



Portland General Electric
121 SW Salmon Street · Portland, Ore. 97204

April 23, 2020

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street, S.E.
P.O. Box 1088
Salem, OR 97308-1088

RE: Willamette Falls Paper Company DR 56

Portland General Electric Company (PGE) submits these comments in response to our customer, Willamette Falls Paper Company's (WFPC), Application for Declaratory Order and Alternative Application for Waiver of Direct Access Requirements and/or New Load Direct Access (NLDA) Requirements. PGE believes the Commission should deny WFPC's petition/request and instead support both the Long-Term Direct Access (LTDA) and NLDA programs as designed in rule and tariff. In approving both programs at their inception, the Commission focused on balancing the offering of direct access options with the need to protect nonparticipating customers. Continuing to strike such a balance is important, and to do so means denying WFPC's request to participate in LTDA under the opt out contract that West Linn Paper previously had in place with PGE and also denying WFPC's claim of eligibility for NLDA. Instead, WFPC should be encouraged to follow the normal long-term direct access (LTDA) enrollment process that occurs each September.

The key points of PGE's comments can be summarized as follows:

- On LTDA: While WFPC is operating the same mill at the same site as West Linn Paper, WFPC is not the same company as West Linn Paper, and not eligible to participate in LTDA without following the enrollment and program rules, including the payment of transition charges. WFPC is a different legal entity, has different investors and owners, and because it is an entirely separate company, it is not responsible for West Linn Paper's former debts, including PGE invoices that were left unpaid when West Linn Paper went through an involuntary bankruptcy. Allowing WFPC to participate in LTDA by skipping the five-year transition period would be unfair to other customers who are expected to follow the rules to qualify and participate in the Program. Of equal importance is the negative impact to cost-of-service customers who would otherwise benefit from the transition adjustment payments that WFPC would be expected to pay in exchange for legitimate enrollment during a September enrollment window.
- On NLDA: WFPC does not meet the eligibility requirements for NLDA. They could not and did not provide a year notice that they would participate in NLDA because WFPC was not a legal entity a year prior to energizing their service.

Additionally, they energized their service with PGE on cost-of-service less than one year after the start of the participation queue. The Commission directed PGE to establish a queue to enable customers to provide notice of intent to enroll in NLDA and that queue was started April 15, 2019. West Linn Paper Co was the first to submit its notice of intent, which read in pertinent part, “West Linn Paper CO formally request to be placed in the queue for NLDA service”. Willamette Falls did not provide a notice of intent¹. WFPC is now claiming the first queued position submitted by West Linn Paper. PGE questions the fairness of allowing West Linn Paper to hold and provide its place in line for WFPC. Even if this were deemed fair to other customers in the queue, PGE’s main objection to WFPC’s NLDA participation is that it energized before the Commission’s required one-year notice. This means that WFPC came on-line as a cost of service customer and has been incorporated into PGE’s planning. The PUC should affirm the queue established by PGE as the appropriate means to line-up for PGE’s NLDA program. The queue was established in a public process with stakeholders, Staff, and the Commission and thus provided prospective participants an equal opportunity to enroll. In addition, the Commission should find WFPC ineligible for NLDA participation due to its lack of one-year notice before energizing and the fact that PGE is now planning for its load.

In these comments, PGE provides further factual background for the Commission, and advocates for the Commission to deny WFPC’s requests in support of the rules around which each of the direct access programs was designed.

WFPC Argument #1 for LTDA participation: The mill has been in continuous operation for more than 130 years under various operators, other than from October 2017 – Sept 2019 “Interim Shutdown” and purchased electricity from an Electricity Service Supplier (ESS) prior to the Interim Shutdown so they should be allowed to continue to purchase from an ESS with no transition adjustments.

PGE’s response: WFPC’s assertion, that it was in “interim shutdown”, is false. The former entity that operated the paper mill site, West Linn Paper Company, owned by Belgravia Investments, Inc, (Belgravia Pulp Holdings, Inc) ceased business operations and became the subject of an involuntary Chapter 7 bankruptcy proceeding. Two years later, Willamette Falls Paper Company (WFPC), a new entity supported by Columbia Ventures Corp and unrelated to West Linn Paper Company, hired a number of former West Linn Paper Company employees and started conducting business at the paper mill site. WFPC’s July 2019 start-up of mill operations is what caused PGE to include WFPC’s load in its load forecasts in September 2019 and in PGE’s 2020 Annual Update Tariff.

