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September 18, 2020

Via Electronic Mail

Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, OR 97308-1088
puc.filingcenter@state.or.us

Re: QTS Investment Properties Hillsboro, LLC, Petitioner

Attention Filing Center:

Attached for filing is an electronic version of *QTS Investment Properties Hillsboro, LLC'S Petition for Waiver.*

Thank you in advance for your assistance.

Sincerely,

Ken Kaufmann
Attorney for QTS Investment Properties Hillsboro, LLC

Attach.

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
Docket No. _____

In the Matter of QTS INVESTMENT PROPERTIES HILLSBORO, LLC'S Petition for Waiver of 2-Year Energization Requirement of Portland General Electric Company's New Load Direct Access Program	))))))	PETITION OF QTS INVESTMENT PROPERTIES HILLSBORO, LLC. [Oral Argument Requested]

I. INTRODUCTION

Pursuant to OAR 860-001-000(2) and 860-038-0001 and the Oregon Public Utility Commission's ("Commission") Order No. 18-341 issued in Docket No. AR 614 and Order No. 20-002 issued in Docket No. UE 358, QTS Investment Properties Hillsboro, LLC ("QTS") respectfully petitions the Commission for a one-time, limited waiver of a deadline in its 60 Megawatt ("MW") May 13, 2020 New Large Load Cost-of-Service Opt-Out Agreement ("Opt-Out Agreement") with Portland General Electric Company ("PGE") under PGE's New Load Direct Access ("NLDA") program. In particular, QTS respectfully requests that the Commission grant a waiver of, or extend, the "Timely Energization Date" set forth in QTS' Opt-Out Agreement from April 15, 2022, to April 15, 2025. Good cause exists to waive the "Timely Energization Date" or else extend it to April 15, 2025.

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As explained below, the Timely Energization Date is the date by which new customer load under PGE's NLDA must begin taking service. Importantly, the Timely Energization Date is neither required by PGE's Tariff (Schedule 689)[1] nor the Commission's Rules governing the NLDA program (OAR 860-038-0700 through 0760). Instead, PGE added the requirement to later iterations of its *pro forma* Opt-Out Agreement "to clarify how PGE is administering the program, addressing issues on which the PUC's rules, adopted in AR 614 through Order 18-341, are silent."[2]

In fact, PGE added the requirement to begin taking service by the Timely Energization Date only after QTS executed an earlier version of the Agreement at PGE's direction, which did not include a two-year deadline to achieve energization of the new load. This late contractual addition undermined QTS' reasonable expectations regarding the amount of time it had to bring the second phase of its planned data center online. Granting the requested waiver or extending the Timely Energization Deadline is consistent with Schedule 689, the Commission's Rules and would allow sufficient time for QTS to develop and construct the planned second phase of its data center and begin taking service from PGE.

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[1] On July 31, 2020, PGE filed Advice Filing 20-21, which among other things proposes to add the two-year energization requirement to its Schedule 689 tariff. *See* OPUC Docket No. ADV 1164 https://apps.puc.state.or.us/edockets/docket.asp?DocketID=22538. On August 25, the Commission voted to make PGE's Advice 20-21 effective on a going forward basis as of September 9, 2020. All references to Schedule 689 herein refer to PGE's February 6 version, filed as PGE Advice Filing 20-02 in docket UE 358 in January 2020.

[2] *See* PGE's "Informational Filing: PGE Program Administration" filed in Docket No. UE 358 on March 20, 2020.

II. PARTIES NAMED IN THIS PETITION

In accordance with OAR-001-0400(2), the parties named in this Petition are:

QTS Investment Properties Hillsboro, LLC Attn: Travis Wright, VP Energy and Sustainability 4737 E. Exeter Blvd. Phoenix, AZ 85018 602-935-1877 Travis.Wright@Qtsdatacenters.com	Portland General Electric Company Attn: Carl Krutka, Key Customer Manager 121 SW Salmon Street Portland, OR 97204 503-849-6746 Carl.Krutka@pgn.com

III. BACKGROUND

The Commission initially approved rules governing PGE's NLDA program through Order No. 18-341 issued in Docket No. AR 614 on September 14, 2018. The rules are reflected in OAR 860-038-0700 through 0760. Under the rules governing the NLDA, large nonresidential customers may elect to opt out of PGE's cost-of-service based pricing for new load exceeding 10 average megawatts ("MWa") over a consecutive 12-month period within the first 36 months of receiving service, subject to a program cap.

On February 5, 2019, PGE filed tariff sheets in Advice No. 19-02 to be effective for service on and after April 1, 2019, to establish the NLDA program. The Commission suspended PGE's proposed NLDA tariff for nine months while it investigated. Order No. 19-103. After a lengthy proceeding, on January 7, 2020, the Commission issued Order No. 20-002 in Docket No. UE 358 directing PGE to file new tariffs consistent with the Order, to be effective February 6, 2020. On January 14, 2020, PGE filed a new NLDA tariff consistent with the Commission's decisions in Order No. 20-002 (Schedule 689) as Advice No. 20-02. PGE subsequently filed revisions to the Opt-Out Agreement on January 17 and 24, 2020 in Docket No. UE 358. The tariffs took effect on February 6.

PGE's January 14, 2020 advice filing included a *pro forma* NLDA Opt-Out Agreement setting forth PGE and the utility customer's terms and conditions of NLDA opt-out. The *pro forma* Agreement did not specify an initial energization deadline. Consistent with the requirements of the Commission's previous Orders, its NLDA rules, and Schedule 689,[3] the Agreement required only that QTS reach 10 MWa in a 12-month period within the first three years of service. In particular, the Agreement provided:

> This Agreement shall remain in effect for an initial term of either five years from the Effective Date or 60 months from the date Customer's service is energized, whichever is longer; provided this Agreement is not earlier terminated by PGE due to Customer's disenrollment from the program, as discussed in Section 2 of this Agreement, for failure to meet the NLDA Program's load requirements identified in Schedule 689 and/or OAR 860-038-0730(3).

PGE Advice No. 20-02, *pro forma* Opt-Out Agreement, at 2.

On January 17, 2020 PGE sent QTS a letter, attached hereto as **Attachment A.** The letter notified QTS of its NLDA eligibility for 90 MW, provided QTS enrolled by signing and returning each of the enclosed (30 MW and 60 MW) NLDA Cost of Service Opt-Out Agreements prior to February 14, 2020. The NLDA Cost of Service Opt-Out Agreements (attached hereto as **Attachment B**) included the language from the Advice No. 20-02 *pro forma* Opt-Out Agreement, above. The Agreements reflected the capacity awarded to QTS to support

[3] Order No. 20-002 at 2. ("Specifically, the NLDA program is available to new load customers of 10 average megawatts (MWa) or higher, and requires the customer reach 10 MWa in a 12-month period within the first three years of service."); 860-038-0710(2)(b) ("For at least one period of 12 consecutive months within the first 36 months of receiving service, the actual load of a facility served under the New Large Load Direct Access Program must meet or exceed 10 average megawatts"); PGE's February 6, 2020 Schedule 689, at 1 ("The New Large Load Customer must meet a minimum load of 10 MWa over a consecutive 12-month period within the first 36 months of receiving service.")

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the phased development of its planned mega data center in Hillsboro, Oregon. The 30 MW Opt-Out Agreement is for Phase 1, which consists of a 158,000 square foot data center encompassing 85,000 square feet of leasable capacity and requires approximately 30 MW of gross power capacity. Phase 1 is complete and began taking service under PGE's NLDA program on May 17th, 2020. The 60 MW Opt-Out Agreement, which is the subject of this Petition, is for Phase 2. Phase 2 will consist of additional data centers at the Hillsboro site totaling approximately 334,000 square feet encompassing more than 247,000 feet of leasable capacity and will require at least an additional 60 MW of capacity. Affidavit of Travis Wright in Support of QTS' Petition ("**Wright Aff**.") at 3.

QTS never requested two separate Opt-Out Agreements. When QTS signed up for PGE's NLDA queue on April 15, 2019, it submitted a single application for "up to 150 MW of load." Wright Aff. at 4. QTS did not object to signing separate Opt-Out Agreements because, under the February 6 tariff and Opt-Out Agreements, the differences between signing two Opt-Out Agreements or one were immaterial. Wright Aff. at 4-5. Facing a February 14, 2020 regulatory deadline to sign[4], QTS executed the Opt-Out Agreements and transmitted them to PGE on February 10.

PGE's QTS account representative told QTS in a February 10 e-mail that the applications "look good to me" and that he had elevated them for final approval (**Attachment C** at 1), but PGE never returned fully-executed copies of the February 10 Agreements. On March 16, 2020, PGE sent QTS another letter, attached hereto as **Attachment E.** The stated intent of the letter was "to clarify how PGE is administering the program, addressing issues on which the PUC's

[4] Attachment B at 5; *see*, *also*, Docket No. UE 358 Calendar, attached as **Attachment D**.

rules, adopted in AR 614 through Order 18-341, are silent." In relevant part, *for the first time*, PGE indicated that "a customer has up to one more year to energize the new service (for initial program participants, that's by April 15, 2021), or two years (for initial program participants, that's by April 15, 2022) if substation construction and/or substation upgrades, are required to provide the new service (the 'Timely Energization Date')."

QTS objected immediately to the changes proposed in the March 16 letter. QTS told PGE it was "highly unlikely that we are able to plan, permit, construct, and commission a second building within the next 2 years in Hillsboro. This needs to be wrapped into a 60-month plan. * * * Especially with the COVID-19 outbreak, do you really think we are able to get that done?" Attachment C at 3. Nevertheless, PGE sent QTS revised Opt-Out Agreements with the Timely Energization language and informed QTS that if it did not execute them within 10 business days "the offer would be withdrawn". Attachment E at 1; Wright Aff. at 5. QTS executed the revised Agreements on May 13, 2020. QTS now seeks relief from the Timely Energization Date of April 15, 2022 included in QTS' Phase 2 (60 MW) Opt-Out Agreement for good cause shown.

IV. PETITION

A. Commission may modify the Timely Energization Date.

The NLDA program rules are codified in OAR 860-038-0700 through 0760. OAR 860-038-0001 provides that "upon request or its own motion, the Commission may waive any of the Division 038 rules for good cause shown."[5] The Commission has discretion to determine what constitutes "good cause." *In re NW Photon Energy*, 2016 Ore. PUC LEXIS, 348 UM 1538,

[5] OAR 860-001-000(2) further provides that "[f]or limited purposes in specific proceedings, the Commission or ALJ may modify or waive any of the rules in this division for good cause shown. A request for exemption must be made in writing, unless otherwise allowed by the Commission or ALJ."

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Order No. 16-368. The Commission has granted waivers of deadlines in numerous instances in the past.[6] While the requirement in the *pro forma* NLDA Opt-Out Agreement that a customer's new load achieves a Timely Energization Date within two years is not reflected in the Commission's Rules or PGE's Schedule 689, it is subject to the Commission's oversight as though it were part of a tariff.[7]

B. QTS detrimentally relied on the NADL rules, PGE's February 6 tariff, and PGE's March 16, 2020 letter.

As the Commission can appreciate, QTS' planned investment in its Hillsboro data center is largely driven by the availability of PGE's NLDA program, as the ability for QTS to attract customers is driven in large part by its ability to reduce its energy costs. For this reason, QTS has actively supported efforts to bring the NLDA program to fruition. After lengthy proceedings, the program was established – *without any requirement that the new load come online within a specific time period*. The only relevant timing requirement in the Commission's Rules or Schedule 689[8] is that a customer meets a minimum load of 10 MWa over a consecutive

[6] *See, e.g., In re Solar City*, 2016 Ore. PUC LEXIS 283; UM 1538, Order No. 16-303 (finding good cause for waiver of Solar Payment Options application deadline under OAR 860-084-0210(1) where applicant had demonstrated actions toward completion of the project and history of successfully completed solar photovoltaic projects.); *In re Taylor's Sausage, Inc.*, 2011 Ore. PUC LEXIS 461; UM 1538, Order No. 11-523 (waiver of 12-month installation requirement of OAR 860-084-0210(1) where applicant demonstrated active pursuit and commitment to install); *In re Dynamic Power Innovation*, 2014 Ore. PUC LEXIS 108; UM 1538, Order No. 14-110 (granting prospective relief from deadline where applicant has paid for all required engineering and applied for all local building permits); *but see In re PGPV, LLC*, 2018 ORE. PUC LEXIS 110; UM 1538, Order No. 18-095 (denying waiver under OAR 860-084-0210(1) where applicant applied for *ex post facto* waiver 7 months after deadline and its queue allocation had been released).

[7] OAR 860-022-0035(1). "Energy and telecommunications utilities within Oregon entering into special contracts with certain customers prescribing and providing rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such utilities are in legal effect tariffs and are subject to supervision, regulation, and control as such."

[8] *See* footnote 3, *supra*.

12-month period within the first 36 months of receiving service. As noted above, QTS fully expects to meet this metric, but requires more than PGE's prescribed two years to bring Phase 2 of its planned data center online.

QTS reasonably relied upon the Commission's NLDA rules when it enrolled on April 15, 2019, and it reasonably relied upon PGE's February 6, 2020 NLDA tariff and *pro forma* Opt-Out Agreement when it tendered separate Agreements to PGE on February 10. Had PGE notified QTS of its 2-year energization deadline sooner, QTS would have submitted one application for 90MW rather than submitting separate 30MW and 60MW applications, and PGE's 24-month energization requirement would not be a concern because Phase 1 of QTS' data center began taking service from PGE on May 17, 2020.

