

From: Evangelos Marinos
To: Dale Thatcher; Gregory Cwalina; Stephen Alexander
Date: Fri, Jun 20, 2003 9:08 AM
Subject: Re: Caldon Meeting

I like to clarify, as discussed before with your management, that upon completion of your review of pertinent documents, if in our opinion valid issues are raised that have not been addressed in our approval of the Cross Correlation Technology we'll be happy to participate in their resolution including a visit to WEC.

>>> Stephen Alexander 06/19/03 05:48PM >>>

On Thursday, 19 June, I met with Drew Holland, Robin Baum, Iqbal Ahmed, and Evangelos Marinos to discuss the disposition of the Caldon submittals of March and April 2003. Robin Baum, OGC, informed us that an amendment to 10 CFR 2.790 had been published in the FR on April 16, 2003, and became effective 16 June. The amendment removed the requirement for a party that has submitted information to the NRC **voluntarily** to provide "a rational basis" for a request to withhold the information from public disclosure. Therefore, for voluntarily submitted information that a submitter considers proprietary and would normally not release, the NRC is now supposed to take their word for it with regard to its proprietary nature and not release it to the public. Also discussed was another provision of 2.790 (this one longstanding) that if the information is not relevant or necessary in the performance of the NRC's functions, it should be returned to the submitter upon request without public disclosure (Robin correct me if I haven't gotten those quite right). These provisions affect the Caldon submittals as follows: The March submittal of the [slides] for the meeting that Caldon requested be closed, that it considered proprietary, that the staff does not consider proprietary, and that Caldon wanted back, would not be strictly subject to the new provision of 2.790 (although we could honor it if we so desired). However, it would be subject to the older provision regarding the need for or relevance of the information in the performance of the NRC's mission/function.

The cognizant I&C staff stated that the information was not relevant or needed. Therefore, it would be returned to Caldon without public disclosure, except for the fact that by prior agreement with Caldon, all copies/pages of the submittal held by the I&C and projects staff had been destroyed with the exception of the page of the document that was being held in the allegation file. The disposition of the remaining page, should it become no longer held in the allegation file, would be that it would be either destroyed or returned to Caldon at their option and would, in the interim, be exempt from public disclosure (e.g., in case of a FOIA request).

With regard to the so-called "Ruland letter" of 23 April, it would be considered subject to the new provision in 2.790 and should be withheld from public disclosure if deemed proprietary by Caldon and returned to Caldon upon request if not relevant or necessary in the performance of NRC functions. It appears then, that in any case, none of Caldon's recent submittals would be subject to public disclosure, but the April 23 "Ruland letter" requesting NRC to rescind the SER on ER-262 and WCAP 15689 may be retained if needed by the staff in the performance of their duties; otherwise it would be returned to Caldon.

The I&C staff expressed their position that they would like to see the Caldon claims made public, but they also recognized that for the NRC to do so, the NRC would be putting WEC in the difficult position of having to defend its AMAG Crossflow accuracy and flow velocity profile insensitivity claims against Caldon accusations in the public forum without divulging proprietary information.

It is my understanding that it was therefore agreed by all parties that if there were any valid technical questions remaining upon the completion of Steve Arndt's and my review of CENP-397 and WCAP 15689P in light of the questions raised by Caldon, that WEC would be given the opportunity to respond to those questions, using additional proprietary information as necessary, without fear of its being released outside the cognizant NRC staff. This will be accomplished if necessary by a visit to the WEC Windsor, CT, facility on 26 June. I&C staff again declined to participate in such a visit, but agreed, as a matter of course, to consider any relevant new information that the visit may yield.

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Any such information would be the basis for substantiating or refuting the allegations in question and closing them out. In the unlikely event that some further action might be required as a result of such information, such action would be taken, as appropriate, outside the allegation process..or so it seems to me. Please advise if the above assessment is not consistent with your understanding.

CC: Drew Holland; Iqbal Ahmed; Steven Arndt