

COMMONWEALTH OF KENTUCKY
BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY

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PUBLIC SERVICE
COMMISSION

Case No. 2014-00166

In the Matter of:

THE 2014 RESOURCE PLAN OF)
BIG RIVERS ELECTRIC)
CORPORATION)

**PETITION FOR REHEARING OF CENTURY ALUMINUM OF KENTUCKY
GENERAL PARTNERSHIP AND CENTURY ALUMINUM SEBREE LLC**

Pursuant to KRS 278.400, Century Aluminum of Kentucky General Partnership and Century Aluminum Sebree LLC (collectively, "Century"), by counsel, petition the Kentucky Public Service Commission ("Commission") for rehearing of its August 7, 2014 Order denying Century's June 16, 2014 Petition for Full Intervention in Big Rivers Electric Corporation's ("Big Rivers") 2014 Integrated Resource Plan ("IRP") proceeding.¹ As hereafter set forth, the Commission's decision to deny Century's intervention is inconsistent with the statutory and regulatory standards for granting intervention set forth at KRS 278.040(2) and 807 KAR 5:001, Section 4(11). Century has a clear interest in the transmission services provided by Big Rivers that are addressed in Section 6 of Big Rivers' IRP filing and subject to Commission review in this proceeding. Section 6 directly impacts Century's right to receive firm transmission service from Big Rivers and constitutes a special interest in the IRP that cannot be adequately represented by any other party. Finally, the Order misinterprets the nature of the Midcontinent Independent System Operator, Inc. ("MISO") Transmission Expansion Planning Process ("MTEP") when it

¹ *In the Matter of the 2014 Resource Plan of Big Rivers Electric Corp.*, Case No. 2014-00166, Order (Ky. P.S.C. Aug. 7, 2014 ("Order")).

concludes that Century may not intervene to address this aspect of Big Rivers' IRP. The Commission should grant rehearing of the Order and allow Century to participate as a full party in the IRP proceeding.

I. Century Clearly Has An Interest in the Jurisdictional Services of Big Rivers.

The Order finds that Century has no interest in the rates or services of Big Rivers that are subject to this Commission's jurisdiction. Century respectfully disagrees with this finding. The Commission's jurisdiction over "service" provided by Big Rivers is not statutorily limited to generation service.² Although Century does not purchase electricity produced by Big Rivers, the continued operation of Century's Sebree and Hawesville aluminum smelters is dependent upon firm, uninterrupted transmission service. This transmission service is provided via facilities owned, operated and maintained by Big Rivers. The Commission's jurisdiction over the "service" provided by a utility encompasses "*any practice or requirement in any way relating to the service of a utility . . .*"³ Indeed, Century receives transmission service that is coordinated through MISO and subject, in part, to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). However, Big Rivers' transmission facilities are used to provide that service. These transmission facilities are addressed in Section 6 of Big Rivers' IRP filing and are within the scope of the Commission's review and evaluation.⁴

If Big Rivers' physical facilities fail in the course of fulfilling its transmission obligations, Century is required to seek recourse not from FERC, but rather from the

² See KRS 278.040(2) ("[t]he commission shall have exclusive jurisdiction over the regulation of rates and service of utilities").

³ KRS 278.010(13) (emphasis added).

⁴ See *in the Matter of the 2014 Resource Plan of Big Rivers Electric Corp.*, Case No. 2014-00166, 2014 Integrated Resource Plan, Section 6 (Ky. P.S.C. May 15, 2014) ("IRP Filing").

Commission.⁵ In fact, in approving the contractual arrangements currently in place for service to the Hawesville and Sebree smelters, the Commission explicitly retained jurisdiction over "complaints as to . . . services" arising under these arrangements and mandated that "any dispute relating to rates or services that may arise under the agreements approved . . . should be filed *here* [i.e., with the Commission] for our review and resolution."⁶ Respectfully, Century is of the opinion that the Order is inconsistent with both the physical reality of Big Rivers' service to Century and the Commission's directives in the orders approving the contractual basis for such service.

