costs to comply with environmental laws and regulation do not include compliance costs at Big River's generation (other than applicable SSR costs associated with the must-run condition at Coleman under Rider I). To the extent permitted by applicable law, Century may self comply by purchasing its proportionate share of renewable energy. The parties acknowledge that they are not aware of any such costs as of the Effective Date;
4. Charges by MISO to establish or maintain the Hawesville Node;
5. Charges to Big Rivers for MISO MTEP or MVP costs that relate solely and directly to Century's operation;
6. Costs related to Century's operation incurred by Big Rivers to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act;
7. Costs or charges of ACES, or similar service provider, related to Century's operation, for scheduling, awards and settlements;
8. Costs of a 0.25 FTE employee of Big Rivers if it is serving as the Market Participant;
9. A credit for any revenue resulting from the ownership, sale or trade of ARRs or FTRs under paragraph IV(J); and
10. Any other amounts due and owing to Big Rivers under the Definitive Documents, including applicable taxes. The parties acknowledge that they are not aware of any such taxes as of the Effective Date;

- F. Performance by Kenergy: To the extent that Century has an obligation to Kenergy, Kenergy's performance of a corresponding or related obligation to Big Rivers is subject to and conditioned upon Century's performance of its obligation. Subject only to performance by Kenergy or persons with an obligation to Big Rivers, Big Rivers shall have an obligation to Kenergy to perform under the Agreement for the benefit of Century.
- G. Term: The obligation of Big Rivers to procure electricity, electric capacity or electricity-related ancillary services to Kenergy for resale to Century pursuant to the Electric Service Agreement shall be for the Service Period, unless terminated earlier pursuant to the terms of the Arrangement Agreement.
- H. Billing; Payment: Big Rivers shall invoice Kenergy with respect to services provided by MISO based on how Big Rivers is invoiced by MISO for those services and monthly for other amounts due to Big Rivers. For such other amounts, Big Rivers will invoice Kenergy on or before the 10<sup>th</sup> business day of Each month. Kenergy shall pay Big Rivers all amounts due and owing under such invoices on the 24<sup>th</sup> calendar month. If any portion of any invoice is disputed by Kenergy, the disputed amount must be paid, under protest, when due. Late payments or refunded amounts will bear interest at the Prime Rate plus 4 percent. Any costs associated with Big Rivers paying MISO on a period/cycle more frequent than the above shall be considered a MISO fee, payable by Century. The security for such payments is described in paragraph XI.
- I. Termination: The Arrangement Agreement may be, or shall be, as provided herein, terminated in the following circumstances:
1. By either party if the conditions precedent in paragraph XII herein to the effectiveness of the agreement are not satisfied by 11:59:59 p.m. on August 19, 2013;
  2. By either party if the KPSC final order relating to the Transactions disapproves or changes material terms or conditions of the Definitive Documents;
  3. By a non-defaulting party following an Event of Default;
  4. By either party upon termination of the Electric Service Agreement; provided the Arrangement



Agreement shall terminate if Century terminates the Electric Service Agreement; and

5. The Arrangement Agreement shall terminate if Big Rivers is no longer the Market Participant.

Big Rivers will provide Kenergy and Century not less than 3 business days' prior notice of an election to terminate the Arrangement Agreement as a result of an Event of Default.

J. Representations and Warranties:

The parties will make customary representations and warranties as of the Closing Date and the Effective Date.

K. Indemnification; Force Majeure:

The Arrangement Agreement will contain mutual indemnification and Force Majeure Event provisions customary for a transaction of this type. The definition of force majeure will not include an insufficiency of funds or decline in credit ratings.

L. Events of Default:

Century shall receive notice of events of default. Events of default under the Arrangement Agreement shall be:

1. Failure to make a scheduled payment for electricity or electricity-related ancillary services, including transmission services;
2. Failure to maintain the security arrangements described in paragraph XI for 3 business days;
3. Failure to pay any other amounts due within 3 business days following written notice;
4. Failure to perform a material non-payment obligation within 30 days following written notice;
5. The occurrence of an event of default under the Electric Service Agreement, the Direct Agreement or the Tax Indemnity Agreement or other Definitive Document;
6. Assignment of the agreement other than as permitted thereunder; or
7. Certain bankruptcy or insolvency events.

