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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING ON ACCESS AUTHORIZATION AND
FITNESS-FOR-DUTY DETERMINATIONS RULEMAKING

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MONDAY,

FEBRUARY 13, 2017

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ROCKVILLE, MARYLAND

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The Public Meeting was convened in the Commission Hearing Room at the Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, at 1:00 p.m., Daniel Doyle, presiding.

NRC STAFF PRESENT:

DANIEL DOYLE, Office of Nuclear Reactor

Regulations (NRR)

JAMES ANDERSEN, Director, Division of Security

Policy, Office of Nuclear Security and

Incident Response (NSIR)

NORMAN ST. AMOUR, Office of the General Counsel (OGC)

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MARK RESNER, NSIR

BRADLEY BAXTER, NSIR

PAUL GOLDBERG, Office of Nuclear Materials Safety
and Safeguards (NMSS)

BETH REED, NRR

LUIS BETANCOURT, Facilitator

EDUARDO URIBE, Facilitator

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P R O C E E D I N G S

1:01 p.m.

MR. DOYLE: Good afternoon. We are going to get started. My name is Daniel Doyle and I'm a Rulemaking Project Manager in the NRC's Office of Nuclear Reactor Regulation. Thank you for joining us today.

The purpose of today's meeting is to provide information to the public about the NRC rulemaking activity on Access Authorization and Fitness-For-Duty Determinations and to offer an opportunity for the public to express views on this rulemaking activity.

I would like to start by introducing the other NRC staff participating into today's meeting. To my right is Mr. Jim Andersen, the Director of the Division of Security Policy in the Office of Nuclear Security and Incident Response; Mr. Norm St. Amour, the Senior Attorney from the Office of General Counsel; Mr. Mark Resner, Senior Security Specialist; and Mr. Brad Baxter, Security Specialist, both from the Office of Nuclear Security and Incident Response; Mr. Paul Goldberg, Project Manager from the Office of Nuclear Material Safety and Safeguards; and Ms. Beth Reed,

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Security Specialist from the Office of Nuclear Reactor Regulation.

We have two facilitators assisting us today, Mr. Luis Betancourt and Mr. Eddie Uribe over here. We also have several other NRC staff here in the audience as well.

I will now turn the meeting over to Eddie for some ground rules and expectations for today. Thank you.

MR. URIBE: Good afternoon. Again, my name is Eddie Uribe. I work for the NRC and I will be your facilitator today. Our role as facilitators is to make sure that the meeting runs accordingly as planned and to get everybody involved in the conversation that we'll have today.

Just a few moments before we get started, let's talk about what we expect for the day. Just before that, for those of you who are not aware of the layout, our restrooms are just out this door to the left. There's women's the left and then men's to the right just a little bit prior to the glass window hallway.

Our goal for today -- this is very important -- is what's the purpose of the meeting today. The

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purpose of the meeting is to collect everybody's input.

There will be no decisions made today. It is really for the staff to hear everybody's voice. And everybody should have an opportunity to raise any issues, questions, concerns or comments.

The meeting will begin with a staff presentation by Dan. After the presentation we will open the meeting to the public. We recognize that the topic of today can affect a number of stakeholders. Therefore we have set aside some specific times to open up to specific groups. And we will run accordingly to allow everybody to have an opportunity to discuss whatever they would like to.

First, we will hear the concerns from the non-power reactor community. Then we will follow that with concerns from the materials community, then the concerns from the unions, the concerns from the power reactor community, and finally the concerns from the non-governmental organizations. We will make every effort to ensure that all stakeholders from these groups have an opportunity to speak today.

Because this meeting is open to the public, we ask that you all be mindful of the information that you speak about. Remember that there is a lot of

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personal issues that could be brought up. So if the need be, keep things generic. Don't have anything that will reveal somebody's identity.

Our meeting today is being transcribed by a reporter. We have a court reporter in the room. Therefore, please state your first name and your affiliation before stating your question or comment.

Also it is very important that one person speaks at a time so that the reporter can get an accurate transcript. The transcript will be posted to the NRC website.

We have folks participating in today's meeting by phone. So it is important to ensure that everyone can hear and follow the meeting. We have an operator assisted bridge line. So when we have an opportunity to discuss here in the room we will open it to the bridge and they'll solicit for those on the bridge.

All callers have been placed in listen only mode to prevent background noises from being a distraction. When we can get a public feedback portion of the meeting, the operator will give instructions.

Public meeting forms are located on either side of the ledges. There's some actually at the entry

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way. Please be sure to fill one out. You can leave it with one of the NRC participants, mail it -- postage is free -- or you can actually just send it to either one of Luis or I.

Your opinion on how this meeting went will help improve on future meetings. Please comment on anybody's behalf including myself and Luis. I will turn this meeting now over to Jim Andersen. After the meeting is over, you feel free to solicit either Luis or myself for any comments or questions that you may have that you may want to have just offline. Thank you.

MR. ANDERSEN: Thank you and good afternoon and welcome to the NRC. Like Dan mentioned, my name is Jim Andersen. I'm the Director of the Division of Security Policy in the Office of Nuclear Security and Incident Response.

As I'm sure you recall in November of 2015, NRC staff provided an options paper to our Commission on Access Authorization and Fitness-For-Duty Determinations. In June of 2016, the Commission approved the staff's recommendation to proceed with the rulemaking process to further explore the issues raised in the staff's paper while taking into

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consideration options for a robust appeal process as well as comments offered by the unions, licensees and other interested stakeholders on this topic.

The Commission also specifically stated that the staff should reach out to potentially affected labor organizations. As such, this is the second public meeting on this topic.

During the November of 2016 meeting, stakeholders urged that NRC not limit the scope of the arbitrator's review stating that internal licensing management review is not transparent or fair and that allowing the arbitrator to overturn a licensee's decision is not a safety or security risk.

Other stakeholders at the meeting indicated that the rulemaking is needed because licensees are responsible for ensuring trustworthiness and reliability and may face enforcement action if their decision is overturned by an arbitrator.

Again, the purpose of today's meeting is to gather additional input. After today's meeting, the NRC will start considering all the input we received and prepare a draft regulatory basis to be published for public comment in early 2016. So this will be another opportunity looking at the draft regulatory

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basis for stakeholders to provide additional comments.

I think our goal is to get a final reg basis issued sometime in late 2017.

At this time, I'd like to turn the meeting over to Dan. And we'll proceed. I just wanted to thank you in advance for all your inputs today. And I just note that I'll have to be ducking out at about 1:50 p.m. My boss was nice enough to take off today and left with a whole bunch of meetings I had to attend to. I apologize for that, but you're in good hands with the group up here. Again, welcome and thanks for your inputs.

MR. DOYLE: Thank you, Jim. Before we go to the next slide, I'd like to just say a few things on this.

Again, Jim mentioned this is the second public meeting. I see some familiar faces that were here from the November meeting. If you were there and saw this one, you'll see that the slides are very similar. Again, basically we got a request to hold an additional meeting to allow for additional input before the publication of the draft regulatory basis. That's why we're here.

We do want this to be effective. But

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because the staff has not taken an initial position, you're basically going to hear the same thing from us today as far as where we are in the process. We're very early. We have not made a final decision. And we're looking for input and specifically on the questions that we had listed later in the slides is what we believe would be the most helpful information to us at this point. But we do want to hear what your concerns are.

Another thing I wanted to mention before going into the slides is if you noticed the first slide changed from November. The title as in the Federal Register Notice that we published is different from what we had back in November.

I just wanted to point that out and just mention that you shouldn't read too much into that. Just basically the staff that's working on it determined that a shorter title basically just saying "Access Authorization and Fitness-For-Duty Determinations" would be a better title. The old title was "Role of Third Parties in Access Authorization and Fitness-For-Duty Determinations."

I just wanted to point out that that had changed. We did mention that in the Federal Register

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Notice. But the fact that the title changed did not change the background of this activity and the Commission's direction. If you have any questions about that, you can feel free to ask.

On slide two, this is the agenda. I will do the staff presentation which includes the purpose of today's meeting, background and how we go here, the current status of this activity and the suggested topics for discussion. We will then open it up to hear from you during the public feedback portion.

