

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 10, 2008**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: June 6, 2008

TO: Public Utility Commission

FROM: Lori Koho

THROUGH: Lee Sparling, Ed Busch and Bonnie Tatom

SUBJECT: HONEYWELL INTERNATIONAL, INC, AND HONEYWELL GLOBAL FINANCE LLC AND PACIFICORP, dba PACIFIC POWER: (Docket No. DR 40) Joint petition for a declaratory ruling pursuant to ORS 756.450 and OAR 860-013-0020.

STAFF RECOMMENDATION:

I recommend that the joint petition for a declaratory ruling, with expedited treatment, be granted and that the Commission open an investigation.

DISCUSSION:

On June 6, 2008, Honeywell International, Inc., and Honeywell Global Finance LLC and PacifiCorp, dba Pacific Power jointly filed a "Petition for Declaratory Ruling" (petition) pursuant to ORS 756.450 and OAR 860-013-0020. The parties request the Commission to issue a declaratory ruling, on an expedited basis, with respect to the rights, obligations, and status of, as well as the applicability of ORS 757.300 and ORS 757.600 to 757.689, and OAR ch. 860, Divisions 38 and 39 to (1) Honeywell, Honeywell Global Finance and their customers; (2) any similarly-situated businesses and customers; (3) Pacific Power and its customers and (4) the facts detailed in the petition (attached).

Other developers, who are not a party to this petition, are keenly interested in the outcome of a ruling. This ruling will determine if the current statutes and rules support or impede use of the most widely used business models for development of small renewable energy projects in the state.

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PROPOSED COMMISSION MOTION:

Approve Honeywell and PacifiCorp's joint petition for a declaratory ruling, Docket No. DR 40, and open an investigation.

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

DR _____

In the Matter of)
) PETITION FOR DECLARATORY RULING
HONEYWELL INTERNATIONAL, INC.,)
and HONEYWELL GLOBAL FINANCE,) EXPEDITED TREATMENT REQUESTED
LLC,)
)
and)
)
PACIFICORP, dba PACIFIC POWER.)

Pursuant to ORS 756.450 and OAR 860-013-0020, Honeywell International, Inc. (“Honeywell”) its wholly-owned subsidiary, Honeywell Global Finance LLC (“Honeywell Global Finance”), and PacificCorp, d.b.a. Pacific Power (“Pacific Power”) petition the Public Utility Commission of Oregon (“Commission”) to issue a declaratory ruling, on an expedited basis, with respect to the rights, obligations and status of, as well as the applicability of ORS 757.300 and ORS 757.600 to 757.689, and OAR ch. 860, Divisions 38 and 39 to, (1) Honeywell, Honeywell Global Finance, and their customers; (2) any similarly-situated businesses and customers; (3) Pacific Power and its customers and (4) the following statement of facts.

Honeywell International, Inc., Honeywell Global Finance LLC, and Statement of Facts

1. Honeywell, acting through its Honeywell Building Solutions unit began offering solar Energy Services Agreements (“ESAs”) to customers in California in 2006, and in Oregon in the fall of 2007.
2. Honeywell Building Solutions is a licensed general contractor in California and Oregon.
3. Under an ESA, Honeywell Building Solutions builds and operates a grid-connected solar photovoltaic facility (“facility”) that is located on a customer’s premises, such as

a roof or vacant land, and sells all of the power generated by the facility to the customer.

Honeywell Building Solutions is responsible for operating, maintaining, and monitoring the facility and bills the customer monthly for the actual kilowatt-hours of electricity generated. The facility is at all times during the term of the ESA owned by Honeywell, either directly or through its wholly-owned subsidiary Honeywell Global Finance.

