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P R O C E E D I N G S

2:02 P.M.

ADMIN. JUDGE RYERSON: Let's begin. Good afternoon, everyone. This is Judge Ryerson and let's go on the record.

With me is Judge Hawkens and our law clerk, Kirsten Stoddard. And we have on the line Judge Abramson calling in.

We obviously have a reporter on the line as well and it will make his life much easier if everyone tries to remember to identify yourselves before you speak.

I also probably should mention we have arranged for another line that is a listen-only line in case members of the public or the press have an interest in this proceeding. As far as I know, no one has called in for the code for that line, but the option has been made available to everyone.

That said, let's get the formal appearances of counsel. I know you probably have already identified yourselves, but who will be speaking for the Petitioner here, Honeywell?

MR. SMITH: This is Tyson Smith. I'm counsel for Honeywell. And with me on the line is David Repka who is in our Washington, D.C. office and

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1 so I will be the primary speaker, but unfortunately,
2 since we can't be in the same room, it may be possible
3 that David will add something here and there.

4 ADMIN. JUDGE RYERSON: Quite all right.
5 Well, thank you and welcome.

6 And for the NRC staff, who do we have?

7 MR. CLARK: Good afternoon. This is
8 Michael Clark. And with me are Patty Jehle and Emily
9 Monteith.

10 ADMIN. JUDGE RYERSON: Okay and who should
11 we ask questions to in the first instance, you, Mr.
12 Clark?

13 MR. CLARK: Sure, Your Honor. That would
14 be great.

15 ADMIN. JUDGE RYERSON: Very good. Well,
16 the purpose of the call is set forth in our August 2
17 order and that's to help the Board develop an initial
18 scheduling order which I hope will be the only
19 scheduling order in this proceeding. And what I've
20 proposed to do is go through the list of topics and
21 the questions as they're put forth in that order in
22 the order in which they're put and to the extent that
23 the parties have been able to reach agreement, perhaps
24 on some issues, we can hear reports on that as we go
25 through.

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1 So before we do that, are there any
2 comments before we begin? Judge Hawkens, Judge
3 Abramson?

4 Judge Abramson, you're with us, right?

5 ADMIN. JUDGE ABRAMSON: Yes, I am here.

6 ADMIN. JUDGE RYERSON: Okay, excellent.

7 Any comments from the parties? First, the Petitioner.

8 MR. SMITH: No, Your Honor. I would just
9 add that we have -- the staff and Honeywell have
10 conferred and I think we've reached agreement on some
11 of the items and we're working on a couple of the
12 other ones and hope to have something next week, but
13 we'll discuss those as we go through them.

14 ADMIN. JUDGE RYERSON: Okay, unless the
15 staff has something, we'll just start with the topics
16 in the order of August 2.

17 And the first one and I will confess I
18 haven't discussed this with my fellow Board members,
19 but I certainly have my own views on it, but let's
20 first get the parties' views on the question of
21 whether summary disposition might be a useful
22 procedure in this particular case.

23 Mr. Smith, do you want to start?

24 MR. SMITH: Yes, certainly. I think from
25 Honeywell's perspective, we actually don't think that

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1 summary disposition is going to be really helpful
2 here. We've already got a fairly discrete set of
3 issues and we've already got the NRC staff's decision.
4 So we think it's more efficient to just proceed in
5 relatively short order to the merits.

6 ADMIN. JUDGE RYERSON: Okay, and is there
7 agreement on that issue?

8 MR. CLARK: Your Honor, this is Mike
9 Clark. The staff is in general agreement, but we
10 think there are some threshold legal issues raised in
11 the hearing request that might either narrow the scope
12 of issues for the hearing or possibly eliminate the
13 need for the hearing. So those issues, we believe,
14 could either be addressed in summary disposition
15 motions or possibly in the initial statements of
16 position.

17 ADMIN. JUDGE RYERSON: Okay, let's get to
18 that as we get to some of the legal issues that we've
19 set out and you may have others that you think are
20 appropriate for the Board's resolution before or in
21 the context of the hearing.

