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A DIVISION OF PACIFICORP

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June 30, 2008

VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY

Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Attention: Vikie Bailey-Goggins
Administrator, Regulatory Operations

Re: **Docket DR 40** – Opening Brief of Pacific Power

PacifiCorp, d.b.a. Pacific Power, hereby submits its Opening Brief in the above-referenced matter.

Questions on this filing may be directed to Joelle Steward, Regulatory Manager, at (503) 813-5542.

Sincerely,

Andrea L. Kelly
Vice President, Regulation

Enclosure
cc: Docket No. DR 40 Service List

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2008, I caused to be served, via E-Mail and US Mail (to those parties who have not yet waived paper service), a true and correct copy of the foregoing document on the following named person(s) at his or her last-known address(es) indicated below.

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DR 40

In the Matter of HONEYWELL INTERNATIONAL, INC., and HONEYWELL GLOBAL FINANCE, LLC, and PACIFICORP, dba PACIFIC POWER, Petition for Declaratory Ruling	OPENING BRIEF OF PACIFIC POWER

I. INTRODUCTION

Pursuant to OAR 860-014-0090 and the June 11, 2008 Prehearing Conference Memorandum and Ruling Order, PacifiCorp, d.b.a. Pacific Power ("Pacific Power") submits its Opening Brief in the above-captioned matter. Pacific Power respectfully requests that the Public Utility Commission of Oregon ("Commission") issue a declaratory ruling in this docket.

II. BACKGROUND

This proceeding involves interpretations of state and federal laws and regulations which arise from the business model selected by electric generators such as Honeywell International, Inc./Honeywell Global Finance, LLC ("Honeywell") to sell electricity to retail customers in Oregon. This proceeding is not about solar energy or any other form of renewable energy except to the extent certain exceptions to law and regulation may exist due to the type of generation providing the electricity being sold. By its actions PacifiCorp and its owner MidAmerican Energy Holdings Company have demonstrated

themselves to be among the leading developers and proponents of renewable energy in the United States.

The business model selected by Honeywell requires participation by electric utilities, which adds complexity to the transaction between Honeywell and an electric consumer.

- First, under its business model, Honeywell does not provide full service to the electric consumer. As a consequence, the electric consumer must either buy the remainder of its service requirements from an electricity service supplier under Oregon law or from the utility. To the extent the consumer chooses the utility, Oregon law and regulations are unclear as to the rates to be charged for the partial service and the utility's obligations to plan for such service.
- Second, under Honeywell's business model, the economics of the transaction for consumers appear to be dependent, at least in part, upon (a) Honeywell owning the generation to qualify for tax and other benefits and (b) the consumer remaining a customer of a regulated utility under its existing tariffs and qualifying for net metering under state law. These aspects of the business model raise questions of first impression regarding the applicability of Oregon's net metering statute. They also raise questions under the Federal Power Act regarding whether the portion of the electricity sold by Honeywell to the customer that is ultimately delivered to the utility (to have something to net meter) constitutes a sale for resale subject to exclusive federal jurisdiction.

The business model also raises other important questions that do not directly involve the utility. These questions primarily involve whether Oregon laws and regulations

intended to permit sales of electricity by investor-owned generators to Oregon consumers without any regulation over the transactions at the state or federal level.

Through the joint petition for declaratory ruling with Honeywell, Pacific Power hopes to resolve those questions. Honeywell and Pacific Power petitioned the Commission for declaratory ruling pursuant to ORS 756.450. A declaratory ruling is binding on the Commission and the petitioners on the facts alleged in the petition.[1]

At the prehearing conference on June 18, 2008, Judge Grant presented the parties with a revised list of assumed facts and questions. The parties provided proposed revisions to Judge Grant on June 19, 2008. Judge Grant presented the parties with the final assumed facts and issues list June 20, 2008.

III. RELEVANT AUTHORITY

Net metering is governed by ORS 757.300, which contains the following relevant provisions:

> **ORS 757.300(1)(a) "Customer-generator"** means a user of a net metering facility.
>
> **ORS 757.300(1)(c) "Net metering"** means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator and fed back to the electric utility over the applicable billing period.
>
> **ORS 757.300(1)(d) "Net metering facility"** means a facility for the production of electrical energy that:
>
> (A) Generates electricity using solar power, wind power, fuel cells, hydroelectric power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues;
>
> (B) Is located on the customer-generator's premises;

[1] *See* ORS 756.450.

