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June 30, 2020

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UM 2107 – Willamette Falls Paper Company and West Linn Paper Company vs Portland General Electric Company

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Answer to the Complaint.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2107**

Willamette Falls Paper Company and
West Linn Paper Company,

Complainant,

v.

Portland General Electric Company,

Defendant.

**PORTLAND GENERAL ELECTRIC
COMPANY’S ANSWER TO THE
COMPLAINT**

I. Introduction

1 On June 3, 2020, Willamette Falls Paper Company (WFalls) and West Linn Paper
2 Company (WLP) jointly filed a Complaint with the Public Utility Commission of Oregon
3 (Commission) against Portland General Electric Company (PGE or Company). WFalls
4 and WLP (collectively, Complainants) allege that WFalls is entitled to opt out of cost-of-
5 service rates and instead participate in direct access, either through long-term direct access
6 (LTDA) or new load direct access (NLDA). Complainants posit two separate theories:
7 First, they claim that the LTDA rights previously held by WLP, the former operator of a
8 paper mill, did not terminate when WLP ceased operations, stopped paying its electric bills,
9 was forced into involuntary bankruptcy proceedings, and sold all its assets to an auctioneer.
10 Instead, they allege that the rights somehow survived and were transferred to an entirely
11 new entity, WFalls, which purchased the assets from the auctioneer and began operating at
12 the same mill site more than one year later. Alternatively, Complainants claim that the
13 Commission should allow WFalls to participate in the NLDA program by waiving two
14 fundamental requirements of that program—that the participant be a new large load and
15 have provided one year’s notice to PGE before energizing.

1 Neither theory supports a valid claim for relief against PGE. First, WLP's LTDA
2 rights could not have been transferred to WFalls because the rights were extinguished.
3 Specifically, after WLP voluntarily dropped its service with its Electricity Service Supplier
4 as part of its wind-up and then accrued several months of missed power and light payments
5 to PGE, PGE closed WLP's accounts without protest. At that point, WLP's LTDA rights
6 terminated under the terms of WLP's LTDA agreement with PGE, as well as the terms of
7 the Commission-approved direct-access schedule under which WLP took service.
8 However, even if WLP's LTDA rights had not terminated, Complainants have provided no
9 evidence to support their assertion that the rights transferred to WFalls, an entirely separate
10 legal entity formed many months after WLP's accounts were closed. Nor have they alleged
11 that WLP sought contractual assignment of its LTDA rights under the terms of its LTDA
12 agreement.

13 Second, as a regulated utility, PGE cannot grant Complainants' alternative request
14 for waiver of the NLDA program requirements; only the Commission has the authority to
15 waive the requirements. The NLDA program, a program still in its infancy, is intended to
16 provide a streamlined opportunity for applicants that meet specific eligibility criteria to opt
17 out of PGE's cost-of-service pricing while protecting non-participating customers from
18 unwarranted cost-shifting. Among the NLDA eligibility criteria are the requirements that
19 a participant be new large load and that it give the utility at least one year's notice of its
20 intent to participate in the program prior to beginning service. These criteria were
21 established in 2018 when the Commission adopted its NLDA rules. WFalls had ample
22 notice of the Commission's eligibility criteria, yet WFalls satisfies neither of these
23 requirements. WFalls knowingly began taking electric service under cost-of-service rates
24 in July 2019, which was months before PGE had a Commission-approved tariff with which

1 to enroll a participant for NLDA. Moreover, a notice of intent to participate in the program
2 was submitted on April 15, 2019, the day the participation queue opened, which was less
3 than one year before WFalls began taking service.

