

**CONSENT AND AGREEMENT**

Dated as of January 1, 2015

by and between

**KENERGY CORP.,**

**CENTURY ALUMINUM SEBREE LLC**

and

**CENTURY ALUMINUM COMPANY**

**KENTUCKY  
PUBLIC SERVICE COMMISSION**

**Linda C. Bridwell**  
Executive Director



EFFECTIVE  
**1/1/2015**  
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

## CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT ("Agreement") is made and entered into as of January 1, 2015, by and between KENERGY CORP., a Kentucky electric cooperative corporation ("Kenergy"), CENTURY ALUMINUM SEBREE LLC, a Delaware limited liability company ("Century") and CENTURY ALUMINUM COMPANY, a Delaware corporation and the direct or indirect parent of Century ("Century Parent"). Kenergy, Century and Century Parent 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 Robards, Kentucky, pursuant to an Electric Service Agreement, dated as of January 1, 2014 (the "Electric Service Agreement").

B. Kenergy currently purchases from Big Rivers Electric Corporation, a Kentucky electric generation and transmission cooperative ("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 1, 2014 (the "Existing Arrangement Agreement").

C. Century Parent gave notice, dated January 31, 2014, to Big Rivers and Kenergy of the appointment of EDF Trading North America, LLC, a Texas limited liability company ("EDF"), as the "Market Participant" (as defined under the Electric Service Agreement) under the Electric Service Agreement.

D. Century Parent has guaranteed the payment and performance of all obligations of Century under the Electric Service Agreement and all other documents related thereto.

E. In connection with the appointment of EDF as 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.

F. Big Rivers and Kenergy are entering into the Operational Services Agreement, dated as of the date hereof (the "Operational Services Agreement"), relating to direct, bilateral obligations to each other in connection with metering and other operational services, as described therein, to be provided by Big Rivers to Kenergy in support of Kenergy's corresponding obligations to Century under the Electric Service Agreement.

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

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Executive Director



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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 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 Recitals.

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

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

1.1.5 EDF: As defined in the Recitals.

1.1.6 EDF Arrangement Agreement: As defined in the Recitals.

1.1.7 EDF Default: Any MISO Tariff Default or “Event of Default” (as defined in the EDF Arrangement Agreement) by EDF.

1.1.8 EDF Lock Box Agreement: The “Lock Box Agreement” as defined in the EDF Arrangement Agreement.

1.1.9 EDF Security and Lock Box Agreement: The “Security and Lock Box Agreement” as defined in the EDF Arrangement Agreement.

1.1.10 EDF Transaction: The “Transaction” as defined in the EDF Arrangement Agreement.

1.1.11 EDF Transaction Documents: The “Transaction Documents” as defined in the EDF Arrangement Agreement.

1.1.12 Effective Date: As defined in the Recitals.

1.1.13 Electric Service Agreement: As defined in the Recitals.

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- 1.1.14 Existing Arrangement Agreement: As defined in the Recitals.
- 1.1.15 Guarantee: As defined in Section 2.5.
- 1.1.16 Interim Arrangement Agreement: As defined in Section 2.1.10(b).
- 1.1.17 Kenergy: As defined in the preamble to this Agreement.
- 1.1.18 Load Curtailment Agreement: As defined in the EDF Arrangement Agreement.
- 1.1.19 Market Participant: As defined in the Recitals.
- 1.1.20 MISO Tariff Default: As defined in the EDF Arrangement Agreement.
- 1.1.21 Operational Services Agreement: As defined in the Recitals.
- 1.1.22 Party or Parties: As defined in the preamble to this Agreement.

**ARTICLE 2**

**ACKNOWLEDGEMENTS, CONSENTS AND AGREEMENTS**

2.1 EDF Transaction. Each of Century and Century Parent hereby acknowledges, accepts, approves and consents, for all purposes, including under any Transaction Document and any other agreement or document granting to Century the right to consent to or approve the EDF Arrangement Agreement, the EDF Transaction Documents or the EDF Transaction, or any actions contemplated thereunder:

2.1.1 To (a) the appointment of EDF, and the replacement of Big Rivers, as the Market Participant pursuant to the EDF Arrangement Agreement, (b) the execution, delivery and performance of the EDF Arrangement Agreement and the other EDF Transaction Documents by the parties thereto, (c) the termination of the Existing Arrangement Agreement pursuant to Section 7.3.3 thereof, subject to the survival of provisions thereof as specified therein, and (d) the consummation of the EDF Transaction;

2.1.2 To the terms, conditions and other provisions of (a) the EDF Transaction Documents (other than the EDF Arrangement Agreement), including the EDF Lock Box Agreement and the EDF Security and Lock Box Agreement, and (b) the EDF Arrangement Agreement, including Sections 2.5, 3.6, 4.4, 5.1, 5.2, 7.2.4, 7.3.4, 7.4, 10.3, 15.1.6, 15.1.7, 15.2 and 15.2.5 thereof;

2.1.3 That Kenergy's obligations under the Electric Service Agreement corresponding to EDF's obligations under the EDF Arrangement Agreement, Kenergy's obligations under the Operational Services Agreement, including Kenergy's obligations relating to the delivery of Electric Services or the price or other terms and conditions relating thereto, shall be limited to the extent of EDF's or Big Rivers' obligations under the EDF Arrangement Agreement, including under Sections 2.5, 3.6, 4.4, 5.1, 5.2, 7.2.4, 7.4, 10.3, 15.1.6, 15.1.7, 15.2 and 15.2.5 thereof, or the Operational Services Agreement, res

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2.1.4 That Century shall have an obligation corresponding to any obligation of Kenergy under the EDF Arrangement Agreement or the Operational Services Agreement, to the extent that any corresponding or related obligation of Kenergy thereunder, including under Sections 2.5, 3.6, 4.4, 5.1, 5.2, 7.2.4, 7.3.4, 7.4, 10.3, 15.1.6, 15.1.7, 15.2 and 15.2.5 of the EDF Arrangement Agreement, is more restrictive or imposes a greater duty than the obligations of Kenergy under the Existing Arrangement Agreement or the Operational Services Agreement;

