



Nuclear Regulatory Commission
Exhibit # - HNY000012-00-BD01
Docket # - 04003392
Identified: 12/15/2011

Admitted: 12/15/2011
Rejected:

Withdrawn:
Stricken:

April 25, 2011

HNY000012
10/14/2011

Mr. Larry Smith, Plant Manager
Honeywell Metropolis Works
Honeywell International, Inc.
P.O. Box 430
Highway 45 North
Metropolis, IL 62960

SUBJECT: RESPONSE TO COURT REMAND ON DENIAL OF EXEMPTION REQUEST FROM TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS* PART 30, APPENDIX C, REGARDING DECOMMISSIONING FINANCIAL ASSURANCE REQUIREMENTS, HONEYWELL METROPOLIS WORKS

Dear Mr. Smith:

By letter dated April 1, 2009 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML090920087), as supplemented by a submittal dated October 13, 2009 (ADAMS Accession No. ML092940174), Honeywell International, Inc. (Honeywell), the licensee, sought from the U.S. Nuclear Regulatory Commission (NRC) an exemption from financial assurance requirements for decommissioning as stated in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30, Appendix C, "Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning." Honeywell was seeking an exemption from the requirement that a licensee using a self-guarantee method of financial assurance have a tangible net worth "of at least 10 times the total current decommissioning cost estimate."

In its April 1, 2009, letter, Honeywell sought to "extend the exemption from the same portion of the financial test in 10 CFR Part 30, Appendix C until the earlier to occur of (1) May 11, 2010 and (2) the effective date of a final rule amending 10 CFR Part 30 consistent with the proposed rule published in the Federal Register on January 22, 2008." (See Honeywell's April 1, 2009, letter.) The extension requested references a prior exemption which was approved by the NRC staff on May 11, 2007 (ADAMS Accession No. ML062140687), as part of its license renewal Technical Evaluation Report for a limited period of time. The following License Condition was then imposed on Honeywell's source material license:

Honeywell is granted an exemption to 10 CFR Part 30, Appendix C, Section II.A.1 (as made applicable by 10 CFR 40.36(e)(2)). Specifically, as described in a letter dated December 1, 2006, Honeywell may include goodwill assets in its calculation of tangible net worth to meet the 10 to 1 ratio of tangible net worth to decommissioning obligation to pass the financial test. All other applicable conditions within 10 CFR 30, Appendix C remain. This license condition will expire 1 year from the date of approval of this license renewal.

A second exemption, with terms comparable to the 2007 exemption, was granted by letter dated August 22, 2008 (ADAMS Accession No. ML082250707).

By letter dated December 11, 2009, the NRC staff denied Honeywell's April 1, 2009, exemption request (ADAMS Accession No. ML093170604). Honeywell successfully sought review of the NRC's denial of the April 1, 2009, exemption request by the United States Court of Appeals for the District of Columbia Circuit (the "Court"). The Court remanded the denial to the NRC for further consideration. Based on the facts and analysis discussed in detail in the enclosure to this letter, the NRC staff hereby denies Honeywell's April 1, 2009, exemption request. This denial is based solely on the information available to the NRC as of the date of the original denial on December 11, 2009.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC's Public Document Room or from the Publicly Available Records System component of NRC's ADAMS. ADAMS is accessible from the NRC's Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If there are any questions regarding this action, please contact Ms. Tilda Liu, NRC Project Manager for Honeywell Metropolis Works, at 301-492-3217 or via e-mail to Tilda.Liu@nrc.gov.

Sincerely,

/RA/

John D. Kinneman, Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-3392
License No. SUB-526

Enclosure: As stated

cc: Mr. Michael Greeno
Nuclear Regulatory Affairs Manager
Honeywell Metropolis Works
P.O. Box 430
Highway 45 North
Metropolis, IL 62960

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If there are any questions regarding this action, please contact Ms. Tilda Liu, NRC Project Manager for Honeywell Metropolis Works, at 301-492-3217 or via e-mail to Tilda.Liu@nrc.gov.

