RulemakingComments Resource

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Attached are Exelon Generation Company, LLC's comments in support of the Petition For Rulemaking, PRM-73-16, NRC-2013-0024.

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June 6, 2013

Ms. Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Starff
Washington, DC 20555-0001

Re: ***Nuclear Energy Institute's Comments on Petition for Rulemaking to Amend 10 C.F.R. § 73.56, "Personnel access authorization requirements for nuclear power plants"*** **(PRM-73-16)**

Dear Ms. Vietti-Cook:

Exelon Generation Company, LLC[1] submits these comments in support of the Petition For Rulemaking 73-16 filed by the Nuclear Energy Institute ("NEI") on January 25, 2013.

The Petition should be granted because it involves the exceptionally important question whether, under NRC regulations, third party, non-expert labor arbitrators are allowed to overrule and reverse security clearance decisions made by security specialists, and affirmed through an internal management review process, at nuclear power facilities operated by NRC licensees. More specifically, the question is whether the NRC intended to grant untrained labor arbitrators unfettered authority to substitute their judgment as to whether an individual is "trustworthy and reliable" within the meaning of 10 C.F.R. § 73.56 and the licensees' access criteria for the contrary judgments of the licensees' trained and experienced security specialists. The NRC's regulations (10 C.F.R. § 73.56, "Personnel access authorization requirements for nuclear power plants") are clear on this issue and support a conclusion that the NRC had no such intention. The regulations require licensees to implement and maintain an access authorization program that "must provide high assurance that the individuals [to whom a licensee grants unescorted access] are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage." (10 C.F.R. § 73.56(c)

[1] Exelon Generation owns and operates seventeen active reactors at ten nuclear power facilities in Illinois (Braidwood Units 1 and 2, Byron Units 1 and 2, Clinton, Dresden Units 1 and 2, LaSalle Units 1 and 2, Quad Cities Units 1 and 2), Pennsylvania (Limerick Units 1 and 2, Peach Bottom Units 1 and 2, Three Mile Island Unit 1), and New Jersey (Oyster Creek, Unit 1). Employees at its Illinois facilities are represented by Local 15 (at five sites) and Local 51 (at Clinton) of the International Brotherhood of Electrical Workers ("IBEW"). Employees at its Three Mile Island and Oyster Creek facilities are also represented by locals of IBEW. In addition, Exelon Generation owns a majority interest in Constellation Nuclear Energy Group, LLC, which owns five active reactors at three sites in Maryland (Calvert Cliffs, Units 1 and 2) and New York (Ginna, Unit 1, and Nine Mile Point, Units 1 and 2). Employees at Nine Mile Point are represented by Local 97, IBEW.

(emphasis added).) The obligation to provide high assurance of trustworthiness and reliability includes ensuring that an individual to whom unescorted access is granted "does not pose a threat to interrupt the normal operations of the plant or to commit radiological sabotage." ("Access Authorization Programs," www.nrc.gov/reactors/operating/ops-experience/access-authoriation.html.) By regulation, "[o]nly a licensee shall grant an individual unescorted access" to the licensee's nuclear power facilities. (10 C.F.R. § 73.56(a)(4) (emphasis added); *see also*, § 73.56(h)(1) (only a licensee's "reviewing official shall determine whether to grant [or] deny . . . an individual's unescorted access authorization status, based on an evaluation of all the information required by" 10 C.F.R. § 73.56).) Individuals denied unescorted access may appeal the denial through a process that "must provide for an impartial and independent internal management review." (10 C.F.R. § 73.56(l).)

As noted in NEI's Petition, the Seventh Circuit recently concluded that this clear regulatory language from the 2009 amendments to the access regulations must be read in conjunction with the NRC's comments to the 1991 rulemaking for the original access regulations and that, when so read, the clear language in § 73.56 becomes ambiguous and does not foreclose review of unescorted access denials by an untrained labor arbitrator. (*Exelon Generation Company v. Local 15, International Brotherhood of Electrical Workers*, 676 F.3d 566 (7th Cir. 2012) (discussed in NEI's Petition (73-16) at p. 2).) To the extent labor arbitrators may ultimately hold the power to deem someone as trustworthy and reliable whom the licensee has determined not to be trustworthy and reliable, licensees no longer retain control over maintaining an access authorization program that provides "high assurance" that the individuals to whom the licensee grants unescorted access are trustworthy and reliable. As a result, the Seventh Circuit's decision places Exelon Generation in the untenable position of potentially having to decide whether it will (1) honor the ruling of an untrained labor arbitrator reversing the finding of Exelon Generation's security specialist and risk a finding by the NRC that it failed to provide "high assurance" of trustworthiness and reliability or (2) refuse to honor the arbitrator's ruling and risk entry of court order compelling Exelon Generation to comply with the arbitrator's award. No reading of the NRC's regulations or comments to the 1991 rulemaking reflects or suggests that the NRC intended either of these results.

