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Honeywell

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October 13, 2009 CERTIFIED MAIL 7008 1830 0002 2995 4253

ATTN: Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUB-526, Docket # 40-3392

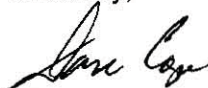
RE: SUPPLEMENTAL INFORMATION TO HONEYWELL METROPOLIS WORKS REQUEST FOR EXTENSION OF EXEMPTION FROM DECOMMISSIONING FINANCIAL ASSURANCE REQUIREMENTS

In accordance with 10 C.F.R. § 40.14, "Specific Exemptions," and 10 C.F.R. § 30.11, "Specific Exemptions," Honeywell previously requested an extension of the exemption granted from certain provisions of 10 C.F.R. § 40.36, "Financial assurance and recordkeeping for decommissioning," paragraph (e), and 10 C.F.R. Part 30, Appendix C, "Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance for Decommissioning Funding" for its Metropolis Works facility ("MTW") in Metropolis, Illinois (Reference 1).

On September 11, 2009, Thomas Hiltz, Branch Chief, NRC, sent an electronic mail message to Mitch Tillman, Plant Manager, Metropolis Works, requesting a telephone conversation to discuss Honeywell's request. Subsequently, Honeywell and the NRC Staff discussed the basis for the proposed exemption request during a September 18, 2009 telephone call. Honeywell committed to providing the NRC with supplemental and updated information regarding Honeywell's current financial status and the basis for an exemption. The enclosed documents provide that supplemental information.

Should you have any questions on the enclosed information or other issues associated with the Metropolis Works' request, please contact Mr. Michael Greeno, Regulatory Affairs Manager, at 618-309-5005.

Sincerely,



Dave Cope
Plant Manager

Enclosures

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SUPPLEMENTAL INFORMATION

HONEYWELL METROPOLIS WORKS REQUEST FOR EXTENSION OF EXEMPTION FROM DECOMMISSIONING FINANCIAL ASSURANCE REQUIREMENTS

References:

1. Letter from M Tillman, Plant Manager, Metropolis Works, Honeywell International, to Director, Nuclear Material Safety and Safeguards, NRC, regarding a request for an extension of the exemption from decommissioning funding requirements, dated April 1, 2009.

2. Letter from J Tus, Honeywell International, to J Stronsnider, Director, Nuclear Material Safety and Safeguards, NRC, regarding a request for an exemption from the decommissioning funding requirements, dated December 1, 2006.

3. Technical Evaluation Report For The Renewal Of Source Materials License Sub-526 For Honeywell Metropolis Works UF6 Conversion Plant, Metropolis, Illinois, dated May 11, 2007.

4. Letter from M Tillman, Plant Manager, Metropolis Works, Honeywell International, to M Weber, Director, Nuclear Material Safety and Safeguards, NRC, regarding a request for an extension of the exemption from decommissioning funding requirements, dated April 11, 2008.

5. Letter from D Dorman, Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, to M Tillman, Plant Manager, Metropolis Works, Honeywell International, granting an extension for the exemption, dated August 22, 2008.

I. Overview of Exemption Request

Honeywell specifically requested an exemption from aspects of 10 C.F.R. § 40.36(e), which states that a licensee may provide a guarantee of funds for decommissioning costs based on a financial test "if the guarantee and funds are as contained in appendix C to Part 30." Appendix C to Part 30 states that for a self-guarantee a licensee must, among other requirements, have a "[t]angible net worth at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof" to pass the financial test.

Traditionally, licensees such as Honeywell have not been permitted to include goodwill in the definition of tangible net worth under Appendix C to Part 30. Honeywell therefore first requested permission to include goodwill in the determination of tangible net worth in a December 1, 2006 request for an exemption (Reference 2). The NRC granted that initial request on May 11, 2007 (Reference 3). Honeywell requested an extension of the exemption on April 11, 2008 (Reference 4), which the NRC granted on August 22, 2008

(Reference 5). As will be discussed further below, the extensions were necessitated by the NRC's delays in completing a rulemaking that would have obviated the exemption.

