



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

June 13, 2008

Public Utility Commission of Oregon
P.O. Box 2148
Salem, Oregon 97308-2148

Re: In the Matter of Honeywell International, Inc., Honeywell Global Finance, LLC and Pacificorp, dba Pacific Power, DR 40

Dear Commissioners:

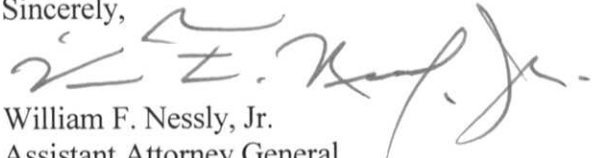
Please find enclosed the Oregon Department of Transportation's Petition to Intervene in the declaratory ruling proceeding for which the petition was filed jointly by Honeywell International, Inc., Honeywell Global Finance, LLC, and Pacificorp, dba Pacific Power on June 6, 2008.

On June 10, 2008, the Public Utility Commission accepted the petition for consideration. The proceeding has been assigned to Administrative Law Judge Michael Grant.

The Oregon Department of Transportation (ODOT) emphatically supports the Petitioners' request for expedited consideration. *See* Part D.2. at page 5 of ODOT's Petition to Intervene. ODOT proposes to intervene only to address the two substantive issues identified in Part F. at page 6 of ODOT's Petition. Those issues are:

1. Whether the solar energy transaction structure generally described in the original Petition will qualify for net metering treatment under ORS 757.300 and OAR chapter 860, division 39.
2. Whether that proposed solar energy transaction structure will require a participating third-party owner to register as an electricity service supplier under the direct access statutes and rules, ORS 757.600 to 757.659 and OAR chapter 860, division 38.

Sincerely,


William F. Nessly, Jr.
Assistant Attorney General
Business Transactions Section

WFN:wfn/DOCUMENT5

c:
John W. Stephens, Attorney at Law
Michelle Mishoe, Attorney at Law

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON

DR 40

In the Matter of

HONEYWELL INTERNATIONAL, INC.,
and HONEYWELL GLOBAL FINANCE,
LLC

and

PACIFICORP, dba PACIFIC POWER

OREGON DEPARTMENT OF
TRANSPORTATION'S PETITION TO
INTERVENE IN DECLARATORY RULING
PROCEEDING

The Oregon Department of Transportation (ODOT) respectfully petitions the Oregon Public Utility Commission, under OAR 860-012-0001, for leave to intervene in the proceeding initiated by the Petition for Declaratory Ruling filed by Honeywell International, Inc., Honeywell Global Finance LLC, and PacificCorp d/b/a Pacific Power, on June 6, 2008 (the "Honeywell Petition"). At its meeting on Tuesday, June 10, 2008, the Public Utility Commission accepted the Honeywell Petition for consideration and assigned the proceeding to Administrative Law Judge Michael Grant.

In accordance with OAR 860-012-0001(1), ODOT submits the following information:

A. Name and Address of Petitioner:

Oregon Department of Transportation
Attn: James Whitty, Office of Innovative Partnerships
Room 115
Transportation Building
355 Capitol Street N.E.
Salem, Oregon 97310

B. Name and Address of ODOT Legal Counsel:

Bill Nessly
Theodore Falk
Senior Assistant Attorneys General
Oregon Department of Justice
General Counsel Division
1162 Court Street N.E.
Salem, Oregon 97301-4096

C. Number of Members and Purposes of the Organization:

ODOT employs approximately 4,700 individuals in carrying out its statutory responsibilities. ODOT serves the population of the State of Oregon, visitors to Oregon, and the transportation sector. As an agency of the State of Oregon, ODOT is an organization without members.

The Oregon Legislative Assembly created ODOT as the state agency charged with the construction, operation, maintenance and administration of Oregon's transportation programs and systems. ORS 184.615. The Oregon Transportation Commission ("OTC"), consisting of five members appointed by the Governor, oversees ODOT's operations and implements state transportation policy. ORS 184.617 and 184.618. The OTC exercises general supervision and control over ODOT's functions with respect to state highways. ORS 366.205.