In its ruling, the Seventh Circuit expressly invited and encouraged the NRC to take action to rectify what the Seventh Circuit described as an "ambiguity" in the regulations resulting from the NRC's silence in the 2009 rulemaking on the issue of arbitrating access decisions (*Exelon Generation*, 676 F.3d at 572, 574, 575) and the "disturbing" consequence of permitting labor arbitrators who have neither specialized expertise nor required training to review and potentially reverse an access decision. (*Exelon Generation Company, LLC v. Local 15, International Brotherhood of Electrical Workers*, 682 F.3d 620, 621 (7th Cir. 2012) (Posner, J.) (cited as "*Exelon Generation II*") (concurring).) As Judge Posner noted in discussing this "disturbing" consequence:

> There are enough indications of split-the-difference behavior in labor arbitrators to make one worry about the possible tendency of an arbitrator ... to impose a sanction that would enable [an employee] to retain a right of unescorted access to the facility even if he were a drug addict, a drunkard, and a congenital liar all rolled up into one.

682 F.3d at 622. For these reasons and the reasons described in NEI's Petition, as more fully explained herein, Exelon Generation fully supports NEI's Petition.

A. Access Denials Currently Being Grieved

Prior to discussing the statutory and policy reasons supporting NEI's Petition and the NRC's authority in this area, a discussion of grievances filed by the union locals representing various Exelon Generation former employees and pending arbitration provides context for Exelon Generation's and NEI's comments.

1. Glycol spill arbitrations

Exelon Generation is currently arbitrating two grievances challenging the denial of unescorted access to two grievants who worked at an Exelon Generation facility in Illinois. The access denials at issue arose from the same incident. Both grievants were responsible for a glycol spill that could have made its way into the system that cycles water to the reactor. Had that happened, it could have damaged the nuclear reactor. It is undisputed that both grievants went to great lengths to cover up the spill and lied during management's investigatory interviews to identify the individual(s) responsible for the spill and cover up, despite the fact that both individuals were told at the beginning of the interview that lying during a Company investigation is grounds for immediate discharge from employment. One of the grievants ultimately came forward and disclosed his responsibility for the spill and the cover up. Exelon Generation terminated both grievants for lying during a Company investigation and covering up the spill. In addition, Exelon Generation's security specialist, after a thorough review of the evidence collected during the investigation, determined that each grievant spilled the glycol, attempted to cover up the spill, and then lied during the Company's investigation about their knowledge of or involvement in the spill and cover up. On this basis, the security specialist determined that each grievant was no longer trustworthy and reliable and denied them unescorted access to Exelon Generation's nuclear power facilities. Those access decisions were subsequently affirmed through Exelon Generation's internal management review process. Exelon Generation and the union agreed to arbitrate the termination decision first, while holding the access denial grievance in abeyance pending a decision in the litigation referenced above. In reviewing whether Exelon Generation had "proper cause" under the collective bargaining agreement to discharge the grievants' employment, the arbitrators in both cases found that Exelon Generation did not have proper

cause because the grievants might have been induced to "come clean" by ambiguous statements made by the plant manager to the union that could have been taken to mean that the plant manager was pledging not to seek their discharge in exchange for honesty. Following the Seventh Circuit's ruling and in the absence of immediate action by the NRC, Exelon Generation had no choice but to arbitrate the denial of unescorted access. One grievance was heard the first week of May (ruling is still pending) and the other grievance is to be heard shortly.[2]