22 The second item, and I'll just start with
23 you each time, I guess, Mr. Smith, is the selection of
24 the appropriate type of hearing, assuming that the
25 hearing is not resolved on a legal issue that we

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1 decide, is there agreement on the type of hearing that
2 would be appropriate here?

3 MR. SMITH: Yes, and I think that
4 Honeywell and the NRC staff are in agreement that the
5 Subpart L procedures would generally apply.

6 ADMIN. JUDGE RYERSON: Okay. Thank you.
7 The third topic as set forth in the order is discovery
8 issues. And here again I would imagine that since
9 you've -- since the Petitioner has already presented
10 its case to the staff, that discovery may not be a
11 particularly complicated or possibly not even a
12 necessary issue here.

13 Again, Mr. Smith, do you comment on that?

14 MR. SMITH: Yes. We've discussed this
15 with the NRC and I think we are -- we're working
16 towards and we've gotten some proposals. We've gone
17 back and forth on a defined set of disclosures or
18 protocols governing mandatory disclosures here. I
19 think we were leaning towards having a single
20 disclosure period, just make disclosures once and have
21 that be it, because as you mentioned, the NRC has made
22 their decision and the documents are already known to
23 everyone.

24 And so we're working on developing that.
25 I think our plan and Michael and I were just emailing

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1 before, so Michael, please correct me if I'm wrong,
2 but we think we should be able to reach agreement on
3 that, submit something to you by say the middle of
4 next week.

5 ADMIN. JUDGE RYERSON: Okay. One issue
6 that cuts across possibly topics 3, 4, and 5, we're
7 talking about financial data here, but I think we're
8 also talking primarily about public financial data.
9 Is that correct? Are there other confidentiality
10 issues that we need to be aware of in connection with
11 any of these issues?

12 MR. SMITH: From Honeywell's perspective,
13 all of the information that we've relied on or that
14 we've sent to the NRC related to our financial
15 position or whether or not the amendment should have
16 been granted is all public information and public
17 documents. That's correct.

18 ADMIN. JUDGE RYERSON: Okay.

19 MR. SMITH: So we don't anticipate, if I
20 may be reading into what you're asking a little bit,
21 we don't anticipate that there would be a strong need
22 for proprietary filings or closed hearing related some
23 confidential financial information. We don't
24 anticipate anything like that.

25 ADMIN. JUDGE RYERSON: And Honeywell is a

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1 publicly-traded company and so its basic financials
2 are all out there, presumably filed with the SEC.

3 MR. SMITH: Correct.

4 ADMIN. JUDGE RYERSON: All right. Getting
5 then directly into issue four, have you been able to
6 reach agreement on the schedule that the parties would
7 prefer here in terms of the initial statements of
8 position, written testimony, when -- or at least in
9 what time frame you think a hearing would be
10 appropriate.

11 MR. SMITH: Sure, and we have gone back
12 and forth with the NRC staff on that and I understand
13 that we've reached agreement on a proposed schedule
14 for the hearing. We've got some suggested dates for
15 completing disclosures, direct testimony, reply
16 testimony, motions in limine, proposed questions for
17 the Board or motions for cross examination, replies,
18 and hearings.

19 I can just sort of tell you what those are
20 now and I think our plan would probably be to include
21 those in our submittal that we'd like to maybe make
22 next week outlining our discovery agreements and sort
23 of formalize our proposal. But in general, we were
24 planning to complete disclosures around September
25 15th, so the middle of next month, with written direct

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1 testimony due October 14th. Reply testimony due
2 November 3rd. We were looking at filing motions in
3 limine, proposed questions for the Board, and any
4 motions for cross examination on November 14th.
5 Replies to any motions that were filed would be due on
6 November 21st and then hoping to have a hearing some
7 time in early to mid-December.

8 ADMIN. JUDGE RYERSON: Okay.

9 MR. SMITH: Assuming that works for the
10 Board, of course. That was sort of what we had agreed
11 would be an appropriate time frame and deadlines.