Honeywell requested that the exemption be granted for several reasons. First, the tangible net worth test — as typically applied — does not accurately reflect the financial strength, stability and low risk of default of a multi-industry conglomerate such as Honeywell, which has been able to diversity and grow, in part, through a strategy of acquisitions. Honeywell's diverse business activities, the value of which is reflected in goodwill as well as other forms of intangible assets such as patents, know how, and brand recognition, are a source of financial strength, not weakness. These assets have consistently generated significant cashflow and financial stability as evidenced by Honeywell's maintenance of an "A" rating from Standard & Poor's and an equivalent rating of A2 from Moody's since 1992. Honeywell should not be inadvertently penalized under the tangible net worth test of Appendix C to Part 30 because of the nature of its business activities, corporate history, or strategy.

Rigid application of the tangible net worth test would also require Honeywell to divert substantial financial resources to obtain a letter of credit or some other third party credit support. No benefit to operational or public safety or to the common defense and security would accrue from this expenditure, and funds that could be used for operational improvements would be needlessly diverted.

II. Exemption Request

In support of its April 1, 2009 request for an exemption from the standard formula used to calculate tangible net worth for the financial test in 10 C.F.R. Part 30, Appendix C, Section II.A.1, Honeywell provides the following supplemental and clarifying information relative to the criteria in 10 C.F.R. § 40.14 and 10 C.F.R. § 30.11.

A. The Exemption is Authorized by Law

There is no statutory prohibition to providing decommissioning funding assurance based on a definition of tangible net worth which includes goodwill under the financial test in 10 C.F.R. Part 30, Appendix C. Accordingly, granting the exemption is authorized by law.

B. Granting the Exemption Will Not Endanger Life or Property or the Common Defense and Security

The objective of the NRC's decommissioning funding assurance regulations is to ensure that licensees maintain adequate financial assurance so that timely decommissioning can be carried out following shutdown of a licensed facility. The flexibility in the regulation that allows a licensee to provide a self-guarantee under appropriate circumstances was intended to reduce the licensee's cost burden while maintaining assurance that funds would be available for decommissioning. The financial tests for a self-guarantee in Part 30, Appendix C include criteria (*e.g.*, tangible net worth test, minimum bond rating, and total asset test) that are intended to reflect the licensee's underlying financial strength and also impose related reporting and oversight requirements. As discussed below, not all of the criteria in Appendix C are necessary

to ensure a licensee's financial strength in every case. Indeed, in Honeywell's present situation, other criteria and measures provide an equivalent, if not greater, level of assurance that Honeywell will be able to carry out its decommissioning obligations.

1. Honeywell Is Financially Strong and Stable, With A Low Risk of Default

The Commission has previously recognized that because a company's "tangible net worth" is an important factor comprising its bond rating, the bond rating itself — combined with the other reporting requirements — may be a sufficient indicator of financial stability. 58 Fed. Reg. 3515, 3518 (Jan 11, 1993); *see also*, 68 Fed. Reg. 68726, 68727 (Dec. 29, 1993) (The qualification to use a self-guarantee "is based in large part on a specified bond rating."); 73 Fed. Reg. 3812, 3825 (Jan. 22, 2008) (concluding that permitting the use of intangible assets in conjunction with an investment grade bond rating would not materially increase the risk of a shortfall in decommissioning funding).

For Honeywell, which has maintained an "A" rating from Standard & Poor's and an equivalent rating of A2 from Moody's for the past 17 years, the minimum bond rating criterion in the financial test is, by itself, an effective surrogate for financial strength and stability. For example, when Honeywell first applied for the exemption in 2006, a company with an initial rating of A2 (Moody's) had a default rate of 0.224% over the subsequent three-year period (1983-2005). *See* MOODY'S SPECIAL COMMENT, DEFAULT AND RECOVERY RATES OF CORPORATE BOND ISSUERS, 1920-2005, at 35 (Jan. 2006) (Attachment 1). In 2009, using the same metric, the default rate was still less than 0.244%. *See* MOODY'S SPECIAL COMMENT, DEFAULT AND RECOVERY RATES OF CORPORATE BOND ISSUERS, 1920-2008, at 33 (Feb. 2009) (Attachment 2). Moreover, for ratings of A2 or better (Moody's), there have only been defaults in 3 of the last 25 years. *Id*. at 30.

