

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1022

September Term 2009

NRC-SUB-526

Filed On: February 17, 2010 [1230380]

Honeywell International, Inc.,

Petitioner

v.

Nuclear Regulatory Commission and United
States of America,

Respondents

ORDER

The petition for review in this case was filed and docketed on February 8, 2010, and assigned the above number. It is, on the court's own motion,

ORDERED that petitioner submit the documents listed below by the dates indicated.

Certificate as to Parties, Rulings, and Related Cases	March 19, 2010
Docketing Statement Form	March 19, 2010
Procedural motions, if any	March 19, 2010
Statement of Intent to Utilize Deferred Joint Appendix	March 19, 2010
Statement of Issues to be Raised	March 19, 2010
Underlying Decision from Which Appeal or Petition Arises	March 19, 2010
Dispositive Motions, if any (Original and 4 copies)	April 5, 2010

It is

FURTHER ORDERED that respondents submit the documents listed below by the dates indicated.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Office of the Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1022

September Term 2009

Entry of Appearance Form	March 19, 2010
Procedural motions, if any	March 19, 2010
Certified Index to the Record	April 5, 2010
Dispositive Motions, if any (Original and 4 copies)	April 5, 2010

It is

FURTHER ORDERED that briefing in this case be deferred pending further order of the court.

The Clerk is directed to transmit to respondents a certified copy of this order and a copy of the petition for review.

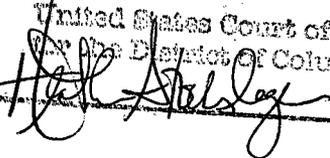
FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Heather T. Stockslager
Deputy Clerk

The following forms and notices are available on the Court's website:

Agency Docketing Statement Form
Entry of Appearance Form
Request to Enter Appellate Mediation Program
Notice Concerning Expedition of Appeals and Petitions for Review
Stipulation to be Placed in Stand-By Pool of Cases

A true copy:

United States Court of Appeals
For the District of Columbia Circuit

Deputy Clerk

FEB - 8 2010

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
FEB - 8 2010
CLERK

RECEIVED

HONEYWELL INTERNATIONAL)
INC.,)

Petitioner,)

v.)

U.S. NUCLEAR REGULATORY)
COMMISSION AND THE UNITED)
STATES OF AMERICA)

Respondents.)

Petition for Review

Case No. 10- 10-1022

PETITION FOR REVIEW

Petitioner Honeywell International Inc. ("Honeywell"), pursuant to 28 U.S.C. §§ 2342-2343 and Rule 15(a) of the Federal Rules of Appellate Procedure, hereby petitions this Court for review of the United States Nuclear Regulatory Commission ("NRC") decision, entered December 11, 2009, for Honeywell's Metropolis Works Facility, NRC Material License No. SUB-526, Docket No. 40-3392.

In the decision, the NRC denied a request to amend Honeywell's NRC-issued license and thereby extend an exemption from aspects of the NRC's decommissioning financial assurance regulations. Having granted identical requests previously, the NRC failed to justify or explain its change in position. The NRC also violated the Administrative Procedure Act by improperly imposing

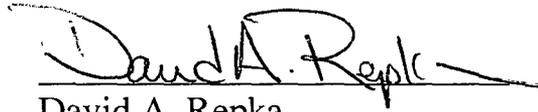
the requirements of a new rule without engaging in notice and comment rulemaking. A copy of the NRC decision is attached to this petition.

The NRC is a proper respondent under Rule 15(a) of the Federal Rules of Appellate Procedure. The United States is a proper respondent under 28 U.S.C. § 2344. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 2342(4) and 2344. This Court is a proper venue under 28 U.S.C. § 2343. The NRC decision became final and subject to review upon its delivery to Honeywell on December 16, 2009, and this Petition is therefore timely. Honeywell has standing under 28 U.S.C. § 2344 and 5 U.S.C. § 702. Honeywell participated in the underlying agency proceeding and is directly aggrieved by the NRC's decision, which effects the license for Honeywell's Metropolis Works Facility.

Petitioner requests as relief that the Court: (a) hold unlawful and set aside the NRC's decision to deny Honeywell's request; (b) declare that the NRC's decision to deny Honeywell's request is arbitrary and capricious, an abuse of discretion and otherwise inconsistent with applicable law; and (c) grant such other and further relief as may be appropriate.

The filing fee of \$450.00 is being paid to the Circuit Clerk upon the filing of this Petition.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style and is positioned above a horizontal line.

