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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: In the Matter of the HONEYWELL INTERNATIONAL, INC., and
HONEYWELL GLOBAL FINANCE, LLC, and PACIFICORP
dba PACIFIC POWER
Docket No. DR 40

Dear Filing Center:

Enclosed please find the original and one (1) copy of OREGON PEOPLE'S UTILITY DISTRICT ASSOCIATION'S OPENING BRIEF in the above-referenced docket.

Thank you for your assistance with this filing. Should you have any questions, please feel free to contact me.

Very truly yours,



Edward A. Finklea

EAF:tr
Enclosure(s)
cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 40

In the Matter of the)	
)	
HONEYWELL INTERNATIONAL, INC., and HONEYWELL GLOBAL FINANCE, LLC,)	OPENING BRIEF OF OREGON PEOPLE’S UTILITY DISTRICT ASSOCIATION
)	
and)	
)	
PACIFICORP, dba PACIFIC POWER.)	

INTRODUCTION

Pursuant the Procedural Schedule adopted in this proceeding by orders dated June 19 and 20, 2008, the Oregon People’s Utility District Association (“OPUDA”) hereby submits its Opening Brief in the above-captioned docket. In this Opening Brief, OPUDA will address the following threshold legal questions posed by the ALJ:

- (1) Is a facility that Honeywell provides as described in the assumed facts 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)?
- (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”?
- (4) Does ORS 757.300 place any limitations on third-party ownership of net-metering facilities?

OPUDA is an organization consisting of six Oregon People's Utility Districts¹ organized and operating pursuant to Article XI, Section 12 of the Oregon Constitution and ORS Chapter 261. As people's utility districts, the members of OPUDA are subject to the net-metering obligations of ORS 757.300. In its Reply Brief, OPUDA may address other issues raised by the ALJ in his June 20th Order, but will confine its Opening Brief to the above legal questions.

ARGUMENT

Under ORS 757.300(1)(d) a facility is a net-metering facility” so long as it meets the criteria set forth in subsections A through D of 300(1)(d). Those criteria specify: 1) the technology used to generate electricity “using solar power, wind power fuel cells etc.”; 2) that the equipment is “located” on the customer-generator’s” “p[remised”]; 3) that the generating facility can “operate in parallel to the electric utility’s existing transmission and distribution facilities”; and 4) finally that that the primary purpose of the facility is to “offset part or all of the customer-generator’s very specific requirements for electricity.” The legislature carefully adopted four criteria for a facility to qualify as a net metering facility. None of the four criteria state or imply that the customer must own the equipment.

The term “customer-generator” should not be read so narrowly as to imply that the customer must own the equipment in order for the facility to qualify as net metering facilities. The legislature was well aware of the fact that many customers of utilities do not even own the property at which they take service. Many residential, commercial and

¹ The members of OPUDA are Central Lincoln PUD, Clatskanie PUD, Columbia River PUD, Emerald PUD,

industrial customers are tenants, not owners, of the property at which they receive electric service. Recognized that reality, the legislature was careful in setting the criteria to qualify as a “net metering facility. The equipment must be “located” on the customers “premises”. Those terms avoid any limitations regarding ownership of the property of the equipment. No where in the statute are there any specifications regarding ownership of either the property that the customer is taking service at, or the equipment being used to provide the electricity via net-metering facilities. To read into the statute that the customer must own the equipment would disqualify many potential net-metering situations based solely on an arbitrary ownership requirement, a distinction that is nowhere articulated in the statute and would make no sense from a policy prospective. The legislature’s desire in enacting 757.300 was to encourage net-metering. If the legislature had intended to disqualify all tenants of the property, or to disqualify from the advantages of net-metering those that own the property but choose to lease the net metering equipment, the statute would have explicitly required the customer to have an ownership interest in the “premises” “the equipment”, or both. The legislature, in its wisdom, left out any ownership requirement. Many “customer-generators” may use net-metering facilities but not own those facilities for a variety of reasons, starting with the fact that many “customers” are only tenants at the property where electric service is taken.

Thus OPUDA urges the OPUC arrive at the following answers to the first set of questions posed by the ALJ. The facility that Honeywell provides as described in the


Northern Wasco PUD, and Tillamook PUD.

assumed facts is a “net-metering facility” under ORS 757.300(1)(d). The entity taking electric service at that address is the “customer-generator” under ORS 757.300(1)(a), regardless of who owns the equipment or the property. Under ORS 757.300, the “customer-generator” need not own the net-metering facility. The facility may be owned by the customer, the property owner, if the property owner is different than the customer, or by a third party. The plain language of ORS 757.300 places no limitations on third-party ownership of net-metering facilities.

OPUDA believes that the clear answers to the first four questions posed by the ALJ resolve all the issues raised in this declaratory docket. OPUDA, however, reserves the right to address the additional questions posed in the June 20th order in its Reply Brief.

Dated this 30th day of June, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I CERTIFY that I have on this day served the foregoing document upon all parties of record in this proceeding via electronic mail and/or by mailing a copy properly addressed with first class postage prepaid.

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