UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman
E. Roy Hawkens
Paul B. Abramson

In the Matter of	Docket No. 40-3392-MLA
HONEYWELL INTERNATIONAL INC.	ASLBP No. 11-910-01-MLA-BD01
(Metropolis Works Uranium Conversion Facility)	March 5, 2012

ORDER
(Providing Proposed Questions for Evidentiary Hearing)

Pursuant to 10 C.F.R. § 2.1207(a)(3)(iii), the attached documents set forth the proposed questions submitted to the Board by the NRC Staff and Honeywell International Inc. at or in connection with the evidentiary hearing held on December 15, 2011 in Rockville, Maryland.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 5, 2012

ATTACHMENT 1

(NRC Staff's Proposed Questions)

November 14, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HONEYWELL INTERNATIONAL INC.	)	Docket No. 40-3392-MLA
	)	ASLBP No. 11-910-01-MLA-BD01
	)	
(Metropolis Works Uranium	)	
Conversion Facility)	)	

NRC STAFF'S PROPOSED QUESTIONS FOR ORAL HEARING

Pursuant to 10 C.F.R. § 2.1207(a)(3) and the Board's Initial Scheduling Order,[1] the NRC Staff proposes questions for the Board to consider asking the witnesses at the December 2011 oral hearing.

I. Questions for Honeywell's Witnesses

Proposed Question HNY1 (Scope of the Exemption Request)

Issue Needing Further Examination:

The nature of the exemption Honeywell sought from the Staff in 2009.

Objective of the Examination:

To establish that Honeywell (1) never applied for an exemption covering any period beyond May 11, 2010; and (2) implied that its need for an exemption would be temporary.

Proposed Line of Questioning:

1. Do you agree that, when you applied for an exemption on April 1, 2009, you asked for the exemption then in effect to be extended "until the *earlier* to occur of (1) May 11, 2010 and (2) the effective date of a final rule amending 10 C.F.R. Part 30 consistent with the proposed rule published in the Federal Register on January 22, 2008"? Exh. HNY000006 at 1 (emphasis added).
2. Do you agree that your exemption, if granted, would have expired on May 11, 2010?
3. Do you agree that you never filed an NRC Form 313 (Application for Material License) for an exemption covering any period after May 11, 2010?
4. At the time of your initial exemption request, you explained that Honeywell had also failed to meet the Appendix C test in 2002, but that "by June 30, 2003, Honeywell had

[1] Initial Scheduling Order (August 23, 2011) at 4. The Board stated that the parties' submissions "should contain a brief description of the issue or issues that the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective." *Id.*

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." Exh. NRC000006 at 1. Do you agree that this statement might be reasonably interpreted as suggesting that Honeywell's need for an exemption from § 40.36(e) would be temporary?

Proposed Question HNY2 (Bond Ratings)

Issue Needing Further Examination:

Honeywell's claim that bond ratings are "excellent indicators of the financial strength of a corporate issuer like Honeywell." Exh. HNY000001 at A14 and A24.

Objective of the Examination:

To establish that when the Staff was reviewing Honeywell's 2009 exemption request, there were significant and widespread concerns over the reliability of bond ratings. Also to establish that bond ratings did not specifically address certain concerns relevant to the Staff's review of Honeywell's exemption request.

Proposed Line of Questioning:

1. Do you agree that in 2009 financial experts were questioning the reliability of the bond ratings issued by agencies such as Standard and Poor's and Moody's? Exhs. NRC000044 at 1, NRC000046 at 17.
2. Do you dispute that in October 2009 the World Bank reported, "In the United States and Europe faulty credit ratings and flawed rating processes are widely perceived as being among the key contributors to the global financial crisis. That has brought them under intense scrutiny and led to proposals for radical reforms."? Exh. NRC000044 at 1.
3. Do you acknowledge that, from late 2008 through 2009, governmental organizations took broad corrective actions designed to address deficiencies on the part of credit rating agencies? Exhs. NRC000044 at 5, NRC000057, NRC000058, NRC000060 at 1–2.
4. You argue that the historical default rates for "A-rated" companies like Honeywell are relatively low. Do you believe that the performance of other companies—both higher-rated companies and lower-rated—during the global financial crisis of 2008–2009 was irrelevant to the Staff's review of Honeywell's exemption request?
5. Are you suggesting that the Staff had to wait for a company just like Honeywell to fail before it could be legitimately concerned over how the global financial crisis of 2008–2009 might have affected Honeywell?
6. Do you acknowledge that the corporate defaults in 2008–2009 included 25 companies Standard and Poor's had rated as "investment-grade"? Exh. HNY000030 at 9, Table 4; HNY000031 at 1–2, Table 1.
7. In A20 of your initial testimony, you state that bond ratings measure long-term risk and the strength of companies over a period of years. Do you agree that Honeywell's 2009 request for a one-year exemption from § 40.36(e) raised questions of short-term risk, rather than long-term risk?

8. Do you agree that bond ratings, which focus on a company's overall financial condition, are not specifically concerned with a company's ability to promptly pay decommissioning costs following shutdown?

Proposed Question HNY3 (Delays in Obtaining Third-Party Financial Instrument)

Issue Needing Further Examination:

Honeywell appears to assume that, if its 2009 exemption request was granted but Honeywell thereafter fell into financial distress and no longer met the conditions of its exemption, it could have quickly obtained a third-party instrument (*e.g.*, a surety bond or letter of credit) as financial assurance. For example, Honeywell states that "even if [its] finances deteriorated, there would be more than ample time to put in place alternate financial assurance mechanisms." Exh. HNY000001 at A44.

Objective of the Examination:

To establish that obtaining a third-party financial instrument could take longer than expected, particularly during an economic downturn like that in 2008–2009.

