

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Honeywell International, Inc.
Metropolis Works Uranium Conversion Facility

Docket Number: 40-3392-MLA

ALSBP Number: 11-910-01-MLA-BD01

Location: (teleconference)

Date: Tuesday, December 6, 2011

Work Order No.: NRC-1316

Pages 1-16

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

PRE-HEARING CONFERENCE

-----x

IN THE MATTER OF:	:
HONEYWELL	:Docket No. 40-3392-MLA
INTERNATIONAL, INC.	:ASLB No. 11-910-01-MLA-BD01
(Metropolis Works	:
Uranium Conversion	:
Facility)	:

-----x

Tuesday, December 6, 2011

The above-entitled matter came on for pre-hearing conference via teleconference, pursuant to notice, at 11:00 a.m.

BEFORE:

PAUL S. RYERSON	Administrative Judge
E. ROY HAWKENS	Administrative Judge

1 APPEARANCES:

2 On Behalf of the Nuclear Regulatory

3 Commission:

4 MICHAEL CLARK, ESQ.

5 EMILY MONTEITH, ESQ.

6 PATRICIA JEHLE, ESQ.

7 of: Office of the General Counsel

8 Mail Stop - O-15 D21

9 U.S. Nuclear Regulatory Commission

10 Washington, DC 20555-001

11

12 On Behalf of Honeywell International, INC.:

13 TYSON SMITH, ESQ.

14 DAVID REPKA, ESQ.

15 of: Winston & Strawn, LLP

16 Rope Ferry Road

17 Waterford, CT 06385

18

19

20

21

22

23

24

25

P-R-O-C-E-E-D-I-N-G-S

11:01 a.m.

1
2
3 JUDGE RYERSON: Okay, good morning. Let's
4 go on the record. Welcome, everyone, this is Judge
5 Ryerson. I'm here with Judge Hawkens. Judge Abramson
6 who is the third member of our panel will be
7 participating next week during the hearing, but is not
8 able to join us today.

9 We also have with us here, Kirsten
10 Stoddard, who's the law clerk to this Board, and
11 Andrew Welkie, who will be operating the digital
12 system during the hearing.

13 I assume we have a reporter on line? No?

14 MALE PARTICIPANT: We do, Your Honor.

15 JUDGE RYERSON: Oh, okay. Thank you. It
16 would be obviously helpful to the reporter if everyone
17 would identify themselves before speaking so that the
18 record will be somewhat clearer.

19 We also have, as you may know, a listen-
20 only mode for this call. I don't think anyone has
21 asked for the information on how to call in on that
22 basis, but you should be aware that there may members
23 of the public or the media listening in as well.

24 With that said let's get formal
25 appearances, first for Honeywell.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SMITH: Yes, this Tyson Smith from
2 Honeywell, and David Repka is also calling in. He and
3 I are in separate offices. He should be on the line.

4 MR. REPKA: I am here.

5 JUDGE RYERSON: Thank you. And for the
6 NRC staff?

7 MR. CLARK: Good morning. This is Michael
8 Clark for the NRC staff, with me is Patricia Jehle,
9 and also on the phone are co-counsel, Emily Monteith.

10 MS. MONTEITH: Hi, this is Emily Monteith.
11 I'm calling in from my home office today.

12 JUDGE RYERSON: All right, thank you.
13 Well, the purpose of today's call, and I hope it won't
14 be a particularly long one, is set forth in our order
15 of November 18, and that's to discuss administrative
16 matters that pertain to the hearing we will have next
17 week on December 15th.

18 The first administrative matter is a very
19 simple one and that's how to get in the building. And
20 the counsel for Honeywell may know this, but recently
21 the main entrance was reconfigured in the building.

22 And so while we will be having the hearing
23 on the third floor of Two White Flint, it is now
24 necessary for all visitors to enter through the main
25 entrance in One White Flint and then be escorted down

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the passageway that connects the two buildings.