D. Nature and Extent of ODOT's Interest in the Proceeding:

1. ODOT's Obligations and Interest.

ODOT maintains approximately 8,044 "centerline" miles¹ of highway (which includes frontage roads, freeway ramps, and the roadways over ODOT's 2,666 bridges). ODOT also occupies highway maintenance facilities and transportation administration buildings throughout the state. Adjacent to state highways is right of way, some of which is unused by traffic and is suitable for installing solar projects to generate power for highway operations.

In operating Oregon's system of state highways, ODOT consumes 45 million kilowatt hours of electric power annually. Statutory directives require ODOT to increase the proportion of ODOT's use of renewable energy. For example, ORS 469A.210 commands ODOT and other state agencies to promote the goal of ensuring that at least eight percent of Oregon's retail electrical load comes from small-scale renewable energy

¹ In the computation of "centerline" mileage, a mile of two-lane highway counts the same as a mile of six-lane freeway.

projects with generating capacities of no more than 20 megawatts.² In addition, ODOT is subject to legislative policies that require the state to encourage the development of sustainable energy resources. ORS 469.010(2).³

Executive pronouncements buttress these statutory directives. On March 10, 2006, Governor Kulongoski issued a press release to set a goal calling for “new renewable electricity to account for 100 percent of state government’s electrical needs.”⁴ Furthermore, the 2006 Oregon Transportation Plan adopted by the OTC—Policies 4.1, Environmentally Responsible Transportation System (Strategy 4.1.2) and 4.2, Energy Supply, (Strategy 4.2.1)—encourages ODOT’s development and use of technologies that reduce greenhouse gases and move toward a diversified and cleaner energy supply.

In pursuit of these goals, the OTC, at its February 21, 2008 meeting, unanimously approved an ODOT plan to pursue renewable energy development by using public-

² ORS 469A.210 states:

The Legislative Assembly finds that community-based renewable energy projects are an essential element of Oregon's energy future, and declares that it is the goal of the State of Oregon that by 2025 at least eight percent of Oregon's retail electrical load comes from small-scale renewable energy projects with a generating capacity of 20 megawatts or less. ***All agencies of the executive department as defined in ORS 174.112 shall establish policies and procedures promoting the goal declared in this section.***

(Emphasis added).

³ ORS 469.010(2)(a) declares the policy of the state:

That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

⁴ The Governor’s press release also advocated “Passing legislation that authorizes state agencies to develop renewable energy on state forests, state lands, state campuses and other state property.” That legislation included the passage of ORS 469A.210, quoted in footnote 2 of this Petition, enacted as Oregon Laws 2007, chapter 301, section 24.

private partnerships for the establishment of solar power generation installations on real property owned or under the control of ODOT. *See* Exhibit A, attached (excerpt from OTC minutes).

To carry out the solar highway project approved by the OTC, ODOT intends to grant third parties, such as solar power developers or electric utility companies, rights to install solar generating systems on suitable ODOT highway property. The generation output of the systems will be sold to ODOT to supply electric power for ODOT's highway operations.

For ODOT, as for any large-scale solar user, these solar generating systems can be economically feasible only when financed using tax credits and the incentives established to encourage the development of renewable energy resources. However, ODOT and other government entities, as public bodies that are exempt from tax liability, cannot take advantage of the federal and state tax credits that are necessary to the financing of these systems. ODOT can access these financing mechanisms only by engaging third parties to own the systems.

ODOT will benefit from third party ownership because the ultimate cost of the renewable power resources ODOT purchases will be lower. That cost can be lower, however, only if third parties can use the federal Investment Tax Credit, accelerated depreciation under the federal Internal Revenue Code, and Oregon state incentives, including the Business Energy Tax Credit. A state agency like ODOT cannot. Because these tax credits and incentives are of no value to ODOT as a tax-exempt unit of government, ODOT plans to use the common solar industry model of third-party developers to whom the tax credits and incentives are valuable and who can sell ODOT the solar power they produce on ODOT land.

