

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KENERGY CORP.     )  
AND BIG RIVERS ELECTRIC                    )  
CORPORATION FOR APPROVAL OF            )  
CONTRACTS                                    )

CASE NO. 2014-00370

ORDER

On October 21, 2014, Kenergy Corp. (“Kenergy”) and Big Rivers Electric Corporation (“Big Rivers”) (collectively “Joint Applicants”) filed a joint application seeking approval of a new market participant arrangement between and among Kenergy, Big Rivers, EDF Trading North America, LLC (“EDF”), Century Aluminum Company (“Century Aluminum”), Century Aluminum Sebree LLC (“Century Sebree”), and Century Aluminum of Kentucky General Partnership (“Century Hawesville”). Under the new market participant arrangement, EDF would replace Big Rivers as the market participant and would provide wholesale electric service to Kenergy for retail delivery by Kenergy to Century Hawesville’s and Century Sebree’s aluminum smelters. Joint Applicants also seek approval of certain interim service arrangements. Joint Applicants further request a declaration that Kenergy has authority to physically disconnect electric service to Century Hawesville or Century Sebree, except as provided under the applicable Alternate Service Agreements (“ASA”) relating to non-smelting load, due to EDF being in default or due to the termination of the applicable proposed EDF Arrangement and Procurement Agreement. Joint Applicants seek expedited treatment of this matter and request a decision on or before December 1, 2014 in order for EDF to file an

application with the Midcontinent Independent System Operator, Inc. ("MISO") by December 1, 2014, to be the new market participant effective January 1, 2015.

There are no intervenors to this proceeding. The matter is now before the Commission for a decision based on the record. Based on the following reasons, the Commission will approve the joint application.

#### Current Electric Service Arrangements

Kenergy currently provides retail electric service to Century Hawesville under an Electric Service Agreement ("Hawesville ESA"), dated August 19, 2013. Under the terms of the Hawesville ESA, Kenergy obtains power from the wholesale market for retail delivery to Century Hawesville from Big Rivers, in its capacity as market participant, through an Arrangement and Procurement Agreement ("Hawesville APA"), dated August 19, 2013. The Hawesville ESA and APA, along with seven other contracts, were approved by the Commission in Case No. 2013-00221.<sup>1</sup> Kenergy also provides retail electric service to Century Sebree under a separate but similar Electric Service Agreement ("Sebree ESA"). As with the current Century Hawesville arrangement, Kenergy obtains power from the wholesale market for retail delivery to Century Sebree from Big Rivers, in its capacity as market participant, through an Arrangement and Procurement Agreement ("Sebree APA"). The Sebree ESA and APA are both dated January 31, 2014, and were approved, along with six other contracts, by the Commission in Case No. 2013-00413.<sup>2</sup> The Century Sebree power supply

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<sup>1</sup> Case No. 2013-00221, Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order (Ky. PSC Aug. 13, 2013).

<sup>2</sup> Case No. 2013-00413, Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order (Ky. PSC Jan. 30, 2014).

contracts are substantially similar to the Century Hawesville power supply contracts and those contracts allow Century Hawesville and Century Sebree to be supplied with electric power purchased on the open market by Kenergy rather than power generated by Big Rivers. Under the terms of the existing Arrangement and Procurement Agreements (“APAs”), those agreements terminate once Big Rivers is no longer the market participant.

#### Century New Market Participant Transaction

According to the joint application, Century Aluminum,<sup>3</sup> on behalf of Century Hawesville and Century Sebree, submitted written notification to Kenergy and Big Rivers on January 31, 2014, stating that pursuant to the respective Electric Service Agreements (“ESAs”), it was appointing EDF as the market participant to replace Big Rivers. Pursuant to the terms of the two ESAs, Kenergy would need to consent to the appointment before EDF can become the new market participant. Kenergy, Big Rivers, Century Hawesville, Century Sebree, and EDF subsequently engaged in negotiating the terms and conditions under which Kenergy would give its consent to EDF becoming the new market participant. The negotiations resulted in the Century New Market Participant Transaction, which is comprised of two sets of the following eight agreements (collectively “Century New Market Participant Transaction Agreements”). The two sets of agreements are substantively identical, except that one set relates to service to Century Hawesville and the other relates to service to Century Sebree.