## VI. DIRECT AGREEMENT

A. Responsibility for Certain

Century will hold Big Rivers harmless from all direct costs, expenses, liabilities, claims or similar consequences relating

Costs:

to the following to the extent not recovered under the Electrical Service Agreement, without duplication:

1. Purchasing and transmitting electricity, electric capacity or electrical ancillary services to the Delivery Point for resale to Century under the Transaction;
2. Claims of bilateral power suppliers under contracts to which Century has agreed for electricity, electric capacity or electricity-related ancillary services purchased for resale to Century; and
3. Any other amounts due and owing to Big Rivers under the Definitive Documents.

B. Other Charges and Credits to Century

Charges and Credits to Century will include , without duplication:

1. The sum, if positive, of (a) monthly costs or charges to Big Rivers, as determined and allocated by MISO, at the Hawesville Node or any other Big Rivers' Node resulting from the must-run condition of the Coleman generation station under the circumstances contemplated in Rider I, less (b) revenues received by Big Rivers or Kenergy for transmission services paid by Century under the MISO tariff or Big Rivers' tariff, *provided* that if the monthly sum is negative, then this credit will be carried forward and netted against any charges under this subpart in subsequent months; *provided further*, that if there is a remaining positive credit after the last billing month in the SSR period under Rider I, then such credit will be set to zero; a mechanic for recovery of these costs if Kenergy is the Market Participant will be included in the Definitive Documents;
2. All electrical transmission capital costs related to Century's operation, not recovered in the MISO or Big Rivers tariffs, allocated by MISO to the Hawesville Node; and
3. Other third-party, out of pocket costs of Big Rivers incurred or committed to by Big Rivers related to Century's operation.

C. Transmission Customer

Century (through Kenergy or the Market Participant) shall be entitled to and Big Rivers will provide to Century

transmission service, directly or indirectly, on the same rates, terms and conditions as other transmission customers.

- D. Coleman Forced Restart Must-Run Costs      If Century increases its load above the Base Load amount plus Curtailable Load amount (other than as provided in section II.C) and, as a consequence, MISO orders Big Rivers to restart the Coleman Generation Station, then unless Century reduces its load to the Base Load and, if applicable, the Curtailable Load, Century shall be responsible for the resulting must-run costs, including capital costs incurred after the date of such restart, charged by MISO, as if Century had requested an SSR Agreement.

## VII. CAPACITOR AGREEMENT

- A. Capacitor Additions:      Century will design, develop, purchase and install the Capacitor Additions, subject to Big Rivers' right to review the specifications relating to the design, installation and operation and maintenance of the Capacitor Additions. At the request of Big Rivers, received by phone, Century shall switch out one of the banks in the Capacitor Additions. Century will maintain a person available to receive from Big Rivers the communication referenced in the preceding sentence.
- B. Parties; Effectiveness; Timing:      Big Rivers, Century and Century Parent will enter into the Capacitor Agreement. The agreement will become effective prior to Closing Date. The parties acknowledge that the goal of the agreement will be to have the Capacitor Additions installed and operational by commencement date of the Electric Service Agreement. The agreement will contain protections for Big Rivers relating to any risks, financial or otherwise, including claims, relating to the Capacitor Additions, including entry into the agreement prior to the Effective Date and the consequences if the conditions to the Effective Date are not satisfied (other than as a result of willful misconduct).
- C. Ownership; Reimbursement of Costs:      Century shall own the Capacitor Additions and directly pay for their design, development, installation and operation or maintenance. Century shall reimburse Big Rivers for any costs incurred by it relating to the Capacitor Additions.
- D. Guarantee:      Century Parent will guarantee all obligations of Century arising out of or relating to the payment or performance its obligations under the Capacitor Agreement.

E. Location: All Capacitor Additions shall be located on property of Century. Neither Big Rivers nor Kenergy shall have any obligation to provide access to real estate or otherwise make available to Century space for the location of the Capacitor Additions.