4 PGE acknowledges that the restart of the mill by a new owner and the eligibility
5 requirements of the NLDA program posed timing challenges for WFalls. But those
6 circumstances do not empower PGE to waive the Commission-approved program
7 eligibility rules or to treat WFalls differently than other customers. Moreover, granting a
8 waiver in this case would not be harmless. PGE's NLDA queue is currently full, and the
9 amount of anticipated load in the queue currently exceeds the cap established by the
10 Commission for PGE's NLDA program. As a practical matter, this means that
11 Complainants' request for waiver, if granted, is likely to have a negative impact on others
12 in the NLDA queue, particularly if WFalls is deemed to be first in the queue. Granting the
13 request would also impact PGE's existing cost-of-service customers, who bear the burden
14 of cost-shifts associated with WFalls' departure from cost-of-service rates. As the mill's
15 landlord and its electric service provider, PGE has long worked cooperatively with the
16 mill's operators to support the mill's ongoing operation. However, PGE must treat all
17 customers in a non-discriminatory manner and cannot waive the NLDA requirements for
18 WFalls when doing so could negatively impact others, including those in the NLDA queue.

19 For these reasons, PGE respectfully requests that the Commission deny the
20 requested relief and dismiss the Complaint.

II. Answer

21 PGE hereby answers WFalls and WLP's Complaint. PGE denies any allegation
22 not specifically admitted herein and reserves the right to supplement this Answer if the
23 Complainants amend their Complaint. As for the Introduction on Pages 1 and 2 of the

1 Complaint, because these statements simply summarize the facts and legal conclusions
2 alleged later in the Complaint, and because the Paragraphs are not numbered, PGE does
3 not need to respond to these statements. To the extent a response is deemed necessary,
4 however, PGE denies the allegations in the Introduction. With respect to the particular
5 numbered Paragraphs of the Complaint, PGE answers as follows:

III. Identity of the Parties

6 1. PGE admits that it is an investor-owned public utility regulated by the Commission
7 under ORS Chapter 757 and that it is headquartered at 121 Southwest Salmon Street,
8 Portland, Oregon 97204. PGE admits that it owns a significant portion of the real
9 property on which the mill is located. PGE admits that it delivers retail electricity
10 to WFalls as a cost-of-service customer under Schedule 89.

11 2. PGE has insufficient information or knowledge to admit or deny the truth of the
12 allegations in Paragraph 2 of the Complaint regarding WLP’s corporate structure
13 and leadership, and therefore denies the same. PGE admits that WLP formerly
14 owned and operated a mill using wood fiber to make paper and that WLP
15 transitioned to PGE’s LTDA program. However, PGE’s records indicate this
16 transition began in 2007; therefore, PGE denies that such transition began in 2005.
17 PGE denies that WLP transferred and assigned its LTDA rights to WFalls. PGE
18 denies the characterization of the LTDA rights as the rights “of the Facility.”

19 3. PGE admits that the Oregon Secretary of State’s website indicates that WFalls is a
20 registered domestic business corporation with Brian Konen as its President. PGE
21 denies that WFalls acquired all the assets of WLP and is its successor in interest
22 with respect to “the Facility’s” LTDA rights. PGE has insufficient information or
23 knowledge to admit or deny the truth of the allegations in Paragraph 3 of the

1 Complaint regarding WFalls’ ownership or current operations of “the Facility,” and
2 employee numbers and status, and therefore denies the same.

IV. Applicable Statutes and Rules

3 4. Paragraph 4 contains statements and conclusions of law, which require no response.

V. Jurisdiction

4 5. Paragraph 5 contains statements and conclusions of law, which require no response.

VI. Factual Background

5 6. PGE has insufficient information or knowledge to admit or deny the truth of the
6 allegations in Paragraph 6 of the Complaint regarding the past ownership and
7 operation of a paper mill by WLP or any other entity, and therefore denies the same.

8 7. PGE admits that it owns a portion of the site at issue in this case and that it operates
9 a hydroelectric plant nearby. PGE admits that WLP was a party to a lease agreement
10 with PGE with respect to that portion of the site owned by PGE. PGE admits that
11 WLP provided cooling water for PGE’s hydroelectric plant, as well as sewage
12 services and security, in accordance with the terms of the lease agreement between
13 PGE and WLP.

