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For the reasons set forth below, the NRC Staff decision to deny the license amendment should be reversed and the license amendment should be granted.

II. SUMMARY OF ARGUMENT

The alternate test previously approved by the NRC provides more than ample basis for the NRC to conclude that there is strong assurance that decommissioning funds will be available for the MTW when needed. Honeywell has been and remains in a very strong financial position, as demonstrated by its A and A2 credit rating for 17 years and other financial indicators. The NRC's requirements for reporting a bond rating downgrade, the annual recertification requirement, and submittal of annual SEC reports further ensure that potential problem situations will be identified and addressed in a timely manner, and that additional assurance mechanisms can be employed if needed. For these reasons, the alternate test provides strong assurance that funds are available for decommissioning MTW.

In contrast, the reasons given by the NRC Staff in their Initial Statement of Position do not support denial of the license amendment and exemption. Bond ratings for diversified "A-rated" companies have been demonstrated to be reliable over long periods of time. Honeywell also has demonstrated remarkable financial stability — even during the recent financial downturn. Contrary to the position of the NRC Staff, intangible assets (including goodwill) are not necessarily illiquid and, in some cases, could be converted into decommissioning funds as quickly as tangible assets. And, net worth, tangible assets, and the annual financial testing requirements and reporting obligations for adverse changes in financial positions all provide assurance of Honeywell's ability to pay in times of declining performance or financial distress.

III. HONEYWELL'S REBUTTAL WITNESSES

Honeywell's rebuttal testimony is presented by the same two witnesses that provided initial testimony: John Tus and Bruce Den Uyl. A description of their qualifications is provided in Honeywell's Initial Statement of Position.⁴ John Tus is a Vice President and the Treasurer of Honeywell. In his role as Treasurer, Mr. Tus is responsible for overseeing aspects of Honeywell's capital structure, public debt ratings, and financial liquidity. Mr. Tus participates in the preparation of Honeywell's SEC filings and is familiar with the financial data that was used in support of the license amendment applications. Bruce Den Uyl is a Managing Director and co-head of the Financial Advisory Services practice at AlixPartners. Mr. Den Uyl was not involved previously with the amendment request or any other issues related to decommissioning financial assurance for the MTW. He therefore provides an outside expert opinion on a number of issues related to corporate financial metrics, Honeywell's financial condition, and the financial assurance for the \$187 million MTW decommissioning obligation.

Through the attached Tus/Den Uyl Rebuttal Testimony, Honeywell's expert witnesses explain that the alternate financial test proposed by Honeywell provides strong assurance that decommissioning funds will be available for MTW, that strict compliance with the regulation is not necessary to serve the underlying purpose of the regulation, and that the NRC has not met its burden in denying the requested amendment.

IV. REBUTTAL ON LEGAL ISSUES

In its Initial Scheduling Order, the Board requested the positions of the parties on four legal issues. These issues were addressed by Honeywell and the NRC Staff in their

⁴ The detailed statements of qualification for Mr. Tus and Mr. Den Uyl were included in Exhs. HNY000002 and HNY000003.

respective Initial Statements of Position. Areas of agreement and areas of disagreement are discussed below.

A. Areas of Agreement with NRC Staff

Honeywell agrees with the NRC Staff's summary of the decommissioning rules applicable to Honeywell as well as the history of the recent decommissioning rulemaking.⁵ Honeywell also agrees that the exemption request should be reviewed under 10 C.F.R. § 40.14.⁶ In particular, Honeywell concurs with the NRC Staff's description of the goals of the exemption review, which includes a determination as to whether the purpose of the requirement from which the exemption is being requested is compromised.⁷ Honeywell is also in agreement with the NRC Staff regarding the interaction between 10 C.F.R. § 40.36 and 10 C.F.R. Part 30, Appendix C.⁸ Whether the exemption is characterized as relief from 10 C.F.R. § 40.36 or from 10 C.F.R. Part 30, Appendix C, the effect is the same: permit use of an alternate financial test that includes the intangible asset of goodwill.

B. Areas of Disagreement with NRC Staff

1. Burden of Proof

The NRC Staff argues that Honeywell has the burden of proof "because Honeywell is the applicant."⁹ The NRC Staff states that, under NRC precedent, the burden of proof remains with the applicant regardless of whether the NRC Staff granted or denied the

⁵ NRC Staff Position Statement at 7-11.

