

## OPERATIONAL SERVICES AGREEMENT

Dated as of January 1, 2015

by and between

**BIG RIVERS ELECTRIC CORPORATION,**

and

**KENERGY CORP.**

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**KENTUCKY  
PUBLIC SERVICE COMMISSION**

**Linda C. Bridwell**  
Executive Director



EFFECTIVE

**1/1/2015**

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

**OPERATIONAL SERVICES AGREEMENT**

This OPERATIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of January 1, 2015, by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky electric generation and transmission cooperative ("Big Rivers"), and KENERGY CORP., a Kentucky electric cooperative corporation and a member of Big Rivers ("Kenergy"). Big Rivers and Kenergy 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 Sebree LLC, a Delaware limited liability company ("Century"), the owner and operator of an aluminum reduction plant in Robards, Kentucky, pursuant to an Electric Service Agreement, dated as of January 31, 2014 (the "Electric Service Agreement").

B. Kenergy currently purchases from Big Rivers, for resale to Century, wholesale electric energy and related services obtained by Big Rivers from the wholesale electric market, pursuant to an Arrangement and Procurement Agreement, dated as of January 31, 2014.


C. Century Aluminum Company, a Delaware corporation and the indirect parent of Century ("Century Parent"), gave notice, dated January 31, 2014, to Big Rivers and Kenergy of the appointment of EDF Trading North America, LLC ("EDF") as the "Market Participant" (as defined under the Electric Service Agreement) under the Electric Service Agreement .

D. In connection with and as a condition to Kenergy's consent to EDF becoming the Market Participant, Kenergy and EDF are entering into the Arrangement and Procurement Agreement, dated as of the date hereof (the "EDF Arrangement Agreement"), to facilitate EDF acting as the Market Participant to obtain wholesale electric energy and related services from the wholesale electric market for resale to Kenergy for delivery to Century under the Electric Service Agreement.

E. In addition to the obligations of Kenergy to Century under the Electric Service Agreement that correspond to obligations of EDF to Kenergy under the EDF Arrangement Agreement, Kenergy has obligations to Century under the Electric Service Agreement relating to metering, interconnection and other operational matters, and Kenergy desires Big Rivers to perform these additional obligations on its behalf and to reimburse Big Rivers for the cost thereof during the remainder of the term of the Electric Service Agreement.

F. In addition to the payment obligations of Century to Kenergy under the Electric Service Agreement that correspond to payment obligations of Kenergy to EDF under the EDF Arrangement Agreement, Century has payment obligations to Kenergy under the Electric Service Agreement relating to Century's maximum metered reactive demand as well as energy in excess of 395 MW in any hour delivered to Century, and Kenergy desires that Big Rivers receive the benefit of these additional payment obligations during the remainder of the term of the Electric Service Agreement.

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G. It is a condition precedent to the “Effective Date” (as defined in the EDF Arrangement Agreement) that Big Rivers and Kenergy each shall have authorized, executed and delivered this Agreement.

H. The Parties desire to enter into this Agreement to set forth the Parties’ respective rights and obligations relating to operational services to be provided by Big Rivers to Kenergy and the reimbursements and other payments from Kenergy to Big Rivers described in these Recitals, as more particularly described herein, in connection with Kenergy’s provision of electric service to Century under the Electric Service Agreement.

I. The Parties desire that this Agreement remain effective during the term of the Electric Service Agreement despite EDF or any other Market Participant appointed after the date hereof being replaced pursuant to a Market Agreement (as defined in the Electric Service Agreement), other than the EDF Arrangement Agreement, that may be entered into by Kenergy and a replacement Market Participant.

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; Rules of Interpretation. Capitalized terms used in this Agreement and not defined in this Section 1.1 or otherwise 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. 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.