After that, I will review the next steps in this process. Then we will wrap up by 4:00 p.m.

The meeting has two purposes. The first is to provide information to the public about this rulemaking activity. And the second is to provide an opportunity for you to express your views on this topic.

This will help us gain a better understanding of the issues.

How did we get here? This slide and the next one lists the major events that brought us to where we are with this rulemaking activity today. I believe many of the people in attendance today are familiar with this history. But it is documented here with links to important documents. I will spend a few minutes

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reviewing it for those who are not familiar.

In March of 2012, the U.S. Court of Appeals for the Second Circuit ruled that the NRC's regulations do not prohibit third party arbitration of licensee unescorted access, denials and revocations. Part of the court's decision rested on their interpretation of the NRC's regulations.

The court decision prompted the Nuclear Energy Institute or NEI to submit a petition for rulemaking in January 2013 requesting that the NRC amend its regulations in 10 CFR 73.56. The petition stated that the effect of the U.S. Court of Appeals' decision is that a person who has been determined not to be trustworthy and reliable by a licensee as part of a comprehensive evaluation required by NRC regulations could nevertheless be granted unescorted access to a nuclear power plant. The petition further stated that this possibility raises serious security and regulatory compliance issues for nuclear power plant licensees.

To address these concerns, the petition requested that the NRC modify its access authorization regulations to impose a limited scope of third party review of denials or revocations of licensee unescorted access decisions to ensure that such decisions cannot

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be overturned by any third party. The petition stated that these revisions would also clarify that unescorted access decisions are solely the responsibility of reactor licensees subject to oversight by the NRC.

In January 2015, NEI withdrew its petition for rulemaking stating that if the NRC endorsed a revision to industry implementing guidance, NEI 03-01, it would address the concerns raised in the petition.

I'd just like to point out you may be thinking what about the public comments on the petition for rulemaking. And I'd just like to note that the NRC did receive public comments on that petition after it was docketed. There were a total of 81 comment submissions.

The staff working on this activity may consider reviewing some of the comments as time permits.

But we will not be providing formal responses to those comments. And we would like to encourage anyone that previously submitted a comment who would like it to be considered in this activity to submit the full comment when we request public feedback which will be after the publication of the draft regulatory basis.

In November 2015, the staff submitted a paper to the Commission to provide options to clarify

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that only licensees can make final decisions on access authorization and fitness-for-duty determinations. The staff recommended that the Commission approve development of a proposed rule that would make clear that only licensees can make final access authorization determinations and do so through an expedited rulemaking. That was identified as option 1B in the paper.

In June 2016, the Commission issued its direction to the staff in the Staff Requirements Memorandum or SRM. They approved option 1A to proceed with the rulemaking process to further explore the issues raised in the staff's paper and in the divergent comments offered by unions and licensees on the topic.

I'd just like to take a moment to highlight the major points from the SRM. It was a very short document. If you have not reviewed it, I would recommend taking a look at that. It directed the staff to proceed with the rulemaking process to explore the issues as I just said.

It said that the rulemaking should be as narrow in scope as is necessary to ensure public safety and security. It said the staff should not unnecessarily preclude arbitration outright, but

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should consider how the NRC's goals can be achieved while still allowing redressability with respect to a licensee's access determinations. And it also directed the staff to make specific outreach to potentially affected labor organizations. Next slide.

Since we got that direction, we've held two meetings. We held a public meeting which is very similar to this one in November 2016 to solicit input.

That accession number that's listed on the slide will open up a package that includes the meeting summary and the transcript as well as the notice and the presentation slides.

In the next month after that meeting, we had a request to hold a meeting with representatives from the International Brotherhood of Electrical Workers. We did accommodate that request. The meeting was closed because of the nature of the information that was discussed at the meeting. It included sensitive information. And personally identifiable information and met our criteria for closing the meeting.

So we did hold that meeting, but we did not issue a meeting summary. And that ADAMS accession number listed on the slide will open up a

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package where you can view those documents. Those are the two meetings that we've held since getting the Commission direction. Next slide.

The status of the rulemaking activity, I'd just like to highlight again that we are developing a regulatory basis. We are early in the rulemaking process. What we're putting together is a document that will describe the issue, options to address the issue and the recommended option.

This is called a regulatory basis. We're going to publish a draft first, have an opportunity for comment on that before we finalize it. We're working on that this year at this time.

Just some elements that will be included in there. It will discuss the scope of the problem, possible options, legal, policy, technical, cost/benefit analysis and identify the preferred regulatory option.

Options may include maintaining the status quo, revising the regulations in one or more different ways or revising guidance. I put other in the last bullet there. And that could include things like a policy statement or maintaining status quo, maintaining awareness of ongoing cases with the ability or the

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expectation that the Commission may step in or issue orders if needed. Some of those other options were discussed in November 2015 paper.

But I just wanted to make clear that the November 2015 paper is not the regulatory basis. The staff put up a recommendation at that time and requested to move to the proposed rule stage. That was rejected and that is why we are going through this process and developing a regulatory basis. Next slide.

As I said, we have a list of suggested topics for discussion that we thought this would be the kind of information that would be most helpful to us. The first item, does allowing a third party arbitrator to overturn a licensee's access authorization determination pose a regulatory problem?

If so, what's the nature of the problem?

Someone asked me at one point what does "regulatory problem" mean. Just recognizing that we are in the rulemaking process and our focus is should we change. Is this an issue? Should we change the regulations?

If not, it may be dealt with in other ways by different parts of the agency. But as far as the rulemaking process, that would be concluded and we would

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not be revising the regulations.

As far as my role as the rulemaking project manager, it's determining what, if any, changes do we need to make to the regulation. That's what I mean by regulatory problems. It's something that is within the scope of our agency's regulatory authority. That could be addressed by revising the regulations in some way.

The second question, does allowing a third party arbitrator to overturn a licensee's access authorization determination pose a safety, human performance or security vulnerability? If so, why? And if not, why not?

We've heard different views on whether or not that is a safety concern, a security vulnerability. We're interested in hearing views from stakeholders on that question.

The third question, if the NRC determines that there is a regulatory problem what potential solution? Again, we're going to be discussing options. For each of those options, we're going to need to discuss how does that address the problem? Does that address the problem? Does it affect due process concerns? That came up as an issue in one of the court

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cases or an item of discussion in the court decision.

What are the unintended consequences? Obviously, you wouldn't do something? They wouldn't be unintended if you knew what they were I guess. But what we're trying to get at is that there are different stakeholders, different aspects, of the regulations.

And the regulatory framework has some overlap in it.

If you make a change for one purpose we want to do the best we can to be aware of what the ripple effects of that would be and try to avoid any unintended consequences. And we're also interested in what the cost drivers would be.

The next item, what are the elements of a robust appeals process? This was in the Commission's direction to look at the appeals process that is in the regulations and considering a robust appeals process and what that would look like and what change, if any, we would need to make. We're interested in hearing what's been your experience with arbitration of access authorization denials or revocations. And if there are alternatives to arbitration by third parties that balance employees' rights with the responsibility of licensees to ensure trustworthiness and reliability.

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That concludes my background and discussion of the purpose of the meeting today and the kind of input that we're looking for. I'm now going to turn it over to our facilitators to walk us through.

MR. BETANCOURT: Good afternoon.

MR. DOYLE: Luis, I'm sorry. Let me just pause for a second. Are there any comments or clarification questions on this background presentation that I gave before we get into hearing the concerns?

(No audible response.)

MR. BETANCOURT: And people on the phone, do they have any clarification questions before we open up the floor for questions? Operator, can you verify if they have any questions on the phone?

OPERATOR: Yes. If you have a question at this time, please press star one. One moment please.

MR. BETANCOURT: Okay. Go ahead.

OPERATOR: We're showing no questions at this time.

MR. BETANCOURT: Okay. Good afternoon. My name is Luis Betancourt. I am your co-facilitator for today's meeting. So as you know we want to hear from you your feedback on the staff questions that they

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have lined up.

We have two microphones on each side of the room, one on my left and one on my right. Please try to focus your questions on the four questions that the staff has laid out on slides seven, eight and nine.

