Johnny Rogers, Nuclear Energy Institute

Brad, thank you very much. This is Johnny. Thank you for the opportunity. I do have some opening comments and then I'm sure we'll turn it over to any additional comments the industry has.

Thank you again for the opportunity to participate. It's a pleasure to do so on behalf of its members and NEI has submitted, as you know, extensive comments on the earlier revisions of this RIS.

First, in March of 2020 and then in June of 2022.

We did not have the opportunity to digest the slides presented here in this meeting in advance, so my remarks are sort of based on our understanding of the…

I want to say that the industry is committed to complying with the requirements 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.

The verification of true identity requirements are only one element of a defense in-depth program that ensures trustworthiness and reliability of all persons being granted access, and licensees have implemented these requirements, and the NRC has inspected those implementations for well over a decade.

And in that light, we wholeheartedly agree with the Staff's April 2020 confirmation that there is no security issue, and we remain confounded as to why this RIS, which we see as imposing new requirements and creating significant confusion is necessary.

Changes to this revision of the risks have failed to address the significant and substantive shortcomings identified by the industry on multiple occasions.

If issued and its current form, this risk would impose new requirements on licensees in contravention to the Administrative Procedure Act and the NRC's back fitting requirements.

The RIS seeks to clarify the section 73.56(d)(3) requirement for verification of true identity, which seeks to ensure that an applicant is the person that he or she claims to be.

In light of that, some of our practical concerns include.

First, the RIS provides no basis for how the staff concluded that it was no longer acceptable to rely upon valid government issued immigration documents.

Despite Commission statements in the preamble of the 2009 final Security Rule section 73.56(d)(3) was revised specifically to allow licensees and applicants to use alien registration or an I-94 form to verify the identity of the foreign national.

Secondly. High level confirmation of employment eligibility has always been one effective tool available to ensure compliance with the requirement to verify true identity.

However, there is no legally binding requirement mandating this verification or the detailed employment verification described in the draft RIS as part of their Access Authorization programs.

Thirdly, we see new guidance regarding verifying the individual's visa category authorizes to perform the specific work.

This is as a broad or unjustified new requirement not previously discussed in any NRC guidance.

Further, this provides no indication of how this new requirement is necessary to meet the true identity objective to verify that the applicant is the person he or she claims to be.

Even licensees that voluntarily use DHS save database to assist in verifying the non- immigration status of foreign nationals are not performing.

The type of detailed employment verification discussed in the RIS. Rather, they are performing a high-level confirmation of employment eligibility contemplated and RIS 2002-13, which is to verify authorized for employment status.

This review has always been limited to independent verification by a federal agency of the applicant's immigration status, thus providing further evidence that the individual is who they purport to be.

Further, it's not clear that the SAVE database and associated guidance can establish the type of detailed employment verification described in the RIS.

For example, the provided step by step guidance does not reflect the array of the COA codes and other codes that are provided in SAVE that do not communicate any additional detail about an applicant's employment eligibility.

The direction provided in the draft RIS would leave licensees with two options in that scenario:

First, either search for other government databases to provide such information, or two, deny the applicants request for UA/UAA over an issue that has nothing to do with verifying the true identity of the applicant, which is the purpose of the paragraph 73.56(d).

For organizations that do not use SAVE or in cases where SAVE is unavailable, the RIS only eliminates methods currently relied on to verify true identity.

And as an example, the ability to rely on valid government issued identification, and provides no acceptable method for compliance. So accordingly, it would appear that other than SAVE, there is no acceptable method of compliance in 10 CFR 73.56(d)(3).

I know there are more detailed questions that the industry may have and I appreciate you and the NRC for providing us the opportunity to engage on this front.

So, thank you very much. And with that, I'll yield back the floor.

Brad Baxter, U. S. Nuclear Regulatory Commission (NRC)

Thank you, Johnny. We greatly appreciate that. A thorough question.

Questions and concerns that you brought to the table.

Would anybody from the NRC staff like to address some of the portions of what Johnny has discussed?

If not, we could, you know, go back and discuss this question internally amongst ourselves as well as some participants may not want to have another public meeting.

However, I could also see this discussion going forward to try to resolve these open items.

I know there's additional meetings coming in the near future where the industry is going to brief CRGR staff to what constitutes a backfit, but that's in the near future, but for today, would anybody from the NRC like to address Johnny's comments?

If so, please go ahead. Yeah, go ahead.

Mark Resner, U.S. NRC

Yeah, Brad, if I may. Yeah, I wanted to reemphasize that, you know, we're saying that SAVE is not the only way to do this, Johnny.

That it's just one acceptable way.

If you have a contractor or vendor who does it, you want assurances when relying on their information that it's reliable information, that they're doing that aspect of the background investigation to verify the employment or the correct non-immigration status.