Proposed Line of Questioning:

1. You state that, in the event Honeywell no longer met the Appendix C financial test, there "would be a self-executing requirement for Honeywell to obtain alternate financial assurance." Exh. HNY000059 at A17.
    a. Do you agree that, even if the *requirement* to obtain alternate financial assurance could be described as "self-executing," Honeywell would first need to determine whether it has fallen out of compliance with the Appendix C financial test and must therefore seek alternate arrangements?
    b. Do you also agree that the process of obtaining financial assurance is not "self-executing" but would require direct action on the part of Honeywell?
2. Do you agree that a company in financial distress could have difficulty obtaining a third-party financial instrument?
3. Do you agree that a third-party financial instrument may be more difficult to obtain during a "credit crunch"—a period involving a sudden tightening of loan conditions—like that in 2008 and 2009?
4. Do you agree that during a credit crunch a company in a weakened financial state might temporarily be unable to obtain a third-party financial instrument at *any cost*?

Proposed Question HNY4 (Goodwill Liquidity Concerns)

Issue Needing Further Examination:

In its exemption requests, Honeywell sought to use goodwill to meet the Appendix C requirement that its tangible net worth be at least 10 times its decommissioning cost estimate. Although the Staff allowed Honeywell to use a certain amount of goodwill to meet the 10-to-1 test in 2007 and 2008, for 2009 Honeywell sought to use significantly more goodwill to meet the test. Honeywell appears to take the position that its significantly increased reliance on goodwill is immaterial because there are no differences between goodwill and tangible assets relevant to its ability to timely provide decommissioning funding.

Objective of the Examination:

To establish that, compared to tangible assets, goodwill is generally more difficult to convert into cash to pay for decommissioning costs. Accordingly, Honeywell's significantly increased reliance on goodwill to meet the Appendix C test for 2009 understandably increased concerns over Honeywell's ability to timely provide decommissioning funding if it ceased operations at the Metropolis Works Facility (MTW).

Proposed Line of Questioning:

1. In its testimony, the Staff explains that goodwill is relatively illiquid because converting this type of asset into cash typically requires the sale of the business or business line whose purchase was responsible for the creation of the goodwill. Exhs. NRC000001 at A.34, NRC000053 at A.30. The Staff also describes certain steps that a business will often have to take in order to convert goodwill into cash. Exh. NRC000053 at A.31.
    a. Do you agree that converting goodwill into cash would involve the sale of a business or business line?
    b. Do you agree that the steps described by the Staff are ones that may routinely be involved in the sale of a business or business line?
2. In A13 of your rebuttal testimony, you disagree with the Staff's testimony that goodwill is illiquid relative to tangible assets. You appear to state that many of Honeywell's tangible assets are, in fact, no more liquid than its goodwill.
    a. Rather than decreasing concerns over the liquidity of goodwill, doesn't your testimony *increase* concerns over the liquidity of Honeywell's tangible assets?
    b. Even assuming that some of Honeywell's tangible assets are not as liquid as other tangible assets, isn't it true that the sale of those assets would not typically involve all the steps required to sell an entire business or business line?
3. In A57 of your initial testimony, you state that the EPA adopted a $10 million tangible net worth requirement in its financial test based on concerns that do not apply to Honeywell. You state, "The EPA clearly viewed a minimum net worth test as a surrogate for whether a company was 'small' and therefore unlikely to have diversified sources of income and was also looking at the relative net worth of a company relative to its decommissioning obligations." Exh. HNY000001 at A57.
    a. Are you denying that the EPA based its minimum tangible net worth test on the concern that intangible assets such as goodwill may be difficult to convert quickly into cash to pay for cleanup costs?
    b. Do you agree that, when it adopted a self-guarantee test in 1993, the NRC took into account the EPA's finding regarding the relative illiquidity of intangible assets?
    c. Do you believe that when adopting its self-guarantee rule the NRC did not take into account the circumstances presented by large, diversified companies?
    d. If so, are you aware of the NRC's statement in the final self-guarantee rule that "all companies, *irrespective of their overall size,* must demonstrate that they possess tangible net worth of at least 10 times the current decommissioning cost

estimate . . . for all decommissioning activities for which the company is responsible. . . ."? Exh. NRC000013 at 2 (58 Fed. Reg. at 68,727) (emphasis added.)

Proposed Question HNY5 (Goodwill Impairment Concerns)

Issue Needing Further Examination:

In its 2009 exemption request Honeywell sought to use 67% of its goodwill to meet the 10-to-1 part of the Appendix C financial test. This was a 67% increase over 2008, when Honeywell needed 40% of its goodwill to meet the test. If Honeywell experienced goodwill impairment that was not promptly identified, Honeywell could have fallen out of compliance with the conditions of its exemption without Honeywell or the NRC becoming aware of its noncompliance.

Objective of the Examination:

To establish that in 2009 (1) goodwill impairment was a significant concern for businesses generally, and (2) due to Honeywell's increased reliance on goodwill to meet the 10-to-1 test, goodwill impairment was a legitimate concern for the Staff when reviewing Honeywell's exemption request.

Proposed Line of Questioning:

1. Do you agree that in 2008 and 2009 there were increases in both the number of companies taking goodwill impairment charges and the amount of those charges? Exh. NRC000040 at 1.
2. Do you agree that, under the financial accounting standards in effect in 2009, a company did not need to test for goodwill impairment between its annual tests unless "an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount"? HNY000033 at 15.
3. Are you aware that, in mid-2009, one major accounting firm reported that goodwill valuation ". . . is not an exact science and that it has never been more difficult than it is now to ascribe a value to an entity"? Exh. NRC000040 at 1.
4. You state that in 2009 Honeywell would have needed to take a goodwill impairment charge of over 30% to fall out of compliance with the conditions of its exemption. Exh. HNY000059 at A16. Wouldn't Honeywell also have fallen out of compliance if it experienced goodwill impairment of this amount that went unrecognized—that is, if Honeywell failed to promptly test for impairment, or if Honeywell had difficulty assigning value to the impairment?
5. In your rebuttal testimony at A16, you state that Honeywell has not recently taken any goodwill impairment charges. Given that Honeywell has not recently been in financial distress, isn't your statement irrelevant to whether Honeywell might suffer goodwill impairment in times of financial distress?