4. Specifically, Honeywell Building Solutions develops and presents a proposal to the customer. Honeywell Building Solutions subcontracts the design and installation of each solar installation to a solar integrator that is an Energy Trust Trade Ally. Honeywell Building Solutions manages the construction of each solar facility using its own procurement, project management, and delivery team. The customer has no direct relationship with the subcontractor. Honeywell Building Solutions enters into the ESA with the customer, monitors the operation of the facility, in particular its power output, and arranges with a subcontractor to maintain and repair the facility. Honeywell Global Finance pays the cost of the facility to Honeywell Building Solutions. In return, Honeywell Building Solutions assigns title to the facility and its rights under the ESA to Honeywell Global Finance. Honeywell Building Solutions, however, retains all of its obligations under the ESA and Honeywell Global Finance allows Honeywell Building Solutions to use the facility in order for Honeywell Building Solutions to fulfill its obligations to the customer under the ESA.

5. For its part, the customer provides its premises for the facility. The customer is responsible for providing physical security for the facility. The customer, in addition to Honeywell Building Solutions, monitors the operation of the facility, including its power output. The typical ESA has a term of 20 years. At the end of the term of the ESA, the customer has several options. The customer can extend the ESA for up to five additional one year terms; the

customer can purchase the facility for its then fair market value; or the customer can remove the facility and ready it for shipping back to Honeywell Global Finance.

6. The customer agrees to purchase all of the electricity generated by that facility at an agreed upon first year rate with an annual escalation. The customer pays only for the power produced by the facility. The first year rate for the power tends to bear some relationship to the tail block rate(s) being paid by the customer to its electric utility. Thereafter, the rate escalates at an agreed upon rate per year.

7. Coincident with the ESA the customer enters into a net metering agreement with its electric utility. All of the electricity purchased by the customer from Honeywell either offsets electricity the customer would otherwise purchase from its electric utility or it flows into the grid.

8. Under the terms of the ESA, Honeywell is entitled to all incentives associated with the facility, including the Federal Income Tax Credit and accelerated depreciation, the Oregon Business Energy Tax Credit (either directly or using the pass-through), and any other available incentives, such as those provided by the Energy Trust of Oregon ("Energy Trust").

9. When Energy Trust incentives are used, the associated renewable energy credits are transferred to the Energy Trust after year two.

10. Honeywell has executed ESAs with the City of Hillsboro (100 kW, PGE); Lewis & Clark College (100 kW, PGE), City of Pendleton I (100 kW, PPL), City of Pendleton II (200 kW, PPL), and Mt. Hood Community College (100 kW, PGE).

Similarly-Situated Businesses

11. There are some variations on this model used by others.

12. In the case of other contractors, the financing and ownership may be provided by a company independent of the contractor—a bank, finance company, etc.

13. There is another model found in Oregon, where a customer and an investor form a limited liability company (“LLC”), in which, for a six year period, the investor owns, for example a 90% membership interest and the customer owns a 10% membership interest; thereafter, the membership interests reverse: the customer owns a 90% membership interest and the investor owns a 10% membership interest. The LLC acquires the facility and sells the power to the customer. During the initial six year period, the investor receives 90% of the income and the tax benefits, including investment tax credits and accelerated depreciation, etc. The customer pays the LLC for the power during the life of the power purchase agreement with the LLC.

Pacific Power Facts

14. Pacific Power is a public utility as defined in ORS 757.005(1)(a)(A) and subject to the Commission’s jurisdiction.

15. Pacific Power must offer net metering service to “customer-generators” meeting criteria set forth in ORS 757.300 and OAR ch. 860, Division 38. Pacific Power & Light Oregon Schedule 135 also applies to net metering service. Pacific Power contends that none of these controlling authorities explicitly addresses the applicability of net metering to a customer who is not a generator; i.e., the subject generation is owned by a third party, not the customer.

16. The Federal Energy Regulatory Commission (“FERC”) permitted states to exercise jurisdiction over net metering under the Federal Power Act (“FPA”). See MidAmerican Energy Company, 94 FERC ¶ 61,340 (2001). Pacific Power contends that FERC noted that in some situations a net metering transaction may require the entity making the sale to comply with the FPA. Pacific Power contends that a power purchase agreement between the customer and

Honeywell or a similarly-situated company coupled with net metering between the customer and the electric utility potentially creates two sales for resale subject to FERC jurisdiction under the FPA. The FERC decision does not address meter ownership or a utility's responsibility for determining whether these arrangements exist in its service territory.

