

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 40

In the Matter of)	
)	
HONEYWELL INTERNATIONAL, INC.)	OPENING BRIEF AND
and HONEYWELL GLOBAL FINANCE,)	WAIVER OF PAPER
LLC,)	SERVICE OF
)	ENERGY TRUST
and)	OF OREGON, INC.
)	
PACIFICORP, dba PACIFIC POWER)	

I. Introduction

Pursuant to a grant agreement with the Oregon Public Utility Commission (“Commission”), the Energy Trust of Oregon, Inc., (“Energy Trust”) has, since 2002, invested funds collected under ORS 757.612 in the above-market costs of renewable energy projects, including solar projects, by providing incentives towards such costs.

In the 2007 Renewable Energy Act, the Oregon legislature found “that community-based renewable energy projects are an essential element of Oregon’s energy future,” and declared it to be the State’s goal:

that by 2025 at least eight percent of Oregon’s retail electrical load comes from small-scale renewable energy projects with a generating capacity of 20 megawatts or less. All agencies of the executive department as defined in ORS 174.112 shall establish policies and procedures promoting the goal declared in this section.

Senate Bill 838, section 24.

The 2007 Act also limited the use of renewable energy funds from the charge authorized by ORS 757.612 to projects with a generating capacity of 20 megawatts or less. ORS 757.612(3)(b)(B). Thus, Energy Trust's renewable energy incentives are linked to the state's ambitious goals for small-scale renewable energy projects. Energy Trust's interest in this proceeding is to ensure that the laws and regulations at issue in this proceeding are interpreted to further, not obstruct, these goals.

As implied by the Honeywell/PacifiCorp petition for declaratory ruling, most if not all of the projects at issue in this proceeding involve Energy Trust funding. In 2008, more than 80 percent of the Energy Trust incentives reserved for commercial solar installations have involved third-party ownership arrangements resembling those described in this proceeding. These projects represent a total investment of some \$35 million. In these arrangements, solar installations are "hosted" by businesses, state or local government entities, schools, congregations or non-profit groups interested in supporting renewable energy but which lack the capital to invest in such facilities, and cannot use solar tax credits to help finance them.

Third-party ownership arrangements leverage significant federal tax incentives for solar projects. The federal investment tax credit and accelerated depreciation can offset 40 percent of the cost of commercial solar installations in addition to the value of Energy Trust incentives and Oregon business energy tax credits.

Entities like Honeywell play a crucial role in leveraging these benefits and making these projects viable by capitalizing the projects, installing solar facilities on the host's property, owning and operating the systems, and selling the projects' energy to the hosts. Absent such arrangements, 80 percent of Energy Trust's renewable energy

investments would likely dry up, and our ability to contribute to the attainment of Oregon's community energy goals would be severely compromised.

Net-metering is integral to these projects. Almost all of the third-party-owned projects in which Energy Trust is involved are net-metered. Net-metering rules allow a ready way to interconnect community-scale projects to the utility grid with low transaction costs.

Oregon policy is headed in the direction of liberalizing rather than restricting the use of innovative financing models like third-party ownership. The Oregon legislature has approved a property tax exemption for third-party-owned, net-metered projects, ORS 307.175(4). Similarly, Oregon Department of Energy rules implementing the 1.5 percent for solar in state construction projects recognize the importance of innovative financing arrangements to leverage federal, state and other incentives. See OAR [330-135-0040](#). The Commission itself expanded the scope of net-metering when it increased the size of projects eligible for net-metering from 25 kilowatts to two megawatts, see OAR 860-039-0010(2).

As "Similarly-Situated Businesses" section of the Assumed Facts acknowledges, there are third-party ownership arrangements other than the type employed by Honeywell. Energy Trust expects that new arrangements will continue to emerge if Oregon's community energy goals are to be accomplished. For this reason, Energy Trust urges caution in interpreting net-metering and energy-service-supplier rules to unduly limit the emergence of innovative development models.

With this background in mind, we address selected questions raised by the petition, addressing related questions together.

II. Questions

Net-Metering Questions 1 and 2: Are facilities that Honeywell describes in the Assumed Facts “net-metering” facilities under ORS 757.300(1)(d)¹? Is Honeywell’s customer as described in the Assumed Facts a “customer-generator” under ORS 757.300(1)(a)²?

Like the projects described in the Assumed Facts, the third-party-owned projects in which Energy Trust is involved (a) generate electricity using solar power, (b) are located on the premises of an entity that is a customer of the utility and the third-party owner (in some cases Honeywell), (c) can operate in parallel with an electric utility’s existing transmission and distribution facilities, and (d) are intended primarily to offset

¹ “Net-metering facility” means a facility for the production of electrical energy that:

(A) Generates electricity using solar power, wind power, fuel cells, hydroelectric power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues;

(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.

² ““Customer-generator” means a user of a net metering facility.”

part of all of the electric requirements of the owner of the premises. Thus, Energy Trust answers the first question in the affirmative.

Energy Trust also answers the customer-generator question in the affirmative because the host entity, which uses the energy generated from the solar facility described in the Assumed Facts, is the user of the facility. That is, the host either directly uses the energy produced by the facility or uses the facility's energy to reduce its utility bill for the value of energy produced when the host cannot use the energy directly.

Net-Metering Questions 3 and 4: Does ORS 757.300 require a customer to own all or part of a net-metering facility to be considered a "customer-generator"? Does ORS 757.300 place any limitations on third-party ownership of net-metering facilities?