When PGE added the 2-year energization requirement, it was foreseeable that QTS would be injured because QTS gave PGE written notice it would be harmed by the change on March 16 – 23 days before PGE filed a revised Opt-Out Agreement adding the 2-year energization requirement. Finally, QTS reasonably relied upon PGE's statement, in its March 16 letter, that QTS should seek relief through the Commission's rule waiver process. Attachment E at 2 (stating "If you fundamentally disagree with the conclusions this letter holds, please avail yourself of the OPUC waiver process."). In reliance upon PGE's instruction, QTS opted to sign the May 13 Opt-Out Agreements and seek a remedy with this petition. Wright Aff. at 5.

C. QTS performed all requested steps to enroll under PGE's February 6 NLDA tariff.

PGE's January 17, 2020 letter to QTS stated that its NLDA tariff would become effective February 6. Attachment A at 1. It also stated that QTS was eligible for the NLDA program and told QTS it must sign and deliver the 30 MW and the 60 MW Opt-Out Agreements no later than February 14. *Id.* QTS reasonably expected that it had a final deal with PGE when it tendered the executed Opt-Out Agreements to PGE on February 10, because QTS was ready, willing, and able to perform, and agreed to be bound to the Opt-Out Agreements. Further, PGE had no authority to deviate from the tariff and *pro forma* Opt-Out Agreement that took effect on February 6. Although PGE filed an updated *pro forma* Opt-Out Agreement on April 8, and filed PGE Advice No. 20-21 on July 31, Oregon's filed rate doctrine dictates that neither had any effect on February 10 when QTS fulfilled all of the eligibility requirements for NLDA service under PGE's February 6 approved tariff. *See*, *Wah Change v. PacifiCorp,* 2009 Ore. PUC LEXIS 291, UM 1002; Order No. 09-343:

> [ORS 757.225] is the codification of the filed rate doctrine. It provides:
>
> > No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. *The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 to 757.220*. (Emphasis added.)
>
> The "printed rate schedules" are the tariffs approved by the Commission, like the special tariff [special contract] at issue in this case. The broad language of ORS 757.225 is clear: PacifiCorp must charge the rate set out in the special tariff.
>
> The second sentence of ORS 757.225 dictates the legal implications of the filed rate doctrine: **the filed rates are the only lawful rates "until they are changed" by the Commission**.

(Bold emphasis added). Consistent with the Commission's analysis in *Wah Chang*, above, Staff told PGE, prior to March 20, 2020, that PGE needed to update its tariff to include changes to the February 6 tariff and PGE declined to do so. June 9, 2020 Staff Report; Docket No. UE 358, at 3-4 ("Staff notes that this does not reflect Staff's only comments, which also included that PGE needed to update its tariff to include its queue management plan. PGE has declined to do so.”). Accordingly, under Oregon’s filed rate doctrine, as explained above, the February 10 Opt-Out Agreements contained the lawful rates approved by the Commission and binding on PGE, and PGE was not authorized to require QTS to execute the May 13 Opt-Out Agreements.

D. PGE’s 2-Year Energization requirement is unreasonable as applied to QTS.

1. Projects >10 MWa take longer than 2-years to deliver in normal times.

The inclusion of the two-year window to achieve energization was implemented by PGE through subsequent revisions to its *pro forma* Opt-Out Agreement after QTS executed the Agreements and without any Commission determination as to the reasonableness of the new requirement.[9] PGE provided no evidence that most potential NLDA subscribers can meet a 24-month deadline. PacifiCorp’s NLDA tariff, Pacific Power Oregon Schedule 293, has no analogous energization deadline. At least with respect to QTS’ Phase 2 development, the two-year Timely Energization Date is neither reasonable nor appropriate.

Even if QTS had not detrimentally relied on the Commission’s rules and PGE’s February 6 filing, the two-year energization requirement is unreasonable. In developing Phase 1, QTS learned that the permitting and construction horizon for large data centers can be a lengthy and difficult process. With respect to Phase 1, the planning, implementation and construction of the first data center took a total of 3.8 years. Delays were experienced due to site permitting, offsite improvements, generator air permitting, weather, soil conditions and contractor availability.

[9] As Commission Staff highlighted in its June 9, 2020 Staff Report on "PGE NLDA Program Administration and Queue Issues" (Docket No. UE-385) at page 4, "because these customers have to have demand in excess of 10 aMW, the planning horizon to serve the load can be extensive, meaning that a customer’s ability to enroll in the NLDA program has meaningful implications for the customer, PGE, and PGE’s system before the actual energization date."

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Before the start of Phase 1, there was a lengthy site entitlement process which took well over a year to complete. There were many challenges at the state and local level to navigate including an Environmental Site Assessment, Clean Water Services, and Significant Natural Resource Overlay. Each one of these entitlements involved multiple consultants, long reports and extensive agency review periods filled with comments and resubmissions. Wright Aff. at 6-7.

When it came time for construction of Phase 1, there were numerous obstacles including a lengthy soil stabilization process that was required prior to installing building foundations, as well as dealing with local challenges such as a prolonged rainy season and contractor resource challenges due to the pandemic and competing large projects. Furthermore, new regulations were imposed in regards to generator air permits, which pushed the permit process beyond a year from start to finish. QTS was the first to participate in the new air permit program which delayed the energization of Phase 1 significantly. Wright Aff. at 7.

In addition, offsite improvements were necessary over which QTS had no control, including work required by the state and local officials related to road improvements and other infrastructure activities. The Huffman road project near the project site was a substantial effort that included a long stretch of two-way road with turn lanes, traffic signals, and city-required lighting. Other offsite improvements include drainage considerations, city trail easements, and other mitigations, which are currently in various stages of completion. This effort started years ago, and pieces of this work and the entitlements are still in progress. Wright Aff. at 7-8.

Given the lengthy timeline required to design, permit, and construct a server farm such as QTS' (or most other >10 MWa new loads), the two-year energization requirement is unrealistically short, and the consequences of missing the deadline unreasonably punitive. QTS has installed dozens of data centers across the United States, many of which are very similar to the Hillsboro Data Center. Nevertheless, it took QTS nearly four years to complete Phase 1 of its Hillsboro Data Center. Wright Aff. at 8.

2. QTS expects additional delays beyond its control due to the COVID-19 pandemic.

On top of the known risks, above, the COVID-19 pandemic poses novel risks (known and unknown) going forward. QTS has experienced COVID-related delays in construction of other projects and anticipates longer permitting timelines due to many government officials working from home. While the exact form and extent of such delays may be difficult to measure, it is prudent to assume that they are real, beyond QTS' control, and that projects face heightened risk of delays due to COVID-19 related impacts for the foreseeable future. Wright Aff. at 8.

In sum, two years is not enough time to dependably deliver a new load greater than 10 MWa. PGE implicitly recognizes this fact on page 4 of Schedule 689, where it requires "Customers must provide not less than three years notice to terminate service under this Schedule." PGE, with all of its inherent advantages, requires at least three years notice to procure alternative electric service for NLDA customers returning to cost-of-service; PacifiCorp requires such customers give four years notice.[10] Nevertheless PGE asks NLDA customers to design, permit, and construct a 60 MW data center in only two years. Given its experience with Phase 1, and the large uncertainty regarding construction and permitting timelines due to the pandemic, QTS believes five years from execution of the Opt-Out Agreement to initial energization is a reasonable deadline.

[10] Pacific Power Oregon Schedule 293, at 3 ("Consumers electing service under this program must give the Company not less than four years' notice to switch to Standard Offer Service or Cost-Based Service as described in Section VII of Rule 21 of this tariff.").

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E. QTS commitment to the 60 MW Facility should not be questioned.

QTS' waiver request does not signal a lack of commitment to move forward with Phase 2; to the contrary, QTS is working diligently towards energization of Phase 2. QTS has expended over $1.5 Million on Phase 2 to date, and has financing to complete the project in place. To date, QTS has installed substantial utility infrastructure needed for Phase 2, committed funding for design and permitting, and is currently working on final building engineering. QTS plans to apply for its building permit for Phase 2 by October 1, 2020. Wright Aff. at 9-10. These are the same indicia of progress the Commission relied upon repeatedly when granting waiver requests in Docket No. UM 1538, discussed above.

QTS' request for prospective waiver is necessary because without it all of QTS' investment would be at unacceptable risk. While Section 1 of QTS' Opt-Out Agreement provides that PGE can extend the Timely Energization Date to account for any delays beyond QTS' control, due to the large investment QTS is making in its Phase 2 data center, it requires more certainty before the investment is sunk as the savings QTS expects to achieve under the NLDA program make the project economic. Imposing a two-year energization deadline to continue participating in the NLDA for Phase 2 places QTS' investment at risk and does not support the goals of the program. Instead, it simply requires QTS to speed up its plans and assume the risk that it may not achieve the Timely Energization Date despite its diligent efforts. Wright Aff. at 9.

F. Good cause exists to grant the requested waiver.

Good cause for waiver exists because QTS detrimentally relied on the energization language in PGE's Feb 6 Opt-Out Agreement when it complied with PGE's request to configure its Hillsboro Data Center into two separate NLDA applications. Had QTS known of the 2-year deadline, it would have tendered a single Opt-Out Agreement for both phases and rendered the deadline a non-issue.

Good cause for waiver exists because at the time QTS legally obligated itself to the privileges and duties of PGE's NLDA program, it did so in accordance with the terms of PGE's February 6 NLDA tariff and Opt-Out Agreement, which was the only Opt-Out Agreement validated by the Commission, and which does not contain any deadline for initial energization.

Good cause for waiver exists because PGE has not shown that 24 months is a reasonable time to design, permit, and construct new electric loads greater than 10 MWa. The likely result of the requirement is an uncertain environment that will discourage large investment needed to participate in the NLDA.

Good cause for waiver exists because QTS is diligently pursuing Phase 2 and has undertaken many commitments towards completion since signing the Opt-Out Agreement on May 16. In Docket No. UM 1538, the Commission reviewed numerous waiver applications seeking extension of eligibility deadlines in the Solar Payment Options program set forth under OAR 860-084-0210. The Commission said:

> In order to find a good cause in solar waiver requests, applicants should provide information of the activities they have taken since the capacity reservation was awarded. Examples include, but are not limited to, securing a source of financing for the project, preparing engineering and system plans, applying for and/or obtaining required permits from regulatory bodies, incurring the expenses of ordering system parts and/or construction activities, and following the process of soliciting and awarding public contracts for the installation of the system.

In re Town of Lakeview, 2011 Ore. PUC LEXIS 318, UM 1538; ORDER NO. 11 374. Applying the above standard, the Commission generally granted waiver requests wherever the applicant demonstrated commitment to a project and diligent pursuit of completion.[11] QTS has made large investments in Phase 2 already, and is diligently pursuing its completion.

V. CONCLUSION

For the foregoing reasons, QTS respectfully requests that the Commission grant a waiver and eliminate the "Timely Energization Date" in QTS' Phase 2 Opt-Out Agreement, or else extend it to April 15, 2025. If the Commission determines that extending the Timely Energization Date to April 15, 2025 is too long, QTS alternatively requests that the Commission authorize QTS to work with PGE on a mutually-agreeable alternative extension to provide QTS with a reasonable opportunity to complete Phase 2 without significant risk that QTS could be disenrolled from the NLDA program, placing its investment at risk.

Dated this 18th day of September 2020.

Respectfully submitted,

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[11] *See* footnote 6, *supra.*

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Attorney for Petitioner QTS Investment Properties Hillsboro, LLC

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the matter of QTS INVESTMENT PROPERTIES HILLSBORO, LLC'S Petition for Waiver of 2-Year Energization Requirement of Portland General Electric Company's New Load Direct Access (NLDA) Requirement	**CASE NO. UM _______** **Affidavit of Travis Wright in support of QTS' Petition**

Q. Please state your name and position.

A. My name is Travis Wright. I am the Vice President – Energy and Sustainability for Quality Technical Services, Inc.

Q. Were you QTS' point of communications with Portland General Electric Company (PGE) regarding QTS' participation in PGE's NLDA Program?

A. Yes. I was the main point of contact, along with our development team, Collin Scott, Lane Anderson, and our electrical designer.

Q. What is the purpose of your affidavit?

A. In Part I of my Affidavit, I authenticate all Attachments to QTS' Petition. In Part II, I discuss QTS' negotiation of its Opt-Out Agreements. In Part III, I discuss why the 24-month energization requirement with disqualification penalty is not reasonable. In Part IV, I describe activities QTS has undertaken with respect to development of Phase 2 of its Hillsboro Data Center.

PART I

AUTHENTICATION OF QTS' EXHIBITS

Q. Below is a list of Attachments filed by QTS in support of its Petition:

Attachment A--January 17, 2020 letter from PGE
Attachment B--February 10, 2020 Opt-Out Agreements
Attachment C--Emails between PGE and QTS
Attachment D--PGE NLDA Regulatory Timeline
Attachment E--March 16, 2020 letter from PGE
Attachment F--May 13, 2020 Opt-Out Agreements

Q. Are you familiar with QTS Attachments A-F, set forth, above, and attached to QTS' Petition?

A. Yes.

Q. Is each of them a true copy of what it purports to be?

A: Yes.

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Part II

QTS' NEGOTIATION OF THE OPT-OUT AGREEMENTS

Q. Can you please describe the Hillsboro Data Center?

A. Phase 1 of QTS' Hillsboro Data Center consists of a 158,000 square foot building with 85,000 square feet of leasable capacity and requires approximately 30 MW of gross power capacity. Phase 1 is complete and began taking service under PGE's NLDA program on May 17th, 2020. Phase 2 will consist of additional data centers at the Hillsboro site totaling approximately 334,000 square feet encompassing more than 247,000 feet of leasable capacity and will require at least an additional 60 MWs of capacity. I describe the current status of Phase 2 in Part IV, below.