But now SAVE is just one way of doing it so.

Brad Baxter, U.S. NRC

I think we have another raised hand from the audience. I think it's Jason's Zorn, I saw yours first.

Jason Zorn, Constellation

Yeah. Thanks Brad.

Brad Baxter, NRC

Yeah, Jason.

Jason Zorn, Constellation

How are you?

Brad Baxter, NRC

Good. How are you doing?

Jason Zorn, Constellation

Not bad.

Brad Baxter, NRC

Good.

Jason Zorn, Constellation

Yeah. Thanks for the opportunity to speak.

So my name is Jason Zorn, Associate General Counsel for Constellation.

I've been involved in this RIS effort for, I guess since its beginning.

So, I have a couple comments and a question related to the RIS.

The comment is again going back to this notion of employment eligibility and how it, at least in our view, that's not really what the intent of this validation provision of the regulation in part 73.56 is.

Now, notwithstanding some of the regulatory history side by the staff, I mean I guess I would say, you know, we've tried to make the point that in our view, employment eligibility isn't an employment issue an immigration issue.

And, of course you know as any employer in the United States, we have methods that we evaluate folks that are coming in that are non-immigrant status through an employment process and through vetting of our contractors to make sure that, you know, they have the appropriate visas and are here for the appropriate work.

We've never had a system in which the access authorization program was designed or intended to validate that the person's claimed work at the plant for that was underlying that the request for unescorted access aligned with the grant of employment eligibility by United States government.

That has not been, at least for us, an access issue that our access reviewers have looked at, nor do they have the expertise to really evaluate that question.

So my last point I just want to make on this is if the staff believes that employment eligibility is a part of this act -- the validation provision of the regulations, but I would just point out that nowhere in 73.56 in the regulation itself does it mention the term employment eligibility, nor is it mentioned in the statements of consideration for the proposed rule or the final rule and it's not mentioned in any guidance, including Reg Guide 5.66 or 03-01 that that is somehow an element of this.

So, to me it seems conspicuously absent from any of the actual regulatory requirements or guidance associated with this that the Commission would just completely leave out that so-called requirement if that's what it was, it had plenty of opportunities to do that.

The question I have goes back to … and Johnny kind of referenced this a little bit, but in the RIS on page 4 there's a statement that suggests that there was some of the responses from, in the first paragraph on the that page sort of midway down.

Thanks. Yeah, the response clearly indicates…then they're referring to SAVE response that the foreign nationals entitled to work in the United States but does not provide any indication of the type of business activity or work the foreign nationals authorized to perform.

It doesn't. Then this sort of implies that that's a problem because it doesn't provide that level of information. But then, I mean it refers to a footnote, it provides more details about the type of business activity or work.

My question slash comment is really more about the footnote, which is the last two sentences of the footnote, suggest or state that there's somehow a requirement that the Reviewing Official is looking at the type of work that a particular individual is planning to do as part of the access authorization review.

And I guess I would ask where exactly in Part 73 does the staff believe this requirement exists because we're not aware of any requirement that someone would have to enter into their Personal History Questionnaire information about what work they were planning to do in the plant, either foreign nationals or domestic applicants for unescorted access.

So the premise of this statement is that somehow the reviewing officials are given a document, presumably by the applicant, that states I'm planning to do "X" work in the plant and then the immigration documents that are presented once they're checked against the SAVE database or some other source perhaps should validate that by being able to compare the two.

But, if you don't have the basic information presented by the applicant, in other words, if there's never a requirement for the applicant to submit that information, then what's the Reviewing Official supposed to compare that input that it gets from SAVE or the other sources about the immigration status for employment eligibility against to make an access determination?

Brad Baxter

Yeah, I appreciate that, Jason.

If anybody from the NRC would like to try to answer some of Jason's questions?

The intent of the Reviewing Official's determination is based on what the individual is gonna provide and how the Reviewing Official will evaluate that in totality.

Now the question I have is, why wouldn't you ask what's your purpose at the site?

Jason Zorn, Constellation

Are you asking that question of me?

Norman St. Amour, U.S. NRC

No.

Brad Baxter, U.S. NRC

I'm trying to generalize. I mean from my standpoint I would like to know.

Everything's matching up one for one. I see that your COA code matches the work being performed and is relevant to working at a nuclear power plant and you're not an agricultural worker.

But don't you know you're gonna be a wrench turner in the power reactor.

Jason Zorn, Constellation

But yeah, I guess, Brad, I would, I would say that you know there's no requirement in 10 CFR to ask that question in a Personal History Questionnaire for this. It's not a prerequisite for unescorted access to acquire that information.