## VIII. PROTECTIVE RELAYS AGREEMENT

- A. Parties; Effectiveness; Timing: Big Rivers, Century and Century Parent will enter into the Protective Relays Agreement. The agreement will become effective prior to Closing Date. The parties acknowledge that the goal of the agreement will be to have the Protective Relays installed and operational by commencement date of the Electric Service Agreement. The agreement will contain protections for Big Rivers relating to any risks, financial or otherwise, including claims, relating to the Protective Relays, including entry into the agreement prior to the Effective Date and the consequences if the conditions to the Effective Date are not satisfied; subject to a willful misconduct exclusion.
- B. Century Obligations: Century will design, develop, purchase and install the Protective Relays, subject to Big Rivers' right to review the specifications relating to the design, installation and operation and maintenance of the Protective Relays.
- C. Big Rivers' Obligations: Big Rivers shall provide Century with notice of any request from MISO or any reliability authority of a direction to activate the Protective Relays and shall establish and maintain, at Century's cost, communication equipment necessary to provide such notice.
- D. Request to MISO: Century and Big Rivers shall request MISO and SERC to allow Century to operate above the Base Load to the maximum extent allowable based on Protective Relays that would allow MISO to curtail load at Century above the Base Load when/if certain defined contingencies occur.
- E. Cooperation: Big Rivers and Kenergy will reasonably cooperate and support their request; *provided*, any confidential information provided by either party will be subject to customary confidentiality provisions to be included in the Protective Relays Agreement.
- F. Location of Protective Relays: The Protective Relays will be located behind Century's meter and will be operated as required by MISO and/or SERC. At Century's cost, Big Rivers will install communication equipment as required by MISO or SERC.

necessary to implement the Protective Relays.

- G. Reimbursement of Costs: Century shall reimburse Big Rivers for any costs incurred by it relating to the Protective Relays.
- H. Guarantee: Century Parent will guarantee all obligations of Century arising out of or relating to the payment or performance its obligations under the Protective Relays Agreement.

**IX. ADDITIONAL OBLIGATIONS AND ACKNOWLEDGEMENTS**

- A. Acknowledgments: Century will acknowledge and agree that:
  - 1. Kenergy may not provide Century electric service on and after 11:59:59 p.m. on August 19, 2013 other than pursuant to a new rate or contract approved by the KPSC;
  - 2. Subject to paragraph III(D), Big Rivers may cease to be a member of MISO, may join another RTO, or may not be a member of any RTO;
  - 3. Big Rivers has no obligation other than pursuant to the Arrangement Agreement to serve or supply power from its generation resources or under contract with Kenergy for the benefit of Century, or its affiliates, spin-offs or successors during the term of the agreement or thereafter.
- B. Assignment of Definitive Documents: For so long as Century has obligations to Big Rivers under the Definitive Documents, Century will not have the right to assign its rights or obligations under the Definitive Documents without the consent of Big Rivers, except to a successor. A successor shall be an entity that acquires all or substantially all of the assets or equity of the assigning entity or that merges with such assigning entity and which demonstrates to the reasonable satisfaction of Big Rivers that it has adequate financial capacity to perform Century's obligations under the agreements. Any such successor must agree to assume all rights and obligations of the assignor under the Definitive Documents. Any assignment will not relieve an assignor or guarantor of its obligations under or with respect to the Definitive Documents without the consent of Big Rivers, which consent will be granted in its sole discretion.
- C. KPSC Proceedings: Century, Kenergy and Big Rivers will request the KPSC

approve the Transaction on an expedited basis.

## **X. TAX INDEMNITY AGREEMENT**

A. General: Century and Century Parent will enter into a tax indemnification agreement with Kenergy. Under the agreement, Century and Century Parent will 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 Transaction. Century will have subrogation rights in any tax proceeding relating to this indemnity and Kenergy will fully cooperate in the defense of any such claim.

Kenergy may seek a tax ruling on any impact of the Transaction on Kenergy's tax exempt status at Century's sole cost and expense following consultation with Century; *provided* that if Kenergy seeks to become the Market Participant, if requested by Century, Kenergy shall obtain an opinion of counsel and provide a copy of such opinion to Century.