- 1.1.1 Agreement: As defined in the preamble to this Agreement.
- 1.1.2 Big Rivers: As defined in the preamble to this Agreement.
- 1.1.3 Century: As defined in the Recitals.
- 1.1.4 Century Parent: As defined in the Recitals.
- 1.1.5 EDF: As defined in the Recitals.
- 1.1.6 EDF Arrangement Agreement: As defined in the Recitals.
- 1.1.7 Effective Date: As defined in the Recitals.
- 1.1.8 Electric Service Agreement: As defined in tl

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

1.1.10 Market Participant: As defined in the Recitals.

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

1.1.12 Regional Entity: A Regional Entity as defined in Section 215 of the Federal Power Act.

1.1.13 Secured Party: As defined in Section 7.5.5.

1.1.14 Special Protection System (SPS): As defined by the ERO or the relevant Regional Entity.

## ARTICLE 2

### METERING

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

2.2 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).

2.3 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 will make mutually agreed upon estimates for such period from the best information available, subject to Century's consent. 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 shall reimburse Big Rivers for the reasonable cost of such test. In all other respects, Big Rivers shall cause its meters through which Energy is delivered to Kenergy for resale to Century under the Electric Service Agreement to be installed, operated, maintained and tested in accordance with all Applicable Law and Good Utility Practice.

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**ARTICLE 3**  
**OPERATIONAL MATTERS**

3.1 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, any other Regional Entity, Applicable Law and any applicable RTO, and neither Party will be required to take any action in violation of any thereof.

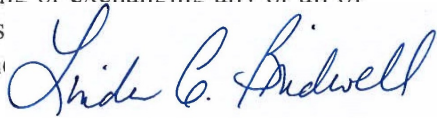
3.1.1 Big Rivers will operate and maintain or cause to be operated and maintained any facilities owned by it on the premises of Kenergy or Century.

3.1.2 Kenergy will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it.

3.2 Installation and Maintenance of Metering, Substation and Switching Equipment. Big Rivers shall install, or shall cause to be installed, any and all metering, substation and switching equipment necessary to enable Kenergy to deliver Energy to Century at the Delivery Point pursuant to the Electric Service Agreement; *provided, however* that such equipment shall not include any protective equipment, including any Special Protection System (SPS) equipment (including any Protective Relays) engineered, designed, developed, procured, installed, owned, operated or maintained by Century. Big Rivers will maintain or cause to be maintained, all such equipment owned by Big Rivers, including the 161 kilovolt transmission lines between the Delivery Point and the Century Substation, in accordance with the Tariff and other Applicable Law. For the avoidance of doubt, nothing herein shall obligate Big Rivers to furnish, install, operate or maintain any equipment owned by Persons other than Big Rivers in connection with the provision of services to Kenergy hereunder.

3.3 Ownership and Removal of Equipment. As between the Parties, 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 the Electric Service Agreement or the EDF Arrangement Agreement (or any other Market 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 the Electric Service 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.

3.4 Right of Access. Big Rivers acknowledges that pursuant to the Electric Service Agreement, Century granted 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 any other work incident to the performance of obligations under the

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Kenergy or Big Rivers shall make reasonable advance arrangements before entering the premises of Century.

3.4.1 Kenergy shall not permit any 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.

3.4.2 Kenergy hereby grants to Big Rivers Kenergy's rights from Century under 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 4

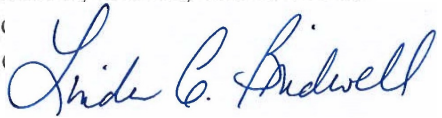
#### OTHER COVENANTS

4.1 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 this Agreement or another 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.

4.2 Release and Indemnification.

4.2.1 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 relating to a corresponding obligation of Kenergy to Big Rivers under this 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 satisfy its obligations under the Electric Service Agreement relating to a corresponding obligation of Kenergy to Big Rivers under this Agreement, if Kenergy elects to assign its rights in connection therewith pursuant to Section 4.2.2.

4.2.2 If Century shall default in any of its obligations under the Electric Service Agreement relating to a corresponding obligation of Kenergy to Big Rivers under this 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 (this shall be coupled with an interest and irrevocable) for purposes of negotiating and settling any and all claims Kenergy may have against Century for such default by Century and to file or prosecute any claim, litigation, suit or proceeding before any Governmental entity in the name of Kenergy or in its own name, or take such other action on behalf of Kenergy as

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Big Rivers for the purposes of obtaining legal or equitable relief as a result of such default by Century and to compromise, settle, or adjust any suit, action or proceeding related to such default by Century 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 such default by Century. 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.

