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June 12, 2013

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

RECEIVED

JUN 12 2013

PUBLIC SERVICE  
COMMISSION

\*Also Licensed in Indiana

Re: 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-\_\_\_\_\_

Dear Mr. Derouen:

Enclosed for filing with the Public Service Commission ("Commission") is the joint application of Kenergy Corp. ("Kenergy") and Big Rivers Electric Corporation ("Big Rivers") for approval of documents related to a proposed transaction with Century Aluminum of Kentucky General Partnership, and a declaratory order. Please note that the application seeks expedited review by the Commission of this application.

Kenergy and Big Rivers are serving courtesy copies of this filing on at least one counsel for each party in the Big Rivers rate case pending before the Commission, PSC Case No. 2012-00535. As you will note from the application, Christopher Hopgood, Dorsey, King, Gray, Norment & Hopgood, is representing Kenergy in this matter.

We request that copies of any pleadings and orders in this case be served on counsel for Kenergy and Big Rivers shown in the application, and on the following persons:

Gregory J. Starheim  
President & CEO  
Kenergy Corp.  
3111 Fairview Drive  
P.O. Box 1389  
Owensboro, Kentucky 42303-1389  
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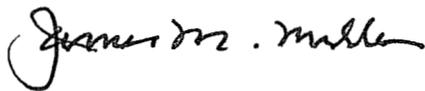
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Jeff Derouen  
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DeAnna Speed  
Director Rates and Budgets  
Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson, Kentucky 42419-0024  
Phone No. (270) 826-2561  
Facsimile No. (270) 844-6408  
DeAnna.Speed@bigrivers.com

I certify that on this date, copies of this letter and the application were served by overnight courier, or by hand delivery on each of the persons listed on the attached service list.

Sincerely yours,



James M. Miller

JMM/ej  
Enclosures

cc: DeAnna Speed  
Service List

**ORIGINAL**



Your Touchstone Energy® Cooperative 

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**In the Matter of:**

**JOINT APPLICATION OF KENERGY )  
CORP. AND BIG RIVERS ELECTRIC )  
CORPORATION FOR APPROVAL OF ) Case No. 2013-\_\_\_\_\_  
CONTRACTS AND FOR A )  
DECLARATORY ORDER )**

**APPLICATION  
and  
EXHIBITS**

**FILED: June 12, 2013**

**ORIGINAL**

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

RECEIVED

JUN 12 2013

PUBLIC SERVICE  
COMMISSION

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4  
5 In the Matter of:

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7 Joint Application of Kenergy Corp. )  
8 and Big Rivers Electric Corporation )  
9 for Approval of Contracts and for ) Case No. 2013-\_\_\_\_  
10 A Declaratory Order )

11  
12  
13 **JOINT APPLICATION AND REQUEST FOR EXPEDITED REVIEW**

14  
15 Kenergy Corp. (“Kenergy”) and Big Rivers Electric Corporation (“Big Rivers”)

16 jointly submit this application (the “Application”) seeking an order of the Kentucky  
17 Public Service Commission (the “Commission”) granting: (i) approval of electric service  
18 arrangements (“Century Transaction”) between and among Kenergy, Big Rivers, Century  
19 Aluminum Company (“Century Parent”) and Century Aluminum of Kentucky General  
20 Partnership (“Century Kentucky” and, together with Century Parent, “Century”); (ii)  
21 alternate electric service arrangements between and among Kenergy, Big Rivers and  
22 Century Kentucky for electric service for non-smelting purposes to the Century Kentucky  
23 smelter facility (the “Hawesville Smelter”); and (iii) a declaratory order confirming that  
24 in the absence of appropriate, approved contractual arrangements being in effect for  
25 electric service to the Hawesville Smelter for the period beginning immediately after  
26 11:59 p.m. CPT on August 19, 2013, Kenergy and Big Rivers have the right to  
27 disconnect service to the Century Kentucky smelter facility at 12:00 a.m. CPT on August  
28 20, 2013. For the reasons stated in paragraph 15 of this Application, Kenergy and Big  
29 Rivers seek expedited review of this Application.





1 that Century Parent had “made a business judgment in good faith to terminate and cease  
2 all aluminum smelting at the Hawesville Smelter . . . .” (*Id.*)

3 6. Big Rivers is seeking rate relief from the Commission to replace the  
4 unmitigated revenue loss resulting from termination by Century Kentucky of the 2009  
5 Retail Agreement. *See* Statutory Notice and *Application of Big Rivers Electric Corp. for*  
6 *a General Adjustment in Rates*, Ky. P.S.C. Case No. 2012-00535 (Jan. 15, 2013).

7 7. In an attempt to find an alternative to Century ceasing all smelting  
8 operations at the Hawesville Smelter on August 20, 2013, Kenergy, Big Rivers and  
9 Century Kentucky have been negotiating, off and on, from approximately October 1,  
10 2012, in an attempt to arrange for the procurement and delivery of a market-priced power  
11 supply for Century Kentucky following the termination of the 2009 Retail Agreement.  
12 Century believes such an arrangement will provide it more affordable electric power,  
13 thereby enabling it to continue smelting operations at the Hawesville Smelter.

14 8. As a result of those negotiations, Kenergy, Big Rivers, and Century have  
15 reached an agreement regarding certain terms and conditions for electric service,  
16 previously denominated herein as the Century Transaction, by which Century Kentucky  
17 will be able to continue smelting operations at the Hawesville Smelter following  
18 termination of the 2009 Retail Agreement. Those terms and conditions and the definitive  
19 agreements documenting the proposed Century Transaction are summarized in more  
20 detail below and in the accompanying testimony.

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1           **III.    THE POST-TERMINATION ELECTRIC SERVICE AUTHORITY**

2                                   **A.    Summary of Relief Requested.**

3           9.       All legal authority for Kenergy to provide electric service to the  
4   Hawesville Smelter will terminate at 12:00 a.m. CPT on Tuesday, August 20, 2013 (the  
5   “Termination Date”), when the 2009 Retail Agreement terminates. Kenergy and Big  
6   Rivers request the following action from the Commission to give Kenergy and Big Rivers  
7   the authority they require to respond appropriately to Century Kentucky’s termination of  
8   the 2009 Retail Agreement on the Termination Date:

9           (a)     Approval of the Definitive Agreements for the Century Transaction. The  
10   Century Transaction definitive agreements, summarized below and described in detail in  
11   the testimonies of Gregory J. Starheim (the “Starheim Testimony,” Application Exhibit  
12   2) and Robert W. Berry (the “Berry Testimony,” Application Exhibit 3), provide the legal  
13   authority for retail electric service for smelting operations at the Hawesville Smelter to  
14   continue from and after the Termination Date until the Electric Service Agreement  
15   terminates, including in the circumstances where Century Kentucky terminates the  
16   Century Transaction on 60 days written notice.

17           (b)     Approval of the Alternate Service Agreement and the Wholesale Letter  
18   Agreement. The Alternate Service Agreement, summarized below and also described in  
19   detail in the Starheim Testimony, provides the legal authority for up to 10,000,000  
20   kilowatts of retail electric service to the Hawesville Smelter if the Century Transaction  
21   does not become effective on the Termination Date, or the Century Transaction is  
22   terminated, and Century Kentucky requires electric service at the Hawesville Smelter for  
23   non-smelting operations. The Letter Agreement is the standard form of supplement to the

1 Kenergy-Big Rivers wholesale power arrangements in which Big Rivers commits to the  
2 power supply requirements for the Alternate Service Agreement.

3 (c) Issuance of a Declaratory Order Authorizing Disconnection of Electric  
4 Service to the Hawesville Smelter. Kenergy and Big Rivers seek a declaratory order  
5 pursuant to 807 KAR 5:001, Section 18, confirming their authority to physically  
6 disconnect electric service to the Hawesville Smelter if they have no legal authority to  
7 provide electric service to the Hawesville Smelter on the Termination Date.

8 **B. Definitive Agreements for the Century Transaction.**

9 10. The definitive agreements for the Century Transaction consist of the  
10 following nine agreements identified in the Electric Service Agreement (Exhibit 4) as the  
11 “Transaction Documents” (*See* Section 1.1.92):

12 (a) Electric Service Agreement – A retail electric service agreement between  
13 Kenergy and Century Kentucky for the sale of electricity, electric capacity and  
14 electricity-related ancillary services, including transmission services, by Kenergy to  
15 Century Kentucky. The agreement is intended to remain in place without regard to who  
16 is acting as the “Market Participant,” which purchases these services from MISO or  
17 pursuant to bilateral contracts for resale to Kenergy for delivery to Century Kentucky.  
18 This agreement is discussed in more detail in the Starheim Testimony. A true and  
19 accurate copy of this agreement is attached hereto as Exhibit 4. Kenergy requests  
20 Commission approval of the Electric Service Agreement.

21 (b) Arrangement Agreement – The power arrangement and procurement  
22 agreement entered into between Big Rivers and Kenergy pursuant to which Big Rivers  
23 arranges and procures electricity, electric capacity and electricity-related ancillary

1 services while it serves as the Market Participant. Under the agreement, Big Rivers will  
2 procure these services for Kenergy for resale to Century Kentucky under the Electric  
3 Service Agreement. The agreement terminates if Big Rivers is no longer the Market  
4 Participant. As a result, this could be a short-term or long-term agreement. This  
5 agreement is discussed in more detail in the Berry Testimony. A true and accurate copy  
6 of this agreement is attached hereto as Exhibit 5. Kenergy and Big Rivers request  
7 Commission approval of the Arrangement Agreement.

8 (c) Direct Agreement – An agreement between Big Rivers and Century  
9 Kentucky relating to direct, bilateral obligations to each other in connection with the  
10 Transaction, such as Century Kentucky’s obligations to reimburse Big Rivers’ costs  
11 relating to must-run conditions at the Coleman Generation Station, if any. This  
12 agreement will remain in effect even if Big Rivers is no longer acting as the Market  
13 Participant and the Arrangement Agreement is terminated. This agreement is discussed  
14 in more detail in the Berry Testimony. A true and accurate copy of this agreement is  
15 attached hereto as Exhibit 6. Big Rivers requests Commission approval of the Direct  
16 Agreement.

17 (d) Capacitor Agreement – An agreement entered into between and among  
18 Big Rivers, Kenergy, and Century Kentucky to protect Big Rivers and Kenergy from  
19 risks and obligations relating to the design, development, purchase, installation, operation  
20 and maintenance of the Capacitor Additions at Century Kentucky. This agreement is  
21 discussed in more detail in the Berry Testimony. A true and accurate copy of this  
22 agreement is attached hereto as Exhibit 7. Big Rivers does not believe the Capacitor  
23 Agreement requires Commission approval. It provides protections to Kenergy and Big

1 Rivers for activities Century Kentucky proposes to conduct on its own property, and must  
2 be effective immediately to allow Century Kentucky to proceed with the work it  
3 proposes.

4 (e) Protective Relays Agreement – An agreement entered into between and  
5 among Big Rivers, Kenergy, and Century Kentucky to protect Big Rivers and Kenergy  
6 from risks and obligations relating to the design, development, purchase, installation,  
7 operation and maintenance of the protective relay equipment at Century Kentucky. This  
8 agreement is discussed in more detail in the Berry Testimony. A true and accurate copy  
9 of this agreement is attached hereto as Exhibit 8. Big Rivers does not believe the  
10 Protective Relays Agreement requires Commission approval. It provides protections to  
11 Kenergy and Big Rivers for activities Century Kentucky proposes to conduct on its own  
12 property, and must be effective immediately to allow Century Kentucky to proceed with  
13 the work it proposes.

14 (f) Tax Indemnity Agreement – Agreement between Kenergy, and Century  
15 Kentucky and Century Parent to indemnify Kenergy on an after-tax basis from any tax  
16 liability or other tax costs incurred by it as a result of the transaction. This agreement is  
17 discussed in more detail in the Starheim Testimony. A true and accurate copy of this  
18 agreement is attached hereto as Exhibit 9. Kenergy does not believe the Tax Indemnity  
19 Agreement requires Commission approval. It satisfies an indemnity requirement of the  
20 Electric Service Agreement, which the Commission is being asked to approve.

21 (g) Guarantee of Century Parent – Agreement of Century Parent in favor of  
22 Kenergy and Big Rivers. Under the agreement, Century Parent will unconditionally and  
23 irrevocably guarantee the prompt payment and performance obligations of Century

1 Kentucky under the Electric Service Agreement, the Direct Agreement, the Tax  
2 Indemnity Agreement and any other Transaction Document, including the obligations of  
3 Century Kentucky relating the payment of money to Kenergy or Big Rivers. This  
4 agreement is discussed in more detail in the Berry Testimony. A true and accurate copy  
5 of this agreement is attached hereto as Exhibit 10. Big Rivers does not believe this  
6 Guarantee of Century Parent requires Commission approval. This document satisfies  
7 credit security requirements of the Electric Service Agreement, the Arrangement  
8 Agreement and the Direct Agreement, which the Commission is being asked to approve.

9 (h) Capacitor Additions and Protective Relays Guarantee – Agreement made  
10 by Century Parent in favor of Kenergy and Big Rivers. Under the agreement, Century  
11 Parent will unconditionally and irrevocably guarantee the prompt payment and  
12 performance obligations of Century Kentucky under the Capacitor Agreement and the  
13 Protective Relays Agreement. The reason for a separate guarantee for these two  
14 agreements distinct from the general guarantee described above is the desire of the parties  
15 for the Capacitor Agreement and the Protective Relays Agreement to be entered into in  
16 advance of the other transaction documents to facilitate the installation of equipment as  
17 soon as possible. Thus, this guarantee would be entered into at the time those two  
18 agreements are executed and delivered by the parties. The other guarantee, the Guarantee  
19 of Century Parent, will be delivered at the time of execution and delivery of the Electric  
20 Service Agreement, the Arrangement Agreement and the Direct Agreement, which is  
21 expected to be later than the time that the Capacitor Agreement and the Protective Relays  
22 Agreement are executed and delivered. This agreement is discussed in more detail in the  
23 Berry Testimony. A true and accurate copy of this agreement is attached hereto as

1 Exhibit 11. Big Rivers does not believe this Capacitor Additions and Protective Relays  
2 Guarantee requires Commission approval.

3 (i) Lockbox Agreement – The Lockbox Agreement relates to Century  
4 Kentucky’s obligation to pay certain amounts due under the Electric Service Agreement  
5 to a depository bank. Century Kentucky will make payments to a lockbox with Old  
6 National Bank (“ONB”), which will separate amounts owed to each of Kenergy and Big  
7 Rivers. ONB will disburse all amounts in the lockbox account each month. A true and  
8 accurate copy of this agreement is attached hereto as Exhibit 12. Big Rivers and Kenergy  
9 do not believe the Lockbox Agreement requires Commission approval. This document  
10 satisfies credit security requirements of the Electric Service Agreement, the Arrangement  
11 Agreement, and the Direct Agreement, which the Commission is being asked to approve.

12 11. The Century Transaction should be approved for the reasons stated in this  
13 Application and in the testimonies of Mr. Starheim and Mr. Berry. Approval by the  
14 Commission of the Century Transaction is authorized by KRS 278.160(1) and 807 KAR  
15 5:011, Section 13.

16 **C. Alternate Service Agreement**

17 12. The Alternate Service Agreement (Exhibit 13) is entered into between  
18 Kenergy and Century Kentucky to provide retail electric service for non-smelting  
19 operations at the Hawesville Smelter. This agreement, based upon Kenergy’s standard  
20 form of large industrial agreement, provides up to only 10,000,000 kW of demand. The  
21 Alternate Service Agreement is required to support non-smelting operations at the  
22 Hawesville Smelter if smelting operations have ceased. It could be required on August  
23 20, 2013, if Century Kentucky ceases smelting operations on that date, or at the  
24 termination of the Electric Service Agreement, which can occur on only 60 days notice.

1 The Letter Agreement (Exhibit 14) is the standard form of wholesale power contract  
2 supplement between Big Rivers and Kenergy that provides the wholesale support for the  
3 Alternate Service Agreement. Kenergy requests approval by the Commission of the  
4 Alternate Service Agreement, and Kenergy and Big Rivers request approval by the  
5 Commission of the Letter Agreement.

6 13. The Alternate Service Agreement and the Letter Agreement should be  
7 approved for the reasons stated in this Application and in the testimonies of Mr. Starheim  
8 and Mr. Berry. Approval by the Commission of the Alternate Service Agreement and the  
9 Letter Agreement is authorized by KRS 278.160(1) and 807 KAR 5:011, Section 13.

10 **D. Issuance of a Declaratory Order Authorizing Disconnection of Electric**  
11 **Service to the Hawesville Smelter.**

12 14. If for any reason neither the Century Transaction nor the Alternate Service  
13 Agreement is in effect as of the Termination Date, and there is no other legal authority  
14 for retail and wholesale service to the Hawesville Smelter, Kenergy will have no legal  
15 authority to continue to provide retail electric service to the Hawesville Smelter, and Big  
16 Rivers will have no legal authority to continue to provide a wholesale power supply to  
17 Kenergy to support retail electric service to the Hawesville Smelter. Under those  
18 circumstances and for the reasons described in more detail in the testimonies of Mr.  
19 Starheim and Mr. Berry, retail electric service to the Hawesville Smelter must be  
20 physically disconnected to terminate service pursuant to the terms of the agreements  
21 approved in the Commission's March 6, 2009 order in P.S.C. Case No. 2007-00455<sup>[1]</sup> and

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<sup>[1]</sup> *In the Matter of: The Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western*

1 807 KAR 5:006 Section 15. Kenergy and Big Rivers seek a declaratory order pursuant to  
2 807 KAR 5:001, Section 18, confirming their authority to physically disconnect electric  
3 service to the Hawesville Smelter under those circumstances.

4

5 **IV. NEED FOR EXPEDITED REVIEW OF THIS APPLICATION**

6 15. Kenergy and Big Rivers seek expedited review of this Application for the  
7 following, compelling reasons:

8 (a) The Termination Date is approximately two months away. There is no  
9 legal authority for electric service at any level to be provided by Kenergy to Century  
10 Kentucky, or Big Rivers to Kenergy for delivery to Century Kentucky on and after the  
11 Termination Date. This situation must be resolved promptly.

12 (b) Kenergy and Big Rivers have been working hard, in good faith, to  
13 complete negotiation of the Century Transaction and drafting of the related, very  
14 complex definitive agreements. They do not believe the Century Transaction could have  
15 been completed faster and filed with the Commission any sooner under the  
16 circumstances.

17 (c) Providing service to a load the size of the Hawesville Smelter smelting  
18 load is a complicated task involving significant risks to Kenergy and Big Rivers. The  
19 magnitude of the smelting operations load, and the associated monthly bill for electric  
20 service exceeding \$10,000,000 make detailed contractual arrangements, including  
21 extensive credit protections, an absolute necessity. Those arrangements cannot be  
22 negotiated and put in place at the last moment to avoid disconnecting service to the

1 Hawesville Smelter. Part of this process also includes the approvals Big Rivers must  
2 obtain to be authorized by its creditors to enter into a transaction with Kenergy for  
3 Century Kentucky. The process established by the Loan Contract between Big Rivers  
4 and the Rural Utilities Service (“RUS”) allows the RUS 60 days in which to decide  
5 whether to hold up a transaction for further review. Big Rivers has been trying to  
6 eliminate creditor issues in advance of this filing, including supplementing language in  
7 the Amended and Restated Revolving Credit Agreement between Big Rivers and the  
8 National Rural Utilities Cooperative Finance Corporation that is before the Commission  
9 for approval in P.S.C. Case No. 2013-00125<sup>2</sup> to eliminate a credit agreement default issue  
10 that would otherwise prevent Big Rivers from entering into the Century Transaction. So  
11 that revolving credit agreement also must be approved before the closing of the Century  
12 Transaction.

13 (d) The regulatory process before the Commission as established by law and  
14 impacted by practical considerations is time-consuming. Without expedited treatment,  
15 Kenergy and Big Rivers would not expect this process to be completed prior to the  
16 Termination Date.

17 (e) Each element of relief requested by them in this Application is critical to  
18 equipping Kenergy and Big Rivers to be prepared to respond to the Termination Date.

19 (f) Maintaining the smelting operations at the Hawesville Smelter, and the  
20 associated jobs and positive economic benefits for the region is clearly a public policy  
21 objective of state and local government.

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<sup>2</sup> *In the Matter of: The Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, P.S.C. Case No. 2013-00125; see Verified Motion to Supplement Filing dated May 14, 2013.

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V. CONCLUSION

16. For the reasons stated in this Application, including the attached exhibits and testimony, the Commission should act on an expedited basis to issue an order granting the following relief to Kenergy and Big Rivers:

(1) Approval of the Electric Service Agreement, Arrangement Agreement, and Direct Agreement;

(2) Adoption of a finding that the attached Capacitor Agreement, Protective Relays Agreement, Tax Indemnity Agreement, Guarantee of Century Parent, Capacitor Additions and Protective Relays Guarantee, and Lockbox Agreement do not need to be filed or approved pursuant to 807 KAR 5:011, Section 13, or, in the alternative, approval of these agreements pursuant to 807 KAR 5:011, Section 13;

(3) Approval of the Alternate Service Agreement and the Letter Agreement; and

(4) Issuance of a declaratory order finding that unless the Commission has otherwise authorized Kenergy to provide retail electric service to the Hawesville Smelter on fair, just and reasonable terms, and made such other authorizations as are required for Big Rivers or any other wholesale supplier to provide the wholesale power supply required by Kenergy to provide that retail electric service, Kenergy and Big Rivers have the authority under the terms of the agreements approved in the Commission’s March 6, 2009 order in P.S.C. Case No. 2007-00455 and 807 KAR 5:006 Section 15 or other law to disconnect electric service to the Hawesville Smelter at 12:00 a.m. on August 20, 2013.

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On this the 12th day of June, 2013.

Respectfully submitted,

  
\_\_\_\_\_  
J. Christopher Hopgood  
DORSEY, KING, GRAY, NORMENT &  
HOPGOOD  
318 Second Street  
Henderson, Kentucky 42420  
Phone: (270) 826-3965  
Facsimile: (270) 683-6694  
chopgood@dkgnlaw.com

Counsel for Kenergy Corp.

  
\_\_\_\_\_  
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Tyson Kamuf  
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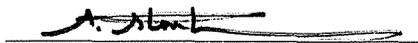
Edward T. Depp  
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Louisville, KY 40202  
Phone: (502) 540-2347  
Facsimile: (502) 585-2207  
tip.depp@dinsmore.com

Counsel for Big Rivers Electric Corporation

VERIFICATION

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I, Gregory J. Starheim, President and Chief Executive Officer of Kenergy Corp., hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 11<sup>th</sup> day of June, 2013.



Gregory J. Starheim  
President and CEO  
Kenergy Corp.

COMMONWEALTH OF KENTUCKY     )  
COUNTY OF HENDERSON            )

The foregoing verification statement was SUBSCRIBED AND SWORN to before me by Gregory J. Starheim, President and Chief Executive Officer, Kenergy Corp., on this the 11<sup>th</sup> day of June, 2013.

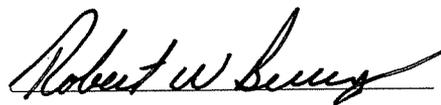


Notary Public, Ky.  
My commission expires: 1-12-17

VERIFICATION

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I, Robert W. Berry, Chief Operating Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 11<sup>th</sup> day of June, 2013.



Robert W. Berry  
Chief Operating Officer  
Big Rivers Electric Corporation

COMMONWEALTH OF KENTUCKY     )  
COUNTY OF HENDERSON            )

The foregoing verification statement was SUBSCRIBED AND SWORN to before me by Robert W. Berry, Chief Operating Officer for Big Rivers Electric Corporation, on this the 11 day of June, 2013.



Notary Public, Ky.  
My commission expires: \_\_\_\_\_

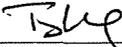
**Notary Public, Kentucky State-At-Large  
My Commission Expires: July 3, 2014  
ID 421951**

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**CERTIFICATE OF SERVICE**

I certify that a true and accurate courtesy copy of the foregoing Application has been provided by Federal Express or by hand delivery upon the persons listed on the attached service list, on the date this Application is filed with the Kentucky Public Service Commission or the following day. The inclusion of any individual or entity in this courtesy service list does not constitute a concession that the individual or entity is, or should be, a party to this proceeding.

On this the 12th day of June, 2013,

  
\_\_\_\_\_  
Counsel for Big Rivers Electric Corporation

1006057v1



*Table of Contents to Exhibits*

<u>Exhibit</u>	<u>Document</u>
1	Letter dated August 20, 2012, from John Hoerner to Gregory J. Starheim
2	Testimony of Gregory J. Starheim, President and CEO, Kenergy Corp.
3	Testimony of Robert W. Berry, Chief Operating Officer, Big Rivers Electric Corporation
4	Electric Service Agreement
5	Arrangement and Procurement Agreement
6	Direct Agreement
7	Capacitor Agreement
8	Protective Relays Agreement
9	Tax Indemnity Agreement
10	Guarantee of Century Parent
11	Capacitor Additions and Protective Relays Guarantee
12	Lockbox Agreement
13	Alternate Service Agreement
14	Wholesale Letter Agreement



**FACSIMILE**

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**Century** ALUMINUM  
Hawesville  
Operations

Date: August 20, 2012

To: Big Rivers Electric Corporate (Attn: Mark Bailey)

Fax Number: 270-827-2558

From: John Hoerner

RE: Notice of Termination and Certificate of Michael A. Bless  
Number of Pages: 3  
(Including This Page)

---

Thank you!

Susan O'Bryan

Administrative Assistant

270-685-2493, ext. 2231

[sobryan@centuryky.com](mailto:sobryan@centuryky.com)

cc: Kenergy Corporation

270-826-3999

Century Aluminum of Kentucky  
1627 State Route 271 N.  
P.O. Box 500  
Hawesville, KY 42348

270-685-2493 Phone  
270-852-2882 Fax

A Century Aluminum Company



August 20, 2012

Kenergy Corporation  
6402 Old Corydon Road  
Henderson KY 42420  
Attn: President & CEO

Via Fax: (270) 826-3999  
With duplicate sent by overnight courier.

Re: Notice of Termination

Mr. Starheim:

Pursuant to §7.3.1 of the Retail Electric Service Agreement dated July 1, 2009, Century Aluminum Company provides you with this notice of termination of the contract, with termination to be effective on August 20, 2013. Attached, as required by §7.3.1.(b), is the certificate of the President of Century Aluminum Company.

Very Truly Yours,

A handwritten signature in black ink that reads 'John E. Hoerner'.

John E. Hoerner

Vice President

North American Operations

cc: Big Rivers Electric Corporation  
201 Third Street  
Henderson KY 42420  
Attn: President & CEO  
Via Fax: (270) 827-2558  
With duplicate sent by overnight courier.

Century Aluminum Company  
2511 Garden Road  
Building A, Suite 200  
Monterey, CA 93840

831-642-9300 Phone  
831-642-9964 Fax



Certificate of Michael A. Bless

1. I am Michael A. Bless, President and Chief Executive Officer of Century Aluminum Company, the parent company of Century Aluminum of Kentucky General Partnership which owns and operates a primary aluminum smelter at Hawesville, Kentucky.
2. On August 20, 2012, pursuant to the direction of its Board, Century Aluminum Company provided notice of termination to Kenergy Corporation and Big Rivers Electric Corporation under §7.3.1 of the Retail Electric Service Agreement dated July 1, 2009, with such termination to be effective on August 20, 2013.
3. Pursuant to §7.3.1.(b) of the contract and consistent with the termination notice, I represent and warrant that Century Aluminum Company has made a business judgment in good faith to terminate and cease all aluminum smelting at the Hawesville smelter and has no current intention of recommencing smelting operations at the Hawesville smelter.

A handwritten signature in black ink, appearing to read "Michael A. Bless".

---

Michael A. Bless  
President and CEO  
Century Aluminum Company

August 20, 2012

Century Aluminum Company  
2511 Garden Road  
Building A, Suite 200  
Monterey, CA 93940

831-642-9300 Phone  
831-642-9964 Fax



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Joint Application of Kenergy Corp.        )  
and Big Rivers Electric Corporation        )  
for Approval of Contracts and for        )     Case No. 2013-\_\_\_\_  
A Declaratory Order                        )

**DIRECT TESTIMONY**

**OF**

**GREGORY J. STARHEIM  
PRESIDENT and CHIEF EXECUTIVE OFFICER**

**ON BEHALF OF**

**KENERGY CORP.**

**FILED:     June 12, 2013**

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DIRECT TESTIMONY  
OF  
GREGORY J. STARHEIM

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1 Corporation (“Big Rivers”), Century Aluminum of Kentucky General  
2 Partnership (“Century Kentucky”), and Century Aluminum Company  
3 (“Century Parent”) (together, Century Kentucky and Century Parent  
4 are referred to as “Century”) to provide retail electric service to  
5 Century’s aluminum smelter in Hawesville, Kentucky after its existing  
6 electric service arrangements terminate on August 20, 2013. I will  
7 also provide details related to the Electric Service Agreement and Tax  
8 Indemnity Agreement between Kenergy and Century Kentucky. I will  
9 also address the impact of the Century Transaction on Kenergy, along  
10 with the reasons why the Century Transaction must be approved  
11 before August 20, 2013.

12 **Q. Are you sponsoring any exhibits?**

13 A. Yes. I am sponsoring the Century Kentucky termination notice  
14 attached as Exhibit 1 to the application, and I refer to several other  
15 exhibits to the application in my testimony.

16

17 **III. THE CENTURY TRANSACTION**

18

19 **Q. Are you familiar with the proposed Century Transaction?**

20 A. Yes. Shortly after becoming CEO of Kenergy, I received notice from  
21 Century on August 20, 2012, of Century’s intent to terminate its  
22 existing Retail Electric Service Agreement with Kenergy and cease

1 smelting operations at the Hawesville smelter. A copy of that notice is  
2 attached as Exhibit 1 to the application in this matter, and I  
3 incorporate it here by reference. Shortly after providing that notice,  
4 Century represented to Kenergy that it might keep the Hawesville  
5 smelter in operation if Kenergy could provide the company with power  
6 supply from the wholesale power market rather than from Big Rivers.  
7 Because of the anticipated adverse economic impact that the closure of  
8 the Hawesville smelter would have on Kenergy and its members, as  
9 well as Hancock and the surrounding counties, I became involved in  
10 efforts to explore how Kenergy might be able to accommodate  
11 Century's request for "market priced power" so that it might continue  
12 operations.

13 **Q. What role did you play in those efforts?**

14 A. Over the past several months, I have acted as Kenergy's principal  
15 negotiator of the Century Transaction. The Century Transaction will  
16 be effectuated pursuant to the agreements attached as Exhibits 4  
17 through 14 of the application (the "Century Transaction Documents").

18 **Q. Please identify the various agreements that constitute the**  
19 **Century Transaction Documents.**

20 A. There are nine agreements that embody substantially all of the terms  
21 and conditions relating to the proposed service to Century. Those  
22 agreements are as follows:

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1. *Electric Service Agreement*, by and between Kenergy and Century Kentucky;
2. *Arrangement and Procurement Agreement*, by and between Big Rivers and Kenergy;
3. *Direct Agreement*, by and between Big Rivers and Century Kentucky;
4. *Tax Indemnity Agreement*, by and among Kenergy, Century Kentucky and Century Parent;
5. *Guarantee*, by Century Parent in favor of Kenergy and Big Rivers, relating to Century’s obligations under the Century Transaction Documents (other than the Capacitor Agreement and Protective Relays Agreement, which are covered by the CPR Guarantee described in item 9, below);
6. *Lockbox Agreement*, by and among Century Kentucky, Kenergy, Big Rivers, and a depository bank;
7. *Capacitor Agreement*, by and among Kenergy, Big Rivers, and Century Kentucky;
8. *Protective Relays Agreement*, by and among Kenergy Big Rivers, and Century Kentucky; and
9. *Guarantee (“CPR Guarantee”)*, by Century Parent in favor of Kenergy and Big Rivers, relating to Century

1 Kentucky's obligations under the Capacitor Agreement  
2 and Protective Relays Agreement.

3 These agreements are attached as Exhibits 4 through 12 of the  
4 application, and I incorporate them herein by reference.

5 **Q. Which of the Century Transaction Documents will you discuss**  
6 **in your testimony?**

7 A. I will specifically address the Electric Service Agreement and the Tax  
8 Indemnity Agreement. Mr. Berry addresses the remaining agreements  
9 in his testimony.

10

11 **Electric Service Agreement**

12 **Q. Are you familiar with the Electric Service Agreement?**

13 A. Yes.

14 **Q. Can you please describe the nature of the Electric Service**  
15 **Agreement?**

16 A. The Electric Service Agreement is a retail contract between Kenergy  
17 and Century Kentucky that sets forth the terms by which Kenergy will  
18 resell electricity and electricity-related ancillary services to Century.  
19 Under that agreement, Kenergy will supply and deliver—and Century  
20 will purchase—electric energy and related services. The Electric  
21 Service Agreement contemplates that Kenergy will obtain this electric  
22 energy and these related services pursuant to one or more contracts—

1 entered into with Century's consent—between Kenergy and a Market  
2 Participant in the Mid-Continent Independent System Operator  
3 ("MISO") who will acquire electric services from the wholesale electric  
4 market for Kenergy to resell to Century. These services may include  
5 electric services procured pursuant to bilateral contracts.

6 **Q. How will Kenergy obtain the electric services necessary to**  
7 **serve Century's load?**

8 A. Initially, Big Rivers will act as this provider, which is referred to as the  
9 "Market Participant" under the Transaction documents, pursuant to  
10 the Arrangement and Procurement Agreement with Kenergy (the  
11 "Arrangement Agreement," and together with the Electric Service  
12 Agreement, the "Principal Agreements"). The Principal Agreements  
13 contemplate that Big Rivers will initially obtain these electric services  
14 from the MISO markets on behalf of Kenergy for delivery to Century.  
15 Although Mr. Berry addresses the Arrangement Agreement more  
16 extensively in his testimony, I will explain that, under the  
17 Arrangement Agreement, Big Rivers (as the initial Market  
18 Participant) will use reasonable commercial efforts to procure electric  
19 energy, related services, and any other services required and invoiced  
20 by MISO from the MISO markets. Big Rivers will resell this electric  
21 energy and services to Kenergy pursuant to the terms of the  
22 Arrangement Agreement. Kenergy will then, in turn, resell this

1 electric energy and services to Century pursuant to the terms of the  
2 Electric Service Agreement.

3 Big Rivers, however, may not remain the Market Participant for all  
4 time. Subject to Century's consent, Kenergy may elect, in the future,  
5 to become the Market Participant itself. Likewise, Century may  
6 designate an alternative Market Participant (other than Kenergy or  
7 Big Rivers), subject to Kenergy's consent, which cannot be  
8 unreasonably withheld. If Century designates its own alternative  
9 Market Participant, it must give Kenergy and Big Rivers at least 120  
10 days' prior written notice of the appointment of a new Market  
11 Participant and cover Kenergy's costs in connection with appointing a  
12 new Market Participant. Century must also demonstrate to Kenergy  
13 that the arrangements with the new Market Participant do not  
14 increase Kenergy's risks compared to the risks to Kenergy under the  
15 Arrangement Agreement and provide Kenergy with such additional  
16 information that Kenergy reasonably requests..

17 Although the Principal Agreements were drafted on the presumption  
18 that Big Rivers and the Century delivery point would be part of the  
19 MISO, the Principal Agreements also provide that Big Rivers or  
20 Kenergy may elect to join or become a member of a regional  
21 transmission operator ("RTO") or independent system operator ("ISO")  
22 other than the MISO or elect to withdraw as a member of MISO. As

1           you know, Big Rivers is a current member of MISO, but if such an  
2           election is made, the applicants will, to the extent necessary, negotiate  
3           in good faith to modify the terms of the Century Transaction  
4           documents to preserve their purposes and intent.

5       **Q. Will Century's load be served, then, from the Big Rivers**  
6       **commercial pricing node within MISO?**

7       A. No. Big Rivers has already established a separate commercial pricing  
8       (CP) node—the Hawesville Node—within MISO specifically for the  
9       Century Hawesville smelter. The Hawesville Node is separate from  
10       Big River's MISO commercial pricing node. This separates the  
11       Century load commercially from the Big Rivers commercial pricing  
12       node in MISO. If Big Rivers is replaced as the Market Participant, Big  
13       Rivers will transfer the Hawesville Node to the new Market  
14       Participant.

15      **Q. What costs are involved in the Electric Service Agreement, and**  
16      **what party shall bear those costs?**

17      A. Article 4 of the Electric Service Agreement provides a comprehensive  
18      list of charges that Century has agreed to pay, including among others  
19      regional transmission organization charges, bilateral contract charges,  
20      excess reactive demand charges, and a monthly retail fee based on the  
21      volume of metered use. Where appropriate, Century's payments to  
22      Kenergy are passed through to Big Rivers.

1 In addition, Century is obligated to pay Kenergy certain amounts not  
2 passed-through to Big Rivers, including amounts due and payable to  
3 Kenergy under the Tax Indemnity Agreement, and Kenergy's internal  
4 and direct costs of serving the Hawesville Smelter (such as regulatory  
5 fees, and audit compliance costs).

6 In short, we structured this to help ensure that the costs imposed by  
7 the Century Transaction would be borne by Century and not Kenergy,  
8 Big Rivers or its other members, or any of their ratepayers.

9 **Q. Is Kenergy's retail adder or customer charge decreasing as a**  
10 **result of the Century Transaction?**

11 A. No. Pursuant to Section 4.5 of the Electric Service Agreement,  
12 Kenergy's retail fee will continue to be calculated as \$2,614 per month,  
13 plus the product of \$0.000045 per kWh and the energy delivered to  
14 Century.

15 **Q. Does the Electric Service Agreement protect Kenergy against**  
16 **the risks of providing electric service to Century?**

17 A. Yes. The Electric Service Agreement requires that Century Kentucky  
18 provide letters of credit, cash collateral or other credit support that is  
19 acceptable to Kenergy to secure the performance of its obligations  
20 under the agreement, including its payment and indemnity  
21 obligations, but without duplication of credit posted to others for the  
22 same liability. In fact, Kenergy's obligation to enter into any

1 contractual arrangements with a new Market Participant or any  
2 bilateral power supplier is conditioned upon Century's consent and  
3 provision of financial assurances reasonably required to hold Kenergy  
4 harmless for Century's related obligations.

5 Similar protections are also addressed in the Arrangement Agreement  
6 between Kenergy and Big Rivers, as well as the Direct Agreement  
7 between Big Rivers and Century. Mr. Berry addresses this aspect of  
8 those agreements in his testimony.

9 Century is also indemnifying Kenergy from and against any tax  
10 liability that could result from this Century Transaction. That  
11 obligation is memorialized in the Tax Indemnity Agreement that I  
12 discuss in further detail below.

13 In addition, Century Parent is guaranteeing Century Kentucky's  
14 obligations. This obligation is memorialized in the Guarantee and  
15 CPR Guarantee that are discussed in more detail the testimony of Mr.  
16 Berry.

17 **Q. How would you compare the mechanics of the Electric Service**  
18 **Agreement to the purchase of "Market Energy" under the**  
19 **terminating Retail Electric Service Agreement between**  
20 **Kenergy and Century?**

21 A. The electric service arrangements under the Electric Service  
22 Agreement and Arrangement Agreement are very similar to the

1 purchase of “Market Energy” under the July 1, 2009 Retail Electric  
2 Service Agreement between Kenergy and Century (as amended, the  
3 “2009 Retail Agreement”).

4 Pursuant to Section 2.3.2(c) of the 2009 Retail Agreement, Kenergy  
5 was required to—upon Century’s request—use commercially  
6 reasonable efforts to acquire energy from either Big Rivers or one or  
7 more other third-party suppliers for resale to Century. Any request by  
8 Century was required to specify the amount and duration of energy,  
9 price, and all other material terms and conditions. Century was then  
10 obligated to pay to Kenergy all amounts that Kenergy is obligated to  
11 pay to the supplier(s) of that energy. Pursuant to the Electric Service  
12 Agreement, Century is similarly obligated to pay to Kenergy all costs  
13 incurred by Kenergy for the electric services acquired for Century.

14 The agreements are also similar insofar as Kenergy is obligated to  
15 deliver to Century only those amounts of energy received from its  
16 supplier(s), net of applicable losses. Kenergy will not be in default  
17 under any provision of the Electric Service Agreement, nor will it have  
18 any liability to Century if the non-delivery of that energy results from  
19 the failure of a third-party supplier to deliver the full amount of energy  
20 and Kenergy has assigned (to Century) its rights and remedies against  
21 the third-party supplier.

1 The agreements also contain similar financial security protections for  
2 Kenergy, as described above.

3

4 **Tax Indemnity Agreement**

5 **Q. Are you familiar with the Tax Indemnity Agreement?**

6 A. Yes.

7 **Q. Can you please provide a general description of the Tax  
8 Indemnity Agreement?**

9 A. This is a contract between Kenergy, Century Kentucky, and Century  
10 Parent that insulates Kenergy from the risk of incurring any  
11 additional tax liabilities if the Century Transaction causes Kenergy to  
12 lose its status as an entity exempt from federal, state, or local tax. If  
13 the Century Transaction results in a change in Kenergy's tax status  
14 and Kenergy incurs costs as a result, Century agrees to hold Kenergy  
15 harmless on an after-tax basis from and against all of those costs.

16 The Tax Indemnity Agreement also permits Kenergy to seek a tax  
17 ruling on any potential impact the Century Transaction may have on  
18 its tax exempt status. If Kenergy chooses to seek such a ruling,  
19 Century will pay all associated costs and expenses, as long as Century  
20 is consulted in advance.

21

22

1 **IV. THE IMPACT OF THE CENTURY TRANSACTION ON**  
2 **KENERGY**

3

4 **Q. What was done to determine whether Kenergy could supply**  
5 **Century with power from the wholesale market?**

6 A. Although Kenergy has an all requirements contract with Big Rivers,  
7 there is an exception for the aluminum smelters (including Century).  
8 Engineering studies were performed to determine constraints relative  
9 to transmission capacity serving the Hawesville smelter. As Big  
10 Rivers is a member of MISO, official requests were made to the MISO  
11 to determine the amount of power that could be delivered with Big  
12 River's Coleman Station (which is adjacent to Century's Hawesville  
13 smelter) in idled condition.

14 **Q. Why did Kenergy support the decision to provide Century's**  
15 **power supply from the wholesale market?**

16 A. First, Century is a member of Kenergy, and it is Kenergy's business  
17 objective to serve all of its members in an economic and responsible  
18 manner. Second, as noted above, the closure of the Hawesville smelter  
19 would negatively impact many Kenergy members (both directly and  
20 indirectly) and would have an adverse effect on the local economy.  
21 Kenergy is further motivated to work with Century to keep the  
22 Hawesville smelter in operation to protect against any negative impact

1 that plant closure could have on Kenergy's growth projects in its  
2 service territory.

3 **Q. Is Kenergy exposed to generation risk or market price risk for**  
4 **electric services as a result of the Century Transaction?**

5 A. No. All of the electric services to be resold by Kenergy will be  
6 purchased from the Market Participant (or bilateral contract  
7 counterparty, if Kenergy is the Market Participant) under the Electric  
8 Services Agreement. Pursuant to Section 2.7 of the Electric Service  
9 Agreement, to the extent a person has a corresponding or related  
10 obligation to Kenergy with respect to any matter, Kenergy's  
11 performance of an obligation with respect to that matter (whether  
12 under the Electric Service Agreement or any other Century  
13 Transaction Document) is subject to and conditioned upon that  
14 person's performance of that corresponding or related obligation to  
15 Kenergy. Consequently, Kenergy will not bear generation risk as a  
16 result of the Century Transaction.

17 Likewise, Century is obligated under the Electric Service Agreement to  
18 pay Kenergy all of Kenergy's costs of purchasing those electric services,  
19 and Century's obligation is back-stopped by the Parent Guarantee.  
20 Therefore, Kenergy will not bear market price risk as a result of the  
21 Century Transaction.

1 **Q. Is Kenergy exposed to disputes between Century and bilateral**  
2 **counterparties or Market Participants as a result of the**  
3 **Transaction?**

4 **A.** Kenergy is protected against any of those disputes, as well.  
5 As noted above, the Electric Service Agreement is structured so that  
6 each of Kenergy's obligations in connection with the Century  
7 Transaction is conditioned on the performance of any related  
8 obligation(s) owed to Kenergy. Moreover, either the Market  
9 Participant or Century may directly enforce any obligation arising  
10 from the Principal Agreements, thereby decreasing the possibility that  
11 Kenergy will be involved in disputes between those parties. In  
12 essence, these agreements create what amounts to a pass-through  
13 arrangement for the obligations between Century and the Market  
14 Participant.

15 Additionally, Century has undertaken certain release and  
16 indemnification obligations that will protect Kenergy against potential  
17 disputes between Century and Big Rivers, the Market Participant (if  
18 different), and bilateral counterparties (if Kenergy is the Market  
19 Participant). For example, Century has released Kenergy from all  
20 claims Century may have against Kenergy if Big Rivers, the Market  
21 Participant (if different), or a bilateral contract counterparty (if  
22 Kenergy is the Market Participant) fails to satisfy its obligations under

1 any Transaction Document or bilateral contract, as applicable.  
2 Century has also agreed to indemnify, hold harmless, and defend  
3 Kenergy against all claims that those same parties may assert against  
4 Kenergy in connection with any of their failure to perform pursuant to  
5 any Century Transaction Document or bilateral contract, as applicable,  
6 provided that Kenergy assigns its related rights to Century in  
7 accordance with the terms of the Electric Service Agreement.

8 The Electric Service Agreement also provides that each market  
9 agreement and bilateral contract must contain provisions that are  
10 substantially similar to these in order to further insulate Kenergy  
11 against disputes between Century and Big Rivers, the Market  
12 Participant (if different), and bilateral counterparties (if Kenergy is the  
13 Market Participant).

14 **Q. How does Kenergy protect itself from Century's credit risk?**

15 A. Kenergy has two levels of protection against any credit risk posed by  
16 Century. On the first level, the Electric Service Agreement requires  
17 Century to provide credit support to Kenergy in amounts Kenergy  
18 estimates to become due and payable: (i) to Kenergy for a period of two  
19 succeeding months of electric service; (ii) with respect to taxes payable  
20 by Century for the benefit of Kenergy; and (iii) for other costs to be  
21 incurred by Kenergy as a result of any Century Transaction Document.  
22 On the second level, Century Parent has provided Kenergy and Big

1 Rivers with a guarantee of payment and performance for all  
2 obligations of Century Kentucky under the Transaction Documents.  
3 That guarantee extends to cover payment and performance of all of  
4 Century Kentucky's obligations not just to Kenergy and Big Rivers, but  
5 also to the Market Participant (if different) or any party to a bilateral  
6 contract entered for Century's benefit.

7 **Q. Pursuant to the terms of the Transaction Documents, who pays**  
8 **for the costs Kenergy incurs to others in connection with the**  
9 **Century Transaction?**

10 A. Century does. Pursuant to Article 4 of the Electric Service Agreement,  
11 Century must pay all of Kenergy's costs of supplying and delivering  
12 electric services to Century under that agreement. Those costs  
13 include: (i) any security that must be provided to any person  
14 (including the RTO or ISO of which the Market Participant is a  
15 member, as well as any bilateral contract counterparty(ies)); (ii)  
16 liabilities for which Century indemnifies Kenergy; and (iii) all other  
17 out-of-pocket costs payable by Kenergy to another person or entity in  
18 connection with the Century Transaction.

19 **Q. Has Kenergy incurred out-of-pocket costs related to**  
20 **negotiating and seeking approval of the Century Transaction?**

21 A. Yes. Kenergy has incurred and is incurring costs related to the  
22 negotiation and approval of the Century Transaction, and Century is

1 reimbursing those costs on a monthly basis under the terms of an  
2 existing cost reimbursement agreement

3 **Q. Will the decision to allow Century to operate in this manner**  
4 **adversely affect Kenergy?**

5 A. No. If providing Century market power supply results in the  
6 Hawesville smelter remaining in operation then the decision will affect  
7 Kenergy in a positive way for the reasons described above. Kenergy  
8 does not envision any adverse impact of allowing Century to operate  
9 with market power supply because Kenergy anticipates recovering all  
10 costs associated with providing this service. In addition, Century will  
11 continue to pay a modest contribution to Kenergy equity consistent  
12 with Kenergy's historical adder and the requirements applicable to all  
13 cooperative members.

14 **Q. Will the decision to allow Century to operate in this manner**  
15 **have an adverse impact on the rates of Kenergy members?**

16 A. No. In light of Century's termination of its existing power  
17 arrangements, the alternative to the Century Transaction was  
18 Century's cessation of smelting operations at the Hawesville smelter.  
19 Consequently, the Century load will be lost from the system whether  
20 or not the Century Transaction is finalized. But while Kenergy  
21 members were faced with rate increases because of Century leaving  
22 the Big Rivers system, the Kenergy board made it clear from the

1 beginning that any solution to Century's problem must not have any  
2 negative effect on Kenergy's other members above and beyond the  
3 increase necessary to replace the load.

4 **Q. Has Kenergy's board approved the Century Transaction?**

5 A. Kenergy's board of directors has approved the Century Transaction.

6 **Q. Will the Century Transaction have any impact on the  
7 Commission's jurisdiction over Kenergy?**

8 A. No. Although I am not a lawyer, it is my understanding that Kenergy  
9 will continue to be subject to the Commission's jurisdiction and  
10 authority. Kenergy's role in the Century Transaction will remain very  
11 similar to its existing role under the 2009 Retail Agreement. Kenergy  
12 will be retail electric supplier of energy to Century. In short, Kenergy  
13 will simply be purchasing electricity and related services from the  
14 Market Participant or bilateral counterparties (if Kenergy becomes the  
15 Market Participant) and then reselling the same electricity and  
16 services to Century.

17

18 **V. THE CENTURY TRANSACTION MUST BE APPROVED**  
19 **BEFORE AUGUST 20, 2013**

20

21 **Q. What would happen if the Commission does not approve the  
22 Century Transaction before August 20, 2013?**

1 A. If the Century Transaction is not approved prior to August 20, 2013,  
2 Kenergy will need to terminate service to Century at that time. The  
3 2009 Retail Agreement is the only mechanism by which Kenergy is  
4 currently able to serve Century, and when that agreement terminates,  
5 service must be terminated as well. Moreover, it is my understanding  
6 that the nature of aluminum smelting operations makes it  
7 extraordinarily expensive to restart smelting operations once they  
8 have been shut down. Even loss of load to a smelter for a few hours  
9 can “freeze” the smelting process, causing tens of millions of dollars in  
10 damages. So, our obvious preference is to avoid that scenario by  
11 securing Commission approval of the Century Transaction prior to  
12 August 20, 2013. And although we recognize that August 20 is quickly  
13 approaching, I note that the parties have worked tirelessly to finalize  
14 the terms of the Century Transaction and make this filing as soon as  
15 possible upon completion of that task.

16 Nevertheless, if the Century Transaction is not approved before  
17 August 20, 2013, Kenergy and Big Rivers are requesting that the  
18 Commission declare that service to Century may be terminated at that  
19 time.

20

1 **Q. Is there an Alternate Service Agreement by which the parties**  
2 **propose Century be served absent approval of the Century**  
3 **Transaction before August 20, 2013?**

4 A. Yes, but it is important to understand that the Alternate Service  
5 Agreement does not protect against closure of the Hawesville smelting  
6 operations. The Alternate Service Agreement (attached as Exhibit 13  
7 to the application and incorporated herein by reference) is designed to  
8 provide Century Kentucky no more than 10 MW of electricity to  
9 support Century's non-smelting operations at the Hawesville Smelter.

10 **Q. So, is the Alternate Service Agreement a substitute for the**  
11 **Century Transaction?**

12 A. No. The Alternate Service Agreement would not allow for the  
13 provision of greater than 10 MW of power to Century for non-smelting  
14 operations, so it provides dramatically less than the 482 MW required  
15 to sustain the current Century smelting operations. The Alternate  
16 Service Agreement simply provides electric service for non-smelting  
17 activities at the Hawesville Smelter, such as security, maintenance  
18 and safety activities, that must continue even after smelting  
19 operations cease. So this agreement needs to be in place immediately  
20 in case it is needed on August 20, 2013, or, if the Electric Service  
21 Agreement becomes effective, at some point in the future after the  
22 Electric Service Agreement is terminated on 60 days notice. In either

1 case, the goal of the Alternate Service Agreement is to permit Century  
2 to receive up to 10 MW in order to keep non-smelting operations active  
3 at the Hawesville site.

4  
5 **VI. CONCLUSION**

6  
7 **Q. Why should the Commission approve the Century Transaction?**

8 A. As noted above, the Century Transaction provides Century with the  
9 market-priced power supply it says it needs to keep the Hawesville  
10 smelter in operation. Helping Century achieve this result is beneficial  
11 to Kenergy, its members, and in a broader sense, the regional economy  
12 of Western Kentucky. The Century Transaction is designed so  
13 Kenergy should not incur costs that are not ultimately the obligation of  
14 Century to pay, and it will not impact Kenergy's retail rates.

15 Without approval of the Century Transaction before August 20, 2013,  
16 however, Kenergy will have no way to protect against the potential for  
17 the adverse economic impact that cessation of smelting operations in  
18 Hawesville would cause for Kenergy's members and the broader  
19 regional economy. This is an extremely unusual scenario facing  
20 Kenergy, Big Rivers, our members, and Century. Consequently, it is  
21 imperative that the Commission expeditiously approve the Century  
22 Transaction, including the Alternate Service Agreement and issue a

1           declaratory order permitting the termination of service to Century on  
2           August 20, 2013, if for any reason those agreements are not in effect on  
3           August 20, 2013.