6. In 2009 it would have taken goodwill impairment of approximately $3.36 billion for Honeywell to fall out of compliance with the 10-to-1 test, while in 2008 it would have required approximately $5.48 billion in impairment.[2] Would you agree that, however low you see the risk objectively, a $3.36 billion impairment charge is more likely than a $5.48 billion charge?
7. Would it be unprecedented for a large company like Honeywell to take a goodwill impairment charge of $3 billion?

Proposed Question HNY6 (Revised Decommissioning Planning Rule)

Issue Needing Further Examination:

To clarify certain statements Honeywell makes concerning the NRC's revised decommissioning planning rule (DPR), which becomes effective December 17, 2012.

Objective of the Examination:

To rebut Honeywell's claim that the Staff relied on the DPR in denying its 2009 exemption request, and to establish that Honeywell is attempting to use this proceeding to challenge the revised DPR.

Proposed Line of Questioning:

1. In its April 25, 2011 reconsideration decision, the Staff states that it agrees the proposed DPR cannot be applied to Honeywell's 2009 exemption request. Exh. HNY000012 at 8. Do you believe that the Staff nonetheless applied the proposed DPR in rejecting the exemption request?
2. If so, what is the basis for your conclusion?
3. Do you acknowledge that, in its April 2009 application for an exemption and again in its October 2009 supplement, Honeywell itself cited the proposed DPR in support of its exemption request? Exhs. HNY000006 at 2, HNY000008 at 6–8.
4. Several answers in your initial testimony discuss the requirements of the revised DPR. *See, e.g.,* Exh. HNY000001 at A38–A40, A56–A60. Given that the Staff agrees the revised DPR cannot be applied to Honeywell's exemption request, isn't this testimony irrelevant to the issues before the Board?
5. Do you agree that your testimony, particularly at A56 through A60, is a challenge to the requirements of the revised decommissioning planning rule?
6. Do you agree that arguing the revised DPR should not be applied to Honeywell, as you do in A58, serves no purpose unless you are seeking a Board ruling on that very issue?
7. Do you agree that through your testimony at A56–A60 you are asking the Board to offer its opinion on the appropriateness of the NRC including a $21 million tangible-net-worth-requirement in the revised Appendix C financial test?

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[2] These amounts are obtained by taking Honeywell's goodwill for each year and subtracting its tangible-net-worth shortfall. On Exhibit NRC000018, this involves subtracting the first row in the bottom table from the second row in the top table.

Proposed Question HNY7 (Other Factors Cited by Honeywell in its Testimony)

Issue Needing Further Examination:

Honeywell cites a variety of other factors in support of its exemption request. In particular, Honeywell points to its tangible assets, intangible assets other than goodwill, free cash flow, the market value of its assets, and a revolving credit facility it has obtained. Honeywell also argues that the reporting requirements in Part 30, Appendix C guarantee that the NRC would be alerted promptly if it fell out of compliance with the self-guarantee test, and that in such a circumstance Honeywell would promptly obtain alternate financial assurance.

Objective of the Examination:

To establish that none of these factors support granting Honeywell's 2009 exemption request.

Proposed Line of Questioning:

1. Isn't it true that your substantial tangible assets are offset by a higher dollar value of liabilities, which is why your tangible net worth at the time of your 2009 exemption request was negative $5.265 billion?
2. Do you acknowledge that in the 2009 exemption request Honeywell sought to use only goodwill, not intangible assets generally, toward meeting the 10-to-1 part of the Appendix C financial test?
3. Do you agree that, if Honeywell entered a period of financial distress, its free cash flow and the market value of its assets could both be adversely affected?
4. Do you agree that (a) a revolving credit facility is not an asset owned by Honeywell, (b) you did not specifically rely on such a credit facility in either your April 2009 exemption application or the October 2009 supplement to your application, (c) Honeywell's access to funds under the credit facility could be terminated if Honeywell fell into financial distress, and (d) you have not introduced the terms and conditions of the credit facility (including, for example, any amounts presently drawn from the facility) as evidence in this proceeding?
5. Isn't it true that in both 2002 and 2005 Honeywell fell out of compliance with the self-guarantee financial test yet failed to notify the NRC immediately, as required by § II.C of Appendix C, or obtain alternate financial assurance, as required by § 40.36(e)? Exh. NRC000006 at 1.
6. Even though the Staff granted Honeywell exemptions in 2007 and 2008 despite its past noncompliance with reporting requirements, isn't this history of noncompliance a relevant factor for *the Board* to consider when evaluating Honeywell's repeated claim that NRC reporting requirements will capture any adverse changes relevant to Honeywell's ability to provide decommissioning funding? (*E.g.*, Exh. HNY000059 at A5, A13, A17, A23.)

II. Questions for NRC Staff Witnesses[3]

Proposed Question NRC1 (Financial Crisis in 2008–2009)

Issue Needing Further Examination:

Honeywell argues that its third exemption request was "nearly identical" to its first and second exemption requests, which the Staff granted. However, Honeywell's argument overlooks broader changes in the general economy between August 2008 (when the Staff granted the second exemption request) and December 2009 (when the Staff denied the third request) that were highly relevant to assessing Honeywell's 2009 exemption request.

Objective of the Examination:

To establish that the Staff was reviewing Honeywell's 2009 exemption request during a severe global economic downturn that caused great uncertainty, and that the Staff had legitimate concerns about how Honeywell may have been affected by the downturn.

Proposed Line of Questioning:

1. What was the general state of the global economy when you were reviewing Honeywell's 2009 exemption request?
2. Were there any significant changes from when the Staff granted Honeywell's second exemption request in August 2008?
3. In late 2009, was the global economy expected to make a quick recovery?
4. Did these events, and any reports analyzing these events, contribute to the Staff's decision on Honeywell's 2009 exemption request?

