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**PUBLIC SERVICE  
COMMISSION**

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February 28, 2014

**HAND DELIVERY**

Mr. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

**Re: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation  
for Approval of Contracts  
Case No. 2013-00413**

Dear Mr. Derouen:

Enclosed for filing in the above matter are an original and ten copies of the Answer of Century Aluminum Sebree LLC to the Petition for Rehearing filed by Kentucky Industrial Utility Customers, Inc.

If you have any questions please let us know.

Very truly yours,

  
David C. Brown

DCB

Enclosures

cc: James M. Miller  
Tyson Kamuf  
Edward P. Depp  
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COMMONWEALTH OF KENTUCKY  
BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED

FEB 28 2014

PUBLIC SERVICE  
COMMISSION

In the Matter of:

Joint Application of Kenergy Corp. )  
and Big Rivers Electric Corporation )  
for Approval of Contracts and for )  
A Declaratory Order )

Case No. 2013-00413

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**RESPONSE OF CENTURY ALUMINUM SEBREE, LLC TO  
PETITION FOR REHEARING OF KENTUCKY INDUSTRIAL UTILITY  
CUSTOMERS, INC.**

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Century Aluminum Sebree, LLC ("Century Sebree"), through counsel, responds as follows to the February 21, 2014 Petition for Rehearing of Kentucky Industrial Utility Customers, Inc. ("KIUC"). As set forth herein, Century Sebree requests that the Kentucky Public Service Commission ("Commission") deny the Petition for Rehearing.

**I. PROCEDURAL BACKGROUND**

By order dated January 30, 2014 in this proceeding, the Commission approved certain new contracts by and among Century Sebree, Big Rivers Electric Corporation ("BREC"), and Kenergy Corp. ("Kenergy") for electric service to Century commencing on and after January 31, 2014 ("Century Sebree Transaction").<sup>1</sup> The Commission found that the Century Sebree

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<sup>1</sup> See *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00413, Order (Jan. 30, 2014) ("Sebree Order")

Transaction is nearly identical substantively to agreements approved on August 14, 2013 for continued electric service to Century Aluminum of Kentucky General Partnership ("Century Hawesville Transaction").<sup>2</sup> The Commission further found that the Century Sebree Transaction, like the Century Hawesville Transaction, will result in "rates that are fair, just, and reasonable for electric service to Century Sebree and to the approximately 113,000 retail customers who electricity is supplied by [BREC]."<sup>3</sup> As in the Hawesville Order, the Sebree Order approved the Century Sebree Transaction agreements as filed and, among other things, rejected KIUC's recommendation for a future market access charge as "unreasonable" given the delicate balance achieved to "kee[p] the Century Sebree smelter viable while not subjecting the remaining customers to any incremental costs after January 31, 2014 . . . ."<sup>4</sup>

On February 21, 2014, KIUC submitted a Petition for Rehearing of the Sebree Order.<sup>5</sup> KIUC argues that the record does not support the Commission's conclusion that Century Sebree is not profitable and therefore Century Sebree would likely terminate the Century Sebree Transaction if a market access charge were imposed. KIUC further argues that the Commission did not address whether Century Sebree's profitability is a relevant issue when determining fair, just and reasonable rates for both Century Sebree and BREC's remaining customers. As such, KIUC asserts that the Sebree Order is arbitrary, unreasonable and may result in unreasonable preference "[d]epending on the Commission's ultimate decision in Case No. 2013-00199."<sup>6</sup>

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<sup>2</sup> See *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, Order (Aug. 14, 2013) ("Hawesville Order").

<sup>3</sup> Sebree Order at 17.

<sup>4</sup> See *id.* at 18-19.

<sup>5</sup> See *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, Petition for Rehearing of Kentucky Industrial Utility Customers, Inc. (Feb. 21, 2014) ("KIUC Petition").

<sup>6</sup> See *id.* at 6. Century Sebree is not a party to Case No. 2013-00199, which remains pending before the Commission.