4

5   **Q.   Does this conclude your testimony?**

6   **A.   Yes.**

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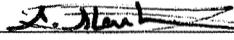
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**BIG RIVERS ELECTRIC CORPORATION**

**JOINT APPLICATION OF KENERGY CORP. AND  
BIG RIVERS ELECTRIC CORPORATION FOR  
APPROVAL OF CONTRACTS AND FOR A DECLARATORY ORDER  
CASE NO. 2013-\_\_\_\_\_**

**VERIFICATION**

I, Gregory J. Starheim, verify, state, and affirm that I prepared or supervised the preparation of the Direct Testimony filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

  
\_\_\_\_\_  
Gregory J. Starheim

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

SUBSCRIBED AND SWORN TO before me by Gregory J. Starheim on  
this the 11<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
Notary Public, Ky. State at Large  
My Commission Expires 1-12-17



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Joint Application of Kenergy Corp.     )  
and Big Rivers Electric Corporation    )  
for Approval of Contracts and for     )     Case No. 2013-\_\_\_\_  
A Declaratory Order                    )

**DIRECT TESTIMONY**

**OF**

**ROBERT W. BERRY  
CHIEF OPERATING OFFICER**

**ON BEHALF OF**

**BIG RIVERS ELECTRIC CORPORATION**

**FILED:     June 12, 2013**

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DIRECT TESTIMONY  
OF  
ROBERT W. BERRY

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1 A. Yes. I testified most recently on behalf of Big Rivers in its 2011  
2 general rate case, Case No. 2011-00036, its 2012 Environmental  
3 Compliance Plan case, Case No. 2012-00063, and its 2012 general rate  
4 case, Case No. 2012-00535.

5

6 **II. OVERVIEW OF TESTIMONY**

7

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to provide additional details about the  
10 power procurement and supply transactions (the “Century  
11 Transaction”) presented here for approval by the Commission.

12 Over the past several months, I have acted on Big Rivers’ behalf as its  
13 principle negotiator of the Transaction, which involves Kenergy Corp.  
14 (“Kenergy”), Big Rivers, Century Aluminum Company (“Century  
15 Parent”), and Century Aluminum of Kentucky General Partnership  
16 (“Century Kentucky”). (Together, Century Parent and Century  
17 Kentucky are referred to as “Century”).

18 Based on my personal knowledge as a direct participant in the Century  
19 Transaction negotiations, I will discuss in greater detail the Century  
20 Transaction generally, as well as the Arrangement and Procurement  
21 Agreement, the Direct Agreement, the Capacitor Agreement, the  
22 Protective Relays Agreement, the Guarantee of Century Parent, the  
23 Capacitor Additions and Protective Relays Guarantee, and the Lockbox

1 Agreement. I will also testify about the impact of the Century  
2 Transaction on Big Rivers.

3 **Q. Are you sponsoring any exhibits?**

4 A. Yes, I am sponsoring the nine contracts that comprise the Century  
5 Transaction, each described in more detail in Section IV below, and the  
6 Letter Agreement attached as Exhibit 14 to this application.

7 **Q. Please provide an overview of your testimony.**

8 A. In Section III of my testimony, I provide an overview of the Century  
9 Transaction structure, the involvement of the markets operated by the  
10 Midcontinent Independent Transmission System Operator, Inc.  
11 (“MISO”), and the Century Transaction’s anticipated impacts on Big  
12 Rivers’ Kenneth C. Coleman Plant (“Coleman”), a coal-fired steam  
13 electric generating plant located near Hawesville, Kentucky.

14 In Section IV, I briefly describe each of the agreements listed above  
15 and explain how they relate to the Century Transaction as a whole.

16 In Section V, I explain in more detail the manner in which Big Rivers  
17 will provide electric services to Kenergy for resale to Century under  
18 the Century Transaction. Specifically, I will address the contracts that  
19 primarily govern Big Rivers’ role in the Century Transaction.

20 In Section VI, I will address how the parties have negotiated  
21 responsibility for various costs in the Century Transaction, including  
22 the costs of the negotiation and approval process. I will also address

1           how the Century Transaction addresses potential sales of surplus  
2           energy.

3           In Section VII, I will discuss the conditions to entering the Century  
4           Transaction, the circumstances under which it may be terminated, and  
5           the effect of any termination.

6           In Section VIII, I will summarize my views on the impact of the  
7           Century Transaction on Big Rivers, also describing why the Century  
8           Transaction will not affect the Commission's jurisdiction over the rates  
9           of Big Rivers or its members.

10          I conclude my testimony in Section IX.

11

12   **III.   THE CENTURY TRANSACTION**

13

14   **Q.    What is the purpose of this portion of your testimony?**

15   A.    In this portion of my testimony, I will provide an overview of the  
16          Century Transaction and some of the effects of entering into the  
17          Century Transaction. I will provide additional details later in my  
18          testimony.

19   **Q.    Are you familiar with Century's existing power supply  
20          arrangements with Big Rivers and Kenergy?**

21   A.    Yes.

1 **Q. Please describe Century's existing power supply arrangements**  
2 **with Big Rivers and Kenergy.**

3 A. Kenergy currently delivers retail electric energy and related services,  
4 such as capacity, transmission, and ancillary services (collectively,  
5 "Electric Services"), to Century for use at its Hawesville Smelter,  
6 under the Retail Electric Service Agreement, dated July 1, 2009 (as  
7 amended, the "2009 Retail Agreement"). Kenergy currently purchases  
8 those Electric Services at wholesale from Big Rivers pursuant to the  
9 July 1, 2009 Wholesale Electric Service Agreement (as amended, the  
10 "2009 Wholesale Agreement"). Big Rivers supplies the Electric  
11 Services sold to Kenergy for service to Century through Big Rivers'  
12 generating facilities and purchased power arrangements, albeit  
13 indirectly through Big Rivers' participation in the MISO market. The  
14 2009 Retail Agreement and the 2009 Wholesale Agreement were both  
15 approved by the Commission in Case No. 2007-00455.

16 **Q. Are you familiar with the Century Transaction?**

17 A. Yes, I am familiar with the Century Transaction and its various  
18 agreements to the extent that they implicate Big Rivers.

19 **Q. Please describe how, pursuant to the Century Transaction, Big**  
20 **Rivers will provide Electric Services to Kenergy for resale to**  
21 **Century.**

1 A. Big Rivers will sell Electric Services to Kenergy under special  
2 contracts. Kenergy in turn will resell Electric Services to Century  
3 under special contracts.

4 **Q. Will the Century Transaction replace the 2009 Retail**  
5 **Agreement and 2009 Wholesale Agreement involving Kenergy,**  
6 **Big Rivers, and Century?**

7 A. Yes, the Century Transaction will replace these arrangements.  
8 Century gave notice of termination of the 2009 Retail Agreement on  
9 August 20, 2012. Century, Kenergy, and Big Rivers thereafter  
10 commenced negotiating new power supply arrangements. The Century  
11 Transaction embodies these negotiated arrangements, but the  
12 agreements will not become effective until the termination of the  
13 existing agreements.

14 **Q. Please describe the basic structure of the Century Transaction.**

15 A. The Century Transaction is intended to provide Century Kentucky's  
16 Hawesville smelter with Electric Services purchased from a wholesale  
17 electric market (such as the MISO market) or pursuant to bilateral  
18 contracts with third parties (each, a "Bilateral Contract").

19 Big Rivers will no longer have an obligation to supply Electric Services  
20 to Century Kentucky from its generation facilities or from any  
21 purchase power arrangement not specifically intended to provide  
22 Electric Services to Kenergy for delivery to Century. Because Big

1 Rivers will no longer have this obligation, it will change how it  
2 operates Coleman, which is adjacent to the Hawesville Smelter.

3 Kenergy retains its role as the sole retail provider of Electric Services  
4 to Century. Kenergy will obtain the Electric Services delivered to  
5 Century from a market participant (as defined in the MISO Tariff, a  
6 “Market Participant”), as described below.

7 **Q. How is the Market Participant determined?**

8 A. Big Rivers will serve as the initial Market Participant. In the future,  
9 Kenergy may elect to become the Market Participant. Alternatively,  
10 Century may appoint an entity other than Big Rivers to be the Market  
11 Participant, provided that it demonstrates to Kenergy that  
12 arrangements with the new Market Participant do not increase  
13 Kenergy’s financial or operational risks compared to the risks to  
14 Kenergy under the Arrangement Agreement. If an entity other than  
15 Big Rivers serves as Market Participant in the future, Kenergy will  
16 execute a separate “Market Agreement” with that entity. Mr.  
17 Starheim describes these options in more detail in his testimony.

18 **Q. Does the Century Transaction result in an increase in  
19 Century’s Load?**

20 A. No. The maximum scheduled load permitted under the Century  
21 Transaction is 482 megawatts. The Century Transaction documents

1 also permit Century to have up to 10 megawatts of imbalance energy  
2 above the 482 megawatts.

3 **Q. Please elaborate on how the Century Transaction will impact**  
4 **Big Rivers' participation in MISO.**

5 A. The Century Transaction will not change Big Rivers' status within  
6 MISO, but Big Rivers has applied to MISO for the establishment of a  
7 new commercial pricing "node" (as defined in the MISO Tariff) at  
8 Coleman (the "Hawesville Node"). If an entity other than Big Rivers  
9 becomes the Market Participant, Big Rivers will transfer the  
10 Hawesville Node to the new Market Participant. In the future, Big  
11 Rivers or Kenergy may elect to join or become a member of a regional  
12 transmission operator ("RTO") or a different independent system  
13 operator ("ISO"), or Big Rivers may elect to withdraw as a member of  
14 MISO. If this occurs, Kenergy, Big Rivers, and Century will, to the  
15 extent necessary, modify in good faith the terms and provisions of the  
16 Century Transaction documents to preserve their purposes and intent.

17 **Q. How will the Century Transaction impact operation of**  
18 **Coleman?**

19 A. As a result of Century's notice of termination of the 2009 Retail  
20 Agreement, Big Rivers has sought permission from MISO to idle  
21 Coleman. If MISO determines that one or more units at Coleman are  
22 required to operate for reliability purposes, Big Rivers and MISO will

1 negotiate and enter into a System Support Resources (“SSR”) Agreement. Among other things, a SSR Agreement would describe 2 what nodes will be obligated to pay costs, if any, associated with the 3 potential must-run condition of any Coleman units (the “SSR Costs”). 4 The Century Transaction documents contain specific provisions to 5 address how any SSR Costs would be paid. 6

7 To avoid triggering a SSR Agreement, Century may keep its load in an 8 amount less than the level that would result in the need for a SSR Agreement (the “Base Load”), plus an additional load which Century 9 has the ability to curtail through the use of protective relays, as 10 directed by governmental authorities regulating reliability (the 11 “Curtable Load”). In combination, the Base Load and Curtable 12 Load are subject to a maximum scheduled load of 482 megawatts, 13 together with up to 10 megawatts of imbalance energy. 14

15 **Q. Does the Century Transaction require approval as a financing**  
16 **transaction pursuant to KRS 278.300?**

17 A. No. It is my understanding that Big Rivers’ agreement to purchase 18 electric energy from the MISO Day-Ahead market does not constitute 19 the kind of “financing” transaction that is subject to the approval 20 requirements of KRS 278.300. Because purchases will be made in the 21 Day-Ahead market, the payment obligations will not resemble the 22 types of long-term “take or pay” commitments that the Commission

1 has previously treated as “financings.” This conclusion is reinforced by  
2 the fact that the parties have negotiated significant credit support for  
3 Big Rivers’ and Kenergy’s market obligations.

4  
5 **IV. THE CENTURY TRANSACTION DOCUMENTS**

6  
7 **Q. What is the purpose of this portion of your testimony?**

8 A. In this portion of my testimony, I will describe the agreements entered  
9 into by and among Century, Kenergy, and Big Rivers to effectuate the  
10 Century Transaction.

11 **Q. What agreements will govern the relationships between  
12 Century, Kenergy, and Big Rivers?**

13 A. There are nine agreements that embody the terms and conditions  
14 relating to the Century Transaction. These agreements are as follows:

- 15 1. Electric Service Agreement, by and between Kenergy and  
16 Century Kentucky (a true and accurate copy of which is  
17 attached to the application as Exhibit 4);
- 18 2. Arrangement and Procurement Agreement (the  
19 “Arrangement Agreement”), by and between Kenergy and  
20 Big Rivers (a true and accurate copy of which is attached to  
21 the application as Exhibit 5);

- 1                   3. *Direct Agreement*, by and between Big Rivers and Century  
2                   Kentucky (a true and accurate copy of which is attached to  
3                   the application as Exhibit 6);
- 4                   4. *Tax Indemnity Agreement*, by and among Kenergy,  
5                   Century Parent, and Century Kentucky (a true and accurate  
6                   copy of which is attached to the application as Exhibit 9);
- 7                   5. *Guarantee*, by Century Parent in favor of Kenergy and Big  
8                   Rivers, relating to Century Kentucky's obligations under the  
9                   Century Transaction documents (a true and accurate copy of  
10                  which is attached to the application as Exhibit 10), other  
11                  than its obligations under the Capacitor Agreement and the  
12                  Protective Relay Agreement that are covered by the CPR  
13                  Guarantee described in item 9;
- 14                 6. *Lockbox Agreement*, by and among Century, Kenergy, Big  
15                 Rivers, and a depository bank (a true and accurate copy of  
16                 which is attached to the application as Exhibit 12);
- 17                 7. *Capacitor Agreement*, by and among Kenergy, Big Rivers,  
18                 and Century Kentucky (a true and accurate copy of which is  
19                 attached to the application as Exhibit 7);
- 20                 8. *Protective Relays Agreement*, by and among Kenergy, Big  
21                 Rivers, and Century Kentucky (a true and accurate copy of  
22                 which is attached to the application as Exhibit 8); and

1                   9. Capacitor Additions and Protective Relays Guarantee  
2                    (“CPR Guarantee”), by Century Parent in favor of Kenergy  
3                    and Big Rivers, relating to Century Kentucky’s obligations  
4                    under the Capacitor Agreement and Protective Relays  
5                    Agreement (a true and accurate copy of which is attached to  
6                    the application as Exhibit 11).

7 **Q. How are Kenergy’s, Big Rivers’, and Century’s respective**  
8 **obligations under the Century Transaction documents related?**

9 A. The Century Transaction documents are structured so that: (i) each  
10 obligation of Kenergy to Big Rivers pursuant to the Arrangement  
11 Agreement is conditioned on the performance by Century Kentucky of  
12 its obligations to Kenergy under the Electric Service Agreement, and  
13 (ii) each obligation of Kenergy to Century Kentucky under the Electric  
14 Service Agreement is conditioned on the performance by Big Rivers of  
15 its obligations to Kenergy under the Arrangement Agreement.

16 **Q. Are you familiar with and able to testify about the**  
17 **Arrangement Agreement that is part of the Century**  
18 **Transaction?**

19 A. Yes.

20  
21

1 Q. Can you please describe the nature of the Arrangement  
2 Agreement?

3 A. The Arrangement Agreement is a contract between Kenergy and Big  
4 Rivers that will coordinate those companies' efforts to acquire Electric  
5 Services from the wholesale market for resale to Century. As Mr.  
6 Starheim has testified, Kenergy has agreed to sell and deliver Electric  
7 Services to Century Kentucky pursuant to the Electric Service  
8 Agreement between those two parties. Big Rivers will not generate the  
9 power to be used by Century Kentucky but will instead serve (at least  
10 initially) as the Market Participant to secure power from the wholesale  
11 market for resale to Kenergy to provide to Century under the Electric  
12 Service Agreement.

13 Pursuant to the Arrangement Agreement, Big Rivers will serve as the  
14 Market Participant in the MISO Day Ahead Market and purchase or  
15 sell imbalance energy in the Real Time Market. Big Rivers will  
16 procure these Electric Services for Kenergy for resale to Century  
17 Kentucky under the Electric Service Agreement. In its role as Market  
18 Participant, Big Rivers will also serve as the scheduling agent for the  
19 electricity, electric capacity, and electricity-related ancillary services  
20 required under the Electric Service Agreement during the term of the  
21 Arrangement Agreement.

22

1 **Q. Are you familiar with the Direct Agreement?**

2 A. Yes.

3 **Q. Can you please provide a general description of the Direct**  
4 **Agreement?**

5 A. The Direct Agreement is a contract between Big Rivers and Century  
6 Kentucky relating to direct, bilateral obligations to each other in  
7 connection with the Century Transaction, such as Century Kentucky's  
8 obligations to reimburse Big Rivers for SSR Costs. The Direct  
9 Agreement will remain in effect even if Big Rivers is no longer acting  
10 as the Market Participant and the Arrangement Agreement is  
11 terminated.

12 **Q. Are you familiar with the Capacitor Agreement?**

13 A. Yes.

14 **Q. Can you please provide a general description of the Capacitor**  
15 **Agreement?**

16 A. This is a contract between Kenergy, Big Rivers, and Century Kentucky  
17 to protect Big Rivers and Kenergy from risks and obligations relating  
18 to the design, development, purchase, installation, operation, and  
19 maintenance of capacitor additions at Century Kentucky.

20 Pursuant to the Capacitor Agreement, Century Kentucky will design,  
21 develop, purchase, and install capacitor additions in order to help  
22 support serving Century Kentucky's requirements for Electric Services

1 under the Electric Service Agreement in circumstances where Big  
2 Rivers has idled Coleman. Century Kentucky will be responsible for  
3 all related work, including the development of the specifications and  
4 the installation of the capacitor additions in its substation on its  
5 property in accordance with law, electrical standards and prudent  
6 utility practice, using commercially reasonable efforts to complete that  
7 installation prior to the effective date of Kenergy's obligation to provide  
8 Electric Services pursuant to the Electric Service Agreement.

9 **Q. Are you familiar with the Protective Relays Agreement?**

10 A. Yes.

11 **Q. Can you please provide a general description of the Protective  
12 Relays Agreement?**

13 A. This is a contract between Century Kentucky, Kenergy, and Big Rivers  
14 to protect Big Rivers and Kenergy from risks and obligations relating  
15 to the design, development, purchase, installation, operation and  
16 maintenance of the Protective Relay additions at Century Kentucky.

17 Pursuant to the Protective Relays Agreement, Century Kentucky will  
18 design, develop, purchase, and install protective relays in order to  
19 support curtailment of Century Kentucky's requirements for Electric  
20 Services in certain circumstances. Century Kentucky will be  
21 responsible for all related work, including the development of the  
22 specifications and the installation of the protective relays in

1           accordance with law, electrical standards and prudent utility practice,  
2           using commercially reasonable efforts to complete that installation  
3           prior to the effective date of Kenergy's obligation to provide Electric  
4           Services pursuant to the Electric Service Agreement.

5           In addition, Kenergy, Big Rivers, and Century Kentucky have agreed  
6           to cooperate to submit to MISO and, if necessary, to SERC a mutually  
7           agreeable proposal that (a) Century Kentucky be permitted to receive  
8           Electric Services at capacities in excess of the Base Load permitted  
9           under the Electric Service Agreement, without considering the  
10          protective relays or any other requirement that MISO may impose as a  
11          condition to exceeding the Base Load, (b) when required to maintain  
12          electrical reliability, authorize third parties be permitted to direct  
13          activation of the protective relays to curtail Century's load at the  
14          Hawesville Smelter, (c) any such direction shall be specified, agreed to,  
15          and communicated to Big Rivers, and (d) Big Rivers shall provide  
16          notice to Century Kentucky of such communications. Century is  
17          installing additional capacitor banks and protective relays as part of a  
18          strategy to increase the amount of power it can take without requiring  
19          a SSR Agreement.

20   **Q.    Are you familiar with the Century Parent Guarantee?**

21   **A.    Yes.**

1 **Q. Can you please provide a general description of the**  
2 **Guarantee?**

3 A. This is a contract between Century Parent, Kenergy, and Big Rivers by  
4 which Century Parent unconditionally and irrevocably guarantees, as  
5 a primary obligor and not merely as a surety, the prompt payment and  
6 performance obligations of Century Kentucky under the Electric  
7 Service Agreement, the Direct Agreement, the Tax Indemnity  
8 Agreement, and all other Century Transaction documents. This  
9 guarantee extends to all obligations of Century Kentucky relating to  
10 the payment of money to Kenergy or Big Rivers, and is continuing,  
11 absolute, and unconditional guarantee of payment and performance.  
12 Execution of the Guarantee is a condition precedent to the closing of  
13 the Century Transaction.

14 **Q. Are you familiar with the CPR Guarantee?**

15 A. Yes.

16 **Q. Can you please provide a general description of the CPR**  
17 **Guarantee?**

18 A. This is a contract between Century Parent, Kenergy, and Big Rivers by  
19 which Century Parent unconditionally and irrevocably guarantees, as  
20 a primary obligor and not merely as a surety, the prompt payment and  
21 performance of Century Kentucky's obligations under the Capacitor  
22 Agreement and the Protective Relays Agreement. The contract

1 contains numerous safeguards to ensure that the guarantee is  
2 continuing, absolute, and unconditional. Execution of the CPR  
3 Guarantee is a condition precedent to the effectiveness of the two  
4 underlying agreements.

5 The reason for a separate guarantee for these two agreements distinct  
6 from the general guarantee described above is the desire of the parties  
7 for the Capacitor Agreement and the Protective Relays Agreement to  
8 be entered into in advance of the other Century Transaction documents  
9 to facilitate the installation of equipment as soon as possible. Thus,  
10 this guarantee would be entered into at the time those two agreements  
11 are executed and delivered by the parties. The primary Guarantee  
12 contract will be delivered at the time of execution and delivery of the  
13 Electric Service Agreement, the Arrangement Agreement, and the  
14 Direct Agreement, which is expected to be later than the time of the  
15 execution and delivery of the Capacitor Agreement and the Protective  
16 Relays Agreement.

17 **Q. Are you familiar with the Lockbox Agreement?**

18 A. Yes.

19 **Q. Can you please provide a general description of the Lockbox  
20 Agreement?**

21 A. The Lockbox Agreement relates to Century's obligation to pay certain  
22 amounts due under the Electric Service Agreement to a depository

1 bank. Century will make payments to a lockbox with Old National  
2 Bank (“ONB”), which will separate amounts owed to each of Kenergy  
3 and Big Rivers. ONB will disburse all amounts in the lockbox account  
4 each month.

5 **Q Are there other agreements for which Kenergy and Big Rivers**  
6 **are seeking Commission approval in the application?**

7 A. Yes. Kenergy is seeking approval for the Alternate Service Agreement,  
8 as is described in the application and in Mr. Starheim’s testimony.  
9 The Alternate Service Agreement is a retail service agreement by  
10 which Kenergy can provide retail electric service to Kenergy for up to  
11 10 megawatts of load for non-smelting purposes. Big Rivers seeks  
12 Commission approval for the “Letter Agreement” attached to the  
13 application as Exhibit 14, and incorporated herein by reference. The  
14 Letter Agreement is the agreement between Big Rivers and Kenergy  
15 by which Big Rivers provides the wholesale power supply support for  
16 the Alternate Service Agreement. The forms of the Alternate Service  
17 Agreement and the Letter Agreement are representative of the forms  
18 used by Kenergy and Big Rivers in connection with Kenergy’s retail  
19 service to many other large industrial customers.

20  
21

1 V. DETAILS OF THE PROVISION OF ELECTRIC SERVICES TO  
2 CENTURY PURSUANT TO THE CENTURY TRANSACTION

3

4 Q. **What is the purpose of this portion of your testimony?**

5 A. The purpose of this portion of my testimony is to explain the manner in  
6 which Big Rivers will provide Electric Services to Kenergy for resale to  
7 Century pursuant to the Century Transaction. In particular, I will  
8 provide additional details about the Arrangement Agreement and  
9 Direct Agreement.

10 Q. **What is the purpose of the Arrangement Agreement between**  
11 **Kenergy and Big Rivers?**

12 A. The Arrangement Agreement specifies the charges, terms, and  
13 conditions pursuant to which Big Rivers will resell Electric Services to  
14 Kenergy for delivery to Century Kentucky for use at the Hawesville  
15 Smelter. The service period under the Arrangement Agreement will  
16 begin on August 20, 2013 (or the day following the "Effective Date," as  
17 defined in the Arrangement Agreement, whichever is later) and will  
18 continue through December 31, 2023 unless the Arrangement  
19 Agreement is terminated early or its term is automatically extended.  
20 The Arrangement Agreement and Electric Service Agreement will  
21 replace the terminated 2009 Wholesale Agreement and 2009 Retail  
22 Agreement, respectively, as the contractual arrangements by which

1 Kenergy obtains power to serve Century Kentucky's Hawesville  
2 Smelter.

3 **Q. How are Century Kentucky's power requirements for the**  
4 **Hawesville Smelter currently met?**

5 A. As I described previously, Kenergy currently supplies and delivers  
6 Electric Services to Century Kentucky's Hawesville Smelter pursuant  
7 to the 2009 Retail Agreement. Under the 2009 Wholesale Agreement,  
8 Kenergy purchases from Big Rivers wholesale Electric Services for  
9 resale to Century Kentucky. These agreements were approved by the  
10 Commission in Case No. 2007-00455. Century gave notice of  
11 termination of the 2009 Retail Agreement on August 20, 2012, and  
12 that termination will occur at 12:00 a.m. CPT on August 20, 2013.

13 **Q. How will the power requirements of Century Kentucky's**  
14 **Hawesville Smelter be met under the Arrangement Agreement?**

15 A. Under Section 2.3 of the Arrangement Agreement, Big Rivers is  
16 obligated, during the service period, to use reasonable commercial  
17 efforts to acquire the Base Load and, if applicable, the Curtailable  
18 Load, for resale to Kenergy for delivery to Century Kentucky under the  
19 Electric Service Agreement. The Base Load plus the Curtailable Load  
20 may not exceed 482 megawatts, plus an additional 10 megawatts of  
21 imbalance energy, and must not create any electric reliability issue.  
22 Big Rivers will procure this energy and other required Electric

1 Services in a MISO market or a similar centralized wholesale electric  
2 market or under a Bilateral Contract.

3 **Q. How are deliveries of energy scheduled pursuant to the**  
4 **Arrangement Agreement?**

5 A. Under Section 3.3 of the Arrangement Agreement, Kenergy or its  
6 designee must schedule all required Electric Services with Big Rivers  
7 or its designee. Big Rivers then will schedule the Base Load and, if  
8 applicable, the Curtailable Load in MISO's Day Ahead Energy and  
9 Operating Reserve Market prior to the date of delivery of those Electric  
10 Services, unless Kenergy notifies Big Rivers of an alternative schedule.  
11 Kenergy must provide prompt notice to Big Rivers of any revisions to  
12 Century Kentucky's schedule. The scheduled energy may not exceed  
13 the Base Load and, if applicable, the Curtailable Load without the  
14 prior consent of Kenergy and Big Rivers.

15 **Q. Turning now to the Direct Agreement, why has Big Rivers**  
16 **entered into this agreement with Century Kentucky?**

17 A. Big Rivers has entered into the Direct Agreement with Century  
18 Kentucky in order to coordinate the complex relationships that are  
19 created by the other Century Transaction documents, and to protect  
20 Big Rivers against exposure to certain potential costs. Generally  
21 speaking, the Direct Agreement provides for the creation of direct  
22 obligations running between Big Rivers and Century Kentucky.

1 **Q. How does the Direct Agreement create direct obligations**  
2 **between Big Rivers and Century Kentucky?**

3 A. Pursuant to Sections 3.1 and 3.2 of the Direct Agreement, Century  
4 Kentucky and Big Rivers agree to fully perform and discharge their  
5 respective obligations under the various Century Transaction  
6 documents. Among other matters, these sections limit each party's  
7 ability to modify the Century Transaction documents, to waive  
8 Kenergy's performance of its obligations under the Century  
9 Transaction documents, or to rely upon waivers granted by Kenergy.  
10 These sections help to ensure that Century Kentucky is obligated to  
11 Big Rivers to perform its obligations under the Electric Service  
12 Agreement, and that Big Rivers is obligated to Century to perform its  
13 obligations under the Arrangement Agreement.  
14 Furthermore, Sections 5.1 and 5.2 provide for reciprocal cure rights for  
15 Big Rivers and Century Kentucky. These sections are intended to  
16 provide additional protection against termination of the Century  
17 Transaction resulting from breach or default. Big Rivers and Kenergy  
18 may each attempt to cure a breach or default of the other parties to the  
19 Century Transaction under certain circumstances, as long as those  
20 efforts do not materially interfere with a party's efforts to cure its own  
21 breach or default.

1 The Direct Agreement also contains provisions addressing the rights  
2 and obligations of Big Rivers relating to any SSR Agreement, SSR  
3 Costs, other costs of Big Rivers, an election by Big Rivers or Kenergy to  
4 join a RTO or ISO other than MISO or to not be a member of any RTO  
5 or ISO, credit support to be provided by Century, and direct payment  
6 obligations from Century to Big Rivers.

7

8 **VI. SALES, FEES, CHARGES, AND PAYMENTS**

9

10 **Q. What is the purpose of this portion of your testimony?**

11 A. In this portion of my testimony, I will address how the parties have  
12 negotiated various costs in the Century Transaction, including the  
13 costs of the negotiation itself. I will also address how the Century  
14 Transaction addresses potential sales of surplus energy.

15 **Q. Has Big Rivers incurred out-of-pocket costs related to  
16 negotiating and seeking approval of the Century Transaction?**

17 A. Yes. Big Rivers has incurred and is incurring costs related to the  
18 negotiation and approval of the Century Transaction, and Century is  
19 reimbursing those costs on a monthly basis under the terms of an  
20 existing cost reimbursement agreement

1 **Q. Are there any provisions in the Century Transaction**  
2 **documents for resale of energy by Big Rivers that otherwise**  
3 **would be deliverable to Century Kentucky?**

4 A. Yes. Big Rivers has agreed that it will use commercially reasonable  
5 efforts to sell, when surplus to Century Kentucky's requirements  
6 ("Surplus Sales"): (1) Electric Services which Century Kentucky has  
7 purchased or is committed to purchase and that otherwise would be  
8 deliverable to Century Kentucky, or (2) specified financial  
9 transmission rights of Century Kentucky. Surplus Sales include sales  
10 made by Big Rivers in connection with Century Kentucky's inability—  
11 for "Uncontrollable Force" reasons (as defined in the Century  
12 Transaction documents) — to receive and consume any Electric  
13 Services purchased by Big Rivers under a Bilateral Contract for resale  
14 to Kenergy under the Arrangement Agreement and delivery (by  
15 Kenergy) to Century Kentucky under the Electric Service Agreement.  
16 These sales are subject to restrictions and conditions set forth in the  
17 Arrangement Agreement. I will describe these restrictions and  
18 conditions later in my testimony.

19 **Q. How does the Arrangement Agreement calculate and apply**  
20 **Surplus Sales proceeds?**

21 A. The "Net Proceeds" of any Surplus Sales will be credited by Big Rivers  
22 against the applicable item in the monthly charges billed under the

1 Arrangement Agreement. The “Net Proceeds” are the proceeds of a  
2 sale or transfer, net of: (i) the cost of the item sold and net of  
3 transaction costs, whenever incurred; and (ii) taxes.

4 **Q. How are Kenergy’s (and, by extension, Century Kentucky’s)**  
5 **payment obligations structured under the Century Transaction**  
6 **documents?**

7 A. Kenergy’s payment obligations under the Arrangement Agreement,  
8 and Century Kentucky’s payment obligations under the Electric  
9 Service Agreement, are composed of several charges for the provision  
10 of Electric Services. A portion of these charges are billed weekly and a  
11 portion is billed monthly. These charges are designed to include all of  
12 Big Rivers’ and Kenergy’s costs of arranging, procuring, and delivering  
13 the Electric Services provided under the Century Transaction  
14 documents. These charges do not include any item that would result in  
15 a duplicative payment for a particular charge if Big Rivers or Kenergy  
16 would not be liable for the duplicative amount. As described in more  
17 detail below, the categories of charges under the Century Transaction  
18 documents are: (1) the Applicable RTO Charge, which may include a  
19 credit for Century’s specified financial transmission rights, (2) the  
20 Bilateral Charge, (3) the Excess Reactive Demand Charge, (4) the  
21 Retail Fee, payable exclusively under the Electric Service Agreement,  
22 and (5) other charges specified and certain taxes. These charges, as

1           may be offset by a credit for Century's specified financial transmission  
2           rights or the Net Proceeds of Surplus Sales, will be paid by Century  
3           Kentucky to Kenergy, which will in turn pay the collected amounts  
4           (less the Retail Fee and any other charges not passed through to Big  
5           Rivers, as I will describe later in my testimony) to Big Rivers under the  
6           Arrangement Agreement.

7   **Q.   Please describe the Applicable RTO Charge.**

8   A.   The Applicable RTO Charge consists of all charges invoiced to Big  
9           Rivers by MISO, or other applicable RTO or ISO, on a pass-through  
10          basis for all Electric Services purchased by Kenergy under the  
11          Arrangement Agreement.  These charges include (1) all activity listed  
12          on the settlement statement of MISO, or other applicable RTO or ISO,  
13          for the Hawesville Smelter node, including SSR Costs relating to that  
14          node, (2) all activity for transmission services associated with that  
15          node, (3) all activity relating to the planning year (or other applicable  
16          period) of MISO, or other applicable RTO or ISO, that is attributable to  
17          that node, (4) costs relating to specified transmission upgrades  
18          attributable to that node that otherwise relate to Century Kentucky's  
19          operation of the Hawesville Smelter, and (5) any credit for revenue  
20          resulting from the sale of financial transmission rights of Century  
21          specified in the agreement.

1 The Applicable RTO Charge does not include charges associated with  
2 Electric Services purchased on Century's behalf pursuant to a Bilateral  
3 Contract. It also does not include any other amounts payable by Big  
4 Rivers to serve Kenergy (for the benefit of Century, pursuant to the  
5 Electric Service Agreement) as provided under the Arrangement  
6 Agreement. Other amounts chargeable to Century under the Century  
7 Transaction not constituting RTO Charges are covered in other  
8 charges, described below.

9 **Q. Please describe the Bilateral Charge.**

10 A. The Bilateral Charge includes all charges to Big Rivers under a  
11 Bilateral Contract with respect to Electric Services provided under the  
12 Arrangement Agreement. The Bilateral Charge also includes all other  
13 costs of Big Rivers or Kenergy for the benefit of Century relating to a  
14 Bilateral Contract of that type, including any separate charges for  
15 transaction fees (including broker fees), transmission services,  
16 ancillary services and related services, whenever incurred (including  
17 financial transmission rights, transmission congestion charges and  
18 similar costs or expenses).

19 **Q. Please describe the Excess Reactive Demand Charge and how  
20 it is calculated.**

21 A. The Excess Reactive Demand Charge will apply if the maximum  
22 metered reactive demand of Century during a billing month exceeds a

1 level of kilovars specified in the Arrangement Agreement. The charge  
2 is \$0.1433 per kilovar in excess of that specified level. This is  
3 consistent with the current contract rate.

4 **Q. Please describe the Retail Fee and how it is calculated.**

5 A. The Electric Service Agreement requires Century Kentucky to pay a  
6 Retail Fee to Kenergy that is not passed through to Big Rivers under  
7 the Arrangement Agreement. The Retail Fee is a fixed fee per month  
8 specified in the Electric Service Agreement, plus \$0.000045 per  
9 kilowatt-hour of energy metered at the Hawesville Smelter node. This  
10 is the same as the current contract rate.

11 **Q. Please describe the other charges payable under the Century  
12 Transaction documents.**

13 A. Kenergy's payment obligations under the Arrangement Agreement,  
14 and Century Kentucky's payment obligations under the Electric  
15 Service Agreement, also include the following charges:

16 (1) costs of Big Rivers arising from any tax liability of Big Rivers  
17 resulting from Surplus Sales;

18 (2) costs of Big Rivers or Kenergy arising from compliance with  
19 applicable renewable portfolio standards and environmental laws  
20 relating to Century's operations;

- 1 (3) costs of Big Rivers or Kenergy arising from compliance with  
2 applicable laws relating to power sales including hedging  
3 arrangements and the provisions of the Dodd-Frank Act;
- 4 (4) costs of Big Rivers arising from a requirement to pay invoices from  
5 the applicable RTO or ISO on a frequency greater than monthly,  
6 costs of Big Rivers or Kenergy arising from the appointment of a  
7 new Market Participant;
- 8 (5) charges for any other services required to be purchased by Big  
9 Rivers or Kenergy to provide the services under the Century  
10 Transaction documents;
- 11 (6) costs of Big Rivers or Kenergy associated with the Hawesville  
12 Smelter node ceasing to be located in MISO, or any other RTO or  
13 ISO, in connection with an election made by Big Rivers or Kenergy  
14 under the Century Transaction documents;
- 15 (7) costs associated with the appointment of a new Market  
16 Participant;
- 17 (8) the cost of one-quarter (0.25) full-time-equivalent employee of Big  
18 Rivers to assist in the administration of Big Rivers' duties under  
19 the Arrangement Agreement and the other Century Transaction  
20 documents;
- 21 (9) other out-of-pocket costs payable by Big Rivers or Kenergy which  
22 are incurred or committed to by Big Rivers or Kenergy in

1 connection with or arising out of the Century Transaction,  
2 including liabilities for which Big Rivers or Kenergy are  
3 indemnified under the agreements and any security necessary to  
4 be provided to any person or entity (including MISO, or other RTO  
5 or ISO of which Big Rivers is a member, or a counterparty to a  
6 Bilateral Contract) arising out of the Century Transaction; and  
7 (10) a charge for use of imbalance energy in excess of 10 MW.

8 In addition to the charges I just described, Century Kentucky has  
9 certain payment obligations to Kenergy under the Electric Service  
10 Agreement that are not passed through to Big Rivers. Mr. Starheim  
11 has addressed these obligations in his testimony.

12 **Q. Please describe the taxes payable under the Century**  
13 **Transaction documents.**

14 A. No state or local sales, excise, gross receipts or other taxes are included  
15 in the specific charges and credits set forth in the Century Transaction  
16 documents. However, Century (and Kenergy) are obligated to pay, or  
17 cause to be paid, to Big Rivers any of those taxes which are or in the  
18 future become applicable to the Electric Services delivered to Century  
19 Kentucky pursuant to the Century Transaction documents.

20

1 Q. Is there any limit in the Century Transaction documents on the  
2 ability of Big Rivers or Century Kentucky to seek rate  
3 changes?

4 A. Yes. The Century Transaction Documents prohibit Kenergy, Big  
5 Rivers, and Century from supporting or seeking, directly or indirectly,  
6 from any governmental authority, including the Commission, any  
7 challenge to or change in the rates, charges, or other terms and  
8 conditions set forth in the Century Transaction documents.

9 Q. Please describe the credit support for the Century  
10 Transaction.

11 A. Credit support is required under the Century Transaction documents.  
12 These agreements require Century (and require Kenergy to cause  
13 Century) to provide and maintain credit support in specified forms to  
14 persons designated by Big Rivers in amounts (without duplication) (1)  
15 reasonably estimated by Big Rivers to become due and payable to it  
16 under the Arrangement Agreement and Direct Agreement for a period  
17 of two succeeding months, (2) estimated by Kenergy to become due and  
18 payable to it under the Electric Service Agreement for a period of two  
19 succeeding months, (3) required by or for the benefit of MISO, or any  
20 RTO or ISO (without regard to Big Rivers acting as the Market  
21 Participant), or under any Bilateral Contract without the requirement  
22 for Big Rivers to provide credit support or be liable to any

1           counterparty, with respect to the provision of Electric Services under  
2           the Arrangement Agreement, (4) which Kenergy or Big Rivers estimate  
3           reasonably could become due with respect to taxes payable by Century  
4           for the benefit of Kenergy or Big Rivers, and (5) which Kenergy  
5           estimates reasonably could become due and payable by Kenergy as a  
6           result of any Century Transaction document. With respect to any  
7           period for which Big Rivers is not or was not the Market Participant,  
8           this credit support will also include any amounts estimated by  
9           Kenergy to be required as security by it, Big Rivers, the Market  
10          Participant or the applicable RTO or ISO.

11          Additionally, Century Kentucky is obligated to cause Century Parent  
12          to guarantee to Kenergy and Big Rivers the payment, performance,  
13          and all other obligations of Century Kentucky under the Century  
14          Transaction documents, as well as to guarantee to the Market  
15          Participant or any party to a Bilateral Contract the payment,  
16          performance, and all other obligations of Century Kentucky under any  
17          Market Agreement with those entities.

18  
19  
20  
21

1 **VII. CONDITIONS AND TERMINATION**

2

3 **Q. What is the purpose of this portion of your testimony?**

4 A. In this portion of my testimony, I will describe the termination  
5 provisions of the Century Transaction documents, and describe the  
6 need for the declaratory order Big Rivers and Kenergy request in the  
7 application.

8 **Q. When do the Century Transaction documents terminate?**

9 A. As I mentioned previously, the Century Transaction documents will  
10 terminate on December 31, 2023 unless a contract is terminated early  
11 or its term is automatically extended. Early termination is permitted  
12 under each contract in limited circumstances, both before and after the  
13 Effective Date. The terms of the contracts will automatically extend  
14 for one year periods on each December 31st after December 31, 2023,  
15 until a party gives at least one year's prior notice of its election for the  
16 agreement to expire on a specified December 31.

17 **Q. When will the Arrangement Agreement between Kenergy and**  
18 **Big Rivers terminate?**

19 A. The Arrangement Agreement will automatically terminate (1)  
20 following an effective termination by Century Kentucky of the Electric  
21 Service Agreement, or (2) when Big Rivers is no longer acting as the  
22 Market Participant. As discussed below, however, certain provisions

1 that customarily survive termination will survive termination of the  
2 contract, including obligations related to reliability.

3 **Q. When will the Direct Agreement between Century Kentucky**  
4 **and Big Rivers terminate?**

5 A. The Direct Agreement does not contain any express termination date.  
6 The agreement is intended to continue until none of the Century  
7 Transaction documents are in effect.

8 **Q. What are the conditions to the effectiveness of Kenergy's, Big**  
9 **Rivers', and Century's obligations regarding Electric Services**  
10 **under the Century Transaction documents?**

11 A. Article 6 of the Electric Service Agreement sets forth the terms and  
12 conditions relating to the date on which the obligations of the parties  
13 regarding the commencement of the provision of Electric Services  
14 under the Electric Service Agreement. Conditions to the Effective  
15 Date include customary conditions for transactions of this type,  
16 including conditions regarding accuracy of the representations and  
17 warranties of the parties, provision of required credit support, due  
18 authorization of the Century Transaction documents by the parties  
19 thereto and of required consents and approvals.

20

21

1 **Q. How may the Century Transaction documents be terminated**  
2 **prior to becoming effective?**

3 A. Prior to the Effective Date, any party to the Century Transaction  
4 documents may terminate the applicable agreement without cost or  
5 penalty by written notice (1) if any conditions to the Effective Date are  
6 not satisfied in full or waived on or before 11:59:59 p.m. on August 19,  
7 2013, or (2) if the Commission and any other governmental authority  
8 required to approve the Century Transaction makes a final and  
9 unappealable ruling that disapproves or changes material terms of any  
10 Century Transaction document.

11 In addition, prior to the Effective Date, either Kenergy or Big Rivers  
12 may terminate the Arrangement Agreement without cost or penalty by  
13 written notice if the Electric Service Agreement is terminated prior to  
14 the Effective Date in accordance with its terms.

15 **Q. Please describe the provisions governing termination after the**  
16 **Effective Date.**

17 A. Once the Century Transaction documents have become effective  
18 with respect to the provision of Electric Services: (1) the Arrangement  
19 Agreement terminates if Big Rivers is no longer the Market  
20 Participant; (2) the Electric Service Agreement may be terminated by  
21 Century Kentucky upon 60 days written notice, (3) the Century  
22 Transaction documents may be terminated by written notice of a non-

1 defaulting party following the occurrence and during the continuation  
2 of any Event of Default, or (4) the Century Transaction documents may  
3 be terminated by written notice if a governmental authority required  
4 to approve the Transaction disapproves or changes a material term of  
5 the Transaction documents.

6 **Q. If a Century Transaction document is terminated, do any**  
7 **contractual provisions survive termination?**

8 A. Yes. The following provisions will survive termination of the contracts  
9 to the full extent necessary for their enforcement and the protection of  
10 the party in whose favor they run: (1) each provision of those  
11 agreements providing for payment for electric services and any other  
12 amounts due thereunder; (2) assignment of the right to collect and  
13 enforce collection of amounts due; and (3) the provision, replenishment  
14 or maintenance of credit support required thereunder or related to  
15 remedies for default, damage claims, indemnification or payment of  
16 other liabilities. Also, acknowledgements regarding Big Rivers'  
17 absence of an obligation to serve Century Kentucky from Big Rivers'  
18 own generations and purchase power resources survives as does  
19 Century's acknowledgement that it is not entitled to tariff service from  
20 Kenergy.

1 **Q. If the Century Transaction is terminated, will Big Rivers have**  
2 **any obligation to produce, obtain, or sell electric power for use**  
3 **by Century Kentucky?**

4 A. Century, Kenergy, and Big Rivers have agreed that Big Rivers has no  
5 obligation to serve or supply any Electric Services from Big Rivers'  
6 power supply resources for the benefit of all or a portion of the  
7 Hawesville Smelter or any affiliates, spin-offs, or successors of Century  
8 during the service period of the Century Transaction documents or  
9 thereafter, other than as provided in the Arrangement Agreement for  
10 the purchase of Electric Services in the centralized wholesale electric  
11 markets of MISO, or other applicable RTO or ISO, or from a  
12 counterparty to a Bilateral Contract.

13 **Q Please explain the request of Kenergy and Big Rivers for a**  
14 **declaratory order.**

15 A. As stated in the application, if for any reason neither the Century  
16 Transaction nor the Alternate Service Agreement is in effect as of the  
17 Termination Date, and there is no other legal authority for retail and  
18 wholesale service to the Hawesville Smelter, Kenergy will have no  
19 legal authority to continue to provide retail electric service to the  
20 Hawesville Smelter, and Big Rivers will have no legal authority to  
21 continue to provide a wholesale power supply to Kenergy to support  
22 retail electric service to the Hawesville Smelter. Under those

1           circumstances, my understanding is that both Kenergy and Big Rivers  
2           would be prohibited by law from continuing to provide service to the  
3           Hawesville Smelter. There would be no basis for Kenergy to charge  
4           Century for electric service, and Kenergy and Big Rivers would have  
5           no agreement in effect between them on the basis of which a wholesale  
6           power supply for service to Century could be provided, sold or  
7           purchased. Kenergy and Big Rivers may not know until the last  
8           minute whether they can provide electric service to Century. For these  
9           reasons, Kenergy and Big Rivers must be in a position to physically  
10          disconnect service to the Hawesville Smelter if circumstances require  
11          it.

12       **VIII. THE IMPACT OF THE CENTURY TRANSACTION ON BIG**  
13       **RIVERS**

14  
15       **Q.    What is the purpose of this portion of your testimony?**

16       A.    In this portion of my testimony, I will summarize my views on the  
17           impact of the Century Transaction on Big Rivers.

18       **Q.    Does Big Rivers approve of the Century Transaction?**

19       A.    Yes. Big Rivers has agreed to all relevant contracts in the Century  
20           Transaction and has determined that it is the best resolution of a  
21           difficult situation. The Century Transaction is the culmination of  
22           months of negotiations among Kenergy, Big Rivers, and Century. In

1            addition, Big Rivers consulted with third parties such as MISO to  
2            ensure that the Century Transaction is both feasible and desirable.

3    **Q.    Will the decision to source power for Century Kentucky's**  
4            **Hawesville Smelter from the wholesale market adversely affect**  
5            **Big Rivers?**

6    A.    No. Big Rivers will continue transmitting electric power to Kenergy  
7            for resale to Century Kentucky, although it will no longer be  
8            generating electric power for Century Kentucky's use.

9    **Q.    Could you please estimate the effect of the proposed Century**  
10           **Transaction on Big Rivers' revenue?**

11   A.    That is difficult to do because the documents are not signed, and the  
12           way the parties will operate under the agreements, assuming a closing,  
13           is not yet known. The parties worked very hard to reach agreement on  
14           the non-binding term sheet that served as the framework for definitive  
15           documents, and to convert the term sheet into definitive documents as  
16           quickly as possible. The definitive documents are based upon  
17           assumptions, including the results of MISO studies that have not yet  
18           been completed. Whether the assumptions prove accurate can affect  
19           how the parties operate under the terms of the Century Transaction, or  
20           even whether a party is willing to enter into it. The documents will  
21           not be signed until the closing. I cannot estimate when the closing will  
22           be except to say that it must occur no later than August 19, 2013. If,

1           however, the Century Transaction results in an increase in margins for  
2           Big Rivers, Big Rivers will reflect that positive development in its next  
3           rate adjustment filing. If the Century Transaction does not become  
4           effective, or if it becomes effective and is subsequently terminated for  
5           any reason, the effects of the Alternate Service Agreement will be  
6           reflected in Big Rivers' next rate filing.

7   **Q   Does Century receive a credit against its SSR Costs obligation**  
8   **under the Direct Agreement for revenues received by Big**  
9   **Rivers for Transmission Services that are part of the Century**  
10 **Transaction, and if so, why is that reasonable?**

11 A.   Under Section 4.1(a) of the Direct Agreement, the amount that  
12   Century is required to pay for SSR Costs is reduced by revenues  
13   received by Big Rivers from or on behalf of Century for transmission  
14   services Big Rivers provides in the applicable transmission tariff, in  
15   addition to revenues received from other entities based on allocations  
16   of responsibility for the related SSR Costs by an RTO or ISO. Big  
17   Rivers estimates that the transmission revenue attributable to  
18   Century will be approximately \$7.7 million on an annual basis  
19   assuming a load of 482 MW. If at any point there is no SSR  
20   Agreement, then there will be no SSR Costs against which Century's  
21   transmission revenue will be offset. While we understand that  
22   Century desires to operate in a manner that eliminates the need for an

1 SSR Agreement, at this point the uncertainties associated with MISO  
2 studies on that subject and other issues require that Big Rivers plan  
3 for MISO to require that a SSR Agreement be in place on and after  
4 August 20, 2013. Offsetting transmission revenue against Century's  
5 SSR Costs obligation is reasonable as proposed in the Transaction  
6 documents because it will potentially allow the Hawesville Smelter to  
7 remain in operation until it can install equipment to eliminate the SSR  
8 condition at the Coleman Station. Big Rivers would have received no  
9 transmission revenue from Century if it had terminated smelting  
10 operations at the Hawesville Smelter. The advantage Kenergy and Big  
11 Rivers negotiated in the Century Transaction is that Big Rivers will  
12 receive the Century transmission revenue if and when there is no  
13 requirement for a SSR Agreement. Whether or not a SSR Agreement  
14 will be required depends upon the results of MISO studies and the  
15 business requirements of Century.

16 **Q. Will the decision to allow Century Kentucky's Hawesville**  
17 **Smelter to operate with power purchased from the wholesale**  
18 **market have an adverse impact on the rates of Big Rivers'**  
19 **members?**

20 **A. Century Kentucky's termination of the 2009 Retail Agreement and the**  
21 **corresponding effect on the demand for Big Rivers' electric power**  
22 **generation made rate increases to Big Rivers' members unavoidable.**

1 Those rate increases are already being addressed in Big Rivers'  
2 pending rate case, P.S.C. Ky. Case No. 2012-00535. The Century  
3 Transaction is not anticipated to have an adverse impact on Big Rivers'  
4 rates beyond what would have been experienced if Century had ceased  
5 smelting operations. Assuming that the Century Transaction closes,  
6 and Century continues smelting operations, Big Rivers has a  
7 reasonable level of confidence that Big Rivers and its members will  
8 benefit to some degree from receipt of transmission revenues from  
9 Century if there is no SSR Agreement, or elimination of severance  
10 costs if there is a SSR Agreement. Century Kentucky's business  
11 decisions will ultimately determine if or when those benefits are  
12 received. Our understanding is that Century wants to avoid  
13 circumstances in which a SSR Agreement is required.

14 The question of who would bear the costs of Century "going to market"  
15 was central to the negotiations of the Century Transaction. Big Rivers  
16 was adamant that any solution could not impose additional costs on  
17 Big Rivers, and as Mr. Starheim has testified, Kenergy took a similar  
18 hard-line position. Consequently, Big Rivers and Kenergy were careful  
19 to protect their members and rate payers from the costs of the power  
20 for Century being sourced from the wholesale electric power market.  
21 Offsetting the Century transmission revenue against SSR Costs puts

1 Big Rivers and its members in no worse position than they would have  
2 been if Century ceased smelting operations.

3 **Q. Have Big Rivers' board of directors and creditors approved**  
4 **this transaction?**

5 A. Big Rivers' board of directors has approved the Century Transaction,  
6 including the Letter Agreement and the declaratory relief requested in  
7 the application. Big Rivers must take certain steps to resolve issues  
8 with creditors or obtain consents from its creditors to enter into a  
9 transaction with Kenergy for Century. The process established by the  
10 Loan Contract between Big Rivers and the Rural Utilities Service  
11 ("RUS") allows the RUS 60 days in which to decide whether to hold up  
12 a transaction for further review. That review was initiated on the  
13 same day the application was filed with the Commission. Big Rivers  
14 has been trying to eliminate other creditor issues in advance of this  
15 filing, including supplementing language in the Amended and  
16 Restated Revolving Credit Agreement between Big Rivers and the  
17 National Rural Utilities Cooperative Finance Corporation that is  
18 before the Commission for approval in P.S.C. Case No. 2013-00125<sup>1</sup> to  
19 eliminate a credit agreement default issue that would otherwise  
20 prevent Big Rivers from entering into the Century Transaction. So  
21 that revolving credit agreement also must be approved by the

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<sup>1</sup> *In the Matter of: The Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, P.S.C. Case No. 2013-00125; see Verified Motion to Supplement Filing dated May 14, 2013.

