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October 12, 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 Response Testimony of Brian Faist (PGE/100-109), Brian Clark (PGE/200-208), and Karla Wenzel & Robert Macfarlane (PGE/300-309). Confidential material in support of the filing will be provided to qualified parties under Protective Order No. 20-218 via encrypted zip file.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachments

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of PGE's Confidential Response Testimony in Docket UM 2107 on the following named person(s) on the date indicated below by electronic mail addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: October 12, 2020



Alisha Till
Paralegal

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

UM 2107

Willamette Falls Paper Company and West
Linn Paper Company,

Complainants,

v.

Portland General Electric Company,

Respondent.

**PORTLAND GENERAL ELECTRIC COMPANY
RESPONSE TESTIMONY OF BRIAN FAIST**

October 12, 2020

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Exhibit List

PGE/101 Confidential - 1997 WLP Lease

PGE/102 - October 19, 2017 WLP Mill Closure Notification

PGE/103 Confidential - Complainants’ Data Responses

PGE/104 - October 24, 2018 Notice to Lessee of Default

PGE/105 Confidential - Email Communications

PGE/106 Confidential - June 3, 2019 Email and Draft Columbia Ventures Lease Term Sheet

PGE/107 Confidential - June 6, 2019 Email and Revised Term Sheet from Columbia Ventures

PGE/108 Confidential - 2020 Willamette Falls Real Estate First Amendment of Lease

PGE/109 Confidential - 2020 Addendum to Tenant’s Parent Guaranty

I. INTRODUCTION AND SUMMARY

1 **Q. Please state your name, business address, and position at Portland General Electric**
2 **Company (PGE).**

3 A. My name is Brian Faist. My business address is 121 SW Salmon Street, 3 World Trade
4 Center, Mailstop 0306, Portland, OR 97204. I am a Principal Originator.

5 **Q. Please summarize your educational background and business experience.**

6 A. I received a Bachelor of Business Administration in Accountancy from the University of
7 Notre Dame in 2006 and a Master of Science in Accountancy from the University of Notre
8 Dame in 2007. I have been with PGE since 2013. I started in the Tax department and have
9 been a member of the Structuring and Origination department since 2016. My current role
10 requires me to negotiate complex commercial transactions on behalf of the Company,
11 requiring a deep understanding of legal, financial, and regulatory considerations. Prior to
12 working at PGE, I worked at both KPMG and Conway, Inc., where I held roles in tax and
13 accounting.

14 **Q. What is the purpose of your testimony?**

15 A. The purpose of my testimony is to explain PGE's discussions with various entities after
16 West Linn Paper Company (WLP) announced that it was winding up its business and
17 ceased paper-making operations at the paper mill it had operated on land WLP leased from
18 PGE. I also explain the transfer of WLP's assets to its secured lender Belgravia Pulp
19 Holdings, Inc. (Belgravia), from Belgravia to Maynards auction house, and then from
20 Maynards to the newly created Willamette Falls Paper Company (WFalls). My testimony
21 summarizes PGE's negotiations with Columbia Ventures, WFalls' parent company,
22 regarding entering a new lease and electric service options for the new company. Finally,
23 my testimony discusses WFalls' current operations and challenges.

24 **Q. Please summarize your testimony.**

25 A. WLP was a paper company that operated for many years near Willamette Falls, Oregon,
26 partially on land that WLP leased from PGE and partially on land WLP owned. WLP also

1 received electric service from PGE. In October 2017, WLP shut down the paper mill and
2 announced that it would begin winding up its business and liquidating its assets. In the
3 wake of the shutdown and liquidation, the future of the site was uncertain, and PGE began
4 to discuss various options with several different entities. PGE and Stern Partners (Stern),
5 WLP's owner, discussed jointly redeveloping their respective properties and the possibility
6 of amending WLP's lease while they explored redevelopment options. PGE also
7 understood that Brian Konen, WLP's Chief Operating Officer, was simultaneously
8 working to find a buyer for the mill assets to resume making paper at the mill.

9 As PGE and Stern discussed possible plans for the site, WLP accrued increasing
10 amounts of past-due rent and electric service payments, owing PGE over [REDACTED] by
11 March 2018. Although WLP was in breach of its lease agreement with PGE and had
12 violated the terms and conditions of its electric service, PGE delayed exercising any rights
13 against WLP for many months. PGE was hopeful that negotiations with Stern would result
14 in a mutually agreeable plan for the site and positive developments for the community.
15 After many months of discussions between PGE and Stern, however, it became apparent
16 that the joint redevelopment efforts were unlikely to proceed. As negotiations with Stern
17 wound down in the second half of 2018, Stern made clear that it intended to stop any cash
18 outflows at WLP and that it would not be paying WLP's bills, which continued to accrue.
19 PGE and Stern shifted their focus to negotiating a mutual lease termination agreement for
20 WLP's lease. As that process dragged on, PGE eventually issued a Notice to Lessee of
21 Default and terminated WLP's lease, although the parties later executed the mutual

22 termination agreement. PGE also took responsibility for the electric service at the
23 site by closing WLP's accounts and opening new accounts in PGE's name. By that point,
24 WLP had paid none of its electric bills at the site for over nine months.

25 After the WLP lease terminated, the mill's assets—primarily paper-making
26 equipment—were sold to an auction house, Maynards, which decided to auction them off.
27 PGE retained title to the land and the building shell. At this point, more than a year after

1 WLP's shutdown, Mr. Konen continued to search on his own for a buyer who would
2 purchase the mill's equipment from Maynards and resume mill operations with a new paper
3 company, but we viewed this as an unlikely possibility. Although Mr. Konen introduced
4 PGE to a few potential investors, none showed serious interest in starting a new paper
5 company or progressed beyond initial due diligence conversations.

6 Then, in April 2019, with Maynards' scheduled auction date quickly approaching,
7 Mr. Konen introduced PGE to an investment company called Columbia Ventures. For the
8 first time, PGE was dealing with an investor that sought to move forward. Columbia
9 Ventures developed a business plan under which it would purchase the mill's old
10 equipment from Maynard's, stand up a new paper company, and negotiate a new lease with
11 PGE. Over the next two months, I worked very quickly with Columbia Ventures to
12 negotiate a new lease and to inform Columbia Ventures regarding the electric service
13 options available to a new owner of the mill. In these discussions, PGE made clear that
14 any customer at the site would be treated as a new customer for purposes of obtaining long-
15 term direct access (LTDA). We also explained that the new load direct access (NLDA)
16 program likely would not be ready in time for their new company to participate. Columbia
17 Ventures communicated that it understood that the new company would need to begin
18 service on cost-of-service rates.

19 Thanks to both parties' hard work, the lease negotiations were successful, and PGE
20 entered a lease agreement with a new company formed by Columbia Ventures, Willamette
21 Falls Real Estate, on June 18, 2019, one day before the scheduled auction. This occurred
22 more than 16 months after WLP stopped paying its bills, and seven months after WLP's
23 lease had been terminated and its electric service accounts closed. We understand that
24 Columbia Ventures evaluated the economics of starting a new paper company at the site,
25 created a business plan with the knowledge that the paper company would be on cost-of-
26 service rates initially, and decided to move forward with the investment with eyes wide
27 open.

1 Columbia Ventures incorporated Willamette Falls Paper Company (WFalls), which
2 purchased the mill assets from Maynards and began operations on July 1, 2019. The
3 COVID-19 pandemic has significantly impacted demand for WFalls' product, and PGE as
4 WFalls' landlord has worked diligently to support the company's continued operation,
5 accommodating requests for financial and other assistance during these challenging
6 economic times. However, PGE the utility provider cannot grant WFalls preferential
7 treatment with respect to LTDA, nor can we waive the Commission's NLDA rules to assist
8 WFalls.

II. BACKGROUND

9 **Q. What was PGE's relationship with complainant West Linn Paper Company.**

10 A. Beginning in 1997, PGE and WLP were parties to a lease agreement, pursuant to which
11 WLP leased a portion of the property that PGE owns near Willamette Falls to operate a
12 paper mill on the property.¹ PGE witness Brian Clark describes the property and PGE's
13 hydroelectric operations at the Sullivan Plant located on the property in greater detail. In
14 addition to being WLP's landlord, PGE provided electric service to WLP at the property
15 pursuant to an electric service agreement. PGE witnesses Karla Wenzel and Robert
16 Macfarlane describe the history of PGE's electric service to the property.

17 **Q. Under the terms of the 1997 lease, who was responsible for paying for electric service**
18 **to the leased property?**

19 A. WLP. The lease provided, [REDACTED]
20 [REDACTED]

21 [REDACTED]²

22 **Q. Did PGE and WLP have a good working relationship?**

23 A. Yes. The two entities worked together cooperatively for many years.

¹ PGE/101.

² PGE/101, Faist/17.

III. WLP SHUTDOWN AND IMPACTS

1 **Q. When did PGE learn that WLP was shutting down the paper mill and winding up its**
2 **corporate operations?**

3 A. On October 19, 2017, WLP sent a letter to PGE and other suppliers in which WLP provided
4 notice that it was ceasing operations and would begin winding up its business and
5 liquidating its assets under the supervision of its secondary lien lender and parent company,
6 Belgravia.³

7 **Q. When you first heard about the WLP shutdown, did you understand that the**
8 **shutdown was temporary or that the mill could potentially be re-started in the future?**

9 A. It was clear from both WLP's notice to PGE and the tone of the news articles I have read
10 that WLP was ceasing operations, winding up its business under the supervision of its
11 secondary lien holder, and ending the mill's 128 years of operation.⁴ Thus, it was clear
12 that WLP was shutting down. I understood that this meant the site might ultimately be
13 open to use by other companies or investors, but the future use of the site was unknown.

14 **Q. Did the process of winding up its business proceed as WLP had envisioned?**

15 A. No, on October 25, 2017, three unsecured creditors filed an involuntary Chapter 7
16 bankruptcy petition against WLP.⁵

17 **Q. What is your understanding of a Chapter 7 bankruptcy proceeding?**

18 A. I am not a lawyer, but I understand that a Chapter 7 bankruptcy generally involves a trustee
19 gathering a debtor's assets into a trust, liquidating those assets, and using the proceeds to
20 pay debts to claim holders.

21 **Q. What happened in the bankruptcy proceeding?**

22 A. I understand that WLP, the unsecured creditors, and the secured creditors eventually
23 entered a Creditors' Trust Agreement to establish a trust for the benefit of creditors.⁶

³ PGE/102.

⁴ See, e.g., PGE/202; PGE/203.

⁵ *In re West Linn Paper Co.*, Case No. 17-33992-tmb7, U.S. Bankruptcy Court for the District of Oregon (filed Oct. 25, 2017).

⁶ WFalls/101.

1 Subject to the Creditors' Trust Agreement, the WLP bankruptcy proceeding was
2 voluntarily dismissed on February 22, 2018. I also understand that previously, WLP's
3 secured creditors had entered a liquidation agreement. The effect of these agreements was
4 that WLP's physical assets were being liquidated and the proceeds used to pay down
5 WLP's debts to its claim holders.⁷ My understanding is that the end result of this process
6 was that WLP did not control or retain title to any significant assets.

7 **Q. Did the Creditors' Trust Agreement provide for the mill assets to be sold to a new**
8 **operator that would re-start the mill, as Mr. Konen suggests?**⁸

9 A. No. The Creditors' Trust Agreement does not mention or provide for a mill re-start and it
10 does not require that the mill assets be sold collectively to a new operator. Mr. Konen says
11 that this was WLP's expectation in executing the Creditors' Trust Agreement, but that
12 expectation is not reflected anywhere in the agreement itself.⁹

13 **Q. As WLP wound up operations during and after the bankruptcy, was PGE in**
14 **conversation with WLP about next steps at the mill site?**

15 A. Yes. During the first half of 2018, PGE, WLP, and its parent companies Belgravia and
16 Stern were in ongoing discussions regarding potential redevelopment of their respective
17 properties surrounding the mill site, amending or terminating the lease between PGE and
18 WLP, and responsibility for ongoing electric service costs for the property.

19 **Q. Before providing more information about these discussions, could you please clarify**
20 **the relationship between Stern, Belgravia, and WLP?**

21 A. Although the corporate structure is somewhat complicated, at a high level, I understand
22 that Belgravia owned WLP and that Stern owned Belgravia.¹⁰ PGE frequently spoke with
23 representatives from Stern when discussing the WLP lease and redevelopment plans. For
24 simplicity, I will generally refer to Stern and Belgravia collectively as "Stern."

⁷ See WFalls/100, Konen/4.

⁸ WFalls/100, Konen/5.

⁹ WFalls/101.

¹⁰ PGE/103, Faist/7-10.

1 **Q. And what was your understanding of the roles these entities played in the discussions?**

2 A. As WLP was winding up its business under the supervision of its secured creditors, WLP
3 was still the lessee at the site but WLP's assets were being independently liquidated and it
4 could not pay its bills. Stern was looking for ways to maximize the value of the land WLP
5 owned at the site through negotiations with PGE.

6 **A. Redevelopment and Lease Amendment Discussions**

7 **Q. Please explain the discussions surrounding redevelopment.**

8 A. Mr. Clark was the PGE lead on these discussions and will testify about them in more detail.
9 But at a high level, PGE and Stern engaged in discussions about jointly redeveloping the
10 land for uses other than a mill—including potentially for residential or mixed use. As part
11 of this process, PGE engaged with the City of West Linn and other interested parties,
12 obtained a Phase II environmental assessment, and commissioned a redevelopment study.

13 **Q. Please explain the concurrent discussions surrounding the management of the**
14 **existing lease.**

15 A. The existing WLP lease was in breach because WLP had stopped paying rent under the
16 lease after January 2018 and had stopped paying for any electric service after February
17 2018. WLP also failed to reimburse PGE for the real property taxes for which it was
18 responsible under the WLP lease, which was an additional event of default.

19 Recognizing that PGE would have the right to terminate the WLP lease due to
20 WLP's breaches, PGE and Stern discussed amending the lease during the redevelopment
21 process to adjust WLP's rent, maintain the access and basic services required for the
22 Sullivan Plant, and to preserve each party's rights while they jointly explored
23 redevelopment options. We also discussed PGE taking responsibility for the electric
24 service to the site. However, in all of these discussions, PGE was very clear that it was not
25 waiving any of its rights or WLP's obligations under the lease by discussing, or providing

1 draft terms for, a lease amendment. Even though PGE did not exercise its right to terminate
2 the WLP lease, WLP remained in breach under the lease from January 2018 onward.

3 **Q. During what timeframe did the redevelopment and lease-amendment discussions**
4 **occur?**

5 A. These discussions began in November 2017, shortly after the shutdown, and continued
6 intermittently throughout the first half of 2018. However, by the fall of 2018, Stern had
7 determined that joint redevelopment did not seem promising and informed PGE that it no
8 longer wished to spend additional resources at WLP.

9 **Q. What did PGE do upon learning that Stern was no longer interested in joint**
10 **redevelopment?**

11 A. At that time, the WLP lease remained in breach, and it had become clear that Stern had no
12 intention of paying the past-due rent, electricity, and property tax bills to remedy the
13 default. Therefore, PGE's discussions with Stern turned to negotiating an agreement to
14 mutually terminate the WLP lease that would remove the lingering uncertainty, stop the
15 accrual of unpaid obligations to PGE, and ensure that operation of PGE's Sullivan Plant
16 was not impacted.

17 **Q. During the redevelopment and lease-amendment discussions, did PGE understand**
18 **that the site's future would involve a new company purchasing the paper mill's assets**
19 **and starting new paper-making operations at the mill site?**

20 A. No. During these conversations, the future of the site was uncertain. Mr. Clark will testify
21 to the specific conversations during early 2018, but my understanding is that redeveloping
22 the site would have precluded a re-start of the mill. So, while PGE understood that Mr.
23 Konen was seeking an investor to purchase WLP's equipment and start paper-making
24 operations at the site, we did not view this possibility as a sure thing. In fact, because PGE
25 was not aware of any potential new owners being identified during the first half of 2018,
26 and because Stern seemed focused on redevelopment efforts that would not have been

1 compatible with a re-start, PGE considered a mill re-start to be unlikely during this
2 timeframe.

3 **Q. During the redevelopment and lease-amendment negotiations, did WLP, Stern, or**
4 **Mr. Konen raise questions or concerns about a potential future owner of the mill's**
5 **continued eligibility to receive direct access service under WLP's LTDA Agreement**
6 **with PGE?**

7 A. No, this issue did not come up.

8 **Q. Was Mr. Konen involved in the redevelopment and lease-amendment discussion?**

9 A. Yes, I understand that Mr. Konen was still employed by WLP at this time, and he attended
10 most if not all of the meetings we had with Stern to discuss redevelopment and amendment
11 of the lease.

12 **B. Lease Termination Discussions**

13 **Q. You noted that when the discussions surrounding redevelopment proved**
14 **unsuccessful, PGE and Stern turned their attention to negotiating a lease termination**
15 **agreement. Were you involved in the lease termination discussions?**

16 A. Yes, I was brought in in May 2018 to be the lead PGE negotiator in the complex discussions
17 with Stern. Therefore, I participated in the final meetings in which the parties discussed
18 redevelopment and the potential amendment of the WLP lease, and once it became clear
19 that redevelopment was off the table, I led the lease-termination negotiations.

20 **Q. What were PGE's objectives in the lease-termination negotiations?**

21 A. PGE sought to maintain an ongoing working relationship with Stern, which was not only
22 WLP's parent company but also owned the land adjacent to PGE's property at the mill,
23 over which PGE has an easement to access portions of PGE's property and the Sullivan
24 Plant. PGE also sought to gain control from WLP of the infrastructure needed to maintain
25 its property and to operate the Sullivan Plant, including fire suppression, effluent system,
26 and sewer lifts. Finally, PGE sought a clean break from the terms of the WLP lease so that

1 there would not be any uncertainty or dispute about the parties' rights going forward or
2 allegations of wrongful termination.

3 **Q. Please describe the process and timeline for negotiating the lease-termination**
4 **agreement.**

5 A. On August 29, 2018, I emailed Stern a term sheet for an agreement to mutually terminate
6 the WLP lease. Once Stern agreed in concept to the term sheet, I provided a draft
7 termination agreement on September 14. After that, discussions stalled, and on October
8 24, 2018, PGE decided to issue a default notice to WLP with respect to the WLP lease.¹¹
9 I contacted Stern at the same time to convey that PGE was still interested in pursuing a
10 mutual termination agreement but was also issuing the default notice in case the mutual
11 termination discussions were not fruitful. After that, negotiation of the mutual termination
12 agreement continued in November. Although the parties allowed the lease to terminate
13 automatically by action of the default notice on November 26, 2018,¹² we continued to
14 refine the mutual termination agreement, which was fully executed on January 29, 2019.
15 The Mutual Termination of Lease Agreement had an effective date of November 26, 2018,
16 which coincided with the date on which PGE terminated the WLP lease.¹³

17 **Q. Mr. Mullins suggests that the fact that the Mutual Termination of Lease Agreement**
18 **was backdated to be effective on November 26, 2018 is “of note.”¹⁴ Please explain**
19 **why the Agreement was signed after the lease terminated.**

20 A. We allowed the lease to terminate automatically on November 26, pursuant to the default
21 notice, but both parties nevertheless felt there was value in executing a Mutual Termination
22 of Lease Agreement to provide clarity surrounding the termination. This was, obviously,
23 a mutual decision, as the Agreement was negotiated and executed by both PGE and WLP.

¹¹ PGE/104.

¹² PGE/105, Faist/43.

¹³ WFalls/104.

¹⁴ WFalls/200, Mullins/8.

1 There was nothing nefarious or underhanded about the backdating, if that is what Mr.
2 Mullins is suggesting.

3 **Q. Was Mr. Konen involved in the lease-termination discussions?**

4 A. No. Once Stern decided it no longer wished to invest in the property and halted its own
5 efforts to find a buyer interested in operating a paper mill, our discussions regarding
6 termination of the WLP lease were with Stern only and did not involve Mr. Konen. I
7 understand that Stern allowed Mr. Konen to continue seeking a buyer for the mill assets
8 during this time.

9 **Q. During these conversations regarding lease termination, did you understand that a
10 new paper company would be starting operations at the site?**

11 A. No. While I knew that Mr. Konen was continuing to market the mill to potential investors
12 in the hope that a new paper company would operate at the site, I thought it was unlikely
13 that a potential investor would be found, given the significant economic challenges in the
14 industry that had forced WLP to shut down. PGE did not talk with any potential buyers
15 until late October 2018, and as I explain below, it was only in late spring 2019 when
16 conversations with Columbia Ventures became serious that I thought Mr. Konen might
17 actually find an investor interested in starting a paper company at the site. I credit Mr.
18 Konen for his persistence and tenacity in finding such an investor.

19 **Q. During the lease-termination negotiations, did WLP or Stern raise questions or
20 concerns about a potential future owner of the mill's continued eligibility to receive
21 direct access service under WLP's LTDA Agreement?**

22 A. No, this issue did not come up.

23 **C. Electric Service Discussions and Account Transition**

24 **Q. If you were not discussing direct access, please explain why discussions surrounding
25 electric service at the mill site occurred during 2018 following the shutdown.**

1 A. In addition to being in default on its lease payments, WLP was in default on its electric
2 service payments to PGE beginning in February 2018. WLP, like any electric service
3 customer, was obligated to pay PGE for its electric service under the terms of its electric
4 service tariff and agreements with PGE, but it had also assumed responsibility for paying
5 for electric service at the site under the terms of its lease. As the missed payments
6 continued to accrue, PGE needed to determine how to address the issue of WLP's ongoing
7 default on its electric service account.

8 **Q. What were PGE's concerns and considerations in determining how to handle electric**
9 **service to the site?**

10 A. PGE's and WLP's rights and obligations with respect to electric service were subject to
11 two sets of agreements. As noted above, the WLP lease laid out the private commercial
12 rights and obligations of PGE and WLP and required WLP to pay for all utilities including
13 electric service at the site. This is not an uncommon commercial lease arrangement. In
14 addition to its lease, WLP had an electric service account with PGE. WLP's electric service
15 account was subject to the agreements and tariffs governing that service, which are under
16 the Commission's authority.

17 Handling WLP's non-payment for electric service was complicated by PGE's need
18 to ensure continued electric service at the site. As Mr. Clark explains, WLP's operations
19 at the former mill site were the primary electric load at the site when the mill was in
20 operation, but the site also required a lower—but critical—level of electric service for some
21 basic environmental and safety equipment, as well as for some elements of PGE's
22 hydroelectric operations. Thus, PGE as a landlord needed to ensure service at that site was
23 maintained to protect its property, and PGE as a utility provider needed to ensure service
24 was maintained to allow for the continued operation of the Sullivan Plant. As a result, PGE
25 could not simply disconnect service to the site as it normally would have for a delinquent
26 customer.

1 Notwithstanding its clear duty to pay for all electric service to the site as part of its
2 lease and pursuant to the applicable agreements and tariffs for electric service, WLP
3 stopped paying after the shutdown. PGE was uncertain how to handle the issue because
4 the elements of site protection critical to PGE's uses of the property were intertwined with
5 WLP's operations, as Mr. Clark explains.¹⁵

6 **Q. What was WLP's position regarding the electric service?**

7 A. Despite WLP's clear obligation to pay for electric service under its lease, Stern and Mr.
8 Konen contended that PGE should take responsibility for the payments given that electric
9 service to the site primarily benefitted PGE and its Sullivan Plant after the shutdown.

10 **Q. Did PGE agree?**

11 A. While PGE agreed in concept that it should ultimately be responsible for its own electric
12 needs at the site after the mill shutdown, PGE also made clear repeatedly that it was not
13 waiving any of its rights or remedies under the WLP lease terms, which remained in effect.

14 **Q. How did PGE ultimately handle the electric service issue at the site?**

15 A. Eventually, it became clear that WLP and its parent companies did not intend to continue
16 paying for electric service at the site under any circumstances. As the accounts in WLP's
17 name continued to accrue late payments over the course of 2018, PGE determined that the
18 best approach would be for PGE to close WLP's account and open a new account in PGE's
19 name to take responsibility for service to the site. As Mr. Clark explains, this process took
20 some time, but the account transition occurred on November 15, 2018.¹⁶

IV. TRANSFERS OF WLP'S ASSETS

21 **Q. While the parties were discussing lease termination and electric service arrangements**
22 **in the wake of the WLP shutdown, did WLP own the mill assets?**

23 A. No. WLP's assets were being liquidated for the benefit of its creditors. I understand that
24 Belgravia funded the Creditors' Trust, and WLP's assets were then transferred to Belgravia

¹⁵ PGE/200, Clark/6.

¹⁶ PGE/200, Clark/17.

1 A. No.

2 **Q. Please describe the transfer from Maynards to WFalls.**

3 A. On June 18, 2019, the day before the assets were scheduled to be sold off individually at
4 auction, a newly created corporation called Willamette Falls Paper Company, Inc.
5 purchased the mill assets from Maynards.²¹ The agreement noted that Maynards

6 [REDACTED].²² The agreement
7 defined the “Assets” transferred as almost identically to the Maynards and Belgravia
8 agreement: [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]²³ The agreement did
13 not purport to convey any contract rights.

14 **Q. What was the end result of this series of transfers?**

15 A. I understand that after this series of transfers, the personal property (machinery, office
16 equipment, etc.) formerly owned by WLP at the mill site was eventually owned by WFalls.

17 **Q. Does WLP still exist as a corporate entity?**

18 A. Yes. The entity remains registered with the Oregon Secretary of State.²⁴

V. NEGOTIATIONS WITH POTENTIAL NEW OWNERS OF THE MILL

19 **Q. You mentioned that Mr. Konen was seeking a new owner to re-start the mill. Did you**
20 **understand that a re-start was a sure thing?**

²¹ Although the Agreement was signed “as of” June 18, 2019, I understand that the entity Willamette Falls Paper Company, Inc. was not actually registered with the State of Oregon until June 25, 2019. Oregon State Business Entity Search, Willamette Falls Paper Company, Inc.:
http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_detl?p_be_rsn=2065896&p_src=BR_INQ&p_print=FALSE.

²² WFalls/110, Konen/1.

²³ WFalls/110, Konen/1.

²⁴ Oregon State Business Entity Search, West Linn Paper Company:
http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_detl?p_be_rsn=716107&p_src=BR_INQ&p_print=FALSE

1 A. No. My understanding was that Maynards planned to sell the equipment at auction, which
2 was scheduled for June 19, 2019, to buyers who would remove the equipment from the site
3 unless a new owner could be found that was willing to buy all of the assets and potentially
4 re-start the mill. As I discussed above, PGE and Stern had engaged in discussions
5 involving various redevelopment options for the site. I viewed the possibility of a new
6 paper company starting operations at the site as an unlikely possibility until late spring
7 2019 when Columbia Ventures, WFalls' parent company, progressed in its discussions
8 with PGE to the point of negotiating a new lease, proving the seriousness of its intentions.

9 **Q. When did you begin talking with new entities interested in forming a new paper**
10 **company to purchase the mill assets and re-start paper-making operations at the site?**

11 A. Beginning in October 2018, Brian Konen introduced us to entities with whom he had been
12 discussing a potential mill re-start.²⁵

13 **Q. How many entities did you talk to about potentially re-starting the mill?**

14 A. I would estimate that I talked to four different entities, but I understand that Brian Konen
15 talked to others that he did not introduce to PGE. Most of our conversations with these
16 suitors were fairly cursory. We provided information to assist in their due diligence, but
17 discussions did not proceed past that phase—presumably because the economics of starting
18 a new paper company were not feasible for most parties. Columbia Ventures was the last
19 entity we talked to, so we were surprised when it became clear that they actually might
20 proceed with the re-start. I will describe our discussions with Columbia Ventures in more
21 detail below.

22 **Q. What was Mr. Konen's role in your conversations with potential new owners?**

23 A. It varied. Mr. Konen often introduced us to the prospective new owners and sometimes
24 attended meetings between them and PGE. It was not clear to me on whose behalf Mr.
25 Konen was working during this time—only that his objective was to find an investor who

²⁵ See PGE/103, Faist/5-6. Note that we did have conversations with Maynards about re-starting the mill in the March 2019 timeframe.

1 would be interested in purchasing the mill equipment and starting a paper company at the
2 site. I understood from Stern that Mr. Konen was no longer on WLP's payroll after the
3 end of 2018.

4 **Q. When did you first meet with Columbia Ventures, W Falls' parent company, about**
5 **entering a new lease that would allow Columbia Ventures to start a new paper-**
6 **making company?**

7 A. Mr. Konen first introduced me to Columbia Ventures by email on April 10, 2019.²⁶ Our
8 first in-person meeting occurred on April 16, 2019.

9 **Q. Who is Columbia Ventures?**

10 A. As I understand it, Columbia Ventures is a private equity diversified holding company.
11 According to Columbia Ventures' website,²⁷ the company's portfolio includes a broad
12 array of holdings, including investments in agriculture, augmented reality, biomedical,
13 manufacturing, real estate development, software, and telecommunications companies,
14 among others.

15 **Q. What is Mr. Konen's relationship with Columbia Ventures?**

16 A. My understanding is that Mr. Konen does not hold a position with or have any financial
17 interest in Columbia Ventures.²⁸

18 **Q. What was Columbia Ventures' role in the negotiations with PGE?**

19 A. Columbia Ventures was the final third-party investor that Mr. Konen brought to the table
20 that expressed interest in purchasing WLP's old equipment, signing a new lease with PGE,
21 and starting a new paper company. Despite Mr. Konen's role as a go-between, I viewed
22 Columbia Ventures as the actual counterparty during the negotiations. Columbia Ventures
23 had the money to invest; Columbia Ventures investigated the property and the options at
24 the site; Columbia Ventures formed the real estate company that ultimately signed a new
25 lease with PGE; and, importantly, Columbia Ventures eventually created a new paper

²⁶ PGE/105, Faist/42.

²⁷ Columbia Ventures Corporation, Portfolio: <https://colventures.com/portfolio-2/>.

²⁸ PGE/103, Faist/1.

1 company, W Falls, in June 2019. Mr. Konen was copied on some of the emails between
2 PGE and Columbia Ventures, but he also did not participate in many of the key
3 conversations. Despite Mr. Konen's intermittent involvement, I did not view him as the
4 party prepared to make financial or legal commitments necessary to start a new paper
5 company at the site.

