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March 16, 2020

VIA ELECTRONIC FILING

Public Utility Commission of Oregon  
201 High Street SE,  
Suite 100  
Salem, OR 97301-3398  
ATTN: Filing Center

RE: Willamette Falls Paper Company's Application for Declaratory Order, and Alternative Application for Waiver of Direct Access Requirements and/or New Load Direct Access Requirements

In accordance with 2017 ORS 756.450, and the Commission's regulations, Section OAR 860-001-0000, et seq., Willamette Falls Paper Company ("**Willamette Paper**") respectfully files the enclosed request for a declaratory order and alternative request for a waiver of the Commission's direct access regulations and/or new load direct access regulations.

Willamette Paper requests that all communications related to this filing be addressed to:

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Respectfully submitted,

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
Docket \_\_- \_\_\_\_\_

Application for Declaratory Order, and Alternative Application for Waiver of Direct Access Requirements and/or New Load Direct Access Requirements.	Application of Willamette Falls Paper Company
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Pursuant to 2017 ORS 756.450,<sup>1</sup> Willamette Falls Paper Company (“**Willamette Paper**”) respectfully submits this petition for a declaratory ruling that Willamette Paper is successor in interest to the West Linn Paper Company (“**West Linn Paper**”) and entitled to retain its status as a customer receiving long-term direct access service. As described in detail below, this is a unique factual circumstance, as Willamette Paper has taken possession of, and resumed the operations of, the existing paper mill (the “**Mill**”) formerly owned by West Linn Paper, using the same manufacturing facilities, employee base and senior management, through wind up of an involuntary bankruptcy proceeding as opposed to a standard commercial transaction. This Mill had operated under long-term direct access for more than 15 years, and already paid transition charges for the full five year period required pursuant to Portland General Electric Company’s (“**PGE**”) tariff implementing its long-term direct access program.

In the alternative, should the Commission determine that operation of the this same Mill, at this same location, with largely the same employees and senior management, should not be treated as an existing direct access service customer that has already met its transition payment obligation, then the Commission should grant any necessary waivers pursuant to rule 860-038-001(4)<sup>2</sup> to either (1) allow Willamette Paper to take standard direct access service without further payment of transition charges or (2) take service under the New Load Direct Access program, with the reduced transition charges applicable thereto.

As detailed below, Willamette Paper submits that good cause exists for granting the declaratory order or waiver for either of these options. The Mill either should be considered one

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<sup>1</sup> 2017 ORS 756.450, Declaratory Rulings (“On petition of any interested person, the Commission may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by the Commission.”)

<sup>2</sup> OAR Chapter 860, Division 38, Scope and Applicability of Rules, Rule 860-038-001(4)

in the same as the existing facility that had been a direct access customer for more than 15 years, or it should be considered to be a new facility, for which the incumbent local utility, PGE has not planned, and therefore should be eligible for the large new load direct access program. It should be one or the other. A finding to the contrary would place form over substance, and would likely frustrate the Mill's ability to meet planned operations, resulting in environmental harm and the potential loss of significant manufacturing jobs and Oregon tax base. Good cause exists to waive any technicalities or regulatory requirements as necessary to ensure the appropriate outcome.

In support hereof, Willamette Paper shows as follows:

I **Factual Background.**

1. Willamette Paper owns and operates the Mill and is engaged in the manufacture of environmentally sustainable paper products.
2. The Mill is located in West Linn, Oregon on property owned by PGE.
3. The Mill has been in continuous operation at this location from for more than 130 years, other than the brief period from October, 2017 through September 2019 (the "**Interim Shutdown**").
4. Prior to the Interim Shutdown, the Mill was owned and operated by West Linn Paper. West Linn Paper temporarily ceased operation at the Mill in October, 2017 when West Linn Paper's senior secured lender foreclosed on its assets.
5. Willamette Paper (through its parent corporation, Columbia Ventures Corp) purchased *all* the assets of West Linn Paper in June, 2019, and is successor in interest to West Linn Paper, utilizing the same facilities, machinery, and equipment.
6. The facilities of West Linn Paper and Willamette Paper are for all intents and purposes the same. The facilities sit on the same land, utilize the same buildings, and operate the same machinery.
7. The employees of the West Linn Paper and the Willamette Paper are largely the same. More than 96 percent of the first 101 employees hired by the Willamette Paper were employees of the West Linn Paper, operating the same machinery on the same premises. The same operating executive responsible for the facility when owned by West Lin Paper is still responsible for the facility as President of Willamette Paper.

