

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	Docket No. 50-400-LA
	)	
(Shearon Harris Nuclear Power Plant)	)	ASLBP No. 99-762-LA
	)	

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NRC STAFF OPPOSITION TO ORANGE COUNTY'S PETITION FOR REVIEW  
OF LBP-00-12, LBP-00-19, AND LBP-01-09

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 50-400-LA
CAROLINA POWER & LIGHT	)	
COMPANY	)	ASLBP No. 99-762-02-LA
	)	
(Shearon Harris Nuclear Power Plant)	)	
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NRC STAFF OPPOSITION TO ORANGE COUNTY'S  
PETITION FOR REVIEW OF LBP-00-12, LBP-00-19 AND LBP-01-09

INTRODUCTION

On March 16, 2001, the Board of Commissioners of Orange County (BCOC), pursuant to 10 C.F.R. § 2.786, filed "Orange County's Petition for Review of LBP-00-12, LBP-00-19 and LBP-01-09" (Petition for Review). For reasons discussed below, the NRC Staff (Staff) opposes the Petition for Review, except as to the issue relating to the interpretation of General Design Criterion 62, and respectfully requests that the Commission deny the petition as to all other issues.

BACKGROUND

This matter arises from a license amendment application filed by Carolina Power & Light Co. (CP&L) for the Shearon Harris Nuclear Power Plant (Harris) to increase spent fuel storage capacity by adding high density rack modules to two previously unused spent fuel pools and placing the two pools (C and D) into service. CP&L proposed to take credit for fuel burnup in order to be able to place the fuel assemblies in higher density racks. It also proposed to utilize portions of the cooling and cleanup piping for the fuel pools that had been partially built during original construction and had lain idle for the intervening time period. BCOC was permitted to intervene in the proceeding

and the Atomic Safety and Licensing Board (Board) admitted two technical contentions for litigation.<sup>1</sup> CP&L invoked the procedures of Subpart K.<sup>2</sup> After submission of written presentations by all parties, supported by affidavits and documentary evidence, and a full day of oral argument, the Board determined that there was no genuine and substantial dispute of fact or law that required the introduction of evidence in an evidentiary hearing, and resolved the contentions in favor of CP&L.<sup>3</sup> The Board held that General Design Criterion (GDC) 62 does not prohibit the use of credit for burnup. The Board found, *inter alia*, no clear cut demarcation between the administrative and non-administrative measures of criticality control processes that would place them within or without “physical procedures and processes” as used in GDC 62. LBP-00-12 at 259-60. The Board also ruled that the alternative plan to demonstrate an acceptable level of quality and safety of the cooling and cleanup system piping was adequate to meet the requirements of 10 C.F.R. § 50.55(a)(3), and that the present day procedures and tests used in the plan combined with the adequacy of the original QA program was sufficient to provide assurance that the quality of the piping and welds was adequate, despite the long period of improper lay-up. *Id.* at 277-78.

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<sup>1</sup> The first, TC-2, contended that 1) the use of credit for burnup of spent fuel to prevent criticality is an administrative measure and General Design Criterion (“GDC”) 62 does not permit the use of administrative measures to control criticality in spent fuel pools, 2) Regulatory Guide 1.13 prohibits the use of credit for burnup because such use would violate the double contingency principle, which requires that criticality not occur without two independent failures and the misplacement of one fuel assembly could cause criticality if credit for burnup is taken. 51 NRC at 250. The second, TC-3, contended that the proposal to use the previously completed sections of the cooling and clean-up piping and equipment was inadequate because: the piping failed to satisfy 10 C.F.R. part 50, Appendix B, Criteria XIII, XVI and XVII; the alternative plan did not describe any program for maintaining the piping during the years it was idle and was deficient because certain Quality Assurance records were missing; and the embedded welds could not be adequately inspected. *Id.* at 250-251.

<sup>2</sup> 10 C.F.R. § 2.1101, et seq.

<sup>3</sup> LBP-00-12, 51 NRC 247, 282 (2000).

On August 7, 2000, upon motion of BCOC for admission of late-filed environmental contentions, the Board admitted one environmental contention.<sup>4</sup> After submission of written presentations pursuant to Subpart K, again supported with affidavits and documentary evidence, and oral argument, the Board held that there were no genuine and substantial disputes of fact or law that can only be resolved at an evidentiary hearing and that the seven-step sequence proposed by BCOC was remote and speculative so as not to warrant preparation of an EIS.<sup>5</sup> The Board authorized issuance of the license amendment and terminated the proceeding.