(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.

The Commission promulgated rules for net metering in Docket No. AR 515, Order No. 07-319, which established OAR 860, Division 39.

OAR 860-039-0005(3)(d) "Customer-generator" means a customer-generator as defined in ORS 757.300(1)(a).

Direct Access is governed by ORS 757.600 through ORS 757.691, containing the following relevant provisions:

ORS 757.600(16) "Electricity service supplier" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory.

ORS 757.600(6) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the commission for an electric company or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility.

ORS 757.600(2) "Ancillary services" means services necessary or incidental to the transmission and delivery of electricity from generating facilities to retail electricity consumers, including but not limited to scheduling, load shaping, reactive power, voltage control and energy balancing services.

ORS 757.612(1) There is established an annual public purpose expenditure standard for electric companies to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources and new low-income weatherization. The public purpose expenditure standard

shall be funded by the public purpose charge described in subsection (2) of this section.

The Commission promulgated rules for direct access in Docket No. AR 380, Order No. 00-596, which established OAR 860, Division 38.

> **OAR 860-038-0005(5) "Ancillary services"** means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.
>
> **OAR 860-038-0340 Electric Company Ancillary Services**
>
> (1) This rule applies to those ancillary services that are not within the exclusive jurisdiction of the Federal Energy Regulatory Commission.
>
> (2) The Commission may require an electric company to provide ancillary services to facilitate direct access to consumers.
>
> (3) The Commission may decide which ancillary services a direct access consumer may purchase directly from electricity service suppliers.
>
> (4) An electric company must provide ancillary services to facilitate direct access that are comparable to the services it provides for its own retail electricity consumers.

The Company's Direct Access tariff contains the following related to Electricity Service Suppliers:

> **Pacific Power Oregon Rule 21, Section 1.C Split Loads Not Allowed** Consumers requesting Direct Access Services may not partition the electric loads at a point of delivery among Service Elections or Service Options. The entire load at a point of delivery must be nominated to only one set of Service Elections or Service Options.

The following concerns the definition of public utility:

> **ORS 757.000-5(1)(a)** ...except as provided in paragraph (b) of this subsection, "public utility" means:
>
> (A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any city or town.
>
> (B) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility.
>
> **ORS 757.005(1)(b)(C)(iii)**...public utility does not include...any corporation, company, individual or association of individuals providing heat, light or power... from solar or wind resources to any number of customers.

The following provision demonstrates the Energy Trust of Oregon's role in the administration of the Public Purpose Fund:

> **ORS 757.612(3)(b)(B)** ...funds collected by an electric company through the public purpose charges shall be allocated as follows:
>
> Nineteen percent for the above-market costs of constructing and operating new renewable energy resources with a nominal electric generating capacity, as defined in ORS 469.300, of 20 megawatts or less.

The following provision provides guidance regarding ownership of Renewable Energy Credits:

> **OAR 860-022-0075 Ownership of Non-Energy Attributes of Generation from Renewable Energy Facilities**

(1) This rule applies to non-energy attributes associated with energy generated and sold under an applicable contract, as identified in section (2) of this rule, that is executed on or after the effective date of this rule.

(2) Unless otherwise agreed to by separate contract, the owner of the renewable energy facility retains ownership of the non-energy attributes associated with electricity the facility generates and sells to an electric company pursuant to:

(a) The provisions of a net metering tariff;

(b) An Oregon contract with the electric company entered into pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978; or

(c) Another retail power production tariff.

IV. DISCUSSION

A. Net Metering

Pacific Power must offer net metering to qualifying customer-generators. Net metering measures the difference between electricity supplied by Pacific Power and the electricity generated by a "customer-generator" and "fed back" to Pacific Power in a billing period.[2] Neither the net metering statute nor the net metering administrative rules expressly address third-party involvement in a net metering arrangement between an electric utility and its customers.