2.1.5 That, notwithstanding anything to the contrary in the Electric Service Agreement, including limitations on discontinuance of service under Article 15 thereof, any termination of the EDF Arrangement Agreement or temporary or permanent discontinuance of the provision of any Electric Services thereunder that is not related to curtailment of any services to Century under the Load Curtailment Agreement or otherwise for reliability purposes, and including any such discontinuance or termination occurring in connection with any EDF Default, shall relieve Kenergy of its obligation to provide such Electric Services to Century under the Electric Service Agreement as of the effective time of such termination or discontinuance and until such time as a Person succeeding EDF becomes the Market Participant in accordance with the terms and conditions of Section 3.1 of the Electric Service Agreement;

2.1.6 That notwithstanding any other measure of damages provided for in the Electric Service Agreement or any other EDF Transaction Document, the total aggregate liability of Kenergy thereunder whether for breach of the Electric Service Agreement or in the context of an indemnification obligation, shall be limited to Two Million Dollars (\$2,000,000.00), subject to any provision of the Electric Service Agreement that imposes a limitation on Kenergy's liability that is less than such amount;

2.1.7 That EDF's obligations under the EDF Transaction Documents will not be supported by a guarantee by any other Person;

2.1.8 That a default or EDF Default by EDF could result in discontinuance of one or more Electric Services or the termination of the EDF Arrangement Agreement and that Century acknowledges, agrees to and accepts all risks of discontinuation of any such Electric Services or termination of the EDF Arrangement Agreement that occurs in the absence of a parent guarantee of EDF's obligations thereunder;

2.1.9 That Kenergy's consent to the appointment of EDF as the Market Participant in the EDF Transaction shall not limit in any respect the rights of Kenergy under Section 3.1.3 of the Electric Service Agreement to consent to any future appointment of a Market Participant, including Kenergy's right to require as a condition to its consent to the appointment of any future Person to be the Market Participant that such Person must provide a guarantee from a direct or indirect parent or creditworthy affiliate, or provide such other security Kenergy may require in its sole discretion;

2.1.10 That in connection with a MISO Tariff Default by EDF

(a) Kenergy shall have the right but not the obligation to terminate the EDF Arrangement Agreement and transfer the Sebree Node a

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Participant to a Market Participant succeeding EDF, as set forth in the EDF Arrangement Agreement;

(b) Big Rivers may be appointed and act as the Market Participant succeeding EDF pursuant to an Interim Arrangement and Procurement Agreement that may be entered into with Kenergy substantially in the form of Exhibit A hereto (an “Interim Arrangement Agreement”), subject to Big Rivers’ agreement to do so at that time in its sole discretion and subject to any terms and conditions in addition to those set forth in the Interim Arrangement Agreement that Big Rivers in its sole discretion requires in connection with entering into that agreement, without consideration of any prior transactions or dealings between or among Kenergy, Big Rivers, Century, Century Parent or any other Person;

(c) If MISO suspends or terminates service to EDF under the MISO Tariff or Kenergy terminates the EDF Arrangement Agreement in accordance therewith and new arrangements with a Market Participant succeeding EDF are not then effective, including credit support and Governmental Approvals required therefore, service to Century under the Electric Service Agreement may be temporarily or permanently interrupted or discontinued; provided, that the foregoing shall not restrict Kenergy from initiating the process of transferring the Sebree Node and EDF’s duties as Market Participant to a Market Participant succeeding EDF, upon the occurrence and continuance of a MISO Tariff Default by EDF;

(d) MISO or any other Governmental Authority may delay or fail to provide Governmental Approvals required for new arrangements with a Market Participant succeeding EDF to be effective, and Century acknowledges that MISO is not required to accept or approve applications to transfer ownership of Nodes outside of its schedules for doing so and failure or delay of MISO to accept or approve an application to transfer the Sebree Node may result in service to Century under the Electric Service Agreement being temporarily or permanently interrupted or discontinued;

(e) During the continuance of a MISO Tariff Default by EDF and prior to effectiveness of arrangements with a Market Participant succeeding EDF, procurement of Energy under the EDF Arrangement Agreement for resale to Kenergy to serve Century under the Electric Service Agreement may be limited if required by MISO to the Real Time Market;

(f) Under the MISO Tariff, MISO may draw, liquidate or increase the required amount or change the required form of credit support posted or required to be posted to MISO securing EDF’s obligations, and Century will be responsible for replacing, renewing, increasing or reinstating (as applicable) any credit support required to serve Century under the Electric Service Agreement;

(g) For the avoidance of doubt and not in duplication of other obligations under any other Transaction Document or EDF Transaction Document, Century will pay or reimburse any and all costs of Kenergy or Big Rivers relating to, incurred in connection with any MISO Tariff Default by EDF and arising out of the Transaction or EDF Transaction, including any and all costs of negotiating and otherwise effecting any new arrangement with a Market Participant succeeding EDF or of serving Century under the

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during the continuance of a MISO Tariff Default by EDF, including costs associated with credit support required by MISO or other Persons to provide such service to Century; and

2.1.11 That nothing in the EDF Transaction Documents shall limit the rights or obligations under the Load Curtailment Agreement of the parties thereto.

2.2 Release and Indemnification. Notwithstanding anything to the contrary in the Electric Service Agreement:

2.2.1 Century (a) releases Kenergy from, and agrees that Kenergy shall have no liability for and that no recourse shall be made to Kenergy in respect of, any and all claims Century may otherwise have had on or after the date hereof against Kenergy for failure to satisfy any obligation, including any payment obligation, of Kenergy under the Electric Service Agreement in connection with or arising out of the failure of EDF to satisfy its obligations under the EDF Arrangement Agreement, and (b) shall indemnify, hold harmless and defend Kenergy from and against any and all claims EDF may assert against Kenergy in connection with any failure by EDF to perform any of its obligations under the EDF Arrangement Agreement.

