



L-2022-138

Office of Administration
Mail Stop: TWFN-7-A60M,
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Program Management
Announcements and Editing Staff

Re: Draft Regulatory Issue Summary (RIS) 2022-XX; Request for Comment,
"Personnel Access Authorization Requirements for Non-Immigrant Foreign
Nationals Working at Nuclear Power Plants" (Docket ID NRC-2022-0119)

Reference:

FPL letter from William L. Parks to U.S. Nuclear Regulatory Commission, "Request
for Comment on draft RIS, "Clarification of Personnel Access Authorization
Requirements for Non - Immigrant Foreign Nationals Working at Nuclear Power
Plants," (Docket ID NRC-2020-0073), L-2020-067, dated April 7, 2020 (ADAMS
Accession No. ML20099E511)

Florida Power & Light Company on behalf of itself and of its affiliates, NextEra Energy Seabrook, LLC, NextEra Energy Duane Arnold, LLC, and NextEra Energy Point Beach, LLC (collectively, "NextEra") provides the following comments on Draft RIS, "Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants." The NRC published the Draft RIS for comment in the *Federal Register* on June 13, 2022 (87 Fed. Reg. 35798). NextEra appreciates the opportunity to provide comments in the attachment to this letter. Following up on NextEra's June 26, 2020 letter commenting on an earlier iteration of this RIS, NextEra continues to believe that the Draft RIS inappropriately interprets the Commission's regulations and reflects a misunderstanding of the capabilities of the SAVE program.

We look forward to continued dialogue with the NRC Staff regarding the Draft RIS.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Dianne Strand", is written over a light blue horizontal line.

Dianne Strand
General Manager Regulatory Affairs
Florida Power & Light Company

Attachment (1)

NextEra Comments on Draft RIS 2022-XX
“Clarification of Personnel Access Authorization Requirements for Nonimmigrant Foreign Nationals Working at Nuclear Power Plants”

This document reflects the comments of Florida Power & Light Company and its affiliates, NextEra Energy Seabrook, LLC, NextEra Energy Duane Arnold, LLC, and NextEra Energy Point Beach, LLC (collectively, “NextEra”) on the NRC’s Draft RIS, “Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants.” NextEra incorporates and reiterates its comments provided in the June 26, 2020 letter and provides the following additional information for the NRC’s consideration.

NextEra currently uses the SAVE program to comply with the requirement in 10 CFR 73.56(d)(3), “Verification of true identity” to validate the claimed non-immigration status that the individual has provided is correct. In other words, NextEra uses SAVE to help ensure that an applicant who is applying for unescorted access or unescorted access authorization is the person that he or she has claimed to be by confirming that the individual has a valid non-immigrant work visa that corresponds to the paperwork that the individual provided. NextEra has no issue with continuing to perform this activity¹ as: (a) it is within the SAVE capability; and (b) it is required by the regulation. NextEra has concerns with conflating this requirement with a requirement to validate that an individual actually is authorized to do the work to be performed because: (a) it is not within the SAVE capability; and (b) the regulation does not require that.

The NRC’s regulation at issue (10 CFR 73.56(d)(3)), does not mention validating employment authorization. In the Draft RIS, it appears that the NRC acknowledges this by describing that the NRC’s 2003 Order EA-02-261, “Order for Compensatory Measures Related to Access Authorization,” included a requirement that licensees confirm employment eligibility.² After noting that this order was rescinded in 2011, the RIS explains that the rescission letter stated that section 73.56 “incorporated all requirements from order EA-02-061” and so the employment authorization requirement applies regardless of the fact that it is not stated anywhere in the NRC’s current regulations. Contrary to the RIS’s statement, the rescission letter did not provide that all requirements of order EA-02-061 were incorporated into the power reactor security requirements. It provided that “all or part” of the requirements were incorporated, but it nevertheless stated that the regulatory requirements were “adequate.” NextEra respectfully submits that it is inappropriate for an agency to impose requirements in an order, replace those requirements with separate requirements in a regulation, rescind the order and its requirements on the basis of the new regulations, and later argue that certain unidentified portions of the order were retained as regulatory requirements even though they were not included in the new regulations or mentioned in the rescission letter.

Regardless of the regulatory history, SAVE cannot tell a licensee’s access authorization staff whether a contractors’ employee is authorized to perform the particular work planned at the site. All SAVE provides is a statement that the paperwork presented is valid. The US immigration laws are complicated and the mere fact that a visa is valid does not provide verification of employment authorization for any particular job task. There are numerous exceptions, nuances, or special circumstances that are not explained through SAVE or made intelligible to the access

¹ This support is despite the difficulties NextEra has encountered in using the SAVE program, which in some circumstances recently has taken up to 30 days to return an answer. This has resulted in certain individuals to miss entire refueling outages.

² NextEra incorporates its discussion of the limited historical scope of this provision and the applicability of the backfit rule from its 2020 comment letter.

authorization staff. Having a valid visa does not necessarily mean that an individual can perform the work expected at a nuclear plant. In some circumstances, this is straightforward, but in many situations, it is not.

Finally, at the public meeting on August 9, 2022, the NRC Staff explained that its interest in this issue was fueled by instances of individuals presenting fraudulent work authorization documentation. That is an issue that SAVE can help to remedy by ensuring that the documentation is valid and correct. But validating that the individual is actually authorized to do the work they plan to perform is not within SAVE's purpose or scope. NextEra again reiterates that it has no issues with using SAVE to validate true identity. However, going further and asking access authorization staff to dive into the nuances of immigration law is inefficient, unnecessary, and not required by law.

In the slides for the August 9, 2022 public meeting, the NRC makes clear that its "key points" are:

- This Regulatory Issue Summary (RIS) reminds licensees that verifying employment eligibility is an important component of the requirement to validate that a foreign national's claimed non-immigration status is correct.
- Licensees are required to take steps to access information in addition to that provided by the individual from other reliable sources to validate the information is authentic.
- Visual inspection of documents alone does not meet the intent of the requirement in 10 CFR 73.56(d)(3) to validate a foreign national's claimed non-immigration status.

Public Meeting slide deck, page 4.

Again, NextEra has no concerns with these three key points, as they are consistent with both the NRC's regulations and the capabilities of the SAVE program. However, extending this to a requirement to identify exactly what types of work the individual is allowed to perform is beyond the requirements of the rule and beyond the capabilities of SAVE and the licensees access authorization staff.

In conclusion, NextEra fully complies with immigration laws and ensures its contractors are contractually bound to do so as well, using the tools available to employers. Moreover, NextEra is willing to use the SAVE program to help validate the true identity of foreign nationals as part of its access authorization program. However, the NRC should not expect licensees to use SAVE to do something that it does not do.

NextEra respectfully suggests that the NRC modify the RIS to state: "Use of the SAVE database is one acceptable means of verifying the validity and accuracy of a foreign national's employment eligibility credentials as part of validating the foreign national's true identity" and striking any reference to validating actual employment authorization. It is not necessary to actually verify employment eligibility for the particular work each applicant would perform in order to use the SAVE program to validate that an individual's credentials are authentic. This change would be consistent with NRC regulatory authority and the capability of the SAVE program.