## **XI. CREDIT**

A. Security Arrangements: Century shall provide and maintain credit support, to the extent not duplicative of the credit support under paragraph IX(C), in the form of the following at Big Rivers' and Kenergy's election: a cash-funded account subject to customary security or custody arrangements, a letter of credit from a bank rated "A+" or better, or other assurances acceptable to Kenergy and Big Rivers in their sole discretion. Such cash collateral, letter of credit or other assurance shall be in an amount not to exceed the sum of:

1. The amounts reasonably estimated by Kenergy and Big Rivers to be due with respect to Century's obligations under the Electric Service Agreement and Kenergy's obligations under the Arrangement Agreement, without duplication, for a period not longer than the payment terms required by each supplier to Kenergy;
2. The amounts reasonably estimated by Big Rivers to be due with respect to Century's additional obligations to Big Rivers for a period of two months. For amounts under the Direct Agreement,

then no longer than the billing period therein;

3. The amounts estimated by Kenergy to be due with respect to Century's obligations under the Tax Indemnity Agreement; and
4. Other amounts reasonably projected by Kenergy or Big Rivers to become payable to either of them by Century or Century Parent.

Kenergy or Big Rivers, as applicable, may apply amounts on deposit in such cash-funded account, draw upon such letter of credit or otherwise access the collateral provided to pay amounts due and owing under the Definitive Documents, plus applicable interest. Any withdrawal or draw on security shall not relieve Century's obligation to replenish collateral to the amount required.

- B. Century Guarantee: Century Parent will guarantee to Kenergy and Big Rivers the payment and performance of all obligations of Century under the Definitive Documents.
- C. MISO Credit: Century shall provide and maintain credit support in the form and in the amount required by MISO with respect to the provision of electricity, electric capacity or electrical ancillary services for resale to Century.
- D. Bilateral Power Supply Arrangements Credit Support: Century shall provide and maintain credit support in the form and in the amount required under any bilateral contract for the purchase of electricity, electric capacity or electricity-related ancillary services for resale to Century, without the requirement for Kenergy or Big Rivers to provide credit support or be liable to the bilateral contract counterparty.

## **XII. CONDITIONS TO THE EFFECTIVE DATE**

- A. General: In addition to the closing conditions contemplated elsewhere in this Summary of Terms and Conditions, and to normal closing documents for a transaction similar to the Transaction, including customary legal opinions, certificates, releases, the condition to the obligations of Kenergy and Big Rivers to commence service under the Definitive Documents shall include:
1. The Delivery Point becomes a specific Node (as defined in the MISO Tariff);

2. All representations and warranties of the parties are true and correct in all material respects;
3. All Definitive Documents become effective;
4. Approvals by the Big Rivers' board; the three Members' boards; the Century and Century Parent boards; the RUS, CoBank, and CFC; and the KPSC and other applicable persons identified prior to entry into the Definitive Documents will have been obtained prior to the Effective Date and any conditions thereto satisfied or waived;
5. An agreement with MISO or SERC regarding Protective Relays, if applicable, satisfactory to each of Kenergy, Big Rivers and Century, in its sole discretion;
6. If applicable, an SSR Agreement with MISO, satisfactory to each of Kenergy, Big Rivers and Century, in its sole discretion;
7. All conditions of MISO to the effectiveness of the Transaction shall have been satisfied or waived; and
8. All Transaction documents have been executed and delivered by the parties thereto.

### **XIII. OTHER**

#### **A. Dispute Resolution:**

If a dispute arises regarding any net adjustment to charges to Century under the Definitive Documents or otherwise concerning the terms or conditions of the Definitive Documents, the duties or obligations of the parties or the implementation, interpretation or breach thereof, 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 10 days or such shorter or longer time as agreed upon by Century, Kenergy and Big Rivers. Absent resolution in this manner, the parties will submit the matter for binding arbitration under AAA rules for three judge's distribution, with the losing party to pay the fees and costs of the prevailing party, subject to appeal or requests for rehearing and subject to agreed minimum dispute amounts. Each party to the arbitration shall appoint a judge (i) with substantial experience in the electric utility sector, (ii) who has not been employed or been a consultant to such party in the



past. The two appointed judges shall select a third judge meeting these criteria. Any party may however seek injunctive relieve where delay in doing so could result in irreparable harm.