6 **Q. Please provide an overview of the initial discussions with Columbia Ventures.**

7 A. At the initial meeting on April 16, we discussed lease, electric service, and environmental
8 issues related to the mill site with Columbia Ventures CEO Ken Peterson and Mr. Konen.
9 PGE provided information and responded to questions to assist Columbia Ventures as it
10 began the due diligence process.

11 **A. Discussion of Electric Service Options**

12 **Q. As Columbia Ventures considered entering a lease with PGE to start a new paper**
13 **company, was PGE clear from the outset of the conversations with Columbia**
14 **Ventures that the new mill owner would not be able to simply resume WLP's LTDA**
15 **service at the mill site?**

16 A. Yes. On April 22, 2019, at 3:23 p.m., Mr. Peterson emailed me to ask whether PGE would
17 be providing direct access service at the site or if a tariff product was the only option. I
18 responded the next day and explained that PGE has long- and short-term direct-access
19 options and that we were exploring a NLDA program that wasn't fully developed, but I
20 confirmed that the primary way of providing electricity to a new company at the outset
21 would be under cost-of-service rates.²⁹

22 Also on April 22, at 5:43 p.m., Mr. Peterson introduced me to James Buchal, an
23 attorney that Columbia Ventures retained to assist them in understanding the electric
24 service options. In the introduction email Mr. Peterson stated his understanding: [REDACTED]

25 [REDACTED]

²⁹ PGE/105, Faist/39-40.

3 [REDACTED]³⁰ Thus, Columbia Ventures clearly understood PGE's position regarding
4 LTDA within one week of initiating conversations with PGE and beginning its due
5 diligence process. I assume that if the inability to immediately resume LTDA had been a
6 non-starter for Columbia Ventures, it would not have proceeded with due diligence,
7 negotiated a lease with PGE, purchased the paper-making equipment from Maynards, and
8 created a new paper company.

9 I note that my testimony is consistent with Mr. Konen's testimony that PGE first
10 raised concerns about a new owner's continued LTDA eligibility in March 2019,³¹ which
11 was *before* PGE began talking to Columbia Ventures.

12 **Q. Did PGE continue to discuss electric service options with Mr. Buchal?**

13 A. Yes. Because my primary focus was the lease negotiations, on April 29, I emailed Mr.
14 Peterson and Mr. Buchal and offered to set up a meeting about electricity supply with
15 PGE's subject-matter experts.³² We scheduled a meeting with Mr. Buchal on May 2.

16 **Q. Please summarize the electric service conversations with Mr. Buchal.**

17 A. A large PGE team met with Mr. Buchal to discuss electric service options. At that meeting,
18 PGE reiterated its position that WLP's LTDA Agreement was not relevant to the electric
19 service options available to a new owner.³³ During the meeting and in subsequent email
20 exchanges, PGE clarified for Mr. Buchal when the mill would be eligible to transition to
21 LTDA (not immediately upon starting up) and helped him develop estimates for serving
22 the mill under cost-of-service rates at the outset and under a possible future transition to
23 direct access.³⁴ We also discussed the fact that new load direct access (NLDA) was not

³⁰ WFalls/202, Mullins/54.

³¹ WFalls/100, Konen/7, 14.

³² WFalls/202, Mullins/54.

³³ WFalls/202, Mullins/69 (PGE meeting notes indicating that in response to a request for old contracts and billings, PGE explained the prior direct access contract was not relevant and would not be the basis for any new contracts).

³⁴ PGE/105, Faist/35-38.

1 going to be approved in time for a mill restart, an idea confirmed by Tyler Pepple, an
2 attorney who had represented WLP³⁵ and who also attended the meeting.

3 **Q. Did Columbia Ventures understand that LTDA would not be available to them**
4 **immediately upon restart?**

5 A. Yes. On May 8, 2019, Mr. Peterson emailed me, [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 [REDACTED] ³⁶

9 **Q. What was PGE's understanding based on its conversations with Columbia Ventures**
10 **regarding electric service?**

11 A. PGE understood that Columbia Ventures was entering the new lease and intending to
12 purchase the mill equipment and start a new paper company with the clear understanding
13 that it would be a cost of service customer and would not be eligible to assume taking
14 LTDA service under WLP's LTDA Agreement or to access the NLDA program. We also
15 understood that Columbia Ventures made the business decision to proceed with the lease
16 fully informed about its electric service options, including the economic impacts of a cost-
17 of-service option. The fact that W Falls did not file the instant complaint regarding LTDA
18 eligibility until 11 months *after* it began taking service on cost-of-service rates supports
19 my understanding that W Falls was not surprised and did not have its expectations upset
20 when it began operating on cost-of-service rates. Mr. Peterson is a savvy and experienced
21 investor, he hired legal counsel to advise and assist him in assessing the electric service
22 options available, and PGE clearly communicated its position to Columbia Ventures from
23 the outset of the negotiations. Therefore, I assume Columbia Ventures was fully informed
24 and accounted for spending at least some time on cost-of-service rates when making the
25 business decision to sign the lease and re-start the mill.

³⁵ PGE/103, Faist/3-4.

³⁶ PGE/105, Faist/29.

1 **B. Discussion of Lease Terms**

2 **Q. Was PGE also discussing the lease terms with Columbia Ventures during this time?**

3 A. Yes. I exchanged several proposals and counterproposals with Mr. Peterson regarding the
4 rent terms of a new lease during the month of May. When it appeared that the parties were
5 nearing mutually agreeable rent terms, PGE provided Columbia Ventures with a very
6 detailed term sheet on June 3, 2019.³⁷ In transmitting this term sheet, I specifically noted
7 that PGE had worked very quickly to put together a more detailed term sheet than we
8 normally would begin negotiations with because we were mindful of the tight timeframe
9 necessitated by the upcoming auction date. I immediately offered to schedule a meeting
10 with the Columbia Ventures team to discuss the term sheet and next steps. On June 5, PGE
11 met with Mr. Peterson, Mr. Konen, and counsel for Columbia Ventures.

12 **Q. After the meeting, did negotiations continue quickly?**

13 A. Yes. On June 6, Columbia Ventures provided revisions to the draft term sheet.³⁸ PGE
14 immediately engaged outside counsel to draft the new lease itself and began informing
15 PGE's executive team about the lease terms, in order to keep the negotiation process
16 moving as quickly as possible.³⁹ In the meantime, while the lease was being drafted, I
17 reached out to Mr. Peterson and Mr. Konen to proactively explain and discuss with them
18 some of the revisions PGE would request from their latest term sheet.⁴⁰

19 The next day, June 12, Mr. Peterson emailed me regarding various lease terms and
20 also expressed his appreciation for the phone call the day before and for my efforts to move
21 the negotiations forward as quickly as possible.⁴¹ Mr. Konen also thanked me for my
22 efforts. When the draft lease took longer to prepare than expected, I continued working
23 through issues internally and with Columbia Ventures in an effort to move the negotiations

³⁷ PGE/106, Faist/9-17.

³⁸ PGE/107, Faist/1.

³⁹ See PGE/105, Faist/2.

⁴⁰ PGE/105, Faist/2.

⁴¹ PGE/105, Faist/1.

1 forward. PGE provided a draft of the new lease to Columbia Ventures on June 14, and I
2 followed up with additional information on open issues the same day.

3 On June 16, Columbia Ventures provided revisions to the draft lease, and on June
4 17, the parties exchanged emails about outstanding issues all day. I also spent the day
5 walking PGE management through the lease so that they would be prepared to sign it.

6 **Q. Were the parties able to reach agreement on the lease terms?**

7 A. Yes. The lease was fully executed on June 18, 2019, one day before the mill assets were
8 scheduled to be sold at auction.⁴² The parties to the lease are PGE and Willamette Falls
9 Real Estate, which is a subsidiary of Columbia Ventures that was formed on June 17,
10 2019.⁴³

11 **Q. Can you please clarify the relationship between Columbia Ventures, Willamette Falls
12 Real Estate, and complainant WFalls?**

13 A. Willamette Falls Real Estate and WFalls are both subsidiaries of Columbia Ventures, and
14 Columbia Ventures owns the majority interest in both entities.⁴⁴ Willamette Falls Real
15 Estate signed the lease with PGE and then sub-leased the leasehold premises to WFalls,
16 with PGE's consent.

17 **Q. What are your observations about the lease-negotiation process?**

18 A. I would characterize the negotiation process as very cooperative. Both parties worked hard
19 to complete the negotiations within the required timeline to allow Columbia Ventures the
20 opportunity to re-start the mill. I can attest that the PGE team worked diligently and in
21 good faith toward this goal, and this was certainly the fastest negotiation process of this
22 type in which I have been involved. Indeed, Mr. Peterson thanked me for helping get it
23 done in record time.⁴⁵ I personally was hopeful that we would be successful in our

⁴² WFalls/111.

⁴³ Oregon State Business Entity Search, Willamette Falls Real Estate, Inc.:
[http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_detl?p_be_rsn=2063890&p_srce=BR_INQ&p_print=F](http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_detl?p_be_rsn=2063890&p_srce=BR_INQ&p_print=FALSE)
[ALSE](#).

⁴⁴ PGE/103, Faist/11.

⁴⁵ WFalls/202, Mullins/56.

1 negotiations because we knew the mill could provide over 100 well-paying jobs for people
2 in my community. For all of these reasons, I found Mr. Konen's allegations⁴⁶ that PGE
3 used the impending auction date as leverage to force Columbia Ventures to agree to less
4 favorable lease terms to be inaccurate and frankly offensive.

5 **C. Responses to Complainants' Testimony**

6 **Q. Mr. Konen testified that when he discussed re-starting the mill with you in October**
7 **2018, he explained that a new owner of the mill would need all the same operating**
8 **parameters as WLP.⁴⁷ Did you understand him to be saying that the only way a mill**
9 **res-tart could be achieved was using direct access power?**

10 A. No. I understood that Mr. Konen desired the cheapest power available for a new owner of
11 the mill, which he thought might be direct access, but I informed him very clearly that
12 direct access might not be available and that there would need to be additional discussions
13 regarding power supply. At this time, I knew that the NLDA program was still being
14 developed, but I thought this could potentially be an option for a new mill owner.

15 **Q. Did you make any promises to Mr. Konen or a potential new owner of the mill that**
16 **they would be permitted to receive LTDA service, immediately upon starting up,**
17 **under WLP's LTDA Agreement?**

18 A. No. As I mentioned, in conversations about a potential re-start, I always made clear that
19 any new investor would need to follow up on electric service issues with the appropriate
20 PGE representatives. I consistently messaged that direct access availability was uncertain.
21 Mr. Konen and I did not discuss—and I certainly did not agree to—his view that a future
22 owner could continue taking service under WLP's LTDA Agreement.

⁴⁶ WFalls/100, Konen/19.

⁴⁷ WFalls/100, Konen/13.

1 **Q. Mr. Konen testified that an early draft of the lease negotiation term sheet**
2 **demonstrated PGE’s understanding the LTDA was available to the new owner of the**
3 **mill.⁴⁸ Is this accurate?**

4 A. No, Mr. Konen’s testimony on this point is factually inaccurate. The language he
5 references was added to the term sheet by counsel for Columbia Ventures—not by PGE.⁴⁹
6 The original PGE language in the term sheet that Columbia Ventures replaced said nothing
7 about direct access and simply stated: [REDACTED]

8 [REDACTED]
9 [REDACTED]⁵⁰ After
10 Columbia Ventures revised the draft term sheet to add the language that Mr. Konen
11 references, PGE never accepted this language or sent a term sheet back to Columbia
12 Ventures that contained this language, and PGE did not include such a provision in the
13 draft lease that it sent Columbia Ventures after receiving the redlined term sheet.
14 Therefore, the language that Mr. Konen references clearly did *not* demonstrate PGE’s
15 understanding that Columbia Ventures would be permitted to immediately begin LTDA by
16 taking over WLP’s LTDA Agreement, as it was not even PGE’s language. Moreover, any
17 references to direct access in the parties’ discussions likely stemmed from PGE’s
18 understanding that WFalls would seek to transition to LTDA in the future, rather than an
19 understanding that WFalls would be resuming service under WLP’s LTDA Agreement.

20 **Q. Mr. Konen testifies regarding conversations he had with PGE before Columbia**
21 **Ventures came into the picture. Is this testimony helpful?**

22 A. No. WFalls is the entity who ultimately re-started the mill and subsequently filed this case,
23 and PGE did not begin talking to WFalls’ parent company Columbia Ventures until April
24 10, 2019. In my experience with business negotiations, I would not expect that my
25 conversations with different potential counterparties would be conveyed to other potential

⁴⁸ WFalls/100, Konen/13-14.

⁴⁹ PGE/105, Faist/19-20; PGE/107.

⁵⁰ PGE/106, Faist/9.

1 counterparts—particularly since many of the discussions occurred pursuant to non-
2 disclosure agreements. I would expect that only my conversations with Columbia Ventures
3 would play a role in Columbia Ventures’ decision-making. To the extent Columbia
4 Ventures became aware of and had questions about conversations with prior suitors, I
5 would have expected Columbia Ventures to ask me about them directly during the
6 negotiation process to confirm that their understanding was correct. Because that did not
7 occur, I do not consider these prior conversations to be helpful in understanding PGE’s
8 negotiations with Columbia Ventures.

9 **Q. If conversations before Columbia Ventures arrived on the scene were relevant to this**
10 **case, were there prior conversations that should have alerted WLP and Mr. Konen to**
11 **PGE’s position that a new entity re-starting the mill would not be immediately eligible**
12 **for LTDA?**

13 A. Yes. On November 16, 2018, former WLP facilities manager John Otnes⁵¹ reached out to
14 PGE and inquired about electrical costs for a party to re-start the mill. PGE responded that
15 it was unable to provide an estimate based on the way the mill used to buy energy when it
16 was served by an Electricity Service Supplier. PGE provided an estimate of the costs per
17 month if the mill were to start back up with similar usage and loads on Rate Schedule 89T
18 paying cost-of-service rates. This should have alerted WLP to PGE’s position.

19 In addition, counsel for PGE met with attorney Tyler Pepple who was representing
20 WLP on March 19, 2019, and in the course of that conversation, PGE informed Mr. Pepple
21 that WLP’s LTDA Agreement had been terminated. PGE assumed that Mr. Pepple
22 informed Mr. Konen of this fact, although based on Mr. Konen’s testimony that “PGE

⁵¹ As Mr. Konen notes, Mr. Otnes was working as a contract employee for PGE at the time, but he was still using his WLP email address for this communication and PGE understood that he was in regular contact with Mr. Konen. WFalls/100, Konen/7-8. After PGE provided the cost estimate, Mr. Otnes did not convey to PGE the information in Mr. Konen’s testimony—that the analysis “confirmed that cost-of-service rates would not be economically viable for the Paper Mill.” WFalls/100, Konen/8.

1 never stated that the LTDA Agreement had expired, or had been terminated, or was
2 otherwise no longer effective,”⁵² we are not certain.

3 **Q. Mr. Konen testifies that you offered a lower lease rate for a new owner if it did not**
4 **take direct access.⁵³ Please explain.**

5 A. In an early brainstorming session with an earlier prospective owner (not Columbia
6 Ventures), I mentioned the possibility of bundling the lease and electricity payments and
7 having the mill remain on cost of service rates, but I expressly caveated my email with the
8 statement that this idea was only “in my head” and had not been vetted with PGE
9 management. Shortly thereafter, I learned that such an approach would not be appropriate,
10 and I did not make any such offer to Columbia Ventures or W Falls.

11 **Q. Mr. Konen alleges that PGE failed to provide WLP’s LTDA Agreement to Mr. Konen**
12 **and WLP legal representative Mr. Pepple upon request.⁵⁴ Please respond.**

13 A. Initially, when Mr. Pepple and Mr. Konen requested WLP’s LTDA Agreement, PGE was
14 not clear that they were authorized to represent WLP and receive WLP’s customer
15 confidential information, and so PGE did not provide the LTDA Agreement immediately
16 upon request. This uncertainty was informed by a conversation with Stern where they
17 stated that Mr. Konen was no longer representing Stern’s interest, a comment that I
18 understood to mean Mr. Konen was no longer involved with WLP. To remove that
19 uncertainty and support Mr. Konen in his re-start efforts, I called Stern to understand
20 whether sharing the LTDA Agreement was something that Stern would support. Although
21 Mr. Konen was no longer an employee of Stern, Stern was supportive of providing him a
22 copy of the agreement, but by that time, I understood that Mr. Konen and Columbia
23 Ventures had received a copy directly from Stern. Around the same time, Columbia
24 Ventures expressed that it understood and seemed to have accepted PGE’s position that the
25 new operator could not resume service under WLP’s LTDA Agreement. Even if our

⁵² WFalls/100, Konen/15.

⁵³ WFalls/100, Konen/14.

⁵⁴ WFalls/100, Konen/15.

1 understanding about whether Mr. Konen had a copy of the contract was in error, I can
2 assure the Commission that PGE did not withhold the LTDA Agreement with malicious
3 intent or out of a desire to conceal its contents, as Mr. Konen alleges.⁵⁵

4 **Q. Mr. Konen also testifies that WLP and WFalls could not have complied with the term**
5 **of WLP’s LTDA Agreement requiring consent for assignment because “neither WLP**
6 **nor WFalls could have known” this term existed given PGE’s refusal to provide the**
7 **agreement.⁵⁶ Do you agree?**

8 A. No. It was my understanding that Mr. Konen did receive a copy of the Agreement directly
9 from WLP’s parent company, an understanding that was supported by the fact that Mr.
10 Konen stopped asking for it. Based on my past experience with Mr. Konen, I did not think
11 that he would simply stop pursuing a copy if he had not received it and still wanted it.
12 Although I recently learned through discovery that my understanding that Mr. Konen had
13 obtained the agreement was incorrect,⁵⁷ I believe that companies like WLP and WFalls—
14 which have retained multiple attorneys over the course of our dealings with them and
15 employ experienced businesspeople like Mr. Konen—can and should be expected to
16 remain aware of the terms and obligations contained in the agreements that they sign,
17 particularly if they are relying on them for the success of a re-start of a mill in otherwise
18 challenging circumstances. I am not aware that losing a contract is a valid reason not to
19 comply with a contract’s terms. I understand that they looked to PGE to provide a copy of
20 the agreement when they could not locate it, but I note that the requests for the contract in
21 the spring of 2019 came well after WLP wound up its business and purportedly transferred
22 the LTDA Agreement to the third parties that owned the mill’s assets prior to WFalls
23 without informing PGE or seeking PGE’s consent.

⁵⁵ WFalls/100, Konen/15.

⁵⁶ WFalls/100, Konen/17.

⁵⁷ PGE/103, Faist/12-13.

1 A. Per Mr. Konen's testimony,⁶² [REDACTED]
2 [REDACTED]. I am aware that COVID-
3 19 has impacted their business, as it has impacted the entire economy.⁶³ I understand that
4 their business has been slow, as many of their customers are hotels, cruise ships, and other
5 industries that have been hit hard by the pandemic. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 **Q. Has PGE made accommodations to assist WFalls during this difficult time?**

10 A. Yes. On March 26, 2020, Mr. Konen reached out to PGE and asked for PGE's assistance
11 with two months of WFalls' rent obligation. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 [REDACTED]
16 [REDACTED] Since the
17 WFalls lease began, PGE as landlord has also contributed to various improvements at the
18 mill site that PGE was not obligated to contribute to under the terms of the WFalls lease.

19 **Q. Did WFalls remain current on their electric bills during this time?**

20 A. No. WFalls did not timely pay its April 2020 electric bill. In mid-May, it began paying
21 the past-due amount in installments and became current on its electric bill by the end of
22 May. Despite the missed payments and the fact that PGE held only a [REDACTED] security
23 deposit for WFalls' bills of approximately [REDACTED], PGE ultimately decided not to
24 increase WFalls' security deposit during this time. [REDACTED]
25 [REDACTED]

⁶² WFalls/100, Konen/12.

⁶³ See PGE/103, Faist/2.

⁶⁴ PGE/108, Faist/1-2.

1 [REDACTED]⁶⁵ (I note that Mr. Konen’s testimony
2 that “PGE has recently demanded that WFalls significantly increase the security
3 deposit...”⁶⁶ is incomplete and misleading.) In sum, PGE has tried to work with WFalls to
4 assist them in remaining afloat.

5 **Q. Mr. Konen testifies that, “Without a ready supply of affordable pulp and low-cost
6 electricity, the Paper Mill is not economically viable.”⁶⁷ Is this consistent with your
7 understanding?**

8 A. While I am not an expert on paper-making, I understand that the inputs Mr. Konen
9 mentions, along with the cost of labor, affect the mill’s cost of producing paper, but I also
10 understand that there are other factors that affect the mill’s viability. Most significantly,
11 there must also be sufficient demand for the paper products the mill produces for the mill
12 to be viable.⁶⁸ I understand that the market for WFalls’ product has been impacted by the
13 COVID-19 pandemic.⁶⁹ In sum, I do not think the mill’s electric service costs are the sole
14 or most significant cause of their current challenges, and I disagree that WFalls was
15 unaware they would not be able to access direct access.

16 **Q. Mr. Konen states that paying cost-of-service rates rather than direct access is not
17 viable long-term for WFalls.⁷⁰ Please respond.**

18 A. To be clear, PGE’s position is not that WFalls must remain on cost-of-service rates forever.
19 In our discussions with Columbia Ventures and WFalls about electric service, we always
20 understood and supported the fact that they would be starting up on cost-of-service rates
21 and seeking direct access in the future. Indeed, Mr. Konen testifies that WFalls starting up
22 on cost-of-service rates was intended to be temporary.⁷¹ Based on the calculations and
23 spreadsheets shared by Mr. Buchal, we also understood that Columbia Ventures had

⁶⁵ PGE/109, Faist/1-2.

⁶⁶ WFalls/100, Konen/19.

⁶⁷ WFalls/100, Konen/3.

⁶⁸ See PGE/103, Faist/2.

⁶⁹ PGE/103, Faist/2.

⁷⁰ WFalls/100, Konen/12, 20.

⁷¹ WFalls/100, Konen/17, 19.

1 accounted for the cost of starting up on cost-of-service rates in their business plan. If they
2 failed to do so, then in my opinion, that was a failure of either their business judgment or
3 of the advice they received in the due diligence process. Based on my experience with Mr.
4 Konen and Mr. Peterson, I highly doubt that they would make this type of mistake.

5 **Q. If Columbia Ventures and WFalls re-started the mill based on the expectation that**
6 **the facility would be able to resume LTDA service under WLP's Agreement, was this**
7 **a reasonable expectation?**

8 A. No. As I have explained, we were transparent with Columbia Ventures from the outset of
9 our negotiations. Mr. Konen has testified that he had different expectations or
10 understanding prior to March 2019, but his own testimony admits that he was informed of
11 PGE's position in March 2019.⁷² Therefore, any reliance on Mr. Konen's prior
12 understanding was patently unreasonable. If Columbia Ventures moved forward with the
13 re-start in the hopes that they would eventually prevail on a LTDA or NLDA complaint, I
14 believe that was not a sound business decision given the uncertainty of taking that approach
15 and the amount of time it took them to file this complaint. Again, I highly doubt Columbia
16 Ventures would make such a decision.

17 **Q. Mr. Mullins claims that PGE benefitted from the mill re-start because PGE receives**
18 **rent payments that are substantially higher than the rent under WLP's former**
19 **lease.⁷³ Please respond.**

20 A. PGE certainly benefits from the rent it receives from WFalls. To the extent Mr. Mullins is
21 suggesting that PGE benefits unjustly because WFalls' rent payments are higher than
22 WLP's rent under the prior lease, I disagree with this suggestion. WLP's lease was signed
23 in 1997, so it is unsurprising that the rent payments in WFalls' 2019 lease are higher. Also,
24 I negotiated WFalls' rent payments at length with Mr. Peterson, and I understand that both
25 sides believed that we had arrived at a fair price. Mr. Mullins is correct that WFalls' rent

⁷² WFalls/100, Konen/14.

⁷³ WFalls/200, Mullins/10.

1 increases each year, a structure not uncommon in commercial and industrial leases. Mr.
2 Peterson proposed, and PGE agreed to, this structure—
3 —to help WFalls get its business started and
4 allow time for it to ramp up production.

5 **Q. Both Mr. Konen and Mr. Mullins testify that if the paper mill closed, PGE ratepayers**
6 **would incur significant decommissioning or remediation costs.⁷⁴ Is this accurate?**

7 A. There are environmental remediation issues at the site that PGE will need to address, and
8 PGE also is working to decommission dilapidated buildings that were previously used by
9 former mill operators but are no longer used. However, the closure of WFalls would not
10 impose significant decommissioning or remediation costs on ratepayers for two reasons.

11 First, the paper mill’s operations on the site have only minimal impact on the timing
12 of PGE’s decommissioning and remediation activities. Decommissioning work is ongoing
13 currently, and much of it can proceed despite the fact that the mill is again operating. For
14 example, PGE demolished the “Mill J” building in early 2020 while WFalls was operating
15 the paper mill, and PGE has additional demolition work planned in the coming year. The
16 mill operations only impact PGE’s plans to the extent those plans involve areas currently
17 in use by the mill. While the areas currently in use may need some environmental
18 remediation work in the future, they are not scheduled for decommissioning any time soon.

19 Second, the mill’s operations do not impact the amount of the decommissioning
20 and remediation costs. PGE will address these issues consistent with state and federal legal
21 requirements, but the cost and timing of doing so are not significantly impacted by whether
22 or not WFalls is operating the mill.

23 **Q. Do you have any final observations regarding WLP and WFalls’ testimony and**
24 **requested relief?**

⁷⁴ WFalls/100, Konen/3; WFalls/200, Mullins/10, 29.

1 A. We understand that the mill is struggling, and we are sympathetic. We hope they can make
2 it through the current challenges. In PGE's role as WFalls' landlord, we have
3 accommodated their requests for assistance. However, we cannot offer WFalls preferential
4 treatment in their electric service arrangements that we would not offer any other customer,
5 nor can we waive the Commission's rules to assist a struggling business.

6 **Q. Does this conclude your direct testimony?**

7 A. Yes.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 101

1997 WLP Lease

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 102

October 19, 2017 WLP Mill Closure Notification

October 12, 2020



October 19, 2017

To All Our Valued Suppliers:

West Linn Paper Company, based in West Linn, Oregon, announced October 16, 2017 that it is ceasing operations and will commence a winding up of its business supervised by its second lien lender.

We are deeply disappointed to end the mill's 128 year history, the last twenty of which resulted from a major restructuring and restart when our current ownership took control of West Linn Paper Company. The commitment and support that we received from our employees, our lenders and our owners as we sought to adapt to structural changes in our markets has been remarkable. However, several unforeseeable events have led to a significant reduction in available pulp, making continued operations impossible. As a result, we will wind up our operations as quickly and efficiently as possible, beginning immediately. We do not anticipate orders for supplies being placed beyond the closure date.

Our second lien lender, with the consent of our senior lender, Wells Fargo Bank, has appointed Development Specialists, Inc. ("DSI") to supervise the winding up of our business, including the collection of accounts receivable, the sale of our finished goods and raw materials inventory, the sale of our machinery and equipment, and all payments made to Wells Fargo, our second lien lender, Belgravia Pulp Holdings Inc., our employees and our trade creditors. Many of you have already talked to DSI. Given that the amount of the secured claims against our assets likely exceeds the liquidation value of those assets, our second lien lender will be communicating with suppliers and other trade creditors in due course in connection with how suppliers can file proof of amounts due for the process of reconciling suppliers claims and ultimately any payments that can be made to suppliers.

We regret that unforeseen events have forced us to take this action. In the interim, if you have any questions, please contact Steve Victor (svictor@dsi.biz) or George Shoup (gshoup@dsi.biz) of Development Specialists, Inc. at (312)-263-4141.

Yours truly,

A handwritten signature in black ink that reads "Brian Konen".

Brian Konen
Chief Operating Officer

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 103

Discovery

Redacted

October 12, 2020

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 11:**

6 Please explain Mr. Konen's relationship to Columbia Ventures and WFalls from September 1,
7 2017, to the present, including the nature of any positions(s) Mr. Konen has held with Columbia
8 Ventures or WFalls and the time period during which he held any such position(s).

9 **WFALLS RESPONSE:**

10 Subject to, as limited by, and without waiving the foregoing General Objections, WFalls was
11 established in June 2019, by Mr. Konen and Columbia Ventures for the purpose of acquiring and
12 operating the Facility. Brian Konen is the President of WFalls. Brian Konen does not hold a
13 position or have any financial interest in Columbia Ventures. Columbia Ventures is not a party
14 to this proceeding.

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16 **Response Date 8-10-2020**

17 **Witness(es) Most Knowledgeable About Response:**

18 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 33:**

6 Has the market environment for WFalls' product changed since Columbia Ventures signed the
7 lease with PGE in June 2019? If so, please explain the change(s).

8 **WFALLS RESPONSE:**

9 Complainants object to this request because it states facts that are not accurate. Willamette Falls
10 Real Estate, not Columbia Ventures, signed the Lease with PGE. Notwithstanding, and subject
11 to, as limited by, and without waiving the foregoing General Objections, there are constant
12 changes to the market environment for WFalls' product, which is impacted by supply and
13 demand. As described in the testimony of Brad Mullins, many paper mills have shut down in the
14 last 20 years. As described in the testimony of Brian Konen, the margins in the paper industry
15 are thin. The pulp shortage that resulted in the shut-down of WLP and described in the
16 testimony of Brian Konen has been resolved. But, since restarting the Facility, the global
17 pandemic has impacted the market environment for WFalls' product.

18 **Response Date:** September 25, 2020

19 **Witness(es) Most Knowledgeable About Response:**

20 Brian Konen.
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WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY

Oregon Public Utility Commission

Docket UM 2107

PGE REQUEST NO. 35:

On March 19, 2019, Tyler Pepple of Davison Van Cleve PC attended a meeting at PGE to discuss the LTDA Agreement.

- a. Was Mr. Pepple representing WLP?
- b. Was Mr. Pepple representing Mr. Konen?
- c. Was Mr. Pepple representing WFalls?
- d. Was Mr. Pepple representing Columbia Ventures?
- e. Was Mr. Pepple representing another entity? If the answer is yes, please identify that entity.
- f. If the answers to a through d are “no,” please explain why Mr. Pepple was discussing the LTDA Agreement with PGE.