1. EDF Arrangement and Procurement Agreements (“EDF APAs”) – The power arrangement and procurement agreements to be entered into between EDF and Kenergy establish terms under which EDF will arrange and procure electricity, electric

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<sup>3</sup> Century Aluminum is the parent company of Century Hawesville and Century Sebree.

capacity, and electricity-related ancillary services while it serves as the market participant. Under each agreement, EDF will procure these services for Kenergy for resale to Century Hawesville and Century Sebree under the Hawesville ESA and the Sebree ESA, respectively. Under the EDF APAs, EDF covenants that it is in good standing as a MISO market participant and as to its ability to provide MISO electric services required under the proposed agreements. EDF also covenants that it will not withdraw as a member of MISO or as a MISO market participant without Kenergy's prior consent. Each EDF APA has an initial term of 29 months. After the initial service term, both the proposed EDF APAs and the existing ESAs automatically renew for successive one-year periods until one party gives the other party at least one year prior notice of termination. Each of the proposed EDF APAs is also subject to earlier termination due to: any change in law that makes performance impossible or makes the applicable agreement illegal; a credit default by either Century Hawesville or Century Sebree; or a default by EDF under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff ("MISO Tariff"). In the event of an EDF default, in addition to the right to terminate, Kenergy will have the right, but not the obligation, to exercise a power-of-attorney for purposes of transferring ownership of the applicable MISO node and EDF's market participant duties under the proposed applicable agreement to a replacement entity qualified to act as the market participant serving Kenergy for resale to either Century Hawesville or Century Sebree, as applicable. Kenergy is requesting Commission approval of the EDF APAs.

2. Operational Services Agreements ("EDF OSAs") – These agreements between Kenergy and Big Rivers are necessary to obligate Big Rivers to continue to

perform metering, interconnection, and other operational services that Big Rivers currently performs under the existing Hawesville APA and Sebree APA in support of Kenergy's corresponding obligations under the Hawesville ESA and Sebree ESA. The EDF OSAs will also obligate Kenergy to reimburse Big Rivers for its costs of providing those services and EDF will be obligated under the EDF APAs to pay those amounts to Kenergy. Big Rivers is requesting Commission approval of the EDF OSAs.

3. Consent and Agreements – These agreements between Kenergy, Century Aluminum, and Century Hawesville or Century Sebree, where applicable, relate to Century Aluminum and Century Hawesville's or Century Sebree's consent to and approval of the applicable EDF APA and the other terms and conditions of the Century New Market Participant Transaction. Century Hawesville and Century Sebree have agreed that any termination of the EDF APAs, or temporary or permanent discontinuation of the provision of any electric services under the EDF APAs that is unrelated to curtailment for reliability purposes, will relieve Kenergy of its obligation to provide such electric services under the applicable existing ESA. Century Aluminum, Century Hawesville, and Century Sebree acknowledge that either Century Hawesville or Century Sebree, as applicable, will pay or reimburse all costs of Kenergy or Big Rivers relating to or arising out of a MISO Tariff default by EDF. Although Kenergy is of the belief that these agreements do not require Commission approval, Kenergy, out of an abundance of caution, is requesting the Commission to approve these consents because some of the terms therein could be construed to modify the existing ESAs.