ORS 757.300 imposes no express ownership requirements or limitations on third-party ownership of net-metering facilities. Energy Trust does not suggest that the Commission could never impose ownership requirements or limitations. However, any such requirements or limitations should be developed with the State's community energy goals in mind. Energy Trust sees nothing in this record that would warrant such requirements or limitations.

Net-Metering Question 5: Who is responsible for the costs of installing the metering arrangement for a facility provided by Honeywell?

ORS 757.300(2)(a) requires that an electric utility "allow net-metering facilities to be interconnected using a standard meter that is capable of registering the flow of electricity in two directions." Though this section is silent with respect to responsibility for cost of such meters, the provision that follows this section permits an electric utility to "at its own expense install one or more additional meters to monitor the flow of

electricity in each direction.” ORS 757.300(2)(b). This provision suggests that costs, other than any applicable application fees, are not to be imposed on customer-generators or users of a net-metering facility. This theme is consistent with a number of statutory and regulatory provisions throughout ORS 757.300 and OAR 860-039. (ORS 757.300(2)(c) (prohibits an electric utility from charging a “customer-generator a fee or charge that would increase the customer-generator’s minimum monthly charge to an amount greater than that of other customers in the same rate class. . . .”); OAR860-039-0045 (sets forth specific limitations on charges for net-metering interconnection fees and costs);) OAR 860-039-0065 (sets forth limitation and a requirement for PUC prior approval through a tariff for charges to customer-generators who request aggregated meters). The statutory and regulatory guidelines specifically identify charges that a utility may collect from customer-generators of net-metering facilities. Because electric utilities are not specifically authorized to impose meter installation costs on customer-generators, the utility should be responsible for these costs.

Transaction between Honeywell and Customer Questions 1-4: As explained in Energy Trust’s response to Net Metering Question 1, the net-metering statutes and rules plainly apply to the transaction between Honeywell and customers. OAR 860-039-055 provides the process for net metering billing, outlining a netting process between the customer-generator and the electric utility based on the customer-generator’s monthly billing. No wholesale or “sale for resale” transaction is contemplated for any portion of these small-scale net metering systems.

Electricity Service Suppliers/Utilities Questions 1 and 2: Does Honeywell offer “electricity services available pursuant to direct access to more than one retail electricity

consumer” under ORS 757.600(16)? 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(16)?

“Direct access” allows a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility. ORS 757.600(6). Honeywell-owned projects, like the third-party-owned projects in which Energy Trust participates, involve the sale of electricity which, because the facility is located on the customer’s site, do not require ancillary services. In Energy Trust’s view, Honeywell is not an electric service supplier under ORS 757.600(6) because no ancillary service is involved. To conclude that Honeywell is an electric service supplier would require the Commission to ignore the statute’s inclusion of the word “and.” Moreover, Energy Trust believes that applying electric service provider requirements to third party owners that provide only electricity would unduly limit the emergence of innovative community energy models.

Electric Service Suppliers/Utilities Questions 4-8: As previously indicated, Energy Trust interprets the statutory and regulatory language to support the conclusion that transaction described in the Assumed Facts is a net metering arrangement. As such, the statutes and regulations contemplate customer service provided by both the Honeywell facility and the electric utility to serve the customer-generator’s load. The net metering rules do not change the net-metered customer’s rate status or the utility’s obligation to serve. Inferring additional rate or service complexity into the language of the rules would create impediments to use of net-metered systems and the growth of community-scale renewable energy projects.

Credits Question 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)?

Nothing in either the statutes or the regulations governing net-metering suggests that tax credits and other monetary incentives for renewable energy projects should not apply. To achieve Oregon's ambitious renewable energy goals, all tools must be available to developers. It is our experience with renewable energy project developers, that in the current market every available process, credit, and incentive is key to making projects economically viable. Interpreting the net metering rules to render such credits and incentives unavailable to developers would significantly stall the emerging market for renewable energy.

Credits Question 2: Who is entitled to any renewable energy credits associated with the output of the facility?

The Commission has spoken clearly about the ownership of non-energy attributes produced by Qualified Facilities:

“Unless otherwise agreed to by separate contract, the owner of the renewable energy facility retains ownership of the non-energy attributes associated with the electricity the facility generates and sells to an electric company pursuant to [t]he provisions of a net metering tariff.” OAR-860-022-0075(2)(a).

See also discussion in Commission Order 05-1229 in AR 495 (Nov. 28, 2005), and OPUC Order 06-538 in UM 1129 (Sept. 20, 2006). As a matter of policy, Energy Trust requires recipients of its renewable energy incentives to transfer to Energy Trust ownership rights of renewable energy credits in proportion to Energy Trust's contribution

to the project's above-market cost. Energy Trust regards itself as holding these credits in trust for the ratepayers of the utility in whose service territory the project is located.


Similarly-Situated Businesses Questions 1-6:

With the possible exception of question 4, Energy Trust sees no basis for concluding that the answers to the net-metering and electric service supplier questions should vary with the distinctions described in the similarly-situated businesses questions. Again, Energy Trust believes that withholding net-metering treatment or applying electric service provider requirements to projects owned by third-parties could unduly limit the emergence of innovative community energy models.

Energy Trust waives paper service in this proceeding.

DATED this 30th day of June, 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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