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DOCKET NUMBER: 40-3392

LICENSE NUMBER: SUB-526

LICENSE HOLDER: Honeywell International, Inc.
Honeywell Metropolis Works
Metropolis, IL

SUBJECT: STAFF EVALUATION FOR DENIAL OF EXEMPTION REQUEST FROM
TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS* PART 30,
APPENDIX C, REGARDING DECOMMISSIONING FINANCIAL
ASSURANCE REQUIREMENTS

1.0 Background

By its April 1, 2009 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML090920087), submittal, as supplemented by a submittal dated October 13, 2009 (ADAMS Accession No. ML092940177), Honeywell sought to extend, for the third time, an exemption previously granted by the U.S. Nuclear Regulatory Commission (NRC) to the 10-to-1 ratio of the aggregate decommissioning costs to tangible net worth set forth in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," Appendix C, "Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning," Section II.A.1 (hereafter referred to as the "10-to-1 ratio"). At the time it requested the exemption, Honeywell relied on a self-guarantee as financial assurance for decommissioning. If granted, the requested exemption would allow Honeywell to continue including goodwill assets in its calculation of tangible net worth for an additional year until May 11, 2010.

Relying on Honeywell's financial data for its fiscal year ended December 31, 2008, Honeywell would not meet the 10-to-1 ratio requirement. At the time Honeywell sought the exemption, the cost estimate to decommission the Metropolis Works Facility (MTW) was \$156 million (\$156,440,898). To meet the above referenced requirement, Honeywell would have needed a tangible net worth of at least \$1.56 billion (\$1,564,408,980). At the time of Honeywell's current request, its tangible net worth was minus \$5.265 billion (-\$5,265,000,000) as of December 31, 2008.

1.1 Initial Exemption Request

The NRC staff approved the initial exemption request on May 11, 2007 (ADAMS Accession No. ML062140687), as part of its license renewal technical evaluation report (TER) for the renewal of Source Material License SUB-526. As a result of the exemption, Honeywell was permitted to include goodwill assets in its calculation of tangible net worth to meet the 10-to-1 ratio required by Section II.A.1 of Appendix C to 10 CFR Part 30. The staff imposed the following License Condition 27 on Honeywell's source material license:

Honeywell is granted an exemption to 10 CFR Part 30, Appendix C, Section II.A.1 (as made applicable by 10 CFR 40.36(e)(2)). Specifically, as described in a letter dated December 1, 2006, Honeywell may include goodwill assets in its calculation of tangible net worth to meet the 10 to 1 ratio of tangible net worth to decommissioning obligation to pass the financial test. All other

Enclosure

applicable conditions within 10 CFR Part 30, Appendix C, remain. This license condition will expire 1 year from the date of approval of this license renewal.

The basis for the exemption was two-pronged, as described in the TER:

The basis for decommissioning financial assurance is to assure that funds for decommissioning are available when needed. A self guarantee relies on the licensee's financial ability to fund decommissioning costs in a timely manner. The ability to pay may be considered in two parts: (1) ability under normal circumstances and (2) ability in cases of financial distress.

At the time the NRC considered the first exemption request, Honeywell's tangible net worth was \$1.929 billion,¹ and the total decommissioning liability was \$243 million, "of which \$156 million represents radiological decommissioning governed by NRC regulations." Therefore, the ratio of tangible net worth to decommissioning cost fell short of the 10-to-1 ratio required by 10 CFR Part 30, Appendix C.² The TER stated that "the 'A' rating held by Honeywell is a reliable indicator that it has the ability to pay its decommissioning obligations under normal circumstances." The TER further stated that "if goodwill assets are included in [tangible] net worth, Honeywell's ratio [of tangible net worth to total decommissioning costs] exceeds 35 to 1." Finally, the TER stated that "[i]n view of the 'A' bond rating and the high ratio of [tangible] net worth (including goodwill) to decommissioning obligation, the likelihood that assets will be available for decommissioning in the event of financial distress in the next year is adequate." In the TER, however, the NRC notified Honeywell that the exemption granted would be subject to reevaluation. Specifically, Section 11.5, "Financial Assurance," of the TER stated the following:

However, Appendix C to Part 30 is currently under evaluation for proposed rulemaking. The NRC staff is in the process of developing proposed amendments which, if approved by the U.S. NRC, will be published for public notice and comment. After public comments are received, additional information may arise that could cause the staff to reconsider the adequacy of using goodwill assets to meet the ratio of tangible net worth to decommissioning obligation...In view of this factor, an exemption to permit the use of goodwill assets to meet the ratio of tangible net worth to decommissioning obligation in Appendix C to Part 30 must be time limited to allow reconsideration of the basis for the exemption in the future.

