



825 NE Multnomah, Suite 2000
Portland, Oregon 97232

July 11, 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** – Reply Brief of Pacific Power

PacifiCorp, d.b.a. Pacific Power, hereby submits an original plus five (5) copies of its Reply 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: Service List for Docket DR-40

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 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.

Service List Docket No. DR-40

Lori J. Cooper
City of Medford
411 W. 8th St.
Medford, OR 97501
Lori.cooper@cityofmedford.org

Martin Shain (W)
Bacgen Solar Group
121 SW Salmon St., 11th Floor
Portland, OR 97204
Martin@bacgensolar.com

Thomas M. Grim (W)
Cable Huston Benedict et al
1001 SW Fifth Ave, Suite 2000
Portland, OR 97204-1136
tgrim@cablehuston.com

Paul Davies (W)
Tom Barrows (W)
Central Lincoln PUD
PO Box 1126
Newport, OR 97365-0090
pdavies@cencoast.com
tbarrows@aol.com

Lowrey R. Brown (W)
Citizens' Utility Board of Oregon
610 SW Broadway – Suite 308
Portland, OR 97205
lowrey@oregoncub.org

Jason Eisdorfer (W)
Citizens' Utility Board of Oregon
610 SW Broadway – Suite 308
Portland, OR 97205
Jason@oregoncub.org

Robert Jenks (W)
Citizens' Utility Board of Oregon
610 SW Broadway – Suite 308
Portland, OR 97205
bob@oregoncub.org

Paul Nolte
City Hall
3860 Fisher Road
Roseburg, OR 97401
law@ashlandhome.net

Janet L. Prewitt (W)
Department of Justice
1162 Court St NE
Salem, OR 97301-4096
Janet.prewitt@doj.state.or.us

Michael T. Weirich (W)
Assistant Attorney General
Department of Justice
1162 Court St NE
Salem, OR 97301-4096
Michael.weirich@doj.state.or.us

James Murphy (W)
Dept. of Justice, Natl Resources Section
1162 Court St NE
Salem, OR 97301-4096
James.b.murphy@doj.state.or.us

Debbie Goldberg Menashe (W)
Energy Trust of Oregon
851 SW Sixth Avenue, Suite 1200
Portland, OR 97204
Debbie.menashe@energytrust.org

John M. Volkman (W)
Energy Trust of Oregon
851 SW Sixth Avenue, Suite 1200
Portland, OR 97204
John.volkman@energytrust.org

Kim T. Buckley (W)
Esler Stephens & Buckley
888 SW Fifth Ave. Suite 700
Portland, OR 97204-2021
buckley@eslerstephens.com

Fritz Feiten (W)
Honeywell Building Solutions
9685 NE Beachcrest Drive
Bainbridge Island, WA 98110
Fritz.feiten@honeywell.com

Scott Winkels (W)
League of Oregon Cities
P.O. Box 928
Salem, OR 97308
swinkels@orcities.org

Kip Pheil (W)
Oregon Department of Energy
625 Marion Street NE, Suite 1
Salem, OR 97301-3737
Kip.pheil@state.or.us

Joseph Reinhart (W)
OSEIA
833 SE Main Street, MB #206
Portland, OR 97214
joe@oseia.org

Oregon Dockets (W)
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232
oregondockets@pacificorp.com

John W. Stephens (W)
Esler Stephens & Buckley
888 SW Fifth Ave. Suite 700
Portland, OR 97204-2021
stephens@eslerstephens.com

Dennis Wilde (W)
Gerding Edlen Sustainable Solutions
1120 NW Couch Street, Suite 600
Portland, OR 97209
Dennis.wilde@gerdingedlen.com

Kevin T. Fox (W)
Keyes & Fox, LLP
5727 Keith Avenue
Oakland, CA 94618
kfox@keyesandfox.com

Ralph Cavanagh (W)
Natural Resources Defense Council
111 Sutter St. Fl 20
San Francisco, CA 94104
rcavanagh@nrdc.org

James Whitty (W)
Office of Innovative Partnerships
Oregon Department of Transportation
Transportation Bldg, RM 115
355 Capitol Street NE
Salem, OR 97310
Jim.whitty@odot.state.or.us

Michelle R. Mishoe (W)
Legal Counsel
Pacific Power & Light
825 NE Multnomah, Suite 1800
Portland, OR 97232
michelle.mishoe@pacificorp.com

