

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**DR 40**

In the Matter of	)	
	)	
HONEYWELL INTERNATIONAL, INC.,	)	<b>REPLY BRIEF OF PORTLAND</b>
HONEYWELL GLOBAL FINANCE, LLC	)	<b>GENERAL ELECTRIC COMPANY</b>
and PACIFICORP, dba PACIFIC POWER	)	
	)	
Petition for Declaratory Ruling	)	

1           Portland General Electric Company (“PGE” or the “Company”) hereby submits its Reply  
2 Brief in response to other parties’ Opening Briefs. Specifically, this brief focuses on the issues  
3 of whether Honeywell is a Customer-Generator (Net Metering Question #2) and whether  
4 Honeywell offers “electricity services available pursuant to direct access to more than one retail  
5 electricity consumer” under ORS 757.600(16) (Electric Service Suppliers/Utilities Question # 1).

**I. Honeywell is a Customer-Generator**

6           As we stated in our Opening Brief, PGE’s considers Honeywell’s customer to be a  
7 “customer-generator” under ORS 757.300(1)(a). The plain language of the definition of that  
8 term supports our reading. The text of the statutory provision itself is the starting point for  
9 interpretation and is the best evidence of the legislature’s intent. Portland Gen. Elec. Co. v.  
10 Bureau of Labor & Indus., 317 Or 606, 610 (1993). A “customer-generator” is defined as a user  
11 of a net-metering facility. ORS 757.300(1)(a). The Honeywell facility, as set forth in the  
12 assumed facts, (hereinafter “Honeywell Facility”) meets the definition of “net-metering facility”  
13 under ORS 757.300(1)(d). Honeywell’s customer uses the output of the net metering facility to  
14 serve its load. The fundamental purpose of the facility is to generate electricity to serve load,  
15 and it is not clear how it could be “used” in any other way.

16           The parties to this docket nearly unanimously agree that Honeywell’s customer is a

1 “customer-generator”. However, PacifiCorp suggests that although the term “customer-  
2 generator” is clearly defined, we should parse the words “customer-generator”, without  
3 considering the clear and straightforward definition accompanying these words in the statutory  
4 text. PacifiCorp Br 8. We disagree with PacifiCorp’s approach and believe that approach renders  
5 the provided definition meaningless. In construing the statute, one should not “insert what has  
6 been omitted, or [] omit what has been inserted.” ORS 174.010.

## II. Honeywell is not clearly an ESS

7 In its Opening Brief response to questions (1) and (2) under the heading Electricity  
8 Service Supplier/Utilities, Oregon Public Utility Commission Staff (“Staff”) concludes that  
9 Honeywell is an ESS. PGE believes that Honeywell is not clearly an ESS.

10 PGE begins by restating its Opening Brief reasoning for concluding that there are  
11 colorable arguments why Honeywell is likely not an ESS. Briefly stated, Honeywell’s business  
12 model as described in the assumed facts is distinguishable from an ESS because it has no need to  
13 use the distribution utility’s transmission and distribution system to sell electricity services to its  
14 customer. Unlike the definition of customer-generator, the definition of ESS is so expansive  
15 (and reliant on other extremely broad defined terms) that it is necessary to read it in the context  
16 of other related statutes. Portland Gen. Elec. Co. v. Bureau of Labor & Indus., 317 Or at 611  
17 (the court must consider the context of the statutory provision at issue, which includes other  
18 provisions of the same statute and other related statutes). Other defined terms in the direct  
19 access statutes imply and assume that an ESS will need the electric utility’s distribution system  
20 to deliver generation to its customer. *See e.g.*, the defined terms “direct access” (ORS  
21 757.600(6)), “retail electricity consumer” (ORS 757.600(29)), “distribution utility” (757.600(9)),  
22 and “distribution” (ORS 757.600(8)). PGE also noted that ORS 757.632 requires electric  
23 companies to provide ESSs with nondiscriminatory access to utility’s distribution systems, again

1 implying that ESSs cannot operate without such access (which Honeywell can). The direct  
2 access statutes' presumption that an ESS will need the utility distribution system, and Honeywell  
3 and similarly situated businesses do not, suggests these entities should not be defined as ESSs.<sup>1</sup>