Proposed Question NRC2 (Bond Ratings)

Issue Needing Further Examination:

Honeywell argues that bond ratings are excellent indicators of a company's financial condition, and it suggests that its high bond ratings are in themselves sufficient to support granting an exemption from 10 C.F.R. § 40.36(e). Exh. HNY000001 at A24, Exh. HNY000009 at 3–4.

Objective of the Examination:

To establish that (1) when the Staff denied Honeywell's third exemption request in December 2009, there were widespread and significant concerns over the reliability of bond ratings; (2) bond ratings are concerned with long-term risk, whereas the Staff's focus when reviewing Honeywell's request for a one-year exemption was on short-term risk; and (3) bond ratings are concerned with a company's overall creditworthiness and do not directly address the Staff's specific concern, which is with a licensee's ability to timely fund decommissioning activities.

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[3] Although the Staff believes its initial and rebuttal testimony fully addresses the issues before the Board, it is offering these proposed questions as an additional reference for the hearing.

Proposed Line of Questioning:

1. You have testified that the primary purpose of the NRC's financial assurance rules is to guarantee that licensees will be able to timely pay decommissioning costs. Do bond ratings directly measure a company's ability to pay decommissioning costs?
2. Are bond ratings intended to capture short-term changes in a company's financial position that may be relevant to its ability to fund decommissioning activities or obtain a third-party financial instrument to cover decommissioning costs?
3. Honeywell argues that bond ratings are excellent indicators of a company's financial condition, pointing to the low rate of default for companies with highly rated bonds.
    a. In late 2009, were bond ratings considered excellent indicators of a company's financial condition?
    b. In 2009, as compared to 2008, were there increased concerns over the reliability of bond ratings?
    c. Was the Staff the only one raising these concerns?
    d. Is it fair to say that a bond rating is "accurate" merely because the rated company does not default on its payment obligations?
    e. Are there other circumstances in which a bond rating might be viewed as inaccurate?
    f. How do bond ratings compare with other financial metrics in terms of predicting a company's performance?
    g. Do credit rating agencies do a good job following up on their initial ratings of companies?
4. Do any of the NRC's financial tests rely on bond ratings alone as a measure of a company's ability to provide decommissioning funding?
5. Has the NRC ever granted an exemption allowing a licensee to provide financial assurance through a self-guarantee or parent-company guarantee based solely on its bond rating?

Proposed Question NRC3 (Financial Assurance Concerns Unrelated to Default)

Issue Needing Further Examination:

Honeywell argues that companies with high bond ratings like its own have low risks of default. However, a default is only one circumstance that may lead to decommissioning funding problems and ensuing delays in decommissioning.

Objective of the Examination:

To establish that when reviewing Honeywell's exemption request the Staff was not concerned solely with whether Honeywell would default during the period covered by its exemption request. Rather, the Staff was also concerned that, if Honeywell entered a period of financial distress but the MTW remained in operation, Honeywell might be unable to timely obtain a third-party instrument as financial assurance.

Proposed Line of Questioning:

1. When reviewing Honeywell's 2009 exemption request, was the Staff concerned solely with whether Honeywell would default during the period covered by the request?
2. Are there circumstances short of default that could affect Honeywell's ability to promptly obtain a surety bond or letter of credit to cover decommissioning costs?
3. Can you give an example of an NRC licensee who had difficulty obtaining a surety bond or letter of credit around the time of Honeywell's 2009 exemption request?

Proposed Question NRC4 (Goodwill Liquidity Concerns)

Issue Needing Further Examination:

As noted above, Honeywell has argued that its 2009 exemption request was nearly identical to its 2006 and 2008 exemption requests, which the Staff granted. However, Honeywell's tangible net worth dropped sharply between its 2008 and 2009 requests. Honeywell's tangible net worth was negative $5.265 billion at the time of its 2009 request, as compared to negative $1.451 billion at the time of its 2008 request. This meant that Honeywell needed to use significantly more goodwill—$6.825 billion as compared to $3.695 billion—to meet the 10-to-1 requirement in the first part of the Appendix C financial test. Exhs. NRC000018, NRC000021.

Objective of the Examination:

To establish that Honeywell's sharp decline in tangible net worth between its 2008 and 2009 requests, and its significantly increased reliance on goodwill for the latter year, was a change of circumstances supporting denial of its 2009 exemption request.

Proposed Line of Questioning:

1. What is goodwill?
2. What would a company have to do in order to convert goodwill into cash?
3. What are some specific steps a company might have to take in order to covert goodwill into cash?
4. Are these steps likely to be more or less time-consuming than the steps involved in selling tangible assets or identifiable intangible assets like patents or trademarks?
5. If a company needs to generate funds quickly, could it use its tangible assets as collateral for a loan?
6. Can goodwill be used this same way?
7. Does the regulatory history to the NRC's self-guarantee rule reflect concern over the relative illiquidity of intangible assets like goodwill?
8. Does the first part of the Appendix C financial test address concerns over the relative illiquidity of intangible assets like goodwill?
9. Compared to previous years, in 2009 did Honeywell seek to use more goodwill to meet the first part of the Appendix C financial test?
10. What do the financial charts marked as Exhibits NRC000020 and NRC000021 say about Honeywell's increased reliance on goodwill for 2009?

11. How was Honeywell's increased reliance on goodwill in 2009 relevant to its ability to promptly generate decommissioning funding?

Proposed Question NRC5 (Goodwill Impairment Concerns)

Issue Needing Further Examination:

In 2009, Honeywell sought to use an unprecedented amount of goodwill—$6.825 billion, or 67% of its total goodwill—to meet the 10-to-1 requirement in the first part of the Appendix C financial test. This increased the Staff's concern that, if Honeywell experienced significant goodwill impairment that was not promptly identified, it might fall out of compliance with the conditions of its exemption without either the Staff or Honeywell itself becoming aware of the noncompliance. Exh. NRC000018.