We first are going to go out to the people here on the floor. Then we're going to open up the line for the people on the phone line.

Although not in the agenda, since we are ahead of schedule after we finish this portion, we are going to take a ten minute break. You can actually have coffee, go to the restrooms and then come back for the open discussion.

Finally, this meeting will be transcribed.

So please state your name once you go to the microphones and the title. Please one person at a time.

With that being said, I would like to invite the members of the non-power reactor community to see if they have any questions on the floor. Go ahead, sir.

MR. NEWTON: Hi. My name is Tom Newton.

I'm from the NIST Center for Neutron Research. One of the things that we're concerned about is that 73.56 doesn't apply to the non-power reactor community. But

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73.57 does. And so we're concerned that maybe we don't want some unintended consequences that would bring an increased regulatory burden on the non-power reactor community. We're just watching this with interest to see what the details are coming up. Thank you.

MR. BETANCOURT: Okay. Are there any other person on the floor for the non-power reactor community?

(No audible response.)

Operator, can you open up the line for the non-power reactor community please?

OPERATOR: Yes. Once again, if you're with the non-power reactor community and would like to ask a question at this time please press star one.

You will be prompted to unmute your phone and record your name. Once again, it is star one to ask a question.

One moment please.

MR. BETANCOURT: Okay. Do we have anybody on the line?

OPERATOR: I'm showing no questions coming through.

MR. BETANCOURT: Okay. Let's go to the second group to the materials community. People on the floor with the materials community? I don't see

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anybody.

Operator, can you open up the line for the people in the materials community?

OPERATOR: For the materials community, please press star one at this time if you would like to ask question. I see no questions coming through.

MR. BETANCOURT: Thank you, Sarah. Okay. Let's go with the concerns of the union. Do we have people on the floor from the union? Go ahead, sir.

MR. TSCHERNE: Okay. My name is Larry Tscherne. It's T-S-C-H-E-R-N-E. I'm from IBEW Local 245 in Toledo, Ohio. Basically, I'm here today just to express a concern about the importance of that third party. It's a very, very important issue to all of our members that's a just cause issue. And it's something that can't be overlooked. It's the only avenue that they would have left.

Once that arbitrator makes a decision, the licensee is still going to have the opportunity through the access control process to allow that person back into the facility. But I can't express enough how important the ability to have that process in the grievance procedure and exactly what it would mean to the membership. Thank you.

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MR. BETANCOURT: Thank you so much. Anybody else from the union on the floor? Go ahead, sir.

MR. BLAKEBURN: Hello. My name is Tyson Blakeburn from STP Local Union 66. I'm currently a union chairman there and a union steward.

This rulemaking decision that you guys could possibly undertake I feel could deal pejoratively for our membership. If you have a licensee that just decides arbitrarily to decide that a person is untrustworthy what you're going to in effect do without having this arbitration process is provide a chilling environment for folks.

If there is not an actual legitimate cause for concern on an individual other than maybe a manager just doesn't like the cut of their gib and doesn't want to deal with him on a personal level so they target him for termination or for badge denial access, this does create a chilling environment.

I think it's an unintended consequence that could come from a rulemaking that could eliminate any arbitration process from union grievances. I hope that you take that into account as well. Thank you.

MR. BETANCOURT: Thank you for your

comment. Anybody else from the union that wants to provide feedback to the staff? Go ahead, ma'am.

MS. TEITELBAUM: I've expressed myself many times.

MR. BETANCOURT: Ma'am, sorry. Can you state your name?

MS. TEITELBAUM: Marilyn Teitelbaum. And I'm not going to repeat those things. But something that concerned me is when I read your two topics for discussion on page seven. And it seems to misunderstand the third party arbitration process.

A third party arbitrator doesn't literally overturn a license access determination. A third party arbitrator may decide whether or not the termination was for just cause and/or may decide whether the access was for just cause, a denial of access.

Then let's assume the arbitrator in these few cases that do go to arbitration where the arbitrator rules on the access issue has decided that the access is not for just cause.

The question is what happens next. What is clear that happens next under your own regulations and under the procedures by the licensee is because they're always going to be out more than 30 days.

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They're going to have to go through an access screening.

Ultimately, the decision of whether to restore access remains in the licensee's hands.

Now if the licensee decides not to after reviewing the arbitration award, reviewing the evidence which generally of these few cases where this happens that it's overturned and the union wants to enforce it anyway, obviously the union can go to court. But the mere process of an arbitrator making that decision of no just cause does not restore access. The access decision always remains in the licensee's hands. Thank you.

MR. BETANCOURT: Thank you very much. Anybody else from the union? We have another person coming up.

MS. JERRY: Good afternoon. I'm Anna Jerry. I'm with IBEW, International Brotherhood of Electrical Workers. And I would just like to say first and foremost thank you so much for allowing us to once again have the opportunity to voice our opinions in regards to this very important issue with our workers within these plants.

Again, I want to reiterate that first and foremost is the safety and security of these plants.

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We are 1000 percent on board with that. And we want to make sure that that is the final outcome irregardless.

In preparing for looking after the last meeting, we started seeing that it was obvious that there was an opinion out there that we arbitrate, we the union arbitrate, every case or every termination that comes through. And we said we know that's not right. We want to look at some numbers.

We started doing a poll internally looking at how many cases, how many terminations, over a period of time were actually arbitrated. And we looked at a span of 32 years. There was a total of 371 employees terminated. And of those 371, only 46 of those ever made it to arbitration. Of those, only 14 ever returned to work.

If you look at that over a period of time, that as a percent of terminations per year being arbitrated is an extremely low percentage, 0.39 percent. And that is really when you look at this rulemaking process that this is an overkill and that that is not needed for this particular issue. We believe the cases that are being brought forth deserve a legitimate look and a second look by a third party

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arbitrator.

Again, we thank you for the opportunity to come here today and to share this information. Thank you.

MR. BETANCOURT: Thank you very much for your comment. We still have time for any union representative to come up and ask a question for the staff. Do we have anybody else on the floor?

(No audible response.)

Okay. Let's open up the lines. Sarah, can you open up the line regarding the unions?

OPERATOR: Yes, to ask a question with the unions group please press star one at this time. One moment please. We do have one question coming through. One moment for the name.

Our first question comes from Bill Scally. Your line is open.

MR. SCALLY: Yes. Thank you for allowing us to attend. This is an extremely important issue and it could even impact the ability for unions and the strength of the unions at the various facilities. This could have a major impact on our ability to represent the employees there even in the grievance and arbitration procedure.

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As the other member had mentioned about a chilling effect, if that chilling effect gets to a certain degree where people just lose total faith in the system and decide not to even have unions, then there would be no one to represent them.

One of the slides talked about an appeal process for FFD situations. Out of all the issues we've had we've only had one time where we had to appeal an FFD issue through the company's appeal process.

And myself as the Business Manager of IBEW Local 1392 representing the Cook Plant, we could not get any information on that appeal process. We could not get any information. We could not get any help from the company on how that was set up, who we were going to be talking to, nothing about it was available.

Phone calls went unanswered. Basically we just had to fly by the seat of our pants in putting in a written brief and ultimately of course it was denied. My feeling was, our feeling was, at the time was that the people on the appeals process were not going to buck the boss.

In November we heard that there were some appeal processes that did work well. Our plant is currently under new management. It might work well

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now, but at the time there was a very authoritarian regime and it wasn't working.

That's part of my concern to make sure that our people have confidence in the system, confidence in the NRC, confidence in the union that if they have a concern that it will be listened to and acted upon by all members, by the company, by the NRC and by the union. I think it's imperative that we have all three of those at the table to discuss issues.

If it's just solely the company, then that takes one part of the milk stool so to speak out of the way.

And I know the NRC does not want to hear every single complaint as in an arbitration. And I'm afraid that this is where that would be going if it was a regulatory issue for access control. Everything would then have to be spelled out by the NRC. Did the company do right/did the company do wrong because it would be a regulation.

That's all part of my concerns. We have a system that works. Could be tweaked a little bit.

But a wholesale denial of arbitrators pursuing this avenue I think would be a serious mistake. Thank you.

