

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Christopher T. Hanson, Chair
David A. Wright
Annie Caputo
Bradley R. Crowell

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Nuclear Generating Units 3 and 4)

Docket No. 50-250-SLR-2
50-251-SLR-2

CLI-24-01

MEMORANDUM AND ORDER

This proceeding relates to the subsequent license renewal of Turkey Point Nuclear Generating Units 3 and 4. The Licensing Board is considering the hearing request of Miami Waterkeeper.¹ Before issuing a decision on the request, the Board certified a question for interlocutory review regarding the timing of the NRC Staff's issuance of the notice of opportunity for hearing in this proceeding.² We accept the Board's certification and find the timing of the Staff's notice to be a reasonable interpretation of our instructions in CLI-22-3.³

¹ *Request for Hearing and Petition to Intervene Submitted by Miami Waterkeeper* (Nov. 27, 2023) (Hearing Request).

² LBP-24-1, 99 NRC __, __ (Jan. 31, 2024) (slip op. at 4); see 10 C.F.R. § 2.341(f)(1).

³ See *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-22-3, 95 NRC 40 (2022).

I. BACKGROUND

The NRC Staff issued a notice in the *Federal Register* announcing an opportunity for members of the public to request a hearing on the Staff's Draft Supplemental Environmental Impact Statement (Draft SEIS).⁴ In response to that notice, Miami Waterkeeper requested that the Secretary of the Commission withdraw the Staff's notice of opportunity for hearing.⁵ The Secretary denied the request to withdraw the hearing notice as beyond the scope of her delegated authority under 10 C.F.R. § 2.346 but granted Miami Waterkeeper a partial extension of an additional twenty days to file a hearing request.⁶ Miami Waterkeeper then filed a timely hearing request with five proposed contentions challenging the Draft SEIS.⁷

The Board held an initial prehearing conference to hear oral argument on the issues presented in Miami Waterkeeper's hearing request.⁸ After oral argument, the Board issued an order certifying the following question for our consideration:

Should the NRC Staff have waited to issue the notice of opportunity for hearing until it completed the Final SEIS, and if so, how does that impact the conduct of this proceeding?⁹

⁴ See Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4, 88 Fed. Reg. 62,110 (Sept. 8, 2023).

⁵ Email from Sydnei Cartwright, Miami Waterkeeper, to Brooke Clark, NRC (Oct. 30, 2023), at 1 (attaching Letter from Sydnei Cartwright, Miami Waterkeeper, to Brooke Clark, NRC (Oct. 27, 2023)) (ADAMS accession no. ML23305A127).

⁶ Order of the Secretary (Nov. 6, 2023), at 3-4 (unpublished).

⁷ Hearing Request at 11-81.

⁸ Licensing Board Order (Scheduling Initial Prehearing Conference) (Dec. 21, 2023) (unpublished) (scheduling conference for January 24, 2024).

⁹ LBP-24-1, 99 NRC at __ (slip op. at 4).

II. DISCUSSION

Today we accept the Board's certification regarding the timing of the hearing notice. For the reasons outlined by the Board, we find that the Board raises a significant and novel issue whose early resolution will materially advance the orderly disposition of this proceeding.¹⁰ Therefore, we grant review of the Board's certified question.

In CLI-22-3, we provided direction for five open subsequent license renewal proceedings.¹¹ We directed the Staff to update the 2013 Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS)¹² so that it covers operations during the subsequent license renewal period.¹³ We also provided that applicants that do not wish to wait for the GEIS update and associated rulemaking could submit a revised environmental report providing information on environmental impacts during the subsequent license renewal period.¹⁴ In either case, the Staff would publish a site-specific environmental impact statement (EIS). We stated that:

After each site-specific review is complete, a new notice of opportunity for hearing—limited to contentions based on new information in the site-specific environmental impact statement—will be issued. This approach will not require

¹⁰ See LBP-24-1, 99 NRC at ___ (slip op. at 4-7); 10 C.F.R. § 2.341(f)(1) (“A ruling referred or question certified to the Commission under §§ 2.319(l) or 2.323(f) may be reviewed if the certification or referral raises significant and novel legal or policy issues, or resolution of the issues would materially advance the orderly disposition of the proceeding.”). As the Board noted, resolution of the certified question would also materially advance the orderly disposition of other subsequent license renewal proceedings. *Id.* at 6 & n.30. Beyond Nuclear and Sierra Club moved to withdraw the hearing notice as premature in the *North Anna* proceeding. *Motion by Beyond Nuclear and Sierra Club for Withdrawal of Premature Hearing Notice* (Jan. 18, 2024; corrected Jan. 22, 2024) (ML24018A150, ML24022A066).

¹¹ *Oconee*, CLI-22-3, 95 NRC at 41.