David A. Repka

Tyson R. Smith

WINSTON & STRAWN LLP

1700 K Street, N.W.

Washington DC 20006

Tel. 202-282-5726

drepka@winston.com

trsmith@winston.com

Attorneys for Petitioners

February 8th, 2010

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

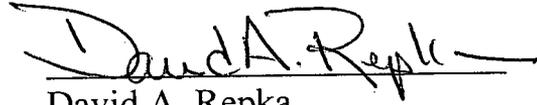
HONEYWELL INTERNATIONAL)	
INC.,)	
)	Petition for Review
Petitioner,)	
)	
v.)	Case No. 10-_____
)	
U.S. NUCLEAR REGULATORY)	
COMMISSION AND THE UNITED)	
STATES OF AMERICA)	
)	
Respondents.)	

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Honeywell International Inc. (“Honeywell”) respectfully submits this disclosure statement.

Honeywell International is a diversified technology and manufacturing leader, serving customers worldwide with aerospace products and services; control technologies for buildings, homes and industry; automotive products; turbochargers; and specialty materials. Honeywell has no parent companies, subsidiaries, or affiliates whose listing is required by Rule 26.1.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

David A. Repka
Tyson R. Smith
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington DC 20006
Tel. 202-282-5726

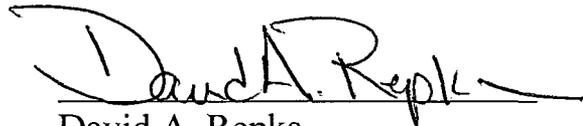
Attorneys for Petitioners

February 8th, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have on this 8th day of February 2010 served a copy of the foregoing petition for review by first-class mail, postage prepaid, on the following individuals at the following addresses:

Stephen G. Burns
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



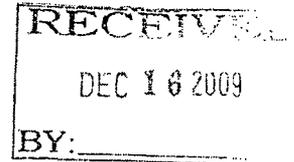
David A. Repka
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1700 K Street, N.W.
Washington DC 20006
Tel. 202-282-5726

Attorney for Petitioners



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 11, 2009



Mr. Dave Cope, Plant Manager
Honeywell Metropolis Works
Honeywell International, Inc.
P.O. Box 430
Highway 45 North
Metropolis, IL 62960

SUBJECT: DENIAL OF EXEMPTION REQUEST FROM 10 CFR PART 30, APPENDIX C,
REGARDING DECOMMISSIONING FINANCIAL ASSURANCE REQUIREMENTS,
HONEYWELL METROPOLIS WORKS, MATERIAL LICENSE NO. SUB-526
(TAC NO. L32718)

Dear Mr. Cope:

By letter dated April 1, 2009 (Agency Documents Access and Management System [ADAMS] Accession No. ML090920087), as supplemented by letter dated October 13, 2009 (ADAMS Accession No. ML092940176), Honeywell (the licensee) requested an exemption from financial assurance requirements for decommissioning stated in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30, Appendix C, "Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning." Title 10 CFR Part 30, Appendix C, is applicable to Honeywell pursuant to 10 CFR 40.36, "Financial Assurance and Recordkeeping for Decommissioning," and Section II.A.1 of Appendix C requires a licensee using a self-guarantee method of financial assurance to have a tangible net worth "at least 10 times the total current decommissioning cost estimate."

Honeywell uses a self-guarantee method of financial assurance. The requested exemption would allow Honeywell to continue including intangible "goodwill" assets in its calculation of tangible net worth. Without the exemption, Honeywell does not pass the financial test applicable to licensees using the self-guarantee method of financial assurance. Honeywell's decommissioning cost estimate is \$156 million [\$156,440,898]. To meet existing Appendix C requirement of 10 to 1 ratio, Honeywell must have a minimum tangible net worth of \$1,564 million [\$1,564,408,980].

The requested exemption would extend, for the third time, the exemption initially approved by the U.S. Nuclear Regulatory Commission (NRC) staff on May 11, 2007 (ADAMS Accession No. ML062140687), as part of its license renewal technical evaluation report (TER). Honeywell was granted an exemption to include goodwill assets to meet the 10 to 1 ratio required by Section II.A.1 of Appendix C to 10 CFR Part 30. The following License Condition (LC) was then imposed on Honeywell's source material license:

LC-27

Honeywell is granted an exemption to 10 CFR Part 30, Appendix C, Section II.A.1 (as made applicable by 10 CFR 40.36(e)(2)). Specifically, as described in a letter dated December 1, 2006, Honeywell may include goodwill assets in its calculation of tangible net worth to meet the 10 to 1 ratio of tangible net worth to decommissioning obligation to

pass the financial test. All other applicable conditions within 10 CFR 30, Appendix C remain. This license condition will expire 1 year from the date of approval of this license renewal.