That's not to say that, you know, through the employment process, that people are vetted and understand that, you know, you were hired as a welder, and that's the work you're going to be doing.

But that's a separate issue.

And I guess we've never seen that as a security issue per se.

That's more of an, you know, either an immigration or appointment issue.

But that doesn't invalidate or somehow make that person not trustworthy reliable.

Because that's never been something that the acts of the reviewing officials are access officials have been asked to look at.

Norman St. Amour, U.S. NRC

Brad, this is Norman St Amor. Can I?

Brad Baxter, U.S. NRC

Hey, sure.

Norman St. Amour, U.S. NRC

I want to respond a bit to what Jason had to say.

Brad Baxter, U.S. NRC

Sure, Norm.

Norman St. Amour, U.S. NRC

Yeah, Jason, I'm not going to get involved in the discussion on what goes into a personal history questionnaire or anything like that. I think you're right.

The Commission issued an order in 2003 requiring licensees to verify employment eligibility of foreign nationals.

You ask where is that carried over into the current regulations, to the explicit requirement to verify employment eligibility when the order was rescinded in November of 2011.

The rationale given for rescinding that order was that the requirements of the order, which included specifically a requirement for verifying employment eligibility is codified in the regulations.

Umm, the only place that discusses foreign nationals.

Yeah. Well, there, there's one other place, but the primary place is 73.56(d)(3) and that contains a requirement that licensees verify that the individuals, the foreign nationals claimed non immigration status is correct.

And what does it mean by claim non immigration status?

What is the claimed non-immigration status and that is the status for what a foreign national is in the United States and as industry stakeholders have pointed out, correctly, there can be a variety of reasons why a foreign national is in the United States, ... pleasure ... or to perform different types of work, some of what may be carried out at a nuclear power reactor, some of what isn't.

So, if you're going to verify that the claimed non immigration status is correct.

Given the history of the issue of employment eligibility on the fact that power reactor licensees were under an order to verify employment eligibility of foreign nationals and the only place that foreign nationals are discussed in the regulations, with one reference elsewhere, is in Part 73 in 73.56(d)(3).

So, part of verifying that that claimed non-immigration status is correct must include verifying employment eligibility.

If, as the rationale for rescinding the order is that that requirement has been codified in our regulation there is no other logical place in the regulations that that requirement could have been located, and so that is the rationale I think for the agency to say employment eligibility, which has been codified in our regulations, could only have been codified in 73.56(d)(3).

Now that doesn't mean that a vendor or a licensee needs to know the exact specific work that an individual is going to be performing, but there is a general understanding as I have been informed of what kinds of work a foreign national would perform.

For example, it is unlikely that a licensee would be hiring a foreign national to perform agricultural work, so we're not, and maybe there needs to be clarification of this, but the expectation is not that the reviewing official would have a granular understanding of the exact task that a foreign national would be performing, but would understand that if you have a visa that authorizes you to do agricultural work on, you're seeking unescorted access to my facility.

We don't need anyone to perform agricultural work, so you don't appear to have the correct type of visa that would allow you to perform the kinds of work that we would grant you on escorted access for.

And it is our understanding going through the save process that making those kinds of determinations on the broad categories of work allowed under specific visas is relatively easily obtained. And we have tried to provide.

Norman St. Amour, U.S. NRC

Information that would facilitate that in the enclosures to the RIS. So I hope that gives you our thinking on some of the issues that you've raised, Jason.

That's all I have Brad,

Brad Baxter

OK. Thank you, norm.

I like to go to a few other comments that have been popping up here, so I think the next person in the queue is Teddy Reed. If you would, Teddy, the floor is yours.

Teddy Reed, Duke Energy

Hey Brad. Thank you and good afternoon and thank you, everyone.

As stated earlier, we so appreciate and respect the rapport that we have with all of our NRC friends and comrades, so we thank you.

My name is Teddy Reed. I'm the manager of Access services and Fitness for Duty for Duke Energy.

I've been employed with Duke for 30 years and blessed to have been working under and with access services for the last 25 years.

I'm also a member of the NEI Task Force as program managers.

We take great pride in ownership of our programs to include, we assure that workers are trustworthy, reliable.

And we keep the bad persons out.

Our governing documents, as stated many times throughout this webinar, 73.56 and then NEI 03-01 specifically in 03-01 revision 3, is where we discuss the true identity and where it defines one of our requirements to vet an individual for unescorted access.

As we've discussed, foreign nationals require additional vetting due to their uniqueness. The 2002 RIS reminded us to validate authorized for employment status.

In 2007, as discussed earlier, the NRC and their MOU with SAVE assists us and other licensees in the industry that use SAVE.

Is has been a great asset. The 2017 PADS Bulletin reinforced the use of SAVE.