4. Interim Arrangement and Procurement Agreements ("Interim APAs") – These interim power arrangement and procurement agreements are to be attached to

the Century Hawesville consent and the Century Sebree consent. Big Rivers and Kenergy may enter into these agreements, if each party agrees to do so, in the event of a default by EDF under an EDF APA and resulting termination of that EDF APA. The Interim APAs are substantially identical to the existing ESAs whereby Big Rivers will arrange and procure electricity, electric capacity, and electricity-related ancillary services while it serves as the market participant. Big Rivers will procure these services for Kenergy for resale to either Century Hawesville or Century Sebree under the respective Hawesville ESA or Sebree ESA. Each Interim APA has an initial term of 180 days, subject to extension or earlier termination. These are intended to be short-term agreements to which continuity of service to either Century Hawesville or Century Sebree may be maintained while new arrangements with a replacement market participant are put in place. If entered into, each Interim APA will terminate once Big Rivers is no longer the market participant. Joint Applicants request that the Commission approve the Interim APAs.

5. Lock Box Agreements – The Lock Box Agreements relate to the obligations of Century Hawesville and Century Sebree to pay certain amounts due under the Hawesville ESA or the Sebree ESA to an account of Kenergy at a depository bank. The depository bank will separate amounts owed to Kenergy by each, under the Hawesville ESA or Sebree ESA, and to Big Rivers under the applicable EDF OSA. Joint Applicants are of the belief that these agreements do not require Commission approval.

6. Security and Lock Box Agreements – The Security and Lock Box Agreements relate to the obligations of Century Hawesville and Century Sebree to pay

certain amounts due under the Hawesville ESA or the Sebree ESA to an account at a depository bank. The depository bank will then disburse the amounts owed to EDF under the applicable EDF APA. Joint Applicants are of the belief that these agreements do not require Commission approval.

7. Kenergy Consents – These are consents by and approval of Kenergy, pursuant to the terms of the existing Hawesville ESA and Sebree ESA, to EDF becoming the market participant under each of those agreements. Kenergy requests that the Commission approve the Kenergy Consents.

8. Termination of Existing Hawesville APA and Sebree APA – This is the acknowledgement of Kenergy and Big Rivers that the applicable existing Hawesville APA and Sebree APA will terminate, pursuant to the terms of those agreements, upon EDF replacing Big Rivers as the market participant. Joint Applicants are of the belief that these acknowledgements do not require Commission approval.

Joint Applicants contend that the Century New Market Participant Transaction definitive documents are substantively identical to the transaction and related documents previously approved by the Commission in Case Nos. 2013-00221 and 2013-00413. Joint Applicants note that the substantive differences primarily stem from changes necessary to accommodate EDF as the new market participant and to transition Big Rivers out of that role. Kenergy maintains that the proposed EDF APAs are structured to ensure that Kenergy's costs of providing retail electric service to the two smelter facilities continue to be borne by either Century Hawesville or Century Sebree, as applicable, and not by Kenergy, Big Rivers or its other members, or any of their ratepayers.

Regarding the EDF OSAs, Big Rivers contends that these agreements are needed primarily because Big Rivers currently provides certain operational services under the existing APAs between it and Kenergy, services that EDF will not be able to provide when it becomes the new market participant. The EDF OSAs will obligate Big Rivers to perform mostly metering, interconnection, and other operational services for which Kenergy has corresponding obligations to Century Hawesville and Century Sebree under the applicable existing ESAs. Big Rivers maintains that it is the only entity that can perform these operational tasks and that these operational tasks do not differ from the ones it is obligated to provide under the existing APAs. Lastly, Big Rivers asserts that the Century New Market Participant Transaction will not have any significant net impact on Big Rivers.

With respect to the Consent and Agreements, Kenergy required both Century Hawesville and Century Sebree to agree specifically to the terms and conditions of the Century New Market Participant Transaction relating to Kenergy's obligation to provide electric service being relieved if a proposed EDF APA terminates or delivery of electric services under that agreement is interrupted or discontinued for reasons other than reliability purposes. Kenergy maintains that it required this provision because under those circumstances Kenergy would have no tariff on file with the Commission for service to Century Hawesville or Century Sebree and, thus, would have no ability to legally provide service to either smelter's load unless other contractual arrangements were effective and approved by the Commission at that time. Kenergy further notes that, under such consent, it will have the right and will be required to physically disconnect service to Century Hawesville or Century Sebree, as applicable, except as



provided under the applicable ASA, until the time that delivery of electric services recommences under new contractual arrangements approved by the Commission. Kenergy also notes, however, that notwithstanding termination of a proposed EDF APA or discontinuance of service under that agreement, Kenergy would still provide electric services for either Century Hawesville's or Century Sebree's non-smelting load under the applicable previously approved ASA.<sup>4</sup>