12 ADMIN. JUDGE RYERSON: Well, again, the
13 Board will have to confer on that, but I will say that
14 I think the milestones would provide for a year or
15 something. With myself, I thought it was totally in
16 a case like this, not necessary at all. So I think
17 this sounds tentatively -- we'll obviously look at
18 exactly what you submit, but I think the time frame,
19 at least to me sounds like a very reasonable one.

20 MR. CLARK: The staff is in agreement with
21 that schedule. The only qualification would be if the
22 Board decides it wants any summary disposition motions
23 or preliminary motions on legal issues. That could
24 push the dates back maybe several weeks, but otherwise
25 the staff is in agreement with that proposal.

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1 ADMIN. JUDGE RYERSON: Okay. We didn't
2 mention hearing location. Again, my guess is that
3 we're talking about maybe a day of a hearing here.
4 Did you talk about that at all, Mr. Smith?

5 MR. SMITH: I think that was our
6 expectation, at least. We didn't talk about this
7 specifically with the staff, but it was in our emails
8 back and forth. I had sort of assumed one day for the
9 hearing and we were also thinking that the hearing
10 would probably be best to just conduct that in
11 Rockville. Our experts will be coming from, probably
12 from New Jersey where Honeywell's headquarters is.
13 And it's just a quick train ride down. So that was
14 our expectation and that works for us as well.

15 ADMIN. JUDGE RYERSON: I assume the staff
16 has no objection to that and I doubt if any Board
17 Members do. That probably is the most convenient for
18 everyone.

19 MR. CLARK: No objection from the staff,
20 Your Honor.

21 ADMIN. JUDGE RYERSON: All right, well,
22 let's get into at least an initial discussion of some
23 of these legal issues and again, you may or may not
24 have been able to reach consensus on some of these,
25 but Mr. Smith, your initial pleading said that the

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1 Board should review the exemption request ab initio.
2 And I wonder if you have a consensus from the staff on
3 that?

4 MR. SMITH: We discussed this with the
5 staff and I guess I should preface this by saying what
6 I really meant by ab initio was something along the
7 lines of this isn't an appellate-type review. So it's
8 not similar to sort of a federal appellate review
9 under the arbitrary and capricious standard.

10 And so I think we were able to agree with
11 the staff that we agree on that point at least. This
12 is not like a federal appellate review and that the
13 Board will consider the issues involved in the same
14 manner that it would when conducting a hearing on the
15 grant or denial of other types of applications. I
16 guess the point is just because this is the Applicant
17 challenging the staff's decision that shouldn't really
18 change the Board's frame for reviewing the underlying
19 licensing decision.

20 ADMIN. JUDGE RYERSON: Okay. Mr. Clark,
21 did you want to comment at this point on that?

22 MR. CLARK: Your Honor, the staff agrees
23 and that works into the next point, the burden proof.
24 As in the normal licensing case, where the burden of
25 proof is on the applicant, the staff's position is the

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1 burden is also on the applicant here to prove that it
2 should be granted the exemption.

3 ADMIN. JUDGE RYERSON: Right. And do you
4 disagree with that, Mr. Smith?

5 MR. SMITH: Well, I think I would take a
6 slightly more nuanced approach, I guess. And I sort
7 of look at it this way. In the typical enforcement
8 case, the NRC staff has the burden of justifying its
9 order and in a typical licensing case, Mr. Clark is
10 right. The applicant, as the proponent of the action
11 has the burden of proof.

12 I think here we're really talking about
13 something that's a little in between those or maybe
14 even more accurately, a little bit of both of those in
15 that I think the NRC has the burden of -- as a
16 proponent of the denial, they have the burden of proof
17 with respect to that denial. But I would agree that
18 ultimately, Honeywell has the burden of proof if we
19 want the amendment issued.

20 So I don't know that it really matters
21 much in the context of your review. Honeywell does
22 have the ultimate burden in order for the license
23 amendment to be granted.