MR. BETANCOURT: Thank you for the

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comment. Do we have anybody else on the line from the unions group?

OPERATOR: We do have a couple more. Our next one comes from Bill O'Brien. Your line is open.

MR. BETANCOURT: Hello Bill. Go ahead.

MR. O'BRIEN: This is Bill O'Brien. I am Counsel for many IBEW locals in the upper Midwest. I'm in Minnesota. And I'm speaking today on behalf of IBEW Locals 949 and 160, both of which have nuclear plant workers in Minnesota.

I've spoken before and I don't wish to reiterate. I just want to make a couple of points.

First of all, I think everyone in the room understands that neutral review of employer decisions is critically important to both the appearance of fairness and to actual fairness. And there is really no way to have neutral review without a neutral, a true neutral without allegiance to any party such as an arbitrator.

I should also note that in more than 30 years of practice I am in my own practice aware of only three instances where as a result of arbitrator decisions an employee who had been denied access was ultimately reinstated. And in fact the process

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followed there was exactly what Marilyn Teitelbaum has described today. And I know she has attempted to describe in other settings.

That is when an arbitrator concludes that just cause has been violated and that there was insufficient cause for the termination of the nuclear plant worker, that worker does not go walking through the door the next day. Invariably, the arbitration process in fact must take more than 30 days. In each case that I am familiar with, there was a renewed, independent access determination related to the employee who had been reinstated.

As Marilyn has said, had access under those circumstances denied access to the employee, the union could then make a determination about whether there was something in the access determination that would warrant appeal of that determination, either going back to the arbitrator or going into court in effect to enforce an arbitrator's award.

But all of that process is just more assurance that there will be multiple eyes on the renewed access determination to ensure that there isn't something that was missed. The cause that the arbitrator found in the underlying arbitration decision

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was not blind to some actual, real security risk.

So in every instance that I'm aware of -- and there are very few because unions do not arbitrate these cases very often -- there has been a renewed access determination and often times with new fitness-for-duty requirements to this employee who has been returned to work. I should also note that in each of those three cases the employer, the licensee, chose not to try to vacate the arbitrator's award which is also their right.

If they disagreed with the arbitrator's award, they could have gone into court and pointed out to a federal district court that the arbitrator missed a critically important safety sensitive issue. And the fact that the employers most often do not attempt to vacate these awards is acknowledgment that there's something else going on. In these limited circumstances, access probably got it wrong. There are multiple layers of protection even after an arbitrator renders its decision.

I don't see that there is any alternative to arbitral review that can provide both the appearance of fairness that is critically important to the members of unions and employees of nuclear plants. Nor is there another process that can create

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the environment for fairness that is so critical to having some opportunity for review of these determinations. Thank you.

MR. BETANCOURT: Thank you, Bill.

Sarah, do we have anybody else on the line?

OPERATOR: We do. Next we have John Rayment. Your line is now open.

MR. RAYMENT: Hello. The question I have -- I'm John Rayment from IBEW Local 1289 -- is usually when you see a rule being changed or challenged there's a reason for it. There's a negative impact of the current rule that would be shown.

Anna Jerry talked about only 14 people being sent back to work. The question I have is what were the negative access situations that happened with those 14 individuals that would cause the NRC or anybody else to think that something needed to be changed. Thank you.

MR. BETANCOURT: Thank you, John Rayment.

Sarah, do we still have people on the line?

MR. DOYLE: Well, let's take a minute to see if the staff wants to or is able to provide a response for that. The question was usually there's a clear problem or an issue. Of those 14 that got their access

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back, what was NRC's view of the problem?

MR. ST. AMOUR: This is Norman St. Amour with OGC. Your question presupposes that the NRC has determined that a change is necessary. And I just want to reiterate that we have not made that determination yet that any change in our regulations in our regulatory structure is necessary.

We're trying to determine at this point if the reinstatement of an individual that a licensee has found is not trustworthy and reliable poses either a safety or a security problem. If we made that determination, we might move forward with a recommendation for a rulemaking or a change in guidance or some other regulatory action. But we have not at this stage determined that the reinstatement of an individual pursuant to an arbitrator's decision does in fact pose a regulatory problem.

If we were to make that determination, we would set forth the rationale for that determination in a subsequent document, a final reg basis perhaps or in the rulemaking documents that would subsequently follow.

MR. DOYLE: Also I would just like to point out as discussed in November 2015 paper which is not

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the basis for this, but it does have a background discussion of the court decision in 2012 and some of the discussion from the court's decision about apparently a lack of clarity with the meaning of the words in the regulation that the two sides in that case were arguing about the meaning of the words. The court looked back at the regulatory history for those words in 73.56 I believe going back to the 1991 rule and the statement of considerations or the preamble for that final rule in 1991.

It sounds like we lost John. Thank you.

MR. BETANCOURT: Sarah, is John Rayment still on the line?

MR. RAYMENT: I'm still here.

MR. DOYLE: Okay. Anyway, I'm just trying to make the point that if we conclude that there's a need to improve the clarity of the regulations to change it one way or the other, then that could also be in itself a problem or a conflict with the regulations and the guidance. That could be a problem that warrants making a change to address that lack of clarity or an inconsistency within the regulations. That's also a possible support.

It sounds like Mr. Rayment is still on the

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phone. We were just responding to your direct question. Did you have a follow-up comment on that?

MR. RAYMENT: No. Thank you for your response.

MR. BETANCOURT: Okay. Sarah, let's continue to see if we have more people on the line.

OPERATOR: We're showing no other questions.

MR. BETANCOURT: Okay. Let's move on to the Power Reactor Community please.

MR. DOYLE: Sorry. We need to clarify something that I said. Please correct something.

MR. ST. AMOUR: No. I want to respond to the comment that was made by Anna. Anna, I thought I heard you say that there is a perception that all cases of termination go to arbitration. To the best of my knowledge, the NRC has never stated and does not believe that all terminations go to arbitration.

In our November meeting, we actually asked for input from all stakeholders on the number of arbitration decisions there are to help us formulate better what the scope of the problem is. And we have received some very valuable input from various stakeholders on the number of arbitration cases, the

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number of licensee decisions that are overturned.

But I did not want to leave the perception that the NRC believes that all licensee termination decisions go to arbitration. We recognize that that is not the case.

MR. BETANCOURT: Thank you, Norman.

Can you hold up your question? I need to move on. But we're going to recircle back to you.

Let's go to the Power Reactor Community on the floor. Do we have anybody from the Power Reactor Community here? Yes. Go ahead, sir.

MR. DIPIETRO: Good afternoon. Nick DiPietro with FirstEnergy. I'm the Fleet Manager for Access Authorization and Fitness-For-Duty. And I've been in the nuclear power industry for over 35 years.

Twenty-five of those years have been involved with access authorization and fitness-for-duty programs.

Just a couple of comments. Like I said before, I think the process that the utilities have is a robust process and it's a serious process. And licensees do not deny access and take that for granted or at the whim of a VP because they may not like someone's demeanor whether they're in the IBEW or just a general worker.

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And these programs have been inspected by the NRC. There's been numerous allegations that the NRC has also investigated associated with access authorization and fitness-for-duty programs. Again, if there would have been a problem with the program it would have been identified through inspection or the process of an office investigation through an allegation.

I've had a number of different ways. I worked for Duquesne Light and now I work for FirstEnergy. We've had it where a panel would make the original decision to grant or deny and then there would be a single point of contact that would hear the appeal. I've had it where there were single points of contact reviewing officials would make the determination to grant or deny and then a board of folks from the utility would look at the appeal.

And there is a number of variations that each licensee uses to do that. But again, I think the process that's in place does work.

We, myself, my company and a lot of my counterparts that I'm on some industry task forces with and working groups do not believe that third party arbitrations through the collective bargaining

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agreement is a good idea. We don't have any problem with collective bargaining as it relates to employment practices. But we don't think it should impact an unescorted access determination or a fitness-for-duty determination.

Allowing third party arbiters to overturn licensees' determination process, will that cause a regulatory problem? It already has caused regulatory problems for some utilities. Allowing a third party, does it pose a safety or human performance vulnerability?

