

10/13/78

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

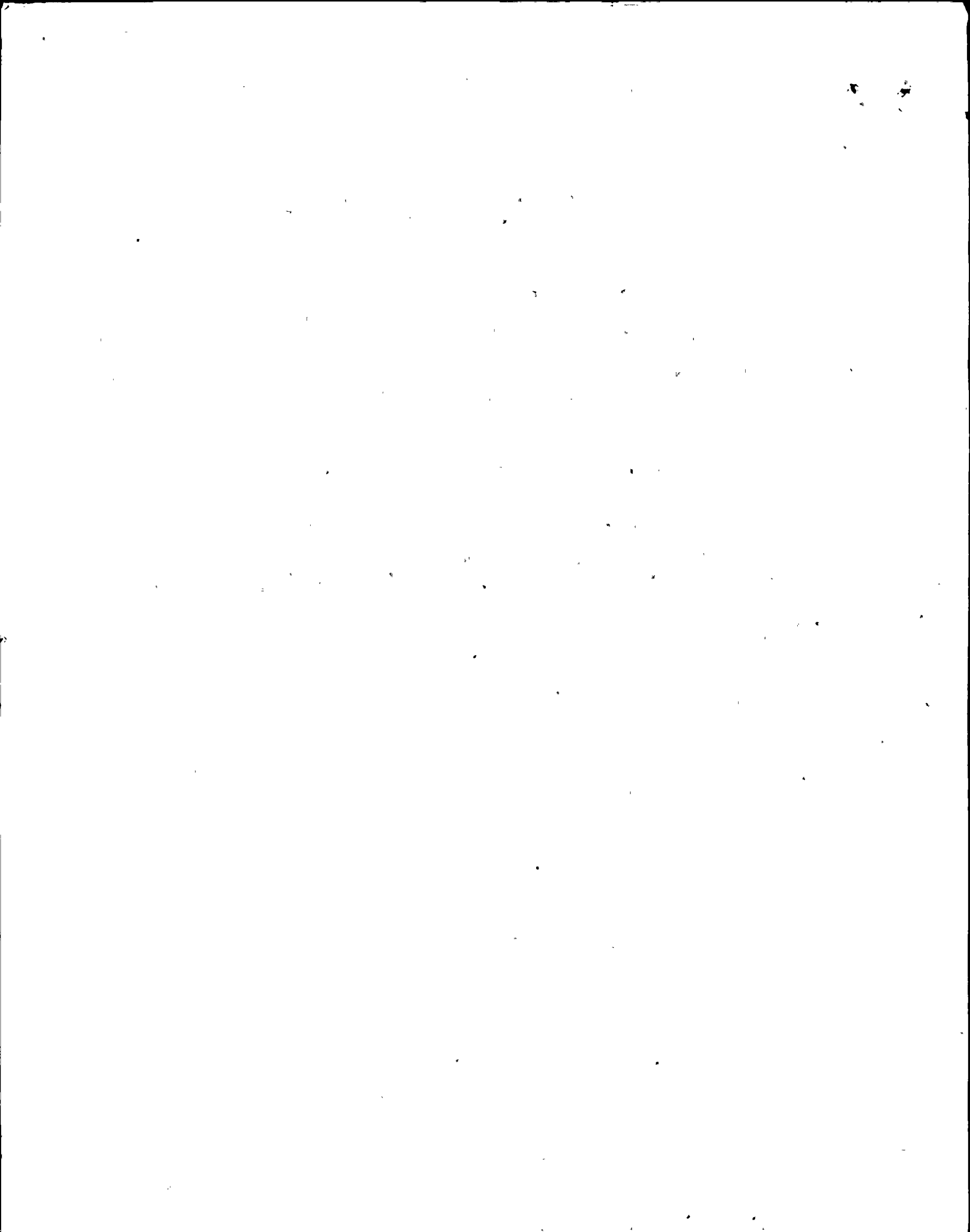
In the Matter of )

PACIFIC GAS AND ELECTRIC COMPANY )

(Diablo Canyon Nuclear Power )  
Plant, Units No. 1 and 2 )

) Docket Nos. 50-275 O.L.  
) ~~50-323 O.L.~~

PACIFIC GAS AND ELECTRIC COMPANY'S  
RESPONSE TO INTERVENOR'S SAN LUIS OBISPO  
MOTHERS FOR PEACE PETITION FOR DIRECT CERTIFICATION  
AND APPEAL FROM LICENSING BOARD ORDER OF SEPTEMBER 5, 1978