⁶ *Id.* at 11-12.

⁷ *Id.* at 12.

⁸ *Id.* at 13-14.

⁹ *Id.* at 14.

license application.¹⁰ However, 10 C.F.R. § 2.325 states that the burden lies with the proponent of the order at issue. As Honeywell pointed out in its Initial Statement of Position, the NRC Staff is the proponent of the order denying the license amendment. Therefore, an initial burden of proof relative to denial of the amendment lies with the NRC Staff. Nevertheless, Honeywell, as the proponent of the amendment, also has a burden of proof with respect to issuance of the amendment — that is, the amendment cannot be issued unless Honeywell meets its burden of proof to demonstrate that the license amendment application meets 10 C.F.R. § 40.14. Overall, the NRC Staff must make a showing that Honeywell’s request does not meet the criteria for granting an exemption, and Honeywell then must demonstrate that the standards under 10 C.F.R. § 40.14 are met.

In light of the fact that the NRC Staff had permitted Honeywell to consider goodwill in its financial test on prior occasions and the pending rule change that would allow licensees to use all intangible assets, including goodwill, in the financial test, the NRC Staff has an obligation to provide a more detailed discussion of the bases for its decision than if it was deciding an issue for the first time. And, that discussion should be subjected to greater scrutiny. Thus, where, as here, the NRC Staff is changing its determination despite substantial precedent (and evidence) to the contrary, the NRC Staff should have a burden to justify the departure from its prior determinations and explain the basis for its decision.

2. Law of the Case

The NRC Staff also argues that Honeywell should be precluded from arguing that the criteria for issuance of an amendment apply under the doctrine of “law of the case.”¹¹ The

¹⁰ *Id.*

¹¹ *Id.* at 16.

NRC Staff's argument is based on the D.C. Circuit decision, which, in the NRC Staff's reading, did not find fault with the NRC Staff's treatment of the application under 10 C.F.R. § 40.14. As an initial matter, the issue was not briefed at the D.C. Circuit and there was no definitive holding on this point in the Court's decision. But, if anything, the law of the case would hold that the application is an "amendment" and not an exemption. Indeed, the NRC Staff argued in the D.C. Circuit that the application was an amendment and therefore within the Court's jurisdiction under the Hobbs Act.¹² The Court agreed with that approach.¹³ And, as noted in Honeywell's Initial Statement of Position, the application under review was specifically submitted using the NRC form for license amendments.

Regardless, the distinction is irrelevant to the determinations that the Licensing Board must make in this proceeding. Honeywell agrees that it must satisfy the criteria in 10 C.F.R. § 40.14 and has provided more than sufficient information to meet its burden of proof. To the extent that NRC Staff is arguing that the exemption should be granted so long as the exemption criteria are met, Honeywell supports that approach. Because the exemption criteria are met, the Licensing Board should therefore authorize Honeywell to use the alternate test.

3. Scope of Information Considered

The NRC Staff acknowledges that it limited its review on remand to information available as of December 11, 2009. According to the NRC Staff, it considered whether in December 2009 it "made the right decision based on available information, not whether at some later date it might have made a different decision based on newer information."¹⁴ There is no

¹² *Honeywell v. NRC*, 628 F.3d 568, 575-576 (2010).

¹³ *Id.* at 576.

¹⁴ NRC Staff Position Statement at 21.

basis for such a limited scope of review on remand, which amounts to little more than a post hoc rationalization that would undermine this hearing process.¹⁵ As Honeywell explained in Initial Statement of Position, an agency is not limited on remand to considering the information previously on the record before it, but may consider all relevant information, including new information bearing on its decision.¹⁶ Given the limited scope of the administrative record and the bases for the D.C. Circuit decision, it is necessary for the NRC to address any new information in order to satisfy the agency's obligation to assess all relevant and material information.¹⁷ Honeywell's request for an exemption was and remains a live request; Honeywell is seeking approval of the exemption going forward. The NRC Staff should have considered all information in the record in reaching its decision.¹⁸

In light of Honeywell's hearing request, the question of the information the NRC Staff should have considered on remand is now moot. This is not a proceeding to sit in judgment of a decision made in December 2009 based on data from 2008. The Licensing Board must now consider all information in the record before it, including information that post-dates the NRC

¹⁵ Post hoc rationalizations, whether by the agency or its attorneys, are no substitute for reasoned decision-making. *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 49 (1983).