Finally, KIUC argues that the Sebree Order "fails to achieve a balance of interests between [BREC], its creditors and its customers." <sup>7</sup>

## II. RESPONSE

KIUC's Petition should be denied. KRS 278.400 does not articulate a standard of review for granting rehearing; on appeal, however, a Commission order may only be vacated only upon a finding that the Commission's determination was "unlawful or unreasonable."<sup>8</sup> As discussed below, the Commission's findings in the Sebree Order were neither unlawful nor unreasonable. Contrary to KIUC's assertions, the Commission's analysis of the Century Sebree Transaction was consistent with its analysis of the Century Hawesville Transaction. KIUC's arguments in favor of a market access charge were duly considered and denied in the Hawesville Order and KIUC exhausted its remedies with respect to the Hawesville Order. No meaningful difference exists between the two transactions to warrant deviation from precedent in the Sebree Order.

Moreover, KIUC's Petition overlooks or ignores key portions of the record that fundamentally undermine KIUC's assertions with respect to Century Sebree's profitability and the effect of a market access charge on Century Sebree's continued operations. Given the Sebree Order's determination that the Century Sebree Transaction results in fair, just and reasonable rates for all of BREC's customers following a full review of the record in this proceeding, the Petition should be denied.

### A. **KIUC'S ARGUMENTS HAVE BEEN DULY CONSIDERED AND PREVIOUSLY DENIED**

Although KIUC's Petition purports to raise four distinct arguments, the nucleus of the rehearing request centers squarely on the Commission's rejection of KIUC's proposed market access charge. As discussed in detail below, the Commission has previously determined that a

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<sup>7</sup> See *id.* at 8. KIUC offers the caveat that the "problem could be cured" depending on the outcome of Case No. 2013-00199. See *id.* at 2.

<sup>8</sup> KRS 278.410.

market access charge on a transaction materially identical to the Century Sebree Transaction is unreasonable. The Commission employed this same analysis in the Sebree Order, and arrived at the same conclusion despite KIUC's attempt to distinguish the transactions. Given that the Commission's analysis in the Sebree Order is consistent with its previous findings in the Hawesville Order, the proposed market access charge is unreasonable. Accordingly, KIUC's Petition should be denied.

KIUC proposed a market access charge as a condition of the Commission's approval of Century Hawesville Transaction.<sup>9</sup> The Commission flatly rejected KIUC's proposal in the Hawesville Order, finding that the proposed contracts "were a product of extensive and good faith negotiations among [BREC], Kenergy [and Century Hawesville] with the goal of keeping the Hawesville smelter viable while not subjecting the remaining customers to any additional incremental costs . . . ."<sup>10</sup> As such, the proposed market access charge "would jeopardize the balance reached by the proposed agreements" and was, therefore, unreasonable. KIUC challenged the Hawesville Order in the Franklin Circuit Court, but later moved to withdraw that challenge, which was granted "with prejudice".<sup>11</sup> The Commission's determination in the Hawesville Order is now settled law.

In closely following this precedent, the Commission applied the same analysis to the Century Sebree Transaction that it applied to the Century Hawesville Transaction. First, the Commission determined that Century Sebree Transaction, like the Century Hawesville Transaction, is the product of extensive and good faith negotiations among BREC, Kenergy and Century, and carefully balances competing interest in order to keep Century Sebree operational

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<sup>9</sup> Hawesville Order at 23.

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

<sup>11</sup> *See* Big Rivers Exh. 2, January 6, 2014 Hearing.

beyond January 31, 2014.<sup>12</sup> Second, consistent with the Century Hawesville Transaction, the Century Sebree Transaction will keep Century Sebree viable while not subjecting BREC's remaining customers to incremental costs.<sup>13</sup> Based on these findings, the Commission made the same determination in the Sebree Order as it had made in the Hawesville Order – i.e., KIUC's proposed market access charge would upset the delicate balance reached in the Century Sebree Transaction and is, therefore, unreasonable.<sup>14</sup> The Century Sebree Transaction is in no way meaningfully different from the Hawesville Smelter Transaction, and cannot justify a different decision. Accordingly, KIUC's Petition should be denied.