- B. Preparation of Definitive Documents: The initial drafts of documents proposed as the Definitive Documents for the Transaction contemplated by this Summary of Terms and Conditions will be prepared by counsel to Kenergy or Big Rivers.
- C. Survival of Obligations: Upon termination of the Electric Service Agreement, Century shall be obligated to pay for all energy, capacity, ancillary services and transmission services provided prior to the effective date of termination. In addition Century shall pay for any costs under any bilateral contracts that extend beyond the effective date of termination; provided Big Rivers and/or Kenergy shall use reasonable commercial efforts to mitigate those costs. The Parent Guarantee and all obligations customarily surviving termination, e.g., payment and indemnification obligations, shall survive termination of the Definitive Documents.
- D. Schedule: The parties agree to use expeditious efforts to finalize the Definitive Documents and to seek, obtain and satisfy any required approvals or conditions to effectiveness. Big Rivers and Kenergy will propose a schedule for the distribution of initial drafts of the Definitive Documents, obtainment of all board approvals, filing with the KPSC for approval of the Transaction, and request to the KPSC to issue an order approving the Definitive Documents on an expedited basis. [BREC to provide specific schedule.]
- The parties agree to publicly endorse this Term Sheet and the Definitive Documents and to support the filing of an application at the KPSC to approve the Definitive Documents in the form presented. Century shall be allowed to make a presentation at a board meeting of Big Rivers and Kenergy prior to or in connection with the approval of the Definitive Documents. The CEOs of Big Rivers and Kenergy will request to other Members that Century have similar opportunities to present to their board of directors if desired.
- E. Governing Law: Commonwealth of Kentucky

## Rider I – SSR for Short Term Operation of Coleman

- A. Purpose: The SSR Agreement will provide for continued operation of one or more units of the Coleman Generating Station after August 19, 2013, until such time as the Capacitor Additions and, at Century's option, the Protective Relays are installed and operational.
- B. Term: The SSR Agreement shall continue month-to-month until terminated by Century on 30 days notice. Big Rivers may terminate on 30 days notice given after April 30, 2014. The agreement shall terminate if Big Rivers commences operation of the Coleman Generation Station for its own purposes. Termination by Century or by Big Rivers, other than to operate Coleman for its own purposes, will require Century to reduce its load to the Base Load plus, if applicable, the Curtailable Load. If MISO refuses to accept termination of the SSR Agreement, then Century will have no obligations under the SSR Agreement as long as Century reduces its load to the Base Load plus, if applicable, the Curtailable Load.
- C. Power Costs and Credits: Costs relating to the SSR Agreement in the circumstances described in this rider shall be payable pursuant to paragraph VI.B.1. Such costs shall NOT include any capital costs, including any capital costs incurred after the Effective Date.
- D. Major Failure: If there is a major failure at any unit of the Coleman Generating Station during the term of the SSR Agreement, either (i) Century shall become responsible for the lesser of (a) the capital repair costs of the unit, but not to exceed the \$1 million insurance deductible, or (b) if less than 3 units are required, then the restart costs of an idled unit, or (ii) Century shall reduce its load to the Base Load plus, if applicable, the Curtailable Load.
- E. MISO Process on Coleman: In any MISO process or negotiation to determine the SSR status of Coleman for purposes of this Rider I, Big Rivers shall provide Century with a reasonable opportunity to review and comment on all material information, proposals and submittals to MISO in such processes. Big Rivers and Kenergy shall not limit or prohibit Century's ability to discuss or engage with MISO regarding issues arising under the SSR Agreement. Big Rivers will not agree to an SSR Agreement without Century's consent.