1 Commission before the closing of the Century Transaction. Resolution  
2 of those items should complete all creditor approvals or consents that  
3 Big Rivers will require for the Century Transaction.

4 **Q. What would be the consequences of not entering into the**  
5 **Century Transaction?**

6 A. Century has already sent its notice of termination of the 2009 Retail  
7 Agreement, so that contract will terminate effective August 20, 2013.  
8 If the Century Transaction is not in place, Big Rivers will not have any  
9 basis to provide Electric Services to Kenergy for service to Century  
10 Kentucky, even if the Hawesville Smelter is used for some other  
11 purpose. As a result, the Hawesville Smelter would be forced to shut  
12 down, causing significant negative economic consequences for the  
13 region—especially Century Kentucky’s employees, many of whom are  
14 served on a residential basis by electric power generated by Big Rivers.

15 **Q. Will Commission approval of the Century Transaction affect its**  
16 **jurisdiction over Big Rivers’ rates?**

17 A. Absolutely not. The rates set by Big Rivers and its members will  
18 continue to be subject to Commission approval. As I previously  
19 described, the Century Transaction establishes contractual obligations  
20 by which Kenergy will provide Electric Services at retail to Century  
21 Kentucky using energy obtained pursuant to one or more contracts by  
22 and between Kenergy and a provider of wholesale Electric Services

1 from a centralized wholesale electric market. Big Rivers will initially  
2 act as that Market Participant pursuant to the Arrangement  
3 Agreement. The proposed Century Transaction is similar to the  
4 obligations established pursuant to the 2009 Retail Agreement and the  
5 2009 Wholesale Agreement, which were approved by the Commission  
6 in Case No. 2007-00455. In short, the Century Transaction will not  
7 affect the Commission's jurisdiction or authority over the rates charged  
8 by Big Rivers or its members.

9  
10 **IX. CONCLUSION**

11  
12 **Q. Do you have any further comments regarding the Century  
13 Transaction documents?**

14 **A.** Yes. The terms and conditions of the Century Transaction are  
15 reasonable and will provide benefits to Kenergy, Big Rivers, Century,  
16 and Big Rivers' other members and ratepayers. The economic benefits  
17 of Century Kentucky's smelting operation are important to Big Rivers'  
18 members and the economy of Western Kentucky. The Century  
19 Transaction documents are drafted to enable Century Kentucky to  
20 continue its current operations without imposing adverse consequences  
21 on Big Rivers, its members, or their ratepayers. Century has agreed to

1 pay Big Rivers any additional out-of-pocket costs it incurs or commits  
2 to related to the Century Transaction.

3 **Q. Do you have any closing comments?**

4 A. Yes. Big Rivers negotiated with Kenergy and Century for many  
5 months. One of our primary goals was to ensure that the Century  
6 Transaction would cause no adverse overall impact to Big Rivers'  
7 operations or revenues. The Century Transaction was structured to  
8 avoid Big Rivers' members having to bear any incremental costs  
9 associated with Century obtaining electric generation from the  
10 wholesale market. The Century Transaction reasonable and should be  
11 approved by the Commission ,along with the other relief requested in  
12 the application by Big Rivers and Kenergy.

13 **Q. Does this conclude your testimony?**

14 A. Yes.

15

**BIG RIVERS ELECTRIC CORPORATION**

**JOINT APPLICATION OF KENERGY CORP. AND  
BIG RIVERS ELECTRIC CORPORATION FOR  
APPROVAL OF CONTRACTS AND FOR A DECLARATORY ORDER  
CASE NO. 2013-\_\_\_\_\_**

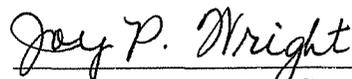
**VERIFICATION**

I, Robert W. Berry, verify, state, and affirm that I prepared or supervised the preparation of the Direct Testimony filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

  
Robert W. Berry

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

SUBSCRIBED AND SWORN TO before me by Robert W. Berry on this  
the 11 day of June, 2013.

  
Notary Public, Ky. State at Large  
My Commission Expires \_\_\_\_\_

**Notary Public, Kentucky State-At-Large  
My Commission Expires: July 3, 2014  
ID 421951**

**ELECTRIC SERVICE AGREEMENT**

Dated as of August 1, 2013,

by and between

**KENERGY CORP.**

and

**CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

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## ELECTRIC SERVICE AGREEMENT

This ELECTRIC SERVICE AGREEMENT (this "Agreement") is dated as of August 1, 2013, and made by and between KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ("Century"). Kenergy and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy currently supplies and delivers retail electric energy and related services to Century, the owner and operator of an aluminum reduction plant in Hawesville, Kentucky, pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the "Existing Retail Agreement").

B. Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers Electric Corporation, a Kentucky electric generation and transmission cooperative of which Kenergy is a member ("Big Rivers"), pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the "Existing Wholesale Agreement").

C. Century gave notice of termination of the Existing Retail Agreement on August 20, 2012.

D. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services obtained from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth herein.

E. In connection with and as a condition to entry into this Agreement, Kenergy and Big Rivers have agreed to enter into the Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"), to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

#### ARTICLE 1

##### DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in Article 1, unless stated otherwise or the context requires otherwise.

1.1.1 AAA Rules: As defined in Section 16.2.

1.1.2 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.3 Affiliate: With respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For avoidance of doubt, Kenergy and the other Members are not Affiliates of Big Rivers.

1.1.4 Agreement: As defined in the preamble to this Agreement.

1.1.5 Ancillary Services: Those generation-based ancillary services, that are necessary to support among other things capacity, reactive supply and voltage control, as well as the transmission of Energy from resources to loads while maintaining reliable operations of the applicable transmission system in accordance with Good Utility Practice, as set forth and described in the Tariff or, if applicable, any Bilateral Tariff.

1.1.6 Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

1.1.7 Applicable RTO Charges: As defined in Section 4.2.

1.1.8 ARR: Auction Revenue Rights as defined in the MISO Tariff, or any similar items under the Tariff.

1.1.9 Arrangement Agreement: As defined in the Recitals.

1.1.10 Base Load: The “Base Load” shall be determined by the following, as applicable: (a) The maximum amount of Load (not to exceed 482 MW), that may be reliably delivered to the Hawesville Node, as confirmed or approved by MISO, in circumstances where Big Rivers has idled the Coleman Generation Station. (b) The “Base Load” may be increased (not to exceed 482 MW) by notice from Century to Kenergy and Big Rivers if such increase does not create a reliability issue, as determined by any Governmental Authority with jurisdiction over electric reliability. As of the date of this Agreement, the Parties are unaware of any Governmental Authority with jurisdiction over electric reliability with respect to an increase in the Base Load other than FERC and MISO. (c) If a SSR Agreement is in effect, the “Base Load” shall be the maximum amount of Load as confirmed or approved by the applicable RTO or ISO (not to exceed 482 MW); (d) The Base Load shall be 482 MW if Big Rivers is operating all three units at the Coleman Generating Station for any reason other than an requirement by MISO to operate for reliability. (e) The Base Load shall be determined by the applicable RTO or ISO (up to 482 MW) if Big Rivers operates less than all three units of the Coleman

Generation Station for any reason other than a requirement by the RTO or ISO to operate for reliability even if the remaining units are operated under an SSR Agreement. (f) In all other circumstances, the “Base Load” shall be zero.

1.1.11 Big Rivers: As defined in the Recitals.

1.1.12 Bilateral Charges: As defined in Section 4.3.

1.1.13 Bilateral Contract: A contractual arrangement between the Market Participant and a Bilateral Counterparty pursuant to which Kenergy, through the Market Agreement, obtains a right or obligation to purchase at the Delivery Point any Electric Services for resale to Century based upon generation resources or contract resources of such Bilateral Counterparty.

1.1.14 Bilateral Counterparty: As defined in Section 2.4.

1.1.15 Bilateral Tariff: The open access transmission or markets tariff or similar construct applicable to a transaction with a Bilateral Counterparty.

1.1.16 Billing Month: Each calendar month during the Service Period.

1.1.17 Business Day: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

1.1.18 Capacitor Additions: As defined in the Capacitor Agreement.

1.1.19 Capacitor Additions and Protective Relays Guarantee: The Capacitor Additions and Protective Relays Guarantee, dated as of June [ ], 2013, by Century Parent, in favor of Big Rivers and Kenergy, relating to the Capacitor Agreement and the Protective Relays Agreement.

1.1.20 Capacitor Agreement: The Capacitor Agreement, dated as of June [ ], 2013, by and among Big Rivers, Kenergy and Century.

1.1.21 Century: As defined in the preamble to this Agreement.

1.1.22 Century Guarantee: As defined in Section 14.3.2.

1.1.23 Century Parent: Century Aluminum Company, a Delaware corporation, and the indirect parent of Century.

1.1.24 Century Substation: Century’s electrical substation located adjacent to the Hawesville Smelter.

1.1.25 Century Transmission Rights: All allocations from MISO of FTRs or ARRs resulting from service by Big Rivers to Kenergy under the Arrangement

Agreement or other Market Agreement and service by Kenergy to Century under this Agreement or a Market Agreement and FTRs purchased by Century.

1.1.26 Coleman Generation Station: Big Rivers' Kenneth C. Coleman Plant, a three unit, coal-fired steam electric generating unit located near Hawesville, Kentucky.

1.1.27 Costs: In the context of the specific costs referenced, "Costs" shall mean those costs of Kenergy to the extent that such costs relate to the operation of Century. For the avoidance of doubt, "Costs" include (i) Century's proportionate share of costs that are incurred by Kenergy to serve both Century and other loads, and (ii) costs incurred by Kenergy that relate only to Century's operation. Costs listed in Exhibit B shall be proportionately allocated as provided therein, or using the method applicable from time to time for calculation of bills (if the calculation method has changed from that shown in Exhibit B).

1.1.28 Curtailable Load: The maximum amount of additional Load at the Hawesville Node above the Base Load that may be served on a reliable basis as confirmed or approved by MISO (or, if applicable, by another RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located) assuming the installation of Protective Relays at the Hawesville Smelter, *provided*, that such amount shall be zero if such confirmation or approval is not given; *provided further*, that the Base Load plus the Curtailable Load may not exceed 482 MW, on a scheduled basis, and 492 MW at any time.

1.1.29 Day Ahead Market: The Day Ahead Energy and Operating Reserve Market established under the MISO Tariff for the purchase of electricity and electricity-related ancillary services or, if the Hawesville Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for purchases of the applicable Electric Services prior to the date of delivery.

1.1.30 Delivery Point: The existing set of meters at the substation of the Coleman Generation Station or such other point of delivery mutually agreed by the Parties and Big Rivers. At Century's request, the Delivery Point may be moved to the Century Substation if permitted by the applicable RTO and Century pays all costs incurred in connection therewith.

1.1.31 Direct Agreement: The Direct Agreement, dated as of the date hereof, by and between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with the Transaction.

1.1.32 Dodd-Frank Act: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203 (signed into law July 21, 2010)) and all requests, rules, regulations, guidelines or directives (whether or not having the force of law) of a Governmental Authority in connection therewith.

1.1.33 Effective Date: As defined in Section 6.1.

1.1.34 Electric Services: Electric services, including capacity and associated Energy, Transmission Services, Ancillary Services and other services required in connection therewith, including services as may be required by any RTO, ISO, Transmission Provider or Reliability Coordinator, and transmission or ancillary services of a Bilateral Counterparty under a Bilateral Tariff.

1.1.35 Energy: The flow of electricity denominated in kWh or MWh.

1.1.36 ERO: Electric Reliability Organization, as defined in the Federal Power Act.

1.1.37 Event of Default: As defined in Section 15.1.

1.1.38 Excess Energy Rate: The greater of (i) \$250 per MWh, and (ii) a price equal to 110% of the highest Hourly all-inclusive cost incurred by Kenergy or the Market Participant, as applicable, to acquire such Energy, and the separate cost, if any, whenever determined, of transmission services and related services required to transmit any Energy over 492 MW to the Delivery Point and including any imbalance charges or other costs arising from the failure of the supplier of such Energy to deliver such Energy.

1.1.39 Excess Reactive Demand Charge: As defined in Section 4.4.

1.1.40 Existing Retail Agreement: As defined in the Recitals.

1.1.41 Existing Wholesale Agreement: As defined in the Recitals.

1.1.42 FERC: Federal Energy Regulatory Commission.

1.1.43 FTR: Financial Transmission Rights as defined in the MISO Tariff, or any similar items under the Tariff.

1.1.44 Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.

1.1.45 Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, a RTO (including MISO as of the Effective Date) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC; provided, however that the RUS is not a Governmental Authority for purposes of this Agreement.

1.1.46 Hawesville Node: A Commercial Pricing Node (as defined in the Tariff) located at the Delivery Point and used solely for delivery and sale of Electric Services for the benefit of the Hawesville Smelter; *provided*, that if the Hawesville Node does not remain in MISO in accordance with Section 3.5.2, then the “Hawesville Node” shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.

1.1.47 Hawesville Smelter: The aluminum reduction plant owned and operated by Century and located in Hawesville, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

1.1.48 Hedging Arrangements: Any contractual arrangements entered into as hedging or derivative arrangements, including any transactions regulated under the Dodd-Frank Act.

1.1.49 Hour or Hourly: A clock hour or per clock hour, respectively.

1.1.50 ICDR: As defined in Section 16.2.

1.1.51 Indemnified Liability: As defined in Section 13.1.

1.1.52 Indemnified Person: As defined in Section 13.1.

1.1.53 Indemnifying Party: As defined in Section 13.1.

1.1.54 ISO: An Independent System Operator, as defined and approved by the FERC.

1.1.55 Kenergy: As defined in the preamble to this Agreement.

1.1.56 KPSC: Kentucky Public Service Commission.

1.1.57 kW: Kilowatt.

1.1.58 kWh: Kilowatt-hour.

1.1.59 Load: The Hourly interval meter data measured in MWhs at the Hawesville Smelter.

1.1.60 Lockbox Agreement: The Security and Lockbox Agreement to be entered into by and among Century, Kenergy, the Market Participant and a depository bank prior to the Effective Date with respect to the payment of certain amounts due by Century to Kenergy under this Agreement.

1.1.61 Market Agreement: A contractual arrangement between Kenergy and a Market Participant relating to the purchase of Electric Services for resale by Kenergy to Century. As of the Effective Date, the Arrangement Agreement shall be a Market Agreement.

1.1.62 Market Participant: Big Rivers, in its capacity as the procurer of Electric Services under the Tariff or from a Bilateral Counterparty for resale to Kenergy for resale to Century pursuant to this Agreement, during the term of the Arrangement Agreement and, thereafter, the counterparty to any other Market Agreement with Kenergy.

1.1.63 Members: The members of Big Rivers. As of the date hereof, the Members of Big Rivers are Jackson Purchase Energy Corporation, Kenergy, and Meade County Rural Electric Cooperative Corporation.

1.1.64 MISO: The Midcontinent Independent Transmission System Operator, Inc.

1.1.65 MISO Tariff: The MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.

1.1.66 Monthly Charge: As defined in Section 4.1.

1.1.67 MW: Megawatt.

1.1.68 MWh: Megawatt-hour.

1.1.69 NERC: North American Electric Reliability Corporation.

1.1.70 Net Proceeds: The proceeds of a sale or transfer, net of the cost of the item sold and net of transaction costs, whenever incurred, and taxes.

1.1.71 Party or Parties: As defined in the preamble to this Agreement.

1.1.72 Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization, other legal entity, RUS or Governmental Authority.

1.1.73 Post-Termination Service Agreement: An agreement in the form of Exhibit A for the provision of Electric Services to serve Century's non-smelting electric requirements following a termination of this Agreement pursuant to Section 7.3, which agreement shall have been approved on or prior to the Effective Date by all Persons whose consent or approval is required in connection with the entry into or effectiveness of such agreement, including the KPSC, following the end of the Service Period. Such agreement shall provide that the Load of Century served thereunder shall not exceed 10 MW.

1.1.74 Potential Tax Liability: As defined in Section 14.3.1(a).

1.1.75 Prime Rate: The then-effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties and Big Rivers shall agree on a mutually acceptable alternative source for that rate.

1.1.76 Protective Relays: As defined in the Protective Relays Agreement.

1.1.77 Protective Relays Agreement: The Protective Relays Agreement, dated as of June [ ], 2013, by and among Big Rivers, Kenergy and Century.

1.1.78 Real Time Market: The Real Time Energy and Operating Reserve Market established under the MISO Tariff or, if the Hawesville Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for real time purchases of the applicable Electric Services.

1.1.79 Reliability Coordinator: As defined by NERC. As of the Effective Date, the Reliability Coordinator is MISO.

1.1.80 Retail Fee: As defined in Section 4.5.

1.1.81 RTO: Regional transmission organization as defined and approved by FERC.

1.1.82 RTO Transmission Upgrades: MISO Transmission Expansion Plan or Multi-Value Projects (each as defined in the MISO Tariff) or similar transmission facilities upgrades, improvements or expansion projects of any RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located.

1.1.83 RUS: United States Department of Agriculture Rural Utilities Service.

1.1.84 SERC: SERC Reliability Corporation, a regional reliability organization.

1.1.85 Service Period: As defined in Section 2.1.

1.1.86 SSR Agreement: An agreement, including a System Support Resources Agreement, entered into with the RTO or ISO of which Big Rivers is a member relating to the SSR Costs of the Coleman Generation Station.

1.1.87 SSR Costs: If and only to the extent that Century operates above the Base Load as defined in Section 1.1.10 and, if applicable, the Curtailable Load, or if any Coleman unit is designated as an SSR by the applicable RTO or ISO then “SSR Costs” shall mean (a) any costs that are not reimbursed to Big Rivers relating to any unit of the Coleman Generation Station required by the applicable RTO or ISO to be operated for reliability purposes for that reason, and (b) the costs, as determined and allocated by the RTO or ISO in which Big Rivers is a member, to the Hawesville Node or any other Node (as defined in the MISO Tariff) of Big Rivers, if Big Rivers is required by the RTO or ISO of which Big Rivers is a member requires for that reason to operate any unit of the Coleman Generation Station for reliability, including, (i) in circumstances where the RTO or ISO of which Big Rivers is a member requires Big Rivers to take the Coleman Generation Station out of an idled status for reliability, all costs incurred in connection with any restart and the operation of any such unit after the date of restart, and (ii) the net Cost of purchasing any replacement Electric Services following an unscheduled outage or

real time de-rate of a unit of the Coleman Generation Station required to be operated for reliability purposes.

1.1.88 Surplus Sales: As defined in Section 10.1.1.

1.1.89 System Emergency: Any cessation or reduction in the provision or delivery of Electric Services by Kenergy due in whole or in part to: (a) a disconnection of all or a portion of Big Rivers' or Kenergy's system from the transmission grid (other than as a direct result of Big Rivers' or Kenergy's gross negligence or willful misconduct), (b) a system emergency on the transmission grid, (c) the occurrence of a condition or situation where the delivery of Energy to a transmission grid with which Big Rivers is directly interconnected or the making available of electric generation services, Transmission Services or Ancillary Services that could cause (i) harm to life or limb or imminent serious threat of harm to life or limb, (ii) material damage to Big Rivers' or Kenergy's system or any material component thereof or imminent danger of material damage to property, or (iii) other dangerous occurrences that Big Rivers or Kenergy believes, in the exercise of Good Utility Practice, should be prevented or curtailed, or (d) any events similar to the foregoing that result in cessation or reduction of service under (i) the Day Ahead Market or the Real Time Market, or (ii) a Bilateral Contract.

1.1.90 System Resources:

- (a) Big Rivers' owned or leased electric generation facilities,
- (b) Big Rivers' contract with the Southeastern Power Administration (Contract No. 89-00-1501-637), or
- (c) Big Rivers' contractual arrangements relating to Electric Services, in effect currently or that become effective in the future, which were not entered into specifically for the purpose of serving the Hawesville Smelter.

1.1.91 Tariff: Big Rivers' Open Access Transmission Tariff or, if Big Rivers is a member of a RTO or ISO, such RTO's or ISO's open access transmission or market tariff, as filed with and approved by FERC. As of the date hereof, the MISO Tariff is the Tariff.

1.1.92 Tax Indemnity Agreement: The Tax Indemnity Agreement, dated as of the date hereof, by and between Kenergy and Century.

1.1.93 Term: As defined in Section 7.1.

1.1.94 Transaction: The transactions by and between or among one or more of Kenergy, Big Rivers, Century, any Market Participant or any Bilateral Counterparty related to the supply of Electric Services to Century under this Agreement and the other Transaction Documents.

1.1.95 Transaction Documents: This Agreement, the Arrangement Agreement or any other Market Agreement, the Direct Agreement, the Capacitor Agreement, the

Protective Relays Agreement, any SSR Agreement, the Century Guarantee, the Capacitor Additions and Protective Relays Guarantee, the Tax Indemnity Agreement and any other agreements entered into on the date hereof or in the future between or among the Parties or Big Rivers relating to the Transaction.

1.1.96 Transmission Provider: A Person accepted by FERC as such in any tariff relating to Transmission Services.

1.1.97 Transmission Services: Transmission services as described in the Tariff or, if applicable, the Bilateral Tariff, as needed to support the transactions contemplated by this Agreement.

1.1.98 Uncontrollable Force: Any cause beyond the control of the Party unable, in whole or in part, to perform its obligations under this Agreement that, despite exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and that, despite the exercise of due diligence, it has been unable to overcome. Examples of events that may constitute the basis of an event that constitutes an “Uncontrollable Force” include: acts of God; strikes, slowdowns or labor disputes; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of any Governmental Authority; civil or military disturbances; explosions, breakage of or accident to machinery, equipment or transmission lines; inability of a Party to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of Governmental Authorities, civil or military (so long as the Party claiming an Uncontrollable Force has not applied for or assisted in the application for such action); transmission constraints or System Emergencies; a forced outage of a generating unit or units preventing the physical delivery of Energy to Kenergy for resale to Century; declaration of an “Uncontrollable Force” under the Arrangement Agreement or an event of force majeure under the Tariff or the Bilateral Tariff, as applicable, any Market Agreement or any Bilateral Contract and any other forces that are not reasonably within the control of the Party claiming suspension. “Uncontrollable Forces” do not include an insufficiency of funds or decline in credit ratings or customary, expected or routine maintenance or repair of plant or equipment. Nothing contained herein shall be construed to obligate a Party to prevent or to settle a labor dispute against its will.

1.1.99 ZRC: Zonal Resource Credits as defined in the MISO Tariff, or any similar items under the Tariff.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and *vice versa*; (c) references to “Recitals,” “Articles,” “Sections,” “Exhibits” or “Schedules” are to the recitals, articles, sections, exhibits or schedules of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person’s authorized agents, permitted successors and assigns in such capacity; (e) the words “herein,” “hereof” and “hereunder” will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” will

be deemed to be followed by the phrase “without limitation” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits and schedules hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented, substituted, renewed or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day that is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; (o) all references to the word “or” shall not be exclusive; and (p) all references to a Governmental Authority shall include any successor to all or a portion of such Governmental Authority’s authority. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

## ARTICLE 2

### ELECTRIC SERVICES AND RATES

2.1 Service Period Obligations. In accordance with the terms and conditions of this Agreement, Kenergy will supply, and Century will purchase, Electric Services for a period beginning at 12:00:00 a.m. midnight on the later of (a) the day immediately following the Effective Date and (b) August 20, 2013, and continuing until 11:59:59 p.m. on December 31, 2023, unless the Parties’ respective obligations to supply and purchase Electric Services are terminated earlier pursuant to the terms and conditions of this Agreement; *provided*, that such period may be extended pursuant to Section 7.1 (the “Service Period”).

2.2 Characteristics of Service. Electric service to be supplied by Kenergy to Century under this Agreement shall be nominally three-phase, sixty cycle at 161,000 volts or as otherwise agreed to by the Parties and Big Rivers. The Parties and Big Rivers will mutually agree on limits of the regulation of voltage but at no time may such regulation of such limits be inconsistent with standards required by applicable Governmental Authorities or any other organizations that establish applicable reliability and electric operation standards.

2.3 Delivery Obligation. During the Service Period, Kenergy will deliver, or cause to be delivered, Electric Services in accordance with the terms and conditions of this Agreement at the Delivery Point.

2.3.1 Energy. Kenergy will use reasonable commercial efforts to acquire the Base Load and, if applicable, the Curtailable Load, for resale to Century to meet the Load of the Hawesville Smelter at the Delivery Point. Schedules submitted by Century may not exceed Base Load plus any applicable Curtailable Load and in any event not more

than 482 MW. Total usage is limited to the Base Load amount if there is no Curtailable Load; *provided, however*, that if there is Curtailable Load, then usage may exceed scheduled load by up to 10 MW (supplied as imbalance Energy) but not to exceed 492 MW. Century acknowledges and agrees that any such excess over 492 MW shall be charged to Century at the Excess Energy Rate; *provided*, that payment of the charge under Section 4.6.9 shall not be deemed to be a waiver of the restrictions herein on Century's Load not exceeding the scheduled Load. Kenergy will acquire the Energy for resale to Century to meet Kenergy's obligations under this Agreement through purchases of Energy through a Market Agreement with the Market Participant if Kenergy is not the Market Participant.

2.3.2 Other Electric Services. Kenergy will obtain Electric Services other than Energy as required and directed by Century through the Market Participant under a Market Agreement with respect to the purchase of such Electric Services (a) in the applicable market of the RTO or ISO of which the Market Participant is a member, or (b) through a Bilateral Contract.

2.3.3 Each Market Agreement must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Market Participant, (c) not require Kenergy to purchase Electric Services from a Person other than the Market Participant except during periods when Kenergy is the Market Participant, and (d) not result in Kenergy paying the Market Participant prior to the time Century pays Kenergy for any amounts due or otherwise expose Kenergy to any greater financial risks than those agreed to by Kenergy under the Arrangement Agreement.

2.4 Bilateral Purchases. Upon request by Century, Kenergy shall use reasonable commercial efforts to acquire specified Electric Services through the Market Participant from specified Persons ("Bilateral Counterparties") for resale under the Market Agreement by the Market Participant to Kenergy for resale to Century. Century must specify in any such request (i) the identity of the Bilateral Counterparty, (ii) the requested amount and duration of such Electric Services, and (iii) desired pricing and other material terms and conditions.

2.4.1 Kenergy's obligation to direct the Market Participant to enter into any Bilateral Contract will be conditioned upon (a) Kenergy's prior receipt of a written notification from Century setting forth Century's consent to the execution, delivery and performance of such Bilateral Contract, and (b) Kenergy's satisfaction, in its sole discretion, only as to financial security arrangements and the elimination of risk to Kenergy associated with the Bilateral Contract and the Market Participant's arrangements with the Bilateral Counterparty. For the avoidance of doubt, any Bilateral Contract must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Bilateral Counterparty, (c) not require Kenergy to purchase Electric Services from a Person other than the Market Participant, except during periods when Kenergy is the Market Participant, and (d) not result in Kenergy paying the Market Participant prior to the time Century pays Kenergy for any amounts due.

2.4.2 Promptly following request by Century pursuant to Section 2.4.1, Kenergy shall request that the Market Participant arrange or have arranged all Transmission Services and Ancillary Services necessary to transmit the Energy the Market Participant obtains under a Bilateral Contract to the Delivery Point. The amount of Energy transmitted from the source to the Delivery Point shall be adjusted to reflect the application of any system loss factor unless otherwise addressed in the terms and conditions of the applicable Bilateral Contract. Century acknowledges and agrees that Kenergy shall have no liability to Century for the failure of the Market Participant to procure Transmission Services and Ancillary Services.

2.4.3 The provisions herein relating to Surplus Sales shall apply if Century is unable to receive and consume any Electric Services purchased by Kenergy under a Bilateral Contract because of an Uncontrollable Force.

2.4.4 Century shall not enter into a Bilateral Contract for the purpose of reselling Electric Services purchased thereunder as Surplus Sales.

2.5 Power Factor. Century shall use reasonable commercial efforts to maintain a power factor at the Delivery Point as nearly as practicable between unity and 0.95 leading or lagging with respect to maximum electric demand incurred by Century during any Billing Month.

2.6 Title and Risk of Loss. Title to and risk of loss with respect to all Electric Services provided by Kenergy to Century pursuant to this Agreement will pass from Kenergy to and rest in Century at the Delivery Point. After title passes to Century, Century will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby.

2.7 Performance by Kenergy. Century acknowledges and agrees that, to the extent a Person has a corresponding or related obligation to Kenergy with respect to any matter, Kenergy's performance of an obligation with respect to such matter under this Agreement or any other Transaction Document is subject to and conditioned upon such Person's performance of such corresponding or related obligation to Kenergy. Subject only to performance by a Person of its obligations to Kenergy, Kenergy shall perform its obligations under this Agreement and the other Transaction Documents to which it is a party. Century acknowledges and agrees that such Person with an obligation to Kenergy may enforce an obligation of Century under this Agreement or any other Transaction Document that corresponds or relates to the obligation of Kenergy to such Person. For example, with respect to a purchase of Energy under a Bilateral Contract, Kenergy shall be obligated to deliver to Century only those amounts of Energy received by Kenergy from the Market Participant, net of applicable losses of Energy. Kenergy will not be in default under any provision of this Agreement nor will it have any liability to Century if the non-delivery of Energy to be purchased by Kenergy sourced under a Bilateral Contract is due to a failure by the Market Participant or the Bilateral Counterparty to deliver the full amount of such Energy required under the Market Agreement or the Bilateral Contract, as applicable; *provided*, that Kenergy has assigned to Century Kenergy's rights and remedies against the Market Participant or Bilateral Counterparty under such agreement.

2.8 Limitation on Use. Subject to Section 3.3.2, Century shall use the Electric Services delivered to and purchased by Century under this Agreement solely for purposes of operating the Hawesville Smelter.

### ARTICLE 3

#### MARKET PARTICIPATION AND SCHEDULING

##### 3.1 Market Participant.

3.1.1 Big Rivers shall act as the initial Market Participant in connection with the Transaction and, pursuant to the Arrangement Agreement, shall use reasonable commercial efforts to arrange and procure the Electric Services required by Century on behalf of Kenergy for resale to Century hereunder.

3.1.2 Kenergy may elect to become the Market Participant. Kenergy's election will not become effective, however, until Century provides written notice of its consent and approval, granted or withheld in Century's sole discretion, of Kenergy becoming the Market Participant.

3.1.3 At any time during the Service Period, Century may appoint a Person to be the Market Participant. Century shall provide Kenergy with information describing in reasonable detail that the proposed arrangements with the new Market Participant do not increase Kenergy's risks compared to the Arrangement Agreement. Such Person shall not become the Market Participant until Kenergy provides written notice of its consent and approval, which shall not be unreasonably withheld or delayed, to such Person becoming the Market Participant. Century also shall provide Kenergy with such additional information as Kenergy reasonably may request in connection therewith. Century shall give Kenergy and, if the Arrangement Agreement is in effect, Big Rivers not less than 120 days' prior written notice of the appointment of such Person to be the new Market Participant. Kenergy shall use reasonable commercial efforts to obtain any necessary approvals or consents in connection with any entry into a Market Agreement with a new Market Participant. Century shall be responsible for any Costs to Kenergy resulting from a change in the Market Participant.

3.1.4 For the avoidance of doubt, a Person acting as the Market Participant shall remain in that capacity, notwithstanding any election under Section 3.1.2 or appointment under Section 3.1.3 of a different Person as a Market Participant, until the consent and approval required from a Party under this Section 3.1 is obtained.

3.1.5 Century acknowledges and agrees that (i) Kenergy shall have no liability under this Agreement or otherwise in connection with or arising out of the absence of any Person acting as the Market Participant during any period in which a Person previously acting as the Market Participant ceases to act in that capacity and another Person is not yet acting in that capacity in accordance with this Section 3.1, (ii) no Person may become the Market Participant if any authorization or approval, consent or other action by, or notice to or filing or registration with, or license or permit from any Person, including

any Governmental Authority, required to be obtained, given, accomplished or renewed for such Person to act in such capacity, shall not have been obtained, given, accomplished or renewed and be in full force and effect.

3.2 Base Load. The Base Load may be modified only as provided in section 1.1.10.

3.3 Scheduling.

3.3.1 Century shall provide a schedule, on an Hourly basis, of all required Electric Services to Kenergy or its designee; *provided that*, commencing on the day following the Effective Date, Kenergy will schedule with the Market Participant the Base Load and, if applicable, the Curtailable Load as the Hourly Load of Century in the Day Ahead Market unless Century provides notice to Kenergy of an alternative schedule not later than 8:00 a.m. on the Business Day prior to the day of delivery.

3.3.2 Century promptly, and no later than sixty (60) minutes prior to any applicable deadline under any applicable RTO or ISO scheduling guidelines, shall notify Kenergy of any revisions to Century's schedule by providing Kenergy with a revised schedule in compliance with the other terms and conditions of this Agreement, and Kenergy shall submit such revised schedule to the Market Participant for its submission to the applicable RTO or ISO within such scheduling guidelines. Century may not intentionally reduce its Load to resell on a short-term basis any Electric Services purchased by Century; *provided* Century may offer and sell interruption and demand reduction services. For avoidance of doubt and notwithstanding any other provision, Century may resell or cause to be resold Electric Services it has purchased or committed to purchase if Century idles significant smelting capacity at the Hawesville Smelter, including one potline or more.

3.4 Transmission Rights. Century shall direct Kenergy to instruct the Market Participant to request, schedule, or sell the Century Transmission Rights in such time and amounts specified at least three Business Days prior to the applicable deadline. Century shall be entitled to the Net Proceeds of the sale of any Century Transmission Rights in the form of a credit to amounts otherwise owing from the Market Participant to MISO in respect of Electric Services purchased by Century under this Agreement.

3.5 Transition to Another RTO or ISO.

3.5.1 This Agreement and the other Transaction Documents have been drafted by the Parties and Big Rivers under the presumption that, during the Service Period, the Hawesville Node is located in MISO and Big Rivers is a member of MISO. Century acknowledges and agrees that Kenergy or Big Rivers, as applicable, may, in its sole discretion, elect to join or become a member of a RTO or ISO other than MISO or elect to withdraw as a member of MISO and not be a member of any RTO or ISO. . In such circumstances, the Parties and the Market Participant agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

3.5.2 The Hawesville Node may remain in MISO if (a) requested by Century, (b) permitted by both the new RTO or ISO and MISO, (c) Century is responsible for any Costs resulting from the Hawesville Node remaining in MISO, and (d) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO. In such case, any terms used herein that relate to the RTO or ISO of which the Market Participant is a member or its tariff shall be deemed amended, as applicable to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

3.5.3 Century acknowledges and agrees that if at any time the Hawesville Node is no longer part of any RTO or ISO, then the Electric Services provided hereunder shall be provided exclusively pursuant to Section 2.4, which shall include arrangements for imbalance Energy.

### 3.6 Forecasts.

3.6.1 Century shall provide Kenergy a forecast of its Load at the Hawesville Node in accordance with the requirements of (a) Module E (Resource Adequacy) of the MISO Tariff, so long as the Hawesville Node is located in MISO, or (b) the resource adequacy provisions of the tariff of the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located, in each case, at least five Business Days prior to the deadline therefor set forth in the applicable tariff. This forecast currently includes a peak forecast for Century's Load at the Hawesville Node for the succeeding 36 months, or for such other term as reasonably requested by Kenergy or as required by the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located, the RTO or ISO of which the Market Participant is a member or the Tariff. The obligations of Century under this Section shall survive appointment of a new Market Participant under Section 3.1.

3.6.2 Century shall respond on or prior to the fifth Business Day to any requests made by Kenergy to Century for data, forecasts, projections or other information necessary or reasonably appropriate for Kenergy or the Market Participant to comply with requests or requirements of the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located, the RTO or ISO of which the Market Participant is a member, other Governmental Authorities or the Tariff. The obligations of Century under this Section shall survive appointment of a new Market Participant under Section 3.1.

## ARTICLE 4

### CHARGES AND CREDITS

4.1 Monthly Charge. Century shall pay Kenergy the following (the “Monthly Charge”) for the Electric Services provided or made available under this Agreement and for other amounts owing to Kenergy under this Agreement, without duplication, including:

4.1.1 Applicable RTO Charges calculated pursuant to Section 4.2;

4.1.2 *plus* the Bilateral Charges calculated pursuant to Section 4.3;

4.1.3 *plus* the Excess Reactive Demand Charge calculated pursuant to Section 4.4;

4.1.4 *plus* the Retail Fee calculated pursuant to Section 4.5;

4.1.5 *plus* other amounts calculated pursuant to Section 4.6; and

4.1.6 *plus* taxes calculated pursuant to Section 4.7.

4.2 Applicable RTO Charges. Charges and credits of the applicable RTO or ISO invoiced to Kenergy by the Market Participant on a pass-through basis for all Electric Services purchased by Kenergy at the Hawesville Node under a Market Agreement, other than Electric Services purchased by the Market Participant under a Bilateral Contract, and any other RTO or ISO charges payable by Kenergy for the benefit of Century under a Market Agreement (the “Applicable RTO Charges”), whenever invoiced, including:

4.2.1 All activity listed on the settlement statement of the applicable RTO or ISO attributed by such RTO or ISO to the Hawesville Node, including SSR Costs relating to the Hawesville Node;

4.2.2 All activity for Transmission Services attributed by the applicable RTO or ISO to the Hawesville Node, including, if applicable, activity during the portion of a month during the Service Period;

4.2.3 All activity relating to the planning year (or other applicable period) of the applicable RTO or ISO that is attributed by such RTO or ISO to the Hawesville Node, including planning activity relating to ZRCs, ARRs and FTRs;

4.2.4 Costs relating to RTO Transmission Upgrades attributed by such RTO or ISO to the Hawesville Node that otherwise relate to Century’s operation of the Hawesville Smelter; and

4.2.5 Any credit for revenue resulting from the sale of the Century Transmission Rights.

4.3 Bilateral Charges. Any charges to a Market Participant under a Bilateral Contract with respect to Electric Services or other Costs for the benefit of Century, including any and all separate charges for transaction fees (including broker fees), transmission services, Ancillary Services and related services, whenever incurred (including financial transmission rights, transmission congestion charges and similar Costs or expenses) (collectively, “Bilateral Charges”).

4.4 Excess Reactive Demand Charge. For any Billing Month, the “Excess Reactive Demand Charge”, if any, shall be the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, between:

4.4.1 the maximum metered reactive demand of Century during the Billing Month, and

4.4.2 an amount of kilovars equal to the sum of:

(a) the product of (A) 0.3287, and (B) the maximum hourly demand during a Billing Month, denominated in kW, associated with Energy provided by Kenergy for resale to Century, and

(b) 74,005.

4.5 Retail Fee. For any Billing Month, the “Retail Fee” shall be an amount equal to the sum of:

4.5.1 the product of:

(a) \$0.000045 per kWh, and

(b) the Energy metered at the Hawesville Node, and

4.5.2 \$2,614 per month.

4.6 Other Amounts. For any Billing Month:

4.6.1 Any amounts due and payable to Kenergy under the Tax Indemnity Agreement.

4.6.2 Costs charged to Kenergy under the Arrangement Agreement, including any tax liability of Big Rivers resulting from Surplus Sales.

4.6.3 Costs arising under Section 10.2 relating to compliance with Applicable Laws relating to the environment.

4.6.4 Costs arising under Section 10.3 relating to compliance with Hedging Arrangements.

4.6.5 Internal and direct Costs incurred in serving Century, including Costs associated with fees of the KPSC, Costs of Kenergy’s compliance with Section 14.2,

Costs associated with any Person other than Big Rivers, including Kenergy, serving as Market Participant, including charges by the RTO to establish or maintain the Hawesville Node if Kenergy is the Market Participant.

4.6.6 Costs arising under Section 3.1.3 relating to the appointment of a new Market Participant.

4.6.7 Charges for any other services required to be purchased by Kenergy to serve Century.

4.6.8 Costs associated with the Hawesville Node exiting an RTO or ISO in connection with an election made by Big Rivers or Kenergy pursuant to Section 3.5.2.

4.6.9 The Excess Energy Rate multiplied by the amount of Energy in excess of 492 MW in any Hour.

4.6.10 Any amounts charged to Kenergy by a Market Participant under a Market Agreement.

4.6.11 Other out-of-pocket Costs payable by Kenergy to another Person that are incurred or committed to by Kenergy in connection with or arising out of the Transaction, including (a) Indemnified Liabilities, (b) any security necessary to be provided to any Person (including the RTO or ISO of which the Market Participant is a member or a Bilateral Counterparty) arising out of the Transaction, and (c) the Costs to pursue any approval or consent under Section 7.2.2; *provided*, that Costs referenced on Exhibit B shall be allocated as provided therein.

4.7 Taxes. No state or local sales, excise, gross receipts or other taxes are included in the charges and credits set forth in this Article 4. Century shall pay or cause to be paid any such taxes that are now or hereafter become applicable to the sale of Electric Services to Century under this Agreement.

4.8 No Duplication. Subject to the provisions of Section 5.4, the Monthly Charge shall not include any item that would result in a duplicative payment for a particular charge if Kenergy would not be liable for the duplicative amount.

## ARTICLE 5

### BILLING

5.1 Market Invoices. Kenergy shall bill Century, or cause Century to be billed, on or before the third Business Day following receipt by Kenergy of an invoice from the Market Participant for any amounts invoiced with respect to service to Kenergy on behalf of Century plus any other amounts then due and owing for any portion of the Electric Services or other amounts payable by Kenergy under a Market Agreement or any other Transaction Document. Century shall pay Kenergy for such amounts in immediately available funds to an account designated by Kenergy or its designee on the second Business Day following Century's receipt of the bill under this Section. For the convenience of the Parties, and to facilitate Kenergy's

obligations to the Market Participant, Kenergy may assign to the Market Participant its right to receive any payments from Century pursuant to this Section 5.1 and Kenergy's rights to collect and enforce the collection of such amounts due from Century.

5.2 Monthly Invoices for other Amounts. Kenergy shall bill Century on or before the 15th Business Day of each month for the Monthly Charge (other than the charges billed pursuant to Section 5.1) as calculated pursuant to Article 4 plus any other amounts then due and owing pursuant to this Agreement. Century shall pay Kenergy such portion of the Monthly Charge and any other amounts due and owing to Kenergy in immediately available funds to an account designated in the Lockbox Agreement on the Business Day following the 24th day of the month following the Billing Month or such earlier date of such month on which the Members' payment to Big Rivers is due.

5.3 Default Interest. If any invoice rendered by Kenergy (or the Market Participant or Big Rivers on behalf of Kenergy) is not paid on the due date, interest will accrue and become payable by Century to Kenergy on all unpaid amounts at a rate of one percent over the Prime Rate commencing on the first day after the due date; *provided*, that if interest in respect of any such unpaid amount accrues interest at a different rate to another Person, the applicable default interest rate shall be such different rate payable to the Person to which such unpaid amounts are owed.

5.4 Payments Under Protest. If any portion of any statement is disputed by Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Kenergy shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made; *provided*, that interest payable with respect to any amounts refunded to Kenergy shall be based on the interest paid to Kenergy, if any, by the payor on a pass-through basis. If the amount to be refunded to Century relates to amounts paid to the Market Participant, Big Rivers or another Person other than Kenergy, then Kenergy will refund such amounts promptly upon receipt of the refund of such amount.

5.5 Release and Indemnification.

5.5.1 Century (a) shall release Kenergy from any and all claims Century may have against Kenergy for the failure of (i) Big Rivers, (ii) the Market Participant (unless Kenergy is the Market Participant); or (iii) a Bilateral Counterparty, to satisfy its obligations under a Market Agreement, any other Transaction Document or a Bilateral Contract, as applicable, and (b) shall indemnify, hold harmless and defend Kenergy from and against any and all claims Big Rivers or a Market Participant may assert against Kenergy in connection with any failure by Big Rivers or the Market Participant to perform under a Market Agreement or any other Transaction Document, as applicable, if Kenergy elects to assign its rights in connection therewith pursuant to Section 5.5.2.

5.5.2 If Big Rivers or the Market Participant shall default under the Market Agreement, Kenergy may deliver to Century (a) a power-of-attorney with full power of substitution that shall designate Century or its designee as Kenergy's attorney-in-fact

(that shall be coupled with an interest and irrevocable) for purposes of negotiating and prosecuting any and all claims Kenergy may have against Big Rivers or the Market Participant for a failure of Big Rivers or the Market Participant to satisfy its obligations under a Market Agreement and to file or prosecute any claim, litigation, suit or proceeding before any Governmental Authority in the name of Kenergy or in its own name, or take such other action otherwise deemed appropriate by Century for the purposes of obtaining legal or equitable relief as a result of the failure of Big Rivers or the Market Participant to satisfy its obligations under the Market Agreement and to compromise, settle, or adjust any suit, action or proceeding related to the failure of Big Rivers or the Market Participant, as applicable, to satisfy such obligations and to give such discharges or releases as Century may deem appropriate, and (b) an assignment conveying to Century all of Kenergy's right, title and interest in and to any legal, equitable or other relief, including the recovery of damages and the grant of injunctive relief or other remedies to which Kenergy may be entitled with respect to the failure of Big Rivers or the Market Participant to satisfy its obligations under a Market Agreement. The power-of-attorney and the assignment shall be in form and substance reasonably satisfactory to Century and shall be legally effective and enforceable under Kentucky or other Applicable Law.

5.6 No Waiver. No payment made by Century pursuant to this Article 5 will constitute a waiver of any right of Century to contest the correctness of any charge or credit.

## ARTICLE 6

### EFFECTIVE DATE AND CONDITIONS

6.1 Effective Date. The obligations of the Parties under Article 2, Article 3, Article 4, Article 5, Section 7.3, Article 8, Article 9, Article 10, Article 11, Article 12, Article 14, and Article 15 shall not commence until the Effective Date. The "Effective Date" will occur on the first date each of the conditions set forth in Section 6.2 has been satisfied in full or waived in writing by the Party in whose favor such condition exists (to the extent one or more conditions is subject to being waived).

6.2 Conditions to Occurrence of Effective Date. Subject to 6.2.8, the following shall be conditions to the occurrence of the Effective Date:

6.2.1 The meters at the substation of the Coleman Generation Station shall be a Commercial Pricing Node (as defined in the MISO Tariff).

6.2.2 Each of the representations and warranties of the Parties contained in this Agreement and the representations and warranties of Big Rivers and Kenergy in the Arrangement Agreement will be true and correct as of the date hereof and the Effective Date (as though such representations and warranties were made at and as of the date hereof and the Effective Date), and each of the Parties shall have received a certificate to such effect from the other Party with respect to the other Party's representations and warranties in this Agreement and Century shall have received a certificate to such effect

from Kenergy and Big Rivers in respect of their respective representations and warranties in the Arrangement Agreement.

6.2.3 Each of the documents and agreements set forth in Schedule 6.2.3 will have been duly authorized, executed and delivered by the parties thereto, and all conditions precedent to the effectiveness of such agreements will have been satisfied or waived, and shall, if amended after the date hereof and prior to the Effective Date, be acceptable in form and substance to the Parties.

6.2.4 The Century Guarantee and the Capacitor Additions and Protective Relays Guarantee will have been duly authorized, executed and delivered by Century Parent and be in full force and effect.

6.2.5 Any credit support required to be provided by Century on the Effective Date pursuant to Section 14.3 shall have been provided.

6.2.6 Except as specified in subsections 6.2.8, no authorization or approval or other action by, and no notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, will be necessary prior to the commencement of the Service Period for the execution, delivery and performance by the Parties to each Transaction Document to which it is a party, other than (i) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and which are routine in nature or which cannot be obtained, or are not normally applied for, prior to the time they are required and which Kenergy has no reason to believe will not be timely obtained and in each case which do not prevent provision of Electric Services as described herein, and (ii) with respect to the approval of any Governmental Authority, on the Effective Date, such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; *provided*, that Century acknowledges and agrees that Kenergy may in its sole discretion discontinue the provision of Electric Services hereunder if any such approvals required by clause (ii) of this Section are overturned or otherwise disapproved by the applicable Governmental Authority subsequent to the Effective Date.

6.2.7 The consent of RUS and each of Kenergy's secured creditors to the Transaction and to all arrangements and agreements contemplated in connection therewith will have been duly issued and received and will be in full force and effect; all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date.

6.2.8 Each authorization, approval, action, notice, registration, license, permit, agreement, consent, filing or declaration with MISO, NERC, SERC or any other Governmental Authority regarding (a) the installation, ownership or operation and maintenance of the Capacitor Additions or the Protective Relays, and (b) an obligation of Big Rivers to operate and maintain, dispatch or make available the Coleman Generation Station and the recovery by Big Rivers of all SSR Costs, shall be satisfactory to each of

Kenergy, Big Rivers and Century, each in its sole discretion, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; *provided*, that neither (i) the failure of the FERC to issue an order approving a SSR Agreement or proposed SSR Agreement, nor (ii) the failure of SERC or MISO to provide any necessary approval of the effectuation of the arrangements contemplated by the Protective Relay Agreement, shall delay the Effective Date.

6.3 Efforts to Satisfy Conditions to Effective Date. Each of the Parties shall use reasonable commercial efforts and act in good faith to satisfy all of the conditions set forth in Section 6.2 at the earliest practicable date (other than those that the applicable Party agrees to waive). At such time as Kenergy or Century believes such conditions have been satisfied, such Party shall notify the other Party in writing. The obligations of the Parties under this Section 6.3 will continue until the earlier of (a) such time as this Agreement terminates pursuant to Section 7.2, and (b) the Effective Date.

## ARTICLE 7

### TERM AND TERMINATION

7.1 Term. Subject to Section 6.1, this Agreement will become binding on the Parties on the date of execution and delivery by the Parties and will remain in full force and effect until 11:59:59 p.m. on December 31, 2023, unless earlier terminated pursuant to the terms and conditions hereof (the “Term”). The Term will be automatically extended for additional one year periods on each December 31<sup>st</sup> thereafter until a Party gives at least one year’s prior notice to the other Party and Big Rivers of its election for the Agreement to expire at 11:59:59 on a specified December 31<sup>st</sup>.

7.2 Termination Prior to Effective Date. This Agreement may be terminated without cost or penalty prior to the occurrence of the Effective Date in accordance with this Section 7.2.

7.2.1 Termination for Failure to Satisfy Conditions to Effective Date. Either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party upon the failure of the conditions in Section 6.2 to be satisfied in full or waived by the Person in whose favor the condition exists on or before 11:59:59 p.m. on August 19, 2013.

7.2.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approvals for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Big Rivers no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.2.3 Service Following Termination Prior to Effective Date. Century acknowledges and agrees that Kenergy may not provide Electric Services to Century on or after 11:59:59 p.m. on August 19, 2013 unless the KPSC approves the provision of Electric Services to Century under a new or existing tariff and pursuant to a new contract entered into between Kenergy and Century.

7.3 Termination After the Effective Date. This Agreement may be terminated after the occurrence of the Effective Date in accordance with this Section 7.3.

7.3.1 Termination for Convenience by Century.

(a) Century may terminate this Agreement as of a date not less than 60 days from the date it provides written notice to Kenergy and Big Rivers of the termination of this Agreement.

(b) If Century requests to purchase Electric Services from Kenergy to serve its non-smelting requirements following a termination pursuant to this Section 7.3.1, then such Electric Services will be provided under the Post-Termination Service Agreement.

7.3.2 Termination for Event of Default. This Agreement may be terminated following the occurrence and during the continuation of an Event of Default pursuant to Article 15.

7.3.3 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approval for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Big Rivers no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision, or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.4 Effect of Termination. Termination of this Agreement will terminate the Transaction Documents listed on Exhibit C, other than obligations of the Parties under such Transaction Documents that survive termination.

## ARTICLE 8

### METERING

8.1 Metering Facilities. Kenergy will provide or cause to be provided metering facilities at the Delivery Point that measure Hourly kW, kWh, kilovars, kilovar-hours and voltage-hours.

8.2 Reading. Kenergy will read or cause to be read the meters at the Delivery Point on the last date of each month (or such other date as may be agreed upon by the Parties).

8.3 Testing. Kenergy will test, or cause to be tested, the calibration of the meters at the Delivery Point by comparison of accurate standards at least once every twelve months (or more often if so required by Applicable Law) and will give Century not less than five Business Days' prior notice of such testing. Century will have the right to observe and participate in all meter tests. Meters registering not more than plus or minus 1% inaccurate will be deemed to be accurate (unless Applicable Law establishes a standard more stringent than 1%, in which case, the more stringent standard will apply). The reading of any meter that will have been disclosed by tests to be inaccurate will be corrected for the 60 days before such tests (or for such shorter period if applicable) in accordance with the percentage of inaccuracy found by such tests. If any meter should fail to register for any period, the Parties and Big Rivers will make mutually agreed upon estimates for such period from the best information available. If Century requests a special meter test, Kenergy shall cause such test to be conducted; *provided, however*, that if any special meter test made at the request of Century discloses that the meters are not more than plus or minus 1% inaccurate, Century shall reimburse Kenergy for the reasonable Cost of such test. In all other respects, meters through which Kenergy delivers Energy to Century shall be installed, operated, maintained and tested in accordance with all Applicable Law and Good Utility Practice.

## ARTICLE 9

### OPERATIONAL MATTERS

9.1 Operations and Operational Responsibility. In carrying out the requirements of this Agreement, each Party will comply with the reliability criteria, standards, guidelines and operating procedures of a FERC-approved ERO, SERC, Applicable Law and any applicable RTO, and neither Party will be required to take any action in violation of any thereof.

9.1.1 Kenergy will operate and maintain or cause to be operated and maintained any facilities owned by it on the premises of Century.