2. Request for arbitration of a denial of unescorted access for two verified confirmed positive test results

In another matter involving an employee at an Exelon Generation facility in Pennsylvania, the union has filed to arbitration a grievance challenging the discharge of an employee for an admitted fitness-for-duty violation and denial of his unescorted access for a second verified confirmed positive for drugs or alcohol. It is undisputed that under the NRC's regulations, a second verified confirmed positive drug/alcohol test result must result in the denial of unescorted access for a minimum of five years. (10 C.F.R. § 26.75(e)(2).) Despite this clear regulatory language, the union challenges the discharge decision on the grounds that the grievant had a break in service between the two fitness for duty violations. The union's assertion has no support in the regulations, and in fact, the NRC has addressed this issue in various frequently asked questions. If the Seventh Circuit's opinion is adopted in the Third Circuit (covering Pennsylvania), the labor arbitrator potentially has the authority to impose his judgment on the licensee and enter a finding that the grievant's access should be reinstated despite two admitted fitness-for-duty violations.

B. Clarifying The NRC's Regulations To Expressly Prohibit Third Parties (Including Arbitrators) From Reversing Or Second Guessing Licensee Access Decisions Is Consistent With, And Required By, The Atomic Energy Act

The Atomic Energy Act ("AEA") provides that "regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public." (42 U.S.C. § 2012 (emphasis added); *see also*, 42 U.S.C. § 2013(c).) The AEA authorizes the NRC to issue licenses to private entities to operate

[2] A number of commenters in opposition to NEI's Petition assert that licensees and unions have been arbitrating access denials for years. The record in the Seventh Circuit case is devoid of a reference to any access denial that Exelon Generation and Local 15 arbitrated. While Exelon Generation recently arbitrated an access denial in the glycol spill case, it did so only after the Seventh Circuit ruled that the regulations do not preclude arbitration of access denials. Exelon Generation is not aware of any access denials at its other facilities that it has arbitrated with its other locals (grievances are pending, but have not been arbitrated).

nuclear reactors, subject to the rules and regulations of the NRC, as "necessary to promote the common defense and security and to protect the health and safety of the public." (42 U.S.C. § 2133(a), (b)(3) (emphasis added); *see also,* 42 U.S.C. §§ 2014(f) and 5841.) Through the AEA, Congress vested the NRC with exclusive jurisdiction over the subject of common defense and security and protection of the public health and safety. The NRC, in turn, delegated to NRC licensees responsibility for ensuring that their plants, and the employees who work at their plants, do not pose a risk to the common defense and security and do not endanger the health and safety of the public.

Given this statutory and regulatory authority, there can be no dispute that a licensee's decision to grant or deny unescorted access to an individual is a security clearance decision made in the interest of national security. The NRC has not delegated the authority to make an access decision to any entity other than a NRC licensee. (10 C.F.R. § 73.56(a)(4) ("[o]nly a licensee shall grant an individual unescorted access").) Neither the AEA nor the express language in the NRC's regulations allow for untrained, non-licensee labor arbitrators (or any other third parties, for that matter) making security clearance decisions.

1. **The NRC's comments in the 1991 rulemaking do not reflect the NRC's intention to allow arbitrators the authority to reverse a licensee's access decision**

Putting aside that the AEA does not authorize the NRC to delegate the security clearance decision to a third party non-licensee, a reading of the NRC's comments in the 1991 rulemaking reveals no such intention on the NRC's part. Contrary to the implication of the Seventh Circuit's decision and the comments of some opponents to NEI's Petition, prior to the 2009 rulemaking, the NRC did not endorse wholesale second-guessing of unescorted access decisions by untrained third party labor arbitrators. In its commentary on its rules published in 1991, ten years before the 9/11 attacks, the NRC responded to an objection from a commenter who raised the specter of independent adjudicators allowing into nuclear power facilities individuals who presented a serious threat to plant security. The NRC responded: "if the evidence indicates a proper application of relevant criteria in excluding an employee, the review procedure, if utilized, should result in a decision vindicating the management action." (Final Rule, 56 Fed. Reg. 18977, at 19003 (1991).) At best, this language reflects an acknowledgment that third parties could review whether the security clearance procedures were followed; the language does not support a conclusion that the NRC intended to allow an untrained third party arbitrator the discretion to second guess and overturn the licensee's access decision. Others asserted that there was no need for a required review because the employees were entitled to review under their collective bargaining agreements. (Final Rule, 56 Fed. Reg. at 19002.) In response, the NRC acknowledged that it was not taking away any existing rights that an employee might have. But, in this regard, the NRC expressly noted that "the Commission has not seen evidence that union collective bargaining agreements

(where they exist) would automatically include denial or revocation of access authorization as a grievable action." (56 Fed. Reg. at 19002.) In other words, even in 1991, there was no indication that the NRC was aware of a practice now potentially allowed by the Seventh Circuit that would treat the licensee's security clearance decision like any other adverse employment action subject to the grievance and arbitration process of a collective bargaining agreement. At best, the record indicates that in 1991, the NRC was willing to accept a due process type review performed under a collective bargaining agreement. That is exactly what NEI's Petition seeks.

