

August 18, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
HONEYWELL INTERNATIONAL INC.	)	Docket No. 40-3392
	)	
(Metropolis Works Conversion Facility)	)	

HONEYWELL POSITION ON BRIEFING LEGAL ISSUES

During the August 11, 2011, scheduling conference, the Board addressed the question of whether there is any benefit to briefing certain legal issues prior to submitting initial statements of position and testimony. Tr. at 25-26. The Board also suggested that the parties may wish to identify issues that would be appropriate for early briefing or which, alternatively, could be deferred to the initial statements of position. *Id.* at 25. The parties have conferred regarding these issues, but were unable to reach agreement.<sup>1</sup> Accordingly, Honeywell International Inc. (“Honeywell”) is submitting its views on the need for initial briefs.

Honeywell does not believe that initial briefing is necessary or warranted. Instead, any legal issues can and should be addressed as part of the written submissions of the parties. Honeywell’s primary interest is an expeditious resolution of this matter and believes that the issues should be heard on the merits at the earliest practicable date. The issues raised by Honeywell’s hearing request involve matters of fact and law. Intermediate briefing and Board decisions on legal issues are unlikely to expedite resolution of the matter. Indeed, even if the

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<sup>1</sup> The parties were able to reach agreement on the schedule for briefing, in the event that the Board decides such briefing is necessary. That proposed schedule, as well as an agreement on the timing and scope of disclosures and the hearing file, was filed separately.

Board were to determine at the outset that the NRC Staff should have considered information available after the date of the NRC Staff's initial decision to deny the license amendment application, Honeywell is not interested in another time-consuming NRC Staff re-evaluation of the same issues that could lead to the same outcome, putting the parties back before the Licensing Board, only many months later. Likewise, a determination as to which party has the burden of proof or whether the amendment should have been reviewed under 10 C.F.R. § 40.14 or 10 C.F.R. § 40.32 is unlikely to significantly alter the parties' positions or testimony. Those issues can be resolved by the Board in conjunction with its decision on the merits.

Based on the above considerations, Honeywell requests that the Board consider legal issues and evidence together and reach an appropriate decision. Apart from summary disposition motions, nothing in the NRC's rules of practice provides for intermediate briefing on legal issues, and no intermediate briefing is needed in the present case.

Respectfully submitted,

/s/ signed electronically by  
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Dated at Washington, District of Columbia  
this 18th day of August 2011

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NUCLEAR REGULATORY COMMISSION

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(Metropolis Works Uranium Conversion	)	
Facility)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "HONEYWELL POSITION ON BRIEFING LEGAL ISSUES" in the captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 18th day of August 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

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