Q. When did QTS enroll in the NLDA?

A. QTS signed up for the NLDA program as soon as it was offered, on April 15, 2019.

Q. Did enrollment ensure your participation?

A. No, PGE required that participants execute an Opt-Out Agreement or else be dis-enrolled from the NLDA program.

Q. Why did QTS submit two Opt-Out Agreements?

A. Hillsboro Data Center was conceived from the start as a single Data Center comprised of adjacent buildings built in succession. QTS does not consider them separate facilities. When QTS enrolled in PGE's NLDA queue, on April 15, 2019, it

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made a single request for "up to 150 MW of load". However in January 2020 PGE directed QTS to fill out a separate Opt-Out agreement for each building. The Phase 1 Opt-Out Agreement is for 30 MWs. The Phase 2 Opt-Out Agreement, which is the subject of this Petition, is for 60 MW.

Q. When did PGE first provide you an Opt-Out Agreement?

A. On January 17, 2020 PGE sent QTS an NLDA Cost of Service Opt-Out Agreement for Phase 1 and a separate one for Phase 2. The accompanying letter from PGE directed QTS to tender a signed copy of the Opt-Out Agreements by February 14, or else forfeit its position in PGE's NLDA queue. On February 10, 2020, QTS executed the Opt-Out Agreements, intending to create a binding agreement with PGE.

Q. Did PGE execute the February 10 Opt-Out Agreements?

A. PGE never executed the February 10 agreements. Instead, on March 16, 2020, PGE sent QTS a letter. The stated intent of the letter was "to clarify how PGE is administering the [NLDA] program, addressing issues on which the PUC's rules, adopted in AR 614 through Order 18-341, are silent." In relevant part, for the first time, PGE indicated that "a customer has up to one more year to energize the new service (for initial program participants, that's by April 15, 2021), or two years (for initial program participants, that's by April 15, 2022) if substation construction and/or substation upgrades, are required to provide the new service (the 'Timely Energization Date')." On April 8, 2020, PGE filed a

"Supplemental Filing of Advice No. 20-02" including addition of the 2-year energization requirement to Opt-Out Agreement.

Q. How did the two-year energization deadline affect QTS?

A. QTS never planned to energize Phase 2 within two years. Had this requirement existed when QTS applied, it would have submitted one application for both phases together. Phase 1 energized in May 2020, so if the two Phases were combined in a single application, the 2-year energization requirement would not be an issue. But because PGE split our application into two and did not notify QTS of its 2-year energization requirement until March 2020, QTS was stuck with two separate Opt-Out Agreements.

Q. Did QTS challenge the 2-year energization requirement?

A. Yes, when I received the March 16 letter, I immediately objected. I told PGE that QTS already signed a contract with PGE. I told PGE it was highly unlikely QTS could commission Phase 2 in only two years and that five years was realistic. PGE refused to reconsider. PGE declared that customers such as QTS who did not agree with PGE's revisions should seek relief through the Commission's rule waiver process. By this time it was clear we would not achieve our planned April 15 energization of Phase 1 due to delays on PGE's end and faced further, indefinite, delay if we did not sign. Also, PGE informed QTS that if it desired to participate in the NLDA program, it would need to execute the newly revised Agreements. Faced with the decision to execute the revised Agreements or be removed from the NLDA program, QTS decided to execute the revised Agreements and seek a waiver for relief from the 2-year Timely Energization Date of April 15, 2022 included in QTS' Phase 2 (60 MW) Opt-Out Agreement.

Part III

REASONABLENESS OF PGE'S TIMELY ENERGIZATION REQUIRMENT

Q. What happens if an NLDA customer does not achieve the 2-year Timely Energization requirement?

A. Unless PGE grants an extension or the Commission grants a waiver, the customer is kicked out of the NLDA program.

Q. What is the economic impact of being kicked out?

A. There would be a significant increase in QTS' cost of power. In addition, procuring renewable energy through PGE is neither cost effective nor impactful. QTS has committed to procure 100% of its energy from renewable resources by 2025, and the only path for QTS to accomplish this in a cost effective way that makes a meaningful difference to the environment is to procure energy through a third party. QTS made a massive commitment to Hillsboro with a site that is master planned for 270 MW, and will be one of the most advanced, and most highly connected facilities in the world. Unlike many of our competitors, we are committed to social responsibility and world-class facilities that are more than just big grey boxes. Without access to the NLDA, we would lose our competitive edge and further expansion on this campus would be difficult to rationalize.

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West Linn, OR 97068

Q. Is 24 months enough time to design, permit, and construct a large data center?

A. Even if QTS had not detrimentally relied on the Commission's rules and PGE's February 6 filing, the two-year energization requirement is unreasonable. In developing Phase 1, QTS learned that the permitting and construction horizon for large data centers in Oregon can be a lengthy and difficult process. The planning, implementation and construction of the first data center took a total of 3.8 years. Before the start of Phase 1, there was a lengthy site entitlement (a/k/a zoning and permitting) process which took well over a year to complete. There were many challenges at the state and local level to navigate including an Environmental Site Assessment, Clean Water Services, and Significant Natural Resource Overlay. Each one of these entitlements involved multiple consultants, long reports and extensive agency review periods filled with comments and resubmissions.

When it came time for construction of Phase 1, there were numerous obstacles including a lengthy soil stabilization process that was required prior to installing building foundations, as well as dealing with local challenges such as a prolonged rainy season and contractor resource challenges due to the pandemic and competing large projects. Furthermore, new regulations were imposed in regards to generator air permits, which pushed the permit process beyond a

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year from start to finish. QTS was the first to participate in the new air permit program which delayed the energization of Phase 1 significantly.

In addition, offsite improvements were necessary over which QTS had no control, including work required by the state and local officials related to road improvements and other infrastructure activities. The Huffman road project near the project site was a substantial effort that included a long stretch of two-way road with turn lanes, traffic signals, and city required lighting. Other offsite improvements include drainage considerations, city trail easements, and other mitigations, which are currently in various stages of completion.

Given the lengthy timeline required to design, permit, and construct a Data Center such as QTS' (or most other >10 MWa new loads), the two-year energization requirement is unrealistically short, and the consequences of missing the deadline unreasonably punitive. QTS has installed dozens of Data Centers across the United States, many of which are very similar to the Hillsboro Data Center. Nevertheless, it took QTS nearly four years to complete Phase 1 of its Hillsboro Data Center.

Q. Does QTS expect additional delays beyond its control due to the COVID 19 pandemic?

A. The COVID-19 pandemic posts novel risks (known and unknown) going forward. QTS has experienced COVID-related delays in construction of other projects and anticipates longer permitting timelines due to many government officials

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working from home. While the exact form and extent of such delays may be difficult to measure, it is prudent to assume that they are real, beyond QTS' control, and that projects face heightened risk of delays due to COVID-19 related impacts for the foreseeable future.

Q. Why shouldn't QTS try to comply with the 2-year energization requirement and seek a waiver after the fact, if needed?

A. QTS' request for prospective waiver is necessary because without it all of QTS' investment would be at unacceptable risk. While Section 1 of QTS' Opt-Out Agreement provides that PGE can extend the Timely Energization Date to account for any delays beyond QTS' control, due to the large investment QTS is making in its Phase 2 data center, it requires more certainty before the investment is sunk as the savings QTS expects to achieve under the NLDA program make the project economic. Imposing a two-year energization deadline to continue participating in the NLDA program for Phase 2 places QTS' investment at risk and does not support the goals of the program. Instead, it simply requires QTS to speed up its plans and assume the risk that it may not achieve the Timely Energization Date despite its diligent efforts.

Part IV

ACTIVITIES QTS HAS UNDERTAKEN ON PHASE 2

Q. Is Phase 2 of the Hillsboro Data Center moving forward?

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A. Very much so.

Q. Does QTS have committed financing to construct Phase 2?

A. Yes

Q. Has QTS spent money towards Phase 2?

A. Yes**.** Expenditures to date for this project are roughly $1.5 Million, including design, geotechnical investigation, permitting and entitlements.

Q. Has QTS undertaken design engineering of Phase 2?

A. Design and engineering for Building 2 is well underway with schematic drawings having been issued in August 2020. We plan to have construction documents ready by the end of September, and will immediately submit to the City of Hillsboro for a building permit. Concurrently, we are completing a design review modification with the City of Hillsboro since the Building 2 design has changed from a one-story to two-story building. The goal is to complete the design review in September/October so that a building permit can be issued by the end of 2020. Additionally, the air permit application for all of Building 2's generators has been submitted to the Oregon DEQ for review and approval.

In regards to construction, PGE has completed one power pathway to the site and is currently about to start the second pathway which will feed Building 2. Crews have been on site completing geotechnical borings, as well as hauling away stock piled dirt in anticipation of a potential building start in early 2021.

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Q. Has QTS applied for a building permit and/or any other permits and zoning approvals necessary to construct Phase 2?

A. QTS plans to apply for its building permit for Phase 2 by October 1, 2020.

Q. Are there any other indicia of QTS' diligent progress on Phase 2?

A. QTS has installed substantial utility infrastructure needed for Phase 2.

Q. Is there anything else you want to say about QTS' Hillsboro Data Center?

A. Yes. The public interest also supports granting of the requested waiver, as QTS is committed to advancing the State's modernization, carbon-reduction and energy efficiency goals. In particular, QTS intends to install electric vehicle ("EV') charging stations on the site of its new data centers and is committed to power its data centers with 100% renewable energy. Further, to the extent that participation in demand response programs became an option for those customers like QTS participating in direct access, QTS would consider such participation. In this respect, granting the requested waiver will help advance state policy goals for the benefit of all customers.

Q. Does this conclude your testimony?

A. Yes.

Q. Do you swear your testimony is truthful to the best of your knowledge?

A. Yes.

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West Linn, OR 97068

Dated this 3RD day of SEPTEMBER 2020.

Travis Wright
Vice President – Energy and Sustainability for Quality Technical Services, Inc.

STATE OF ARIZONA)
) ss.
County of maricopa)

On this 3rd day of ~~August~~ sep 2020, before me, a Notary Public in and for the State of Arizona, personally appeared travis wright, known or identified to me and who subscribed said name to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affix my official seal the day and year first above written.

________________, Notary Public for Arizona

Residing at: 2303 N 44th st ste -14 phx, AZ, 85008

My commission expires: 05/27/2023

ARUN KARKI
Notary Public - State of Arizona
MARICOPA COUNTY
Commission # 565722
Expires May 27, 2023

Kenneth Kaufmann, Attorney at Law
1785 Willamette Falls Drive, Suite 5
West Linn, OR 97068

Attachments to Petition of QTS Investment Properties Hillsboro, LLC

Attachment A	January 15, 2020 letter from PGE
Attachment B	February 10, 2020 Opt-Out Agreements
Attachment C	E-mails between PGE and QTS
Attachment D	Docket No. UE 358 Calendar
Attachment E	March 16, 2020 letter from PGE
Attachment F	May 13, 2020 Opt-Out Agreements

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

January 17, 2020

Travis Wright
QTS Investment Properties Hillsboro, LLC
4737 E. Exeter Blvd
Phoenix. AZ 85018

Re: Notification of Eligibility for New Large Load Direct Access Program and February 14 Deadline to Enroll

Dear Mr. Wright,

We are writing to let you know that the Public Utility Commission of Oregon (OPUC) issued an order (Order 20-002) concerning PGE's New Large Load Direct Access (NLDA) Program tariff. You expressed interest in the NLDA program last April when you enrolled in PGE's nonbinding queue for customers. We filed our final compliance filing, Schedule 689, with the Commission this week for OPUC Staff review (Advice Filing 20-02). The Commission's order directs a tariff effective date of February 6, 2020.

PGE has determined that you are eligible for the NLDA program. Based on the load PGE is designing for QTS, we identified two sites, Building 1 at 30 MW and Building 2 at 60 MW that qualify.

To enroll both buildings, you must sign and submit the attached NLDA Cost of Service Opt-Out Agreements no later than 5 PM PST on February 14, 2020. To accomplish this, you must do the following:

- Electronically return a signed copy of the attached NLDA Cost of Service Opt-Out agreements via email to pgecontracts2@pgn.com no later than 5 PM PST on February 14, 2020.
- Mail a signed copy of the agreements to your Key Customer Manager so that PGE can fully execute the document on the original. If you wish to receive original executed agreements for your own records, please sign and send two copies of each and PGE will return one of each to you upon signing.

Failure to sign and return the agreements via email by February 14, 2020 at 5 PM PST will result in forfeiture of your position in the queue. Based on currently available information, PGE cannot energize your service prior to April 15, 2020, so you will satisfy the one-year notification period provided in the rules[1].

Please be advised of the following:

> According to Commission Order 20-002, customers served under Schedule 689 will be required to support resource adequacy to ensure that PGE can continue to be able to maintain a resilient system and provide reliable power to all customers. The Commission has stated that customers will not be able to be exempted from these potential charges through grandfathering. Further, PGE may be proposing changes to curtailment schedules applicable to NLDA customers, consistent with the invitation the Commission extended in Order 20-002. These proposals are still in their formative stages and no specifics are known about their impact at this time.