The Order's characterization of Century's interest in the jurisdictional "service" provided by Big Rivers inappropriately narrows the statutory definition to only generation service. Such a limitation is inconsistent with the Commission's characterization of its jurisdiction in approving Century and Big Rivers' currently operative contractual arrangements. Because Century is a firm transmission customer that relies on Big Rivers' transmission facilities to deliver power to both smelters, Century has a clear interest in the physical services of Big Rivers. The Commission should recognize this interest, and grant rehearing of the Order to allow Century to participate as a full party to this proceeding.

II. The Commission Erred in Finding that Century's Special Interest in the IRP Proceeding Is Insufficient to Grant Intervention.

The Order concludes that Century failed to adequately establish a "special interest" in the IRP proceeding sufficient for intervention, finding that Century's interest "is derived from the contractual arrangements on which [Century] currently purchase[s] power at

⁵ See KRS 278.260(1) (providing the Commission with original jurisdiction over complaints as to services of any utility, including "any service [that] is inadequate or cannot be obtained.")

⁶ See, e.g., *Joint Application of Kenergy Corp. and Big Rivers Electric Corp. for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00413, Order at 20 (Ky. P.C.S. Jan. 30, 2014).

market-based rates."⁷ While Century appreciates the opportunities identified on page 6 of the Order for participation in the IRP proceeding, the Order fails to acknowledge that the issues in play during this and future IRP evaluations impact the continued availability of firm transmission service to the Hawesville and Sebree smelters and, by extension, the economic viability of these facilities. Any "recourse" available to Century to protect its contractual interest in Big Rivers' service would be after-the-fact and insufficient to belatedly address these impacts and their effect on Century's future operations in Kentucky.

The IRP Filing makes certain assumptions with respect to transmission planning that could have a direct impact on the continued availability of firm transmission service and therefore Century's ability to continue operation of the Hawesville and Sebree smelters.⁸ By way of example, Big Rivers asserts that "[w]hile transfer capability value can vary significantly due to a number of factors, study results . . . demonstrate that Big Rivers can import sufficient generation to satisfy all *firm system demand requirements*."⁹ The IRP Filing provides no further analysis or supporting data to sustain this assertion. It is of paramount interest to Century to understand the factual predicates for this position and to have information confirming that Big Rivers is planning its transmission system to adequately cover its transmission service obligations to the smelters. Big Rivers is obligated to provide firm transmission service to the Hawesville and Sebree smelters, interruptible only in the unique cases of a MISO-authorized Curtailment Event.¹⁰ Century

⁷ Order at 5.

⁸ See IRP Filing, Sections 6.2-6.3.

⁹ See *id.*, Section 6.2 (emphasis added).

¹⁰ See, e.g., Arrangement and Procurement Agreement by and between Big Rivers Electric Corp. and Kenergy Corp. §§ 2.2, 9.4 (Aug. 19, 2013); Direct Agreement by and between Big Rivers Electric Corp. and Century Aluminum of Kentucky General Partnership § 3 (Aug. 19, 2013); Load Curtailment Agreement by

has a substantial and direct interest in ensuring that the IRP conforms to these transmission service obligations, not only in accordance with Big Rivers' contractual obligations, but also to ensure that the economic viability of the Hawesville and Sebree smelters is not jeopardized as a result of any poor or inadequate transmission planning by Big Rivers. For these reasons, Century has a "special interest" in the IRP proceeding that cannot be represented by any other party. Accordingly, the Commission should grant rehearing of the Order and allow Century to fully participate in the IRP proceeding to ensure that its critical operational interests are sufficiently addressed in the Commission's review and evaluation.

III. Big Rivers' Local Transmission Solutions Do Impact The MISO Regional Transmission Planning Process.

The Order appears to conclude that the MISO MTEP is wholly a "top-down" transmission planning process. For example, the Order states that "[b]ecause Big Rivers is a MISO member and MISO has functional control over Big Rivers' transmission system, we note that Big Rivers' transmission planning process is dictated primarily by MISO's ["MTEP"].¹¹ Century respectfully disagrees. To the contrary, the MISO MTEP incorporates local transmission planning, including those projects contemplated by Big Rivers in its IRP, into the regional planning process. Big Rivers' own transmission planning, as reflected and reviewed during the IRP review process, is a key component of the MTEP. Century pays Big Rivers for service on Big Rivers' transmission facilities. Consequently, Century has a direct and substantial interest in the transmission elements of

and among Big Rivers Electric Corp., Kenergy Corp. and Century Aluminum Sebree LLC § 3 (Jan. 31, 2014).