It is important to note that Honeywell passed the financial test for several consecutive years before the initial exemption request. Given Honeywell's history of passing the financial test, the staff considered Honeywell's noncompliance with the 10-to-1 ratio as an anomalous, temporary condition. This interpretation of Honeywell's financial data was reinforced by the rationale Honeywell offered in support of the exemption. In its letter dated November 3, 2006 (ADAMS Accession No. ML063120165), Honeywell stated the following:

The deviation [with respect to the 10-to-1 ratio] for the year ended December 31, 2002 was due primarily to an asset write-off in our specialty

¹ See U.S. Securities and Exchange Commission (SEC) 10-K filed on February 16, 2007 (SEC Accession Number 0000930413-07-001369).

² Section II.A.1 of Appendix C to 10 CFR Part 30, requires a "tangible net worth at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof...for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as [a] parent-guarantor...."

materials divisions and an increase in Honeywell's reserves recognized in the fourth quarter of 2002...by June 30, 2003, Honeywell had returned to full compliance with all three legs of the financial test for self-guarantee of decommissioning liability and remained in compliance until December 31, 2005.

This suggested that Honeywell's noncompliance with 10 CFR Part 30, Appendix C, would be temporary. In concert with the above two-pronged basis, the NRC staff approved the exemption request.

1.2 Second Exemption Request

Honeywell submitted its second exemption request to the NRC by letter dated April 11, 2008 (ADAMS Accession No. ML081060399). The NRC staff reviewed the second exemption request and, by letter dated August 22, 2008 (ADAMS Accession No. ML082250707), found it acceptable "[b]ecause the basis for granting the original exemption still applies..." specifically, "Honeywell has continued to maintain a long-term credit rating of 'A' as assigned by Standard & Poor's...."

On January 22, 2008, the NRC issued a proposed rule on decommissioning planning (Decommissioning Planning Rule) (73 FR 3812). At the time of Honeywell's second exemption request, the Decommissioning Planning Rule was still pending Commission affirmation, and public comments were being evaluated. In support of its request, Honeywell noted that the exemption, if granted, would be consistent with the proposed Decommissioning Planning Rule, as the proposed rule included revisions "to 10 CFR Part 30, Appendix C that would allow the licensee to use intangible assets, if the licensee also has an investment grade bond rating." Therefore, in its review, the NRC stated that "the staff considers that it is acceptable to allow an extension of this exemption until the earlier of (1) May 11, 2009, or (2) the next effective date of a final rule amending the financial assurance requirements in 10 CFR Part 30 or 10 CFR Part 40 which may be similar to the proposed rule published in the Federal Register on January 22, 2008." (See NRC letter and exemption dated August 22, 2008, to M. Tillman [ADAMS Accession No. ML082250707].)

Given Honeywell's negative tangible net worth of minus \$1.451 billion (-\$1,451,000,000) as of December 31, 2007, the decision to grant the second exemption was a closer call. In considering the second exemption request, however, the NRC staff gave very high regard to Honeywell's history of compliance with the 10-to-1 ratio up to 2007, and the NRC staff anticipated that the 2-year imbalance would be corrected the following year.

2.0 Third Exemption Request

As previously stated, the requested exemption dated April 1, 2009, would extend, for the third time, the exemption initially approved by the NRC staff on May 11, 2007 (ADAMS Accession No. ML062140687). The NRC denied this exemption request by letter dated December 11, 2009 (ADAMS Accession No. ML093170604). Honeywell subsequently requested a review of the NRC's denial by the U.S. Court of Appeals for the District of Columbia Circuit (the "Court"). On December 21, 2010, the Court vacated and remanded the decision to the NRC for further consideration. Upon further review, the NRC hereby denies Honeywell's exemption request because, as explained in more detail below, the basis for granting the two prior exemptions no longer applies. While Honeywell cites its overall financial strength and emphasizes that there are costs associated with alternative means of complying with NRC financial assurance rules, this rationale is no longer persuasive. Honeywell's 2008 financial

data revealed that, contrary to trending upward in positive tangible net worth, Honeywell's tangible net worth significantly decreased to a negative tangible net worth of -\$5,265,000,000. Additionally, with respect to the costs of compliance, the NRC is not asking Honeywell to assume any burden that is different than the burden applied to other NRC materials licensees, despite the cost of their compliance and the other companies' financial positions. Further, the implication in the original request that the need for the exemption was temporary was undermined when, rather than improving, Honeywell's financial condition with respect to tangible net worth continued to deteriorate. Honeywell has provided no credible argument for why it should be treated differently than other similarly situated licensees when their failure to meet the regulations is clearly not a temporary condition. The following provides a more detailed basis for the NRC's denial.