[1] OAR 860-038-0740 (1)(b)

Please direct any questions on the New Large Load Direct Access program to your Key Customer Manager, Carl Krutka at 503-464-8487 or carl.krutka@pgn.com

Sincerely,

Robert Macfarlane

Robert Macfarlane
Manager, Pricing & Tariffs

QTS INVESTMENT PROPERTIES HILLSBORO, LLC

AND

PORTLAND GENERAL ELECTRIC COMPANY

NEW LARGE LOAD COST-OF-SERVICE OPT-OUT AGREEMENT

UNDER SCHEDULE 689

February 10, 2020

This New Large Load Cost-Of-Service Opt-Out Agreement ("Agreement") dated February ___, 2020 (hereafter the "Effective Date") is between QTS INVESTMENT PROPERTIES HILLSBORO, LLC ("Customer") and PORTLAND GENERAL ELECTRIC COMPANY ("PGE"). This Agreement reflects Customer's binding election to participate in PGE's New Large Load Direct Access Program and take service under the terms and conditions of Schedule 689. PGE and Customer are hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

The Parties agree as follows:

1. <u>Term and Termination of Agreement</u>

Customer is electing to take service under the terms and conditions of Schedule 689 as such schedule may be modified, amended, or succeeded from time to time following approval or equivalent action by the Oregon Public Utility Commission (hereinafter referred to as "Schedule 689").

This Agreement shall remain in effect for an initial term of either five years from the Effective Date or 60 months from the date Customer's service is energized, whichever is longer; provided this Agreement is not earlier terminated by PGE due to Customer's disenrollment from the program, as discussed in Section 2 of this Agreement, for failure to meet the NLDA Program's load requirements identified in Schedule 689 and/or OAR 860-038-0730(3). If not terminated earlier, then at the end of the initial term, this Agreement shall be automatically extended for one year, and thereafter from year-to-year, until a written Notice of Intent to Terminate is given to PGE, by Customer. If PGE should receive a Notice of Intent to Terminate, then this Agreement shall terminate on the third anniversary date of PGE's receipt of such notice. Except when this Agreement is unilaterally terminated by PGE due to Customer's disenrollment under Section 2, or due to business closure as discussed below, or due to violation of OAR 860-038-0730(1) pursuant to Section 7, Customer must give PGE not less than 3 years advance written notice of its intent to terminate this Agreement. Upon receipt by PGE, such notice of intent to terminate shall be binding on the Parties. Except as provided for in Section 7, at the time of termination of this Agreement Customer's account(s) will be moved to an appropriate cost-of-service rate schedule.

In the event Customer ceases operations (i.e., Customer goes out of business) at the location identified in Section 4, PGE may unilaterally terminate this Agreement without notice.

2. <u>Disenrollment Process</u>

For purposes of evaluating Customer's compliance with, and eligibility to continue under, Schedule 689 and this Agreement, Customer's service shall begin on the date the existing or new meter is energized for Customer. To remain eligible for service under Schedule 689, Customer's actual load at the facility being served under the New Large Load Direct Access Program must achieve 10MWa over a period of twelve consecutive months within the first 36 months of receiving service. If, in month 33, Customer has not yet achieved at least one month at 10MWa, the Company may begin the process to disenroll Customer from the New Large Load Direct Access Program. The Company will do so by providing the Customer and the Commission with written notification of its proposal to transfer the Customer to an applicable cost-of-service rate schedule 90 days after the Company's disenrollment notice to the Customer. If Customer wishes to challenge the disenrollment, then, within 60 days of receipt of such notification of disenrollment, Customer must provide written notice of its dispute and any supporting documentation, to both the Company and the Commission. To receive consideration, such supporting documentation must demonstrate that Customer's shortfall in load, below the threshold 10MWa, is attributable to: 1) equipment failure; 2) incremental demand-side management, load curtailment or load control; or 3) other legitimate cause outside the control of the Customer. If disenrolled, Customer will promptly be transitioned to an applicable cost-of-service rate and subject to all notice requirements and provisions of such cost-of-service schedule.

3. Service

PGE shall furnish to Customer, at each Service Point described in this Agreement, sixty-hertz alternating current of such phase and voltage as PGE may have available, subject to the General Rules and Regulations of PGE's current tariff, which tariff is typically available on PGE's website at: www.portlandgeneral.com/our-company/regulatory-documents/tariff.

4. Location(s) to be Served

The New Large Load must be separately metered from any load at any existing facility owned by Customer, or otherwise measured separately with comparable accuracy and in a form that is mutually agreed upon between the Customer and the Company. Pursuant to this Agreement, PGE shall furnish service consistent with Schedule 689, at the Customer location(s) listed (or to be listed, once address is established at an undeveloped site) on Exhibit A, which exhibit is attached hereto and incorporated by reference. Construction meters and any energy supplied during construction will not apply toward any calculation for compliance purposes under Schedule 689.

5. Description of Service Point(s)

Pursuant to the requirements of Schedule 689, the Service Point(s), for the level of service(s) being planned for and provided under this Agreement, will be populated in Exhibit B to this Agreement once said Service Point(s) is/are known, but no later than 30 business days following energization.

6. Expected Load

Customer's expected annual load for purposes of this Agreement and for purposes of determining eligibility under Schedule 689 will be 30 MW. This is the amount of load that will be counted toward the NLDA program cap unless Customer is disenrolled under Section 2 of the Agreement.

7. Resource Mix

In accordance with the Affidavit provided by Customer and attached hereto as Exhibit C, Customer agrees that its resource mix shall remain consistent with the requirements of OAR 860-038-0730(1). If Customer is found in violation of the provisions contained in Exhibit C, Customer will be enrolled in the general cost-of-service opt out program in the next direct access enrollment window, and this Agreement shall be terminated.

8. Pricing and Payment

Customer agrees to pay all applicable rates and charges specified in Schedule 689, including but not limited to, a New Large Load Direct Access Service Transition Rate, an Existing Load Shortage Transition Adjustment and any other applicable rates and charges related to Customer's election with regard to Energy Supply, in accordance with the terms and conditions of Schedule 689 and Tariff Rules. Following receipt of any bill from PGE, Customer shall make such payments to PGE when due.

9. Customer Address

All bills and notices issued to Customer under or pursuant to this Agreement shall be sent to Customer at the following address:

12851 Foster Street
Overland Park, KS 66213

10. Modification of Previous Agreements

Any other agreements pertaining to Customer's opting out of PGE's Cost of Service pricing for the location(s) and Service Point(s) designated in this Agreement are hereby superseded and replaced by this Agreement. For the avoidance of doubt, this Agreement is not intended to alter or supersede any agreement for Minimum Load Service, Alternate Service, or Dispatchable Standby Generation that may exist between the Parties.

11. Waivers and Other Conditions

For the duration of this Agreement, Customer waives any rights to receive Electricity (as defined in Rule B of PGE's tariff) from PGE under cost-of-service rates and waives any claim against PGE under OAR 860-021-0010(5) based in any way on Customer's election of service under Schedule 689. In connection with these waivers and the taking of service under Schedule 689, by signing this Agreement Customer also acknowledges and agrees to abide by all the Special Conditions listed in Schedule 689, as such may be modified, amended, or succeeded from time to time following approval or equivalent action by the Oregon Public Utility Commission.

12. Representations and Warranties

a) Representations and Warranties of PGE. PGE represents and warrants to Customer that:

   i. it has the full right, power and authority to enter into this Agreement, to grant Customer the rights set forth herein, and to perform its obligations hereunder;

   ii. the execution of this Agreement by the individual whose signature is set forth at the end of this Agreement has been duly authorized by all necessary action on the part of PGE; and

iii. this Agreement, once executed and delivered by PGE, constitutes the legal, valid and binding obligation of PGE, enforceable against PGE in accordance with its terms.

b) Representations and Warranties of Customer. Customer represents and warrants to PGE that:

i. it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

ii. the execution of this Agreement by the individual whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Customer, have been duly authorized by all necessary action on the part of Customer;

iii. the execution, delivery and/or performance of this Agreement by Customer will not violate, conflict with, require consent under or result in any breach or default under (i) any applicable law or PGE tariff, including but not limited to Schedules 135 and 203, or (ii) with or without notice or lapse of time or both, any of the provisions of any contract or agreement to which it is a party or to which any of its material assets are bound ("Customer Contracts"); and

iv. this Agreement, once executed and delivered by Customer (and assuming due authorization, execution and delivery by PGE), constitutes the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

c) No other Representations or Warranties. **EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS SECTION, (A) NEITHER PARTY TO THIS AGREEMENT, NOR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION OF THIS AGREEMENT.**

13. Disclaimer of Consequential Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND EXCEPT TO THE EXTENT REQUIRED BY LAW, PGE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, MORAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR BASED ON ANY OTHER LEGAL OR EQUITABLE THEORY) UNDER OR IN RESPECT OF THIS AGREEMENT, WHETHER OR NOT ARISING FROM PGE'S SOLE, JOINT OR CONCURRENT NEGLIGENCE AND WHETHER OR NOT PGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Jurisdiction and Venue

Subject first to the venue, jurisdiction, and appeals priority of the PUC, if applicable, any judicial action or proceeding seeking to enforce any provision of this Agreement, or based on any right arising out of this Agreement, any legal action or proceeding shall be brought in the Multnomah County Circuit Court of the State of Oregon and each of the Parties irrevocably consents to the jurisdiction of such court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to such venue.

15. Miscellaneous

Except for modifications which result from changes approved by the Oregon Public Utility Commission in Schedule 689 referenced and incorporated herein, no other modification of this Agreement shall be valid unless made in writing and signed by PGE and Customer.

No waiver of any provision of this Agreement shall be valid unless made in writing by the waiving Party, and no such waiver shall be deemed a waiver of compliance with any other provisions or conditions of this Agreement.

It is a condition of this Agreement that Customer continues to meet applicable statutory requirements and the requirements of PGE's Schedule 689 during the term of this Agreement. For the avoidance of doubt, Customer is expected to cease any current participation, and refrain from future participation, in any PGE program or pilot that would i) violate a statute, rule or order of the Public Utility Commission of Oregon, or ii) prohibit dual enrollment, as of the time and date Customer begins taking service under Schedule 689. If, at any time during the term of this Agreement, Customer should fail to satisfy this condition, PGE shall have the right to terminate this Agreement and/or seek all such remedies that may be available to it under the law and/or in equity. To the extent the right to terminate is exercised by PGE, Customer will be considered a "new" Customer for purposes of determining available service options, but NOT eligible for enrollment under Schedule 689.

This Agreement and the services, rates, terms and conditions described in this Agreement, or incorporated by reference, are subject to all changes in applicable tariffs and all lawful orders of the Oregon Public Utility Commission.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement this 10 day of FEBRUARY, 2020.

QTS INVESTMENT PROPERTIES HILLSBORO, LLC
(Company Name)

By: ______________________________
(Signature)

CHAD L WILLIAMS
(Printed Name and Title of Signatory Party)

2/10/2020
(Date)

PORTLAND GENERAL ELECTRIC COMPANY

By: ______________________________
(Signature)

____
(Printed Name and Title of Signatory Party)

____
(Date)

Approved as to rates ____________________

Exhibit A
Customer Location(s)

Location Name/Description	Address
QTS Building 1	4951 NE Huffman St., Hillsboro, OR 97124

Exhibit B
Customer Service Point(s)

Location Name	Service Point Name/Description	Service Point Location/Address
QTS Building 1	[TBD]	Building 1 at 4951 NE Huffman St., Hillsboro, OR 97124

Exhibit C
Signed Affidavit

SEE ATTACHED

QTS INVESTMENT PROPERTIES HILLSBORO, LLC

AND

PORTLAND GENERAL ELECTRIC COMPANY

NEW LARGE LOAD COST-OF-SERVICE OPT-OUT AGREEMENT

UNDER SCHEDULE 689

February 10, 2020

This New Large Load Cost-Of-Service Opt-Out Agreement ("Agreement") dated February ___, 2020 (hereafter the "Effective Date") is between QTS INVESTMENT PROPERTIES HILLSBORO, LLC ("Customer") and PORTLAND GENERAL ELECTRIC COMPANY ("PGE"). This Agreement reflects Customer's binding election to participate in PGE's New Large Load Direct Access Program and take service under the terms and conditions of Schedule 689. PGE and Customer are hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

The Parties agree as follows:

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This Agreement shall remain in effect for an initial term of either five years from the Effective Date or 60 months from the date Customer's service is energized, whichever is longer; provided this Agreement is not earlier terminated by PGE due to Customer's disenrollment from the program, as discussed in Section 2 of this Agreement, for failure to meet the NLDA Program's load requirements identified in Schedule 689 and/or OAR 860-038-0730(3). If not terminated earlier, then at the end of the initial term, this Agreement shall be automatically extended for one year, and thereafter from year-to-year, until a written Notice of Intent to Terminate is given to PGE, by Customer. If PGE should receive a Notice of Intent to Terminate, then this Agreement shall terminate on the third anniversary date of PGE's receipt of such notice. Except when this Agreement is unilaterally terminated by PGE due to Customer's disenrollment under Section 2, or due to business closure as discussed below, or due to violation of OAR 860-038-0730(1) pursuant to Section 7, Customer must give PGE not less than 3 years advance written notice of its intent to terminate this Agreement. Upon receipt by PGE, such notice of intent to terminate shall be binding on the Parties. Except as provided for in Section 7, at the time of termination of this Agreement Customer's account(s) will be moved to an appropriate cost-of-service rate schedule.

In the event Customer ceases operations (i.e., Customer goes out of business) at the location identified in Section 4, PGE may unilaterally terminate this Agreement without notice.

