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July 11, 2008

VIA E-MAIL AND U.S. MAIL

Oregon Public Utility Commission
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Re: In the Matter of Honeywell International, Inc., Honeywell Global Finance, LLC, and PacifiCorp, dba Pacific Power
PUC Docket No. DR-40
DOJ File No. 330-030-GN0304-08

Filing Center:

Enclosed are the original and five copies of the Reply Brief of Oregon Department of Energy, Intervenor, in the above-captioned matter for filing with the Public Utility Commission today.

Sincerely,

/s/ James B. Murphy

James B. Murphy
Assistant Attorney General
Natural Resources Section

JBM:tmc/GENY4165
Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR-40

In the Matter of	)	
	)	
HONEYWELL INTERNATIONAL INC.,	)	REPLY BRIEF OF OREGON
HONEYWELL GLOBAL FINANCE LLC.,	)	DEPARTMENT OF ENERGY,
AND	)	INTERVENOR
PACIFICORP, DBA PACIFIC POWER	)	
	)	

The Oregon Department of Energy ("ODOE") respectfully submits this Reply Brief in the above-captioned declaratory ruling proceeding to address policy issues in this case. ODOE requests that the Oregon Public Utility Commission ("OPUC") adopt a policy that will encourage the development of renewable resources in Oregon. ODOE's interest in this proceeding is to ensure that OPUC interprets the laws and rules at issue here to further this policy goal.

ODOE is in agreement with the positions presented in the Opening Briefs, as refined in their Reply Briefs, of the Staff of OPUC, and the Oregon Department of Transportation ("ODOT"), as well as the Opening Briefs of Portland General Electric Co. ("PGE") and Renewable Northwest Project, et al. Additional recent policy background and discussion is provided below where ODOE feels additional comment is necessary.

Recent Policy Background

In context of the assumed facts and questions raised in this proceeding, we urge OPUC to consider what purpose was served by the passage of Senate Bill 1149 (1999), which included the direct access provisions at issue here. Or Laws 1999, ch 865 (SB 1149). Activity in the prior

legislative session led ODOE and OPUC to study public knowledge and opinion on restructuring, conservation, and renewable resource programs. At that time, utilities raised concerns that a competitive market would diminish the customer pool expected to recover investments in generation, transmission, and distribution. Because the investment and recovery periods span multiple decades, the balance between customer choice, stranded assets, and ratepayer equity became a major focus in the legislative process.

In testimony before the Oregon Senate, PacifiCorp supported customer choice so long as it benefited all customers and did not hurt the interests of shareholders. *See*, *e.g.*, Testimony of Bruce Hellebuyck, Regulatory Policy Director for PacifiCorp, Oregon Senate Public Affairs Committee (SB 1149), March 11, 1999 (transcript on file) (stating that nearly all parties agree that increased competition for energy services and products is inevitable and desirable in the industry). The State also recognized that some services such as transmission and distribution do not fit a competitive market model. *See* Office of the Governor, Statement of Principles for Restructuring the Electric Utility Industry 3 (December 12, 1996) ("For the transmission and distribution systems, which will remain natural monopolies, oversight and regulation must continue in order to ensure safe, efficient, and reliable power delivery.").

The response to these concerns turned into Senate Bill 1149, with the direct access provisions codified in ORS 757.600. The expectations that spurred the legislation were rapidly disrupted by a confluence of natural and market events. The Oregon Energy Outlook of December 2000 evaluated the period that followed passage of Senate Bill 1149, and found that deregulation in California created massive problems when the electrical system came under pressure. Oregon Office of Energy, Oregon Energy Outlook: A Report to the Oregon Office of Energy 3 (December 31, 2000). These problems led the federal government to take the

unprecedented step of ordering power generators and marketers in the West to ship electricity to California. *Id*. at 17. Despite the tumult of 2000, the march to deregulation appeared definitive.

Oregon approached deregulation cautiously and gradually. Oregon's deregulation plan was designed to change how utilities serve customers but leave certain retail rates under OPUC regulation while providing different levels of choice for different customer classes. *Id*. at 13. Action towards deregulation and restructuring slowed considerably after Senate Bill 1149 (1999) was implemented.