Last year alone with Duke Energy, we processed and granted UA to 194 foreign nationals and over the last five years, 714.

And since the introduction of the MOU in 2007, we have granted access to 1,446 foreign nationals.

SAVE provides us a great response and it lets us know the applicant's employment status.

It is a banner. It is a paragraph. It is the governing item on the SAVE response.

This is the response that tells us they're employment eligible and that item has been included within the UA/UAA file and has been inspected and audited without exception since 2007.

The third revision of the draft RIS does introduce new requirements specific to the visa codes, as Jason has just alluded to on Page 4.

It now states that the RO must verify that the foreign national visa category authorizing the type of business activity must be validated and vetted.

This introduced a challenge for SAVE users?

Just in a review and inspection of the last four foreign nationals that Duke Energy has vetted and authorized over the last 10 days, the immigration class of admission or COA code we have had four responses that we have received:

C33, which is children of married U.S. citizen;

I-1, which is a lawful permanent resident, a spouse of a new arrival;

IR6, which is a spouse of a U.S. citizen; and

A12, which is children of unmarried son or daughter of a U.S. citizen.

We have never used as part of our protocol nor are we screening the review or the inspection of visa codes as is defined in the third revision of the draft RIS.

We have, however, utilized SAVE to provide us the response for employment eligibility, which is clearly defined in the 2002 RIS, which has been in the MOU, which has been defined in NEI 03-01, when we are validating the workers immigration status.

So as a representative of the task force and the representative of the SAVE users, now to find that we must validate and use the COA codes as part of our vetting would introduce a significant challenge, and as indicated by the four examples that I just provided, how would I vet and define the children of unmarried sons and daughters, spouses, and things of that nature?

How do I vet them when the only thing that I should be going after is validating their employment status?

So Brad, that's a loaded question.

I did just want to provide that, and again I sure want to state that the rapport that we have had with NRC for many, many years has been wonderful.

Thank you for providing us SAVE access and the MOU since 2007 because it does provide us what we need to see that they are employment authorized.

And it has been audited and inspected without incident or exception since 2007.

Brad Baxter, U.S. NRC

You know, very good Teddy.

Greg Bowman, U.S. NRC

Brad, can I just chime in real quick?

So, Teddy, thanks…thanks so much for providing that.

I think one of the purposes of this meeting was really for us to hear practical examples of where you've seen challenges with the position of the RIS.

So, the comment you made is exactly what we're looking for.

I'm not sure we're going to have a satisfying answer for you right now, but that kind of data is very helpful for us.

The RIS is in draft and we're using this meeting as an opportunity to see where there's areas we can improve clarity or make revisions.

Mark or Brad, I'm not sure if you have a direct response to Teddy's question, but I again, I just wanted to express appreciation for you providing it cause it it's exactly what we're looking for from this meeting.

Brad Baxter, U.S. NRC

No, I appreciate it, Greg.

I would just jump on the coattails you just mentioned there.

I mean, we wouldn't have a definitive answer based on what Teddy provided, but that detail here is the first time I've heard of that extensive data, so we greatly appreciate that.

Mark, I don't know if you had any additional comments.

I know we have a couple more questions in the queue here. I'd like to get to some.

Mark, if you have anything? If not, I'll just move on to the next question.

Mark Resner, U.S. NRC

Brad, just a brief comment.

Teddy, thank you for that comment.

And I think you know, I think Norm alluded to it earlier, and certainly what Greg said. We'll take that under serious consideration.

But the purpose of the type of visa is, you know, so we don't get a visa that is like what Norm had mentioned, an agricultural visa and so we know what type of work that they're going to do.

Do they show up with a visa, to understand what you're saying, Teddy, it shows the employment eligibility.

But again, I think why are you here? I mean, they have to be badged at some point, where and what access are you going have?

You know, are you going into a vital area? Where in the plant are you going?

But uh, and maybe that's an access control visa via access authorization; however, that was the intent, I think, but we'll certainly look at that and we thank you for the comment.

Brad Baxter, U.S. NRC

Appreciate that, Mark. I'm gonna move on to the next question.

Rani Franovich, your hand is up.

Rani Franovich, Breakthrough Institute

Yes, this is Rani Franovich, can you hear me?

Brad Baxter, U.S. NRC

Right. Yes, I can. Thank you.

Rani Franovich, Breakthrough Institute

Thank you. I have a few questions and then I'll have a comment.

The first question is when did the transcription of the meeting begin?

Caty Nolan, U.S. NRC

Yes, so I was going to interrupt. I started that and I'm sorry that I did not state I started that.

And this is Caty Nolan, the acting branch chief.

I started that as soon as we finished our formal presentation.

Admittedly, I meant to start it at the beginning of the meeting, but I started it basically as soon as Brad turned it over to Johnny and it's been on ever since.

