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

Re: Case No. 2013-00199

Dear Mr. Derouen:

Enclosed are an original and ten (10) copies of Big Rivers Electric Corporation's response to a letter from Century Aluminum Company dated May 28, 2014, which the Public Service Commission filed in the record in the above-referenced matter. I certify that on this date, a copy of this letter and a copy of the response were served on each of the persons on the attached service list by first-class mail. Please feel free to contact me if you have any questions.

Sincerely,



Tyson Kamuf

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

RECEIVED
JUN 5 2014
PUBLIC SERVICE
COMMISSION

3
4
5 In the Matter of:

6
7 Application of Big Rivers Electric)
8 Corporation for a General) Case No. 2013-00199
9 Adjustment In Rates)

10
11
12 **RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO CENTURY**
13 **ALUMINUM COMPANY'S LETTER TO THE PUBLIC SERVICE COMMISSION**
14 **DATED MAY 28, 2014**
15

16 1. Comes now Big Rivers Electric Corporation ("Big Rivers"), through counsel, and
17 hereby submits its response to a letter dated May 28, 2014, from Michael Early on behalf of
18 Century Aluminum Company ("Century") to the Public Service Commission ("Commission").
19 The letter was received by the Commission on May 29, 2014, and was filed in the record in this
20 proceeding.

21 **A. Introduction.**
22

23 2. Century's termination of its retail electric contract for its aluminum smelter in
24 Hawesville, Kentucky, forced Big Rivers to seek significant rate relief from all other retail
25 customers on the Big Rivers system.¹ A similar contract termination by Alcan Primary Products
26 Corporation for its aluminum smelter in Sebree, Kentucky -- which smelter was subsequently
27 purchased by Century -- required Big Rivers to seek additional rate relief from the remaining
28 retail customers.² The smelter contracts limited the smelters' ability to terminate their contracts.
29 To terminate the contracts, both smelters were required to and did represent and warrant that
30 each had made a business judgment in good faith to terminate and cease all aluminum smelting
31 at the smelter location, and had no current intention of recommencing smelting operations at the

¹ See generally, Case No. 2012-00535.
² See generally, Case No. 2013-00199.

1 location.³ However, neither the Century Hawesville smelter nor the Century Sebree smelter has
2 ceased operations. Big Rivers and Kenergy Corp. (“Kenergy”) (the Big Rivers Member
3 distribution cooperative that provides retail service to the smelters) offered and were able to
4 negotiate arrangements with Century whereby Century’s two smelters would no longer be served
5 from the Big Rivers system and would instead receive power from Kenergy at market-based
6 rates. These arrangements were approved by the Commission in Case No. 2013-00221 (for the
7 Hawesville smelter) and Case No. 2013-00413 (for the Sebree smelter).

8 3. Big Rivers believes that the new smelter agreements were necessary “to avert the
9 anticipated adverse economic impacts for Western Kentucky if the smelter closed and laid off its
10 work force.”⁴ The agreements achieved a delicate balance of keeping the smelters viable while
11 not subjecting remaining customers to any additional incremental costs,⁵ and the economic
12 benefits of the new agreements were “superior to simply standing by and allowing Century to
13 terminate its smelting operations.”⁶

14 4. However, there were consequences of the smelters either leaving Big Rivers’
15 system or terminating smelting operations. For example, in addition to the rate relief sought in
16 Case Nos. 2012-00535 and 2013-00199, the smelter contract terminations resulted in the loss of
17 Big Rivers’ investment-grade credit ratings. The smelter contract terminations have also resulted
18 in Big Rivers’ plans to idle its Wilson and Coleman generating stations to keep the necessary rate
19 increases to a minimum. Although a recent uptick in the wholesale power market has enabled
20 Big Rivers to postpone the idling of its Wilson generating station, Big Rivers is already in the
21 process of idling its Coleman generating station, which will result in nearly 100 employee

³ See Big Rivers’ response to Item 42 of the Attorney General’s Initial Request for Information.

⁴ Joint Post-Hearing Brief of Kenergy Corp. and Big Rivers Electric Corporation in Case No. 2013-00413 at p. 5.

⁵ *Id.*

⁶ *Id.* at p. 9.

1 positions being terminated once the idling process is complete. If Wilson is idled, nearly 100
2 additional employee positions will be terminated.

3 5. Despite Century's central role in precipitating these circumstances, Century now
4 asks the Commission to modify an order in a proceeding in which Century is not even a party, in
5 an effort to benefit itself at the expense of the retail customers remaining on the Big Rivers
6 system. This should not be tolerated. For the following reasons, the Commission should reject
7 the requests made by Century in its May 28 letter.