BCOC is seeking review of the Board's orders discussed above. BCOC alleges that each of the Orders contains legal and factual errors, and raises substantial and important questions of law, discretion and policy. Petition for Review at 5. As to LBP-00-12, BCOC complains that the Board's interpretation of GDC 62 was erroneous. Petition for Review at 5-6. BCOC also complains that the Board did not specifically address or completely ignored several of BCOC's arguments relating to the integrity of the cooling system piping. *Id.* at 6. Regarding LBP-00-19, BCOC asks review of the Board's decision to restrict the scope of the admitted environmental contention to the probability of BCOC's seven-step severe accident scenario. Petition for Review at 6-7. As to LBP-01-09, BCOC complains that the Board erred in addressing the merits of the issues and that even if a decision on the merits was appropriate, the Board's ruling was arbitrary and capricious.

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<sup>4</sup> LBP-00-19, 52 NRC 85 (2000). The contention, EC-6, asserted that an Environmental Impact Statement was required before the license amendment could be issued because the amendment would increase the risk of accidents beyond those addressed in the Environmental Assessment and beyond those previously analyzed by the Staff. The contention put forth a seven-step severe accident sequence, as follows: degraded core accident, containment bypass or failure, loss of all spent fuel cooling and makeup systems, extreme radiation doses precluding personnel access, inability to restart any pool cooling or makeup systems due to extreme radiation doses, loss of most or all pool water through evaporation, and initiation of an exothermic oxidation reaction in pools C and D. *Id.* at 95. The Board admitted the contention limited to analysis of the probability of the occurrence of the sequence and whether it is remote and speculative under the National Environmental Policy Act (NEPA). *Id.* at 97-99.

<sup>5</sup> Memorandum and Order (Denying Request for Evidentiary Hearing and Terminating Proceeding), LBP-01-09, slip op. at 41 (March 1, 2001).

Petition for Review at 8-10. Finally, BCOC asserts that the Board based its decision on an assumption regarding permissible doses that is contrary to NEPA. *Id.* at 10-11.

As discussed more fully below, the Staff submits that, other than the issue relating to GDC 62,<sup>6</sup> none of the issues raised by BCOC meet the threshold for Commission review.

#### DISCUSSION<sup>7</sup>

##### A. Legal Standards for Commission Review.

In determining whether to grant a petition for review of a Presiding Officer's decision, the Commission considers the factors set forth in 10 C.F.R. § 2.786(b)(4). *See Advanced Medical Systems, Inc.*, CLI-93-8, 37 NRC 181, 184 (1993). Pursuant to that rule, a petition for review “may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to the following considerations: (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) a substantial and important question of law, policy, or discretion has been raised; (iv) the

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<sup>6</sup> An identical issue has already been accepted for review by the Commission. *See Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-01-03 (January 17, 2001). Both BCOC and CP&L filed *amicus* briefs in that case.

<sup>7</sup> On March 21, 2001, in response to a motion by CP&L to extend page limitations due to the failure of BCOC to comply with the Commission's regulations, the Commission issued an Order affording both the Staff and CP&L a 15-page limit for responses to the Petition for Review.

In the “NRC Staff Opposition to Orange County's Motion for Emergency Stay of LBP-01-09 and NRC Staff Motion to Strike,” filed this date, the Staff is moving to strike certain portions of the “Declaration of Gordon Thompson Filed in Support of BCOC's Motion for Emergency Stay of LBP-01-09,” (March 16, 2001) on the grounds that they are not relevant to the Stay Motion, are an unauthorized attempt to supplement the record and are an attempt to avoid the page limitations of 10 C.F.R. § 2.788(b)(2). *See Hydro Resources, Inc.* (2929 Coors Rd.), CLI-99-18, 49 NRC 411, 412 (1999); *Toledo Edison Co. and Cleveland Electric Illuminating Co.* (Davis-Besse Nuclear Power Station, Units 1, 2 and 3; Perry Nuclear Power Plant, Units 1 and 2), ALAB-430, 6 NRC 457 (1977). The Staff submits that the content of the declaration should not be considered in conjunction with the Petition for Review, which must stand on its own. Such consideration would only serve to circumvent the page limitations of 10 C.F.R. § 2.786(b)(2) and unfairly prejudice the other parties.