According to S&P in 2005, for the period from 1981 to 2005, companies with combined ratings of A+, A, and A- have a 0.23% cumulative average default rate over a 3-year time horizon. *See* 2005 ANNUAL GLOBAL CORPORATE DEFAULT STUDY AND RATINGS TRANSITIONS, at 17 (Jan. 2006) (Attachment 3). Using the same metric over the period from 1981 to 2008, companies with such ratings have a 0.34% cumulative average default rate over a 3-year time horizon. *See* 2008 ANNUAL GLOBAL CORPORATE DEFAULT STUDY AND RATINGS TRANSITIONS, at 43 (April. 2009) (Attachment 4). There is no basis for a change in approach in assessing the merits of an exemption.

To the extent that the recent economic turmoil has led to a historically anomalous number of defaults, the majority of those defaults (>80% by volume) were in the banking, finance, insurance, and real estate finance sectors. MOODY'S SPECIAL COMMENT, 1920-2008, at 4. Indeed, the defaults in the financial sectors implicitly support the conclusion that there is greater financial assurance for a self-guarantee issued by a diversified conglomerate such as Honeywell than for a letter of credit issued by a bank.[1] Put another way, Honeywell is in a

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[1] For example, the largest defaults in the United States in 2008 included Lehman Brothers Holdings, GMAC, Washington Mutual Bank, Residential Capital, Downey Financial Corp., Luminant Mortgage Capital, Triad Financial Corporation, and Franklin Bank

stronger financial condition than many of the third parties that it would turn to in the event that it became necessary to obtain a letter of credit. In 2008, no industrial company that was rated A- or higher defaulted on its debt within a 12-month period. *See* 2008 ANNUAL GLOBAL CORPORATE DEFAULT STUDY, at 18.

Further, the bond rating companies — through committees chartered to track a particular company — continuously monitor a company to determine whether the rating should be downgraded or upgraded as appropriate. In short, Honeywell's steady bond rating clearly demonstrates both its financial strength and its financial stability.

The ongoing reporting and oversight goals of the financial assurance test are satisfied by Honeywell's continuing obligation to report bond rating downgrades (Part 30, Appendix C, Section III.E) as well as the annual recertification (Part 30, Appendix C, Section II.B.3) and SEC report submission obligations (Part 30, Appendix C, Section III.D).[2] 68 Fed. Reg. at 68727. Because the minimum bond rating and reporting requirements in the self-guarantee financial test will remain unchanged if the requested exemption is granted, there continues to be assurance that adequate funds will be available at any point in time to decommission the facility.

Honeywell also generates significant annual free cash flow that is available for decommissioning the MTW when necessary. Honeywell generated $3.1 billion in free cash flow in 2007 and in 2008, and expects to generate a minimum of $2.2 billion in free cash flow in 2009. This is up from $1.7 billion in free cash flow in 2004, $1.8 billion in 2005, and $2.2 billion in 2006. Moreover, Honeywell had more than $22.5 billion in assets in the United States at the end of 2008 (compared to $20.3 billion and $21.3 billion at the end of 2006 and 2007 respectively). Accordingly, in the extremely unlikely event that MTW permanently ceases operation in the near future, life, property, or common defense and security would not be endangered even if the tangible net worth test were eliminated entirely. And, going forward, the requirement to pass the test annually provides assurance that Honeywell will continue to be able to provide decommissioning funding when operations cease.

2. Exemption More Accurately Reflects Honeywell's Financial Strength

Honeywell is not proposing to eliminate the "tangible net worth test" in its entirety. Instead, Honeywell proposes an adjustment to the presumptive formula used to calculate tangible net worth so that the test will more accurately reflect Honeywell's ability to satisfy its decommissioning obligations at MTW. For a diversified technology and manufacturing company like Honeywell, the tangible net worth test does not accurately reflect its

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Corp. MOODY'S SPECIAL COMMENT, DEFAULT AND RECOVERY RATES OF CORPORATE BOND ISSUERS, 1920-2008, at 8.