14 8. PGE partially admits and partially denies the allegations in Paragraph 8.
15 Specifically, PGE admits that WLP enrolled in the LTDA program; however, PGE
16 denies that WLP enrolled in 2005. PGE admits that, to the best of its knowledge,
17 WLP complied with all requirements necessary to transition to LTDA. PGE admits
18 that the Commission’s LTDA transition requirements were intended to ensure that
19 WLP’s transition to LTDA did not cause unwarranted cost shifts, but denies that
20 WLP’s compliance with such requirements “ensured” that no costs arising from
21 WLP’s transition to LTDA were shifted to other customers. PGE admits that WLP

1 purchased power from one or more Electricity Service Suppliers for some period of
2 time, and that PGE delivered the power pursuant to Schedule 483 and its successor,
3 Schedule 489. PGE otherwise denies the allegations in Paragraph 8.

4 9. PGE partially admits and partially denies the allegations in Paragraph 9.
5 Specifically, PGE admits that at the time WLP enrolled in LTDA, PGE's LTDA
6 schedule required WLP to give two years' notice of its intent to return to cost-of-
7 service rates, and the opt-out contract between WLP and PGE is consistent with
8 such notice requirement. PGE admits that WLP did not provide such notice before
9 it ceased operating the mill, stopped paying its bills, and otherwise failed to meet its
10 obligations under any applicable schedule, including Schedule 489, or its contract.
11 PGE admits that the notice period under Schedule 489 was subsequently increased
12 to three years for direct-access consumers whose LTDA service began on or after
13 2015. PGE generally denies Complainants' statements about the purpose of the
14 notice period and PGE's planning. However, PGE admits that for planning
15 purposes, it generally assumes that customers that have transitioned to LTDA will
16 remain on LTDA.

17 10. PGE has insufficient information to admit or deny the allegation regarding WLP's
18 financial difficulties and their impact on its operations. PGE admits that WLP
19 ceased operations and began winding up its business in or around October 2017, but
20 PGE denies the characterization of WLP's actions as "suspend[ing] operations."

21 11. PGE admits that PGE transferred the electric service at the site into PGE's name
22 effective September 2018, after WLP ceased operations, stopped paying its bills,
23 was forced into involuntary bankruptcy, and liquidated its assets. PGE admits that
24 it needed to assure continued electric service to its property for a variety of reasons,

1 including for PGE’s hydroelectric plant operations. PGE admits that nothing in
2 Schedule 489 speaks to PGE’s right to transfer direct access service to its own
3 account, but denies that PGE was “transfer[ring] direct access” rights to its own
4 account. PGE otherwise denies the allegations in Paragraph 11.

5 12. PGE has insufficient information or knowledge to admit or deny the truth of the
6 allegations in Paragraph 12 related to the reasons for and process of creating W Falls,
7 and therefore denies the same.

8 13. PGE admits that a petition to initiate an involuntary Chapter 7 bankruptcy
9 proceeding against WLP was filed on October 25, 2017. PGE admits that the
10 bankruptcy petition was dismissed by the Court in February 2018, pursuant to the
11 Creditor Trust Agreement, which speaks for itself. PGE otherwise denies the
12 allegations in Paragraph 13.

13 14. PGE has insufficient information or knowledge to admit or deny the truth of the
14 allegations in Paragraph 14 related to transfers of WLP’s assets and the intentions
15 of the parties involved, and therefore denies the same.

16 15. PGE has insufficient information or knowledge to admit or deny the truth of the
17 allegations in Paragraph 15 related to Mr. Konen’s titles, actions, and beliefs
18 between Fall 2018 and early 2019, and therefore denies the same. PGE admits that
19 Mr. Konen engaged in multiple discussions with PGE and other interested parties
20 regarding restarting the mill. PGE admits that, as the property owner, it had an
21 incentive to support operation of the mill by a new owner. PGE admits that
22 decommissioning the site could require a material expense but is unable to confirm
23 the actual dollar value due to significant uncertainty. PGE otherwise denies the
24 allegations in Paragraph 15.

1 16. PGE has insufficient information or knowledge to admit or deny the truth of the
2 allegations in Paragraph 16 related to the formation of WFalls and the purposes of
3 WFalls, and therefore denies the same. PGE admits that the Oregon Secretary of
4 State’s website indicates that WFalls registered as a new business with the state of
5 Oregon on June 25, 2019.