1. Is a facility that Honeywell provides as described in the assumed facts a "net metering facility" under ORS 757.300(1)(d)?

ORS 757.300(1)(d) defines "net metering facility" as a facility that produces electric energy from, among other things, solar power, is located on a customer-generator's premises, can operate in parallel with an electric utility's existing

[2] ORS 757.300(1)(c).

transmission and distribution system and will be used to offset part or all of a customer-generator's electricity needs.

Honeywell installs or causes to be installed, on a customer's premises, solar photovoltaic facilities that generate electricity using solar power. These facilities are capable of operating in parallel with an electric utility's transmission and distribution system and are intended to be used primarily to offset part or all of a customer's electricity requirements. Thus, the facilities installed or caused to be installed by Honeywell appear to meet the definition of "net metering facility."

2. Is Honeywell's customer as described above a "customer-generator" under ORS 757.300(1)(a)?

ORS 757.300(1)(a) defines "customer-generator" as a "user" of a net metering facility. OAR 860-039-0005(3)(d) refers to the statutory definition of "customer-generator" without any further expansion or explanation. Customers buying electricity from Honeywell are certainly users of the net metering facility, but that does not resolve the uncertainty created by the Legislature's choice of the term "customer-generator." In interpreting legislative acts, each word is presumed to have meaning.[3] Here, the Legislature created a new hyphenated term rather than select the term "customer" which is used in common parlance. It is clear that the second half of the hyphenated term cannot be separated from the first half, because a generator, in that function, takes no retail electric service from a regulated utility -- only end-use customers take retail electric service. The question to be answered by the Commission, therefore, is whether the Legislature intended that the first half of the hyphenated term be separable from the

[3] *Portland General Electric Company v. Bureau of Labor and Industries,* 317 Or. 606, 611, 859 P.2d 1143, 1146 (1993).

second half such that a customer need not be a generator or have an ownership/leasehold interest in generation to be considered a "customer-generator."

In reaching its determination, the Commission will also need to consider the interpretation of the definition and purpose of net metering. ORS 757.300(1)(c) defines "net metering" as measuring the difference between the electricity supplied by the utility and output *generated by the customer-generator* and fed back to the utility. Under Honeywell's business model, the customer has no role in operating or maintaining the net metering facilities. The customer merely purchases the output from Honeywell through a purchase power agreement, which appears to make Honeywell the generator.

Additionally, the Commission will also need to consider its disposition of the following Supplemental Comments filed by Commission Staff ("Staff") during the Commission's net metering rulemaking, Docket No. AR 515:

> A "customer-generator" must be both a "user of a net metering facility" and actually "generate" electricity with the net metering facility. *See* ORS 757.300(1)(a) and (1)(c). As such, a *casual* tenant in an apartment building, or a home located on a winery, cannot be considered a "customer-generator" under the net metering law because, while the tenant may be a "user" of the net metering facility, in the typical case the tenant will not itself be "generating electricity" with the net metering facility.

(Emphasis in original).[4]

3. Does ORS 757.300 require a customer to own a net-metering facility or a portion of the facility to be considered a customer-generator?

ORS 757.300 does not contain language addressing whether a customer must own a net metering facility, or a portion thereof, to be considered a customer-generator. Nor does OAR 860, Division 39 address this issue. In its comments filed in Docket No. AR

[4] Staff Supplemental Comments, Docket No. AR 515, May 9, 2008, p. 2.

515,[5] Pacific Power requested that the net metering rules address situations where the owner and user of a net metering facility are two different entities.[6] The Commission declined to adopt rules to address those situations in Order No. 07-319.[7]

In its comments in Docket No. AR 515, Pacific Power stated it would be willing to request a waiver of the net metering rules when necessary to accommodate net metering facilities with separate owners and users. While Pacific Power remains willing to seek individual waivers, it would seem to be administratively more efficient for the Commission to clarify the rule or grant a blanket waiver in this proceeding, given the large number of individual waivers that might be required throughout the state.