2.2.2 If Kenergy shall fail to satisfy any of its obligations under the Electric Service Agreement in connection with or arising out of any failure of EDF in the performance or payment of any of its obligations under the EDF Arrangement Agreement, then, upon Century's written request, Kenergy shall 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 EDF for such failure of EDF and to file or prosecute any claim, litigation, suit or proceeding relating to such failure of EDF 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 such failure of EDF and to compromise, settle, or adjust any suit, action or proceeding related to such failure of EDF and to give such discharges or releases as Century may deem appropriate in connection with such failure of EDF, 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 such failure of EDF; *provided, however,* that such power-of-attorney and such assignment shall only include claim(s) of Kenergy against EDF relating to the failure of Kenergy to satisfy its obligation(s) under the Electric Service Agreement in connection with or arising out of the failure of EDF in the performance or payment of any of its obligations under the EDF Arrangement Agreement. For the avoidance of doubt and by way of example and not limitation, such claim would (i) include a claim of Kenergy against EDF for a failure of EDF to deliver, or cause to be delivered, Electric Services in accordance with the terms and conditions of the EDF Arrangement Agreement at the Delivery Point, to the extent Kenergy fails in its corresponding obligation to Century under the Electric Service Agreement, and (ii) include a claim of Kenergy against EDF for indemnification under the EDF Arrangement Agreement unrelated to any failure of Kenergy to perform an obligation to Century under the Electric Service 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 any applicable law or other Applicable Law.

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2.3 Electric Service Agreement and Other Transaction Documents. The Parties agree, and Century Parent acknowledges, that, subject to Sections 2.1 and 2.2, the Electric Service Agreement and the other Transaction Documents (other than the Existing Arrangement Agreement and the Lockbox Agreement) shall continue unchanged, shall constitute the binding obligations of each party thereto and their respective successors and permitted assigns thereunder, shall remain in full force and effect and are hereby ratified and affirmed in all respects.

2.4 Regulatory Proceedings. No Party will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the terms, conditions or other provisions set forth in this Agreement or any other EDF Transaction Document. Nothing in this Section 2.4 shall impair or deprive either Party of its right to pursue, in law or at equity, any actions necessary to enforce the terms of this Agreement.

2.5 Century Parent Guarantee. Century Parent acknowledges that each EDF Transaction Document shall constitute a Transaction Document and, as such, any and all obligations of Century under any EDF Transaction Document are guaranteed by Century Parent pursuant to the Guarantee, made by and entered into as of January 1, 2014, by Century Parent in favor of Kenergy and Big Rivers (the “Guarantee”). By entering into this Agreement, Century Parent acknowledges and agrees that Century’s obligations under each EDF Transaction Document shall be “Guaranteed Obligations” guaranteed by it under Section 2 of the Guarantee.

2.6 Notices relating to Credit Support. Each Party shall promptly notify in writing each other Party, Big Rivers and EDF of any request, direction or other communication received by such Party from any Person, including MISO, that any credit support or collateral, including any letter of credit, relating to the Transaction or the EDF Transaction, or the provision of Electric Services under any Transaction Document or EDF Transaction Document be increased, decreased or otherwise modified. Such notification shall describe such communication in reasonable detail and attach a copy of such communication if such communication is in writing.

2.7 Credit Support to EDF. Pursuant to Section 14.3.1(d) of the Electric Service Agreement, Kenergy directs Century to provide, and Century agrees to provide, credit support in a form permitted under Section 14.3.1 of the Electric Service Agreement directly to EDF or MISO for Applicable RTO Charges (as defined under the EDF Arrangement Agreement). Kenergy shall not request further credit support to be provided directly to Kenergy for its own benefit during the effectiveness of the EDF Arrangement Agreement for such Applicable RTO Charges to the extent Kenergy has no liability, risk, exposure or obligation with respect thereto.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

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

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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 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.

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, 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.

3.5 Proceedings. Except as set forth in Schedule 3.5, 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.

3.6 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 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, between or among the Parties relating to the subject matter hereof. This Agreement may be amended only by a written document signed by each of the Parties. Each Party acknowledges that it has not relied upon any representations, statements or warranties of any other Party in executing this Agreement except for those expressly set forth in this Agreement.

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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 any 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 4.3 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 4.3, the address of each Party, Big Rivers and EDF is the address set out below or such other address that any of such Persons may from time to time deliver by notice to each of the other such Persons, in accordance with this Section.

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

If to Century: Century Aluminum Sebree LLC  
9404 State Route 2096  
Robards, Kentucky 42452  
Attn: Plant Manager  
Facsimile: (270) 521-7305

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 Century Parent: 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

If to EDF: EDF Trading North America, LLC  
4700 W. Sam Houston Pkwy. N., Suite 250  
Houston, Texas 77041  
Attn: Vice President  
Facsimile: (281) 6531411

With a copy to: EDF Trading North America, LLC  
4700 W. Sam Houston Pkwy. N., Suite 250  
Houston, Texas 77041  
Attn: Legal  
Facsimile: (281) 781-0360

4.4 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.

4.5 Jurisdiction. The Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over any and all disputes between or among 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 this section prohibits a Party from referring any matter properly within its jurisdiction to any Governmental Authority over which jurisdiction shall limit or expand the jurisdiction of any Governmental Authority over Big Rivers. In any proceeding hereunder, each Party irrevocably waives by law, its right, if any, to trial by jury. For the avoidance of doubt

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Linda C. Bidwell  
Executive Director

*Linda C. Bidwell*

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accept service of any papers or process in any action or proceeding arising under or relating to this Agreement, at its address specified in Section 18.6 of the Electric Service Agreement or Section 14 of the Guarantee, as applicable, and agrees that such service shall be, for all purposes, good and sufficient.