As stated in the TER for the Renewal of Source Materials License, SUB-526, dated May 11, 2007, Honeywell was put on notice that the exemption granted would be subject to re-evaluation. Specifically, Section 11.5, "Financial Assurance," of the TER stated the following:

However, Appendix C to Part 30 is currently under evaluation for proposed rulemaking. The NRC staff is in the process of developing proposed amendments which, if approved by the U.S. NRC, will be published for public notice and comment. After public comments are received, additional information may arise that could cause the staff to reconsider the adequacy of using goodwill assets to meet the ratio of tangible net worth to decommissioning obligation In view of this factor, an exemption to permit the use of goodwill assets to meet the ratio of tangible net worth to decommissioning obligation in Appendix C to Part 30 must be time limited to allow reconsideration of the basis for the exemption in the future.

The second exemption request was submitted by Honeywell via letter dated April 11, 2008 (ADAMS Accession No. ML081060399). The staff reviewed the second exemption request and found it acceptable by letter dated August 22, 2008 (ADAMS Accession No. ML082250707). However, since that time, Honeywell's tangible net worth has continued to decline. Honeywell's tangible net worth was \$1.929 billion [\$1,929,000,000] as of December 31, 2005; \$70 million [\$70,000,000] as of December 31, 2006; minus \$1.451 billion [-\$1,451,000,000] as of December 31, 2007; and minus \$5.265 billion [-\$5,265,000,000] as of December 31, 2008.

In its letter dated April 1, 2009, Honeywell made the argument that the proposed exemption request should be granted because the "exemption is entirely consistent with a proposed rule published on January 22, 2008" (referring to the fact that, on January 22, 2008, the proposed Decommissioning Planning rule was published for comment in the *Federal Register*). The NRC staff does not find this to be a persuasive argument for renewing the exemption.

The current version of Appendix C to 10 CFR Part 30 does not have a minimum tangible net worth requirement. In order to make Appendix C consistent with Appendices A and D to 10 CFR Part 30 in this regard, the draft rule proposed adding to Appendix C a minimum tangible net worth requirement of \$19 million (73 *Federal Register*, January 22, 2008, pages 3825 to 3826). Moreover, the proposed rule codifies certain aspects of existing regulatory guidance to improve the quality of decommissioning funding plans, and applies NRC experience to increase the likelihood that adequate funds will be available when needed to complete the decommissioning process. In addition, the proposed rule addresses the potential vulnerability of the parent company guarantee and the self-guarantee as the financial mechanism for providing decommissioning funding assurance, in cases where the guarantor falls into financial distress. Further, the proposed rule amends the 10 to 1 tangible net worth to total decommissioning cost estimate ratio in the existing Appendix C to a 10 to 1 ratio of net worth to total decommissioning cost estimate. The proposed rule will allow the use of intangible assets to satisfy the 10 to 1 net worth requirement only if tangible net worth exceeds \$19 million, and intangible assets may only be used for the portion above \$19 million. The minimum tangible net worth requirement must be met at all times. The proposed final rule, set forth in SECY-09-0042, "Final Rule: Decommissioning Planning (10 CFR Parts 20, 30, 40, 50, 70, and 72)," dated March 13, 2009 (ADAMS Accession No. ML090500566), and still pending before the

Commission, increases the minimum tangible net worth requirement from \$19 million to \$21 million to adjust for inflation.

As stated above, as of December 31, 2008, Honeywell had a negative tangible net worth of minus \$5.265 billion [-\$5,265,000,000]. Therefore, Honeywell meets neither the current 10 CFR Part 30, Appendix C, requirements, nor the proposed requirements in SECY-09-0042 pending before the Commission. Accordingly, based on the above, the NRC staff is denying Honeywell's April 1, 2009, request for an exemption.

Due to this action, Honeywell will need to put into place one or more of the following types of financial assurance instruments to meet the requirements of 10 CFR 40.36(e): trust, escrow account, government fund, certificate of deposit, deposit of government securities, surety bond, letter of credit, line of credit, or parent company guarantee. Pursuant to Section II.C of 10 CFR Part 30, Appendix C, Honeywell must establish alternate financial assurance within 120 days from the date of this letter. Additionally, pursuant to Section III.C of 10 CFR Part 30, Appendix C, Honeywell's current self guarantee is to remain in force until NRC approves Honeywell's alternate surety.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If there are any questions regarding this action, please contact Ms. Tilda Liu, NRC Project Manager for Honeywell Metropolis Works, at (301) 492-3217 or via e-mail to tilda.liu@nrc.gov.

Sincerely,

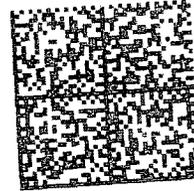


Daniel H. Dorman, Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No.: 40-3392
License No.: SUB-526

CLERK, UNITED STATES COURT OF APPEALS

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General Counsel
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