2.1 Bond Ratings Are Not as Reliable as Previously Thought

Part of the basis for granting the first and second exemptions was that "the 'A' rating held by Honeywell is a reliable indicator that it has the ability to pay its decommissioning obligations under normal circumstances," and that an "'A' bond rating and the high ratio of [tangible] net worth (including goodwill) to decommissioning obligation" provides adequate assurance "that assets will be available for decommissioning in the event of financial distress...." (See the NRC's TER dated May 11, 2007.) The common criterion to both prongs of this basis is the bond rating. The NRC staff acknowledges that Honeywell's bond rating has remained as A2, as rated by Moody's, as relevant to the third exemption request.

Despite "Honeywell's maintenance of an 'A' rating from Standard & Poor's and an equivalent rating of A2 from Moody's since 1992" (see Honeywell supplemental information dated October 13, 2009 [ADAMS Accession No. ML092940177]), the NRC staff finds that the basis for the original exemption no longer applies. What differentiates the 2007 and 2008 decisions from the 2009 denial are two factors exogenous to Honeywell, which have significantly affected the staff's analysis of the exemption request.

First, the regulatory context of the two previous exemption requests changed significantly when the third exemption request was considered. During the latter half of 2008 and through 2009, during which the third exemption request was submitted and considered, the stability of the global economy was abruptly interrupted by the market and financial downturn, leading to extremely high uncertainty for future business and economic conditions. The Congressional Budget Office (CBO) stated that "[t]he sudden decline in economic activity in the second half of [2008] signaled that the recession could be severe...[n]ormally, sharp contractions in economic activity are followed by rapid rebounds, but this forecast anticipates that the recovery in 2010 will be slow." (See CBO's "The Budget and Economic Outlook: Fiscal Years 2009 to 2019" [<http://www.cbo.gov/ftpdocs/99xx/doc9957/01-07-Outlook.pdf>].) CBO also stated that "[a] major source of uncertainty in the outlook is the degree and persistence of turmoil in financial markets and the resulting impact on the future course of the economy."

Second, during the review process for the 2009 exemption request, the NRC staff learned that the bond rating by itself was not as reliable as previously thought. The NRC staff found that "[a] downgrade can have such an adverse effect on a rated sovereign or corporate issuer that it can destabilize the issuer or the market for its securities...." (See J. Katz, et al. (2009), "Credit Rating Agencies No Easy Regulatory Solution, Crisis Response Public Policy for the Private Sector.") Therefore, companies that provide credit ratings such as Standard & Poor's and Moody's "may be reluctant to downgrade because of the impact on the (usually not publicly disclosed) triggers in private financial contracts...."

In its October 13, 2009, supplemental response, Honeywell cited portions of the *Federal Register* (FR) notice publishing the then-proposed rule. The proposed rulemaking, among other things, provided a rationale for allowing intangible assets, with at least an “A” bond rating, to meet some financial tests. Part of the rationale was that “bond rating agencies include intangible assets in their evaluation of the financial stability of a company’s bonds.” (See 73 FR 3835). This means, significantly, that the bond rating already gives credit for intangible assets.

If Honeywell’s exemption request were approved, the NRC would be allowing Honeywell to rely on its intangible assets to meet the 10-to-1 ratio requirement. However, because these intangible assets are already given credit by way of Honeywell’s bond rating, the NRC staff finds that allowing Honeywell to continue to use its intangible assets to meet the 10-to-1 requirement while relying chiefly on its bond rating would place excess emphasis on the intangible assets.

