KEYES & FOX, LLP

Distributed Generation Law

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June 30, 2008

VIA ELECTRONIC FILING & U.S. MAIL

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street, N.E., #215
P.O. Box 2148
Salem, Oregon 97308-2148

Re: DR 40 – In the Matter of HONEYWELL INTERNATIONAL, INC., HONEYWELL GLOBAL FINANCE, LLC and PACIFICORP, dba PACIFIC POWER Application for Declaratory Ruling.

Attention Filing Center:

Enclosed for filing in the above-captioned docket are an original and one copy of the Opening Comments of the Interstate Renewable Energy Council. Thank you for your assistance.

Sincerely,

Kevin Fox

Enclosures

Cc: Service List-DR 40

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR 40

In the Matter of	)	
	)	
HONEYWELL INTERNATIONAL, INC.,	)	
HONEYWELL GLOBAL FINANCE, LLC	)	OPENING COMMENTS OF THE
	)	INTERSTATE RENEWABLE ENERGY
and	)	COUNCIL
	)	
PACIFICORP, dba PACIFIC POWER	)	
	)	
Application for Declaratory Ruling.	)	

OPENING COMMENTS

On June 20, 2008, Chief Administrative Law Judge Michael Grant issued a Memorandum in DR 40 ("Memorandum") requesting parties to comment on a series of questions. In response to the Judge Michael Grant's request, the Interstate Renewable Energy Council ("IREC") respectfully submits the following Opening Comments.

For over two decades, IREC has worked as a non-profit organization to move renewable energy resources into the marketplace. With funding from the U.S. Department of Energy, IREC's mission includes assisting state utility regulatory commissions in identifying "best practices" in the areas of net metering and interconnection of renewable resources. IREC has entered appearances or submitted comments in net metering proceedings before utility regulatory commissions in numerous states, including Alaska, Arizona, Florida, Illinois, Kentucky, Oregon, Nevada, North Carolina, and Texas.

Honeywell's Energy Services Agreements ("ESAs") offer a creative means for its customers to finance renewable self-generation in a way that avoids significant up front expenditure. ESAs also enable entities that lack federal taxable-income, such as Oregon's

schools and government agencies, to capture the value of federal tax incentives. Without this type of financial arrangement, many customers that would otherwise be inclined to install on-site renewable generation would be unable to do so.

I. NET-METERING:

(1) Is a facility that Honeywell provides as described above a "net-metering facility" under ORS 757.300(1)(d)?

Yes. The facility Honeywell provides is a "net metering facility" under ORS 757.300(1)(d).

According to the Assumed Facts set forth in the Memorandum, Honeywell has executed separate ESAs with four non-residential customers. Each calls for the installation of a solar electric generating facility of at least 100 kW. Honeywell's customers currently receive most or all of their electricity service from either PacifiCorp or Portland General Electric ("PGE").

Initially ORS 757.300, applied only to net metering facilities that had a generating capacity of 25 kilowatts or less (see ORS 757.300 (8)). In AR 515, a Rulemaking to Adopt Rules Related to Net Metering, the Commission adopted rules for net metering and increased the capacity limit for PGE and PacifiCorp customers, raising the individual system limit from 25 kilowatts (kW) to 2 megawatts (MW) for nonresidential applications. *See* Order No. 07-319, AR 515, *Rulemaking to Adopt Rules Related to Net Metering* pp. 5-7 (July 24, 2007); OAR 860-039-0010(2) ("For non-residential customers of a public utility, these rules apply to net metering facilities that have a generating capacity of two megawatts or less.") PacifiCorp and PGE therefore must make net metering available to non-residential customers with eligible facilities up to 2 MW. This includes Honeywell's customers.

Under ORS 757.300(1)(d), a "net metering facility" is "a facility 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."

According to the Assumed Facts, Honeywell provides its customers with "a solar photovoltaic facility that generates electricity using solar power and is located on a customer's premises, such as a roof or vacant land." The facility "can operate in parallel with an electric utility's existing transmission and distribution facilities and is intended primarily to offset part or all of the customer's requirements for electricity."

As explained below, Honeywell's customer is a "customer-generator" as used in ORS 757.300(1)(d) so the facility Honeywell provides meets all of the requirements to be considered a "net metering facility" under ORS 757.300(1)(d).

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

Yes. According to ORS 757.300(1)(a), a "customer-generator" is "a user of a net metering facility." Honeywell's customers purchase all of the electricity generated by Honeywell's facilities. As such, these customers are "users" of the facilities and thus meet the definition of "customer-generators" as set forth in ORS 757.300(1)(a).