8 **B. Century cannot seek rehearing of the Commission's orders in this proceeding, in**
9 **Case No. 2013-00221, or in Case No. 2013-00413.**

10 6. The Century letter is essentially a request that the Commission modify its April
11 25, 2014, order that initiated a focused audit of Big Rivers' mitigation plan. Among other things,
12 Century seeks to have the Commission modify the April 25 order by expanding the scope of the
13 focused audit to encompass issues such as whether Big Rivers' revenue requirement should
14 include transmission revenues from the Hawesville smelter and whether Big Rivers should be
15 compelled to perform live-line maintenance.⁷ However, Century is not a party to this proceeding
16 and did not even seek to intervene. KRS 278.400 provides, in pertinent part, "After a
17 determination has been made by the commission in any hearing, *any party to the proceedings*
18 may, within twenty (20) days after the service of the order, apply for a hearing with respect to
19 any of the matters determined"⁸ (emphasis added). Non-parties do not have the right to seek
20 rehearing, and Century's attempt to do so should be rejected.

21 7. Even if Century was a party to this proceeding, its attempt to have the
22 Commission rehear the April 25 order is improper because the letter was not filed within the 20
23

⁷ See Century letter at pp. 1-2.

⁸ KRS 278.400.

1 day timeframe required for rehearing motions. As such, Century's request that the Commission
2 modify the April 25 order to expand the scope of the focused audit should be denied.

3 8. Not only does Century seek an impermissible modification of the order issued in
4 this proceeding, it also now attempts to impermissibly re-litigate the live-line maintenance issue
5 decided in Case No. 2013-00221 and Case No. 2013-00413. Although Century clearly
6 misrepresents the Commission's order in Case No. 2013-00221,⁹ Century did ask the
7 Commission in that case to compel Big Rivers to perform live-line maintenance.¹⁰ Century's
8 request was denied.¹¹ Century again raised the live-line maintenance issue in Case No. 2013-
9 00413, but again, the Commission declined to compel Big Rivers to perform live-line
10 maintenance.¹² Century also tried to get the Federal Energy Regulatory Commission ("FERC")
11 to force Big Rivers to perform live-line maintenance, but FERC also rejected Century's
12 request.¹³ Century's attempt to now use the focused audit process to once again re-litigate the
13 live-line maintenance issue should be rejected.

14 **C. Century does not have a legitimate interest in the focused audit.**

15 9. The Century letter alleges a number of reasons why Century has "a substantial
16 interest" in the focused audit of Big Rivers' mitigation plan. These alleged interests are not
17 legitimate reasons to allow Century to participate in the focused audit for the reasons identified
18 in Big Rivers' May 23, 2014, Response to the Petition for Rehearing of Kentucky Industrial
19

⁹ In Case No. 2013-00221, as well as in Case No. 2013-00413, the Commission found "both live-line and de-energized transmission line maintenance protocols to be consistent with good and reasonable utility practice." (Order dated January 30, 2014, in Case No. 2013-00413 at p. 18.) It did not find, as Century alleges in its letter, that live-line maintenance "was as safe as maintenance on de-energized lines." Century letter at p. 2.

¹⁰ Order dated August 14, 2013, in Case No. 2013-00221 at pp. 12-13.

¹¹ *Id.* at p. 15.

¹² Order dated January 30, 2014, in Case No. 2013-00413 at p. 18.

¹³ *Midcontinent Independent System Operator, Inc.*, FERC Docket Nos. ER14-1391-000 and ER14-1392-000, Order Accepting Termination of Tariff Filings (April 30, 2014) at para. 43 (holding, "We disagree with Century Aluminum and find that, based on the record, live-line maintenance is not necessary to alleviate the reliability issues caused by the suspension of the Coleman Units.").

1 Utility Customers, Inc., the Attorney General, and Ben Taylor and Sierra Club. They are also
2 not legitimate grounds to allow Century to participate in the focused audit for the following
3 reasons.

4 10. Century claims that it “has a substantial interest in . . . BREC’s past actions
5 regarding the smelters leaving the system (including the financial impact on Century as an
6 energy and transmission customer). . . .”¹⁴ However, under the filed rate doctrine and the general
7 legal prohibition against retroactive ratemaking, any action either Big Rivers or the Commission
8 might take as a result of the focused audit will not impact the past rates Century paid as an
9 energy customer or as a transmission customer.

10 11. Century claims that it “has a substantial interest in . . . any action Big Rivers may
11 take going forward that may impact Century as an energy or transmission customer and as a
12 potential purchaser of the Coleman Generating Station.”¹⁵ However, Century has no interest in
13 Big Rivers’ energy rates because Century no longer receives energy from Big Rivers’ generating
14 resources. Big Rivers’ transmission rates are not within the scope of the focused audit and are
15 not even under the Commission’s jurisdiction, as those rates are established pursuant to the
16 MISO tariff and are approved by FERC.

17 12. As it mentions twice in its letter, Century is a potential purchaser of the Coleman
18 Station. This, of course, betrays Century’s real interest – not in the focused audit, but rather in
19 the potential purchase of the Coleman Station. As a potential purchaser of Coleman, Century
20 will clearly benefit if Big Rivers is forced to liquidate Coleman in a fire sale. Intervenor
21 Kentucky Industrial Utility Customers, Inc. (“KIUC”) (of which Century is a member¹⁶) has

¹⁴ Century letter at p. 1.