WFALLS RESPONSE:

a. Complainants object to this Request to the extent it requests attorney-client privileged or confidential information. Notwithstanding and subject to, as limited by, and without waiving the foregoing General Objections, Brian Konen, as president of WLP, retained Mr. Pepple to assist with energy issues after PGE indicated that LTDA may no longer be an option for the Paper Mill in March 2019. Mr. Konen retained Mr. Pepple on behalf of WLP and Mr. Konen’s efforts to restart the Paper Mill as a NewCo--WFalls.

b. Complainants object to the question to the extent it requests attorney-client privileged or confidential information. Notwithstanding and subject to, as limited by, and without waiving the foregoing General Objections, please see response to 35 (a) and Mr. Pepple did not represent Mr. Konen in his personal capacity.

1 c. Complainants object to the question to the extent it requests attorney-client
2 privileged or confidential information. Notwithstanding and subject to, as limited by, and
3 without waiving the foregoing General Objections, please see response to 35 (a) and Mr. Pepple
4 was not representing Columbia Ventures.

5 d. Please see Complainants' response to 35 (a).

6 e. Please see Complainants' response to 35 (a)-(d).

7
8 **Response Date:** September 25, 2020

9 **Witness(es) Most Knowledgeable About Response:**

10 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 39:**

6 Please identify every entity with whom Mr. Konen had discussions about purchasing WLP's
7 assets at the site and/or restarting the Facility.

- 8 a. Please identify the time periods during which Mr. Konen was engaged in
9 discussions with each entity identified in response to this data request.
10 b. For each entity identified in response to this data request, did Mr. Konen
11 introduce any representative of that entity to anyone at PGE? If the answer is yes,
12 please identify the name of the individual, the entity the individual represented,
13 and the date (or, if the date is not known, the approximate date) that the individual
14 was introduced to a PGE employee.

15 **WFALLS RESPONSE:**

- 16 a. Complainants object to this request to the extent it is unduly burdensome and not
17 likely to lead to the discovery of admissible evidence. Further, PGE already has
18 knowledge about which persons or entities may have met with PGE.
19 Notwithstanding, and subject to, as limited by, and without waving the foregoing
20 General Objections, Mr. Konen, as president of WLP, was in discussions with several
21 different investment groups about purchasing and restarting the Paper Mill including:
22 (1) Kevin Thomas and Nate Liebler. Mr. Konen introduced these
23 individuals to Brian Faist in approximately October, 2018.
24 (2) Ben Rankin, Phil Farmer and Mike Cammenga. This group reached
25 out to Brian Faist in approximately February 2019.
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(3) Maynards. Mr. Konen is not aware of any discussions between Maynards and PGE.

(4) Angeles Equity Partners. Mr. Konen is not aware of any meeting between Angeles Equity Partners and PGE.

(5) Columbia Ventures. Columbia Ventures first met with PGE in approximately April, 2019.

b. See Complainants response to 39 (a).

Response Date: September 25, 2020

Witness(es) Most Knowledgeable About Response:

Brian Konen

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 63:**

6 Please explain the relationship between Belgravia Pulp Holdings, Inc. and Stern Partners.

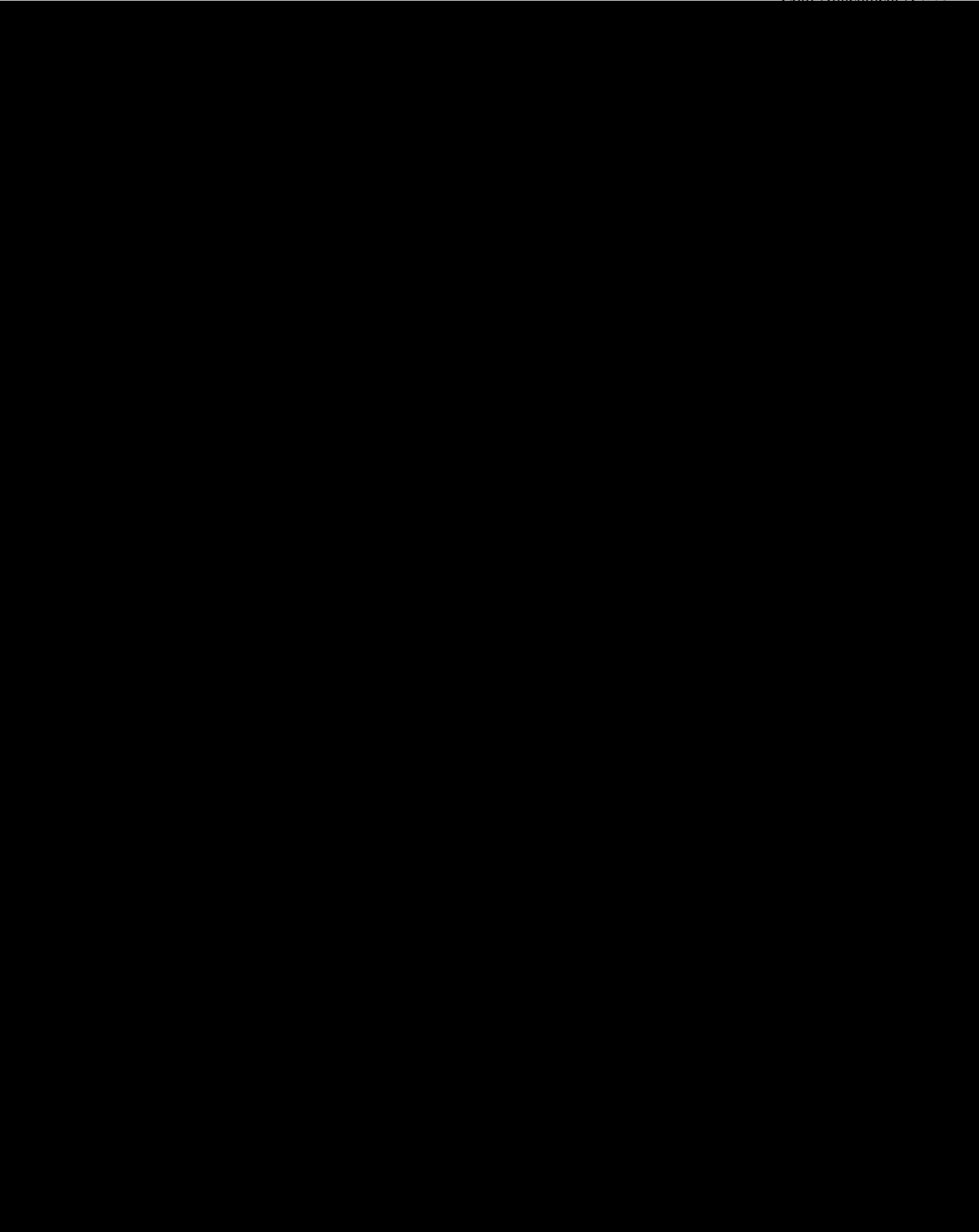
7 **WFALLS RESPONSE:**

8 Subject to, as limited by, and without waving the foregoing General Objections, Stern Partners
9 and affiliates own the majority of the entities described on document bates stamped 000237.

10 **Response Date:** October 6, 2020

11 **Witness(es) Most Knowledgeable About Response:**

12 Brian Konen



1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 64:**

6 Please explain the relationship between Belgravia Pulp Holdings, Inc. and West Linn
7 Paper.

8 **WFALLS RESPONSE:**

9 Subject to, as limited by, and without waving the foregoing General Objections, please response
10 to PGE request 63 and document bates stamped 000237.

11 **Response Date** October 6, 2020

12 **Witness(es) Most Knowledgeable About Response:**

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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 65:**

6 Please explain the relationship between Stern Partners and West Linn Paper.

7 **WFALLS RESPONSE:**

8 Subject to, as limited by, and without waving the foregoing General Objections, please see
9 response to PGE request 63 and 64 and document bates stamped 000237.

10 **Response Date:** October 6, 2020

11 **Witness(es) Most Knowledgeable About Response:**

12 Brian Konen

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 69:**

6 Please explain the relationship between Willamette Falls Real Estate and Complainant WFalls.

7 **WFALLS RESPONSE:**

8 Complainants object to this request to the extent that PGE already has this information because
9 Willamette Falls Real Estate entered into the lease with PGE for the Paper Mill site, and PGE
10 consented to WFalls as the subtenant. Notwithstanding, and subject to, as limited by, and
11 without waiving the foregoing General Objections, Willamette Falls Real Estate and WFalls
12 have substantially similar ownership structures. Columbia Ventures invested in and owns the
13 majority interest of both companies. Mr. Konen is also an owner of both companies.

14 **Response Date** October 7, 2020

15 **Witness(es) Most Knowledgeable About Response:**

16 Brian Konen

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 79:**

6 Please refer to WFalls/100, Konen/15, in which Mr. Konen testifies that PGE refused to
7 provide Mr. Konen with a copy of WLP's LTDA Agreement until the discovery process
8 in this docket.

- 9 a. Between, October 1, 2017 and July 10, 2020, did Mr. Konen obtain a copy of
10 WLP's LTDA Agreement from a source other than PGE?
11 b. If the answer to (a) is yes, please identify the source and the date on which Mr.
12 Konen received a copy
13 c. If the answer to (a) is no, did Mr. Konen request a copy of the LTDA Agreement
14 from any source other than PGE?
15 d. Between, October 1, 2017 and July 10, 2020, did Columbia Ventures or WFalls
16 obtain a copy of WLP's LTDA Agreement from a source other than PGE?
17 e. If the answer to (d) is yes, please identify the source and the date on which
18 Columbia Ventures or WFalls received a copy.
19 f. If the answer to (d) is no, did Columbia Ventures or WFalls request a copy of the
20 LTDA Agreement from any source other than PGE?

21 **WFALLS RESPONSE:**

- 22 a. Subject to, as limited by, and without waiving the foregoing General Objections,
23 Mr. Konen did not obtain a copy of WLP's LTDA from a source other than from
24 PGE through the discovery process in this case.
25 b. Subject to, as limited by, and without waiving the foregoing General Objections,
26 see response to subpart (a).

1 c. Subject to, as limited by, and without waiving the foregoing General Objections,
2 Mr. Konen, as president of WLP, tried to find a copy of the LTDA agreement in
3 WLP records, but was unable to locate it.

4 d. Subject to, as limited by, and without waiving the foregoing General Objections,
5 neither Columbia Ventures nor W Falls obtained a copy of WLP's LTDA from a
6 source other than from PGE through the discovery process in this case.

7 e. Subject to, as limited by, and without waiving the foregoing General Objections,
8 see response to subpart (d).

9 f. Subject to, as limited by, and without waiving the foregoing General Objections,
10 see response to subpart (c).

11 **Response Date:** October 9, 2020

12 **Witness(es) Most Knowledgeable About Response:**

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 104

October 24, 2018 Notice to Lessee of Default

October 12, 2020



Portland General Electric Company
Legal Department
121 SW Salmon Street • Portland, Oregon 97204
503-464-7383 • Facsimile 503-464-2200

Kristin M. Ingram
Assistant General Counsel

Certified Mail - Return Receipt Requested

October 24, 2018

West Linn Paper Properties Company
4800 Mill Street
West Linn, Oregon 97068
Attn: Brian Konen, President

Barbara Radler
Radler White Parks & Alexander LLP
111 SW Columbia Street, #700
Portland, Oregon 97201

W. Iain Scott
McCarthy Terault
Suite 4700, Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, Ontario
Canada M5K 1E6

Neil de Gelder
Executive Vice President
Stern Partners Inc.
Suite 2900 – P.O. Box 11583
650 W. Georgia Street
Vancouver, BC V6B 4N8

RE: Notice to Lessee of Default

Greetings:

This Notice of Default is in reference to that certain Amendment to and Restatement of Lease Agreement between Portland General Electric Company ("PGE") and West Linn Paper Properties Company ("Lessee") dated April 4, 1997, as amended, for the premises located generally at 4800 Mill Street, West Linn, Oregon 97068 (the "Lease").

Be advised that as of October 24, 2018, Lessee is in default in both its payment of rent in accordance with Section 3 of the Lease and for Lessee's failure to pay taxes to local taxing authorities in accordance with Section 4.1.1 of the Lease.

If the breaches of Lease are not corrected (rent payment must be received by PGE and all outstanding tax obligations must be paid to local taxing authorities) within thirty (30) days of the date of this Notice, the Lease will terminate effective 6:00 pm (Prevailing Pacific Time) on the 26 day of November, 2018.

Please be advised that Lessee remains obligated to comply with and satisfy all of the terms of the Lease as stated therein through the expiration or earlier termination of the Lease, including without limitation, the maintenance of all required insurance by Lessee and the payment of sums due from Lessee to PGE or any third party in a timely fashion.

October 24, 2018
Page 2

Portland General Electric

All PGE rights are reserved under this Notice and PGE waives no claims or defenses by issuance of this Notice.

Sincerely,



Kristin Ingram
Associate General Counsel

KMI/jm

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 105

Email Communications

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 106

June 3, 2019 Email and Draft Columbia Ventures Lease Term Sheet

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 107

June 6, 2019 Email and Revised Term Sheet from Columbia Ventures

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 108

2020 Willamette Falls Real Estate First Amendment of Lease

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 109

2020 Addendum to Tenant's Parent Guaranty

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

UM 2107

Willamette Falls Paper Company and West
Linn Paper Company,

Complainants,

v.

Portland General Electric Company,

Respondent.

**PORTLAND GENERAL ELECTRIC COMPANY
RESPONSE TESTIMONY OF BRIAN CLARK**

October 12, 2020

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IV. LEASE AMENDMENT AND REDEVELOPMENT DISCUSSIONS 8

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VI. RESPONSES TO COMPLAINANTS’ TESTIMONY..... 19

Exhibit List

PGE/201 - Map of PGE and WLP Properties, Lease Area, Sullivan Plant, and Willamette Falls Paper Company Plant

PGE/202 - October 16, 2017 West Linn Paper Company Press Release

PGE/203 - October 17, 2017 City of West Linn Press Release

PGE/204 Confidential - Email Communications

PGE/205 Confidential - February 23, 2018 Email and PGE Proposed Term Sheet for Lease Amendment

PGE/206 Confidential - March 26, 2018 Letter Responding to PGE Term Sheet

PGE/207 Confidential - May 1, 2018 Email and Draft Agenda for Meeting

PGE/208 Confidential - July 17, 2018 Letter Regarding Suspension of Services

I. INTRODUCTION AND SUMMARY

1 **Q. Please state your name, business address, and position at Portland General Electric**
2 **Company (PGE).**

3 A. My name is Brian Clark. My business address is 121 SW Salmon Street, 3 World Trade
4 Center, Mailstop 0301, Portland, OR 97204. I am the Division Chief Information Officer,
5 Utility Operations.

6 **Q. Please summarize your educational background and business experience.**

7 A. I received a Bachelor's Degree in Mechanical Engineering from the University of
8 Washington. I have worked at PGE since 1989, first as an Engineer and Supervisor at the
9 Trojan Nuclear Plant, then as Engineering Supervisor, Maintenance Manager, and later
10 Plant Manager at the Beaver Generating Plant. In 2010, I became the Manager of Hydro
11 Operations Licensing & Support. I later became the General Manager of Hydro and
12 Renewables and then, in 2013, I became the General Manager of Power Supply
13 Engineering Services, a role that I held until September 2018. Since September 2018, I
14 have been in my current role as Division CIO, Utility Operations. I attended the Utility
15 Executive Course at the University of Idaho in 2006.

16 **Q. What is the purpose of your testimony?**

17 A. The purpose of my testimony is to explain PGE's actions and thought-processes after West
18 Linn Paper Company (WLP) announced that it was winding up its business and ceased
19 paper-making operations at the paper mill it had operated on land WLP leased from PGE.
20 I explain the relationship between PGE's T.W. Sullivan Hydroelectric Plant (Sullivan) and
21 the paper mill and how PGE sought to protect its access to Sullivan and ability to operate
22 the plant in the wake of WLP's shutdown. My testimony summarizes PGE's discussions
23 with WLP and its owner Stern Partners (Stern) regarding the potential to amend WLP's
24 lease and cooperatively explore redevelopment of the former mill site. I also explain PGE's
25 ultimate decision to close WLP's electric service account and take responsibility for
26 electric service to the mill site after WLP declined to pay for electric service for more than

1 six months. Finally, I respond to various inaccurate statements in Complainants' testimony
2 regarding the relationship between Sullivan and the mill and PGE's use of electricity at the
3 site.

4 **Q. Please summarize your testimony.**

5 A. WLP was a paper company that operated for many years near Willamette Falls, Oregon,
6 adjacent to PGE's Sullivan plant. WLP's paper mill was located partially on land that
7 WLP leased from PGE and partially on land WLP owned. WLP was also a customer of
8 PGE. Because of the long history of both the mill and Sullivan and the patchwork land
9 ownership in the area, operations of the mill and Sullivan were intertwined, and WLP
10 provided cooling water and other operational support to Sullivan.

11 While the story told by Complainants' witness Brian Konen appears to be a
12 straightforward tale of one paper mill closing and another reopening, with Mr. Konen as
13 the key decisionmaker, in fact, the story is more complicated. Between the time that WLP
14 shut down the paper mill and began winding up its business in October 2017 and the time
15 that Willamette Falls Paper Company (WFalls) began operating the paper mill in July 2019,
16 there was a 20-month period during which a number of different options for the future of
17 the site were discussed with different entities, and it was not at all clear to PGE that a new
18 company would be found that would choose to resume paper-making operations. During
19 this time, PGE first engaged in conversations with WLP and Stern about potentially
20 amending WLP's lease to reduce rent in exchange for WLP continuing to provide services
21 to Sullivan while PGE and Stern discussed redevelopment. The parties' discussions of
22 redevelopment included the possibility of PGE and Stern jointly redeveloping both PGE's
23 land and the adjacent land owned by WLP for residential or other uses besides a paper mill.
24 The City of West Linn was also interested in redevelopment of PGE's riverfront property.
25 PGE understood that Mr. Konen was simultaneously seeking to find a buyer to resume
26 making paper at the mill, but contrary to the implication from Mr. Konen's testimony, this
27 was far from the only option being considered and was not a certain outcome.

1 While these conversations were occurring, WLP stopped paying PGE for rent,
2 electric service, and taxes, and was therefore in default under both its lease and its electric
3 service agreement after January 2018. PGE held off on exercising its rights against WLP
4 for most of 2018 while it engaged with Stern about options for the site and sought to ensure
5 that neither operation of nor access to PGE’s Sullivan generating plant would be hampered.
6 However, as the redevelopment conversations lagged, no buyer for the mill operations had
7 yet been found, and WLP owed PGE hundreds of thousands of dollars in past-due rent,
8 electric payments, and taxes, PGE began discussing a mutual lease termination with Stern
9 and ultimately issued a default notice to WLP with respect to the WLP Lease in October
10 2018. At this time, we understood that Stern had no intention of spending additional money
11 on WLP, although Mr. Konen continued to look for a new buyer for the mill operation.

12 PGE also closed WLP’s electric accounts with PGE in the fall of 2018 and opened
13 new accounts in PGE’s name to take responsibility for electric service to the mill site, as
14 WLP and Stern had repeatedly asked us to do. Notably, in none of our discussions with
15 WLP, Stern, or Mr. Konen did any of these entities raise questions or concerns regarding
16 the status of WLP’s long-term direct access (LTDA) Agreement with PGE, and the fate of
17 that Agreement played no role in PGE’s decision to close WLP’s electric service accounts.
18 Throughout the uncertain time after WLP’s closure, PGE’s actions were designed to protect
19 PGE’s interests—including Sullivan—not to harm or disadvantage WLP or a future owner
20 of the paper mill.

II. BACKGROUND

21 **Q. Please describe your role at PGE and specifically on issues related to WLP and**
22 **WFalls.**

23 **A.** During 2017 when WLP announced it was shutting down, I was the General Manager of
24 Power Supply Engineering Services at PGE. Having worked in engineering, plant
25 management, and hydro operations at PGE for many years, I had some knowledge of the
26 Sullivan Plant. I was tasked with leading PGE’s efforts to gather information in the wake

1 of the WLP closure, to determine what PGE needed to keep its Sullivan Plant operating
2 without interruption, and to coordinate with WLP employees and with Stern, which owned
3 WLP, to determine next steps.

4 **Q. What is the Sullivan Plant?**

5 A. The T.W. Sullivan Plant is a hydroelectric facility located on an island in the Willamette
6 River at Willamette Falls. Sullivan was completed in 1895 and consists of 13 turbine
7 generators capable of generating approximately 18 MW. It is a summer-peaking hydro
8 facility and is Low-Impact Hydropower Institute certified. PGE owns and operates the
9 plant pursuant to a license from the Federal Energy Regulatory Commission, and the
10 current license expires in 2035.

11 **Q. Why was PGE concerned about impacts to the Sullivan Plant from the WLP
12 shutdown?**

13 A. WLP operated a paper mill adjacent to the Sullivan Plant, and the mill is located primarily
14 on land that WLP leased from PGE, as shown in the map attached as Exhibit 201.¹ WLP
15 owned a small parcel of land on the island and several other parcels of land on the upland
16 property.² Because of the long history of both the mill and the hydro facility on the island
17 and the patchwork land ownership and easements, the operation of the Sullivan Plant is
18 intertwined with the mill. Therefore, PGE was uncertain how the unexpected mill
19 shutdown and winding up of WLP's business would affect Sullivan.

20 **Q. Could you please explain the relationship between WLP and Stern?**

21 A. Although the corporate structure is somewhat complicated, at a high level, I understand
22 that Belgravia Pulp Holdings, Inc. (Belgravia) owned WLP and that Stern owned
23 Belgravia.³ For simplicity, I generally refer to both Stern and Belgravia as "Stern" in my
24 testimony, because PGE's conversations with these entities were with employees of Stern.

¹ PGE/201.

² WLP's property was conveyed to Stern subsidiary Belgravia Pulp Holdings (Belgravia) by a Warranty Deed in Lieu of Foreclosure on July 2, 2018. WFalls/102.

³ PGE/103, Faist/7-10.

III. MILL SHUTDOWN AND IMPACTS TO SULLIVAN

1 **Q. When did you learn that WLP was shutting down?**

2 A. The news first broke on October 16, 2017, when WLP issued a press release stating that it
3 was ceasing operations and winding up its business.⁴ In the press release, Brian Konen
4 stated, “We are deeply disappointed to end the mill’s 128 year history . . .” The City of
5 West Linn issued a press release about the closure the following day.⁵ Then, on October
6 19, 2017, WLP sent a letter to PGE and other suppliers in which WLP provided notice that
7 it was ceasing operations and would begin winding up its business.⁶

8 **Q. Based on this information, did you understand that WLP or another entity would**
9 **potentially be resuming paper-making at the mill in the future?**

10 A. No. I understood that the mill was being permanently shut down.⁷ WLP’s notice did not
11 indicate that WLP was seeking a new owner to operate the mill. Also, in late October
12 2017, some of WLP’s unsecured creditors filed an involuntary Chapter 7 bankruptcy
13 against WLP, which I understood meant WLP’s assets would likely be liquidated. The
14 bankruptcy filing added an additional layer of uncertainty and was another reason why I
15 understood WLP’s business operation to be at a permanent end.

16 **Q. What were your thoughts immediately upon learning of the shutdown?**

17 A. I was immediately concerned about impacts to the Sullivan Plant. I was concerned about
18 impacts to Sullivan operations, which as I mentioned were intertwined with the mill’s
19 operations. I was also concerned about PGE’s ability to access the Sullivan Plant, because
20 accessing Sullivan required crossing through WLP-owned land and the WLP mill. PGE
21 quickly assembled a team to obtain information about and work on issues raised by the

⁴ PGE/202.

⁵ PGE/203.

⁶ PGE/102.

⁷ See also, e.g., Jay Helton, *West Linn Paper Co. Announces Closure of West Linn, Oregon Plant*, Broker Newswire (Oct. 20, 2017) <https://brokernewswire.com/west-linn-paper-co-announces-closure-of-west-linn-oregon-plant/> (“The company will cease all operations permanently.”); *End of an era: West Linn paper mill to close, after 128 years*, nwLaborPress.org (Oct. 31, 2017), <https://nwlaborpress.org/2017/10/end-of-an-era-west-linn-paper-mill-to-close-after-128-years/> (“West Linn Paper Company announced Oct. 16 it is permanently closing its Willamette Falls paper mill, after 128 years of operation.”).

1 shutdown. Our number one goal in the wake of the shutdown was to ensure that Sullivan
2 operations were not impacted. Of course, upon hearing about the shutdown, I was also
3 concerned for the WLP employees, some of whom we had regular interaction with, who
4 would be losing their jobs.

5 **Q. Can you please explain more about how the mill and Sullivan operations were**
6 **interdependent?**

7 A. Yes. At the time of the shutdown, WLP had a pump and water treatment system in place
8 to withdraw water from the Willamette River pursuant to a PGE water right, process the
9 water, and provide a portion of the processed water to PGE for use cooling the Sullivan
10 generators.⁸ Prior to the shutdown, the vast majority of the water WLP treated was used
11 by the mill itself, and only a small portion was used by PGE for Sullivan. ([REDACTED]

12 [REDACTED]
13 [REDACTED]⁹) After the mill shutdown,
14 Sullivan became the primary user of the treated water, but Sullivan needed only a small
15 amount of water relative to the capacity of WLP's treatment system. Although PGE had
16 the option to utilize a back-up supply of water from the City of West Linn for cooling
17 Sullivan, we were nevertheless concerned about the shutdown's impact on Sullivan
18 operations in this and other regards.

19 In addition, WLP operated the sewage system that PGE relied on for the Sullivan
20 plant. In fact, the sewage system for the entire island was integrated and interdependent.
21 The sewage system was comprised of a series of sewage lift stations, which pumped
22 sewage across the island and then up into the City of West Linn sewage system. When
23 WLP was operating, they managed and paid for this, as they were by far the biggest user
24 of the system with more than one hundred employees versus PGE's one regular employee
25 at Sullivan.

⁸ [REDACTED]

⁹ PGE/101, Faist/8-9, 16 (Lease Sections 1.3 & 3.5).

1 WLP also operated the technology that controlled the fire suppression and other
2 safety systems for the mill buildings and other PGE buildings. Finally, WLP provided
3 security for the island, which included staffing a guard station on the property around the
4 clock to control access to the mill and entire island area.

5 Given the long history of intertwined operations at the site and that PGE's needs
6 were minor relative to that of the operational paper mill, WLP had provided these services
7 to PGE as part of its lease obligation and the parties' cooperative relationship for decades.
8 There had never been a reason to invest in separate infrastructure and accounts previously.
9 After the mill shutdown, however, the interrelated nature of our operations became
10 problematic given PGE's need to continue operating Sullivan to help serve PGE's
11 customers.

12 **Q. Please summarize your initial conversations with WLP after the shutdown**
13 **announcement.**

14 A. PGE met with WLP on October 26, 2017, and in the meeting WLP conveyed that it planned
15 to continue the status quo in its handling of processed water, electricity, septic and sewer,
16 and to continue providing security in the same ways that it had pre-shutdown. Later, on
17 December 29, we learned that WLP planned to continue providing water, septic, lighting,
18 and fire suppression at the site through at least the first quarter of 2018.

19 **Q. Did WLP continue with the status quo through the first quarter of 2018?**

20 A. No. WLP continued providing processed water and managing the septic and sewer
21 systems, but it began communicating to PGE that it would not continue providing these
22 services. WLP also stopped paying for electricity after January 2018. And WLP
23 significantly cut back its security presence at the site. After installing temporary fencing,
24 it closed the guard shop and halted security patrols, but continued to monitor several onsite
25 security cameras.

26 **Q. How did PGE respond to these post-shutdown changes?**

1 A. Upon receiving news of the shutdown, PGE had immediately begun work on a capital
2 project to become self-sufficient for cooling water. That project was placed into service in
3 August 2018, but prior to August, we remained concerned about losing the cooling water
4 WLP had provided. In addition, PGE was concerned about employee and property safety
5 at Sullivan and at the mill buildings after incidents in which trespassers entered the site,
6 damaging equipment and attempting to start fires. In response, PGE hired a roving patrol
7 to provide security at night and also installed additional fencing around the Sullivan plant.

IV. LEASE AMENDMENT AND REDEVELOPMENT DISCUSSIONS

8 **Q. When did you first hear that Mr. Konen sought to resume paper-making at the mill**
9 **site?**

10 A. On December 6, 2017, I heard for the first time that Mr. Konen was seeking to reopen the
11 mill and wanted to potentially sell the mill equipment to a new owner if the involuntary
12 bankruptcy could be resolved without a forced sale of WLP's assets.

13 **Q. Was PGE also in discussions with Stern after the shutdown regarding the future of**
14 **the property?**

15 A. Yes. We understood that Stern, as WLP's ultimate parent, was the entity calling the shots
16 after the shutdown, liquidation, and bankruptcy filing. On November 20, 2017, we met
17 with Stern at the site, and we met with them again on January 22, 2018. During these
18 meetings, Stern Executive Vice President Neil de Gelder conveyed that Stern's plan was
19 to stem their losses. They had invested many millions of dollars in the mill and its
20 equipment in the years before the shutdown, and they wanted to get as much of that cash
21 as possible back out. Therefore, Stern seemed to be keeping its options open at this time
22 as they tried to determine the best way to maximize the value of the mill assets and land.
23 They seemed willing to sell the mill assets if the bankruptcy could be resolved favorably
24 and an interested buyer could be found, and it was our understanding that they enlisted Mr.
25 Konen to seek an interested buyer. At the same time, they also expressed interest in
26 exploring the possibility of redeveloping the site with PGE. Stern seemed to believe that

1 its ownership of the parcel that controlled access to the island could prove to be a very
2 valuable asset if the island were to be redeveloped. We discussed jointly investigating
3 redevelopment possibilities with them.