Objective of the Examination:

To establish that in 2009, as compared with 2008, there was increased concern that Honeywell might suffer goodwill impairment causing it to fall out of compliance with the conditions of an exemption. If this goodwill impairment was not promptly identified, it could have caused Honeywell to fall out of compliance with the conditions of its exemption without the knowledge of the NRC Staff or Honeywell itself.

Proposed Line of Questioning:

1. What is goodwill impairment?
2. At the time of Honeywell's 2009 exemption request, what accounting standard applied to goodwill impairment?
3. What did this standard say?
4. Are there any grey areas surrounding when a company takes a goodwill impairment charge?
5. Is it possible that, even though a company's goodwill might decline in value, that might not be reflected in a goodwill impairment charge until sometime later?
6. Please explain the significance of Exhibit NRC000022.
7. Assuming the Staff granted Honeywell's 2009 exemption request, how much goodwill impairment would Honeywell have needed in order to fall out of compliance with the conditions of its exemption?
8. How did this compare with 2008, when the Staff granted the second exemption?
9. Would it be unprecedented for a company to take a goodwill impairment charge of approximately $3 billion?
10. If a company falls into financial distress, could this increase the likelihood of goodwill impairment?

Proposed Question NRC6 (Specific Findings under 10 C.F.R. § 40.14)

Issue Needing Further Examination:

Under 10 C.F.R. § 40.14, an application for an exemption cannot be granted unless, at a minimum, the applicant establishes that the exemption is in the public interest and would not endanger life or property.

Objective of the Examination:

To establish why the Staff found that granting Honeywell's 2009 exemption request was against the public interest. To also establish that granting the exemption could have endangered life and property by leading to delays in decommissioning, which could have resulted in increased exposure to radiation.

Proposed Line of Questioning:

1. In your April 2011 reconsideration decision, you state that granting Honeywell's 2009 exemption request would not have been in the public interest and therefore failed to satisfy 10 C.F.R. § 40.14. Why is that so?
2. When evaluating whether the 2009 exemption would be in the public interest, did you consider the cost to Honeywell of obtaining a third-party financial instrument?
3. In the supplement to its 2009 exemption request, Honeywell estimated the cost of obtaining a letter of credit for the MTW. Exh. HNY000008 at 11. Are there other third-party financial assurance instruments that might have lowered Honeywell's costs?
4. Section 40.14 also requires that an exemption avoid endangering life or property. Could granting the 2009 exemption request have adversely affected life or property?
5. Has the NRC previously addressed the impacts that delays in decommissioning can have on life and property?

Respectfully submitted,
/Signed (electronically) by/
Emily L. Monteith

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

Dated at Rockville, Maryland
this 14th day of November 2011

~~1. Would you agree that it~~

1. If there's

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1. Isn't it true that Honeywell's bond rating and market capitalization aren't specifically concerned with Honeywells ability to pay decommissiong costs in a timely manner? Aren't these factors more relevant to investors?

2. Haven't you previously testified that Honeywell's free cash flow isn't relevant to its ability to pay decommissioning costs during times of financial distress

Isnt it true that

<u>negative</u> tangible net worth

arises ~~[illegible]~~ with

aquisitions because you buy

~~the assets you get are~~

intangible (ie. goodwill)

but you give

up tang. assets (cash)

<u>or</u> take on debt ?

Mr Tus implied that tangible assets are worth more than their book value. Is it more accurate to say that book value of an tangible asset may be either larger or smaller than the market value

→ nothing pledged +

What is the difference between Honeywell's claim that they ~~have~~ are large relative to the obligation and the claim they are two large to fail?

ATTACHMENT 2

(Honeywell International Inc.'s Proposed Questions)

November 14, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
HONEYWELL INTERNATIONAL INC.	)	Docket No. 40-3392
	)	
(Metropolis Works Conversion Facility)	)	

HONEYWELL'S QUESTIONS FOR THE LICENSING BOARD
ON NRC STAFF'S PRE-FILED DIRECT AND REBUTTAL TESTIMONY

Pursuant to the Licensing Board's Initial Scheduling Order, dated August 23, 2011, and the Order (Providing Direction on Pre-filed Evidentiary Material), dated September 9, 2011, and in accordance with 10 C.F.R. § 2.1207(a)(3), Honeywell International Inc. ("Honeywell") hereby submits proposed questions for the NRC Staff witnesses, Roman Przygodzki, Kenneth Kline, Thomas Fredrichs, Paul Bailey, and John Collier, at the December 15, 2011, hearing. These questions are based on the NRC Staff testimony filed on October 14, 2011, and reply testimony filed on November 3, 2011.

A. Background

1. Which NRC Staff witnesses reviewed the initial exemption request in 2007 and the first extension in 2008?

2. Which NRC Staff witnesses reviewed the second extension request, including both the December 2009 denial letter and the April 2011 denial letter?

3. Did the fact that the primary reviewer changed have an impact on the outcome?

   i. Do the reviewers who drafted the denial in 2009 agree that the exemption should have been granted in 2007 and 2008?

   ii. Do the reviewers that granted the exemption in 2007 and 2008 agree that the exemption should have been denied in 2009?

4. Was there any directive from NRC Staff management to deny the exemption on policy grounds? Did NRC Staff management express concern with the administrative burden of processing the exemption each year?

5. The NRC Staff argues repeatedly that there is no "alternate test" (*e.g.*, direct at ¶57, rebuttal at ¶5). But, Honeywell's references to the "alternate test" appear to be little more than shorthand for the test that the NRC permitted under the exemption — that is, the ratio of tangible assets plus goodwill to decommissioning liabilities assured by a self guarantee, along with the other criteria that remain unchanged. Isn't that correct?

B. <u>Basis for Exemption Request</u>

a. Overall Financial Condition

6. Did the NRC Staff review Honeywell's financial data for 2007, 2008, 2009, and 2010?

7. Do you agree that Honeywell is presently a diversified company that has a strong balance sheet?

8. Do you agree that Honeywell's financial condition has improved since 2009? Do you agree that your fears about Honeywell's financial condition in 2009 have not been realized?

b. Bond Rating

9. Is having an "A" bond credit rating for 17 years an indicator of Honeywell's financial strength and stability?

10. Honeywell provided objective data (at ¶22) showing a very low risk of default for "A"-rated companies, particularly within a one-year period.

    i. What specific metrics are the NRC Staff relying on to support its position that bond ratings are unreliable?

    ii. Is any of that data applicable to highly-rated, diversified companies such as Honeywell?