conduct of the proceeding involved a prejudicial procedural error; or (v) any other consideration which the Commission may deem to be in the public interest.” BCOC has asserted that its petition meets the criteria. But, as discussed below, other than the issue relating to GDC 62, BCOC has failed to raise a substantial question with respect to any of the above considerations so as to warrant Commission review of the Board’s Orders. Accordingly, the Petition for Review should be granted as to the GDC 62 issue and denied as to all other issues.

B. LBP-00-12

BCOC requests that the Commission take review of the Board's determination that GDC 62 permits the administrative and procedural measures that CP&L proposes to rely upon for criticality prevention. Petition for Review at 5. As BCOC correctly points out, the Commission has already taken review of the identical issue in the *Millstone* case. CLI-01-03 (January 17, 2001). Both BCOC and CP&L filed amicus briefs in that case.<sup>8</sup> The Staff's brief filed in the *Millstone* proceeding fully addressed both the *Millstone* and the *Harris* decisions regarding GDC 62.<sup>9</sup> Since the Commission has already taken review of the identical issue in another case, the Staff agrees that the Commission should take review in this case. But, since the issue has already been fully briefed, there is no necessity for further briefing. Therefore, the Staff suggests that the Commission consolidate this issue for decision. Consolidation is warranted here, where the legal

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<sup>8</sup> Carolina Power & Light Company's Brief Amicus Curiae Supporting Affirmance of the Board Decision in LBP-00-26 (February 28, 2001); Orange County's Amicus Brief on Review of LBP-00-26 (February 7, 2001).

<sup>9</sup> See NRC Staff Response to "Connecticut Coalition Against Millstone and Long Island Coalition Against Millstone Brief on Review of LBP-00-26" and "Orange County's Amicus Brief on Review of LBP-00-26," (February 28, 2001).

issue involved is identical.<sup>10</sup> See, e.g. *Edlow International Co.* (Agent for the Government of India on Application to Export Special Nuclear Materials), CLI-78-4, 7 NRC 311 (1978).

Regarding BCOC's assertion that the Board erred in "ignoring" portions of its evidentiary case on the quality assurance issues, the Staff submits that the Board addressed all relevant issues and considered all probative evidence. BCOC states that the Board did not address its: "considerable evidence that only the welds were inspected" in the embedded pipes (Petition for Review at 6); evidence that CP&L failed to follow its own weld inspection procedures (*Id.* at 6 n.8); and evidence that a single water test was insufficient to determine that the pipes were free of corrosive agents during the lay-up period (*Id.*). There is no indication that the evidence was ignored - only that it was refuted by the evidence presented by the Staff and CP&L. BCOC's claim that the Board did not address their evidence is contradicted by the Board's opinion, wherein the testing of the water, the weld and piping inspections and the visual inspection of the embedded pipes and welds are discussed. LBP-00-12, 51 NRC at 276-278. The Board noted and discussed BCOC's objections to the handling of the piping during the lay-up period. *Id.* at 272, n.11. The Board fully discussed BCOC's concerns regarding the adequacy of the testing and weld inspection. *Id.* at 275-278. As to the claim that embedded pipes were not inspected, the Board noted both the Staff's and CP&L's witnesses reviewed the video tapes of the inspection. *Id.* at 276-278. BCOC's evidence to refute this evidence is also discussed and disposed of by the Board. *Id.* at 278. There is, in fact, simply no basis for BCOC's claim that the evidence was ignored. See *Id.* at 272-280. Moreover, the Board was not required to make detailed findings in this case. 10 C.F.R. § 2.1115(a)(2) merely requires, where issues are not designated for hearing, that the Board make a "brief statement of the reasons for the disposition." See 50 Fed. Reg. 41667. In LBP-00-12, the

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<sup>10</sup> Although BCOC argued below that the double contingency rule of draft Regulatory Guide 1.13 would be violated if credit for burnup is permitted, the issue has not been raised in the Petition for Review and should be deemed waived. See *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 NRC 13, 20 n.18 (1986).