I've had some cases that went to arbitration. And the arbiter said bring the person back to work. We've had cases where they were allowed to return and ultimately get unescorted access. It wasn't right away. We worked through some counseling and some other processes to bring those folks back to work. And we had folks that the arbiter said bring them to work and they were never given unescorted access. They had to go work in other utilities.

I don't know if that process works or not. But we've had experiences there.

I can also say that there are people that we have denied access to that have gone down the road

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and done some very serious things after they were denied access through our process. The four Marines in Tennessee is a good example of that.

So as far as potential safety and human performance vulnerabilities, I think there is. How can due process concerns be looked at or mitigated? I'm not in favor of it through collective bargaining. But there are some third party processes like the ADR process for example where there are disagreements between utilities and the regulator in this case where a third party comes in. And you resolve the issue.

If there is a third party system that's set up, I would like it to be independent of employment and focus strictly on the access authorization or fitness-for-duty determinations. And I think it needs to apply to all individuals like I said before and not just the IBEW.

I appreciate the comments from the IBEW folks here. Our utility covers six states. I think we have 22 different agreements with different bargaining units. We recognize we need those people to work for our utility. And they come in and do a good job.

It's not that I have anything against the

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IBEW folks. It's just that I think it should be open for everyone and it should be equitable to everyone independent of collective bargaining agreements. Thank you for allowing me to have my few comments here.

MR. BETANCOURT: Thank you, sir. Anybody else from the Power Reactor Community here on the floors?

(No audible response.)

Hearing none, Sarah, can you open up the line for the Power Reactor Community?

OPERATOR: Once again, it is star one to ask a question for the Power Reactor Community. One moment please.

MR. BETANCOURT: Do we have anybody, Sarah?

OPERATOR: We have one question that just came through. One moment please.

MR. BETANCOURT: Thank you.

OPERATOR: It comes from Esther Park. Your line is open.

MS. PARK: Yes. Hello. My name is Esther Park. I'm with Arizona Public Service Company. I appreciate the opportunity to provide our comments to the NRC.

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I just wanted to reiterate some of what Nick had just shared in terms of what we see as a regulatory dilemma if the status quo is currently maintained. While we believe that an appeals process is an important process to have, we believe there are other ways beyond third party arbitration to accomplish that. Given that I think the dilemma for licensees where not only are we required to have the responsibility and maintain the responsibility for access authorization determination, there's also regulatory requirements that those making those determinations on behalf of the licensee and just generally have also gone through their own trustworthy and reliability determinations per the regulations. While, yes, the arbitrator on some levels will remand in their way the decision they find if they overturn the licensee's decision, the licensee is then faced with the regulatory dilemma of whether they should overturn their prior decision of finding an individual not trustworthy or reliable often without additional information to guide that decision. They will face enforcement action from the NRC versus choosing not to overturn that decision and face some of these enforcement litigation actions that have been discussed

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already here by some of union representatives.

That it is just one point that I wanted to make. Thank you.

MR. BETANCOURT: Thank you so much.

Sarah, do we still have another person from the Power Reactor Community?

OPERATOR: We're showing no further questions for the Power Reactor.

MR. BETANCOURT: Thank you, Sarah. Let's open up the floor for the Non-Governmental Organizations. Do we have anybody here?

(No audible response.)

I don't see anybody. Okay. Let's open up the phone line. Sarah, please go ahead.

OPERATOR: Once again, that is for Non-Governmental. Please press star one at this time. One moment.

Our first question comes from Barry Quigley. Your line is open.

MR. QUIGLEY: Yes, this is Barry Quigley, representing myself, a member of the public. There's been a couple of statements that people believe that the appeals process as is is satisfactory. And I would dispute that.

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Those were people speaking from their experience at their utilities. At my utility, that was not the case. I filed an internal appeal that included medical information. That appeal was denied without considering the medical information.

The appeal reviewer was not a doctor. That's clearly just a farce. It's not robust. It doesn't work. When I tried to get specific information on what exactly made me untrustworthy and unreliable, I was not given anything.

Under the Equal Employment Opportunity Commission, that is another potential third party that you need to consider. I could have made a complaint to the EEOC that I was being discriminated against for having a condition. So that's another third party that you must consider.

Also a lot of talk from the unions. You also have to consider that not everyone is in a union.

So whatever you do it has to apply to a non-union plant and also to management. That's all the comments I have.

MR. BETANCOURT: Thank you so much.

Sarah, do we have more people on the line?

OPERATOR: Yes. Next we have Lisa Powell.

Your line is open.

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MS. POWELL: Okay. First of all, I want to say thank you for giving me this opportunity to have some input. It's been seven years since I raised my concerns and brought forth a whistleblower complaint and went through a hearing process. Today I feel that it should be mandatory that there should be a third party arbitration or an outside individual who is neutral to both parties to be able to bring both parties to a table. They would come together with an agreement to find out if perhaps maybe there was some human performance areas or maybe perhaps a culture of discrimination.

We all know we make mistakes. And NRC, EEOC, DOL, OSHA, the investigators, they can all make mistakes just as well as any other individual performing any duty on any given day.

The statements I make are a result of actual factual experience. They're not thinking. I've taken seven years to look at the process and the cases. I've read a lot of regulatory information from the federal law.

During my case, I had two other federal violations that unfortunately took place at a building that other employees from the Energy employer were given

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evaluations. And I won't go into any other specifics other than that. Those are recorded with the Health and Human Services.

As I said, the statements I make are actual and factual and I can back it up with paper. Not only that, but I can back up everything I say with recordings.

I knew at the time that they were trying to remove me from fit-for-duty. I knew at that time to go ahead and start making recordings. And I did prior to that because of a statement that was made to me by my superintendent.

Third party arbitration should be mandatory for the safety and security of nuclear employees as well as the safety and security and protection of the public. The determination to allow third party arbitration will draw out further violations. The system does not work.

I have in my case 2012 ERA 00011 and two other federal violations that were performed by fitness-for-duty evaluators. Evaluation of an energy employee through the Occupation Act as well as through an everyday fitness-for-duty evaluation of nuclear employees that are performing their duties on a daily basis, they are the ones that have the hands-on and

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the eyes-on.

No one wants to lose their job especially when they have great benefits, great pay. They're only doing what they're trained to do. There are so many federal laws that can be violated. And the union process is costly, very burdensome on the employees, not to mention the MROs aren't trained. They don't know the regulations. And they leave everything up to the corporations to make the determination of what happens to the employee.

I myself was returned to go back to duty on three different occasions by the MROs. It was my plant manager who refused to let me back onto the site.

I didn't violate any drugs.

The only thing that happened to me is I had an employee that I raised a concern against raised a concern against me. And they took me out on payroll observation in which they were trained the week before and given the documents to read. That's so they could get the wording correct to walk me out the door.

I think third party arbitration should be mandatory because there is a culture of discrimination.

It affects both the civil rights and the human rights of the nuclear employee.

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I today do not wish to be placed back in.

It was a lifelong dream for me to finally reach that seven years of education, 20 years of maintenance, to be able to have an opportunity to work in the nuclear environment and to have a job that has stability that I could rely on.

I have asked and I have spoken with several NRC employees to have the Commission and other employees review my recordings. Department of Labor and OSHA has some of the recordings. They don't have all the recordings. And so does NRC.

The only reason I came forward today was because of all the other employees out there within the nuclear industry. I see it right here between the new facility and Units 3 and 4 being built. This is where I live.

I had other people from Ford and these are the statements from other people working and performing fitness-for-duty evaluations. This is the letter that they sent to the company. It says and I'm only going to briefly state my paragraph on it so that you'll understand what an employee goes when they're going through the fitness-for-duty process. You won't even have to listen to any recordings.

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This paragraph states "Ms. Powell has had extreme difficulties trying to get any answers from" -- I won't mention the company -- "and an MRO evaluator concerning her evaluations. I, too, have not been successful in obtaining my patient's records. These evaluations are the ones that removed Ms. Powell from" -- and I won't state the company's name -- "and they will not provide us with any information regarding the evaluation.