9.1.2 Century will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it, including the Capacitor Additions and the Protective Relays.

9.2 Facilities Provided by Kenergy. Kenergy has caused to be furnished and installed, or shall cause to be furnished or installed, all of the facilities required for the delivery of Energy to the Delivery Point, as well as the 161 kilovolt transmission lines required between the Delivery Point and the Century Substation. Kenergy shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment but excluding the Capacitor Additions and the Protective Relays, necessary to deliver Energy to Century at the Delivery Point. Kenergy will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Good Utility Practice, to the extent necessary to assure

sufficient capability to take and use the Electric Services to be delivered by Kenergy to Century as provided for in this Agreement.

### 9.3 Facilities Provided by Century.

9.3.1 Century has provided or shall provide, without cost to Kenergy or Big Rivers all easements for rights-of-way upon Century's property at the Hawesville Smelter (at such locations and of such dimensions as may be mutually agreed upon) for Big Rivers' transmission lines and for any Kenergy distribution lines.

9.3.2 Century has furnished and installed, shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use Energy purchased hereunder at and from the Century Substation, including (a) the Protective Relays and such protective devices as may be reasonably necessary to protect Big Rivers' transmission system from disturbance caused by Century, and (b) the Capacitor Additions. Additional plans for equipment to be installed for such protection of the facilities of Kenergy or Big Rivers shall be submitted to Kenergy and Big Rivers for prior approval.

9.4 Curtailment. Century acknowledges and agrees that, if Big Rivers determines in accordance with Good Utility Practice, or in compliance with any FERC-approved ERO, SERC, Applicable Law and other regulation, any applicable RTO, or other applicable operating criteria or rules, that a System Emergency has occurred or is imminent, and after suspending or reducing deliveries to Persons purchasing interruptible Energy from Big Rivers, Kenergy may suspend or reduce the delivery of Energy hereunder and may cease to make available in whole or in part the Electric Services, in each case to the extent caused by, or that Kenergy or Big Rivers determines necessary or prudent under the circumstances to prevent or attempt to prevent, or counter or reduce the effects of, such System Emergency. Century acknowledges and agrees that any curtailment caused by a System Emergency (or for any other reason) that cannot be avoided after the suspension or reduction of deliveries to Persons purchasing interruptible Energy from Big Rivers will be effected in a non-discriminatory manner consistent with the Tariff. Kenergy shall request Big Rivers notify Century as to the occurrence or threatened occurrence of any System Emergency or other event that may require curtailment, its cause and its impact on the provision of Electric Services under this Agreement, as soon as practicable. Kenergy will not be obligated to supply Electric Services to Century to the extent suspended or curtailed as a result of the System Emergency.

9.5 Ownership and Removal of Equipment. Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed, by either of the Parties hereto (or by Big Rivers) on or in the premises of the other Party (or Big Rivers) to deliver or receive service under this Agreement shall be and remain the property of the Party (or Big Rivers) owning and installing such equipment, apparatus, devices or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement or any extension thereof, the owner (including, if applicable, Big Rivers) of any equipment, apparatus, devices or facilities on the property of a Party shall have the right to enter upon the premises of that Party, and shall, within a reasonable time and at the sole expense of the owner, remove such equipment, apparatus, devices or facilities.

9.6 Right of Access. Century grants the duly authorized agents and employees of Kenergy and Big Rivers the right to reasonable access to the premises of Century to the extent reasonably required for the purposes of installing, repairing, inspecting, testing, renewing or exchanging any or all of its equipment located on the premises of Century, for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Kenergy or Big Rivers shall make reasonable advance arrangements before entering the premises of Century.

9.6.1 Century shall use reasonable commercial efforts to properly protect the property of Kenergy or Big Rivers, located on its premises, and shall permit no Person to inspect or adjust the wiring and apparatus of Kenergy (or Big Rivers) except with Kenergy's or Big Rivers' consent, as applicable. Neither Party assumes the duty or responsibility of inspecting the wiring or apparatus of the other Party.

9.6.2 Century grants to Kenergy and its agents and employees a license to enter the Century Substation and upon Century's easements and rights-of-way to accomplish the purposes of this Agreement, *provided* that reasonable advance arrangements appropriate under the circumstances are made.

## ARTICLE 10

### COVENANTS

#### 10.1 Surplus Sales.

10.1.1 Century may request that Kenergy direct the Market Participant to sell (a) any Electric Services that Century has committed to purchase, or (b) Century Transmission Rights, in each case, that are surplus to Century's requirements by delivering prior written notice to Kenergy and the Market Participant identifying the Electric Services to be sold and the associated times and duration of the requested sales ("Surplus Sales"). The Net Proceeds of any Surplus Sales will be credited by Kenergy or the Market Participant, as applicable, against the related item in the Monthly Charges. Century acknowledges and agrees that (i) Kenergy shall have no liability to any Person in connection with or arising out of the Market Participant's (unless Kenergy is the Market Participant) or a Bilateral Counterparty's (if Kenergy is the Market Participant) failure to make, manner of making or other handling or execution of a direction to execute Surplus Sales; *provided* that Kenergy has directed the Market Participant with respect to such Surplus Sales in accordance with Century's request pursuant to this Section, and (ii) Century shall provide notice of any such request to the Market Participant simultaneously with Century's provision of such request to Kenergy under this Section 10.1.1.

10.1.2 Any request by Century pursuant to this Section 10.1 shall be irrevocable following the Market Participant's entry into contractual obligations relating to any such Surplus Sales.

10.1.3 For the avoidance of doubt, nothing in this Section 10.1 shall relieve Century of its obligation for any portion of the Monthly Charge pursuant to Article 4.

10.2 Compliance with Environmental Laws. Century shall be responsible for Costs related to Century's operation, incurred by Kenergy to comply with (i) state or federal renewable energy portfolio or similar standards or (ii) Applicable Laws relating to the environment. For avoidance of doubt, such Costs of Kenergy to comply with environmental laws and regulation would include, because Century does not use any Kenergy-owned facilities, only charges or requirements imposed based on Kenergy's retail sales or the number of Kenergy's retail electric customers. To the extent permitted by Applicable Law, Century may self-comply with the provisions of this Section by purchasing its proportionate share of renewable energy.

10.3 Compliance with Applicable Laws Relating to Hedging Arrangements. Century shall be responsible for Costs related to Century's operation incurred by Kenergy to comply with Applicable Laws relating to sales pursuant to this Article, including Hedging Arrangements and the Dodd-Frank Act and any rules and regulations of any Governmental Authority, applicable to any Hedging Arrangements entered into by the Market Participant or any other Person in connection with Kenergy's provision of Electric Services to Century hereunder.

10.4 Electric Services for Hawesville Smelter Only. Century shall consume all Energy purchased by and delivered to the Hawesville Smelter under this Agreement in connection with the operation of its Hawesville Smelter, except as expressly permitted pursuant to this Agreement. Century acknowledges and agrees that it is not entitled to any Electric Services under any tariff of Kenergy, but, rather, is entitled to such Electric Services only pursuant to a contract entered into with Kenergy. Century further acknowledges and agrees that Kenergy will clarify its existing tariffs to this end and that Century shall not challenge or protest any Kenergy filings to make such changes. Century further acknowledges and agrees that it will not request or seek for Big Rivers to have an obligation to supply Electric Services (to Kenergy or otherwise) for delivery to Century from Big Rivers' System Resources; *provided*, for avoidance of doubt this does not include Transmission Services.

10.5 Entry into Market Agreement. Kenergy will not enter into any Market Agreement without the prior written consent of Century.

## ARTICLE 11

### UNCONTROLLABLE FORCES

11.1 Occurrence of an Uncontrollable Force. No Party will be considered to be in breach or default in the performance of any of its obligations under this Agreement if the failure of performance is due to an Uncontrollable Force, except as otherwise provided in this Article. If either Party is unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties, to the extent that they are affected by such Uncontrollable Force, will be suspended during the continuance of any inability so caused, but for no longer period. A Party will not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful acts or omissions.

11.2 Mitigation. A Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability as

promptly as reasonably possible. Nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

11.3 Notice of Uncontrollable Force. A Party shall notify the other Party at the earliest practicable time following (i) the occurrence of any Uncontrollable Force that renders such Party incapable of performing hereunder or (ii) the time at which such Party has reason to expect that such an Uncontrollable Force is imminent. Kenergy also shall notify Century if it receives notice from the Market Participant that the Market Participant anticipates that it will be unable to perform its obligations to Kenergy under any contract or agreement that affects Kenergy's performance under this Agreement due to an Uncontrollable Force and Century is not an additional addressee of such notice.

11.4 Payment Obligations. Notwithstanding anything in this Agreement to the contrary, the occurrence of an Uncontrollable Force shall not relieve Century of its payment obligations under Article 4, including its payment obligations with respect to any portion of the Monthly Charge. CENTURY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF SECTION 10.1 (SURPLUS SALES) SHALL CONSTITUTE CENTURY'S SOLE AND EXCLUSIVE REMEDIES IF CENTURY IS UNABLE TO RECEIVE ENERGY INCLUDING IF THAT INABILITY IS CAUSED BY AN UNCONTROLLABLE FORCE.

## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Kenergy. Kenergy hereby represents and warrants to Century as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.1.1 Kenergy is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligation hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the Term hereof.

12.1.2 The execution, delivery and performance of this Agreement by Kenergy have been duly and effectively authorized by all requisite corporate action.

12.1.3 This Agreement and the other Transaction Documents to which it is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Kenergy in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.1.4 The execution and delivery of this Agreement by Kenergy and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Kenergy or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time,

or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Kenergy is a party or by which it, or its property, is bound.

12.1.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Kenergy is subject is required for the due execution, delivery or performance by it of this Agreement and the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Kenergy has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Kenergy that have not been satisfied or irrevocably waived.

12.1.6 There is no pending or, to Kenergy's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Kenergy to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.1.7 Kenergy is not aware of Costs to comply with Section 10.2 as of the Effective Date.

12.2 Representations and Warranties of Century. Century hereby represents and warrants to Kenergy as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.2.1 Century is a general partnership duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky and is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and under any other Transaction Documents to which it is a party, and to carry on its business as it is now being conducted and as it is contemplated hereunder and thereunder to be conducted during the Term hereof.

12.2.2 The execution, delivery and performance by Century of this Agreement and the other Transaction Documents to which it is a party have been duly and effectively authorized by all requisite partner action.

12.2.3 This Agreement and the other Transaction Documents to which Century is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Century in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.2.4 The execution and delivery of this Agreement by Century and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Century or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Century is a party or by which it, or its property, is bound.

12.2.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Century is subject is required for the due execution, delivery or performance by it of this Agreement or the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Century has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Century that have not been satisfied or irrevocably waived.

12.2.6 There is no pending or, to Century's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Century to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.2.7 Century is not aware of Costs to comply with Section 10.2 as of the Effective Date.

## ARTICLE 13

### INDEMNIFICATION

13.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, each Party (in such capacity, an “Indemnifying Party”) hereby agrees that it will pay, and will protect, indemnify, and hold harmless the other Party and its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an “Indemnified Person”), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject arising out of or relating to the performance or failure to perform its obligations under this Agreement, any other Transaction Documents to which it is a party or any Market Agreement or Bilateral Contract (each, an “Indemnified Liability”), and any actual or prospective claim, litigation, investigation or proceeding relating thereto, whether based on contract, tort or any other theory, and regardless of whether any Indemnified Person is a party thereto, including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 13.1.

13.2 Primary Indemnity. Except to the extent there is insurance coverage available no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of an Indemnifying Party under this Agreement.

#### 13.3 Payments.

13.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify the Indemnifying Party in a timely manner of any such amounts payable by the Indemnifying Party hereunder; *provided*, that any failure to provide such notice shall not affect the Indemnifying Party’s obligations under this Article 13.

13.3.2 Any amounts payable by an Indemnifying Party pursuant to this Article 13 shall be payable within the later to occur of (i) ten (10) Business Days after the Indemnifying Party receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which the Indemnifying Party’s indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

13.4 Survival. The provisions of this Article 13 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

13.5 Subrogation. Upon payment by an Indemnifying Party pursuant to this Article 13 of any claim under Section 13.1 in respect of any Indemnified Liability, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of the Indemnifying Party cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

## ARTICLE 14

### ADDITIONAL AGREEMENTS

#### 14.1 Regulatory Proceedings.

14.1.1 Proceedings That Affect Rates. Neither Kenergy nor Century will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rates and charges set forth in this Agreement or other terms and conditions set forth herein.

14.1.2 KPSC Jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Kenergy, Big Rivers or the rates, terms and conditions of the provision of Electric Services to Century.

14.2 Audit Rights. Kenergy will permit Century to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy reasonably relating to its service to Century under this Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Century under this Agreement for a period of three years beyond the date of the service. Nothing in this Section 14.2 shall obligate Kenergy to disclose attorney-client privileged information.

14.3 Century Credit Support. Century shall provide the following credit support for its obligations under this Agreement and other Transaction Documents:

14.3.1 Century shall provide and maintain credit support in the form of one of the following as elected by Century (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Kenergy, Big Rivers and any other Person entitled to benefit therefrom, in their sole discretion, or (iii) other credit support acceptable to Kenergy, Big Rivers and any other Person entitled to the benefit thereof, in each case, in an amount equal to the sum of the following, without duplication:

(a) With respect to any period for which Big Rivers is or was the Market Participant, the amounts reasonably estimated by Kenergy, without duplication, with respect to (i) Century's obligations under this Agreement for a period not longer than the payment terms required by each supplier to Kenergy, (ii) any security required by or for the benefit of any applicable RTO or ISO (without regard to Big Rivers acting as the Market Participant), (iii) any security

required by any counterparty to a Bilateral Contract, and (iv) any amount that Kenergy estimates reasonably (A) could be due with respect to taxes payable by Century for the benefit of Kenergy or Big Rivers as a result of this Agreement or (B) could become due and payable by Kenergy as a result of this Agreement or any other Transaction Document, including with respect to taxes payable by Century for the benefit of Kenergy under the Tax Indemnity Agreement or any other Transaction Document (“Potential Tax Liability”). For the avoidance of doubt, security required pursuant to this paragraph, but relating to the period when Big Rivers was acting as the Market Participant, may extend beyond the period when Big Rivers is the Market Participant or the underlying agreement terminates and may be required to be provided directly to the Person benefiting therefrom;

(b) With respect to any period for which Big Rivers is not or was not the Market Participant, any amounts estimated by Kenergy to be required by it, Big Rivers, the Market Participant or the applicable RTO or ISO as security. For the avoidance of doubt, (i) security required pursuant to this paragraph, but relating to the period when such Market Participant was acting as the Market Participant, may extend beyond the period when such Market Participant is no longer the Market Participant or the applicable RTO or ISO is no longer the RTO or ISO of which the Market Participant is a member, and (ii) the Market Participant may require security to be provided directly to the Person benefiting therefrom;

(c) Any amount that a Bilateral Contract requires to be maintained for the benefit of the parties to such Bilateral Contract other than Century; and

(d) For the avoidance of doubt, Century shall provide any credit support required by this Section 14.3 to the Person designated by Kenergy but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

14.3.2 In addition to any other credit provided herein or any other Transaction Document:

(a) Century shall cause Century Parent to guarantee to Kenergy and Big Rivers the payment, performance and all other obligations of Century under this Agreement or any Transaction Document that may become due and owing to Kenergy or Big Rivers, including Potential Tax Liability, pursuant to a Guarantee Agreement executed by Century Parent in favor of Kenergy and Big Rivers that shall be satisfactory in form and substance to Kenergy and Big Rivers (the “Century Guarantee”). At the request of Big Rivers or Kenergy, Century will maintain the Century Guarantee until closure of all applicable tax years of Big Rivers. At the request of Century, Kenergy shall request that Big Rivers provide Century with information as to the amount and calculation of the estimated Potential Tax Liability and documentation in support thereof.

(b) Century shall cause Century Parent to guarantee to the Market Participant or any party to a Bilateral Contract the payment, performance and all other obligations of Century under any agreements with such Persons that may become due and owing to any of them pursuant to a guarantee agreement executed by Century Parent in favor of such Person, that shall be satisfactory in form and substance to them.

14.3.3 Following the accessing by any Person entitled to the security provided by Century to pay amounts due and owing but unpaid by Century under any Transaction Document, Century shall promptly, but in no event more than three Business Days following any accessing of the security, replenish such security to the amounts required by Section 14.3.

14.4 Post-Termination Obligation. Upon termination of this Agreement in the circumstances described in Section 7.3.1(b), and subject to Section 14.5, neither Kenergy nor Big Rivers will have any contractual obligation under this Agreement to supply any Electric Services to Century other than pursuant to a Post-Termination Service Agreement. In all other circumstances, (a) Century acknowledges and agrees that Kenergy will not have any contractual obligation to supply Electric Services to Century or any of its Affiliates with respect to the Hawesville Smelter or its portion thereof, and (b) Century would need to negotiate a new arrangement with Kenergy for the provision of Electric Services.

14.5 Right to Supply from Big Rivers. Century acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the Hawesville Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter other than as provided in the Arrangement Agreement for the purchase of Electric Services in the Day Ahead Market or the Real Time Market or from a Bilateral Counterparty; *provided*, that Century Parent or an affiliate of Century may seek a contractual service arrangement, with Big Rivers and Kenergy with respect to the Sebree smelter.

## ARTICLE 15

### EVENTS OF DEFAULT; REMEDIES

15.1 Events of Default. Each of the following constitutes an “Event of Default” under this Agreement:

15.1.1 Failure by Century to make any scheduled payment in accordance with this Agreement;

15.1.2 Failure by Century for three or more Business Days to maintain any security required by Section 14.3;

15.1.3 Failure of a Party to perform any material duty imposed on it by this Agreement (other than a failure to make a payment when due) within 30 days following the non-performing Party’s receipt of written notice of the non-performing Party’s breach of its duty hereunder;

15.1.4 Failure by a Party to pay any amounts under this Agreement or any Transaction Document within three Business Days following the non-performing Party's receipt of written notice of the non-performing Party's default in its payment obligation, except as provided in Section 15.1.1;

15.1.5 Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article 17;

15.1.6 The occurrence and continuance of an "Event of Default" under any Transaction Document;

15.1.7 Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws by a Party and such petition has not been withdrawn or dismissed within 60 days after filing;

15.1.8 Assignment by a Party for the benefit of its creditors; or

15.1.9 Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment.

15.2 Remedies, General. Except as otherwise provided in this Agreement, following the occurrence and during the continuance of an Event of Default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity. Unless otherwise provided herein, remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy and nothing contained in this Agreement may be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein provided that:

15.2.1 UNDER NO CIRCUMSTANCE WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER TO THE OTHER PARTY, ITS AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS WHETHER IN TORT, CONTRACT OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

15.2.2 If Century fails to pay any invoice rendered by or on behalf of Kenergy within the time prescribed in Section 5.1 or Section 5.2, Kenergy may discontinue delivery of any or all Electric Services hereunder upon not less than 72 Hours prior written notice to Century and Big Rivers of its intention to do so unless Century has

cured such default within those 72 Hours. Kenergy's discontinuance of such service for non-payment will not in any way affect, diminish or limit the obligations of Century to make all payments required under this Agreement or any other Transaction Document, as and when due. For the convenience of the Parties, and to facilitate satisfaction of Kenergy's obligation to Big Rivers, Century hereby acknowledges and consents to the assignment by Kenergy to Big Rivers of its right to receive such payment from Century under this Agreement while Big Rivers is the Market Participant (other than with respect to the Retail Fee or otherwise incurred by Kenergy and not related to Big Rivers) and Kenergy's rights to collect and enforce collection of such amounts due from Century. If Big Rivers owes credits or funds to Kenergy for the benefit of Century, Kenergy hereby assigns such credits or funds to Century and shall cooperate with and assist Century with respect to any collections of any such amounts due from Big Rivers to Kenergy; *provided*, that Century shall reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

15.2.3 Unless otherwise provided herein, if a Party is in breach of its obligations under this Agreement but such breach does not constitute, or would not with the passage of time or the giving of notice constitute, an Event of Default and this Agreement does not provide any other remedy therefor, if such breach has not been cured by the breaching Party within 60 days after receiving written notice from the non-breaching Party setting forth, in reasonable detail, the nature of such breach, the non-breaching Party may commence dispute resolution with respect to such breach and exercise its rights under Article 16, but will not be entitled to terminate, or seek to terminate, this Agreement, or suspend performance of its obligations and duties hereunder as a result of such breach.

## ARTICLE 16

### DISPUTE RESOLUTION

16.1 Resolution Meetings. If a dispute arises between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, either Party may request in writing a meeting among an authorized representative of each of the Parties and the Market Participant to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten days or such shorter or longer time as agreed upon by the Parties of the request. Nothing in this Section 16.1 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement.

16.2 Arbitration. Absent resolution of the dispute pursuant to Section 16.1, and subject to a minimum amount in controversy of \$100,000.00, the Parties shall submit the matter to be settled, subject to Section 16.2.7, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution ("ICDR") of the American Arbitration Association (the "AAA Rules"), in accordance with the following terms and conditions:

16.2.1 In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

16.2.2 The ICDR shall administer the arbitration.

16.2.3 The seat of arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

16.2.4 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two party-nominated arbitrators to agree on an arbitrator in accordance with Section 16.2.4(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 16.2.4(a) and 16.2.4(b), each arbitrator selected pursuant to this Section 16.2.4 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed by, a consultant to or received compensation from any Party in the past.

16.2.5 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, and including, but not limited to, specific performance and injunctive relief, whether interim or final, and any such relief and any interim, provisional or conservatory measure ordered by the arbitral tribunal may be specifically enforced by any court of competent jurisdiction.

16.2.6 The losing Party shall pay the fees and costs of the prevailing Party.

16.2.7 The award of the arbitral tribunal shall be subject to appeal to, or requests for rehearing by, a court in accordance with Section 18.2.

16.2.8 The award of the tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

16.2.9 Except for arbitration proceedings pursuant to this Section 16.2, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 18.2, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

16.3 RTO or ISO Disputes. Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable with respect to the provision of Electric Services to the Hawesville Node or otherwise payable in respect of the provision of Electric Services hereunder shall be binding on the Parties. Nothing in this provision is intended to impair the rights of either Party to pursue any action through MISO's (or the applicable RTO's or ISO's) dispute resolution process or at the FERC.

## ARTICLE 17

### GENERAL PROVISIONS/SUCCESSORS AND ASSIGNS

17.1 Binding Nature. This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Party, except as provided in Section 17.4, and except that, subject to satisfaction of the conditions of Section 17.2, assignment may be made by either Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

17.2 Limitation on Assignment. Subject to Section 17.4, in no event may either Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Party or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

17.3 Duties. No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

17.4 Financing Lien. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

## ARTICLE 18

### MISCELLANEOUS

18.1 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

18.2 Jurisdiction. Subject to Section 16.2, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes; *provided* that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in Section 16.2 or this Section prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 16.2, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 18.6, and agrees that such service shall be, for all purposes, good and sufficient.

18.3 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

#### 18.4 Amendments.

18.4.1 This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties.

18.4.2 The Parties acknowledge and agree that nothing in this Agreement shall limit the right of Big Rivers to file changes to the Tariff, or limit the right of any Party to challenge any aspect of the Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

18.5 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to

fulfill its obligations under this Agreement; *provided*, that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

18.6 Notices. A notice, consent, approval or other communication under this Agreement must be in writing, addressed to the Person to whom it is to be delivered at such Person's address shown below and (a) personally delivered (including delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile, with a duplicate notice sent by a nationally recognized overnight courier service, *provided, however*, that (i) a notice given pursuant to Section 3.3.2 may be given by telephone to be followed as soon as reasonably practicable by written notice as described herein and (ii) a notice of Uncontrollable Force shall be given by whatever means is available followed by notice in writing as described herein as soon as reasonably practicable; *provided, further*, that notices given pursuant to Section 5.1 and Section 5.2 may be given by electronic message at such addresses as each Party may provide to the other Party by any other method of notice permitted by this Section. A notice given to a Person in accordance with this Section 18.6 will be deemed to have been delivered (a) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (b) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 18.6, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party, in accordance with this Section 18.6, with copies of all such notices to Big Rivers to the address set forth below, in the same manner as notice is otherwise given hereunder. Simultaneously with a Party's giving of any notice required or permitted to be given hereunder from one Party to another Party, such Party shall give such notice to the Market Participant using the same method of delivery used to provide such notice to the other Party.

If to Kenergy:                      Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 826-3999

with a copy to:                      Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Facsimile: (270) 852-2882

With a copy to: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Facsimile: (312) 696-3102

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

For notices pursuant to Section 15.1:

If to Kenergy: Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 826-3999

With a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Facsimile: (270) 852-2882

18.7 Severability. If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment will not affect, impair or invalidate the remainder of this Agreement but will be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, unless the loss or failure of such

clause, sentence, paragraph or part of this Agreement materially adversely affects the benefit of the bargain to be received by either or both of the Parties, in which event the Parties shall promptly meet and use their good faith best efforts to renegotiate this Agreement in such a fashion as will restore the relative rights and benefits of both Parties or, absent such renegotiation, the Party that was so materially adversely affected will be entitled, in its discretion, to terminate this Agreement.

18.8 Survival. Sections 10.4, 14.4 and 14.5 shall survive termination of this Agreement. Each provision of this Agreement providing for payment for Electric Services and any other amounts due hereunder, assignment of the right to collect and enforce collection of amounts due, the provision, replenishment or maintenance of credit support required hereunder or related to remedies for default, damage claims, indemnification or payment of other liabilities also shall survive termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

18.9 Merger. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the matters addressed herein and supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

18.10 Further Assurances. The Parties shall execute such additional documents and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

18.11 Counterparts. This Agreement may be executed in any number of counterparts that together will constitute but one and the same instrument and each counterpart will have the same force and effect as if they were one original.

18.12 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard or care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement other than Big Rivers. Big Rivers shall be an express third party beneficiary of this Agreement and may enforce the provisions hereof during the period of any survival obligations for its benefit pursuant to Section 18.8.

18.13 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

18.14 No Agency. This Agreement is not intended, and may not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or otherwise bind, the other Party.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 6.2.3**  
**LISTING OF CERTAIN TRANSACTION DOCUMENTS**

1. This Agreement
2. Arrangement Agreement
3. Direct Agreement
4. Capacitor Agreement
5. Protective Relays Agreement
6. Century Guarantee
7. Capacitor Additions and Protective Relays Guarantee
8. Tax Indemnity Agreement
9. Lockbox Agreement

**EXHIBIT A**  
**FORM OF POST-TERMINATION SERVICE AGREEMENT**

**EXHIBIT B**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges change:

1. ACES Fee – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum – Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
4. NRCO – Cost Differential between organization classification, if applicable, due to Century’s inclusion in Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission – Pro-rata share of Big Rivers’ intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers’ Local Balancing Authority load(LESS HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees – Tons of emissions related to Coleman Station during SSR operation.
9. KAEC – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Cases – Century will not be charged costs for Big Rivers rate cases with the KPSC.

The foregoing costs may apply to Kenergy if Kenergy is the Market Participant. If Kenergy is not the Market Participant then the following apply to Kenergy:

1. Public Service Commission – Taxes based on pro-rata share of Kenergy’s revenue from Century.
2. KPSC Rate Cases – Century will not be charged costs for Kenergy rate cases with the KPSC.

**EXHIBIT C**  
**TRANSACTION DOCUMENTS CO-TERMINOUSLY TERMINATED**

- Arrangement and Procurement Agreement By and Between Big Rivers Electric Corporation and Kenergy Corporation.



**ARRANGEMENT AND PROCUREMENT AGREEMENT**

Dated as of August 1, 2013,

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

**KENERGY CORP.**

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## ARRANGEMENT AND PROCUREMENT AGREEMENT

This ARRANGEMENT AND PROCUREMENT AGREEMENT (this "Agreement") is dated as of August 1, 2013, and made by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers") and KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"). Kenergy and Big Rivers are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy currently supplies and delivers retail electric energy and related services to Century Aluminum of Kentucky General Partnership, a Kentucky general partnership ("Century"), the owner and operator of an aluminum reduction plant in Hawesville, Kentucky, pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the "Existing Retail Agreement").

B. Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers, an electric generation and transmission cooperative of which Kenergy is a member, pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the "Existing Wholesale Agreement").

C. Century gave notice of termination of the Existing Retail Agreement on August 20, 2012.

D. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services obtained from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth in the Electric Service Agreement, dated as of the date hereof, between Kenergy and Century (the "Electric Service Agreement").

E. In connection with and as a condition to Kenergy's entry into the Electric Service Agreement, Kenergy and Big Rivers have agreed to enter into this Agreement, to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century under the Electric Service Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

## ARTICLE 1

### DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in Article 1, unless stated otherwise or the context requires otherwise.

1.1.1 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.2 Affiliate: With respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For avoidance of doubt, Kenergy and the other Members are not Affiliates of Big Rivers.

1.1.3 Agreement: As defined in the preamble to this Agreement.

1.1.4 Ancillary Services: Those generation-based ancillary services, that are necessary to support among other things capacity, reactive supply and voltage control, as well as the transmission of Energy from resources to loads while maintaining reliable operations of the applicable transmission system in accordance with Good Utility Practice, as set forth and described in the Tariff or, if applicable, any Bilateral Tariff.

1.1.5 Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

1.1.6 Applicable RTO Charges: As defined in Section 4.2.

1.1.7 ARR: Auction Revenue Rights as defined in the MISO Tariff, or any similar items under the Tariff.

1.1.8 Base Load: The “Base Load” shall be determined by the following, as applicable: (a) The maximum amount of Load (not to exceed 482 MW), that may be reliably delivered to the Hawesville Node, as confirmed or approved by MISO, in circumstances where Big Rivers has idled the Coleman Generation Station. (b) The “Base Load” may be increased (not to exceed 482 MW) by notice from Century to Kenergy and Big Rivers if such increase does not create a reliability issue, as determined by any Governmental Authority with jurisdiction over electric reliability. As of the date of this Agreement, the Parties are unaware of any Governmental Authority with jurisdiction over electric reliability with respect to an increase in the Base Load other than FERC and MISO. (c) If a SSR Agreement is in effect, the “Base Load” shall be the maximum amount of Load as confirmed or approved by the applicable RTO or ISO (not to exceed

482 MW); (d) The Base Load shall be 482 MW if Big Rivers is operating all three units at the Coleman Generating Station for any reason other than an requirement by MISO to operate for reliability. (e) The Base Load shall be determined by the applicable RTO or ISO (up to 482 MW) if Big Rivers operates less than all three units of the Coleman Generation Station for any reason other than a requirement by the RTO or ISO to operate for reliability even if the remaining units are operated under an SSR Agreement. (f) In all other circumstances, the “Base Load” shall be zero.

1.1.9 Big Rivers: As defined in the preamble to this Agreement.

1.1.10 Bilateral Charges: As defined in Section 4.3.

1.1.11 Bilateral Contract: A contractual arrangement between Big Rivers, acting as the Market Participant, and a Bilateral Counterparty pursuant to which Big Rivers obtains a right or obligation to purchase at the Delivery Point any Electric Services for resale to Kenergy pursuant to this Agreement for delivery to Century pursuant to the Electric Service Agreement based upon generation resources or contract resources of such Bilateral Counterparty.

1.1.12 Bilateral Counterparty: As defined in Section 2.4.

1.1.13 Bilateral Tariff: The open access transmission or markets tariff or similar construct applicable to a transaction with a Bilateral Counterparty.

1.1.14 Billing Month: Each calendar month during the Service Period.

1.1.15 Business Day: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

1.1.16 Capacitor Additions: As defined in the Capacitor Agreement.

1.1.17 Capacitor Additions and Protective Relays Guarantee: The Capacitor Additions and Protective Relays Guarantee, dated as of June [ ], 2013, by Century Parent, in favor of Big Rivers and Kenergy, relating to the Capacitor Agreement and the Protective Relays Agreement.

1.1.18 Capacitor Agreement: The Capacitor Agreement, dated as of June [ ], 2013, by and among Big Rivers, Kenergy and Century.

1.1.19 Century: As defined in the Recitals.

1.1.20 Century Guarantee: As defined in the Electric Service Agreement.

1.1.21 Century Parent: Century Aluminum Company, a Delaware corporation, and the indirect parent of Century.

1.1.22 Century Substation: Century's electrical substation located adjacent to the Hawesville Smelter.

1.1.23 Century Transmission Rights: All allocations from MISO of FTRs or ARRs resulting from service by Big Rivers to Kenergy under this Agreement and service by Kenergy to Century under the Electric Service Agreement and FTRs purchased by Century.

1.1.24 Coleman Generation Station: Big Rivers' Kenneth C. Coleman Plant, a three unit, coal-fired steam electric generating unit located near Hawesville, Kentucky.

1.1.25 Costs: In the context of the specific costs referenced, "Costs" shall mean those costs of Big Rivers to the extent that such costs relate to the operation of Century. For the avoidance of doubt, "Costs" include (i) Century's proportionate share of costs that are incurred by Big Rivers to serve both Century and other loads, and (ii) costs incurred by Big Rivers that relate only to Century's operation. Costs listed in Exhibit A shall be proportionately allocated as provided therein, or using the method applicable from time to time for calculation of bills (if the calculation method has changed from that shown in Exhibit A).

1.1.26 Curtaillable Load: The maximum amount of additional Load at the Hawesville Node above the Base Load that may be served on a reliable basis, as confirmed or approved by MISO (or, if applicable, by another RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located) assuming the installation of Protective Relays at the Hawesville Smelter, *provided*, that such amount shall be zero if such confirmation or approval is not given; *provided, further*, that the Base Load plus the Curtaillable Load may not exceed 482 MW, on a scheduled basis, and 492 MW at any time.

1.1.27 Day Ahead Market: The Day Ahead Energy and Operating Reserve Market established under the MISO Tariff for the purchase of electricity and electricity-related ancillary services or, if the Hawesville Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for purchases of the applicable Electric Services prior to the date of delivery.

1.1.28 Delivery Point: The existing set of meters at the substation of the Coleman Generation Station or such other point of delivery mutually agreed by the Parties and Century. At Century's request, the Delivery Point may be moved to the Century Substation if permitted by the applicable RTO and Century pays all costs incurred in connection therewith.

1.1.29 Direct Agreement: The Direct Agreement, dated as of the date hereof, by and between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with the Transaction.

1.1.30 Dodd-Frank Act: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203 (signed into law July 21, 2010)) and all requests,

rules, regulations, guidelines or directives (whether or not having the force of law) of a Governmental Authority in connection therewith.

1.1.31 Effective Date: As defined in Section 6.1.

1.1.32 Electric Service Agreement: As defined in the Recitals.

1.1.33 Electric Services: Electric services, including capacity and associated Energy, Transmission Services, Ancillary Services and other services required in connection therewith, including services as may be required by any RTO, ISO, Transmission Provider or Reliability Coordinator, and transmission or ancillary services of a Bilateral Counterparty under a Bilateral Tariff.

1.1.34 Energy: The flow of electricity denominated in kWh or MWh.

1.1.35 ERO: Electric Reliability Organization, as defined in the Federal Power Act.

1.1.36 Event of Default: As defined in Section 15.1.

1.1.37 Excess Energy Rate: The greater of (i) \$250 per MWh, and (ii) a price equal to 110% of the highest Hourly all-inclusive cost incurred by Big Rivers to acquire such Energy, and the separate cost, if any, whenever determined, of transmission services and related services required to transmit any Energy over 492 MW to the Delivery Point and including any imbalance charges or other costs arising from the failure of the supplier of such Energy to deliver such Energy.

1.1.38 Excess Reactive Demand Charge: As defined in Section 4.4.

1.1.39 Existing Retail Agreement: As defined in the Recitals.

1.1.40 Existing Wholesale Agreement: As defined in the Recitals.

1.1.41 FERC: Federal Energy Regulatory Commission.

1.1.42 FTR: Financial Transmission Rights as defined in the MISO Tariff, or any similar items under the Tariff.

1.1.43 Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.

1.1.44 Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, a RTO (including MISO as of the Effective Date) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC; *provided, however* that the RUS is not a Governmental Authority for purposes of this Agreement.

1.1.45 Hawesville Node: A Commercial Pricing Node (as defined in the Tariff) located at the Delivery Point and used solely for delivery and sale of Electric Services for the benefit of the Hawesville Smelter; *provided*, that if the Hawesville Node does not remain in MISO in accordance with Section 3.5.2, then the “Hawesville Node” shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.

1.1.46 Hawesville Smelter: The aluminum reduction plant owned and operated by Century and located in Hawesville, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

1.1.47 Hedging Arrangements: Any contractual arrangements entered into as hedging or derivative arrangements, including any transactions regulated under the Dodd-Frank Act.

1.1.48 Hour or Hourly: A clock hour or per clock hour, respectively.

1.1.49 Indemnified Liability: As defined in Section 13.1.

1.1.50 Indemnified Person: As defined in Section 13.1.

1.1.51 Indemnifying Party: As defined in Section 13.1.

1.1.52 ISO: An Independent System Operator, as defined and approved by the FERC.

1.1.53 Kenergy: As defined in the preamble to this Agreement.

1.1.54 KPSC: Kentucky Public Service Commission.

1.1.55 kW: Kilowatt.

1.1.56 kWh: Kilowatt-hour.

1.1.57 Load: The Hourly interval meter data measured in MWhs at the Hawesville Smelter.

1.1.58 Lockbox Agreement: The Security and Lockbox Agreement to be entered into by and among Century, Kenergy, Big Rivers and a depository bank prior to the Effective Date with respect to the payment of certain amounts due by Kenergy to Big Rivers hereunder.

1.1.59 Market Participant: Big Rivers, in its capacity as the procurer of Electric Services under the Tariff or from a Bilateral Counterparty for resale to Kenergy pursuant to this Agreement for resale to Century pursuant to the Electric Service Agreement, prior to termination of this Agreement pursuant to Article 7, and, thereafter, the counterparty to any other contractual arrangement with Kenergy relating to the purchase of Electric Services from the wholesale electric market, including pursuant to bilateral contracts, for resale to Kenergy for delivery to Century.

1.1.60 Members: The members of Big Rivers. As of the date hereof, the Members of Big Rivers are Jackson Purchase Energy Corporation, Kenergy, and Meade County Rural Electric Cooperative Corporation.

1.1.61 MISO: The Midcontinent Independent Transmission System Operator, Inc.

1.1.62 MISO Tariff: The MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.

1.1.63 Monthly Charge: As defined in Section 4.1.

1.1.64 MW: Megawatt.

1.1.65 MWh: Megawatt-hour.

1.1.66 NERC: North American Electric Reliability Corporation.

1.1.67 Net ARR/FTR Proceeds: The sum of ARR revenues, as determined by the applicable ISO or RTO, offset for applicable ARR and FTR uplift amounts and applicable administrative fees charged by the applicable ISO or RTO. FTR charges or credits related to auction and settlement activities will be allocated to Century for the positions Century directs Big Rivers to pursue on their behalf. Century's pro-rata share of Net ARR/FTR Proceeds will be calculated by taking Century's load at Big Rivers' annual system peak divided by Big Rivers' annual system peak, multiplied by the Net ARR/FTR Proceeds received by Big Rivers on a monthly basis from MISO.

1.1.68 Net Proceeds: The proceeds of a sale or transfer, net of the cost of the item sold and net of transaction costs, whenever incurred, and taxes.

1.1.69 Party or Parties: As defined in the preamble to this Agreement.

1.1.70 Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization, other legal entity, RUS or Governmental Authority.

1.1.71 Prime Rate: The then-effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street*

*Journal* discontinues publication of the prime commercial lending rate, the Parties and Big Rivers shall agree on a mutually acceptable alternative source for that rate.

1.1.72 Protective Relays: As defined in the Protective Relays Agreement.

1.1.73 Protective Relays Agreement: The Protective Relays Agreement, dated as of June [ ], 2013, by and among Big Rivers, Kenergy and Century.

1.1.74 Real Time Market: The Real Time Energy and Operating Reserve Market established under the MISO Tariff or, if the Hawesville Node is located in a different RTO or ISO, any similar organized central market in such other RTO or ISO for real time purchases of the applicable Electric Services.

1.1.75 Reliability Coordinator: As defined by NERC. As of the Effective Date, the Reliability Coordinator is MISO.

1.1.76 Retail Fee: As defined in the Electric Service Agreement.

1.1.77 RTO: Regional transmission organization as defined and approved by FERC.

1.1.78 RTO Transmission Upgrades: MISO Transmission Expansion Plan or Multi-Value Projects (each as defined in the MISO Tariff) or similar transmission facilities upgrades, improvements or expansion projects of any RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located.

1.1.79 RUS: United States Department of Agriculture Rural Utilities Service.

1.1.80 SERC: SERC Reliability Corporation, a regional reliability organization.

1.1.81 Service Period: As defined in Section 2.1.

1.1.82 SSR Agreement: An agreement, including a System Support Resources Agreement, entered into with the RTO or ISO of which Big Rivers is a member relating to the SSR Costs of the Coleman Generation Station.

1.1.83 SSR Costs: If and only to the extent that Century operates above the Base Load as defined in Section 1.1.10 and, if applicable, the Curtailable Load, or if any Coleman unit is designated as an SSR by the applicable RTO or ISO then "SSR Costs" shall mean (a) any costs that are not reimbursed to Big Rivers relating to any unit of the Coleman Generation Station required by the applicable RTO or ISO to be operated for reliability purposes for that reason, and (b) the costs, as determined and allocated by the RTO or ISO in which Big Rivers is a member, to the Hawesville Node or any other Node (as defined in the MISO Tariff) of Big Rivers, if Big Rivers is required by the RTO or ISO of which Big Rivers is a member requires for that reason to operate any unit of the Coleman Generation Station for reliability, including, (i) in circumstances where the RTO or ISO of which Big Rivers is a member requires Big Rivers to take the Coleman Generation Station out of an idled status for reliability, all costs incurred in connection

with any restart and the operation of any such unit after the date of restart, and (ii) the net Cost of purchasing any replacement Electric Services following an unscheduled outage or real time de-rate of a unit of the Coleman Generation Station required to be operated for reliability purposes.

1.1.84 Surplus Sales: As defined in Section 10.1.1.

1.1.85 System Emergency: Any cessation or reduction in the provision or delivery of Electric Services by Big Rivers due in whole or in part to: (a) a disconnection of all or a portion of Big Rivers' or Kenergy's system from the transmission grid (other than as a direct result of Big Rivers' or Kenergy's gross negligence or willful misconduct), (b) a system emergency on the transmission grid, (c) the occurrence of a condition or situation where the delivery of Energy to a transmission grid with which Big Rivers is directly interconnected or the making available of electric generation services, Transmission Services or Ancillary Services that could cause (i) harm to life or limb or imminent serious threat of harm to life or limb, (ii) material damage to Big Rivers' or Kenergy's system or any material component thereof or imminent danger of material damage to property, or (iii) other dangerous occurrences that Big Rivers or Kenergy believes, in the exercise of Good Utility Practice, should be prevented or curtailed, or (d) any events similar to the foregoing that result in cessation or reduction of service under (i) the Day Ahead Market or the Real Time Market, or (ii) a Bilateral Contract.

1.1.86 System Resources: An obligation to supply Electric Services from:

- (a) Big Rivers' owned or leased electric generation facilities;
- (b) Big Rivers' contract with the Southeastern Power Administration (Contract No. 89-00-1501-637); or
- (c) Big Rivers' contractual arrangements relating to Electric Services, in effect currently or that become effective in the future, which were not entered into specifically for the purpose of serving the Hawesville Smelter.

1.1.87 Tariff: Big Rivers' Open Access Transmission Tariff or, if Big Rivers is a member of a RTO or ISO, such RTO's or ISO's open access transmission or market tariff, as filed with and approved by FERC. As of the date hereof, the MISO Tariff is the Tariff.

1.1.88 Tax Indemnity Agreement: The Tax Indemnity Agreement, dated as of the date hereof, by and between Kenergy and Century.

1.1.89 Term: As defined in Section 7.1.

1.1.90 Transaction: The transactions by and between or among one or more of Kenergy, Big Rivers, Century, any Market Participant or any Bilateral Counterparty related to the supply of Electric Services to Century under the Electric Service Agreement and the other Transaction Documents.

1.1.91 Transaction Documents: This Agreement, the Electric Service Agreement, the Direct Agreement, the Capacitor Agreement, the Protective Relays Agreement, any SSR Agreement, the Century Guarantee, the Capacitor Additions and Protective Relays Guarantee, the Tax Indemnity Agreement and any other agreements entered into on the date hereof or in the future between or among the Parties or Century relating to the Transaction.

1.1.92 Transmission Provider: A Person accepted by FERC as such in any tariff relating to Transmission Services.

1.1.93 Transmission Services: Transmission services as described in the Tariff or, if applicable, the Bilateral Tariff, as needed to support the transactions contemplated by this Agreement.

1.1.94 Uncontrollable Force: Any cause beyond the control of the Party unable, in whole or in part, to perform its obligations under this Agreement that, despite exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and that, despite the exercise of due diligence, it has been unable to overcome. Examples of events that may constitute the basis of an event that constitutes an “Uncontrollable Force” include: acts of God; strikes, slowdowns or labor disputes; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of any Governmental Authority; civil or military disturbances; explosions, breakage of or accident to machinery, equipment or transmission lines; inability of a Party to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of Governmental Authorities, civil or military (so long as the Party claiming an Uncontrollable Force has not applied for or assisted in the application for such action); transmission constraints or System Emergencies; a forced outage of a generating unit or units preventing the physical delivery of Energy to Kenergy for resale to Century; declaration of an “Uncontrollable Force” under the Electric Service Agreement or an event of force majeure under the Tariff or the Bilateral Tariff, as applicable, or any Bilateral Contract and any other forces that are not reasonably within the control of the Party claiming suspension. “Uncontrollable Forces” do not include an insufficiency of funds or decline in credit ratings or customary, expected or routine maintenance or repair of plant or equipment. Nothing contained herein shall be construed to obligate a Party to prevent or to settle a labor dispute against its will.

1.1.95 ZRC: Zonal Resource Credits as defined in the MISO Tariff, or any similar items under the Tariff.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and *vice versa*; (c) references to “Recitals,” “Articles,” “Sections,” “Exhibits” or “Schedules” are to the recitals, articles, sections, exhibits or schedules of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person’s authorized agents, permitted successors and assigns in such capacity; (e) the words

“herein,” “hereof” and “hereunder” will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits and schedules hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented, substituted, renewed or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day that is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; (o) all references to the word “or” shall not be exclusive; and (p) all references to a Governmental Authority shall include any successor to all or a portion of such Governmental Authority’s authority. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

## ARTICLE 2

### ELECTRIC SERVICES AND RATES

2.1 Service Period Obligations. In accordance with the terms and conditions of this Agreement, Big Rivers will sell and deliver, and Kenergy will purchase, Electric Services for delivery to Century under the Electric Service Agreement for a period beginning at 12:00:00 a.m. midnight on the later of (a) the day immediately following the Effective Date and (b) August 20, 2013, and continuing until 11:59:59 p.m. on December 31, 2023, unless the Parties’ respective obligations to supply and purchase Electric Services are terminated earlier pursuant to the terms and conditions of this Agreement; *provided*, that such period may be extended pursuant to Section 7.1 (the “Service Period”).

2.2 Characteristics of Service. Electric service to be supplied by Big Rivers to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement shall be nominally three-phase, sixty-cycle at 161,000 volts or as otherwise agreed to by the Parties and Century. The Parties and Century will mutually agree on limits of the regulation of voltage but at no time may such regulation of such limits be inconsistent with standards required by applicable Governmental Authorities or any other organizations that establish applicable reliability and electric operation standards.

2.3 Delivery Obligation. During the Service Period, Big Rivers will deliver, or cause to be delivered, Electric Services in accordance with the terms and conditions of this Agreement at the Delivery Point.

2.3.1 Energy. Big Rivers will use reasonable commercial efforts to acquire the Base Load and, if applicable, the Curtailable Load, for resale to Kenergy under this Agreement for resale to Century under the Electric Service Agreement to meet the Load of the Hawesville Smelter at the Delivery Point. Schedules submitted by Kenergy on behalf of Century may not exceed Base Load plus any applicable Curtailable Load and in any event not more than 482 MW. Total usage is limited to the Base Load amount if there is no Curtailable Load; *provided, however*, that if there is Curtailable Load, then usage may exceed scheduled load by up to 10 MW (supplied as imbalance Energy) but not to exceed 492 MW. Kenergy acknowledges and agrees that any such excess over 492 MW shall be charged to Kenergy at the Excess Energy Rate; *provided*, that payment of the charge under Section 4.6.9 shall not be deemed to be a waiver of the restrictions herein on Century's Load not exceeding the scheduled Load. Big Rivers will procure the Energy for resale to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement (a) under a Bilateral Contract pursuant to Section 2.4, (b) in the Day Ahead Market if scheduled in accordance with Article III, or (c) if not pursuant to clause (a) or (b), in the Real Time Market.

2.3.2 Other Electric Services. Big Rivers will obtain Electric Services other than Energy as required and directed by Kenergy, pursuant to direction from Century to Kenergy and Big Rivers under the Electric Service Agreement, with respect to the purchase of such Electric Services (a) in the applicable market of the RTO or ISO of which Big Rivers is a member, or (b) through a Bilateral Contract.

2.4 Bilateral Purchases. Upon request by Kenergy following notice from Century under the Electric Service Agreement, Big Rivers shall use reasonable commercial efforts to acquire specified Electric Services from specified Persons ("Bilateral Counterparties") for resale hereunder to Kenergy for delivery to Century under the Electric Service Agreement. Kenergy must specify in any such request (i) the identity of the Bilateral Counterparty, (ii) the requested amount and duration of such Electric Services, and (iii) desired pricing and other material terms and conditions.

2.4.1 Big Rivers' obligation to enter into any Bilateral Contract will be conditioned upon (a) Big Rivers' prior receipt of a written notification from Century to Kenergy and Big Rivers setting forth Century's consent to the execution, delivery and performance of such Bilateral Contract, and (b) Big Rivers' satisfaction in its sole discretion, only as to financial security arrangements and the elimination of risk to Big Rivers associated with the Bilateral Contract and the arrangements with the Bilateral Counterparty. For the avoidance of doubt, any Bilateral Contract must, among other things, (a) provide for delivery to Kenergy at the Delivery Point, (b) contain provisions to the effect of Sections 2.7 and 5.5 with respect to the Bilateral Counterparty, (c) not require Kenergy to purchase Electric Services from a Person other than Big Rivers, except during periods when Kenergy is the Market Participant, and (d) not result in Big Rivers paying the Bilateral Counterparty prior to the time Big Rivers is paid under this Agreement for any related amounts due.

2.4.2 Promptly following request by Century to Kenergy and Big Rivers pursuant to Section 2.4.1, Big Rivers shall arrange or have arranged all Transmission

Services and Ancillary Services necessary to transmit the Energy Big Rivers obtains under a Bilateral Contract to the Delivery Point. The amount of Energy transmitted from the source to the Delivery Point shall be adjusted to reflect the application of any system loss factor unless otherwise addressed in the terms and conditions of the applicable Bilateral Contract.

2.4.3 The provisions herein relating to Surplus Sales shall apply if Century is unable to receive and consume any Electric Services, or Big Rivers is unable to deliver such Electric Services purchased by Big Rivers under a Bilateral Contract for resale to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement because of an Uncontrollable Force.

2.5 [Reserved.]

2.6 Title and Risk of Loss. Title to and risk of loss with respect to all Electric Services provided by Big Rivers to Kenergy under this Agreement for delivery to Century pursuant to the Electric Service Agreement will pass from Big Rivers to and rest in Kenergy when the same is made available by Big Rivers at the Delivery Point. Until title passes, Big Rivers will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby. After title passes to Century, Big Rivers acknowledges and agrees that Kenergy will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby.

2.7 Performance by the Parties. Each Party acknowledges and agrees that, to the extent a Person has a corresponding or related obligation to the other Party under a Transaction Document, such other Party's performance of an obligation with respect to such matter under this Agreement or any other Transaction Document is subject to and conditioned upon such Person's performance of such corresponding or related obligation to such other Party. Subject only to performance by a Person with an obligation to such other Party of its obligations to such other Party, such other Party shall perform its obligations under this Agreement and the other Transaction Documents to which it is a party. Each Party acknowledges and agrees that such Person with an obligation to the other Party may enforce an obligation of such Party under this Agreement or any other Transaction Document that corresponds or relates to the obligation of the first Party to such Person. For example, with respect to a purchase of Energy under a Bilateral Contract, Big Rivers shall be obligated to deliver to Kenergy only those amounts of Energy received by Big Rivers, net of applicable losses of Energy. Big Rivers will not be in default under any provision of this Agreement nor will it have any liability to Century or Kenergy if the non-delivery of Energy to be purchased by Kenergy hereunder sourced under a Bilateral Contract is due to a failure by the Bilateral Counterparty to deliver the full amount of such Energy required under the Bilateral Contract; *provided*, that Big Rivers has assigned to Kenergy the rights and remedies of Big Rivers against the Bilateral Counterparty under such agreement, for Kenergy's assignment of such rights and remedies to Century pursuant to the Electric Service Agreement.

## ARTICLE 3

### MARKET PARTICIPATION AND SCHEDULING

#### 3.1 Market Participant.

3.1.1 Big Rivers shall act as the initial Market Participant with respect to the Electric Service Agreement in connection with the Transaction and, pursuant to this Agreement, shall use reasonable commercial efforts to arrange and procure the Electric Services required by Kenergy for delivery to Century under the Electric Service Agreement.

3.1.2 Big Rivers acknowledges and agrees that, subject to Section 18.8, Kenergy may elect to become the Market Participant, subject to Century's consent and approval.