Honeywell’s supplemental information states that it “has maintained an ‘A’ rating from Standard & Poor’s and an equivalent rating of A2 from Moody’s for the past 17 years,” and asserts that “the minimum bond rating criterion in the financial test is, by itself, an effective surrogate for financial strength and stability.” Honeywell observed that “when [it] 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)...[and] [i]n 2009, using the same metric, the default rate was still less than 0.244%.” (See Honeywell’s submittal dated October 13, 2009.) These data and the related analysis, however, do not reflect those businesses that might have begun downward performance but had not yet failed in 2008, as a result of the severe economic downturn in 2008 and 2009. In other words, the staff was concerned that the number of defaults would increase in 2009.

Both Honeywell and the NRC staff apparently agree that Honeywell’s bond rating was the principal basis cited by Honeywell in support of the prior exemption requests as well as the principal basis relied on by the NRC staff in granting those exemptions. However, as discussed, more recent information has caused analysts to question the reliability of this indicator alone. Thus, as demonstrated above, bond ratings by themselves are not necessarily “an effective surrogate for financial strength and stability” as Honeywell asserts.

In light of the significant financial and economic stresses still affecting Honeywell in late 2009, the highly uncertain duration and severity of these economic challenges, and the NRC staff’s understanding, as previously detailed, that bond ratings have limited reliability within the context of tangible net worth and decommissioning financial assurance, the NRC staff finds that primary reliance on the bond rating as the rationale for permitting an exemption to the 10-to-1 ratio requirement presents too great a risk and is inconsistent with the conservative assumptions and requirements of NRC financial assurance for decommissioning. As such, an exemption is not in the public interest. The continued and increased magnitude of Honeywell’s failure to meet the criteria would make it irresponsible for the NRC to allow Honeywell to continue its failure to meet the specific requirements in the regulations.

Accordingly, the bases for the exemptions granted in 2007 and 2008 are no longer applicable in 2009. Because the NRC’s granting of an exemption from the financial assurance regulations would undermine the conservatism built into NRC regulations to ensure that adequate funds for facility decommissioning are available when needed, the NRC staff finds it to be in the best interest of the public health and safety that, given the continued and increasing deficiency in

Honeywell's tangible net worth, Honeywell should meet all requirements of the financial test as contained in 10 CFR Part 30, Appendix C, including the 10-to-1 ratio.

2.2 Reliability of Free Cash Flow Is Uncertain in the Event of a Bankruptcy

In its supplemental submittal, Honeywell stated that it "generates significant annual free cash flow that is available for decommissioning the MTW when necessary." (Id.) In the TER to the first exemption, the NRC staff stated that "[t]he bond rating is supported by Honeywell's annual revenues of approximately \$27 billion, which generates about \$2.4 billion net annual cash flow." Insofar as cash flow might be considered by bond rating companies, the NRC staff has already outlined above why bond ratings, standing alone, are not as reliable as previously thought.

With regard to the cash flow itself, aside from its effect on the bond rating, the NRC staff still finds Honeywell's argument unpersuasive. Assuming that Honeywell remains viable during the decommissioning of the Metropolis facility, it might decide to pay for part, or all, of its decommissioning expenses over time by relying on free cash flow. However, the availability of free cash flow for the purposes of fully funding a standby trust for decommissioning expenses is much less certain in the event of financial distress or bankruptcy. Inasmuch as the funds represented by this cash flow are not committed to the NRC as in the case of a letter of credit, surety bond, external sinking fund, or other instrument (10 CFR 30.35 (f)(3)), those funds might be diverted to other purposes in the event of financial distress or bankruptcy to pay creditors, shareholders, or other stakeholders. Further, if Honeywell were to experience financial distress or declare bankruptcy and cease substantial portions, if not all, of its business operations, it is reasonable to assume that free cash flow would then drop significantly.

The NRC staff finds that in a financial distress or bankruptcy scenario, the availability of free cash flow to fully fund a standby trust in the amount of the cost estimate for decommissioning would be highly uncertain, as reflected in the fact that cash flow is not accepted as the means of financial assurance under the regulations. The NRC staff further finds that reliance on such an uncertain source of funding is contrary to the intent of the NRC's financial assurance regulations because reliance on uncertain sources of decommissioning funding would not provide "reasonable assurance that at the time of termination of operations adequate funds are available so that decommissioning can be carried out in a safe and timely manner and that lack of funds does not result in delays that may cause potential health and safety problems." (See "General Requirements for Decommissioning Nuclear Facilities," Final Rule, 53 FR 24018, 24037; June 27, 1988.) An uncertain source of funds may "result in delays" with respect to fully funding the standby trust and "may cause potential health and safety problems." This contradicts Honeywell's assertion that "annual free cash flow is available for decommissioning the MTW when necessary." Accordingly, in the event of financial distress or bankruptcy, a letter of credit or other surety mechanism is a much more certain source of decommissioning funding than anticipated free cash flows.