Ms. Powell has been compliant with the fitness-for-duty program in every possible way. It is a condition of her employment. This evaluation is based on the psychological evaluation." Then it goes to state that my personal psychologist --

MR. BETANCOURT: Ma'am, sorry to interrupt.

MS. POWELL: He was most familiar. Now I had to go to him because I did it as a safety measure on myself. And before I was --

MR. BETANCOURT: Ma'am. Sorry to interrupt. This is Mr. Betancourt, the facilitator.

MS. POWELL: I fix to finish up. They need to listen. Before I was terminated by the time they drew me out for six months of playing with me, I did

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what's called a self-declaration. Why? Because they had put me on so many psychotropic drugs, not to mention they returned me back to duty. They returned me back to duty and I did a self-declaration right after they did that. They put me on three different psychotropic drugs that really affected my brain for so long that it's taking me until now, seven years, to be able to do simple math problems.

But I have no recourse. I was left with no insurance and no money. So I'm coming forward and I'm stating this today because of the people in doing what they did to me I'm here for them.

MR. BETANCOURT: Thank you, ma'am. I appreciate your comments.

Let's move on to the next person on the call. Sarah, do you have any person on the line?

OPERATOR: We show no further questions at this time.

MR. BETANCOURT: Oh, you're Dustin.

OPERATOR: Correct, yes.

MR. BETANCOURT: Okay. Thank you.

OPERATOR: You're welcome.

MR. BETANCOURT: So I guess right now this is the end of all the five organization groups. Right

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now, we are ahead of schedule. So it's right now on my clock 2:10 p.m. Let's take like a 10 minute break and we will be back by 2:20 p.m.

MR. DOYLE: And I'd just like to point out -- thank you, Luis -- that this open discussion period on the agenda after is an opportunity for anyone who either did not get an opportunity to make a comment up until now or did make a comment and had another thought or wanted to respond to maybe something someone else has said. You'll have that opportunity during the open discussion.

MR. BETANCOURT: Thank you, Dan. So let's take a ten minute break. Please be reminded that you cannot take coffee inside the room. So if you want to have coffee, you have to drink it outside. Okay. Thank you.

(Whereupon, the above-entitled matter went off the record at 2:11 p.m. and resumed at 2:20 p.m.)

MR. BETANCOURT: Okay, everybody. It's 2:20 p.m. So let's go back to the meeting. If everybody can actually go back to their seats please. Dustin, we're going to start the meeting.

OPERATOR: Okay.

MR. URIBE: Hopefully, everybody has had

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a chance to get something to drink, get a little refreshment.

Dan, would you like to check with the staff anything?

MR. DOYLE: After the break and when we heard the questions we went through in the different groups, I just wanted to check with the NRC staff sitting here. Would anybody like to make a statement or a response to anything that they heard? Obviously, you guys can jump in at any point. Does anybody have any comments they want to make?

(No audible response.)

Nope. We don't have any comments. Let's move ahead.

MR. URIBE: All right. Why don't we open it up to the floor? Anybody that would like to make any comments or questions about things that we've covered go ahead and come up to one of the mikes and please state your name and your business.

MR. BETTILYON: Bruce Bettilyon, IBEW Local 66. I'm afraid that by doing anything other than we have on the status quo for this rulemaking is going to have an unintended consequence on the observation programs. Virtually, we feel or I feel it's going to

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shut them down. People are going to clam up and not say anything.

Secondly, the result of what we take to a grievance and arbitration procedure is not actually the access piece of it. The access piece of it comes in conjunction with the act that we're arbitrating.

If we just grieve the act that the employee was either terminated or unjustly treated and the access piece was not an issue at that point, be no harm, no foul. But due to the fact the companies conjoin the two incidents, that's why now I feel that the access is of issue with the actual arbitration. Thank you.

MR. URIBE: Thank you very much. We have somebody else coming to the mike.

MR. SCHWARZ: Bill Schwarz from IBEW Local 50. I just wanted to follow up on a couple of things.

It's been stated from the utilities that they could face an enforcement action if they followed through on an arbitrator's instruction to return someone to work. My question to the staff would be have you ever carried out an enforcement action for a utility returning someone to work.

Additionally, the gentleman from FirstEnergy stated that the internal review process

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of the utilities is robust. Have they ever overturned their own decision and brought someone back to work through that process? Those are my questions. Thank you.

MR. DOYLE: Okay. I can give a short answer. This is not my direct area of expertise. But I do know that I believe the NRC has taken enforcement action. I believe that was discussed in the November 2015 paper in response to a licensee's actions following an arbitration. I don't know if you guys can expand on that.

And then the other question about has the internal review process ever resulted in overturning the decision. Again, I don't have personal experience of that, but I believe I heard from the comments that the power reactor community has made that they have. But I don't have additional information about that.

MR. ST. AMOUR: Yes, the NRC can't answer that final question. That would have to come from industry.

MR. DIPIETRO: Just to answer the question. Yes, we've had many -- I won't say many. We've had a number of initial access determinations that went through our internal appeal process and the

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individual was granted unescorted access.

MR. URIBE: Can you please state your name?

MR. DIPIETRO: My name is Nick DiPietro with FirstEnergy just to answer the question that was posed to me.

MR. URIBE: Thank you.

MR. DIPIETRO: Thank you.

MR. URIBE: Would anyone else like to ask a question or pose a comment? Go ahead, sir.

MR. TSCHERNE: Yes. My name is Larry Tscherne again from IBEW Local 245. We represent the employees at the Davis-Besse Nuclear Plant which is a FirstEnergy plant. I've been the business manager of that local for 21 years and been in the IBEW for 37. I'm pretty familiar with the way this process works, although I'm not an expert.

With respect to the question that was just asked, I could speak on behalf of the membership of Local 245. We haven't had very many that have gone to that extent. But the ones that we have have never been overturned. Thank you.

MR. URIBE: Anyone else here at the floor?
Go ahead.

MS. TEITELBAUM: Marilyn Teitelbaum

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representing Local 15 IBEW. You know there are two things going on here, at least, that struck me that we don't always distinguish between. And I think one of them as Mr. Doyle mentioned may have kicked off the November 2015 staff recommendation. And those are the court cases that dealt with the arbitrability of these cases dealing with licensee access.

I just want to suggest to you that seems to me totally irrelevant to what you're doing here. Arbitrability, whether something is arbitrable, does not say anything about whether or not restoration of access is or is not appropriate. Arbitrability is just -- And what the court was doing in the 7th Circuit case that I think kicked this thing off, all the court was doing there is expressing what was long ago established by the United States Supreme Court which is in favor of arbitrability of grievances as a peaceful way of resolving disputes.

But the fact that something is arbitrable doesn't mean an arbitration decision that overturns access is or is not enforceable. So it shouldn't be a concern of yours on a regulatory basis, on a safety basis, of whether something is arbitrable or not except that perhaps you would like to clear up and make it

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clear that it can be arbitrated if there's anything to do. And that could probably be done by guidelines.

But I think the court cases overwhelmingly and the Supreme Court has been in favor of finding things when there's a broad cause and people have agreed to that. The parties defined it arbitrable.

So really what it seems to me your concern here has to do with an arbitrator's award. And when an arbitrator says that an access decision was not for just cause. But that shouldn't even been of concern with you. And I don't know why the gentleman from FirstEnergy it would be of concern to him either.

A licensee ultimately decides whether they're going to restore access. So why would you engage in this rulemaking when it still remains in the licensee's hands.

Now, yes. If an arbitrator rules that there's no just cause for access and the licensee refuses to reinstate might there be further action in court? Yes. I think I disagreed with one of the union speakers though about what the standard would be.

I'm not sure you could go back to the arbitrator. The only place you would end up is in court with either the union trying to force the decision or

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a licensee trying to vacate it.

But the standard that would be going forward would not be the standard in normal arbitrations about whether the decision was arbitrary, discriminatory or unreasonable. There's another one that if I were a licensee and I felt that I was having to put back somebody who was not reliable or trustworthy, I would say it's a violation of NRC regulations.

The NRC regulation prohibits them from putting back somebody that is trustworthy and reliable.

And then it would go to court. And Federal Court decides all kinds of security issues, all kinds of complex things. And if there's really, really a need to not reinstate access pursuant to an arbitrator's award, that's where it will end up.

