

SUNSI Review Complete
Template = ADM-013
E-RIDS=ADM-03
ADD: Mark Resner

As of: 6/18/20 10:24 AM
Received: June 15, 2020
Status: Pending_Post
Tracking No. 1k4-9h9s-x299
Comments Due: June 15, 2020
Submission Type: Web

PUBLIC SUBMISSION

COMMENT (11)
PUBLICATION DATE:
3/31/2020
CITATION 85 FR 17770

Docket: NRC-2020-0073

Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals
Working At Nuclear Power Plants

Comment On: NRC-2020-0073-0001

Clarification of Personnel Access Authorization Requirements for Non- Immigrant Foreign Nationals
Working at Nuclear Power Plants

Document: NRC-2020-0073-DRAFT-0012

Comment on FR Doc # 2020-06473

Submitter Information

Name: Sarah Kane

General Comment

See attached file for Arizona Public Service (APS) comments on Draft Regulatory Issue Summary 2020-XX,
"Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals
Working at Nuclear Power Plants;" Docket ID NRC-2020-0073

Attachments

CORR 102-08114_EXTERNAL



**Palo Verde
Nuclear Generating Station**
5871 S. Wintersburg Road
Tonopah, AZ 85354

102-08114-MDD/SMK
June 15, 2020

ATTN: Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: **Palo Verde Nuclear Generating Station Units 1, 2, and 3
Comments on Draft Regulatory Issue Summary 2020–XX,
“Clarification of Personnel Access Authorization Requirements
for Non-Immigrant Foreign Nationals Working at Nuclear
Power Plants;” Docket ID NRC–2020–0073**

Dear Ms. Vietti-Cook:

Arizona Public Service (APS) appreciates the opportunity to review and provide comments for consideration by the U.S. Nuclear Regulatory Commission (NRC) on the Draft Regulatory Issue Summary (RIS) related to personnel access authorization requirements for non-immigrant foreign nationals working at nuclear power plants. APS is an owner and the operator of the three-unit Palo Verde Nuclear Generating Station (PVNGS) in Arizona. APS has been an active participant in industry discussions and development of comments, and hereby endorses the comments provided by the Nuclear Energy Institute (NEI) on the Draft RIS.

APS is committed to continued compliance with the requirements of 10 CFR 73.56, “Personnel access authorization requirements for nuclear power plants,” which are designed to provide high assurance that individuals subject to access authorization programs are trustworthy and reliable, and do not pose an unreasonable risk to public health and safety or the common defense and security.¹ Included within these requirements is the “verification of true identity,” required by 10 CFR 73.56(d)(3), which is the subject of the Draft RIS.

¹ 10 CFR 73.56(c).

102-08114-MDD/SMK

ATTN: Document Control Desk

U.S. Nuclear Regulatory Commission

Comments on Draft Regulatory Issue Summary, "Clarification of
Personnel Access Authorization Requirements for Non-Immigrant
Foreign Nationals Working at Nuclear Power Plants"

Page 2

APS agrees with the Draft RIS that "licensees must take reasonable steps to access reliable, independent sources of information, in addition to the information provided by the applicant to verify the applicant's claimed non-immigration status,"² which it currently does through the use of the Department of Homeland Security U.S. Citizenship and Immigration Services (DHS-USCIS) Systematic Alien Verification for Entitlements (SAVE) program. The use of SAVE is not universal in the nuclear industry and it is our understanding that consistent with APS, when SAVE is used, it traditionally has not been used by access authorization organizations to confirm that the specific visa category of an individual matches the work they will perform, which is a separate area of personnel scrutiny not related to true identity. Furthermore, the NRC has performed inspections at APS and at power plant licensees throughout the U.S. and based on our research, the positions presented in the Draft RIS have not been stated, nor enforced by the NRC until now.