11. A significantly higher rate of default is expected for speculative-grade companies.

    i. How are the default examples cited by the NRC Staff (at ¶24) relevant to the reliability of bond ratings for diversified, A-rated companies such as Honeywell?[1]

[1] The Table in ¶9 of Honeywell's rebuttal testimony describes the bond credit rating history for those companies.

ii. Why would the NRC Staff look at default rates for speculative companies (junk-rated) in ¶12 and ¶21 of its rebuttal testimony?

iii. Why isn't the data for "A" rated companies (*i.e.*, those eligible for the self-guarantee) more germane to Honeywell's situation? That data is referenced in Honeywell's initial testimony (at ¶22) and rebuttal testimony (at ¶¶11-12).

12. In its testimony (at ¶17), the NRC Staff refers to the risk of default for "investment-grade" companies. However, the self-guarantee financial test requires a minimum bond rating of "A," which is a higher rating than the lowest investment-grade rating.

    i. By including lower-rated companies than the minimum required for the self-guarantee test, is the NRC Staff artificially inflating the risk of default to bolster their position?

    ii. Why is the NRC Staff not looking at the minimum ratings required under the NRC's rules?

13. How does the fact that investment-grade companies, with a lower bond credit rating than Honeywell, have a higher rate of default (*see* NRC Staff testimony at ¶17) call into question the reliability of bond ratings? If anything doesn't the fact that lower rated companies default more often actually *support* the reliability of bond ratings?

14. If the NRC Staff had looked at companies rated "A" or better, would it have reached a different conclusion on the reliability of bond ratings?

15. Honeywell provided objective data in ¶48 of its initial testimony indicating that the credit rating agencies actively downgraded companies during 2008 and 2009. Yet, the NRC Staff argues that credit rating agencies may be reluctant to downgrade companies. Can the NRC Staff point to any objective evidence to support their position, particularly for diversified, A-rated companies such as Honeywell?

16. Based on the information that is now available, does the NRC believe that bond credit ratings for A-rated companies were actually less reliable than previously thought?

17. Assume for a moment that you receive a new application tomorrow. Do you have the same concern with the reliability of bond ratings now? Or, was the concern primarily a result of the financial crisis? If you still have the concern, can you point to any objective evidence to support that concern?

18. How is data on the bond credit rating of financial instruments involving sub-prime mortgages relevant to Honeywell?

c. Tangible Net Worth

19. How is tangible net worth calculated? How does it differ from net worth?

20. Is a negative tangible net worth, by itself, an indicator of financial weakness?

21. Does a declining tangible net worth always indicate deteriorating financial condition?

22. Based on the information that is now available, does the NRC Staff believe that Honeywell's declining tangible net worth in 2008-2009 indicated poor financial performance?

    i. If yes, what is the basis for that conclusion?

    ii. Did you take into account the fact that Honeywell increased its tangible assets, intangible assets, free cash, and net worth over the same period?

23. Does the NRC Staff believe that an improving tangible net worth (as occurred in 2009 and 2010, cited in ¶28, Table 5, of Honeywell's initial testimony) indicates improving financial condition?

d. Net Worth

24. Since 2008, Honeywell has had more than $35 billion in total assets. And, Honeywell's net worth grew from $7.1 billion in 2008 to $10.8 billion in 2010 (see ¶29, Table 6, of Honeywell initial testimony). Does this provide an indication that Honeywell has sufficient assets to pay for decommissioning?

C. <u>Ability to Pay for Decommissioning</u>

a. NRC Staff's Stated Concerns

25. The NRC Staff does not appear to dispute Honeywell's ability to pay for decommissioning in normal circumstances. Is the NRC Staff's concern limited to Honeywell's ability to pay in times of financial distress?

26. The NRC Staff indicated that one of its concerns is the risk of a delay in obtaining funds for decommissioning activities in times of financial distress.

    i. Does the NRC Staff believe that its annual testing requirements and reporting obligations are inadequate to capture declining ability to pay well in advance of a problem?

    ii. Doesn't the NRC have the ability to require a remedy if there are indications of a problem?

27. Based on the history of defaults for A-rated companies, does the NRC Staff believe that there is a genuine risk of Honeywell defaulting or otherwise not being able to pay for decommissioning in less than one year? If so, why are any self guarantees accepted? Can the NRC provide any objective evidence to support its conclusion?

28. Based on the information that is now available, does the NRC Staff agree that this concern in 2009 has not been realized?

29. Does the NRC Staff have same concern now for Honeywell or other "A-rated" companies? If the NRC Staff received a new application tomorrow, would the Staff raise the same concern?

b. Liquidity

30. What types of "liquid" tangible assets does the NRC Staff think could be used to pay for decommissioning? Obviously, cash and marketable securities are types of liquid assets, but the NRC appears to be discounting their availability.

31. How "liquid" are tangible assets in fact?

32. The NRC Staff acknowledges in ¶34 of its rebuttal testimony that a company could generate decommissioning funds by using tangible assets as collateral for a loan.

    i. Does the NRC Staff recognize that Honeywell has more than $23 billion in tangible assets?

    ii. Does this eliminate the NRC Staff's concern – particularly in light of Honeywell significant net worth (total assets minus liabilities)?

33. Apart from goodwill, does the NRC consider any intangible assets (such as patents or customer lists) to be relatively liquid?

34. Did the NRC Staff take Honeywell's revolver into account or consider other sources of liquidity (*e.g.*, commercial paper, issue stock)? If not, why not?