In my research on this issue in terms of IBEW locals, I only know of one where they went to court and vacated. Now maybe there's another one out there that I don't know of. But they went to court and vacated.

There is already a scheme in place for dealing with any safety, any problem issues. Nobody is going to make the licensee do something when they

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feel that they are going to be violating their obligations.

The licensee does make decisions about access all the time. And they may have taken away somebody's access and restore it. They do that without impartial arbitrators.

Based on my research, I see that there is -- I know of no logical reason that there would be for going through the complex and expensive rulemaking process. I haven't heard even amongst those licensees that spoke here give one example of where they reinstated a person that they thought was not reliable or trustworthy. I would assume they wouldn't do that.

I did hear Ms. Park say that a licensee had been faced with a regulatory dilemma often without additional information. I don't know what that means, but you're never in a regulatory dilemma because you cannot reinstate and you can go to court. Thank you.

MR. URIBE: We have one more.

MS. BOR: I'm Victoria Bor. I'm Counsel to the International Brotherhood of Electrical Workers.

I just wanted to make a couple of points to follow up on what Ms. Teitelbaum said.

The first one is in response to Ms. Park's

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comment about the regulatory dilemma of having to reinstate or redo the access determination without any new information. In fact, that's what the arbitration is all about. It's about teasing out the information that underlay the initial decision to terminate or discipline the employee which led to their denial of access.

If an arbitrator finds that there's no just cause for the discipline and orders reinstatement as Ms. Teitelbaum has said, the next step is that the licensee has to redo the access authorization determination. It's in the licensee's control but now with the information that came out at the arbitration.

I don't see where there's a dilemma there.

The second point I wanted to make is that we've heard a lot about the robust appeal process. The gentleman from FirstEnergy said that there are lots of situations where FirstEnergy has overturned a denial during the appeal process.

That's not been the experience of the IBEW local unions. As a matter of fact, we on behalf of the locals when we heard this through the first rulemaking, the public comment period, that the NRC had in response to NEI's petition for rulemaking had

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heard a lot about the robust appeals process. We filed information requests on all of the licensees with whom IBEW local unions have collective bargaining agreements and asked them how many times they had reversed denials through the appeal procedure.

None of them responded. So we filed unfair labor practice charges under the National Labor Relations Act. And when it appeared that the board was going to issue complaints against the licensees they all responded. None of them reported having ever reversed a denial through the appeal procedure.

Now I don't remember offhand whether FirstEnergy responded. But to the extent that we've been able to get that information we're not aware at least in our bargaining units of any denial of access ever being reversed on appeal.

And the third point I wanted to make and this is really a question is Mr. DiPietro, if I have his name correctly, mentioned that FirstEnergy has 22 bargaining units represented by the IBEW. And he spoke of the fact that people have been returned to work over the objections of FirstEnergy.

We're not aware of anyone ever having been returned to work who turned out to be a security problem.

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If our information is incorrect, I'd really like to know about that. Thank you.

MR. URIBE: We're going to give an opportunity for the members on the phone. Operator, if you can ask if anyone on the phone has a question.

OPERATOR: We have one question from Barry Quigley. Go ahead. Your line is open.

MR. QUIGLEY: Yes, this is Barry Quigley. With regards to the FirstEnergy statement that they have a robust appeals process, that is somewhat gratifying. However, I should not have to change employers to get a robust appeals process. It has to be everybody that has a robust appeals process, not just FirstEnergy. That ends my comment.

MR. URIBE: Operator, is there anyone else on the line that would like to ask a question or make a comment?

OPERATOR: Yes. We have a question from Lisa Powell. Go ahead. Your line is open.

MS. POWELL: Yes. I don't have a question. I have this to say. In my case, I was deemed trustworthy and reliable by the MROs as well as an independent person by the name of Peter Paul that performed an evaluation on me. From the very

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beginning, I was deemed trustworthy and reliable.

So far as the appeals process goes and overturning, the arbitration process would allow -- Let me back up. I was not given any type of an appeals process. I wasn't given any disability paperwork. I wasn't even given my fit-for-duty paperwork while I was going through this process.

The forms that I had to sign on a daily basis, I wasn't even given that. And I didn't have access to any of the company's procedures, policies. They locked me out of the network. They took away my password. So I couldn't get to the company's own policies and procedures. So I didn't have anything to go by. And I wasn't offered an appeals process of any sort.

These issues are what keeps an individual out from being able to legally pursue a case and to protect themselves from further damage. I think an arbitration process would have at least allowed an individual such as myself who has raised concerns and who has been removed from fit-for-duty due to behavioral observation and who has been deemed trustworthy and reliable by their own personal MROs.

It would allow that individual to at least

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be able to secure their security clearance, the information that is contained in their files as well as their personnel files that a company has. This would allow the employee to seek further employment, perhaps maybe not within the nuclear industry. If they could clear those other things up, then they at least would have a chance to some sort of quality of life and perhaps maybe some income so that they can support themselves while they're going through the hearing process.

No one wants to go through this. I certainly didn't. It's like a slap across the face.

And I couldn't do it effectively because of all the obstacles I had against me at the time. I feel like if there was an arbitration, a third party, perhaps maybe the employee would be able to bring forward their concerns a little more effectively.

Those investigations that NRC states that they do and that DOL does, I never met an investigator to begin with, not even from the Department of Labor or OSHA. And there are flaws there, too.

I think if these issues would be brought forth it would be pertinent to the safety of the industry and in a timely manner and something that's a little more effective. That's all I have to say about that.

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MR. URIBE: Thank you very much. I would like to see if John Rayment would like to ask his question on the phone.

MR. RAYMENT: I'm turning the phone over to my business manager, Ed Stroup. Thank you.

MR. STROUP: Hello. My name is Ed Stroup. I'm the President and Business Manager IBEW Local 1289. I represent in New Jersey union members for both FirstEnergy and Exelon.

I have to tell you they're both wrong in the positions they're taking here, both of those companies. And to me this whole question is about checks and balances.

This proposed rule is all checks and no balances. Some countries operate with all checks and no balances. They're called dictatorships. In America, we operate on due process and just cause. No company should have the sole determination without due process and just cause through arbitration.

We should not look at what rules may need to be changed unless and until we decide the real question. Are we willing to give the companies the unilateral rights to make final decisions without due process and just cause through arbitration? I say no,

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absolutely not. Thank you.

MR. URIBE: Thank you. We do have a response from the staff here.

MR. ST. AMOUR: Yes. This is Norman St. Amour with NRC OGC. Again, I'd like to point out that your comment presupposes that the NRC is engaging in a rulemaking. And we have made no determination that we are going to engage in a rulemaking. We are just trying at this point to determine if there is a problem and what the scope of the problem is and what is the appropriate remedy if we do identify a problem.

I appreciate your comment. But I don't want to leave the impression that the NRC is going forward with a rulemaking at this point in time.

MR. URIBE: Do we have anybody else on the phone line?

OPERATOR: Our next question is from Esther Park. Go ahead. Your line is open.

MS. PARK: Hi, yes. Esther Park again for Arizona Public Service. I just wanted to respond to a couple of earlier comments.

One, I do respectfully disagree that the cases that were discussed in the staff paper in November have nothing to do with this matter. In fact, a lot

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of those while it was looking at the question of whether these issues are arbitrable, the courts' decisions were based on the fact that they've interpreted the regulations to have some ambiguity and vagueness in them. So therefore I do think it is very relevant for this question of whether or not there is a regulatory dilemma between where the licensees get stuck and between dealing within an overturning of what they have determined in terms of access authorization based on training and meeting certain requirements of the NRC to protect public health and safety.

That being said, we do take seriously due process rights as well. But we believe that that's another aspect here. The potential conflict between the process, but also protecting the interest of the public health and safety is another very important value. We believe both of those are important and warrants the need for this rulemaking to clarify and have the regulator balance those interests in an appropriate manner.