2. Disenrollment Process

For purposes of evaluating Customer's compliance with, and eligibility to continue under, Schedule 689 and this Agreement, Customer's service shall begin on the date the existing or new meter is energized for Customer. To remain eligible for service under Schedule 689, Customer's actual load at the facility being served under the New Large Load Direct Access Program must achieve 10MWa over a period of twelve consecutive months within the first 36 months of receiving service. If, in month 33, Customer has not yet achieved at least one month at 10MWa, the Company may begin the process to disenroll Customer from the New Large Load Direct Access Program. The Company will do so by providing the Customer and the Commission with written notification of its proposal to transfer the Customer to an applicable cost-of-service rate schedule 90 days after the Company's disenrollment notice to the Customer. If Customer wishes to challenge the disenrollment, then, within 60 days of receipt of such notification of disenrollment, Customer must provide written notice of its dispute and any supporting documentation, to both the Company and the Commission. To receive consideration, such supporting documentation must demonstrate that Customer's shortfall in load, below the threshold 10MWa, is attributable to: 1) equipment failure; 2) incremental demand-side management, load curtailment or load control; or 3) other legitimate cause outside the control of the Customer. If disenrolled, Customer will promptly be transitioned to an applicable cost-of-service rate and subject to all notice requirements and provisions of such cost-of-service schedule.

3. Service

PGE shall furnish to Customer, at each Service Point described in this Agreement, sixty-hertz alternating current of such phase and voltage as PGE may have available, subject to the General Rules and Regulations of PGE's current tariff, which tariff is typically available on PGE's website at: www.portlandgeneral.com/our-company/regulatory-documents/tariff.

4. Location(s) to be Served

The New Large Load must be separately metered from any load at any existing facility owned by Customer, or otherwise measured separately with comparable accuracy and in a form that is mutually agreed upon between the Customer and the Company. Pursuant to this Agreement, PGE shall furnish service consistent with Schedule 689, at the Customer location(s) listed (or to be listed, once address is established at an undeveloped site) on Exhibit A, which exhibit is attached hereto and incorporated by reference. Construction meters and any energy supplied during construction will not apply toward any calculation for compliance purposes under Schedule 689.

5. Description of Service Point(s)

Pursuant to the requirements of Schedule 689, the Service Point(s), for the level of service(s) being planned for and provided under this Agreement, will be populated in Exhibit B to this Agreement once said Service Point(s) is/are known, but no later than 30 business days following energization.

6. Expected Load

Customer's expected annual load for purposes of this Agreement and for purposes of determining eligibility under Schedule 689 will be 60 MW. This is the amount of load that will be counted toward the NLDA program cap unless Customer is disenrolled under Section 2 of the Agreement.

7. Resource Mix

In accordance with the Affidavit provided by Customer and attached hereto as Exhibit C, Customer agrees that its resource mix shall remain consistent with the requirements of OAR 860-038-0730(1). If Customer is found in violation of the provisions contained in Exhibit C, Customer will be enrolled in the general cost-of-service opt out program in the next direct access enrollment window, and this Agreement shall be terminated.

8. Pricing and Payment

Customer agrees to pay all applicable rates and charges specified in Schedule 689, including but not limited to, a New Large Load Direct Access Service Transition Rate, an Existing Load Shortage Transition Adjustment and any other applicable rates and charges related to Customer's election with regard to Energy Supply, in accordance with the terms and conditions of Schedule 689 and Tariff Rules. Following receipt of any bill from PGE, Customer shall make such payments to PGE when due.

9. Customer Address

All bills and notices issued to Customer under or pursuant to this Agreement shall be sent to Customer at the following address:

12851 Foster Street
Overland Park, KS 66213

10. Modification of Previous Agreements

Any other agreements pertaining to Customer's opting out of PGE's Cost of Service pricing for the location(s) and Service Point(s) designated in this Agreement are hereby superseded and replaced by this Agreement. For the avoidance of doubt, this Agreement is not intended to alter or supersede any agreement for Minimum Load Service, Alternate Service, or Dispatchable Standby Generation that may exist between the Parties.

11. Waivers and Other Conditions

For the duration of this Agreement, Customer waives any rights to receive Electricity (as defined in Rule B of PGE's tariff) from PGE under cost-of-service rates and waives any claim against PGE under OAR 860-021-0010(5) based in any way on Customer's election of service under Schedule 689. In connection with these waivers and the taking of service under Schedule 689, by signing this Agreement Customer also acknowledges and agrees to abide by all the Special Conditions listed in Schedule 689, as such may be modified, amended, or succeeded from time to time following approval or equivalent action by the Oregon Public Utility Commission.

12. Representations and Warranties

a) Representations and Warranties of PGE. PGE represents and warrants to Customer that:

i. it has the full right, power and authority to enter into this Agreement, to grant Customer the rights set forth herein, and to perform its obligations hereunder;

ii. the execution of this Agreement by the individual whose signature is set forth at the end of this Agreement has been duly authorized by all necessary action on the part of PGE; and

iii. this Agreement, once executed and delivered by PGE, constitutes the legal, valid and binding obligation of PGE, enforceable against PGE in accordance with its terms.

b) Representations and Warranties of Customer. Customer represents and warrants to PGE that:

i. it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

ii. the execution of this Agreement by the individual whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Customer, have been duly authorized by all necessary action on the part of Customer;

iii. the execution, delivery and/or performance of this Agreement by Customer will not violate, conflict with, require consent under or result in any breach or default under (i) any applicable law or PGE tariff, including but not limited to Schedules 135 and 203, or (ii) with or without notice or lapse of time or both, any of the provisions of any contract or agreement to which it is a party or to which any of its material assets are bound ("Customer Contracts"); and

iv. this Agreement, once executed and delivered by Customer (and assuming due authorization, execution and delivery by PGE), constitutes the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

c) No other Representations or Warranties. **EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS SECTION, (A) NEITHER PARTY TO THIS AGREEMENT, NOR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION OF THIS AGREEMENT.**

13. Disclaimer of Consequential Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND EXCEPT TO THE EXTENT REQUIRED BY LAW, PGE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, MORAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR BASED ON ANY OTHER LEGAL OR EQUITABLE THEORY) UNDER OR IN RESPECT OF THIS AGREEMENT, WHETHER OR NOT ARISING FROM PGE'S SOLE, JOINT OR CONCURRENT NEGLIGENCE AND WHETHER OR NOT PGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Jurisdiction and Venue

Subject first to the venue, jurisdiction, and appeals priority of the PUC, if applicable, any judicial action or proceeding seeking to enforce any provision of this Agreement, or based on any right arising out of this Agreement, any legal action or proceeding shall be brought in the Multnomah County Circuit Court of the State of Oregon and each of the Parties irrevocably consents to the jurisdiction of such court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to such venue.

15. Miscellaneous

Except for modifications which result from changes approved by the Oregon Public Utility Commission in Schedule 689 referenced and incorporated herein, no other modification of this Agreement shall be valid unless made in writing and signed by PGE and Customer.

No waiver of any provision of this Agreement shall be valid unless made in writing by the waiving Party, and no such waiver shall be deemed a waiver of compliance with any other provisions or conditions of this Agreement.

It is a condition of this Agreement that Customer continues to meet applicable statutory requirements and the requirements of PGE's Schedule 689 during the term of this Agreement. For the avoidance of doubt, Customer is expected to cease any current participation, and refrain from future participation, in any PGE program or pilot that would i) violate a statute, rule or order of the Public Utility Commission of Oregon, or ii) prohibit dual enrollment, as of the time and date Customer begins taking service under Schedule 689. If, at any time during the term of this Agreement, Customer should fail to satisfy this condition, PGE shall have the right to terminate this Agreement and/or seek all such remedies that may be available to it under the law and/or in equity. To the extent the right to terminate is exercised by PGE, Customer will be considered a "new" Customer for purposes of determining available service options, but NOT eligible for enrollment under Schedule 689.

This Agreement and the services, rates, terms and conditions described in this Agreement, or incorporated by reference, are subject to all changes in applicable tariffs and all lawful orders of the Oregon Public Utility Commission.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement this 10 day of FEBRUARY, 2020.

QTS INVESTMENT PROPERTIES HILLSBORO, LLC
(Company Name)

By: Chad L. Dilliams
(Signature)

Chad L. Dilliams
(Printed Name and Title of Signatory Party)

2/10/2020
(Date)

PORTLAND GENERAL ELECTRIC COMPANY

By: ______________________________
(Signature)

____
(Printed Name and Title of Signatory Party)

____
(Date)

Approved as to rates ____________________

Exhibit A

Customer Location(s)

Location Name/Description	Address
QTS Building 2	4951 NE Huffman St., Hillsboro, OR 97124

Exhibit B
Customer Service Point(s)

Location Name	Service Point Name/Description	Service Point Location/Address
QTS Building 2	[TBD]	Building 2 at 4951 NE Huffman St., Hillsboro, OR 97124

Exhibit C
Signed Affidavit

SEE ATTACHED

STATE OF Kansas)

) ss.:

COUNTY OF Johnson)

Return this completed and notarized document no later than February ___, 2020 along with an executed copy of the New Large Load Cost of Service Opt Out Agreement.

AFFIDAVIT OF ELIGIBILITY AND COMPLIANCE

I, Chad Williams, CEO (full legal name and title), having been duly authorized to act on QTS Investment Properties Hillsboro, LLC [participating entity's name] behalf, and being duly sworn, depose and say:

1. QTS Investment Properties Hillsboro, LLC [participating entity's name] has made the election to enroll in PGE's New Large Load Direct Access Program under ("**Schedule 689**") and it is understood that QTS Investment Properties Hillsboro, LLC [participating entity's name] is provisionally enrolled (an "**NLDA Participant**"), subject to space under PGE's Schedule 689 cap and verification of eligibility.

2. I understand that I am submitting this Affidavit of Eligibility and Compliance ("**Affidavit**") to assist in determining whether QTS Investment Properties Hillsboro, LLC [participating entity's name] is eligible to be an NLDA Participant in accordance with OAR 860-038-0700 through 860-038-0760 (the "**OPUC Rules**") and Schedule 689.

3. I represent that QTS Investment Properties Hillsboro, LLC [participating entity's name] satisfies all of the eligibility requirements under the OPUC Rules and Schedule 689, or alternatively, that QTS Investment Properties Hillsboro, LLC [participating entity's name] has obtained a waiver from the Public Utility Commission of Oregon for the following eligibility requirements:

[list each eligibility criterion for which waiver was granted]

___

___

___

thereby allowing QTS Investment Properties Hillsboro, LLC [participating entity's name] to enroll as an NLDA Participant under Schedule 689.

4. I further represent that, throughout the duration of its enrollment under Schedule 689, QTS Investment Properties Hillsboro, LLC [participating entity's name] shall fully comply with its obligations under OAR 860-038-0730(1) by contracting for energy resources that do not include any allocation of coal-fired resources, as defined in ORS 757.518 (l)(b)(B), after January 1, 2030. Furthermore, it is understood that violation of this commitment could result in disenrollment from Schedule 689 service.

5. I understand that Portland General Electric Company is obligated to, and shall provide a copy of this Affidavit of Eligibility and Compliance to the Public Utility Commission of Oregon pursuant to OAR 860-038-0730(2)(a).

6. If any of my statements in this Affidavit is false, I acknowledge that the consequence could be disenrollment from Schedule 689 in addition to any other remedies that PGE may seek to enforce against QTS Investment Properties Hillsboro, LLC [participating entity's name].

By: Chad L. Williams

Printed name: Chad L. Williams

Sworn to before me this 10th day of February, 2020.

Marjorie Seifert

Notary Public

[SEAL] NOTARY PUBLIC STATE OF KANSAS MARJORIE SEIFERT My Appointment Expires July 18, 2022

From: **Carl Krutka** Carl.Krutka@pgn.com
Subject: RE: RE: [Ext] Address for NLDA Paperwork
Date: February 10, 2020 at 9:27 AM
To: Wright, Travis Travis.Wright@Qtsdatacenters.com

CK

You're good now by sending me the signed NLDA contracts. I already sent them over to the NLDA group to look them over and see if there is anything else we need. I looked at them and they look good to me but I'm not the final say.

I will let you know ASAP if there is anything else we need.

Let me know if you have any other questions.

Thanks.

Carl Krutka • Key Customer Manager • 503-849-6746 (m)

From: Wright, Travis
Sent: Monday, February 10, 2020 8:30 AM
To: Carl Krutka
Subject: RE: [Ext] RE: Address for NLDA Paperwork

*****Please take care when opening links, attachments or responding to this email as it originated outside of PGE.*****

OK – looks like I need to get you an e-mail by Feb 14th, and follow up with the original as soon as reasonable after that – correct?

From: Carl Krutka <Carl.Krutka@pgn.com>
Sent: Monday, February 10, 2020 10:26 AM
To: Wright, Travis <Travis.Wright@Qtsdatacenters.com>
Subject: [Ext] RE: Address for NLDA Paperwork

Please mail it directly to me.

Portland General Electric
Attn: Carl Krutka
121 SW Salmon St.
1WTC0407
Portland, OR 97204

Thanks.

Carl Krutka • Key Customer Manager • 503-849-6746 (m)

From: Wright, Travis <Travis.Wright@Qtsdatacenters.com>
Sent: Monday, February 10, 2020 6:55 AM
To: Carl Krutka <Carl.Krutka@pgn.com>

Subject: Address for NLDA Paperwork

*****Please take care when opening links, attachments or responding to this email as it originated outside of PGE.*****

Carl – can you tell me the address I need to use for the NLDA paperwork ASAP? We have signed, notarized and are ready to put it into a FedEx envelope now.

Thanks,
Travis

travis wright
Vice President – Energy and Sustainability
O: 602.935.1877 **M:** 602.332.1800
4533 E Lafayette Blvd, Phoenix AZ 85018
NYSE: QTS
qtsdatacenters.com [qtsdatacenters.com]

People Powered | Technology Focused | Infrastructure Invested

QUALITY TECHNOLOGY SERVICES CONFIDENTIALITY NOTICE:
This e-mail message including its attachments is classified COMPANY CONFIDENTIAL. It is intended for the person or entity to which it is addressed and may contain confidential material. Quality Technology Services controls the distribution of COMPANY CONFIDENTIAL assets, as such, any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact us at irt@qtsdatacenters.com or 866-239-5000 and destroy all copies of the original message. Thank you.