35. Given the role of private equity firms and the market for purchasing whole, intact businesses, does the NRC Staff disagree with Honeywell's witnesses that it may be easier to sell entire business units than used equipment or other tangible assets? Has the NRC Staff looked at metrics of M&A activity over the last 30 years (since the EPA rule it references)? Do these metrics support the NRC Staff position?

c. Goodwill Impairment

36. Did the NRC Staff review Honeywell's financial statements to determine whether it had taken impairment charges for goodwill in the past?

37. What basis did the NRC Staff have for its concern that Honeywell would take a goodwill impairment charge? Is this just a "hypothetical" concern?

38. If Honeywell had the exemption and took an impairment charge, what would the NRC do?

39. Based on the information that is now available, does the NRC Staff agree that this concern in 2009 was not realized with respect to Honeywell?

d. Commitment

40. The NRC Staff argues that free cash flow is not "committed" to the NRC and therefore cannot support the exemption. Is this different from any other licensee using a guarantee? Are tangible or intangible assets "committed" to the NRC when a company is relying on a parent or self guarantee?

e. Decommissioning Planning Rule

41. Honeywell only requested to include goodwill (not all intangible assets) in the financial test calculation under the exemption. Does the decommissioning planning final rule permit licensees to use both tangible and intangible assets (not just goodwill) to meet the 10:1 ratio in the financial test?

42. The NRC Staff didn't mention the fact that Honeywell had a negative tangible net worth when granting the exemption in 2008.

    i. In the April 2011 denial, did the NRC Staff assign any weight to the fact that Honeywell does not have a minimum tangible net worth of $21 million?

    ii. Why does the NRC Staff mention the minimum tangible net worth test in its December 2009 and April 2011 denial letters?

43. In its 2008 request, Honeywell included the same language as the 2009 request regarding "consistency" with the proposed rule.

    i. Isn't it clear that Honeywell was referring only to the NRC Staff's inclusion of intangible assets in the financial test ratio?

    ii. Did the NRC Staff raise the issue of consistency with the proposed minimum tangible net worth criterion when it granted the exemption in 2008?

    iii. Why did the NRC Staff treat the same language in Honeywell's 2008 and 2009 exemption requests differently with respect to the minimum tangible net worth criterion?

44. How do you respond to Honeywell's view that — at least in its case — a minimum net worth test would be a stronger measure of worthiness for a self-guarantee than a minimum tangible net worth test?

f. Reporting Requirements and Corrective Actions

45. What role do the reporting requirements and the requirement to obtain alternate financial assurance play in assuring ability to pay? What role does the requirement to re-perform the financial test on an annual basis play in assuring ability to pay?

46. Are these annual testing and reporting requirements intended to capture declining financial performance? Doesn't the annual test provide assurance that changes in financial condition will be captured and appropriate corrective action taken?

47. If the exemption were not limited to one year — for example, if it was in place on an open-ended basis — would the annual financial test and reporting obligations still apply?

48. Can the NRC Staff point to any objective evidence suggesting that the annual reporting and testing requirements would not capture declining financial performance for a diversified company like Honeywell?

D. Information Considered

49. The NRC Staff has argued that it is basing its decision only on information available at the time of its decision in December 2009.

    i. Is the NRC Staff limiting itself to information that it actually reviewed in making its decision in 2009? If the NRC Staff considered the exhibits that it cites when it denied the exemption in 2009,[2] why were they not included in the record before the D.C. Circuit?

    ii. Or, did the NRC Staff identify additional documents that it could have reviewed, but did not actually review, only after the D.C. Circuit decision?

    iii. If so, how did the NRC Staff go about identifying that information? Was the NRC Staff only looking for information to justify its earlier decision to deny the exemption? Did that effort identify any documents that contained information supporting the exemption?

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[2] 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.

50. In Section 2.3 of its April 2011 denial letter, the NRC Staff states that "Honeywell has experienced a significant and uncorrected decrease in tangible net worth."

    i. Was the NRC Staff aware that Honeywell's tangible net worth had increased in 2009 and 2010? Was that statement accurate at the time it was written?

    ii. Is that statement accurate now?

    iii. Why would the NRC Staff not use the best and most up-to-date information in making a decision?

51. One concern with only examining information that was available in 2009 is the difficulty of avoiding post hoc rationalization – that is, of only considering information that supports the desired conclusion rather than objectively re-evaluating the request.

    i. Did the NRC Staff mention the "relative illiquidity" of goodwill in granting the exemption in 2007 and 2008? In the proposed or final decommissioning rule? In the December 2009 or April 2011 denial letters? Why did the NRC Staff not raise the issue of goodwill being relatively illiquid before this hearing?

    ii. The NRC Staff has argued that there were numerous financial reports questioning the reliability of bond ratings when the Staff denied Honeywell's exemption request in December 2009. Did you ever tell Honeywell that this was your concern before the April 2011 denial letter? Is that still a concern now (*e.g.*, if a licensee filed an extension request on similar bases tomorrow)?

    iii. In the April 2011 denial letter, the Staff states that it was concerned about the negative effects the global financial crisis was having on credit markets, the possibility that the crisis might negatively affect Honeywell's future financial performance, and the potential for these combined factors to negatively affect Honeywell's ability to obtain an alternative financial assurance mechanism if needed. Were any of these factors mentioned in the December 2009 denial letter? Is that still a concern now?

    iv. Did the NRC Staff raise the issue of goodwill impairment in granting the exemption in 2007 and 2008? Did the NRC Staff raise the issue of goodwill impairment in the proposed or final decommissioning rule? Did the NRC Staff raise the issue of goodwill impairment in either the December 2009 or April 2011 denial letters? Why did the NRC Staff not raise the issue of goodwill impairment before this hearing?