17. All Pacific Power customers pay a public purpose charge, which is intended to be used in part to fund above-market costs of new renewable energy resources. ORS 757.612(2). The Energy Trust administers funds collected under the public purpose charge. Customers owning and installing net metering facilities frequently seek grants from the Energy Trust to offset some of the costs of the facilities.

18. Pacific Power must allow its non-residential customers to choose an electricity service supplier pursuant to direct access regulation as set forth in ORS 757.600 to 757.687 and OAR ch. 860, Division 39. Pacific Power & Light Company Oregon Rule 21 contains requirements for participation in direct access. Rule 21 Section I.C requires customers to receive electric supply wholly from one source, whether from Pacific Power or an electricity service supplier.

19. Pacific Power also offers other rates, such as standby and partial requirements rates, that may be applicable to customers with installed generation.

20. Commission Order No. 07-002, Docket No. UM 1052 requires Pacific Power to submit Integrated Resource Plans ("IRPs") to the Commission for acknowledgement and contains guidelines to be used for resource planning purposes. Among other purposes, the IRPs identify the projected amounts of capacity and energy required to serve the projected needs of Oregon customers that Pacific Power must serve under Oregon statutes and rules.

WHEREFORE, Honeywell and Honeywell Global Finance petition for a declaratory ruling that:

a. A facility that Honeywell and Honeywell Global Finance provide as described above is a “net metering facility.” The facility is “for the production of electrical energy that: (A) Generates electricity using solar power...; (B) Is located on the customer-generator’s premises; (C) Can operate in parallel with an electric utility’s existing transmission and distribution facilities; and (D) Is intended primarily to offset part or all of the customer-generator’s requirements for electricity. ORS 757.300(1)(d). A customer of Honeywell and Honeywell Global Finance for such a facility is a “customer-generator.” The customer is a “user of a net metering facility.” ORS 757.300(1)(a). Subject to the Commission’s rules and regulations, and the public utility’s applicable rate schedules and rules, ORS 757.300(2)-(9) apply to the customer.

b. Neither Honeywell nor Honeywell Global Finance is an “electricity service supplier.” Neither Honeywell nor Honeywell Global Finance offers to sell electricity services available pursuant to “direct access” to more than one retail electricity consumer. ORS 757.600(16). Honeywell’s and Honeywell Global Finance’s electricity services are not available pursuant to direct access because its customers do not have the ability to purchase electricity and certain ancillary services directly from an entity other than the distribution utility. ORS 757.600(6). At the most, its customers only have the ability to purchase electricity directly from an entity other than the distribution utility.

c. A facility that a similarly-situated business provides as described above is a “net metering facility” (ORS 757.300(1)(d)), and a customer of the similarly-situated business for such a facility is a “customer-generator” (ORS 757.300(1)(a)). Subject to the PUC’s rules and

regulations, and the public utility's applicable rate schedules and rules, ORS 757.300(2)-(9) apply to the customer of the similarly-situated business.

d. The similarly-situated business is not an "electricity service supplier." The similarly-situated business does not offer to sell electricity services available pursuant to direct access to more than one retail electricity consumer. ORS 757.600(16). The similarly-situated business's electricity services are not available pursuant to direct access because its customers do not have the ability to purchase electricity and certain ancillary services directly from an entity other than the distribution utility. ORS 757.600(6). At the most, its customers only have the ability to purchase electricity directly from an entity other than the distribution utility.

