

**Cheryl Miskey**

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**From:** Richard Conte, *RI*  
**Sent:** Tuesday, December 23, 2008 5:34 PM  
**To:** Darrell Roberts  
**Cc:** John Richmond  
**Subject:** I HOPE THIS IS WHAT YOU ASKED FOR  
**Attachments:** NJ&NRC\_PerfectTogether.doc

For Marsh'a benefit she is going to need some history - so I bit the bullet. lost a tooth.

I need to leave by 1000 am tomorrow for a Doctor's appointment.

John - FYI

Received: from R1CLSTR01.nrc.gov ([148.184.99.7]) by R1MS01.nrc.gov  
([148.184.99.10]) with mapi; Tue, 23 Dec 2008 17:33:49 -0500  
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Content-Transfer-Encoding: binary  
From: Richard Conte <Richard.Conte@nrc.gov>  
To: Darrell Roberts <Darrell.Roberts@nrc.gov>  
CC: John Richmond <John.Richmond@nrc.gov>  
Date: Tue, 23 Dec 2008 17:33:49 -0500  
Subject: I HOPE THIS IS WHAT YOU ASKED FOR  
Thread-Topic: I HOPE THIS IS WHAT YOU ASKED FOR  
Thread-Index: AcIIToY/xbLh9ESVQ4Ks/ILBKz+T8Q==  
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ISSUE FROM STATE OF NEW JERSEY  
ON NRC EXIT/MEETING INFORMATION/NOTES

Statement of the Problem:

A representative of the State of New Jersey indicated on December 23, 2008 after the exit meeting with Amergen on the 71003 inspections the following concern: There is a gap in important information between what was discussed on December 23, 2008 [as reflected in the exit notes which New Jersey does NOT have] and what is already in the public domain [two Amergen board notifications, one NRC staff board notification and PNO 08-012] and that information should be in the hands of decision makers, and the public [parties to the hearing implied]. Further, the State of New Jersey would like to comment on those matters formally, but appears to be restricted from doing so because of the memorandum of understanding between New Jersey and the NRC staff.

Background:

On December 2, 2008, the NRC staff met in a teleconference to do a dry-run of the exit meeting for December 3, 2008. It had already been pre-arranged that Region I 71003 Team Leader and DRS Management would debrief with representatives of the State of New Jersey in order to respond to any questions they may have related to the exit information and notes. The exit meeting with Amergen was scheduled to later in the day on December 3, 2008. After the dryrun on December 2, 2008, the Deputy Director of DRS determined that the staff needed to do a further review related to the performance issues noted before we were ready to discuss the matter with the state or Amergen. A perception perhaps developed at this time, in light of the false startup for the exit meeting times, that the matter was more significant, perhaps safety significant, and the agency was struggling with the information.

Consensus building occurred between December 3 and December 19, 2008, and the exit notes were substantially revised to reflect the results of the consensus building. The new insight that occurred was that the staff was restricted from relying on the Final License Renewal SER proposed conditions and commitments due to the final licensing action not occurring. This meant that performance deficiencies or statements about the adequacy of implementation could not be addressed in the report but there was no objection to documentation factual based observations in the exit notes and report. Performance issues related to Part 50 activities (in distinction to Part 54 activities as reflected in the staff Final SER on License Renewal) could be addressed. For the exit the Deputy Director of DRS took on the role of explaining the regulatory framework at the beginning of the exit meeting. Unfortunately with all of the information that needed to be processed, the inspector did not have enough information to assess or document performance deficiencies with respect to Part 50 activities (requirements or standards) so an unresolved item was communicated.

Dr. Jill Lipoti observed after the exit meeting in a separate call on or about 1000am on December 23, that the staff had information different than what was out in the public domain (two Amergen board notifications, one NRC staff board notification, and PNO 08-12, dated November 18, 2008). In her view this information was important enough that it should be reported to the Commission, the parties to the hearing, and the public. She felt that the information was important because it was relevant to the frequency of the UT and VT inspections of the Drywell (currently 4 years vs. potential need for 2 years) and the

implementation problems surrounding the commitments is important information for decision makers. She also expressed concern that the state could not make the Commission aware of the information because of the agreement in the memorandum of understanding between New Jersey and NRC staff. She felt that this agreement information coupled with the staff's announced tentative report issuance date on or about February 6-7, 2008 put the state in an awkward position, like a "gag order."

Darrell Roberts indicated that NRC staff would review the State of New Jersey's concern as reflected above and we would get back to her on how we decided to proceed.

#### Discussions:

In addressing the gap issue the following situations would need to be addressed in releasing the information as contained in the exit notes:

1. Release the information to the Commission in a board notification (Parties are automatically served):
  - a. Areas to consider Is the information relevant and material with respect to previous board notifications vs. the PNO 08-012
  - b. If yes, make sure we are right, what are the implications (OGC, DLR)
  - c. If no proceed with 2.
2. Release the information to the Commission and the Parties to the Hearing:
  - a. Areas to consider: Is it necessary to give parties to the hearing in order for them to exercise their right to reopen the hearing or file new contentions (board notification or other type of information medium.
  - b. If yes, make sure we are right, what are the implications (OGC, DLR)
  - c. If no, proceed with 3.
3. Release the information to the public (Commission and the Parties to the Hearing get copies or we can rely on ADAMS notification process):
  - a. Areas to consider: The staff is exercising its discretion as public servants – potential memo to file or memo form BC to DRS Director with the exit notes attached.
  - b. If yes, make sure we are right, what are the implications (OGC, DLR, PAO, SLO)
  - c. If no proceed with 4.
4. Proceed on course with report in 45 days due out Feb. 6-7, 2008 with target and good faith effort to get report out January 30, 2008.
  - a. Areas to consider:
    - i. Is the staff not being responsive to the state's concern in light of the unique circumstances?
    - ii. Is the State of New Jersey adversely impact NRC staff's due process?
  - b. If yes make sure we are right, what are the implications (OGC, DLR, PAO, SLO)
  - c. If no, explore other options, see 5 below
5. Other Options:
  - a. The State of New Jersey has sufficient information in the public domain in order to communicate their concern to whomever based on the two Amergen board notifications, one NRC staff board notification, and PNO 08-012.
  - b. Nothing in the MOU between the state and the staff restricts them from commenting on information that is public available even if it overlaps with the exit material – The MOU states in part: "Prior to the release of NRC inspection reports, the State will exercise discretion in disclosing to the public its observations during the inspections." The state could ask us to comment on their draft letter (exercise of

discretion) and we can confirm if any information in their draft letter is unique to that developed for the exit and NOT in the public domain.

Options:

In a conference call for December 29, 2008, EB 1 BC lead a discussion of the pros and cons of each of the five areas above.

Recommendations:

[Redacted]

(b)(5)

[Redacted] RAJ

Final Action:

TBD.