



HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

June 13, 2013

The Honorable Allison M. Macfarlane
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, DC 20555-0001

Dear Chairman Macfarlane:

The Nuclear Regulatory Commission is currently considering a petition for rulemaking requesting the Commission limit the scope of third party review of employer decisions revoking employee unescorted access [NRC-2013-0024]. In light of the recent 7th Circuit court ruling, 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 grievances 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, the licensees – as represented by the Nuclear Energy Institute (NEI) – have repeatedly fought to limit independent review. When the NRC undertook a comprehensive review of its regulations, NEI 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 (l) reveals the opposite purpose – to enhance rather than erode procedural protections. Subsection (l) 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 (1) does not bar arbitral review of unescorted access denials." Id. At 571-72


Also keenly noted is the fact that nothing in the Commission's record so much as hinted at the Commission's intent to modify the long-established allowance of objective, third party review.

NEI has responded to its court loss by seeking to rewrite the rules for its benefit and the workers' detriment. We consider this to be a solution in search of a problem. 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. If Judge Posner had his way, no employer would have carte blanche authority to remove security clearances and every employee - not just the unionized - would be able to benefit from third party review of those decisions. *Exelon v. Local 15*, 682 F.3d 620 (7th Cir. 2012). We find this history convincing, and urge the NRC to not advance this petition for rulemaking, which seeks to limit the existing rights of workers. Creating a ceiling where there has long existed a due process is not the proper course of action.

Sincerely,



Robert A. Brady
Member of Congress



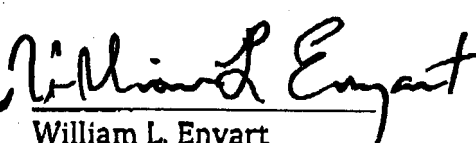
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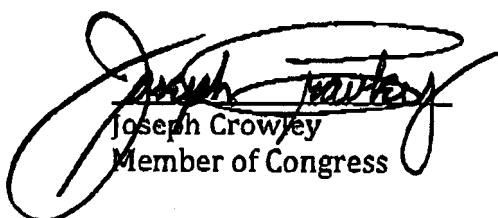
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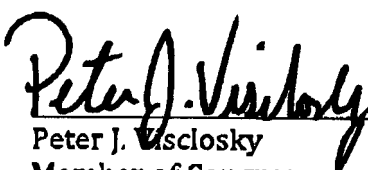
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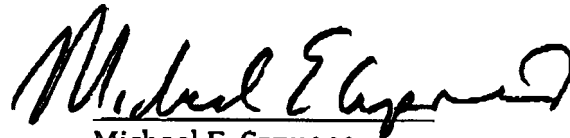
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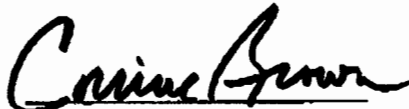
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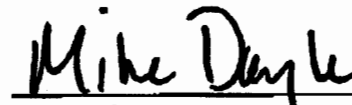



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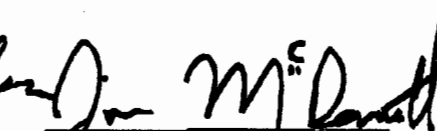
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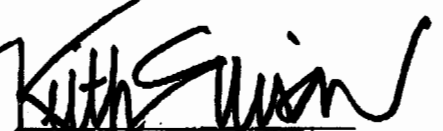

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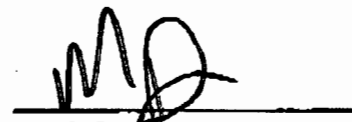

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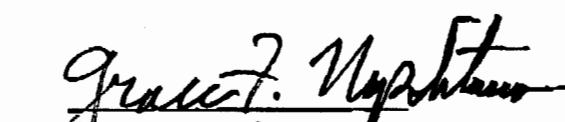

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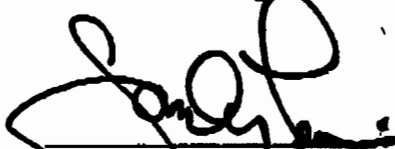

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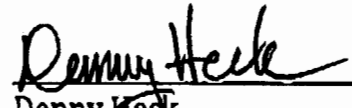