6 17. PGE has insufficient information or knowledge to admit or deny the truth of the
7 allegations in Paragraph 17 related to WFalls’ acquisition of WLP’s assets and
8 WFalls’ understanding and intentions, and therefore denies the same. PGE denies
9 that WLP retained any LTDA rights that could be conveyed to WFalls, and if there
10 were any such rights, denies that they were actually conveyed to WFalls. PGE
11 otherwise denies the allegations in Paragraph 17.

12 18. Regarding the allegations in Paragraph 18, upon information and belief, WFalls did
13 not exist as a legal entity prior to June 25, 2019. PGE admits that, in discussions
14 about restarting the mill and negotiating a new lease, WFalls expressed a desire to
15 be a LTDA consumer, but PGE denies that WFalls had any right to such service
16 when it commenced taking electric service from PGE in July 2019. PGE discussed
17 a variety of service options with WFalls, its parent company, and/or affiliates,
18 including NLDA, the cost-of-service Energy Partner program, and the possibility of
19 transitioning WFalls to LTDA once it met the requirements under the applicable
20 schedule to begin LTDA service. It is PGE’s understanding that WFalls and its
21 parent company understood their options and related costs and decided to move
22 forward with the decision to open the mill, in any case. PGE admits that Willamette
23 Falls Real Estate, Inc. and PGE negotiated lease payments that started in 2020 and
24 increased in 2021 and that the lease rate for the 2019 lease between PGE and

1 Willamette Falls Real Estate, Inc. was approximately 2.7 times greater than the lease
2 rate for the 1997 lease between PGE and WLP. PGE denies all other allegations in
3 Paragraph 18 not specifically admitted in this paragraph.

4 19. PGE admits that it discussed with Mr. Konen the possibility of subleasing a portion
5 of the property to another energy-intensive operation. PGE otherwise denies the
6 allegations in Paragraph 19.

7 20. Upon information and belief, PGE denies that it first expressed doubt about whether
8 WLP's direct access rights survived in March 2019. PGE advised potential
9 investors in the site that any new operator would not be eligible for LTDA service
10 without following the regulatory steps required for LTDA eligibility. PGE admits
11 it theoretically could realize some amount of additional revenue if W Falls were a
12 cost-of-service customer instead of a direct access consumer. The amount of
13 additional revenue would depend on how long W Falls stayed a cost-of-service
14 customer, its load characteristics, whether it stayed in operation, and whether it
15 could pay its bills. PGE otherwise denies the allegations in Paragraph 20.

16 21. PGE admits that, to the best of PGE's knowledge, WLP fully complied with the
17 LTDA transition requirements. PGE admits that it has not provided W Falls with an
18 economic analysis to indicate that additional transition charges would be necessary,
19 and denies any implication that PGE is required to do so. PGE otherwise denies the
20 allegations in Paragraph 21.

21 22. PGE has insufficient information or knowledge to admit or deny the truth of the
22 allegations in Paragraph 22 related to WLP and W Falls' reliance on direct access
23 rights and WLP's decision to submit a notice of intent to reserve a place in PGE's
24 NLDA queue, and therefore denies the same. PGE admits that WLP sent a non-

1 binding request to be placed in PGE’s NLDA queue, but denies that WLP
2 “enroll[ed]” in the NLDA program. PGE admits that on April 15, 2019, the first
3 day PGE set up its NLDA queue, Mr. Konen sent PGE an email that included the
4 text alleged in the Complaint. PGE has insufficient information or knowledge to
5 admit or deny the truth of the allegations in Paragraph 22 regarding the role in which
6 Mr. Konen acted on April 15, 2019, and therefore denies the same.

7 23. PGE admits that the Oregon Secretary of State’s website indicates that WFalls
8 registered as a new business with the state of Oregon on June 25, 2019.