In that light, the Draft RIS, substantially expands this validation process by requiring review of the individual's immigration and employment status. By doing so, the Draft RIS inappropriately and unnecessarily integrates employment and immigration law into unescorted access authorization programs. It likewise inappropriately places requirements on a licensee's reviewing official to become trained immigration specialists with an understanding of the various work eligibility codes. It does so even when most licensees – such as APS – are generally not the direct employer of the subject foreign national. APS believes that vetting a foreign national's visa is important and does so separate and apart from the PVNGS access authorization program *when* APS is the employer of that foreign national as is required of *employers* pursuant to DHS regulations at 8 CFR 274a.2. This is a separate and distinct requirement from the NRC's requirements of 10 CFR 73.56, and should remain so.

² Draft RIS at pg. 1.

Additionally, the Draft RIS states that it "reinforces NRC's expectations" that licensees verify that a non-immigrant foreign national possesses a visa in the correct visa category to perform the type of work for which access is granted. However, as detailed in NEI's comments, both the Draft RIS and related EGM-20-001³ point to the fact that NRC's expectations with respect to appropriate methods for complying with the true identity requirement in 10 CFR 73.56(d)(3) have lacked clarity.⁴ Adding to this regulatory uncertainty is EGM-20-001, which clearly communicates that the NRC's efforts to "clarify" the issue will require changes to licensees' access authorization processes.⁵ For the NRC to now require this additional activity and to infer that not performing this activity warrants enforcement discretion because it is a violation⁶, is inconsistent with the NRC's backfitting regulations at 10 CFR 50.109.

For the reasons described above, APS endorses NEI's comments and does not believe that the NRC should finalize the Draft RIS. Although APS disagrees with issuance of the RIS, APS supports NEI's proposal to work expeditiously with the NRC to more clearly articulate acceptable methods of complying with Section 73.56(d)(3) as described in NEI's comments. If the NRC decides that the Draft RIS should be finalized, then the backfitting implications of the expansive position currently communicated in the Draft RIS must be addressed in compliance with 10 CFR 50.109.

³ NRC Enforcement Guidance Memorandum (EGM) 2020-001, Enforcement Discretion Not to Cite Certain Violations of 10 CFR 73.56 Requirements, dated February 13, 2020 (available at ADAMS Accession No. ML19316A667).

⁴ See, e.g., EGM-20-001, at pg. 1 ("[T]he NRC has identified the need to clarify existing regulatory requirements that licensees are required to meet to demonstrate compliance."); Draft RIS, at pg. 1 (entitled "Clarification of Personnel Access Authorization Requirements for Nonimmigrant Foreign Nationals Working at Nuclear Power Plants").

⁵ EGM-20-001, at pg. 3 ("moving forward a change to the unescorted access [UA] and unescorted access authorization [UAA] processes should be implemented for subsequent AA [access authorization] evaluations."). See also EGM-20-001, at pg. 4 ("The Office of Nuclear Security and Incident Response [NSIR] will (1) develop and issue revised guidance describing an acceptable approach for complying with 10 CFR 73.56(d)(3), and (2) update applicable inspection guidance accordingly. To ensure this matter is broadly understood by the nuclear industry, NSIR will also develop and issue a generic communication product to inform or clarify to affected NRC licensees the means by which "true identity" must be validated in accordance with 10 CFR 73.56(d)(3) requirements.").

⁶ See *id.*

102-08114-MDD/SMK
ATTN: Document Control Desk
U.S. Nuclear Regulatory Commission
Comments on Draft Regulatory Issue Summary, "Clarification of
Personnel Access Authorization Requirements for Non-Immigrant
Foreign Nationals Working at Nuclear Power Plants"
Page 4

If you have any questions or require additional information, please contact Theresa
Jones, Nuclear Security Program Section Leader, at (623) 393-1653 or
Theresa.Jones@aps.com.

Sincerely,

Dilorenzo, Michael
D(Z99838)



Digitally signed by Dilorenzo, Michael
D(Z99838)
DN: cn=Dilorenzo, Michael D(Z99838)
Date: 2020.06.15 08:45:32 -07'00'

Michael DiLorenzo
Nuclear Regulatory Affairs Department Leader

MDD/SMK/mg

cc: S. P. Lingam
C. A. Peabody

NRC NRR Project Manager for PVNGS
NRC Senior Resident Inspector for PVNGS