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December 30, 2013

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COMMISSION

**VIA HAND DELIVERY**

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

***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 the updated Transaction Documents referenced in the Rebuttal Testimony of Robert W. Berry at page 5, lines 5-9, and page 5, line 11 through page 7, line 7. These new Transaction Documents update Exhibits 5, 7, and 9 to the Application filed with the Commission on November 20, 2013.

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/lb  
Enclosure

**Certificate of Service**  
**Kentucky PSC Case No. 2013-00413**

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## **ELECTRIC SERVICE AGREEMENT**

Dated as of January [ ], 2014,

by and between

**KENERGY CORP.**

and

**CENTURY ALUMINUM 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 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~~385 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~~385 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~~385 MW);

(d) The Base Load shall be ~~378~~385 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 Curtaillable 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 Curtaillable Load may not exceed ~~378~~385 MW, on a scheduled basis, and ~~388~~395 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~~395 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

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 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.

1.1.60

1.1.61 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.

1.1.62 MISO: The Midcontinent Independent System Operator, Inc.

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

1.1.64 Monthly Charge: As defined in Section 4.1.

1.1.65 MW: Megawatt.

1.1.66 MWh: Megawatt-hour.

1.1.67 NERC: North American Electric Reliability Corporation.

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.

1.1.69 Notice of Termination: As defined in the Recitals.

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

1.1.71 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.

1.1.72 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.

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

1.1.74 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.

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

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

1.1.77 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.

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

1.1.79 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, redispach, 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.

1.1.80 Retail Fee: As defined in Section 4.5.

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

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 Sebree Node is located.

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

1.1.84 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.

1.1.85 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.

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

1.1.87 Service Period: As defined in Section 2.1.

1.1.88 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.

1.1.89 Surplus Sales: As defined in Section 10.1.1.

1.1.90 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.

1.1.91 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.

1.1.92 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.

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

1.1.94 Term: As defined in Section 7.1.

1.1.95 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.

1.1.96 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.

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

1.1.98 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.

1.1.99 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.

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

1.1.101 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~~385 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~~395 MW. Century acknowledges and agrees that any such excess over ~~388~~395 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~~395 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 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 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;

15.1.3 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 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.



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

**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~~385 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~~385 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~~385 MW);

(d) The Base Load shall be ~~378~~385 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 Curtaillable 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 Curtaillable Load may not exceed ~~378~~385 MW, on a scheduled basis, and ~~388~~395 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~~395 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

1.1.56 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.

1.1.57

1.1.58 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.

1.1.59 MISO: The Midcontinent Independent System Operator, Inc.

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

1.1.61 Monthly Charge: As defined in Section 4.1.

1.1.62 MW: Megawatt.

1.1.63 MWh: Megawatt-hour.

1.1.64 NERC: North American Electric Reliability Corporation.

1.1.65 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.

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

1.1.68 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.

1.1.69 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.

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

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

1.1.72 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.

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

1.1.74 Reliability Costs: As defined in the Electric Service Agreement.

1.1.75 Retail Fee: As defined in the Electric Service Agreement.

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

1.1.77 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.

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

1.1.79 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.

1.1.80 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.

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

1.1.82 Service Period: As defined in Section 2.1.

1.1.83 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.

1.1.84 Surplus Sales: As defined in Section 10.1.1.

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.

1.1.86 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 Sebree Smelter.

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.

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

1.1.89 Term: As defined in Section 7.1.

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.

1.1.91 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.

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

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.

1.1.94 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.

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

1.1.96 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~~385 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~~395 MW. Kenergy acknowledges and agrees that any such excess over ~~388~~395 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~~395 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 Curtailed 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

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.  
   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. 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.

**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 (other than the Load Curtailment Agreement), 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, subject to the Load Curtailment Agreement.

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.