24 ADMIN. JUDGE RYERSON: Okay. It struck me
25 that as you suggest, one way to look at this is well,

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1 the staff has issued an order, in effect, and the
2 staff is defending its position. But that would seem
3 to me to have the ironic result that Honeywell would
4 somehow be better off losing its case in front of the
5 staff, than it would be winning its case in front of
6 the staff which sounds like an odd result. But all
7 right, let's consider, we may want to ask you to
8 specifically brief some of these issues, either as
9 part of your pre-trial statements or otherwise.

10 Let's -- unless -- does anyone else have
11 anything to say about either (a) or (b) at this point?

12 MR. CLARK: Judge Ryerson, this is Mike
13 Clark. I would just have two quick points on B.
14 First, we haven't mentioned the regulation. 10 CFR
15 2.325 is the regulation that assigns the burden of
16 proof to the applicant. So the staff's use of the
17 plain language of that regulation controls here.

18 Also, regardless of whether the staff
19 denies or grants an application, it takes a position
20 and that position is always involved in litigation.
21 Yet when staff grants an application, the burden of
22 proof is on the applicant to show that it was entitled
23 to the licensing action.

24 Likewise, when the staff takes the
25 position that it should be denied, the burden should

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1 not change. I can point to two cases, Greystar, 53
2 NRC 168; and Morabedo, which was the denial of an
3 operator license. That's 26 NRC 81.

4 In both of those cases, even though the
5 staff denied an application, the burden of proof was
6 on the applicant.

7 ADMIN. JUDGE RYERSON: Okay. Mr. Smith,
8 anything else you'd like to say at this time? Again,
9 I think we're probably going to in some way ask you to
10 brief these issues.

11 MR. SMITH: No, Your Honor, I don't have
12 anything else to add.

13 ADMIN. JUDGE RYERSON: Okay. Let's get to
14 6c, and -- oh, I know, before we get off of a and b,
15 particularly a, and we didn't ask you to consider this
16 before the call, but it did occur to me as I looked at
17 the papers, there may be a dispute among the parties
18 here. When we look at this issue, I know the staff
19 was quite careful in its decision that it was acting
20 on remand from the D.C. Circuit with respect to the
21 original decision based, I guess, on the original
22 evidence and the staff, if I recall correctly, was
23 quite careful to say that it was not considering more
24 recent financial data that was submitted by Honeywell.

25 Do you have agreement on whether that's

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1 right or wrong?

2 Mr. Smith, what's Honeywell's position as
3 to what information, in fact, this Board then should
4 be considering in terms of Honeywell's financial
5 condition? Are we sort of frozen in time, when was
6 it, 2009? Or are we free to look at more recent
7 financial data in connection with the request that's
8 in front of us?

9 MR. SMITH: I don't think we are frozen in
10 time and I think and maintain that the NRC staff
11 should look at all information that's available to it
12 when it's making a decision. I think it's -- it would
13 be arbitrary and contrary to considering all available
14 information when making a decision for the NRC to
15 ignore relevant information that is available to it
16 and it's on the docket with the Agency.

17 ADMIN. JUDGE HAWKENS: Did you make that
18 argument to the staff when the case was remanded to it
19 from the D.C. Circuit?

20 MR. SMITH: We did meet with the NRC
21 staff. We provided them with additional information
22 regarding our financial considerations, that it
23 changed since 2009 and we offered to update the record
24 if they had any questions on remand and they didn't
25 take us up on that. So we did discuss that with them.

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1 We didn't actually -- it never saw, the
2 issue was never sharpened to the point where we made
3 a submittal that they declined to consider or said
4 that they would decline to consider. The first time
5 that we were aware of that was when they issued their
6 second denial letter when they said that they didn't
7 consider any new information.

8
9 ADMIN. JUDGE RYERSON: Mr. Clark, do you
10 want to comment at this time? Again, this may be an
11 issue that we'll be dealing with in briefs in some
12 fashion. But any comment you'd like to make now?