4.3 Electric Service Agreement. Kenergy shall (a) not waive the performance and discharge by Century of its material obligations under the Electric Service Agreement without the prior written consent of Big Rivers; (b) not amend or modify the Electric Service Agreement without the prior written consent of Big Rivers; (c) not terminate or repudiate the Electric Service Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Kenergy) other than in accordance with the provisions thereof without the prior written consent of Big Rivers; and (d) make payments pursuant to the Electric Service Agreement when due and in accordance therewith for so long as such agreement exists; *provided*, that Big Rivers' consent when required under this Section shall not be unreasonably withheld; *provided further*, that Big Rivers' consent shall not be required as a condition to the appointment under the Electric Service Agreement of any new Market Participant.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to the other Party as of the date hereof as follows:

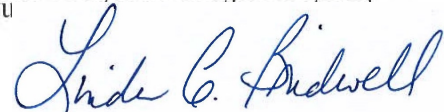
5.1 Organization, Power and Authority. Such Party (a) is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of formation, and is authorized to do business in the Commonwealth of Kentucky; and (b) has the requisite power and authority to 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.

5.2 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 the 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.

5.3 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

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contract, agreement or instrument to which such Party is a party or by which it, or its property, is bound.

5.4 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, which in each case has not been obtained, 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.

5.5 Proceedings. Except as set forth in Schedule 5.5 hereto, 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, authorization, consent or other action by any Governmental Authority relating to the subject matter of this Agreement, or (c) if determined adversely to such Party, would materially adversely affect its ability to perform under this Agreement.

5.6 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 6

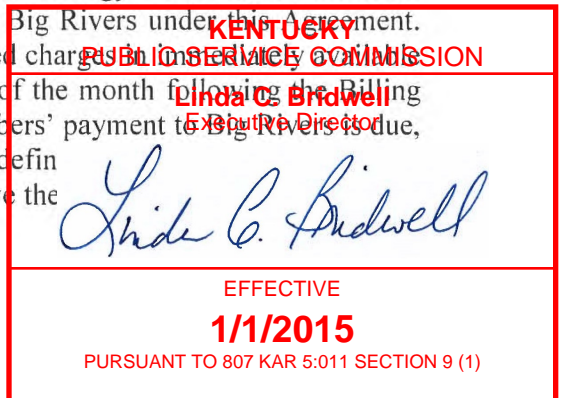
### PAYMENT; REIMBURSEMENT AND BILLING

#### 6.1 Reimbursement and Payment.

6.1.1 Kenergy shall reimburse Big Rivers for the costs of the services provided under Article 2 and Article 3, to the extent that Big Rivers does not receive payment for those costs under the Tariff or any other Transaction Document. Costs to be reimbursed to Big Rivers include Century's pro rata share of the Residual Load (as defined by the MISO Tariff) costs for the Big Rivers local balancing authority area on and after July 1, 2016. Big Rivers shall make such pro rata allocation based on Century's Load as a percentage of aggregate load in the Big Rivers local balancing authority area. Kenergy shall not be obligated to reimburse Big Rivers for Residual Load costs for the period prior to July 1, 2016.

6.1.2 Kenergy shall pay Big Rivers all amounts received by Kenergy under (i) Section 4.4 of the Electric Service Agreement for the Excess Reactive Demand Charge or (ii) Section 4.6.9 of the Electric Service Agreement for the Excess Energy Rate.

6.2 Invoicing and Auditing. Big Rivers shall bill Kenergy on or before the tenth (10th) day of each month for all amounts due and owing to Big Rivers under this Agreement. Kenergy shall pay or cause to be paid to Big Rivers such billed charges on the following Business Day following the 24th business 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, and otherwise pursuant to the Lock Box Agreement (as defined in the Lock Box Agreement). Big Rivers acknowledges that Century shall have the





Rivers subject to reimbursement hereunder, as described in Section 3.11 of the Direct Agreement and subject to the limitations set forth in such Section, as if such Section made reference to this Agreement instead of the Arrangement Agreement.