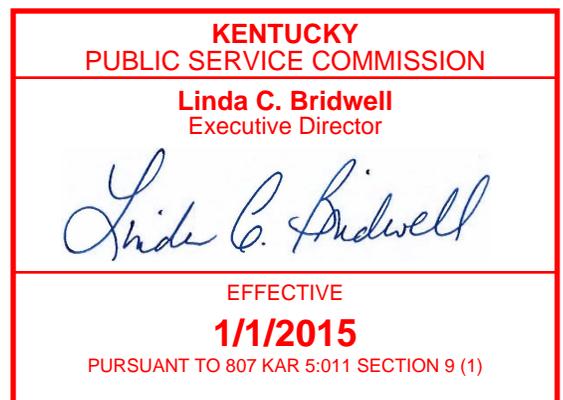
4.6 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement among the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

4.7 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.

4.8 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.

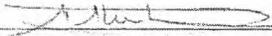
4.9 Effectiveness. This Agreement shall become effective on the date the EDF Arrangement Agreement becomes effective.

[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: Gregory J. Starheim  
Title: President and Chief Executive Officer

CENTURY ALUMINUM SEBREE LLC

By: \_\_\_\_\_  
Name: Rick T. Dillon  
Title: Vice President

CENTURY ALUMINUM COMPANY

By: \_\_\_\_\_  
Name: Rick T. Dillon  
Title: Executive Vice President

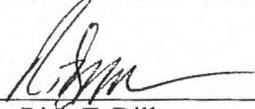


IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.

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

CENTURY ALUMINUM SEBREE LLC

By:  \_\_\_\_\_  
Name: Rick T. Dillon  
Title: Vice President

CENTURY ALUMINUM COMPANY

By:  \_\_\_\_\_  
Name: Rick T. Dillon  
Title: Executive Vice President

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**SCHEDULE 3.5**

**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.

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**EXHIBIT A**

**INTERIM ARRANGEMENT AGREEMENT**

See attached.

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PUBLIC SERVICE COMMISSION**

**Linda C. Bridwell**  
Executive Director



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**1/1/2015**

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

EXHIBIT A

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**INTERIM ARRANGEMENT AND PROCUREMENT AGREEMENT**

Dated as of \_\_\_\_\_, 20\_\_,

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

**KENERGY CORP.**

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**KENTUCKY  
PUBLIC SERVICE COMMISSION**

**Linda C. Bridwell**  
Executive Director



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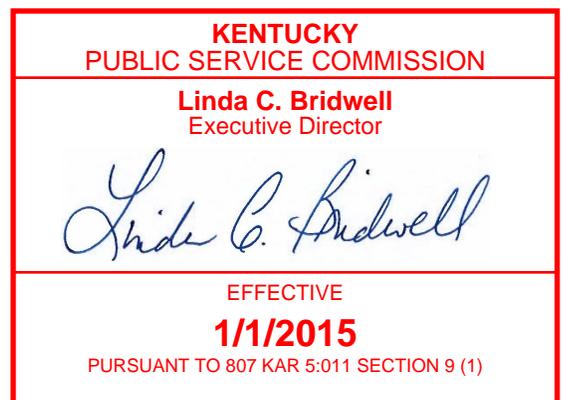
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**INTERIM ARRANGEMENT AND PROCUREMENT AGREEMENT**

This INTERIM ARRANGEMENT AND PROCUREMENT AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 20\_\_, 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 Sebree LLC, a Delaware limited liability company (“Century”), the owner and operator of an aluminum reduction plant in Robards, Kentucky (as further defined below, the “Sebree Smelter”), pursuant to an Electric Service Agreement, dated as of January 31, 2014 (as amended, the “Electric Service Agreement”).

B. Kenergy currently purchases wholesale electric energy and related services for resale to Century from EDF Trading North America, LLC, a Texas limited liability company (“EDF”), pursuant to an Arrangement and Procurement Agreement, dated as of January 1, 2015 (as amended, the “Arrangement Agreement”).

C. The Arrangement Agreement has or will be terminated prior to the commencement of the Service Period (as defined below) in connection with an Event of Default (under and as defined in the Arrangement Agreement) under Sections 15.1.6 or 15.1.7 thereof involving a MISO Tariff Default by EDF.

D. Kenergy desires for Big Rivers to serve as the Market Participant (as defined below) succeeding EDF and for the ownership of the Sebree Node to be transferred to Big Rivers for the Service Period.

E. In connection with the transfer described in the prior recital, Kenergy and Big Rivers have agreed to enter into this Agreement, to facilitate Big Rivers acting, at least on an interim basis, as the Market Participant 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:

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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 Arrangement Agreement: As defined in the Recitals.

1.1.9 Base Load: As defined in the Electric Service Agreement.

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

1.1.11 Bilateral Charges: As defined in Section 4.3.

1.1.12 Bilateral Contract: A contractual arrangement between Big Rivers as the Market Participant, and a Bilateral Counterparty pursuant to which the Counterparty obtains a right or obligation to purchase at the Delivery Point.

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during the continuance of a MISO Tariff Default by EDF, including costs associated with credit support required by MISO or other Persons to provide such service to Century; and

2.1.11 That nothing in the EDF Transaction Documents shall limit the rights or obligations under the Load Curtailment Agreement of the parties thereto.

2.2 Release and Indemnification. Notwithstanding anything to the contrary in the Electric Service Agreement:

2.2.1 Century (a) releases Kenergy from, and agrees that Kenergy shall have no liability for and that no recourse shall be made to Kenergy in respect of, any and all claims Century may otherwise have had on or after the date hereof against Kenergy for failure to satisfy any obligation, including any payment obligation, of Kenergy under the Electric Service Agreement in connection with or arising out of the failure of EDF to satisfy its obligations under the EDF Arrangement Agreement, and (b) shall indemnify, hold harmless and defend Kenergy from and against any and all claims EDF may assert against Kenergy in connection with any failure by EDF to perform any of its obligations under the EDF Arrangement Agreement.

