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Oregon PUC Rules in Favor of Third Party Solar Projects

On July 31, 2008, the Oregon Public Utility Commission ("Oregon PUC") issued an order in *In the Matter of Honeywell International, Inc. and Pacificorp*, Oregon PUC Docket DR-40, [Order No. 08-388](#) (July 31, 2008), addressing a wide range of issues related to net-metering facilities that may signal a new trend in net-metering regulations. In the proceeding the Oregon PUC evaluated the regulatory ramifications for solar Energy Services Agreements ("ESAs") offered by Honeywell to customers whereby Honeywell finances, builds, owns and operates a solar photovoltaic system located on a customer's premises and sells the electricity generated by the solar facility to the customer. The customer enters into a net-metering arrangement with its electric utility under which energy produced by the solar facility in excess of the customer's load is delivered to the electric distribution system, and the customer receives a credit against the electricity it purchases from the utility.

Honeywell and Pacificorp had jointly requested that the Oregon PUC address questions related to the applicability of various Oregon utilities laws and regulations with respect to Honeywell's net-metering program.

In issuing the ruling, the Oregon PUC determined that Honeywell's customers are entitled to utilize net metering based on the statutory definition of net metering. The Oregon PUC also found that the legislature intended the term "customer-generator" to mean a "user of the net-metering facility" and determined

that Honeywell's customers satisfied the definition. The Oregon PUC stated that the omission of ownership requirements in the current statutory framework did not compel customers to own any portion of the net-metering facility, but it reserved the right to impose ownership requirements in the future. The order also declined to address federal issues raised by some parties questioning whether such sales constituted wholesale sales of electricity, but noted FERC's recent pronouncement that no sale is deemed to occur in conjunction with the practice of net metering. Finally, the Oregon PUC determined that Honeywell is not a public utility under Oregon law.

The Oregon ruling clears the way for solar equipment providers to market ESAs to individual customers without risk of violating current Oregon utility regulations. The ruling also serves as one of the nation's first rulings directly addressing the issue of third party ownership of equipment used to produce power covered by net-metering arrangements. Several other states have identified potential issues regarding third party ownership of net-metering facilities, but have not, as yet, provided definitive guidance as to whether customers or equipment providers should be regulated as public utilities or as retail electricity providers. The issue has created concern in the solar industry at a time when net metering is becoming available in many states. While the Oregon decision clears the way for ESAs only within Oregon, it may be a bellwether as other states analyze their net-metering programs.

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