6.3 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.

6.4 Payments Under Protest. If any portion of any statement is disputed by Kenergy (or Century, under the Electric Service Agreement), 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.

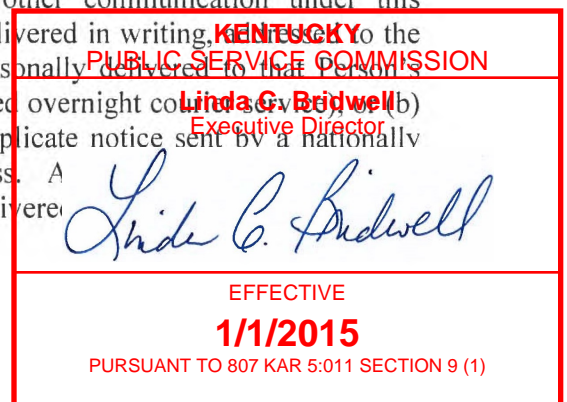
## ARTICLE 7

### MISCELLANEOUS

7.1 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, between the Parties relating to the subject matter hereof. 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.

7.2 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.

7.3 Notices. A notice, consent, approval or other communication under this Agreement must, except as otherwise provided herein, be delivered in writing, 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 delivered in accordance with this Section will be deemed to have been delivered.



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, 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, and the address of Century is the address set forth in Section 18.6 of the Electric Service Agreement or such other address that Century may provide pursuant to Section 18.6 of the Electric Service Agreement.

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

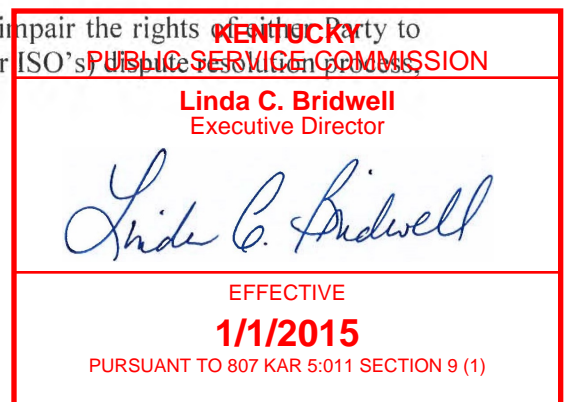
If to Kenergy:        Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: (270) 826-3999

#### 7.4 Dispute Resolution.

7.4.1 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 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 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 7.7, and any such request shall not be deemed incompatible with this Agreement.

7.4.2 Absent resolution of the dispute pursuant to Section 7.4.1, 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 7.7.

7.4.3 Nothing in this Section 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, at the KPSC or at the FERC.



7.5 Successors and Assigns.

7.5.1 This Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns as fully as if the words "successors and assigns" were written herein wherever reference to Big Rivers or Kenergy occurs in this Agreement. No right, obligation or other interest in this Agreement may be assigned, pledged or otherwise transferred 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 7.5.4 or Section 7.5.5, and except that, subject to satisfaction of the conditions of Section 7.5.2, 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.

7.5.2 Except as provided in Section 7.5.5, 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 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.

7.5.3 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.

7.5.4 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.

7.5.5 Notwithstanding any other provision of this Agreement to the contrary, Big Rivers may, without the written consent of Kenergy and without relieving itself from liability hereunder, assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America, acting through RUS, or other secured party (directly or through an indenture trustee or other collateral agent; collectively, including such indenture trustee or other collateral agent, a "Secured Party"). Thereafter, a Secured Party, without the written consent of Kenergy, may (a) cause this Agreement (and all obligations hereunder) to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such security interest, or (b) if RUS first acquires this Agreement pursuant to 7 U.S.C. § 907 or if any other Secured Party otherwise first acquires this Agreement, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) to a third party; *provided, however*, that in either case (i) Big Rivers is in default of its obligations under this Agreement and the applicable Secured Party is not in default of its obligations under this Agreement and the applicable Secured Party