2.3 Honeywell Has Experienced a Significant and Uncorrected Decrease in Tangible Net Worth

As Honeywell's submittals show, its tangible net worth was \$1.929 billion (\$1,929,000,000) as of December 31, 2005; \$70 million (\$70,000,000) as of December 31, 2006; minus \$1.451 billion (-\$1,451,000,000) as of December 31, 2007; and minus \$5.265 billion (-\$5,265,000,000) as of December 31, 2008. With regard to the first exemption request, as stated in Section 1.1 of this letter, the NRC staff considered Honeywell's noncompliance with the 10-to-1 ratio to be an anomalous, temporary condition. As noted, the staff's conclusion was buttressed by the letter from Honeywell, dated November 3, 2006, also discussed above, characterizing the deviation

with respect to the 10-to-1 ratio for the year ended December 31, 2002, as essentially a temporary condition because “by June 30, 2003, Honeywell had returned to full compliance with all three legs of the financial test for self-guarantee of decommissioning liability and remained in compliance until December 31, 2005.”

The NRC staff’s conclusion that the deviation with respect to the 10-to-1 ratio was temporary and likely to be corrected in the near term, however, was not validated after the granting of the first exemption request and became even more uncertain after the second exemption request, particularly when Honeywell’s tangible net worth became negative. The tangible net worth figures cited above clearly exhibit a downtrend, which contradicts the NRC’s initial assumption that the noncompliance was temporary. Given this result, and the lack of any evidence provided by Honeywell that it will come into compliance with all parts of the financial test, the staff lacks adequate assurance that its original expectation in granting the first two exemptions will be fulfilled. The staff recognizes that the second exemption was granted despite a negative tangible net worth but cannot responsibly continue to extend a past leniency that is clearly no longer warranted.

2.4 Exemption Is Not in the Public Interest

NRC regulations presume compliance unless an exemption is approved or otherwise provided for in 10 CFR 40.14, “Specific Exemptions.” Section 40.14 provides that the NRC has the discretion to grant an exemption from the regulations in 10 CFR Part 40, “Domestic Licensing of Source Material,” if it determines that the exemption would be authorized by law, would not endanger life or property or the common defense and security, and would be in the public interest. Honeywell asserts that “the granting of the exemption is in the public interest.” The principal basis for this argument is that Honeywell would otherwise be required to procure a letter of credit, or other financial instrument, to comply with 10 CFR Part 30, Appendix C. (See Honeywell’s submittal dated October 13, 2009.) The NRC staff disagrees and does not find Honeywell’s argument persuasive. In this regard, the NRC has granted no other materials licensee an exemption from 10 CFR Part 30, Appendix C.

The financial burden associated with Honeywell’s full compliance with 10 CFR Part 30, Appendix C, is relatively small and no different than that incurred by every other materials licensee that is required to provide financial assurance but does not rely on a self or parent guarantee as financial assurance. As the NRC observed in the statement of considerations for the final rule, “Self-Guarantee as an Additional Financial Assurance Mechanism,” “[a]nnual fees for letters of credit, surety bonds, and other forms of third party financial assurance typically are approximately 1.5 percent of the amount of financial assurance provided.” (See 58 FR 68726; December 29, 1993.) By comparison, Honeywell states that it “generates significant annual free cash flow” and “expects to generate a minimum of \$2.2 billion in free cash flow in 2009.” Honeywell estimated it would cost “between \$1,500,000 and \$2,000,000 per year” to provide a letter of credit for the decommissioning of the Metropolis facility. (See Honeywell submittal dated October 13, 2009.) A cost of \$2 million per year is therefore relatively small compared to \$2.2 billion in free cash flow and is less than 1.5 percent of the amount of financial assurance provided as estimated in the aforementioned rulemaking. While procuring a financial instrument requires Honeywell to pay fees to a financial institution, every materials licensee that is required to provide financial assurance, except those that rely on a self or parent company guarantee in accordance with the NRC’s regulations, already provides the required financial assurance by letters of credit or other financial instruments and therefore likewise incur such fees. In sum, Honeywell has not distinguished the financial burden of its fee payment from that of other

compliant materials licensees that do not rely on a self or parent guarantee as financial assurance under the same NRC regulations.