Prior to WFPC starting its paper milling business, the site was operated by West Linn Paper Company (“WLP”; registered with the State of Oregon on January 10, 1997 as Corporate Registry No. 553134-81) who was a cost of service customer that elected to

¹ In addition to its formal request to be placed in the queue for NLDA service, West Linn included an additional line of text that read, “West Linn Paper CO . . . Potential new customer is most likely Willamette Falls Paper CO”.

participate in PGE's LTDA program in 2007. After five years of transition adjustments, WLP stayed on direct access, purchasing energy from an Electricity Service Supplier (ESS) until they went out of business in October of 2017. It ceased operations after an involuntary bankruptcy proceeding² that was brought about when its senior secured lender foreclosed on its assets. A project team was put in place at PGE to work through the issues of the WLP bankruptcy and, incidentally, their vacating of the mill property (since the property is owned by PGE). During this time, the former WLP utility accounts were either closed or transferred into PGE's name. In short, WLP ceased being both a PGE and ESS customer and its LTDA contract with PGE was deemed terminated. PGE's lease to West Linn Paper Company was also terminated on November 26, 2018. Consequently, WLP left PGE with significant unpaid utility bills.

In June 2019 a newly formed entity called Willamette Falls Paper Company (with the support of Columbia Ventures Corporation) acquired the mill-related equipment and assets of West Linn Paper Company that had been sold to a third-party for auction. They subsequently opened utility accounts with PGE and knowingly commenced business operations as a PGE cost-of-service customer on July 1, 2019. Brian Konen was the general manager of the mill under West Linn Paper Company and was hired into a similar role by WFPC. Such was also the case for many of WLP's former employees who were subsequently hired as new employees of WFPC. While commendable, hiring the former employees of the bankrupt and shuttered business does not revive the defunct West Linn Paper Company nor convert the new business entity, WFPC, into a continuation of the defunct business entity.

Timeline

October 2017 – West Linn Paper Company – Involuntary Bankruptcy proceeding filed and service from ESS was dropped and WLP went on PGE's daily market pricing. WLP continued on PGE's daily market pricing until it ceased being a PGE customer.

January 2018 – West Linn Paper Company stopped paying PGE bills.

September 2018 – West Linn Paper ceased being a PGE customer – service put in PGE's name, as the property owner.³

June 2019 – WFPC registered as a new business with the State of Oregon⁴

July 2019 – WFPC initiated a request for service as a new electricity customer of PGE after PGE told them that the long-term direct access contract with WLP had been terminated.

² US Bankruptcy Court, District of Oregon, Case No. 17-bk-33992-tmb7 on October 24, 2017

³ September 1, 2018 – for the purpose of keeping lagoon pumps operating at the site, which had been the customer's responsibility

⁴ Corporate Registry No. 1570696-92

WFPC's Argument #2 Regarding NLDA Eligibility: WFPC should be eligible for the NLDA program because they provided notice to PGE more than one year prior to starting operations on July 1, 2019.

PGE's Response: WFPC's assertion, that they provided notification more than one year prior to commencing business operations, is false. The entity, WFPC, could not have provided notice more than one year prior, as it claims, because WFPC was not recognized as a legal entity at the time the PGE queue was commenced⁵. Additionally, WFPC commenced operations July 1, 2019, less than one year after the start of the participation queue date of April 15, 2019. While PGE does not deny that Brian Konen, who would later become associated with WFPC, sent an e-mail to PGE expressing interest in the prospective program, PGE was consistent in its responses to Mr. Konen, as well as to other prospective NLDA program participants who made similar inquiries before the April 15, 2019 queue opened, that PGE did not yet have a tariff on file or a queue available. PGE believed it would be unfair to start a queue for a prospective program: 1) prior to the filing of a tariff that would undoubtedly establish the generally applicable terms and conditions for participating in such a program, but ones that had yet to be developed, and 2) prior to PGE providing public notice of any queue process it might develop, so that all interested parties would have an equal opportunity to enroll.