2.2.2 If Kenergy shall fail to satisfy any of its obligations under the Electric Service Agreement in connection with or arising out of any failure of EDF in the performance or payment of any of its obligations under the EDF Arrangement Agreement, then, upon Century's written request, Kenergy shall 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 EDF for such failure of EDF and to file or prosecute any claim, litigation, suit or proceeding relating to such failure of EDF 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 such failure of EDF and to compromise, settle, or adjust any suit, action or proceeding related to such failure of EDF and to give such discharges or releases as Century may deem appropriate in connection with such failure of EDF, 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 such failure of EDF; *provided, however*, that such power-of-attorney and such assignment shall only include claim(s) of Kenergy against EDF relating to the failure of Kenergy to satisfy its obligation(s) under the Electric Service Agreement in connection with or arising out of the failure of EDF in the performance or payment of any of its obligations under the EDF Arrangement Agreement. For the avoidance of doubt and by way of example and not limitation, such claim would (i) include a claim of Kenergy against EDF for a failure of EDF to deliver, or cause to be delivered, Electric Services in accordance with the terms and conditions of the EDF Arrangement Agreement at the Delivery Point, to the extent Kenergy fails in its corresponding obligation to Century under the Electric Service Agreement, and (ii) include a claim of Kenergy against EDF for indemnification under the EDF Arrangement Agreement unrelated to any failure of Kenergy to perform an obligation to Century under the Electric Service 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 any or other Applicable Law.

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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.

1.1.13 Bilateral Counterparty: As defined in Section 2.4.

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

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

1.1.16 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.

1.1.17 Century: As defined in the Recitals.

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

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

1.1.20 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.

1.1.21 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).

1.1.22 Curtailable Load: As defined in the Electric Service Agreement.

1.1.23 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 Sebree 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.

1.1.24 Delivery Point: As defined in the Electric Service Agreement.

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1.1.25 Direct Agreement: The Direct Agreement, dated as of January 31, 2014, by and between Big Rivers and Century relating to direct, bilateral obligations to each other in connection with electric service to the Sebree Smelter.

1.1.26 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.

1.1.27 EDE: As defined in the Recitals.

1.1.28 Effective Date: As defined in Section 6.1.

1.1.29 Electric Service Agreement: As defined in the Recitals.

1.1.30 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.

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

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

1.1.33 Event of Default: As defined in Section 15.1.

1.1.34 FERC: Federal Energy Regulatory Commission.

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

1.1.36 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.

1.1.37 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 (including MISO as of the Effective Date) or ISO, any electri

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including NERC and SERC, and the KPSC; *provided, however* that the RUS is not a Governmental Authority for purposes of this Agreement.

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

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

1.1.40 Indemnified Liability: As defined in Section 13.1.

1.1.41 Indemnified Person: As defined in Section 13.1.

1.1.42 Indemnifying Party: As defined in Section 13.1.

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

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

1.1.45 KPSC: Kentucky Public Service Commission.

1.1.46 kWh: Kilowatt-hour.

1.1.47 Load: The Hourly interval meter data measured in MWhs at the Sebree Smelter.

1.1.48 Load Curtailment Agreement: The Load Curtailment Agreement, dated as of January 31, 2014, by and among Big Rivers, Kenergy and Century.

1.1.49 Lockbox Agreement: The Security and Lockbox Agreement, dated as of January 31, 2014, by and among Century, Kenergy, Big Rivers and Old National Bank, of Evansville, Indiana, or if such agreement has terminated or the account thereunder has been closed, a Security and Lockbox Agreement to be entered into on or prior to the date hereof, by and among Century, Kenergy, Big Rivers and a depository bank, in each case, with respect to the payment of certain amounts due by Kenergy to Big Rivers hereunder.

1.1.50 Margin Charge: As defined in Section 4.4.

1.1.51 Market Participant: Prior to the Effective Date, EDF, in its capacity as the procurer of Electric Services under the Tariff or from a bilateral counterparty for resale to Kenergy pursuant to the Arrangement Agreement for resale to Century pursuant to the Electric Service Agreement; on and after the Effective Date and prior to termination of this Agreement pursuant to Article 7, 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; and, thereafter, a Person replacing Big Rivers in such capacity in accordance with the terms and conditions of this Agreement and the Ele

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1.1.52 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.

1.1.53 MISO: The Midcontinent Independent System Operator, Inc.

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

1.1.55 Monthly Charge: As defined in Section 4.1.

1.1.56 MW: Megawatt.

1.1.57 MWh: Megawatt-hour.

1.1.58 NERC: North American Electric Reliability Corporation.

1.1.59 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.

1.1.60 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.

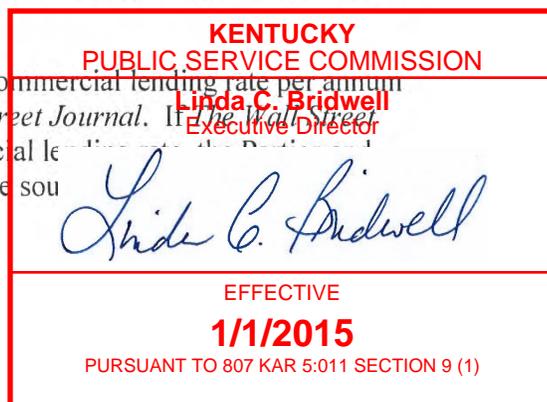
1.1.61 Operational Services Agreement: The Operational Services Agreement, dated as of [\_\_\_\_\_], 2015, by and between Big Rivers and Kenergy, with respect to the Transaction.

1.1.62 OSA Lock Box Agreement: The Lock Box Agreement, dated as of January 1, 2015, by and between Big Rivers, Kenergy, Century and U.S. Bank National Association.

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

1.1.64 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.

1.1.65 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, Century shall agree on a mutually acceptable alternative source.



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

1.1.67 Protective Relays Agreement: The Protective Relays Agreement, dated as of January 31, 2014, by and among Big Rivers, Kenergy and Century.

1.1.68 Real Time Market: The Real Time Energy and Operating Reserve Market established under the MISO Tariff or, if the Sebree 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.

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

1.1.70 Reliability Costs: As defined in the Electric Service Agreement.

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

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

1.1.73 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 Sebree Node is located.

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

1.1.75 Sebree 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 Sebree Smelter; *provided*, that if the Sebree Node does not remain in MISO in accordance with Section 3.5.2, then the “Sebree Node” shall be the Delivery Point for the delivery of Energy or other Electric Services under the Tariff.