¹⁶ *Union Camp Corp. v. United States*, 53 F.Supp.2d 1310, 1327 (1999).

¹⁷ *Environmental Defense Fund, Inc. v. Costle*, 657 F.2d 275, 284 (D.C. Cir. 1981). On remand, the NRC Staff is not limited to mere "pencil whipping" of its justification for denial, but instead should evaluate the totality of information available to the NRC Staff.

¹⁸ The NRC Staff argues that its approach was consistent with the remand order, which the NRC Staff asserts "directed the NRC to better explain the decision it made." NRC Staff Position Statement at 21. In fact, the remand order was not that specific. The D.C. Circuit simply remanded the request "for further proceedings." 628 F.3d at 581. Implicit in that remand is the assumption that, if the NRC lacked sufficient information to make an informed and well-articulated decision, then it must gather additional information and perform additional analyses in order to satisfy the Administrative Procedure Act.

Staff initial decision to deny the amendment in December 2009. Honeywell and the NRC Staff are submitting evidence and testimony to support their respective positions.¹⁹ There are no restrictions on the dates of information that can be considered by the Licensing Board in a proceeding. The only limitations are that the information and testimony be “relevant, material, and reliable,” and not repetitious.²⁰ Accordingly, the Licensing Board should consider all relevant, material, and reliable information as part of its *de novo* review — regardless of its availability or use by the NRC Staff.²¹

V. REBUTTAL STATEMENT OF POSITION

In its Initial Statement of Position, the NRC Staff’s arguments generally align with those made in its denial letter. As a result, the NRC Staff’s principal arguments were addressed by Honeywell in its Initial Statement of Position. However, the NRC Staff articulated several additional reasons for its decision that warrant discussion below.

A. Intangible Assets Are Not Necessarily Illiquid Relative to Tangible Assets

The NRC Staff argues for the first time that one reason for its decision is the relative illiquidity of intangible assets. For example, the NRC Staff argues that goodwill, “due to

¹⁹ The NRC Staff has not limited itself to information in its possession in December 2009. For example, several NRC exhibits were not listed on the certified index of the record (Exh. HNY000041) for the D.C. Circuit appeal, including Exhs. NRC000023, NRC000025, NRC000027, NRC000028, NRC000034, NRC000039, NRC000041, NRC000043, and NRC000044. The NRC Staff also relied on more recent documents in its filings. *See, e.g.*, Financial Crisis Inquiry Commission Report (Exh. NRC000047) and Federal Reserve Bank of St. Louis Report (Exh. NRC000048). In doing so, the NRC Staff has effectively waived any argument that the scope of information considered should be limited to that available to the agency prior to December 2009.

²⁰ 10 C.F.R. § 2.337.

²¹ The administrative record must be based on all information “before the agency at the time the decision was made.” *Costle*, 657 F.2d at 284. The relevant decision will be the Licensing Board’s decision, not the Staff’s decision.

its relative illiquidity, might not be readily available to fund decommissioning activities.”²² According to the NRC, “intangible assets may be more difficult to convert into cash to pay for decommissioning costs.”²³ And, the NRC Staff stated that, “compared to other intangible assets, goodwill may be even more difficult to convert into cash, because it would require the sale of an entire business or business line.”²⁴ This is an overly-simplistic view, and one that does not take into account the challenges associated with sale of tangible assets or the value of cash-generating businesses.

The rebuttal testimony of Mr. Tus and Mr. Den Uyl addresses this issue directly. Tangible assets include items such as cash, accounts receivable, inventory and hard assets like equipment and machinery.²⁵ Other than cash or near-cash equivalents, most of these assets are relatively illiquid. For example, tangible assets, like a piece of equipment or machinery, tend to be industry- or task-specific and, as a result, it may take a considerable period of time to market the asset and secure a purchaser.²⁶ In addition, it is uncommon for a business to sell a tangible asset that is in working condition unless the company is exiting that business line or is facing an extraordinary liquidity need.²⁷ Indeed, it can be more difficult to sell an individual piece of used equipment or other tangible asset than an entire business unit.