13 MR. CLARK: Sure, Your Honor. First, I'd
14 like to say I think the staff has a slightly different
15 take on how that information was submitted to the NRC,
16 the information that was submitted this year. The
17 staff understood that it was submitted in connection
18 with the request to reinstate the self guarantee that
19 was a March 2011 request. And I'd have to verify with
20 the staff. I don't believe they understood that to be
21 a request to supplement the 2009 application.

22 Second, I'd say that at the beginning,
23 Your Honor, I refer to certain threshold legal issues
24 that might be appropriate for summary disposition.
25 This is primarily what I was talking about. Staff, as

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1 you noted, is pretty clear. It didn't consider
2 information after the date of its original denial in
3 December 2009. If we had to consider information
4 after that date, we didn't do it and the Board should
5 probably rule on that before we proceed to testimony.

6 ADMIN. JUDGE RYERSON: Well, that is a
7 good point. And that might, one way or the other,
8 that might resolve things in advance of the hearing.
9 All right, we'll give some thought to the timing of
10 briefing some of these issues.

11 Another thought occurred to me and again,
12 this is not a point that's in the order, but I was
13 thinking about 10 CFR 2.335 which I take it nobody
14 thinks literally applies here. That's the provision
15 that says in a case where an intervenor comes in with
16 contentions and the staff, I'm sure, is quite familiar
17 with the provision. It basically makes it somewhat
18 difficult to challenge a Commission regulation and
19 sets forth some criteria for doing so. I could be
20 wrong, but I don't believe those criteria have ever
21 been satisfied in the Commission's view.

22 I was just wondering if that rule suggests
23 a deference that we owe, perhaps not to the staff's
24 position, but rather to the regulation itself. Again,
25 I don't think it probably literally applies, but I

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1 wonder if it reflects a philosophy or a policy at the
2 Commission that's at all relevant here. I throw it
3 out as a question. I know we didn't raise it with
4 you, so you may not have anything you want to say off
5 the top of your head about it.

6 But I'll ask you, Mr. Smith, is 2.335 at
7 all relevant here?

8 MR. SMITH: I don't believe 2.335 is
9 relevant here. We've really moved past that, the
10 staff by initially granting an amendment, an exemption
11 via an amendment to Honeywell from a portion of the
12 NRC's regulations. And the NRC's regulations also
13 specifically allow that to happen. So I don't think
14 we're really dealing with a place where we're
15 challenging an NRC regulation. We're dealing with the
16 application of the exemption and the amendment
17 regulations here.

18 ADMIN. JUDGE RYERSON: That's a good
19 point. You're really dealing with the application of
20 a regulation which is primarily your 40.14, I guess.

21 MR. SMITH: And 40.32 which is the
22 amendment standard.

23 ADMIN. JUDGE RYERSON: Do you agree with
24 that, Mr. Clark? You don't have to agree with it off
25 the top of your head. I'm just curious if you

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1 violently disagree.

2 MR. CLARK: Well, I would agree that 2.335
3 isn't directly relevant. I think one of the issues
4 we'll be talking about under Question 6c is what
5 Honeywell needs to prove to show it should have been
6 granted an exemption. And one thing it will need to
7 show is that there's a need for an exemption.

8 So to the extent Honeywell tries to argue
9 that the financial assurance regulations are
10 themselves unnecessary, I don't think that's an
11 argument they can make.

12 ADMIN. JUDGE RYERSON: Okay. Well, let's
13 turn to 6c which is an issue that initially intrigued
14 me conceptually. As I thought more about the criteria
15 that are in 40.14, maybe it's kind of an academic
16 exercise. Because one of the criteria is public
17 interest.

18 So if -- I start having difficulty seeing
19 how one could declare the exemption to be in the
20 public interest, but nonetheless decline to grant the
21 exemption. But it is interesting to me that the rule
22 does not say the Commission shall grant an exception
23 if the three stated criteria are met. It says "may."

24 And so the question at least occurred to
25 me is well, are those simply necessary, but not

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1 necessarily sufficient requirements that are set forth
2 in 40.14 and if they're not necessarily sufficient and
3 we have discretion under this "may" language, what do
4 we look to to exercise that discretion?