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

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

1.1.78 Service Period: As defined in Section 2.1.

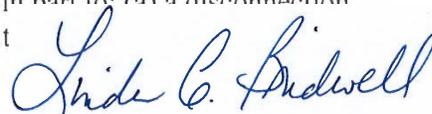
1.1.79 SSR Agreement: As defined in the Electric Service Agreement.

1.1.80 Surplus Sales: As defined in Section 10.1.1.

1.1.81 System Emergency: Any cessation or reduction in the provision of 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 t

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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, (d) any curtailments pursuant to the Load Curtailment Agreement, or (e) 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.

1.1.82 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 Sebree Smelter.

1.1.83 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.

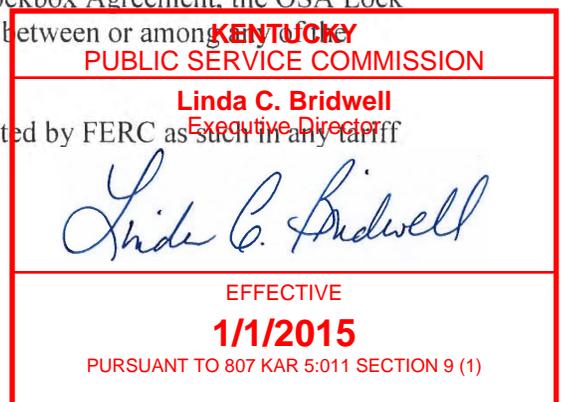
1.1.84 Tax Indemnity Agreement: The Tax Indemnity Agreement, dated as of January 31, 2014, by and between Kenergy and Century.

1.1.85 Term: As defined in Section 7.1.

1.1.86 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.

1.1.87 Transaction Documents: This Agreement, the Electric Service Agreement, the Direct Agreement, the Load Curtailment Agreement, the Tax Indemnity Agreement, the Protective Relays Agreement, any SSR Agreement, the Century Guarantee, the Operational Services Agreement, the Lockbox Agreement, the OSA Lock Box Agreement and any other agreements entered into between or among Parties or Century relating to the Transaction.

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



1.1.89 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.

1.1.90 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 any System Emergency; 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.

1.1.91 Wilson Generation Station: Big Rivers’ D.B. Wilson Station, a single unit, coal-fired steam electric generating unit located in Centertown, Kentucky.

1.1.92 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 agreement, document or instrument as the same may be amended, n

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exceed scheduled load by up to 10 MW (supplied as imbalance Energy) but not to exceed 395 MW. 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, and as instructed by 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, (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, and (c) confirmation by Kenergy of satisfaction of its rights under Section 2.4.1 of the Electric Service Agreement. 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 receive and consume such Electric Services purchased by Big Rivers under a Bilateral Contract.

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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 pursuant to Section 2.6 of the Electric Service Agreement, Kenergy acknowledges and agrees that, as between the parties, Kenergy will be deemed in exclusive control of the Electric Services and will be responsible for any damage or injury caused thereby.

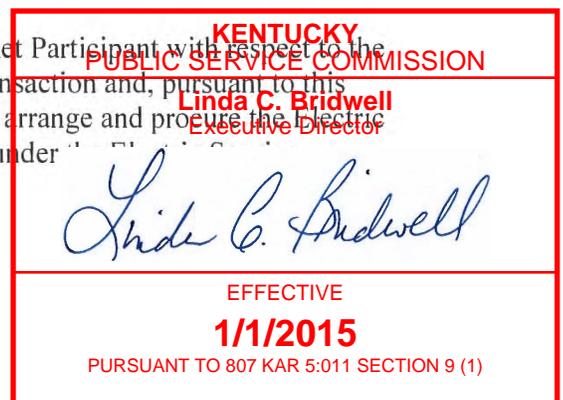
2.7 Performance by the Parties. Each Party acknowledges and agrees that, to the extent a Person has a corresponding or related obligation to the other Party under a Transaction Document, such other Party's performance of an obligation with respect to such matter under this Agreement or any other Transaction 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 interim 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), and this Agreement may terminate pursuant to Section 7.3.3. 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 Sebree 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 or any applicable Governmental Approval or RUS approval is obtained in connection therewith.

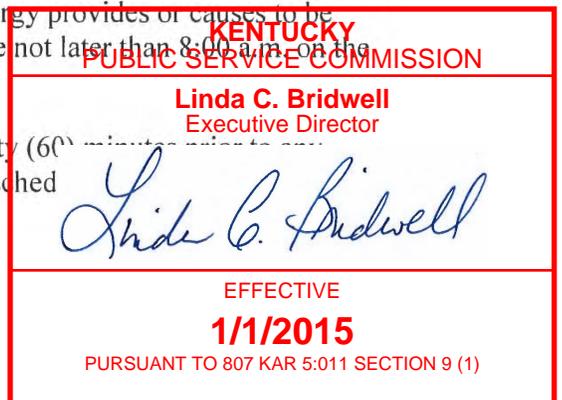
3.1.5 Kenergy acknowledges and agrees that Big Rivers shall have no liability under this Agreement or otherwise in connection with or arising out of the absence of any Person acting as the Market Participant during any period in which a Person previously acting as the Market Participant ceases to act 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 or Curtailable Load Changes. Nothing in this Agreement shall affect or limit Big Rivers' rights to consent to any modification of the Base Load, Curtailable Load or the definitions thereof.

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 such schedules may not exceed the Base Load plus any applicable Curtailable Load and in any event not more than 482 MW; *provided, further*, that 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 sched



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. Pursuant to the direction or instruction of Century, 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.