Once PGE filed its Schedule 689 NLDA program tariff in February 2019, the OPUC directed PGE to develop a non-binding queue that would allow prospective program participants to provide PGE with their one-year notice of intent to take NLDA service⁶. The rules for participation in the queue were subsequently developed, communicated to the Commission and intervenors in an April 4, 2019 letter filing, and then the queue was commenced April 15, 2019. The Commission's audio recording of its meeting of March 21, 2020 makes clear that the intent of the queue was to start the minimum one-year notice, required from prospective NLDA participants to PGE, of their intent to participate.⁷

PGE opened the queue on April 15, 2019 at 8:00 a.m. and Brian Konen sent an e-mail immediately thereafter that was the first to express intent to enroll "West Linn Paper Co" in the New Load Direct Access program. In early June 2019, PGE sent Mr. Konen a letter noting concerns about West Linn Paper Company's eligibility. While PGE felt compelled to acknowledge that West Linn Paper Co was the first in the queue, PGE's concerns about eligibility stemmed from the facts known about West Linn Paper Company's history and the fact that West Linn Paper Company was not engaged in

⁵ On April 15, 2019 at the start of PGE's NLDA queue, Brian Konen with his title noted as President, West Linn Paper, sent notification to PGE by email stating: "To PGE: West Linn Paper CO formally request to be placed in the queue for NLDA service. West Linn Paper CO... Potential new customer is most likely Willamette Falls Paper CO." This was before Willamette Falls Paper Company had been registered in Oregon as a business and more than a year and a half after West Linn Paper was placed in involuntary bankruptcy.

⁶ Order 19-103 dated March 22, 2019.

⁷ Preceding the March 21 meeting, AWEC sent the Commission a letter asking, in part, to clarify that suspending PGE's NLDA tariff does not prevent a customer from giving the required notice. AWEC mentions in its letter that Calpine also supports the concept of allowing customers to provide notice during the suspension period. PGE also sent a letter supporting the enabling of customer notice. The Commission then directed the establishment of the queue at its March 21 public meeting.

planning discussions with PGE regarding any prospective load associated with a new facility, an existing facility, or an expansion of an existing facility on behalf of itself, but only as a proxy for another potential entity. WFPC started operating in July 2019. A little over 6 months later, after the Commission approved PGE's NLDA tariff but before the tariff was effective, PGE reached out again to those in the queue. In a January 17, 2020 letter, PGE notified Mr. Konen, who was by then an employee of WFPC, that WFPC was not eligible for NLDA as it did not provide the one-year notice before it energized.

The Commission provided guidance on waivers, in the context of the participation cap, when it issued its Order 18-341 at page 7. WFPC's alternative request is for a waiver of the rule that requires at least one-year notice prior to energization. The Commission should consider the guidance it provided and determine whether WFPC's request is first, supported by good cause, and secondly, whether approval of its waiver application will advance the goals reflected in state policy through elements such as carbon-free generation resources, value added grid services and support for system capacity needs or through other means. WFPC has not made any of these claims or showings.

WFPC's only potential remedy is LTDA Participation

From PGE's perspective, WFPC's only potential remedy is through its participation in the normal September LTDA enrollment process. Currently, there are approximately 64MWa remaining under the 300 MWa cap, which is more than enough room for WFPC to participate, provided they meet other program requirements in the tariff, namely that: 1) their accounts maintain demand of 250kW or more by Service Point ID (SPID); 2) they have usage that aggregates to 1MWa or greater as demonstrated by at least one year on cost of service rates; 3) they submit a signed agreement early in September, as capacity under the cap is awarded on a first come, first served basis; and 4) they are subject to five years of Sch 129 transition adjustments.

Summary

PGE works to support all customers in each phase of their business and must administer all our programs, including NLDA, in a non-discriminatory manner that is consistent with the current rules and fair for all customers. To grant WFPC a waiver of the one-year requirement, when PGE is already planning for their load, particularly given that the queue contains more eligible load than NLDA capacity available under the 119 MWa cap, would shift costs to our other cost-of-service customers and is, therefore, not fair or reasonable to all concerned.

For the foregoing reasons, PGE is asking the Commission to support the NLDA and LTDA programs as designed, decline WFPC's request for a declaratory ruling and deny their request in the alternative, to grant a waiver of the New Load Direct Access rules.

PGE recognizes the dramatic change in our economic climate and is focused on our customers. In response to our small business customers facing hardships, PGE is advising businesses closed due to COVID-19 about how to reduce energy use, and we are suspending disconnections and late payments, waiving credit card fees for payments under a set amount, initiating time payment agreements (previously available only to residential customers), providing direct energy assistance for business customers and contributing to the Oregon Community Foundation to support small businesses.

Please direct any questions or comments regarding this filing to Teresa Griffels at (503) 464-7802.

Please direct all formal correspondence and requests to the following email address pge.opuc.filings@pqn.com

Sincerely,

\s\ Jay Tinker

Jay Tinker
Director Rates and Regulatory Affairs

cc: Scott Gibbens & UE 358 and UM 2024 Service Lists