From: **Wright, Travis** Travis.Wright@Qtsdatacenters.com
Subject: RE: [Ext] NLDA clarification letter
Date: March 16, 2020 at 5:08 PM
To: Carl Krutka Carl.Krutka@pgn.com

TW

This is pretty disappointing, Carl. It is highly unlikely that we are able to plan, permit, construct, and commission a second building within the next 2 years in Hillsboro. This needs to be wrapped into a 60 month plan. How do we manage a site with two different utility providers? What happens in year 6 when (in your example) the 45 MW of load goes to 50MW?

We are the only participant in the program, and we have already signed a contract… Are you proposing to send another contract that needs to be signed within 10 days? And I suppose it needs a notary? Come on, Carl. Especially with the COVID-19 outbreak, do you really think we are able to get that done? Did our service require substation upgrades? So we are on the 2 year plan?

Yes, we need a call ASAP. How does tomorrow look for you?

Travis

From: Carl Krutka <Carl.Krutka@pgn.com>
Sent: Monday, March 16, 2020 11:14 AM
To: Wright, Travis <Travis.Wright@Qtsdatacenters.com>
Subject: [Ext] NLDA clarification letter

Travis

Here is the NLDA clarification letter that explains the issues brought up during the conference call with the OPUC back in Feb.

Lets talk over the phone once you've had time to read through the letter.

Thanks.

Carl Krutka
Key Customer Manager • 503-464-8487 (o) • 503-849-6746 (m)
PortlandGeneral.com • Follow us on social @PortlandGeneral

eDockets

Attachment D--Docket No. UE 358 Calendar

Docket Summary

Docket No: UE 358 **Docket Name:** PORTLAND GENERAL ELECTRIC COMPANY ADVICE NO. 19-04 NEW LOAD DIRECT ACCESS

Print Summary

Subject Company: PORTLAND GENERAL ELECTRIC

See also: ADV 919 ADV 1164

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Advice No. 19-02, New Load Direct Access Program. (Docket opened at the 3/21/19 Public Meeting. See ADV 919 for intial filing of tariffs and pre-meeting comments.)

Filing Date: 3/21/2019 **Advice No:** 20-02 **Public Mtg:** 8/25/2020

Effective: 1/1/1900 **Expiration:** **Status:** **PENDING**

Order: 20-002 **Order Signed:** 1/7/2020

Email Service List (semi-colon delimited) Email Service List (comma delimited)

If you experience problems with the *above* 'Email Service List' links, please try one of these:

Service List Popup (semi-colon delimited) Service List Popup (comma delimited)

General information about Tariff Filings.

ACTIONS SERVICE LIST **SCHEDULE**

Date/Time	Event	Description
8/25/2020 9:30:00 AM	PUBLIC MEETING	Item No. RA2
	Location: HEARING ROOM - PUC 201 HIGH ST SE , SALEM, OR	
6/16/2020 9:30:00 AM	PUBLIC MEETING	Item No. RA4
	Location: HEARING ROOM - PUC 201 HIGH ST SE , SALEM, OR	
2/14/2020	MISCELLANEOUS	Queue Customers Must Make Elections
2/6/2020	EFFECTIVE DATE/ STATUTORY DEADLINE	
2/6/2020	EFFECTIVE DATE/ STATUTORY DEADLINE	
2/6/2020	EFFECTIVE DATE/ STATUTORY DEADLINE	
2/6/2020	EFFECTIVE DATE/ STATUTORY DEADLINE	
1/17/2020	MISCELLANEOUS	Notifications to Customers in Queue
1/14/2020	MISCELLANEOUS	PGE Compliance Tarriffs due
1/6/2020	FINAL ORDER DUE DATE	Target Commission Decision
11/26/2019	BRIEF DUE	Simultaneous Reply Briefs
11/14/2019	BRIEF DUE	Simultaneous Opening Briefs
10/31/2019 9:30:00 AM	HEARING	LC 73 Commissioner Workshop Notice and Agenda posted to give the New Load Direct Access parties notice that planning for direct access may be discussed.
	Location: HEARING ROOM - PUC 201 HIGH ST SE STE 100 , SALEM, OR	
10/29/2019	OTHER FILING DUE	Motions to Admit Pre-Filed Testimony and Exhibits due
10/17/2019 9:30:00 AM	HEARING	NOTICE OF HEARING. Copies served on 10/17/19.
	Location: HEARING ROOM - PUC 201 HIGH ST SE STE 100 , SALEM, OR	
10/11/2019	COMMENTS/RESPONSES DUE	Replies to Responses to Bench Request due
10/4/2019	COMMENTS/RESPONSES DUE	Responses to Bench Request due
9/26/2019	TESTIMONY/EXHIBITS DUE	Cross-Examination Exhibits due
9/23/2019	CROSS EXAMINATION STATEMENT DUE	
9/6/2019	TESTIMONY/EXHIBITS DUE	PGE Surrebuttal Testimony
8/21/2019	TESTIMONY/EXHIBITS DUE	Staff and Intervenor Cross-Answering and Rebuttal Testimony
8/5/2019	TESTIMONY/EXHIBITS DUE	PGE Reply Testimony
7/18/2019	TESTIMONY/EXHIBITS DUE	Staff and Intervenor Reply Testimony due
6/14/2019	TESTIMONY/EXHIBITS DUE	PGE Opening Testimony due
5/13/2019 10:00:00 AM	CONFERENCE	NOTICE OF PREHEARING CONFERENCE. Copies served to UE 358 and Electric Lists on 5/1/19.
	Location: HEARING ROM - PUC 201 HIGH ST SE STE 100 , SALEM, OR	

[New Search]

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

New Large Load Direct Access Clarification Letter

March 16, 2020

Dear Travis Wright,

On February 13, 2020, the Oregon Public Utility Commission (OPUC) Staff convened a meeting attended by PGE, intervenors in the New Large Load Direct Access (NLDA) docket at the PUC, and customers currently in the NLDA queue. The purpose of this meeting was to discuss NLDA program implementation questions, including the handling of the customer queue, that have arisen and identify answers.

At this meeting, OPUC staff clearly stated that given PGE's approved NLDA program tariff, PGE has the directive and responsibility, to administer the tariff in a fair and equitable way. Over the past several weeks PGE has been working on refining our process to administer the NLDA tariff for the customers in the queue. As a result of this work, PGE is providing direction and clarification to customers in the queue. The items listed below will be addressed in one or more of the following documents: PGE's filed tariff at the PUC, in this letter, or included in the NLDA contract.

1. The start of the one-year notification requirement[1], before a new load can be energized, began on April 15, 2019, with the creation of the current NLDA queue. Consequently, any load energized prior to April 15, 2020, is not be eligible for NLDA.

2. Once PGE tenders an NLDA contract, that customer will have ten (10) business days from the date of PGE's tender, to sign and return the contract to PGE, or the offer will be withdrawn.

3. Beyond the one-year notification period, a customer has up to one more year to energize the new service (for initial program participants, that's by April 15, 2021), or two years (for initial program participants, that's by April 15, 2022) if substation construction and/or substation upgrades, are required to provide the new service(the "Timely Energization Date"). Temporary power will not be considered "energization" for purposes of determining a Customer's Energization Date. Allowances will be made if delays in construction are outside the control of the customer, such as material delays, or other delays caused by PGE. Failure to meet the Timely Energization Date will result in automatic

[1] OAR 860-038-0740 "(1)Each New Large Load consumer must notify the electric company of its intent to enroll in the New Large Load Direct Access Program and opt out of cost-of-service rates at the earlier of either: (a) A binding written agreement with the utility for eligible new load, or (b) One year prior to the expected starting date of the incremental load."

disenrollment from the NLDA program and termination of the New Large Load Cost of Service Opt-Out Agreement.

4. PGE will calculate, in demand (kW), the new load that is to be referenced in the NLDA Opt-Out Agreement ("Contracted Load")and used for purposes of determining any remaining capacity under the cap of the NLDA program, and such calculation will be based on the capacity of service the customer is currently requesting from PGE. PGE will design and construct facilities to serve the Contracted Load stated in the NLDA contract.

5. Following the sixtieth (60) month after energization of the new service, PGE will evaluate the actual load factor (LF) of the customer and apply it to the Contracted Load reflected in the original contract, to calculate energy in MWa.[2] The remaining energy (MWa), beyond that used by Customer, will be added back to the program as capacity available under the cap.

6. A customer has sixty (60) days, from receipt of notification of their ineligibility for NLDA, to file a waiver with the OPUC in accordance with OAR 860-001-0000 *et seq*.

PGE understands that no customer in the queue will be completely satisfied with the implementation of these rules, whose purpose is to add clarity and transparency to the administration of the tariff and the queue. During the many meetings and discussions over the past several weeks, with no single customer in mind, PGE thought it fair to ensure that decisions by customers in the queue are made in a timely manner so no one customer could unfairly hold space in the NLDA program under the cap for an indeterminate period of time, and therefore, negatively impact other customers behind them in the queue and/or other customers that may request access to this program in the future.

If clarifications regarding the information in this letter are required, please reach out directly to your respective PGE Key Customer Manager. If you fundamentally disagree with the conclusions this letter holds, please avail yourself of the OPUC waiver process.[3] Provided a timely waiver request is submitted to the OPUC, a customer's place in the queue will be secured while their waiver is being considered by the OPUC.

Sincerely,

Carl Krutka
Portland General Electric

[2] Example: 50 MW Contracted Load is stated in the contract and designed for by PGE. 60 months following Customer's Energization Date, Customer's load factor is 90%. (50 MW * .9 LF = 45 MWa). Thereafter, 45 MWa will be considered Customer's load under the NLDA cap and the remaining 5 MWa will be added back as capacity available under the NLDA cap.

[3] Refer to OAR 860-001-0000 *et seq*.

QTS INVESTMENT PROPERTIES HILLSBORO, LLC

AND

PORTLAND GENERAL ELECTRIC COMPANY

NEW LARGE LOAD COST-OF-SERVICE OPT-OUT AGREEMENT

UNDER SCHEDULE 689

May 13, 2020

This New Large Load Cost-Of-Service Opt-Out Agreement ("Agreement") dated May 13 ,2020 (hereafter the "Effective Date") is between QTS INVESTMENT PROPERTIES HILLSBORO, LLC ("Customer") and PORTLAND GENERAL ELECTRIC COMPANY ("PGE"). This Agreement reflects Customer's binding election to participate in PGE's New Large Load Direct Access Program and take service under the terms and conditions of Schedule 689. PGE and Customer are hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

The Parties agree as follows:

1. <u>Term and Termination of Agreement</u>

Customer is electing to take service under the terms and conditions of Schedule 689 as such schedule may be modified, amended, or succeeded from time to time (hereinafter referred to as "Schedule 689") and OAR 860-038-0700 through 0760.

Provided this Agreement is not earlier terminated due to Customer's disenrollment from the program for failure to 1) meet the NLDA Program's load requirements identified in Schedule 689, 2) comply with OAR 860-038-0730(3), or 3) meet the Timely Energization Date (defined below), it shall remain in effect for an initial term of five years from the later of the Effective Date or the date Customer's new service is energized ("Energization Date") which shall be no later than April 15, 2021 ("Timely Energization Date"). Said Timely Energization Date may be extended by PGE for a period equivalent to any delays that are caused by events which QTS INVESTMENT PROPERTIES HILLSBORO, LLC could not reasonably be expected to avoid by the exercise of reasonable diligence and foresight.

If not terminated earlier, then, at the end of the initial term, this Agreement shall be automatically extended from year-to-year until terminated. Customer may terminate this Agreement by providing PGE with a written Notice of Intent to Terminate that is consistent with the notice and any other termination requirements established in Schedule 689, as such schedule may be modified, amended or succeeded from time to time. Upon receipt by PGE, such Notice of Intent to Terminate shall be binding on both Parties. Except as provided for in Section 7, upon termination Customer's account(s) will be moved to an appropriate cost-of-service rate schedule.

In the event Customer ceases operations (i.e., Customer goes out of business) at the location identified in Section 5, PGE may unilaterally terminate this Agreement without notice.

2. <u>Disenrollment Process</u>

To remain eligible for service under Schedule 689, Customer's Energization Date must occur on or before the Timely Energization Date and Customer's actual load at the facility being served under the New Large Load Direct Access Program must achieve 10MWa, over a period of twelve consecutive months within the first 36 months of its Energization Date.

If Customer's Energization Date does not occur on or before the Timely Energization Date, Customer shall be disenrolled, this Agreement shall automatically terminate, and Customer will be planned for as a cost-of-service customer and subject to all requirements and provisions of the applicable rate schedule upon its Energization Date.

If Customer's Energization Date does occur on or before the Timely Energization Date, but by month 33 Customer has not yet achieved at least nine consecutive months at 10MWa, the Company may begin the process to disenroll Customer from the New Large Load Direct Access Program. The Company will do so by providing the Customer and the Commission with written notification of its proposal to transfer the Customer to an applicable cost-of-service rate schedule 90 days after the Company's disenrollment notice to the Customer.

If Customer wishes to challenge the disenrollment, then, within 60 days of receipt of such notification of disenrollment, Customer must provide written notice of its dispute and any supporting documentation, to both the Company and the Commission. To receive consideration of any challenge regarding disenrollment for failure to meet the NLDA Program's load requirements identified in Schedule 689, such supporting documentation must demonstrate that Customer's shortfall in load, below the threshold 10MWa, over a period of twelve consecutive months, is attributable to: 1) equipment failure; 2) incremental demand-side management, load curtailment or load control; or 3) other legitimate cause outside the control of the Customer. Once disenrolled, Customer will promptly be transitioned to an applicable cost-of-service rate and subject to all notice requirements and provisions of such cost-of-service schedule.