Secondly, just to respond to the comment I believe by Ms. Bor where I believe her comment regarding the arbitration's purpose being to tease out the underlining information made in that access

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determination highlights further the dilemma that exists. On the one hand, licensees are required by current regulations to follow certain requirements in making access determination decisions. They includes the appropriate training and appropriate program that the regulator determines is adequate for doing this job and also for the licensee's staff undergoing their own credentials of training as well as being found trustworthy and reliable under this same standard.

Whereas, while Labor arbitrators serve as has been discussed before in comments, a valuable purpose in the employment context, they do not have this training. Nor they have not gone through a similar background that is currently required for others who are making access determinations. So that is another.

Again, we believe that there should be an appeals process that is independent. We just don't necessary agree that Labor arbitrators may be the appropriate method. Thank you.

MR. URIBE: Thank you. We do have a question here in the room.

MR. DIPIETRO: Nick DiPietro again with FirstEnergy. Just a couple clarifying comments. I'm speaking as an access authorization/fitness-for-duty

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program manager and trying to reflect the opinions of my peers when I'm up here discussing this. This may not always be the official FirstEnergy stance. I just happen to work for FirstEnergy. But I'm talking as a fitness-for-duty program manager or an access authorization program manager. That's just take it for what it's worth.

The question about the 22, they're not all IBEW. We have a number of different agreements with a number of different bargaining units. So they're not just all IBEW across our footprint.

And then the one question where we did have an arbitration case and the arbiter ruled to bring the individual back to work, that was at Davis-Besse. It was a security officer.

I don't want to get in all the details of the case. But we did have one go to arbitration. The arbiter ruled to have the person come back to work, did not get immediate unescorted access. Again, that was the example that I used where we worked with the individual through counseling and some other things.

Ultimately, the individual was -- It had to deal with a psychological referral. Once we got the okay from the psychologist, we were able to

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reinstate the individual's unescorted access. Just some clarifying comments on some of the things that were said earlier. Thank you.

MR. URIBE: Thank you. Anybody else in the room? Then I'll go back to the phones. Go ahead. We do have a question here in the room.

MS. TEITELBAUM: Yes. As it relates to Ms. Park -- Marilyn Teitelbaum -- who emphasized about the special training of the security people, I have reviewed a lot of arbitration awards over the last six weeks. Frequently, those arbitrators at least in part overturned the access decisions when they did overturn them in part because the access people didn't do what the NRC regulations told them they were supposed to do.

A typical one is the NRC regulations list certain mitigating circumstances that are supposed to be considered. It says you should consider these activating, these mitigating. They didn't do it. They didn't even have the information in front of them.

It was only through the arbitration that those mitigating circumstances were in fact revealed.

The arbitrator then ordered that there was no just cause. Ultimately, in those cases the licensee put

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them back. We have to assume they put them back not because they thought they were a security risk continuing, but they decided after reviewing everything that they were no longer a security risk if they ever were.

And I assume -- I'm sorry, Nick. I didn't get your last name from First Energy. I assume he didn't put that security guard back to work thinking that they were a continuing security risk.

These are all illustrations including the example that was given here in this room of how the system that exists now works. It works for both sides.

If in fact there was a problem with the licensee, there are plenty of existing remedies available. Thank you.

MR. URIBE: All right. Let's go back to the phones. Anybody on the phone would like to ask a question or make a comment?

OPERATOR: Our next question comes from David Klein. Go ahead. Your line is open.

MR. KLEIN: Good afternoon. This is David Klein from Access Profiles, Incorporated. And I just wanted to make a couple points to the things that you talked about.

One, I'm very much in favor of a robust

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due process appeal process in place. But I also think that the ultimate decision maker in that process should be deemed trustworthy and reliable and should also be properly trained on NRC regulation whether it's access authorization or fitness-for-duty. Thank you.

MR. URIBE: All right. Thank you. Any other questions before we go to closing remarks?

OPERATOR: Our next question comes from Barry Quigley. Go ahead. Your line is open.

MR. QUIGLEY: Yes, this is Barry Quigley. I would like to dispute the statement that there are plenty of remedies. It may be true for someone in unions, but for someone in management like me my appeal went to the company. The company sent it to an unqualified reviewer and determined that I was unfit.

I'm not sure what other remedies were available to me. But I dispute the statement that there are plenty of remedies. End of comment.

MR. URIBE: Thank you. Anybody else on the phone?

OPERATOR: Our next question comes from Lisa Powell. Go ahead. Your line is open.

MS. POWELL: I, too, would like to dispute that there are existing remedies. When an employee

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is terminated, they draw it out over years period of time.

I one by one had everything taken away from me. And to begin with I couldn't even access my own savings account over a year's time. So I was left with no money and no support whatsoever.

All I had to do was just sit back and wait on the different Federal agencies to contact me and try to communicate with me. I didn't even get any feedback from them for two years I believe it is. And then by then I was already placed on disability and simply terminated because I didn't have the paperwork to support my disability.

It was the company's medical doctors and their vendors that determined my disability. They were the ones that withheld my paperwork. What's a person to do?

I had a choice. I could either go through with my EEOC violations, my EDSA violations or get some type of remedy through that. But I chose to pursue the OSHA because I know the concerns that I had raised that I spoke with my concerns management about. That's the road I took. And that's the road I have completely followed ever since, not for my own personal safety

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but for the safety of the public and welfare of the public and the nuclear workers at these sites. That's all I have to say.

MR. URIBE: Thank you very much. Any last questions on line?

OPERATOR: We show no further questions at this time.

MR. URIBE: Here in the room?

(No audible response.)

All right. I'll hand it back to you, Dan.

MR. DOYLE: Okay, thank you. It looks like we have something on the webinar.

(Off microphone comment.)

No, okay. Great. Thank you. We'll move on to the next slide.

For the next steps, again I just want to point out for this meeting today as stated in the meeting notice but just to be clear that we're not having a written comment period associated with this meeting.

And as stated in the meeting notice, this is in the early stages. This is for the staff's consideration.

We're looking for input which I do think we got a lot of good input. And there will be a transcript. But to be clear, we're not formally

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responding to the comments that we're receiving today.

If the final regulatory basis concludes that changes to the regulations are needed, the NRC will proceed to the next step in the rulemaking process which is to develop a proposed rule. There would be additional public outreach and opportunities for input during the proposed rule stage, including a written comment period and one or more public meetings. Just a heads-up for future public involvement opportunities depending on how this moves ahead.

Again, for the slide here, this is the same slide we had from November. During the break, someone asked me if we're still planning on publishing this in early 2017. And what does that mean? Can you state a month?

The short answer is no. I cannot give you a month. And there is some flexibility with how we develop this document. I am in charge of herding everything and trying to determine the schedule and keep us on schedule.

I can't give you a month at this time. I'm still saying early. I'll say sometime generally in the next few months. But, sorry, I can't give you more information on that.

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Our next major step would be to publish a draft regulatory basis and have a public meeting. We would have a meeting notice on the NRC's website for that. That would be the second bullet is that meeting during the comment period on the draft regulatory basis.

The staff will consider that feedback from these meetings we've already had in the additional meeting and any written comments we get before publishing a final regulatory basis. Next slide.

You can find information about this rulemaking activity on regulations.gov. You would find that by searching for the docket I.D. NRC-2016-0145 as shown on the slide there. You can also sign up for email alerts by clicking on the docket folder and then there's a link to sign up for email alerts. You would get an email whenever anything is added.

A summary and a transcript of this meeting today will be made publicly available on the NRC's website and also posted on regulations.gov within 30 days.

Please let us know if you're satisfied with today's meeting or if you have any suggestions for how we could make it more effective. There are feedback

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forms in both sides of the room that you can fill out and leave with an NRC staff member or drop in the mail later.

If you think of something and don't have a form, you could scan this QR code or go to the NRC's Calendar of Public Meetings and find this meeting. You'll see a link in there to be able to provide online feedback.

This is not substantive comments on the topic. This is solicitation for feedback on the effectiveness of the meeting and scheduling, communication, that kind of thing.

If you did not sign the attendance list, I would appreciate it if you would do that before you leave. We have attendance lists on both sides.

Thank you for attending and have a great day. That concludes today's meeting. Thank you.

(Whereupon, the above-entitled matter went off the record at 2:59 p.m.)

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