Just as important, it must be kept in mind that the 2009 regulatory amendments to the access regulations were part of comprehensive action by the NRC to tighten up security at nuclear plants as part of this country's response to the 9/11 attacks. It is not surprising that in light of that stated purpose, the NRC would rule in 2009 that outsiders, who know next to nothing about security matters, could not be making access decisions.

2. Security clearance decisions must be made by trained and experienced specialists

In making a security clearance decision, a licensee must determine whether an individual is "trustworthy and reliable." That determination is much broader than a common sense understanding of the terms "trustworthiness" and "reliability." Although both terms certainly contemplate individuals who tell the truth and are honest, a finding of trustworthiness and reliability is based on so much more than whether someone tells the truth. As explained in §§ 73.56(d)-(e), an initial finding of trustworthiness and reliability requires a complete and thorough evaluation of an individual's background, including employment history, military service, education, credit history, character and reputation; a criminal history investigation based on fingerprints submitted to the FBI under § 73.57; a psychological assessment designed to identify the possible "adverse impact of any noted psychological characteristics on the individual's trustworthiness and reliability" (10 C.F.R. 73.56(e)); and a drug and alcohol test in accordance with 10 C.F.R. Part 26. The trustworthiness and reliability evaluation is not a discrete, one time decision. For all individuals holding unescorted access, the licensee must continuously monitor trustworthiness and reliability through a review and evaluation of any legal actions involving the individual (10 C.F.R. § 73.56(g)) and a behavioral observation program designed to detect "behaviors or activities that may constitute an unreasonable risk to the health and safety of the public and common defense and security, including a potential to commit radiological sabotage." (10 C.F.R. §§ 73.56(f)(1), 26.33.) Evaluating all of this information and making assessments of the information requires specialized expertise based on extensive training and experience.

In this regard, the United States Supreme Court has made it crystal clear that, as a matter of Constitutional law, non-expert agencies and individuals may not review or second guess

security clearance decisions. In *Department of Navy v. Egan*, 484 U.S. 518, 520, 527 (1988), the Supreme Court said that the question whether someone should be denied security clearance could be answered only by making a "predictive judgment" regarding possible future behavior. It cautioned that:

> Predictive judgments of this kind must be made by those with the necessary expertise in protecting classified information. For "reasons . . . too obvious to call for enlarged discussion," [citations omitted], the protection of classified information must be committed to the broad discretion of the agency responsible, and this must include broad discretion to determine who may have access to it. Certainly, it is not reasonably possible for an outside nonexpert body to review the substance of such a judgment and to decide whether the agency should have been able to make the necessary affirmative prediction [as to whether the person is a security risk] with confidence. Nor can such a body determine what constitutes an acceptable margin of error in assessing the potential risk.

484 U.S. 529-530. The logic of the Supreme Court opinion applies equally to the NRC's access regulations[3] and the authority of the NRC to delegate unescorted access security clearance decisions to licensees and to preclude non-licensee third parties from substituting their own judgments for the judgment of licensees. *Beattie v. Boeing Co.*, 43 F.3d 559, 566 (10th Cir. 1994) (private party's authority to "grant or deny escorted access clearance" derived from a federal agency delegation and is entitled to deference and cannot be second-guessed by the court).

