

United States Senate
WASHINGTON, DC 20510

May 13, 2016

The Honorable Stephen G. Burns
Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD

Dear Chairman Burns:

The Nuclear Regulatory Commission (NRC) is currently considering a staff recommendation to initiate an expedited rulemaking to limit the scope of third party review of employer decisions revoking employee unescorted access (SECY-15-0149). In light of the 7th Circuit court ruling concluding that arbitration is allowed under NRC's existing rules pertaining to employee access, we urge the Commission to deny this petition for rulemaking as an unnecessary curtailment of due process for nuclear workers.

For over twenty years, nuclear power plant licensees and their employees have effectively engaged in third party review of unescorted access decisions, as NRC rules permit. Unescorted access is a requirement for most employees at nuclear plants, and that access may be revoked when the employer deems the employee untrustworthy or unreliable. In 1991, the NRC implemented a minimum level of due process review for these access denials. A nuclear generating licensee was henceforth required to provide "an opportunity for an objective review of the information upon which the [unescorted access] denial... was based." Union represented employees at numerous plants were able to review the denial or revocation of unescorted access as part of their grievance procedure as settled upon in collective bargaining agreements. These labor contract grievance procedures could ultimately lead to arbitration, where an objective third party would have the power to reinstate a wrongful access denial.

Despite a functioning third party review process, licensees have repeatedly sought to limit independent review. When the NRC undertook a comprehensive review of its regulations, licensees argued unsuccessfully that the changes prohibited arbitral review. A unanimous Seventh Circuit Court of Appeals panel held that NRC's 2009 amendments were not a reversal of its prior allowance of third party review. *Exelon v. Local 15*, 676 F.3d 566 (7th Cir. 2012).

The Court found:

"[The Licensee's] reading of [10 C.F.R. §] 73.56 mistakenly assumes that the Commission wrote the 2009 revision to roll back workers' rights. The text of the amended subsection (I) reveals the opposite purpose – to enhance rather than erode procedural protections. Subsection (I) provides baseline rights to employees challenging adverse access determinations: to receive notice, to be heard, and to have an objective decision-maker.... The change in the 2009 from "may be" to "must provide" clarified that the internal management review is a required procedural floor of protection for

employees. We see no basis for inferring that the internal review was also a procedural ceiling. Subsection (I) does not bar arbitral review of unescorted access denials.”

The decision to revoke or deny unescorted access is tantamount to termination of an employee, and that employee would face dim prospects of finding another nuclear power plant job. Recognizing the gravity of that determination, the NRC has – for decades – established a floor of employee protection and due process. And for decades employee grievances have been subject to possible arbitral review where the collective bargaining agreement affords the employee greater procedural protections.

We urge the NRC to reject the staff recommendation, made in SECY-15-0149, to initiate an expedited rulemaking to expressly preclude arbitration of employee access.

Sincerely,



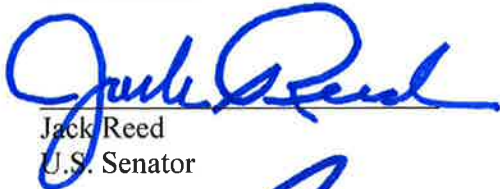
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U.S. Senator



Barbara A. Mikulski
U.S. Senator



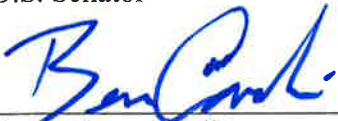
Patty Murray
U.S. Senator



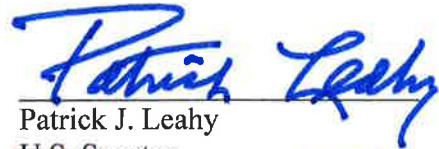
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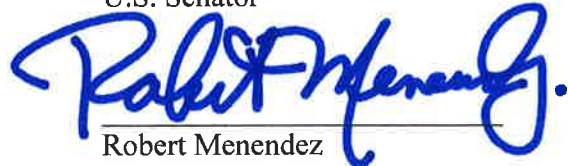
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