(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"?

No. ORS 757.300 does not require a customer to own a net-metering facility or a portion of a facility to be considered a "customer-generator." According to ORS 757.300(1)(a), a customer need only be a "user" of a net metering facility.

In Order No. 07-319, the Commission discussed the issue of whether ORS 757.300 requires a customer to own a net-metering facility. *See* Order No. 07-319 at p. 3. According to that Order, PacifiCorp interpreted the proposed rules to permit the owner of a net metering facility and the customer-generator or user to be different entities. *Id.* Acknowledging this to be the case, the Commission declined to "adopt additional rules, as recommended by PacifiCorp, to address the complexities that can develop when the owner of a net metering facility is not the same entity as the user or customer-generator." Order No. 07-319 at p. 3. This discussion clarifies that ORS 757.300 and the Commission's rules implementing ORS 757.300 do not intend to prevent third-party ownership of a net-metering facility.

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

No. As discussed above, there do not appear to be any limitations in ORS 757.300 or in the Commission's net metering rules that prevent third-party ownership of net-metering facilities. Moreover, when the Commission's net metering rules were adopted just a year ago, it appears that both PacifiCorp and the Commission considered ORS 757.300 to accommodate third-party ownership of net-metering facilities.

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

Honeywell and a utility. Mot likely, two meters will be required. Honeywell should be responsible for the costs of installing the meter needed to measure the output of the on-site solar PV generating facility. PacifiCorp or PGE should be responsible for installing the meter necessary to accommodate a net metering arrangement. PacifiCorp's and PGE's responsibility for providing their customers with a meter that will accommodate net metering is addressed in

the Commission's net metering rules. OAR 860-039-0020(5) ("The public utility will install the required metering equipment at the utility's expense.")

II. 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?

As discussed above, there is nothing in the Oregon Statutes governing net meting or in the Commission's rules implementing net metering that prohibits third-party ownership of a net metering system. To the contrary, it was acknowledged during the Commission's rulemaking to adopt net metering rules that third-party ownership may be accommodated. Thus, Honeywell's customers qualify for net metering under ORS 757.300.

(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)?

No. A net metering customer's delivery of energy to a utility under a net metering arrangement is not a sale; therefore, Honeywell's sale of energy to its customers is not a sale for resale because there is no resale of the energy the Honeywell's facilities supply.

In the Petition for Declaratory Ruling in this matter, PacifiCorp 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." *Honeywell/PacifiCorp Petition for Declaratory Ruling*, AR 515 at ¶ 16 (June 5, 2008).

PacifiCorp's argument assumes that net metered outflow constitutes a sale. The Federal Energy Regulatory Commission ("FERC") addressed this issue in a request for declaratory

ruling brought by PacifiCorp's sister company MidAmerican Energy Company. *See MidAmerican Energy Company*, 94 FERC ¶ 61,340 at 62,263 (2001) ("*MidAmerican*"). FERC squarely rejected this argument. In *MidAmerican*, PacifiCorp's sister company argued that under net metering "every flow of power constitutes a sale, and, in particular, that every flow of power from a homeowner or farmer to MidAmerican must be priced consistent with the requirements of either PURPA or the FPA." *Id.* FERC squarely rejected this argument stating, "We find no such requirement." *Id.* ("no sale occurs when an individual homeowner or farmer (or similar entity such as a business) installs generation and accounts for its dealings with the utility through the practice of netting.") *See also PJM Interconnection,* L.L.C., 94 FERC ¶ 61,251 (2001) ("*PJM Interconnection*") (finding in a similar matter that there is no sale – for end use or otherwise – when one party is using its own generating resources for the purpose of self-supply of station power, and accounting for such usage through the practice of netting.)

According to *MidAmerican* and *PJM Interconnection*, the flow of power from a customer-generator to a utility under a net metering arrangement is not a sale. As such, it certainly cannot be consider a sale for resale as PacifiCorp has suggested. Accordingly, if Honeywell's customers are not engaged in a sale, Honeywell's sales of energy to its customers cannot be considered a sale for resale.

