



Portland General Electric Company
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June 30, 2008

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
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**Re: DR 40 – HONEYWELL INTERNATIONAL, INC., HONEYWELL GLOBAL FINANCE,
LLC & PACIFICORP PETITION FOR DECLARATORY RULING**

Attention Filing Center:

Enclosed for filing in the captioned docket is an original and five copies of:

- **PORTLAND GENERAL ELECTRIC COMPANY OPENING BRIEF**

This document is being filed by electronic mail with the Filing Center. An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to me in the envelope provided.

This document is being served upon the DR 40 service list.

Thank you in advance for your assistance.

Sincerely,

J. Richard George
Assistant General Counsel
Portland General Electric Company

JRG:SMC
Enclosures
cc: Service List-DR 40

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused PGE's Opening Brief to be served by electronic mail to those parties whose email addresses appear on the attached service list, and by First Class US Mail, postage prepaid and properly addressed, to those parties on the attached service list who have not waived paper service from OPUC Docket No. DR 40.

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



J. RICHARD GEORGE

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

DR 40

In the Matter of)	
HONEYWELL INTERNATIONAL, INC. and)	OPENING BRIEF OF
HONEYWELL GLOBAL FINANCE, LLC.,)	PORTLAND GENERAL
and)	ELECTRIC COMPANY
PACIFICORP, dba PACIFIC POWER)	
Application for Declaratory Ruling.)	

I. Introduction

1 PGE appreciates the opportunity to provide comment and briefing in this important
2 declaratory ruling proceeding.

3 Solar power is a viable source of renewable energy for Oregon, the benefits of which
4 extend beyond mere additional generation. It is one of several renewable resources PGE is
5 pursuing to fulfill Oregon's energy future. Solar power can help slow climate change, and
6 may play a significant role in meeting the state's goal of having 25 percent of our region's
7 electric load served by renewable energy sources by the year 2025. Moreover, solar power
8 development may provide other economic benefits to Oregon. A number of solar hardware
9 manufacturing companies have moved to Oregon thanks in part to the reliability of our
10 electric system, the manner in which Oregonians have embraced renewable power, and the
11 fact that we have rules and processes in place that welcome the development of new solar
12 projects.

13 PGE strongly supports the solar industry and we believe that the current applicable
14 statutes and rules do allow the Honeywell activities described in the assumed facts. If this
15 Commission determines that changes are necessary, PGE will support efforts to provide
16 clarity to the rules and statutes where it may be needed. We will be actively engaged and
17 work diligently to help expedite any such process.

18 From a policy standpoint, PGE strongly believes that the net-metering statutes and rules
19 should be neutral with respect to third party ownership. From our perspective, the utility's
20 relationship is with the net-metering customer. What the net-metering customer may do on
21 its side of the meter to try to reduce its load is largely the customer's decision. Of course, we
22 would expect the customer to comply with applicable laws and safety standards, and would

1 enforce those through contracts and tariffs that are binding on the net-metering customer.
2 PGE remains the utility, the default provider of electricity, despite the presence of a
3 generation unit. If, for some reason, the generator were to fail, the customer would not be
4 without power.

5 Net-metering, by definition, requires that the facility be sized not to take advantage of
6 favorable rates for a power sale, but rather appropriately sized to allow the potential for the
7 customer to offset its entire load. Net-metering in Oregon is structured to support the
8 variability of solar energy production and help spread generation to offset load over times
9 when loads are more than that produced by the solar energy facility (e.g., at night).

10 It is true that there is a potential for negative effects on the utility and its other customers
11 if net-metering grows and creates cost or reliability issues. For example, there could be
12 significant planning considerations and costs for supporting variable generating sources that
13 a utility and its customers may face with too much net-metering. However, there are
14 mechanisms such as decoupling to address these issues. In addition, the Oregon net-metering
15 statute contains a built-in mechanism for the utility to seek to limit these effects. When the
16 amount of net-metering offered to the utility reaches one half of one percent of the single
17 hour system coincidental peak, the utility may apply to the Commission to limit net-metering
18 obligations. ORS 757.300(6)

19 PGE also does not believe, from a policy perspective, that the Electricity Service Supplier
20 (“ESS”) statutes and rules should apply to Honeywell in the context described in the assumed
21 facts. Essentially, Honeywell is a hardware provider. It can be inferred from the assumed
22 facts that Customers seeking Honeywell’s services do not simply want electricity from
23 another electricity seller, but rather want solar panels on top of their building or residence.