8. The Mill exercised its statutory rights under Oregon’s direct access laws<sup>3</sup> and the Commission’s regulations thereunder<sup>4</sup> to purchase power from an electricity service supplier instead of the incumbent local utility, PGE, beginning in January, 2005, and maintained its status a purchaser of direct power through the day the Mill suspended operations.
9. The Mill paid transition charges related to its direct access service for a period of at least five years.
10. The Mill and its management – both as West Linn Paper and as Willamette Paper -- always intended to operate under direct access service.
11. PGE informed Willamette Paper that it did not believe Willamette Paper was eligible to retain its status as an existing direct access customer given the change of ownership as an asset sale, rather than assignment.
12. PGE informed Willamette Paper that, although it would not allow the Mill to be served under its prior direct access service, the Mill would be eligible for the New Load Direct Access Program.
13. The Electricity Service Supplier that provided service to the Mill prior to the Interim Shutdown was ready, willing and able (subject to certain preconditions) to provide service to the Mill under the new ownership structure, and stands ready to provide such service today.
14. Willamette Paper made clear to PGE at all times that it intended to remain on direct access service, and that if it was not eligible to retain its status as an existing direct access customer because it was not technically the same plant, it would apply to take service under the new load direct access program.
15. PGE had both actual and constructive notice at all times that Willamette Paper did not intend to take long-term service from PGE.
16. Willamette Paper applied for the new load direct access queue immediately upon availability via an email from Brian Konen, Chief Operating Officer of West Linn Paper and current president of Willamette Paper, dated April 15, 2019 and timestamped at 8:00 AM - *the very first moment available for applying for the new load direct access queue.*
17. PGE informed Willamette Paper by letter dated January 17, 2020 that PGE determined the Facility was ineligible for PGE’s New Load Direct Access Program because “you

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<sup>3</sup> OR Laws 1999, ch 865, Section 6(1), and codified in ORS 757.646(1)

<sup>4</sup> OAR Chapter 860, Division 38

failed to provide the required 1-year notice under the rule ... .”

18. Willamette Paper informed PGE that it intended to contest and/or seek a waiver of PGE’s determination on a timely basis.
19. Willamette Paper estimates the difference in power costs for Mill operation if it is required to pay full direct access transition charges would be an increase of between two to four million dollars per year.
20. Willamette Paper estimates the difference in power costs for Mill operation if it is required to purchase power under PGE’s large industrial cost of service rate schedule rather than the Large New Load Direct Access program (including applicable transition costs) would be an increase of approximately \$10- 15 million per year for the first 5 years, and \$4MM per year thereafter.
21. The Mill employees more than 120 people in Oregon.
22. The Mill is the first – and currently the only -- paper manufacturing facility in the United States to offer paper using non-wood fiber, using agricultural waste as a primary source of pulp for some products. This agricultural waste otherwise would be burned or tilled under, in either case releasing substantial greenhouse gas emissions.
23. Willamette Paper has worked with Business Oregon on the restart of the Mill. As part of the restart, Willamette Paper is required to invest in its operations in order to add the capability to use mixed waste paper from the regional area which is now a waste problem for the state. This investment will be dramatically hampered, or rendered impossible, if the Mill is required to restart payment of full transition charges for a new 5 year period or is forced to take service under the incumbent utility’s cost of service rates.
24. The paper industry has very thin margins. West Linn Paper was forced into an involuntary bankruptcy proceeding due to competitive pressure, leading to transfer of the Mill to Willamette Paper. Willamette Paper likely will not be competitive on a long term basis if it is required to pay for electricity at cost of service prices from PGE, or forced to pay full transition charges under the direct access program.

**II. The Commission should declare that Willamette Paper is successor in interest to West Linn Paper for purposes of the direct access program and/or waive the direct access transition fee.**

Willamette Paper requests that the Commission declare that, for purposes of the direct access program, the Mill is and has been a long-term direct access customer that has already paid transition charges for a full five year period and may continue to receive direct access service

without payment of further transition charges. For all intents and purposes related to direct access, Willamette Paper and West Linn Paper are one in the same. While not the very same legal entity, it is the very same Mill, using the same equipment, at the same location, and with largely the same employees and executive management. The Mill has been served through direct access for more than fifteen years, and management of the Mill informed PGE that it intended to stay on direct access service upon re-opening the Mill. PGE had not just constructive notice, but actual notice, that Willamette Paper did not intend of taking electricity service from PGE when it resumed Mill operations.

Under these circumstances, the Commission should declare that Willamette Paper, as new operator of the Mill, is entitled to step into the shoes of its predecessor, West Linn Paper, and retain status as a direct access shipper that has already been on direct access service for more than 5 years. This is the same Mill, taking the same service. The Mill has already contributed transition charges for 5 years, and has made clear its intent to remain on direct access service. PGE has not planned to provide service for the Mill, nor committed to expend resources that to do so – *i.e.*, allowing the Mill to remain on direct access service will not create any potential cost shifts to other entities.