9 24. PGE admits that PGE and Willamette Falls Real Estate, Inc. entered into a five-year
10 lease on June 18, 2019, with a commencement date of July 1, 2019. PGE denies
11 that WFalls gave PGE notice of its intent to participate in the NLDA program. PGE
12 denies that it understood, at the time it executed the lease, that WFalls intended to
13 take direct access service, and denies the characterization that WFalls would
14 “continue” taking direct access service. PGE denies the characterization of the lease
15 payments as “inflated.”

16 25. PGE has insufficient information or knowledge to admit or deny the truth of the
17 allegations in Paragraph 25 related to the makeup of WFalls’ workforce and the date
18 on which WFalls began its operations, and therefore denies the same. PGE denies
19 that WFalls “resumed” operations, to the extent this terminology suggests that
20 WFalls had operated the mill or been a PGE customer previously. PGE admits that
21 the Oregon Secretary of State’s website indicates that Mr. Konen is the president of
22 WFalls.

1 26. PGE has insufficient information or knowledge to admit or deny the truth of the
2 allegations in Paragraph 26 related to WFalls’ operations, products, environmental
3 impacts, and agreement with the State of Oregon, and therefore denies the same.

4 27. PGE admits that WFalls’ electric service was energized in July 2019 on a cost-of-
5 service schedule, but denies the implication that this service was started without
6 WFalls’ knowledge and consent. PGE has insufficient information or knowledge to
7 admit or deny the truth of the allegations in Paragraph 27 related to the date on which
8 WFalls began operations, WFalls’ expectations, operating costs, or viability, and
9 therefore denies the same. PGE otherwise denies the allegations in Paragraph 27.

10 28. PGE admits that it requested a security deposit of \$110,000 for electric service and
11 that this deposit is less than WFalls’ current monthly power bill. PGE denies that it
12 generally calculates the security deposit based on the customers’ projected monthly
13 power bills. Under PGE’s Rule E, “Establishing Credit/Treatment of Deposits,”
14 PGE requires a security deposit equal to two average month’s billings. In
15 determining the appropriate amount of the deposit, PGE’s credit team typically
16 looks at historical use. For WFalls, PGE’s credit team looked to the prior mill’s
17 usage in calculating the initial security deposit. PGE denies that the amount of the
18 security deposit is evidence of PGE’s understanding that WFalls would be taking
19 direct access service.

20 29. PGE admits that it requested an increase in the security deposit to accurately reflect
21 two average months’ billings, based on WFalls’ actual usage. PGE and WFalls
22 subsequently entered an Addendum to the Parental Guaranty of the Lease that
23 eliminated the current need for an increased security deposit. PGE denies the
24 implication that the request to increase the security deposit was in any way related

1 to PGE disputing WFalls' LTDA rights or NLDA eligibility, or that its efforts to
2 obtain reasonable security from a customer were inconsistent in any way with its
3 rights or obligations as a regulated electric utility.

4 30. PGE has insufficient information or knowledge to admit or deny the truth of the
5 allegations in Paragraph 30 related to WFalls' current operations, capabilities,
6 power demand, and desires, and therefore denies the same.

7 31. PGE admits that it sent WFalls a letter dated January 17, 2020, informing WFalls
8 that PGE had determined WFalls was ineligible for NLDA service. PGE admits that
9 WFalls' failure to provide the one-year notice required by Commission rules
10 contributed to this conclusion. Moreover, WFalls was already energized and
11 receiving electric service from PGE at cost-of-service rates, and PGE was already
12 planning for its load. PGE's January 17 letter speaks for itself.

VII. Legal Claims

A. Complainant's First Claim for Relief

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14 32. In response to Paragraph 32, PGE refers to and incorporates herein all the preceding
15 Paragraphs.

16 33. PGE denies that WLP fully transitioned to LTDA service in 2005, but admits that
17 WLP fully transitioned to LTDA service in 2007.

18 34. PGE admits that Schedule 489 and the associated contract between WLP and PGE
19 required WLP to give PGE two years' notice of its intent to return to cost-of-service
20 rates and that WLP did not provide such notice. PGE has insufficient information
21 or knowledge to admit or deny the truth of the allegations in Paragraph 34 related to
22 WLP's intent, and therefore denies the same.