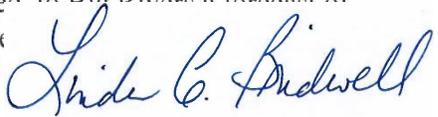
3.5.1 This Agreement and the other Transaction Documents have been drafted by the Parties and Century under the presumption that, during the Service Period, the Sebree Node is located in MISO and Big Rivers is a member of MISO. Kenergy or Big Rivers may, each in its sole discretion, elect to join or 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 Sebree 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 Sebree 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 Sebree 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 Sebree Node in accordance with the re

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(Resource Adequacy) of the MISO Tariff, so long as the Sebree 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 Sebree 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 Sebree 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 Sebree 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 Sebree 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

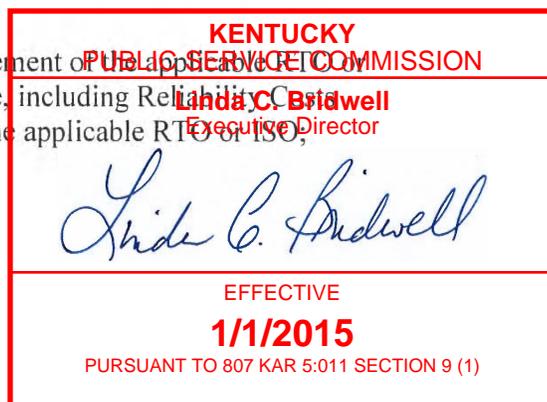
##### CHARGES AND CREDITS

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 Margin 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 Sebree 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 Sebree Node, including Reliability Credits relating to the Sebree Node to the extent invoiced by the applicable RTO or ISO,



4.2.2 All activity for Transmission Services attributed by the applicable RTO or ISO to the Sebree 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 Sebree 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 Sebree Node that otherwise relate to Century's operation of the Sebree Smelter;

4.2.5 Any credit for Net ARR/FTR Proceeds resulting from the sale of the Century Transmission Rights; and

4.2.6 All Costs relating to reactive power attributed by such RTO or ISO to the Sebree Node

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 Margin Charge. For any Billing Month, the "Margin Charge", if any, shall be the product of:

4.4.1 thirty percent (30%), and

4.4.2 an amount equal to the sum of any:

(a) Amounts calculated pursuant to Section 4.5;

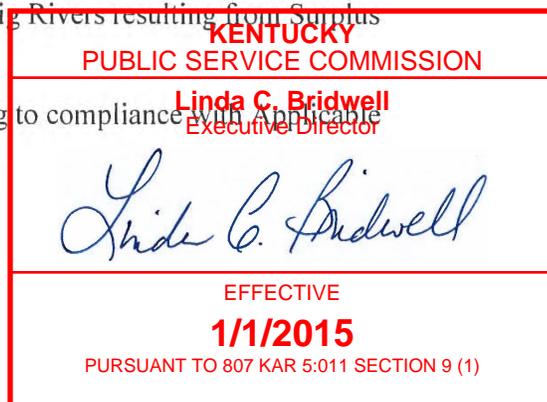
(b) Amounts owing by Century to Big Rivers pursuant to Section 4.1(d)(iii) of the Direct Agreement; and

(c) Amounts owing by Kenergy to Big Rivers under Section 6.1.1 of the Operational Services Agreement.

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 Sebree 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 All internal Costs incurred or committed to by Big Rivers in connection with or arising out of the Transaction that are not otherwise payable to Big Rivers pursuant to a Transaction Document other than this Agreement.

4.5.9 Any 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 that are not otherwise payable to Big Rivers pursuant to a Transaction Document other than this Agreement, 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 7.2.1; *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.

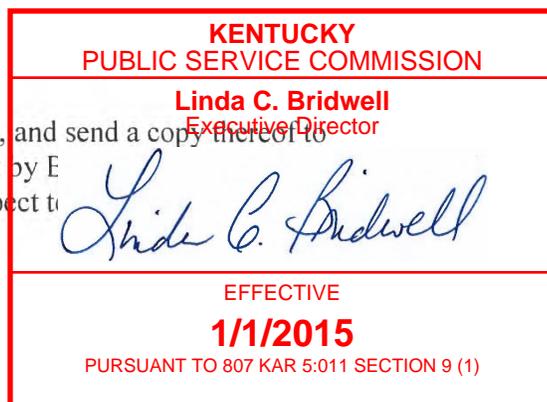
4.6 Taxes. No state or local sales, excise, gross receipts or other taxes are included in the charges and credits set forth in this Article 4. Kenergy shall pay or cause to be paid any such taxes that are now or hereafter become applicable to the resale of Electric Services to Kenergy under this Agreement 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, and send a copy thereof to Century, on or before the third Business Day following receipt by E of the applicable RTO or ISO for any amounts invoiced with respect to



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 and Century's receipt of the bill under this Section. For the convenience of the Parties, to facilitate Century's obligations to Kenergy and Kenergy's obligations to Big Rivers, and to provide for the orderly application of amounts owing from Century to Kenergy pursuant to the Electric Service Agreement, from Kenergy to Big Rivers pursuant to the Operational Services Agreement and from Kenergy to Big Rivers hereunder, the Parties and Century have entered into the Lockbox Agreement and the OSA Lock Box 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, defend and reimburse Kenergy from and against any and all claims Century may assert against Kenergy.



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. The following shall be conditions to the occurrence of the Effective Date:

6.2.1 The meters at the substation of the Robert A. Reid substation at the Sebree generation station that are dedicated to the Delivery Point shall be a Commercial Pricing Node (as defined in the MISO Tariff).

6.2.2 Big Rivers shall be the registered "Market Participant" (as defined in the MISO Tariff) for the Sebree Node and shall be the Person re

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Tariff for delivering Electric Services to the Sebree Node. The Sebree Node shall have been transferred to Big Rivers and Big Rivers shall be the Sebree Node owner registered with MISO.

6.2.3 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.

6.2.4 Each of the documents and agreements set forth in Schedule 6.2.4 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.

6.2.5 The Century Guarantee will have been duly authorized, executed and delivered by Century Parent and be in full force and effect.

6.2.6 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.

6.2.7 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 required to be obtained, given, accomplished or renewed prior to the Effective Date, 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.

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6.2.8 The consent of RUS, each of Kenergy's creditors and each of Big Rivers' creditors to the Transaction and to all arrangements and agreements contemplated in connection therewith, in each case to the extent required from such creditors, 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.