3.1.3 Big Rivers acknowledges and agrees that, subject to Section 18.8, at any time during the Service Period, Century may appoint a Person to be the Market Participant under the Electric Services Agreement, subject to Kenergy's consent and approval, which shall not be unreasonably withheld or delayed. Big Rivers further acknowledges that Century shall give Kenergy and Big Rivers not less than 120 days' prior written notice of the appointment of such Person to be the new Market Participant. Kenergy shall be responsible for any Costs to Big Rivers resulting from Big Rivers no longer being the Market Participant with respect to the Electric Services Agreement. Big Rivers shall transfer ownership of the Hawesville Node to the new Market Participant.

3.1.4 Big Rivers further acknowledges and agrees that, for the avoidance of doubt, a Person acting as the Market Participant shall remain in that capacity, notwithstanding any election under Section 3.1.2 of the Electric Service Agreement or appointment under Section 3.1.3 of the Electric Service Agreement of a different Person as a Market Participant, until the consent and approval required from the applicable Party under Section 3.1 of the Electric Service Agreement is obtained.

3.1.5 Kenergy acknowledges and agrees that Big Rivers shall have no liability under this Agreement or otherwise in connection with or arising out of the absence of any Person acting as the Market Participant during any period in which a Person previously acting as the Market Participant ceases to act in that capacity and another Person is not yet acting in that capacity in accordance with Section 3.1 of the Electric Service Agreement.

3.2 Base Load. The Base Load may be modified only as provided in Section 1.1.10.

#### 3.3 Scheduling.

3.3.1 Kenergy or its designee shall provide or cause to be provided a schedule, on an Hourly basis, of all required Electric Services to Big Rivers or its designee; *provided*, that commencing on the day following the Effective Date, Big Rivers will schedule the Base Load and, if applicable, the Curtailable Load as the Hourly Load of

Century in the Day Ahead Market unless Kenergy provides or causes to be provided notice to Big Rivers of an alternative schedule not later than 8:00 a.m. on the Business Day prior to the day of delivery.

3.3.2 Kenergy promptly, and no later than sixty (60) minutes prior to any applicable deadline under any applicable RTO or ISO scheduling guidelines, shall notify Big Rivers or cause Big Rivers to be notified of any revisions to Century's schedule by providing Big Rivers with a revised schedule in compliance with the other terms and conditions of this Agreement, and Big Rivers shall submit such revised schedule to the applicable RTO or ISO within such scheduling guidelines.

3.4 Transmission Rights. Kenergy or its designee shall have the right to direct Big Rivers or cause Big Rivers to be directed to request, schedule or sell the Century Transmission Rights in such time and amounts specified at least three Business Days prior to the applicable deadline. Kenergy, for the benefit of Century, shall be entitled to the Net ARR/FTR Proceeds of the sale of any Century Transmission Rights in the form of a credit to amounts otherwise owing from Big Rivers to MISO in respect of Electric Services purchased by Kenergy under this Agreement for delivery to Century under the Electric Service Agreement.

### 3.5 Transition to Another RTO or ISO.

3.5.1 This Agreement and the other Transaction Documents have been drafted by the Parties and Century under the presumption that, during the Service Period, the Hawesville Node is located in MISO and Big Rivers is a member of MISO. Kenergy or Big Rivers may, each in its sole discretion, elect to join or become a member of a RTO or ISO other than MISO or elect to withdraw as a member of MISO and not be a member of any RTO or ISO. In such circumstances, the Parties and Century agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

3.5.2 The Parties acknowledge and agree that Hawesville Node may remain in MISO if (a) requested by Century, (b) permitted by both the new RTO or ISO and MISO, (c) Century is responsible for any Costs resulting from the Hawesville Node remaining in MISO, and (d) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO. In such case, any terms used herein that relate to the RTO or ISO of which Big Rivers is a member or its tariff shall be deemed amended, as applicable, to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

3.5.3 Each Party acknowledges and agrees that if at any time the Hawesville Node is no longer part of any RTO or ISO, then the Electric Services provided hereunder shall be provided exclusively pursuant to Section 2.4, which shall include arrangements for imbalance Energy.

### 3.6 Forecasts.

3.6.1 Kenergy shall provide, or cause to be provided, to Big Rivers a forecast of Century's Load at the Hawesville Node in accordance with the requirements of (a) Module E (Resource Adequacy) of the MISO Tariff, so long as the Hawesville Node is located in MISO, or (b) the resource adequacy provisions of the tariff of the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located, in each case, at least five Business Days prior to the deadline therefor set forth in the applicable tariff. This forecast currently includes a peak forecast for Century's Load at the Hawesville Node for the succeeding 36 months, or for such other term as reasonably requested by Big Rivers or as required by the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located, the RTO or ISO of which Big Rivers is a member or the Tariff.

3.6.2 Kenergy shall respond on or prior to the fifth Business Day to any requests made by Big Rivers to Kenergy for data, forecasts, projections or other information necessary or reasonably appropriate for Big Rivers to comply with requests or requirements of the RTO or ISO, or Transmission Provider for the service area, in which the Hawesville Node is located, the RTO or ISO of which Big Rivers is a member, other Governmental Authorities or the Tariff. The obligations of Kenergy under this Section shall survive termination of this Agreement.

## ARTICLE 4

### CHARGES AND CREDITS

4.1 Monthly Charge. Kenergy shall pay Big Rivers the following (the "Monthly Charge") for the Electric Services provided or made available under this Agreement and for other amounts owing to Big Rivers under this Agreement, without duplication, including:

- 4.1.1 Applicable RTO Charges calculated pursuant to Section 4.2;
- 4.1.2 *plus* the Bilateral Charges calculated pursuant to Section 4.3;
- 4.1.3 *plus* the Excess Reactive Demand Charge calculated pursuant to Section 4.4;
- 4.1.4 *plus* other amounts calculated pursuant to Section 4.5; and
- 4.1.5 *plus* taxes calculated pursuant to Section 4.6.

4.2 Applicable RTO Charges. Charges and credits invoiced to Big Rivers by the applicable RTO or ISO on a pass-through basis for all Electric Services purchased by Kenergy at the Hawesville Node hereunder, other than Electric Services purchased by Big Rivers under a Bilateral Contract, and any other RTO or ISO charges payable by Big Rivers for the benefit of Century under the Electric Service Agreement (the "Applicable RTO Charges"), whenever invoiced, including:

4.2.1 All activity listed on the settlement statement of the applicable RTO or ISO attributed by such RTO or ISO to the Hawesville Node, including SSR Costs relating to the Hawesville Node;

4.2.2 All activity for Transmission Services attributed by the applicable RTO or ISO to the Hawesville Node, including, if applicable, activity during the portion of a month during the Service Period;

4.2.3 All activity relating to the planning year (or other applicable period) of the applicable RTO or ISO that is attributed by such RTO or ISO to the Hawesville Node, including planning activity relating to ZRCs, ARR and FTRs;

4.2.4 Costs relating to RTO Transmission Upgrades attributed by such RTO or ISO to the Hawesville Node that otherwise relate to Century's operation of the Hawesville Smelter; and

4.2.5 Any credit for Net ARR/FTR Proceeds resulting from the sale of the Century Transmission Rights.

4.3 Bilateral Charges. Any charges to Big Rivers under a Bilateral Contract with respect to Electric Services or other Costs for the benefit of Kenergy with respect to Century, including any and all separate charges for transaction fees (including broker fees), Transmission Services, Ancillary Services and related services, whenever incurred (including financial transmission rights, transmission congestion charges and similar Costs or expenses) (collectively, "Bilateral Charges").

4.4 Excess Reactive Demand Charge. For any Billing Month, the "Excess Reactive Demand Charge", if any, shall be the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, between:

4.4.1 the maximum metered reactive demand of Century during the Billing Month, and

4.4.2 an amount of kilovars equal to the sum of:

(a) the product of (A) 0.3287, and (B) the maximum hourly demand during a Billing Month, denominated in kW, associated with Energy provided by Kenergy for resale to Century, and

(b) 74,005.

4.5 Other Amounts. For any Billing Month:

4.5.1 Costs arising from any tax liability of Big Rivers resulting from Surplus Sales.

4.5.2 Costs arising under Section 10.2 relating to compliance with Applicable Laws relating to the environment.

4.5.3 Costs arising under Section 10.3 relating to compliance with Hedging Arrangements.

4.5.4 Costs arising from a requirement to pay invoices from the applicable RTO or ISO on a frequency greater than the periodicity set forth in Section 5.1.

4.5.5 Costs arising under Section 3.1.3 relating to the appointment of a new Market Participant.

4.5.6 Charges for any other services required to be purchased by Big Rivers to provide the services hereunder to Kenergy for the benefit of Century, including any energy advisory services for scheduling, awards and settlements (including such services provided by ACES (formerly ACES Power Marketing)).

4.5.7 Costs associated with the Hawesville Node exiting an RTO or ISO in connection with an election made by Big Rivers or Century pursuant to Section 3.5.2.

4.5.8 The Excess Energy Rate multiplied by the amount of Energy in excess of 492 MW in any Hour.

4.5.9 The cost of one-quarter (0.25) full-time-equivalent employee of Big Rivers, to assist in the administration of Big Rivers' duties under this Agreement and the other Transaction Documents.

4.5.10 Other out-of-pocket Costs payable by Big Rivers to another Person that are incurred or committed to by Big Rivers in connection with or arising out of the Transaction, including (a) Indemnified Liabilities, (b) any security necessary to be provided to any Person (including the RTO or ISO of which Big Rivers is a member or a Bilateral Counterparty) arising out of the Transaction, and (c) the Costs to pursue any approval or consent under Section 7.2.2; *provided*, that Costs referenced on Exhibit A shall be allocated as provided therein; *provided, further*, that Big Rivers shall not voluntarily enter into any contractual commitment for Costs referred to in this Section for any period in excess of one (1) year without the consent of Century.

4.6 Taxes. No state or local sales, excise, gross receipts or other taxes are included in the charges and credits set forth in this Article 4. Kenergy shall pay or cause to be paid any such taxes that are now or hereafter become applicable to the resale of Electric Services to Kenergy under this Agreement for delivery to Century under the Electric Service Agreement.

4.7 No Duplication. Subject to the provisions of Section 5.4, the Monthly Charge shall not include any item that would result in a duplicative payment for a particular charge if Big Rivers would not be liable for the duplicative amount.

## ARTICLE 5

### BILLING

5.1 Market Invoices. Big Rivers shall bill Kenergy, on or before the third Business Day following receipt by Big Rivers of an invoice from the applicable RTO or ISO for any amounts invoiced with respect to service to Big Rivers on behalf of Kenergy for the benefit of Century plus any other amounts then due and owing for any portion of the Electric Services or other amounts payable by Kenergy with respect to the applicable RTO or ISO. Kenergy shall pay or cause to be paid to Big Rivers such amounts in immediately available funds to an account designated by Big Rivers or its designee on the second Business Day following Kenergy's receipt of the bill under this Section. For the convenience of the Parties, and to facilitate Kenergy's obligations to Big Rivers, Kenergy has assigned its right to receive any payments from Century pursuant to Section 5.1 of the Electric Service Agreement and Kenergy's rights to collect and enforce the collection of such amounts due from Century pursuant to the Lockbox Agreement.

5.2 Monthly Invoices for other Amounts. Big Rivers shall bill Kenergy on or before the fifteenth (15th) Business Day of each month for the Monthly Charge (other than the charges billed pursuant to Section 5.1) as calculated pursuant to Article 4 plus any other amounts then due and owing pursuant to this Agreement or any other Transaction Document. Kenergy shall pay or cause to be paid to Big Rivers such portion of the Monthly Charge and any other amounts due and owing to Kenergy in immediately available funds to an account designated in the Lockbox Agreement on the Business Day following the 24th day of the month following the Billing Month or such earlier date of such month on which the Members' payment to Big Rivers is due.

5.3 Default Interest. If any invoice rendered by Big Rivers is not paid on the due date, interest will accrue and become payable by Kenergy to Big Rivers on all unpaid amounts at a rate of one percent over the Prime Rate commencing on the first day after the due date and accruing on each day thereafter until the date such amount is paid; *provided*, that if interest in respect of any such unpaid amount accrues interest at a different rate to another Person, the applicable default interest rate shall be such different rate payable to the Person to which such unpaid amounts are owed.

5.4 Payments Under Protest. If any portion of any statement is disputed by Kenergy or Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Big Rivers shall promptly cause to be refunded to Kenergy (or to Century on behalf of Kenergy, as applicable) the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made; *provided*, that, if applicable, interest payable with respect to any amounts refunded to Big Rivers shall be based on the interest paid to Big Rivers, if any, by the payor on a pass-through basis. If the amount to be refunded to Kenergy relates to amounts paid to a Person (other than Big Rivers), then Big Rivers will refund such amounts promptly upon receipt of the refund of such amount.

5.5 Release and Indemnification.

5.5.1 Big Rivers (a) shall release Kenergy from any and all claims Big Rivers may have against Kenergy for the failure of Century to satisfy its obligations under the Electric Service Agreement, and (b) shall indemnify, hold harmless and defend Kenergy from and against any and all claims Century may assert against Kenergy in connection with any failure by Century to perform under the Electric Service Agreement, if Kenergy elects to assign its rights in connection therewith pursuant to Section 5.5.2.

5.5.2 If Century shall default under the Electric Service Agreement, Kenergy may deliver to Big Rivers (a) a power-of-attorney with full power of substitution that shall designate Big Rivers or its designee as Kenergy's attorney-in-fact (that shall be coupled with an interest and irrevocable) for purposes of negotiating and prosecuting any and all claims Kenergy may have against Century for a failure of Century to satisfy its obligations under the Electric Service Agreement and to file or prosecute any claim, litigation, suit or proceeding before any Governmental Authority in the name of Kenergy or in its own name, or take such other action otherwise deemed appropriate by Big Rivers for the purposes of obtaining legal or equitable relief as a result of the failure of Century to satisfy its obligations under the Electric Service Agreement and to compromise, settle, or adjust any suit, action or proceeding related to the failure of Century to satisfy such obligations and to give such discharges or releases as Big Rivers may deem appropriate, and (b) an assignment conveying to Big Rivers all of Kenergy's right, title and interest in and to any legal, equitable or other relief, including the recovery of damages and the grant of injunctive relief or other remedies to which Kenergy may be entitled with respect to the failure of Century to satisfy its obligations under the Electric Service Agreement. The power-of-attorney and the assignment shall be in form and substance reasonably satisfactory to Big Rivers and shall be legally effective and enforceable under Kentucky or other Applicable Law.

5.6 No Waiver. No payment made by Kenergy (or Century on Kenergy's behalf) pursuant to this Article 5 will constitute a waiver of any right of Kenergy (or Century) to contest the correctness of any charge or credit.

ARTICLE 6

EFFECTIVE DATE AND CONDITIONS

6.1 Effective Date. The obligations of the Parties under Article 2, Article 3, Article 4, Article 5, Section 7.3, Article 8, Article 9, Article 10, Article 11, Article 12, Article 14, and Article 15 shall not commence until the Effective Date. The "Effective Date" will occur on the first date each of the conditions set forth in Section 6.2 has been satisfied in full or waived in writing by the Party in whose favor such condition exists (to the extent one or more conditions is subject to being waived).

6.2 Conditions to Occurrence of Effective Date. Subject to Subsection 6.2.8, the following shall be conditions to the occurrence of the Effective Date:

6.2.1 The meters at the substation of the Coleman Generation Station shall be a Commercial Pricing Node (as defined in the MISO Tariff).

6.2.2 Each of the representations and warranties of the Parties contained in this Agreement and the representations and warranties of Kenergy and Century in the Electric Service Agreement will be true and correct as of the date hereof and the Effective Date (as though such representations and warranties were made at and as of the date hereof and the Effective Date), and each of the Parties shall have received a certificate to such effect from the other Party with respect to the other Party's representations and warranties in this Agreement and Big Rivers shall have received a certificate to such effect from Kenergy and Century in respect of their respective representations and warranties in the Electric Service Agreement.

6.2.3 Each of the documents and agreements set forth in Schedule 6.2.3 will have been duly authorized, executed and delivered by the parties thereto, and all conditions precedent to the effectiveness of such agreements will have been satisfied or waived, and shall, if amended after the date hereof and prior to the Effective Date, be acceptable in form and substance to the Parties.

6.2.4 The Century Guarantee and the Capacitor Additions and Protective Relays Guarantee will have been duly authorized, executed and delivered by Century Parent and be in full force and effect.

6.2.5 Any credit support required to be provided by Century on the Effective Date pursuant to Section 14.3, the Direct Agreement or the Electric Service Agreement shall have been provided.

6.2.6 Except as specified in Subsection 6.2.8, no authorization or approval or other action by, and no notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, will be necessary prior to the commencement of the Service Period for the execution, delivery and performance by the Parties to each Transaction Document to which it is a party, other than (i) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and which are routine in nature or which cannot be obtained, or are not normally applied for, prior to the time they are required and which the Party who is required to obtain such item has no reason to believe will not be timely obtained and in each case which do not prevent provision of Electric Services as described herein, and (ii) with respect to the approval of any Governmental Authority, on the Effective Date, such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; *provided*, that Kenergy acknowledges and agrees that Big Rivers may in its sole discretion discontinue the provision of Electric Services hereunder if any such approvals required by clause (ii) of this Section are overturned or otherwise disapproved by the applicable Governmental Authority subsequent to the Effective Date.

6.2.7 The consent of RUS, each of Kenergy's secured creditors and each of Big Rivers' secured creditors to the Transaction and to all arrangements and agreements contemplated in connection therewith will have been duly issued and received and will be in full force and effect; all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date.

6.2.8 Each authorization, approval, action, notice, registration, license, permit, agreement, consent, filing or declaration with MISO, NERC, SERC or any other Governmental Authority regarding (a) the installation, ownership or operation and maintenance of the Capacitor Additions or the Protective Relays, and (b) an obligation of Big Rivers to operate and maintain, dispatch or make available the Coleman Generation Station and the recovery by Big Rivers of all SSR Costs, shall be satisfactory to each of Kenergy, Big Rivers and Century, each in its sole discretion, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date; *provided*, that neither (i) the failure of the FERC to issue an order approving a SSR Agreement or proposed SSR Agreement, nor (ii) the failure of SERC or MISO to provide any necessary approval of the effectuation of the arrangements contemplated by the Protective Relay Agreement, shall delay the Effective Date.

6.3 Efforts to Satisfy Conditions to Effective Date. Each of the Parties shall use reasonable commercial efforts and act in good faith to satisfy all of the conditions set forth in Section 6.2 at the earliest practicable date (other than those that the applicable Party agrees to waive). At such time as Kenergy or Big Rivers believes such conditions have been satisfied, such Party shall notify the other Party in writing. The obligations of the Parties under this Section 6.3 will continue until the earlier of (a) such time as this Agreement terminates pursuant to Section 7.2, and (b) the Effective Date.

## ARTICLE 7

### TERM AND TERMINATION

7.1 Term. Subject to Section 6.1, this Agreement will become binding on the Parties on the date of execution and delivery by the Parties and will remain in full force and effect until 11:59:59 p.m. on December 31, 2023, unless earlier terminated pursuant to the terms and conditions hereof (the "Term"). The Term will be automatically extended for additional one year periods on each December 31<sup>st</sup> thereafter until a Party gives at least one year's prior notice to the other Party and Century of its election for the Agreement to expire at 11:59:59 on a specified December 31.

7.2 Termination Prior to Effective Date. This Agreement may be terminated without cost or penalty prior to the occurrence of the Effective Date in accordance with this Section 7.2.

7.2.1 Termination for Failure to Satisfy Conditions to Effective Date. Either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party upon the failure of the conditions in Section 6.2 to be satisfied in full or waived by the Person in whose favor the condition exists on or before 11:59:59 p.m. on August 19, 2013.

7.2.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approvals for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Century no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.2.3 Termination Pursuant to a Century Termination. Either party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party following termination of the Electric Service Agreement pursuant to and in accordance with Section 7.2 of the Electric Service Agreement.

7.3 Termination After the Effective Date. This Agreement may be terminated after the occurrence of the Effective Date in accordance with this Section 7.3.

7.3.1 Termination for Event of Default. This Agreement may be terminated following the occurrence and during the continuation of an Event of Default pursuant to Article 15.

7.3.2 Termination Based on Governmental Action. If any Governmental Authority issues an order, finding, decision or takes other action with respect to any necessary approval for the Transaction that disapproves or changes material terms of this Agreement or the Transaction Documents or overturns or vacates any such approval, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Century no later than three Business Days following the date on which appeals, challenges, requests for rehearing or similar requests have been denied and such order, finding, decision or action becomes final and non-appealable. Prior to such time, each Party shall use reasonable commercial efforts to obtain all necessary approvals, including exhausting all appeals, challenges, request for rehearing or similar events that may be available to such Party.

7.3.3 Termination for Market Participant. Subject to Section 18.8, this Agreement shall terminate upon Big Rivers no longer acting as the Market Participant with respect to the Electric Services Agreement.

7.4 Automatic Termination. Notwithstanding Sections 7.2 and 7.3, this Agreement shall terminate automatically when the Electric Service Agreement terminates if Century terminates the Electric Service Agreement pursuant to and in accordance with Article 7 thereof.

7.5 Effect of Termination. Subject to Section 18.8, neither Party will have any obligations to the other Party following termination hereof, other than obligations of the Parties under such Transaction Documents which survive termination.

## ARTICLE 8

### METERING

8.1 Metering Facilities. Big Rivers will provide or cause to be provided metering facilities at the Delivery Point that measure Hourly kW, kWh, kilovars, kilovar-hours and voltage-hours.

8.2 Reading. Big Rivers will read or cause to be read the meters at the Delivery Point on the last date of each month (or such other date as may be agreed upon by the Parties).

8.3 Testing. Big Rivers will test, or cause to be tested, the calibration of the meters at the Delivery Point by comparison of accurate standards at least once every twelve months (or more often if so required by Applicable Law) and will give Kenergy and Century not less than five Business Days' prior notice of such testing. Kenergy and Century will have the right to observe and participate in all meter tests. Meters registering not more than plus or minus 1% inaccurate will be deemed to be accurate (unless Applicable Law establishes a standard more stringent than 1%, in which case, the more stringent standard will apply). The reading of any meter that will have been disclosed by tests to be inaccurate will be corrected for the 60 days before such tests (or for such shorter period if applicable) in accordance with the percentage of inaccuracy found by such tests. If any meter should fail to register for any period, the Parties and Century will make mutually agreed upon estimates for such period from the best information available. If Kenergy or Century requests a special meter test, Big Rivers shall cause such test to be conducted; *provided, however*, that if any special meter test made at the request of Century or Kenergy discloses that the meters are not more than plus or minus 1% inaccurate, Kenergy or Century, as applicable, shall reimburse Big Rivers for the reasonable Cost of such test. In all other respects, meters through which Big Rivers delivers Energy to Kenergy for resale to Century under the Electric Service Agreement shall be installed, operated, maintained and tested in accordance with all Applicable Law and Good Utility Practice.

## ARTICLE 9

### OPERATIONAL MATTERS

9.1 Operations and Operational Responsibility. In carrying out the requirements of this Agreement, each Party will comply with the reliability criteria, standards, guidelines and operating procedures of a FERC-approved ERO, SERC, Applicable Law and any applicable RTO, and neither Party will be required to take any action in violation of any thereof.

9.1.1 Big Rivers will operate and maintain or cause to be operated and maintained any facilities owned by it on the premises of Kenergy or Century.

9.1.2 Kenergy will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it.

9.2 Installation and Maintenance of Interconnection Equipment. Big Rivers has caused to be furnished and installed, or shall cause to be furnished or installed, all of the facilities required for the delivery of Energy to the Delivery Point, as well as the 161 kilovolt transmission

lines required between the Delivery Point and the Century Substation. Big Rivers shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment but excluding the Capacitor Additions and the Protective Relays, necessary to enable Kenergy to deliver Energy to Century at the Delivery Point. Big Rivers will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Good Utility Practice, to the extent necessary to assure sufficient capability to take and use the Electric Services to be delivered by Big Rivers to Kenergy hereunder for resale to Century under the Electric Service Agreement.

9.3 [Reserved.]

9.4 Curtailment by Big Rivers. If Big Rivers determines in accordance with Good Utility Practice, or in compliance with any FERC-approved ERO, SERC, Applicable Law and other regulation, any applicable RTO or ISO, Reliability Coordinator or other applicable operating criteria or rules, that a System Emergency has occurred or is imminent, and after suspending or reducing deliveries to Persons purchasing interruptible Energy from Big Rivers, Big Rivers may suspend or reduce the delivery of Energy hereunder and may cease to make available in whole or in part the Electric Services, in each case to the extent caused by, or that Big Rivers determines necessary or prudent under the circumstances to prevent or attempt to prevent, or counter or reduce the effects of, such System Emergency. Any curtailment caused by a System Emergency (or for any other reason) that cannot be avoided after the suspension or reduction of deliveries to Persons purchasing interruptible Energy from Big Rivers will be effected in a non-discriminatory manner consistent with the Tariff. Big Rivers shall notify Kenergy and Century as to the occurrence or threatened occurrence of any System Emergency or other event that may require curtailment, its cause and its impact on the provision of Electric Services under this Agreement, as soon as practicable. Big Rivers will not be obligated to supply Electric Services to Kenergy hereunder for resale to Century under the Electric Service Agreement to the extent suspended or curtailed as a result of the System Emergency.

9.5 Ownership and Removal of Equipment. Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed, by either of the Parties hereto (or by Century) on or in the premises of the other Party (or Century) to deliver or receive service under this Agreement shall be and remain the property of the Party (or Century) owning and installing such equipment, apparatus, devices or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement or any extension thereof, the owner (including, if applicable, Century) of any equipment, apparatus, devices or facilities on the property of a Party shall have the right to enter upon the premises of that Party, and shall, within a reasonable time and at the sole expense of the owner, remove such equipment, apparatus, devices or facilities.

9.6 Right of Access. Big Rivers acknowledges that pursuant to the Electric Service Agreement, Century grants the duly authorized agents and employees of Kenergy and Big Rivers the right to reasonable access to the premises of Century to the extent reasonably required for the purposes of installing, repairing, inspecting, testing, renewing or exchanging any or all of its equipment located on the premises of Century, for reading or testing meters, or for performing

any other work incident to the performance of this Agreement. Kenergy or Big Rivers shall make reasonable advance arrangements before entering the premises of Century.

9.6.1 Kenergy shall direct Century to use reasonable commercial efforts to properly protect the property of Kenergy or Big Rivers, located on the premises of Century, and to permit no Person to inspect or adjust the wiring and apparatus of Kenergy or Big Rivers except with Kenergy's or Big Rivers' consent, as applicable. Neither Party assumes the duty or responsibility of inspecting the wiring or apparatus of the other Party.

9.6.2 Kenergy hereby grants to Big Rivers Kenergy's rights from Century for a license to enter the Century Substation and upon Century's easements and rights-of-way to accomplish the purposes of this Agreement, provided that reasonable advance arrangements appropriate under the circumstances are made.

## ARTICLE 10

### COVENANTS

#### 10.1 Surplus Sales.

10.1.1 Big Rivers acknowledges and agrees that Century may request that Kenergy direct Big Rivers to sell (a) any Electric Services that Century is committed to purchase, or (b) Century Transmission Rights, in each case, that are surplus to Century's requirements by delivering prior written notice to Kenergy and Big Rivers identifying the Electric Services to be sold and the associated times and duration of the requested sales ("Surplus Sales"). The Net Proceeds of any Surplus Sales will be credited by Big Rivers against the related item in the Monthly Charges. Kenergy acknowledges and agrees that Big Rivers shall have no liability to any Person in connection with or arising out of Big Rivers' failure to make, manner of making or other handling or execution of a direction to execute Surplus Sales; *provided*, that Big Rivers has used commercially reasonable efforts with respect to such Surplus Sales in accordance with Kenergy's direction pursuant to this Section.

10.1.2 Any request to Big Rivers pursuant to this Section 10.1 or Section 10.1 of the Electric Service Agreement shall be irrevocable following the Big Rivers' entry into contractual obligations relating to any such Surplus Sales.

10.1.3 For the avoidance of doubt, nothing in this Section 10.1 shall relieve Kenergy of its obligation for any portion of the Monthly Charge pursuant to Article 4.

10.2 Compliance with Environmental Laws. Kenergy shall be responsible for Costs related to Century's operation, incurred by Big Rivers to comply with (i) state or federal renewable energy portfolio or similar standards or (ii) Applicable Laws relating to the environment. For avoidance of doubt, such Costs of Big Rivers to comply with environmental laws and regulation would not include compliance costs at Big Rivers' generation facilities, including Coleman Generation Station (other than SSR Costs). Big Rivers acknowledges that pursuant to the Electric Service Agreement, to the extent permitted by Applicable Law, Century

may self-comply with the provisions of this Section by purchasing its proportionate share of renewable energy.

10.3 Compliance with Applicable Laws Relating to Hedging Arrangements. Kenergy shall be responsible for Costs related to Century's operation incurred by Big Rivers to comply with Applicable Laws relating to sales pursuant to this Article, including Hedging Arrangements and the Dodd–Frank Act and any rules and regulations of any Governmental Authority, applicable to any Hedging Arrangements entered into by Big Rivers or any other Person in connection with Big Rivers' provision of Electric Services to Kenergy hereunder for resale to Century under the Electric Service Agreement;

10.4 Electric Service Agreement. Kenergy covenants that:

10.4.1 It will at all times fully perform and discharge all of its obligations under the Electric Service Agreement;

10.4.2 It will not resell any Electric Services purchased from Big Rivers under this Agreement, except as expressly permitted in this Agreement and the Electric Service Agreement or with the prior written consent of Big Rivers, in Big Rivers' sole discretion and it shall require that any Energy that Kenergy purchases from Big Rivers under this Agreement and resells to Century under the Electric Service Agreement must be consumed by Century in connection with its operation of the Hawesville Smelter;

10.4.3 It will not take any action or support any action by other Persons that in any manner would impede Kenergy's ability to fulfill its obligations to Big Rivers under this Agreement nor will it amend or modify the Electric Service Agreement, including with respect to (i) the rates, terms and conditions for service; (ii) Century's payment obligations; or (iii) the term of the Electric Service Agreement, in each case without the prior written consent of Big Rivers;

10.4.4 It will not waive compliance by Century with any of its obligations under the Electric Service Agreement, fail to fully enforce the Electric Service Agreement against Century, or act in any manner that would adversely affect Kenergy's ability to fulfill its obligations under this Agreement;

10.4.5 It will provide to Big Rivers all notices of default received or sent by Kenergy pursuant to the Electric Service Agreement;

10.4.6 It will not terminate the Electric Service Agreement if the termination would be a breach by Kenergy thereof (including rejection of the agreement in a bankruptcy or reorganization proceeding);

10.4.7 It will not terminate the Electric Service Agreement for breach by Century without providing Big Rivers notice of such Century breach and a reasonable opportunity for Big Rivers to cure such Century breach, if it should elect, in its sole discretion, to do so. Big Rivers' opportunity to cure will extend, at a minimum, for a period of not less than ten (10) Business Days after the later of (i) the applicable period of time available

for a cure by Century under the Electric Service Agreement, or (ii) notice of the breach by Century is delivered by Kenergy to Big Rivers; and

10.4.8 It will not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Electric Service Agreement to any Person without (i) subject to Section 17.4, first obtaining the written consent of Big Rivers, which consent shall not be unreasonably withheld or delayed, and (ii) causing the transferee of the Electric Service Agreement to assume and agree to perform all of Kenergy's obligations under this Agreement which arise following that assignment or transfer.

## ARTICLE 11

### UNCONTROLLABLE FORCES

11.1 Occurrence of an Uncontrollable Force. No Party will be considered to be in breach or default in the performance of any of its obligations under this Agreement if the failure of performance is due to an Uncontrollable Force, except as otherwise provided in this Article. If either Party is unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties, to the extent that they are affected by such Uncontrollable Force, will be suspended during the continuance of any inability so caused, but for no longer period. A Party will not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful acts or omissions.

11.2 Mitigation. A Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability as promptly as reasonably possible. Nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

11.3 Notice of Uncontrollable Force. A Party shall notify the other Party at the earliest practicable time following (i) the occurrence of any Uncontrollable Force that renders such Party incapable of performing hereunder or (ii) the time at which such Party has reason to expect that such an Uncontrollable Force is imminent. Kenergy also shall notify Big Rivers if it receives notice from Century that Century anticipates that it will be unable to perform its obligations to Kenergy under any contract or agreement that affects Kenergy's performance under this Agreement due to an Uncontrollable Force and Big Rivers is not an additional addressee of such notice.

11.4 Payment Obligations. Notwithstanding anything in this Agreement to the contrary, the occurrence of an Uncontrollable Force shall not relieve Kenergy of its payment obligations under Article 4, including its payment obligations with respect to any portion of the Monthly Charge. KENERGY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF SECTION 10.1 (SURPLUS SALES) SHALL CONSTITUTE KENERGY'S SOLE AND EXCLUSIVE REMEDIES IF CENTURY IS UNABLE TO RECEIVE ENERGY INCLUDING IF THAT INABILITY IS CAUSED BY AN UNCONTROLLABLE FORCE.

## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Kenergy. Kenergy hereby represents and warrants to Big Rivers as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.1.1 Kenergy is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligation hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the Term hereof.

12.1.2 The execution, delivery and performance of this Agreement by Kenergy have been duly and effectively authorized by all requisite corporate action.

12.1.3 This Agreement and the other Transaction Documents to which it is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Kenergy in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.1.4 The execution and delivery of this Agreement by Kenergy and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Kenergy or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Kenergy is a party or by which it, or its property, is bound.

12.1.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Kenergy is subject is required for the due execution, delivery or performance by it of this Agreement and the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Kenergy has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Kenergy that have not been satisfied or irrevocably waived.

12.1.6 There is no pending or, to Kenergy's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Kenergy to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.1.7 Kenergy is not aware of Costs to comply with Section 10.2 as of the Effective Date.

12.2 Representations and Warranties of Big Rivers. Big Rivers hereby represents and warrants to Kenergy as follows as of the date of the execution and delivery of this Agreement and as of the Effective Date:

12.2.1 Big Rivers is an electric generation and transmission cooperative duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and under any other Transaction Documents to which it is a party, and to carry on its business as it is now being conducted and as it is contemplated hereunder and thereunder to be conducted during the Term hereof.

12.2.2 The execution, delivery and performance by Big Rivers of this Agreement and the other Transaction Documents to which it is a party have been duly and effectively authorized by all requisite partner action.

12.2.3 This Agreement and the other Transaction Documents to which Big Rivers is a party each constitute a legal, valid and binding obligation of such Party, enforceable against Big Rivers in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

12.2.4 The execution and delivery of this Agreement by Big Rivers and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to Big Rivers or its governing documents, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which Big Rivers is a party or by which it, or its property, is bound.

12.2.5 No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which Big Rivers is subject is required for the due execution, delivery or performance by it of this

Agreement or the other Transaction Documents to which it is a party, other than (a) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Big Rivers has no reason to believe will not be timely obtained and in each case that do not prevent provision of Electric Services as described herein, and (b) with respect to the approval of any Governmental Authority such approvals will have been duly given or issued, received and will be in full force and effect, and all conditions therein will have been satisfied to the extent required to be satisfied on or prior to the Effective Date. There are no conditions to the effectiveness of this Agreement with respect to Big Rivers that have not been satisfied or irrevocably waived.

12.2.6 There is no pending or, to Big Rivers' knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) relates to the Transaction or the ability of Big Rivers to perform its obligations hereunder or under any Transaction Document, (b) affects or relates to any approval, authorization, consent or other action by, or notice to or filing or registration with, or license from any Person, (c) relates to this Agreement or the Transaction Documents, or (d) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

12.2.7 Big Rivers is not aware of Costs to comply with Section 10.2 as of the Effective Date.

## ARTICLE 13

### INDEMNIFICATION

13.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, each Party (in such capacity, an "Indemnifying Party") hereby agrees that it will pay, and will protect, indemnify, and hold harmless the other Party and its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject arising out of or relating to the performance or failure to perform its obligations under this Agreement, any other Transaction Documents to which it is a party or any Bilateral Contract (each, an "Indemnified Liability"), and any actual or prospective claim, litigation, investigation or proceeding relating thereto, whether based on contract, tort or any other theory, and regardless of whether any Indemnified Person is a party thereto, including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 13.1.

13.2 Primary Indemnity. Except to the extent that there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of an Indemnifying Party under this Agreement.

13.3 Payments.

13.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify the Indemnifying Party in a timely manner of any such amounts payable by the Indemnifying Party hereunder; provided, that any failure to provide such notice shall not affect the Indemnifying Party's obligations under this Article 13.

13.3.2 Any amounts payable by an Indemnifying Party pursuant to this Article 13 shall be payable within the later to occur of (i) ten (10) Business Days after the Indemnifying Party receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which the Indemnifying Party's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

13.4 Survival. The provisions of this Article 13 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

13.5 Subrogation. Upon payment by an Indemnifying Party pursuant to this Article 13 of any claim under Section 13.1 in respect of any Indemnified Liability, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of the Indemnifying Party cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

## ARTICLE 14

### ADDITIONAL AGREEMENTS

14.1 Regulatory Proceedings.

14.1.1 Proceedings That Affect Rates. Neither Kenergy nor Big Rivers will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rates and charges set forth in this Agreement or other terms and conditions set forth herein.

14.1.2 KPSC Jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Kenergy, Big Rivers or the rates, terms and conditions of the provision of Electric Services to Century.

## 14.2 Audit Rights.

14.2.1 Kenergy will permit Big Rivers to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy reasonably relating to its service to Century under the Electric Service Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Century under the Electric Service Agreement for a period of three years beyond the date of the service.

14.2.2 Big Rivers will permit Kenergy and Century to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Big Rivers reasonably relating to its service to Kenergy under this Agreement, including scheduled deliveries, meter records, billing records, records related to payments made by Kenergy or Century to Big Rivers pursuant to the assignment described in Section 5.1, and such other documents related to payment for and determination of the amount of Electric Services supplied by Big Rivers and delivered to Kenergy for resale and delivery to Century and the appropriate classification of such Energy. Big Rivers shall retain all documentation applicable to service to Kenergy under this Agreement for a period of three years.

14.2.3 Nothing in this Section 14.2 shall obligate a Party to disclose attorney-client privileged information.

## 14.3 Credit Support.

14.3.1 Kenergy shall cause Century to provide and maintain credit support in the form, at Century's election, of (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Big Rivers in its sole discretion, or (iii) other credit support acceptable to Big Rivers in its sole discretion, in each case, in an amount equal to the sum of the following:

(a) amounts reasonably estimated by Big Rivers to become due and payable to Big Rivers under this Agreement for a period of the two succeeding months; and

(b) the amount (without duplication) of any credit support required to be provided and maintained under Section 14.3 of the Electric Service Agreement for the benefit of Big Rivers.

14.3.2 Kenergy shall cause Century to provide and maintain additional credit support in the form required by any RTO or ISO and in the amount (a) determined by Big Rivers with respect to the provision of Electric Services to Kenergy hereunder for delivery to Century under the Electric Service Agreement, and (b) required under any Bilateral Contract for the purchase by Kenergy of any Electric Services hereunder for delivery to Century under the Electric Service Agreement, without the requirement for Big Rivers to provide credit support or be liable to the Bilateral Counterparty.

14.3.3 Kenergy shall cause Century to provide any credit support required by this Section 14.3 to the Person designated by Big Rivers but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

14.4 Right to Supply from Big Rivers. Kenergy acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the Hawesville Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter other than as provided in this Agreement for the purchase of Electric Services in the Day Ahead Market or the Real Time Market or from a Bilateral Counterparty; *provided*, that Century Parent or an affiliate of Century may seek a contractual service arrangement with Big Rivers and Kenergy with respect to the Sebree smelter.

## ARTICLE 15

### EVENTS OF DEFAULT; REMEDIES

15.1 Events of Default. Each of the following constitutes an “Event of Default” under this Agreement:

15.1.1 Failure by a Party to make any scheduled payment in accordance with this Agreement;

15.1.2 Failure by Century for three or more Business Days to maintain any security required by Section 14.3;

15.1.3 Failure of a Party to perform any material duty imposed on it by this Agreement (other than a failure to make a payment when due) within 30 days following the non-performing Party’s receipt of written notice of the non-performing Party’s breach of its duty hereunder;

15.1.4 Failure by a Party to pay any amounts under this Agreement or any Transaction Document within three Business Days following the non-performing Party’s receipt of written notice of the non-performing Party’s default in its payment obligation, except as provided in Section 15.1.1;

15.1.5 Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article 17;

15.1.6 The occurrence and continuance of an “Event of Default” under any Transaction Document, including the Electric Service Agreement;

15.1.7 Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws by a Party and such petition has not been withdrawn or dismissed within 60 days after filing;

15.1.8 Assignment by a Party for the benefit of its creditors; or

15.1.9 Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment.

15.2 Remedies, General. Except as otherwise provided in this Agreement, following the occurrence and during the continuance of an Event of Default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity; *provided*, that if Big Rivers is the non-defaulting Party, it may elect to terminate this Agreement upon three (3) Business Days' prior written notice to the other Party and Century, or to seek enforcement of its terms at law or in equity. Unless otherwise provided herein, remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy and nothing contained in this Agreement may be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein provided that:

15.2.1 UNDER NO CIRCUMSTANCE WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER TO THE OTHER PARTY, ITS AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS WHETHER IN TORT, CONTRACT OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

15.2.2 Kenergy acknowledges and agrees that, if Kenergy or Century fails to pay any monthly invoice rendered by or on behalf of Kenergy with respect to service to Century within the time prescribed in Section 5.1 or Section 5.2 of the Electric Service Agreement, Big Rivers may discontinue delivery of any or all Electric Services thereunder upon not less than 72 Hours prior written notice to Kenergy and Century of its intention to do so unless Kenergy or Century has cured such default within those 72 Hours. Kenergy further acknowledges and agrees that Big Rivers' discontinuance of such service thereunder for non-payment will not in any way affect, diminish or limit the obligations of Kenergy or Century, as applicable, to make all payments required any Transaction Document, as and when due. For the convenience of the Parties, and to facilitate satisfaction of Kenergy's obligation to Big Rivers, Kenergy hereby assigns to Big Rivers its right to receive payments from Century under the Electric Service Agreement (other than with respect to the Retail Fee or otherwise incurred by Kenergy and not related to Big Rivers) and Kenergy's rights to collect and enforce collection of such amounts due from Century. Big Rivers acknowledges and agrees that Kenergy has assigned to Century credits or funds that Big Rivers owes to Kenergy for the benefit of Century and Kenergy has agreed to cooperate with and assist Century with respect to any collections of any such amounts due from Big Rivers to Kenergy; *provided*, that Century

has agreed to reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

15.2.3 Unless otherwise provided herein, if a Party is in breach of its obligations under this Agreement but such breach does not constitute, or would not with the passage of time or the giving of notice constitute, an Event of Default and this Agreement does not provide any other remedy therefor, if such breach has not been cured by the breaching Party within 60 days after receiving written notice from the non-breaching Party setting forth, in reasonable detail, the nature of such breach, the non-breaching Party may commence dispute resolution with respect to such breach and exercise its rights under Article 16, but will not be entitled to terminate, or seek to terminate, this Agreement, or suspend performance of its obligations and duties hereunder as a result of such breach.

## ARTICLE 16

### DISPUTE RESOLUTION

16.1 Resolution Meetings. If a dispute arises between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, either Party may request in writing a meeting among an authorized representative of each of the Parties and Century to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten days or such shorter or longer time as agreed upon by the Parties of the request. Nothing in this Section 16.1 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement. Nothing in this Section shall prevent a Party, where delay in doing so could result in irreparable harm, from seeking interim, provisional or conservatory measures in accordance with Section 18.2, and any such request shall not be deemed incompatible with this Agreement.

16.2 Unresolved Disputes. Absent resolution of the dispute pursuant to Section 16.1, each Party may pursue all remedies available to it at law or in equity from a court or other Governmental Authority in accordance with Section 18.2.

16.3 RTO or ISO Disputes. Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable with respect to the provision of Electric Services to the Hawesville Node or otherwise payable in respect of the provision of Electric Services hereunder shall be binding on the Parties. Nothing in this provision is intended to impair the rights of either Party to pursue any action through MISO's (or the applicable RTO's or ISO's) dispute resolution process or at the FERC.

## ARTICLE 17

### GENERAL PROVISIONS/SUCCESSORS AND ASSIGNS

17.1 Binding Nature. This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or

operation of law, without the prior written consent of the other Party, except as provided in Section 17.4, and except that, subject to satisfaction of the conditions of Section 17.2, assignment may be made by either Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

17.2 Limitation on Assignment. Subject to Section 17.4, in no event may either Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Party or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

17.3 Duties. No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

17.4 Financing Lien. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

## ARTICLE 18

### MISCELLANEOUS

18.1 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

18.2 Jurisdiction. Subject to Article 16, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes; *provided*, that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in Article 16 or this Section prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably

waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any action or proceeding arising under or relating to this Agreement, at the address set forth in Section 18.6, and agrees that such service shall be, for all purposes, good and sufficient.

18.3 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

18.4 Amendments.

18.4.1 This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties.

18.4.2 The Parties acknowledge and agree that nothing in this Agreement shall limit the right of Big Rivers to file changes to the Tariff, or limit the right of any Party to challenge any aspect of the Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

18.5 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement; *provided*, that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

18.6 Notices. A notice, consent, approval or other communication under this Agreement must be in writing, addressed to the Person to whom it is to be delivered at such Person's address shown below and (a) personally delivered (including delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile, with a duplicate notice sent by a nationally recognized overnight courier service, *provided, however*, that (i) a notice given pursuant to Section 3.3.2 may be given by telephone to be followed as soon as reasonably practicable by written notice as described herein and (ii) a notice of Uncontrollable Force shall be given by whatever means is available followed by notice in writing as described herein as soon as reasonably practicable; *provided, further*, that notices given pursuant to Section 5.1 and Section 5.2 may be given by electronic message at such addresses as each Party may provide to the other Party by any other method of notice permitted by this Section. A notice given to a Person in accordance with this Section 18.6 will be deemed to have been delivered (a) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (b) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day;

*provided, however,* that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 18.6, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party, in accordance with this Section 18.6, with copies of all such notices to Century to the address set forth below, in the same manner as notice is otherwise given hereunder. Simultaneously with a Party's giving of any notice required or permitted to be given hereunder from one Party to another Party, such Party shall give such notice to Century using the same method of delivery used to provide such notice to the other Party.

If to Kenergy:	Kenergy Corp. 6402 Old Corydon Road Henderson, Kentucky 42420 Attn: President and CEO Facsimile: (270) 826-3999
with a copy to:	Big Rivers Electric Corporation 201 Third Street Henderson, Kentucky 42420 Attn: President and CEO Facsimile: (270) 827-2558
If to Century:	Century Aluminum Company P.O. Box 500 State Route 271 North Hawesville, Kentucky 42348 Attn: Plant Manager Facsimile: (270) 852-2882
With a copy to:	Century Aluminum Company One South Wacker Drive Suite 1000 Chicago, Illinois 60606 Attn: General Counsel Facsimile: (312) 696-3102
If to Big Rivers:	Big Rivers Electric Corporation 201 Third Street Henderson, Kentucky 42420 Attn: President and CEO Facsimile: (270) 827-2558

For notices pursuant to Section 15.1:

If to Kenergy:	Kenergy Corp. 6402 Old Corydon Road Henderson, Kentucky 42420
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Attn: President and CEO  
Facsimile: (270) 826-3999

With a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Facsimile: (270) 852-2882

18.7 Severability. If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment will not affect, impair or invalidate the remainder of this Agreement but will be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, unless the loss or failure of such clause, sentence, paragraph or part of this Agreement materially adversely affects the benefit of the bargain to be received by either or both of the Parties, in which event the Parties shall promptly meet and use their good faith best efforts to renegotiate this Agreement in such a fashion as will restore the relative rights and benefits of both Parties or, absent such renegotiation, the Party that was so materially adversely affected will be entitled, in its discretion, to terminate this Agreement.

18.8 Survival. Section 14.4, and prior to termination of the Electric Service Agreement, Article 9, shall survive termination of this Agreement. Each provision of this Agreement providing for payment for Electric Services and any other amounts due hereunder, assignment of the right to collect and enforce collection of amounts due, the provision, replenishment or maintenance of credit support required hereunder or related to remedies for default, damage claims, indemnification or payment of other liabilities also shall survive termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

18.9 Merger. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the matters addressed herein and supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

18.10 Further Assurances. The Parties shall execute such additional documents and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

18.11 Counterparts. This Agreement may be executed in any number of counterparts, that together will constitute but one and the same instrument and each counterpart will have the same force and effect as if they were one original.

18.12 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard or care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement other than Century. Century shall be an express third party beneficiary of this Agreement and may enforce the provisions hereof during the period of any survival obligations for its benefit pursuant to Section 18.8.

18.13 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

18.14 No Agency. This Agreement is not intended, and may not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or otherwise bind, the other Party.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 6.2.3**  
**LISTING OF CERTAIN TRANSACTION DOCUMENTS**

1. This Agreement
2. Electric Service Agreement
3. Direct Agreement
4. Capacitor Agreement
5. Protective Relays Agreement
6. Century Guarantee
7. Capacitor Additions and Protective Relays Guarantee
8. Tax Indemnity Agreement
9. Lockbox Agreement

**EXHIBIT A**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges change:

1. ACES Fee -- Pro-rata share of Big Rivers' total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum -- Pro-rata share of Big Rivers' Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers' Local Balancing Authority load (less HMPL), only to extent Century load is included in fee calculation.
4. NRCO -- Cost Differential between organization classification, if applicable, due to Century's inclusion in Big Rivers' total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers' total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission -- Pro-rata share of Big Rivers' intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers' Local Balancing Authority load(LESS HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees -- Tons of emissions related to Coleman Station during SSR operation.
9. KAEC -- Pro-rata share of Big Rivers' total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Cases -- Century will not be charged costs for Big Rivers rate cases with the KPSC.

**DIRECT AGREEMENT**

Dated as of August 1, 2013

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

**CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

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## DIRECT AGREEMENT

This DIRECT AGREEMENT ("Agreement") is made and entered into as of August 1, 2013, by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ("Century"). Big Rivers and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy Corp., a Kentucky electric cooperative corporation and a member of Big Rivers ("Kenergy"), currently supplies and delivers retail electric energy and related services to Century, the owner and operator of an aluminum reduction plant in Hawesville, Kentucky, pursuant to a Retail Electric Service Agreement, dated July 1, 2009 (as amended, the "Existing Retail Agreement").

B. Kenergy currently purchases wholesale electric energy and related services for resale to Century from Big Rivers, pursuant to a Wholesale Electric Service Agreement, dated as of July 1, 2009 (as amended, the "Existing Wholesale Agreement").

C. Century gave notice of termination of the Existing Retail Agreement on August 20, 2012.

D. Kenergy is willing to supply and deliver, and Century is willing to purchase, electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, on the terms and conditions set forth in the Electric Service Agreement, dated as of the date hereof (as amended, the "Electric Service Agreement").

E. In connection with and as a condition to entry into the Electric Service Agreement, Kenergy and Big Rivers have agreed to enter into the Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"), to facilitate Big Rivers acting, at least initially, as the Market Participant (as defined below) to obtain electric energy and related services from the wholesale electric market, including pursuant to bilateral contracts, for resale by Kenergy to Century.

F. The Parties desire to set forth in this Agreement certain obligations owed to each other that will survive the appointment and approval of a Market Participant other than Big Rivers and termination of the Arrangement Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

1. Definitions; Rules of Interpretations. Capitalized terms used in this Agreement and not defined herein have the meanings assigned to those terms in the Electric Service Agreement; *provided*, that if the Electric Service Agreement is terminated prior to the satisfaction in full of all obligations of the Parties hereunder, capitalized terms defined by reference to the Electric Service Agreement shall have the meanings at the time of termination; *provided further*, that the definition of “Costs” herein shall refer to costs of Big Rivers and not Kenergy and the Exhibit A hereto will supplant the reference to Exhibit B in the Electric Service Agreement. The rules of interpretation set forth in Section 1.2 of the Electric Service Agreement shall apply to this Agreement as though fully set forth herein. References to any SSR Agreement herein shall include any SSR Agreement entered into in substitution or replacement of a SSR Agreement that is expiring in accordance with its terms.

2. Effectiveness. This Agreement shall commence on the date first written above, provided that the obligations of the Parties under Section 3 and Section 5 shall not commence until the Effective Date.

3. Covenants and Agreements.

3.1 Electric Service Agreement. Century shall (a) fully perform and discharge all of its obligations under the Electric Service Agreement unless excused in accordance with the terms thereof; (b) not act or rely upon any written or oral waivers granted by Kenergy of Century’s performance under or compliance with provisions of the Electric Service Agreement that could be reasonably expected to materially adversely affect Big Rivers’ rights or interests under this Agreement or the Arrangement Agreement without the prior written consent of Big Rivers; (c) so long as the Arrangement Agreement is in effect, (i) not waive the performance and discharge by Kenergy of its material obligations under the Electric Service Agreement without the prior written consent of Big Rivers; (ii) not amend or modify the Electric Service Agreement without the prior written consent of Big Rivers; (iii) not terminate or repudiate the Electric Service Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Century) other than in accordance with the provisions thereof without the prior written consent of Big Rivers; and (iv) make payments pursuant to the Electric Service Agreement when due and in accordance therewith for so long as such agreement exists; (d) not take any action or support any action by others that in any manner would impede Century’s ability to fulfill its obligations to Kenergy or Big Rivers under the Electric Service Agreement, this Agreement or any other Transaction Document to which it is a party or act in any manner that could reasonably be expected to materially adversely affect its ability to perform or discharge its obligations under this Agreement; (e) provide Big Rivers with a copy of all notices sent to Kenergy pursuant to the Electric Service Agreement; and (f) not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Electric Service Agreement except in accordance with Article 17 thereof; *provided*, that any transfer or assignment pursuant to Article 17 thereof that requires the consent or approval of Kenergy also shall require the consent of Big Rivers.