4. Does ORS 757.300 place any limitations on third-party ownership of net-metering facilities?

ORS 757.300 does not contain language addressing whether a third-party may own a net metering facility, or a portion thereof. Nor does OAR 860, Division 39, address this issue. As discussed in response to issue 3 above, Pacific Power requested in its comments filed in Docket No. AR 515 that the net metering rules address situations where the owner and user of a net metering facility are two different entities.[8] The Commission declined to adopt rules to address those situations in Order No. 07-319.[9]

5. Who is responsible for the costs of installing the metering arrangement for a facility provided by Honeywell?

Currently, cost responsibility for meter installation varies. For net metering where the customer is also the generator, Pacific Power installs and maintains these meters, and

[5] PacifiCorp Comments, Docket No. AR 515, May 9, 2008, p. 5.
[6] *Id.*
[7] Docket No. AR 515, Order No. 07-319, p. 5.
[8] PacifiCorp Comments, Docket No. AR 515, May 9, 2008, p. 5
[9] Docket No. AR 515, Order No. 07-319, p. 5.

these metering costs are allocated to all customers through base rates.[10] For direct access, where customers are buying generation services from a generator other than the utility, Pacific Power recovers the costs for large nonresidential customer meters from the large nonresidential customer class; but for small nonresidential customer interval meters, those costs are recovered from the individual customer that causes the costs to be incurred.[11]

Thus, it is unclear under current practice whether the state's intent is to have the metering costs borne (1) by the generator, (2) by the customer receiving the generation, (3) by the rate class to which the customer belongs or (4) by all classes of customers. Commission guidance regarding the allocation of these costs is necessary.

B. Transaction between Honeywell and Customer

1. If the customer does not qualify for net metering under ORS 757.300, is the transaction between Honeywell and the customer considered a retail sale?

Honeywell's business model involves three separate transactions: (1) a sale of electricity by Honeywell to an Oregon consumer for a portion of its service needs; (2) a sale by the utility to the Oregon consumer for the remainder of its service needs, including backup for the Honeywell sale any time the Honeywell generation is operating at less than full capacity and the consumer's demand exceeds the Honeywell generation output; and (3) the utility's "waiver" of all kWh charges for bundled electric service for all kWh of energy the consumer delivers into the utility's system (i.e., net metering). If net metering was not a part of Honeywell's business model, then the only transactions

[10] Pacific Power & Light Company Oregon Rule 8, Section I.
[11] Pacific Power & Light Company Oregon Rule 8, Sheet No. J-2. See also, Pacific Power & Light Company Oregon Schedule 300.

would be the first two, which would be retail transactions. These transactions would be subject to applicable state regulation.

2. If the customer does qualify for net metering under ORS 757.300, does a portion of the transaction between the customer and Honeywell become a sale for resale (*i.e.*, the energy that the customer buys from Honeywell that is delivered to the utility)?

In order to qualify for net metering, there must be a source of generation on the customer's side of the meter; otherwise the customer is simply using less of the utility's service and attempting to sell back to the utility the amount of the utility's own generation that the customer did not use or purchase, which would be a sale for resale. In Honeywell's business model, the sale from Honeywell to the consumer under the power purchase agreement is the source of that generation. When the customer delivers a portion of the electricity that it purchased from Honeywell to the utility for net metering, that portion of the electricity was not consumed at retail. As a consequence, that portion of the electricity and the associated transaction arguably become a sale from Honeywell to the customer for resale by the customer to the utility.

3. If some portion of the transaction between Honeywell and the customer is a sale for resale, what authority does the state and the Commission have over that sale for resale?

Federal Power Act Section 201 defines "sale of electric energy at wholesale" as a sale of electric energy to any person for resale.[12] The Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over sales for resale. In a situation where the customer owns the generation, the FERC has theorized that the net metering transaction between the utility and its retail customer is not a sale for resale that the

[12] 18. U.S.C.S. §824(d).

FERC needs to regulate.[13] However, the FERC has not addressed the issue of sales for resale when an entity other than the customer owns the generation. Indeed, the MidAmerican decision suggests there may be circumstances where the FERC will choose to exercise its jurisdiction.[14]

The only significant exceptions to the exclusivity of the FERC's jurisdiction over sales for resale of which PacifiCorp is aware are the delegation of authority to state regulators to regulate sales for resale from qualifying facilities to utilities under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the transaction between the customer owning generation and the utility under the MidAmerican case. Thus, there is a question as to whether the sale from Honeywell to the customer is subject to review and approval by the FERC as a sale for resale.