6.3 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

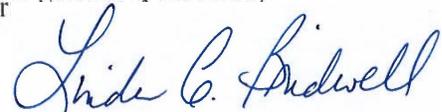
7.1 Term. Subject to Section 6.1, this Agreement will become binding on the Parties on the date of execution and delivery by the Parties and will remain in full force and effect until 10:59:59 p.m. on the date that is 180 days after the Effective Date, unless earlier terminated pursuant to the terms and conditions hereof (the "Term"). Unless otherwise agreed by the Parties and Century, the Term will be automatically extended for additional six-month periods thereafter until a Party gives at least 90 days' prior notice to the other Party and Century of its election for the Agreement to expire at 10:59:59 p.m. on the 180<sup>th</sup> day of such initial or renewal period.

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 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.

7.2.2 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.

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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

[RESERVED.]

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 the

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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 Wilson Generation Station (other than Reliability 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 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 Sebree 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.



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.

11.1.1 The Parties (i) acknowledge the Load Curtailment Agreement and agree to the terms, conditions and other provisions thereof, and (ii) acknowledge and agree that performance hereunder may be adversely impacted to the extent that, pursuant to the Load Curtailment Agreement, Big Rivers causes the delivery of Electric Services hereunder to be reduced or suspended in whole or in part, as set forth in the Load Curtailment Agreement.

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 Articles 4 and 5, 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

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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 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 required to be obtained, given, accomplished or renewed prior to 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. 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.

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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:

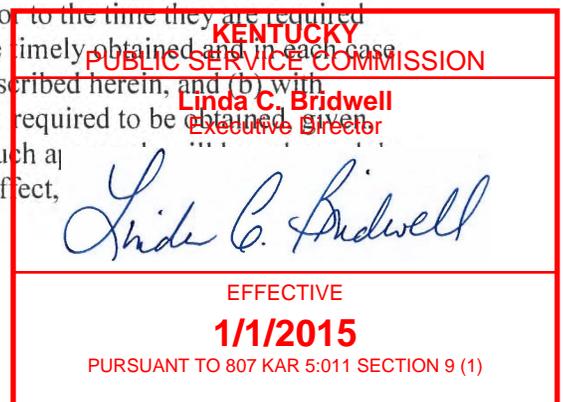
12.2.1 Big Rivers is an electric generation and transmission cooperative duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a 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 corporate 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 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 required to be obtained, given, accomplished or renewed prior to the Effective Date, such as a license, which is not given or issued, received and will be in full force and effect,



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.

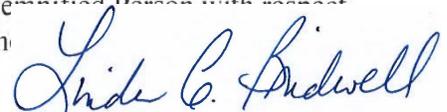
13.2 Primary Indemnity. Except to the extent that there is insurance coverage available, no Indemnified Person shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of an Indemnifying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

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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.

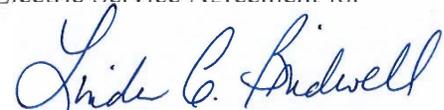
14.1.2 KPSC Jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Kenergy, Big Rivers or the rates, terms and conditions of the provision of Electric Services to Century.

#### 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 create and maintain documentation applicable to service to Century under the Electric Service Agreement for a period of three years beyond the date of the service.

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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 Sebree 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.

## 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;

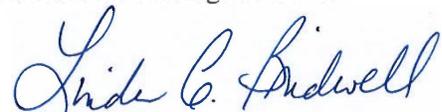
15.1.7 Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws by a Party and such petition 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 a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment.

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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 i under this Agreement but such breach does not constitute, or

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**Linda C. Bridwell**  
Executive Director  
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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 Sebree 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

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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 18.2 and agrees that such service shall be, for all purposes, good and sufficient.

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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 provide to the other Party, in accordance with this Section 18.6, with copies of all

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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 Sebree LLC  
9404 State Route 2096  
Robards, Kentucky 42452  
Attn: Plant Manager  
Facsimile: (270) 521-7305

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 424

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Attn: President and CEO  
Facsimile: (270) 827-2558

If to Century: Century Aluminum Sebree LLC  
9404 State Route 2096  
Robards, Kentucky 42452  
Attn: Plant Manager  
Facsimile: (270) 521-7305

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

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 the Party, be necessary or desirable, to effect or evidence the provisions transactions contemplated hereby.



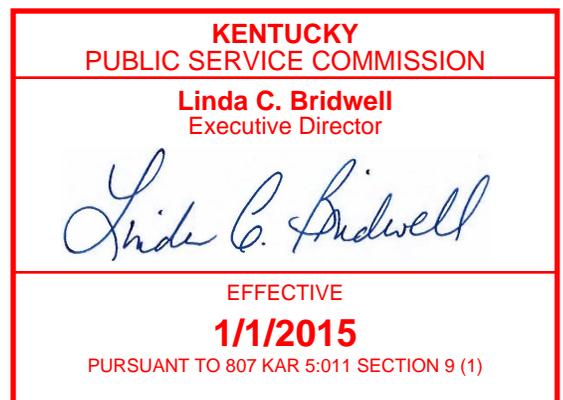
18.11 Counterparts. This Agreement may be executed in any number of counterparts, that together will constitute but one and the same instrument and each counterpart will have the same force and effect as if they were one original.

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: President and Chief Executive Officer

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title: President and Chief Executive Officer

INTERIM ARRANGEMENT



**SCHEDULE 6.2.4  
LISTING OF CERTAIN TRANSACTION DOCUMENTS**

1. This Agreement
2. Electric Service Agreement
3. Direct Agreement
4. Load Curtailment Agreement
5. Century Guarantee
6. Protective Relays Agreement
7. Tax Indemnity Agreement
8. Lockbox Agreement
9. OSA Lock Box Agreement
10. Operational Services Agreement

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**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 any owned or leased generating facility that any Governmental Authority with jurisdiction for reliability requires Big Rivers to operate to reliably serve the Load or in consequence of the operation of the Sebree Smelter or the Transaction.
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.

