

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the matter of:)
)
ELECTRIC TARIFF FILING OF KENERGY) CASE NO. 2023-00036
CORP. FOR APPROVAL OF SPECIAL)
CONTRACTS)

**KENERGY CORP.'S RESPONSES TO
DATA REQUESTS**

KENERGY CORP. (“Kenergy”) submits the following responses to the data requests filed on February 8, 2023, with the Order in this matter.

1. Identify and quantify any expenses that will be incurred by Kenergy as a result of the change in the market participant.

RESPONSE: Kenergy’s expenses will be the legal expenses in this matter and its internal overhead associated herewith. Kenergy estimates that its legal expense will be approximately \$60,000 and its internal overhead will be approximately \$10,000.

WITNESS: Travis Siewert, Kenergy

2. Confirm that any expense identified above will be borne by Century Sebree, Century Century Hawesville, or Century Aluminum and not Kenergy's retail customers. If not confirmed, explain.

RESPONSE: Confirmed. Century Sebree, Century Hawesville and Century Aluminum have paid and will continue to reimburse all external and internal expenses associated with the change in the market participant.

WITNESS: Travis Siewert.

3. Refer to the January 26, 2023 letter to Linda Bridwell, in which Kenergy states that other than the existing arrangement agreements, none of the previously approved transaction documents will terminate as a result of the change in market participant from EDF to Century Marketer. Provide a list of the previously approved transaction documents that will remain in effect after the change in market participant and provide a brief explanation for each one.

RESPONSE:

1. **The Electric Service Agreement between Kenergy and Century Aluminum of Kentucky General Partnership ("Century Hawesville") dated August 19, 2013, and the Electric Service Agreement between Kenergy Corp. and Century Aluminum Sebree, LLC ("Century Sebree"), dated January 31, 2014, both remain in effect. Under these agreements, Kenergy resells electric services and provides distribution services to each of the smelters. These agreements were drafted such that they remain in place regardless of the identity of the market participant providing services to Kenergy for resale to Century Hawesville or Century Sebree.**
2. **The Operational Services Agreements, each dated as of January 1, 2015,**

between Big Rivers Electric Corporation (“Big Rivers”) and Kenergy regarding the Hawesville and Sebree smelters, in each case, remain in effect. These agreements obligate Big Rivers to provide certain metering, interconnection and other operational services that would not be provided by a market participant in connection with Kenergy’s performance of its obligations under the Electric Service Agreements.

3. The Load Curtailment Agreement, dated as of January 21, 2014, by and among Big Rivers, Kenergy and Century Hawesville and the Load Curtailment Agreement, dated as of January 31, 2014, by and among Big Rivers, Kenergy and Century Sebree remain in effect and relate to certain curtailment rights applicable to each smelting facility.
4. The Direct Agreement, dated as of August 19, 2013, by and between Big Rivers and Century Hawesville and Direct Agreement, dated as of January 31, 2014, by and between Big Rivers and Century Sebree, in each case, remain in effect and relate to the right to directly enforce certain obligations between the parties and other obligations relating to system reliability, RTO and other matters.
5. The Guarantee, dated as of August 19, 2013, by and among Century Aluminum Company (“Century Parent”), Kenergy and Big Rivers, and the Guarantee, dated as of January 31, 2014, by and among Century Parent, Kenergy and Big Rivers (collectively, the “Parent Guarantees”), guarantying the payment performance of all obligations of Century Hawesville and Century Sebree, as

respectively, under all transaction agreements, including the payment of money thereunder.

6. **The Tax Indemnity Agreement, dated as of August 19, 2013, by and among Kenergy, Century Parent and Century Hawesville and Tax Indemnity Agreement, dated as of January 31, 2014, by and among Kenergy, Century Parent and Century Sebree, remain in effect and relate to indemnification of Kenergy for any taxes incurred by Kenergy as a result of its failure to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions with Century Hawesville or Century Sebree, as applicable.**

Witness: Travis Siewert.

4. Explain whether the proposed Century Marketer Arrangement and Procurement Agreements will alter the costs to Kenergy as compared to the existing Century Hawesville Electric Service Agreement and the Century Sebree Electric Service Agreement.

RESPONSE: No. The proposed agreements will not alter the costs to Kenergy compared to the currently existing Electric Service Agreements with Century Hawesville and Century Sebree. Replacing EDF with Century Marketer simply changes who supplies Kenergy with electric services from the MISO Market.

WITNESS: Travis Siewert

5. Refer to the Application generally. Explain how Century Marketer is affiliated with

Century Aluminum.