Although Pacific Power recognizes the Commission would prefer not to opine upon federal law, it would seem unavoidable. There should be no question that the Commission and the state do not have the authority to require a utility to participate in a transaction where a portion of that transaction is or may be unlawful under federal law.

4. If some portion of the transaction between Honeywell and the customer is not a sale for resale, what is the source of the energy being delivered to the grid to qualify for net metering?

There are only two sources of electricity being sold to the consumer under Honeywell's business model – the electricity sold by the utility and the electricity sold by Honeywell. As noted in the discussion on issue B.2 above, the electricity sold by the utility cannot be used for net metering if it is a sale for resale. With respect to the electricity sold by Honeywell, if the retail end user does not consume all of the

[13] MidAmerican Energy Company, Docket No. EL-99-3-000, 94 FERC ¶61,340, 62,263 (2001).
[14] Id. at 62,263.

electricity, then there is excess electricity to be delivered to the utility for net metering, thereby creating a sale for resale. But, if no portion of the sale from Honeywell to the consumer is a sale for resale (i.e., it is all a retail sale), there would seem to be no electricity to deliver to the utility and no electricity to net meter.

C. Electric Service Suppliers/Utilities

1. Does Honeywell offer "electricity services available pursuant to direct access to more than one retail electricity consumer" under ORS 757.600?

Under the stipulated facts, Honeywell acknowledges selling electricity to more than one Oregon consumer. Although each generator is a facility dedicated to a single customer, that distinction does not seem to make a difference under state law. Therefore, Honeywell appears to offer electricity as contemplated by the definition of direct access. Honeywell does not appear to offer ancillary services as defined by ORS 757.600(6).

2. If Honeywell sells electricity directly to the customer, but does not offer any ancillary services for purchase, does Honeywell's service constitute "direct access" under ORS 757.600?

ORS 757.600(6) defines direct access as "the ability of a retail electricity consumer to purchase electricity and certain ancillary services...directly from an entity other than the distribution utility." Ancillary services include, but are not limited to, scheduling, load shaping, reactive power, voltage control and energy balancing services.[15] The definition of direct access focuses on the ability of a retail electricity customer to purchase electricity and certain ancillary services from a competitive source. This definition, along with the remainder of the direct access statute, does not place any requirements on the types of services an ESS must offer to customers to qualify as an ESS. In other words, the direct access statute does not require an ESS to package

[15] ORS 757.600(2) and OAR 860-038-0005(5).

electricity service(s) in order to serve retail electric customers. There is no requirement that an ESS offer both electricity and ancillary services.

In order to level the playing field for direct access, the Commission included a requirement in the direct access rules that requires electric utilities to make ancillary services available for purchase by customers/ESSs. This demonstrates that the Commission anticipated situations where an ESS might not offer or package electricity and ancillary services in a way that makes them deliverable to a utility's distribution system. Indeed, it is entirely possible that an entity could be an ESS without owning any generation assets, by contracting for each piece needed to move generation from production to the end user. This would be the case for a power marketer.

Thus, the fact that Honeywell does not offer ancillary services does not seem to be dispositive of the question of whether Honeywell is an ESS. What may be a factor in answering that question is the fact that Honeywell does not use the distribution system of the utility to deliver its generation. The Commission is requested to opine on that factor, keeping in mind the customer is using the distribution system to deliver to the utility a portion of the electricity generated by Honeywell.

3. Is Honeywell a public utility as defined in ORS 757.005(1)?

ORS 757.005(1)(a)(A&B) defines a public utility as any entity that owns, controls or manages all or part of any plant or equipment used to generate, transmit, deliver or furnish heat, light or power, indirectly or directly to the public or for the public. This statutory provision further includes entities for which a public utility may contract for service, managerial construction, engineering or financing fees and having an affiliated interest with a public utility. ORS 757.005(1)(b)(C)(iii) exempts from the definition of

public utility, entities providing heat, light or power from solar or wind resources to any number of customers. This would seem to exempt Honeywell under the facts of this proceeding but would not exempt sellers from generation sources other than solar and wind.

