

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 Uranium Conversion Facility))	ASLBP No. 11-910-01-MLA-BD01
)	

NRC STAFF STATEMENT IN SUPPORT OF
EARLY BRIEFING ON LEGAL ISSUES

On August 11, 2011, the Board held a telephone conference with the parties to discuss scheduling issues. During the conference, the Board raised the question of whether the parties may wish to brief certain legal issues prior to submitting their initial statements of position and testimony. Transcript of August 11, 2011 Teleconference (ADAMS Accession No. ML11228A124) 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. Tr. at 25. The Board suggested that the parties address these issues in a joint filing on prehearing issues or, if the parties could not reach agreement, in separate statements. Tr. at 26. Because the parties have not reached agreement in this area, the Staff is filing this separate statement.¹

The Staff believes there are several issues in this proceeding that will benefit from early briefing. Specifically, the Staff would ask that the Board invite briefing on: (1) which party has the burden of proof in this proceeding; (2) whether the Staff properly evaluated Honeywell's

¹ The parties have reached agreement on other prehearing issues identified by the Board, including discovery and scheduling issues. The parties are filing a joint statement today that sets forth their proposals in these areas.

application under 10 C.F.R. § 40.14 or whether, alternatively or additionally, the Staff should have evaluated the application under 10 C.F.R. § 40.32; and (3) whether, when the Staff reevaluated its December 11, 2009 denial decision pursuant to the D.C. Circuit remand order, the Staff was obligated to consider information postdating the December 11, 2009 decision.

The first issue is a fundamental issue that may affect how the parties present evidence.

Accordingly, this issue is appropriately addressed at the outset of the proceeding. The answers to the second and third issues, on the other hand, could expedite resolution of this proceeding.

Specifically, rulings for the Staff could narrow the scope of the parties' evidentiary submissions, while rulings for Honeywell could require the Staff to revisit its April 25, 2011 denial decision.

For these reasons, it would be appropriate to have early briefing on these issues as well.

Early briefing and early Board rulings on these issues would be consistent with policies underlying the NRC's procedural rules. In particular, it would promote "[s]implification, clarification, and specification of the issues" for the hearing, which would be consistent with 10 C.F.R. § 2.329(c)(1). Early Board rulings on these issues could also expedite this proceeding, because it would either narrow the scope of the evidence or let the Staff know at the outset that it needs to revisit its April 2011 denial decision. *Cf.* 10 C.F.R. § 2.710(d)(1) (consideration of summary disposition motions is permissible where the resolution of the motions will serve to expedite the proceeding). In addition, early briefing would allow the Board to quickly determine whether there are any issues it should certify to the Commission. *See Statement of Policy on Conduct of Adjudicatory Proceedings*, 48 N.R.C. 18, 23 ("[B]oards are encouraged to certify novel legal or policy questions related to admitted issues to the Commission as early as possible in the proceeding."). Finally, early briefing would not unduly delay this proceeding.

Even taking into account early briefing, the parties have agreed to a schedule that would allow this proceeding to be completed far earlier than a typical proceeding under Subpart L.²

Respectfully submitted,

*/Signed (electronically) by/
Michael J. Clark*

Michael J. Clark
Patricia A. Jehle
Emily L. Monteith
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 18th day of August, 2011

² The parties' proposed schedules are set forth in their joint filing, which is also being filed today.

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(Metropolis Works Uranium)	
Conversion Facility))	Date: August 18, 2011

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF STATEMENT IN SUPPORT OF EARLY BRIEFING ON LEGAL ISSUES" in this 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 above captioned proceeding.

/Signed (electronically) by/

Michael J. Clark

Michael J. Clark
Counsel for the NRC Staff