

June 2, 2010

Mr. Winfred Nash, President
Babcock & Wilcox Nuclear Operations
Group, Inc.
2016 Mount Athos Road
Lynchburg, VA 24504

SUBJECT: PLANNED SPIN-OFF FROM MCDERMOTT INTERNATIONAL INC.
(TAC NOS. L32979 AND L32988)

Dear Mr. Nash:

This responds to your letter, dated April 1, 2010, as supplemented by your letter dated May 4; and as further supplemented by information presented in a closed meeting at the U.S. Nuclear Regulatory Commission's (NRC) Headquarters on May 12, 2010 (ML101340665); and by your May 14, 2010, responses to a Request for Additional Information. This documentation pertains to the planned spin-off of The Babcock & Wilcox Company from McDermott International Inc., insofar as it relates to special nuclear materials license SNM-42.

The NRC finds that the spin-off constitutes an indirect transfer of control over license SNM-42 and that prior approval from the NRC is thus required in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 70.36. In addition to SNM-42 for the Lynchburg site, this finding applies to activities at Nuclear Fuel Services (NFS) under special nuclear materials license SNM-124, as well as to activities at the former Parks Township Shallow Land Disposal Area (SLDA) under special nuclear materials license SNM-2001.

In preparation for the spin-off, McDermott International, Inc. (MII) created a new, wholly owned subsidiary of MII, named "The Babcock & Wilcox Company" (B&W). B&W is a new entity that was formed in its own lineage with respect to MII and was not previously part of the corporate lineage that includes NFS, B&W Nuclear Operations Group, and BWX Technologies (collectively, the "licensees"). As described in NUREG-1556, Volume 15, Appendix F, control of an NRC license, "... is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license." An intermediate parent company of the licensees, Babcock & Wilcox Holdings, Inc.—whose subsidiaries include the licensees—will merge with and into B&W and B&W will thereafter remain as the surviving entity. Since B&W is a new entity, control over the above-referenced NRC licenses—and the power to direct licensed activities under those licenses—is indirectly transferred. The staff's decision is consistent with the guidance contained in NUREG-1556, Volume 15 and is consistent with past NRC decisions regarding transfers of control. We are therefore treating your prior submissions as if they were a request for approval of a transfer of control.

W. Nash

-2-

We have reviewed the information provided and intend to issue an Order later this week that will authorize the indirect transfers as of the effective date of the spin-off. Note that while there is no requirement to hold a hearing prior to the issuance of such an Order, the Order—which will include a notice of opportunity to request a hearing, and a notice of opportunity to submit comments—will be published in the Federal Register in accordance with 10 CFR 2.309(b)(1) and 2.1305(b), respectively.

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 Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible through the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions regarding this matter, please contact Merritt N. Baker of my staff at (301) 492-3128 or by e-mail at Merritt.Baker@NRC.gov.

Sincerely,

/RA/

Catherine Haney, Director
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-27
License No.: SNM-42

W. Nash

-2-

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