

September 15, 2022

VIA ELECTRONIC MAIL (puc.filingcenter@puc.oregon.gov)
Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

Subject: QTS Investment Properties Hillsboro, LLC's (QTS's) comments on AR 651: Division 38 Direct Access Regulation Straw Proposal

To the Public Utility Commission of Oregon:

QTS operates a data center facility, located in Portland General Electric (PGE) service territory in Hillsboro, Oregon ("Hillsboro Data Center"). The Hillsboro Data Center is being constructed in phases and will consist of five large data centers housed in five buildings, the first two of which have been constructed. When completed, QTS's investment in the Hillsboro Data Center will exceed \$2 billion and will require up to 270 average Megawatts ("aMW") of electric service.

The success of QTS's planned investment was predicated on QTS serving the first two buildings' electric requirements of 90 aMW (Phase 1) using 100% renewable power obtained from a 3rd party under the New Large Load Direct Access ("NLDA") program established by the Public Utility Commission of Oregon ("Commission") under its Division 038 Rules. NLDA is available only to new large loads that have never previously been served by the utility. As such, NLDA customers are different from the other Direct Access customers receiving service under Division 038: Long-Term Direct Access (LTDA) customers (who previously *were* served by the utility).

To the best of its knowledge, QTS is the only PGE NLDA customer. As such, it may be uniquely impacted by changes to the Division 38 Direct Access rules. One such example is proposed rule 860-038-0170, Non-bypassable charges ("Rule 170"). Rule 170 provides, in part:

"Non-bypassable Charges" are costs that are directed by the legislature to be recovered by all customers or charges that retail consumers served by electricity service suppliers otherwise may avoid by obtaining electric power through direct access that are determined by the Commission to be appropriate for recovery from all customers. In determining whether a cost is appropriate for recovery as a non-bypassable charge, the Commission shall consider the following factors [(a) to (e)]:

(2) All retail electricity consumers served by Direct Access are responsible for paying Non-bypassable Charges as determined by the Commission.

It is unclear how Rule 170 would be applied in the case of costs associated with decommissioning coal-fired generation, for one example. A justification for imposing such costs on a former cost-of-service customer is that the original capital costs incurred to finance the coal plants were done assuming no direct access and that all load in the utility service territory was cost-of-service load.

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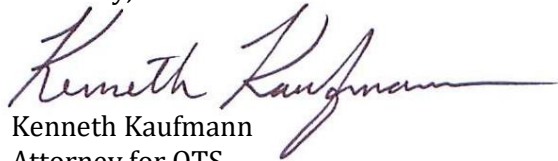
Therefore, if a large existing cost-of-service load served by the coal plant subsequently takes direct access service, coal plant-related costs incurred on its behalf may be shifted to other customers. Such a justification applies to LTDA customers, but does not apply to NLDA customers, whose new large load was never served nor planned for by the utility.

The above rule does not expressly differentiate, in application, between NLDA and LTDA customers. In fact, it says "(2) All retail electricity consumers served by Direct Access are responsible for paying Non-bypassable Charges as determined by the Commission." QTS is concerned that in the future the above language could be relied upon to impose coal plant decommissioning charges on QTS, and to preclude QTS from challenging the reasonableness of such a decision. In such case, QTS would expect, at the least, an opportunity to argue why it should not pay such charges.

QTS does not believe that the Commission would intentionally limit its own discretion to consider differences between LTDA and NLDA customer class characteristics when deciding if a non-bypassable charge should apply equally to both classes. However, sometimes when a rule is susceptible to an unintended reading, that reading can lead to unnecessary confusion and conflict in the future. QTS therefore requests the Commission modify Rule 170 to address the general concern raised above.

QTS appreciates the opportunity to submit comments on the proposed Division 38 rule changes and thanks the Commission for its consideration.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth Kaufmann". The signature is written in black ink and is positioned above the typed name and title.

Kenneth Kaufmann
Attorney for QTS