52. The NRC's review of the exemption request — including both the Board's review and the NRC Staff review — is still ongoing and has been for more than 2.5 years.

    i. Did the NRC Staff require Honeywell to obtain financial assurance (*e.g.*, by purchasing a surety bond to comply with the rule) while the denial was on appeal to the D.C. Circuit?

    ii. Did Honeywell request reinstatement of the self-guarantee while the NRC Staff was considering its extension request on remand? What did the NRC decide?

    iii. Is the Honeywell surety in place currently as far as you know?

    iv. As the larger economic circumstances have changed since 2009, does it make more sense for the agency to consider <u>all</u> available data in reaching a decision — particularly since the NRC Staff required a surety while Honeywell pursued its hearing rights and successful appeal?

E. <u>Time Period of Exemption</u>

53. If the Board determines that Honeywell meets the exemption criteria, the implication is that Honeywell would not have been required to rely on a surety bond for the last 2 years. How does the NRC Staff suggest we remedy the harm to Honeywell under such circumstances?

54. Do NRC regulations authorizing exemptions contain any limitations on the time period of an exemption?

55. Is there anything precluding a grant of an exemption for an indefinite period of time? Would the annual financial testing and reporting obligations continue to apply? Could these trigger an obligation for Honeywell to obtain alternate financial assurance?

56. In its testimony, the NRC Staff states (at ¶13) that it originally limited the exemption to one year in order to monitor the progress on the decommissioning rulemaking (allowing consideration of intangible assets). When is the decommissioning rule effective?

57. Is there anything precluding a grant of an exemption until the effective date of the proposed rule? Or beyond?

F. Exemption Criteria

a. Protection of Life and Property

58. The NRC Staff argues that the exemption does not avoid endangering life and property because Honeywell did not show that life or property would not be endangered even if the tangible net worth test were eliminated entirely.

    i. How would life and property be endangered? Can the NRC Staff point to any objective evidence of an incremental increase in the risk of decommissioning financial assurance? How is this any different than in 2007 or 2008 when the NRC granted the exemption?

    ii. Did Honeywell propose to eliminate the financial test entirely?

    iii. Did Honeywell propose relying on bond rating alone?

    iv. Won't the reporting obligations and annual test alleviate the NRC Staff's concern here?

59. Should the NRC Staff be looking at the how the various provisions of Appendix C — the alternate financial test ratio, the minimum bond rating, the total asset test, the reporting obligations, and the requirement to make alternate financial arrangements in the face of declining financial performance — work together rather than focus solely on the one financial test ratio?

60. Does the subsequent data presented by Honeywell — for example, at ¶¶28-29 of its initial testimony and ¶¶16-17 of its rebuttal testimony — demonstrate that the NRC Staff's concerns were, in fact, not realized? Since 2008, Honeywell has increased its tangible net worth, tangible assets, and intangible assets, has taken no goodwill impairment charges, and has not defaulted.

b. Public Interest

61. What is the basis for the NRC Staff's assertion on page 37 of its position statement that Honeywell must show that it "needs" the exemption? Does that criterion appear in Part 40?

62. What is the basis for the NRC Staff's assertion (at ¶44) that Honeywell must show that its burden in obtaining a surety or letter of credit is "unique"? Unique relative to what? Does this mean that only one licensee can get an exemption for any regulation?

63. Does the NRC Staff acknowledge that an exemption may be granted where compliance is not necessary to satisfy the purpose of the regulation? (Compare to 10 C.F.R. § 50.12(a)(2)(ii).)

64. In granting the exemption in 2007 and 2008, the NRC Staff concluded that avoiding unnecessary regulatory costs was in the public interest.

    i. Is the NRC Staff now saying that avoiding unnecessary regulatory costs is not in the public interest?

    ii. Why does avoiding *unnecessary* regulatory burden become irrelevant simply because the licensee has an ability to pay the unnecessary costs?

65. How does the fact that the cost to obtain a surety bond is relatively small to the decommissioning liability (*see* NRC Staff Testimony at ¶44) factor into the public interest determination? Is there any criterion in the exemption regulation on this point?

For NRC panel:

1. NRC position is that they won't grant exemption for more than one year, in part because of concerns that "something" could happen. What is the basis for the concern — in Honeywell's particular case — that such a need will arise within one year? How is that credible?

2. What is the scenario of financial deterioration such that Honeywell w/ $38 billion in assets (and $4B in cash) won't be able to come up w/ $186 million?

3. Is it really true that the Staff never grants exemptions in perpetuity? In fact, aren't most Staff exemptions "open-ended" or for an unspecified period of time?

4. Have you read Honeywell's testimony regarding the liquidity of intangible assets? What is the basis for your conclusion that they can't come up with the funds?

consideration of intangibles

5. If concerned about illiquidity, why are you allowing in new rule? Isn't it because you consider intangibles "liquid enough."

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
HONEYWELL INTERNATIONAL INC.	)	DOCKET NO. 40-3392-MLA
(Metropolis Works Uranium Conversion Facility)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB Order (Providing Proposed Questions for Evidentiary Hearing) have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

Paul S. Ryerson, Chair
Administrative Judge
paul.ryerson@nrc.gov

E. Roy Hawkens
Administrative Judge
roy.hawkens@nrc.gov

Paul B. Abramson
Administrative Judge
paul.abramson@nrc.gov

Anthony C. Eitreim, Esq.
Chief Counsel
ace1@nrc.gov
Kirsten A. Stoddard
Law Clerk
kirsten.stoddard@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15D21
Washington, DC 20555-0001
Michael Clark, Esq.
michael.clark@nrc.gov
Patricia Jehle, Esq.
patricia.jehle@nrc.gov
Emily Monteith , Esq.
emily.monteith@nrc.gov
Carrie Safford, Esq.
carrie.safford@nrc.gov
Catherine Scott, Esq.
clm@nrc.gov
OGC Mail Center
OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
hearingdocket@nrc.gov

Counsel for Applicant

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111
Tyson R. Smith, Esq.
trsmith@winston.com

Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006
Rachel Miras-Wilson, Esq.
rwilson@winston.com
David A. Repka, Esq.
drepka@winston.com
Carlos L. Sisco, Sr. Paralegal
csisco@winston.com

[Original signed by R. Giitter]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of March 2012