Randall Dahlgren
Portland General Electric
121 SW Salmon St. 1WTC 0702
Portland, OR 97204
Pge.opuc.filings@pgn.com

J. Richard George
Portland General Electric
121 SW Salmon St. 1WTC 1301
Portland, OR 97204
Richard.george@gn.com

Theodore Falk (W)
Sr Asst Attorney General
Department of Justice
1162 Court St NE
Salem, OR 97301-4096
Theodore.c.falk@doj.state.or.us

Doug Parsons (W)
Sunenergy Power Corporation
1133 NW Wall St. Suite 305
Bend, OR 97701-1968
dparsons@sunenergypower.com

David F. White (W)
Tonkon Torp LLP
1600 Pioneer Tower
888 SW Fifth Ave.
Portland OR 97204
davidw@tonkon.com

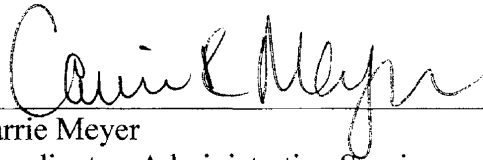
Jeremiah Baumann (W)
Environment Oregon
1536 SE 11th Ave
Portland, OR 97214
jeremiah@environmentoregon.org

Suzanne Liou (W)
Renewable Northwest Project
917 SW Oak Ste 303
Portland OR 97205
Suzanne@rnp.org

Bill Nessly (W)
Sr Asst Attorney General
Department of Justice
1162 Court St NE
Salem, OR 97301-4096
William.nessly@doj.state.or.us

Danelle Romain (W)
The Romain Group, LLC
707 SW Washington St, Suite 927
Portland, OR 97205
dromain@teleport.com

Chris Chandler Ditorrice (W)
Central Lincoln PUD
PO Box 1126
Newport, OR 97365-0090
cditorrice@cencoast.com



Carrie Meyer
Coordinator, Administrative Services

**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

REPLY BRIEF OF
PACIFIC POWER

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” or “Company”) submits its Reply Brief in the above-captioned matter.

I. DISCUSSION

As noted in Pacific Power’s Opening Brief, this proceeding involves a request for the Commission to provide clarity regarding the laws and regulations which apply to the transactions that 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. Clarification is essential to ensure Pacific Power’s compliance with the governing authorities and to ensure protection and certainty for all participants, including customers.

The opening briefs of the parties demonstrate that different interpretations may be derived from the statutes and regulations at issue here. It is for this very reason that

Pacific Power joined with Honeywell to seek clarification in the most expeditious forum available, the Public Utility Commission of Oregon (“Commission”). Resorting to the courts or the Legislature would have taken much longer.

Although some have questioned the timing of the filing, Pacific Power submitted the filing as soon as facts were known and the filing could be prepared after consultation with some of the key parties. Pacific Power is not seeking to impede the development of renewable energy. The Company, in fact, sees solar as a beneficial part of Oregon’s energy future, both immediate and long-term. The Company has regularly supported community-based solar projects with grants and technical assistance.

Pacific Power is also not challenging Oregon’s net metering statute. In fact, Pacific Power has staff dedicated solely to ensuring that net metering projects happen in a timely way. During the pendency of this proceeding, Pacific Power has continued to make net metering arrangements with Oregon customers who clearly comply with the net metering statutes.

Finally, Pacific Power is not opposing Honeywell’s business model. Pacific Power’s interest in this matter, simply put, is to ensure that, if the Company is to be a participant in any business model that impacts its customers, the Company is not violating laws or rules in so doing.

The Company believes the Commission’s policy has always been to encourage utilities to seek clarification of laws and regulations where they may be unclear. In fact, on May 13, 2008, Pacific Power and Honeywell met with Commission Staff and the Department of Justice and were encouraged to jointly file the Petition for Declaratory

Ruling. Pacific Power requests that the Commission opine on all of the questions identified by the ALJ. This Reply Brief highlights a few of those questions.