### Findings

Having reviewed the evidentiary record and being otherwise sufficiently advised, the Commission finds that the agreements comprising the Century New Market Participant Transaction are reasonable to effectuate the appointment of EDF as the new market participant to replace Big Rivers in that capacity, and all of the agreements should be approved as filed. The proposed EDF APAs will not alter the costs to Kenergy as compared to the existing Hawesville ESA and Sebree ESA. All of Kenergy's costs under the proposed EDF APAs will be passed through to either Century Hawesville or Century Sebree under the applicable existing ESA. Likewise, the resulting reduction in revenues and expenses associated with the termination of the existing APAs will have no significant net impact on Big Rivers. The transaction will eliminate revenue that Big Rivers currently receives from Century Hawesville and Century Sebree to cover the expenses Big Rivers incurs to perform services under the existing APAs, but will also terminate the obligations to perform those services under those agreements and eliminate any costs to Big Rivers. Thus, Big Rivers will not be

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<sup>4</sup> The Alternate Service Agreements were approved by the Commission in Case Nos. 2013-00221 and 2013-00413. These agreements allow Kenergy to provide retail electric service for Century Hawesville's and Century Sebree's non-smelting operations up to 10 MW at the termination of the applicable Electric Service Agreements upon a 60-day notice by either Century Hawesville or Century Sebree.

impacted by the Century New Market Participant Transaction and Big Rivers' limited operational services obligations under the EDF OSAs are similar to what is already being provided under the current ESAs.

Regarding the request for a declaratory order, the Commission agrees with Kenergy's position and finds that, in the event of a termination of an EDF APA or a temporary or permanent termination of electric service under the applicable EDF APA unrelated to curtailment of services for reliability purposes, Kenergy will have the right at such time to disconnect service to either Century Hawesville or Century Sebree, as applicable and appropriate, if alternate contractual agreements are not then approved and in effect for the applicable smelting load, except for the provision of 10 MW of electric service for non-smelting load as required under the relevant ASA. KRS 278.160(1) requires each utility to file with the Commission "schedules showing all rates and conditions for service established by it and collected or enforced." If an EDF APA is terminated, or if the provision of electric service pursuant to an EDF APA is discontinued due to a default by EDF, and there is no Commission-approved contract for a successor to EDF as a market participant, Kenergy would have no ability to legally provide electric service to either Century Hawesville's or Century Sebree's smelting load, as applicable, unless and until such time as other contractual arrangements could be approved by the Commission and become effective.

IT IS THEREFORE ORDERED that:

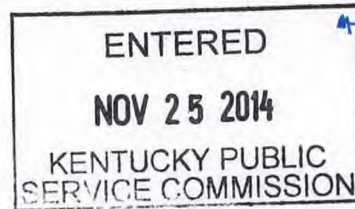
1. The Century New Market Participant Transaction Agreements are approved.

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

3. Big Rivers and Kenergy shall file, within 15 days of the date of this Order, executed copies of the Century New Market Participant Transaction Agreements.

4. Any documents filed pursuant to ordering paragraph 3 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:

  
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Executive Director

J. Christopher Hopgood  
Dorsey, King, Gray, Norment & Hopgood  
318 Second Street  
Henderson, KENTUCKY 42420

Honorable Tyson A Kamuf  
Attorney at Law  
Sullivan, Mountjoy, Stainback & Miller, PSC  
100 St. Ann Street  
P.O. Box 727  
Owensboro, KENTUCKY 42302-0727

Honorable James M Miller  
Attorney at Law  
Sullivan, Mountjoy, Stainback & Miller, PSC  
100 St. Ann Street  
P.O. Box 727  
Owensboro, KENTUCKY 42302-0727