3.2 Arrangement Agreement. Big Rivers shall (a) fully perform and discharge all of its obligations under the Arrangement Agreement unless excused in accordance with the terms thereof; (b) not act or rely upon any written or oral waivers granted by Kenergy of Big Rivers’ performance under or compliance with provisions of the Arrangement Agreement that could be reasonably expected to materially adversely affect Century’s rights or interests under

the Electric Service Agreement without the prior written consent of Century; (c) enforce the performance and discharge by Kenergy of its material obligations under the Arrangement Agreement and not waive the performance and discharge by Kenergy of its material obligations thereunder; (d) not amend or modify the Arrangement Agreement without the prior written consent of Century; (e) not terminate or repudiate the Arrangement Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Big Rivers) other than in accordance with the provisions thereof; (f) not take any action or support any action by others that in any manner would impede Big Rivers' ability to fulfill its obligations to Kenergy or Century under the Arrangement Agreement, this Agreement or any other Transaction Document to which it is a party or act in any manner that could reasonably be expected to materially adversely affect its ability to perform or discharge its obligations under this Agreement; (g) provide Century with a copy of all notices sent to Kenergy pursuant to the Arrangement Agreement; and (h) not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Arrangement Agreement except in accordance with Article 17 thereof; *provided*, that any transfer or assignment pursuant to Article 17 thereof that requires the consent or approval of Kenergy also shall require the consent of Century.

### 3.3 Coleman Generation Station.

(a) As of the date hereof, Big Rivers is pursuing or will have entered into an SSR Agreement (the "Initial SSR Agreement") regarding the obligation of Big Rivers to operate and maintain, dispatch or make available the Coleman Generation Station, until such time as MISO determines an SSR Agreement is not required. Big Rivers shall maintain the Initial SSR Agreement, and seek its termination, in accordance with this Agreement and the Initial SSR Agreement.

(b) [In any MISO negotiation of the Initial SSR Agreement, Big Rivers shall provide Century with a reasonable opportunity to review and comment on all material information, proposals and submittals made by Big Rivers to MISO in such negotiation. Big Rivers and Kenergy shall not limit or prohibit Century's ability to discuss or engage with MISO regarding issues arising under the Initial SSR Agreement as it pertains to Century. Big Rivers agrees that it will not enter into the Initial SSR Agreement without Century's consent, *provided, however*, that if Century fails to consent, then Century shall limit its Load to not more than the Base Load plus, if applicable, the Curtailable Load.] **[Note: this provision will be deleted if the SSR Agreement is in place at the time this Agreement is entered into.]**

(c) Big Rivers will use reasonable commercial efforts to structure the Initial SSR Agreement to permit Big Rivers to request termination of the SSR Agreement following 30 days' notice by Big Rivers to MISO, or by MISO to Big Rivers, that an SSR Agreement is no longer required or after confirmation by Century that it will operate at or below the Base Load plus, if applicable, the Curtailable Load effective immediately prior to and following termination of the SSR Agreement. Big Rivers will request and advocate to MISO for the allocation and recovery of the costs of the Initial SSR Agreement on the basis of coincident peak demands.

(d) If the Initial SSR Agreement is not terminated effective as of May 30, 2014 or earlier, then thereafter (i) Century shall limit its Load to not more than the Base Load

plus, if applicable, the Curtailable Load or (ii) Century shall pay all SSR Costs in accordance with this Agreement.

(e) During the term of the Initial SSR Agreement, if a major failure, casualty or mechanical breakdown occurs at one or more units of the Coleman Generation Station designated as SSR units, Century shall become responsible for the lesser of (i) the capital repair Costs of the applicable units, but not to exceed Big Rivers' property casualty insurance deductible with respect to such major failure, casualty or breakdown, or (ii) if less than three units of the Coleman Generation Station are required to operate under the Initial SSR Agreement, then the restart Costs of an idled unit of the Coleman Generation Station. Big Rivers covenants that the deductible for the property casualty insurance policy for the Coleman Generation Station is \$1 million and shall not be increased during the term of this Agreement.

(f) Century acknowledges and agrees that, if Century's Load exceeds the Base Load plus, if applicable, the Curtailable Load, then Century must pay all SSR Costs in accordance with this Agreement, or reduce its Load to a level not in excess of the Base Load plus, if applicable, the Curtailable Load.

(g) Subject to Section 4, Century acknowledges and agrees that (i) Big Rivers will charge Century for all SSR Costs, subject only to the offsets set forth in Section 4.1(a)(i) and (ii) to the extent any such offsets are actually received by Big Rivers; (ii) Century shall be obligated to pay for all SSR Costs during periods in which other Persons to whom the RTO or ISO has preliminarily or definitively allocated responsibility for a portion of the SSR Costs are not paying such costs, whether as a result of a challenge to a SSR Agreement or otherwise, and (iii) the absence, existence, effectiveness or unenforceability of an SSR Agreement shall not affect Century's obligation to pay SSR Costs pursuant to Section 4 if operation of the Coleman Generation Station is required by any Governmental Authority with jurisdiction for reliability.

#### 3.4 Subsequent SSR Agreement Relating to Coleman Generation Station.

Subsequent to the period of the Initial SSR Agreement and following the idling of any unit of the Coleman Generation Station, if the Load of the Hawesville Smelter above the amount of the Base Load plus, if applicable, the amount of the Curtailable Load and thereby creates the need for a SSR Agreement as determined by the applicable RTO or ISO and, as a consequence of such increase, any RTO or ISO orders Big Rivers to restart, operate, maintain, and dispatch or make available any unit of the Coleman Generation Station for reliability purposes, then unless Century operates the Hawesville Smelter at the Base Load and, if applicable, the Curtailable Load, Century shall pay Big Rivers for all of the resulting SSR Costs incurred by Big Rivers, in accordance with Section 4, including all of the resulting capital costs incurred to restart any affected unit of the Coleman Generation Station and all of the resulting capital Costs incurred after the date of such restart, charged by the applicable RTO or ISO, as if Century had requested that Big Rivers enter into a SSR Agreement with the applicable RTO or ISO under the Tariff with respect to any unit of the Coleman Generation Station.

3.5 Modification of SSR Agreement. If Big Rivers restarts one or more of the Coleman Generation Station units for its own purpose while an SSR is in effect, Big Rivers will request MISO to modify the SSR agreement to eliminate the SSR status of the equivalent

number of units. (Example: if two Coleman units are designated as SSR units and Big Rivers starts one Coleman Generation Station unit for its own purpose, Big Rivers would request MISO to amend the SSR Agreement to designate only one Coleman Generation Station unit as an SSR unit).

### 3.6 Alternative RTO or ISO.

(a) This Agreement and the other Transaction Documents have been drafted by the Parties and Kenergy under the presumption that, during the Service Period, the Hawesville Node is located in MISO and Big Rivers is a member of MISO. If the Coleman Substation and the Hawesville Node are not located within the same RTO or ISO during the Service Term, then the Parties agree to modify in good faith the terms and provisions of this Agreement and any other Transaction Documents to the extent necessary to preserve the purposes and intent of the Transaction Documents.

(b) Century acknowledges and agrees that Kenergy or Big Rivers, as applicable, may, in its sole discretion, elect to join or become a member of a new RTO or ISO or elect to withdraw and not be a member of any RTO or ISO. The Hawesville Node may remain in MISO if (i) requested by Century, (ii) permitted by MISO and the new RTO or ISO, (iii) Century is responsible for any costs resulting from the Hawesville Node remaining in MISO, and (iv) Big Rivers is not unreasonably precluded by the request from leaving MISO and joining or becoming a member of a different RTO or ISO or not being a member of any RTO or ISO. In each such case, any terms used herein that relate to MISO or the MISO Tariff shall be deemed amended, as applicable, to incorporate the correlative terms with respect to the new RTO or ISO or applicable tariff. If necessary, the Parties agree to modify in good faith the terms and provisions of the Transaction Documents to conform them to the extent necessary to the requirements of the new RTO or ISO or the withdrawal of Kenergy or Big Rivers from any RTO or ISO and otherwise amend them in the manner necessary to preserve the purposes and intent of the Transaction Documents.

(c) Big Rivers shall (i) provide Century one year's notice before leaving MISO; (ii) provide Century with notice of a recommendation by Big Rivers' management to Big Rivers' board of directors that Big Rivers terminate its membership in MISO (subject to any applicable confidentiality restrictions) promptly after the date the recommendation is made; (iii) if not publicly available, provide Century with a copy of the annual report required by the Kentucky Public Service Commission regarding the cost and benefit to Big Rivers of being a member in MISO (subject to any applicable confidentiality restrictions); and (iv) allow Century to participate in meetings or conference calls with MISO regarding matters affecting amounts payable by Century relating to leaving MISO.

(d) Century acknowledges and agrees if (i) Kenergy or Big Rivers, as applicable, in its sole discretion, elects to join or become a member of a new RTO or ISO or elects to withdraw and not become a member of any RTO or ISO, and (ii) Century is not permitted by either MISO or the new RTO or ISO to remain in MISO, then Century will be responsible for all costs associated with Century's exit from MISO, including any fees charged by MISO as a result of the exit.

3.7 Acknowledgement. Century acknowledges and agrees that Big Rivers has no obligation to serve or supply any Electric Services from System Resources for the benefit of all or a portion of the Hawesville Smelter or any Affiliates, spin-offs or successors of Century during the Service Period or thereafter; *provided*, that Century Parent or an affiliate of Century may seek a contractual service arrangement with Big Rivers, through Kenergy, with respect to the Sebree smelter.

3.8 Century Credit Support. Century shall provide and maintain credit support, at Big Rivers' election, in the form of one of the following, as selected by Century: (i) a letter of credit from a bank rated "A+" or higher, (ii) cash collateral subject to security arrangements in form and substance satisfactory to Big Rivers in its sole discretion or (iii) other credit support acceptable to Big Rivers in its sole discretion, in each case, in an amount equal to the sum of the following without duplication either in this Agreement or with regard to the Electric Service Agreement or any Market Agreement:

(a) amounts reasonably estimated by Big Rivers to become due and payable to Big Rivers under this Agreement during the two succeeding months; and

(b) the amount (without duplication) of any credit support required to be provided and maintained under Section 14.3 of the Electric Service Agreement for the benefit of Big Rivers.

Century shall provide any credit support required by this Section to the Person designated by Big Rivers and Kenergy but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

3.9 Additional Credit Support. Century shall provide and maintain additional credit support in the form required by any RTO or ISO and in the amount (a) determined by Big Rivers prior to termination of the Arrangement Agreement or, if after such termination, Kenergy with respect to the provision of Electric Services for resale to Century and (b) required under any Bilateral Contract for the purchase by Kenergy of any Electric Services for resale to Century, without the requirement for Big Rivers to provide credit support or be liable to the Bilateral Counterparty.

3.10 Right to Transmission Services. Notwithstanding any other provision in this Agreement or any Transaction Document, Big Rivers acknowledges and agrees that Century (through Kenergy or the Market Participant) shall be entitled to Transmission Services, on the same rates, terms and conditions as other transmission customers pursuant to the Tariff.

3.11 Audit Rights. Big Rivers will permit Century to audit, upon reasonable notice, at Century's own expense, at a mutually agreeable time, all information in the possession of Big Rivers relating to Big Rivers' service under the Arrangement Agreement to Kenergy for resale to Century, including scheduled deliveries, meter records, billing records, records related to payments to Big Rivers and such other documents related to payment for and determination of the amount of Electric Services supplied by Big Rivers and delivered to Kenergy for resale and delivery to Century. Big Rivers shall retain all documentation applicable to service to Kenergy

under the Arrangement Agreement for a period of three years. Nothing in this Section shall obligate Big Rivers to provide attorney-client privileged information.

3.12 Imbalance Energy Limit. Century acknowledges and agrees that it will not consume more than 10 MW of energy above the Base Load plus, if applicable, the Curtailable Load.

3.13 Transmission Charges. The Parties acknowledge and agree that delivery of Electric Services from the Delivery Point to the Century Substation is network integration transmission service and Big Rivers will not charge any supplemental amount in addition to the charge for network integration transmission service for delivery of Electric Services to the Delivery Point for the transmission of Electric Services from the Delivery Point to the Century Substation.

3.14 Assignment of the Hawesville Node. Big Rivers shall transfer the Hawesville Node to any Person succeeding Big Rivers as the Market Participant.

4. Direct Payment Obligations.

4.1 Century shall pay Big Rivers all amounts owing to Big Rivers under this Agreement (the "Direct Payments") including, without duplication either within this Agreement or with regard to the Electric Service Agreement or any Market Agreement, the following:

(a) All SSR Costs incurred by Big Rivers, including under any regulation, order, directive or policy of a RTO or ISO that would be substantively similar to an SSR Agreement if the provisions of such regulation, order, directive or policy were implemented in an agreement with the RTO or ISO, and whether or not any SSR Agreement is then in effect or approved by any Governmental Authority, together with any Costs, including new capital expenditures (except to the extent provided in clause (iii) below), of Big Rivers when the operation of such units of the Coleman Generation Station is required for reliability if Century's Load exceeds the Base Load plus, if applicable, the Curtailable Load, including any such Costs that are not reimbursed as SSR Costs, subject to the following:

(i) Century shall not be obligated to pay Big Rivers any SSR Costs to the extent that (A) Century pays any such costs under the Electric Service Agreement to or for the benefit of the applicable RTO or ISO and (B) such applicable RTO or ISO then credits such amounts to Big Rivers and Big Rivers receives such amounts either directly in the form of a payment to Big Rivers or indirectly as a credit to amounts otherwise owing by Big Rivers to the applicable RTO or ISO on a statement of the applicable RTO or ISO;

(ii) The amount payable by Century for SSR Costs for any Billing Month shall be reduced by:

(1) revenues received by Big Rivers for Transmission Services for such Billing Month paid by Century directly or indirectly under the Tariff, including revenues paid by Century which are received by Big Rivers pursuant to Subsection 4.1(a)(i), and

(2) revenues received from other Persons based on allocations of responsibility for the related SSR Costs by an RTO or ISO;

If the portion of the Direct Payment relating to this Subsection (a) is negative as a result of the offsets in clauses (1) and (2) above, then such offsets will be carried forward and applied as a credit against any future SSR Costs. Any accumulated offsets or credits accruing pursuant to this Subsection 4.1(a)(ii) shall be reduced to zero at the time of the termination or expiration of the SSR Agreement. Big Rivers shall thereafter have no obligation to pay to Century any offsets or credits accruing under this Subsection 4.1(a)(ii), except as provided in Subsection 4.1(a)(iv) below.

(iii) The portion of the SSR Costs for the Initial SSR Agreement relating to scheduled capital expenditures for the period from September 1, 2013 to May 30, 2014 will be based on the budget approved by MISO. Such budget shall exclude capital and labor costs associated with an outage of Unit 1 of the Coleman Generation Station if MISO designates only two or fewer units of the Coleman Generation Station as required to operate for reliability purposes. If applicable, any capital or other costs associated with the planned maintenance of Unit 1 will be budgeted no earlier than October 2013. "Capital costs" shall mean any costs required to be capitalized pursuant to applicable Accounting Principles.

(iv) After termination of the Initial SSR Agreement, Big Rivers will credit to the next invoice to Century hereunder amounts received from other Persons for their allocated responsibility for SSR Costs but that Century previously paid to Big Rivers and that would otherwise result in duplicate recovery by Big Rivers of such amounts. If the amount to be refunded exceeds the next invoice issued hereunder, then Big Rivers shall refund such unapplied credit to Century.

(b) For the avoidance of doubt and notwithstanding any other provision herein, Century shall not be charged any SSR Costs or other Costs related to the Coleman Generation Station, if (i) Century operates at or below the Base Load plus, if applicable, the Curtailable Load; (ii) MISO terminates the SSR Agreement; or (iii) Big Rivers continues operations or restarts operations of any units of the Coleman Generation Station such that the operation of no additional units of the Coleman Generation Station are required to support system reliability under an SSR Agreement.

(c) Century shall pay or reimburse Big Rivers for the Costs referred to in Sections 3.6(b)(iii) and 3.6(d) for which Century is responsible only to the extent these charges are charged by MISO to Big Rivers. Currently it is understood that these charges will be charged to the Market Participant.

(d) Century shall reimburse Big Rivers for all other third-party, out of pocket Costs of Big Rivers incurred or committed to by Big Rivers related to the operation of the Hawesville Smelter.

4.2 Monthly Invoices. Big Rivers shall bill Century on or before the fifteenth Business Day of each Billing Month for the payments and charges due and payable by Century hereunder by delivery of a monthly invoice reflecting the payments and charges that accrued

during the preceding month and unpaid amounts from prior monthly statements. Century shall pay Big Rivers such amounts in immediately available funds to an account designated by Big Rivers on the Business Day following the 24th day of the month following the Billing Month.

4.3 Default Interest. If any monthly invoice rendered by Big Rivers to Century is not paid on the due date, interest will accrue and become payable by Century to Big Rivers on all unpaid amounts at a rate of one percentage point over the Prime Rate commencing on the first day after the due date and accruing on each day thereafter until the date such payment is made.

4.4 Payments Under Protest; No Waiver. If any portion of any monthly invoice hereunder is disputed by Century, Century shall pay the disputed amount, under protest, when due. If the disputed amount of the payment is found to be incorrect, Big Rivers shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made. No payment made by Century pursuant to this Section shall constitute a waiver of any right of Century to contest the correctness of any charge or credit reflected in a Big Rivers' invoice.

4.5 Acknowledgements Regarding Payment Term. Century acknowledges and agrees that Big Rivers shall be entitled to Direct Payments without regard to the status or effectiveness of the Electric Service Agreement, the Arrangement Agreement or any other Transaction Document.

## 5. Cure Rights.

5.1 Notwithstanding any provision contained in the Electric Service Agreement that affords Century the right to terminate the Electric Service Agreement upon any breach or default by Kenergy thereunder, Century shall provide Big Rivers a reasonable opportunity, exercisable in Big Rivers' sole discretion, to cure any such breach or default by Kenergy prior to exercising such termination rights, which opportunity shall extend, at a minimum, for a period of not less than 10 Business Days after the later of (i) the date of expiration of the applicable period of time (if any) available for a cure by Kenergy under the Electric Service Agreement, and (ii) the date on which notice of the breach or default by Kenergy is delivered by Century to Big Rivers. Century hereby consents to any attempt by Big Rivers to cure any breaches or defaults by Century under the Electric Service Agreement that may hereafter occur; *provided*, that Big Rivers does not materially interfere with Century's attempts (if any) to so cure such breaches or defaults.

5.2 Notwithstanding any provision contained in the Arrangement Agreement that affords Big Rivers the right to terminate the Arrangement Agreement upon any breach or default by Kenergy thereunder, Big Rivers shall provide Century a reasonable opportunity, exercisable in Century's sole discretion, to cure any such breach or default by Kenergy prior to exercising such termination rights, which opportunity shall extend, at a minimum, for a period of not less than ten Business Days after the later of (i) the date of expiration of the applicable period of time (if any) available for a cure by Kenergy under the Arrangement Agreement, and (ii) the date on which notice of the breach or default by Kenergy is delivered by Big Rivers to Century.

Big Rivers hereby consents to any attempt by Century to cure any breaches or defaults by Big Rivers under the Arrangement Agreement that may hereafter occur; *provided*, that Century does not materially interfere with Big Rivers' attempts (if any) to so cure such breaches or defaults.

6. Representations and Warranties.

6.1 Big Rivers. Big Rivers hereby represents and warrants to Century as follows:

(a) Big Rivers is an electric generation and transmission cooperative corporation duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the Arrangement Agreement, to perform its obligations hereunder and thereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

(b) Subject to Section 6.1(c), this Agreement, the Arrangement Agreement and other agreements entered into by Big Rivers in connection therewith constitute Big Rivers' valid and binding obligation enforceable against it in accordance with their terms, except as enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement and the Arrangement Agreement by Big Rivers have been duly and effectively authorized by all requisite corporate action.

(c) As of the Effective Date, all consents, approvals, authorizations, actions or orders, including without limitation, those that must be obtained from Governmental Authorities and the RUS, required for its authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement and the Arrangement Agreement have been obtained other than as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time, and that are routine in nature or that cannot be obtained, or are not normally applied for, prior to the time they are required and that Big Rivers has no reason to believe will not be timely obtained.

(d) Subject to Section 6.1(c), its execution and delivery of this Agreement and the Arrangement Agreement, its consummation of the transactions contemplated by this Agreement and the Arrangement Agreement, and its fulfillment of and compliance with the terms and provisions hereof and thereof do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to it, or conflict with any of the terms, conditions or provisions of its Articles of Incorporation or Bylaws or any material instrument, mortgage, agreement, contract or restriction to which it is a party, or by which any of its properties are bound, or require the approval, consent or authorization of any federal, state or local court, or any of its creditors, or of any other Person, or give any party with rights under any such instrument, agreement, contract, mortgage, judgment, award, order or other restriction the right to terminate, modify or otherwise change its rights or obligations thereunder that has not been obtained.

6.2 Century. Century hereby represents and warrants to Big Rivers as follows:

(a) Century is a general partnership duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky and is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

(b) This Agreement, the Electric Service Agreement and other agreements entered into by Century in connection therewith constitute Century's valid and binding obligation enforceable against it in accordance with their terms, except as enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement and the Electric Service Agreement by Century have been duly and effectively authorized by all requisite partner action.

(c) All consents, approvals, authorizations, actions or orders, including without limitation, those that must be obtained from governmental agencies or authorities, required for its authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement and the Arrangement Agreement have been obtained.

(d) Its execution and delivery of this Agreement and the Electric Service Agreement, its consummation of the transactions contemplated by this Agreement and the Electric Service Agreement, and its fulfillment of and compliance with the terms and provisions hereof and thereof do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to it, or conflict with any of the terms, conditions or provisions of its partnership agreement or any material instrument, mortgage, agreement, contract or restriction to which it is a party, or by which any of its properties are bound, or require the approval, consent or authorization of any federal, state or local court, or any of its creditors, or of any other Person, or give any party with rights under any such instrument, agreement, contract, mortgage, judgment, award, order or other restriction the right to terminate, modify or otherwise change its rights or obligations thereunder that has not been obtained.

7. Indemnification. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, Century hereby agrees that it will pay, and will protect, indemnify, and hold harmless Big Rivers and each of its respective designees, agents and contractors (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel but not including the expenses incurred by Big Rivers in connection with the preparation, negotiation, execution and delivery of this Agreement) to the extent not recovered under the Arrangement Agreement and to which such Indemnified Person may become subject arising out of or relating to any or all of the following (each, an "Indemnified Liability"): (a) the purchase and transmission of electricity, electric capacity or electrical

ancillary services to the Delivery Point for resale to Century, (b) Bilateral Contracts, to which Century has agreed, for the purchase of electricity, electric capacity or electricity-related ancillary services for resale to Century, (c) any other amounts due and owing to Big Rivers under the Transaction Documents, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by Century or otherwise, and regardless of whether any Indemnified Person is a party thereto, such items (a) through (d) including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 7. Any claims under this Section 7 in respect of any Indemnified Liabilities are referred to herein, collectively, as “Indemnity Claims”. No Indemnified Person shall be obliged to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of Century under this Agreement.

#### 7.1 Payments.

(a) All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate, and all such sums and costs shall be immediately due and payable on demand. Each such Indemnified Person shall promptly notify Century in a timely manner of any such amounts payable by Century hereunder; *provided*, that any failure to provide such notice shall not affect Century’s obligations under this Section 7.

(b) Any amounts payable by Century pursuant to this Section 7 shall be payable within the later to occur of (i) ten (10) Business Days after Century receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which Century’s indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

7.2 Survival. The provisions of this Section 7 shall survive termination of this Agreement, and shall be in addition to any other rights and remedies of any Indemnified Person.

7.3 Subrogation. Upon payment of any Indemnity Claim by Century pursuant to this Section 7, Century, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of Century cooperate with Century and give at the request and expense of Century such further assurances as are necessary or advisable to enable Century vigorously to pursue such claims.

#### 8. Miscellaneous.

8.1 Entire Agreement; Amendments; No Reliance. This Agreement, the Electric Service Agreement, the Arrangement Agreement and the other Transaction Documents constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, whether oral or written. This Agreement may be amended only

by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in the foregoing documents.

8.2 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of an subsequent breach of the same or any other term, covenant or condition contained herein.

8.3 Notices. A notice, consent, approval or other communication under this Agreement must be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party in accordance with this Section:

If to Big Rivers:           Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 827-2558

If to Century:            Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Fax: (270) 852-2882

With copy to:            Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 8.4 Dispute Resolution.

(a) Resolution Meetings. If a dispute arises concerning the terms or conditions of this Agreement, the duties or obligations of the Parties or the implementation, interpretation or breach thereof, either Party may request a meeting among authorized representatives of the other Party to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within 10 days or such shorter or longer time as agreed upon by the Parties. Nothing in this Section 8.4 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement.

(b) Arbitration Generally. Absent resolution of the dispute pursuant to Section 8.4(a), and subject to a minimum amount in controversy of \$100,000.00, the Parties will submit the matter to be settled, subject to Section 8.7, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules (the “AAA Rules”) then in effect of the ICDR of the American Arbitration Association, in accordance with the following terms and conditions:

(i) In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

(ii) The ICDR shall administer the arbitration.

(iii) The seat of the arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration

(c) Arbitration Procedures. The following procedures shall govern the selection of arbitrators.

(i) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(ii) In the event of an inability by the two party-nominated arbitrators to agree on an arbitrator in accordance with Section 8.4(c)(i) the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(iii) Notwithstanding Sections 8.4(c)(i) and 8.4(c)(ii), each arbitrator selected pursuant to this Section 8.4(c) shall have substantial experience in the electric utility sector, and shall not have been employed by, a consultant to or received compensation from any Party in the past.

(d) Remedies and Relief.

(i) The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the arbitral tribunal may be specifically enforced by any court of competent jurisdiction.

(ii) The losing Party shall pay the fees and costs of the prevailing Party.

(iii) The award of the arbitral tribunal shall be subject to appeal to, or requests for rehearing by, a court in accordance with Section 8.7.

(iv) The award of the tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

(e) Except for arbitration proceedings pursuant to this Section 8.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; provided, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures through the courts in accordance with Section 8.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

(f) Notwithstanding anything else herein to the contrary, any final decision of an RTO or ISO regarding amounts payable hereunder shall be binding on the Parties. The Parties acknowledge and agree that Century shall be responsible for pursuing any challenge to any amounts an RTO or ISO charges to a Market Participant or Kenergy that directly or indirectly is charged to Century.

8.5 Assignments and Transfers. No Party shall assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party, *provided, however*, that no prior consent shall be required with respect to an assignment to any person who is a permitted assignee of Century pursuant to and in accordance with the Electric Service Agreement or a permitted assignee of Big Rivers pursuant to and in accordance with the Arrangement Agreement. No assignment by Century pursuant to the preceding sentence shall relieve or release Century of or from its obligations under or with respect to this Agreement without the consent of Big Rivers, which consent will be granted in its

sole discretion. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

8.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

8.7 Jurisdiction. The Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over each and every judicial action brought under or in relationship to this Agreement, *provided* that the subject matter of such dispute is not a matter reserved by law to the KPSC, or to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section and any claim that such action, suit or proceeding brought in accordance with this Section has been brought in an inconvenient forum. Nothing in this paragraph prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 8.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 8.3, and agrees that such service shall be, for all purposes, good and sufficient.

8.8 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement and the other Transaction Documents to which it is a party; *provided* that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

8.9 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties and their respective successors and permitted assigns.

8.10 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

8.11 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement, other than Kenergy which shall be a third party beneficiary hereof.

8.12 Kenergy Obligations Separate. Nothing contained in this Agreement shall obligate Century or Big Rivers for any obligations or liabilities of Kenergy, whether under or pursuant to the Electric Service Agreement, the Arrangement Agreement or otherwise.

8.13 No Direct Service. The Parties acknowledge that Big Rivers and Kenergy are entering into the Arrangement Agreement and Century and Kenergy are entering into the Electric Service Agreement which agreements contain the terms and conditions setting forth the wholesale arrangement and procurement of power by Big Rivers and the purchase of such power by Kenergy, and the corresponding retail sale of such power by Kenergy and the purchase of such power by Century. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers to sell directly to Century, or an agreement of Century to directly purchase from Big Rivers, any Electric Services.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT B**  
**ALLOCATION OF SPECIFIED COSTS**

Provided as illustration only, not guaranteed to be an all-inclusive list and subject to change as the basis for charges to Big Rivers change:

1. ACES Fee – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
2. North American Transmission Forum – Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
3. NERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
4. NRCO – Cost Differential between organization classification, if applicable, due to Century’s inclusion in Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
5. NRECA - Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
6. Public Service Commission – Pro-rata share of Big Rivers’ intra-Kentucky revenue, only to extent Century revenues are included in fee calculation.
7. SERC - Pro-rata share of Big Rivers’ Local Balancing Authority load (LESS HMPL), only to extent Century load is included in fee calculation.
8. EPA Title V Permit Fees – Tons of emissions related to Coleman Station during SSR operation.
9. KAEC – Pro-rata share of Big Rivers’ total sales, only to extent Century sales are included in fee calculation.
10. KPSC Rate Casts – Century will not be charged costs for Big Rivers rate cases with the KPSC.



**CAPACITOR AGREEMENT**

Dated as of June [ ], 2013

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.**

and

**CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

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## CAPACITOR AGREEMENT

This CAPACITOR AGREEMENT ("Agreement") is made and entered into as of June [ ], 2013, by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers"), KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ("Century"). Big Rivers, Kenergy and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Century owns and operates an aluminum reduction plant in Hawesville, Kentucky and purchases electric services pursuant to a Retail Electric Service Agreement, dated July 1, 2009, with Kenergy (the "Existing Agreement").

B. Century issued a notice of termination with respect to the Existing Agreement, effective as of August 20, 2013.

C. To facilitate entry into new electric service arrangements intended to be effective upon termination of the Existing Agreement (the "Transaction"), the Parties desire to enter into this Agreement to set forth the Parties' respective rights and obligations relating to electrical capacitors and related equipment more particularly described in Exhibit A hereto (the "Capacitor Additions").

D. Century intends that the Capacitor Additions will support serving its requirements for electric services under an Electric Service Agreement to be entered into between Century and Kenergy (the "Electric Service Agreement") as part of the Transaction, in circumstances where Big Rivers has idled its Kenneth C. Coleman Plant, a three unit, coal-fired steam electric generating facility located near Hawesville, Kentucky (the "Coleman Generation Station").

E. In satisfaction of the condition of Big Rivers and Kenergy set forth herein to the effectiveness of this Agreement, Century Aluminum Company, a Delaware corporation and the indirect owner of Century ("Guarantor"), is entering into a Guarantee, dated as of the date hereof, for the benefit of Big Rivers and Kenergy ("the "Guarantee"), guaranteeing to Big Rivers and Kenergy the payment, performance and all other obligations of Century arising out of or relating to this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

## ARTICLE 1

### DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in this Section 1.1, unless stated otherwise or the context requires otherwise.

1.1.1 AAA Rules: As defined in Section 6.4.2.

1.1.2 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.3 Agreement: As defined in the preamble to this Agreement.

1.1.4 Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

1.1.5 Approval: Any valid waiver, exemption, declaration, variance, franchise, permit, authorization, approval, consent, lease, ruling, tariff, rate, certification, license or similar order of or from, or filing or registration with, or notice to, or other action by, any Governmental Authority with jurisdiction over the matter in question.

1.1.6 Arrangement Agreement: An Arrangement and Procurement Agreement, to be entered into by Kenergy and Big Rivers, to facilitate Big Rivers' obtainment of electric energy and related services from the wholesale electric market including pursuant to bilateral contracts, for resale to Kenergy, for delivery to Century under the Electric Service Agreement.

1.1.7 Big Rivers: As defined in the preamble to this Agreement.

1.1.8 Business Day: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

1.1.9 Capacitor Additions: As defined in the Recitals.

1.1.10 Century: As defined in the preamble to this Agreement.

1.1.11 Coleman Generation Station: As defined in the Recitals.

1.1.12 Delivery Point: The existing set of meters at the substation of the Coleman Generation Station or such other point of delivery mutually agreed by the Parties.

1.1.13 Dispute: Any and all disputes, controversies and claims between or among the Parties and arising under, relating to or in connection with, this Agreement, in any manner whatsoever, whether in contract, in tort, or otherwise, and including any dispute or controversy regarding the existence, validity or enforceability of this Agreement, and whether brought by a Party or any of its parents, subsidiaries, affiliates, officers, directors or agents on the one hand, against a Party or any of its parents, subsidiaries, affiliates, officers, directors or agents, on the other hand.

1.1.14 Electric Service Agreement: As defined in the Recitals.

1.1.15 Existing Agreement: As defined in the Recitals.

1.1.16 FERC: Federal Energy Regulatory Commission.

1.1.17 Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.

1.1.18 Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, a RTO (including MISO) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC.

1.1.19 Guarantee: As defined in the Recitals.

1.1.20 Guarantor: As defined in the Recitals.

1.1.21 Harmonic Distortion: As defined in Section 5.1.

1.1.22 Hawesville Smelter: The aluminum reduction plant owned and operated by Century and located in Hawesville, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

1.1.23 ICDR: As defined in Section 6.4.2.

1.1.24 Indemnified Liability: As defined in Section 3.1.

1.1.25 Indemnified Person: As defined in Section 3.1.

1.1.26 ISO: An Independent System Operator, as defined and approved by FERC.

1.1.27 Kenergy: As defined in the preamble to this Agreement.

1.1.28 KPSC: Kentucky Public Service Commission.

1.1.29 MISO: The Midcontinent Independent Transmission System Operator,  
Inc.

1.1.30 NERC: North American Electric Reliability Corporation.

1.1.31 Party or Parties: As defined in the preamble to this Agreement.

1.1.32 Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization or Governmental Authority.

1.1.33 Phase Imbalance: As defined in Section 5.1.

1.1.34 Prime Rate: The then-effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties shall agree on a mutually acceptable alternative source for that rate.

1.1.35 RTO: A regional transmission organization as defined and approved by  
FERC.

1.1.36 RUS: United States Department of Agriculture Rural Utilities Service.

1.1.37 SERC: SERC Reliability Corporation.

1.1.38 Specifications: As defined in Section 2.4.

1.1.39 System Disturbance: As defined in Section 5.1.

1.1.40 Transaction: As defined in the Recitals.

1.1.41 Wholesale Transmission System: As defined in Section 5.1.

1.1.42 Work: As defined in Section 2.1.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and vice versa; (c) references to "Articles," "Recitals," "Sections" or "Exhibits" are to the articles, recitals, sections or exhibits of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person's authorized agents, permitted successors and assigns in such capacity; (e) the words "herein," "hereof" and "hereunder" will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation" and will not be construed to mean that the examples

given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day that is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; and (o) the word “or” shall not be exclusive. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

## ARTICLE 2

### CAPACITOR ADDITIONS

2.1 General. Century shall perform, or cause to be performed, all work and services necessary or appropriate to engineer, design, develop, procure, install, own, operate and maintain the Capacitor Additions (the “Work”) in accordance with this Agreement and subject to the rights and obligations of Big Rivers and Kenergy set forth herein.

2.2 Standard of Care. Century shall perform the Work or cause the Work to be performed (a) in a professional, prudent, good and workman-like manner; (b) in a manner that minimizes to the extent commercially reasonable any adverse impact on the transmission facilities of Big Rivers; and (c) in accordance with the terms of this Agreement, all Applicable Laws, all applicable Approvals of Governmental Authorities, consents of third parties obtained by any Party necessary in connection herewith, Good Utility Practice, including all applicable (i) engineering, environmental, construction and safety codes and standards, (ii) the terms of the insurance policies of Century relating to the Capacitor Additions, and (iii) the standards, rules and regulations of any Governmental Authority. If Big Rivers or Kenergy must obtain any consent from a third party relating to the Work, Big Rivers or Kenergy, as applicable, promptly shall notify Century of the need for such consent. Century shall not be responsible for performing any Work in accordance with any such consent until such consent has been obtained and the notice has been given to Century.

2.3 Schedule of Installation and Operation. Century shall use commercially reasonable efforts to cause the Capacitor Additions to be installed and operational on or prior to the effective date of Kenergy’s obligation to provide electric services to Century pursuant to the Electric Service Agreement. Failure of the Capacitor Additions to be installed and operational on or prior to such date shall not (a) affect Century’s obligations hereunder, (b) result in any liability of Kenergy or Big Rivers to Century or any other Person; or (c) delay the effective date of Kenergy’s or Big Rivers’ obligation to provide electric services to Century pursuant to the Electric Service Agreement and the Arrangement Agreement.

2.4 Specifications. Century shall prepare or cause to be prepared all engineering and design drawings and specifications relating to the design, installation and operation and maintenance of the Capacitor Additions, including drawings, specifications and other documents necessary to (a) illustrate the scale and relationship of the components of the Capacitor Additions; (b) fix and describe engineering, structural, mechanical and electric systems of the Capacitor Additions; and (c) complete construction of the Capacitor Additions (collectively, the “Specifications”). Century shall submit the Specifications to Big Rivers in an electronic format designated by Big Rivers for its review and comment. Big Rivers shall use commercially reasonable efforts to review the Specifications expeditiously but in all cases within seven days of Big Rivers’ receipt of the Specifications. Century shall accept and incorporate into the Specifications any comments of Big Rivers to the extent that such comments relate to compliance with the standards, rules and regulations of any Governmental Authority with jurisdiction relating to the Work.

2.5 No Approval or Reliance. Big Rivers’ review of and comments with respect to the Specifications shall not constitute: (a) approval of the proposed Work or design of the Capacitor Additions or an evaluation or determination that the Specifications meet, or the Work or the proposed Capacitor Additions will meet or comply with, Section 2.2 or are otherwise suitable for their intended purpose; or (b) a waiver of, or release of Century from, any liability for errors or omissions related to or arising out of the Specifications, the Work or the Capacitor Additions. Century shall retain all documentation applicable to the Capacitor Additions for a period of three years following the earlier of (i) cessation of operation of the Capacitor Additions or (ii) the termination of this Agreement. Century acknowledges and agrees that (A) Kenergy and Big Rivers are entering into this Agreement to accommodate Century’s desire to perform the Work based on Century’s assessment that the Capacitor Additions will serve Century’s intended purpose, (B) neither Kenergy nor Big Rivers has undertaken or will undertake any evaluation or analysis as to whether the Capacitor Additions will have the results desired by Century, (C) neither Kenergy nor Big Rivers has any duty, fiduciary or otherwise, regarding the suitability of the Work or the Capacitor Additions for their intended purpose, including whether the Work or the Capacitor Additions will meet any applicable requirements of any Governmental Authority, and (D) it is not relying on Kenergy or Big Rivers for engineering, legal, regulatory, financial or other advice but instead is seeking and will rely on the advice of its own professionals and advisors for such matters.

2.6 Certification and Seal. All engineering work performed or caused to be performed by Century pursuant to Section 2.1 requiring certification shall be certified, and all Specifications requiring sealing shall be sealed, by professional engineers licensed and properly qualified to perform such engineering services in all appropriate jurisdictions.

2.7 Location and Access. The Capacitor Additions shall be located on real property owned by Century. Neither Big Rivers nor Kenergy shall have any obligation to provide access to real estate or otherwise make available to Century any space for the Capacitor Additions or the Work.

2.8 Payments and Reimbursements. Century shall own the Capacitor Additions. Century shall directly pay for the Work and any other costs attributable to ownership of the Specifications, the Work and the Capacitor Additions. Century shall reimburse Big Rivers or

Kenergy for all out-of-pocket costs and expenses incurred by Big Rivers or Kenergy, as applicable, relating to the Specifications, the Work and the Capacitor Additions within ten (10) Business Days of Century's receipt from Big Rivers or Kenergy, as applicable, of an invoice setting forth such costs in reasonable detail.

2.9 Approvals. Century shall obtain, or cause to be obtained, any and all Approvals necessary for the Work, including any and all Approvals required by MISO, on or prior to the time such Approvals are required by Applicable Law to be duly obtained, given, accomplished or renewed, and all such Approvals shall be maintained in full force and effect and any conditions therein shall have been satisfied or waived. Century's obligations under this Section 2.9 shall include continuous compliance with all electric reliability standards, rules and regulations of SERC, NERC and FERC relating to the Work, including the ownership or operation and maintenance of the Capacitor Additions, or the performance of Century's obligations hereunder. Big Rivers and Kenergy shall cooperate with Century and support any requests for Approvals of Governmental Authorities required hereunder as long as Big Rivers and Kenergy have no objections to or concerns about the course of action proposed by Century with respect to any such Approval. Century shall be solely responsible for the contents of any such requests. Such cooperation shall include Big Rivers or Kenergy using reasonable commercial efforts to promptly submit on Century's behalf, if necessary, any request for such Approvals following completion thereof.

2.10 Protection of Persons and Property. Century shall be responsible for the safety and protection of its employees and agents and third parties, as well as its and their respective property, in connection with the performance of the Work. Century shall cause its employees and agents to comply with all safety programs relating to the Work. Other than due to its own gross negligence or willful conduct, neither Big Rivers nor Kenergy shall be held liable for any injury or death of any such Persons or any damage to any such personal property that may occur in connection with the performance of the Work.

2.11 Contractors. Notwithstanding any agreement with any contractor or subcontractor, as between Century, on one hand, and Big Rivers or Kenergy, on the other hand, Century is solely responsible for the Work and will not be excused from its obligations hereunder if any portion of the Work is defective, non-operational or not performed in accordance with the requirements of this Agreement. Century has complete and sole responsibility as a principal for its agents and all other Persons hired to perform or assist in performing the Work, including contractors.

2.12 No Agency. Nothing in this Agreement is intended by the Parties, and nothing in this Agreement shall be construed, to create an agency, partnership, joint venture or similar relationship between the Parties with respect to the Capacitor Additions or any Work.

2.13 Insurance. Century shall maintain (a) property insurance for the Capacitor Additions in an amount equal to the replacement cost thereof and (b) other insurance (including liability insurance) with respect to the Capacitor Additions and the Work in accordance with Good Utility Practice and Applicable Law. At the request of Big Rivers, Century shall provide information regarding the insurance program maintained by Century in connection with this Agreement, including certificates or other reasonable evidence of any required insurance

coverage. The insurance coverage required to be maintained hereunder shall not limit, restrict or otherwise affect Century's liabilities in connection with this Agreement.

2.14 Guarantee. Century acknowledges and agrees that (a) the Guarantee has been entered into as a condition to the entry into this Agreement by Big Rivers and Kenergy, and (b) Century shall cause a Substitute Guarantee (as defined in the Guarantee) to be entered into in the circumstances required therefor under the Guarantee.

2.15 Cessation of Smelting Operations; Survival. The Parties acknowledge and agree that (a) Century may permanently cease smelting operations at the Hawesville Smelter, including ceasing operation of the Capacitor Additions, and (b) in such case, Century's obligations under Sections 2.3, 2.4, 2.6 and 2.13, the first sentence of each of Sections 2.7 and 2.8, and Article 5 shall terminate.

### **ARTICLE 3**

#### **INDEMNIFICATION**

3.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, Century hereby agrees that it will pay, and will protect, indemnify, and hold harmless each of Big Rivers and Kenergy and each of its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject, excluding such losses, claims, damages, liabilities, costs and other expenses due to Big Rivers' or Kenergy's gross negligence or willful conduct, whether incurred directly or incurred based on claims of third Persons, arising out of or relating to the Specifications, the Work or the Capacitor Additions, whether arising before or after the date hereof, including any or all of the following (each, an "Indemnified Liability"):

3.1.1 The execution or delivery of this Agreement, or any agreement or instrument contemplated hereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder, including all obligations relating to the Specifications, the Work or the Capacitor Additions;

3.1.2 Any environmental liability related to or arising out of the Work or the Capacitor Additions;

3.1.3 Any liability relating to the Capacitor Additions or this Agreement resulting from (a) entry into this Agreement prior to the satisfaction or waiver of the conditions to the obligations of Kenergy to commence service under the Electric Service Agreement, or (b) failure to enter into the Electric Service Agreement or failure of such conditions to be satisfied or waived;

3.1.4 Damage to or destruction of any plant, machinery or equipment of any Person, including (a) relating to or arising out of the failure, inoperability, or unavailability for their intended purpose of, the Capacitor Additions, or (b) due to the inaccuracy, faultiness or inadequacy in any respect of the Specifications or the Work;

3.1.5 Fines, penalties or other consequences resulting from the failure of the Capacitor Additions to perform their intended purpose, including assessments of Governmental Authorities, including MISO, NERC or SERC, or the failure to obtain or maintain, or satisfy any obligations relating to, any required Approval;

3.1.6 The out-of-pocket costs to obtain any consent of a third party necessary for the performance of the Work or the obligations of the Parties hereunder; or

3.1.7 Any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing Subsections 3.1.1 through 3.1.6, whether based on contract, tort or any other theory, whether brought by any third party or by Century or otherwise, and regardless of whether any Indemnified Person is a party thereto, such Subsections 3.1.1 through 3.1.6 including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with the recovery of costs under the provisions of this Section 3.1.

3.2 Primary Indemnity. Except to the extent there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of Century under this Agreement.

### 3.3 Payments.

3.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify Century in a timely manner of any such amounts payable by Century hereunder; *provided*, that any failure to provide such notice shall not affect Century's obligations under this Article 3.

3.3.2 Any amounts payable by Century pursuant to this Article 3, shall be payable within the later to occur of (i) ten (10) Business Days after Century receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which Century's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

3.3.3 If any portion of any amounts invoiced hereunder is disputed by Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Kenergy or Big Rivers, as applicable, shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made.

3.4 Survival. The provisions of this Article 3 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

3.5 Subrogation. Upon payment by Century pursuant to this Article 3 of any claim under Section 3.1 in respect of any Indemnified Liability, Century, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of Century cooperate with Century and give at the request and expense of Century such further assurances as are necessary or advisable to enable Century vigorously to pursue such claims.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to each other Party as of the date hereof as follows:

4.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Agreement.

4.2 Due Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by such Party, and assuming the due authorization, execution and delivery of this Agreement by each other Party, constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

4.3 No Violation. The execution and delivery of this Agreement by such Party and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to such Party or its organizational documents or by-laws, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

4.4 Approvals. Except as set forth on Exhibit B, no Approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which such Party is subject is required for the due execution, delivery or performance by it of this Agreement. There are no conditions to the effectiveness of this Agreement with respect to such Party that have not been satisfied or irrevocably waived.

4.5 Proceedings. There is no pending or, to such Party's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) questions the validity of this Agreement or the ability of such Party to perform its obligations hereunder, (b) affects or relates to any Approval

relating to the Work or the Capacitor Additions, or (c) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

4.6 Independent Decision. Such Party has, independently and without reliance upon any other Party and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement.

## ARTICLE 5

### SYSTEM DISTURBANCES

5.1 General. Century shall not use the Capacitor Additions or perform the Work in such manner as to cause a “System Disturbance.” A “System Disturbance” is a use of electric power and energy that directly or indirectly results in a risk of harm to any Person or material damage to or interference with the transmission system of a wholesale power supplier of Kenergy or the transmission system of Big Rivers (the “Wholesale Transmission System”), a system connected with the Wholesale Transmission System or facilities or other property in proximity to the Wholesale Transmission System, or the plant, facility, equipment or operations of any other Person served directly or indirectly from the Wholesale Transmission System. A System Disturbance includes, but is not limited to “Harmonic Distortion” and “Phase Imbalance.” A “Harmonic Distortion” is a level of current harmonic total demand distortion measured at the Delivery Point that exceeds the limits on total demand distortion described in IEEE Standard 519, Section 10. A “Phase Imbalance” is a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at the Delivery Point.

5.2 Changes. Kenergy or Big Rivers may require and Century shall, at Century’s expense, make such changes in the Capacitor Additions as may be reasonably necessary to eliminate System Disturbances. If Century’s use of power and energy creates an imbalance between phases that causes a System Disturbance, and Century fails to make changes in the Capacitor Additions requested by Big Rivers or Kenergy to correct such condition, in addition to any other available remedies, Big Rivers or Kenergy may, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.

## ARTICLE 6

### MISCELLANEOUS

6.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in this Agreement.

6.2 Waiver. The waiver by a Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

6.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section 6.3 will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if such day is a Business Day, or otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 6.3, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party in accordance with this Section 6.3:

If to Big Rivers:           Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 827-2558

If to Kenergy:           Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 826-3999

If to Century:           Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Fax: (270) 852-2882

With copy to:           Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Fax: (312) 696-3102

6.4 Dispute Resolution.

6.4.1 If a Dispute arises, a Party may request a meeting among authorized representatives of the Parties to discuss and attempt to reach a resolution of the Dispute. Such

meeting will take place within ten (10) Business Days or such shorter or longer time as agreed upon by the Parties.

6.4.2 Absent resolution of the Dispute pursuant to Section 6.4.1, and subject to a minimum amount in controversy of \$100,000.00, the Parties shall submit the matter to be settled, subject to Section 6.4.9, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution (“ICDR”) of the American Arbitration Association (the “AAA Rules”), in accordance with the following terms and conditions:

(a) In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

(b) The ICDR shall administer the arbitration.

(c) The seat of arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

6.4.3 Subject to Sections 6.4.1 and 6.4.2, any Party may pursue any remedy available at law or equity with respect to any dispute or breach under this Agreement. Nothing in this Agreement shall expand or reduce the jurisdiction of any Governmental Authority.

6.4.4 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two Party-nominated arbitrators to agree on an arbitrator in accordance with Section 6.4.4(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 6.4.4(a) and 6.4.4(b), each arbitrator selected pursuant to this Section 6.4.4 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed or been a consultant to any Party in the past.

6.4.5 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the arbitral tribunal may be specifically enforced by any court of competent jurisdiction.

6.4.6 The losing Party shall pay the fees and costs of the prevailing Party.

6.4.7 The award of the arbitral tribunal shall be subject to appeal or requests for rehearing pursuant to Section 6.7.

6.4.8 The award of the tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

6.4.9 Except for arbitration proceedings pursuant to this Section 6.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any Dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 6.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

#### 6.5 Successors and Assigns.

6.5.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Parties, except as provided in Section 6.5.4, and except that, subject to satisfaction of the conditions of Section 6.5.2, assignment may be made by a Party to such Person as acquires all or substantially all the assets of the assigning Party or that merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

6.5.2 In no event may a Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Parties or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

6.5.3 No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted

assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

6.5.4 A Party may, without the approval of any other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

6.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

6.7 Jurisdiction. Subject to Section 6.4, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all Disputes, *provided* that the subject matter of such Dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related Disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section 6.7 and any claim that such action, suit or proceeding brought in accordance with this Section 6.7 has been brought in an inconvenient forum. Nothing in Section 6.4 or this Section 6.7 prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of any Governmental Authority over Kenergy or Big Rivers. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 6.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 6.3, and agrees that such service shall be, for all purposes, good and sufficient.

6.8 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit each other Party to fulfill its obligations under this Agreement; *provided* that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by any other Party. Where the consent, agreement, or approval of any Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where any Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to any Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

6.9 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

6.10 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

6.11 No Power Sales Commitment. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers or Kenergy to sell to Century, or an agreement of Century to purchase from Big Rivers or Kenergy, any electric energy or ancillary or related services, including reactive power.

6.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT A**

### **CAPACITOR ADDITIONS**

Consistent with the expected MISO Operating Guide, the Capacitor Additions are sized to provide the necessary voltage support for the Hawesville Smelter to operate at up to 492 MW with all units of the Coleman Generation Station idled.

## **EXHIBIT B**

### **REQUIRED CONSENTS**

No approval or consent is required, but MISO will review this Agreement as part of its verification or confirmation of the Base Load and Curtailable Load that will be permitted pursuant to the Electric Service Agreement and Attachment Y to MISO's Open Access Transmission Tariff.



**PROTECTIVE RELAYS AGREEMENT**

Dated as of June [ ], 2013

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.**

and

**CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

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## PROTECTIVE RELAYS AGREEMENT

This PROTECTIVE RELAYS AGREEMENT ("Agreement") is made and entered into as of June [ ], 2013, by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers"), KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ("Century"). Big Rivers, Kenergy and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Century owns and operates an aluminum reduction plant in Hawesville, Kentucky and purchases electric services pursuant to a Retail Electric Service Agreement, dated July 1, 2009, with Kenergy (the "Existing Agreement").

B. Century issued a notice of termination with respect to the Existing Agreement, effective as of August 20, 2013.

C. To facilitate entry into new electric service arrangements intended to be effective upon termination of the Existing Agreement (the "Transaction"), the Parties desire to enter into this Agreement to set forth the Parties' respective rights and obligations relating to protective relays and related equipment more particularly described in Exhibit A hereto (the "Protective Relays").

D. Century intends that the Protective Relays will support curtailment of Century's requirements for electric services, in certain circumstances, served under an Electric Service Agreement to be entered into between Century and Kenergy (the "Electric Service Agreement") as part of the Transaction.