²² NRC Staff Position Statement at 7.

²³ *Id.* at 29.

²⁴ *Id.*; *see also* NRC Staff Testimony at ¶34.

²⁵ Tus/Den Uyl Rebuttal Testimony at ¶13.

²⁶ *Id.*

²⁷ *Id.*

Intangible assets — in particular the goodwill that was utilized in the financial test proposed by Honeywell (and accepted by the NRC in May 2007 and August 2008) — are usually included in the sale of an entire ongoing business or business unit.²⁸ While corporate mergers and acquisitions activity ebbs and flows, there is a relatively liquid market for business units.²⁹ In addition to corporate strategic buyers that purchase these businesses, there is a significant amount of capital committed to private equity firms in the United States and globally. Many of these private equity firms focus on purchasing individual business units from diversified conglomerates such as Honeywell.³⁰ Furthermore, Honeywell’s own history of purchasing whole, ongoing businesses (and not specific tangible assets) highlights that such a market exists for businesses and their associated goodwill.³¹

There is also no reason for the NRC Staff to presume that Honeywell would have to dispose of intangible assets, such as goodwill, to pay for decommissioning even in times of financial distress. Honeywell has significant tangible assets that could be used, if necessary.³² Honeywell’s tangible assets have increased from approximately \$21 billion at the end of 2006 to approximately \$24 billion at the end of 2010.³³ These tangible assets far exceed the decommissioning cost estimate for MTW (\$187 million). The availability of sufficient assets also can be confirmed by examining Honeywell’s net worth. Net worth is the total assets minus

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Tus/Den Uyl Testimony at ¶25

³² Tus/Den Uyl Rebuttal Testimony at ¶14.

³³ Tus/Den Uyl Testimony at ¶29 (Table 6).

total liabilities of a company. Honeywell’s net worth grew from \$7.1 billion in 2008 to \$10.8 billion in 2010.³⁴ This demonstrates that Honeywell has assets, both tangible and intangible, that could be sold to pay for decommissioning funding if necessary.³⁵

Finally, the NRC Staff’s concern is alleviated by the existence of the other aspects of the self-guarantee rule. In the very unlikely event that Honeywell was forced to sell assets in a distressed sale to pay for decommissioning, the causes of the distress also would have caused deterioration in bond credit rating or other financial metric that would be captured by the NRC’s reporting requirements and alternate financial assurance mechanisms. Thus, the NRC Staff’s concern regarding relative illiquidity is unfounded and, in any event, unpersuasive.³⁶

B. Bond Ratings Are Not Unreliable for “A-Rated” Companies

The NRC Staff argues that the financial uncertainty in 2008 and 2009 somehow demonstrates that bond ratings are unreliable or reflects an increase in long-term risk of default.³⁷ However, the NRC Staff looked only to issues in the broader economy and ignored the data showing a low risk of default for diversified, highly-rated companies like Honeywell.³⁸ The companies that the NRC selected for comparison are not diversified companies, but instead are

³⁴ *Id.* at ¶19.

³⁵ The availability of these assets to pay for decommissioning also demonstrates that the minimum tangible net worth test is unnecessary and misguided. Since intangibles are at least as liquid as most tangible assets, a better measure of a diversified company’s ability to pay is its net worth (total assets minus total liabilities). *Id.* at ¶¶58-59.

³⁶ Tus/Den Uyl Rebuttal Testimony at ¶¶13-14. The NRC Staff’s concern with the supposed illiquidity of intangible assets is apparently not so great as to preclude their use entirely. For example, under the pending decommissioning rule, the NRC would allow licensees to use all intangible assets (not just goodwill) in the financial test.

³⁷ NRC Staff Position Statement at ¶¶24-28.