2 It will expedite admission to the building
3 if the names of everyone in Honeywell's party could be
4 supplied to Ms. Cloyd. Her number, which I think was
5 on the original order for this call, is 301-415-6504.

6 And I think we encourage strongly early
7 arrival to get through the security system in the
8 building. The hearing will begin promptly at 9:00
9 a.m. in the Two White Flint hearing room.

10 The next item involves how we'll be
11 handling exhibits. And I would personally like to
12 commend Counsel for both sides on your November 10
13 statement in which you indicate that you plan to argue
14 the merits, and you reserve your rights to argue the
15 lack of relevance or lack of probity of various
16 exhibits but that you are not going to become
17 embroiled in a dispute in front of the Board as to
18 which exhibits are admissible and which are not.

19 Because at least I always feel strongly
20 that's rarely productive since the Board is, after
21 all, without a jury the very same people who will look
22 at the documents to determine whether they're
23 admissible or not. So again I commend you on that
24 approach.

25 And consistent with that November 10

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 statement we propose, the Board proposes to admit at
2 the hearing all submitted exhibits, including the pre-
3 file testimony which has been designated as exhibits,
4 into evidence.

5 And that would be Honeywell 1 through 64,
6 I believe, and the NRC documents Exhibits 1 through 61
7 which include one revised NRC document, NRC R2. Is
8 everyone agreeable to that approach?

9 Hearing no objection, we'll plan to do
10 that first thing at the hearing. Next, as I said, we
11 plan to use the exhibit numbers that were used for
12 identification purposes when these exhibits were
13 submitted to the Electronic Hearing Docket.

14 There is one set of declarations that came
15 in afterwards from the NRC staff and we propose to
16 just give that NRC Exhibit number 62, the next
17 consecutive NRC Exhibit number, for all four
18 declarations.

19 And at that point I think we have covered
20 all of the pre-trial, pre-hearing testimony and
21 exhibits. One favor we would like to ask, and this is
22 not essential but it might help speed things up at the
23 hearing.

24 If there are documents, exhibits that
25 either party, either Honeywell or the staff, thinks

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 highly likely that will come up during the hearing, if
2 you would confidentially give the numbers of the
3 documents, of the exhibits to the Board's law clerk,
4 Ms. Stoddard. Again, her number is 301-415-5534.

5 I know it will be hard with the witnesses
6 to know which exhibits might be used because the Board
7 will be asking the questions, but there may be some
8 exhibits that Counsel feels are highly likely to be
9 used by the witnesses almost without regard to what
10 the questions will be.

11 And similarly if in opening statements or
12 closing statements you would like some particular
13 exhibits highlighted and brought up on a screen, which
14 we have the capacity to do, you might let Ms. Stoddard
15 know.

16 Again, it's not essential but it would
17 help Mr. Welkie call up those exhibits more quickly
18 than might otherwise be possible.

19 One last housekeeping detail, or one more
20 housekeeping detail. I think if there's ever a reason
21 for Honeywell to resubmit its exhibit list, it
22 probably should designate that Exhibit 35 has four
23 parts, 35A, 35B, 35C and 35D.

24 I think Mr. Welkie can simply remember
25 that and it's not necessary for an entire revised

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exhibit list to be submitted. But if for some reason
2 you do that it would be best to break those exhibits
3 out separately.

4 Yes, one more housekeeping detail on
5 exhibits. And I think we have resolved what was
6 becoming a bit of a problem, and staff and Honeywell
7 counsel may be familiar with this or may not be.

8 At the moment it is the policy of the
9 Office of the Secretary not to place in the public
10 document room, electronically, materials that are
11 subject to copyright.

12 The concern, I suppose, is that people who
13 have a hankering for an old article in the Wall Street
14 Journal might search through ADAMS just in the off
15 chance that the article was introduced as an exhibit
16 in some adjudicatory proceeding.

17 In any event that is the current policy,
18 I think subject possible to reconsideration, but it's
19 the current policy.