Board did more than required by the regulation in issuing its detailed, well-reasoned memorandum and order. Therefore, this ground for review does not meet the criteria of 10 C.F.R. § 2.786 and should be denied.

Finally, BCOC asserts error in the refusal to consider its late-filed contention regarding the need for a construction permit. Petition for Review at 6. The Staff submits that the Board was correct in finding that the issue, raised for the first time in BCOC's written presentation,<sup>11</sup> was an attempt to admit a late-filed contention without meeting the requirements of 10 C.F.R. § 2.714(a)(1). See LBP-00-12, 51 NRC at 280-282. The assertion that a construction permit was required to complete the cooling system piping was a completely new contention and not, as claimed by BCOC, a permissible response to the Staff and CP&L's positions. Therefore, the Board did not err in declining to consider the issue. Moreover, even if error is assumed, it is of no consequence because a construction permit would not be required for the amendment requested. BCOC has not shown that the amendment involves a material alteration to the facility, as contemplated by 10 C.F.R. § 50.92(a). See, e.g. *Virginia Electric and Power Co. (Surry Power Station, Units 1 and 2)*, DD-79-19, 10 NRC 625, 654-61 (1979). Therefore, this ground does not meet the criteria of 10 C.F.R. § 2.786.

Based upon the foregoing, the Staff submits that, other than the issue concerning GDC 62, BCOC has failed to meet the criteria for Commission review. Therefore, the Petition for Review of LBP-00-12 should be denied.

C. LBP-00-19

BCOC asserts error in the Board's limitation of consideration to its "illustrative" seven-step severe accident scenario, claiming that the contention, as proposed, referred to other

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<sup>11</sup> It should be noted that the issue was not raised in discovery, either in BCOC's answers to interrogatories or in the depositions of its two witnesses, or in any pleading filed by BCOC prior to its written presentation.

causes of spent fuel pool accidents, which were supported with basis and specificity. Petition for Review at 6-7. Yet, BCOC fails to point to any place in the record that supports its assertion that other causes were argued and supported with basis and specificity. The Commission requires litigants to specify the precise portion of the record relied upon in support of the assertion of error. *Pennsylvania Power & Light Co.* (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952, 955-56, 956 n.6 (1982). In fact, BCOC cannot point to the record because it proffered no other causes with sufficient basis and specificity. The only sequence that marginally meets the Commission's requirements for basis and specificity is the seven-step sequence admitted by the Board.<sup>12</sup>

BCOC further asserts that the Board based its decision on an overly narrow reading of two *Vermont Yankee* cases.<sup>13</sup> Yet, nowhere in its Petition for Review does BCOC adequately explain its assertion that the Board adopted an overly narrow reading of the *Vermont Yankee* cases. It apparently bases its claim on its unsupported assertion that the Board should have considered the contribution of "other uncontested probability calculations to the overall probability of a spent fuel pool fire." Petition for Review at 8. It is the burden of BCOC, as intervenor, not the Board, to provide a causative mechanism and a credible basis for the accidents upon which its contention is based. See *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 (1989). It cannot rely upon the inclusion of unspecified, uncontested probability calculations not properly pled in their filing.

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<sup>12</sup> To the extent that BCOC is asserting that its sabotage scenario should have been admitted, as the Board noted, that issue is not litigable in NRC cases. LBP-00-19, 52 NRC at 97-98 (citations omitted).

<sup>13</sup> *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-90-4, 31 NRC 333 (1990); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-90-7, 32 NRC 129 (1990).

Based on the foregoing, it is clear that BCOC has failed to demonstrate that it has met the criteria of 10 C.F.R. § 2.786(b)(4). Therefore, the Petition for Review of LBP-00-19 should be denied.

D. LBP-01-09

BCOC asserts that the Board committed both legal and “clear factual” error in LBP-01-09. First, BCOC faults the Board for determining the issue on the merits. Petition for Review at 8-9. The assertion has no basis and misconstrues the purpose of Subpart K and the meaning of the regulations. 10 C.F.R. § 2.1115 governs the designation of issues for hearing under subpart K and specifically authorizes the Board to “[d]ispose of any issues of law or fact not designated for resolution in an adjudicatory hearing.”

With regard to issues not designated for resolution in an adjudicatory hearing, the presiding officer shall include a brief statement of the reasons for the disposition. If the presiding officer finds that there are no disputed issues of fact or law requiring resolution in an adjudicatory hearing, the presiding officer shall also dismiss the proceeding.