1 Honeywell is not in the business of offering energy sales as envisioned by direct access.
2 Honeywell does not directly utilize the utility's distribution system and offers no ancillary
3 services. What Honeywell does offer, is a method by which customers can obtain solar
4 power generation on their physical business or dwelling. Imposing on Honeywell the various
5 requirements imposed on ESSs would be burdensome and unnecessary.

6 We have organized our comments below in accordance with the questions as set forth by
7 Judge Grant in his June 20, 2008 memorandum.

II. Net-metering Questions

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

10 Yes. The Honeywell facility, as set forth in the assumed facts, generates electricity using
11 solar power, is located on the customer-generator's premises, can operate in parallel with an
12 electric utility's existing transmission and distribution facilities, and is intended primarily to
13 offset part or all of the customer-generator's requirements for electricity. Therefore, it meets
14 the definition of a "net-metering" facility as set forth under ORS 757.300(1)(d). There is no
15 ambiguity in the statute with respect to this definition and thus the plain language controls
16 when applying the law to the facts regarding the Honeywell facility. PGE v. Bureau of Labor
17 and Industries, 317 OR 606, 610-12, 859 P.2d 1143 (1993).

18 ***(2) Is Honeywell's customer as described above a "customer-generator" under ORS***
19 ***757.300(1)(a)?***

20 Yes. Honeywell's customer as described in the assumed facts is a "customer-generator."
21 Customer-generator, as defined in ORS 757.300(1)(a), means a "user of a net-metering
22 facility." Honeywell's customers "use" the facility by consuming the energy produced by the
23 facility and thereby reducing the energy provided to the customer by the utility. The plain

1 meaning of the statutory text supports this interpretation and should be accorded deference.
2 McIntire v. Forbes, 322 OR 426, 431, 909 P.2d 846 (1996) (Words of common usage should
3 be given their plain, natural and ordinary meaning). *Webster’s Third New International*
4 *Dictionary* is relied on to ascertain the meaning of statutory terms. Osborn v. PSRB, 325 OR
5 135, 146, 934 P.2d 391 (1997). “User,” as defined in *Webster’s*, is one that “expends or
6 consumes by putting to use.” Here, the customer is a user of the generating facility by
7 consuming the electricity it generates.

8 ***(3) Does ORS 757.300 require a customer to own a net-metering facility or a portion of the***
9 ***facility to be considered a “customer-generator”?***

10 See discussion of question 4, below.

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

13 No. There is no text in ORS 757.300 that requires a customer to own a net-metering
14 facility or a portion of the facility to be considered a “customer-generator”, nor is there any
15 text that places any limitation on such form of ownership. Moreover, there are no provisions
16 in the statute that are rendered inoperable if such a reading is not implied. *See generally*
17 ORS 757.300. In accordance with statutory construction principles set forth in PGE v. BOLI,
18 *supra* and ORS 174.010, “the office of the judge [the Commission here] is simply to
19 ascertain and declare what is, in terms or in substance, contained therein, not to insert what
20 has been omitted.” Therefore, no customer ownership requirement or third-party ownership
21 limitation should be read into the statute.

22 The Commission has previously suggested that its *rules* do allow third-party ownership
23 of net-metering facilities. In Order No. 07-319, the Commission states: “PacifiCorp interprets
24 the rules to permit the owner of a net-metering facility and the customer-generator or user to

1 be different entities. PacifiCorp states that, in its experience, complexities arise in such
2 situations. PacifiCorp recommends that rules be developed to address such complexities.”
3 In response, the Commission did not disagree that third party ownership situations can exist
4 under the net-metering rules, but explained that the waiver process can be utilized to request
5 more time to deal with complexities caused by such an ownership structure, instead of
6 adopting additional rules. See Order No. 07-319 at 3, 5.

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

9 ORS 757.300(2)(a) provides that an electric utility “shall allow net-metering facilities to
10 be interconnected using a standard meter that is capable of registering the flow of electricity
11 in two directions.” OAR 860-039-0020(5) clarifies that the utility is responsible for the cost
12 of such installation. The statutes and rules do not, however, apply to any additional metering
13 that may be needed by Honeywell for purposes of its Energy Services Agreement with the
14 customer, and PGE would expect the costs of such metering to be borne by parties to that
15 agreement.