20 That will make it, at least for Honeywell,
21 potentially difficult to get access to the staff's
22 exhibits at this time, except that fortunately we have
23 gotten a commitment from the Office of the Secretary
24 that they will leave open the links by which the
25 documents were originally transmitted, for at least 90

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 days. So the original links should be available.

2 You might want to download, if you already
3 haven't, the exhibits to be sure you have them. But
4 those links should be available for 90 days in each
5 case, which I think would take you to mid-January in
6 the case of the initial filings.

7 After that or after the hearing actually,
8 those exhibits will also be placed in the confidential
9 portion of the Electronic Hearing Docket, so they
10 should be available there as well but they will not be
11 available there before the hearing.

12 Is everyone clear on that? Are there any
13 problems that that raises for anyone?

14 MR. SMITH: This is Tyson Smith. That's
15 no problem for Honeywell. We've downloaded those
16 documents and have them all.

17 JUDGE RYERSON: Excellent.

18 MR. SMITH: Thank you.

19 MR. CLARK: This is Michael Clark, no
20 problem for the staff either.

21 JUDGE RYERSON: Okay, thank you. Here is
22 how we propose, how the Board proposes to proceed. We
23 will entertain opening statements and we will try not
24 to interrupt them.

25 If the Board has questions of Counsel we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 will try to save those for the end of your opening
2 statements. These are not legal arguments. These are
3 opening statements in an evidentiary hearing.

4 We would like them to be less than ten
5 minutes, each side, and I would emphasize less than.
6 We have read your statements. We have read the
7 testimony. I think we understand the issues.

8 But we will give each side less than ten
9 minutes to say what it will at the start of the
10 hearing. We know that there appears to be a lack of
11 agreement on the burden of proof at least on certain
12 issues.

13 As a matter of convenience and without
14 necessarily deciding burden of proof on any issue, we
15 will proceed in the order of Honeywell first and then
16 the NRC staff.

17 So Honeywell will open with an opening
18 statement of less than ten minutes and then will be
19 followed by the staff. If the Board has questions of
20 Counsel, this is not argument, these are opening
21 statements in an evidentiary hearing, so we will try,
22 if we do have any questions, to hold them until the
23 end of these brief opening statements.

24 Then the Board will take over, in effect,
25 and ask questions of the witnesses, again, beginning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with the Honeywell witnesses followed by the NRC staff
2 witnesses.

3 And finally we anticipate closing
4 statements by the parties in the same order, Honeywell
5 followed by the NRC staff, again less than ten minutes
6 per side.

7 And finally, again, if the Board has
8 questions we will try to save those for the end of
9 your closing statements and not try to interrupt them.

10 After the hearing, we will want transcript
11 corrections from the parties, at least as to any
12 matters of substance, in the transcript.

13 This will be an awkward time of year
14 perhaps to confer on transcript corrections, but we
15 would very much like the parties to do that and submit
16 agreed upon transcript corrections for the Board's
17 approval.

18 We will disfavor motions from any party on
19 transcript corrections unless you really find you
20 cannot work this out and agree upon what the
21 corrections are. And I'll be surprised if you cannot
22 do that.

23 Given the holidays, the hearing will
24 terminate on either the 15th or the 16th. I believe
25 we should have a transcript three working days after

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that.

2 So I would suggest and I will listen to
3 pleas if this is difficult, but I would suggest that
4 we have agreed upon transcript corrections submitted
5 by Wednesday, January 4. Is that acceptable to
6 Honeywell?

7 MR. SMITH: That should be acceptable to
8 Honeywell.

9 JUDGE RYERSON: Yes. And NRC staff?

10 MR. CLARK: That would be fine with the
11 staff.

12 JUDGE RYERSON: Okay. So we will look for
13 them on January 4. Proposed finding of fact and
14 conclusions of law, the Board would like those to be
15 filed simultaneously and we propose Thursday, February
16 3rd, as a date for that.