AND WHEREFORE, Pacific Power petitions for a declaratory ruling stating whether:

a. A customer of an Oregon regulated utility that receives electricity from a facility that Honeywell provides as described above (1) is/is not a "customer-generator" for the purpose of ORS 757.300(1)(a); and (2) does/does not "use" such facility for the purpose of that statutory section.

b. "Ownership" of a facility is defined as XX% [Commission to determine] ownership and may/may not include third-party interests.

c. Electricity produced by a facility that Honeywell provides as described in the petition to a customer of an Oregon regulated electric utility does/does not qualify for net metering for the purpose of ORS 757.300(1)(d).

d. Subject to the Commission's rules and regulations, and the public utility's applicable rate schedules and rules, ORS 757.300(2)-(9) does/does not apply to the customer.

e. To protect ratepayers not participating in net metering against unnecessary cost shifting, no limitations/the following limitations [Commission to identify] should be placed on third party ownership of net metering facilities.

f. The metering arrangement for a facility provided by Honeywell as described above must be installed at the metered customer's/Pacific Power's other customers' cost.

g. When Honeywell provides generation to a customer as described above:

(1) Honeywell and Honeywell Global Finance are/are not "electricity service suppliers" as defined in ORS 757.600(16).

(2) Honeywell and Honeywell Global Finance are/are not offering to sell electricity services available pursuant to "direct access" to more than one retail electricity consumer. ORS 757.600(16).

(3) Honeywell's and Honeywell Global Finance's electricity services are/are not available pursuant to direct access because its customers do/do not have the ability to purchase electricity and certain ancillary services directly from an entity other than the distribution utility. ORS 757.600(6). The customer does/does not have the ability to purchase electricity directly from an entity other than the distribution utility.

(4) Honeywell is/is not a utility.

h. When Honeywell provides generation to a customer as described above, Honeywell is/is not required to serve 100% of the customer's load.

i. When Honeywell provides generation to a customer as described above, if Honeywell is not required to serve 100% of the customer's load:

(1) The portion of the customer's load not served by Honeywell would/would not be served by Pacific Power at partial requirements tariff rates;

(2) In its IRP, Pacific Power is/is not required to plan to serve the portion of the customer's load served by Honeywell;

j. (3) When Honeywell does **not** provide generation for its portion of the customer's load:

(1) Pacific Power is/is not required to sell electricity to the customer for Honeywell's portion of the load;

(2) Any electricity sold by Pacific Power to the customer for Honeywell's portion of the load is/is not priced at Pacific Power's standby tariff.

k. When Honeywell provides generation to a customer as described above, Honeywell qualifies/does not qualify for an exemption under the Public Utility Regulatory Policies Act ("PURPA") and is/is not subject to the Federal Power Act.

l. OAR ch. 860, Division 39 applies/does not apply when a facility is receiving three other subsidy mechanisms for the same facility (federal tax credit, state tax credit, and Energy Trust of Oregon funding).

m. The Commission's interpretations above would/would not be the same for a similarly-situated business serving the customer from a facility fueled by a net-metering eligible fuel.

n. The Commission's interpretations in Pacific Power a-l above would/would not be the same where a customer is receiving service from a registered ESS.

o. With respect to a similarly-situated business, if the facility serving the customer is fueled by something other than a net-metering eligible fuel:

(1) The owner of the facility is/is not required to register as an electricity service supplier;

(2) The owner of the facility is/is not a public utility.

p. Pacific Power does/does not have an obligation to determine whether third parties own customer generation facilities and sell the output to customers.

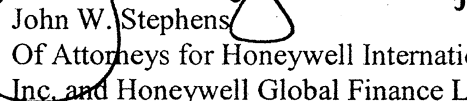
q. If the customer qualifies for net metering, Pacific Power and its customers are entitled to any renewable energy credits associated with the output of the facility.

r. The Commission will/will not support a position before FERC that Pacific Power does not violate the Federal Power Act with these arrangements in place in its service territory.

DATED this 5th day of June, 2008.

ESLER, STEPHENS & BUCKLEY

By:



John W. Stephens
Of Attorneys for Honeywell International,
Inc. and Honeywell Global Finance LLC

and

/s/ Michelle R. Mishoe
Michelle R Mishoe
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Pacific Power

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