RESONSE: Century Marketer is a wholly owned subsidiary of Century Aluminum of South Carolina, Inc., a wholly owned subsidiary of Century Aluminum Company.

WITNESS: Michael Early, Century Aluminum.

6. Refer to the Application, Arrangement and Procurement Agreement, Section 2.5, page 11. "Century Marketer provides electric services to or for the benefit of Persons other than Kenergy and Century for Century Marketer's benefit and engages in commodities trading for its own benefit in connection with transactions in MISO." To the extent that Century Marketer engages in speculative or other risky behavior and consequently defaults or declares bankruptcy.

a. Explain what oversight, if any, MISO uses to monitor marketers' activities with respect to maintaining financial viability. Include in the response what type and amount of letters of credit or other credit support / guarantees are required by MISO and by Century Marketer's corporate parent.

RESPONSE: MISO requires credit support and collateral from MISO market participants that is subject to increase based upon energy prices, non-payment of certain MISO services, and defaults occurring in MISO-administered markets. In the event of a non-payment or default by certain entities taking services from MISO, MISO calculates the potential exposure for non-payment for each category of markets and services pursuant to Attachment L (Credit Policy) of the MISO Open

Access Transmission, Energy and Operating Reserve Markets Tariff. To become a MISO market participant, an applicant must be able to demonstrate adequate capitalization, consistent with MISO's rules and policies outlined in Attachment L. Adequate capitalization requires either a Minimum Tangible Net Worth/ Total Assets or an alternative capitalization. For Minimum Tangible Net Worth, the market participant seeking to participate in any MISO service categories (with the exception of Financial Transmission Rights markets) must show 1) Audited Financial Statements for the most recent fiscal year showing \$500,000 or greater in Tangible Net Worth or 2) Audited Financial Statements for the most recent fiscal year showing \$5 million or greater in Total Assets. See MISO Tariff, Attachment L, Section III.C. Each market participant must be ready and able to increase its credit support upon demand by MISO. Century Marketer has the requisite credit support from Wells Fargo Bank to satisfy MISO requirements.

b. Explain and identify the protections in place for Kenergy and Big Rivers Electric, if applicable, if Century Marketer defaults on contractual obligations or declares bankruptcy such that no resulting costs will accrue to or be apportioned by MISO to Kenergy or Big Rivers Electric.

RESPONSE: The structure of the credit support from Century Hawesville and Century Sehree to Kenergy continues as it was originally established in 2013 and 2014, respectively, and the Century Parent has guaranteed these obligations. Specifically, the protections to Kenergy as a result of a Century Marketer default under its Arrangement and Procurement Agreements, including bankruptcy,

principally derive from the back-to-back nature of obligations under the Electric Service Agreements and the Arrangement and Procurement Agreements. Under Section 5.5.1 of the Electric Service Agreements, Century Hawesville and Century Sebree release and indemnify Kenergy for the market participant's failure to perform an obligation to Kenergy, such as failing to provide Kenergy electric services for resale to those entities. Century Parent then guarantees those obligations of its subsidiaries under the Parent Guarantees. Section 5.5 of the Arrangement and Procurement Agreements contains parallel provisions to Section 5.5 of the Electric Service Agreements. Further, the Lock Box Agreement provides that moneys flow from Century Hawesville or Century Sebree, as applicable, to Kenergy and Big Rivers before being distributed to Century Marketer. If, for example, Century Marketer filed for reorganization under Chapter 11 of the Bankruptcy Code after it has received its payment from Kenergy and before Century Marketer pays those funds to MISO, Century Hawesville or Century Sebree indemnifies Kenergy and is obligated to hold it harmless for any costs as a result thereof. Further, the MISO Tariff does not authorize MISO to pursue payment from non-Tariff Customers, including entities that do not take service under MISO's Tariff and who are not in direct privity of contract with MISO, such as purchasers of electric services from a MISO market participant. The Tariff envisions that MISO, in the event of a default, only pursues payment from a Tariff Customer, which is defined in Module A of the MISO Tariff as a MISO Market Participant, a Transmission Customer, or a Coordination Customer, each of which is subject to MISO credit requirements and

oversight. This is the same credit risk as Kenergy had and has with Big Rivers or EDF serving as the market participant. In neither of those arrangements did the market participant provide Kenergy credit support beyond the above-described contractual arrangements because Kenergy was not bearing the credit risk of the market participant.