³⁸ NRC Staff Testimony at ¶¶25-28.

focused on specific industries.³⁹ For example, Lyondell is exclusively a chemical company and General Motors' business is only related to the automotive industry. In contrast, Honeywell is a well diversified company with numerous customers and end markets for its goods and services. In 2010, Honeywell's \$33.4 billion in sales were distributed among four primary lines of business: automated control solutions (41%), aerospace (32%), specialty materials (14%), and transportation systems (13%).⁴⁰ This diversification serves as a natural buffer to the issues that the NRC-identified companies faced. Furthermore, many of the NRC-identified companies were financial companies that experienced difficulties stemming from the subprime mortgage crisis.⁴¹ Financial companies are quite different from other industries and face unique challenges and dynamics. And, in contrast to Honeywell's "A" rating, all of the non-financial companies that the NRC cited were speculative, or junk, rated companies well before they defaulted on their debts.⁴²

The NRC Staff also highlights various articles and examples of corporate defaults in 2008 and 2009 to support its decision. For instance, the NRC cites an Economist article referencing a Standard & Poor's ("S&P") report for the proposition that number of defaults in 2009 will exceed the number of defaults in 2008.⁴³ However, S&P report referenced in the article does not relate to Honeywell. When discussing its default forecast for 2009, S&P was not referring to investment-grade borrowers such as Honeywell. The two underlying S&P reports

³⁹ Tus/Den Uyl Rebuttal Testimony at ¶9.

⁴⁰ Honeywell Presentation, dated March 14, 2011 (Exh. HNY000013).

⁴¹ Tus/Den Uyl Rebuttal Testimony at ¶9.

⁴² *Id.* at ¶11 *citing* Compilation of Bond Credit Rating Histories for Selected Companies (Exh. HNY000062).

⁴³ *See* NRC Staff Testimony at ¶¶24-25 *citing* Exh. NRC000041.

that the Economist takes its information from were describing *only* speculative-grade, or “junk” rated, companies.⁴⁴ Honeywell was and is rated “A,” an “investment-grade” rating. Companies rated “A” by S&P default at an extremely low rate: a one-year default rate of 0.08% for the period 1981-2010.⁴⁵ Companies that were rated Ba (the highest level of non-investment grade) by Moody’s defaulted at 14 to 16 times this rate.⁴⁶

Other examples provided by the NRC also have limited relevance to Honeywell’s particular circumstances. For example, a Wall Street Journal article (Exh. NRC000039) lists more than 90 defaults from 2009. However, only two of those examples had “A” bond credit ratings and both were credit unions. The vast majority of the defaults were “C-rated” companies. Default rates are expected to be higher for companies with lower credit ratings.⁴⁷ The data in the credit ratings agency reports also indicate that, for companies rated A or better, there is a very low risk of default within one year.⁴⁸ For example, in 2009, the year with the highest number of defaults, there were only three defaults out of the 1,396 companies with an A rating at the beginning of the year.⁴⁹ There were no defaults for companies rated AA or AAA.⁵⁰ In 2010, there were no defaults for any companies rated A, AA, or AAA at the beginning of the year.⁵¹

⁴⁴ Tus/Den Uyl Rebuttal Testimony at ¶11 *citing* Exhs. HNY000063 and HNY000064.

⁴⁵ Tus/Den Uyl Testimony at ¶¶22, 44.

⁴⁶ *Id.* at ¶45.

⁴⁷ *Id.* at ¶48.

⁴⁸ *Id.* at ¶¶22-23.

⁴⁹ *See* S&P 2009 Global Default Study at 22 (Table 14) (Exh. HNY000031).

⁵⁰ *Id.*

⁵¹ *See* S&P 2010 Global Default Study at 21 (Table 14) (Exh. HNY000032).

And, for the few companies rated “A” by S&P that have eventually defaulted, it was more than 10 years, on average, between when they were rated “A” and when they eventually defaulted.⁵²

In short, the fact that there were more defaults in 2008 and 2009 is unsurprising given the financial and economic circumstances at that time. But, there is no objective evidence indicating anything other than a very low risk of default for a diversified “A-rated” company such as Honeywell.⁵³ The NRC Staff’s concerns are unfounded — a conclusion that has been borne out by subsequent data indicating Honeywell’s continued financial strength.⁵⁴

C. Honeywell Did Not Take Any Goodwill Impairment Charges

The NRC Staff also expresses a concern that Honeywell might need to write down its goodwill.⁵⁵ Honeywell performs its goodwill impairment test annually as of March 31st. Based on a review of annual and quarterly reports dating back to the 2006 annual report (encompassing the period from March 31, 2005, to March 31, 2011), there have been no impairments of goodwill.⁵⁶ Thus, the NRC Staff’s concern, as applied to Honeywell, does not have merit.