17 Is that acceptable to Honeywell?

18 MR. SMITH: Yes, that should be fine. We
19 have another hearing the week before that in another
20 NRC matter, but I don't believe that that should
21 present any problems for us getting it done.

22 JUDGE RYERSON: And NRC staff, is that a
23 reasonable date for you?

24 MR. CLARK: That would be fine with the
25 staff.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE RYERSON: Okay. I would encourage
2 you to look at, if you haven't, in connection with
3 proposed findings 10 CFR 2.712(c), which is
4 technically applicable only I believe in G, Subpart
5 G hearings, but sets forth what I think findings of
6 fact are supposed to be, which are, in effect,
7 findings of fact. And there's a nice summary of how
8 they might be submitted.

9 I know that sometimes in our proceedings
10 I've seen findings of fact, proposed findings of fact
11 and including findings of fact, frankly, that some
12 Boards have adopted that don't look much like findings
13 of fact. And I encourage you to look at what the rule
14 in the G hearings says about that and I suggest it
15 might be a good model.

16 That is all I have as Chairman today. Are
17 there other issues, Judge Hawkens, that you think we
18 should be raising?

19 JUDGE HAWKENS: I have none.

20 JUDGE RYERSON: No issues from Judge
21 Hawkens. Again our purpose here is to cover as much
22 as we can before the hearing. We'd very much like to
23 finish it in one day.

24 Anything from Honeywell's standpoint we
25 should talk about today?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SMITH: No, Your Honors.

2 JUDGE RYERSON: And the NRC staff?

3 MR. CLARK: Your Honor, I was just
4 wondering if you see any need for a witness
5 introductions.

6 JUDGE RYERSON: No, I don't think so. We
7 have their resumes, we read their testimony. Thank
8 you.

9 MR. CLARK: Okay, thank you.

10 JUDGE RYERSON: Anything else?

11 MR. SMITH: Actually I did have one
12 question, thinking about the presentation of
13 witnesses.

14 JUDGE RYERSON: Who is speaking?

15 MR. SMITH: I apologize. This is Tyson
16 Smith from Honeywell.

17 JUDGE RYERSON: Yes.

18 MR. SMITH: You had mentioned that you
19 would proceed to ask questions by Honeywell first
20 followed by the NRC staff. I was wondering, would you
21 anticipate the possibility of having sort of rebuttal
22 testimony by the Honeywell witnesses?

23 JUDGE RYERSON: Well, I thought about
24 that. I mean the Board asks the questions, so if the
25 Board finds it necessary the Board might go back to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Honeywell witnesses. I wouldn't send them home
2 after they testify.

3 MR. SMITH: Oh no, certainly not. I was
4 just, for planning purposes and explain to them what's
5 expected.

6 JUDGE RYERSON: We will entertain a
7 request for some sort of clarification. I mean again,
8 there are questions. You've submitted proposed
9 questions and I suspect we will be using some of them.

10 But if you feel for whatever reason that
11 the record is not where it should be after we've gone
12 through each side once, you can certainly raise it in
13 some fashion at that point.

14 MR. SMITH: Thank you.

15 MR. CLARK: Your Honor, this is Michael
16 Clark. I have one more question. Does the Board know
17 at this time whether it intends to call witnesses as
18 a panel or as individual witnesses?

19 JUDGE RYERSON: The Board has not
20 discussed that. I mean clearly the testimony is, I
21 think, properly designated in the written testimony as
22 either on behalf of two witnesses or one witness, it's
23 clear who was speaking.

24 My own instinct would be, and this is
25 really speaking for myself, I usually am comfortable

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 directing questions to a witness. Now that may not
2 mean that it's not efficient to have two witnesses
3 sitting in the box at the same time, but the Board has
4 not quite decided that yet.

5 MR. CLARK: Okay, thank you, Your Honor.

6 JUDGE RYERSON: Anything else while we're
7 all together? Hearing nothing, we stand adjourned.
8 Thank you.

9 (Whereupon, the foregoing matter was
10 concluded at 11:20 a.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25