4. Is Honeywell required to serve 100 percent of the customer's load?

If, under the facts presented, Honeywell meets the definition of an ESS, Pacific Power's direct access tariff, as approved by the Commission, does not allow a customer to split load between Pacific Power and a chosen ESS.[16] Thus, unless the Commission approves a change in PacifiCorp's tariff, Honeywell must serve 100 percent of the customer's load.

5. Is the utility required to sell electricity to the customer for any portion of load not served by Honeywell? If so, what rates apply to the portion of the customer's load not served by Honeywell?

As noted in issue C.4 above, if Honeywell is an ESS then Pacific Power's tariffs require Honeywell to provide 100 percent of the customer's load. Thus, Pacific Power cannot serve the load not served by Honeywell unless the Commission approves a change in the tariff.

If the Commission approves a change in that tariff, Pacific Power offers rate schedules, such as partial requirements service, that are applicable to customers with on-site generation under specific circumstances. Self-generating customers requiring standby electric service for generation with a total nameplate capacity rating of 1000 kW or more may take service under Pacific Power's partial requirements Schedule 47.[17] If these similarly situated self-generating customers take electric service(s) from an ESS, they

[16] Pacific Power & Light Company Oregon Rule 21, Section I.C.
[17] Pacific Power & Light Company Oregon Schedule 47.

may take delivery service from Pacific Power under partial requirements Schedule 747.[18] Self-generating customers with nameplate capacity ratings smaller than 1000 kW take service under the applicable Pacific Power rate schedule. Partial requirements service is required only for standby electric service for generation of 1,000 kW or greater. It is not required for generation smaller than 1,000 kW.

6. Is the utility required to sell electricity to the customer for the customer's total load when the Honeywell facility is not generating electricity? If so, should the customer be placed on a partial requirements rate schedule?

Under direct access, Pacific Power must offer default supply, either on an emergency basis or as a standard offer.[19] Emergency standard offer service is intended to protect a direct access customer in the event of an ESS default, by providing a temporary means to procure full electricity services on short-notice from the electric utility.[20] After five days on emergency service, an electric company must move the customer to standard offer service, unless the customer directs otherwise.[21] If Honeywell is considered an ESS, the default rate options under direct access would be applicable when the facility does not produce electricity.

A net metering customer requiring standby electric service for generation with a total nameplate capacity rating of 1000 kW or more would be required to take service under Pacific Power's partial requirements Schedules 47 or 747 as discussed in the response to C.5 above. A net metering customer with a nameplate capacity rating smaller than 1000 kW would take service under the applicable Pacific Power rate schedule rather than under a separate, small customer partial requirements tariff. Partial requirements

[18] Pacific Power & Light Company Oregon Schedule 747.
[19] OAR 860-038-0280.
[20] Id. at (3)(a).
[21] Id. at (6).

service is required only for standby electric service for generation of 1,000 kW or greater. It is not required for generation smaller than 1,000 kW.

7. In its IRP, is the utility required to plan to serve the portion of the customer's load not served by Honeywell?

The Commission first instituted Least Cost Planning in Order No. 89-507. The Commission then modified the least cost planning requirements in Docket No. UM 1056, Order No. 07-047. Pacific Power files an Integrated Resource Plan ("IRP") every two years that thoroughly evaluates all known sources for meeting load. In considering generation needs, Pacific Power counts the number of net meters and includes the total number of meters in the IRP, although the IRP process does not address net metering. Guideline 9 of the IRP process directs electric utilities to exclude from the IRP loads committed to service by an electric service supplier.[22] Thus, Pacific Power needs clarification on the ESS issues in order to know whether to include this load in its IRP.

8. Does the utility have an obligation to determine who owns generation facilities installed on the customer's side of the meter?

There are no statutory or regulatory authorities that address this issue. Any relationship between a customer and another party regarding anything on the customer's side of the meter should only be the responsibility of the customer and the other party. It would be the customer's and the other party's responsibility to ensure compliance with any applicable statutes and regulations.