5 What considerations or criteria can or
6 must or should we be applying in addition to finding
7 those criteria are satisfied?

8 Any initial comments on that, Mr. Smith?

9 MR. SMITH: Yes, Your Honor. I think a
10 couple of things here is one, I recognize, as you did
11 that the exemption criteria does contain a "may" and
12 suggests that satisfaction of interesting criteria is
13 not necessarily a sufficient condition for granting an
14 exemption. But I think here, we're dealing with a
15 little bit of a different framework.

16 The NRC has already granted an exemption
17 several years ago and they've embodied that in a
18 license condition. So Honeywell is actually just
19 seeking to amend its license to change the date for
20 its applicability.

21 And again, the license amendment is the
22 source of the hearing opportunity here. And for that
23 matter, we should be reviewing this against the
24 license amendment standards in 40.32. And those
25 standards are actually not discretionary. It says

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1 that an application for a license application will be
2 approved if -- and then you meet the applicable
3 criteria. So from our view, that's the framework we
4 should be looking through rather than the 40.14
5 exemption criteria.

6 ADMIN. JUDGE RYERSON: Okay, Mr. Clark,
7 any comments at this point?

8 MR. CLARK: Sure, Your Honor. Well, we
9 wouldn't review against 40.32. If we did, we would
10 deny the application out of hand because we failed to
11 meet the safety requirements in 40.36, by reference,
12 Appendix C or Appendix A (c)(4)(c) part 30.

13 The reason we have to review it under
14 40.14 is because they can't meet the regulatory
15 criteria. So 40.14 is the correct regulation.

16 Regarding your question of whether there
17 are additional criteria, in reviewing exemption
18 requests under 40.14, the staff applies staff guidance
19 and that guidance is contained both in NUREG-1556.920
20 and also for NMSS programs specifically it's a policy
21 and procedure letter. The letter is 1-58.

22 The NUREG and the policy and procedure
23 letter provide the guidance that the staff uses when
24 determining whether to grant or deny an exemption
25 request. As part of that guidance, the staff looks at

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1 factors such as the need for an exemption and also
2 whether the applicant has exhausted all other means of
3 complying with the regulations.

4 ADMIN. JUDGE RYERSON: Okay, so from the
5 staff's standpoint and as you well know, the Board --
6 NUREGs do not control the Board's decision.
7 Regulations do. But from the staff's standpoint, you
8 look at the regulation and you also look at the NUREG
9 which has guidance above and beyond what's in the
10 regulation.

11 Is that a fair characterization?

12 MR. CLARK: That is correct.

13 ADMIN. JUDGE RYERSON: Okay. Well, let me
14 think just for a moment about how we can talk a little
15 bit about how procedurally we might want to proceed.
16 Before we do that, and obviously we're not taking any
17 evidence today, but I believe Judge Abramson had some
18 questions about licensee's ownership structure or
19 perhaps a joint venture participation in this
20 particular facility that at least I didn't see a
21 reference to in the papers.

22 Judge Abramson, did you want to ask some
23 questions in that area before we proceed?

24 ADMIN. JUDGE ABRAMSON: Well, I think the
25 question is obvious. Is the ownership of the facility

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1 vested entirely in Honeywell and if not, how is the
2 guarantee established? Who provides the guarantee?
3 What document trail leads strictly to Honeywell only
4 and not to the other joint ventures if there's a joint
5 venture?

6 MR. SMITH: This is Tyson Smith. Judge
7 Abramson, Honeywell is the licensee and the sole owner
8 of the Metropolis facility, so we're talking about a
9 self-guaranty here rather than a parent guaranty. And
10 that guaranty is provided directly by Honeywell
11 International, Inc.

12 ADMIN. JUDGE ABRAMSON: Okay, thank you.

13 ADMIN. JUDGE RYERSON: Well, here is what
14 I am trying to figure out is the most efficient way to
15 promptly get our scheduling order out here. It sounds
16 like you've already given some thought to providing us
17 with a suggested schedule for hopefully the middle of
18 next week or so, that we could work into an order.