[2] For example, under Part 30, Appendix C, Section III, a licensee must notify NRC within 20 days if its rating ceases to be in any category of A or above for Moody's and S&P. Such a change triggers a further requirement to seek alternate financial assurance within 120 days.

financial stability or low risk of default. Accordingly, as previously explained, Honeywell requests an exemption from the implicit method of calculating tangible net worth and proposes to continue to use an alternate formula that includes the asset of goodwill in tangible net worth.

The traditional test of tangible net worth focuses exclusively on "brick and mortar" assets which may or may not be saleable at their book value. Tangible net worth is not defined in the NRC regulations, but that term as commonly used refers to a company's net worth less its intangible assets.[3] While a traditional tangible net worth test may be appropriate for electric utilities or mining companies which rely on a relatively narrow category of tangible assets to generate cash, it is not appropriate for a diversified, multi-industry conglomerate such as Honeywell that manufactures a wide range of products: from high-technology products such as avionics (which require extensive intellectual property) to consumer products such as Fram oil filters (which are more heavily dependent on the value of a brand). The test which Honeywell would continue to use under the exemption includes an asset category, goodwill, that must be annually tested for impairment in its cash-generating ability.

Financial Accounting Standard ("FAS") 141(R), *Business Combinations*, at 2, defines goodwill as "an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized."[4] FAS 141(R) provides that assets acquired and liabilities assumed be recorded at their fair value. In almost all business combinations, the consideration paid by the acquiring company exceeds the book value of the assets acquired and liabilities assumed from the target. The reason for this excess of goodwill is that the acquired company is valued on the basis of its cashflow or net income generating potential, not on the simple book value of its assets and liabilities. Thus, in the case of an acquisitive company like Honeywell, goodwill reflects the cash generating potential of the businesses acquired.

Under FAS 142, *Goodwill and Other Intangible Assets*, the recognition of goodwill on a company's balance sheet must be annually tested and adjusted to reflect any impairment.[5] Paragraph 18 of FAS 142 specifically states that "[g]oodwill shall not be amortized. Goodwill shall be tested for impairment." This impairment test is performed at least annually and is required to be performed more frequently if there is any material indication of impairment. Impairment testing requires a reporting company and its outside auditors to compare the historical value of goodwill to its current fair value. If there has been a material deterioration in the income-earning capability of the assets to which goodwill has been allocated, an appropriate write-down in the value of goodwill is required. Stated simply, each year a company must verify that the value of its goodwill can be objectively demonstrated by the earnings potential of its underlying businesses.

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[3] Examples of intangible assets could include goodwill, brand value, or patents.

[4] Statement 141(R) was issued in December 2007 and is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. FAS 141(R) is codified in FASB Accounting Standards Codification ("ASC") 805, *Business Combinations*.

[5] FAS 142 is codified in ASC 350, *Intangibles–Goodwill and Other*.

This independent test of the "fair value" of goodwill, which is audited annually by the company's independent accountants, ensures that the underlying businesses of a company can support the amount of goodwill reflected on its balance sheet. The annual impairment test required by FAS 142 (and concomitant write-down of goodwill) puts investors and other consumers of a company's financial reports on notice that the value of a company's business is deteriorating. Because any impairment of goodwill would be reflected in a lower net worth (using the alternate formula proposed in this exemption request), the financial tests in Part 30, Appendix C, will continue to capture any significant changes in Honeywell's financial strength or stability. Any changes that result in Honeywell no longer satisfying the financial test criteria under the exemption would trigger the requirement to establish alternate financial assurance within 120 days (Part 30, Appendix C, Section II.C).

3. Exemption Would Not Increase the Risk of Decommissioning Funding Shortfall

The NRC Staff has recognized that Honeywell's alternative approach can be effective at assessing the financial strength of a licensee and therefore provide reasonable assurance of its ability to provide decommissioning funding. In an ongoing rulemaking, the NRC's proposed decommissioning planning rule would adopt the rationale described above by incorporating changes to the financial test for self-guarantees into 10 C.F.R. Part 30, Appendix C. *See* 73 Fed. Reg. 3812, 3825 (Jan. 22, 2008). Specifically, the proposed rule would permit the use of the intangible asset of goodwill when calculating net worth — precisely the intent of the exemptions previously granted to Honeywell as well as the instant exemption request.