E. In satisfaction of the condition of Big Rivers and Kenergy set forth herein to the effectiveness of this Agreement, Century Aluminum Company, a Delaware corporation and the indirect owner of Century ("Guarantor"), is entering into a Guarantee, dated as of the date hereof, for the benefit of Big Rivers and Kenergy ("the "Guarantee"), guaranteeing to Big Rivers and Kenergy the payment, performance and all other obligations of Century arising out of or relating to this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

**ARTICLE 1**  
**DEFINITIONS; RULES OF INTERPRETATION**

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in this Section 1.1, unless stated otherwise or the context requires otherwise.

1.1.1 AAA Rules: As defined in Section 6.4.2.

1.1.2 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.3 Agreement: As defined in the preamble to this Agreement.

1.1.4 Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

1.1.5 Approval: Any valid waiver, exemption, declaration, variance, franchise, permit, authorization, approval, consent, lease, ruling, tariff, rate, certification, license or similar order of or from, or filing or registration with, or notice to, or other action by, any Governmental Authority with jurisdiction over the matter in question.

1.1.6 Arrangement Agreement: An Arrangement and Procurement Agreement, to be entered into by Kenergy and Big Rivers, to facilitate Big Rivers' obtainment of electric energy and related services from the wholesale electric market including pursuant to bilateral contracts, for resale to Kenergy, for delivery to Century under the Electric Service Agreement.

1.1.7 Big Rivers: As defined in the preamble to this Agreement.

1.1.8 Business Day: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

1.1.9 Century: As defined in the preamble to this Agreement.

1.1.10 Dispute: Any and all disputes, controversies and claims between or among the Parties and arising under, relating to or in connection with, this Agreement, in any manner whatsoever, whether in contract, in tort, or otherwise, and including any dispute or controversy regarding the existence, validity or enforceability of this Agreement, and whether brought by a Party or any of its parents, subsidiaries, affiliates, officers, directors or agents on the one hand, against a Party or any of its parents, subsidiaries, affiliates, officers, directors or agents, on the other hand.

1.1.11 Electric Service Agreement: As defined in the Recitals.

1.1.12 Existing Agreement: As defined in the Recitals.

1.1.13 FERC: Federal Energy Regulatory Commission.

1.1.14 Good Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be any and all generally accepted practices, methods, or acts.

1.1.15 Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, a RTO (including MISO) or ISO, any electric reliability authority, including NERC and SERC, and the KPSC.

1.1.16 Guarantee: As defined in the Recitals.

1.1.17 Guarantor: As defined in the Recitals.

1.1.18 Harmonic Distortion: As defined in Section 5.1.

1.1.19 Hawesville Smelter: The aluminum reduction plant owned and operated by Century and located in Hawesville, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

1.1.20 ICDR: As defined in Section 6.4.2.

1.1.21 Indemnified Liability: As defined in Section 3.1.

1.1.22 Indemnified Person: As defined in Section 3.1.

1.1.23 ISO: An Independent System Operator, as defined and approved by FERC.

1.1.24 Kenergy: As defined in the preamble to this Agreement.

1.1.25 KPSC: Kentucky Public Service Commission.

1.1.26 MISO: The Midcontinent Independent Transmission System Operator, Inc.

1.1.27 NERC: North American Electric Reliability Corporation.

1.1.28 Party or Parties: As defined in the preamble to this Agreement.

1.1.29 Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization or Governmental Authority.

1.1.30 Phase Imbalance: As defined in Section 5.1.

1.1.31 Prime Rate: The then-effective prime commercial lending rate per annum published in the “Money Rates” section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties shall agree on a mutually acceptable alternative source for that rate.

1.1.32 Protective Relays: As defined in the Recitals.

1.1.33 RTO: A regional transmission organization as defined and approved by FERC.

1.1.34 RUS: United States Department of Agriculture Rural Utilities Service.

1.1.35 SERC: SERC Reliability Corporation.

1.1.36 Specifications: As defined in Section 2.4.

1.1.37 System Disturbance: As defined in Section 5.1.

1.1.38 Transaction: As defined in the Recitals.

1.1.39 Wholesale Transmission System: As defined in Section 5.1.

1.1.40 Work: As defined in Section 2.1.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and vice versa; (c) references to “Articles,” “Recitals,” “Sections” or “Exhibits” are to the articles, recitals, sections or exhibits of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person’s authorized agents, permitted successors and assigns in such capacity; (e) the words “herein,” “hereof” and “hereunder” will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended,

modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day that is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; and (o) the word “or” shall not be exclusive. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

## ARTICLE 2

### PROTECTIVE RELAYS

2.1 General. Century shall perform, or cause to be performed, all work and services necessary or appropriate to engineer, design, develop, procure, install, own, operate and maintain the Protective Relays (the “Work”) in accordance with this Agreement and subject to the rights and obligations of Big Rivers and Kenergy set forth herein.

2.2 Standard of Care. Century shall perform the Work or cause the Work to be performed (a) in a professional, prudent, good and workman-like manner, (b) in a manner that minimizes to the extent commercially reasonable the adverse impact on the transmission facilities of Big Rivers and (c) in accordance with the terms of this Agreement, all Applicable Laws, all applicable Approvals of Governmental Authorities, consents of third parties obtained by any Party necessary in connection herewith, Good Utility Practice, including all applicable (i) engineering, environmental, construction and safety codes and standards, (ii) the terms of the insurance policies of Century relating to the Protective Relays, and (iii) the standards, rules and regulations of any Governmental Authority. If Big Rivers or Kenergy must obtain any consent from a third party relating to the Work, Big Rivers or Kenergy, as applicable, promptly shall notify Century of the need for such consent. Century shall not be responsible for performing any Work in accordance with any such consent until such consent has been obtained and notice given to Century.

2.3 Schedule of Installation and Operation. Century shall use commercially reasonable efforts to cause the Protective Relays to be installed and operational on or prior to the effective date of Kenergy’s obligation to provide electric services to Century pursuant to the Electric Service Agreement. Failure of the Protective Relays to be installed and operational on or prior to such date shall not (a) affect Century’s obligations hereunder, (b) result in any liability of Kenergy or Big Rivers to Century or any other Person; or (c) delay the effective date of Kenergy’s or Big Rivers’ obligation to provide electric services to Century pursuant to the Electric Service and the Arrangement Agreement.

2.4 Specifications. Century shall prepare or cause to be prepared all engineering and design drawings and specifications relating to the design, installation and operation and maintenance of the Protective Relays, including drawings, specifications and other documents necessary to (a) illustrate the scale and relationship of the components of the Protective Relays; (b) fix and describe engineering, structural, mechanical and electric systems of the Protective

Relays; and (c) complete construction of the Protective Relays (collectively, the “Specifications”). Century shall submit the Specifications to Big Rivers in an electronic format designated by Big Rivers for its review and comment. Big Rivers shall use commercially reasonable efforts to review the Specifications expeditiously but in all cases within seven days of Big Rivers’ receipt of the Specifications. Century shall accept and incorporate into the Specifications any comments of Big Rivers to the extent that such comments relate to compliance with the standards, rules and regulations of any other Governmental Authority with jurisdiction relating to the Work.

2.5 No Approval or Reliance. As between Big Rivers and Kenergy, on one hand and Century on the other, with respect to any potential liability of Big Rivers for the Work or for the operation of the Protective Relays, Big Rivers’ review of and comments with respect to the Specifications shall not constitute: (a) approval of the proposed Work or design of the Protective Relays or an evaluation or determination that the Specifications meet, or the Work or the proposed Protective Relays will meet or comply with, Section 2.2 or are otherwise suitable for their intended purpose; or (b) a waiver of, or release of Century from, any liability for errors or omissions related to or arising out of the Specifications, the Work or the Protective Relays. Century shall retain all documentation applicable to the Protective Relays for a period of three years following the earlier of (i) cessation of operation of the Protective Relays or (ii) the termination of this Agreement. Century acknowledges and agrees that (A) Kenergy and Big Rivers are entering into this Agreement to accommodate Century’s desire to perform the Work based on Century’s assessment that the Protective Relays will serve Century’s intended purpose, (B) neither Kenergy nor Big Rivers has undertaken or will undertake any evaluation or analysis as to whether the Protective Relays will have the results desired by Century, (C) neither Kenergy nor Big Rivers has any duty, fiduciary or otherwise, regarding the suitability of the Work or the Protective Relays for their intended purpose, including whether the Work or the Protective Relays will meet any applicable requirements of any Governmental Authority, and (D) it is not relying on Kenergy or Big Rivers for engineering, legal, regulatory, financial or other advice but instead is seeking and will rely on the advice of its own professionals and advisors for such matters.

2.6 Certification and Seal. All engineering work performed or caused to be performed by Century pursuant to Section 2.1 requiring certification shall be certified, and all Specifications requiring sealing shall be sealed, by professional engineers licensed and properly qualified to perform such engineering services in all appropriate jurisdictions.

2.7 Location and Access. The Protective Relays shall be located on the real property owned by Century and located behind Century’s meter at the Hawesville Smelter. Neither Big Rivers nor Kenergy shall have any obligation to provide access to real estate or otherwise make available to Century any space for the Protective Relays or the Work.

2.8 Payments and Reimbursements. Century shall own the Protective Relays. Century shall directly pay for the Work and any other costs attributable to ownership of the Specifications, the Work and the Protective Relays. Century shall reimburse Big Rivers or Kenergy for all out-of-pocket costs and expenses incurred by Big Rivers or Kenergy, as applicable, relating to the Specifications, the Work and the Protective Relays within ten (10)

Business Days of Century's receipt from Big Rivers or Kenergy, as applicable, of an invoice setting forth such costs in reasonable detail.

2.9 Coordination with Third-Parties. The Parties shall cooperate in good faith to submit to MISO and SERC, if applicable, a mutually agreeable proposal that: (a) Century be permitted to install Protective Relays to receive electric service under the Electric Service Agreement at capacities in excess of the maximum demand to be permitted under the Electric Service Agreement, without considering the Protective Relays or any other requirement that MISO may impose as a condition to exceeding such maximum demand; (b) permit when required to maintain electric reliability, MISO, NERC, SERC or any other Governmental Authority with jurisdiction over electric reliability to direct activation of the Protective Relays to curtail Century's load at the Hawesville Smelter, down to the maximum demand to be permitted under the Electric Service Agreement, without considering the Protective Relays; (c) such direction shall be a specified, agreed communication to Big Rivers; and (d) Big Rivers shall promptly provide Century with notice of any such communication in procedures to be developed by the Parties. At Century's sole cost and expense, Big Rivers shall install and maintain communication equipment required by MISO or SERC to facilitate such communication. Except for the gross negligence or willful conduct by Big Rivers or Kenergy, Century acknowledges and agrees that neither Kenergy nor Big Rivers shall have any liability to any Person with respect to such communication equipment or Big Rivers' installation or operation thereof.

2.10 Approvals. Century shall obtain, or cause to be obtained, any and all Approvals necessary for the Work, including, if applicable, any and all Approvals required by SERC or NERC, on or prior to the time such Approvals are required by Applicable Law to be duly obtained, given, accomplished or renewed, and all such Approvals shall be maintained in full force and effect and any conditions therein shall have been satisfied or waived. Century's obligations under this Section 2.10 shall include continuous compliance with all electric reliability standards, rules and regulations of SERC, NERC and FERC relating to the Work, including the ownership or operation and maintenance of the Protective Relays, or the performance of Century's obligations hereunder. Big Rivers and Kenergy shall cooperate with Century and support any requests for Approvals of Governmental Authorities required hereunder as long as Big Rivers and Kenergy have no objections to or concerns about the course of action proposed by Century with respect to any such Approval. Century shall be solely responsible for the contents of any such requests. Such cooperation shall include Big Rivers or Kenergy using reasonable commercial efforts to promptly submit on Century's behalf, if necessary, any request for such Approvals following completion thereof.

2.11 Protection of Persons and Property. Century shall be responsible for the safety and protection of its employees and agents and third parties, as well as its and their respective property, in connection with the performance of the Work. Century shall cause its employees and agents to comply with all safety programs relating to the Work. Other than due to its own gross negligence or willful conduct, neither Big Rivers nor Kenergy shall be held liable for any injury or death of any such Persons or any damage to any such personal property that may occur in connection with the performance of the Work.

2.12 Contractors. Notwithstanding any agreement with any contractor or subcontractor, as between Century, on one hand, and Big Rivers or Kenergy, on the other hand,

Century is solely responsible for the Work and will not be excused from its obligations hereunder if any portion of the Work is defective, non-operational or not performed in accordance with the requirements of this Agreement. Century has complete and sole responsibility as a principal for its agents and all other Persons hired to perform or assist in performing the Work, including contractors.

2.13 No Agency. Nothing in this Agreement is intended by the Parties, and nothing in this Agreement shall be construed, to create an agency, partnership, joint venture or similar relationship between the Parties with respect to the Protective Relays or any Work.

2.14 Insurance. Century shall maintain (a) property insurance for the Protective Relays in an amount equal to the replacement cost thereof and (b) other insurance (including liability insurance) with respect to the Protective Relays and the Work in accordance with Good Utility Practice and Applicable Law. At the request of Big Rivers, Century shall provide information regarding the insurance program maintained by Century in connection with this Agreement, including certificates or other reasonable evidence of any required insurance coverage. The insurance coverage required to be maintained hereunder shall not limit, restrict or otherwise affect Century's liabilities in connection with this Agreement.

2.15 Guarantee. Century acknowledges and agrees that (a) the Guarantee has been entered into as a condition to the entry into this Agreement by Big Rivers and Kenergy, and (b) Century shall cause a Substitute Guarantee (as defined in the Guarantee) to be entered into in the circumstances required therefor under the Guarantee.

2.16 Cessation of Smelting Operations; Survival. The Parties acknowledge and agree that (a) Century may permanently cease smelting operations at the Hawesville Smelter, including ceasing operation of the Protective Relays, and (b) in such case, Century's obligations under Sections 2.3, 2.4, 2.6, and 2.14, the first sentence of each of Sections 2.7 and 2.8, and Article 5 shall terminate.

### ARTICLE 3

#### INDEMNIFICATION

3.1 Claims. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, Century hereby agrees that it will pay, and will protect, indemnify, and hold harmless each of Big Rivers and Kenergy and each of its respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs or other expenses (including, to the extent permitted by Applicable Law, the reasonable fees, disbursements and other charges of counsel) to which such Indemnified Person may become subject, excluding such losses, claims, damages, liabilities, costs and other expenses due to Big Rivers or Kenergy's gross negligence or willful conduct, whether incurred directly or incurred based on claims of third Persons, arising out of or relating to the Specifications, the Work or the Protective Relays, whether arising before or after the date hereof, including any or all of the following (each, an "Indemnified Liability"):

3.1.1 The execution or delivery of this Agreement, or any agreement or instrument contemplated hereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder, including all obligations relating to the Specifications, the Work or the Protective Relays;

3.1.2 Any environmental liability related to or arising out of the Work or the Protective Relays;

3.1.3 Any liability relating to the Protective Relays or this Agreement resulting from (a) entry into this Agreement prior to the satisfaction or waiver of the conditions to the obligations of Kenergy to commence service under the Electric Service Agreement, or (b) failure to enter into the Electric Service Agreement or failure of such conditions to be satisfied or waived;

3.1.4 Damage to or destruction of any plant, machinery or equipment of any Person, including (a) relating to or arising out of the failure, inoperability, or unavailability for their intended purpose of, the Protective Relays, or (b) due to the inaccuracy, faultiness or inadequacy in any respect of the Specifications or the Work;

3.1.5 Fines, penalties or other consequences resulting from the failure of the Protective Relays to perform their intended purpose, including assessments of Governmental Authorities, including NERC or SERC, or the failure to obtain or maintain, or satisfy any obligations relating to, any required Approval;

3.1.6 Any liability relating to or arising out of the installation or maintenance of the communication equipment to be installed pursuant to Section 2.9;

3.1.7 The out-of-pocket costs to obtain any consent of a third party necessary for the performance of the Work or the obligations of the Parties hereunder; or

3.1.8 Any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing Subsections 3.1.1 through 3.1.7, whether based on contract, tort or any other theory, whether brought by any third party or by Century or otherwise, and regardless of whether any Indemnified Person is a party thereto, such Subsections 3.1.1 through 3.1.7 including, to the extent permitted by Applicable Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with the recovery of costs under the provisions of this Section 3.1.

3.2 Primary Indemnity. Except to the extent there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of Century under this Agreement.

### 3.3 Payments.

3.3.1 All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Prime Rate. Each such Indemnified Person shall promptly notify Century in a timely manner of any such amounts

payable by Century hereunder; *provided*, that any failure to provide such notice shall not affect Century's obligations under this Article 3.

3.3.2 Any amounts payable by Century pursuant to this Article 3, shall be payable within the later to occur of (i) ten (10) Business Days after Century receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which Century's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Prime Rate from and after such applicable date until paid in full.

3.3.3 If any portion of any amounts invoiced hereunder is disputed by Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Kenergy or Big Rivers, as applicable, shall promptly cause to be refunded to Century the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made.

3.4 Survival. The provisions of this Article 3 shall survive termination of this Agreement and shall be in addition to any other rights and remedies of any Indemnified Person.

3.5 Subrogation. Upon payment by Century pursuant to this Article 3 of any claim under Section 3.1 in respect of any Indemnified Liability, Century, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of Century cooperate with Century and give at the request and expense of Century such further assurances as are necessary or advisable to enable Century vigorously to pursue such claims.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to each other Party as of the date hereof as follows:

4.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Agreement.

4.2 Due Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by such Party, and assuming the due authorization, execution and delivery of this Agreement by each other Party, constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

4.3 No Violation. The execution and delivery of this Agreement by such Party and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any

Applicable Law relating to such Party or its organizational documents or by-laws, or (b) contravene the provisions of, or constitute a default (or an event that, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

4.4 Approvals. Except as set forth on Exhibit B, no Approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which such Party is subject is required for the due execution, delivery or performance by it of this Agreement. There are no conditions to the effectiveness of this Agreement with respect to such Party that have not been satisfied or irrevocably waived.

4.5 Proceedings. There is no pending or, to such Party's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority that: (a) questions the validity of this Agreement or the ability of such Party to perform its obligations hereunder, (b) affects or relates to any Approval relating to the Work or the Protective Relays, or (c) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

4.6 Independent Decision. Such Party has, independently and without reliance upon any other Party and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement.

## ARTICLE 5

### SYSTEM DISTURBANCES

5.1 General. Century shall not use the Protective Relays or perform the Work in such manner as to cause a "System Disturbance." A "System Disturbance" is a use of electric power and energy that directly or indirectly results in a risk of harm to any Person or material damage to or interference with the transmission system of a wholesale power supplier of Kenergy or the transmission system of Big Rivers (the "Wholesale Transmission System"), a system connected with the Wholesale Transmission System or facilities or other property in proximity to the Wholesale Transmission System, or the plant, facility, equipment or operations of any other Person served directly or indirectly from the Wholesale Transmission System. A System Disturbance includes, but is not limited to "Harmonic Distortion" and "Phase Imbalance." A "Harmonic Distortion" is a level of current harmonic total demand distortion measured at the Delivery Point that exceeds the limits on total demand distortion described in IEEE Standard 519, Section 10. A "Phase Imbalance" is a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at the Delivery Point.

5.2 Changes. Kenergy or Big Rivers may require and Century shall, at Century's expense, make such changes in the Protective Relays as may be reasonably necessary to eliminate System Disturbances. If Century's use of power and energy creates an imbalance between phases that causes a System Disturbance, and Century fails to make changes in the Protective Relays requested by Big Rivers or Kenergy to correct such condition, in addition to

any other available remedies, Big Rivers or Kenergy may, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.

## ARTICLE 6

### MISCELLANEOUS

6.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in this Agreement.

6.2 Waiver. The waiver by a Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

6.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section 6.3 will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if such day is a Business Day, or otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 6.3, the address of a Party is the address set out below or such other address that that Party may from time to time deliver by notice to the other Party in accordance with this Section 6.3:

If to Big Rivers:           Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 827-2558

If to Kenergy:           Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 826-3999

If to Century: Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Fax: (270) 852-2882

With copy to: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, Illinois 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 6.4 Dispute Resolution.

6.4.1 If a Dispute arises, a Party may request a meeting among authorized representatives of the Parties to discuss and attempt to reach a resolution of the Dispute. Such meeting will take place within ten (10) Business Days or such shorter or longer time as agreed upon by the Parties.

6.4.2 Absent resolution of the Dispute pursuant to Section 6.4.1, and subject to a minimum amount in controversy of \$100,00.00, the Parties shall submit the matter to be settled, subject to Section 6.4.9, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution (“ICDR”) of the American Arbitration Association (the “AAA Rules”), in accordance with the following terms and conditions:

(a) In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

(b) The ICDR shall administer the arbitration.

(c) The seat of arbitration shall be Henderson, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

6.4.3 Subject to Sections 6.4.1 and 6.4.2, any Party may pursue any remedy available at law or equity with respect to any dispute or breach under this Agreement. Nothing in this Agreement shall expand or reduce the jurisdiction of any Governmental Authority.

6.4.4 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in

accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two Party-nominated arbitrators to agree on an arbitrator in accordance with Section 6.4.4(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 6.4.4(a) and 6.4.4(b), each arbitrator selected pursuant to this Section 6.4.4 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed or been a consultant to any Party in the past.

6.4.5 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, and including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the arbitral tribunal may be specifically enforced by any court of competent jurisdiction.

6.4.6 The losing Party shall pay the fees and costs of the prevailing Party.

6.4.7 The award of the arbitral tribunal shall be subject to appeal or requests for rehearing pursuant to Section 6.7.

6.4.8 The award of the tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court that has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

6.4.9 Except for arbitration proceedings pursuant to this Section 6.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any Dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 6.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

## 6.5 Successors and Assigns.

6.5.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or

operation of law, without the prior written consent of the other Parties, except as provided in Section 6.5.4, and except that, subject to satisfaction of the conditions of Section 6.5.2, assignment may be made by a Party to such Person as acquires all or substantially all the assets of the assigning Party or that merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

6.5.2 In no event may a Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Parties or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

6.5.3 No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

6.5.4 A Party may, without the approval of any other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

6.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

6.7 Jurisdiction. Subject to Section 6.4, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all Disputes, *provided* that the subject matter of such Dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related Disputes under this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section 6.7 and any claim that such action, suit or proceeding brought in accordance with this Section 6.7 has been brought in an inconvenient forum. Nothing in Section 6.4 or this Section 6.7 prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of any Governmental Authority over Kenergy or Big Rivers. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 6.4, or any action or

proceeding arising under or relating to such arbitration, at the address set forth in Section 6.3, and agrees that such service shall be, for all purposes, good and sufficient.

6.8 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit each other Party to fulfill its obligations under this Agreement; *provided* that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by any other Party. Where the consent, agreement, or approval of any Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where any Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to any Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

6.9 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

6.10 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

6.11 No Power Sales Commitment. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers or Kenergy to sell to Century, or an agreement of Century to purchase from Big Rivers or Kenergy, any electric energy or ancillary or related services, including reactive power.

6.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT A**

### **PROTECTIVE RELAYS**

The Protective Relay System will be designed to allow reductions in load at the Hawesville Smelter consistent with a MISO Operating Guide that is expected in July 2013. It may require manual or automatically implemented system or a combination of both.

## **EXHIBIT B**

### **REQUIRED CONSENTS**

SERC approval is required only for a special protective system that affects the bulk electric system. No approval is required by MISO, but MISO will review this Agreement as part of its verification or confirmation of the Curtailable Load to be permitted under the Electric Service Agreement and Attachment Y to MISO's Open Access Transmission Tariff.



**TAX INDEMNITY AGREEMENT**

Dated as of August 1, 2013

by and among

**KENERGY CORP.,**

**CENTURY ALUMINUM COMPANY**

and

**CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

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## TAX INDEMNITY AGREEMENT

This TAX INDEMNITY AGREEMENT (this “Agreement”) is made and entered into as of August 1, 2013, by KENERGY CORP., a Kentucky electric cooperative corporation (the “Indemnified Party”), CENTURY ALUMINUM COMPANY, a Delaware corporation (the “Century Parent”), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership and a wholly-owned indirect subsidiary of Century Parent (“Century”). Each of Century and Century Parent are sometimes referred to herein collectively as the “Indemnifying Parties”, and individually as a “Indemnifying Party”. Each of the Indemnifying Parties and the Indemnified Party are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

### RECITALS

A. The Indemnified Party and Century have entered into an Electric Service Agreement, dated as of the date hereof (the “Electric Service Agreement”), under which the Indemnified Party shall provide Century retail electric service.

B. The Indemnifying Parties have agreed, subject to the terms and conditions of this Agreement, to jointly and severally indemnify and hold harmless the Indemnified Party on an after-tax basis for certain tax liabilities and other costs relating to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions; Rules of Interpretation. Capitalized terms used herein but not otherwise defined herein, including in this Section 1.1, are used as defined in the Electric Service Agreement. The rules of interpretation set forth in the Electric Service Agreement shall apply to this Agreement.

1.1.1 Agreement: As defined in the preamble to this Agreement.

1.1.2 Century: As defined in the preamble to this Agreement.

1.1.3 Century Parent: As defined in the preamble to this Agreement.

1.1.4 Electric Service Agreement: As defined in the Recitals.

1.1.5 Expenses: Any and all expenses related to accounting advisory services, tax advisory services, reasonable legal services, and other fees and expenses, in each case, for which the Indemnified Party is liable or has agreed to pay in connection with the failure of the Indemnified Party to maintain its status as an entity exempt from U.S.

federal, state or local income taxation as a result of the transactions under the Transaction Documents, including all expenses incurred under Section 2.5 and Section 2.7.

1.1.6 Indemnified Party: As defined in the preamble to this Agreement.

1.1.7 Indemnifying Party or Indemnifying Parties: As defined in the preamble to this Agreement.

1.1.8 Indemnity Claim: As defined in Section 2.1.

1.1.9 Indemnity Claim Notice: As defined in Section 2.2.2.

1.1.10 Net After-Tax Basis: With respect to any amount payable under Section 2.1, the amount payable will be increased to account for Taxes on the amount payable and additions under this Section 1.1.4, taking into account any Tax deduction, credit or loss that will be realized as a result of any payment by the Indemnified Party of an amount, including Taxes, with respect to which a payment to be received by the Indemnified Party is made under this Agreement.

1.1.11 Other Tax Status Costs: Any and all costs, fees or expenses incurred, or reductions in or failures to realize, revenues, reimbursements or other benefits reducible to money, in each case of the Indemnified Party resulting from, occurring in connection with, relating to or otherwise arising out of the Indemnified Party's failure to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents, including by way of example and not limitation, ineligibility for or reduction in Federal Emergency Management Agency assistance based on an Indemnified Party's failure to maintain its status as an entity exempt from U.S. federal income taxes.

1.1.12 Party or Parties: As defined in the preamble to this Agreement.

1.1.13 Tax or Taxes: All fees, taxes (including income taxes, franchise taxes, sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible)), levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to these taxes, now or hereafter imposed by any U.S. federal, state or local government or other taxing authority.

1.1.14 Tax Claim: As defined in Section 2.5.

## ARTICLE 2

### INDEMNIFICATION FOR CERTAIN TAXES

2.1 Indemnification. The Indemnifying Parties hereby, jointly and severally, agree to indemnify, defend and hold harmless the Indemnified Party and its successors, on a Net After-Tax Basis, from and against, any Taxes (after taking into account all applicable tax deductions, credits, exemptions and exclusions in the applicable tax year), Other Tax Status Costs and Expenses incurred by the Indemnified Party relating to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation as a result of the transactions under the Transaction Documents (an "Indemnity Claim"). For the avoidance of doubt, any transaction under the Transaction Documents, without regard to degree or amount,

that relates to the failure of the Indemnified Party to maintain its status as an entity exempt from U.S. federal, state or local income taxation may give rise to an Indemnity Claim, including, without limitation, if the Indemnified Party has income from nonmembers due to other transactions but because of any transaction under the Transaction Documents fails to receive a sufficient percentage of its income from its members to meet losses and expenses (within the meaning of Section 501(c)(12)(A) of the Internal Revenue Code of 1986, as amended).

## 2.2 Procedures and Notice.

2.2.1 Notwithstanding anything to the contrary in this Agreement, the Indemnified Party will take reasonable efforts to deliver written notice to the Indemnifying Parties as early as possible in any tax year in which it projects that it will have an Indemnity Claim; *provided* that the failure to give such notice shall not limit the Indemnifying Parties' obligations hereunder. The Indemnified Party will discuss the basis and calculations for such Indemnity Claim with the Indemnifying Parties and provide the Indemnifying Parties with such information as they may reasonably request with respect to such Indemnity Claim (including, for the avoidance of doubt, the information set forth in the proviso to Section 2.2.2).

2.2.2 The Indemnified Party must deliver written notice of an Indemnity Claim accompanied by a written statement describing the Indemnity Claim in reasonable detail, stating the amount the Indemnified Party believes to be payable by the Indemnifying Parties on account thereof pursuant to the terms of this Agreement and providing the computation of the amount (an "Indemnity Claim Notice"); *provided* that, with respect to any Indemnity Claim that relates to whether the Indemnified Party failed to receive a sufficient percentage of its income from its members to meet losses and expenses (within the meaning of Section 501(c)(12)(A) of the Internal Revenue Code of 1986, as amended), the computation will include detail concerning the calculation of the Indemnified Party's total income, income from the Indemnified Party's activities as a market participant, pursuant to the Transaction Documents, and total income that is not collected from members for the sole purpose of meeting losses and expenses.

2.2.3 Any amount payable to the Indemnified Party pursuant to Section 2.1 shall be paid in immediately available funds to the Indemnified Party within ten (10) days after receipt of the Indemnity Claim Notice, without regard to the pendency of any dispute or action pursuant to Section 2.5 or Section 4.4. The Parties agree to make any payments necessary in order for the amounts received by the Indemnified Party in respect of any Indemnity Claim to equal the amounts of any final determination of any amounts payable hereunder.

2.3 Time Period for Asserting Indemnity Claims. Indemnity Claims may be made only by delivering an Indemnity Claim Notice to the Indemnifying Parties prior to the one hundred eightieth (180th) day following expiry of the relevant statute of limitations applicable to the assessment of Taxes indemnified hereunder; *provided* that Indemnity Claims for Expenses or Other Tax Status Costs may be made prior to the one hundred eightieth (180th) day following the date such Expenses or Other Tax Status Costs are incurred. For the avoidance of doubt, this Agreement shall survive the termination or expiration of the Electric Service Agreement or any other Transaction Documents until the time period for asserting any Indemnity Claims hereunder shall have expired.

2.4 Notice of Indemnity Claims. If any claim or demand for Taxes, Expenses or Other Tax Status Costs in respect of which indemnity may be sought against the Indemnifying Parties

pursuant to this Agreement is asserted against the Indemnified Party, the Indemnified Party promptly shall (a) notify the Indemnifying Parties of such claim or demand after receipt of such claim or demand and (b) give the Indemnifying Parties such information with respect thereto as the Indemnifying Parties may reasonably request; *provided* that the failure to give such notice within such period shall not limit the Indemnifying Parties' obligations hereunder.

2.5 Defense of Tax Claims. The Indemnified Party shall take such action in contesting such claim or demand as the Indemnifying Parties may request, including appeals, provided the Indemnified Party has not received a written opinion of independent tax counsel, selected by the Indemnified Party and reasonably satisfactory to the Indemnifying Party that there is no reasonable basis for the contest and the Indemnifying Party agrees to pay the Indemnified Party's costs of pursuing the contest. The Indemnifying Parties may, at their own expense, elect to assume the defense of any claim, suit, action, litigation or other proceeding (including any Tax audit) for Taxes in respect of which indemnity may be sought against the Indemnifying Parties pursuant to this Agreement (collectively, a "Tax Claim"); and, as between the Indemnified Party and the Indemnifying Parties, the Indemnifying Parties shall determine whether and in what manner to defend such Tax Claim and shall otherwise control all aspects of any defense of such Tax Claim; *provided that*, if the Indemnifying Party elects to assume the defense of a Tax Claim, it shall retain counsel reasonably satisfactory to the Indemnified Party; *provided further* that in the event that the Indemnified Party has been advised by independent counsel that having common counsel would present a conflict of interest or preclude the Indemnified Party from making certain legal defenses, then the Indemnified Party may retain separate counsel to defend it against the Tax Claim at the Indemnifying Parties' expense. Subject to the immediately preceding sentence, if the Indemnifying Parties elect to assume the defense of or otherwise participate in any such Tax Claim, each Party shall (i) cooperate in the defense or prosecution of any such Tax Claim, (ii) consult with and keep each other Party and its designated counsel reasonably informed with respect to such Tax Claim, (iii) furnish or cause to be furnished, records and information, or make employees available on a reasonable and mutually convenient basis to provide information as may be reasonably requested in connection therewith, and (iv) consider comments of and consult in good faith with each other Party; *provided that* nothing in this Section shall obligate a Party to disclose information that is subject to the attorney-client privilege. The Indemnified Party shall not settle any such Tax Claim or consent to the entry of any judgment with respect to Taxes indemnified hereunder without prior written notice to and consent of the Indemnifying Parties.

2.6 Tax Returns. The Indemnified Party agrees that it will not voluntarily elect to treat itself on any tax return as an entity not exempt from U.S. federal, state or local income taxation, and that it will not take a position or make a filing inconsistent with the foregoing in any litigation or investigation, or otherwise, without giving prior written notice to the Indemnifying Parties that describes the basis for taking such position or making such filing and consulting in good faith with the Indemnifying Parties prior to taking such action; *provided* that the failure to give such notice shall not limit the Indemnifying Parties' obligations hereunder.

2.7 Tax Ruling. At Century's sole cost and expense, the Indemnified Party may seek a tax ruling on any impact of the transactions under the Transaction Documents on the Indemnified Party's tax exempt status; *provided* that prior to seeking such tax ruling, the Indemnified Party shall consult (in good faith) with Century; *provided further* that, if the Indemnified Party seeks to become the Market Participant, the Indemnified Party shall (i) notify

Century thereof, and (ii) if requested by Century within thirty (30) Business Days of such notice, obtain an opinion of nationally recognized tax counsel regarding the potential impact of acting in this capacity and provide a copy of such opinion to Century prior to becoming the Market Participant.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

Except with respect to Section 3.6, each Party hereby represents and warrants to each other Party as of the date hereof as follows:

3.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Agreement.

3.2 Due Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by such Party, and assuming the due authorization, execution and delivery of this Agreement by each other Party, constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

3.3 No Violation. The execution and delivery of this Agreement by such Party and the compliance by it with the terms and provisions hereof do not and will not (a) contravene any Applicable Law relating to such Party or its organizational documents or by-laws, or (b) contravene the provisions of, or constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

3.4 Approvals. No approval, authorization, consent or other action by, and no notice to or filing or registration with, and no new license from, any Person (including without limitation, any Governmental Authority) or under any Applicable Law to which such Party is subject is required for the due execution, delivery or performance by it of this Agreement. There are no conditions to the effectiveness of this Agreement with respect to such Party that have not been satisfied or irrevocably waived.

3.5 Proceedings. There is no pending or, to such Party's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against it by any Person before any Governmental Authority which: (a) questions the validity of this Agreement or the ability of such Party to perform its obligations hereunder, or (b) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

3.6 Knowledge. The Indemnified Party hereby represents and warrants to the Indemnifying Parties as of the date hereof that the Indemnified Party has no knowledge of any action or event, other than the Transaction, that could reasonably be expected to lead to a Tax Claim, including any investigation, pending or threatened, before or by the Internal Revenue

Service (or any state or local equivalent), any Governmental Authority against the Indemnified Party or its Affiliates.

3.7 Independent Decision. Such Party has, independently and without reliance upon any other Party and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement.

#### ARTICLE 4

#### MISCELLANEOUS

4.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in this Agreement.

4.2 Waiver. The waiver by a Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of a subsequent breach of the same or any other term, covenant or condition contained herein.

4.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section will be deemed to have been delivered (i) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (ii) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section, the address of a Party is the address set out below or such other address which that Party may from time to time deliver by notice to the other Party in accordance with this Section:

If to the  
Indemnified Party: Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 826-3999

If to Century: Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Fax: (270) 852-2882

With copy to: Century Aluminum Company  
One South Wacker Drive Suite 1000  
Chicago, IL 60606  
Attn: General Counsel  
Fax: (312) 696-3102

If to Century Parent: Century Aluminum Company  
One South Wacker Drive  
Suite 1000  
Chicago, IL 60606  
Attn: General Counsel  
Fax: (312) 696-3102

#### 4.4 Dispute Resolution.

4.4.1 If a dispute arises, a Party may request a meeting among authorized representatives of the Parties to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten (10) Business Days or such shorter or longer time as agreed upon by the Parties.

4.4.2 Absent resolution of the dispute pursuant to Section 4.4.1, and subject to a minimum amount in controversy of \$1 million, the Parties shall submit the matter to be settled, subject to Section 4.4.9, by binding arbitration by a tribunal of three (3) arbitrators constituted and acting under the International Arbitration Rules then in effect of the International Centre for Dispute Resolution (“ICDR”) of the American Arbitration Association (the “AAA Rules”), in accordance with the following terms and conditions:

4.4.3 In the event of any conflict between the AAA Rules and the provisions of this Agreement, the provisions of this Agreement shall apply.

4.4.4 The ICDR shall administer the arbitration.

4.4.5 The seat of arbitration shall be Louisville, Kentucky, unless otherwise agreed by the Parties, and the fact that hearings are held elsewhere shall not affect the seat of arbitration.

4.4.6 The following procedures shall govern the selection of arbitrators:

(a) The claimant Party or Parties shall appoint one arbitrator in accordance with the AAA Rules, the respondent Party or Parties shall appoint one arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the first

arbitrator, and the two arbitrators so appointed shall appoint the third (and presiding) arbitrator in accordance with the AAA Rules within thirty (30) days after the appointment of the second arbitrator.

(b) In the event of an inability by the two Party-nominated arbitrators to agree on an arbitrator in accordance with Section 4.4.6(a), the appointing authority for the third arbitrator shall be the ICDR, acting in accordance with such rules as it may adopt for such purpose. The ICDR shall use its best efforts to appoint such third arbitrator within thirty (30) days of an application being made for such purpose.

(c) Notwithstanding Sections 4.4.6(a) and 4.4.6(b), each arbitrator selected pursuant to this Section 4.4.6 shall (i) have substantial experience in the electric utility sector, and (ii) not have been employed or been a consultant to any Party in the past.

4.4.7 The arbitration tribunal shall have the power to grant any remedy or relief that it deems just and equitable and that is in accordance with the terms of this Agreement, including specific performance and injunctive relief, whether interim or final. Any such relief and any interim, provisional or conservatory measure ordered by the arbitral tribunal may be specifically enforced by any court of competent jurisdiction.

4.4.8 The losing Party shall pay the fees and costs of the prevailing Party.

4.4.9 The award of the arbitral tribunal shall be subject to appeal or requests for rehearing pursuant to Section 4.7.

4.4.10 The award of the tribunal may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any competent jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that a court of any jurisdiction where the assets of a Party against which enforcement is sought may be found, or a court which has subject matter jurisdiction over any proceeding to confirm or enhance the award, is a court of competent jurisdiction and venue, and the Parties irrevocably consent to the exercise of personal jurisdiction in any such court, and irrevocably waive any claim that any such jurisdiction is an inconvenient forum.

4.4.11 Except for arbitration proceedings pursuant to this Section 4.4, no action, lawsuit or other proceeding (other than proceedings for the confirmation or enforcement of an arbitration award, an action to compel arbitration or an application for interim, provisional or conservatory measures in connection with the arbitration, or to obtain documentary or testimonial evidence) shall be brought by or between the Parties in connection with any dispute; *provided*, that, where delay in doing so could result in irreparable harm, each Party to the arbitration proceeding retains the right to seek interim, provisional or conservatory measures in accordance with Section 4.7, and any such request shall not be deemed incompatible with this Agreement to arbitrate or constitute a waiver of the right to arbitrate.

4.4.12 Notwithstanding the foregoing, each arbitrator will be instructed that (i) if the Indemnified Party voluntarily elects to be treated as an entity that is not exempt from U.S. federal, state or local income taxation, or voluntarily takes a position on a tax return or makes a filing treating itself as not being so exempt, the mere acquiescence of the applicable taxing

authority to such treatment or filing shall not be determinative of the applicable issue before the arbitrator and (ii) a position taken in a Tax Claim by the applicable taxing authority regarding the taxation of the Indemnified Party shall be determinative of the issue addressed in such Tax Claim for purposes of any determination by the arbitrator, but, for the avoidance of doubt, shall not preclude or limit any of the Indemnifying Parties rights under Section 2.5.

#### 4.5 Successors and Assigns.

4.5.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Parties, except as provided in Section 4.5.4, and except that, subject to satisfaction of the conditions of Section 4.5.2, assignment may be made by a Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

4.5.2 In no event may a Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Parties or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

4.5.3 No permitted assignment or transfer will change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

4.5.4 A Party may, without the approval of any other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

4.6 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of law rules.

4.7 Jurisdiction. Subject to Section 4.4, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes, *provided* that the subject matter of such dispute is not a matter reserved to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this

Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, suit or proceeding as provided in this Section 4.7 and any claim that such action, suit or proceeding brought in accordance with this Section 4.7 has been brought in an inconvenient forum. Nothing in Section 4.4 or this Section 4.7 prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. For the avoidance of doubt, each Party hereby agrees to accept service of any papers or process in any arbitration under Section 4.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 4.3, and agrees that such service shall be, for all purposes, good and sufficient.

4.8 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

4.9 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

*[Remainder of page intentionally left blank. Signatures follow.]*

IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

**GUARANTEE**

Dated as of August 1, 2013

by and among

**CENTURY ALUMINUM COMPANY,**

**KENERGY CORP.**

and

**BIG RIVERS ELECTRIC CORPORATION**

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## GUARANTEE

This GUARANTEE (this "Guarantee") is made and entered into as of August 1, 2013, by CENTURY ALUMINUM COMPANY, a Delaware corporation (the "Guarantor"), in favor of KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers").

## RECITALS

A. Kenergy and Century Aluminum of Kentucky General Partnership, a Kentucky general partnership and a wholly owned indirect subsidiary of the Guarantor ("Century"), have entered into an Electric Service Agreement, dated as of the date hereof (the "Electric Service Agreement"), under which Kenergy shall provide Century retail electric service.

B. Kenergy and Big Rivers have entered into an Arrangement and Procurement Agreement, dated as of the date hereof (the "Arrangement Agreement"), under which Big Rivers shall provide Kenergy wholesale electric service for resale to Century.

C. Big Rivers and Century have entered into a Direct Agreement, dated as of the date hereof (the "Direct Agreement"), under which they shall coordinate with respect to the performance of their respective obligations under the Electric Service Agreement and the Arrangement Agreement.

F. Century, Guarantor and Kenergy have entered into a Tax Indemnity Agreement, dated as of the date hereof (the "Tax Indemnity Agreement"), under which Century and Guarantor jointly and severally hold Kenergy harmless on an after-tax basis for costs relating to the failure of Kenergy to maintain its status as an entity exempt from federal, state or local income taxation as a result of the transactions under the Transaction Documents.

G. The Guarantor indirectly owns all of the voting stock of Century, and will derive substantial benefits from the transactions contemplated by the Electric Service Agreement and Arrangement Agreement, which benefits are hereby acknowledged by the Guarantor.

H. It is a condition precedent to the closing of the transactions contemplated by the Electric Service Agreement that the Guarantor, simultaneously with the execution and delivery of the Transaction Documents dated the date hereof, shall have executed and delivered this Guarantee to Kenergy and Big Rivers.

I. The Guarantor desires to enter into this Guarantee in order to satisfy the condition precedent described in the preceding recital.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties, intending to be legally bound, hereby covenant and agree as follows:

1. Definitions; Rules of Construction. Capitalized terms used herein but not otherwise defined are used as defined in the Electric Service Agreement. The rules of interpretation set forth in the Electric Service Agreement shall apply to this Guarantee.

2. Guaranteed Obligations. As used herein, "Guaranteed Obligations" shall mean any and all of the obligations of Century under (i) the Electric Service Agreement, (ii) the Direct Agreement, (iii) the Tax Indemnity Agreement and (iv) any other Transaction Document, including (a) the obligations of Century relating to the payment of money to Kenergy or Big Rivers (or their permitted assignees), (b) any such obligations that would become due but for the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code, or (c) interest, fees and other charges whether or not a claim is allowed for such obligations in any such bankruptcy proceeding.

3. Guarantee. The Guarantor hereby unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, the prompt performance and payment in full when due, of all the Guaranteed Obligations. The Guarantor acknowledges that the Guaranteed Obligations may arise or be created, incurred or assumed at any time and from time to time and in such manner and such circumstances and with such terms and provisions as Century, Kenergy and Big Rivers may agree without notice or demand of any kind or nature whatsoever to, or the consent of, the Guarantor.

4. Preservation of Century's Substantive Defenses. Notwithstanding any of Guarantor's waivers hereunder, Kenergy and Big Rivers agree and acknowledge that Guarantor shall be entitled to assert (separately or jointly with Century) any substantive defenses, or claims in recoupment or setoff, with respect to the Guaranteed Obligations that Century would be entitled to assert against Kenergy or Big Rivers, including any claims or defenses that Century could assert by reason of the invalidity, illegality or unenforceability of any of the Transaction Documents. This Section 4 shall not permit Guarantor to assert any defenses in its own right, based on impairment of Guarantor's rights of subrogation, reimbursement, exoneration, contribution or indemnification, or other suretyship principles.

5. Nature of Guarantee Continuing, Absolute and Unconditional.

(a) This Guarantee is and is intended to be a continuing guarantee of performance when due of the Guaranteed Obligations, and not of collection, and is independent of and in addition to any other guarantee, endorsement, collateral or other agreement held by Kenergy or Big Rivers therefor or with respect thereto, whether or not furnished by the Guarantor. The Guarantor hereby waives any right to require that any resort be had by Kenergy or Big Rivers to any other Person or to any of the security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of

Kenergy or Big Rivers in favor of Century or any other Person. All Guaranteed Obligations shall be conclusively presumed to have been created in reliance hereon.

(b) This Guarantee shall not be changed or affected by any representation, oral agreement, act or thing whatsoever, except as herein provided. This Guarantee is intended by the Guarantor to be the final, complete and exclusive expression of the agreement between the Guarantor and Kenergy and Big Rivers with respect to the subject matter hereof.

(c) The Guarantor hereby agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from the Guarantor, that the Guarantor will remain bound upon this Guarantee notwithstanding any extension, renewal or other alteration of any Guaranteed Obligation and the Guarantee herein made shall apply to the Guaranteed Obligations as so amended, renewed or altered.

(d) Subject to Section 4 above, the obligations of the Guarantor under this Guarantee are irrevocable, absolute and unconditional and the Guarantor hereby irrevocably waives any defense it may now have or hereafter acquire relating to:

(i) the failure of Kenergy or Big Rivers to assert any claim or demand or to exercise or enforce any right or remedy under the Transaction Documents, or against Century;

(ii) any extension, renewal or other alteration of, or any rescission, waiver, amendment or modification of, any term or provision of the Transaction Documents;

(iii) the settlement or compromise of any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or any subordination of the payment of all or any part thereof to the payment of any liability (whether due or not) of Century to its creditors, other than Kenergy or Big Rivers;

(iv) the application of any sums by whomsoever paid or howsoever realized to any liability of Century to Kenergy or Big Rivers regardless of what liabilities of Century remain unpaid;

(v) the act or failure to act in any manner referred to in this Guarantee which may deprive the Guarantor of its right to subrogation against Century to recover any payments made pursuant to this Guarantee;

(vi) any change, restructuring or termination of the organizational structure or existence of Century; or

(vii) any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

(e) The Guarantor's obligation hereunder is to perform the Guaranteed Obligations in full when due in accordance with the terms of the Transaction Documents, and

such obligation shall not be affected by any stay or extension of time for performance by Century resulting from any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended or replaced, or any similar federal or state law. Subject to Section 4, the obligations of the Guarantor hereunder are independent of the Guaranteed Obligations under or in respect of the Transaction Documents, and a separate action may be brought and prosecuted against the Guarantor to enforce this Guarantee, irrespective of whether any action is brought against Century or whether Century is joined in any such action.

6. Waivers and Acknowledgments.

(a) The Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand of performance or payment, notice of non-performance or non-payment, default, protest, acceleration or dishonor and any filing of claims with a court in the event of insolvency or bankruptcy of Century, any right to require a proceeding first against Century, protest, notice and all demands whatsoever and any requirement that Kenergy or Big Rivers protect, secure, perfect or insure any lien or any property subject thereto or exhaust any right or take any action against Century or any other Person.

(b) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guarantee and acknowledges that this Guarantee is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) The Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by Kenergy or Big Rivers that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of the Guarantor or other rights of the Guarantor to proceed against Century or any other Person and (ii) subject to Section 4, any defense based on any right of set off or counterclaim against or in respect of the obligations of the Guarantor hereunder.

(d) The Guarantor hereby unconditionally and irrevocably waives any duty on the part of Kenergy or Big Rivers to disclose to the Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Century now or hereafter known by Kenergy or Big Rivers.

(e) The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Transaction Documents and that the waivers set forth in Section 4, Section 5 and this Section 6 are knowingly made in contemplation of such benefits.

7. No Discharge or Diminishment of Guarantee. Except as provided in Section 4 above, the obligations of the Guarantor under this Guarantee shall not be subject to any reduction, limitation, impairment or termination for any reason (other than if the Guaranteed Obligations have been indefeasibly performed in full), including any claim of waiver, release, surrender, alteration or compromise of any of the Guaranteed Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of any discharge of Century from any of the Guaranteed Obligations in bankruptcy proceedings

or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor under this Guarantee shall not be discharged or impaired or otherwise affected by the failure of Kenergy or Big Rivers to assert any claim or demand or to enforce any remedy under any Transaction Document or any other agreement or otherwise, by any waiver or modification of any such agreement, by any default, waiver or delay, or by any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

8. Reinstatement. The Guarantor agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, with respect to any payment, or any part thereof, of principal of, interest on or any other amount with respect to the Guaranteed Obligations that is at any time rescinded or must otherwise be restored by Kenergy or Big Rivers upon the bankruptcy, insolvency or reorganization of Century or any other Person.

9. No Waiver; Remedies. No failure on the part of Kenergy or Big Rivers to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10. Covenant. The Guarantor covenants and agrees that, without the prior written consent of Kenergy and Big Rivers, so long as any part of the Guaranteed Obligations shall remain outstanding, the Guarantor shall not liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, or directly or indirectly convey, sell, lease, assign, transfer or otherwise dispose of the Hawesville Smelter or all or substantially all of its property, assets or business, whether now owned or hereafter acquired, and shall preserve and maintain in full force and effect its legal existence and all of its rights, privileges and franchises necessary for the fulfillment of its obligations under this Guarantee. Kenergy and Big Rivers shall not withhold their prior written consent to any such liquidation or dissolution, or any such sale or other disposition of the Hawesville Smelter or all or substantially all of the Guarantor's property and business, occurring in connection with a strategic restructuring of the Guarantor if (a) a wholly owned direct or indirect subsidiary of Guarantor has a ratio of debt to equity of no more than 3.0:1.0 and a net worth of not less than \$200 million (a "Substitute Guarantor") and executes in favor of Kenergy and Big Rivers, a substitute guarantee containing terms and conditions substantially the same as those contained herein (a "Substitute Guarantee"), and (b) the Substitute Guarantor shall provide to Kenergy and Big Rivers such reasonable legal opinions and other documentation as either Kenergy or Big Rivers shall reasonably request in connection therewith. Upon compliance with the provisions of Section 10(a) and (b) hereof, the Substitute Guarantor shall be the "Guarantor" for all purposes hereunder and the prior Guarantor shall be released from its obligations arising hereunder after the date on which the Substitute Guarantee shall be effective.

11. Representations and Warranties. The Guarantor hereby represents and warrants as of the date of execution and delivery of this Guarantee as follows:

(a) *Organization and Existence.* The Guarantor (i) is duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to transact business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified, including the Commonwealth of Kentucky; and (ii) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Guarantee.

(b) *Authorization, Execution and Binding Effect.* This Guarantee has been duly authorized, executed and delivered by the Guarantor, and assuming the due authorization, execution and delivery of this Guarantee by Kenergy and Big Rivers, constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *No Violation.* The execution and delivery of this Guarantee by the Guarantor and the compliance by the Guarantor with the terms and provisions hereof do not and will not (i) contravene any law applicable to the Guarantor or its organizational documents or by-laws, or (ii) contravene the provisions of, or constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor, or its property, is bound.

(d) *No Required Consents, Approvals or Conditions.* No authorization, consent, approval or other action by, and no notice to or filing or registration with, and no new license or permit from, any Person (including without limitation, any Governmental Authority) or under any law applicable to the Guarantor is required for the due execution, delivery or performance by the Guarantor of this Guarantee. There are no conditions to the effectiveness of this Guarantee that have not been satisfied or waived.

(e) *Absence of Litigation.* There is no pending or, to the Guarantor's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against the Guarantor or Century by any Person before any Governmental Authority which: (i) questions the validity of this Guarantee or the ability of the Guarantor to perform its obligations hereunder, or (ii) if determined adversely to the Guarantor, would materially adversely affect its ability to perform this Guarantee.

(f) *Independent Decision.* The Guarantor has, independently and without reliance upon Kenergy or Big Rivers and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guarantee.

12. Amendment. Except as otherwise expressly provided in this Guarantee, any provision of this Guarantee may be amended or modified only by an instrument in writing signed by the Guarantor, Kenergy and Big Rivers, and any provision of this Guarantee may be waived only by Kenergy and Big Rivers acting jointly.



15. Severability. Any term or provision of this Guarantee which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Guarantee or affecting the validity or enforceability of any of the terms or provisions of this Guarantee in any other jurisdiction.