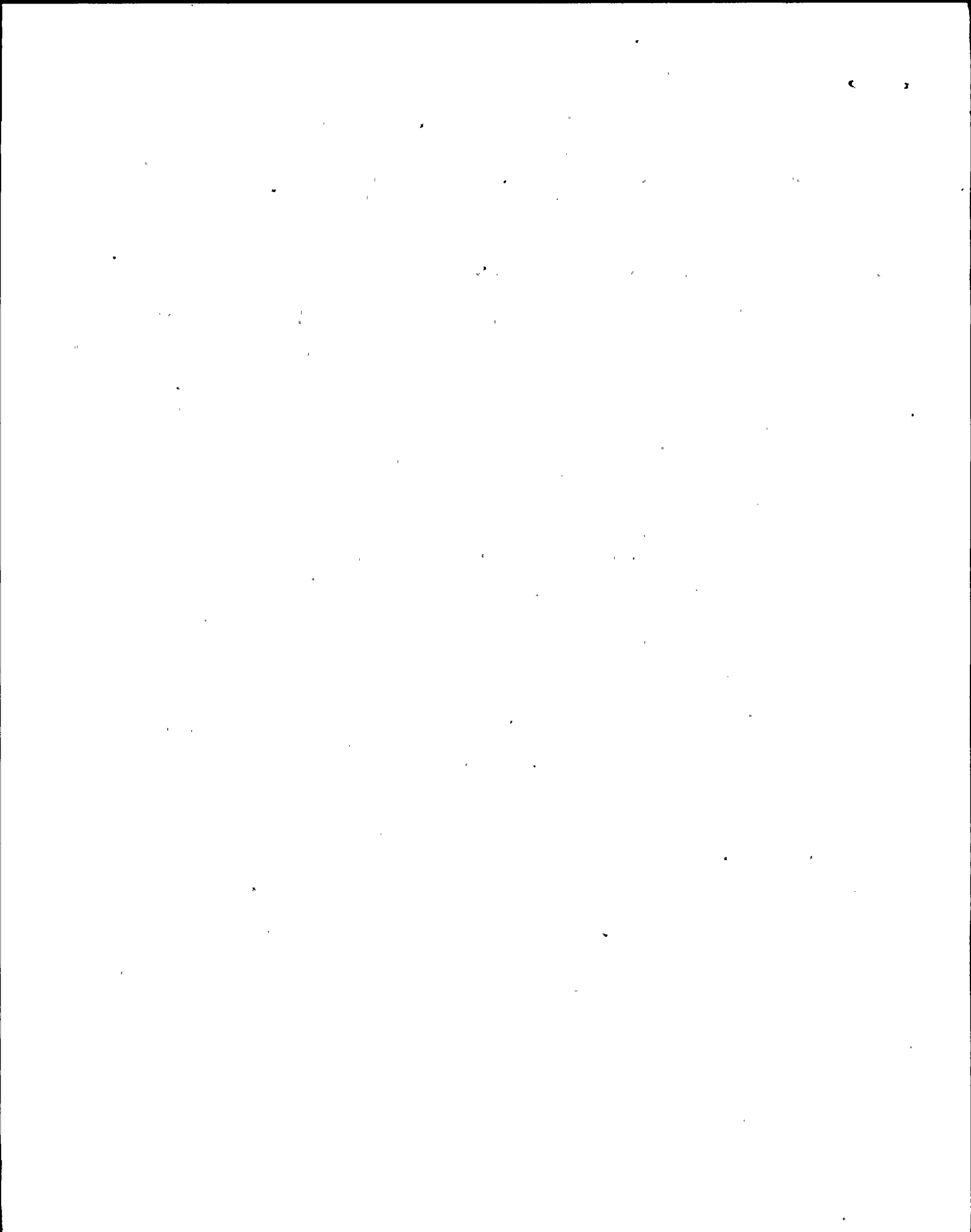
I. CERTIFICATION IS NOT APPROPRIATE

- A. Factual Background Between The Decision In Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 N.R.C. 1398 (1977) And Intervenor's Instant Request For Certification And Order.

After briefing, oral argument, and due consideration, this Board rendered its opinion in Pacific Gas and Electric Co., supra., on June 9, 1977. In a well detailed decision, the Appeal Board held that a security plan for a nuclear facility should be made available, under protective order, to counsel and expert witness(es) only to the extent and under the conditions set forth in the opinion. The conditions are, in pertinent part, as follows:

1. A mere conclusory statement of relevance (between portions of the plan and contentions) will not suffice; one must show a relationship between the contentions and the specific portions of the plan one wishes to view. 5 N.R.C. at 1404.
2. Any release must be subject to a protective order. Id.
3. A security plan need not be revealed to a witness who lacks relevant expertise for evaluating it. Access to the plan or portions thereof should be given only to witnesses who have been shown to possess the technical competence necessary to evaluate portions of the plan which they may be shown. Id.

In addition, the Appeal Board stated that "the party sponsoring the witness has the burden of demonstrating his expertise", (5 N.R.C. 1405) that "[o]nly those portions of a plan which relate to the expert's area of expertise need be shown that expert" and, "[i]f a proposed expert's qualifications are challenged,



the intervenor must prove that the expert is qualified to evaluate each section of the plan which is to be reviewed by him or her."