4 **Q. Was redevelopment also being discussed in other venues?**

5 A. Yes, as noted in the City of West Linn press release following announcement of WLP's
6 closure, the City was engaged in a process to develop a comprehensive master zoning plan
7 for the waterfront area, which included the mill site. The City seemed very interested in
8 evaluating alternatives for use of the waterfront property, which included PGE's property
9 on the island and the upland area, to improve access to and views of Willamette Falls. PGE
10 was participating in the City's strategic planning discussions and was generally supportive
11 of the redevelopment and economic development efforts of the community, while also
12 monitoring the process to ensure that Sullivan's continued operation would not be
13 compromised.

14 **Q. Did PGE and Stern discuss amending WLP's lease with PGE?**

15 A. Yes. Stern requested to renegotiate the WLP lease to allow them additional time to evaluate
16 the options available to them—including redevelopment at the site—in the wake of WLP's
17 closure. We discussed amending the lease to adjust WLP's rent in exchange for
18 maintenance of basic service supporting Sullivan while the parties jointly explored
19 redevelopment options. I believed that it would be in PGE's best interest to work
20 cooperatively with Stern, rather than risk having them abandon the site and leaving PGE
21 with responsibility for the mill buildings and equipment.¹⁰ To that end, we engaged Stern
22 in conversations about redevelopment and a potential amendment of the WLP lease until
23 the fall of 2018.

24 **Q. Please explain how the lease-amendment and redevelopment conversations with**
25 **Stern progressed during the first part of 2018.**

¹⁰ PGE owned the land leased to WLP and electrical facilities on it, but all other buildings and improvements on the land were owned by WLP. See PGE/101, Faist/7.

1 A. These conversations progressed slowly. At the end of January, I reached out to Stern and
2 asked about their plan and intended timing for redeveloping the property, and whether they
3 had contacted any developers or had a specific developer in mind.¹¹ Stern responded that
4 they did not yet have any plans and that the matter remained up for discussion.¹² In the
5 same communication, Stern gave permission for PGE to reach out to former WLP
6 employees regarding potential employment with PGE,¹³ which suggested to me that they
7 had no intention of re-starting the mill imminently. Mr. Konen was copied on these emails.

8 **Q. Was Mr. Konen continuing to work on finding a buyer to recommence paper-making**
9 **at the mill?**

10 A. Yes, he was, although he seemed to recognize that resuming mill operations was by no
11 means guaranteed. Mr. Konen emailed me on January 29, 2018, to let me know that John
12 Otnes, facilities manager for WLP, preferred to stay with WLP if there was a chance for a
13 re-start.¹⁴ Mr. Konen also stated, “If a restart does not have a chance in a few months, he
14 [Mr. Otnes] would be looking for employment.”¹⁵

15 **Q. Did the negotiations with Stern proceed?**

16 A. Yes. On February 23, 2018, I sent Stern a “non-binding proposed” lease amendment term
17 sheet.¹⁶ Among other terms, PGE’s term sheet proposed that so long as WLP’s use of the
18 leasehold premises was “limited to caretaker status,” PGE would reduce WLP’s rent and
19 assume responsibility for the electric service.¹⁷ In exchange, PGE proposed that WLP
20 would continue providing cooling water and operating the sewer system and lighting.¹⁸
21 PGE also requested that WLP forego its option to purchase PGE’s property, which existed
22 under the WLP lease.¹⁹

¹¹ PGE/204, Clark/15.

¹² PGE/204, Clark/15.

¹³ PGE/204, Clark/15.

¹⁴ PGE/204, Clark/13.

¹⁵ PGE/204, Clark/13. Mr. Otnes ultimately joined PGE as a contractor on November 1, 2018.

¹⁶ PGE/205.

¹⁷ PGE/205, Clark/3.

¹⁸ PGE/205, Clark/2.

¹⁹ PGE/205, Clark/3.

1 **Q. Could you please explain what PGE meant by the proposal that PGE would assume**
2 **responsibility for the electric bills?**

3 A. We meant that we would place electric service for the site in PGE's name. I will discuss
4 PGE's thinking and ultimate decision to close WLP's account and move the service into
5 PGE's name in greater depth below, and PGE witnesses Karla Wenzel and Rob Macfarlane
6 also testify about this issue.

7 **Q. Was the WLP bankruptcy proceeding ongoing at this time?**

8 A. No, the bankruptcy case was dismissed on February 22, 2018.

9 **Q. How did Stern respond to PGE's term sheet?**

10 A. In response to my inquiry on March 2, Stern indicated that the term sheet was "some
11 distance" from what they had in mind and that they would get back in touch to discuss next
12 steps.²⁰

13 On March 22, I again reached out to Stern regarding the term sheet.²¹ I conveyed
14 the amounts WLP owed to PGE for taxes, rent, and electric service, which totaled
15 [REDACTED] at that time.²² And I clarified again that all rights and obligations under the
16 WLP lease remained in full force and effect until the lease was formally amended, and that
17 PGE was not waiving any of its rights.²³ I informed Stern that PGE was unable to modify
18 WLP's electric bills absent agreement on a lease amendment,²⁴ by which I meant that PGE
19 was not willing to take responsibility for the electric service costs without obtaining some
20 of the clarifications or other revisions to WLP's lease that PGE sought in exchange.

21 On March 26, Stern's attorney responded that the term sheet was not what Stern
22 had in mind and that it greatly improved PGE's position while worsening Stern's.²⁵ She
23 conveyed Stern's view that it was providing filtered water to PGE at the site at WLP's sole

²⁰ PGE/204, Clark/11.

²¹ PGE/204, Clark/9.

²² PGE/204, Clark/9.

²³ PGE/204, Clark/9.

²⁴ PGE/204, Clark/9.

²⁵ PGE/206, Clark/1.

1 PGE was providing use of its land to WLP with no compensation. Because of the difficult
2 situation we were in, PGE sought to get clarity from Stern about the plan and timeline for
3 redevelopment efforts so that we could determine how to handle the WLP lease and electric
4 service for the site going forward.

5 **Q. Please explain what happened next in the negotiations with Stern?**

6 A. On April 9, I responded to Mr. de Gelder and again emphasized that the lease rights and
7 obligations remained in full effect and that PGE was not waiving any of its rights under the
8 WLP lease.³³ Prior to scheduling another meeting between the parties, I requested that
9 Stern provide an agenda and explain their proposed redevelopment approach, budget, and
10 cost-allocation.³⁴ I also asked for more information about Stern's proposed terms of the
11 parties' relationship during the 18- to 24-month interim period they had proposed.³⁵

12 Mr. de Gelder responded that the parties needed to reach agreement on a path
13 forward or go their separate ways.³⁶ He proposed that both parties would not waive their
14 rights under the lease during the interim period.³⁷ [REDACTED]

15 [REDACTED] »³⁸

16 [REDACTED]

17 I then asked Mr. de Gelder to address the fact that WLP was over \$60,000 in arrears
18 for rent, and he responded that he could not address this issue in isolation.³⁹ He again
19 requested that we meet to discuss.⁴⁰ He indicated that Stern would attempt to restart a
20 conversation [REDACTED]⁴¹ He stated, [REDACTED]

33 PGE/204, Clark/6.
34 PGE/204, Clark/6.
35 PGE/204, Clark/6.
36 PGE/204, Clark/4.
37 PGE/204, Clark/5.
38 PGE/204, Clark/5.
39 PGE/204, Clark/3.
40 PGE/204, Clark/2.
41 PGE/204, Clark/2.

4

⁴²

5 **Q. Did WLP have an additional event of default under the lease around this time?**

6 A. Yes. In April 2018, WLP had two property tax warrants imposed against it and its personal
7 property for failing to pay about \$ [REDACTED] in personal property taxes for 2017. This was
8 yet another in the series of breaches of the terms of the WLP lease. WLP also continued
9 to owe PGE an additional \$ [REDACTED] for WLP-lease-related property taxes.⁴³

10 **Q. Did PGE and Stern eventually meet in person?**

11 A. Yes, on May 1, 2018, Mr. de Gelder circulated an agenda for the meeting.⁴⁴ The parties
12 met on May 17 in Portland.

13 **Q. Was Mr. Konen involved in these conversations with Stern that you've been
14 discussing?**

15 A. Yes, he was copied on Mr. de Gelder's emails and attended the in-person meeting.

16 **Q. In any of your discussions with Stern, WLP, and Mr. Konen about electric service at
17 the site, did anyone raise questions or concerns about the status of WLP's LTDA
18 Agreement?**

19 A. No, this issue did not come up. The only discussions regarding electric service were
20 surrounding WLP's insistence that PGE should take responsibility for electric service to
21 the site.

22 **Q. What happened after the May-17 in-person meeting with Stern?**

23 A. After the meeting, PGE spent several weeks deliberating internally regarding the
24 appropriate next steps. At this point, WLP remained in breach of the terms of the its lease,
25 owing PGE hundreds of thousands of dollars in rent, missed electric payments, and taxes,

⁴² PGE/204, Clark/2.

⁴³ PGE/309.

⁴⁴ PGE/207.

1 and it was not clear from the conversations to-date that a joint redevelopment effort was
2 going to proceed—although Stern indicated that they were still interested. PGE had
3 commissioned a redevelopment study for the property, including the leasehold premises,
4 but did not yet have the results and so did not know how likely redevelopment was. We
5 understood that Stern was no longer trying to find a new buyer to run the mill and assume
6 the WLP lease, and instead had turned their attention to selling the assets. Because we
7 were trying to think through the possible scenarios and figure out the best path forward, we
8 did not communicate with Stern during this time frame.

9 **Q. When did you next hear from Stern?**

10 A. On July 12, Stern sent a letter stating that WLP had continued to incur expenses to provide
11 services to PGE and notifying PGE that they would stop providing services for and
12 assisting PGE unless the parties reached an agreement to amend the lease by July 20.⁴⁵

13 Around this time Brian Faist began leading the negotiations for PGE, and he
14 corresponded with Mr. de Gelder regarding a potential amendment of the WLP lease.⁴⁶

15 On August 1, Mr. Faist and I met with Mr. de Gelder and Mr. Konen at PGE to
16 discuss the business terms of a potential lease amendment and redevelopment plan. During
17 this meeting, it became clear that Stern's interest in joint redevelopment was waning and
18 that Stern was not interested in spending any more money on the site. As a result, a joint
19 redevelopment effort no longer seemed very promising. Stern indicated that they were still
20 willing to sell the mill assets to a new owner if Mr. Konen could find one, but they were
21 no longer going to spend money in the search for a buyer. In a follow up email on August
22 14, Mr. de Gelder wrote, [REDACTED]⁴⁷

23 **Q. How did the parties proceed after the August meeting?**

24 A. PGE and Stern switched from negotiating an agreement to mutually terminate the existing
25 WLP lease. Mr. Faist led these negotiations for PGE and testifies about them in detail.

⁴⁵ PGE/208.

⁴⁶ PGE/105, Faist/44-51.

⁴⁷ PGE/204, Clark/1.

1 Once the focus switched to termination of the WLP Lease, the conversations were between
2 PGE and Stern, and Mr. Konen was no longer involved. By this time, PGE had placed its
3 cooling-water project in service and was no longer dependent on WLP for Sullivan cooling
4 water.

V. **WLP ACCOUNT CLOSURE**

5 **Q. Please explain your thinking regarding the WLP electric account following the WLP**
6 **shutdown.**

7 A. As we discussed a potential amendment of the WLP Lease with Stern and WLP and they
8 insisted that PGE should take responsibility for electric service to the site, I looked into
9 placing the electric service to the site in PGE's name.

10 **Q. Had you dealt with any issues related to a customer's electric bill before?**

11 A. No. My background is in engineering and plant management, so this was a new area for
12 me.

13 **Q. Why were you motivated to have PGE take responsibility for the electric service to**
14 **the site?**

15 A. I wanted to get the service transferred into PGE's name so that we could take responsibility
16 for it and reduce the uncertainty. Mr. Konen and Mr. de Gelder were insistent that PGE
17 should take over, and it became clear that WLP had no intention of paying their electric
18 bills. I knew that, as a utility provider, PGE could not simply let WLP off the hook for
19 amounts they owed to us, and I was worried about PGE continuing to accrue past-due
20 electric charges that WLP was never going to pay. While it was true that PGE was
21 consuming the majority of power at the site after the shutdown, it was a minor amount
22 compared to WLP's consumption when it was operating. However, most of the charges
23 post-shutdown were caused by a high demand charge that was appropriate for the mill's
24 large industrial production but not for PGE's usage. I thought that the best path forward
25 would be for PGE—as the landlord of the site and owner of Sullivan—to take over the
26 service.

1 **Q. How did you go about moving the electric service to PGE accounts?**

2 A. I began coordinating with PGE's customer and billing teams. Although I first raised the
3 question of PGE taking over the electric service in January 2018, because of the
4 negotiations with Stern that I explain above, we did not move forward with the change at
5 that time. However, I resumed my efforts in October 2018 as the WLP lease-termination
6 negotiations with Stern progressed, PGE issued a default notice to WLP, and it became
7 clear that PGE would soon be solely responsible for the property. We determined that PGE
8 could take responsibility for the electric service by closing WLP's accounts and opening
9 new, non-revenue accounts in PGE's name for the site. These changes occurred on
10 November 15, 2018, but the changes were backdated to be effective as of September 1,
11 2018.

12 **Q. Why did you decide to make the changes effective as of September 1, even though the**
13 **lease with WLP was still in effect on that date?**

14 A. My thinking was that WLP had not paid its electric bills for more than six months, and
15 Stern and WLP had made clear that they had no intention of paying and that PGE should
16 take responsibility for the electric service. Most—though not all—of the power being
17 consumed at the site was being used by PGE for Sullivan and to protect PGE's property.
18 Given the situation, I thought that it made no sense for PGE to continue accruing unpaid
19 debts that we knew would never be paid. As Ms. Wenzel and Mr. Macfarlane explain,
20 PGE had filed a claim with the Creditors' Trust to recover some of the amounts WLP owed
21 PGE through August 2018. Therefore, we determined that making the transfer effective
22 September 1, 2018⁴⁸ was a reasonable approach.

23 **Q. Was the decision to make the account changes effective as of September 1, 2018, even**
24 **though WLP's lease remained in effect until November 26, 2018, motivated by a**
25 **desire to harm WLP, as Mr. Mullins seems to suggest?**⁴⁹

⁴⁸ I note that Mr. Mullins incorrectly states that the change was made effective September 1, 2019. WFalls/200, Mullins/24. I assume this was a typographical error.

⁴⁹ WFalls/200, Mullins/24.

1 A. Certainly not. Stern, WLP, and Mr. Konen had been asking PGE to take responsibility for
2 the electric service for many months. I was surprised to see Mr. Mullins characterize
3 PGE's action as "willful misconduct" given that having PGE take responsibility for the
4 service in September rather than November did not harm WLP in any way and only
5 benefitted them by preventing them from have a higher balance showing as due on their
6 unpaid electric bills.

7 **Q. In your discussions and decision-making regarding PGE taking responsibility for the**
8 **electric service, was terminating WLP's LTDA rights ever discussed or considered as**
9 **a reason for making the change?**

10 A. No. As I mentioned above, neither Stern nor WLP raised concerns about WLP's LTDA
11 rights during my conversations with them, and this issue was not considered at all as I
12 worked to place the service to the site in PGE's name.

13 **Q. Did you make the decision for PGE to take responsibility for the electric service**
14 **knowing that efforts were being made to re-start the paper mill and knowing that**
15 **making the change would likely increase the costs for a future operator of the paper**
16 **mill, as Mr. Mullins claims?**⁵⁰

17 A. No. As I explained above, in the fall of 2018, I knew that Stern had abandoned efforts to
18 find a new owner, was declining to spend any more money on the mill operation, and was
19 discussing a termination of the WLP lease with PGE. I knew that Mr. Konen was
20 continuing to seek a new owner, but given that the mill had been shut down for a year and
21 no buyer had been found during that time, a resumption of paper-making did not seem at
22 all likely. As I've also explained, LTDA was simply not considered at all as part of the
23 conversation with Stern, WLP or Mr. Konen. So, the possibility that a new owner would
24 actually be found, let alone take the position that it should be eligible for service under
25 WLP's LTDA Agreement, never crossed my mind.

⁵⁰ WFalls/200, Mullins/24.

1 **Q. Is Mr. Mullins’ characterization that PGE “simply transferred [WLP’s] account, as**
2 **it existed, into its own name” accurate?⁵¹**

3 A. No. We closed WLP’s accounts and opened new accounts in PGE’s name with different
4 account numbers.

VI. RESPONSES TO COMPLAINANTS’ TESTIMONY

5 **Q. Mr. Konen testifies that the Sullivan Plant requires the paper mill to operate to**
6 **provide certain critical functions.⁵² Is this currently true?**

7 A. No. As I explained, PGE has an alternate system in place to obtain cooling water for
8 Sullivan and no longer requires the mill operator to provide cooling water. Also, in the
9 Mutual Termination of Lease Agreement with WLP, PGE obtained the rights to operate
10 and control the fire suppression and effluent systems. In addition, Mr. Konen’s statement
11 is incorrect because the paper mill itself does not need to be operational for the mill’s
12 operator to provide processed water and other services to Sullivan. As evidenced after the
13 WLP shutdown, those services can be provided even when the mill is not operating.

14 **Q. Mr. Konen also testifies that if the paper mill closed, it would cost PGE more to**
15 **provide services to Sullivan that WFalls now provides.⁵³ Do you agree?**

16 A. Currently, PGE and WFalls share the cost of security services for the site, so PGE’s costs
17 would increase slightly if WFalls closed. WFalls also is providing City water and sewer
18 and processed water for cooling the generators. If WFalls closed the paper mill, PGE could
19 return to using the alternate cooling water system it installed in August 2018, or use water
20 from the City of West Linn.

21 **Q. Mr. Mullins testified that PGE was the “sole beneficiary of the electric services” at**
22 **the site after WLP stopped manufacturing paper.⁵⁴ Is this true?**

⁵¹ WFalls/200, Mullins/16.

⁵² WFalls/100, Konen/3.

⁵³ WFalls/100, Konen/3.

⁵⁴ WFalls/200, Mullins/6.

1 A. No. After the mill shutdown, the electric usage at the site dropped significantly. While it
2 is true that most of the electricity consumed at the site after the shutdown was used for
3 functions that benefitted PGE, WLP and Stern continued to benefit from some of it. For
4 example, the service provided lighting to the parking lot owned by WLP and supported the
5 fire suppression systems at the site, which protected not only PGE property but also WLP's
6 assets that remained at the site and allowed WLP to continue to insure those assets. Some
7 of those assets were secured by the claims of third parties. Also, the sewage pumping
8 benefitted the entire island—not just PGE's property. Finally, WLP had an effluent permit
9 issued by the Oregon Department of Environmental Quality, which required it to operate
10 several effluent pumps and systems that needed electricity. I note that Mr. Mullins himself
11 seems to recognize that his remark is an over-statement because on the next page, he
12 testifies that after the shutdown the mill “required only minimal electric service.”⁵⁵ Keep
13 in mind that PGE's electricity usage was a relatively minor part of WLP's load when the
14 mill was operating. Rather than requiring PGE to spend the time and money to separate
15 their intertwined operations, WLP had simply paid for these relatively incidental electric
16 costs for many years. When WLP ceased operation and breached the terms of the WLP
17 lease and electric payments, PGE was left in a difficult position.

18 **Q. But in October 2018, you sent an email in which you stated, “Effectively, since that**
19 **time [the end of February 2018] 100% of the electricity was in direct support of PGE**
20 **Ops. You could probably call it Jan[.] 1 2018.”⁵⁶ This seems inconsistent with your**
21 **testimony above. Please explain.**

22 A. My testimony is more accurate than the shorthand statement in my email, which should be
23 more accurately phrased as “almost 100%.” I made this statement in the midst of an
24 ongoing discussion about when PGE should take responsibility for the electric service. As
25 the email conversation shows, there were many different considerations at play relevant to

⁵⁵ WFalls/200, Mullins/7.

⁵⁶ WFalls/200, Mullins/9; WFalls/202, Mullins/15.

1 the parties' interests at the site. We ultimately consulted with other PGE departments,
2 including the legal department, when making the decision.

3 **Q. Mr. Mullins references this email in which you wrote that the electric service at the**
4 **site was benefitting PGE and following your quotation he adds "as the landlord."⁵⁷**
5 **Has he accurately conveyed your message?**

6 A. No. I did not say, nor did I mean to say, that PGE was benefitting "as the landlord." I
7 agree that PGE was certainly benefitting in its role as landlord, in the sense that it did not
8 want the site to fall into disrepair. But PGE also benefitted in its role as utility provider
9 because much of the electric service was in support of the Sullivan generating plant, which
10 provides electric power that is used and useful to utility customers.

11 **Q. Does this conclude your direct testimony?**

12 A. Yes.

⁵⁷ WFalls/200, Mullins/9.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

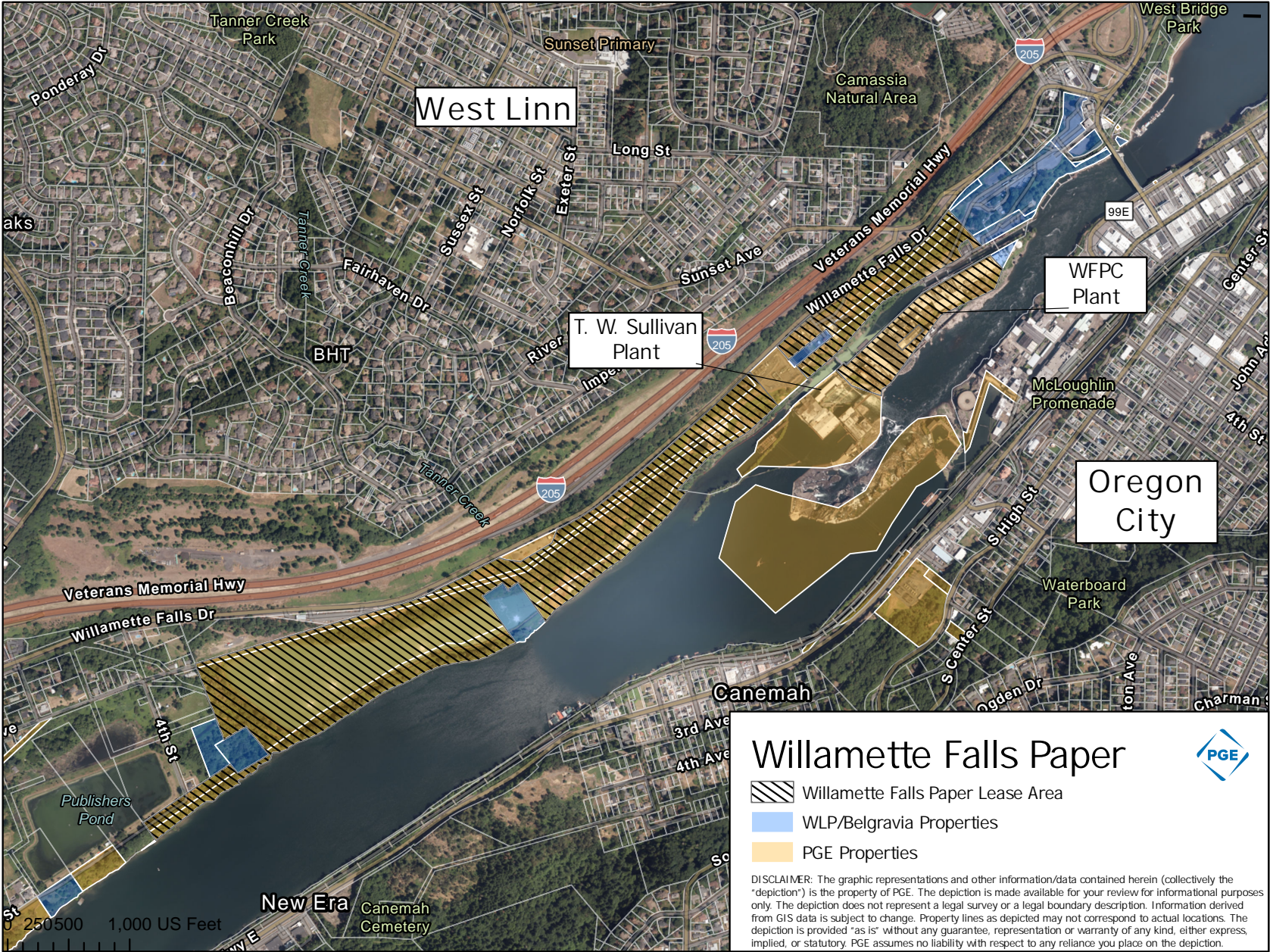
UM 2107

Portland General Electric Company

Exhibit 201

Map of PGE and WLP Properties, Lease Area, Sullivan Plant, and
Willamette Falls Paper Company Plant

October 12, 2020



**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 202

October 16, 2017 West Linn Paper Company Press Release

October 12, 2020



West Linn Paper Company Ceasing Operations and Winding up Business

October 16, 2017 - West Linn, Oregon - West Linn Paper Company today announced that it is ceasing operations and will commence a winding up of its business supervised by its second lien lender.

“We are deeply disappointed to end the mill’s 128 year history, the last twenty of which resulted from a major restructuring and restart when our current ownership took control of West Linn Paper Company. The commitment and support that we received from our employees, our lenders and our owners as we sought to adapt to structural changes in our markets has been remarkable. However, several unforeseeable events have led to a significant reduction in available pulp, making continued operations impossible. As a result we will wind up our operations as quickly and efficiently as possible, beginning immediately.” states Brian Konen, Chief Operating Officer for West Linn Paper Company.

Company officials said that orders for stock product will continue to be accepted. Orders that have been produced but not yet shipped will be shipped. Manufacturing orders that have been accepted, but not yet produced, will be reviewed and customers will be contacted shortly with confirmations as to whether those orders will be produced. The Company will not be accepting new manufacturing orders going forward.

For more information, please contact: Brian Konen, Chief Operating Officer or Robert Glatz, Chief Financial Officer, at (503) 557-6639.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 203

October 17, 2017 City of West Linn Press Release

October 12, 2020



CITY HALL 22500 Salamo Rd, West Linn, OR 97068

Telephone: (503) 657-0331

Fax: (503) 650-9041

CITY OF West Linn

FOR IMMEDIATE RELEASE

Oct. 17, 2017

Contact: Courtney Flynn

cflynn@westlinnoregon.gov (503)742-8609

Closing of West Linn Paper Company a Loss to the Community

The City of West Linn is saddened to learn about the closing of West Linn Paper Company, the City's largest and oldest employer. Through 128 years of operation the West Linn Paper Company has contributed significantly to the rich history of the City; the loss of this business will certainly be felt.

"The West Linn Paper Company has been a mainstay in the City and I am deeply saddened the company is closing," said West Linn Mayor Russ Axelrod. "My sympathies are with the employees of the company and their families. The City will work with the West Linn Paper Company to lessen any hardships in any way possible."

The City of West Linn will continue to move forward with the owners of this property, and many other stakeholders, on West Linn's Waterfront Plan, which will provide a vision and master plan for more than two miles of land along the Willamette River.

###

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 204

Email Communications

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 205

February 23, 2018 Email and PGE Proposed Term Sheet
for Lease Amendment

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 206

March 26, 2018 Letter Responding to PGE Term Sheet

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 207

May 1, 2018 Email and Draft Agenda for Meeting

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 208

July 17, 2018 Letter Regarding Suspension of Services

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

UM 2107

Willamette Falls Paper Company and West
Linn Paper Company,

Complainants,

v.

Portland General Electric Company,

Respondent.

**PORTLAND GENERAL ELECTRIC COMPANY
RESPONSE TESTIMONY OF KARLA WENZEL AND ROBERT
MACFARLANE**

October 12, 2020

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- PGE/301 Confidential** - September 24, 2020 Assignment Agreement
- PGE/302, Confidential** - October 9, 2020 Letter re PGE Consent to Assignment of Agreement
- PGE/303** - Schedule 489, Effective May 14, 2018
- PGE/304 Confidential** - Drop Authorization for Direct Access Customer
- PGE/305 Confidential** - Discovery
- PGE/306 Confidential** – 5 and 15 Day Notices
- PGE/307 Confidential** – Bill Notices
- PGE/308 Confidential** – Overdue Bill Summary
- PGE/309** - February 22, 2018 Bankruptcy Court Order

I. INTRODUCTION AND SUMMARY

1 **Q. Please state your name, business address, and position at Portland General Electric**
2 **Company (PGE).**

3 A. My name is Karla Wenzel. My business address is 121 SW Salmon Street, 1 World Trade
4 Center, Mailstop 0306, Portland, OR 97204. My title is Manager, Regulatory Policy and
5 Strategy, at Portland General Electric (PGE).

6 My name is Robert Macfarlane. My business address is 121 SW Salmon Street, 1 World
7 Trade Center, Mailstop 0306, Portland, OR 97204. My title is Manager, Pricing and Tariffs
8 at PGE.

9 **Q. Ms. Wenzel, please describe your education and business experience.**

10 A. I received a Bachelor of Arts degree in Political Science from Willamette University and a
11 Juris Doctor degree from Lewis and Clark College's Northwestern College of Law. I have
12 worked in the Rates and Regulatory Affairs department at PGE since 2009 in various
13 capacities including as Tariff and Pricing Manager and Strategy and Policy Manager. In
14 addition, I have held other positions for five years at PGE in the customer service,
15 distribution, and legal departments.

16 **Q. Mr. Macfarlane, please describe your education and business experience.**

17 A. I received a Bachelor of Arts degree in business from Portland State University with a
18 focus in Finance. From 2004 to 2008, I was a consultant with Bates Private Capital in Lake
19 Oswego, Oregon, where I developed, prepared, and reviewed financial analyses used in
20 securities litigation. I joined PGE in 2008 and worked as an analyst and regulatory
21 consultant in the Rates and Regulatory Affairs Department. In January 2018, I became
22 Interim Manager, Pricing and Tariffs, and in September 2019, I assumed my current
23 position as Manager, Pricing and Tariffs. My duties at PGE have included pricing, revenue
24 requirement, and regulatory issues.