16. Governing Law. This Guarantee shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules.

17. Disputes. If a dispute arises between or among the parties hereto concerning the terms or conditions of this Guarantee, the duties or obligations of the parties under this Guarantee, or the implementation, interpretation or breach of this Guarantee, the parties hereto shall be bound by the dispute resolution procedures set forth in Article 16, and the jurisdictional provisions set forth in Section 18.2, of the Electric Service Agreement as if such provisions were set forth fully herein and referred to the parties hereto.

18. Headings. The article and section headings contained in this Guarantee are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Guarantee.

19. Counterparts. This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Guarantee may execute this Guarantee by signing any such counterpart.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the Guarantor, Kenergy and Big Rivers have caused this Guarantee to be duly executed as of the day and year first written above.

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:



**CAPACITOR ADDITIONS AND PROTECTIVE RELAYS  
GUARANTEE**

Dated as of June [ ], 2013

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.**

and

**CENTURY ALUMINUM COMPANY**

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## CAPACITOR ADDITIONS AND PROTECTIVE RELAYS GUARANTEE

This CAPACITOR ADDITIONS AND PROTECTIVE RELAYS GUARANTEE (this "Guarantee") is made and entered into as of June [ ], 2013, by CENTURY ALUMINUM COMPANY, a Delaware corporation (the "Guarantor"), in favor of KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), and BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers").

### RECITALS

A. Big Rivers, Kenergy and Century Aluminum of Kentucky General Partnership, a Kentucky general partnership and a wholly owned indirect subsidiary of the Guarantor ("Century"), have entered into a Capacitor Agreement, dated as of the date hereof (the "Capacitor Agreement"), setting forth such parties' respective rights and obligations relating to certain electrical capacitors and related equipment intended by Century to support serving its requirements for electric services in certain circumstances under an Electric Service Agreement to be entered into by Kenergy and Century in connection with the Transaction.

B. Big Rivers, Kenergy and Century have entered into a Protective Relays Agreement, dated as of the date hereof (the "Protective Relays Agreement"), and together with the Capacitor Agreement, the "Guaranteed Agreements"), setting forth such parties' respective rights and obligations relating to certain protective relays and related equipment intended by Century to support serving its requirements for electric services in certain circumstances under such Electric Service Agreement.

C. The Guarantor indirectly owns all of the voting stock of Century, and will derive substantial benefits from the transactions contemplated by the Guaranteed Agreements, which benefits are hereby acknowledged by the Guarantor.

D. It is a condition precedent to effectiveness of each of the Guaranteed Agreements that the Guarantor, simultaneously with the execution and delivery of the Guaranteed Agreements, shall have executed and delivered this Guarantee to Kenergy and Big Rivers.

E. The Guarantor desires to enter into this Guarantee in order to satisfy the condition precedent described in the preceding recital.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties, intending to be legally bound, hereby covenant and agree as follows:

1. Definitions; Rules of Construction. Capitalized terms used herein but not otherwise defined are used as defined in the Guaranteed Agreements. The rules of interpretation set forth in the Guaranteed Agreements shall apply to this Guarantee.

2. Guaranteed Obligations. As used herein, “Guaranteed Obligations” shall mean any and all of the obligations of Century under the Guaranteed Agreements, including (a) the obligations of Century relating to the payment of money to Kenergy or Big Rivers (or their permitted assignees), (b) any such obligations that would become due but for the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code, or (c) interest, fees and other charges whether or not a claim is allowed for such obligations in any such bankruptcy proceeding.

3. Guarantee. The Guarantor hereby unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, the prompt performance and payment in full when due, of all the Guaranteed Obligations. The Guarantor acknowledges that the Guaranteed Obligations may arise or be created, incurred or assumed at any time and from time to time and in such manner and such circumstances and with such terms and provisions as Century, Kenergy and Big Rivers may agree without notice or demand of any kind or nature whatsoever to, or the consent of, the Guarantor.

4. Preservation of Century’s Substantive Defenses. Notwithstanding any of Guarantor’s waivers hereunder, Kenergy and Big Rivers agree and acknowledge that Guarantor shall be entitled to assert (separately or jointly with Century) any substantive defenses, or claims in recoupment or setoff, with respect to the Guaranteed Obligations that Century would be entitled to assert against Kenergy or Big Rivers, including any claims or defenses that Century could assert by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Agreements. This Section 4 shall not permit Guarantor to assert any defenses in its own right, based on impairment of Guarantor’s rights of subrogation, reimbursement, exoneration, contribution or indemnification, or other suretyship principles.

5. Nature of Guarantee Continuing, Absolute and Unconditional.

(a) This Guarantee is and is intended to be a continuing guarantee of performance when due of the Guaranteed Obligations, and not of collection, and is independent of and in addition to any other guarantee, endorsement, collateral or other agreement held by Kenergy or Big Rivers therefor or with respect thereto, whether or not furnished by the Guarantor. The Guarantor hereby waives any right to require that any resort be had by Kenergy or Big Rivers to any other Person or to any of the security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of Kenergy or Big Rivers in favor of Century or any other Person. All Guaranteed Obligations shall be conclusively presumed to have been created in reliance hereon.

(b) This Guarantee shall not be changed or affected by any representation, oral agreement, act or thing whatsoever, except as herein provided. This Guarantee is intended by the Guarantor to be the final, complete and exclusive expression of the agreement between the Guarantor and Kenergy and Big Rivers with respect to the subject matter hereof.

(c) The Guarantor hereby agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from the Guarantor, that the Guarantor will remain bound upon this Guarantee notwithstanding any extension,

renewal or other alteration of any Guaranteed Obligation and the Guarantee herein made shall apply to the Guaranteed Obligations as so amended, renewed or altered.

(d) Subject to Section 4 above, the obligations of the Guarantor under this Guarantee are irrevocable, absolute and unconditional and the Guarantor hereby irrevocably waives any defense it may now have or hereafter acquire relating to:

(i) the failure of Kenergy or Big Rivers to assert any claim or demand or to exercise or enforce any right or remedy under the Guaranteed Agreements, or against Century;

(ii) any extension, renewal or other alteration of, or any rescission, waiver, amendment or modification of, any term or provision of the Guaranteed Agreements;

(iii) the settlement or compromise of any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or any subordination of the payment of all or any part thereof to the payment of any liability (whether due or not) of Century to its creditors, other than Kenergy or Big Rivers;

(iv) the application of any sums by whomsoever paid or howsoever realized to any liability of Century to Kenergy or Big Rivers regardless of what liabilities of Century remain unpaid;

(v) the act or failure to act in any manner referred to in this Guarantee which may deprive the Guarantor of its right to subrogation against Century to recover any payments made pursuant to this Guarantee;

(vi) any change, restructuring or termination of the organizational structure or existence of Century; or

(vii) any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

(e) The Guarantor's obligation hereunder is to perform the Guaranteed Obligations in full when due in accordance with the terms of the Guaranteed Agreements, and such obligation shall not be affected by any stay or extension of time for performance by Century resulting from any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended or replaced, or any similar federal or state law. Subject to Section 4, the obligations of the Guarantor hereunder are independent of the Guaranteed Obligations under or in respect of the Guaranteed Agreements, and a separate action may be brought and prosecuted against the Guarantor to enforce this Guarantee, irrespective of whether any action is brought against Century or whether Century is joined in any such action.

6. Waivers and Acknowledgments.

(a) The Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand of performance or payment, notice of non-performance or non-payment, default, protest, acceleration or dishonor and any filing of claims with a court in the event of insolvency or bankruptcy of Century, any right to require a proceeding first against Century, protest, notice and all demands whatsoever and any requirement that Kenergy or Big Rivers protect, secure, perfect or insure any lien or any property subject thereto or exhaust any right or take any action against Century or any other Person.

(b) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guarantee and acknowledges that this Guarantee is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) The Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by Kenergy or Big Rivers that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of the Guarantor or other rights of the Guarantor to proceed against Century or any other Person and (ii) subject to Section 4, any defense based on any right of set off or counterclaim against or in respect of the obligations of the Guarantor hereunder.

(d) The Guarantor hereby unconditionally and irrevocably waives any duty on the part of Kenergy or Big Rivers to disclose to the Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Century now or hereafter known by Kenergy or Big Rivers.

(e) The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Guaranteed Agreements and that the waivers set forth in Section 4, Section 5 and this Section 6 are knowingly made in contemplation of such benefits.

7. No Discharge or Diminishment of Guarantee. Except as provided in Section 4 above, the obligations of the Guarantor under this Guarantee shall not be subject to any reduction, limitation, impairment or termination for any reason (other than if the Guaranteed Obligations have been indefeasibly performed in full), including any claim of waiver, release, surrender, alteration or compromise of any of the Guaranteed Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of any discharge of Century from any of the Guaranteed Obligations in bankruptcy proceedings or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor under this Guarantee shall not be discharged or impaired or otherwise affected by the failure of Kenergy or Big Rivers to assert any claim or demand or to enforce any remedy under any Guaranteed Agreement or any other agreement or otherwise, by any waiver or modification of any such agreement, by any default, waiver or delay, or by any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

8. Reinstatement. The Guarantor agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, with respect to any payment, or any part thereof, of principal of, interest on or any other amount with respect to the Guaranteed Obligations that is at any time rescinded or must otherwise be restored by Kenergy or Big Rivers upon the bankruptcy, insolvency or reorganization of Century or any other Person.

9. No Waiver; Remedies. No failure on the part of Kenergy or Big Rivers to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10. Covenant. The Guarantor covenants and agrees that, without the prior written consent of Kenergy and Big Rivers, so long as any part of the Guaranteed Obligations shall remain outstanding, the Guarantor shall not liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, or directly or indirectly convey, sell, lease, assign, transfer or otherwise dispose of the Hawesville Smelter or all or substantially all of its property, assets or business, whether now owned or hereafter acquired, and shall preserve and maintain in full force and effect its legal existence and all of its rights, privileges and franchises necessary for the fulfillment of its obligations under this Guarantee. Kenergy and Big Rivers shall not withhold their prior written consent to any such liquidation or dissolution, or any such sale or other disposition of the Hawesville Smelter or all or substantially all of the Guarantor's property and business, occurring in connection with a strategic restructuring of the Guarantor if (a) a wholly owned direct or indirect subsidiary of Guarantor has a ratio of debt to equity of no more than 3.0:1.0 and a net worth of not less than \$200 million (a "Substitute Guarantor") and executes in favor of Kenergy and Big Rivers, a substitute guarantee containing terms and conditions substantially the same as those contained herein (a "Substitute Guarantee"), and (b) the Substitute Guarantor shall provide to Kenergy and Big Rivers such reasonable legal opinions and other documentation as either Kenergy or Big Rivers shall reasonably request in connection therewith. Upon compliance with the provisions of Section 10(a) and (b) hereof, the Substitute Guarantor shall be the "Guarantor" for all purposes hereunder and the prior Guarantor shall be released from its obligations arising hereunder after the date on which the Substitute Guarantee shall be effective.

11. Representations and Warranties. The Guarantor hereby represents and warrants as of the date of execution and delivery of this Guarantee as follows:

(a) *Organization and Existence.* The Guarantor (i) is duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to transact business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified, including the Commonwealth of Kentucky; and (ii) has the requisite power and authority to conduct its business as presently conducted, to own or hold under lease its properties, and to enter into and perform its obligations under this Guarantee.

(b) *Authorization, Execution and Binding Effect.* This Guarantee has been duly authorized, executed and delivered by the Guarantor, and assuming the due authorization, execution and delivery of this Guarantee by Kenergy and Big Rivers, constitutes a legal, valid

and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *No Violation.* The execution and delivery of this Guarantee by the Guarantor and the compliance by the Guarantor with the terms and provisions hereof do not and will not (i) contravene any law applicable to the Guarantor or its organizational documents or by-laws, or (ii) contravene the provisions of, or constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor, or its property, is bound.

(d) *No Required Consents, Approvals or Conditions.* No authorization, consent, approval or other action by, and no notice to or filing or registration with, and no new license or permit from, any Person (including without limitation, any Governmental Authority) or under any law applicable to the Guarantor is required for the due execution, delivery or performance by the Guarantor of this Guarantee. There are no conditions to the effectiveness of this Guarantee that have not been satisfied or waived.

(e) *Absence of Litigation.* There is no pending or, to the Guarantor's knowledge, threatened litigation, action, suit, proceeding, arbitration, investigation or audit against the Guarantor or Century by any Person before any Governmental Authority which: (i) questions the validity of this Guarantee or the ability of the Guarantor to perform its obligations hereunder, or (ii) if determined adversely to the Guarantor, would materially adversely affect its ability to perform this Guarantee.

(f) *Independent Decision.* The Guarantor has, independently and without reliance upon Kenergy or Big Rivers and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guarantee.

12. Amendment. Except as otherwise expressly provided in this Guarantee, any provision of this Guarantee may be amended or modified only by an instrument in writing signed by the Guarantor, Kenergy and Big Rivers, and any provision of this Guarantee may be waived only by Kenergy and Big Rivers acting jointly.

13. Continuing Guarantee; Successors and Assigns. This Guarantee is a continuing Guarantee, shall survive termination or expiration of either or both of the Guaranteed Agreements and shall remain in full force and effect until the payment in full of the Guaranteed Obligations, and shall be binding upon the Guarantor and its respective successors and assigns; *provided, however,* that the Guarantor may not assign or transfer any of its rights, benefits, obligations or duties hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of Kenergy and Big Rivers which consent shall not be unreasonably withheld, subject to Section 10. Any purported assignment in violation of this Section 13 shall be void. This Guarantee shall inure to the benefit of the respective successors and assigns of Kenergy and Big Rivers permitted under the Guaranteed Agreements, and, in the event of any transfer or assignment of rights by Kenergy or Big Rivers, the rights and privileges herein

conferred upon the transferring entity shall automatically extend to and be vested in such permitted transferee or assignee, all subject to the terms and conditions hereof.

14. Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given if (and then two Business Days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the Guarantor: Century Aluminum Company  
P.O. Box 500  
State Route 271  
Hawesville, Kentucky 42348  
Facsimile: 270-852-2882  
Attention: Plant Manager

If to Kenergy: Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Facsimile: 270-826-3999  
Attention: President and CEO

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson, Kentucky 42419  
Facsimile: 270-827-2558  
Attention: President and CEO

Any party hereto may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any party hereto may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

15. Severability. Any term or provision of this Guarantee which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Guarantee or affecting the validity or enforceability of any of the terms or provisions of this Guarantee in any other jurisdiction.

16. Governing Law. This Guarantee shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules.

17. Disputes. If a dispute arises between or among the parties hereto concerning the terms or conditions of this Guarantee, the duties or obligations of the parties under this Guarantee, or the implementation, interpretation or breach of this Guarantee, the parties hereto shall be bound by the dispute resolution procedures set forth in Section 6.4, and the jurisdictional provisions set forth in Section 6.7, of the Capacitor Agreement as if such provisions were set forth fully herein and referred to the parties hereto.

18. Headings. The article and section headings contained in this Guarantee are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Guarantee.

19. Counterparts. This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Guarantee may execute this Guarantee by signing any such counterpart.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the Guarantor, Kenergy and Big Rivers have caused this Guarantee to be duly executed as of the day and year first written above.

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:



**SECURITY AND LOCK BOX AGREEMENT**

Dated as of August 1, 2013

by and among

**BIG RIVERS ELECTRIC CORPORATION,**

**KENERGY CORP.,**

**CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

and

**OLD NATIONAL BANK**

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## SECURITY AND LOCK BOX AGREEMENT

This SECURITY AND LOCK BOX AGREEMENT, dated as of August 1, 2013 (this "Lockbox Agreement"), is made by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative (together with its successors and assigns, "Big Rivers"), KENERGY CORP., a Kentucky electric cooperative corporation (together with its successors and assigns, "Kenergy") and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership (together with its successors and assigns, "Century"), and OLD NATIONAL BANK, of Evansville, Indiana (the "Depository Bank"). Big Rivers, Kenergy, Century and the Depository Bank are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### PRELIMINARY STATEMENTS

A. Reference is made to that certain Electric Service Agreement, dated the date hereof, between Kenergy and Century (as amended, modified or supplemented from time to time, the "Electric Service Agreement"), pursuant to which Kenergy is obligated to sell to Century and Century agrees to purchase from Kenergy retail electric service in accordance with the terms and conditions specified therein.

B. Reference is made to that certain Arrangement and Procurement Agreement, dated the date hereof, between Kenergy and Big Rivers, pursuant to which Big Rivers agrees to provide wholesale electric service to Kenergy for resale to Century under terms described therein (collectively the "Arrangement Agreement").

C. Reference is made to any additional agreements entered into from time to time, between Big Rivers and Kenergy that provide for the sale of wholesale electric service by Big Rivers to Kenergy (for resale by Kenergy to Century) which Big Rivers, Century and Kenergy agree, in writing, shall be covered by the terms of this Lockbox Agreement (collectively, the "Additional Big Rivers Agreements" and together with the Arrangement Agreement, the "Total Big Rivers Agreements").

D. Reference is made to any additional agreements entered into, from time to time between Kenergy and Century that provide for the sale to Century of additional retail electric service procured from the Big Rivers by Kenergy which Big Rivers, Century and Kenergy agree, in writing, shall be covered by the terms of this Lockbox Agreement (collectively, the "Additional Electric Service Agreements" and together with the Electric Service Agreement, the "Total Electric Service Agreements").

E. The parties hereto wish to provide security to Big Rivers for obligations arising to Big Rivers from Kenergy pursuant to the Total Big Rivers Agreements (the "Secured Obligations") and for the orderly application of all amounts owing by Century to Kenergy with respect to retail electric service pursuant to the Total Electric Service Agreements (collectively, the "Century Payments"), without setoff for any other amounts that may be owing from Kenergy to Century. Accordingly, Kenergy has agreed to establish, in the name of Kenergy, a bank account with the Depository Bank, which account shall be designated as, and hereinafter referred to as, the Lockbox Account (as hereinafter defined).

F. The Depository Bank has agreed to maintain the Lockbox Account pursuant to and in accordance with this Lockbox Agreement.

G. The Parties further understand and agree that Century's only responsibility under this Lockbox Agreement is to make Century Payments to the Depository Bank in accordance with the instructions set forth in Section 1 hereof (or such other instructions as may be subsequently agreed to by Big Rivers and Kenergy pursuant to this Lockbox Agreement and delivered to Century).

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Payments by Century. Unless otherwise agreed in writing, Big Rivers, Century and Kenergy hereby irrevocably agree that Century Payments shall be paid by wire transfer or through the Automated Clearing House (ACH) network to the Depository Bank for deposit in the Lockbox Account in accordance with Section 3 hereof and coincident with date payments are due and owing under the Total Big Rivers Agreements and the Total Electric Service Agreements applicable to this service. Big Rivers, Century and Kenergy agree that Century Payments shall be deemed to have been made to Kenergy and shall be credited toward Century's payment obligations under the Total Electric Service Agreements and satisfaction of Century's obligation to make Century Payments. Kenergy and Big Rivers agree that amounts received by the Depository Bank from Century shall be deemed to have been paid to Big Rivers by Kenergy, shall be thereafter the property of Big Rivers and shall be credited toward the Secured Obligations, subject to Section 3.

2. Lockbox Account. The Depository Bank has established account number [ ] in the name "Kenergy Lockbox Account" (such account and any successor account are referred to as the "Lockbox Account") and the Depository Bank shall not change the name or account number without the prior written consent of Big Rivers. Big Rivers shall possess exclusive dominion and control, as a secured party, of the funds (and any and all proceeds therefrom) from time to time in the Lockbox Account. Neither Kenergy nor any person or entity claiming by, through or under Kenergy shall have any control over the use of, or any right to withdraw any amount from, the Lockbox Account, except that Big Rivers shall have the right to withdraw or direct the withdrawal of amounts from the Lockbox Account. The Depository Bank shall be entitled to rely on, and shall act in accordance with, all instructions given to it by Big Rivers with respect to the Lockbox Account and the funds therein without further consent by Kenergy.

3. Kenergy Fees. Prior to each day that Century deposits funds in the Lockbox Account or if such deposits are received by the Depository Bank after 12:00 noon, Henderson, Kentucky time, then the next business day, (a "Payment Day") Big Rivers will provide a notice in writing to the Depository Bank (the "Fee Notice"), setting forth the amount to be applied to Kenergy with respect to the Retail Fee (as defined in the Electric Service Agreement) for the month in which such Fee Notice is received (the "Kenergy Fees") and attaching copies of (i) the monthly statement provided by Kenergy to Century pursuant to the Total Electric Service Agreements and (ii) the monthly statement provided by Big Rivers to Kenergy pursuant to the Total Big Rivers Agreements. The Depository Bank shall be under no obligation to verify or confirm any of the information or calculations contained in any Fee

Notice. Concurrently with delivery of the Fee Notice to the Depository Bank, Big Rivers shall deliver a copy thereof to Kenergy and Century, but the effectiveness of any such Fee Notice, as it relates to the Depository Bank's obligations under this Section 3, shall not depend on the delivery thereof to the Depository Bank and Century.

4. Duties of the Depository Bank.

(a) The Depository Bank shall apply and credit to the Lockbox Account all wire transfers directed to such Lockbox Account, even though such wire transfers may identify the Lockbox Account as an account of Kenergy. Century shall direct Century Payments to the Depository Bank in accordance with the following instructions:

Account Name: Kenergy Lockbox Account (Century)  
Bank ABA No. 086300012  
Account No. [ ]  
Reference: Kenergy Corp. – Century Aluminum of Kentucky

The Depository Bank agrees (x) to maintain the Lockbox Account as a segregated account from Kenergy's other accounts, if any, maintained with the Depository Bank, (y) to refrain from commingling the funds deposited in the Lockbox Account with any other funds of Kenergy and (z) that the location of the Lockbox Account shall not be changed without the prior written consent of Big Rivers.

(b) On each Payment Day, the Depository Bank shall, on behalf of Kenergy, withdraw and distribute the following amounts from funds on deposit in the Lockbox Account in the following priority, and, in each case to the extent of the amount on deposit after giving effect to any prior withdrawal and distribution provided that prior to each application of funds, the Depository Bank shall have received from Big Rivers a Fee Notice for the month in which such distribution is to be made:

(i) to the Depository Bank, to pay fees, costs, expenses and indemnities as and when due to the Depository Bank on such Payment Day; then

(ii) to Kenergy in an amount equal to Kenergy Fees, pursuant the following wire transfer instructions:

Bank: US Bank  
Bank ABA No. 042100175  
Account No. 145803863326  
Beneficiary: Kenergy - General Fund; and then

(iii) the remainder to Big Rivers, pursuant to the following wire transfer instructions:

Bank: Old National Bank, Evansville, IN  
Bank ABA No. 086300012  
Account No. 10585559

Beneficiary: Big Rivers Electric General Fund.

5. Assignment; Acknowledgement of Release: Grant of Security Interest; Remedies Upon Default.

(a) As security for Kenergy's obligations to Big Rivers under the Total Big Rivers Agreements and for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, Kenergy hereby assigns to Big Rivers all of its rights to receive Century Payments and all of its rights to collect and enforce collection of such amounts due from Century (collectively, the "Century Contract Rights"). Century hereby acknowledges and consents to such assignment, and further agrees that, in realizing its rights in respect of Century Contract Rights, Big Rivers may sell and foreclose on such rights separately and apart from the disposition in respect of the rest of the Total Electric Service Agreements. Kenergy agrees to cooperate with and assist Big Rivers with respect to any collections of amounts due from Century to Kenergy which are assigned to Big Rivers pursuant to this Section, provided that Big Rivers will reimburse Kenergy for any expenses it incurs in providing such cooperation and assistance. Kenergy represents and warrants to Big Rivers that such assigned payments and rights are not subject to any existing liens or encumbrances.

(b) Upon execution of this Lockbox Agreement by Kenergy and the execution by Kenergy of any and all UCC Financing Statements requested by Big Rivers as of the execution hereof, and so long as this Lockbox Agreement remains in effect, Big Rivers hereby releases Kenergy from further liability under the Total Big Rivers Agreements for any Century Payments assigned hereby, *provided* that such release does not relieve Kenergy of its other liabilities or responsibilities under each of the Total Big Rivers Agreements.

(c) To secure the performance by Kenergy of all its obligations under the Total Big Rivers Agreements, Kenergy hereby irrevocably pledges and/or assigns to Big Rivers, and grants to Big Rivers a security interest in (i) Century Contract Rights, (ii) all Century Payments, excluding the Retail Fee, (to the extent such Century Payments have not been previously assigned to Big Rivers by Kenergy) (iii) all of its right, title and interest in, to and under the Lockbox Account and all funds contained therein, and in all obligations of the Depository Bank to Kenergy with respect thereto and (iv) in all proceeds of the foregoing (such items in respect of which such security interest is given hereinafter collectively referred to as the "Collateral"). Upon the occurrence of a default by Kenergy under the Arrangement Agreement, Big Rivers may, in addition to exercising any of the remedies available to it under the Total Big Rivers Agreements,

(x) enforce its right to all or any portion of the Collateral by such appropriate judicial proceedings as it shall deem most effective to protect and enforce such right;

(y) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce its right to the Collateral, or any portion thereof, to the extent permitted by applicable law; or

(z) sell, assign or otherwise liquidate any or all of the Collateral and take possession of the proceeds of any such sale or liquidation.

(d) Following the occurrence of a default by Kenergy under any Total Big Rivers Agreement and the enforcement by Big Rivers of its rights with respect to the Collateral in accordance with clause (c) above, Big Rivers shall be entitled to retain the proceeds received from any such enforcement.

6. Indemnity. Big Rivers hereby agrees to indemnify and hold the Depository Bank harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable legal fees) (collectively, "Claims") with respect to the performance of this Lockbox Agreement unless such Claims arise from the Depository Bank's gross negligence or willful misconduct. Big Rivers further agrees, so long as Century pays all Century Payments to the Depository Bank, to pay, indemnify and hold Century harmless from and against any and all Claims of or against the Depository Bank with respect to the performance, interpretation, construction and enforcement of this Lockbox Agreement.

7. Fees and Expenses. Big Rivers hereby agrees that all fees and charges associated with the Lockbox Account as shall from time to time be mutually agreed upon by Big Rivers and the Depository Bank shall be included on a monthly consolidated account analysis statement which the Depository Bank shall submit to Big Rivers. This statement shall set forth the fees and charges payable by Big Rivers for such month and be accompanied by such supporting documentation as the Depository Bank shall deem reasonable. All fees and charges set forth in the statement described above shall be deducted from the Lockbox Account by Depository Bank.

8. Limitations on Liability of the Depository Bank. The Depository Bank undertakes to perform those duties as are expressly set forth herein and the other processing requirements as may be covered in any procedure agreement consented to by Kenergy and Big Rivers. Notwithstanding any other provisions of this Lockbox Agreement, it is agreed by the Parties that the Depository Bank shall not be liable for any action taken by it or any of its directors, officers, agents or employees in accordance with this Lockbox Agreement except for its or their own gross negligence or willful misconduct. In no event shall the Depository Bank be liable for losses or delays resulting from force majeure, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond the Depository Bank's reasonable control or for indirect, special or consequential damages.

9. Account Information. Upon the request of any party, the Depository Bank shall provide to each of Big Rivers and Kenergy statements summarizing the activity in the Lockbox Account. In addition, the Depository Bank will provide to each of Big Rivers and Kenergy copies of all information reasonably requested by either of them.

The Depository Bank may rely, and shall be protected in acting or refraining from acting, upon any notice (including but not limited to electronically confirmed facsimiles of such

notice) reasonably believed by the Depository Bank to be genuine and to have been given by the proper Party or Parties.

The Depository Bank shall have no obligation to review or confirm that any actions taken pursuant to this Lockbox Agreement comply with any other agreement or document between the Big Rivers, Century and Kenergy or between any of them. The provisions of this paragraph shall survive termination of this Lockbox Agreement.

10. Waiver of Right of Set-Off. So long as any obligation of Kenergy to Big Rivers under this Lockbox Agreement remains outstanding, the Depository Bank waives, with respect to all of its existing and future claims against Kenergy or any affiliate thereof, all existing and future rights of set-off and banker's liens against the Lockbox Account and all items (and proceeds thereof) that come into its possession in connection with the Lockbox Account; *provided* that the Depository Bank retains the right to charge the Lockbox Account for all items deposited in and credited to the Lockbox Account after the date hereof and subsequently returned to the Depository Bank unpaid and for all fees and charges associated with such returned items.

11. Effectiveness; Integration; Amendments. This Lockbox Agreement shall be effective as of the date first written above, and the Depository Bank shall be in a position to process remittances to the Lockbox Account commencing the date hereof. This Lockbox Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter contained herein. To the extent that any other agreement or understanding, whether in writing or oral, relating to the matters referred to herein is inconsistent with this Lockbox Agreement, this Lockbox Agreement shall supersede such other agreement, including any procedures agreement and any other agreement between Kenergy and the Depository Bank relating to the collection of Century Payments. No provision of this Lockbox Agreement may be amended, modified or waived, except by a written instrument executed by the Parties. Any provision of this Lockbox Agreement which is or is declared illegal, invalid or unenforceable under any law or regulation shall not affect the legality, validity or enforceability of any other provisions hereof.

12. Termination. This Lockbox Agreement shall terminate on the earliest of (a) the date on which the Depository Bank receives a certificate of an authorized officer of Big Rivers to the effect that all Secured Obligations have been paid in full, (b) the date of termination of this Lockbox Agreement by Big Rivers (with the consent of Kenergy, which consent shall not be unreasonably withheld) upon 60 days prior written notice to the Depository Bank and to Kenergy or (c) the date of termination of this Lockbox Agreement by the Depository Bank (with the consent of Big Rivers, which consent shall not be unreasonably withheld) upon 60 days prior written notice to Kenergy and to Big Rivers, provided that such 60 day period shall be extended at the request of Big Rivers if a substitute depository bank cannot be established during such 60 day period. Upon termination of this Lockbox Agreement pursuant to this Section, Big Rivers shall be released from any and all liability and obligations with respect to such Lockbox Account or arising hereunder, and the Lockbox Account shall, at the option of Kenergy, be transferred to Kenergy's name and become an account from which Kenergy may withdraw any and all funds contained therein, or the account shall be closed.

13. Substitute Depository Bank. In the event that the Depository Bank resigns or is removed by the Parties (other than due to the occurrence of the events contemplated by clause (a) of Section 12 hereof), a substitute bank shall be nominated by Big Rivers which nominee shall be approved by Kenergy (with notice to be provided to Century). Such substitute depository bank shall accept such appointment by executing a comparable Lockbox Agreement and shall thereafter succeed to all rights and responsibilities of the Depository Bank as therein provided.

14. Notices. All notices, requests or other communications given to Kenergy, Big Rivers or the Depository Bank shall be given in writing (including telex, facsimile transmission or similar writing) at the address or telex or facsimile number specified below:

Depository Bank:	Old National Bank 1 Main Street Evansville, Indiana 47708 Attn: Anna Lee Tepool Facsimile: (812) 465-0123
Big Rivers:	Big Rivers Electric Corporation 201 Third Street Henderson, Kentucky 42419 Attn: Vice President, CFO Facsimile: (270) 827-2101
Kenergy:	Kenergy Corp. P.O. Box 18 Henderson, Kentucky 42419-0018 Attn: President and CEO Facsimile: (270) 826-3999
Century:	Century Aluminum Company P.O. Box 500 State Route 271 North Hawesville, Kentucky 42348 Attn: Plant Manager Facsimile: (270) 852-2882

Any Party may change its address or facsimile number or notices hereunder by notice to each other Party hereunder. Each notice, request or other communication shall be effective (a) if given by facsimile transmission, when such facsimile is transmitted to the facsimile number specified in this Section, (b) if given by mail, two business days after such communication is deposited in the mail with first class postage prepaid, addressed as aforesaid or (c) if given by any other means, when delivered at the address specified in this Section.

15. Acknowledgment of Security Interest. By execution of this Lockbox Agreement the Depository Bank acknowledges and consents to the security interest granted by Kenergy to Big Rivers pursuant to Section 5. Kenergy agrees to promptly execute and deliver all

further instruments and documents that may be necessary or which Big Rivers may in good faith reasonably request, in order to perfect and protect any pledge or security interest granted hereby, including, without limitation, such financing or continuation statements, or amendments thereto, as Big Rivers may reasonably request.

16. Governing Law. Except to the extent that federal law or the laws of the state in which the Depository Bank is located govern the Lockbox Account, this Lockbox Agreement shall be governed by, and interpreted in accordance with, the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules. For purposes of this Lockbox Agreement, the Commonwealth of Kentucky shall be deemed the bank's jurisdiction under the Kentucky Uniform Commercial Code.

17. Counterparts. This Lockbox Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, each of the Parties has caused this Lockbox Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

OLD NATIONAL BANK

By: \_\_\_\_\_  
Name:  
Title:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:



## ALTERNATE SERVICE AGREEMENT

**THIS AGREEMENT** for Purchase of Power ("Agreement") is made \_\_\_\_\_, 2013, between **KENERGY CORP.**, 6402 Old Corydon Road, Henderson, Kentucky 42420 (hereinafter called the "Seller"), and **CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP** with a service address and corporate address at 1627 State Route 3543, Hawesville, KY 42348, (hereinafter called the "Consumer").

Seller and Consumer are parties to a retail electric service agreement dated as of July 1, 2009 (the "2009 Agreement"), pursuant to which Seller provides Consumer electric service to Consumer's aluminum smelting facility in Hawesville, Kentucky.

Consumer notified Seller on August 20, 2012, that Consumer will terminate the 2009 Agreement on August 20, 2013 (the "Termination Date"), in accordance with the terms of the 2009 Agreement.

Seller and Consumer are negotiating an Electric Service Agreement proposed to be dated as of August 1, 2013 (the "Electric Service Agreement") and related documents, pursuant to which Seller would provide Consumer retail electric service for aluminum smelting operations at Consumer's Hawesville facility; and

Consumer desires to enter into an agreement for a power supply to the same facility for non-smelting operations that will become effective, at Consumer's election, concurrently with the termination date of the 2009

Agreement, or if the Electric Service Agreement is in effect on the Termination Date, again at the election of the Consumer, on the termination date of the Electric Service Agreement.

Accordingly, Seller and Consumer agree as follows:

The Seller shall sell and deliver to the Consumer at the Delivery Point, as defined in Section 1.D. of this Agreement, and the Consumer shall purchase all of the electric power and energy, which the Consumer may need at the aforementioned service address for non-smelting operations, up to ten megawatts (the "Maximum Demand"), except as otherwise provided herein, upon the following terms:

1. **SERVICE CHARACTERISTICS**

- A. Service hereunder shall be alternating current, 3 phase, sixty cycles, nominal 161,000 volts.
- B. The Consumer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of power and shall not sell electric power and energy purchased hereunder. All electric consuming facilities of Consumer shall be connected on the load side of the metering facilities described in Section 1.22 of Addendum 1.
- C. The Consumer acknowledges that Seller's wholesale power supplier is transmitting electric power and energy to Seller for sale hereunder across the transmission system of Big Rivers Electric Corporation (the "Wholesale Transmission System").

agreement with Big Rivers regarding service to Consumer has received all approvals required by Seller's and Big Rivers' credit agreements, and is approved or accepted in writing by the KPSC.

9. **ADDENDA**

The addenda to this Agreement are attached hereto and incorporated herein as a part of this agreement for electric service.

10. **INDEMNIFICATION**

Consumer agrees to indemnify and hold Seller harmless from and against any and all claims, demands, damages, judgments, losses or expenses asserted against Seller by or on behalf of Big Rivers arising out of, related to or concerning damage to the Wholesale Transmission System, or any system or electric consuming facilities connected to the Wholesale Transmission System, resulting from Consumer's operations, activities or usage of electric power and energy hereunder.

11. **NOTICE TO BIG RIVERS**

Any notice from Consumer to Seller required by the terms of this Agreement shall be given concurrently to Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420, Attn: President and CEO, using the same methodology required by this Agreement for notice to Kenergy.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement all as of the day and year first above written.

KENERGY CORP.  
Seller

By \_\_\_\_\_

Printed Name Gregory J. Starheim

Title President and CEO

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP  
Consumer

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

## ADDENDA TO ALTERNATE SERVICE AGREEMENT

### ADDENDUM 1

#### 1.10 Facilities to be Provided by Consumer.

1.11 Consumer has provided or shall provide, without cost to Seller or Big Rivers all easements for rights-of-way upon Consumer's property at the Hawesville smelter (at such locations and of such dimensions as may be mutually agreed upon) for Big Rivers' transmission lines, and for any Kenergy distribution lines for service to Consumer.

Consumer has furnished and installed, shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased under the Agreement at and from Consumer's substation located adjacent to the Hawesville smelter.

1.12 Except as provided in Section 1.20 of this Addendum, Consumer shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from Consumer's Substation, including but not limited to (i) such protective devices as may be reasonably necessary in the opinion of the Seller to protect the system of the Seller or the Wholesale Transmission System from disturbances caused by Consumer, (ii) voltage regulation capability in the Consumer-provided electrical facilities sufficient to meet the operating requirements of all Consumer's equipment over the full range of acceptable

transmission delivery voltage, and (iii) protection devices as needed to prevent damage to that equipment during voltage excursions outside of the full range of acceptable transmission delivery voltage. Plans for equipment to be installed for such protection shall be submitted to Seller for prior approval, which shall not be unreasonably withheld.

1.20 **Facilities to be Provided by Seller.**

1.21 Seller has caused to be furnished and installed, or shall cause to be furnished and installed, all of the facilities required for the delivery of electric power and energy to the Delivery Point, as well as the 161 kilovolt transmission lines required between the Delivery Point and Consumer's electrical substation that is designated by Consumer under Section 6.B. of the Agreement. Seller shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment, necessary to deliver electric power and energy to Consumer's Substation . Seller will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Prudent Utility Practice, to the extent necessary to assure sufficient capability to take and use the electric power and

energy delivered by Seller to Consumer as provided for in the Agreement.

1.22 Seller acknowledges Consumer's need, from time to time, to perform scheduled maintenance on its substation equipment, and agrees that upon minimum 30 days written notice it will arrange, or cause to be arranged, service during the period of the scheduled maintenance activities using one of the 161 kV transmission lines that was de-energized on the Service Commencement Date

1.30 **Construction Standards.** Consumer shall construct and maintain any facilities it builds under an obligation created by this Agreement in accordance with applicable provisions of the National Electrical Safety Code of the American National Standards Institute (ANSI C2), and other applicable laws, codes and regulations, provided however Seller shall have no duty to inspect those facilities for conformance with such standards or have any responsibility for the means, methods or techniques employed by Consumer or its contractor in the construction of these facilities. Each party shall own, maintain and operate the facilities it purchases and installs.

1.40 **Electric Disturbances and Phase Balancing.**

- (a) Consumer shall not use the power and energy delivered under this Agreement in such manner as to cause a "System Disturbance." A System Disturbance is a use of electric power and energy which directly or indirectly results in a risk of harm to human beings or material damage to or interference with the transmission system of Seller's wholesale power supplier (the "Wholesale Transmission System"), a system connected with the Wholesale Transmission System or facilities or other property in

proximity to the Wholesale Transmission System, or the plant, facility, equipment or operations of any other customer served directly or indirectly from the Wholesale Transmission System. A System Disturbance includes, but is not limited to: (a) Harmonic Distortion: a level of current harmonic total demand distortion (TDD) measured at the Delivery Point that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and, (b) Phase Imbalance: a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at the Delivery Point.

- (b) Seller may require Consumer, at Consumer's expense, to make such changes in its system as may be reasonably necessary to eliminate System Disturbances. If Consumer's use of power and energy creates an imbalance between phases that causes a System Disturbance, and fails to make changes in its system requested by Seller to correct such condition, in addition to any other remedies it has Seller make, in its determination of billing demand, assume that the load on each phase is equal to the greatest load on any phase.
- (c) Consumer shall maintain a power factor at the Delivery Point as nearly as practicable to unity. Power factor during normal operation may range from unity to ninety percent (90%). If Consumer's power factor is less than 90% at time of maximum load, Seller reserves the right to require Consumer to choose either (a) installation at Consumer's expense of equipment which will maintain a power factor of 90% or higher; or (b)

adjustment of the maximum monthly metered demand for billing purposes in accordance with the following formula:

$$\frac{\text{Maximum Actual Measured Kilowatts} \times 90\%}{\text{Power Factor (\%)}}$$

- (d) Consumer acknowledges and agrees that Seller shall have no responsibility for damage to any property, or to any equipment or devices connected to Consumer's electrical system on Consumer's side of the Delivery Point that results solely from acts or omissions of Consumer, its employees, agents, contractors or invitees, or malfunction of any equipment or devices connected to Consumer's electrical system on Consumer's side of the Delivery Point.

**ADDENDUM 2**

[Reserved]

**ADDENDUM 3**

**Force Majeure.** In the event performance of this Agreement is limited or prevented in whole or in part by Acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government (whether federal, state, or local, civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, or inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, civil or military), upon such party's giving notice and reasonably full particulars of such force

majeure or uncontrollable force, in writing or by telegraph to the other party within a reasonable time after the occurrence of the cause relied on, the party whose performance is so limited or prevented shall be excused, discharged and released from the performance to the extent such performance is limited or prevented, but only for the period when the performance is limited or prevented and thereafter all of the terms of this Agreement shall remain in effect except that the term of the agreement shall be extended for a period equal to the duration of the aforesaid force majeure. A minimum bill due during a billing period when a force majeure event occurs shall be prorated based upon the duration of the period of force majeure, but nothing contained herein shall excuse Consumer from the obligations of paying at the time provided herein, for any power consumed by it. In no event shall this Agreement subject either party to liability for consequential or incidental damages, or damages for loss of anticipated profits.

#### **ADDENDUM 4**

**Successors in Interest.** Consumer may with written approval of the Seller assign or transfer this Agreement and such approval shall not be unreasonably withheld. In such event such assignee or transferee shall assume all obligations or responsibilities of Consumer under this Agreement.

#### **ADDENDUM 5**

5.10 **Remedies of the Parties.** Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter. Except as specifically provided herein, this Agreement shall not be construed to abridge, limit,

or deprive either party of any remedy for breach of the provisions herein which would otherwise be available at law or equity.

5.20 **Reports and Information.** Consumer shall furnish to the Seller such reports and information concerning its operations as the Seller may reasonably request from time to time to allow Seller to perform its obligations or exercise its rights under the Agreement.

5.30 **Notices.** Any written notice, demand or request required or authorized under this Agreement shall be deemed properly given to or served on Seller if mailed to:

Kenergy Corp.,  
Attention: President & CEO  
Post Office Box 18  
Henderson, Kentucky 42419-0018

And concurrently to:

Big Rivers Electric Corporation  
Attention: President & CEO  
201 Third Street  
Henderson, KY 42420

Any such notice, demand or request shall be deemed properly given to or served on Consumer if mailed to:

Century Aluminum of Kentucky General Partnership  
c/o Plant Manager  
1627 State Route 3543  
Hawesville, KY 42348

5.40 **Jurisdiction and Venue.** The terms, covenants and conditions herein contained constitute the entire agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written,

between the parties hereto with respect to the subject matter hereof, provided, however, that service to the Consumer is subject to the provisions of the Articles of Consolidation and Bylaws of Seller and is subject to the lawful orders of the Kentucky Public Service Commission. All respective rights and obligations of the parties shall be governed by the laws of the State of Kentucky. Venue of any action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be Henderson County, Kentucky.

5.50 **Severability.** Should any provision or provisions of this Agreement be declared void or illegal by any court of competent jurisdiction, then such void or illegal provision or provisions shall be severed from this Agreement, and all other provisions hereof shall remain in full force and effect.



Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 2

Third Revised SHEET NO. 35

CANCELLING PSC NO. 2

Second Revised SHEET NO. 35

**CLASSIFICATION OF SERVICE**

**Schedule 35 – Large Industrial Customers Served Under Special Contract  
(Dedicated Delivery Points) - (Class C)**

APPLICABLE

In all territory served.

AVAILABILITY OF SERVICE

This rate shall apply to existing large customers where service is provided through a dedicated delivery point connected to the transmission system of Big Rivers or other accessible system classified as Class C customers, or new customers executing special contracts approved by the Kentucky Public Service Commission.

TYPE OF SERVICE

The electric service furnished under this schedule will be three-phase sixty cycle, alternating current at available nominal voltage.

RATE

Customer Charge per Delivery Point \$100.00 per Month

Plus:

Demand Charge per KW of Billing Demand in Month \$ 10.50

Plus:

Energy Charges:

Per KWH \$0.027508

Facilities Charge

1.38%

(times assigned dollars of Kenergy investment for facilities per month-see Sheet No.35B)

DETERMINATION OF BILLING DEMAND

The Billing Demand in kilowatts shall be the higher of: a) The customer's maximum integrated thirty-minute demand at such delivery point during each billing month, determined by meters which record at the end of each thirty-minute period the integrated kilowatt demand during the preceding thirty minutes; or b) the Contract Demand.

POWER FACTOR ADJUSTMENT

The customer agrees to maintain a power factor as nearly as practical to unity. Kenergy will permit the use of apparatus that shall result, during normal operation, in a power factor not lower than 90%. At Kenergy's option, in lieu of the customers providing the above corrective equipment when power factor is less than 90%, Kenergy may adjust the maximum measured demand for billing purposes in accordance with the following formula:

DATE OF ISSUE February 1, 2013

Month / Date / Year

DATE EFFECTIVE September 1, 2011

Month / Date / Year

ISSUED BY [Signature]

(Signature of Officer)

TITLE President and CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2011-00035 DATED January 29, 2013

KENTUCKY  
PUBLIC SERVICE COMMISSION

JEFF R. DEROUEN  
EXECUTIVE DIRECTOR

TARIFF BRANCH

[Signature]

EFFECTIVE

**9/1/2011**

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)



Henderson, Kentucky

FOR ALL TERRITORY SERVED
Community, Town or City
PSC NO. 2
First Revised SHEET NO. 35A
CANCELLING PSC NO. 2
Original SHEET NO. 35A

T

CLASSIFICATION OF SERVICE
Schedule 35 - Large Industrial Customers Served Under Special Contract
(Dedicated Delivery Points) - (Class C)

Max. Measured KW x 90%
Power Factor (%)

The power factor shall be measured at time of maximum load.

METERING

Electrical usage will be metered at the transmission voltage supplied or at the customer's secondary voltage with a 1.% adder to the metered KWH to account for transformer losses, as determined by Kenergy.

ADJUSTMENT CLAUSES

The bill amount computed at the charges specified above shall be increased or decreased in accordance with the following:

- Renewable Resource Energy Service Rider Sheets No. 23 - 23D
Fuel Adjustment Rider Sheets No. 24 - 24A
Environmental Surcharge Rider Sheets No. 25 - 25A
Unwind Surcredit Adjustment Rider Sheets No. 26 - 26A
Rebate Adjustment Rider Sheets No. 27 - 27A
Member Rate Stability Mechanism Rider Sheets No. 28 - 28A
Price Curtailable Service Rider Sheets No. 42 - 42C
Non-FAC Purchased Power Adjustment Rider Sheets No. 30 - 30A

N

AGREEMENT

An "agreement for purchase of power" shall be signed by any new customer prior to service under the rate. Should the provisions of the expansion rate contained on Sheets No. 41-41G apply, additional language incorporating those provisions will be added to the agreement.

TAXES AND FEES

School Taxes added if applicable.
Kentucky Sales Taxes added if applicable.

FRANCHISE CHARGE

The rate herein provided shall include, where applicable, an additional charge for local government franchise payment determined in accordance with the Franchise Billing Plan as set forth on Sheet No. 105

TERMS OF PAYMENT

The above rates are net, the gross rate being five percent (5%) greater. In the event the current monthly bill is not paid within twenty (20) days from the date the bill was rendered, the gross rate will apply.

DATE OF ISSUE December 2, 2011
DATE EFFECTIVE September 1, 2011
ISSUED BY [Signature]
TITLE President and CEO
BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. 2011-00035 DATED November 17, 2011

KENTUCKY PUBLIC SERVICE COMMISSION
JEFF R. DEROUEN EXECUTIVE DIRECTOR
TARIFF BRANCH
[Signature]
EFFECTIVE 9/1/2011
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)



Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 2

Second Revised SHEET NO. 35B

CANCELLING PSC NO. 2

First Revised SHEET NO. 35B

CLASSIFICATION OF SERVICE

Schedule 35 - Large Industrial Customers Served Under Special Contract (Dedicated Delivery Points) - (Class C)

DETERMINATION OF FACILITIES CHARGE RATE

Table with columns: Line No., Item, Total. Rows include Distribution O&M Expense, Distribution Plant @ Year End, Dist. Exp. Cost Factor, Test Year A&G Acct. Expense, Test Year O&M Expense Excluding A&G, Line 5/Line 6, Dist. Expense Carrying Cost Factor, A&G Cost Factor, Distribution Plant Depreciation Rate, Cost of Capital, Amortization Factor, Replacement Cost Factor, Capital Recovery Factor, General Plant Factor, General Plant @ Year End, General Plant Depreciation Rate, Not Used, Amortization Factor, General Plant Fixed Charge Rate, General Plant Fixed Charges, Total Utility Plant, Percent of TUP - General Plant Factor, SUMMARY: O&M Factor, A&G Factor, Capital Recovery Factor, General Plant Factor, Total Annual Carrying Cost, PSC Assessment, Adjustment Annual Carrying Cost, Monthly Fixed Charge Rate Charge.

DATE OF ISSUE December 2, 2011 Month / Date / Year

DATE EFFECTIVE September 1, 2011 Month / Date / Year

ISSUED BY [Signature] (Signature of Officer)

TITLE President and CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION IN CASE NO. 2011-00035 DATED November 17, 2011

KENTUCKY PUBLIC SERVICE COMMISSION JEFF R. DEROUEN EXECUTIVE DIRECTOR TARIFF BRANCH [Signature] EFFECTIVE 9/1/2011 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)





201 Third Street  
P.O. Box 24  
Henderson, KY 42419-0024  
270-827-2561  
www.bigrivers.com

May \_\_, 2013

Mr. Gregory J. Starheim  
Kenergy Corp.  
6402 Corydon Road  
P.O. Box 18  
Henderson, KY 42419-0018

Re: Retail Electric Service Agreement  
Century Aluminum of Kentucky General Partnership

Dear Greg:

This letter agreement ("*Letter Agreement*") will evidence Big Rivers' concurrence with the terms of Kenergy's electric service agreement with Century Aluminum of Kentucky General Partnership (the "*Retail Customer*") dated May \_\_, 2013, a copy of which is attached hereto as Exhibit 1 (the "*Alternate Retail Agreement*"), and the agreement between Big Rivers and Kenergy with respect thereto.

(1) **Existing Agreement and Tariffs.** The terms and conditions of the June 11, 1962, wholesale power agreement, as amended, and Big Rivers' filed tariffs shall continue in full force and effect except as expressly modified by this Letter Agreement.

(2) **Additional Rights and Obligations of Big Rivers.** Big Rivers shall make available to Kenergy the electric power required during the term of the Alternate Retail Agreement to perform the power supply obligations assumed by Kenergy in the Alternate Retail Agreement, and Big Rivers shall have the benefit of Retail Customer's covenants in such agreement. Big Rivers will supply the facilities required to deliver power to the delivery point, as defined in the Alternate Retail Agreement, and to meter electrical usage by Retail Customer.

(3) **Obligations of Kenergy.** Kenergy shall take and pay for (i) electric power and energy delivered by Big Rivers in accordance with Big Rivers' Rate Schedule LIC, with demand and energy being measured in accordance with the Alternate Retail Agreement, and (ii) facilities charges incurred by Big Rivers in connection with extending service to the Retail Customer's delivery point. Kenergy will promptly forward to Big Rivers a copy of any notices received by Kenergy from the Retail Customer under the terms of the Alternate Retail Agreement.

(4) **Obligation of Kenergy for Minimum Billing Demand Charge.** Kenergy agrees to bill Retail Customer for any minimum billing demand charges in excess of measured demand. Kenergy agrees to pay over to Big Rivers all funds actually collected

under such billings. The terms of this paragraph do not affect the obligation of Kenergy to pay Big Rivers in accordance with Big Rivers' tariff as and when billed for the wholesale charges for electric power and energy actually consumed by Retail Customer.

(5) **Division of Any Partial Payments.** Kenergy will pay to Big Rivers a pro rata share of any partial payment made to Kenergy by or on behalf of Retail Customer.

(6) **Effective Date.** This Letter Agreement will become effective upon approval or acceptance by the Public Service Commission of Kentucky, and upon receipt of any consents or approvals required under Big Rivers' agreements with its creditors.

(7) **Entire Agreement and Amendment.** This Letter Agreement represents the entire agreement of the parties on the subject matter herein, and cannot be amended except in writing, duly authorized and signed by Big Rivers and Kenergy. The Alternate Retail Agreement cannot be amended without the written approval of Big Rivers. Big Rivers shall have the right to approve the terms and issuer(s) of the letter(s) of credit contemplated by the Alternate Retail Agreement to secure the obligations of the Retail Customer for termination charges.

(8) **Right to Supply from Big Rivers.** Kenergy acknowledges and agrees that Big Rivers has no obligation to serve or supply any wholesale electric services from its system resources for the benefit of all or a portion of the Hawesville smelter owned by Retail Customer, or any affiliates, spin-offs or successors of Retail Customer during the term of the Alternate Retail Agreement or thereafter other than as provided in this Letter Agreement.

If this Letter Agreement is acceptable to Kenergy, please indicate that acceptance by signing in the space provided and returning six signed counterparts to us.

Sincerely yours,  
BIG RIVERS ELECTRIC  
CORPORATION

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Mark A. Bailey, President/CEO

ACCEPTED:

KENERGY CORP.

---

Gregory J. Starheim  
President/CEO

Date: May \_\_, 2013