A third-party transaction structure constitutes the sole lawful and most economically feasible means for ODOT to realize the renewable energy development

goals imposed on it. For this reason, ODOT has a vital interest in several of the issues presented by the Honeywell Petition.

2. ODOT's Critical Need For Immediate Resolution.

ODOT has an acute interest in obtaining expedited rulings on the issues identified in Part F, below. The federal investment tax credit that is indispensable to the acquisition of economically feasible third-party financing for the ODOT solar project is scheduled to drop from 30 percent to 10 percent on December 31, 2008.

Due to the lead times necessary to order solar panels and to complete their installation, ODOT must execute agreements with third-party owners within a matter of weeks. Otherwise, the planned solar systems cannot be installed in 2008, and will not qualify for the current, more favorable federal Investment Tax Credit. If the project cannot be instituted in time to qualify for the current, higher Investment Tax Credit, ODOT's opportunity will evaporate. For that reason, ODOT also respectfully requests expedited consideration of this proceeding, and will cooperate to the utmost to promote the speedy resolution of the issues that can be expedited.

E. Special Knowledge or Expertise of ODOT:

ODOT cannot claim technical expertise in the development or installation of solar energy facilities. That circumstance only underscores ODOT's interest in these proceedings. If ODOT cannot resort to third-party owners for the solar generating facilities to attain ODOT's renewable energy goals, those goals cannot be achieved.

However, ODOT possesses significant experience and expertise in soliciting and negotiating public contracts for technical systems and for public-private partnerships and financing arrangements, as well as for the operation of highways. ODOT will be able to contract for one or more solar energy generating installations, if the outcome of this proceeding demonstrates that doing so can be economically feasible. ODOT can furnish the Public Utility Commission information about ODOT's planned solar projects, and

about the projects of other government and nonprofit users, to illustrate the third-party development model at stake in this proceeding.

F. Issues ODOT Intends to Raise at the Proceeding:

ODOT's requested intervention in the declaratory ruling proceeding will not broaden the issues, burden the record, or delay the proceedings. *See* OAR 860-012-0001(2). As described above, third-party ownership of solar power facilities represents the sole available and most cost efficient means for ODOT to attain the renewable electricity objectives assigned to it. In addition, the availability to ODOT's third-party owners of the full array of economic incentives will be critical to their ability to participate in a solar energy program to benefit ODOT.

For these reasons, ODOT accepts paragraphs 3 through 8 of the Honeywell Petition as generally outlining the type of proposed solar energy transaction structure that ODOT wants to implement to realize its renewable energy development goals. ODOT requests permission to present its position on three primary issues, all of which already are raised by the Honeywell Petition.

The first of those issues is whether the proposed solar energy transaction structure will qualify for net metering treatment under ORS 757.300 and OAR chapter 860, division 39. *See* Honeywell Petition at page 6, paragraph a. ODOT will be a user of a net metering facility which ORS 757.300(1)(a) defines as a customer generator.

The second issue is whether the proposed solar energy transaction structure will not result in requiring the third-party owner selected by ODOT to be subjected to regulation as an electricity service supplier under the direct access statutes and rules. ORS 757.600 to 757.659 and OAR chapter 860, division 38. *See* Honeywell Petition at page 6, paragraph b.

The third issue is how the proceeding may most fruitfully be expedited. ODOT will support resolving the Honeywell issues in an expedited proceeding and believes the PacifiCorp issues are of sufficient complexity as not to lend themselves to expedited

treatment. Of the Honeywell issues, ODOT will contend that the third party ownership issue is the single issue for which expedited resolution is most pressing.

THEREFORE, ODOT respectfully requests that the Public Utility Commission grant ODOT's Petition to Intervene in the declaratory ruling proceeding the Commission accepted for consideration on June 10, 2008.