BIG RIVERS ELECTRIC CORPORATION

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A GENERAL ADJUSTMENT IN RATES  
CASE NO. 2012-00535

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Supplemental Request for Information  
dated May 3, 2013

May 29, 2013

1 Item 2) *Please describe in detail the role and responsibilities that Big*  
2 *Rivers, Kenergy, and Century each will have pursuant to the*  
3 *“arrangement” and the functions and activities that Big Rivers*  
4 *specifically will perform pursuant to the “arrangement.”*

5

6 **Response)** The term sheet states the roles and responsibilities contemplated for  
7 each of Big Rivers, Kenergy and Century under the “arrangement,” and speaks for  
8 itself. The term sheet identifies eight agreements that are contemplated for this  
9 transaction.

10

11 1) Electric Service Agreement - A retail electric service  
12 agreement between Kenergy and Century for the sale of  
13 electricity, electric capacity and electricity-related ancillary  
14 services, including transmission services, by Kenergy to  
15 Century. The agreement is intended to remain in place without  
16 regard to who is acting as the “Market Participant,” which  
17 purchases these services from MISO or pursuant to bilateral  
18 contracts for resale to Kenergy for delivery to Century.

19 2) Arrangement Agreement - The power arrangement and  
20 procurement agreement entered into between Big Rivers and  
21 Kenergy pursuant to which Big Rivers arranges and procures  
22 electricity, electric capacity and electricity-related ancillary

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- 1 services while it serves as the Market Participant. Under the  
2 agreement, Big Rivers will procure these services for Kenergy  
3 for resale to Century under the Electric Service Agreement. The  
4 agreement terminates if Big Rivers is no longer the Market  
5 Participant. As a result, this could be a short-term or long-term  
6 agreement.
- 7 3) **Direct Agreement** - An agreement between Big Rivers and  
8 Century relating to direct, bilateral obligations to each other in  
9 connection with the Transaction, such as Century's obligations  
10 to reimburse Big Rivers' costs relating to a must-run conditions  
11 at the Coleman Generation Station. This agreement will remain  
12 in effect even if Big Rivers is no longer acting as the Market  
13 Participant and the Arrangement Agreement is terminated.
- 14 4) **Capacitor Agreement** - An agreement entered into between  
15 and among Big Rivers, Kenergy, and Century to protect Big  
16 Rivers and Kenergy from risks and obligations relating to the  
17 design, development, purchase, installation, operation and  
18 maintenance of the Capacitor Additions at Century.
- 19 5) **Protective Relay Agreement** - An agreement entered into  
20 between and among Big Rivers, Kenergy, and Century to protect  
21 Big Rivers and Kenergy from risks and obligations relating to

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- 1 the design, development, purchase, installation, operation and  
2 maintenance of the Protective Relay additions at Century.
- 3 6) **Tax Indemnity Agreement** – Agreement between Kenergy,  
4 and Century and Century Parent to indemnify Kenergy on an  
5 after-tax basis from any tax liability or other tax costs incurred  
6 by it as a result of the transaction.
- 7 7) **Guarantee of Century Parent** – Agreement of Century  
8 Parent in favor of Kenergy and Big Rivers. Under the  
9 agreement, Century Parent will unconditionally and irrevocably  
10 guarantee the prompt payment and performance obligations of  
11 Century under the Electric Service Agreement, the Direct  
12 Agreement, the Tax Indemnity Agreement and any other  
13 transaction document, including the obligations of Century  
14 relating the payment of money to Kenergy or Big Rivers.
- 15 8) **Capacitor Additions and Protective Relays Guarantee of**  
16 **Century Parent** – Agreement made by Century Parent in favor  
17 of Kenergy and Big Rivers. Under the agreement, Century  
18 Parent will unconditionally and irrevocably guarantee the  
19 prompt payment and performance obligations of Century under  
20 the Capacitor Agreement and the Protective Relays Agreement.  
21 The reason for a separate guarantee for these two agreements  
22 distinct from the general guarantee described above is the desire

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1 of the parties for the Capacitor Agreement and the Protective  
2 Relays Agreement to be entered into in advance of the other  
3 transaction documents to facilitate the installation of equipment  
4 as soon as possible. Thus, this guarantee would be entered into  
5 at the time those two agreements are executed and delivered by  
6 the parties. The other guarantee will be delivered at the time of  
7 execution and delivery of the Electric Service Agreement, the  
8 Arrangement Agreement and the Direct Agreement which is  
9 expected to be later than the time of the execution and delivery  
10 of the Capacitor Agreement and the Protective Relays  
11 Agreement.