3. Expected Load

Customer's expected load for purposes of this Agreement is 30,000 kW per month (hereafter the "Contracted Load"). The amount of Contracted Load will be relied upon by PGE to establish the scope of the service design and any construction that may be performed to accommodate service to Customer under this Agreement and Schedule 689. Additionally, such Contracted Load will be used for purposes of calculating load available under PGE's NLDA program cap, at least for the first 60 months from Customer's Energization Date, unless Customer is earlier disenrolled in accordance with Section 2 of this Agreement.

4. Service

PGE shall furnish to Customer, at each Service Point described in this Agreement, sixty-hertz alternating current of such phase and voltage as PGE may have available, subject to the General Rules and Regulations of PGE's current tariff, which tariff is typically available on PGE's website at: www.portlandgeneral.com/our-company/regulatory-documents/tariff.

5. Location(s) to be Served

The Contracted Load must be separately metered from any load at any existing facility owned by Customer, or otherwise measured separately with comparable accuracy and in a form that is mutually agreed upon between the Customer and the Company. Pursuant to this Agreement, PGE shall furnish service consistent with Schedule 689, at the Customer location(s) listed (or to be listed, once an address is established at a newly developed site) on Exhibit A, which exhibit is attached hereto and incorporated by reference. Construction meters and any energy supplied during construction will not apply toward any calculation for compliance purposes under Schedule 689.

6. Description of Service Point(s)

Pursuant to the requirements of Schedule 689, the Service Point(s), for the level of service(s) being planned for and provided under this Agreement, will be populated in Exhibit B to this Agreement once said Service Point(s) is/are known, but no later than 30 business days following Customer's Energization Date.

7. Resource Mix

In accordance with the Affidavit provided by Customer and attached hereto as Exhibit C, Customer agrees that its resource mix shall remain consistent with the requirements of OAR 860-038-0730(1). If Customer is found in violation of the provisions contained in Exhibit C, Customer will be enrolled in the general cost-of-service opt out program in the next direct access enrollment window, and this Agreement shall be terminated.

8. Pricing and Payment

Customer agrees to pay all rates and charges applicable under Schedule 689, including but not limited to, a New Large Load Transition Cost Adjustment, an Existing Load Shortage Transition Adjustment and any other applicable rates and charges related to Customer's election with regard to Energy Supply, in accordance with the terms and conditions of Schedule 689 and Tariff Rules. Following receipt of any bill from PGE, Customer shall make such payments to PGE when due.

9. Customer Address

All bills and notices issued to Customer under or pursuant to this Agreement shall be sent to Customer at the following address:

12851 Foster Street
Overland Park, KS 66213

10. Modification of Previous Agreements

Any other agreements pertaining to Customer's opting out of PGE's Cost of Service pricing for the location(s) and Service Point(s) designated in this Agreement are hereby superseded and replaced by this Agreement. For the avoidance of doubt, this Agreement is not intended to alter or supersede any agreement for Minimum Load Service, Alternate Service, or Dispatchable Standby Generation that may exist between the Parties.

11. Waivers and Other Conditions

For the duration of this Agreement, Customer waives any rights to receive Electricity (as defined in Rule B of PGE's tariff) from PGE under cost-of-service rates and waives any claim against PGE under OAR 860-021-0010(5) based in any way on Customer's election of service under Schedule 689. In connection with these waivers and the taking of service under Schedule 689, by signing this Agreement Customer also acknowledges and agrees to abide by all the Special Conditions listed in Schedule 689, as such may be modified, amended, or succeeded from time to time following approval or equivalent action by the Oregon Public Utility Commission.

12. Representations and Warranties

a) Representations and Warranties of PGE. PGE represents and warrants to Customer that:

i. it has the full right, power and authority to enter into this Agreement, to grant Customer the rights set forth herein, and to perform its obligations hereunder;

ii. the execution of this Agreement by the individual whose signature is set forth at the end of this Agreement has been duly authorized by all necessary action on the part of PGE; and

iii. this Agreement, once executed and delivered by PGE, constitutes the legal, valid and binding obligation of PGE, enforceable against PGE in accordance with its terms.

b) Representations and Warranties of Customer. Customer represents and warrants to PGE that:

i. it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

ii. the execution of this Agreement by the individual whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Customer, have been duly authorized by all necessary action on the part of Customer;

iii. the execution, delivery and/or performance of this Agreement by Customer will not violate, conflict with, require consent under or result in any breach or default under (i) any applicable law or PGE tariff, including but not limited to Schedules 135 and 203, or (ii) with or without notice or lapse of time or both, any of the provisions of any contract or agreement to which it is a party or to which any of its material assets are bound ("Customer Contracts"); and

iv. this Agreement, once executed and delivered by Customer (and assuming due authorization, execution and delivery by PGE), constitutes the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

c) No other Representations or Warranties. **EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS SECTION, (A) NEITHER PARTY TO THIS AGREEMENT, NOR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION OF THIS AGREEMENT.**

13. Disclaimer of Consequential Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND EXCEPT TO THE EXTENT REQUIRED BY LAW, PGE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, MORAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR BASED ON ANY OTHER LEGAL OR EQUITABLE THEORY) UNDER OR IN RESPECT OF THIS AGREEMENT, WHETHER OR NOT ARISING FROM PGE'S SOLE, JOINT OR CONCURRENT NEGLIGENCE AND WHETHER OR NOT PGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Jurisdiction and Venue

Subject first to the venue, jurisdiction, and appeals priority of the PUC, if applicable, any judicial action or proceeding seeking to enforce any provision of this Agreement, or based on any right arising out of this Agreement, any legal action or proceeding shall be brought in the Multnomah County Circuit Court of the State of Oregon and each of the Parties irrevocably consents to the jurisdiction of such court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to such venue.

15. Assignment and Delegation

Customer shall not assign any of its rights or delegate any of its obligations hereunder; provided, however, that Customer may assign its rights or delegate its obligations, in whole only, upon 30 days prior written notice to PGE, to (a) one of its wholly owned Subsidiaries/Affiliates, or (b) an entity that acquires all or substantially all of the business and assets of Customer to which this Agreement pertains, whether by merger, reorganization, or acquisition. For the avoidance of doubt, assignment and delegation is not available with only the purchase of assets or real property pursuant to a sale or otherwise. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder unless the non-assigning or non-delegating party enters into a novation releasing the assigning or delegating party of its obligation under the Agreement. Notwithstanding the foregoing provisions of this Section 15, PGE may, subject to any approval required by the Public Utility Commission of Oregon, fully assign its rights and delegate its obligations under this Agreement, in whole or in part, to any successor in interest through purchase, merger or corporate restructuring.

16. Miscellaneous

Except for modifications that result from changes approved by the Oregon Public Utility Commission in Schedule 689, referenced herein, no other modification of this Agreement shall be valid unless made in writing and signed by PGE and Customer.

No waiver of any provision of this Agreement shall be valid unless made in writing by the waiving Party, and no such waiver shall be deemed a waiver of compliance with any other provisions or conditions of this Agreement.

It is a condition of this Agreement that Customer continues to meet applicable statutory requirements and the requirements of PGE's Schedule 689 during the term of this Agreement. For the avoidance of doubt, Customer is expected to cease any current participation, and refrain from future participation, in any PGE program or pilot that would i) cause them to violate a statute, rule or order of the Public Utility Commission of Oregon, or ii) prohibit dual enrollment, as of the time and date Customer begins taking service under Schedule 689. If, at any time during the term of this Agreement, Customer should fail to satisfy this condition, PGE shall have the right to terminate this Agreement and/or seek all such remedies that may be available to it under the law and/or in equity. To the extent the right to terminate is exercised by PGE, Customer will be considered a "new" Customer for purposes of determining available service options, but NOT eligible for enrollment under Schedule 689.

This Agreement and the services, rates, terms and conditions described in this Agreement, or incorporated by reference, are subject to all changes in applicable tariffs and all lawful orders of the Oregon Public Utility Commission.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement this 13th day of May, 2020.

QTS INVESTMENT PROPERTIES HILLSBORO, LLC

(Company Name)

DS TW DS DR

By: DocuSigned by: Chad Williams 2775CB2A95BB4C7...

(Signature)

Chad Williams CEO CEO

(Printed Name and Title of Signatory Party)

5/13/2020

(Date)

PORTLAND GENERAL ELECTRIC COMPANY

By: ______________________________

(Signature)

____

(Printed Name and Title of Signatory Party)

____

(Date)

Approved as to rates ____________________

Exhibit A

Customer Location(s)

Location Name/Description	Address
Building 1	4951 NE Huffman St., Hillsboro OR 97124

Exhibit B
Customer Service Point(s)

Location Name	Service Point Name/Description	Service Point Location/Address
	6013920962	4951 NE Huffman St., Hillsboro OR 97124

Exhibit C

Signed Affidavit

SEE ATTACHED

STATE OF ________________)
) ss.:
COUNTY OF ______________)

Return this completed and notarized document no later than ________________ ___, 2020 along with an executed copy of the New Large Load Cost of Service Opt Out Agreement.

AFFIDAVIT OF ELIGIBILITY AND COMPLIANCE

I, Chad Williams, CEO (full legal name and title), having been duly authorized to act on QTS Investment Properties Hillsboro, LLC [participating entity's name] behalf, and being duly sworn, depose and say:

1. QTS Investment Properties Hillsboro, LLC [participating entity's name] has made the election to enroll in PGE's New Large Load Direct Access Program under ("Schedule 689") and it is understood that QTS Investment Properties Hillsboro, LLC [participating entity's name] is provisionally enrolled (an "NLDA Participant"), subject to space under PGE's Schedule 689 cap and verification of eligibility.

2. I understand that I am submitting this Affidavit of Eligibility and Compliance ("Affidavit") to assist in determining whether QTS Investment Properties Hillsboro, LLC [participating entity's name] is eligible to be an NLDA Participant in accordance with OAR 860-038-0700 through 860-038-0760 (the "OPUC Rules") and Schedule 689.

3. I represent that QTS Investment Properties Hillsboro, LLC [participating entity's name] satisfies all of the eligibility requirements under the OPUC Rules and Schedule 689, or alternatively, that QTS Investment Properties Hillsboro, LLC [participating entity's name] has obtained a waiver from the Public Utility Commission of Oregon for the following eligibility requirements:

[list each eligibility criterion for which waiver was granted]

____
____
____

thereby allowing QTS Investment Properties Hillsboro, LLC [participating entity's name] to enroll as an NLDA Participant under Schedule 689.

4. I further represent that, throughout the duration of its enrollment under Schedule 689, QTS Investment Properties Hillsboro, LLC [participating entity's name] shall fully comply with its obligations under OAR 860-038-0730(1) by contracting for energy resources that do not include any allocation of coal-fired resources, as defined in ORS 757.518 (l)(b)(A), after

January 1, 2030. Furthermore, it is understood that violation of this commitment could result in disenrollment from Schedule 689 service.

5. I understand that Portland General Electric Company is obligated to, and shall, provide a copy of this Affidavit of Eligibility and Compliance to the Public Utility Commission of Oregon pursuant to OAR 860-038-0730(2)(a).

6. If any of my statements in this Affidavit is false, I acknowledge that the consequence could be disenrollment from Schedule 689 in addition to any other remedies that PGE may seek to enforce against QTS Investment Properties Hillsboro, LLC [participating entity's name].

DS TW DS DR

By: DocuSigned by: Chad Williams 2775CB2A95BB4C7...
Printed name: Chad Williams

Sworn to before me this ____ day of
________________, 20____.

____
Notary Public

[SEAL]

QTS INVESTMENT PROPERTIES HILLSBORO, LLC

AND

PORTLAND GENERAL ELECTRIC COMPANY

NEW LARGE LOAD COST-OF-SERVICE OPT-OUT AGREEMENT

UNDER SCHEDULE 689

May 13, 2020

This New Large Load Cost-Of-Service Opt-Out Agreement ("Agreement") dated May 13 ,2020 (hereafter the “Effective Date”) is between QTS INVESTMENT PROPERTIES HILLSBORO, LLC ("Customer") and PORTLAND GENERAL ELECTRIC COMPANY ("PGE”). This Agreement reflects Customer’s binding election to participate in PGE’s New Large Load Direct Access Program and take service under the terms and conditions of Schedule 689. PGE and Customer are hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

The Parties agree as follows:

1. <u>Term and Termination of Agreement</u>

Customer is electing to take service under the terms and conditions of Schedule 689 as such schedule may be modified, amended, or succeeded from time to time (hereinafter referred to as “Schedule 689”) and OAR 860-038-0700 through 0760.

Provided this Agreement is not earlier terminated due to Customer’s disenrollment from the program for failure to 1) meet the NLDA Program’s load requirements identified in Schedule 689, 2) comply with OAR 860-038-0730(3), or 3) meet the Timely Energization Date (defined below), it shall remain in effect for an initial term of five years from the later of the Effective Date or the date Customer’s new service is energized (“Energization Date”) which shall be no later than April 15, 2022 (“Timely Energization Date”). Said Timely Energization Date may be extended by PGE for a period equivalent to any delays that are caused by events which QTS INVESTMENT PROPERTIES HILLSBORO, LLC could not reasonably be expected to avoid by the exercise of reasonable diligence and foresight.