Granting this request for a declaratory order (or waiver of the Commission's regulations to the same effect) is in the public interest given unique factual circumstances of this case and the potential economic harm if relief is not granted. The change in ultimate ownership of the Mill was the result of an involuntary Section 7 bankruptcy and foreclosure proceeding that prevented transfer of contracts in due course, and instead required execution of new agreements under the name of the new legal entity. But the existence of new agreements does not change the underlying fact that this is the same Mill, with the same equipment, and the same largely the same employees and management, as prior to the ownership transition. The new ownership expressly requested PGE allow it to take assignment of the direct access status, but it is Willamette Paper's understanding that PGE did not believe its tariff allowed for such treatment absent waiver. It is Willamette Paper's understanding that PGE does not oppose this request for waiver.

Granting Willamette Paper the relief requested – either via a declaratory order that the Mill already met its obligations to pay transition charges for a five year period, or waiver of the transition charge obligation based on the unique factual circumstances outlined above, will not prejudice or harm any other party, nor cause any cost shifts to others. Willamette Paper submits that good cause exists to grant the requested relief. The paper industry is a highly-competitive industry subject to major national and international competition. In the face of such competition, Willamette Paper has re-opened an existing facility and restored more than 100 high-paying jobs that are critical to the regional economy – all while producing the first high quality paper products using agricultural waste instead of wood fiber as a source material. Granting the request will also allow Willamette Paper to meet its commitment to Business Oregon to utilize locally recycled paper that otherwise would be in the waste stream. Requiring Willamette Paper to either restart payment of transition costs for another five year period, or be limited to service under PGE’s cost of service tariff, would severely hamper plant operations, possibly jeopardizing a substantial number of jobs and harming the environment, while granting such relief in the face of these unique circumstances will have no negative consequences.

It is significant to note that PGE has not in any way planned to serve to serve the Mill using utility-supplied generation. PGE’s Integrated Resource Plan makes it clear that it views paper manufacturing as a declining industry in its service territory.<sup>5</sup> The Mill itself made it clear that it desired to remain on direct access service, and did not intend to take utility-supplied generation. It is Willamette Paper’s understanding that PGE purchased no generation capacity or made any related commitments to serve the Mill. Under these circumstances, the fact that the existing Mill – which had been served through direct access for the prior 15 years – restarted after a hiatus should not prevent the facility from retaining its existing direct access status. The simple fact is that the Mill already paid transition charges for more than 5 years, and there have been no changes in circumstance that would warrant requiring a restart of transition charges – especially when such an obligation could severely damage the viability of the Mill.

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<sup>5</sup> See PGE 2019 Integrated Resource Plan, Docket LC 73, at p 91: “paper manufacturing represented the largest industrial segment in PGE’s service area. This sector has declined, with significant plant closures in recent years, and now the key driver of future industrial load is growth in the high technology sector, notably semiconductor manufacturing and data centers.

**2. In the Alternative, Willamette Paper should be treated as a new facility and be entitled to service under the New Load Direct Access Program.**

*(a) The Mill provided more than one year's notice of intent to participate in the Direct Access Program and holds the first slot in the New Load Direct Access Queue.*

To the extent the Commission declines to issue a declaratory order (or grant a waiver) allowing the Mill to retain its prior status as a long term direct access customer, the Commission should declare that the Mill is entitled to take service under PGE's New Load Direct Access program, and/or grant any waivers necessary to effectuate that result.

As noted above, the Mill always intended to receive service under direct access, and never intended to receive service under PGE's cost of service offering. PGE had not just constructive, but in fact actual notice that the Mill did not intend to take electricity service under PGE's cost of service rate.

In addition to informing PGE more than a year in advance that it did not intend to purchase utility-supplied power, and consistent with PGE's recommendations and the Commission's orders establishing the large new load direct access program, the Mill applied for a place in the queue to receive large new load direct access. Based on information and belief, the Mill was the *very first entity to apply* and should have queue position number 1.

Rather than accepting the Mill's queue application, PGE informed the Mill by letter dated January 17, 2020 that PGE determined that the Mill ineligible for PGE's New Load Direct Access Program because "you failed to provide the required 1-year notice under the rule ... ." The Mill understands that it is PGE's interpretation that no notice of intent to move to direct access could occur until the effective date that the queue opened; *i.e.*, PGE's interpretation of the regulatory requirements of the newly-adopted program created a *de facto* first notice date as of the date the queue was formed, without regard to timing of actual notice.