1 **Q. What is the purpose of your testimony?**

2 A. Our testimony addresses Complainant West Linn Paper Company's (WLP) Long-Term
3 Direct Access (LTDA) agreement with PGE and the regulatory requirements applicable to
4 WLP's service under that agreement and WLP's rate schedule. We discuss PGE's
5 increasing concern after WLP was forced into liquidation and continually failed to pay its
6 electric bills and PGE's eventual justification for closing WLP's accounts. We also discuss
7 the basis for PGE's conclusion that the closure of WLP's accounts terminated WLP's
8 LTDA agreement with PGE. Finally, we explain why Complainant Willamette Falls Paper
9 Company (WFalls) is not eligible for New Load Direct Access (NLDA) under the Public
10 Utility Commission of Oregon's (Commission) rules, and address WFalls' request for a
11 waiver of those rules.

12 **Q. Please summarize your testimony.**

13 A. For many years, WLP took electric distribution service from PGE under Schedule 489 and
14 a LTDA agreement with PGE, receiving supply from an ESS (electricity service supplier).
15 WLP also leased property at the mill site from PGE under a lease agreement signed in
16 1997. After operating under this lease agreement for many years, WLP ceased operations
17 in October 2017 and was forced into liquidation. Several months later, WLP stopped
18 paying its electric bills on its Schedule 489 account. By early 2018, WLP's continued
19 nonpayment of its Schedule 489 account provided grounds for termination of WLP's
20 electric service under PGE's tariff. Despite sending appropriate notices of disconnection,
21 PGE held off closing WLP's accounts until November 2018, when WLP's electric service
22 account was deeply in arrears and WLP's lease was finally being terminated for default.
23 When WLP's accounts were closed, PGE opened electric service accounts in its own name.
24 PGE did so without cutting off power at the site to ensure continued supply of a relatively
25 small but critical amount of electricity needed for site protection and for operations at its
26 T.W. Sullivan Hydroelectric Plant (Sullivan). On November 26, 2018, the property
27 reverted back to PGE's possession upon termination of WLP's lease. _By the end of

1 November 2018, PGE was both the electric service customer at the site and was legally in
2 possession of the property.

3 As Mr. Faist explains, approximately five months later, in April 2019, Mr. Konen
4 introduced PGE to Columbia Ventures, a private equity holding company that showed
5 interest in starting a new paper company. In June 2019, Columbia Ventures incorporated
6 a new company called W Falls to purchase WLP's assets from an auctioneer and operate a
7 paper mill at the site. In July 2019, W Falls energized the site under cost-of-service (COS)
8 rates and began operations. W Falls now asserts a right to receive LTDA under WLP's old
9 LTDA agreement. W Falls also seeks a refund and damages from PGE for PGE's alleged
10 failure to recognize its assumption of WLP's prior LTDA rights. In the alternative, WLP
11 seeks a waiver from the Commission's NLDA rules that would allow it to participate in
12 PGE's NLDA program.

13 Our testimony explains that PGE was justified in terminating WLP's service in
14 November 2018, and that PGE did so without any ill-will toward WLP or W Falls, a
15 separate corporate entity that did not exist until well after WLP's electric service accounts
16 were closed and PGE had retaken possession of the property. When WLP's accounts were
17 closed in November 2018, WLP's Schedule 489 service and its right to LTDA both
18 terminated pursuant to the terms of Schedule 489 and WLP's LTDA agreement with PGE.
19 Although W Falls now wishes to move immediately to LTDA, PGE simply has no authority
20 to waive the requirements of its tariff to allow W Falls to do so.

21 We also explain that Complainants' allegations that PGE acted inappropriately by
22 failing to recognize WLP's transfer or assignment of WLP's LTDA agreement to W Falls
23 are unfounded. There is no evidence that WLP ever attempted to transfer or assign its
24 LTDA agreement to W Falls until September 24, 2020, nearly two years after WLP's
25 electric service accounts were closed and more than three months after Complainants filed

1 their complaint against PGE.¹ In any case, this purported assignment was meaningless:
2 Once WLP's Schedule 489 account was closed in November 2018, WLP had no
3 meaningful electric service rights to purportedly transfer to WFalls.

4 We also address various tariff interpretation issues and allegations of wrongdoing
5 by Complainants' witness Brad Mullins. Despite Complainants' allegations of PGE's
6 wrongdoing with respect to WLP's LTDA rights, PGE acted appropriately at each turn
7 with respect to WLP's and WFalls' electric service accounts. When WFalls started
8 operations, its status was that of a new customer, requiring a new account and a new service
9 selection under PGE's tariff. PGE's actions throughout this process were both justified
10 and motivated by appropriate intent.

11 With respect to WFalls' request for waiver of the Commission's NLDA rules,
12 WFalls concedes it does not meet the eligibility requirements for NLDA.² WFalls failed
13 to provide the one-year notice required by the NLDA rules, and it chose to energize its
14 service with PGE on July 1, 2019, before PGE's NLDA program was implemented. It
15 therefore energized on a COS rate schedule, under which it has continuously been receiving
16 service since July 1, 2019. Because WFalls came online as a COS customer and has been
17 incorporated into PGE's planning, it is ineligible for NLDA. The question of whether
18 WFalls should be granted a waiver is a question for the Commission. Given the
19 Commission's prior statements on the standards for waiver of NLDA requirements, it
20 seems unlikely WFalls has met those standards.

¹ PGE/301; PGE/302. This purported assignment agreement was signed by Mr. Konen on behalf of both WLP and WFalls and provided to PGE on September 25, 2020, in response to a discovery request. On October 9, 2020, one business day before PGE's testimony was due, WLP's attorney sent PGE's attorney a letter seeking PGE's consent to assign WLP's LTDA agreement to WFalls. In the assignment agreement, WLP also sought to transfer its NLDA queue position to WFalls. PGE did not intend to take issue with the transfer of WLP's queue position to WFalls, provided the Commission deems the transfer appropriate.

² WFalls/200, Mullins/35 (conceding that WFalls must seek a waiver of the one-year notice requirement).

II. WLP'S LTDA SERVICE

1 **Q. When did WLP begin taking long-term direct access service at the mill site?**

2 A. For many years (1997 – 2006), WLP took service from PGE under a COS schedule. In
3 2006, WLP began the transition to LTDA. WLP and PGE entered into a LTDA Agreement
4 on September 29, 2006, that took effect on January 1, 2007.³

5 **Q. Under what rate schedule did WLP take service from PGE?**

6 A. When WLP transitioned to LTDA, it took service under PGE's Schedule 483, PGE's Large
7 Nonresidential Opt-Out Schedule; this is the schedule referenced in WLP's LTDA
8 Agreement. Later in 2007, PGE replaced Schedule 483 with two separate Large
9 Nonresidential Opt-Out Schedules differentiated by size.⁴ Subsequently, WLP took
10 service under Schedule 489,⁵ which was the successor to Schedule 483 applicable to
11 WLP's load.

12 **Q. What is required for a PGE customer to transition to LTDA service?**

13 A. The requirements are specified in PGE's tariff and require customers to be on COS for one
14 year before electing LTDA service. Thereafter, the customer may opt out of its COS rate
15 during an election window, provided PGE has remaining capacity available under its
16 LTDA program cap. The customer is then put on an appropriate PGE opt-out schedule.
17 Assuming the customer wishes to purchase its energy supply from ESS, the customer must
18 select an ESS, who must send in a Direct Access Service Request (DASR) transaction to
19 enroll the customer with the ESS. In addition to the base charges, such as those in Schedule
20 489, LTDA customers must pay the charges summarized on Schedule 100 and pay the
21 transition adjustments specified in Schedule 129.⁶

³ WFalls/204.

⁴ Schedule 483 applied to customers with demand less than 1,000 kW; Schedule 489 was for demand above that level.

⁵ PGE/303.

⁶ Schedule 129, PGE's schedule for Long-Term Transition Cost Adjustment, will be applied to the customer's monthly bill as either a charge or a credit. PGE Schedules and Rules, *available at*: <https://www.portlandgeneral.com/our-company/regulatory-documents/tariff>.

1 **Q. Did WLP follow the requirements under its LTDA agreement and applicable tariff**
2 **schedule?**

3 A. For many years, yes. WLP made an election to purchase its energy supply from an ESS,
4 fulfilled the requirements pertaining to the five years of transition adjustments under PGE's
5 LTDA program, and to the best of PGE's knowledge, paid the charges required by its
6 LTDA agreement and tariff schedules.

7 **Q. Was WLP purchasing energy supply from an ESS at the beginning of 2017?**

8 A. Yes. At the beginning of 2017, WLP was taking service under PGE Schedule 489 and
9 purchasing its energy supply from an ESS.

10 **Q. What happened in October 2017?**

11 A. As PGE witnesses Brian Faist and Brian Clark explain in their testimony, WLP announced
12 on October 19, 2017, that it was ceasing operations and winding up its business under the
13 supervision of its secondary lien holder.⁷ That same day, WLP submitted a form called a
14 Manual Drop Authorization for Direct Access Customers (commonly referred to as a
15 "Drop Direct Access Service Request" or "Drop DASR") to PGE.⁸ The form notified PGE
16 that WLP intended to stop taking service from its ESS, effective immediately.

17 **Q. What is the significance of a Drop DASR?**

18 A. When a customer leaves its ESS, it sends a Drop DASR form to PGE. This is not
19 uncommon when a LTDA customer intends to terminate its service altogether. However,
20 the tariff provides that if the customer gives thirteen-business days' notice and wishes to
21 continue receiving some form of electric service, the customer will receive PGE's
22 Company Supplied Energy Option, which is based on the Intercontinental Exchange Mid-
23 Columbia Daily on- and off-peak Electricity Firm Price Index. If the customer does not
24 give thirteen-business days' notice but wishes to continue receiving electricity service, the

⁷ PGE/100, Faist/5; PGE/200, Clark/5.

⁸ PGE/304.

1 customer will be placed on PGE's Nonresidential Emergency Default Service for five
2 business days under PGE's Schedule 81.

3 **Q. What did PGE do upon receiving WLP's Drop DASR form?**

4 A. Because the Drop DASR was provided without the required thirteen-days' notice but WLP
5 wished to continue receiving service, WLP was moved to Emergency Default Service for
6 five business days. WLP did not select a new ESS, so WLP was ultimately placed on
7 PGE's Company Supplied Energy Option, consistent with Schedule 489.

8 **Q. Does a customer retain its LTDA rights after submitting a Drop DASR and returning
9 to PGE's Company Supplied Energy Option?**

10 A. Yes. Under Schedule 489, a LTDA customer can elect to purchase its energy supply from
11 an ESS or choose the Company Supplied Energy Option. Both are valid options under
12 LTDA service.

13 **Q. What did the Drop DASR suggest to PGE?**

14 A. Because WLP did not give PGE thirteen-business days' notice of its intent to move to the
15 Company Supplied Energy Option, WLP was required to pay higher rates under the
16 Emergency Default Supply option for a period of time. Given WLP's impending
17 liquidation, it seemed likely to PGE that WLP was unable to provide continued assurances
18 of creditworthiness to its ESS and was likely denied service. It thus fell to PGE to provide
19 WLP with electricity at the site.

III. SCHEDULES, RULES, AND OBLIGATIONS APPLICABLE TO WLP'S LTDA SERVICE

20 **Q. Please describe the requirements of WLP's LTDA service.**

21 A. As noted previously, WLP elected to move to direct access in 2006 and initially took
22 delivery service from PGE under PGE Schedule 483. When that schedule was later divided
23 into two separate schedules differentiated on the basis of demand, WLP took service under
24 Schedule 489, the larger of the two. WLP was on Schedule 489 from 2007 until 2018.

1 Schedule 489 is PGE’s COS opt-out schedule for large non-residential customers
2 with a demand greater than 4,000 kW.⁹ The schedule identifies various delivery charges,
3 including those for basic delivery service, retail ancillary services, and distribution charges,
4 as well as options for energy supply. It also addresses the conditions under which the
5 customer will receive Nonresidential Emergency Default Service, the application of
6 transition adjustments, and other issues.

7 **Q. Are there special conditions associated with service under Schedule 489?**

8 A. Yes. Customers taking service under Schedule 489 must enter into a service agreement
9 with PGE.

10 **Q. What other special conditions are associated with service under Schedule 489?**

11 A. Schedule 489 states that, “At the time service terminates under this schedule, the Customer
12 will be considered a new customer for purposes of determining service options.”

13 **Q. Does a “new customer” have the right to elect LTDA service?**

14 A. Not immediately. New customers are required to follow the steps noted above to enroll in
15 LTDA, including taking service under COS rates for a period of time, opting out during an
16 enrollment window, and being subject to appropriate transition adjustments.

17 **Q. Aside from the requirements described in Schedule 489 itself, are there more general
18 regulatory requirements that apply to a Schedule 489 customer?**

19 A. Yes. PGE’s general rules and regulations apply to all tariff schedules.¹⁰ For example,
20 PGE’s rules require all customers to establish and maintain creditworthiness (Rule E) and
21 make timely payments (Rule F). The Commission’s administrative rules, regulations, and
22 orders are also deemed part of PGE’s tariff and thus are applicable to all customers.¹¹
23 Finally, other tariff schedules are applicable to Schedule 489 customers by their own terms.

⁹ WLP took service under that schedule at the subtransmission level.

¹⁰ PGE Rule A, Section 1.

¹¹ PGE Rule A, Section 3.

1 **Q. How did WLP’s LTDA agreement required by Schedule 489 fit into this regulatory**
2 **scheme?**

3 A. The LTDA agreement was not a superfluous agreement. Schedule 489 requires a customer
4 to enter into a service agreement, which is an agreement that specifies direct access “terms
5 and conditions for service.”¹² Thus, the terms of WLP’s LTDA agreement were
6 themselves mandatory terms and conditions associated with WLP’s LTDA service.

7 **Q. Please describe WLP’s LTDA agreement.**

8 A. The LTDA agreement was signed by two parties, WLP and PGE. The initial term of the
9 agreement was for five years, but under the terms of the agreement, the agreement extended
10 from year-to-year until termination. The agreement could be terminated by WLP
11 voluntarily at the end of the initial five-year term or at a later date, but voluntary
12 termination required WLP to give “not less than 2 years advance written notice of
13 termination to PGE.”¹³

14 **Q. Has the Commission explained the purpose of this two-year notice requirement?**

15 A. Yes. The two-year notice requirement is intended to provide PGE with advance notice that
16 a non-residential load will be returning to PGE’s system, so that PGE can begin planning
17 for that new load through its resource planning process. That notice requirement has since
18 been extended to three years, in recognition of the fact that the utility planning process is
19 closer to a three-year cycle.¹⁴

20 **Q. What other provisions were in the LTDA agreement?**

21 A. Under the terms of the agreement, WLP agreed to pay all applicable rates and charges
22 specified in its rate schedule upon receipt of bills from PGE. The LTDA agreement, like
23 Schedule 489, also noted that a direct access customer would be “considered a new

¹² See PGE Rule B(8).

¹³ WFalls/204, Mullins/3.

¹⁴ *In the Matter of Portland General Electric Company, Request for a General Rate Revision*, Docket UE 262, Order No. 13-459 at 9 (Dec. 9, 2013); Docket UE 262, Stipulating Parties’ Joint Testimony in Support of Second Partial Stipulation, Stipulating Parties/200, Compton-Kaufman-Deen-Jenks-Higgins-Hendrix-Cody/6 (Aug. 20, 2013).

1 Consumer for purposes of determining available service options” at the time of termination
2 of the agreement.¹⁵

3 **Q. Could WLP’s LTDA agreement be assigned to another customer?**

4 A. Under certain conditions, yes. The LTDA agreement noted that its terms would apply to
5 the “successor and assigns of the Consumer and of PGE,” though assignment was not
6 permitted unless WLP obtained the written permission of PGE.

7 **Q. Why does assignment of the agreement require PGE’s consent?**

8 A. Before entering into an agreement for electrical service with a new customer, PGE is
9 required to ensure the new customer meets various requirements imposed by its tariff and
10 Commission rules, such as requirements related to creditworthiness, payment history, and
11 energy usage, among others. In other words, PGE is required to conduct a certain amount
12 of due diligence before opening an account with a new customer to ensure the customer is
13 likely to pay for electric supply and/or distribution service provided by PGE. If an existing
14 large customer intends to assign its LTDA agreement to another, PGE would have the
15 obligation to ensure the assignee would be eligible for service under the agreement at issue,
16 that the customer would meet certain creditworthiness requirements, and that the
17 assignment would not harm other customers, for example.

18 **Q. Has PGE ever consented to the assignment of a LTDA agreement?**

19 A. Yes. PGE has in numerous instances consented to the assignment of a LTDA agreement,
20 in appropriate circumstances.¹⁶

21 **Q. You note that timely payment is a condition of electric service under Schedule 489,
22 under the LTDA agreement with WLP, and under Commission rules. What rights
23 does PGE have if a customer fails to pay its bills?**

¹⁵ WFalls/204, Mullins/4.

¹⁶ See WFalls/202, Mullins/40, 82-83 (identifying several transfers in context of sale of operations or corporate restructuring).

1 A. If a customer fails to pay its bills, PGE has the right to terminate the customer's service.
2 This right was reflected in WLP's LTDA agreement, Schedule 489, and PGE rules, and is
3 also a right identified in the Commission's administrative rules.¹⁷

4 **Q. If a customer fails to pay its bills, must PGE terminate the customer's service**
5 **immediately?**

6 A. No. The Company need not exercise the right to terminate a customer's service
7 immediately. If grounds for disconnecting a customer exist, PGE has the option to seek
8 termination of the customer's electric service at that time but is not obligated to do so. The
9 Company's rules state that "[d]elay or failure on the Company's part to exercise this option
10 does not constitute a waiver of its right to do so at a later time."¹⁸

IV. PGE ACTED REASONABLY IN CLOSING WLP'S ELECTRIC SERVICE ACCOUNTS

11 **Q. Why did PGE ultimately terminate WLP's electric service?**¹⁹

12 A. WLP stopped paying its electric bills to PGE in January 2018. From the end of January
13 2018 until November 2018, when PGE finally terminated WLP's electric service, WLP did
14 not make a payment to its Schedule 489 electric service account, [REDACTED]

15 [REDACTED]²⁰

16 **Q. At what point in time was PGE entitled to terminate WLP's service?**

17 A. Under the terms of its tariff, PGE would have been entitled to terminate WLP's electric
18 service for nonpayment in early 2018. In fact, PGE's records indicate that 15- and 5-day
19 notices of disconnection were sent to WLP on March 16 and March 26, 2018.²¹ By that
20 point, WLP had incurred over [REDACTED] in unpaid electric service bills, was in violation of

¹⁷ See, e.g., OAR 860-021-0305 (grounds for disconnection, including for nonpayment).

¹⁸ PGE Rule H.

¹⁹ By "termination of service," PGE is referring to the closure of WLP's accounts for nonpayment.

²⁰ WLP had a number of smaller accounts, as well. WLP made its last payment to any of those accounts on February 22, 2018.

²¹ PGE/306, Wenzel-Macfarlane/1-4.

1 the terms and conditions for receiving electric service, and was in breach of its LTDA
2 agreement.²²

3 **Q. Why didn't PGE terminate WLP's accounts at that time?**

4 A. There were a number of reasons to delay termination. The situation was complicated. Our
5 understanding is that WLP signed a liquidation agreement with its secured creditors in
6 October 2017 and was forced into involuntary bankruptcy on October 25, 2017. The
7 bankruptcy petition was dismissed on February 22, 2018, but the process for WLP's
8 winding down was not initially clear to PGE.²³ For a while, WLP's solvent parent
9 company, Stern Partners, was engaged in discussions with Mr. Clark and others about the
10 future of the site, which might have led to positive redevelopment efforts. Moreover, as
11 Mr. Clark explains, a small amount of the historical power load at the site was used in
12 support of PGE's hydro operations at the Sullivan plant, operations that were intertwined
13 with WLP's.²⁴ It was thus necessary for PGE to take care that it did not jeopardize Sullivan
14 operations. In short, although PGE viewed WLP as a significant credit risk as early as
15 October 2017, it nevertheless seemed reasonable to allow the issues some time to develop
16 so that PGE could make the right decisions in a complicated situation. PGE did not,
17 however, waive any of its rights against WLP.

18 **Q. What was the Creditors' Trust Agreement?**

19 A. We are not lawyers, but we understand that the Creditors' Trust Agreement was an
20 agreement between WLP and a trustee that was also signed by some of WLP's secured
21 lienholders. PGE was not a party to the agreement. Parties who were owed money by
22 WLP could choose to file a claim with the Creditors' Trust. Our understanding is that a
23 party filing a claim would give up its right to sue WLP for nonpayment by doing so in

²² See PGE/307; PGE/308.

²³ PGE/309 (*In re West Linn Paper Co.*, Case No. 17-33992-tmb7, U.S. Bankruptcy Court for the District of Oregon, Order Dismissing Involuntary Petition (Feb. 22, 2018)).

²⁴ PGE/200, Clark/7.

1 exchange for some chance (though no guarantee) of ultimately receiving some amount of
2 recovery from the trust.²⁵

3 **Q. Did the existence of the Creditors' Trust provide PGE with adequate assurance that**
4 **PGE would be compensated for WLP's accruing unpaid electric bills?**

5 A. No. As noted above, our understanding is that unsecured creditors like PGE could elect to
6 file a proof of claim with the Creditors' Trust at some point, but no unsecured creditor that
7 did so was guaranteed any recovery.

8 **Q. Did PGE consider taking over responsibility for electric service at the mill site while**
9 **PGE was in discussions with Stern Partners about redevelopment efforts?**

10 A. Mr. Clark and Mr. Faist describe the discussions with Stern Partners, WLP's solvent parent,
11 about electric service at the site. Ultimately, however, the parties were unable to agree
12 about how the parties' private contractual obligations might be modified in light of WLP's
13 shutdown and breach of its lease agreement. From a regulatory perspective, then, the
14 obligation for pay for electric service, and the electric service accounts, remained in WLP's
15 name.

16 **Q. Why didn't PGE simply stop charging WLP for electric service?**

17 A. As a regulated utility, PGE must charge all customers for electric service provided. So
18 long as WLP was an electric customer taking electric service under a Commission-
19 regulated tariff, PGE was required to charge WLP for that electric service used.

20 **Q. Please describe PGE's view of the situation from a regulatory perspective by the fall**
21 **of 2018.**

22 A. PGE viewed WLP as a significant credit risk beginning in October 2017, when WLP
23 announced it was winding up its business and was forced into an involuntary bankruptcy.
24 From a regulatory standpoint, WLP's account balances were becoming increasingly
25 troubling. Nevertheless, while PGE was discussing options for the site with various parties,

²⁵ See W Falls/101, Konen/19.

1 PGE was willing to engage in site redevelopment discussions with Stern Partners in the
2 hope that discussion could yield positive results for all parties and that Sullivan operations
3 would not be disrupted in the interim. PGE was therefore taking time to allow events to
4 develop and to make the right decisions. By August 2018, Mr. Konen had found no
5 investor with any serious interest in starting a paper mill at the site, and discussions with
6 Stern were winding down.²⁶ As Mr. Clark testifies, Stern had indicated that it did not
7 intend to pay out any money going forward on WLP's behalf, and the path forward with
8 Stern/WLP seemed at an end.²⁷ From a regulatory perspective, PGE had been holding
9 WLP's account termination in abeyance for months, but it became increasingly clear that
10 the prudent course of action was to terminate WLP's service.

11 **Q. WLP had also been in breach of its lease agreement for nearly a year at this point.**
12 **Did PGE issue a notice of default to WLP?**

13 A. Yes. As Mr. Faist explains, PGE issued WLP a notice of default under its lease on October
14 24, 2018. The lease terminated effective November 26, 2018.²⁸

15 **Q. When did PGE finally close WLP's electric service accounts?**

16 A. PGE closed WLP's electric service accounts on November 15, 2018. After closing WLP's
17 accounts, PGE opened new accounts in PGE's name and took responsibility for electric
18 service at the site.

19 **Q. Was PGE justified in terminating WLP's electric service in November 2018?**

20 A. Yes. Between January 25, 2018 and November 15, 2018, when WLP's account was finally
21 terminated, WLP made no payments on its Schedule 489 electric service account. Under
22 the terms of Schedule 489, the terms of the LTDA agreement, and Commission rules, PGE
23 was justified in providing notice of disconnection in March 2018, and was entitled to
24 terminate WLP's account at any point after WLP ceased paying. In any case, even if PGE

²⁶ PGE/200, Clark/15.

²⁷ PGE/200, Clark/15-16.

²⁸ PGE/100, Faist/10.

1 had not closed WLP's accounts on November 15, 2018, it would have properly closed the
2 accounts and moved them into PGE's name less than two weeks later, when possession of
3 the property reverted back to PGE.

4 **Q. Why did PGE finally take this step on November 15, 2018?**

5 A. By this point, WLP had been issued a notice of default of its lease agreement, and WLP's
6 electric service accounts were still in arrears. From a regulatory perspective it was clear
7 that WLP was going to vacate the site, a change in possession was imminent, and the time
8 for optimism about WLP's ability or willingness to pay was over.

9 **Q. When it closed WLP's accounts on November 15, 2018, PGE opened new accounts in
10 its name. When PGE did so, it backdated the account opening to September 1, 2018.
11 Why?**

12 A. From PGE's perspective, backdating the account opening to September 1 simply allowed
13 PGE to take financial responsibility for the account earlier in time, thus preventing WLP's
14 more recent account balances from showing up as regulatory bad debt. This seemed like
15 an appropriate date, as PGE was able to submit a claim to the Creditors' Trust for WLP's
16 unpaid electric service bills through the end of August 2018, though our understanding is
17 that PGE was not anticipating much recovery from the Creditor's Trust claim at that time.

18 **Q. Did choosing a September 1, 2018 account-opening date benefit PGE's shareholders?**

19 A. At most, it prevented PGE from incurring unexpected uncollectible expense under its
20 existing rates.

21 **Q. Did choosing a September 1, 2018 account-opening date benefit PGE's COS
22 customers?**

23 A. Yes. If PGE had not backdated the account, WLP's account balance as of November 15,
24 2018, would simply have been written off as uncollectible bad debt expense. This expense
25 would have factored into the calculation of PGE's uncollectible expense in its next rate
26 case if 2018 turned out to be one of the historical years upon which bad debt expense were
27 based. Given that PGE would have been well within its rights to terminate WLP's electric

1 service on September 1, 2018, however, it seemed unnecessary to keep that uncollectible
2 expense on PGE's (and PGE customers') regulatory books.

3 **Q. Did the September 1, 2018 date harm Complainants?**

4 A. We do not understand how it could have. WLP's grievance in this case appears to be based
5 on the fact that its account was closed, not the specific date of the closure. Whether WLP's
6 account had been closed in March 2018, September 2018, November 15, 2018, or
7 November 26, 2018 (when possession of the property reverted back to PGE)—all dates on
8 which PGE would have been justified in terminating WLP's electric service—the impact
9 on WLP would have been the same. WLP's outstanding liabilities were actually decreased
10 by PGE's decision to back-date the account closure.

11 **Q. Did PGE shut off electric service to the site when it moved the accounts into PGE's
12 name?**

13 A. No. As Mr. Clark explains, it was important to have electric power at the site for some
14 limited but important purposes, including operation of the Sullivan plant.

15 **Q. How long did PGE take service at the site?**

16 A. PGE took service at the site from November 15, 2018, until June 30, 2019. W Falls opened
17 a new account on July 1, 2019, and began taking service at COS pricing under PGE's
18 Schedule 89.

19 **Q. While WLP was still a PGE electric customer with increasingly overdue accounts, did
20 WLP ever advise PGE that it was important for WLP to keep its accounts active?**

21 A. Not that we are aware.

22 **Q. After November 15, 2018, PGE started receiving bills for electric service at the site,
23 rather than WLP. Did WLP ever complain about this fact?**

24 A. Not that we are aware. In any case, WLP's lease terminated on November 26, 2018. Even
25 if PGE had not closed WLP's accounts for nonpayment on November 15, 2018, PGE would
26 have closed them when PGE took over possession of the property.

1 **Q. When WFalls sought to open an electric service account in July 2019, did PGE view**
2 **WFalls as eligible for LTDA immediately?**

3 A. No. WFalls was a new customer, and as such, it was required to take the steps any new
4 customer would need to take to be eligible for LTDA.

5 **Q. Why couldn't WFalls take over WLP's old LTDA rights?**

6 A. WFalls could not take over WLP's old LTDA rights because WLP's eligibility for LTDA
7 had ended when WLP's electric service was terminated seven months earlier—long before
8 WFalls became a PGE customer in July 2019. PGE advised WFalls' parent company early
9 in the parties' discussions that a new owner would not be eligible to begin LTDA service
10 immediately.²⁹

11 **Q. Did PGE ever view WFalls as a "successor" to WLP for purposes of taking over**
12 **WLP's electric service account?**

13 A. No. There was no reason for PGE to believe that WFalls was WLP's legal successor such
14 that WFalls could automatically take over WLP's electric service account.³⁰ WFalls was
15 not created as part a reorganization or merger, for example. More importantly, by that
16 point, WLP had no electric service accounts to take over.³¹

**V. RESPONSE TO COMPLAINANTS' ALLEGATIONS REGARDING WLP'S
ACCOUNT CLOSURE AND LTDA AGREEMENT**

17 **Q. How do you respond to Mr. Konen's allegation that PGE improperly closed WLP's**
18 **electric service accounts?**

19 A. We disagree with Mr. Konen's assertion that PGE acted inappropriately when closing
20 WLP's electric service accounts. Mr. Clark and Mr. Faist explain in more detail the course
21 of events as they unfolded from PGE's perspective. Overall, we understand that Mr. Konen
22 continuously tried to find an investor to start a new paper company at the site and ultimately

²⁹ PGE/100, Faist/18-19.

³⁰ We understand that documents provided to PGE in discovery confirm PGE's conclusion on this point. PGE will address this issue in legal briefing.

³¹ We also note that WLP had made no effort to pay off its debt to PGE or to perform under its LTDA agreement. Nor did WFalls offer to pay any of WLP's outstanding balances when it started service.

1 was able to do so. He would now like the new company to enjoy the benefits that WLP
2 enjoyed. But the story is more complicated than that. Long before Mr. Konen found an
3 investor willing to start a new paper mill at the site, WLP had become a shell company
4 unable to pay its electric bills. In November 2018, PGE finally closed WLP's electric
5 service accounts and WLP's lease was terminated. All of this happened well before PGE
6 knew anything about Columbia Ventures, let alone WFalls, the company Columbia
7 Ventures eventually incorporated in June 2019.