So yes, everyone should be aware that I have been transcribing since that time.

Rani Franovich, Breakthrough Institute

Thank you, Caty.

And so, I'll just go on the record then that the NRC staff presentation should be part of the record.

There were some things stated that should be preserved for reference.

So, to the extent that that can be recovered, I would suggest that the talking points and script that Brad and Mark were reading from be included in the meeting summary with the transcript that began with the Q&A and comment period.

Does that sound agreeable?

Caty Nolan, U.S. NRC

Yeah. Thank you. Thank you, Rani.

Rani Franovich, Breakthrough Institute

Sure, so my second question is, has since 2007 the NRC, let me ask this question first.

Is access authorization at the plants, the licensee's program and practices subject to inspection and oversight by the NRC?

A simple yes or no is fine.

Greg Bowman, U.S. NRC

This is Greg. Yes, it is.

Brad Baxter, U.S. NRC

Yeah, yes.

Rani Franovich, Breakthrough Institute

Yes, OK, I thought so.

And so, since 2007, has the NRC identified any inspection findings or violations associated with failure to validate employment eligibility?

Based on what I understand the NRC believes the intent of governing regulations to be.

Brad Baxter, U.S. NRC

Would anybody from the NRC like to address?

Mark Resner, U.S. NRC

Yeah, in 2017 there was the OI initiated look at this.

The Homeland Security Investigations Office, in coordination with the Office of Investigation identified several instances where tourist visas were used to grant unescorted access and so forth.

So and pending right now is Enforcement Memoranda discretion until June of 2023, but hopefully that answers your question ….

Rani Franovich, Breakthrough Institute

OK, Mark, thank you for that.

And so, I did read in the RIS that there were these instances that were identified, and I was curious as to whether or not the NRC had issued a violation so that I could better understand how that violation would be, would be crafted based on the NRC's interpretation of the regulation.

And if there's an EGM, I would like to get the accession number, even if it's in a follow up e-mail after this call because I think that would be very instrumental in my understanding how the NRC is reading the intent of the regulation.

Based on those instances in 2017, so I would really appreciate the ADAMS accession number for that EGM.

My other question is about the high assurance standard and this RIS and in other regulatory language that is being developed for advanced reactors and I may have missed it, I think it was on Slide 9 where the comment about high assurance was identified.

How is that comment being resolved, dispositioned?

Greg Bowman, U.S. NRC

This is Greg. I could just offer, we're still working through comment resolution to a certain extent, so I know we're not going to give you a firm answer.

I think I can say from my opinion we recognize that the Commission's direction is that in the Atomic Energy Act, in other places where the word high assurance is used, that it is equivalent to reasonable assurance.

And, so from my perspective, our position on this RIS is not based on high assurance versus reasonable assurance confusion on our part, for lack of a better expression.

But we're still kind of working through comment resolution right now, but that's kind of how I would articulate it.

Yeah, thanks.

Rani Franovich, Breakthrough Institute

I appreciate that, Greg, and I'm very appreciative of the fact that you're even on this call and hearing the dialogue.

And so, while I understand your point, I'll take issue with it because and I believe it was during Slide 12, which is why the talking points and script used for this meeting are very important for the record.

Mark actually alluded to high assurance and Johnny Rogers has alluded to high assurance and there seems to be this perpetuation of a notion that security is somehow more important than safety and it's a real problem that is perpetuated by these references to high assurance rather than reasonable assurance.

And you may recall from my comment on this RIS and other proposed language for advanced reactors that the Commission was very explicit and strident, and it's 2016 SRM when it told the staff and implementing, and I'm quoting here, and implementing the NRC's regulatory program, either in developing new regulations, inspecting licensing compliance with regulations or executing the force on force program, the staff should be mindful that the concept of high assurance of adequate protection found in our security regulations is equivalent to reasonable assurance when it comes to determining what level of regulation is appropriate.

And here's the important part Greg, and I'm still quoting, the NRC should not be applying a zero-risk mentality to security any more than we should be doing so with respect to safety.

The staff should operate under this paradigm and eliminate ambiguity on this point and its guidance documents, other internal directives, instructions, or training materials. To the extent such ambiguity exists, the NRC staff, and that's the end of the quote.

I'll just leave you with this comment.

The NRC staff is defying Commission direction from 2016 when it continues to perpetuate this confusion that the staff very explicitly said do not do that.

I believe, and I've heard a former NRC chairman say to me that it's time for the NRC and NSIR leadership to rip the Band-Aid off and change the rule to reasonable assurance wherever high assurance is mentioned.

And I believe there are seven instances of this because of this perpetuated confusion that drives regulatory overreach and that concludes my comment. Thank you.

