

**Third Party Review of Nuclear Power Reactor Licensee
Access Authorization and Fitness-for-Duty Determinations Rulemaking
Reference Material for Public Meeting
(to be made publicly available 30 days before meeting)**

The U.S. Nuclear Regulatory Commission (NRC) staff is conducting a public meeting to present the status of the rulemaking regarding third-party review of nuclear power reactor licensee access authorization (AA) and fitness-for-duty (FFD) determinations, as well as the NRC staff's planned next steps. At this time, based, in part, on the NRC staff's assessment of new information provided by external stakeholders, the NRC staff expects to recommend that the Commission authorize the staff to discontinue this rulemaking. Instead, the staff would propose to update NRC guidance to describe acceptable means of achieving an appeal process, including arbitration. The NRC staff also intends to solicit input from stakeholders on guidance updates that would be appropriate to describe appeal processes and FFD determinations.

Background:

- On November 15, 2015, the Office of Nuclear Security and Incident Response submitted [SECY-15-0149](#), "Role of Third-Party Arbitrators in Licensee Access Authorization and Fitness-For-Duty Determinations at Nuclear Power Plants" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16063A268), to the Commission, providing options to clarify that only licensees can make final decisions on access authorization and fitness-for-duty determinations.
- On June 6, 2016, in [SRM-SECY-15-0149](#) (ADAMS Accession No. ML16158A286), the Commission directed the staff to proceed with the normal rulemaking process, including the development of a regulatory basis document, and to make specific outreach to potentially affected labor organizations regarding the proposed content and timeframe for the proposed rule, in addition to the staff's normal outreach efforts. The Commission further directed the staff to include, in the proposed rule, a robust appeal process for workers whose AA is denied or revoked.
- On November 16, 2016, the staff held the first public meeting to provide information on the background and status of this rulemaking activity and to obtain input from interested stakeholders, including the unions and industry representatives. (Meeting summary is publicly available at ADAMS Accession No. [ML16336A034](#).)
- On December 12, 2016, the staff held a closed meeting to discuss several specific cases referenced in SECY-15-0149 and other cases that may be relevant to this rulemaking activity. (Meeting summary is publicly available at ADAMS Accession No. [ML16355A092](#).)
- On January 31, 2017, and February 6, 2017, the International Brotherhood of Electric Workers (IBEW) voluntarily provided the staff with specific data, including the number of arbitration cases and the outcome of these cases. The data provided by IBEW was limited only to the data that IBEW locals provided and was not necessarily a complete list of all IBEW cases or arbitrations conducted by other unions or brought by individuals independent of any union involvement.

- On February 13, 2017, the staff held a second public meeting at the request of IBEW to provide additional outreach for the public to express their views on the AA/FFD rulemaking effort. (Meeting summary is publicly available at ADAMS Accession No. [ML17067A171](#)).

Discussion and Next Steps:

During the development of the regulatory basis (RB) document, the staff considered the feedback received from external stakeholders, including the data from IBEW. The staff used this information to evaluate the staff's prior position that it was necessary to prohibit third-party arbitrators from overturning AA and FFD determinations—i.e., to overturn Commission precedent ([56 Federal Register 18997](#)) indicating that processes included in bargaining agreements were acceptable. Based on this new information, the staff evaluated whether arbitration cases to date have resulted in a significant safety or security concern that warrants engagement in rulemaking to address the role of arbitrators in licensee AA or FFD determinations. The staff did not find evidence of cases or arbitration practices that would create such a concern.

As part of the rulemaking process, the staff performed a preliminary cost analysis, which concluded that the rulemaking option would not be cost-justified, based on a mean net cost of \$4.5 million using a 7percent discount rate. The staff also notes that no significant qualitative or quantitative benefits were identified that would offset the costs.

This caused the staff to re-evaluate its path forward and consider options other than rulemaking, and place on hold its efforts to finalize a RB document that would justify further rulemaking activities. The staff expects to recommend that the Commission authorize the staff to discontinue this rulemaking. The staff is evaluating whether to pursue an update to NRC guidance to provide guidance on robust appeal processes, which could include a role for arbitrators.

The staff is conducting this public meeting to present the status of rulemaking and solicit input from stakeholders on guidance updates that may be appropriate to describe appeal processes for AA and FFD determinations. The staff would like to engage the public to discuss the following questions during the meeting:

- What are the elements of a robust appeals process?
- What has been your experience with current appeal processes for access authorization denials or revocations or fitness-for-duty determinations?
- For licensees that do not include AA and FFD determinations within the scope of arbitration under their collective bargaining agreements, what alternative approaches have been used that balance employee rights with the responsibility of licensees to ensure trustworthiness and reliability?
- Would a review panel vice a single-person review of access revocations and/or denials be beneficial to both parties in the appeal process?
- If a review panel is used in access denials and/or revocations, should panel members be required to meet specific qualifications to participate on the panel?

After the public meeting, the staff will consider the feedback received from the public to inform its path forward, and the staff will submit a notation paper to the Commission describing the staff's recommended approach.