19 It seems to me and I haven't thought
20 through exactly when it would be best to brief the
21 issues, but it's clear that some of the issues we've
22 been talking about, if not all the legal issues, ought
23 to be briefed either at the time of the hearing or at
24 least in one case before the hearing because it could
25 affect the subject matter of the hearing.

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1 I don't know if you want to try to add
2 some dates for briefing of some of the issues that you
3 agree should be briefed and you can include that in
4 your filing or we can give some thought to that
5 independently and look at your schedule and then
6 perhaps tweak it a bit in light of some briefing that
7 we would like to see.

8 Do you have a sense, you probably don't
9 even need necessarily to decide right now. But I
10 throw those open as two options, one to basically give
11 us what you were planning to give us or alternatively
12 on the same time frame because I think it would be
13 nice to move on this quickly, give us something that
14 also maybe proposes issues that would be appropriate
15 for briefing prior to the hearing statement or
16 something that you think might be deferred to the
17 hearing statement.

18 MR. SMITH: I think without conferring
19 with the NRC staff, I think, in general, we would plan
20 to propose a schedule to you regarding at least the
21 basic outlines of the key milestones.

22 With regard to the supplemental briefing
23 on issues, I think I'll have to give that some
24 additional thought and discussion with the NRC staff.
25 I mean I think our position is that we weren't

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1 planning on filing any summary disposition motions
2 related to any of those legal issues and we would plan
3 to just include those in our -- brief those in our
4 written statements of position as part of our direct
5 testimony filing.

6 It sounds like the NRC staff maybe had a
7 different view. And then, of course, what Your Honors
8 would like to see and what you think might advance the
9 proceeding as well.

10 So I think if we -- people had thoughts on
11 what we would like, might want to have briefed
12 earlier, I think we're certainly amenable to working
13 that into the schedule or into the proposed schedule.

14 ADMIN. JUDGE RYERSON: Okay, well, I would
15 suggest and hearing no opposition from any of my
16 colleagues that you try to work in, try to reach some
17 agreement and work it in. If you don't agree, you
18 might just submit a paragraph or two separately as to
19 your reasons for why something should or should not be
20 briefed out of turn, as it were. And we'll take a
21 look at that.

22 Again, I think your sense that this is
23 something we'd like to see sooner, rather than later
24 certainly by the end of next week, if not before, is
25 correct and we'll look at whatever you can give us in

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1 that time frame and sort of take it from there in
2 putting together an order that all Board members are
3 comfortable with.

4 We probably should pick a specific date
5 because dates always get things done. Let's see.
6 Next week would be -- how about by Thursday, the 18th?
7 That's a week from today.

8 Does that seem reasonable to both you, Mr.
9 Smith, and you Mr. Clark?

10 MR. SMITH: This is Tyson Smith. That
11 seems reasonable to me.

12 ADMIN. JUDGE RYERSON: Okay.

13 MR. CLARK: That is fine for the staff.

14 ADMIN. JUDGE RYERSON: Okay, excellent.
15 We'll look for something from either both of you
16 together or maybe a little bit of a separate
17 statement, if you want to, no later than Thursday, the
18 18th. And then we will plan to promptly try to get an
19 order out after that.

20 Anything else we should be talking about
21 today while we're all together?

22 Judge Hawkens?

23 ADMIN. JUDGE HAWKENS: No, I have nothing.

24 ADMIN. JUDGE RYERSON: Judge Abramson?

25 ADMIN. JUDGE ABRAMSON: No.

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1 ADMIN. JUDGE RYERSON: Mr. Smith, anything
2 else while we're all together you think we should be
3 addressing at this time?

4 MR. SMITH: No, Your Honors.

5 ADMIN. JUDGE RYERSON: Okay, and finally,
6 Mr. Clark?

7 MR. CLARK: Thank you, but no.

8 ADMIN. JUDGE RYERSON: Okay, all right,
9 well, thank you, and we stand adjourned.

10 (Whereupon, at 2:35 p.m., the pre-hearing
11 conference was concluded.)

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