¹¹ Order at 5.

Big Rivers' IRP and should be permitted to present issues or develop facts that would assist in the IRP review process without unduly complicating or disrupting the proceedings.

Big Rivers' transmission planning process is not dictated by MISO's regional transmission planning efforts in the MTEP. Rather, the MISO MTEP process incorporates transmission solutions proposed by all of its Transmission Owners, including Big Rivers. As set forth in Attachment FF to MISO's FERC Electric Tariff, MISO Transmission Owners are required to annually integrate proposals for transmission expansion into the regional planning process. Therefore, the MTEP is not strictly a "top-down" process that ignores local projects.¹² MISO's Transmission Planning Business Practices Manual further explains that "MISO, through the regional planning process, integrates the local planning processes of its member companies and the advice and guidance of stakeholders into a coordinated regional transmission plan and identifies additional expanses as needed. . . ."¹³

Moreover, as noted in Vice Chairman Gardner's dissent, "Transmission Planning, including planned projects, is expressly a separate subject in Section 6 of Big Rivers' 2014 IRP."¹⁴ If Big Rivers' transmission planning were wholly dictated by the MISO MTEP, such planning would likely be excluded from the IRP and the associated Commission evaluation. That is not the case here. Big Rivers' IRP addresses both recent transmission projects that have been completed, and Big Rivers' plans for future transmission projects. Century, as a transmission service customer that is directly interconnected with Big Rivers'

¹² See Midcontinent Indep. Sys. Operator, Inc., FERC Electric Tariff, Attachment FF, Section D(1)(b), available at https://www.misoenergy.org/_layouts/MISO/ECM/Download.aspx?ID=169142 (Aug. 8, 2014).

¹³ See Midcontinent Indep. Sys. Operator, Inc., Transmission Planning Business Practices Manual, BPM-020-R10, available at https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=19215 (Apr. 10, 2014).

¹⁴ *In the Matter of the 2014 Resource Plan of Big Rivers Electric Corp.*, Case No. 2014-00166, Dissenting Opinion of Vice Chairman James W. Gardner (Ky. P.S.C. Aug. 7, 2014).

transmission facilities, has a substantial interest in Big Rivers' transmission planning and can assist the Commission in developing facts and issues that are relevant to the Commission's analysis of the IRP.

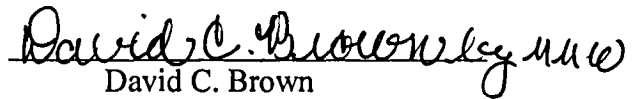
Century represents that should the Commission grant this Petition and allow Century's full intervention, Century will abide by the June 13, 2014 Order of Procedure, as amended on June 30, 2014, with the opportunity to file a single set of requests for information, and will not request any deviation due to its delayed admission into this proceeding. In such case it would also be appropriate for the Commission to consider and rule upon Century's motion for the admission of Robert A. Weishaar, Jr., pro hac vice, in this proceeding.

For all of these reasons, the Commission should grant rehearing of the Order and allow Century to participate in the Commission's review as a full party to the IRP proceeding.

WHEREFORE, Century Aluminum of Kentucky General Partnership and Century Aluminum Sebree LLC request that the Kentucky Public Service Commission:

- (1) Grant rehearing of its August 7, 2014 Order; and
- (2) Grant Century Aluminum of Kentucky General Partnership and Century Aluminum Sebree LLC full intervention in this proceeding.

Respectfully submitted,



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August 20, 2014

CERTIFICATE OF SERVICE

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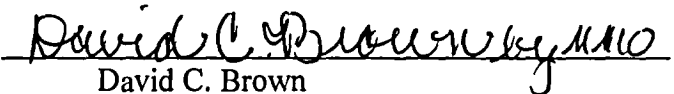
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