1 35. PGE admits that valid LTDA rights may be assigned to a subsequent purchaser of a
2 facility under appropriate circumstances. PGE denies that such an assignment
3 would be permissible in this case under PGE's Commission-approved schedule.
4 PGE otherwise denies the allegations in Paragraph 35, including the suggestion that
5 a transfer or assignment is at the consumer's sole discretion. Moreover, PGE denies
6 that WLP retained any valid, transferable or assignable LTDA rights that could be
7 assigned, transferred, or otherwise conveyed to WFalls.

8 36. Paragraph 36 contains statements and conclusions of law, which require no
9 response.

10 37. Paragraph 37 contains statements and conclusions of law, which require no
11 response. PGE denies that WLP's LTDA rights survived after WLP's accounts were
12 closed or that any such rights transferred or were assigned to WFalls.

13 38. PGE denies the allegations in Paragraph 38.

14 39. Paragraph 39 contains statements and conclusions of law, which require no
15 response. PGE otherwise denies the allegations in Paragraph 39.

16 **B. Complainant's Second Claim for Relief**

17 40. In response to Paragraph 40, PGE refers to and incorporates herein all the preceding
18 Paragraphs.

19 41. Paragraph 41 contains statements and conclusions of law, which require no
20 response.

21 42. PGE admits that it has allowed consumers to assign valid LTDA rights to a
22 subsequent purchaser of a facility under appropriate, limited circumstances. Such
23 assignments are permitted, provided that any such assignment is subject to PGE's
24 written consent, which shall not be unreasonably withheld. In this case, no valid

1 rights existed to convey, and PGE's consent was not sought, precluding
2 consideration of such an assignment.

3 43. Paragraph 43 contains statements and conclusions of law, which require no
4 response. PGE nevertheless denies the allegations in Paragraph 43.

5 **C. Complainant's Third Claim for Relief**

6 44. In response to Paragraph 44, PGE refers to and incorporates herein all the preceding
7 Paragraphs.

8 45. PGE denies the allegations in Paragraph 45.

9 46. PGE admits that Mr. Konen sent PGE an email on April 15, 2019, that included the
10 text alleged in the Complaint. PGE admits that April 15, 2019, was the first day
11 PGE's NLDA queue existed.

12 47. PGE admits that Mr. Konen's email secured the first position in the non-binding,
13 NLDA queue for WLP. PGE denies that its receipt of this email made WLP or
14 WFalls eligible for NLDA service. NLDA eligibility requirements are established
15 by the Commission and described in Commission rules. PGE has insufficient
16 information or knowledge to admit or deny the truth of the allegations in Paragraph
17 47 related to the legal basis for Complainants' assertion that the queue position was
18 transferred and assigned from WLP to WFalls and the timing of the alleged transfer
19 and assignment, and therefore denies the same.

20 48. PGE denies that WFalls entered a lease with PGE. Willamette Falls Real Estate,
21 Inc. entered a lease with PGE on June 18, 2019. Willamette Falls Real Estate, Inc.
22 and WFalls entered a Sublease dated July 1, 2019. PGE has insufficient information
23 or knowledge to admit or deny the truth of the allegations in Paragraph 48 related to
24 the date on which WFalls began business operations, and therefore denies the same.

1 49. PGE admits that it sent WFalls a letter on January 17, 2020, addressing WFalls’
2 ineligibility for NLDA. PGE’s January 17 letter speaks for itself.

3 50. Paragraph 50 contains statements and conclusions of law, which require no
4 response.

5 51. PGE denies the allegations in Paragraph 51. PGE denies that the Commission
6 granting a waiver of the NLDA requirements to WFalls, under the circumstances
7 alleged in the Complaint, would be consistent with the Commission’s guidance
8 regarding waivers.

9 52. Paragraph 52 contains statements and conclusions of law, which require no
10 response. To the extent a response is required, PGE denies the allegations in
11 Paragraph 52.