4 This conclusion is bolstered by the arguments set forth in the Opening Briefs of  
5 Honeywell, Interstate Renewable Energy Council, and Renewable Northwest Project, et al.  
6 Those parties also distinguish Honeywell's business model and the business models of similarly  
7 situated businesses by noting that certain administrative rules necessary to ensure a functioning  
8 direct access market are unnecessary to Honeywell's relationship with its customer. As these  
9 parties point out, "scheduling," as that term is used in the Division 38 rules, is not required. As  
10 stated in the rules, "[e]ach ESS shall be certified as either scheduling or non-scheduling" and "[a]  
11 non-scheduling ESS must contract with a scheduling ESS or control area operator for all  
12 scheduling services." OAR 860-038-0410(1) and (3). "Scheduling" as it is used in the applicable  
13 laws and rules, typically means ensuring that all necessary point to point transmission services  
14 and network integration transmission service has been acquired to deliver the ESS's electricity  
15 services to the direct access customer. *See, e.g.*, OAR 860-038-0410(2). "Scheduling," is part of  
16 the definition of "ancillary services." *See* ORS 757.600(2).

17 Under the assumed facts, neither Honeywell nor its customer has any need for scheduling  
18 or, for that matter, any other ancillary services as that term is defined in the direct access statutes.  
19 Such laws and rules intended to regulate ESSs are not necessary for Honeywell to serve its  
20 customer. Nor are these laws and rules necessary to protect Honeywell's customer by ensuring it

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<sup>1</sup> We note that ORS 757.649(5) requires the distribution utility to provide a consolidated bill for all electricity services provided, including those provided by an ESS, if the customer does not request otherwise. As Honeywell's brief points out, this implies ESSs provide services by using the electric utility's distribution system (Honeywell Br 22)--that is, the distribution utility is the gatekeeper that monitors and is involved with the relationship between the ESS and its customer. The distribution utility plays no such role in the relationship between Honeywell and its customer under the assumed facts. The transaction between Honeywell and its customer occurs on the customer's side of the meter with no direct role played by the local electrical utility. PGE believes this factor further distinguishes Honeywell and similarly situated businesses from an ESS and implies that the direct access statutes

1 has a reliable electricity supply. Honeywell’s customer remains connected to the electric utility,  
2 it only pays for power generated, and, if necessary, it has remedies available under contract law  
3 based on the energy services agreement between itself and Honeywell.<sup>2</sup>

4 Assuming for sake of argument that Honeywell is an ESS given the assumed facts, staff  
5 suggests it may waive certain ESS requirements pursuant to OAR 860-038-0001(4). Staff Br 6.  
6 Staff’s “waiver” remedy may address some of Honeywell’s concerns by preventing unnecessary  
7 regulation. Nevertheless, statutory ESS requirements are not waivable by the Commission. For  
8 example, if the Commission determines that Honeywell is an ESS, Honeywell must collect from  
9 its customers the 3% public purpose charge pursuant to ORS 757.612. ORS 757.612(3)(f) states  
10 that the Commission cannot establish a charge different from that established in ORS 757.612(2)  
11 which, in effect, a waiver would do. Additionally, ORS 757.654(4) states that every bill from an  
12 ESS to a direct access retail electricity consumer shall contain at least “(d) the amount of any  
13 public purpose charge or credit....” Applied to the assumed facts, it is difficult to believe that  
14 the Legislature intended for retail electricity consumers who contract for renewable energy  
15 generation such as that provided by Honeywell to pay the public purpose charge.

### III. Conclusion

16 For the reasons enumerated above, PGE respectfully requests that based on the assumed  
17 facts, the Commission find Honeywell’s customer to be a customer-generator that may engage in  
18 net metering using the Honeywell Facility, and that Honeywell’s business model not make  
19 Honeywell an ESS subject to burdensome requirements.

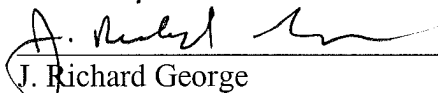
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should not regulate such businesses.

<sup>2</sup> In addition, PGE notes that it is not difficult to imagine a situation where a commercial customer is a separate entity from the entity that owns the real property occupied by the commercial customer. Such structuring often provides tax or other advantages. In such a situation, if the separate entity that owns the property installed a photovoltaic array and billed the commercial customer’s other entities for the electricity generated, would Staff also consider the property owning entity an ESS? Again, such regulation by the Commission over these entities would

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Respectfully submitted,



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July 11, 2008

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Sincerely,

A handwritten signature in black ink, appearing to read "J. Richard George", written in a cursive style.

J. Richard George  
Assistant General Counsel  
Portland General Electric Company

JRG:SMC  
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I hereby certify that I have this day caused PGE's Reply 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 11th day of July 2008.

  
\_\_\_\_\_  
J. RICHARD GEORGE

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