The solar photovoltaic market in particular has matured since 1999. Manufacturing, installation, and service options for solar systems grew dramatically from 1999 to today. Much of this growth was fueled by tremendous overseas demand. This year, as recognized in the opening briefs, the dramatic increase in state and federal incentives drove the solar market from a small group of early adopters towards a larger, though certainly still niche, group of interested parties.

The State tax credit pass-through that opened the door for public agencies, the increase from 35% to 50% for the business energy tax credit for renewable resources, and the Federal tax credit for solar facilities reflect policies with different origins but a congruent desired outcome: Increase activity in the realm of renewable resource development to move the market forward. *See* Or Laws 2007, ch 583, § 6 (SB 521) (codified at ORS 469.206) (pass-through); Or Laws 2007, ch 843, § 14 (HB 3201) (codified at ORS 315.354(4)) (35% to 50% state tax credit increase); 26 USCA 48(a)(2)(A) (2008), as amended by the Energy Policy Act of 2005, Pub L No 109-058, § 1337, 119 Stat 1038 (2005) (federal tax credit). Those domestic consumption effects have rippled through the industry, as expected, and spurred expansion of the domestic manufacturing sector.

The policy direction prescribed by the 2007 legislature and reflected in ODOE rules supports this dynamic and growing industry and the third-party financing arrangements that have developed within it. For example, the legislature exempted third-party net metering projects from property tax assessment. Or Laws 2007, ch 885, § 1 (HB 3488) (codified at ORS 307.175(4)). In rules implementing House Bill 2620 (2007), which requires a state or local government to devote at least 1.5 percent of the cost of constructing or renovating a building to solar energy technologies if the building receives state funds, ODOE included as qualifying arrangements lease-purchase agreements and power purchase agreements like the ESA here. OAR 330-135-0040.

The 2007 legislature also determined that "community-based renewable energy projects are an essential element of Oregon's energy future, and declares that it is the goal of the State of Oregon 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." Oregon Renewable Energy Act, Or Laws 2007, ch 301, § 24 (SB 838) (codified at ORS 469A.210). The legislature required all executive agencies to establish policies and procedures promoting this goal. *Id.*

With this background in mind, ODOE offers the following answers to selected questions raised by the petition.

Net Metering

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

Response to Question 1. Yes. The relationship between the utility and their customer falls under OPUC rules for net metering regardless of who provides the renewable energy

equipment. Nothing in the statutes defines or limits classifying the system under the net metering rules.

Classification as a net metered system is limited to a very small fraction of electric generation capacity, provided from a unique class of generation options, meeting specific interconnection requirements. Classification entitles the customer-generator to unique treatment by OPUC or the governing body. Different treatment of customer classes based on public policy goals is a common outcome throughout utility regulation.

Transaction Between Honeywell and Customer

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

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

Response to Questions 1 and 2. No. Net metering does not constitute a sale of energy, and as such no portion of this exchange should be considered a sale for resale. No contract for pricing or money is exchanged. Net metering is simply a transactional agreement for treating energy exchange between the serving utility and the customer-generator as equal so long as the exchange occurs within one net metering billing period. Under OPUC's net metering rulemaking Docket AR 515, both PGE and PacifiCorp are to treat this billing period as annual.

Framing the description of net metering as a sales agreement unnecessarily invites questions of FERC oversight. No net metered systems currently deliver net energy beyond the local distribution centers. All energy is consumed by loads within the immediate distribution area, and as a result, net metered systems are required to meet interconnection requirements.

These requirements ensure line safety and require any needed utility upgrades be paid for by the customer, not the utility or rate payers.

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?

Response to Questions 1 and 2. No. Honeywell does not constitute an ESS because it does not provide direct access. Direct access applies to companies that make use of the utility distribution system to provide electrical energy. This is not done by Honeywell because all energy transaction between Honeywell and the customer is done on the customer's side of the utility meter. Periodic surplus generation, should it exist, falls under the purview of Oregon's net metering statue and OPUC governing rules.

