

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of

HONEYWELL INTERNATIONAL, INC.

(Metropolis Works Uranium Conversion Facility)

Docket No. 40-3392-MLA

ASLBP No. 11-910-01-MLA-BD01

August 23, 2011

INITIAL SCHEDULING ORDER

This proceeding concerns a request by Honeywell International, Inc. (Honeywell) for an exemption from certain provisions of 10 C.F.R. § 40.36(e) and 10 C.F.R. Part 30, Appendix C, to permit Honeywell to use an alternate method for demonstrating decommissioning funding assurance for its Metropolis Works uranium conversion facility in Metropolis, Illinois.¹ Subject to further orders of the Board, this order shall control the prehearing and hearing process.

I. Background

After the Nuclear Regulatory Commission (NRC) Staff denied its request for an exemption, Honeywell requested a hearing, which the Board granted on July 27, 2011.² On August 11, 2011, the Board conducted a scheduling conference with the parties by telephone.³ On August 18, 2011, the parties submitted a joint proposal concerning scheduling and

¹ Request for Hearing on Denial of Decommissioning License Amendment Request (June 22, 2011) at 1–2.

² Honeywell International, Inc. (Metropolis Works Uranium Conversion Facility), LBP-11-19, 74 NRC __, __ (slip op. at 4) (July 27, 2011).

³ Tr. at 1–4.

administrative matters on which they agreed.⁴ The same day, Honeywell and the NRC Staff each submitted a separate proposal regarding briefing legal issues, on which they were unable to agree.⁵

II. Discussion

As discussed during the scheduling conference,⁶ the Board wishes to hear the positions of the parties concerning at least four legal issues: (1) burden of proof; (2) the nature and source of the standard that the Board should apply on the merits; (3) specifically, whether an exemption must be granted if the stated criteria in 10 C.F.R. § 40.14 are satisfied and, if not, what further considerations should inform the Board's decision; and (4) whether, on remand of this matter from the United States Court of Appeals for the District of Columbia Circuit,⁷ it is appropriate to consider information postdating the NRC Staff's earlier, December 11, 2009 denial decision that was reviewed by the Court of Appeals. The parties disagree on whether it would be efficient to brief some or all of these legal questions before requiring written testimony and proceeding to an evidentiary hearing.

The NRC Staff correctly points out that, if the Board were to conclude that the NRC Staff improperly failed to consider information subsequent to December 11, 2009, theoretically a hearing might not be necessary if the NRC Staff were given an opportunity to revisit and possibly reverse its exemption decision on the basis of more recent data.⁸ But Honeywell waives any opportunity to reargue its case before the NRC Staff, stating that it "is not interested

⁴ Joint Filing on Administrative Issues (Aug. 18, 2011) at 1 [hereinafter Joint Filing].

⁵ Honeywell Position on Briefing Legal Issues (Aug. 18, 2011) at 1 [hereinafter Honeywell Statement]; NRC Staff Statement in Support of Early Briefing on Legal Issues (Aug. 18, 2011) at 1 [hereinafter NRC Staff Statement].

⁶ Tr. at 11–23.

⁷ See Honeywell Int'l, Inc. v. NRC, 628 F.3d 568, 581 (D.C. Cir. 2010).

⁸ NRC Staff Statement at 2.

in another time-consuming NRC Staff re-evaluation of the same issues that could lead to the same outcome, putting the parties back before the Licensing Board, only many months later.”⁹ Honeywell’s “primary interest” is in “an expeditious resolution of this matter.”¹⁰ Accordingly, the Board will not delay a hearing in order to conduct an intermediate round of legal briefing. The Board expects the parties to address the pertinent legal issues in their respective statements of position or motions in limine, as appropriate, and if necessary in post-hearing briefs.

III. Schedule

Accordingly, the Board adopts the proposed schedule favored by Honeywell:

Activity	Date
Parties Complete Disclosures	September 15, 2011
Written Direct Testimony Due	October 14, 2011
Written Reply Testimony Due	November 3, 2011
Motions in Limine Due; Proposed Questions for Board Due; Motions for Cross-Examination Due	November 14, 2011
Replies to Motions Due	November 21, 2011
Hearing (~1 day)	Early to Mid-December 2011

IV. Administrative Matters

Evidentiary Hearing. As agreed by the parties, this proceeding shall be conducted under the procedures set forth at 10 C.F.R. Part 2, Subpart L, and the evidentiary hearing shall be held at NRC headquarters in Rockville, Maryland.¹¹ Although the specific time and date for the hearing will be announced in a subsequent order, the Board currently contemplates that it will

⁹ Honeywell Statement at 2.

¹⁰ Id. at 1.

¹¹ Tr. at 6–7, 11.

commence in early to mid-December 2011, and will likely last one or two days. The Board does not expect that consideration of summary disposition motions would serve to expedite the proceeding.¹²

Disclosures and Hearing File. The obligations of the parties concerning disclosures under 10 C.F.R. § 2.336 and the hearing file under 10 C.F.R. § 2.1203 are altered to conform to their agreement, as set forth in their Joint Filing on Administrative Issues.¹³

Written Testimony. Prehearing evidentiary submissions shall contain an initial written statement of position, written testimony and exhibits. The initial written statement shall be in the nature of a trial brief that summarizes the party's case, setting out applicable legal standards, identifying witnesses and evidence, and specifying with as much particularity as practicable how each witness, exhibit, or category of evidence supports a factual or legal position. Written testimony—whether direct or reply—shall be submitted under oath in the form of an affidavit or sworn declaration suitable for being received directly into evidence pursuant to 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are specifically relying upon.

Proposed Questions for Board to Ask. Examination plans concerning questions for the Board to consider propounding to the witnesses, pursuant to 10 C.F.R. §§ 2.1207(a)(3)(i) and (ii), 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. Proposed examination questions and plans should be filed in camera, using the NRC's E-Filing system, and not served on the other party.

¹² See 10 C.F.R. § 2.710(d)(1).

¹³ Joint Filing at 1–2.

Motions for Cross-Examination. Motions to conduct cross-examination of a specified witness or witnesses shall be filed and served in the normal manner. The associated cross-examination plan required by 10 C.F.R. § 2.1204(b), however, should be filed in camera, using the NRC's E-Filing system, and not served on the other party.

Availability of Witnesses. Unless the Board orders otherwise, each party must, at its own expense and effort, assure that each person for whom it has submitted written testimony attends the evidentiary hearing in person and is available to testify and to respond orally to questions.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 23, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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HONEYWELL INTERNATIONAL INC.)	DOCKET NO. 40-3392-MLA
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)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board **INITIAL SCHEDULING ORDER**, dated August 23, 2011, have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Linda D. Lewis]_____
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 23rd day of August 2011