12  
13  
14  
15

**Witness) Robert W. Berry**

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1 **Item 3)** *Please describe and quantify the costs that Big Rivers and*  
2 *Kenergy each will incur to provide Century market access.*

3

4 **Response)** Big Rivers and Kenergy are not providing Century market access  
5 under the arrangement described in the term sheet. Century will be provided  
6 retail electric service by Kenergy, the retail electric supplier in the area in which  
7 Century's electric consuming facility is located. The proposal is that Big Rivers  
8 would arrange and procure power on the open market or under bilateral contracts,  
9 resell it to Kenergy, which would deliver it to Century at the market price, plus  
10 additional costs incurred by Big Rivers and Kenergy. The term sheet, which was  
11 provided in response to KIUC 3-1, was structured so Big Rivers would not incur  
12 any unreimbursed costs arrange and procure electricity, electric capacity and  
13 electricity-related ancillary services to Century under the term sheet  
14 arrangement. In general terms, Big Rivers will initially act as the Market  
15 Participant (MP) to arrange and procure the electricity and electricity-related  
16 services required by Kenergy for resale to Century under the Electric Service  
17 Agreement. The arrangements contemplated in the term sheet cover all  
18 exposures to costs, but what the actual costs will be cannot be quantified with any  
19 degree of certainty. Century and Kenergy can replace Big Rivers as the MP if  
20 they desire. In that case, Big Rivers will continue to be reimbursed for certain  
21 costs agreed under the Direct Agreement and otherwise receive revenue from the  
22 sale of transmission services pursuant to the MISO Tariff.

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1 Under the Arrangement Agreement, Big Rivers will charge Kenergy for the  
2 following:

- 3 • On a pass-through basis, the market cost of all electricity,  
4 electric capacity and electricity-related ancillary services,  
5 required to be purchased by Big Rivers to serve Kenergy for the  
6 benefit of Century.  
7
- 8 • Charges for transmission service to the Hawesville Node.  
9
- 10 • Costs, if any, related to Century's operation incurred by Big  
11 Rivers to comply with (i) state or federal renewable energy  
12 portfolio or similar standards, or (ii) environmental laws or  
13 regulations. Those costs to comply with environmental laws and  
14 regulation do not include compliance costs at Big River's  
15 generation (other than applicable SSR costs associated with the  
16 must-run condition at Coleman).  
17
- 18 • Charges by MISO to establish or maintain the Hawesville Node.  
19
- 20 • Charges to Big Rivers for MISO MTEP or MVP costs (i.e.,  
21 transmission capital costs) that relate solely and directly to  
22 Century's operation.  
23
- 24 • Costs related to Century's operation incurred by Big Rivers to  
25 comply with the Dodd-Frank Wall Street Reform and Consumer  
26 Protection Act.  
27
- 28 • Costs or charges of ACES, or similar service provider, related to  
29 Century's operation, for scheduling, awards and settlements.



BIG RIVERS ELECTRIC CORPORATION

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A GENERAL ADJUSTMENT IN RATES  
CASE NO. 2012-00535

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Supplemental Request for Information  
dated May 3, 2013

May 29, 2013

- 1                   • Costs of a 0.25 FTE employee of Big Rivers if it is serving as the  
2                   Market Participant.  
3
- 4                   • An excess reactive demand charge equal to the product of  
5                   \$0.1433 and the amount, expressed in kilovars, of the difference,  
6                   if positive, of (a) the maximum metered reactive demand of  
7                   Century during any billing month, minus (b) the amount of  
8                   kilovars equal to the product of 0.3287 times the maximum  
9                   hourly demand during the billing month, expressed in kilowatts,  
10                  plus 74,005 kilovars.  
11
- 12                  • Any other amounts due and owing to Big Rivers under the  
13                  transaction documents, including applicable taxes or claims by  
14                  counterparties to any bilateral contracts.  
15  
16