Clearly, the Board must *dispose* of the issues not designated for hearing by resolving them. In LBP-01-09, the Board, after determining that there were no genuine and substantial facts or legal principles in dispute, resolved the issues in favor of issuance of the license amendment. The Board took the same action in LBP-00-12, where it determined that there were no genuine and substantial facts or legal principles in dispute and resolved the two contentions in favor of CP&L. Resolution of issues requires a decision on the merits, notwithstanding that the issue are not designated for hearing. That is, once the determination that there were no genuine and substantial facts in issue, a determination as to which set of facts prevails must be made. Subpart K provides for a form of summary disposition procedure. Final Rule, Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors, 50 Fed. Reg. 41,662, 41,664 (1984). Summary disposition contemplates *disposition* on the merits established through

written pleadings. *See e.g.* 10 C.F.R. § 2.749. Since the regulations are clear on this point, there is no basis for BCOC's claim of error.

Second, BCOC complains that the Board was arbitrary and capricious in choosing facts favorable to the Staff. Petition for Review at 9-10. Yet, despite the use of numerous substantive footnotes, BCOC has provided no basis to demonstrate that review should be granted. The allegations of error are just that - mere allegations. BCOC must clearly identify the errors in the decision for which it seeks review and provide sufficient information and cogent argument for the Commission to determine the precise nature of the claims. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285 (1994), *aff'd*, *Advanced Medical Systems, Inc. v. NRC*, 61 F.3d 903 (6<sup>th</sup> Cir. 1995). *See also Susquehanna*, ALAB-693, 16 NRC at 955-56 n.6. It has failed to do so in this case. BCOC's objection amounts to a complaint that the Board is wrong because it did not accept Dr. Thompson's opinions or analysis. But the Board thoroughly explained why it did or did not accept a party's analysis or opinion. Its conclusions were soundly based upon the record and the reasoned assessment of the competing analyses of the accident sequence. The Board gave Dr. Thompson's technical judgment the appropriate weight based upon his qualifications and testimony. It is the Board's function to "decide, based on the sworn testimony and sworn written submissions, whether the differing technical judgment gives rise to a genuine and substantial dispute of fact that must be resolved in an adjudicatory hearing." 50 Fed. Reg. at 41667. Clearly, the Board weighed the differing judgments of the Staff and Dr. Thompson and found the Staff's to be more persuasive.

BCOC misrepresents the Board's decision and fails on numerous occasions to cite to the record to support its theses. For example, in footnote 17 of its petition, BCOC raised numerous issues, first contending that the Board "completely ignored" its "evidence" of the type of analysis required. Petition for Review at 9-10 n.17. But, the "evidence" was merely the opinion of Dr. Thompson. Furthermore, the Board explained the type of analysis it was seeking. LBP-01-09

at 16-17. BCOC next states that the Board misrepresents its position regarding the potential occurrence of degraded core accidents (step 1), but it provides no citations to the record and no discussion of the effect of this alleged misrepresentation.<sup>14</sup> Petition for Review at 9-10 n.17. In any event, since the Board used the Staff's higher probability for this step, BCOC's objection could not result in reversible error. See LBP-01-09 at 19. Contrary to BCOC's allegation that the Board disregarded its criticisms of the Staff's method used to estimate onsite radioactivity levels, the Board directly addressed the criticisms, but did not accept them.<sup>15</sup> *Id.* at 26. BCOC further asserts that the Board made arbitrary judgments on the merits of the case without benefit of substantive expertise. Petition for Review at 10 n.17. But the Board, in fact, had the benefit of the extensive affidavits of many experts and other witnesses. BCOC cites *Hope Creek* for the proposition that the Board "must do more than reach conclusions; it must 'confront the facts.'" Petition for Review at 10 n.18, (citing *Public Service Electric & Gas Co., Atlantic City Electric Co. (Hope Creek Generating Station, Units 1 and 2)*, ALAB-429, 6 NRC 229, 237 (1977)). That is precisely what the Board did in this case. It fulfilled its obligation to "explain its rejection of evidence" contrary to that which it accepted, and it based its decision on the evidence submitted. See *Hope Creek*, ALAB-429, 6 NRC at 237. The fact that BCOC is dissatisfied with the outcome and disagrees with the Board's findings is not grounds for review.