III. Transaction Between Honeywell and Customer

16 ***(1) If the customer does not qualify for net-metering under ORS 757.300, is the***
17 ***transaction between Honeywell and the customer considered a retail sale?***

18 PGE reserves briefing, if necessary, on this issue for its Reply Brief.

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

22 No. The energy provided by the generator is used to offset the customer’s load; it is not
23 resold. The crediting mechanism established by the Oregon rules and statutes ensures that
24 any power delivered to the utility is either matched to the customer’s load as a billing

1 determinant, thereby lowering the bills paid by the customer to the utility, or ultimately if the
2 customer's load cannot be further reduced on an annual basis (generation exceeds load),
3 credits for the extra amount of generation are provided to low-income assistance programs.
4 *See* ORS 757.300 (3)(d) and OAR 860-039-0060. The utility does not purchase, or
5 compensate the customer for, any electricity in excess of the customer's load.

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

8 PGE reserves briefing, if necessary, on this issue for its Reply Brief.

9 ***(4) If some portion of the transaction between Honeywell and the customer is not a sale for***
10 ***resale, what is the source of the energy being delivered to the grid to qualify for net-***
11 ***metering?***

12 PGE reserves briefing, if necessary, on this issue for our Reply Brief.

IV. Electric Service Suppliers/Utilities

13 ***(1) Does Honeywell offer "electricity services available pursuant to direct access to more***
14 ***than one retail electricity consumer" under ORS 757.600(16)?***

15 Arguably No. ORS 757.600(15) defines "electricity services" as "electricity distribution,
16 transmission, generation or generation-related services." Honeywell could be considered as
17 "offer[ing] to sell electricity services" since it provides generation services. It is also clear
18 from the facts, that Honeywell provides such services to more than one retail customer.

19 However, the question presented, which essentially recites the definition of "electricity
20 service supplier," uses additional statutorily defined terms, namely "direct access" and "retail
21 electricity consumer," each of which refers to the use of a utility's distribution system. First,
22 "direct access" is "the ability of a retail electricity consumer to purchase electricity and
23 certain ancillary services, as determined by the commission for an electric
24 company...directly from an entity other than the *distribution utility*." ORS 757.600(6)

1 (emphasis added). A “distribution utility” is “an electric utility that owns and operates a
2 distribution system connecting the transmission grid to the retail electricity consumer.” ORS
3 757.600(9). Next, “retail electricity consumer” is defined as “the end user of electricity . . .
4 includ[ing] all end users of electricity served through the *distribution system* of an electric
5 utility . . . whether or not each end user purchases the electricity from the electric utility.”
6 ORS 757.600(29) (emphasis added).

7 Finally, “distribution” is defined as “the delivery of electricity to retail electricity
8 consumers through a distribution system consisting of local area power poles, transformers,
9 conductors, meters, substations and other equipment.” ORS 757.600(8).

10 An ESS is defined as an entity that offers to sell electricity services available pursuant to
11 direct access. ORS 757.600(6) Direct access, through its use of other statutorily defined
12 terms, assumes use of the utility’s distribution network. This reading is consistent with ORS
13 757.632, which states, “Every electricity service supplier is authorized to use the distribution
14 facilities of an electric company on a nondiscriminatory basis after the retail electricity
15 consumers of the electricity service supplier are afforded direct access pursuant to ORS
16 757.601.” Honeywell, under the assumed facts, is distinguishable from ESSs in that they do
17 not need to use the utility’s distribution system to sell generation to their customers.

18 Honeywell has no need to use the distribution facilities of an electric company on a
19 nondiscriminatory basis as envisioned in ORS 757.632 and implied in the definitions of
20 direct access and retail electricity consumer, therefore a reasonable argument can be made
21 that Honeywell is not an ESS under Oregon’s direct access regulations.

22 ***(2) If Honeywell sells electricity directly to the customer, but does not offer any ancillary***
23 ***services for purchase, does Honeywell’s service constitute “direct access” under ORS***
24 ***757.600?***

1 Arguably No. ORS 757.600(6) defines “direct access” as “the ability of a retail
2 electricity consumer to purchase electricity and certain ancillary services, as determined by
3 the commission for an electric company...directly from an entity other than the distribution
4 utility.” Honeywell does not offer ancillary services for purchase, and therefore arguably this
5 service does not constitute direct access.