8 **Q. What is your general reaction to Mr. Mullins' testimony?**

9 A. Mr. Mullins' testimony is difficult to address. First, Mr. Mullins makes a number of
10 conclusory statements about complex legal issues. For example, Mr. Mullins makes the
11 pronouncement that WFalls is legally a "successor" to WLP, citing case law. Rather than
12 burdening the Commission with a motion to strike this testimony, PGE will simply point
13 out the fact that Mr. Mullins is not a lawyer.³² Moreover, his conclusions are misstatements
14 of the law, which PGE will address in legal briefing.

15 In a similar vein, Mr. Mullins makes erroneous statements about the interpretation
16 of PGE's regulatory tariffs and schedules. It is not clear that Mr. Mullins has any expertise
17 in tariff interpretation; however, we will address Mr. Mullins' misstatements in our
18 testimony.

19 **Q. Mr. Mullins alleges that PGE gave itself preferential treatment. He argues that "had
20 any other person been the landlord of the Paper Mill," service under Schedule 489
21 would have continued under the Company Supplied Option.³³ How do you respond?**

22 A. Mr. Mullins is incorrect. PGE closed WLP's electric service accounts for nonpayment.
23 There is no legal basis for assuming that PGE or any other entity had the duty to assume
24 WLP's obligations, let alone the responsibility for protecting those rights on behalf of an

³² PGE/305, Wenzel-Macfarlane/174-76.

³³ WFalls/200, Mullins/2-3.

1 unknown other that might operate the paper mill sometime in the future. Once WLP's
2 accounts were closed, PGE was appropriately treated as a new customer.

3 **Q. Do you agree with Mr. Mullins that PGE's role as both landlord and electric service**
4 **provider "creates an inherent conflict of interest"?³⁴**

5 A. No. PGE's obligations under its lease were governed by private contract. Its obligations
6 as an electric service provider were governed by Commission regulation. PGE discharged
7 its duties appropriately, and, if anything, delayed the exercise of its rights longer than it
8 ordinarily would have to ensure its Sullivan operations were able to continue without
9 interruption and to give Stern and other potential investors some time to come up with a
10 workable plan for the mill site.

11 **Q. Do you have any additional comments on Mr. Mullins' assertions that PGE's serving**
12 **as both landlord and electric service provider led to some sort of self-dealing to**
13 **WLP's disadvantage?**

14 A. Yes. While some of PGE's actions at the site can be attributable to PGE's role as both
15 landlord and electric service provider (such as its need to maintain some basic functions at
16 the site), PGE has been careful to separate the private rights and obligations (established
17 by its lease with WLP) from its regulatory rights and obligations as an electric service
18 provider (established with respect to WLP's electric service account). If anything,
19 Complainants are unfairly using PGE's status as both landlord and electric service provider
20 to seek special treatment in this docket.

21 It is common for lease agreements to indicate which party is responsible for electric
22 service—it can be the landlord or the tenant. If a tenant responsible for electric service
23 were to open an account with PGE and then fail to pay its bills, that customer could not
24 simply direct PGE to seek payment from the landlord. PGE would continue to hold the

³⁴ WFalls/200, Mullins/3.

1 tenant, the actual account holder, responsible for payment. If the tenant did not pay its
2 bills, PGE would terminate the customer's service.

3 In this case, Complainants use PGE's property ownership as a basis for urging the
4 Commission to treat PGE differently than the Commission would treat any other landlord,
5 and for treating WLP differently than it would treat any other utility customer. WLP argues
6 that the Commission should: (1) hold WLP harmless for WLP's failure to pay its electric
7 bills (in contravention of PGE's tariff); (2) find that PGE should have paid WLP's electric
8 bills (in contravention of the parties' private contractual agreement); (3) find PGE liable
9 for wrongdoing for closing WLP's accounts for nonpayment, and (4) award damages
10 against PGE for this course of events. PGE strongly disagrees with Complainants'
11 position. When determining responsibility for payment on WLP's electric service account,
12 the Commission should apply the same standards to PGE that it would to any landlord, and
13 the same standards to WLP that it would apply to any utility customer.

14 **Q. Mr. Mullins suggests that PGE knew WLP intended to open a new paper mill at the**
15 **site and that PGE should not have closed WLP's accounts for that reason.³⁵ Is this**
16 **correct?**

17 A. No. PGE certainly understood that Mr. Konen wanted to find an investor for new paper
18 mill. This does not mean PGE was obligated to suspend its right to payment indefinitely
19 while Mr. Konen pursued his goals. PGE delayed terminating WLP's service for a
20 significant period of time to allow for positive developments to occur.³⁶ Ultimately, Mr.
21 Konen did not find a serious investor until well after PGE had retaken possession of the
22 property with Mr. Konen's consent.³⁷

³⁵ WFalls/200, Mullins/8.

³⁶ Moreover, as Mr. Faist explains, in November 2018 it was not clear that a paper mill would actually be started at the site. No serious investor showed up until April 2019. PGE/100, Faist/16-17.

³⁷ See WFalls/104, Konen/6.

1 **Q. Mr. Mullins states that PGE was “made whole, on January 25, 2018 through**
2 **December 2017.”³⁸ How do you respond?**

3 A. The dates stated by Mr. Mullins are confusing. If Mr. Mullins simply means to say that
4 PGE was paid for WLP’s electric service from December 2017 to January 2018, he is
5 correct. If he means to suggest that WLP paid for electric service on its Schedule 489
6 account after January 25, 2018, he is wrong. As noted previously, WLP’s electric service
7 accounts were deeply in arrears by November 2018, and PGE ultimately received only a
8 partial offset for these amounts from the Creditors’ Trust in late 2019.

9 **Q. According to Mr. Mullins, following WLP’s execution of the Creditors’ Trust**
10 **Agreement, WLP “could no longer make payments to unsecured creditors, [] outside**
11 **the terms of the agreement.”³⁹ How do you respond?**

12 A. We are unsure what Mr. Mullins is asserting here. Perhaps Mr. Mullins is simply saying
13 that WLP lacked money to pay its bills to PGE because its assets were controlled by its
14 creditors. In any case, the Creditors’ Trust Agreement did not alter WLP’s obligation to
15 pay PGE for its electric service each month when those bills came due, per the terms and
16 conditions of WLP’s electric service.

17 **Q. Do you agree with Mr. Mullins that PGE’s submission of a claim to the Creditors’**
18 **Trust meant that “PGE agreed to the process that was established to sell the Paper**
19 **Mill assets”?⁴⁰**

20 A. No. The Creditors’ Trust Agreement says no such thing. The trust gave creditors like PGE
21 an opportunity to submit claims to a trustee for some chance of financial recovery for debts
22 covering a limited time-period. As a condition of submitting a claim, a claimant like PGE
23 agreed not to sue WLP or WLP’s secured creditors for money owed.⁴¹ That was the nature
24 of the promise, nothing more.

³⁸ WFalls/200, Mullins/6.

³⁹ WFalls/200, Mullins/6.

⁴⁰ WFalls/200, Mullins/7.

⁴¹ See WFalls/101, Konen/20.

1 **Q. Was PGE able to submit a claim to the Creditors' Trust?**

2 A. Yes. In September 2018, PGE submitted a claim to the Creditor's Trust for [REDACTED] in
3 unpaid bills from January through August 2018. Of that amount, [REDACTED] was for electric
4 service provided to WLP by PGE and [REDACTED] was for unpaid lease payments.⁴²

5 **Q. Did PGE feel confident it would be able to recover some of this money from the**
6 **Creditor's Trust?**

7 A. No, not when the claim was submitted, and certainly not in November 2018 when WLP's
8 electric service accounts were closed. By November 2018, PGE had received nothing from
9 the Creditors' Trust and had no assurance it would receive any payment whatsoever. PGE
10 ultimately did receive some recovery in September 2019.⁴³

11 **Q. Mr. Mullins argues that PGE never terminated WLP's electric service, apparently**
12 **because PGE did not cut off power to the site.⁴⁴ Do you agree?**

13 A. No. PGE closed WLP's electric service account on November 15, 2018. The closure of
14 WLP's accounts was a termination of WLP's electric service. An electric service provider
15 need not physically cut off power at a location to terminate a customer's service, and
16 frequently does not in situations where there is simply a change in possession. In this case,
17 electric service remained necessary at the site for certain basic site maintenance, safety,
18 and Sullivan plant operations, and PGE was able to take over responsibility for the service
19 without the need for physical disconnection.

⁴² WFalls/202, Mullins/5.

⁴³ PGE ultimately recovered about [REDACTED] of WLP's unpaid bills from the Creditors' Trust, or just over 50 percent of its claim. PGE had to write off approximately [REDACTED] of WLP's debts incurred through August 2018.

⁴⁴ WFalls/200, Mullins/12.

1 **Q. Mr. Mullins claims that PGE did not comply with the disconnection procedures in**
2 **ORS 860-021-0505.⁴⁵ Is this correct?**

3 A. No. PGE's records indicate that notices of disconnection were automatically generated
4 and automatically sent to WLP on March 16, 2018, and March 26, 2018.⁴⁶

5 **Q. Mr. Mullins argues that PGE was required to take service under WLP's Schedule 489**
6 **agreement after it closed WLP's electric service accounts and opened accounts in**
7 **PGE's name.⁴⁷ Is this correct?**

8 A. No. Mr. Mullins interprets PGE's tariffs incorrectly. WLP's accounts were terminated for
9 nonpayment and closed. PGE opened new accounts in its own name and was appropriately
10 deemed a new customer. PGE took service under Schedule 89, a COS schedule.

11 **Q. Why does Mr. Mullins believe PGE was required to take service under Schedule 489?**

12 A. Mr. Mullins apparently believes that PGE somehow automatically stepped into the shoes
13 of WLP at the time WLP's accounts were closed and is now required to give itself two-
14 years' notice before terminating WLP's service under Schedule 489.⁴⁸ There is no basis
15 for this assertion. Mr. Mullins also ignores the fact that WLP's service terminated,
16 consistent with PGE's tariff.

17 In any case, the two-year notice requirement applies to a customer's voluntary
18 termination of a LTDA agreement in order to return to COS rates. It is a duty WLP owed
19 to PGE as a condition of voluntary termination of its LTDA contract and its Schedule 489
20 service. Nothing requires PGE to assume the rights and obligations that WLP owed to
21 PGE under the LTDA agreement after WLP breached the terms of its agreement and
22 prompted the termination of its service for nonpayment.

⁴⁵ WFalls/200, Mullins/14.

⁴⁶ PGE/306; *see also* PGE/305, Wenzel-Macfarlane/136-140.

⁴⁷ WFalls/200, Mullins/12.

⁴⁸ WFalls/200, Mullins/2, 12.

1 **Q. But Mr. Mullins argues that the WLP's LTDA agreement simply could not terminate**
2 **without two-years' notice.⁴⁹ Do you agree?**

3 A. No. PGE terminated WLP's electricity service completely, consistent with PGE's tariff.
4 PGE did not move WLP from LTDA to COS. The two-year notice requirement addresses
5 voluntary termination of the LTDA service agreement, not involuntary termination. It is a
6 contractual duty owed by WLP, no one else, under the LTDA agreement. Moreover, any
7 contract can be terminated for breach. WLP breached its LTDA agreement as early as
8 January 2018, and never cured the default before PGE closed WLP's accounts in
9 November 2018. In any case, even if the LTDA agreement survived, WLP thereafter had
10 only the rights a new customer has with respect to service options. This issue will be
11 addressed in more detail in PGE's briefing of legal issues.

12 **Q. Mr. Mullins argues that it was inappropriate for PGE to start service on Schedule 89**
13 **because the two-year notice provision in Schedule 489 and WLP's LTDA agreement**
14 **was intended to prevent cost shifting to COS customers.⁵⁰ What is your response?**

15 A. Mr. Mullins is correct regarding the purpose of the two-year notice. A customer that has
16 chosen to go to LTDA must give PGE advanced notice about its intention to return to COS
17 rates so that PGE can plan for the return of the retail load. However, when a customer who
18 signs a LTDA agreement violates the terms and conditions of its electric service and its
19 LTDA agreement, a new customer at the site is not responsible for the prior customer's
20 electric service.⁵¹ Any new customer is just that, a new customer.

21 **Q. Mr. Mullins alleges that PGE's taking service under Schedule 89 harmed customers,**
22 **because the West Coast was experiencing high energy prices at the time.⁵² Is this**
23 **factually correct?**

⁴⁹ WFalls/200, Mullins/2, 12.

⁵⁰ WFalls/200, Mullins/25.

⁵¹ If a customer simply changes its name in an effort to avoid its obligations, that would be a different analysis.

⁵² WFalls/200, Mullins/25-26.

1 A. First, Mr. Mullins’ statement is factually incorrect. PGE’s PCAM did not trigger payments
2 for 2018 or 2019. To the extent PGE incurred higher costs due to the Enbridge issue noted
3 by Mr. Mullins, none of those costs fell on customers. Shareholders absorbed the costs
4 completely.

5 Second, PGE could not have elected Schedule 489 when it opened a new account
6 at the site in any event. Once WLP’s accounts were terminated, any subsequent customer
7 was to be treated as a new customer under the terms of PGE’s tariff. As PGE has explained,
8 this requirement precludes any new customer—PGE or anyone else—from immediately
9 taking LTDA service upon opening a new account.

10 Finally, while Mr. Mullins correctly notes that a return of load previously served
11 by an ESS to COS rates can harm customers, PGE would observe that the large industrial
12 load at the site was gone by the time PGE opened its account. PGE’s load at the site was
13 a fraction of the paper mill’s load when it was in operation.⁵³ Ultimately, however, the
14 fact that a subsequent customer would end up on COS rates was caused by WLP’s
15 shutdown, its inability to comply with the terms and conditions of its electric service, and
16 its default on its lease, even if that shutdown was not WLP’s fault.

17 **Q. Was PGE’s opening of new accounts in its name a “temporary transfer of services to**
18 **the account of the landlord,”⁵⁴ as Mr. Mullins characterizes it?**

19 A. No. PGE did not temporarily transfer service into its name. It opened new accounts in its
20 own name. At the time PGE closed WLP’s accounts, PGE had no way of knowing whether
21 redevelopment might occur, when it might occur, or who it might involve.⁵⁵ If a
22 redevelopment plan were to materialize, there might someday be another lessee at the site,
23 but whether that would happen was unknown to PGE at the time.

⁵³ PGE/305, Wenzel-Macfarlane/2-113.

⁵⁴ WFalls/200, Mullins/13.

⁵⁵ Indeed, the investor who ultimately opened a new paper business at the site was not even introduced to PGE until months after PGE began taking service at the site. *See* PGE/100, Faist/17.

1 **Q. Mr. Mullins cites Rule C of PGE’s tariff for the proposition that PGE was required**
2 **to maintain WLP’s Schedule 489 service.⁵⁶ How do you respond?**

3 A. Nothing in Rule C required PGE to maintain WLP’s Schedule 489 service. Rule C simply
4 states that PGE’s tariff applies to PGE’s provision of electric service. PGE terminated
5 WLP’s electric service consistent with PGE’s tariff.

6 **Q. WLP’s LTDA agreement is binding on its “successors and assigns.” Do you agree**
7 **with Mr. Mullins that PGE is WLP’s “successor in interest,” such that WLP’s LTDA**
8 **agreement automatically transferred to PGE?⁵⁷**

9 A. No. This is a clear misstatement of the law that will be addressed in PGE’s legal briefing.⁵⁸

10 **Q. In addition to arguing that PGE is WLP’s successor-in-interest, Mr. Mullins also**
11 **argues that WFalls is WLP’s successor-in-interest.⁵⁹ Do you agree?**

12 A. No. Like the prior statement, this statement lacks legal foundation and will be addressed
13 in PGE’s legal briefing. Our understanding is that the legal documents associated with the
14 disposition of WLP’s assets, as well as various publicly available documents, make clear
15 that WFalls is an unrelated corporate entity that does not meet the definition of a successor-
16 in-interest.⁶⁰

17 **Q. If WFalls were WLP’s successor-in-interest, what impact would that have on WFalls’**
18 **claims?**

19 A. None. If WFalls were WLP’s successor-in-interest, we understand that WFalls would
20 presumably step into WLP’s shoes and assume WLP’s rights and obligations. WLP’s
21 LTDA agreement and its electric service accounts with PGE were terminated in November

⁵⁶ WFalls/200, Mullins/13.

⁵⁷ WFalls/200, Mullins/17.

⁵⁸ The Complainants’ relationship is described in more detail in Mr. Faist’s and Mr. Clark’s testimony.
See also PGE/305, Wenzel/Macfarlane/167.

⁵⁹ WFalls/200, Mullins/18.

⁶⁰ *See* WFalls/102; WFalls/103; WFalls/110; PGE/305, Wenzel-Macfarlane/141-52; PGE/100, Faist/15
(n.21 & n.24); *Joseph v. W. Linn Paper Co.*, Case No. 3:18-cv-01069-SB, 2020 US Dist LEXIS 83906 (D
Or Apr. 24, 2020) (*adopted by and Motion granted by: Joseph v. W. Linn Paper Co.*, No. 3:18-cv-1069-
SB, 2020 US Dist LEXIS 83450 (D Or May 12, 2020)).

1 2018,⁶¹ seven months before WFalls came into existence. There were no rights to step
2 into. PGE will address this issue in detail in its legal briefing.

3 **Q. If WLP’s LTDA rights were not automatically transferred via succession, Mr.**
4 **Mullins argues, they were “assigned” to WFalls.⁶² Is this correct?**

5 A. No. WLP’s LTDA agreement was assignable, but (1) it was only assignable while it was
6 in effect, and (2) and it was only assignable with PGE’s consent.⁶³ WLP’s right to Schedule
7 489 service under its LTDA agreement was terminated well before WFalls existed, so it is
8 unclear how there were any rights to transfer.

9 **Q. Was WLP’s LTDA agreement assigned to WFalls through the series of asset sales and**
10 **transactions that occurred after WLP’s insolvency, as Complainants suggest?⁶⁴**

11 A. No. PGE has reviewed the agreements provided by Complainants in support of their
12 conclusion. WLP clearly failed to assign its LTDA agreement to WFalls through that series
13 of transactions. PGE will discuss this issue in more detail in its legal briefing.

14 **Q. Did WLP ever try to assign its LTDA agreement to WFalls?**

15 A. Yes, but not until a few weeks ago. On September 24, 2020, WLP signed an agreement
16 with WFalls purporting to assign WLP’s LTDA agreement to WFalls. The document was
17 signed by Mr. Konen on behalf of both parties and provided to PGE on September 25,
18 2020.

19 **Q. To be clear, this purported assignment agreement was executed after Complainants**
20 **filed their complaint against PGE?**

21 A. Yes. It was executed after Complainants filed their complaint and their opening testimony,
22 and only after PGE issued a DR inquiring whether documentation of any such assignment
23 existed.

⁶¹ Effective September 1, 2018.

⁶² WFalls/200, Mullins/18.

⁶³ See WFalls/204, Mullins/5.

⁶⁴ WFalls/100, Konen/2, 4-6; WFalls/200, Mullins/5.

1 **Q. In any case, WLP's LTDA agreement required PGE's consent before it could be**
2 **assigned to another party. Did WLP seek PGE's consent to assign its LTDA**
3 **agreement?**

4 A. Not until three days ago. On October 9, 2020, Complainants' attorney Chad Stokes sent a
5 letter to PGE's attorney seeking PGE's consent for WLP to assign its LTDA Agreement to
6 W Falls.⁶⁵

7 **Q. Was this the first time WLP sought PGE's consent to assign its LTDA agreement to**
8 **anyone?**

9 A. Yes. Until last week, WLP had never sought PGE's consent to assign its LTDA agreement
10 W Falls or to any other party.

11 **Q. How did PGE respond to WLP's request for consent to the assignment?**

12 A. Mr. Stokes letter was received by PGE at 4:03 pm last Friday, one business day before
13 PGE's testimony was due in this docket. PGE has not had the opportunity to meaningfully
14 review the letter nor to provide a written response. PGE will review Mr. Stokes' letter (and
15 the legal authority cited therein) and will provide Complainants with a written response as
16 soon as practicable. Because this is PGE's only opportunity to file testimony in this docket,
17 PGE reserves the right to supplement its testimony to add PGE's response to the record to
18 ensure the Commission has a complete record on which to base its decision.

19 **Q. What is your general reaction to the purported assignment agreement and the request**
20 **for consent for assignment?**

21 A. We have a number of reactions. First, Complainants have accused PGE of wrongdoing
22 for, among other things, failing to acknowledge WLP's assignment of its LTDA agreement
23 to W Falls. WLP's September 24, 2020 document and its last-minute request for PGE's
24 consent for assignment provide further support for one of PGE's contentions in this case:

⁶⁵ PGE/302.

1 that despite WLP's assertions of wrongdoing by PGE, WLP never sought to assign its
2 LTDA agreement to WLP, nor sought PGE's consent for any such assignment, until now.

3 Second, even if WLP's LTDA agreement were somehow still in effect (which PGE
4 disputes), it is unclear what possible effect an assignment would have at this point. WLP's
5 electric service accounts were closed long ago, and its Schedule 489 service terminated.
6 WLP's only contractual right under the LTDA agreement, even if it survived, would be to
7 start as "a new Consumer for purposes of determining available service options."⁶⁶ As we
8 explained previously, a new consumer may certainly seek to move to LTDA, but it must
9 first take the steps required by PGE's tariff.

10 **Q. Complainants assert that WFalls should be permitted to move to LTDA because there**
11 **is no evidence that allowing it to do so would cause any harm. What is your general**
12 **reaction to this line of argument?**

13 A. PGE's approved LTDA program addresses cost shifts for long-term opt outs and includes
14 Commission-approved transition adjustments for five years. PGE's LTDA program is
15 designed to protect customers from cost shifts caused by the LTDA program in aggregate.
16 To provide this protection, however, the Commission-approved LTDA program
17 requirements must be adhered to, and all utility customers interested in LTDA must follow
18 them. Thus, if WFalls chooses to opt out of cost-of-service and pursue LTDA (Schedule
19 489 subtransmission), it would do so through the September election window, and would
20 be subject to then-applicable PGE Schedule 129 transition adjustment for the enrollment
21 period.⁶⁷

22 **Q. Mr. Mullins argues that PGE did not acquire any generating resources to serve the**
23 **paper mill load and is not planning any new resources in its IRP to serve an**

⁶⁶ WFalls/204, Mullins/4.

⁶⁷ WFalls/202, Mullins/71.

1 **“imminent resource deficiency,” so customers would not be harmed by WFalls**
2 **moving immediately to LTDA.⁶⁸ Do you agree with this assessment?**

3 A. No. WFalls’ July 2019 start-up of mill operations caused PGE to include WFalls’ load in
4 its load forecasts in September 2019 and in PGE’s 2020 Annual Update Tariff.⁶⁹ Mr.
5 Mullins is aware of this and downplays it in his testimony,⁷⁰ but he is aware that PGE was
6 planning for WFalls’ load by the time WFalls’ energized. In any case, acquiring a new
7 long-term resource is not the only way to plan for additional load. Short-term market
8 purchases are a tool commonly used.⁷¹

9 **Q. Mr. Mullins argues that moving WFalls to Schedule 489 will nevertheless have no**
10 **material impact on customer rates in future AUT proceedings.⁷² How do you**
11 **respond?**

12 A. The fact that other customers did not benefit “materially” from the inclusion of the load is
13 irrelevant. As explained above, the requirements for LTDA are based on Commission
14 policy and require all customers to comply with the same regulatory requirements. The
15 Commission has not invited customers to seek waivers of PGE’s tariff requirements to
16 obtain LTDA eligibility, nor should it. Smaller loads will not, individually, have an impact
17 on PGE’s overall COS; but the cumulative effect of small load defections will. The
18 Commission has established uniform eligibility criteria for this reason.

19 **Q. Mr. Mullins states that WFalls’ load does not “reduce any other ratepayer’s**
20 **contribution to fixed costs” because PGE has not filed a rate case since WFalls started**
21 **taking service on Schedule 89.⁷³ Is this a significant point?**

⁶⁸ WFalls/200, Mullins/27.

⁶⁹ PGE/305, Wenzel-Macfarlane/114-35.

⁷⁰ WFalls/200, Mullins/28.

⁷¹ As the Commission is aware, depending on the market situation, a reliance on short-term market purchases is not always harmless. The issue of resource adequacy is currently under discussion in docket UM 2024 in light of projections of near-term regional capacity deficits that may impact the availability of short-term market purchases.

⁷² WFalls/200, Mullins/28.

⁷³ WFalls/200, Mullins/28.

1 A. No. PGE is already serving WFalls' load on a COS rate schedule and planning for its load.
2 These are the relevant criteria. WFalls load may not have been used to develop customer
3 prices yet, but will be in PGE's next general rate case, consistent with WFalls' status as a
4 new customer. Using Mr. Mullins' logic, any future new customer should be able to enroll
5 in LTDA if an existing LTDA customer goes out of business, circumventing Schedule 129
6 transition adjustments.

7 **Q. Mr. Mullins states that WFalls has paid more for electric service than it would have**
8 **under Schedule 489 LTDA rates.⁷⁴ What is your response?**

9 A. Although irrelevant, PGE doesn't speculate as to the amount LTDA customers pay to their
10 ESS for energy supply and only has insight into the PGE portion of the customer's energy
11 bill. The PGE portion of the bill is lower for Schedule 489 than Schedule 89. In addition,
12 Mr. Mullins presumes that WLP is entitled to a previously existing service under Schedule
13 489 with no Schedule 129 transition adjustments, which it is not.

14 **Q. Mr. Konen testifies that the amount of the security deposit PGE assessed to WFalls is**
15 **evidence of PGE's understanding that WFalls would be taking direct access service.⁷⁵**
16 **Please respond**

17 A. Mr. Konen is incorrect. As PGE explained in response to a data request on this topic,⁷⁶
18 PGE erroneously relied on WLP's historic billing information in calculating WFalls'
19 deposit. PGE's general practice is to look to a prior customer's bills for the same site to
20 estimate billing when calculating a deposit for a new customer. However, the PGE
21 personnel who calculated the deposit did not recognize that WLP's information represented
22 direct access rates, whereas WFalls was on COS rates. The amount of the security deposit
23 does not demonstrate PGE's understanding or expectation that WFalls would be taking
24 direct access service immediately.

⁷⁴ WFalls/200, Mullins/9, *see also* WFalls/203.

⁷⁵ WFalls/100, Konen/19.

⁷⁶ WFalls/202, Mullins/75.

1 **Q. How do you respond to Mr. Mullins' assertion that PGE's ratepayers would incur**
2 **significant costs if WFalls were to shut down?**⁷⁷

3 A. Mr. Mullins is incorrect. He states that a closure would harm PGE's ratepayers because
4 (1) PGE would lose lease revenues and (2) PGE would need to pay environmental
5 remediation costs it would not otherwise face. Neither of these statements is true. Mr.
6 Faist discusses the site's environmental issues in his testimony and explains that WFalls'
7 continued operation at the site does not meaningfully impact PGE's remediation plans or
8 its potential liability at the site.⁷⁸ Second, WFalls' leased property is not treated as utility
9 property. Any costs associated with WFalls' lease are not passed through to ratepayers.
10 The amounts PGE was required to write off when WLP failed to make its lease payments,
11 for example, were borne entirely by PGE shareholders. The electric service at the site, by
12 contrast, does provide support to PGE's regulated operations, as described in Mr. Clark's
13 testimony.

14 **Q. Complainants ask the Commission for a refund calculated as the difference between**
15 **what WFalls has paid under Schedule 89 and the amounts WFalls estimates it would**
16 **have paid under Schedule 489, beginning in July 2019.**⁷⁹ **How do you respond?**

17 A. Even if the Commission had the authority to award refunds of this type, which PGE
18 disputes, there is no justification for any such award. PGE acted appropriately throughout
19 its dealings with Complainants. PGE's actions were appropriate under its tariff, its
20 agreement with WLP, and with Commission rules and regulations.⁸⁰ Nevertheless, if the

⁷⁷ WFalls/200, Mullins/29.

⁷⁸ PGE/100, Faist/32.

⁷⁹ WFalls/200, Mullins/21-24.

⁸⁰ Mr. Mullins suggests that PGE acted inappropriately when, in response to a data request, PGE failed to perform a calculation for Complainants by comparing the costs and revenues PGE would have recognized under the LTDA service election to the costs and revenues PGE actually recognized under the cost of service rates. WFalls/200, Mullins/21. Our understanding is that the Commission lacks authority to award the refunds sought by Complainants. In any case, PGE was unable to perform this calculation without either (1) deleting information in its system that it would not be able to recreate without permanently changing the time entries for the original data; or (2) manually performing the calculation itself. Despite Mr. Mullins' assertion that this was somehow inappropriate, PGE's counsel advised

1 Commission ultimately finds in favor of Complainants on this issue, PGE believes
2 Complainants' calculation of potential refund amounts to be generally accurate and would
3 work with Complainants to calculate a more precise refund amount consistent with the
4 filed-rate doctrine.

5 **Q. How do you respond to Mr. Mullins' more specific allegations that PGE acted with**
6 **"willful misconduct," and his request that the Commission award treble damages**
7 **under ORS 756.185 on that basis?⁸¹**

8 A. First, we understand that the Commission lacks authority to award damages under
9 ORS 756.185 or any other statute. In any case, Mr. Mullins identifies the following
10 specific bases for his assertion: that PGE did not follow its tariff, that PGE started service
11 on Schedule 89 without giving itself two-year notice of its intent to leave Schedule 489,
12 and that PGE backdated the closure of WLP's account from November 15, 2018 to
13 September 1, 2018, and also the date of lease termination.⁸² PGE has explained each of
14 these issues. None were inappropriate.

15 **Q. Do you have any additional comments on Complainants' various allegations of**
16 **misconduct?**

17 A. Yes. Mr. Mullins appears to have no personal knowledge of PGE's motivations. In any
18 case, PGE understands that Mr. Konen is deeply invested in the success of WFalls, for the
19 sake of both its employees and the community. However, PGE acted appropriately by
20 closing WLP's accounts in November 2018. PGE acted with no ill intentions toward WLP
21 or toward WFalls' parent company, Columbia Ventures, an investor that did not show up
22 on the scene until five months later. PGE was honest with Columbia Ventures about the
23 impact of WLP's account closure and the fact that any new paper company would need to
24 start on a COS rate.