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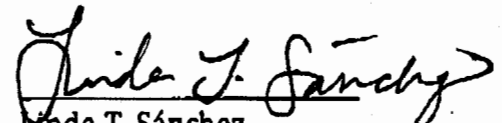

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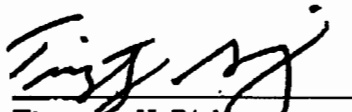

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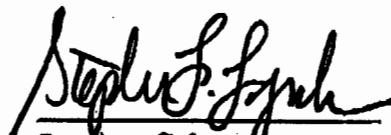

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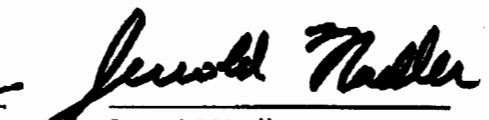

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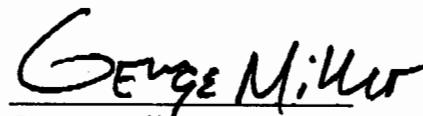

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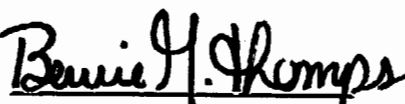

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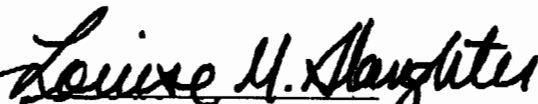

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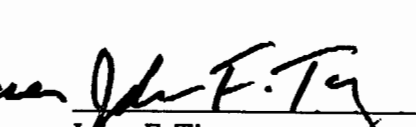

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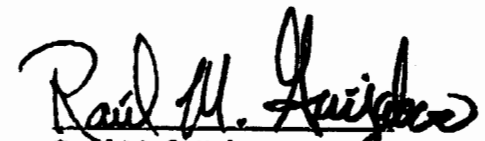

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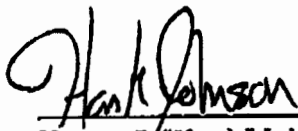
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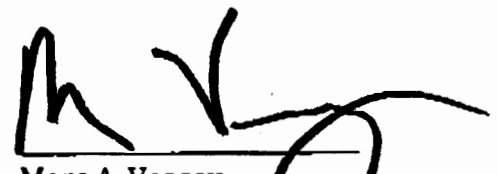
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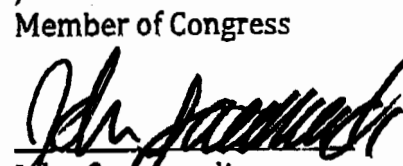
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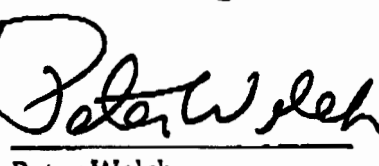
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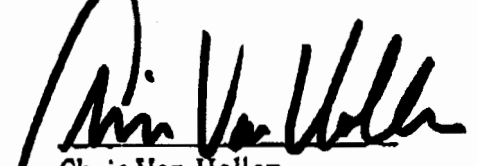

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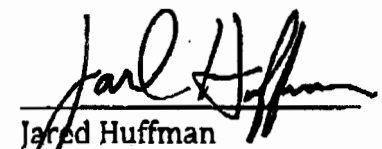

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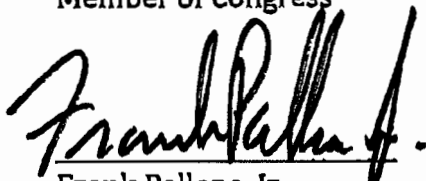

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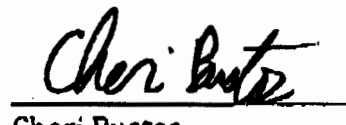

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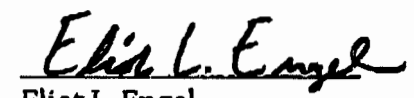

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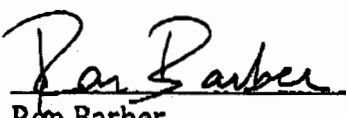