¹² “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (Final Report), NUREG-1437, rev. 1, vols. 1-3 (June 2013) (ML13107A023) (package).

¹³ *Oconee*, CLI-22-3, 95 NRC at 41.

¹⁴ *Id.* at 42.

intervenors to meet heightened pleading standards in 10 C.F.R. § 2.309(c) for newly filed or refiled contentions.¹⁵

As the Board noted, there are different views on what constitutes a “complete” site-specific environmental review and thus when the hearing notice should have been published. Miami Waterkeeper asserted that the Staff should have published the hearing notice after the Staff completed its Final Supplemental Environmental Impact Statement (Final SEIS) rather than after the Draft SEIS. In its view, the Staff’s site-specific environmental review for Turkey Point is not complete until the Final SEIS is issued.¹⁶ Similarly, the Board emphasized that CLI-22-3 used the phrase “[a]fter each site-specific review is complete,” which “seems clear on its face: complete means complete, not ‘substantially complete.’”¹⁷ The Board also points out that the sentence preceding this phrase provides for a public comment period “during the development of the site-specific environmental impact statements,” and that “the process of developing an EIS is distinct from its completion”—development precedes completion.¹⁸ On the other hand, FPL argued that “[i]n all material respects, the Staff’s site-specific *review* of the applicant’s site-specific application materials is complete upon issuance of the draft SEIS. To complete the overall *process*, the Staff will then respond to public comments and make any necessary final adjustments before issuing the final SEIS.”¹⁹ In addition, the Staff announced its intention to issue hearing notices after publication of draft site-specific EISs at a public meeting

¹⁵ *Id.*

¹⁶ Hearing Request at 10 & n.31.

¹⁷ LBP-24-1, 99 NRC at ___ (slip op. at 6).

¹⁸ *Id.*

¹⁹ *Florida Power & Light Company Answer in Opposition to Miami Waterkeeper Extension Request* (Nov. 2, 2023), at 3 n.10.

held to describe its path forward on environmental reviews for subsequent license renewals.²⁰ At the prehearing conference, the Staff acknowledged that this proceeding is unique and that it interpreted the language in CLI-22-3 in a manner consistent with its usual practice of issuing hearing notices at the earliest stage, which is typically at the environmental report stage for reactor license renewals, but in this case, for the five subsequent license renewal applications listed in CLI-22-3, it would be after publication of the Draft SEIS.²¹

We recognize that the language in CLI-22-3 could be interpreted in different ways. After considering the views expressed by the Board and the participants, we find that the Staff reasonably interpreted the language in CLI-22-3 as allowing the issuance of hearing notices after draft site-specific EISs were complete. While the circumstances surrounding this subsequent license renewal proceeding (as well as the other four proceedings covered in CLI-22-3) are unusual, the Staff appropriately adapted its ordinary practice of announcing hearings at the earliest opportunity to promote efficiency. Consideration of public comments is an important part of the National Environmental Policy Act (NEPA) process. We hesitate to narrowly interpret the language in CLI-22-3 as requiring that the notices of hearing be issued after the consideration of public comments and publication of final EISs, in effect identifying that stage as the “completion” of the NEPA process. Even a final EIS can be supplemented before the agency issues its record of decision. For example, the Staff may issue a supplemental EIS based on new and significant circumstances or information arising after the publication of the

²⁰ *Id.* (referring to August 17, 2022 public meeting); see Public Meeting Announcement, “Public Meeting on Path Forward for Site-Specific Environmental Reviews for Subsequent License Renewal” (Aug. 10, 2022) (ML22222A129); Public Meeting Summary, “Public Meeting on the Path Forward for Site-Specific Environmental Reviews of Subsequent License Renewal” (Sept. 6, 2022), at 2 (ML22238A305).

²¹ Tr. at 35.

final EIS.²² Similarly, information developed during any hearing on environmental contentions would supplement the environmental record.²³ As such, we find that the Staff's identification of the issuance of the draft site-specific EIS as the point of completion of its site-specific review reflects a reasonable interpretation of the Commission's direction in CLI-22-3.

III. CONCLUSION

For the foregoing reasons, we *accept* the Board's certification and *find* the Staff's interpretation of our instructions in CLI-22-3 with respect to the timing of *Federal Register* notices announcing the opportunity for a hearing to be acceptable.

IT IS SO ORDERED.

For the Commission



Carrie M. Safford
Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of March 2024.

²² See 10 C.F.R. § 51.92(a); *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 388 (2012).

²³ See 10 C.F.R. §§ 51.102, 51.103; *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998) ("The adjudicatory record and Board decision (and, of course, any Commission appellate decisions) become, in effect, part of the [final EIS].").

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-24-01)** have been served upon the following persons by Electronic Information Exchange.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of March 2024.