C. Labor Arbitrators Are Not Trained And Do Not Have Expertise To Make Security Clearance Decisions Under the NRC's Regulations

The labor arbitrator, like a court, is not an expert in national security matters and is not in a position to decide whether someone is a threat to interrupt normal plant operations or to commit radiological sabotage or to provide "high assurance" that individuals granted unescorted access are trustworthy and reliable. In fact, in the glycol spill arbitrations referenced above, one of the arbitrators wrote, "I know next to nothing about the rules regarding security clearance and how they are implemented." None of the opponents to NEI's Petition asserts that labor arbitrators possess the requisite skill, expertise, or training to make security clearance decisions. Rather, the essence of the opposition centers on assertions that licensees' access authorization programs are unfair and rely on minor offenses to support the arbitrary discharge from employment of numerous employees who rely on the nuclear

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[3] One of the agencies specifically mentioned by the Court as a civilian body that was making decisions that that affected national security was the Atomic Energy Commission.

industry for their livelihood.[4] While the opponents expressly acknowledge the importance of safety in a nuclear power facility and represent that they have no intention of advocating on behalf of individuals who truly pose a threat to nuclear facilities, none of the opponents to NEI's Petition addresses the crux of the matter at issue here. An unescorted access decision under 10 C.F.R. § 73.56 is a security clearance decision. It is not an employment discharge decision or employment decision in general. The fact that the end result of the security clearance decision may very well be discharge from employment does not change the nature of the access decision itself as a security clearance decision completely removed from the employment decision. For the reasons explained herein, such security clearance decisions must be made by licensee security specialists who are trained in the NRC regulatory requirements and licensee's access criteria and who possess the expertise and learned judgment to make predictive assessments regarding individuals' behavior.

Labor arbitrators are certainly highly skilled; they undergo years of training and develop an expertise in traditional labor law and evaluating whether proper or "just cause" for discharge from employment exists under collective bargaining agreements. In evaluating proper or just cause for discharge, labor arbitrators rely on a notion of "industrial justice" based on years and years of labor arbitral awards and arbitral experience. That history of industrial justice and arbitral experience does not include familiarity with the NRC regulations for determining the trustworthiness and reliability of an individual. Industrial justice typically requires a balancing of the employee's length of employment, work performance, and record of progressive discipline against the severity of the infraction as compared to other infractions and consistency in treatment of employees engaging in similar offenses. In the industrial justice world, a serious infraction by a thirty year employee may be "forgiven" because of his long tenure with the employer. The employee's length of employment is not, however, dispositive of his trustworthiness and reliability at the time of his actions nor predictive of the employee's behavior going forward. Labor arbitrators typically place the interests of employees ahead of employer interests, giving rise to the tendency to engage in a "split-the-difference behavior" that could give rise to an arbitrator entering an award that "would enable [an employee] to retain a right of unescorted access to the facility even if he were a drug addict, a drunkard, and a congenital liar all rolled up into one." *Exelon Generation II*, 682 F.3d at 622. Security clearance decisions cannot be based on the same type of "split-the-difference" approach. While fairness to an employee is certainly a consideration in making a security clearance decision, it is not the only or a paramount consideration. Those

[4] Assertions of significant numbers of denials appear to be inflated. Of the approximately 110,000 to 112,000 individuals recorded in the Personnel Access Data System (a national database used by licensees to record access decisions) as holding unescorted access at all of the nuclear power facilities in the United States at any given time for the years 2010 through 2012, only .5% to .6% of those unescorted access decisions resulted in a subsequent denial of unescorted access. That small percentage accounts for all individuals holding unescorted access with a nuclear operator during the given period, including management and bargaining unit employees.

considerations must give way to the overall obligation of a licensee or individual making a security clearance decision to ensure the safety and security of the plant, the employees working at the plant, the public health and welfare, and the common defense.

