



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

DEC 17 1982

Mr. John H. MacMillan  
Senior Vice President and  
Group Executive  
Advanced Technology Group  
Babcock & Wilcox  
2250 Murrell Road  
P.O. Box 1260  
Lynchburg, Virginia 24505

Dear Mr. MacMillan:

We have reviewed your letter of October 20, 1982, concerning the proposed reorganization of McDermott which will result in Babcock & Wilcox, holder of Facility License CX-10, being wholly owned by McDermott, Incorporated (as is now the case), which will, in turn, be wholly owned by McDermott International, a corporation organized under the laws of Panama. Section 104d. of the Atomic Energy Act which prohibits foreign domination and control of a licensed facility, is somewhat ambiguous and could be read to preclude the continued holding of a facility license by Babcock & Wilcox, as the subsidiary of a foreign corporation.

We have concluded, on the basis of the representations in your letter and the information regarding stock ownership in the enclosure, that this proposed change would not result in a situation where Babcock & Wilcox would no longer qualify for a facility license. However, in order to ensure continuing compliance with the provision of section 104d. of the Atomic Energy Act of 1954, as amended, prohibiting foreign ownership, control or domination of a licensed facility (and as we have discussed with Mr. George Ellis and Mr. James Jones), Babcock & Wilcox's Facility License CX-10 is hereby amended to insert the following conditions:

1. the president of Babcock & Wilcox, any officers of Babcock & Wilcox having direct responsibility for the control, and any employees of Babcock & Wilcox having direct custody, of special nuclear material, as defined in the Atomic Energy Act of 1954, as amended, stored, used, or produced at the CX-10 facility, shall be citizens of the United States;
2. Babcock & Wilcox alone shall be responsible for the custody and control of such special nuclear material; and the officer of Babcock & Wilcox in charge of such special nuclear material shall report directly to the president of Babcock & Wilcox;
3. the president of Babcock & Wilcox shall be charged with the responsibility and have the exclusive authority (either acting directly or through persons designated by and reporting directly to him) of

ensuring that the business and activities of Babcock & Wilcox shall at all times be conducted in a manner which shall be consistent with the protection of the common defense and security of the United States;

4. Babcock & Wilcox shall report to the Commission any action by the Government of the Republic of Panama or any changes in the law of the Republic of Panama that would affect ownership or control of Babcock & Wilcox or any action by that Government regarding the operation of McDermott International that would affect the activities of Babcock & Wilcox licensed by the Commission.
5. the foregoing provisions shall apply to Babcock & Wilcox and any entities in which Babcock & Wilcox shall have voting control; and
6. the foregoing conditions will continue to be binding on Babcock & Wilcox unless amended or rescinded by the Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, of the Commission, as appropriate (or the person holding any equivalent successor positions with the Commission or any agency of the United States which shall be the successor of the Commission).

The Commission has found that:

- A. The change in Babcock & Wilcox's parent from McDermott Incorporated to McDermott International is not inconsistent with the provisions of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Chapter I;
- B. The change will not be inimical to the common defense and security or to the health and safety of the public;
- C. Babcock & Wilcox continues to be qualified to be the holder of Facility License CX-10.

It should be stressed that our conclusion that Babcock & Wilcox may continue to hold Facility License CX-10 is based upon the facts of this case and the representations made to us. It does not constitute a precedent, since conclusions as to whether a facility will be owned, controlled or dominated by a foreign entity requires a factual determination based upon the circumstances of the particular case.

Since the foreign ownership, domination and control issues raised by section 104d. of the Atomic Energy Act do not apply to materials licenses, no action to amend nuclear materials licenses will be required.

FOR THE NUCLEAR REGULATORY COMMISSION



William J. Dircks  
Executive Director for Operations

cc: Davis Polk & Wardwell