To qualify as an ESS, persons or entities must "offer to sell electricity services available pursuant to direct access to more than one retail electricity customer." ORS 757.600(16). The term "electricity services" means "electricity distribution, transmission, generation, or generation-related services." ORS 757.600(15). However, to offer electricity services pursuant to direct access, a retail electricity customer must be able "to purchase electricity and certain ancillary services * * * directly from an entity other than the distribution utility." ORS 757.600(6). The term "ancillary services" speaks of services related to "transmission and delivery from generating facilities to retail electricity customers, including but not limited to scheduling, load shaping, reactive power, voltage control and energy balancing services." ORS

757.600(2). These definitions lead to the conclusion that Honeywell is not an ESS under the assumed facts.

The definition of ancillary services requires a person or entity to offer both transmission and delivery related services. Transmission and delivery (also termed distribution) are distinct legal terms in the statute and distinct concepts in terms of grid operation and rate base and recovery determination. The statute does not define the term "transmission," but does define the term "transmission facility," which means "the plant and equipment used to transmit electricity in interstate commerce." ORS 757.600(33).[1] On the other hand, the statute defines the term "distribution" as "the *delivery* of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment." ORS 757.600(8) (emphasis added).[2] These definitions reflect a clear

[1] Similarly, ORS 758.010 concerning utility rights of way defines "transmission company" as "a person or entity that owns or operates high voltage transmission lines and is subject to the jurisdiction of the Federal Energy Regulatory Commission." Transmission is also a term of art in the utility and energy industries. For example, the Energy Information Administration, which collects statistics for the federal Department of Energy, defines the term as:
"Transmission (electric) (verb): The movement or transfer of electric energy over an interconnected group of lines and associated equipment between points of supply and points at which it is transformed for delivery to consumers or is delivered to other electric systems. Transmission is considered to end when the energy is transformed for distribution to the consumer." Energy Information Administration, Glossary, *available at* http://www.eia.doe.gov/glossary/glossary_t.htm (last visited July 11, 2008).
The Bonneville Power Administration defines the term as:
"The bulk transport of electricity from large generation centers over significant distances to interchanges with large industries and distribution networks of utilities." Bonneville Power Administration, BPA Definitions, *available at* http://www.bpa.gov/corporate/pubs/definitions/tuv.cfm (last visited July 11, 2008).
The Western Electricity Coordinating Council defines the term as:
"Transmission: An interconnected group of lines and associated equipment for the movement or transfer of electric energy between points of supply and points at which it is transformed for delivery to customers or is delivered to other electric systems." Western Electricity Coordinating Council, Glossary of WWEC Terms and Acronyms, available at http://www.wecc.biz/wrap.php?glossary/index.php#T (last visited July 11, 2008).

[2] Distribution is also a term of art in the utility and energy industries. For example, the Energy Information Administration defines the term as:
"Distribution: The delivery of energy to retail customers."
"Distribution system: The portion of the transmission and facilities of an electric system that is dedicated to delivering electric energy to an end-user." Energy Information Administration, Glossary, *available at* http://www.eia.doe.gov/glossary/glossary_d.htm (last visited July 11, 2008).
The Bonneville Power Administration defines the term as as:

distinction between transmission and delivery—transmission is over long distances through the grid and delivery is local distribution to retail customers.

Under the assumed facts, Honeywell does not meet these definitional requirements. It is important to distinguish the two components of the ESA arrangement that could, but OPUC should conclude do not, implicate transmission or distribution. The first is on-site transfer of electricity from the solar panels to the customer's buildings or other activities, which clearly does not implicate transmission as defined. As a result, Honeywell cannot be an ESS based on this component of the ESA arrangement because an essential element of the definition of ancillary services is lacking.