The glycol spill arbitrations clearly showcase the dichotomy between arbitrating proper or just cause for discharge and arbitrating the appropriateness of a security specialist's decision to deny unescorted access to a grievant. In sustaining the discharge grievances and ordering the reinstatement to employment of each grievant, both arbitrators acknowledged the grievants' deception and dishonesty, but reinstated them (pending a determination on access) based on an alleged promise by the plant manager to be lenient if the responsible individual(s) came forward and disclosed their involvement in the spill. Having decided the employment issue, the arbitrators – admittedly qualified to make decisions based on traditional labor law – are now required to switch hats and transition from making an employment decision under the collective bargaining agreement to making a security clearance decision under the NRC's regulations – a decision they are clearly unqualified to make. While the plant manager's alleged promise of leniency may have bearing on the employment decision (the decision to discharge employment based on the misconduct), it has no or little bearing on a determination of whether the grievants are trustworthy and reliable under the NRC's regulations and Exelon Generation's access criteria. The fact that the individuals failed to report the spill, covered it up, lied during the investigation, and told the truth only when they thought they would not suffer any consequences demonstrates, even based on a layperson understanding of "trustworthiness," that these grievants are not trustworthy or reliable. Yet, the union persists in arbitrating the decision by Exelon Generation's security specialist (as affirmed through the internal management review process) to deny these individuals unescorted access. If one of the untrained, unqualified arbitrators determines that the Exelon Generation security specialist and the appeal reviewer were wrong in their assessments of the grievants' trustworthiness and that the denial should be reversed, Exelon Generation will be forced to decide whether it allows the grievant(s) to inprocess for unescorted access, potentially in violation of its obligation to provide "high assurance" that the grievants are trustworthy and reliable, or decline to follow the arbitrator(s)' ruling and risk a court order compelling it to comply with the arbitrator's award. Will the opinion of a labor arbitrator who admittedly knows nothing about nuclear security overrule the decision of Exelon Generation's security specialist who has received extensive training, has had extensive interactions with the NRC on the issue of access authorization, and has extensive experience in making the predictive judgments about an individual's trustworthiness and reliability? Nothing in the clear language of the regulations or the NRC's comments in the 1991 rulemaking indicates the NRC ever contemplated or consciously agreed to allow such a scenario.

D. Additional Concerns Of Unfairness Are Misplaced

As further support for the unfairness in access programs, opponents to the Petition assert that licensees fail to provide individuals denied unescorted access with a full or clear explanation for the denial decision and representation during the review process. Putting aside Exelon Generation's disagreement with such an assertion, the venue for challenging this "unfairness" is at the NRC, not through arbitration. The NRC's regulations require licensees to provide an individual to whom access has been denied "[a]ll information pertaining to a denial" of unescorted access (10 C.F.R. § 73.56(m)(2)) and access to an appeal process that "ensure[s] the individual is informed of the grounds for the denial or unfavorable termination" (10 C.F.R. § 73.56(m)(2).) The regulations also require that licensees implement an appeals process that "allow[s] the individual an opportunity to provide additional relevant information and an opportunity for an objective review of the information" upon which the licensee security specialist based the denial. (10 C.F.R. § 73.56(l).) The regulations further allow an individual to designate someone, including a union, to represent the individual with respect to a denial of unescorted access. (10 C.F.R. § 73.56(m)(1)(i), (m)(2).)

All the protections the opponents seek already exist in the regulatory requirements. Licensees are not given free reign to make arbitrary or capricious decisions. The NRC monitors all aspects of the licensee's operation of its nuclear power plants, including the access authorization requirements, and regularly audits the access authorization files to ensure compliance with the regulatory requirements and fairness to the individual. (www.nrc.gov/reactors/operating/ops-experience/access-authorization/faq.html,"Frequently Asked Questions About Access Authorization" (Question: "How does the NRC check that a plant's access authorization process is fair and adhering to regulations?" Answer: "Each licensee is subject to inspections conducted by the NRC. NRC inspectors review a plant's access authorization program to ensure that it is being conducted in compliance with NRC regulations.")) Any person who believes he was unfairly denied unescorted access may raise a concern with the NRC.(www.nrc.gov/about-nrc/regulatory/allegations/safety-concern.html; *see also*,"Frequently Asked Questions About Access Authorization," www.nrc.gov/reactors/operating/ops-experience/access-authorization/faq.html (Question: "What are my recourses if I believe that my employer revoked my access authorization unfairly?" and "How can I appeal an access authorization denial or withdrawal?" Answer: ". . . you can file an allegation with the NRC."))

A number of commenters in opposition to the Petition assert that NEI's Petition will somehow chill employees in raising nuclear safety concerns for fear of retaliation. It is unclear from those commenters how raising a concern about nuclear safety would or could result in a denial of unescorted access. In any event, NEI's Petition and its proposed amendments to the access regulations at 10 C.F.R. § 73.56 have no impact on and propose no changes to the NRC's regulatory prohibition in 10 C.F.R. § 50.7 on retaliating against

individuals who raise safety concerns or a similar prohibition in Section 211 of the Energy Reorganization Act.

Please contact me or Tamra Domeyer at (630) 657-3753 (tamra.domeyer@exeloncorp.com) if you need additional information or clarification of these comments.

Very truly yours,

Michael J. Pacilio
Chief Nuclear Officer