The interests of Century Marketer, on one hand, and Century Hawesville and Century Sebree, on the other, are aligned. Risky or speculative market transactions by Century Marketer would principally expose its own affiliates, not Kenergy or Big Rivers, to risk.

Finally, if the costs of a Century Marketer default were allocated to MISO Market participants, Century Hawesville and Century Sebree, as applicable, would be obligated pursuant to Section 2.1.10 of the Century Consent to pay or reimburse Kenergy and Big Rivers for any and all costs relating to, involved or associated with any MISO tariff default by Century Marketer. Century Parent confirmed in Section 2.5 of the Century Consent that those obligations also are subject to the Parent Guaranty. As a result, Big Rivers, as a market participant in MISO, is better protected against the costs of a Century Marketer default under the MISO tariff than a default by any other market participant in MISO.

c. In the event of a Century Marketer default and costs are apportioned to either or both Kenergy and Big Rivers Electric as members of MISO, explain whether these costs can be passed on to Century Aluminum or Century Marketer's corporate parent. If so, identify in the Application/contracts the provision(s) locations.

RESPONSE: Please see the prior response with respect to the coverage of a Century Market default in MISO and confirmation of the inclusion of indemnification obligations under the Parent Guarantees. The Parent Guarantees on file in 2013-00413 (Sebree) and 2013-00221 (Hawesville) are still in effect.

Witness: Travis Siewert and Michael Early.

7. Refer to PDF Page 8 of the Redline version of Century Consent ...the Energy Management Agreement, the Lock Box Agreement and the Security and Lockbox Agreement) shall..." Confirm that both a "Lock Box Agreement" and "The Security and Lockbox Agreement will be executed. If not, explain why both documents are included in this Agreement.

RESPONSE: The parenthetical in Section 2.3 of the Century Consent describing documents that do not remain unchanged includes references to the "Lock Box Agreement" and the "Security and Lock Box Agreement" for different reasons. The Lock Box Agreement is included in the parenthetical because the agreement is being modified to reflect the current payment stream from Century Hawesville or Century Sebree to Kenergy and Big Rivers and then to Century Marketer. The "Security and Lock Box Agreement" is not necessary in this transaction and will be terminated because the existing agreement granted EDF a security interest in an account to which its payments would be made. Century Marketer is not requiring such a security interest.

Note that Kenergy does not believe that the new Lock Box Agreement to be

executed and delivered in connection herewith requires Commission approval as it is a deposit/withdrawal method for handling funds. The Lock Box Agreement is a Kenergy requirement that goes into effect after 11:00 p.m. Central Time on May 31, 2023, and is not a MISO requirement. Having Century Marketer approved by the Commission as Kenergy's MISO market participant by March 1, 2023, is the critical deadline at hand.

Witness: Travis Siewert and Michael Early.

DORSEY, GRAY, NORMENT & HOPGOOD
318 Second Street
Henderson, KY 42420
Telephone – (270) 826-3965
Telefax – (270) 826-6672
Counsel for Kenergy Corp.

By _____


J. Christopher Hopgood
chopgood@dkgnlaw.com

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VERIFICATION

(Data Request Responses)

I verify, state and affirm that the data request responses attached hereto, sponsored by me and filed with this verification are true and correct to the best of my knowledge and belief formed after a reasonable inquiry, and I ask that I be added as a witness for this information.


Travis Siewert

STATE OF KENTUCKY

COUNTY OF DAVIESS

The foregoing was signed, acknowledged and sworn to before me by TRAVIS SIEWERT this 13 day of February, 2023.

My commission expires 4-21-2025

(seal)

Notary Public, State of Kentucky at Large
Notary Public ID#: KYNP21907

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VERIFICATION

(Data Request Responses)

I, Michael Early, Vice-President, Century Marketer, verify, state and affirm that the data request responses attached hereto, sponsored by me and filed with this verification are true and correct to the best of my knowledge and belief formed after a reasonable inquiry, and I ask that I be added as a witness for this information.

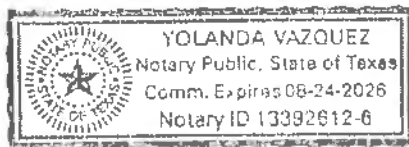
Michael Early
Michael Early

STATE OF TEXAS
COUNTY OF Williamson

The foregoing was signed, acknowledged and sworn to before me by MICHAEL EARLY this 13 day of February, 2023.

My commission expires 8-24-24

(seal)



Notary Public, State of ^{Texas}~~Kentucky~~ at Large *hmc*
Notary Public ID#: 13392612-6
Yolanda Vazquez