(5 N.R.C. 1406.) (Footnote omitted.) This Board, based on the submittals before it concerning Dr. De Nike, also noted that there was not sufficient information to demonstrate that Dr. De Nike was qualified to review the security plan. (5 N.R.C. 1406, n. 19.)

On June 17, 1977, the Licensing Board issued its order concerning future discovery of the security plan. (Attached hereto as Exhibit 1.) The Board directed the parties to confer within thirty days to attempt to reach agreement on the expert witnesses to be proposed by Intervenor. On May 6, 1977, Thomas Englehardt, NRC Staff Attorney, wrote to Intervenor suggesting four persons who might well be willing to act as experts for Intervenor in this matter, none of whom Applicant objected to. Those persons were:

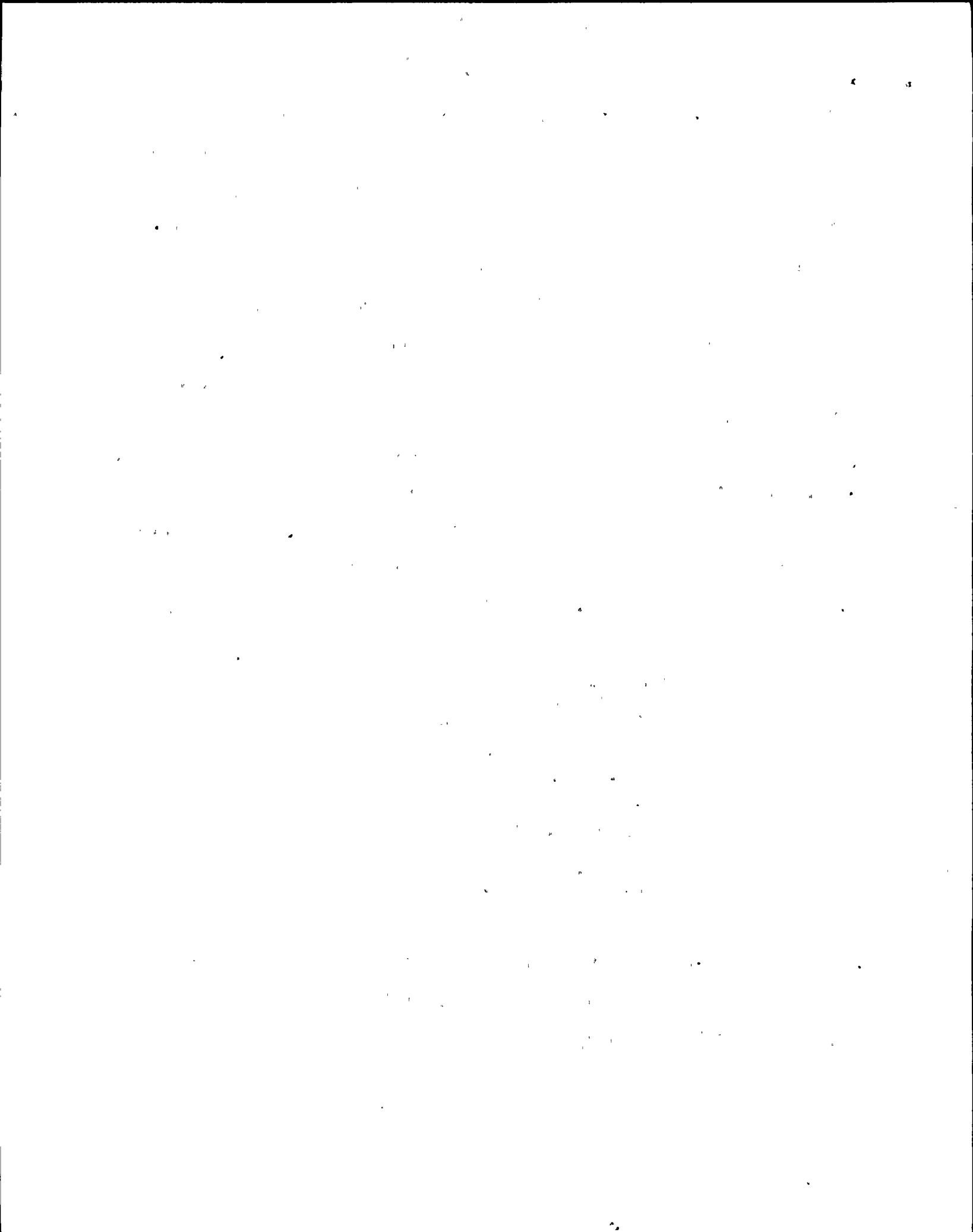
Dr. Martin R. Gustavson  
Assistant Associate Director  
for Military Systems  
University of California  
Lawrence Livermore Lab.

Mr. L. Philip Reinig, President  
Los Alamos Technical Associates, Inc.