In Order No. 2003-A, FERC clarified that it would only assert jurisdiction if an on-site generating facility produces more energy than it needs and makes a net sale of energy to a utility. Order No. 2003-A, *Standardization of Generator Interconnection Agreements and Procedures* at ¶ 744-747, 106 FERC ¶ 61,220 (2004). Under the Assumed Facts set forth in the Memorandum, Honeywell's solar facilities generate only between 0.5 percent and 18 percent of the annual electricity used by a customer. Thus, there will be no net energy production from a

Honeywell facility. Moreover, Oregon's net metering rules are not structured so as to allow sales of net energy production. Systems must to be sized to meet on-site needs, ORS 757.300(1)(d)(D), and utilities do not provide payments for excess generation either at the end of a billing period or the end of a year. *See* OAR 860-039-055(1) ("if in a monthly billing period a customer-generator supplies to the public utility more electricity than the public utility supplies the customer-generator, the public utility will apply the excess kilowatt-hours as a cumulative credit to the customer-generator's next monthly bill"); OAR 860-039-060(2) ("The customer-generator may not elect to receive a credit or payment for any unused credit accumulated at the conclusion of the annual billing cycle.")

As discussed above, net metered outflow does not constitute a sale and customer-generators with net-metering facilities do not receive payment for excess generation. As such, Oregon's net meting rules do allow for the type of situation that may invoke FERC's jurisdiction and the transaction between Honeywell and its customer is not a sale for resale as PacifiCorp has suggested.

(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?

As discussed above, the transaction between Honeywell and its customer is not a sale for resale.

(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?

Under the Assumed Facts set forth in the Memorandum, the source of the energy being delivered to the grid is a net metering facility that is owned by Honeywell and used by a customer-generator. For the reasons set forth above, such facility is eligible for net metering.

III. 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(16)?

No. Under the Assumed Facts set forth in the Memorandum, Honeywell is not an electricity service supplier ("ESS"). Oregon's statutes on direct access and the Commission's rules make clear that an ESS is something other than an on-site supplier of energy that offers a unique contractual relationship to a single on-site customer for the purpose of facilitating self-generation with renewable resources.

Under ORS 757.600(16), an ESS is "a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer." *See also* 860-038-0005(25) (same). Under OAR 860-038-0410(1), an ESS must be "certified as either scheduling or nonscheduling." A nonscheduling ESS must contract with a scheduling ESS or control area operator for all scheduling services. OAR 860-038-0410(3). Each scheduling ESS must "schedule the resources to serve the direct access loads for which it has scheduling responsibility with the appropriate control area operators." OAR 860-038-0410(2).

These requirements are clearly inapplicable to the service Honeywell provides to its customers. As an on-site supplier of energy to a single on-site customer, Honeywell's services require no scheduling. Although not explicitly stated in Oregon's direct access statutes or the Commission's rules, provisions such as OAR 860-038-0410 demonstrate that Oregon's direct access laws are intended to govern an entirely different type of service than that provided by Honeywell.

(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?

No. As discussed above, Honeywell is not an ESS and it does not provide direct access service to its customers. "Direct access" means "the ability of a retail electricity consumer to purchase electricity and certain ancillary services . . . directly from an entity other than the distribution utility." ORS 757.600(6); 860-038-0005(13). "Ancillary services" are the "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 757.600(2); OAR 860-038-0005(5). As discussed above, Oregon's direct access laws are not structured so as to encompass an on-site provider of electricity. An on-site supplier of electricity, such as Honeywell, has no need to provide ancillary services in connection with its on-site delivery of energy. As such, Honeywell is not a provider of direct access service to its customers.

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

No. Honeywell is not a "public utility" as defined in ORS 757.005(1). As used in Chapter 757 of the Oregon Revised Statutes, the term "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." ORS 757.005(1)(b)(C)(iii). Honeywell provides power to its customers from solar resources and therefore does not meet the definition of "public utility" in ORS 757.005(1).

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

No. IREC is not aware of any statute or Commission rule that places such an obligation on Honeywell. If the Commission were to choose to place such a requirement on Honeywell, such action would significantly undermine the ability of Oregon's schools and government agencies to meet on-site energy needs with clean, renewable power sources such as solar or wind. Such resources are intermittent. If the Commission was to require that on-site generation from wind or solar must meet 100 percent of a customer's on-site load, on-site generation from intermittent renewables would become impractical due to system sizing limitations (e.g. limits on available roof space) and the expense of electrical energy storage devices.

(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?

A utility's obligation to serve the load of a Honeywell customer should be no different than it is for any other customer-generator with a net-metering facility.

(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?

A utility's obligation to serve the load of a Honeywell customer should be no different than it is for any other customer-generator with a net-metering facility.