DATED this 13th day of June 2008.

Respectfully submitted,
Hardy Myers
Attorney General



William F. Nessly, Jr.
Senior Assistant Attorney General
Theodore C. Falk
Senior Assistant Attorney General
Of Attorneys for Petitioner to
Intervene Oregon Department of
Transportation

GENY1669

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June 2008, I served the within Petition to Intervene in Declaratory Ruling Proceeding upon John W. Stephens, attorney for Honeywell International, Inc. and Honeywell Global Finance, LLC, and Michelle R. Mishoe, attorney for Pacificorp, dba Pacific Power, by then depositing in the United States Post Office at Salem, Oregon, a full, true and correct copy thereof addressed to:

John W. Stephens
Esler Stephens & Buckley
888 SW Fifth Avenue, Suite 700
Portland, OR 97204-2021

and

Michelle R. Mishoe
Pacific Power & Light
825 NE Multnomah, Suite 1800
Portland, OR 97232

and prepaying the postage thereon.

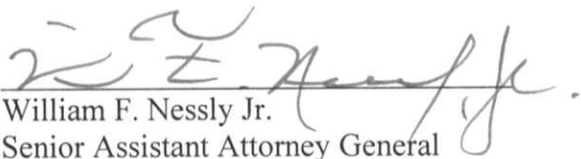

William F. Nessly Jr.
Senior Assistant Attorney General
Oregon Department of Justice
Of Attorneys for Petitioner to
Intervene Oregon Department of
Transportation

EXHIBIT A

Excerpt from Minutes of Oregon Transportation Commission, February 21, 2008

OREGON TRANSPORTATION COMMISSION

**Minutes of the Regular Monthly Meeting
February 21, 2008
Salem**

On Thursday, February 21, 2008, at 8:00 a.m., the OTC and Oregon Department of Transportation staff held a briefing session and reviewed the agenda in Room 135 of the Transportation Building, 355 Capitol Street NE, Salem. The regular monthly meeting began at 10:00 a.m. in Conference Room 122.

Notice of these meetings was made by press release of local and statewide media circulation throughout the state. Those attending part or all of the meetings included:

Chair Gail Achterman	Transp. Development Admin. Jerri Bohard
Vice Chair Michael Nelson	Public Transit Administrator Michael Ward
Commissioner Janice Wilson	Governor's Sr. Transp. Advisor Chris Warner
Commissioner Alan Brown	Region 1 Manager Jason Tell
Commissioner David Lohman	Interim Region 2 Manager Dee Jones
Director Matthew Garrett	Region 3 Manager Paul Mather
Chief of Staff Joan Plank	Region 4 Manager Bob Bryant
Deputy Director for Highways Doug Tindall	Region 5 Manager Monte Grove
Deputy Director Central Services Lorna Youngs	Commission Assistant Kim Jordan
Communications Administrator Patrick Cooney	

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Chair Achterman called the meeting to order at 10:05 a.m.

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Director's report highlights:

Storm update

Director Garrett saluted the men and women of ODOT's maintenance crews for their outstanding job dealing with the continuing weather issues.

Timber Tax/Secure Rural Schools Issue

Loss of timber tax funding has compromised some of the most vulnerable small counties in eastern Oregon to the extent that, potentially, they have to shut their doors. Working closely with county and city individuals, ODOT is vetting different scenarios that may help blunt the trauma specific to the transportation funding gap that comes with the non-renewal of the Secure Rural Schools Act. The discussions are on distribution of monies, percentages, county allocations and the criteria used in those allocations, base levels of investments, and more innovational approaches like jurisdictional-blind formulas. A recommendation will go to Mr. Nisbitt in mid March.

Doug Tindall and ITS Manager Galen McGill presented the project selection criteria for projects funded from the \$8,000,000 increase in the Operations Program approved by the commission in adopting the 2008-2011 Statewide Transportation Improvement Program. (*Background material in General Files, Salem.*)

Galen McGill discussed the six criteria categories developed for selection of operations projects.