KENTUCKY PUBLIC SERVICE COMMISSION Linda C. Bidwell Executive Director
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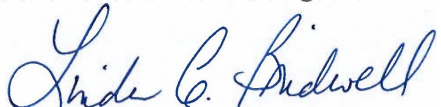
notice of such default; and (ii) the applicable Secured Party has given Kenergy not less than thirty (30) days' prior written notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) indicating the identity of the intended third-party assignee or purchaser. For the avoidance of doubt, the limitations on assignment set forth in Section 7.5.2 shall not apply to sales, assignments, transfers or other dispositions pursuant to this Section 7.5.5.

7.6 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.

7.7 Jurisdiction. Subject to Section 7.4, the Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes 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, *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 7.4 or this Section 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 7.4, or any action or proceeding arising under or relating to such arbitration, at the address set forth in Section 7.3, and agrees that such service shall be, for all purposes, good and sufficient.

7.8 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; *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 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.

7.9 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.

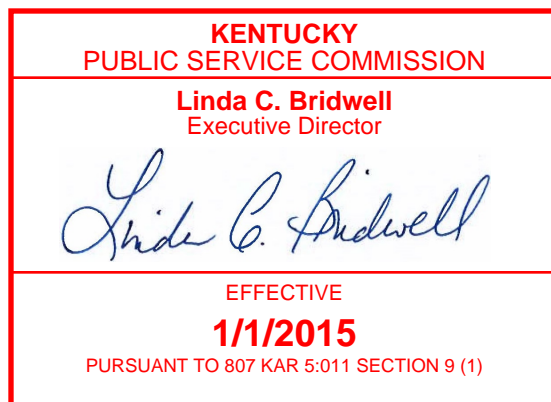
<b>KENTUCKY PUBLIC SERVICE COMMISSION</b>
Linda C. Bidwell Executive Director

<b>EFFECTIVE 1/1/2015 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)</b>

7.10 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; *provided*, that the Parties acknowledge the rights of Century under Sections 2.3, 3.3 and 6.2 hereunder, and Sections 2.7 and 5.5 of the Electric Service Agreement; *provided further*, that this Agreement shall be considered a “Market Agreement” solely for purposes of Section 5.5 of the Electric Service Agreement.

7.11 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.

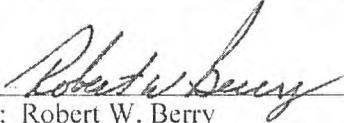
7.12 Term; Survival. This Agreement shall become effective on the date the EDF Arrangement Agreement becomes effective and shall terminate upon termination of the Electric Service Agreement; *provided*, that Section 3.4 and Article 4 shall survive termination of this Agreement.

[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: Robert W. Berry  
Title: President and Chief Executive Officer

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

<b>KENTUCKY PUBLIC SERVICE COMMISSION</b>
<b>Linda C. Bridwell</b> Executive Director 
EFFECTIVE <b>1/1/2015</b> PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

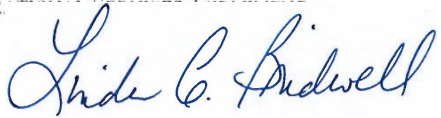
IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Robert W. Berry  
Title: President and Chief Executive Officer

KENERGY CORP.

By: \_\_\_\_\_  
Name: Gregory J. Starheim  
Title: President and Chief Executive Officer

<b>KENTUCKY PUBLIC SERVICE COMMISSION</b>
<b>Linda C. Bridwell</b> Executive Director
OPER: _____ 
<b>EFFECTIVE 1/1/2015</b> PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

**SCHEDULE 5.5**

**PROCEEDINGS**

Kentucky Indus. Util. Customers, Inc. v. Kentucky Pub. Serv. Comm'n, No. 13-CI-00399 (Ky. Franklin Cir. Ct. 2014), and any proceedings relating thereto.

**KENTUCKY  
PUBLIC SERVICE COMMISSION**

**Linda C. Bridwell**  
Executive Director



EFFECTIVE

**1/1/2015**

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)