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

A utility's obligation to plan to serve the load of a Honeywell customer should be no different than it is for any other customer-generator with a net-metering facility.

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

IREC is not aware of any statute or rule of the Commission that creates such an obligation.

IV. 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)?

Yes. Eligibility for net metering under OAR 860, Division 39 (the Commission's Net Metering Rules) is not contingent on the type or number of subsidies for which a net metering facility may or may not be eligible.

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

Honeywell. According to OAR 860-022-075(2)(a), "[u]nless 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: The provisions of a net metering tariff."

As discussed herein, the outflow of net metered energy to the grid does not constitute a sale; however, that does not alter the applicability of OAR 860-022-075(2)(a), which clearly contemplates that the owner of a renewable energy facility retains ownership of the non-energy attributes and therefore the renewable energy credits associated with the output of the facility.

V. Similarly-Situated Businesses

(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?

IREC does not believe the Commission's answer to any of the questions posed should differ if this arrangement was to be pursued.

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

IREC does not believe the Commission's answer to any of the questions posed should differ if this arrangement was to be pursued.

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

IREC does not believe the Commission's answer to any of the questions posed should differ if a net-metering eligible fuel other than solar was to be used.

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

If a non net-metering eligible fuel is used, then the facility should not be eligible for net metering.

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

IREC does not believe the Commission's answer to any of the questions posed should differ if this arrangement was to be pursued.

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

IREC does not believe the Commission's answer to any of the questions posed should differ if this arrangement was to be pursued.

CONCLUSION

IREC appreciates the opportunity to file the above comments.

Dated this 30th day of June, 2008.

Respectfully submitted,

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Kevin Fox, OSB No. 05255
Attorney for the Interstate Renewable Energy Council

Keyes & Fox, LLP
5727 Keith Avenue
Oakland, CA 94618
Telephone: (510) 381-3052
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CERTIFICATE OF SERVICE

I certify that on the 30th day of June, 2008, I served the foregoing Opening Comments of the Interstate Renewable Energy Council upon the persons named on the attached service list by electronic mail and/or by mailing a full, true and correct copy thereof with first class postage prepaid.

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DATED: June 30, 2008.

_____

Kevin Fox, OSB No. 05255
Attorney for the Interstate Renewable Energy Council

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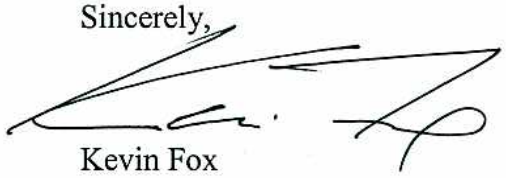

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electrical energy that: (A) Generates electricity using solar power . . . (B) Is located on the customer-generator's premises; (C) Can operate in parallel with an electric utility's existing transmission and distribution facilities; and (D) Is intended primarily to offset part or all of the customer-generator's requirements for electricity."

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(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"?

No. ORS 757.300 does not require a customer to own a net-metering facility or a portion of a facility to be considered a "customer-generator." According to ORS 757.300(1)(a), a customer need only be a "user" of a net metering facility.

In Order No. 07-319, the Commission discussed the issue of whether ORS 757.300 requires a customer to own a net-metering facility. *See* Order No. 07-319 at p. 3. According to that Order, PacifiCorp interpreted the proposed rules to permit the owner of a net metering facility and the customer-generator or user to be different entities. *Id.* Acknowledging this to be the case, the Commission declined to "adopt additional rules, as recommended by PacifiCorp, to address the complexities that can develop when the owner of a net metering facility is not the same entity as the user or customer-generator." Order No. 07-319 at p. 3. This discussion clarifies that ORS 757.300 and the Commission's rules implementing ORS 757.300 do not intend to prevent third-party ownership of a net-metering facility.

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

No. As discussed above, there do not appear to be any limitations in ORS 757.300 or in the Commission's net metering rules that prevent third-party ownership of net-metering facilities. Moreover, when the Commission's net metering rules were adopted just a year ago, it appears that both PacifiCorp and the Commission considered ORS 757.300 to accommodate third-party ownership of net-metering facilities.

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

Honeywell and a utility. Mot likely, two meters will be required. Honeywell should be responsible for the costs of installing the meter needed to measure the output of the on-site solar PV generating facility. PacifiCorp or PGE should be responsible for installing the meter necessary to accommodate a net metering arrangement. PacifiCorp's and PGE's responsibility for providing their customers with a meter that will accommodate net metering is addressed in

the Commission's net metering rules. OAR 860-039-0020(5) ("The public utility will install the required metering equipment at the utility's expense.")