1. Customer-generator

Most of the initial briefs focus exclusively on the customer being a “user” of the Honeywell facility. The Oregon Department of Transportation (“ODOT”) reaches a conclusion on the application of the term “customer-generator” that is the opposite of the application offered by Commission Staff in Docket No. AR 515. ODOT’s analysis effectively eliminates the “generator” portion of the term “customer-generator” created by the Legislature, effectively interpreting the term to have the same meaning as the word “customer.” Since the Legislature could have used the latter term but expressly chose not to, Pacific Power requests the Commission opine on its statutory construction of the net metering statute.¹

2. Meter cost allocation

The opening briefs generally agree that the cost responsibility for the meters used to measure the output of Honeywell’s facility would be between Honeywell and the customer. However, questions remain as to whether the costs of any net meter or direct access meter would be borne by the customer-generator or all customers under Honeywell’s business model. The Commission is asked to provide clarification.

3. Nature of the Transactions

If the Commission concludes that the customer qualifies for net metering under Honeywell’s business model, then it is important to define the nature of the transactions

¹ When possible, the court must give effect “to every part and every word of a...statute unless there is some clear reason to the contrary, no portion of the fundamental law shall be treated as superfluous.” *State ex rel. Gladden v. Lonergan*, 201 Or. 163, 177 (1954).

that are occurring. The briefs appear to be in agreement that the source of any energy to be net metered is the energy generated and provided by Honeywell through the self-styled purchase power agreement (“PPA”). The Commission is requested to clarify the extent of its jurisdiction over (1) the PPA and (2) the transaction through which the right to the energy passes from Honeywell to the customer-generator to Pacific Power to Pacific Power customers.²

4. Electricity Service Supplier

The opening briefs presented varying interpretations of the direct access statute and the electricity service supplier (“ESS”) requirements, demonstrating the need for clarity as to how the direct access statute and regulations might apply to Honeywell.³ The clarifications and waivers suggested by the opening briefs can only be provided by the Commission or the Legislature, and are not within the authority of an Oregon utility to unilaterally decide. Pacific Power requests that when the Commission clarifies the ESS provisions, it avoid inadvertently creating a significant loophole in the SB 1149 legislative scheme.

5. Requirement to serve 100 percent of load

If the Commission concludes that Honeywell is an ESS, regardless of any waivers of the law and regulations ordered by the Commission, the Commission will still need to address Pacific Power’s previously-approved tariffs.

² With respect to FERC’s MidAmerican decision, the FERC stated that in billing periods where there is a net sale from a customer to a utility, and the customer is not a Qualifying Facility, then the customer would need to comply with the Federal Power Act. MidAmerican Energy Company, 94 FERC ¶61,340, 62263 (2001). The FERC repeated this conclusion in its Small Generator Interconnection Rulemaking. Standardization of Generator Interconnection Agreements and Procedures, 106 FERC ¶61,220 at 744-747 (2004). However, the FERC has never considered the issue of third-party ownership of an onsite generation facility, specifically where the third party sells the output to a customer to be used for net metering with the utility.

³ ORS 757.600 through 757.691 and OAR 860, Division 38.

Pacific Power's direct access tariff, Rule 21, requires that an ESS serve 100 percent of a customer's load (Section I.C.). This tariff is intended to ensure that customer loads not be split and costs shifted to other customers. Such a cost shift would occur if loads were partitioned, allowing the ESS to serve the lower cost base portion of the customer's load, leaving the utility to serve the volatile and higher cost portion of the customer's load. Any decision on this issue should take into consideration protections from cost shifts for other customers and limit the decision to changes necessary for the facts presented in this proceeding.

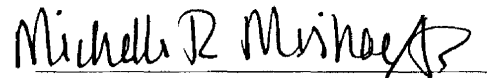
II. Conclusion

Given the different positions and points raised by the parties, it is possible to reach different conclusions on several key issues in this proceeding. This is why Pacific Power participated in the joint pleading and why it is imperative that the Commission issue a declaratory ruling to provide clarity as expeditiously as possible.

As the Commission drafts the language of its opinions on the issues, Pacific Power requests the Commission be cognizant that the stipulated facts involve a very knowledgeable, reputable and well-financed developer providing electric service to knowledgeable governmental entities with procurement expertise and contracting resources. However, the Commission's opinions might, if not carefully worded, inadvertently apply to less reputable and lesser capitalized entities seeking to sell electricity to non-residential and residential customers that have no experience and limited legal and contracting resources.

DATED: July 11, 2008.

Respectfully submitted,

A handwritten signature in black ink that reads "Michelle R. Mishoe". The signature is written in a cursive style with a horizontal line underneath it.

Michelle R. Mishoe, OSB #07242

Legal Counsel

Pacific Power

Counsel for Pacific Power