⁵² Tus/Den Uyl Testimony at ¶45.

⁵³ Although the NRC Staff states that it is concerned with the reliability of bond ratings, it nevertheless continues to use bond ratings as one criterion in the financial test presumably based, at least in part, on long-term data demonstrating the low risk of default for “A-rated” companies.

⁵⁴ See Tus/Den Uyl Testimony at ¶18. Honeywell’s financial position improved since 2008. For example, Honeywell increased its tangible net worth in both 2009 and 2010. Net worth similarly grew from \$7.1 billion in 2008 to \$10.8 billion in 2010. Free cash flow was \$3.1 billion in 2008 and is forecast to increase to \$3.5 to \$3.7 billion in 2011.

⁵⁵ NRC Staff Testimony at ¶39.

⁵⁶ Tus/Den Uyl Rebuttal Testimony at ¶16.

Moreover, even if Honeywell had taken goodwill impairment charges, there would not have been an increase in the risk of a shortfall in decommissioning funding. As the NRC Staff noted, goodwill is tested for impairment annually, or whenever there might be a change of circumstances potentially affecting its value.⁵⁷ If the results of the test indicated that goodwill was impaired and that, as a result, Honeywell no longer met the 10:1 test as permitted under the exemption, then Honeywell would be required to put in place alternate financial assurance.⁵⁸

In addition, goodwill impairment should be treated the same as other changes in financial condition. The reporting requirements in 10 C.F.R. Part 30, Appendix C, Section II.B.2, require notice to the NRC of any adjustments in financial data used in the financial test and would also trigger an obligation to obtain alternate financial assurance.⁵⁹ These reporting mechanisms, which are in place to capture declining financial performance, would continue to apply under the exemption.⁶⁰ In the event that goodwill is impaired, the NRC Staff would be given notice of that fact and there would be a self-executing requirement for Honeywell to obtain alternate financial assurance.⁶¹ Thus, the existing reporting mechanisms ensure equivalent protection for changes in goodwill.⁶²

⁵⁷ See NRC Staff Testimony at ¶39 (citing HNY000033 at 14-15).

⁵⁸ Tus/Den Uyl Rebuttal Testimony at ¶17.

⁵⁹ *Id.*

⁶⁰ Tus Den Uyl Testimony at ¶35.

⁶¹ *Id.* at ¶44.

⁶² Tus/Den Uyl Rebuttal Testimony at ¶17.

D. Honeywell Is Not Over-Relying on Goodwill

The NRC Staff also argues that Honeywell was relying on increasing amounts of goodwill in order to pass the financial test.⁶³ However, the more relevant analysis is that, when including goodwill under the revised test, Honeywell far exceeds the 10:1 test.⁶⁴ As presented in Table 9 in the Honeywell testimony (at ¶47), the ratio under the alternate test was 34:1 at December 31, 2007, 32:1 at December 31, 2008, 43:1 at December 31, 2009; 44:1 at December 31, 2010. Importantly, the alternate test calculation does not include other identified intangible assets on the balance sheet. If these were included in the calculation, the ratio would be significantly higher.⁶⁵

Further, even in 2008, when the NRC expressed concern that Honeywell needed to apply 67% of its goodwill to the financial test, Honeywell would have to write down more than 30% of its goodwill before it no longer met the financial test.⁶⁶ Given that Honeywell had not taken any impairment charges since at least 2005, an impairment charge of this magnitude would be very unlikely.⁶⁷

⁶³ NRC Staff Testimony at ¶40.

⁶⁴ Tus/Den Uyl Rebuttal Testimony at ¶19.

⁶⁵ The NRC Staff also neglects to calculate the same ratio for 2009 and 2010, which demonstrate that Honeywell would need to rely on less goodwill than in 2008. Tus/Den Uyl Rebuttal Testimony at ¶19. This further undercuts the NRC Staff's rationale for denying the exemption.