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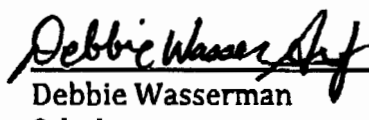

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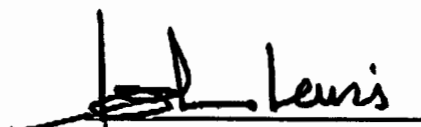

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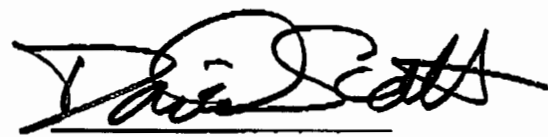

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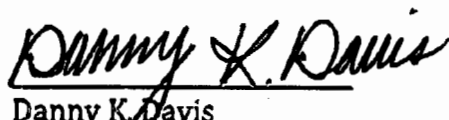

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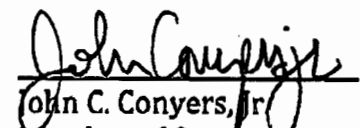

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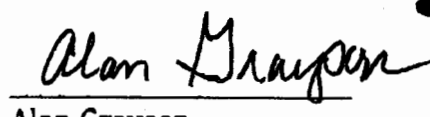

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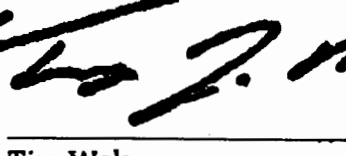

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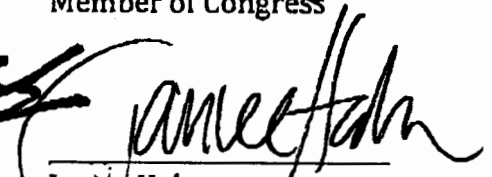

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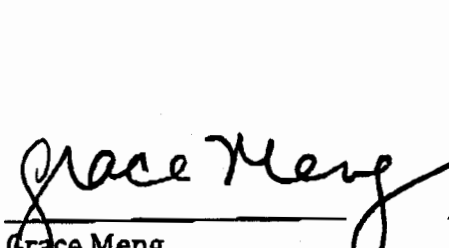
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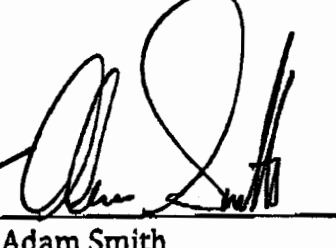
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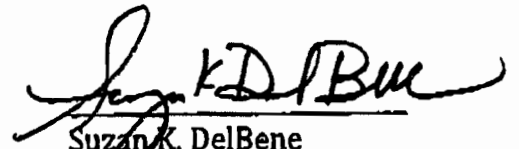
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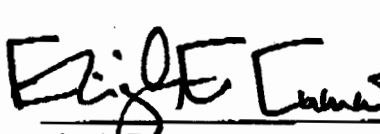

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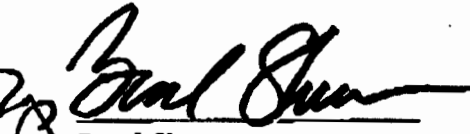

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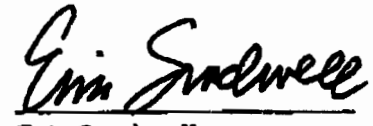

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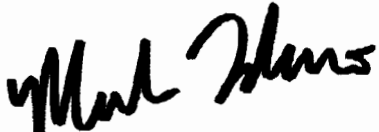

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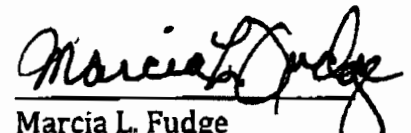

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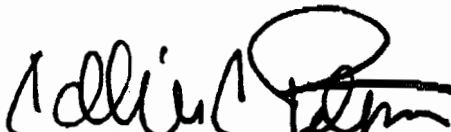

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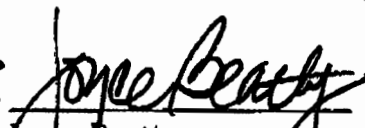

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