Dr. Robert J. Donham, Program Manager  
Los Alamos Technical Associates, Inc.

Mr. Dan D. Darling  
Dan Darling & Associates  
El Segundo, California

In an earlier letter (attached hereto as Exhibit 5), Applicant had informed Intervenor of what areas in which a consultant should have expertise and, additionally, enclosed a resume of an individual to

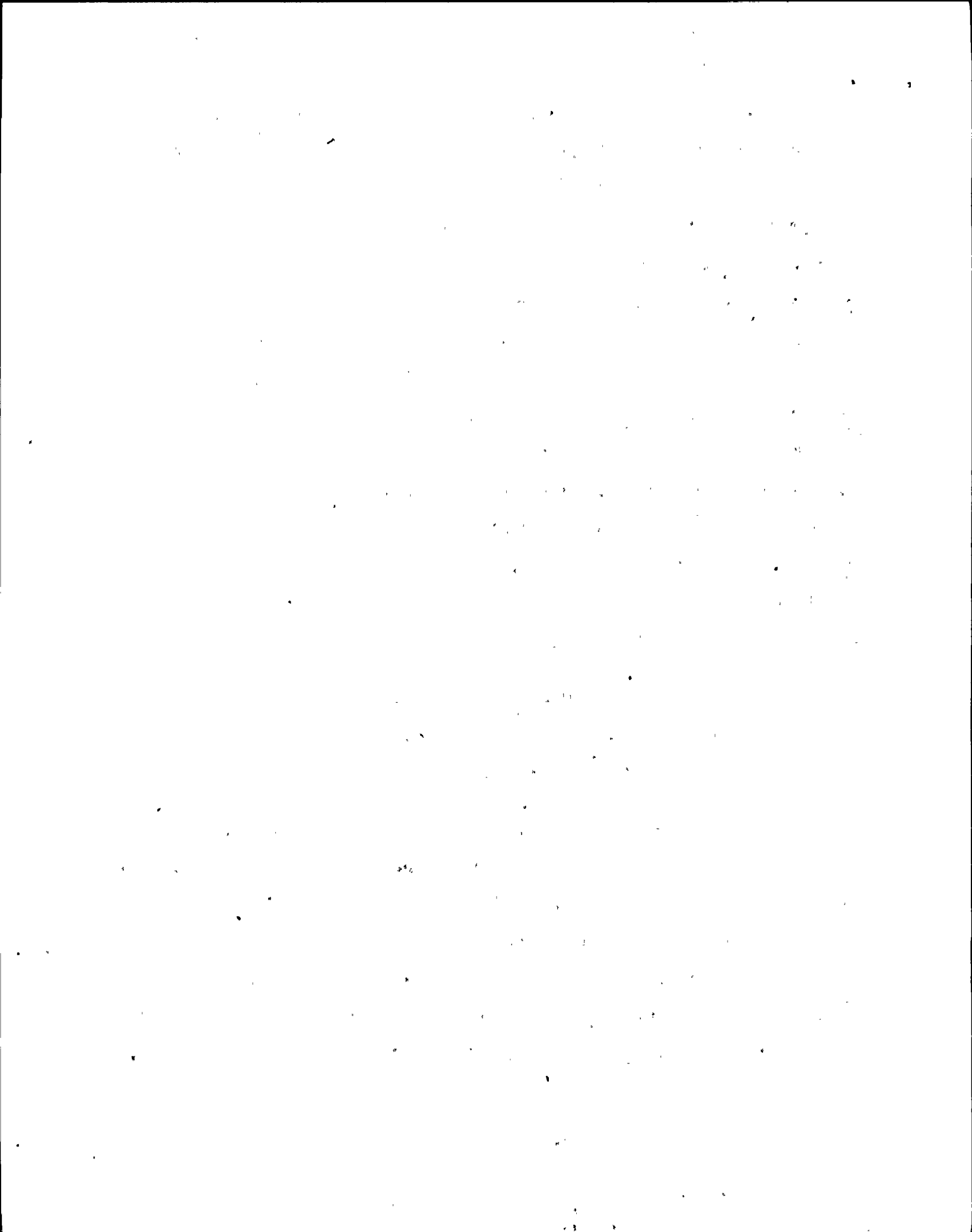


indicate the type of person Applicant believed would be qualified to examine site security plans.

Despite the Licensing Board's directive and the efforts of the parties, Intervenor once again petitioned the Board to qualify Dr. De Nike on August 29, 1977. Not one iota of new information was presented by Intervenor despite the prior ruling of the Appeal Board. On September 21, 1977 and October 4, 1977, the Applicant and NRC Staff, respectively, opposed Intervenor's Petition on the basic premise that no new evidence to show Dr. De Nike's qualifications had been presented. In addition, Applicant also moved the Board to dismiss the security contention as constituted as it did not comport with the recently revised 10 C.F.R., Part 73. On November 3, 1977, the Licensing Board entered its order (attached hereto as Exhibit 2) which provided:

- (i) Dr. De Nike was not qualified;
- (ii) Intervenor's contention was to be amended to relate to current Part 73; and
- (iii) Intervenor was to have 60 days after receipt of the Order to refine its contention and to produce a qualified expert.