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

7 No. That statute excludes from the definition of public utility any “corporation,
8 company, individual, or association of individuals providing heat, light or power . . . from
9 solar or wind resources to any number of customers.” ORS 757.005(1)(b)(C)(iii).

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

11 No. In the net-metering context, set forth in the assumed facts, the customer remains a
12 utility customer and the obligation to serve their load remains with the utility. Additionally,
13 public utilities in Oregon are statutorily obligated to meet customer demand. ORS 757.020
14 requires every public utility to furnish adequate and safe service. Additionally, ORS 757.603
15 requires every public utility to provide all retail electricity consumers that are connected to
16 the electric company's distribution system with a regulated, cost-of-service rate option.

17 Under the assumed facts, Honeywell provides power from a solar resource and is excluded
18 from the definition of public utility and has no similar obligation under Oregon law.

19 ***(5) Is the utility required to sell electricity to the customer for any portion of load not***
20 ***served by Honeywell? If so, what rates apply to the portion of the customer’s load not***
21 ***served by Honeywell?***

22 Yes. As discussed above, the utility is required to sell electricity for any portion of load
23 not offset by the Honeywell generator. The rates that apply are the applicable tariffs rates.

24 ***(6) Is the utility required to sell electricity to the customer for the customer’s total load***
25 ***when the Honeywell facility is not generating electricity? If so, should the customer be***

1 ***placed on a partial requirements rate schedule?***

2 Yes. As discussed above, public utilities in Oregon are statutorily obligated to meet
3 customer demand. A customer should be placed on a partial requirements rate schedule if the
4 customer does not meet the requirements to be a net-metering customer and the utility's
5 partial requirements service tariffs are otherwise applicable to the customer.

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

8 Yes. Under current Commission policy, the utility is required to plan to serve its
9 customer load. See OPUC Orders No. 89-507 (establishing Least Cost Planning in Oregon)
10 and No. 07-002 (providing guidelines for Integrated Resource Plans) (corrected by Errata
11 Order No. 07-047).

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

14 No. As discussed above, the utility's relationship is with its customer, not a third party.
15 System and safety requirements are imposed on the net-metering customer via applicable
16 contracts and tariffs.

V. Credits

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

19 Yes. There is no indication in the Net-metering rule (OAR 860, Division 39) that it does
20 not apply to a facility that also receives federal tax credits, state tax credits and ETO funding.

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

23 If the Energy Trust of Oregon ("ETO") has provided funding for the facility, the ETO
24 typically requires that renewable energy credits ("RECs") from projects it supports be retired

1 on behalf of the incumbent utility’s customers in proportion to the above-market project costs
2 that ETO funds subsidized. These RECs may count towards the utility’s Renewable Energy
3 Standard requirements. ORS 757.300 is silent on the issue of RECs. Therefore, it can be
4 inferred that transfer of RECs to the utility is not required to be eligible for net-metering.
5 PGE’s position is that the disposition of the balance of the RECs (or all REC’s in the absence
6 of ETO funding) associated with the output of the facility is between Honeywell and the
7 customer to determine.

VI. Similarly-Situated Businesses

8 PGE believes that, depending on how the Commission answers the questions above, the
9 various structures explored below may significantly change such answers. Given PGE’s
10 positions on the above-questions, we do not believe it is necessary to answer all the questions
11 below at this time and accordingly reserve doing so in our Reply Brief.

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

13 ***(1) The customer and third-party provider of a facility create a separate entity for each***
14 ***project, under which the third-party provider and customer share ownership of the***
15 ***facility?***

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

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

19 Potentially. A third party owner of a generating facility using fuels other than solar or
20 wind may be considered a public utility, unless they are an ESS. The exclusions in ORS
21 757.005(1)(b)(C) from the definition of “public utility” applies only to a subset of the fuels
22 that may be eligible for net-metering. For example, a third party owner of a generator that
23 uses biogas as a fuel and provides power to a commercial customer would be a public utility
24 under ORS 757.005(1), unless they were an ESS.

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

2 Yes. See answer to #3 above. Unless the third party generator is an ESS, they would be
3 a public utility as defined by ORS 757.005(1). No non-net-metering eligible fuels are
4 excluded from the definition of public utility.

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

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