

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 40

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

MEMORANDUM

**DISPOSITION: FINAL ASSUMED FACTS AND
QUESTIONS ESTABLISHED**

Based on the comments received from certain parties, I have finalized the list of assumed facts and questions for resolution in this declaratory ruling proceeding. I have attached that list for the parties' convenience. Parties need not comment on all questions, but are requested to organize any comments based on how the questions are presented in the attachment.

Dated at Salem, Oregon, this 20th day of June, 2008.

Michael Grant
Chief Administrative Law Judge

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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 Pacific Power, or Portland General Electric Company.

Under an ESA, Honeywell finances, builds and operates a 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. Depending on the particular project with the above-identified customers, these solar facilities generate between 0.5 percent and 18 percent of the annual electricity used by the customer at the project served by the solar facility.

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 purchases all of the electricity generated by the facility at agreed-upon rates with Honeywell, which may be comparable to the electric utility's retail tail block rate. 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 is provided on the customer side of the meter. Energy produced by the solar facility that is consumed onsite reduces the energy provided to the customer by the utility. Energy in excess of concurrent loads at the site is supplied to the utility distribution system and is credited against energy consumed by the site when loads are less than that produced by the solar energy facility (*e.g.*, at night). The customer is not paid for any annual surplus energy. Any annual surplus is credited to the utility's low income assistance program as per administrative rules governing net metering.

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 (ETO).

Pacific Power is a public utility that is subject to state and federal regulation. Pacific Power must offer net metering service to qualifying Oregon retail customers pursuant ORS 757.300. Pacific Power must also make direct access available to non-residential customers. Pacific Power offers other rates, such as standby and partial requirements rates, that may be applicable to customers. Further, Pacific Power must maintain resource plans, which identify the projected amounts of capacity and energy required to service the projected needs of Oregon customers that Pacific Power is obligated to serve.

All Pacific Power customers pay a public purpose charge for cost-effective conservation, new market transformation and for constructing and operating certain new renewable energy resources. All of the renewable energy funds, not subject to self-direction, are administered by the ETO. Customers owning and installing net metering facilities frequently seek grants from the ETO.

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) Is Honeywell’s customer as described above a “customer-generator” under ORS 757.300(1)(a)?
- (3) Does ORS 757.300 require a customer to own a net-metering facility or a portion of the facility to be considered a “customer-generator”?
- (4) Does ORS 757.300 place any limitations on third-party ownership of net-metering facilities?
- (5) Who is responsible for the costs of installing the metering arrangement for a facility provided by Honeywell?

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)?
- (3) If some portion of the transaction between Honeywell and the customer is a sale for resale, what authority does the state and the Commission have over that sale for resale?
- (4) If some portion of the transaction between Honeywell and the customer is not a sale for resale, what is the source of the energy being delivered to the grid to qualify for net metering?

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?
- (3) Is Honeywell a public utility as defined in ORS 757.005(1)?
- (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? If so, what rates apply to the portion of the customer’s load not served by Honeywell?
- (6) Is the utility required to sell electricity to the customer for the customer’s total load when the Honeywell facility is not generating electricity? If so, should the customer be placed on a partial requirements rate schedule?
- (7) In its IRP, is the utility required to plan to serve the portion of the customer’s load not served by Honeywell?
- (8) Does the utility have an obligation to determine who owns generation facilities installed on the customer’s side of the meter?

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

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 third-party provider 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?
- (5) The customer leases the equipment from the third party rather than paying for the electricity it provides?
- (6) The third-party provider is a registered electricity service supplier under ORS 757.600(16)?