⁶⁶ *Id.*

⁶⁷ *Id.*

E. The Exemption Meets the Requirements of 10 C.F.R. § 40.14

The NRC Staff argues that Honeywell’s application does not meet the requirements of 10 C.F.R. § 40.14 — specifically the requirements that the exemption avoid endangering life and property and that the exemption be in the public interest.

The NRC first argues that the exemption does not avoid endangering life and property because, “[a]ccording to Honeywell, life or property would not be endangered ‘even if the tangible net worth test were eliminated entirely.’”⁶⁸ But, Honeywell is not proposing to eliminate the test entirely. Instead, Honeywell is proposing an alternate test that is still based on a ratio of assets to liabilities. Only in this test, the assets include both tangible assets and the intangible asset of goodwill. The NRC Staff then states that the NRC’s rules “disagree” and hold that an “A” bond rating, by itself, does not adequately protect life and property.⁶⁹ Honeywell understands that the amendment requires an exemption from the rules, but the fact that the rules “disagree” cannot alone be a reason to deny an exemption. On the merits, Honeywell is not proposing to rely solely on the “A” bond rating. Rather, the assurance is provided by a number of different requirements working in concert — the alternate financial test, the minimum bond rating requirement, the total asset test, the reporting requirements, and the requirement to make alternate financial arrangements in the face of declining financial performance. These requirements collectively provide the necessary assurance, not the bond rating alone.

Second, the NRC Staff asserts that Honeywell must prove that the costs of compliance were unnecessary.⁷⁰ Honeywell has in fact demonstrated that the costs associated

⁶⁸ NRC Staff Position Statement at 35.

⁶⁹ *Id.*

⁷⁰ NRC Staff Position Statement at 37.

with compliance are not necessary to achieve the purpose of the regulation. The NRC Staff further argues that Honeywell must show that it needs the exemption, as opposed to merely preferring an exemption to reduce regulatory costs.⁷¹ The NRC Staff provides no support for this proposition. An exemption is available if the exemption criteria are met. The NRC regulations do not require a showing that there is a “need” for the exemption. Likewise, Honeywell need not prove that its burden in obtain a surety or letter of credit is “unique.”⁷² Instead, as the NRC Staff pointed out in its Initial Statement of Position, issuance of an exemption is appropriate where there is sufficient justification and the purpose of the requirement being exempted is not compromised — that is, where compliance is not necessary to satisfy the purpose of the regulation. The fact that the exemption would reduce regulatory costs is not a basis to deny the exemption. Here, Honeywell has demonstrated that there is strong assurance that decommissioning funds would be available through use of the alternate test, in conjunction with the other existing requirements in Part 30, Appendix C. As a result, the purpose of the decommissioning financial assurance rule is satisfied and granting the exemption is appropriate.⁷³

⁷¹ *Id.*

⁷² See NRC Staff Testimony at ¶44. There is no explanation as to how this establishes that the exemption is not in the public interest. An exemption, by its very nature, authorizes activities that would otherwise not be allowed for other licensees. The exemption relates to the special circumstances of Honeywell’s financial performance and balance sheet rather than a comparison to the impact on other licensees of otherwise-applicable regulations (where no exemption is requested or justified).

⁷³ The NRC Staff also argues that the avoided costs must be weighed against the increased risk to the public. NRC Staff Position Statement at ¶37. However, as explained above, there is no increased risk associated with use of the alternate test, when considered alongside the other Appendix C requirements that remain in effect (minimum bond rating, total asset test, reporting requirements, requirement to obtain alternate assurance).

VI. CONCLUSION

For the reasons stated above, as supported by expert testimony and exhibits, Honeywell has met its burden of showing that the criteria for issuance of an amendment and exemption have been satisfied by the preponderance of the evidence. The alternate financial test proposed by Honeywell provides strong assurance that decommissioning funds will be available for MTW and that strict compliance with the regulation is not necessary to serve the underlying purpose of the regulation. As a result, the NRC Staff's decision to deny the amendment should be reversed and the Licensing Board should direct the NRC Staff to issue the amendment.

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))

CERTIFICATE OF SERVICE

I hereby certify that copies of “HONEYWELL REBUTTAL STATEMENT OF POSITION” and “REBUTTAL TESTIMONY OF JOHN TUS AND BRUCE DEN UYL” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 3rd day of November 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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