Greg Bowman, U.S. NRC

Thank you, Rani. I appreciate it.

I think it's safe to say we're going to have to agree to disagree on whether we're defying the Commission's direction, but I certainly understand, yeah, I think we all understand your point and the importance of making sure that we're not conflating security requirements to something beyond reasonable assurance.

I think that's a safe statement.

Brad Baxter, U.S. NRC

OK. Thank you, Greg and Rani, we'll get back to you on that e-mail to provide that EGM.

Rani Franovich, Breakthrough Institute

Thank you. Appreciate that.

Brad Baxter, U.S. NRC

You're welcome. I know we have a few…

Brian Zaleski, U.S. NRC

Yeah, sorry, I can just add it to the meeting notice on the NRC public meeting website. I just added all three versions of the RIS this morning.

So, if you go to the public meeting website, you'll be able to find the EGM. I'll upload it in a few minutes or shortly after the meeting.

This is Brian Zaleski, by the way, OK.

Brad Baxter, U.S. NRC

Greatly appreciate that, Brian.

I know we're coming to a close, but I do have three more questions in the queue here.

Next one is Jerry Bonanno, your hands been up.

Jerry Bonanno, NEI

Yeah. Thank you, Brad. Jerry Bonanno with Nuclear Energy Institute.

I think I have what are two clarifying questions, so hopefully I can get these out pretty quick and we can move on.

Both of them have to do with, there's a lot of mention in the draft RIS and in the slides about Commission action, specifically with respect to this issue and I may have misheard early in the presentation.

I think, Brad, you may have been talking and I thought I heard you say that the staff had gone up to the Commission between the 2020 RIS and issuing this draft revision at some point with some options, and I wanted to just get clarity on that and see is there a paper that you went up to the Commission and if you got Commission feedback, how did you get that?

Was there an SRM? Was there a CA note? How did that happen?

Brad Baxter, U.S. NRC

Based on the dialogue that we had with them, Jerry, with the Commission through a CA note that we were advising that this is the direction that we were pursuing, and it was for awareness and that was pretty much, you know, the basis behind that.

Jerry Bonanno, NEI

OK.

Greg Bowman, U.S. NRC

So it was not a voting matter that we put in front of the Commission or anything like that.

Brad Baxter, U.S. NRC

Right.

Jerry Bonanno, NEI

OK, thank you for that clarification.

I just had one more question and I think, you know, Norm touched on this a little bit and thank you Norm for that explanation of the rationale.

I think we understand it. I think we disagree with it because we think we have different views on the relationship between the 2003 Order, the 2009 final rule, and the 2011 rescission letter.

So, throughout the RIS and even in the presentation today, there's references to Commission action on this issue and when, when I hear Commission action, I think of a quorum voting and a majority of the Commission coming down in a specific direction.

So, I think you know other than the 2003 Order, because I think we understand, you know that order and what it said, is there any other Commission direction that the staff is relying on like a staff requirements memorandum or anything that's specifically mentions or talks about the fact that employment eligibility verification is required under paragraph 73.56(d)(3)?

Brad Baxter, U.S. NRC

Norm, did you have a follow up to that question?

Greg Bowman, U.S. NRC

So, I'll just offer, I don't think we're going to offer anything more than what we discussed today, Jerry.

Jerry Bonanno, NEI

OK.

Greg Bowman, U.S. NRC

I'll leave it up to any of the NRC staff who may want to chime in, but I think that's the answer you're going to hear.

Jerry Bonanno, NEI

OK, now that, that's good. Thank you. I appreciate the meeting again and I I'll jump off now to let some other people ask some questions but thank you. I appreciate it.

Greg Bowman, U.S. NRC

Thanks, thanks Sir.

Brad Baxter, U.S. NRC

Thank you, Jerry.

Brad Baxter, U.S. NRC

Next in queue is David Cummins. David?

David A Cummings, Duke Energy

Yes, thank you. I'm Associate General counsel with Duke Energy and I had a few comments and I guess I'll try to condense and blend them together, maybe since I know we're already running well past time.

When we think about sort of your responses to Teddy Reid's comments, you know Greg, Mark, and some others acknowledge this was the first they'd heard of such cases.

Which seems to really sort of highlight that the staff may not have the full understanding of the extent of the types of challenges and confusion that licensees had been identifying and have been trying to inform the NRC of as we've worked on this issue for years now and that was just the first example thrown out, which seemed to confound the staff.

So, saying that you don't know what you are going to do about those cases, but you do know what to do about an agricultural worker.

Doesn't really provide the clarity that this report, that this RIS, this draft RIS would purport.

To sort of lay out for licensees with the additional guidance and the like.