**B. KIUC'S PETITION OVERLOOKS AND IGNORES KEY PARTS OF THE RECORD THAT DIRECTLY REFUTE KIUC'S CLAIMS AND FIRMLY SUPPORT THE COMMISSION'S ORDER.**

In its effort to draw a distinction between the Century Sebree Transaction and the Century Hawesville Transaction, KIUC argues that "the evidence in the record does not support the Commission's conclusion that the Sebree Transaction Agreements 'were a product of good faith negotiations . . .'"<sup>15</sup> Specifically, KIUC suggests that the Commission failed to consider evidence submitted regarding Century Sebree's profitability with respect to imposing a market access charge, arguing that "the only evidence in the record that offered any insight into the Sebree smelter's profitability indicated that the smelter is not on the verge of closing, but instead is profitable and perhaps able to pay a higher rate than the rate negotiated by [BREC]." KIUC further argues that Century Sebree's assertion that the smelter will close if a market access charge is "inconsistent" with representations made to investors regarding profitability.<sup>16</sup> KIUC's record evidence regarding Century Sebree's profitability was based entirely on data obtained from two

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<sup>12</sup> See Sebree Order at 18.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See KIUC Petition at 2-3.

<sup>16</sup> See *id.* at 4.

employee newsletters, dated December 2012 and May 2013, released by Century Sebree's predecessor Rio Tinto Alcan.<sup>17</sup>

While KIUC's Petition acknowledges that Century Sebree's post-hearing data responses refute KIUC's profitability claims, the Petition entirely ignores statements made on the record by Century Sebree during the January 6, 2014 evidentiary hearing that clearly contradict KIUC's profitability argument and squarely address Century Sebree's going-forward business operations if a market access charge were to be imposed. As discussed in the testimony of Jason Young, Century Sebree's plant manager, Sebree's 2012 financial results are properly accounted for as a \$12.5 million loss.<sup>18</sup> The losses continued into 2013, after Century assumed ownership of the Sebree Smelter and, even if it had been taking marked-based power, Sebree was at best "break even" financially.<sup>19</sup> Moreover, as discussed in the testimony of Michael Early, the Century Sebree Transaction poses significant power pricing risks on Century Sebree than are not borne by any other Kenergy customer. The Transaction is structured to ensure that all net incremental costs incurred by Kenergy and BREC to provide service to Sebree are borne by Century alone. Century also bears the full risk that Reliability Costs may be incurred as a result of the changes in operation at Wilson, Coleman, and other BREC plants. While Century Sebree is taking on these significant risks, BREC's remaining customers will benefit from millions of dollars in firm transmission revenues for continued service to Sebree. As clearly stated in Mr. Early's testimony, given all of the risks Century Sebree incurs under the Century Sebree Transaction, Century Sebree simply cannot assume the risk of a market access charge and remain operational.<sup>20</sup>

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<sup>17</sup> Kollen Direct Testimony at p. 9: 1-3.

<sup>18</sup> Testimony of Jason Young at January 6, 2014 Hearing, Tr. 15:28-15:29 ("Young Hearing Testimony");

<sup>19</sup> Early Hearing Testimony.

<sup>20</sup> Early Hearing Testimony.

The Commission rejected KIUC's proposed market access charge based on its review of all record evidence, including Century Sebree's hearing testimony and post-hearing data response regarding profitability. The record firmly supports the decision made in the Sebree Order. KIUC's arguments to the contrary are incorrect, and its Petition should be denied.



**III. CONCLUSION**

WHEREFORE, Century respectfully submits that KIUC's Petition for Rehearing should be denied.

Respectfully submitted,

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Dated: February 28, 2014

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via United States Postal Service, First Class Mail, postage prepaid, upon:

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on this the 28<sup>th</sup> day of February, 2014.

  
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