The NRC described its rationale for proposing to amend the rules on the financial test ratio as follows:

> The existing regulations allow guarantees to be used as financial assurance for decommissioning by companies whose financial statements demonstrate a low risk of default for corporate obligations. A set of financial tests are prescribed in 10 CFR part 30, appendices A, C, D and E for companies who may qualify to use the guarantee methods. A requirement to use the parent company guarantee or self-guarantee as a financial assurance option is passing the tests on an annual basis. Some of the financial tests in 10 CFR part 30, appendices A, C, and E are done using bond valuations. In the past, only tangible assets were considered within the calculations performed under the financial tests. In response to an inquiry during the public stakeholder meeting on January 10, 2007, NRC staff considered whether allowing the use of intangible assets would materially increase the risk of a shortfall in decommissioning funds. Staff concluded the risk of a shortfall in funding would not materially increase under the amendments in this proposed rule.
>
> Financial accounting standards issued since the original decommissioning regulations were issued in 1988 now provide objective methods to value

intangible assets. The change in accounting standards provides assurance that intangible asset valuation is reasonable. In addition, bond rating agencies include intangible assets in their evaluation of the financial stability of a company's bonds. This provides an independent check of the reasonableness of the company's valuation of its assets. The default rate remains low for bonds rated investment grade. To further assure a current bond rating adequately reflects the company's financial stability, amendments in the proposed rule would specify that the bond must be uninsured, uncollateralized, and unencumbered to be used in the financial test. Finally, the value of the nuclear facilities, both as tangible and intangible assets, are excluded from the calculation of net worth on grounds that those assets would not be available to produce funds for decommissioning after the facility is shut down. The staff concluded that permitting the use of intangible assets in conjunction with an investment grade bond rating would not materially increase the risk of a shortfall in decommissioning funding.

In addition, the guarantee methods require annual repassage of the test. Historical trends in bond ratings show that the time between receiving a rating that is below investment grade to the time of default is five years, on the average. The annual repassage requirement will normally provide adequate time for the guarantor to obtain alternative financial assurance. For the few cases where a default may occur in a short time, the acceleration clause discussed in N.4 and N.5 of this document, will provide a method to obtain funds in situations of financial distress.

Therefore, the proposed rule would allow the use of intangible assets, used in conjunction with an investment grade bond rating, to meet specified criteria in the financial tests for parent company and self-guarantees.[6]

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[6] 73 Fed. Reg. at 3825 (emphasis added). During the September 18, 2009 telephone conversation, there was some confusion as to whether the draft Final Rule continues to permit inclusion of intangible assets in net worth calculations for the guarantee methods in conjunction with an investment grade bond rating. *See* SECY 09-0042, "Final Rule: Decommissioning Planning," dated March 13, 2009. The draft Final Rule explains that the Commission examined financial report examples to ensure that confirmatory information about intangible assets could be obtained from publicly available quarterly and annual reports of publicly traded firms. *Id.* at 127. On the basis of this and other considerations, including those discussed in the proposed rule, the draft Final Rule supports the use of certain intangible assets in calculating net worth. *Id.* However, draft revisions to NRC decommissioning guidance NUREG-1757 do not reflect the changes in the draft Final Rule (or those in the Proposed Rule) that permit licensees to include intangible assets in their calculations of net worth. The "Model Parent Company Guarantee Financial Test II" and "Model Self-Guarantee Financial Test" worksheets in Draft NUREG-1757 retain the terminology "tangible net worth" and do not consistently include the definition of "net worth." *See* Draft NUREG-1757 at A-77, A-83, A-91

In light of the NRC's prior grant of the requested exemption in 2007 and in 2008, as well as the NRC's reasoning and bases for making similar changes in the proposed decommissioning planning rulemaking, the exemption (*i.e.*, an extension of the previous exemptions) should be granted. Indeed, denial of the requested exemption would be arbitrary — that is, there would be no apparent basis for the NRC to change its conclusions regarding the proposed exemption.[7] Certainly, the bases that the NRC articulated for granting the exemption previously have not changed (*e.g.*, bond rating, accounting standards, annual re-passage). And, nothing in Honeywell's specific financial condition would warrant denial of the exemption request. As noted above, Honeywell's bond rating remains unchanged and the ratio of Honeywell's net worth to its guaranteed decommissioning liabilities continues to exceed 10. Moreover, having been granted the exemption twice previously, Honeywell has relied on its ability to continue to use the exemption until the NRC completes its decommissioning planning rulemaking.[8]