The second component of the ESA—the supply of energy in excess of concurrent loads at the customer's site to the utility—also does not meet the definitional requirements of transmission and distribution for Honeywell to qualify as an ESS because no delivery or transmission related services are involved. There is a critical and common distinction for utilities between what physically occurs with the movement of electrons through the system and what the parties have contracted to transmit and deliver. The actual behavior of the electric grid only loosely mimics the terms of electric contracts because there is discontinuity between contract terms and physical reality owing to geographic distance and time. For example, PacifiCorp and PGE both own or contract for electricity from facilities in Montana for use in Oregon. Contracted delivery of electricity is not physically replicated across the transmission and distribution system: The output of a Montana power plant is almost certain to actually serve

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"The transport of electricity to ultimate use points, such as homes and businesses, from a source of generation or from one or more substations." Bonneville Power Administration, BPA Definitions, *available at* http://www.bpa.gov/corporate/pubs/definitions/d.cfm (last visited July 11, 2008).
The Western Electricity Coordinating Council defines the term as:
"Distribution Provider: Provides and operates the 'wires' between the transmission system and the end-use customer * * *." Western Electricity Coordinating Council, Glossary of WWEC Terms and Acronyms, available at http://www.wecc.biz/wrap.php?glossary/index.php#D (last visited July 11, 2008).

loads in or near Montana rather than reaching customers on either side of the Willamette River in Portland. Load shaping services operate in the same manner by providing for generation that takes place late on a Tuesday to be delivered on a Wednesday.

Whether electrons physically move from the customer's site to other utility customers is not relevant in this context because transmission and delivery are terms that most critically establish the contractual relationship between the contracting parties. At no time has Honeywell contracted to transmit or deliver electricity to those receiving the energy during periods when loads are less than provided by the solar facility. At no time is Honeywell able to predict or contract for delivery to adjacent locations because this exchange with other utility customers occurs in a constantly shifting radius about the customer's site. At no time does Honeywell need the ancillary services to satisfy the requirements of their agreement with the customer. At no time does the arrangement between Honeywell and the customer alter the customer interaction with the utility (beyond creating a financial environment that allows the project to be developed). Rather, this excess energy offsets energy provided by the utility, and as such, is more properly described as a transactional agreement for treating energy exchange between the utility and the customer.

Regardless of the distinction between physical reality and contract, there is negligible physical impact on transmission systems under the assumed facts. Assuming OPUC concludes that the ESAs fall under the net metering provisions, the site output and overall penetration limits in the net metering statute and rules preclude an appreciable impact on the distribution system. Those limits also preclude a demonstrable impact on the transmission network because the energy generated by the solar facilities is used within the distribution system and enters the transmission network in only minimal amounts, if any.

Finally, the ESS provisions do not appear to contemplate the ESA arrangement described in the assumed facts. A key modifier in the definition of ancillary services is "from generating facilities to retail electricity customers." ORS 757.600(2). The assumed facts describe a condition in which each of the distinct generating facilities delivers electricity to a specific customer (singular, not plural). At times of low site demand, the net metering exchange allows excess generation to move onto the utility distribution system and serve the loads of one or more customers (plural, not singular). Although in the aggregate Honeywell serves multiple customers with multiple ESAs, the modifier quoted above leads to the conclusion that the direct access provisions envision output from generating plants pushed across transmission and distribution networks to multiple end users. On the other hand, net metering contemplates a one-to-one transaction between each generating facility and each customer, and more properly covers the ESA here.

Similarly Situated Businesses

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

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

As noted in earlier arguments, the procurement arrangement by which the customer achieves on-site generation eligible for net metering is irrelevant to the utility interaction.

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Whether the customer builds a system on-site, purchases equipment outright, hires an installer, leases equipment, or follows the arrangement described in the stipulated facts does not inherently change the outcome from the utility side of the meter.

DATED this 11th day of July 2008.

Respectfully submitted,

HARDY MYERS
Attorney General

/s/ James B. Murphy
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th of July 2008, I served the foregoing REPLY BRIEF OF OREGON DEPARTMENT OF ENERGY, INTERVENOR upon the persons named on the attached service list by mailing a full, true and correct copy thereof to such persons by regular first-class mail, excepting those persons waiving such service by mail who were served at their e-mail address, as listed on the service list.

DATED: July 11, 2008

/s/ James B. Murphy

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