

Question:

Please explain why McDermott International, Inc. (MII), et al., believes the following is not a change of control, given the definition of “control” in NUREG-1556, Vol. 15, Appendix F: The merger of The Babcock & Wilcox Company (B&W) and Babcock & Wilcox Holdings, Inc. (BHI).

Basis:

10 CFR 70.36

NUREG-1556, Vol. 15, Appendix F

B&W NOG RAI Responses

May 25, 2010 Conference Call

Discussion:

10 CFR 70.36 states:

No license granted under the regulations in this part and no right to possess or utilize special nuclear material granted by any license issued pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.

NUREG-1556, Volume 15, Appendix F, defines control as:

Control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used. That control 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.

MII, incorporated in Panama, created a new wholly owned subsidiary, named B&W, that is incorporated in the state of Delaware. Per the RAI responses, B&W’s purpose is to: (1) serve as a vehicle under which all entities related to B&W’s business can be aggregated (including B&W NOG and NFS), so that a single entity can be spun-off from MII; and (2) facilitate the preparation and presentation of financial statements, representative of B&W operations, for SEC Form 10. After the spin-off, it is our understanding that the ultimate parent company will be incorporated in Delaware, rather than Panama.

The focus here is on the *corporate entities* – which is or are the “person or persons who possess the power to determine corporate policy and thus the direction of the activities under the license” – rather than the individuals that comprise the corporate officers and directors.

It is our understanding that B&W has a new tax ID number and new FEIN (Federal Employer Identification Number). B&W is a new entity that was not previously in any other form or designation in the MII corporate structure. B&W appears to be formed as an entity in its own

lineage with respect to MII, and is separate from the corporate lineage that includes BHI, B&W NOG and NFS. **Does MII et al. agree that B&W is a new entity, and if not, explain why.**