(parent test II), and A-96, A-103, and A-112 (self guarantee test); *compare* NUREG 1757, Vol. 3, September 2003, A-119 and A-135. Therefore, the latest Draft NUREG-1757 does not reflect the proposed changes in the draft Final Rule and, specifically, the use of intangible assets in calculating net worth for self-guarantees. Through the Nuclear Energy Institute, Honeywell notified the NRC (through OGC) of this apparent oversight in late-April 2009.

7 *See Mr. Sprout, Inc. v. United States,* 8 F.3d 118, 129 (2d Cir. 1993) ("When the Commission departs from its own settled precedent, as here, it must present a 'reasoned analysis' that justifies its change of interpretation so as to permit judicial review of its new policies."); *Huntington Hosp. v. Thompson,* 319 F.3d 74, 79 (2d Cir. 2003) ("While an agency is not locked into the first interpretation of a statute it embraces, it cannot simply adopt inconsistent positions without presenting 'some reasoned analysis.'"); *see also Atchison, T. & S.F.R. Co. v. Wichita Bd. of Trade,* 412 U.S. 800, 807-808 (1973) (A "settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to."); *Cf. Motor Vehicles Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) ("Revocation constitutes a reversal of the agency's former views as to the proper course" and agencies are therefore "obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.").

8 The exemption request, which was granted as part of Honeywell's renewed license, was linked to the decommissioning rulemaking based on the then-current schedule for the rulemaking and the potential for adverse comments on the use of intangible assets. At the time of the initial exemption request, the NRC had an internal date for sending the decommissioning planning draft proposed rule to the EDO in September 2007, followed by Commission review and approval. The NRC expected to publish the proposed rule by the end of 2007, followed by comments, resolution of comments, and publication of a final rule by the end of 2008. In actuality, the proposed rule was not published until January 2008 and still has not been approved by the Commission. Indeed, a recent vote sheet from Chairman Jazcko suggests that the rule may need to be re-noticed in its

4. *NRC Should Not Prospectively Apply Draft Rule Language to Honeywell*

During the September 18, 2009 discussion of the exemption request, NRC Staff reviewers noted that the revised decommissioning rule, as most recently proposed, would add a new criterion to Appendix C. Specifically, the proposed rule would add a requirement in Section II.A.(1) of Appendix C to 10 CFR Part 30 for a tangible net worth of at least $19 million, which would be adjusted over time. 73 Fed. Reg. at 3825. Under the existing rule, that component of the financial test for self-guarantee specifies only that the applicant or licensee must have tangible net worth at least 10 times the current decommissioning cost estimate or certification amount. The proposed amendment would specify tangible net worth of $19 million *and* 10 times the amount required. According to the discussion in the *Federal Register* notice, this proposed amendment would make the self-guarantee financial test in Appendix C to 10 CFR Part 30 consistent with the tests in Appendices A and D to 10 CFR Part 30.

The proposed additional criterion should not preclude issuance of the requested exemption to Honeywell. As an initial matter, the proposed rule is just that – proposed. The Commission has not approved issuance of the final rule and the proposed requirements contained therein are inapplicable to Honeywell. Procedurally, the changes should not be imposed before the rule revisions have been finalized. Applying new rules prospectively would render the notice and comment process virtually meaningless. Further, such an action would be contrary to the NRC's Principles of Good Regulation (*i.e.*, openness, clarity, and reliability) and would be fundamentally unfair to the regulated community.

Aside from that, however, Honeywell's particular financial circumstances and the alternate financial test would continue to satisfy the intent of the proposed $19 million minimum tangible net worth requirement. The NRC's proposed minimum tangible net worth requirement is modeled on the Environmental Protection Agency ("EPA") financial test. *See* 73 Fed. Reg. at 3825. The EPA initially proposed a $10 million minimum *net worth* requirement as part of its financial test because the business failure rate for firms with $10 million or more in *net worth* (not *tangible net worth*) was lower than for firms overall.[9] *See* "Standards Applicable to Owners

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entirety. *See* VR-SECY-09-0042-GBJ, dated May 8, 2009. Honeywell should not be penalized for the delays in promulgation of the final decommissioning rules, which are beyond its control. Further, the NRC apparently did not receive compelling adverse comments on the relevant aspects of proposed rule as the draft final rule continues to permit the use of intangible assets in the financial ration calculation.