On February 1, 1978, Intervenor once again petitioned the Board to order Dr. De Nike qualified (once again without submitting any additional information, evidence, or argument) and also asked the Board to "qualify" Dr. Bruce Welch. On February 13, 1978 and February 17, 1978, the Applicant and Staff, respectively, opposed the petition and requested of the Licensing Board permission to depose Dr. Welch as to his qualifications. On February 24, 1978, Dr. Welch





was deposed for that purpose. On March 9, 1978, Applicant filed a response challenging the qualifications of Dr. Welch based on his deposition testimony and this Board's decision in Pacific Gas and Electric Co., supra. Intervenor requested, on March 17, 1978, and was given, additional time to file a "response" to Applicant's response. On April 1, 1978, Intervenor's "response" consisted of their again asking the Board to order Dr. De Nike (again, needless to say, without any added information), Dr. Welch, and, for the first time, Richard Hubbard, all to be qualified. Applicant opposed this latest filing on April 11, 1978, and Staff joined in the opposition on May 8, 1978.

The Board, on May 11, 1978, reaffirmed its order of November 3, 1977 regarding Dr. De Nike and, based on the deposition of Dr. Welch and the resume of Richard Hubbard, denied Intervenor's petition to qualify those gentlemen. That order is attached hereto as Exhibit 3.

On May 23, 1978, Intervenor submitted yet another petition, this time requesting that David Comey be qualified as its expert. Applicant and Staff, under date of June 5, 1978, both requested permission to depose Mr. Comey and the Board so ordered on June 13, 1978. Mr. Comey was deposed on July 5, 1978. Due to transcripts available to Staff from other proceedings, Staff responded to the petition first, on August 14, 1978, and Intervenor followed on August 25, 1978. Contemporaneously with Applicant's response in opposition to the qualifications of Dr. Comey, Intervenor filed a Petition for Immediate Order that Dr. Comey was qualified. On



September 5, 1978, the Licensing Board, after review of the record before it, denied Intervenor's Petition to Qualify Mr. Comey.

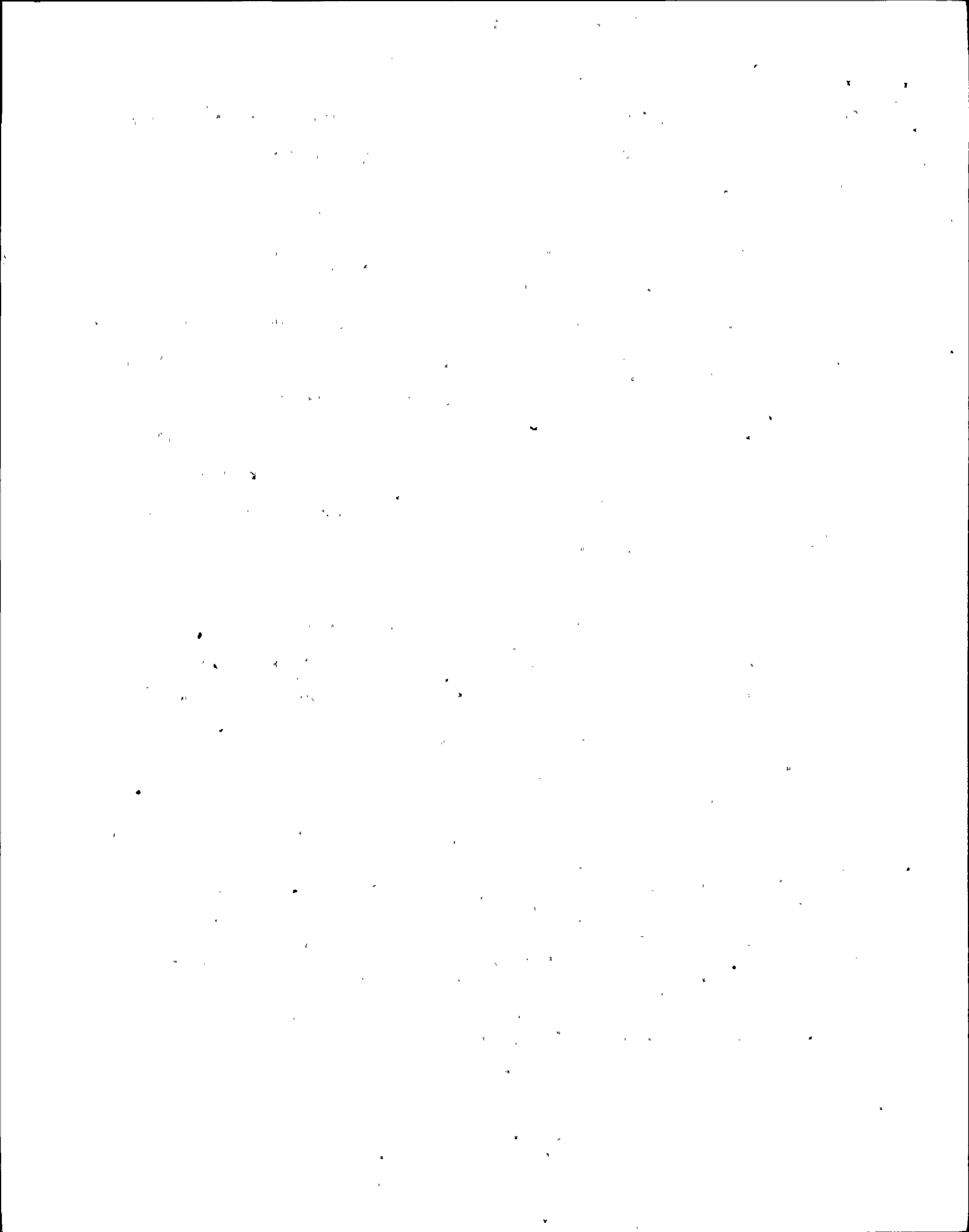
(Attached hereto as Exhibit 4.)<sup>1</sup>