Complainants' counsel of this issue in a timely manner, in advance of the due date for PGE's response to the data request, and understood that Complainants took no issue with PGE's response.

⁸¹ WFalls/200, Mullins/24.

⁸² Mr. Faist explains the details of the parties' lease termination date. PGE/100, Faist/10-11.

1 PGE also understands that WFalls may be frustrated by PGE’s lack of flexibility
2 with respect to its willingness to offer WFalls relief. However, PGE is a regulated utility
3 required to follow its tariff and regulatory requirements in a nondiscriminatory fashion.
4 PGE’s inability to deviate from those requirements does not reflect any ill will toward
5 WFalls; to the contrary, PGE is interested in WFalls’ success and has sought to help WFalls
6 in its role as WFalls’ landlord.⁸³ However, once PGE closed WLP’s accounts, which it
7 was manifestly entitled to do, it is PGE’s understanding that WLP’s LTDA rights went
8 away, and any new customer at the site was required to start anew.

9 PGE would note as well that it is approaching the ceiling of its existing LTDA cap,
10 meaning the disposition of WFalls complaint may affect other PGE customers, making it
11 doubly important that PGE treat all customers in a non-discriminatory manner.

VI. WFALLS’ REQUEST FOR WAIVER OF NLDA ELIGIBILITY RULES

12 Q. What is New Load Direct Access (NLDA)?

13 A. In 2018, the Commission adopted rules that require utilities to establish direct access
14 programs for large new loads. OAR 860-038-0700 through OAR 860-038-0760 specify
15 the requirements for utilities’ NLDA programs and eligibility criteria for participants.

16 Q. What is the status of PGE’s NLDA program?

17 A. The Commission’s rules were adopted on September 14, 2018.⁸⁴ Since then, PGE has been
18 working to stand up and implement the program. PGE has made tariff filings related to
19 program implementation in docket UE 358, and continues to work in that docket with Staff
20 and stakeholders on implementation details and waiver standards.

21 Q. Is WFalls seeking a waiver of NLDA eligibility requirements?

22 A. Yes. WFalls states that it seeks a waiver from the one-year notice requirement in OAR
23 860-038-0740,⁸⁵ which states that, “(1) Each New Large Load consumer must notify the

⁸³ PGE/100, Faist/29.

⁸⁴ See *In the Matter of Rulemaking Related to a New Large Load Direct Access Program*, Docket AR 614, Order No. 18-341 (Sept. 14, 2018).

⁸⁵ WFalls/200, Mullins/30-31.

1 electric company of its intent to enroll in the New Large Load Direct Access Program and
2 opt out of cost-of-service rates at the earlier of either: (a) A binding written agreement with
3 the utility for eligible new load, or (b) One year prior to the expected starting date of the
4 incremental load.”

5 **Q. Why does WFalls require a waiver from this one-year notice provision?**

6 A. WLP submitted a letter to PGE on April 15, 2019, indicating its interest in participating in
7 PGE’s NLDA program. The NLDA program was not yet in effect at the time, but PGE
8 had established a nonbinding queue so interested parties could notify PGE of their interest
9 in the program.⁸⁶ A year had not yet passed on July 1, 2019, when WFalls energized its
10 facilities at the mill site, taking power under PGE’s COS Schedule 89. Thus, WFalls did
11 not give the one-year notice required by OAR 860-038-0740 prior to energization.⁸⁷

12 **Q. Aside from the failure to provide the one-year notice, are there other issues with**
13 **WFalls’ eligibility for NLDA?**

14 A. Yes. PGE has a related but more fundamental concern about WFalls’ eligibility. OAR
15 860-038-0710(2)(a) states that for load to qualify as “Large New Load” eligible for the
16 program, the load must never have been “contracted for or committed to in writing by a
17 COS consumer with an electric company.” Once WFalls energized on a COS rate
18 schedule, WFalls became ineligible for the NLDA program. To be eligible for NLDA,
19 WLP would also need a waiver from this energization requirement.

20 **Q. Does PGE have authority to grant WFalls a waiver from the requirements of the**
21 **Commission’s NLDA rules?**

22 A. No. PGE cannot grant a customer a waiver from the Commission’s NLDA rules or from
23 the requirements in PGE’s tariff.

⁸⁶ WLP was not at the time a PGE lessee or a PGE customer at the site; however, Mr. Konen was still seeking an investor to start a paper company at the site.

⁸⁷ PGE assumes for purposes of this argument that WLP appropriately allowed WFalls to take its place in the NLDA queue.

1 **Q. Were the one-year notice period and prohibition on energization publicly known at**
2 **the time WFalls began taking service under COS rates?**

3 A. Yes. These requirements were in the rules adopted by the Commission on September 14,
4 2018 and published by the Secretary of State on September 18, 2020. The one-year notice
5 provision is found in in OAR 860-038-0740, and the prohibition against energizing on COS
6 rates is found in OAR 860-038-0710.

7 **Q. When WFalls energized its facilities in July 2019, would it have been possible for**
8 **WFalls to take service under NLDA?**

9 A. No. At the time WFalls decided to energize in July 2019, there was no active NLDA
10 program in effect. The program was in the early stages of development. On March 22,
11 2019, the Commission opened docket UE 358 to address PGE's initial advice filing for the
12 program. Since then, PGE has been working with Staff and stakeholders in that docket to
13 develop implementation details and stand up the program.

14 **Q. Was PGE to blame for the fact that the NLDA program was not operational when**
15 **WFalls wished to start operations?**

16 A. No. PGE recognizes that timing issues presented a serious challenge for WFalls, but the
17 timing was not anyone's fault, including PGE's.

18 **Q. PGE sent a letter on January 17, 2020, notifying Mr. Konen that WFalls was not**
19 **eligible for NLDA. What was the basis for PGE's conclusion?**

20 A. The letter advised Mr. Konen that WFalls was ineligible for NLDA because WFalls failed
21 to provide the one-year notice required by the NLDA rules.⁸⁸ The letter also explained that
22 because WFalls had energized on July 1, 2019, PGE was now planning for its load. Finally,
23 the letter advised WFalls of its right to seek a waiver.

⁸⁸ WFalls/109, Konen/3.

1 **Q. PGE advised WLP that WLP had the first queue position in PGE’s NLDA queue on**
2 **April 15, 2019, but PGE did not send WLP notice of its ineligibility until January 17,**
3 **2020. Did PGE delay advising WLP of its ineligibility?**

4 A. No. Mr. Mullins suggests that PGE acted somehow unfairly by taking time to determine
5 eligibility of parties in the queue,⁸⁹ but this is incorrect. Two important things happened
6 between April 15, 2019, and January 17, 2020. First, when WLP was put in the queue,
7 there was no operational NLDA program. Basic program implementation details were still
8 being developed at the Commission in docket UE 358; testimony and briefing in that
9 docket continued throughout 2019; and the Commission issued its initial order on PGE’s
10 advice filing on January 7, 2020, only days before PGE sent Mr. Konen the letter.⁹⁰ During
11 that time, PGE was focused on developing implementation details rather than engaging in
12 premature review of eligibility of parties in the queue. Moreover, PGE advised Mr. Konen
13 on June 3, 2019 that PGE had “concerns about your eligibility since you are not a customer
14 and do not have a qualifying site under the [rules] governing eligibility.”⁹¹ Second, WFalls
15 energized its facilities on COS rates on July 1, 2019, just over two months after joining the
16 queue, making it ineligible for the program.

17 **Q. What is the Commission’s standard for a waiver of the NLDA’s energization**
18 **requirement?**

19 A. No standard has yet been established by the Commission for waivers of the one-year notice
20 provision or the energization requirement. In 2018, the Commission provided some
21 guidance on waivers of the participation cap⁹² and has since indicated its intent to maintain

⁸⁹ WFalls/200, Mullins/35.

⁹⁰ On April 15, 2019, WLP informed PGE that it would like to be in PGE’s nonbinding queue. WLP was first in the queue, and thus enjoyed a favorable position in that queue. However, contrary to the language in Mr. Mullins’ testimony, WFalls/200, Mullins/30, WLP’s notice of intent was not an application to participate in the program, and PGE’s acknowledgement of WLP’s position in the queue did not constitute acceptance of WLP’s application for the program. WLP’s letter of intent was sufficient to put WLP in the nonbinding queue, nothing more.

⁹¹ See WFalls/107, Konen/1.

⁹² Docket AR 614, Order No. 18-341 at 8 (“Part of our justification for limiting the size of this program is the reality that cost-of-service customers are increasingly relied upon to finance system improvements

1 a “high bar” for such waivers.⁹³ Generally speaking, the Commission has asked to see
2 evidence that participation will advance the goals reflected in state policy through elements
3 such as carbon-free generation resources, value added grid services and support for system
4 capacity needs or through other means.

5 **Q. Complainants allege that PGE is acting unreasonably by failing to support WFalls’**
6 **request for a waiver.⁹⁴ How do you respond?**

7 A. PGE believes the eligibility rules are important. The NLDA program and its eligibility
8 requirements, which were developed through a lengthy rulemaking process in docket
9 AR 614, are intended to strike a balance that allows certain nonresidential customers to be
10 served by a third-party supplier, while still ensuring that PGE’s customers remain protected
11 from unwarranted cost shifting. The program rules only achieve these goals to the extent
12 they are enforced. Second, the factors WFalls has identified as the basis for a waiver are
13 not the types of factors the Commission ordinarily considers when granting a general
14 waiver from its rules, let alone the more specific types of benefits the Commission has
15 identified as important for granting a waiver of the NLDA rules.⁹⁵ Moreover, WFalls is
16 not the only NLDA applicant in the queue. The day PGE opened its nonbinding queue,

that impose near-term costs to adapt the system to new utility and customer-sited technology intended to lead to long-term economic and environmental benefits for all customers. Such is the case with demand response, storage initiatives, electric vehicles, and other programing. If aspiring NLDA participants can support the system modernization efforts through committed private action, then that action may provide part of the good cause justification necessary to exceed the cap.”).

⁹³ Docket UE 358, Order No. 20-295, App’x A at 5 (Aug. 28, 2020).

⁹⁴ WFalls/100, Konen/21; WFalls/200, Mullins/34-36.

⁹⁵ WFalls asserts that its operations provide jobs and economic benefits, and that other entities support its continued operations. *See, e.g.*, WFalls/100, Konen/21, 22; WFalls/200, Mullins/10, 37. While PGE agrees these are worthwhile benefits, the Commission does not typically consider generalized economic and social benefits when discharging its core regulatory functions. Moreover, it is not clear that granting the waiver request would ensure these benefits come to fruition. WFalls also states generically that it would reduce its carbon footprint through NLDA. WFalls/100, Konen/21-22. The Commission has discussed criteria for a waiver of the NLDA cap and determined that a “high bar” would apply to such requests and that the applicant would need to demonstrate its ability to bring specific benefits to the grid. *See* Order 18-341 at 7-8. A high bar should also apply to a request for an NLDA waiver of the energization requirement, as any applicant energized on COS rates no longer meets the fundamental definition of “new load.”

1 PGE received more interest in the program than its program cap would allow.
2 Consequently, a decision on WFalls' waiver request will likely have an impact on other
3 parties in the queue, as well.⁹⁶ PGE must enforce Commission rules and regulations in a
4 nondiscriminatory fashion.

5 **Q. WFalls has asserted the right to step into WLP's shoes for purposes of obtaining**
6 **WLP's NLDA queue position.⁹⁷ Does PGE agree with this?**

7 A. PGE questions the fairness of allowing WLP to hold and provide its place in line for
8 WFalls. Even if this were deemed fair to other customers in the queue, it is not PGE's
9 main issue with WFalls' NLDA participation.

10 **Q. Despite conceding that WFalls requires a waiver, Mr. Mullins nevertheless argues**
11 **that WFalls has only been taking "temporary power" from PGE, and thus has not**
12 **truly energized.⁹⁸ Do you agree?**

13 A. No. We do not know what Mr. Mullins means by "temporary power." Mr. Mullins cites
14 the testimony of Staff witness Scott Gibbens in docket UE 358 in support of his position
15 that WFalls did not "energize" such that it became ineligible for NLDA.⁹⁹ In fact, Mr.
16 Gibbens testified as follows:

17 **Q. AWEC and Calpine both propose that the Commission allow**
18 **leniency to customers currently in the queue who energize prior to**
19 **program implementation. Does Staff agree?**

⁹⁶ Mr. Mullins suggests that PGE is being too conservative when determining whether the program is at capacity. WFalls/200, Mullins/34. As the Commission has recognized, however, PGE has received multiple waiver requests, and none has yet been resolved. For that reason, Staff suggested that when reviewing a waiver request, the Commission should conservatively assume that all higher queued waiver requests are granted. Docket UE 358, Staff Report for the August 25, 2020 Public Meeting, Item RA2 at 8 (Aug. 24, 2020).

⁹⁷ See, e.g., WFalls/100, Konen/16.

⁹⁸ WFalls/200, Mullins/33-34.

⁹⁹ WFalls/200, Mullins/33 (citing Docket UE 358, Staff's Rebuttal and Cross-Answering Testimony at Staff/300, Gibbens/13 (Aug. 21, 2019)).

1 A. No. Staff recommends that any customer who energizes beyond
2 construction power, prior to approval of a NLDA program, be deemed
3 ineligible for the program.¹⁰⁰

4 WFalls has been using electric service to run a paper mill; it has not been receiving
5 construction power or any type of “temporary power.” It is therefore “ineligible for the
6 program.”

7 **Q. What is your recommendation with respect to WFalls’ request for a waiver of the**
8 **NLDA rules?**

9 A. In PGE’s view, the Commission should determine whether granting WFalls’ waiver
10 application in this case will advance the goals reflected in state policy through elements
11 such as carbon-free generation resources, value added grid services and support for system
12 capacity needs or through other means. While the Commission has not yet established
13 criteria for a waiver of the type requested by WFalls, the general criteria established by the
14 Commission for cap waivers would seem to be reasonable criteria to apply here in the
15 interim. In PGE’s view, WFalls has not made any of these claims or showings.

16 **Q. Does this conclude your direct testimony?**

17 A. Yes.

¹⁰⁰ Docket UE 358, Staff/300, Gibbens/12. Moreover, Staff’s final recommendation in its brief was that the Commission, “[a]ffirm the Commission’s policy to limit NLDA customer eligibility to load that has not been energized prior to taking NLDA service.” Docket UE 358, Staff’s Opening Brief at 27 (Nov. 14, 2019).

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 301

September 24, 2020 Assignment Agreement

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 302

October 9, 2020 Letter re PGE Consent to
Assignment of Agreement

Redacted

October 12, 2020



CHAD M. STOKES
ADMITTED IN OREGON AND WASHINGTON

cstokes@cablehuston.com
www.cablehuston.com

October 9, 2020

VIA E-MAIL

Lisa Hardie
McDowell Rackner Gibson, PC
419 SW 11th Ave. Suite 400
Portland, OR 97205

Re: PGE Consent to Assignment of Agreement

Dear Ms. Hardie:

I am writing on behalf of my clients West Linn Paper Company (“WLP”) and Willamette Falls Paper Company (“WFalls”). As you know, WLP and Portland General Electric (“PGE”) executed and entered into an Agreement for Electric Power Service Under Schedule 483 dated September 29, 2006 (“Agreement”). The Agreement sets forth the terms and conditions of PGE’s provision of long-term direct access service to WLP’s paper mill located at 4800 Mill Street in West Linn, Oregon (“Paper Mill”). As of June 18, 2019, all tangible and intangible property associated with the operation of the Paper Mill assets were transferred to WFalls. Because WFalls is the legal successor to WLP with respect to the Paper Mill, the Agreement has already transferred from WLP to WFalls. Out of an abundance of caution, however, WLP and WFalls have executed an Assignment Agreement formally assigning the Agreement to WFalls. The Assignment Agreement is attached to this letter as Exhibit A. As set forth in the Agreement, WLP and WFalls hereby seek PGE’s consent to such assignment and PGE’s consent cannot be unreasonably withheld. For the reasons set forth below, there is no reasonable basis for PGE to withhold consent.

The Agreement is still in effect. The Agreement continues in effect on a year to year basis following the initial five (5) year term unless and until it is terminated by WLP. The Agreement can only be terminated by WLP giving PGE two (2) years notice. “Whether Consumer wishes to terminate the Agreement and return to any applicable rate schedule at the end of the five year term, or at a later time, Consumer must in all cases give not less than 2 years advance notice of termination . . .” (Emphasis added). The Agreement reiterates that “Consumers must give PGE not less than two years advance written notice to terminate service under this schedule.” WLP has never given PGE written notice of termination. There is no provision for PGE to terminate the Agreement, even as a remedy for an event of default. Even if it could do so, PGE has never given WLP a written notice of termination. By its terms, therefore, the Agreement has never been terminated and remains in effect.

CABLE HUSTON

Lisa Hardie
October 9, 2020
Page 2

Before the transfer of the Paper Mill assets to WFalls in June of 2019, PGE's actions demonstrate that the Agreement remains in effect. Legal counsel and management for WLP requested from PGE a copy of the Agreement. PGE improperly refused to provide WLP with a copy of the Agreement on the theory that WLP's legal counsel and management were not authorized to request a copy of an Agreement to which WLP was a party. In the correspondence surrounding WLP's request for the Agreement, PGE never once asserted that the Agreement had been terminated or was no longer in effect. Indeed, PGE's improper refusal to provide the Agreement reflects PGE's contemporaneous understanding and belief that the Agreement had never been terminated and was therefore still valid and binding. Indeed, PGE apparently continued to be concerned with other energy intensive industries having access to the Paper Mill's direct access rights in June 2019 as reflected in the draft lease term sheet attached as exhibit WFalls/105.

Given that the Agreement remains in effect, it automatically applied to WFalls when it became WLP's successor in interest. The Agreement says that it "shall apply to the successors and assigns of the Consumers and of PGE." This language is mandatory and not permissive. WFalls is WLP's successor. As noted above, WFalls acquired all tangible and intangible property associated with the operation of the Paper Mill assets. WFalls is managed by the same president as WLP. WFalls now employs more than one hundred (100) former WLP employees. WFalls makes the same types of products and serves many of the same of customers as WLP. There is, therefore, simply no question that WFalls is WLP's successor for the purposes of the Agreement.

Notwithstanding that the Agreement already applies to WFalls as the successor to WLP, out of an abundance of caution and to avoid any doubts, WLP and WFalls have also executed the attached Assignment Agreement. Section 2(A) of Assignment Agreement provides "WLP hereby assigns, conveys, and transfers to WFalls any and all rights or interest that WLP may have in the Assigned Agreement." With respect to any such assignment, the Agreement says that "Consumer may not assign this Agreement without the written permission of PGE, which shall not be unreasonably withheld." (Emphasis added). By this letter, therefore, WLP seeks PGE's consent to its assignment of the Agreement to WFalls.

There is no "reasonable" basis recognized under Oregon law for PGE to withhold consent to assignment. As explained above, the Agreement remains in full force and effect. WLP's delay in seeking PGE's consent to assignment is not a reasonable basis for PGE to withhold consent. As explained above, the Agreement already transferred to WFalls as WLP's successor to ownership of the Paper Mill assets. WLP and WFalls only recently executed the attached Assignment Agreement out of an abundance of caution. This request for consent to such Assignment Agreement is therefore timely. Further, WLP and WFalls were deprived of any meaningful opportunity to seek PGE's consent to assignment at the time that WFalls acquired the Paper Mill because PGE refused to provide WLP with a copy of the Agreement. Had PGE timely provided WLP a copy of the Agreement, WLP may have proceeded differently with

CABLE HUSTON

Lisa Hardie
October 9, 2020
Page 3

respect to the transfer of the Agreement. PGE cannot withhold the terms of the Agreement and later complain that WLP has not fully complied with the terms of the Agreement.

Nor may PGE withhold consent to assignment in this case based on WLP's unpaid power bills. Under Oregon law, an outstanding breach of an agreement—absent termination of the agreement—is not grounds for withholding consent to assignment of the agreement. See *McKeon v. Williams*, 104 Or.App. 106 (1990) (Failure to pay rent did not absolve landlord of obligations under lease with respect to its consent to assignment where landlord had not terminated the lease due to such non-payment.). As applied here, PGE could not and, in fact, did not terminate the Agreement in response to WLP's unpaid invoices. Therefore, PGE's obligation not to unreasonably withhold consent to assignment remains valid and binding.

Please confirm PGE's consent to the assignment of the Agreement from WLP to W Falls at your earliest convenience.

Sincerely,



Chad M. Stokes

CMS:RGL

By signing below, PGE consents to the transfer and assignment of the Agreement from WLP to W Falls.

PORTLAND GENERAL ELECTRIC

By: _____
Its: _____
Date: _____

EXHIBIT A

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 303

Schedule 489, Effective May 14, 2018

October 12, 2020

**SCHEDULE 489
LARGE NONRESIDENTIAL
COST-OF-SERVICE OPT-OUT
(>4,000 kW)**

AVAILABLE

In all territory served by the Company.

APPLICABLE

To each Large Nonresidential Customer whose Demand has exceeded 4,000 kW more than once within the preceding 13 months and who has previously enrolled in a long-term opt-out window. To obtain service under this schedule, Customers must initially enroll a minimum of 1 MWA determined by a demonstrated usage pattern such that projected usage for a full 12 months is at least 8,760,000 kWh (1 MWA) from one or more Service Points (SPs). Each SP must have a Facility Capacity of at least 250 kW. Customers with existing enrolled SPs meeting the 1 MWA criteria above may, in a subsequent enrollment window enroll additional SPs so long as the 250 kW Facility Capacity requirement is met. Service under this schedule is limited to the first 300 MWA that applies to Schedules 485, 489, 490, 491, 492, and 495. Beginning with the September 2004 Enrollment Period^{***} C, Customers have a minimum five-year option and a fixed three-year option.

(C)
|
(C)

MONTHLY RATE

The Monthly Rate will be the sum of the following charges at the applicable Delivery Voltage per SP*:

(C)

	<u>Delivery Voltage</u>		
	<u>Secondary</u>	<u>Primary</u>	<u>Subtransmission</u>
<u>Basic Charge</u>	\$3,160.00	\$1,770.00	\$3,850.00
<u>Distribution Charges**</u>			
The sum of the following:			
per kW of Facility Capacity			
First 4,000 kW	\$1.59	\$1.55	\$1.55
Over 4,000 kW	\$1.28	\$1.24	\$1.24
per kW of monthly On-Peak Demand	\$2.68	\$2.60	\$1.26
<u>System Usage Charge</u>			
per kWh	(0.005) ¢	(0.005) ¢	(0.006) ¢

* See Schedule 100 for applicable adjustments.

** The Company may require a Customer with dedicated substation capacity and/or redundant distribution facilities to execute a written agreement specifying a higher minimum monthly Facility Capacity and monthly Demand for the SP.

(C)

*** A list of Enrollment Periods can be found in Schedule 129.

SCHEDULE 489 (Continued)

MARKET BASED PRICING OPTION

Energy Supply

The Customer may elect to purchase Energy from an Electricity Service Supplier (ESS) (Direct Access Service) or from the Company. Such election will be for all of the Customer's SPs under this schedule.

(C)

Direct Access Service

In addition to the above charges, the Customer is subject to charges from its serving ESS for Electricity, Transmission and other services as well as any other charges specified in the service agreement between the Customer and the ESS.

Company Supplied Energy

Upon not less than five business days notice, the Customer may choose the Company Supplied Energy Charge option. The election of this option will be effective on the next regularly scheduled meter reading date, but with not less than a five business day notice to the Company prior to the scheduled meter read date.

The Company Supplied Energy Option is the Intercontinental Exchange Mid-Columbia Daily on- and off-peak Electricity Firm Price Index (ICE-Mid-C Index) plus 2 mills per kWh plus losses. If prices are not reported for a particular day or days, the average of the immediately preceding and following reported days' on- and off-peak prices will be used to determine the price for the non-reported period. Prices reported with no transaction volume or as "survey-based" will be considered reported.

Wheeling Charge

The Wheeling Charge will be \$1.793 per kW of monthly Demand.

Transmission Charge

Transmission and Ancillary Service Charges will be as specified in the Company's Open Access Transmission Tariff (OATT) as filed and approved by the Federal Energy Regulatory Commission.

Portland General Electric Company
P.U.C. Oregon No. E-18

Fourteenth Revision of Sheet No. 489-3
Canceling Thirteenth Revision of Sheet No. 489-3

SCHEDULE 489 (Continued)

MINIMUM CHARGE

(M)

The minimum charge will be the Basic and Distribution Charges. In addition, the Company may require the Customer to execute a written agreement specifying a higher minimum charge or minimum Facility Capacity and/or Demand, if necessary, to justify the Company's investment in Facilities. The minimum Facility Capacity and Demand (in kW) will be 200 kW and 4,000 kW for primary voltage and subtransmission voltage service respectively.

ON AND OFF PEAK HOURS

On-peak hours are between 6:00 a.m. and 10:00 p.m. Monday through Saturday. Off-peak hours are between 10:00 p.m. and 6:00 a.m. Monday through Saturday and all day Sunday.

LOSSES

The following adjustment factors will be used where losses are to be included in the energy charges:

Subtransmission Delivery Voltage	1.0356
Primary Delivery Voltage	1.0496
Secondary Delivery Voltage	1.0685

REACTIVE DEMAND CHARGE

In addition to the Monthly Rate, the Customer will pay 50¢ for each kilovolt-ampere of Reactive Demand in excess of 40% of the maximum Demand. Such charge is separate from and in addition to the Minimum Charge specified.

ADJUSTMENTS

Service under this schedule is subject to adjustments approved by the Commission. Adjustments applicable to this schedule are summarized in Schedule 100.

SPECIAL CONDITIONS

Customers selecting this schedule must enter into a service agreement. In addition, the Customer acknowledges that:

- Customer is giving up the right granted under state law to receive Electricity from the Company at a rate based on the cost of electric generating resources owned in whole or in part by the Company. Customers enrolled for service under the Minimum Five-Year Option during Enrollment Periods A through L must give the Company not less than two years notice to terminate service under this schedule. Customers enrolled for service under the minimum Five-Year Option subsequent to Enrollment Period L must provide not less than three years notice to terminate service under this schedule. Such notices will be binding.

(T)

(T)

(M)

(N)

* A list of Enrollment Periods can be found in Schedule 129.

Portland General Electric Company
P.U.C. Oregon No. E-18

Seventh Revision of Sheet No. 489-4
Canceling Sixth Revision of Sheet No. 489-4

SCHEDULE 489 (Continued)

SPECIAL CONDITIONS (Continued)

2. At the time service terminates under this schedule, the Customer will be considered anew Customer for purposes of determining available service options. A Customer served under the Company Supplied Energy option must meet the terms of the service agreement associated with that service prior to termination of service under this schedule.
3. The rate the Customer pays for Electricity may be higher or lower than the rates charged by the Company to similar customers not taking service under this schedule, including competitors to the Customer.
4. Neither the Company, its employees and agents, the Commission nor any other agency of the State of Oregon has made any representation to the Customer regarding future Electricity prices that will result from the Customer's election of service under this schedule.
5. The Customer is selecting this schedule based solely upon its own analysis of the benefits of this schedule. The Customer has available to it Energy experts that assisted in making this decision.
6. The Customer warrants that the person signing the service agreement has full authority to bind the Customer to such agreement.
7. Direct Access Service is available only on acceptance of a Direct Access Service Request (DASR) by the Company. A Customer is required to have interval metering and meter communications in place prior to initiation of service under this schedule.
8. If the Customer is served at either primary or subtransmission voltage, the Customer will provide, install, and maintain on the Customer's premises all necessary transformers to which the Company's service is directly or indirectly connected. The Customer also will provide, install, and maintain the necessary switches, cutouts, protection equipment, and in addition, the necessary wiring on both sides of the transformers. All transformers, equipment, and wiring will be of types and characteristics approved by the Company, and the arrangement and operation of such equipment will be subject to the approval of the Company.
9. Customers selecting service under this Schedule will be limited to a Company/ESS Split Bill.

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(M)

SCHEDULE 489 (Concluded)

(T)

TERM

(M)

Minimum Five-Year Option

The term of service will not be less than five years. Service will be year-to-year thereafter. Customers enrolled for service during Enrollment Periods* A through L must give the Company not less than two years notice to terminate service under this schedule. Customers enrolled for service subsequent to Enrollment Period* L must give the Company not less than three years notice to terminate service under this schedule. Such notices will be binding.

(T)

(T)

Fixed Three-Year Option

The term of service will be three years. Upon completion of this three year term, the Customer will select service under any other applicable rate schedule, subject to all notice requirements and provisions of the schedule.

(M)

* A list of Enrollment Periods can be found in Schedule 129.

(N)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 304

Drop Authorization for Direct Access Customer

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 305

Discovery

Redacted

October 12, 2020

August 16, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
PGE Second Supplemental Response to W Falls and WLP Data Request No. 004
Dated July 10, 2020

Request:

Please provide all Documents concerning any unpaid power invoices resulting from WLP's suspension of Facility operations.

Second Supplemental Response:

PGE supplements this response with Supplemental Attachment 004 D, which contains protected information subject to General Protective Order No. 20-218.

Supplemental Response:

PGE supplements this response with Attachment 004 D, which contains protected information subject to General Protective Order No. 20-218.

Response:

PGE objects that this request for "all Documents" is overly broad and unduly burdensome. Notwithstanding and without waiving these objections, PGE responds as follows:

Please see the following attachments:

- Attachment 004 A - Itemizations for every unpaid power invoice resulting from West Linn Paper's suspension of operations. This information was sent to the Creditors' Trust.
- Attachment 004 B - Copy of the bills that support each itemization
- Attachment 004 C - Claim allocation by account, by month
- Documents provided in response to Request 015.

PGE is continuing to search for responsive documents and will supplement this response if additional responsive documents are discovered.

[REDACTED]

July 24, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 008
Dated July 10, 2020**

Request:

Please provide all Documents concerning PGE's provision of electric service to itself at the Facility, including without limitation all meter readings, invoices, payments, and notices, following its transfer of accounts to its own name as referenced in Paragraph 11 of the Answer.