In order for any issue to proceed to hearing, the Board must "identify the specific facts that are in genuine and substantial dispute, the reason why the decision of the Commission is likely

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<sup>14</sup> The same is true of its claim that the Board misrepresented its position on loss of spent fuel cooling.

<sup>15</sup> BCOC also alleges that the Board misrepresented its estimate of the overall probability of the four selected containment bypass sequences, but does not explain how the Board misrepresented it or the effect on the proceeding. In fact, the Board noted that BCOC's and the Staff's analyses of the 2<sup>nd</sup> step of the sequence do not differ significantly. LBP-01-19 at 21. Therefore, this objection is of no consequence.

to depend on the resolution of that dispute,<sup>16</sup> and the reason why an adjudicatory hearing is likely to resolve the dispute.” 10 C.F.R. § 2.1115(a). BCOC has failed to identify any disputes meeting the criteria of 10 C.F.R. § 2.1115. Since presumably all the facts and arguments have been submitted to the Board, BCOC has failed to show what further evidence might remain to be adduced at hearing.<sup>17</sup> An evidentiary hearing on EC-6 is not necessary. The Board was able to resolve the issues based on the parties’ submissions, including the affidavits and supporting exhibits, and oral argument. The Board’s thorough, reasoned opinion compared and analyzed the parties’ submissions, as relevant, and provided support for its conclusions.

Third, BCOC asserts that the Board erred in accepting the premise that workers can be exposed to doses greater than 5rem TEDE during accident conditions. *Id.* at 9-10. BCOC asserts that the occupational radiation exposure limits of 5 rem TEDE per year, as set forth in 10 C.F.R. Part 20, should be the criterion for precluding post-accident access to restore SFP cooling or makeup and that the use of an exposure limit of 25 rem TEDE is unlawful. But, as held by the Board, the regulations do not bar CP&L from using a 25rem dose limit in an actual emergency or in planning for an emergency. LBP-01-09 at 29-30. *See also* 10 C.F.R. § 20.1001(b) (“nothing in this part shall be construed as limiting actions that may be necessary to protect health and safety.”); 10 C.F.R. § 50.47(b)(11) (permitting use of EPA Emergency Worker and Lifesaving Activity Protective Action Guides, which permit exposures of up to 25 rem TEDE under emergency conditions when needed to protect lives and large populations). Therefore, this ground does not provide a basis for review of LBP-01-09.

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<sup>16</sup> This criterion is far stricter than a finding that an issue is material pursuant to the summary disposition rules. *See* 10 C.F.R. § 2.749(d).

<sup>17</sup> That BCOC may have been unable to clearly articulate its position in its written presentation, cannot be grounds to warrant an adjudicatory proceeding where the facts are otherwise understood by the Board.

CONCLUSION

The Staff submits that the Board's rulings are consistent with Commission precedent, common methods of regulatory analysis, and are well grounded in law and fact. The Staff agrees that the Commission should take review of the GDC 62 issue, but since the issue has been fully briefed and the identical issue is on appeal in the *Millstone* case, the issue should be consolidated with that proceeding with respect to this matter, and not separately briefed or considered in the instant case. As to the remaining issues raised in the Petition for Review, BCOC has failed to demonstrate the existence of a substantial question with respect to any of the considerations specified in 10 C.F.R. § 2.786. It has not shown as to any of the three Board decisions for which it seeks review that a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding, that a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law, or that a substantial and important question of law, policy, or discretion has been raised. Therefore, the Staff respectfully requests that the Petition for Review be granted as to the GDC 62 issue only and be denied as to all other issues.

Respectfully submitted,

**/RA/**

Susan L. Uttal  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 2nd day of April, 2001

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )  
)  
CAROLINA POWER & LIGHT COMPANY ) Docket No.50-400-LA  
) ASLBP No. 99-762-02-LA  
(Shearon Harris Nuclear Power Plant) )  
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF OPPOSITION TO ORANGE COUNTY'S PETITION FOR REVIEW OF LBP-00-12, LBP-00-19 AND LBP-01-09" in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, or by deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in U.S. Postal Service as indicated by double asterisk, with copies by electronic mail as indicated this 2<sup>nd</sup> day of April, 2001:

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