B. Intervenor Is Not Seeking Clarification Of The Requirements Set Down By This Appeal Board But Is Simply Challenging The Licensing Board's Order Of September 5, 1978.

Although Intervenor states that certification is necessary to clarify the requirements and guidelines regarding the disclosure of security plans set down by the Appeal Board in Pacific Gas and Electric Co., supra., it is clear that Intervenor's supporting argument is not directed to the question of a need for clarification at all. Intervenor does not argue that the Appeal Board's opinion is not clear, or that the Licensing Board failed to understand the guidelines, or that the Licensing Board stated that the guidelines are unclear. What Intervenor does take issue with are the findings of the Licensing Board respecting the lack of qualification of Intervenor's proposed expert. In fact, Intervenor states that it has complied "with all requirements and guidelines regarding qualification of an expert", (Int. Supp. Mem., p. 4) but that the

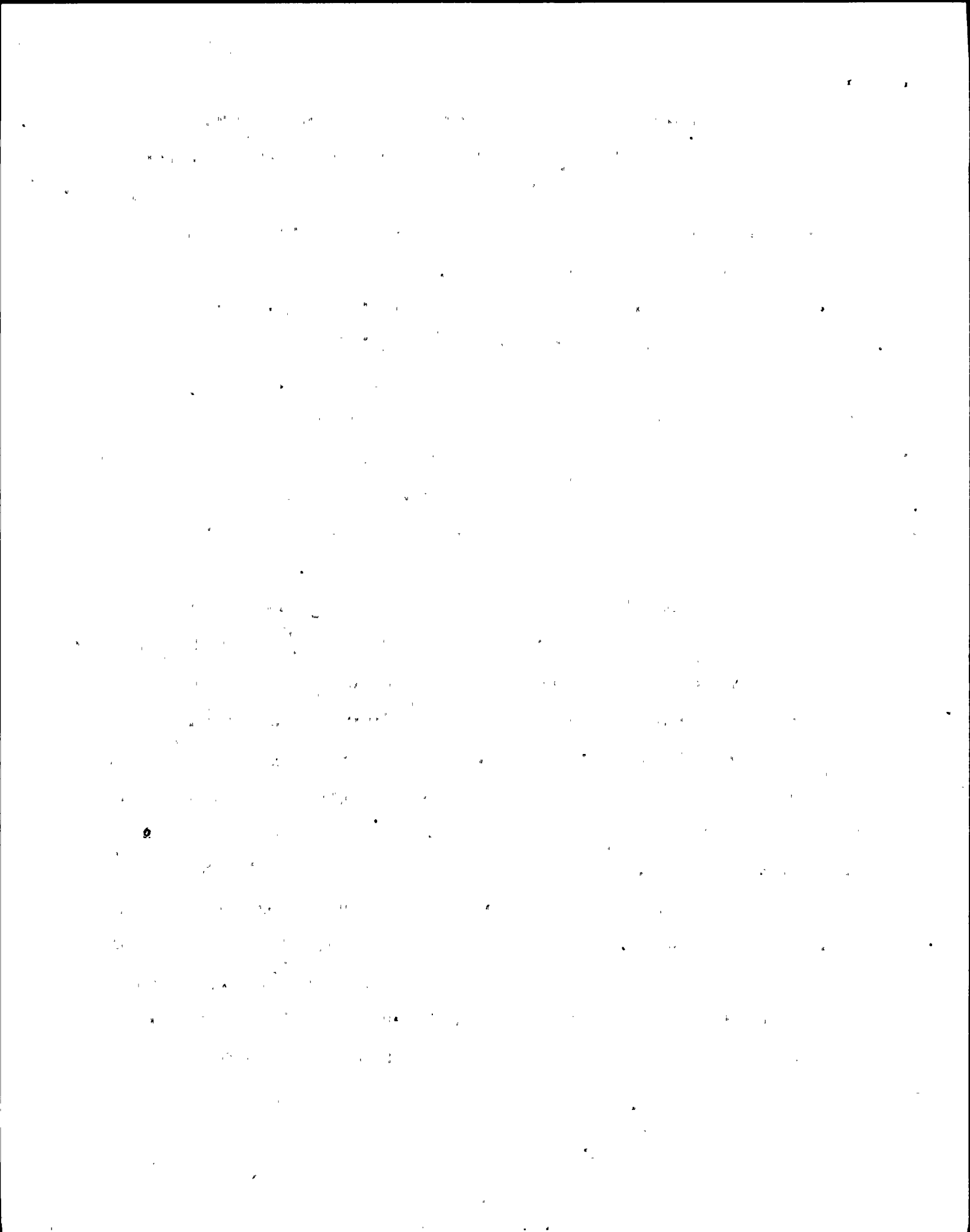
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<sup>1</sup>It is apparently only the order of September 5, 1978 that Intervenor attempts to appeal from in the instant "Appeal From Orders of May 11, 1978, and September 5, 1978, Relative to Qualification of Security Experts" (hereinafter "Int. Appeal") and "Supplemental Memorandum in Support of Intervenor San Luis Obispo Mothers for Peace Appeal from Orders of May 11, 1978, and September 5, 1978, Relative to Qualification of Security Experts: petition for Direct Certification" (hereinafter "Int. Supp. Mem."). As the Order of May 11, 1978 did not concern Mr. Comey and Intervenor states in its latest filing that "[i]ntervenor seeks now direct certification and qualification only of David Dinsmore Comey as security expert for discovery purposes." (Int. Supp. Mem., p. 1.)