Honeywell is not required to rely on a letter of credit as its alternate surety instrument. Honeywell may rely on any other acceptable type of financial mechanism for which it qualifies under the NRC's applicable regulations. As an example, it may rely on an escrow account or other instrument that might reduce its annual fee expenditure. For instance, Kennecott Uranium Company relied on a deposit of cash as financial assurance in response to its letter of credit expiration and nonrenewal. (See ADAMS Accession No. ML082750039.) For these reasons, the NRC staff does not find Honeywell's argument of financial burden persuasive. In addition to the staff's findings on the reliability of bond ratings that undermine the basis for granting the prior two exemption requests, the NRC staff also finds that the exemption is not in the public interest. Given the dramatic increase in the extent to which Honeywell's tangible net worth fails to meet NRC requirements, the exemption would present too great a risk to the public health and safety in assuring that decommissioning funds will be available when needed.

2.5 Requested Exemption Is Inconsistent with Decommissioning Planning Rule

Honeywell's October 13, 2009, submittal states that the NRC should not prospectively apply the proposed Decommissioning Planning Rule. The NRC agrees that application of the proposed Decommissioning Planning Rule before it is final and effective would be inappropriate.

Nonetheless, in its letter dated April 1, 2009, Honeywell stated that the proposed exemption request should be granted because the "exemption is entirely consistent with [the] proposed [Decommissioning Planning Rule]." The NRC staff does not find Honeywell's position on compliance with the proposed rule to be a persuasive argument for renewing the exemption. While Honeywell may meet one of the components in the proposed rule because of the proposed rule's allowance of intangible assets in meeting the 10-to-1 ratio, Honeywell would still need an exemption because it would fail to meet the proposed rule's second component, which requires a minimum tangible net worth of \$19 million. In other words, even looking at the proposed rule, Honeywell would be seeking preferential treatment over other licensees for a financial situation that is increasingly noncompliant with the regulations.

The version of Appendix C to 10 CFR Part 30 in effect as of December 2009 does not specify a minimum tangible net worth, but merely requires that the licensee's tangible net worth be at least 10 times the total current decommissioning cost estimate. The then draft rule proposed adding to Appendix C a minimum tangible net worth requirement of \$19 million. (See 73 FR 3825–3826.) This amount was subsequently increased to \$21 million in the draft final rule submitted to the Commission on March 13, 2009. (See SECY-09-0042, "Final Rule: Decommissioning Planning," ADAMS Accession No. ML090500566.)

Additionally, the draft final rule sought to amend the 10-to-1 tangible net worth ratio in Appendix C to 10 CFR Part 30 to a 10-to-1 net worth ratio, which would require a 10-to-1 ratio of net worth to decommissioning costs and at least a \$21 million tangible net worth. Licensees like Honeywell would have to meet this minimum tangible net worth requirement at all times once the rule is final and effective. Therefore, even if the NRC staff accepted Honeywell's approach of applying the logic of the proposed rule in considering the exemption request, Honeywell would not meet the second of two separate and equally important requirements under the proposed rule (that it has at least \$21 million in tangible net worth).

For this reason, the NRC staff disagrees with Honeywell's assertion that its proposed "exemption is entirely consistent with a proposed rule published on January 22, 2008."

3.0 Summary

Based on the reasons discussed above, the NRC staff denies Honeywell's April 1, 2009, exemption request, as supplemented. The NRC staff clarifies that the consideration and denial of Honeywell's exemption request have been guided solely by NRC regulations as they existed on the date of the initial denial on December 11, 2009, and information known to the NRC staff as of that date. Further, the NRC staff emphasizes that no single basis discussed above represents the sole reason for the denial. Rather, the bases in their totality form the collective rationale supporting the denial of the exemption request.

As a result of the NRC's denial of the requested exemption, Honeywell is required to comply with the requirements in Section II.A.1 of Appendix C to 10 CFR Part 30 and provide financial assurance by way of a qualifying financial instrument.

Principal Contributor

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