D. Credits

1. Does OAR 860, Division 39 apply when a facility is receiving three other subsidy mechanisms for the same facility (federal tax credit, state tax credit, and ETO funding)?

[22] Order No. 07-047, p. 6.

Several incentive measures are available to stimulate growth in the renewable energy industry. Federal and Oregon state tax credits are available for renewable energy facilities, such as Honeywell's facilities. Additionally, ORS 757.612 established a public purpose charge to be levied on all retail electricity customers. Among other things, the public purpose charge must be used for the above-market costs of new renewable energy resources.[23] The Energy Trust of Oregon ("ETO") administers the funds available for these costs. Customers owning and installing net metering facilities frequently seek grants from ETO.

Pacific Power is not aware of an Oregon statute or regulation that precludes Honeywell from receiving multiple federal and state benefits under the stipulated facts. Pacific Power is aware that some federal tax credits such as the renewable energy production tax credit do provide for some offsets of state benefits, depending upon the nature of the state benefit.

2. Who is entitled to any renewable energy credits associated with the output of the facility if the customer qualifies for net metering?

Oregon statute provides that the owner of a renewable energy facility retains ownership of renewable energy credits ("RECs") associated with the electricity generated by that facility that the owner sells to the electric utility under a net metering tariff, through a PURPA contract or through another retail power production tariff.[24] Who is entitled to the RECs depends on the definition of "owner" of the facility and how the electricity generated by the facility is sold to the electric utility. Where the utility is paying an amount in excess of PURPA avoided cost, there is a reasonable basis to

[23] ORS 757.612((3)(b)(B)).
[24] OAR 860-022-0075(2).

suggest that the excess represents the value of the RECs. Thus, the utility's customers should be entitled to the RECs in that circumstance.

E. Similarly-Situated Businesses

Would the Commission's answer to any of the questions above differ if:

1. The customer and third-party provider of a facility create a separate entity for each project, under which the third-party provider and customer share ownership of the facility?

This scenario would eliminate the direct access issues, because the separate entity would only be providing electricity services to one customer. However, the Commission would still need to determine whether the facility qualifies for net metering and whether the sale of the output of the facility to the customer would be a sale for resale. The analysis would be the same as for Honeywell.

2. The third-party provider uses outside sources, such as a bank or finance company, to finance the project?

If the only fact that changes is the financing source, this would seem to have no effect on the analysis that should be performed. The analysis should be the same for all issues as that for the Honeywell situation, and the answers should be the same.

3. The facility uses a net-metering eligible fuel other than solar?

If the facility uses wind as its fuel source, then the same analyses applied to Honeywell for all issues would apply in this situation. If the facility uses a fuel source other than solar or wind, the same analyses would apply, but the similarly situated business would not qualify for the exemption from the definition of a public utility.

4. The facility uses a non net-metering eligible fuel?

This scenario would eliminate the need for analysis on the net metering and credit issues. The analysis for the transaction issues and electric service supplier issues would

apply, but the similarly situated business would not qualify for the exemption from the definition of a public utility.

5. The customer leases the equipment from the third party rather than paying for the electricity it provides?

Presumably, this would be akin to leasing a car. The car dealer still owns the car, but the customer operates and maintains the car while in the customer's possession. If the customer leases the equipment from a third party rather than paying for the electricity, presumably the customer would have more control over the operation of the facility. The same analyses would apply, although the outcome(s) could be different.

6. The third-party provider is a registered electricity service supplier under ORS 757.600(16)?

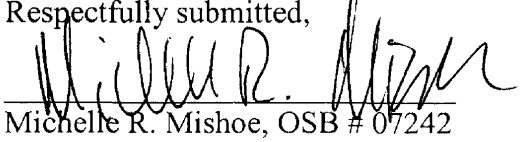
If the third-party provider is an ESS, then the direct access rules would apply. The Commission would also need to determine whether the customer would be eligible for net metering and whether the ESS's sale of electricity to the customer would be considered a sale for resale.

V. CONCLUSION

Pacific Power respectfully requests that the Commission issue a declaratory ruling providing answers to the above questions.

DATED: June 30, 2008.

Respectfully submitted,



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