[9] Although the EPA ultimately elected to utilize a minimum tangible net worth criteria rather than a minimum net worth criteria, the EPA's research regarding the risk of default focused only on companies with net worth (not tangible net worth) less than $10 million. *See* "Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Requirements," 47 Fed. Reg. 15032, 15035 (April 22, 1982). Honeywell has a net worth of greater than $4 billion. Thus, the EPA example does not provide the NRC with any basis for concluding there is a greater of risk default for a company with less than $10 million in tangible net worth. The EPA's analysis only spoke to a minimum *net worth*.

and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Requirements; Revised interim final rule," 47 Fed. Reg. 15032, 15035 (April 7, 1982). The EPA, however, clearly viewed the $10 million net worth requirement as a surrogate for the size of the licensee. *See id*. (comparing firms with $10 million or more in net worth to "smaller" companies). With over $27 billion in annual revenue and a net worth of greater than $4 billion, Honeywell is not a "small" licensee by any objective measure.

Moreover, the EPA's minimum net worth requirement was intended to reduce the use of self-guarantees where the hazardous waste facility itself represents the only significant income-producing asset of an owner or operator. 47 Fed. Reg. at 15035. The EPA reasoned that, if the facility is the owner's or operator's only source of income, closure will cut off all income and thus increase the risk that there will not be adequate funds to complete closure and post-closure care. *Id*. However, the intent of EPA in this regard does not apply in the present situation.

In Honeywell's case, the Metropolis Works is not the primary, or even a particularly significant, source of income for Honeywell. And, given Honeywell's diversified revenue stream, the eventual closure of Metropolis will not eliminate funding for decommissioning. As noted above, Honeywell projects approximately $32 billion in sales in 2009. Honeywell generated $3.1 billion in free cash flow in 2007 and in 2008, and Honeywell expects to generate a minimum of $2.2 billion in free cash flow in 2009. Thus, the objectives of the EPA's minimum tangible net worth requirement are not served by application of a minimum tangible net worth requirement for a large, diversified company such as Honeywell. Indeed, application of a minimum tangible net worth criterion would be unnecessarily restrictive and would place undue financial burden on Honeywell without any corresponding benefit to the health and safety of the public.

Honeywell has raised this issue previously in its May 8, 2008 comments on the proposed rulemaking. In those comments, Honeywell opposed the addition of the minimum tangible net worth criterion as unnecessary. Honeywell also commented that any minimum net worth criterion linked to *tangible net worth* alone would not accurately reflect the risk of default. Honeywell suggested that, if anything, such a test should be tied to *net worth*. Even if the draft final rule were promulgated as written (*i.e.*, with a minimum tangible net worth criterion), Honeywell believes that the above discussion regarding the basis for new criterion and Honeywell's particular financial condition (*e.g.*, > $4 billion in net worth) would support an exemption from the minimum tangible net worth criterion (if the rule is promulgated as proposed). Alternatively and as Honeywell suggested in its comments on the proposed rule, the minimum test could be based on *net worth*, rather than *tangible net worth*, which would be consistent with the NRC's treatment of net worth for other portions of the financial test.

C. <u>Granting the Exemption is Otherwise in the Public Interest</u>

Honeywell's continued ability to provide a domestic source of conversion services in support of the nuclear power industry that supplies 20% of the nation's electricity is clearly in the public interest. Recent production problems at the Cameco and Areva conversion facilities and the resulting worldwide decline in primary conversion supply mean that

Honeywell's ability to invest in the improved safety and performance of MTW is particularly critical.