II. 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?

As discussed above, there is nothing in the Oregon Statutes governing net meting or in the Commission's rules implementing net metering that prohibits third-party ownership of a net metering system. To the contrary, it was acknowledged during the Commission's rulemaking to adopt net metering rules that third-party ownership may be accommodated. Thus, Honeywell's customers qualify for net metering under ORS 757.300.

(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)?

No. A net metering customer's delivery of energy to a utility under a net metering arrangement is not a sale; therefore, Honeywell's sale of energy to its customers is not a sale for resale because there is no resale of the energy the Honeywell's facilities supply.

In the Petition for Declaratory Ruling in this matter, PacifiCorp 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." *Honeywell/PacifiCorp Petition for Declaratory Ruling*, AR 515 at ¶ 16 (June 5, 2008).

PacifiCorp's argument assumes that net metered outflow constitutes a sale. The Federal Energy Regulatory Commission ("FERC") addressed this issue in a request for declaratory

ruling brought by PacifiCorp's sister company MidAmerican Energy Company. *See MidAmerican Energy Company*, 94 FERC ¶ 61,340 at 62,263 (2001) ("*MidAmerican*"). FERC squarely rejected this argument. In *MidAmerican*, PacifiCorp's sister company argued that under net metering "every flow of power constitutes a sale, and, in particular, that every flow of power from a homeowner or farmer to MidAmerican must be priced consistent with the requirements of either PURPA or the FPA." *Id.* FERC squarely rejected this argument stating, "We find no such requirement." *Id.* ("no sale occurs when an individual homeowner or farmer (or similar entity such as a business) installs generation and accounts for its dealings with the utility through the practice of netting.") *See also PJM Interconnection*, L.L.C., 94 FERC ¶ 61,251 (2001) ("*PJM Interconnection*") (finding in a similar matter that there is no sale – for end use or otherwise – when one party is using its own generating resources for the purpose of self-supply of station power, and accounting for such usage through the practice of netting.)

According to *MidAmerican* and *PJM Interconnection*, the flow of power from a customer-generator to a utility under a net metering arrangement is not a sale. As such, it certainly cannot be consider a sale for resale as PacifiCorp has suggested. Accordingly, if Honeywell's customers are not engaged in a sale, Honeywell's sales of energy to its customers cannot be considered a sale for resale.

In Order No. 2003-A, FERC clarified that it would only assert jurisdiction if an on-site generating facility produces more energy than it needs and makes a net sale of energy to a utility. Order No. 2003-A, *Standardization of Generator Interconnection Agreements and Procedures* at ¶ 744-747, 106 FERC ¶ 61,220 (2004). Under the Assumed Facts set forth in the Memorandum, Honeywell's solar facilities generate only between 0.5 percent and 18 percent of the annual electricity used by a customer. Thus, there will be no net energy production from a

Honeywell facility. Moreover, Oregon's net metering rules are not structured so as to allow sales of net energy production. Systems must to be sized to meet on-site needs, ORS 757.300(1)(d)(D), and utilities do not provide payments for excess generation either at the end of a billing period or the end of a year. *See* OAR 860-039-055(1) ("if in a monthly billing period a customer-generator supplies to the public utility more electricity than the public utility supplies the customer-generator, the public utility will apply the excess kilowatt-hours as a cumulative credit to the customer-generator's next monthly bill"); OAR 860-039-060(2) ("The customer-generator may not elect to receive a credit or payment for any unused credit accumulated at the conclusion of the annual billing cycle.")

As discussed above, net metered outflow does not constitute a sale and customer-generators with net-metering facilities do not receive payment for excess generation. As such, Oregon's net meting rules do allow for the type of situation that may invoke FERC's jurisdiction and the transaction between Honeywell and its customer is not a sale for resale as PacifiCorp has suggested.

(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?

As discussed above, the transaction between Honeywell and its customer is not a sale for resale.

(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?

Under the Assumed Facts set forth in the Memorandum, the source of the energy being delivered to the grid is a net metering facility that is owned by Honeywell and used by a customer-generator. For the reasons set forth above, such facility is eligible for net metering.

III. 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(16)?

No. Under the Assumed Facts set forth in the Memorandum, Honeywell is not an electricity service supplier ("ESS"). Oregon's statutes on direct access and the Commission's rules make clear that an ESS is something other than an on-site supplier of energy that offers a unique contractual relationship to a single on-site customer for the purpose of facilitating self-generation with renewable resources.