- Project Benefits – Expected benefits of the project and an evaluation plan.
- Technical Merits – Evaluates the technical benefit of proposed project and the feasibility of the proposed solution.
- Implementation Readiness – Evaluates how ready a project is to being implemented. Is the technology ready to implement? Is the project within legal and policy constraints? Are the appropriate partnerships in place?
- Importance – Is the project innovative or does the project improve the state of the practice.
- Ongoing Operational Cost Effectiveness – Evaluates the project's plan to cover ongoing costs.
- Support – Is there funding support from applicants or other government agencies?

The Commission asked if the category for "importance" might have more scoring value than "technical merit" when based on what we want to give to the public. This will be reviewed and brought back to the March OTC meeting to discuss changes made or if no changes are made, the reasons for it. A suggestion was made to change the category name to "importance/innovation."

The Commission noted that projects don't have to be on the state system to qualify and to stimulate new ways of thinking and develop new kinds of partnerships. We need to examine our outreach for the request for proposals to assure that the right people are engaged. The following suggestions were noted:

- Hold a question and answer session so interested parties can meet, share information and exchange ideas.
- Provide an outside line for incoming phone calls.
- The request for proposals should contain many examples to educate and stimulate understanding and awareness.
- Advertise widely to reach as many people as possible and get the word out to consulting firms and private companies.



Under the authority of Oregon Administrative Rule 731-070-0240, the commission considered whether the Solar Energy Projects (Oregon Department of Transportation Solar Highway Project) have the potential to accelerate cost-effective delivery or promote innovative approaches to carrying out projects. James Whitty, Manager, Office

of Innovative Partnerships, provided background on ODOT Solar Highway Procurement. Allison Hamilton, Project Director, Office of Innovative Partnerships, gave a presentation on the project. *(Background material in General Files, Salem.)*

The procurement contemplated will accelerate the development of sustainable renewable energy to offset the costs of ODOT's 45 million kilowatts consumed annually. Project financing will take advantage of state and federal tax credits, early depreciation and utility incentives through a third-party power provider. ODOT will incur no costs up front. The first step in the two-step procurement will pre-qualify a short list of power providers and award the initial projects. The power purchase contemplated is for the installation and long-term operation and maintenance of the solar system.

The ODOT Solar Highway Project has the support of leadership and key stakeholders including the Director's Office, Governor's Office, Oregon Department of Energy, Oregon Department of Administrative Services, Oregon Solar Energy Industries Association, Portland General Electric, Energy Trust of Oregon, and Federal Highway Administration.

Solar panels on 120 miles of Oregon's 16,000 miles of right-of-way would supply all 45 million kilowatt hours ODOT uses annually. Several sites have been identified as having solar potential for this first ODOT offering, including the I-5/I-205 Interchange, the abandoned West Linn Safety Rest Area, the Woodburn northbound and southbound ports of entry, sound walls along U.S. Highway 26, district offices in Region 1, and the ODOT Materials Lab.

The directive is to procure energy at costs equal to, or less than currently paid today at grid costs. While discussion is taking place with all utilities across the state, ODOT is starting with PGE because its costs, and incentives, are the highest. The goal is to negotiate rates in the agreement that come in under the cost of grid power.

The Commission asked if revenue could be generated for the Highway Trust Fund by renting out some of the remaining 16,000 miles of Oregon right-of-way for solar energy providers. Under current law this is not allowed, but that would be a goal.

The Commission also noted that these types of contracts are very complicated, and as this will be the first of its kind in the United States, we need to assure we get the appropriate advice and council needed. The Commission requested that the request for proposals contain an evaluation component for what we are trying to accomplish.

Commissioner Wilson moved to approve this determination. The motion passed unanimously.



The Commission considered approval of the following Consent Calendar items.
(Background material in General Files, Salem.)