Licensing Board nonetheless has found Mr. Comey's background and experience to be insufficient to qualify Mr. Comey as an expert. (Id.) Intervenor could not be as certain as it claims to be that it has complied with all requirements if clarification of those requirements were actually needed. The only logical conclusion to be reached from a reading of Intervenor's filings is that it is the Licensing Board's not finding Mr. Comey qualified from which they appeal. Validity of this conclusion is borne out by Intervenor's subsequent argument that "the Licensing Board arbitrarily refused to recognize Mr. Comey's expertise" (Int. Supp. Mem., p. 6), and by Intervenor's sole request that the Appeal Board "order that David Dinsmore Comey is qualified to serve as Intervenor's expert witness". (Id., p. 20.)

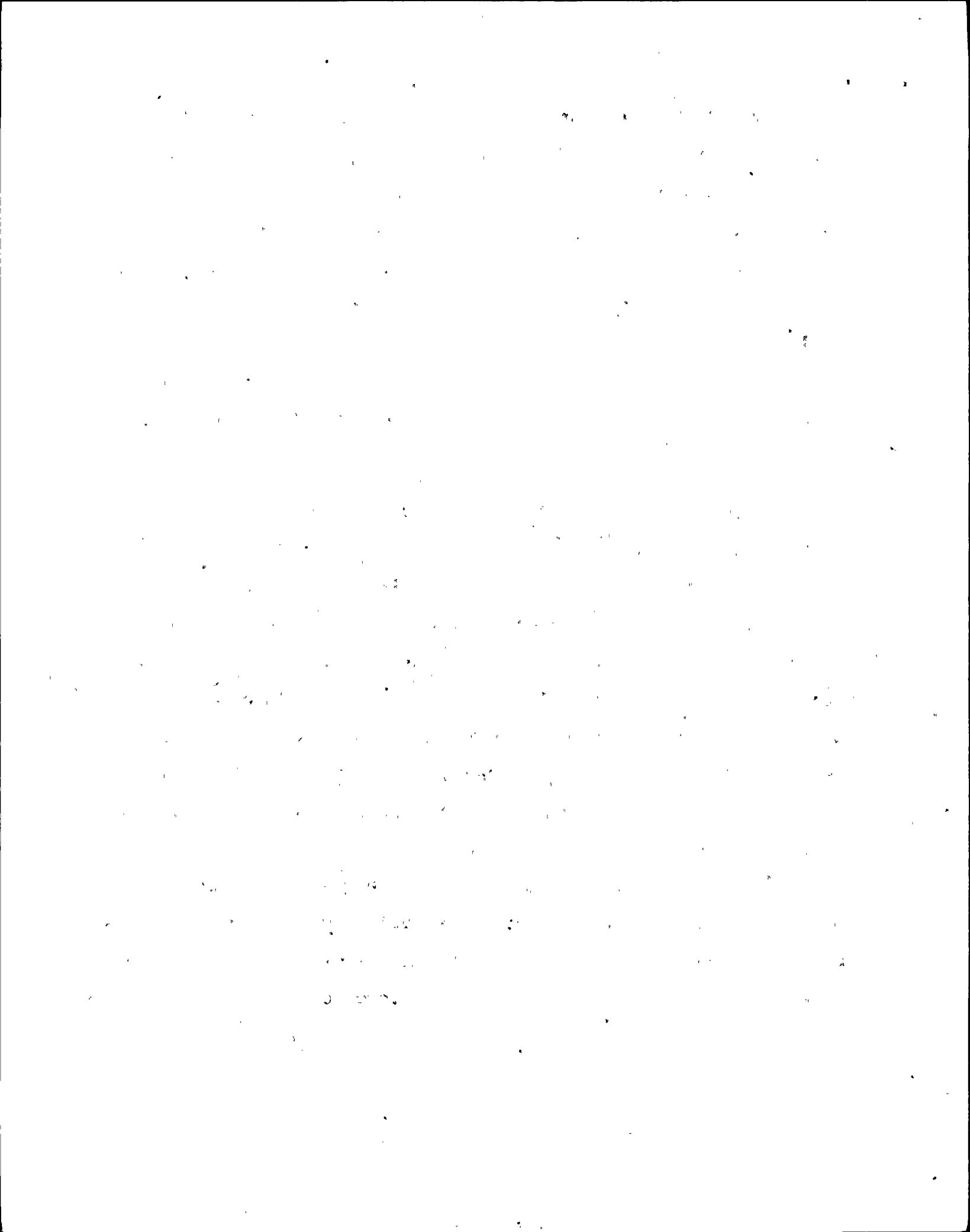
Intervenor's challenge of the Licensing Board's finding is not appealable as a matter of right, nor does it justify the granting of certification by the Appeal Board under 10 C.F.R. §2.718(i). Even if the Licensing Board's ruling has the effect of precluding Intervenor from examining the Applicant's security plan, Commission rules postpone Intervenor's right to obtain appellate review until the conclusion of the proceeding as Intervenor has other contentions which will be considered by the Licensing Board. 10 C.F.R. §§2.730(f), 2.714a; Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-269, NRCI 75/4R, 411, 413 (1975). As stated above, Intervenor's question concerns whether the Licensing Board abused its discretion in finding Mr. Comey unqualified. Interlocutory appeals of such evidentiary rulings do not present a proper case for



certification. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB 353, NRCI 76/10 381 (1976). The Appeal Board has adopted this position simply because time does not permit the Board to concern itself with the numerous interlocutory rulings made by licensing boards during the course of a proceeding. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-393, 5 N.R.C. 767, 768 (1977). The Licensing Board's Order which Intervenor attempts to appeal from here falls squarely in the category of an interlocutory ruling dealing with an evidentiary matter.

- C. The Question Presented By Intervenor In This Appeal Is Not One With Board Implications Or General Applicability Justifying The Granting Of Certification.