12 53. PGE denies that recognizing WFalls as a NLDA customer advances the goals
13 reflected in state policy. PGE has insufficient information or knowledge to admit
14 or deny the truth of the allegations in Paragraph 53 related to the WFalls’
15 manufacturing processes and its environmental impacts, and therefore denies the
16 same.

VIII. Affirmative Defenses

17 Without waiving the foregoing, PGE alleges the following affirmative defenses.

First Defense

19 With respect to Complainants’ First Claim for Relief, the Complaint fails to state a claim
20 against PGE for which relief may be granted. The First Claim for Relief is simply a set of
21 unsubstantiated factual allegations; it does not state any legally cognizable claim or
22 grounds for relief.

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Second Defense

With respect to Complainants’ First and Second Claims for Relief, WLP materially breached its LTDA agreement with PGE by failing to pay applicable rates and charges under the agreement and leaving PGE with a substantial, uncollectible balance due.

Third Defense

With respect to Complainants’ First and Second Claims for Relief, WLP terminated its LTDA agreement with PGE by accepting the termination of its electric service accounts with PGE.

Fourth Defense

With respect to Complainants’ First and Second Claims for Relief, WLP breached its LTDA agreement with PGE by failing to give two years’ notice prior to terminating the agreement.

Fifth Defense

Complainants’ First and Second Claims for Relief are barred by the filed-rate doctrine and ORS 757.225. Under the Commission-approved schedules, tariffs, rules, and/or regulations applicable to this dispute, WLP became a “new Consumer” when its accounts with PGE were closed. As a new Consumer, WLP forfeited its LTDA rights and had no LTDA rights to transfer, assign, or otherwise convey to W Falls.

Sixth Defense

Complainants’ First and Second Claims for Relief are barred by the doctrines of equitable estoppel and laches. After failing to pay its electric bills, WLP acquiesced to the termination of its electric service and/or the transfer of that service to PGE’s name. Once that termination occurred, WLP failed to notify PGE that it objected to the termination of that service or to the termination of its LTDA rights. Because granting Complainants’ First

1 and Second Claims for relief at this point in time would result in cost shifts to PGE's
2 remaining customers, Complainants are estopped from asserting these claims.

3 Seventh Defense

4 Upon information and belief, Complainants' First and Second Claims for Relief are barred
5 by the doctrine of waiver. By soliciting, accepting, and continuing to receive service from
6 PGE at cost-of-service rates, WFalls waived any claim that it is entitled to WLP's
7 terminated LTDA rights.

8 Eighth Defense

9 With respect to Complainants' Third Claim for Relief, the Complaint fails to state a claim
10 against PGE for which relief may be granted. The Third Claim for Relief is a request for
11 the Commission to grant a waiver of a Commission rule. It is not a legally cognizable
12 claim against PGE for which the Commission may order PGE to provide relief.

13 Ninth Defense

14 Upon information and belief, Complaints' Third Claim for Relief is barred by the doctrine
15 of waiver. By soliciting, accepting, and continuing to receive service from PGE at cost-
16 of-service rates, WFalls ceased to be "new load" eligible for the Commission's NLDA
17 program, per Commission rules. By so doing, WFalls waived its right to receive
18 authorization from PGE to participate in the NLDA program.

19 Tenth Defense

20 Upon information and belief, WLP lacks standing to assert the claims in the Complaint.
21 The Complaint should therefore be dismissed with respect to WLP.

22 Eleventh Defense

23 The Commission lacks authority to grant the relief requested in Paragraph 2 of the
24 Complainants' Prayer for Relief.

1 PGE's investigation into the allegations in this Complaint is recent, and PGE
2 reserves the right to amend its Answer or Affirmative Defenses if further information
3 becomes evident during the course of additional investigation and discovery.

IX. Prayer for Relief

4 PGE respectfully requests that the Commission deny W Falls and WLP's requested
5 relief and dismiss the Complaint.

Dated this 30th day of June 2020.

MCDOWELL RACKNER GIBSON PC

/s/ Lisa Hardie

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