If not terminated earlier, then, at the end of the initial term, this Agreement shall be automatically extended from year-to-year until terminated. Customer may terminate this Agreement by providing PGE with a written Notice of Intent to Terminate that is consistent with the notice and any other termination requirements established in Schedule 689, as such schedule may be modified, amended or succeeded from time to time. Upon receipt by PGE, such Notice of Intent to Terminate shall be binding on both Parties. Except as provided for in Section 7, upon termination Customer’s account(s) will be moved to an appropriate cost-of-service rate schedule.

In the event Customer ceases operations (i.e., Customer goes out of business) at the location identified in Section 5, PGE may unilaterally terminate this Agreement without notice.

2. <u>Disenrollment Process</u>

To remain eligible for service under Schedule 689, Customer’s Energization Date must occur on or before the Timely Energization Date and Customer’s actual load at the facility being served under the New Large Load Direct Access Program must achieve 10MWa, over a period of twelve consecutive months within the first 36 months of its Energization Date.

If Customer’s Energization Date does not occur on or before the Timely Energization Date, Customer shall be disenrolled, this Agreement shall automatically terminate, and Customer will be planned for as a cost-of-service customer and subject to all requirements and provisions of the applicable rate schedule upon its Energization Date.

If Customer's Energization Date does occur on or before the Timely Energization Date, but by month 33 Customer has not yet achieved at least nine consecutive months at 10MWa, the Company may begin the process to disenroll Customer from the New Large Load Direct Access Program. The Company will do so by providing the Customer and the Commission with written notification of its proposal to transfer the Customer to an applicable cost-of-service rate schedule 90 days after the Company's disenrollment notice to the Customer.

If Customer wishes to challenge the disenrollment, then, within 60 days of receipt of such notification of disenrollment, Customer must provide written notice of its dispute and any supporting documentation, to both the Company and the Commission. To receive consideration of any challenge regarding disenrollment for failure to meet the NLDA Program's load requirements identified in Schedule 689, such supporting documentation must demonstrate that Customer's shortfall in load, below the threshold 10MWa, over a period of twelve consecutive months, is attributable to: 1) equipment failure; 2) incremental demand-side management, load curtailment or load control; or 3) other legitimate cause outside the control of the Customer. Once disenrolled, Customer will promptly be transitioned to an applicable cost-of-service rate and subject to all notice requirements and provisions of such cost-of-service schedule.

3. Expected Load

Customer's expected load for purposes of this Agreement is 60,000 kW per month (hereafter the "Contracted Load"). The amount of Contracted Load will be relied upon by PGE to establish the scope of the service design and any construction that may be performed to accommodate service to Customer under this Agreement and Schedule 689. Additionally, such Contracted Load will be used for purposes of calculating load available under PGE's NLDA program cap, at least for the first 60 months from Customer's Energization Date, unless Customer is earlier disenrolled in accordance with Section 2 of this Agreement.

4. Service

PGE shall furnish to Customer, at each Service Point described in this Agreement, sixty-hertz alternating current of such phase and voltage as PGE may have available, subject to the General Rules and Regulations of PGE's current tariff, which tariff is typically available on PGE's website at: www.portlandgeneral.com/our-company/regulatory-documents/tariff.

5. Location(s) to be Served

The Contracted Load must be separately metered from any load at any existing facility owned by Customer, or otherwise measured separately with comparable accuracy and in a form that is mutually agreed upon between the Customer and the Company. Pursuant to this Agreement, PGE shall furnish service consistent with Schedule 689, at the Customer location(s) listed (or to be listed, once an address is established at a newly developed site) on Exhibit A, which exhibit is attached hereto and incorporated by reference. Construction meters and any energy supplied during construction will not apply toward any calculation for compliance purposes under Schedule 689.

6. Description of Service Point(s)

Pursuant to the requirements of Schedule 689, the Service Point(s), for the level of service(s) being planned for and provided under this Agreement, will be populated in Exhibit B to this Agreement once said Service Point(s) is/are known, but no later than 30 business days following Customer's Energization Date.

7. Resource Mix

In accordance with the Affidavit provided by Customer and attached hereto as Exhibit C, Customer agrees that its resource mix shall remain consistent with the requirements of OAR 860-038-0730(1). If Customer is found in violation of the provisions contained in Exhibit C, Customer will be enrolled in the general cost-of-service opt out program in the next direct access enrollment window, and this Agreement shall be terminated.

8. Pricing and Payment

Customer agrees to pay all rates and charges applicable under Schedule 689, including but not limited to, a New Large Load Transition Cost Adjustment, an Existing Load Shortage Transition Adjustment and any other applicable rates and charges related to Customer's election with regard to Energy Supply, in accordance with the terms and conditions of Schedule 689 and Tariff Rules. Following receipt of any bill from PGE, Customer shall make such payments to PGE when due.

9. Customer Address

All bills and notices issued to Customer under or pursuant to this Agreement shall be sent to Customer at the following address:

12851 Foster Street
Overland Park, KS 66213

10. Modification of Previous Agreements

Any other agreements pertaining to Customer's opting out of PGE's Cost of Service pricing for the location(s) and Service Point(s) designated in this Agreement are hereby superseded and replaced by this Agreement. For the avoidance of doubt, this Agreement is not intended to alter or supersede any agreement for Minimum Load Service, Alternate Service, or Dispatchable Standby Generation that may exist between the Parties.

11. Waivers and Other Conditions

For the duration of this Agreement, Customer waives any rights to receive Electricity (as defined in Rule B of PGE's tariff) from PGE under cost-of-service rates and waives any claim against PGE under OAR 860-021-0010(5) based in any way on Customer's election of service under Schedule 689. In connection with these waivers and the taking of service under Schedule 689, by signing this Agreement Customer also acknowledges and agrees to abide by all the Special Conditions listed in Schedule 689, as such may be modified, amended, or succeeded from time to time following approval or equivalent action by the Oregon Public Utility Commission.

12. Representations and Warranties

a) Representations and Warranties of PGE. PGE represents and warrants to Customer that:

i. it has the full right, power and authority to enter into this Agreement, to grant Customer the rights set forth herein, and to perform its obligations hereunder;

ii. the execution of this Agreement by the individual whose signature is set forth at the end of this Agreement has been duly authorized by all necessary action on the part of PGE; and

iii. this Agreement, once executed and delivered by PGE, constitutes the legal, valid and binding obligation of PGE, enforceable against PGE in accordance with its terms.

b) Representations and Warranties of Customer. Customer represents and warrants to PGE that:

i. it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

ii. the execution of this Agreement by the individual whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Customer, have been duly authorized by all necessary action on the part of Customer;

iii. the execution, delivery and/or performance of this Agreement by Customer will not violate, conflict with, require consent under or result in any breach or default under (i) any applicable law or PGE tariff, including but not limited to Schedules 135 and 203, or (ii) with or without notice or lapse of time or both, any of the provisions of any contract or agreement to which it is a party or to which any of its material assets are bound ("Customer Contracts"); and

iv. this Agreement, once executed and delivered by Customer (and assuming due authorization, execution and delivery by PGE), constitutes the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

c) No other Representations or Warranties. **EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS SECTION, (A) NEITHER PARTY TO THIS AGREEMENT, NOR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION OF THIS AGREEMENT.**

13. Disclaimer of Consequential Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND EXCEPT TO THE EXTENT REQUIRED BY LAW, PGE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, MORAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR BASED ON ANY OTHER LEGAL OR EQUITABLE THEORY) UNDER OR IN RESPECT OF THIS AGREEMENT, WHETHER OR NOT ARISING FROM PGE'S SOLE, JOINT OR CONCURRENT NEGLIGENCE AND WHETHER OR NOT PGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Jurisdiction and Venue

Subject first to the venue, jurisdiction, and appeals priority of the PUC, if applicable, any judicial action or proceeding seeking to enforce any provision of this Agreement, or based on any right arising out of this Agreement, any legal action or proceeding shall be brought in the Multnomah County Circuit Court of the State of Oregon and each of the Parties irrevocably consents to the jurisdiction of such court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to such venue.

15. Assignment and Delegation

Customer shall not assign any of its rights or delegate any of its obligations hereunder; provided, however, that Customer may assign its rights or delegate its obligations, in whole only, upon 30 days prior written notice to PGE, to (a) one of its wholly owned Subsidiaries/Affiliates, or (b) an entity that acquires all or substantially all of the business and assets of Customer to which this Agreement pertains, whether by merger, reorganization, or acquisition. For the avoidance of doubt, assignment and delegation is not available with only the purchase of assets or real property pursuant to a sale or otherwise. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder unless the non-assigning or non-delegating party enters into a novation releasing the assigning or delegating party of its obligation under the Agreement. Notwithstanding the foregoing provisions of this Section 15, PGE may, subject to any approval required by the Public Utility Commission of Oregon, fully assign its rights and delegate its obligations under this Agreement, in whole or in part, to any successor in interest through purchase, merger or corporate restructuring.

16. Miscellaneous

Except for modifications that result from changes approved by the Oregon Public Utility Commission in Schedule 689, referenced herein, no other modification of this Agreement shall be valid unless made in writing and signed by PGE and Customer.

No waiver of any provision of this Agreement shall be valid unless made in writing by the waiving Party, and no such waiver shall be deemed a waiver of compliance with any other provisions or conditions of this Agreement.

It is a condition of this Agreement that Customer continues to meet applicable statutory requirements and the requirements of PGE's Schedule 689 during the term of this Agreement. For the avoidance of doubt, Customer is expected to cease any current participation, and refrain from future participation, in any PGE program or pilot that would i) cause them to violate a statute, rule or order of the Public Utility Commission of Oregon, or ii) prohibit dual enrollment, as of the time and date Customer begins taking service under Schedule 689. If, at any time during the term of this Agreement, Customer should fail to satisfy this condition, PGE shall have the right to terminate this Agreement and/or seek all such remedies that may be available to it under the law and/or in equity. To the extent the right to terminate is exercised by PGE, Customer will be considered a "new" Customer for purposes of determining available service options, but NOT eligible for enrollment under Schedule 689.

This Agreement and the services, rates, terms and conditions described in this Agreement, or incorporated by reference, are subject to all changes in applicable tariffs and all lawful orders of the Oregon Public Utility Commission.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement this 13th day of May, 2020.

QTS INVESTMENT PROPERTIES HILLSBORO, LLC

(Company Name)

By: DocuSigned by: Chad Williams
2775CB2A95BB4C7...

(Signature)

DS TW DS DR

Chad Williams

(Printed Name and Title of Signatory Party)

5/13/2020

(Date)

PORTLAND GENERAL ELECTRIC COMPANY

By: ____________________

(Signature)

____

(Printed Name and Title of Signatory Party)

____

(Date)

Approved as to rates ____________________

Exhibit A
Customer Location(s)

Location Name/Description	Address
Building 2	4951 NE Huffman St., Hillsboro OR 97124

Exhibit B
Customer Service Point(s)

Location Name	Service Point Name/Description	Service Point Location/Address
	TBD	TBD

Exhibit C

Signed Affidavit

SEE ATTACHED

STATE OF ________________)
) ss.:
COUNTY OF ______________)

Return this completed and notarized document no later than ________________ ___, 2020 along with an executed copy of the New Large Load Cost of Service Opt Out Agreement.

AFFIDAVIT OF ELIGIBILITY AND COMPLIANCE

I, Chad Williams, CEO (full legal name and title), having been duly authorized to act on QTS Investment Properties Hillsboro, LLC [participating entity's name] behalf, and being duly sworn, depose and say:

1. QTS Investment Properties Hillsboro, LLC [participating entity's name] has made the election to enroll in PGE's New Large Load Direct Access Program under ("Schedule 689") and it is understood that QTS Investment Properties Hillsboro, LLC [participating entity's name] is provisionally enrolled (an "NLDA Participant"), subject to space under PGE's Schedule 689 cap and verification of eligibility.

2. I understand that I am submitting this Affidavit of Eligibility and Compliance ("Affidavit") to assist in determining whether QTS Investment Properties Hillsboro, LLC [participating entity's name] is eligible to be an NLDA Participant in accordance with OAR 860-038-0700 through 860-038-0760 (the "OPUC Rules") and Schedule 689.

3. I represent that QTS Investment Properties Hillsboro, LLC [participating entity's name] satisfies all of the eligibility requirements under the OPUC Rules and Schedule 689, or alternatively, that QTS Investment Properties Hillsboro, LLC [participating entity's name] has obtained a waiver from the Public Utility Commission of Oregon for the following eligibility requirements:

[list each eligibility criterion for which waiver was granted]

____
____
____

thereby allowing QTS Investment Properties Hillsboro, LLC [participating entity's name] to enroll as an NLDA Participant under Schedule 689.

4. I further represent that, throughout the duration of its enrollment under Schedule 689, QTS Investment Properties Hillsboro, LLC [participating entity's name] shall fully comply with its obligations under OAR 860-038-0730(1) by contracting for energy resources that do not include any allocation of coal-fired resources, as defined in ORS 757.518 (l)(b)(A), after

January 1, 2030. Furthermore, it is understood that violation of this commitment could result in disenrollment from Schedule 689 service.

5. I understand that Portland General Electric Company is obligated to, and shall, provide a copy of this Affidavit of Eligibility and Compliance to the Public Utility Commission of Oregon pursuant to OAR 860-038-0730(2)(a).

6. If any of my statements in this Affidavit is false, I acknowledge that the consequence could be disenrollment from Schedule 689 in addition to any other remedies that PGE may seek to enforce against QTS Investment Properties Hillsboro, LLC [participating entity's name].

DS TW DS DR

DocuSigned by:

By: Chad Williams
2775CB2A95BB4C7...

Printed name: Chad Williams

Sworn to before me this ____ day of
________________, 20____.

____
Notary Public

[SEAL]