

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 40

In the Matter of)	
)	
HONEYWELL INTERNATIONAL, INC., and)	
HONEYWELL GLOBAL FINANCE, LLC,)	PREHEARING CONFERENCE
)	MEMORANDUM AND
and)	RULING
)	
PACIFICORP, dba PACIFIC POWER,)	
)	
Application for Declaratory Ruling.)	

**DISPOSITION: SCHEDULE ADOPTED;
PETITIONS TO INTERVENE GRANTED**

On June 19, 2008, the Public Utility Commission of Oregon (Commission) held a prehearing conference in this matter to adopt a schedule for this proceeding. Representatives appeared on behalf of Honeywell International and Honeywell Global Finance, LLC; PacifiCorp, dba Pacific Power; Portland General Electric Company; the Energy Trust of Oregon, Inc.; Oregon Department of Transportation; the Oregon Department of Energy; the Citizens' Utility Board; Renewable Northwest Project; SunEdison; the Oregon Solar Energy Industries Association (OSEIA); the City of Portland; the City of Gresham, and Commission Staff.

Prior to the conference, the Commission received petitions to intervene from the Oregon Department of Transportation, OSEIA, the Oregon Department of Energy, the Energy Trust of Oregon, and the Central Lincoln People's Utility District. I find that these parties have sufficient interest in the proceeding and that their appearance and participation will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding. Accordingly, the petitions are granted. *See* OAR 860-013-0021.

At the conference, the following procedural schedule was adopted:

EVENT	DATE
Petitions to Intervene	June 23, 2008
Simultaneous Opening Briefs	June 30, 2008
Simultaneous Reply Briefs	July 11, 2008
Oral Argument (if requested by the Commissioners)	July 17, 2008 (Afternoon)
Commission Decision	Prior to July 31, 2008

Given the expedited timeframe for this docket, I provided the parties with a modified statement of facts and list of issues intended to streamline the issues for resolution by the Commission. The participants are to provide comments on this streamlined list of facts and issues by the close of business on June 20, 2008.

Dated at Salem, Oregon, this 19th day of June, 2008.

Michael Grant
Chief Administrative Law Judge

ASSUMED FACTS

Honeywell offers solar Energy Services Agreements (“ESAs”) to customers in Oregon. Honeywell has executed ESAs with the City of Hillsboro (100 kW); Lewis & Clark College (100 kW), City of Pendleton I (100 kW), City of Pendleton II (200 kW), and Mt. Hood Community College (100 kW). These customers currently receive most or all of their electricity service from either PacifiCorp, dba as Pacific Power, or Portland General Electric Company.

Under an ESA, Honeywell finances, builds and operates a grid-connected solar photovoltaic facility that generates electricity using solar power and is located on a customer’s premises, such as a roof or vacant land. The facility can operate in parallel with an electric utility’s existing transmission and distribution facilities and is intended primarily to offset part or all of the customer’s requirements for electricity.

At all times during the term of the ESA, the facility is fully owned by Honeywell. Honeywell is responsible for operating, maintaining, and monitoring the facility and bills the customer monthly for all the actual kilowatt-hours of electricity generated. Honeywell does not provide any ancillary services to the customer.

The customer provides its premises for the facility and is responsible for providing physical security. The customer, in addition to Honeywell, monitors the operation of the facility, including its power output.

The customer agrees to purchase all of the electricity generated by that facility at agreed upon rates with Honeywell. The customer pays only for the power produced by the facility.

Coincident with the ESA the customer enters into a net metering agreement with its electric utility. All of the electricity purchased by the customer from Honeywell either offsets electricity the customer would otherwise purchase from its electric utility or is sold to the electric utility for use on the grid.

Under the terms of the ESA, Honeywell is entitled to all incentives associated with the facility, including the Federal Income tax Credits and accelerated depreciation, the Oregon Business Energy Tax Credit (either directly or using the pass-through), and any other available incentives, such as those provided by the Energy Trust of Oregon.

QUESTIONS

Under the assumed facts described above, petitioners seek Commission resolution of the following questions:

Net-Metering

- (1) Is a facility that Honeywell provides as described above a “net-metering facility” under ORS 757.300(1)(d).
- (2) Does ORS 757.300 require the user of a net-metering facility to own a portion of the facility?
- (3) Does ORS 757.300 place any limitations on third-party ownership of net-metering facilities?
- (4) Who is responsible for the costs of installing the metering arrangement for a facility provided by Honeywell?

Electric Service Suppliers/Utilities

- (1) Does Honeywell offer “electricity services available pursuant to direct access to more than one retail electricity consumer” under ORS 757.600(16)?
- (2) 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(6)?
- (3) Under the scenario described above, is Honeywell a utility as defined in ORS 757.005(1)(a)?
- (4) Is Honeywell required to serve 100 percent of the customer’s load?
- (5) Is the utility required to sell electricity to the customer for any portion of load not served by Honeywell?
- (6) What rates apply to the portion of the customer’s load not served by Honeywell?
- (7) In its IRP, is the utility required to plan to serve the portion of the customer’s load not served by Honeywell?
- (8) If Honeywell provides no electricity to the customer, is the utility required to serve the customer’s load? If so, at what rates?

- (9) Does the utility have an obligation to determine whether third parties own customer-generation facilities and sell the output to customers?

Tax Credits

- (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 Energy Trust of Oregon funding)?
- (2) Who is entitled to any renewable energy credits associated with the output of the facility?

Similarly Situated Businesses

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

- (1) The customer and third-party provider of a facility create a separate entity for each project, under which the investor and customer share ownership of the facility?
- (2) The third-party provider uses outside sources, such as a bank or finance company, to finance the project
- (3) The facility uses a net-metering eligible fuel other than solar?
- (4) The facility uses a non net-metering eligible fuel?

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

The 2007 Oregon Legislative Assembly amended the Administrative Procedures Act to require agencies to provide all parties written notice of contested case rights and procedures. Pursuant to ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in this proceeding will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 to 756.610 and OAR Chapter 860, Divisions 11-14. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to this hearing, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission staff, if participating in the case, will be represented by counsel. Once a hearing has begun, you will not generally be allowed to request a recess to obtain counsel.

Administrative Law Judge: The Commission has delegated the authority to preside over contested cases to its employee Administrative Law Judges (ALJs). The scope an ALJ's authority is defined in OAR 860-012-0035. The ALJ make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified, and present evidence and witnesses on those issues. *See* OAR 860-014-0045 to OAR 860-014-0060. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-014-0065 to 860-014-0070.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-014-0045(1)(b). Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the type of proceeding. *See* OAR 860-014-0035. The burden of presenting evidence to support an allegation or position rests with the proponent of the allegation or position. Once a hearing is completed, the ALJ will not generally allow the introduction of additional evidence without good cause.

Record: The hearing will be recorded, either by a court reporter or by audio/digital tape, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request the Commission for a copy of the tape for a fee set forth in OAR 860-011-0090(2)(e)(C). The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The ALJ's draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days. *See* ORS 756.561 and OAR 860-014-0095. You may also file a petition for review with the Court of Appeals within 60 days. *See* ORS 756.610.