Were the Commission to insist upon a rigid application of the tangible net worth test and make a self-guarantee of Honeywell's decommissioning funding obligation unavailable, Honeywell would be required to expend funds on unwarranted compliance costs of a purely financial nature. For example, providing a letter of credit to cover the estimated decommissioning cost for the MTW plant would cost Honeywell between $1,500,000 and $2,000,000 per year (up to $20 million over a 10-year license term). Thus, the annual savings to Honeywell from avoiding the cost of a third party letter of credit is greater than the estimated annual savings of $750,000 for the *entire industry* used to justify the self-guarantee rulemaking. 58 Fed. Reg. at 68726.

Further, the costs of obtaining a letter of credit or other third-party financial assurance cannot be passed on to customers. Honeywell, the sole domestic UF_6 converter, competes directly with foreign UF_6 converters and foreign suppliers of bundled products that contain conversion, who are not subject to NRC fees or regulatory requirements. The conversion market is highly competitive and success in bidding on contracts often turns on differentials as small as a couple of pennies per kgU. Adding the cost of obtaining third-party financial assurance will drive customers to foreign converters since Honeywell cannot pass the costs forward. *See, e.g.*, *Allied Signal v. NRC*, 988 F.2d 146, 149 (D.C. Cir. 1993). Further, the prices agreed to in Honeywell's existing long-term contracts are based, in part, on Honeywell's expectation that the exemption would be available until the decommissioning planning rulemaking was finished.

The requested exemption also is only a continuation of previously-granted exemptions — originally intended to apply only until such time as the rulemaking, which would eliminate the need for an exemption, was complete. Honeywell continues to believe that the final decommissioning rule should obviate the need for the requested exemption. Neither the current regulation nor the proposed regulation (with the minimum tangible net worth criterion) is necessary to achieve the underlying purpose of the rule. Compliance with either would result in undue hardship and costs that are significantly in excess of those contemplated when the regulation was adopted. Imposing the requirement to provide third-party decommissioning funding assurance results in a significant and unnecessary hardship without any direct or indirect benefit or improvement to life, property, or common defense and security. Providing decommissioning funding assurance for the MTW using the alternate financial test ensures that adequate financial assurance is available when required. Accordingly, the granting of the exemption is in the public interest.

D. Environmental Review

Since the granting of this exemption does not satisfy any of the criteria for categorical exclusion in 10 C.F.R. § 51.22, "Criteria for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion of otherwise not requiring environmental review," nor the criteria requiring an environmental impact statement in 10 C.F.R. § 51.20, "Criteria for and identification of licensing and regulatory actions requiring

environmental impact statements," an environmental assessment is required in accordance with 10 C.F.R. § 51.21, "Criteria for and identification of licensing and regulatory actions requiring environmental assessments." Accordingly, Honeywell proposes that the NRC make a finding of no significant impact based on the following information addressing the provisions of 10 C.F.R. § 51.30, "Environmental assessment."

1. *Need for the Proposed Action*

Granting the requested exemption will allow Honeywell to satisfy the applicable decommissioning funding assurance requirements for the MTW without imposing an unnecessary financial burden on Honeywell.

2. *The Environmental Impacts of the Proposed Action*

Granting the requested exemption will not result in environmental impacts in addition to those described in the Environmental Report for Renewal of Source Material License SUB-526 for the MTW since adequate funds will continue to available to decommission the MTW at any point in time after the facility permanently ceases operations. The exemption does not change the types or amounts of any effluents that may be released offsite, does not result in an increase in individual or cumulative occupational radiation exposure, and does not increase the potential for or consequences of a radiological accident.

3. *Alternatives as Required by Section 102(2)(E) of the National Environmental Policy Act*

The only alternative to granting the exemption request is to not grant the request. The significant financial burden that would be imposed on Honeywell by not granting the requested exemption is unnecessary to provide financial assurance for decommissioning or protect the environment. There would be no difference in environmental impacts.

4. *A List of Agencies and Persons Consulted and Identification of Sources Used*

The NRC Project Manager for the MTW was contacted. The MTW's application for a renewed license was used a source, as were the company's 10K filings with the SEC.

Based on the above information, Honeywell proposes that, if the exemption request is granted, the NRC reach a finding of no significant impact in accordance with 10 C.F.R. § 51.32, "Finding of No Significant Impact."

III. Conclusion

The exemption should be granted because the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Further, granting the exemption would not result in any significant impact to the environment.