So how can we move forward with the RIS with such a fundamental lack of understanding of what the NRC is putting forth, and I know we disagree here, but it seems to be the only means of compliance that the NRC is really outlining in this RIS because Mark, well, you've repeatedly stated that SAVE is only one means of compliance and the use of independent and reliable sources would be sufficient.

What are those other potential alternatives that you have contemplated?

The draft RIS seems to really set up a level of review requiring access to data that I don't think we can access through other means and a level of review that would not even necessarily be effectuated through SAVE as we keep trying to inform the staff.

Umm, but that really seems to be the only position you're pushing licensees into.

Not only to use SAVE, which Duke Energy does, but to use it in a manner that's never been used before to our knowledge.

And in a way that we don't even think it can necessarily be used.

Furthermore, it's being used for something that does not meet the intent of the rule, which is to verify the true identity.

You're going well beyond that.

You've stated before that the verification of the true identity, it's dealing with this idea. The individual is who they say they are, that the personal identifying information that the individual is provided is authentic or not fraudulent.

Going to these very isolated examples that you found over well over a decade of no problems really being identified.

And that's really distinct from any assertion that the individual has the correct visa to perform specific work. That's very different from verification of true identity.

That the information they've provided is accurate, that they are not trying to perpetrate fraud, that they are not the individual they purport to be.

You know that other information is relevant under other processes.

Whether they are authorized to do that work, same thing with the individual, have the necessary certifications qualifications, but those are not relevant to an initial UA inquiry and review and is going to involve information that the reviewing officials don't have.

Now you seem to think that SAVE will provide all that Norm, I believe you said, the phrase you used was "it's a readily available." I believe that was what I wrote down here. I'd have to find it in my notes, but have you all run? I'm sorry, "relatively easily obtained."

So, have you conducted some more review of the codes?

Have you worked with licensees using codes?

We actually see DACA and others that don't simply deal with agricultural workers.

Or is that something you're intending to do before you ever put this RIS out? Because I'm assuming that's going take a significant amount of time and would likely involve coordination with the licensees, which hasn't been done up to date, I don't believe.

So, I'm just trying to say, it seems like you guys have stepped way ahead with this new guidance as though, well, you think that fixes the problems.

But, as this call has really sort of elucidated, that confusion is even worse than ever because you're driving us to SAVE and using SAVE in a way that I don't think you realize may not actually work or do what you think it does and you're doing.

So, to fix a problem that doesn't actually seem to exist you're creating confusion where there wasn't confusion.

And I just think we may need to slow down a little bit on this process and I'd like to hear if the NRC is contemplating taking a step back in light of this confusion and the concerns that we are raising and quite frankly, the Staffs confusion with regards to some of these comments.

Brad Baxter, U.S. NRC

But thank you, David. Would anyway from the NRC staff like to address that.

Greg Bowman, U.S. NRC

So, Dave, thanks. Thanks for the comment. We definitely are going to regroup after this meeting to discuss next steps.

Certainly, I will say, and Mark, you will have to help me with this. Maybe Mark you can talk a little bit about what alternatives might exist for the use of SAVE.

We have run cases in SAVE ourselves to see the process, for example, that we put in the RIS.

How it works, but you know you and the industry deal with a lot more of these than we do.

So, knowing what kind of challenges you've seen, you know that I mean it helps.

We're not going to know everything that you know.

This is not the end of the dialogue on the topic, obviously, so take that for what it's worth.

Mark.

Mark Resner, U.S. NRC

Yeah, David and Greg. As I mentioned during the presentation, pardon me.

SAVE is not the only method, if, under 73.56(a)(4) the contractor or vendor can do part of that background investigation, and if they're doing that with access, using E-Verify is another option.

If they have access to that and they can reliably, say, prove to the licensee without putting the licensee at risk, that yes, we've confirmed that this individual is employment eligible and who they say they are.

The question is, and I think you touched on it a little bit, David, and your comment was, you know, as far as access authorization.

If the person is showing up in the three instances we had, if were granted access using a B-2 tourist visa.

So, we think it's important to look at the visa.

So, you have to be able to know where they're going to be in the plant.

Are they going to be accessible to computer rooms?

Are they going into the vital area, you know, which supervisor is going to give the acknowledgement of their access to the vital area?

So, the purpose of why they're there, I think, is critical to this. But enough said.

David Cummings, Duke Energy

You know, I appreciate that Mark and what I would just suggest is aside from the alternatives of reliance upon a contractor review, we're not seeing anything else in this guidance that would give a licensee, for example, you're essentially saying compliance hinges on the reliance of a separate agency's database that is outside the NRC's purview, and control and expertise, and you're saying rely on that guidance now.

I've actually tried to access some of that guidance, and it goes to a dead entry. Now that may be because I'm not an authorized SAVE user personally.

