

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR 40

In the Matter of)	
)	REPLY BRIEF OF
HONEYWELL INTERNATIONAL, INC.)	ENERGY TRUST OF
and HONEYWELL GLOBAL FINANCE,)	OREGON, INC.
LLC,)	
)	
and)	
)	
PACIFICORP, dba PACIFIC POWER)	

In reply, Energy Trust wishes to underscore the relevance of Oregon’s community energy goal in this proceeding, established in the 2007 Renewable Energy Act (Senate Bill 838, section 24). All State agencies have been directed to establish policies and procedures aimed at promoting renewable energy projects with a generating capacity of 20 megawatt or less, such that by 2025 at least eight percent of Oregon’s retail electrical load comes from these small-scale projects. Where parties in this proceeding offer alternative interpretations of net-metering and electric-service-supplier laws and rules, we urge the Commission to avoid interpretations that would undermine our ability to help achieve the State goal.

The opening briefs have clarified that the most plausible interpretations of the net-metering and electric-service-supplier laws and rules are fully consistent with the State’s community energy goal, that the Honeywell projects are net-metering projects, and Honeywell is not an electric service supplier.

The central net-metering issue is whether Honeywell’s customer is a “customer-generator,” which the legislature defined to mean “a user of a net metering facility.” ORS 757.300(1)(a). There is apparent agreement in the opening briefs that Honeywell’s customer uses the Honeywell facility. The only dispute seems to be whether the legislature meant “customer-generator” to mean something different from “user.” Energy Trust finds the definition clear, and the parties are in no position to question the legislature’s choice of words. In this case, the simplest and most straightforward application of the statutory definition is fully consistent with the State’s community energy goal.

The pivotal electric-service-supplier issue is whether Honeywell offers electricity services “pursuant to direct access.” This issue too is answered by a statutory definition. “Direct access” is “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) (emphasis added). If a customer cannot purchase electric and ancillary services from a service provider, but would have to seek one of these services from a distribution utility, the service provider is not an electric service supplier. Because Honeywell’s customer does not have the ability to purchase electricity and ancillary services from Honeywell, Honeywell is not an electric service supplier.

The OPUC Staff opening brief proposes alternative grounds for holding that Honeywell falls within this definition: either Honeywell really does offer ancillary services, or the ancillary services requirement should be ignored because Honeywell’s customer doesn’t need ancillary services (OPUC Staff brief at 8-9). The first argument is

inadmissible under the Assumed Facts. Honeywell doesn't provide ancillary services (Assumed Facts, paragraph 3).

The second argument would substitute a new, shifting definition of direct access in lieu of that adopted by the legislature. Instead of basing Honeywell's regulatory status on Honeywell services, the Staff brief would base Honeywell's status on individual customer needs. Honeywell would be an electricity service supplier to customers who don't need ancillary services, and not to customers who do need ancillary services. The identical service would be regulated in one case and not the other. It is difficult to conceive of a policy rationale for this shifting regulatory treatment, but in all events it is not the approach the legislature adopted. The statute employs a straightforward test: Honeywell's regulatory status depends on whether or not its customers can buy both energy and ancillary services from Honeywell. This straightforward test, which leaves Honeywell outside the definition of electricity services supplier, is fully consistent with Oregon's community energy goal.


Some parties have suggested that waiver processes could soften the effects of alternative readings of these terms, and we wish to note our concerns with this suggestion. First, as explained above, there is nothing to waive; the terms defined by the legislature are sufficiently clear to allow these projects to proceed without waivers. Second, organizing a categorical waiver process or processes (PacifiCorp suggests possible waivers for net-metering, PacifiCorp brief at 10, and the OPUC staff for energy service supplier rules, OPUC Staff brief at 6) would take time, while the clock is ticking toward the end-of-year expiration of the federal tax credits that help make these projects viable. Third, it is difficult to foresee all the issues that could arise in waiver processes, or

to have confidence that waivers would resolve all the issues. For example, if Honeywell were an “energy service supplier,” would the Commission also have to revise PacifiCorp’s tariff to allow it to serve part of a Honeywell customer’s load? (See PacifiCorp brief at p. 16). Finally, requiring projects to seek waivers and gamble on successful outcomes would impose new burdens and increase the financial risk of the very projects that need to be expedited to accomplish Oregon’s community energy goals.

For these reasons, Energy Trust urges the Commission to confirm that that the Honeywell projects are net-metering projects and Honeywell is not an electric service supplier.

DATED this 11th day of July, 2008

ENERGY TRUST OF OREGON, INC.


By: 

John M. Volkman, General Counsel
Debbie Goldberg Menashe, Senior Counsel

CERTIFICATE OF SERVICE

I, Debbie Goldberg Menashe, hereby certify that on this day I served a copy of the Opening Brief and Waiver of Paper Service of Energy Trust of Oregon upon all persons indicated on the attached service list via electronic mail, and also by first-class mail to those who have not waived paper service.

Dated this 30th day of June, 2008, at Portland, Oregon.

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July 11, 2008

The Honorable Michael Grant
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Subject: In the Matter of Honeywell International, Inc., and Honeywell Global Finance, LLC, and PacifiCorp dba Pacific Power, DR 40

Dear Judge Grant,

Enclosed please find an original and five copies of the Reply Brief of Energy Trust of Oregon, Inc.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Debbie Menashe", with a long horizontal flourish extending to the right.

Debbie Goldberg Menashe
Senior Counsel

cc: Service List
Enclosures