Response:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

July 24, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 024
Dated July 10, 2020**

Request:

Please provide all Documents evidencing the plans that PGE made, as of January 17, 2020, for serving the Facility on a cost of service basis as alleged in Paragraph 31 of the Answer.

Response:

PGE objects that this Request is vague, overly broad, and unduly burdensome. Planning to serve PGE's cost of service (COS) load is a core function of the utility's business. As such, a request for "all Documents" related to this planning function is unreasonable. Notwithstanding and without waiving these objections, PGE responds as follows:

PGE included deliveries to WFalls in its COS load forecast, which demonstrates that PGE included the customer in PGE's planning processes. Specifically, PGE incorporated WFalls into its load forecast beginning with its September 2019 load forecast, which was finalized in early September 2019. PGE's assumption about the rate under which the customer received service reflected the customer's current status and service election at that time (as a cost of service customer, on Schedule 89).

This vintage of PGE's load forecast was used in PGE's final 2020 AUT filing. While workpapers provided in this filing avoid including individual customer information for confidentiality reasons, PGE's internal workpapers include disaggregation of rate schedules by different groupings, including some individual large loads. Attachment 024 A shows that deliveries to WFalls were included in PGE's COS forecast by linking this disaggregated data to a summary table from PGE's Final AUT Pricing Workpapers.

Attachment 024 A contains protected information and is subject to General Protective Order 20-218.

October 8, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Supplemental Response to W Falls and WLP Data Request No. 037
Dated August 7, 2020**

Request:

Did PGE provide written notice to WLP pursuant to OAR 860-021-0505 of PGE's decision to terminate Schedule 489 service to the Facility? If so, please provide copied of any such written notice provided to WLP.

Supplemental Response:

As PGE has continued to review the history of this case, PGE became aware that it provided the disconnection notices attached as confidential Attachments 037A and 037 B in March 2018.

Response:

PGE objects to this Request as argumentative to the extent it implies that PGE's closure of WLP's account and initiation of a new account for service for the site in PGE's name, after WLP ceased paying its bills, amounted to an intentional "decision" to terminate WLP's rights. Notwithstanding and without waiving this objection, PGE responds as follows:

No. PGE understood based on written communications with Stern Partners and communications from Brian Konen that WLP did not want to keep paying for electric service, that WLP had taken the position that PGE should be paying for electric service, and that WLP had ceased paying its bills.

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 1:**

6 Please see Introduction to Complaint at page 1, stating, “WFalls is WLP’s successor in interest.”

7 a. What is the basis for the assertion that WFalls is WLP’s successor in interest?

8 b. If your assertion is that there is a legal relationship between WFalls and WLP, please
9 explain the nature of that legal relationship.

10 c. Please provide all Documents supporting the assertion that WFalls is WLP’s successor
11 in interest.

12 **WFALLS RESPONSE:**

13 a. Subject to, as limited by, and without waiving the foregoing General Objections, WFalls
14 objects to this Request to the extent that it calls for a legal conclusion. Notwithstanding
15 the forgoing objections, WFalls is the successor in interest to WLP because WFalls
16 purchased all of the assets of WLP. WFalls has the same executive management as
17 WLP, specifically including President Brian Konen. WFalls has rehired more than one
18 hundred employees that formerly worked for WLP. WFalls operates the same machines
19 in the same buildings on the same site as WLP. WFalls makes essentially the same
20 products as WLP, with the only exception being WFalls’ focus on using environmentally
21 friendly inputs to make sustainable paper products.

22 b. Subject to, as limited by, and without waiving the foregoing General Objections, WFalls
23 objects to this Request to the extent that it calls for a legal conclusion. Notwithstanding
24 the forgoing, WFalls and WLP are independent corporate entities. As explained in the
25 Complaint, WFalls acquired all of the assets of WLP through a series of transactions
26

1 involving intervening third-parties following the unsuccessful involuntary Chapter 7
2 bankruptcy proceeding filed against WLP.

- 3 c. Subject to, as limited by, and without waiving the foregoing General Objections, WLP
4 will produce, after a search of reasonable scope, documents supporting the assertion that
5 WFalls is WLP's successor in interest.

6
7 **Response Date 8-10-2020**

8 **Witness(es) Most Knowledgeable About Response:**

9 Brian Konen

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 4:**

6 Please see Complaint at paragraph 2, stating, “WLP transferred and assigned the long-term direct
7 access rights of the Facility to WFalls.”

8 a. When did the referenced transfer and assignment occur?

9 b. Please provide a narrative description of how the referenced transfer and assignment
10 occurred.

11 c. Please provide all Documents memorializing or effectuating the referenced transfer and
12 assignment.

13 d. Please provide all Documents regarding or discussing the referenced transfer and
14 assignment.

15 e. Did Complainants notify PGE of the referenced transfer and assignment? If so, please
16 provide all Documents regarding such notification and PGE’s response.

17 **WFALLS RESPONSE:**

18 a. Subject to, as limited by, and without waiving the foregoing General Objections, the
19 transfer and assignment occurred on June 18, 2019.

20 b. Subject to, as limited by, and without waiving the foregoing General Objections, WFalls
21 purchased all the assets of WLP. Mr. Konen will testify in this proceeding that it was the
22 understanding and intent of both WLP and WFalls that this transfer of assets included
23 everything necessary to restart the Facility, including any and all direct access purchase
24 rights of the Facility.

25 c. Subject to, as limited by, and without waiving the foregoing General Objections, WFalls
26 will produce, after a search of reasonable scope, documents responsive to this request.

- 1 d. Subject to, as limited by, and without waiving the foregoing General Objections, WFalls
2 will produce, after a search of reasonable scope, documents responsive to this request.
3 e. Subject to, as limited by, and without waiving the foregoing General Objections, Mr.
4 Konen will testify in this proceeding that he notified PGE that WFalls intended to and did
5 purchase all the assets necessary to operate the Facility. Mr. Konen will also testify that
6 PGE was well aware the Facility needed direct access energy to be successful. Mr. Konen
7 was in regular contact with Mr. Faist on this and other issues because PGE was a key
8 stakeholder in the reopening efforts as the lessor of the site.
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10 **Response Date 8-10-2020**

11 **Witness(es) Most Knowledgeable About Response:**

12 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 6:**

6 Please see Complaint at paragraph 10.

- 7 a. At any time after WLP began experiencing the financial difficulties described in
8 paragraph 10, did WLP advise PGE that it would like to keep its electric service
9 account in its own name?
10 b. If so, please describe the nature of those communications and provide all Documents
11 regarding the communications.

12 **WFALLS RESPONSE:**

- 13 a. Subject to, as limited by, and without waiving the foregoing General Objections,
14 there is nothing in any applicable PGE tariffs or contracts that obligates a customer to
15 notify PGE that it wishes to continue receiving power in its own name.
16 Notwithstanding the foregoing, Mr. Konen will testify that he engaged in numerous
17 discussions with PGE about resuming manufacturing operations at the Facility, which
18 would include direct access power service.
19 b. Subject to, as limited by, and without waiving the foregoing General Objections, see
20 response to 6(a).

21
22 **Response Date 8-10-2020**

23 **Witness(es) Most Knowledgeable About Response:**

24 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 8:**

6 Please see Complaint at paragraph 11.

7 a. When did WLP first become aware that PGE had transferred WLP's electric service
8 account into PGE's name?

9 b. Please provide all Documents related to PGE's transfer of WLP's electric service
10 account into PGE's name, including but not limited to Documents referencing the account
11 transfer, WLP's or any other entity's communications with PGE about the account transfer,
12 and/or internal communications about the account transfer.

13 c. When did WLP, WFalls, or Columbia Ventures first advise PGE that it considered
14 PGE's transfer of WLP's account into its own name to be inappropriate?

15 d. Please describe any communications between WLP, Columbia Ventures, or WFalls
16 about the transfer of WLP's electric service accounts into PGE's name, including the date of the
17 communication, the parties to the communication, and the nature of the communication.

18 e. Please provide all Documents supporting the response to part d.

19 **WFALLS RESPONSE:**

20 a. Subject to, as limited by, and without waiving the foregoing General Objections, see
21 response to 5(b).

22 b. Subject to, as limited by, and without waiving the foregoing General Objections, WFalls will
23 produce, after a search of reasonable scope, documents responsive to this request.

24 c. Subject to, as limited by, and without waving the foregoing General Objections, Mr.
25 Konen will testify in this proceeding that in March of 2019, more than six months after
26 Mr. Konen began negotiating with PGE to restart the Facility, PGE expressed doubt for

1 the first time about whether PGE would recognize the Facility's long-term direct access
2 rights. This caused Mr. Konen to begin to question PGE's handing of the account.

3 d. Subject to, as limited by, and without waiving the foregoing General Objections,
4 Complainants will produce, after a search of reasonable scope, documents responsive to this
5 request. The documents will speak for themselves as to the contents thereof.

6 e. Subject to, as limited by, and without waiving the foregoing General Objections,
7 Complainants will produce, after a search of reasonable scope, documents responsive to
8 this request.

9
10 **Response Date 8-10-2020**

11 **Witness(es) Most Knowledgeable About Response:**

12 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 16:**

6 Please see Complainants' response to PGE Data Request No. 1.

7 a. Is it Complainants' position that W Falls, as WLP's successor in interest, assumed
8 WLP's debts and obligations, as well as its assets?

9 b. If the answer to a. is yes, please provide all Documents or other evidence
10 supporting your answer, and please denote the specific section(s) of such Documents containing
11 the support.

12 c. Is it Complainants' position that the "intervening third-parties" involved in the
13 series of transactions that transferred WLP's assets to W Falls received assignment of WLP's
14 LTDA Agreement with PGE and then subsequently assigned the LTDA Agreement to W Falls?

15 **WFALLS RESPONSE:**

16 a. Complainants object to this request to the extent it calls for a legal conclusion.
17 The purchase and sale documents that have been provided to PGE speak for themselves.
18 Notwithstanding, and subject to, as limited by, and without waiving the foregoing General
19 Objections, W Falls is WLP's successor in interest with respect to ownership of the Assets and
20 operation of the Paper Mill. W Falls did not independently assume WLP's unpaid debts when it
21 purchased all Assets of the Paper Mill. As provided in the Uniform Commercial Code, a
22 financial obligation attaches to an asset only when there is a valid and binding security
23 agreement granting the creditor a security interest in such asset and that security agreement has
24 been perfected. In this case, PGE's power bills were not secured by Paper Mill Assets. Under
25 the Creditor Trust Agreement, the creditors of WLP agreed by contract how to wind down the
26 operation and distribute the remaining money and assets to creditors. Depending on whether the

1 creditors were secured or unsecured, and the relative priority of the liens, some creditors were
2 fully satisfied, and some creditors were not. As a matter of law, any remaining unsecured debts
3 do not carry forward as a lien on the underlying Assets.

4 b. Subject to, as limited by, and without waiving the foregoing General Objections,
5 see response to 16 (a). The Creditor Trust Agreement, to which PGE agreed to be bound, is
6 Exhibit Konen/101 to the opening testimony of Brian Konen. See also WFalls/200, Mullins/7
7 discussing PGE's consent to be bound to the Creditors Trust Agreement.

8 c. Complainants object to this request to the extent it calls for a legal conclusion.
9 The purchase and sale documents previously provided to PGE speak for themselves.
10 Complainants also object to this request on the basis that it is overly ambiguous because it is not
11 clear who PGE is referring to as "intervening third-parties." Notwithstanding, and subject to, as
12 limited by, and without waiving the foregoing General Objections, the LTDA Agreement
13 remains valid and binding because it was never terminated by WLP and because PGE never
14 disconnected electric service to the Paper Mill at Service Point ID 9130567661. By its terms, the
15 LTDA Agreement "shall apply to the successors and assigns of the Consumer and of PGE..." If
16 the LTDA Agreement did not automatically transfer to WLP's successors, then it is still in
17 WLP's name and can now be assigned by WLP to WFalls as the current operator of the Paper
18 Mill.

19 **Response Date:** September 16, 2020

20 **Witness(es) Most Knowledgeable About Response:**

21 Brad Mullins.
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 11:**

6 Please explain Mr. Konen's relationship to Columbia Ventures and WFalls from September 1,
7 2017, to the present, including the nature of any positions(s) Mr. Konen has held with Columbia
8 Ventures or WFalls and the time period during which he held any such position(s).

9 **WFALLS RESPONSE:**

10 Subject to, as limited by, and without waiving the foregoing General Objections, WFalls was
11 established in June 2019, by Mr. Konen and Columbia Ventures for the purpose of acquiring and
12 operating the Facility. Brian Konen is the President of WFalls. Brian Konen does not hold a
13 position or have any financial interest in Columbia Ventures. Columbia Ventures is not a party
14 to this proceeding.

15
16 **Response Date 8-10-2020**

17 **Witness(es) Most Knowledgeable About Response:**

18 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 20:**

6 Please see Complainants' response to PGE Data Request No. 4, stating, "Mr. Konen will
7 testify in this proceeding that it was the understanding and intent of both WLP and
8 WFalls that this transfer of assets included everything needed to restart the Paper Mill,
9 including any and all direct access purchase rights of the Paper Mill.

- 10 a. Is this understanding documented in writing?
11 b. If so, please provide all Documents regarding this understanding.
12 c. If Complainants assert that a previously produced Document includes this
13 understanding, please provide the name of the Document and the specific
14 provision(s) that relates to this understanding.

15 **WFALLS RESPONSE:**

- 16 a. Subject to, as limited by, and without waiving the foregoing General Objections, Mr.
17 Konen has submitted written testimony in this proceeding that the purchase and sale documents
18 were intended to be "all asset" transfers. The purchase and sale documents speak for themselves.
19 b. Subject to, and limited by, and without waiving the foregoing General Objections,
20 Complainants have already produced all of the purchase and sale documents.
21 c. Subject to, and limited by, and without waiving the foregoing General Objections, the
22 purchase and sale documents were intended to be all asset transfers, and the purchase and sale
23 documents speak for themselves.

24 **Response Date:** September 16, 2020

25 **Witness(es) Most Knowledgeable About Response:**

26 Brian Konen

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 21:**

6 Please see Complainants' response to PGE Data Request No. 4. Please confirm that
7 neither WLP nor WFalls notified PGE in writing that WLP intended to assign WLP's
8 LTDA Agreement to WFalls or any of the "intervening third-parties." If not confirmed,
9 please explain.

10 **WFALLS RESPONSE:**

11 WFalls objects to this request on the basis that the term "intervening third-parties" is ambiguous.
12 Notwithstanding and subject to, as limited by, and without waiving the foregoing General
13 Objections, PGE was well aware of the transfer of all assets of the Paper Mill to BHP, Maynards,
14 and WFalls. PGE never objected to such transfers. Nor did PGE assert in connection with such
15 transfers that the LTDA Agreement needed to be separately "assigned." PGE was also aware
16 that the LTDA Agreement, by its terms, would automatically apply to WLP's successors. PGE
17 also refused to provide either WLP or WFalls a copy of the LTDA Agreement. Thus, neither
18 WLP nor WFalls had any reason to think that a separate assignment agreement or notice of
19 assignment would be necessary.

20 **Response Date:** September 16, 2020

21 **Witness(es) Most Knowledgeable About Response:**

22 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 22:**

6 Did WLP or WFalls seek or obtain written permission from PGE to assign WLP's LTDA
7 Agreement to WFalls or any of the "intervening third-parties"?

- 8 a. If the answer is "yes," please provide all Documents supporting this answer.
9 b. If the answer is "no," please explain why not.

10 **WFALLS RESPONSE:**

- 11 a. See response to 21.
12 b. See response to 21.

13 **Response Date:** September 16, 2020

14 **Witness(es) Most Knowledgeable About Response:**

15 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 32:**

6 Please see WFALLS/100, Konen/20, stating, “Q. Why didn’t WFalls assert that Schedule
7 489 was applicable to its load when it first started operating? A. I did.”

- 8 a. On what date(s) did Mr. Konen make the referenced assertion?
9 b. To whom did Mr. Konen make the referenced assertion?
10 c. Please provide all Documents in which Mr. Konen made the referenced assertion.

11 **WFALLS RESPONSE:**

- 12 a. Subject to as limited by and without waving the foregoing General Objections, the
13 understanding that the Paper Mill would be served under LTDA was never an
14 issue until March 2019 when Brian Faist first indicated that LTDA may not be
15 available and Mr. Konen expressed his belief that the Paper Mill should still be
16 served under LTDA. Mr. Konen has continued to assert that the Paper Mill is
17 entitled to LTDA service, including authorizing WLP and WFalls to initiate this
18 complaint against PGE.
19 b. See response to PGE request 32 (a).
20 c. Subject to as limited by and without waving the foregoing General Objections,
21 these conversations were oral and not in writing. Notwithstanding, please see
22 PGE’s response to WFalls Data Request 17, Confidential Attachment A, email
23 030 documenting WFalls intention to take, and PGE’s refusal to provide, services
24 under Schedule 489.
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Response Date: September 16, 2020

Witness(es) Most Knowledgeable About Response:

Brian Konen

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 37:**

6 Please see WFalls/200, Mullins/12, stating “When PGE took over the account as the landlord,
7 PGE was not authorized under its Tariffs to change the service election from Schedule 489 to
8 Schedule 89, absent giving itself two-years notice.”

- 9 a. Is it Complainants’ position that the account remained on Schedule 489 when
10 PGE took over and was subsequently changed to Schedule 89?

11 **WFALLS RESPONSE:**

12 a. Complainants object to this request to the extent it calls for legal conclusion and
13 asking Complainants to brief their case prematurely. Notwithstanding, and subject to as limited by
14 and without waving the foregoing General Objections, please see WFalls, 200, Mullins /12 through
15 Mullins/20.

16
17 **Response Date:** September 25, 2020

18 **Witness(es) Most Knowledgeable About Response:**

19 Brad Mullins

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 38:**

6 Please see WFalls/200, Mullins/12. Is it Complainants' position that WLP's LTDA agreement
7 was transferred to PGE at any point? If the answer is yes, please describe when and how this
8 transfer occurred.

9 **WFALLS RESPONSE:**

10 Complainants object to this request to the extent it calls for legal conclusion and asking
11 Complainants to brief their case prematurely. Notwithstanding, and subject to as limited by and
12 without waving the foregoing General Objections, Complainants' position is that PGE is required to
13 comply with its own tariffs. When PGE transferred service to its name, the Paper Mill was being
14 served under Schedule 489. Nothing in Schedule 489 gave PGE the unilateral right, either as the
15 customer or as the utility, to change the service to Schedule 89. Unlike WFalls, however, PGE was
16 not WLP's "successor" with respect to the Paper Mill and please see WFalls, 200, Mullins /12
17 through Mullins/20.

18
19 **Response Date:** September 25, 2020

20 **Witness(es) Most Knowledgeable About Response:**

21 Brad Mullins
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 44:**

6 Did WFalls assume any contractual obligations from WLP? If so, please identify all such
7 contractual obligations WFalls is required to perform under such contracts and provide all
8 underlying documents supporting your answer.

9 **WFALLS RESPONSE:**

10 Subject to, as limited by, and without waiving the foregoing General Objections, all assets
11 necessary to operate the Paper Mill were transferred. This is reflected in the purchase and sale
12 documents that have already been provided to PGE, which included the Warranty Deed in Lieu
13 of Foreclosure between WLP and BPH which transferred, among other things:

14 “All of Grantor's assets, including, without limitation, tangible and intangible
15 personal property now or hereafter used or acquired in connection with or in any way arising out
16 of or relating to the ownership, development, operation or maintenance of the Land and
17 Improvements, including, without limitation, all furniture, furnishings, equipment, supplies,
18 inventory and other goods, wherever located, whether in the possession of Grantor,
19 warehousemen, bailee or any other person; all site plans, plats, architectural plans, specifications,
20 work drawings, surveys, engineering reports, test borings, market surveys and other similar work
21 products; all permits, licenses, franchises and trade names; all contract rights (including, without
22 limitation, all architectural, construction, engineering, consulting and management contracts, all
23 insurance policies, and all performance, payment, completion and other surety bonds); and all
24 claims, causes of action, warranties, accounts receivable, escrow accounts, insurance policies,
25 deposits (including tax, insurance and other reserves), instruments, documents, general
26 intangibles and business records.”

Even though WFalls assumed permit, license, and contract obligations on a *prospective* basis,
that does not mean that WFalls also assumed all outstanding contract liabilities. As set forth in
the purchase and sale documents, the assets were transferred free and clear of all liens, liabilities
and other encumbrances. Please also see Response to PGE Request 16(a).

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Response Date: October 5, 2020

Witness(es) Most Knowledgeable About Response:

Brian Konen.

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 45:**

6 Did WFalls assume any utility service contracts or utility service agreements of any kind from
7 WLP? If the answer is yes, please provide all documents supporting your answer.

8 **WFALLS RESPONSE:**

9 Subject to, as limited by, and without waiving the foregoing General Objections, WFalls also
10 objects to this request on the grounds that the terms “utility service agreements” and “utility
11 service contracts” are vague and undefined. Notwithstanding, please see response to Request 44.

12 **Response Date** October 5, 2020

13 **Witness(es) Most Knowledgeable About Response:**

14 Brian Konen

1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 48:**

6 Does WFalls continue to honor any obligations from production contracts that WLP entered into
7 before WFalls purchased WLP's assets? If so, please identify all such contracts, provide copies
8 of the contracts, and provide evidence that WFalls continues to perform under such contracts.

9 **WFALLS RESPONSE:**

10 WFalls objects to this request on the basis that it is overly vague, as it is not clear what PGE is
11 requesting with respect to "production contracts." Notwithstanding, and subject to, as limited
12 by, and without waiving the foregoing General Objections, WLP did not have any current
13 production contracts when WFalls purchased WLP's assets.

14 **Response Date:** October 5, 2020

15 **Witness(es) Most Knowledgeable About Response:**

16 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 51:**

6 Has WFalls assumed responsibility to pay the arrearages owed to PGE for WLP's nonpayment of
7 electric service under WLP's LTDA agreement? If so, please provide all documents supporting
8 this assertion. If not, please explain why not.

9 **WFALLS RESPONSE:**

10 Subject to, as limited by, and without waiving the foregoing General Objections, WFalls has not
11 assumed responsibility pay WLP debts and obligations because the assets were transferred free
12 and clear of any liens, liabilities and other encumbrances. Please see response to Request 16(a).
13 PGE already has the purchase and sale documents that reflect how the assets were transferred
14 and it is our understanding that PGE submitted a claim under the Creditor Trust Agreement for
15 these amounts. Further, PGE has acknowledged and agreed that the majority of such
16 "arrearages" were incurred by WLP for electric service not to operate the Paper Mill but solely
17 as an accommodation to PGE in order to facilitate the operation of PGE's Sullivan Plant.

18 **Response Date:** October 5, 2020

19 **Witness(es) Most Knowledgeable About Response:**

20 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

2
3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 52:**

6 Please identify all intangible assets owned by WLP that W Falls purchased after WLP was forced
7 into involuntary bankruptcy, including, but not limited to, intellectual property, goodwill, and/or
8 other intangible assets and underlying documentation identifying these assets

9 **WFALLS RESPONSE:**

10 Complainants object to this request because it is unduly burdensome to answer, and PGE has
11 already been provided all of the purchase and sale documents that identify the assets that were
12 transferred.

13 **Response Date:** October 5, 2020

14 **Witness(es) Most Knowledgeable About Response:**

15 Brian Konen
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 60:**

6 Is Mr. Mullins a lawyer? If your answer is yes, please list all jurisdictions in which Mr. Mullins
7 has been or is currently authorized to practice law, and the dates his bar license was active in
8 each jurisdiction.

9 **WFALLS RESPONSE:**

10 Complainants object to this request to the extent it is argumentative, and PGE knows the answer
11 to this question. Notwithstanding, and subject to, as limited by, and without waiving the
12 foregoing General Objections, while Mr. Mullins is not a lawyer, Mr. Mullins has been
13 employed in the energy and utilities industry since 2010, and over that period, has reviewed
14 hundreds of power supply agreements and utility tariffs. He has testified in over 60 proceedings,
15 many of which involved interpretation of the complex terms of power supply contracts and
16 utility tariffs.

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18 **Response Date:** October 5, 2020

19 **Witness(es) Most Knowledgeable About Response:**

20 Bradley Mullins
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 61:**

6 Is Mr. Mullins an expert in contract law? If your answer is yes, please provide all evidence
7 supporting your assertion.

8 **WFALLS RESPONSE:**

9 Complainants object to this request to the extent it is argumentative. Notwithstanding, and
10 subject to, as limited by, and without waiving the foregoing General Objections, please refer to
11 Mr. Mullins qualifications in Exhibit WFalls/201. Further, Mr. Mullins has been employed in
12 the energy and utilities industry since 2010, and over that period, has reviewed hundreds of
13 power supply agreements and utility tariffs. He has testified in over 60 proceedings, many of
14 which involved interpretation of the complex terms of power supply contracts and utility tariffs.

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16 **Response Date:** October 5, 2020

17 **Witness(es) Most Knowledgeable About Response:**

18 Bradley Mullins
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**
4 **Docket UM 2107**

5 **PGE REQUEST NO. 62:**

6 Please identify all prior cases or dockets in which Mr. Mullins provided testimony addressing
7 contract law, and provide copies of all such testimony.

8 **WFALLS RESPONSE:**

9 Complainants object to this request to the extent it is argumentative, unduly burdensome and the
10 documents requested are publicly available. Notwithstanding, and subject to, as limited by, and
11 without waiving the foregoing General Objections, please refer to Mr. Mullins qualifications in
12 Exhibit WFalls/201. Mr. Mullins testimony is available publicly online in the respective
13 jurisdictions.

14 **Response Date:** October 5, 2020

15 **Witness(es) Most Knowledgeable About Response:**

16 Bradley Mullins
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1 **WILLAMETTE FALLS PAPER COMPANY and WEST LINN PAPER COMPANY**

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3 **Oregon Public Utility Commission**

4 **Docket UM 2107**

5 **PGE REQUEST NO. 78:**

6 Did W Falls purchase any assets formerly owned by WLP from any source other than Maynards?

7 If so, please list the assets and provide evidence of the same.

8 **WFALLS RESPONSE:**

9 Subject to, as limited by, and without waiving the foregoing General Objections, W Falls did not
10 purchase any assets formerly owned by WLP from any source other than Maynards.

11 Notwithstanding, Mr. Konen, in his personal capacity, purchased 10 tankers, 4 tractors and 11
12 empty trailers in March 2018 because he was trying to restart the Paper Mill and the equipment
13 was needed for Paper Mill operations. This occurred before the formation of W Falls. The
14 equipment described in this paragraph were owned by WLP affiliate Columbia River Logistics,
15 Inc., but transferred and assigned to Belgravia Pulp Holdings (BPH) when WLP ceased
16 operations. Mr. Konen purchased the equipment directly from BPH. The equipment described
17 in this paragraph is currently being used by W Falls. See also documents bates stamped 000376-
18 000390.

19 **Response Date:** October 8, 2020

20 **Witness(es) Most Knowledgeable About Response:**

21 Brian Konen
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 306

5 and 15 Day Notices

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 307

Bill Notices

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 308

Overdue Bill Summary

Redacted

October 12, 2020

**THIS EXHIBIT IS CONFIDENTIAL
PER PROTECTIVE ORDER 20-218
AND IS PROVIDED SEPARATELY**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

Portland General Electric Company

Exhibit 309

February 22, 2018 Bankruptcy Court Order

October 12, 2020

Below is an Order of the Court.


TRISH M. BROWN
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

West Linn Paper Company,

Alleged Debtor.

Case No. 17-33992-tmb7

**ORDER DISMISSING INVOLUNTARY
PETITION**

This matter came to be heard on the Notice of Intent to Dismiss Involuntary Petition/Notice of Hearing [Docket #112] (the “**Notice**”) indicating that West Linn Paper Company (“**West Linn**”), Belgravia Pulp Holdings, Inc. (“**BPH**”) and 6200605 Canada Inc. (“**605 Canada**”) (BPH and 605 Canada referred to collectively as the “**Second Lienholders**”), Resolute FP US Inc. (“**Resolute**”), Export Development Canada (“**EDC**”) and West Fraser Forest Products, Inc. (“**West Fraser**”) (Resolute, EDC and West Fraser collectively referred to as “**Petitioning Creditors**”) had reached an agreement that would form the basis for their mutual consent to dismissal of the Case and the Involuntary Petition. West Linn and the Petitioning Creditors filed and served the Notice on all creditors in accordance with Bankruptcy Code § 303(j)(2) and Bankruptcy Rule 1017. A hearing having been held on February 20, 2018 before this Court (the “**Hearing**”), and based on the Court’s review of all pleadings filed in this Case,

the entire record of this Case (including the evidence submitted at all prior hearings), good cause appearing, and the Court having overruled any timely objections for the reasons set forth on the record of the Hearing,

THE COURT HEREBY FINDS that: (a) this Court has jurisdiction over this proceeding under 28 U.S.C. § 1334(b); (b) this Case has been properly referred to this Court under 28 U.S.C. § 157 and Local Rule 2100-1; (c) venue for this Case is proper in this district under 28 U.S.C. § 1408; and (d) venue for the proceedings on the Notice is proper in this district under 28 U.S.C. § 1409.

Therefore, IT IS HEREBY ORDERED ADJUDGED, AND DECREED that:

1. The Involuntary Petition is dismissed pursuant to 11 U.S.C. § 303(j)(2), ^{TMB} ~~with~~ _{TMB} prejudice and without costs to any party.

~~2. Effective upon entry of this Order: (i) all payments and proceeds previously applied by Wells Fargo to its claims against West Linn shall be deemed final and indefeasible and, therefore, shall not be subject of any contest, challenge, or other recovery by West Linn or other parties in interest on any basis; and (ii) West Linn hereby releases any and all claims, counterclaims, and causes of action against Wells Fargo and its affiliates, subsidiaries, agents, officers, directors, employees, attorneys, advisors, predecessors, successors and assigns in any way relating to or arising in connection with Wells Fargo's lending and banking relationships with West Linn or Columbia River Logistics Inc.~~ _{TMB}

###

PRESENTED BY:

PERKINS COIE LLP

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