¹⁵ Century letter at p. 1.

¹⁶ KIUC does not represent Century in all proceedings; however, according to KIUC’s website, Century is a KIUC member. *See* kiucenergy.com.

1 tried to get the Commission to force Big Rivers to liquidate Coleman, and if Century and KIUC
2 are permitted to intervene in the focused audit, it is likely they will continue their efforts to
3 benefit Century's negotiating position at the expense of Big Rivers' Members' remaining
4 customers.¹⁷ The Commission should not provide Century standing to either influence Big
5 Rivers' mitigation plan management or use the Commission's focused audit process as a
6 leveraging tool to give Century a commercial negotiating advantage in any potential sale of
7 Coleman Station.

8 13. Century further claims that the agreements the Commission approved in Case No.
9 2013-00221 left its Hawesville operation "at significant risk," and that as a result, "Century has
10 an interest in whether Big Rivers has taken, or should take, all reasonable actions to restart
11 Coleman or to sell Coleman to Century or another entity."¹⁸ Century voluntarily negotiated and
12 signed those agreements, and it asked the Commission to approve the agreements "without
13 modification."¹⁹ Consequently, Century should not now be permitted to use the focused audit
14 process to revise those same agreements or to impose additional requirements on Big Rivers,
15 such as an obligation to run Coleman at no cost to Century or to sell Coleman to Century at a fire
16 sale price.

17 14. Century claims, "If operation of Hawesville was more certain, then these
18 [transmission] revenues could also be included in the revenue requirement."²⁰ Big Rivers'
19 revenue requirement is not within the scope of the focused audit. Moreover, because Century is
20 no longer on the Big Rivers system, it has no interest in Big Rivers' revenue requirement.

¹⁷ The Petition for Rehearing telegraphs on page 4 the intent of Century to assert an interest in Big Rivers' management of its current surplus generation.

¹⁸ Century letter at p. 1.

¹⁹ Century's Post-Hearing Brief in Case No. 2013-00221 at p. 1.

²⁰ Century letter at p. 2.

1 Although Century is a transmission customer of Big Rivers, Big Rivers' transmission rates are
2 not part of Big Rivers' revenue requirement and were not at issue in this proceeding.

3 15. Finally, Century asserts an interest in getting the Commission to compel Big
4 Rivers to perform live-line maintenance.²¹ The Commission already rejected that request of
5 Century's in Case No. 2013-00221, where it found that "To the extent that Century Kentucky
6 believes that live line transmission maintenance is essential to its economic viability, this issue
7 should have been a critical part of its negotiations with the Applicants." (Order of August 14,
8 2013 at pp. 14-15.) The Commission clarified that "The issue of live line maintenance is one
9 that the parties to the Century Transaction Agreements must resolve among themselves." *Id.* at
10 p. 15. The focused audit process should not be used to allow Century to once again litigate this
11 issue. It is also not an issue within the scope of the focused audit.

12 16. Thus, Century has no legitimate interest in the focused audit process, and its
13 attempts to hijack the Commission's focused audit process in a scheme to improve its negotiating
14 position for a potential purchase of Coleman Station, as well as its attempts to re-litigate the live-
15 line maintenance issue should be rejected.

16 **D. "Interested parties" should not be allowed to participate in the focused audit.**
17

18 17. In its response to the Petition for Rehearing filed jointly by KIUC, the Attorney
19 General, and Ben Taylor and Sierra Club, Big Rivers explained the reasons why interested
20 parties should not be allowed to participate in the focused audit process. Those reasons are more
21 fully explained in that response, and they apply equally to Century's request to allow interested
22 parties to participate in the Big Rivers focused audit.

23 18. In short, however, giving interested parties the same rights a utility has in a
24 focused audit of the utility would impermissibly rewrite KRS 278.255(4), 807 KAR 5:013

²¹ Century letter at p. 2.

1 Section 3, and 807 KAR 5:013 Section 4. It would transform the focused audit process into an
2 adversarial proceeding, a free-for-all, where entities like Century seek to bias the auditor's report
3 for private advantage or gain, instead of helping the auditor prepare an impartial report for the
4 Commission's consideration. It would transform the focused auditor into an appellate court
5 whose role would be to adjudicate the same arguments that the Commission already considered
6 in this proceeding and in Case No. 2013-00221. It would unduly complicate and disrupt the
7 focused audit process, increasing the length and cost of the focused audit and further distracting
8 Big Rivers from pursuing its mitigation plan. Thus, the Commission should reject Century's
9 request to allow interested parties to participate in the focused audit of Big Rivers' mitigation
10 plan.

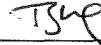
11 **E. Conclusion.**

12
13 19. For the foregoing reasons, Century's requests should be denied.

14

1 On this the 4th day of June, 2014.

2 Respectfully submitted,

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28 *Counsel for Big Rivers Electric Corporation*

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31 **Certificate of Service**

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

36
37 On this the 4th day of June, 2014,

38
39
40 
41 _____
42 Counsel for Big Rivers Electric Corporation