17 Note that under the Electric Service Agreement, Kenergy will charge Century  
18 for the above, on a pass-through basis, together with other amounts payable to  
19 Kenergy to reimburse for its costs it may incur as a result of the transaction,  
20 including a contribution to Kenergy's margin.  
21

22 Under the Direct Agreement, Big Rivers will charge Century the following:  
23

- 24                  • All System Support Resource (SSR) (must run) costs of the  
25                  Coleman generating station, less any transmission revenue  
26                  received by Big Rivers from Century.  
27
- 28                  • All electrical transmission capital costs related to Century's  
29                  operation allocated by MISO to the Century Node.

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- 1                   • Other third-party out of pocket costs of Big Rivers incurred or  
2                   committed to by Big Rivers related to Century's operation.  
3  
4                   • All SSR (must run) costs, including capital if Coleman is forced  
5                   to restart due to Century's increase in load.  
6  
7                   • If a major failure occurs at Coleman during the SSR period,  
8                   Century will pay Big Rivers' \$1 million insurance deductible, or  
9                   if less than 3 units are required to operate, Century will pay the  
10                  costs to restart the idled unit or reduce its load.  
11  
12                  • If Big Rivers decides to exit MISO or to join an alternate RTO,  
13                  then Century is responsible for any additional costs resulting  
14                  from the Hawesville Node remaining in MISO.  
15

16 Under the Capacitor Agreement and the Protective Relays Agreement, Big  
17 Rivers will charge Century for the following:

- 18  
19                  • Any costs incurred by Big Rivers associated with the  
20                  construction, installation, ownership, operation and  
21                  maintenance of the capacitor additions or the protective relays.  
22  
23                  • Any claims by others, such as a reliability authority, relating to  
24                  the capacitor additions or the protective relays.  
25

26  
27 **Witness)**   Robert W. Berry

28

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1 **Item 4)** *Please provide a copy of all analyses prepared by or on behalf*  
2 *of Big Rivers and/or Kenergy to identify and quantify the costs that it will*  
3 *incur to provide Century market access.*

4

5 **Response)** Big Rivers and Kenergy are not providing Century market access  
6 under the arrangement described in the term sheet. Century will be provided  
7 retail electric service by Kenergy, the retail electric supplier in the area in which  
8 Century's electric consuming facility is located. The proposal is that Big Rivers  
9 would arrange and procure power on the open market or under bilateral contracts,  
10 resell it to Kenergy, which would deliver it to Century at the market price, plus  
11 additional costs incurred by Big Rivers and Kenergy. Please see Big Rivers'  
12 responses to items 1, 2 and 3, above.

13

14

15 **Witness)** Robert W. Berry

16

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1 Item 5) *Please provide a quantification of the costs that Big Rivers*  
2 *and/or Kenergy each will incur to provide Century market access for the*  
3 *test year, including an allocation of each Company's present costs as well*  
4 *as any incremental costs to do so, and the amounts included in the*  
5 *Company's test year revenue requirement in this case. If Big Rivers does*  
6 *not agree that there should be an allocation of any of the Company's*  
7 *present costs, then please explain why it does not agree.*

8

9 **Response)** Big Rivers and Kenergy are not providing Century market access  
10 under the arrangement described in the term sheet. Century will be provided  
11 retail electric service by Kenergy, the retail electric supplier in the area in which  
12 Century's electric consuming facility is located. The proposal is that Big Rivers  
13 would arrange and procure power and related services on the open market or  
14 under bilateral contracts, resell it to Kenergy, which would deliver it to Century at  
15 the market price, plus additional costs incurred by Big Rivers and Kenergy.  
16 Please see Big Rivers' response to item 3, above. Big Rivers will not incur  
17 unreimbursed costs in the test year as a result of the transaction contemplated by  
18 the term sheet. Big Rivers believes that there will be no allocation of any of the  
19 Company's present costs because the rate case filed in this proceeding was filed  
20 assuming Century ceased operation after August 19, 2013. As such, there are no  
21 costs that would be attributable to Century's operations included in this filing.

22

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1 **Witness)** Robert W. Berry

2