Maybe only the individuals who use SAVE now can access the guidance document that the NRC cites to, but that guidance document then says click here for other resources.

The other resources link goes to an error code 404, page not found USCIS website.

But so, what happens if SAVE goes down, or if SAVE isn't available for a few days or for well over a month as some licensees have maybe suggested could be a case?

What is a licensee supposed to do in that case where maybe we can't rely on a contractor, or a contractor is not involved?

We don't see any metrics that would allow us to know consistently how to comply with these new requirements, which again, you know, there's no question we're talking impermissible backfit here for that.

But we don't even know how you would comply with that backfit because there's no guidance as to these alternatives and if the NRC doesn't know that, how are we expecting licensees to know that when we're telling you?

It doesn't match, it doesn't matter what we do. It doesn't match precedent.

It isn't required and we don't know the means by which we would do it.

So, if you can't figure it out, it's very difficult just to say, well, it's your problem licensees.

So, and I know that that's not what you're intending to do, but that's what this RIS is sort of the current level.

I think that's where we're at.

I think a great deal more work would need to be done even something inside the backfit piece which we're not just to say that this gives clarity.

I think we've actually gone in the opposite direction unfortunately with these new additions.

And I'll stop there. But thank you so much. I really appreciate the work.

Brad Baxter, U.S. NRC

Appreciate that, David.

I do have one more commenter in the queue here. I have Dawn Odom.

Dawn, go ahead.

Dawn Odom, Florida Power & Light/NextEra Energy

Good afternoon. I am Dawn Odom, Access Program Manager for Florida Power and Light / NextEra Energy.

And to just add to the comments that Teddy Reed made.

We process a significant number of foreign nationals at our facilities and just to provide some additional information regarding that.

We had a specific case. We had an individual who had a permanent resident card, category code CR6, which is spouse of a U.S. citizen.

The expiration date on the card was 1/03/21, so the individual provided us with a document and I-797 form indicating that she had an extension for 18 months.

We validate all of those in the SAVE program and what came back to us is conditional resident employment authorized, applicant is a non-national of the U.S. who has been granted permanent resident status on a conditional basis.

They're allowed to live and work in the United States as a permanent resident, but we'll need to apply to remove the condition of their status within two years of issuance of their permanent residence status and then the information that came back says date admitted to the U.S. as indefinite.

So, for us, that information does not match with the information that we were provided because I would expect to see a date of 18 months from the expiration on the card in the SAVE program.

And that's not what we received. So, for an individual in this case, we would not grant access, we submit the information for further verification.

And we are finding at least here, I am waiting a minimum of 40 days for responses.

Which in our last outage we had half a dozen individuals who were not able to come into the plant to work because we didn't receive responses in a timely manner for them to be able to obtain unescorted access.

We've had some of the similar ones that Teddy identified, dependent visas.

IR 6Is, and TN documents. I have an individual that I just recently submitted about a week and a half ago.

A visa or passport number. He is not a U.S. citizen, but the SAVE result came back and said the individual is a U.S. citizen, so I submitted it for further verification.

He missed the last outage because we didn't get the response back in a timely manner.

And now we're back to the same issue because we validate this information every time an individual comes in for access.

So, it's not a, we don't always get back the information we expect, and to make a determination, like I said, in this case, conditional employment authorized. What? What does that mean?

How do I know whether or not this person is truly eligible to come in and do whatever job they may be doing in the plant? Because that doesn't really give me an answer.

Brad Baxter, U.S. NRC

OK, very good, good.

Greg Bowman, U.S. NRC

So, if I could just summarize the comment. I guess for us, for us to consider going forward, I guess it's similar to what Teddy's comment was.

The RIS in your view lacks clarity on what a licensee should do if unexpected information is obtained from SAVE, or SAVE is not available, or if the response isn't provided in a timely manner, what happens then?

What are you supposed to do?

Then in your view the RIS should be more clear from that standpoint.

Dawn Odom, Florida Power & Light/NextEra Energy

Yes.

Greg Bowman, U.S. NRC

Is that, did I articulate the concern accurately? What do you do?

Dawn Odom, Florida Power & Light/NextEra Energy

Yes, if that's the expectation, like I said in this particular case, conditional employment authorized.

What does that, that's not very clear as to what we would do in that situation.

I don't know what the conditions are so, we have this person on hold, we're not granting them access because I don't know what the conditions are.

I don't know what we should be looking for.

So, because we can't make that determination, we can't authorize unescorted access.

Greg Bowman, U.S. NRC

OK, I understand.

Brad Baxter, U.S. NRC

Very good, very good.

I know we are 15 minutes over on time now.

I see no other comments or questions in the queue here, but as you can see this is very contentious issue and we appreciate everybody's feedback.