Willamette Paper fundamentally disagrees with PGE's interpretation that the Mill is ineligible for the queue. Rule 860-038-0740 specifies that each New Large Load consumer must notify the utility of its intent to opt out of cost of service rates at the earlier of either (a) a binding written agreement with the utility for eligible new load, or (b) one year prior to the expected



starting date of the incremental load.<sup>6</sup> The Mill provided more than one year’s notice that it was intending to use direct access service – either as a continuation of its prior direct access service or through the new load program. The Mill consistently made it known to PGE that it did not intend to take service PGE’s standard cost of service, and PGE was well aware of that fact. There is nothing in the Commission’s regulations nor PGE’s tariff stating that the queue governs notification criteria. Willamette Paper submits that the date for submission into the New Load Direct Access Queue is separate and apart from, and does not control, the obligation under the new load direct access program to inform PGE more than one year in advance of its intention not to take utility service. Willamette Paper understands that, although PGE believes its interpretation that the queue date establishes the earliest date for notice under the program, it does not intend to oppose waiver to allow the Mill to receive new load direct access given the specific factual circumstances of this case.

*b. The Mill should not be penalized for regulatory delays entirely outside of its control.*

The implementation of new load direct access in general, and on PGE’s system in particular, has been fraught with delays. The Commission initially considered new load direct access programs in early 2017, in large part in response to Senate Bill 979.<sup>7</sup> After protracted discussions, the Commission ultimately determined that it had authority to approve new load direct access programs, and, in order to expedite resolution, directed that such programs be reviewed under a phased approach under which parties would initially address the large new load program, with new load direct access applicable to smaller loads to be addressed at a later date. After another lengthy proceeding, the Commission issued regulations setting out its New Load

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<sup>6</sup> Rule 860-038-0740(1).

<sup>7</sup> See, e.g., Order No. 17-171, May 16, 2017, Staff report at 3 (“The Senate Committee on Business and Transportation held a hearing on April 3, 2017, to receive public input on SB 979. Staff reviewed this hearing and found substantial public interest in SB 979, including interest in the treatment of new direct access loads. Among other issues, the proposed legislation contemplated removal of the transition adjustment for new commercial load at new sites choosing direct access over cost of service. The underlying reasoning for this suggestion was that utilities may not plan for this new load in the first place and thus would not result in harm to cost of service customers if they were to select direct access. Numerous business interests expressed support for SB 979, including Industrial Customers of Northwest Utilities, Northwest Intermountain Power Producers Coalition, Walmart, TechNet, and Microsoft.”)

Direct Access Rules.<sup>8</sup> Due to some complex regulatory issues, however, PGE's new load direct access program was not formally approved by the Commission until close to 3 years later.

The Willamette Paper has diligently done everything within its power to retain its existing direct access service and/or move to new load direct access service. The Mill informed PGE throughout that it did not intend to purchase utility-supplied power. The Mill also made sure that it filed to participate in PGE's new load direct access queue at the very first moment that the queue was available.

Willamette Paper also has gone to extraordinary lengths to restart paper manufacturing, and rehire its former employees, bringing much-needed economic development to its region, all while developing a new, innovative process to produce paper stock using agricultural waste, rather than wood stock. To do so, the Mill had to restart the facility pending the Commission's final order approving PGE's large new load direct access program, while still relying on its understanding that the Mill would be eligible to participate in that program. As noted above, the Mill at all times made clear to PGE that it intended to take direct access service, and not purchase utility-supplied energy, and such notification was well more than a year prior to the start of its service.

Under these circumstances, Willamette Paper believes that, if the Commission declines to allow the Mill to continue its prior status as an existing, long-term direct access customer, the Commission should grant any necessary waivers to allow the Mill to take large new load direct access service. If the Mill is not considered to be the same as the prior entity with respect to direct access service, *i.e.*, if it is not considered "old" direct access load, then logically it must be considered eligible as "new" direct access load and entitled to service under the large new load direct access program. The regulatory delays in approval of PGE's program were completely outside of Willamette Paper's control. Failure to grant the relief requested herein, and jeopardizing continued financially viable operation of the Mill, due to technical issues related to the timing of approval of PGE's tariff, would place form over substance, and would not be good public policy.

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<sup>8</sup> In the Matter of Rulemaking Related to New Large Load Direct Access Program, Docket No. AR 614, Order No. 18-341 (Sep 14, 2018).

### III. CONCLUSION

**WHEREFORE**, for the reasons set forth herein, Willamette Paper respectfully requests the Commission declare that the Mill is entitled to retain its status as an existing long-time direct access customer that already completed its transition charge responsibility, or grant any necessary waivers to allow it to do so. The fact that ownership transfer took place through a foreclosure proceeding, rather than a traditional sale and assignment, should not change eligibility to retain such service under the unique circumstances of this case.

In the alternative, Willamette Paper respectfully requests the Commission find that the Mill is eligible to participate in the large new load direct access program, or grant any necessary waivers to allow it to do so.

Willamette Paper submits that the relief requested here is reasonable, necessary and appropriate given the unique circumstances of the ownership transition and economic importance of the Mill.

Dated this 16th day of March 2020.

Respectfully submitted,

*/Carl Fink/S/*

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