Under ORS 757.600(16), an ESS is "a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer." *See also* 860-038-0005(25) (same). Under OAR 860-038-0410(1), an ESS must be "certified as either scheduling or nonscheduling." A nonscheduling ESS must contract with a scheduling ESS or control area operator for all scheduling services. OAR 860-038-0410(3). Each scheduling ESS must "schedule the resources to serve the direct access loads for which it has scheduling responsibility with the appropriate control area operators." OAR 860-038-0410(2).

These requirements are clearly inapplicable to the service Honeywell provides to its customers. As an on-site supplier of energy to a single on-site customer, Honeywell's services require no scheduling. Although not explicitly stated in Oregon's direct access statutes or the Commission's rules, provisions such as OAR 860-038-0410 demonstrate that Oregon's direct access laws are intended to govern an entirely different type of service than that provided by Honeywell.

(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?

No. As discussed above, Honeywell is not an ESS and it does not provide direct access service to its customers. "Direct access" means "the ability of a retail electricity consumer to purchase electricity and certain ancillary services . . . directly from an entity other than the distribution utility." ORS 757.600(6); 860-038-0005(13). "Ancillary services" are the "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 757.600(2); OAR 860-038-0005(5). As discussed above, Oregon's direct access laws are not structured so as to encompass an on-site provider of electricity. An on-site supplier of electricity, such as Honeywell, has no need to provide ancillary services in connection with its on-site delivery of energy. As such, Honeywell is not a provider of direct access service to its customers.

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

No. Honeywell is not a "public utility" as defined in ORS 757.005(1). As used in Chapter 757 of the Oregon Revised Statutes, the term "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." ORS 757.005(1)(b)(C)(iii). Honeywell provides power to its customers from solar resources and therefore does not meet the definition of "public utility" in ORS 757.005(1).

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

No. IREC is not aware of any statute or Commission rule that places such an obligation on Honeywell. If the Commission were to choose to place such a requirement on Honeywell, such action would significantly undermine the ability of Oregon's schools and government agencies to meet on-site energy needs with clean, renewable power sources such as solar or wind. Such resources are intermittent. If the Commission was to require that on-site generation from wind or solar must meet 100 percent of a customer's on-site load, on-site generation from intermittent renewables would become impractical due to system sizing limitations (e.g. limits on available roof space) and the expense of electrical energy storage devices.

(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?

A utility's obligation to serve the load of a Honeywell customer should be no different than it is for any other customer-generator with a net-metering facility.

(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?

A utility's obligation to serve the load of a Honeywell customer should be no different than it is for any other customer-generator with a net-metering facility.

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

A utility's obligation to plan to serve the load of a Honeywell customer should be no different than it is for any other customer-generator with a net-metering facility.

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

IREC is not aware of any statute or rule of the Commission that creates such an obligation.

IV. 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)?

Yes. Eligibility for net metering under OAR 860, Division 39 (the Commission's Net Metering Rules) is not contingent on the type or number of subsidies for which a net metering facility may or may not be eligible.

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

Honeywell. According to OAR 860-022-075(2)(a), "[u]nless 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: The provisions of a net metering tariff."

As discussed herein, the outflow of net metered energy to the grid does not constitute a sale; however, that does not alter the applicability of OAR 860-022-075(2)(a), which clearly contemplates that the owner of a renewable energy facility retains ownership of the non-energy attributes and therefore the renewable energy credits associated with the output of the facility.

V. Similarly-Situated Businesses

(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?

IREC does not believe the Commission's answer to any of the questions posed should differ if this arrangement was to be pursued.

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

IREC does not believe the Commission's answer to any of the questions posed should differ if this arrangement was to be pursued.

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

IREC does not believe the Commission's answer to any of the questions posed should differ if a net-metering eligible fuel other than solar was to be used.

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

If a non net-metering eligible fuel is used, then the facility should not be eligible for net metering.

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

IREC does not believe the Commission's answer to any of the questions posed should differ if this arrangement was to be pursued.

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

IREC does not believe the Commission's answer to any of the questions posed should differ if this arrangement was to be pursued.

CONCLUSION

IREC appreciates the opportunity to file the above comments.

Dated this 30th day of June, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 30th day of June, 2008, I served the foregoing Opening Comments of the Interstate Renewable Energy Council upon the persons named on the attached service list by electronic mail and/or by mailing a full, true and correct copy thereof with first class postage prepaid.

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