In ruling on requests for certification under 10 C.F.R. §2.718(i), the Appeal Board has stated that the requesting party must establish that certification is necessary to protect the public interest or to avoid unusual delay or expense. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, NRCI 75/11 752, 759 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, NRCI 75/5 478, 483 (1975). The question which Intervenor asks to be certified in this appeal does not satisfy either of these standards. Assuming that a question which has broad implications or general applicability satisfies the Appeal Board's "public interest" requirement, Intervenor has failed to raise such a question. Intervenor's question simply involves whether a particular witness is qualified for the particular purpose of reviewing portions





of Applicant's security plan. The implications and applicability of this question do not extend beyond the facts of this determination.

In its November 3, 1976 unpublished order granting Applicant's request for certification, this Appeal Board ruled that the extent of an applicant's obligation to disclose the contents of its security plan raises questions affecting the public interest. Intervenor attempts to rely on this ruling to support its request for certification. (Int. Supp. Mem., pp. 3, 5, 8.) Intervenor's reliance is misplaced for at least two reasons. First, the public interest question present in ALAB-410 was resolved when the Appeal Board set forth whether and under what conditions a security plan might be disclosed. The question posed in this appeal is whether the public interest requires that the Appeal Board review at this time the evidentiary ruling of the Licensing Board to the effect that Intervenor's proposed expert is unqualified. The answer is no, for the Appeal Board has held that evidentiary questions do not justify a grant of certification. Long Island Lighting Co., supra.; Public Service Co. of Indiana, supra. Second, had the Appeal Board denied certification in its November 3, 1976 order, the Applicant would have had an inadequate remedy. In being directed by the Licensing Board to disclose confidential information, Applicant was in a position similar to the applicants in Kansas City Gas and Electric Co. (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-327, NRCI 76/4, 408 (1976). In that case the Licensing Board had issued an order directing that the applicants disclose to certain intervenors the

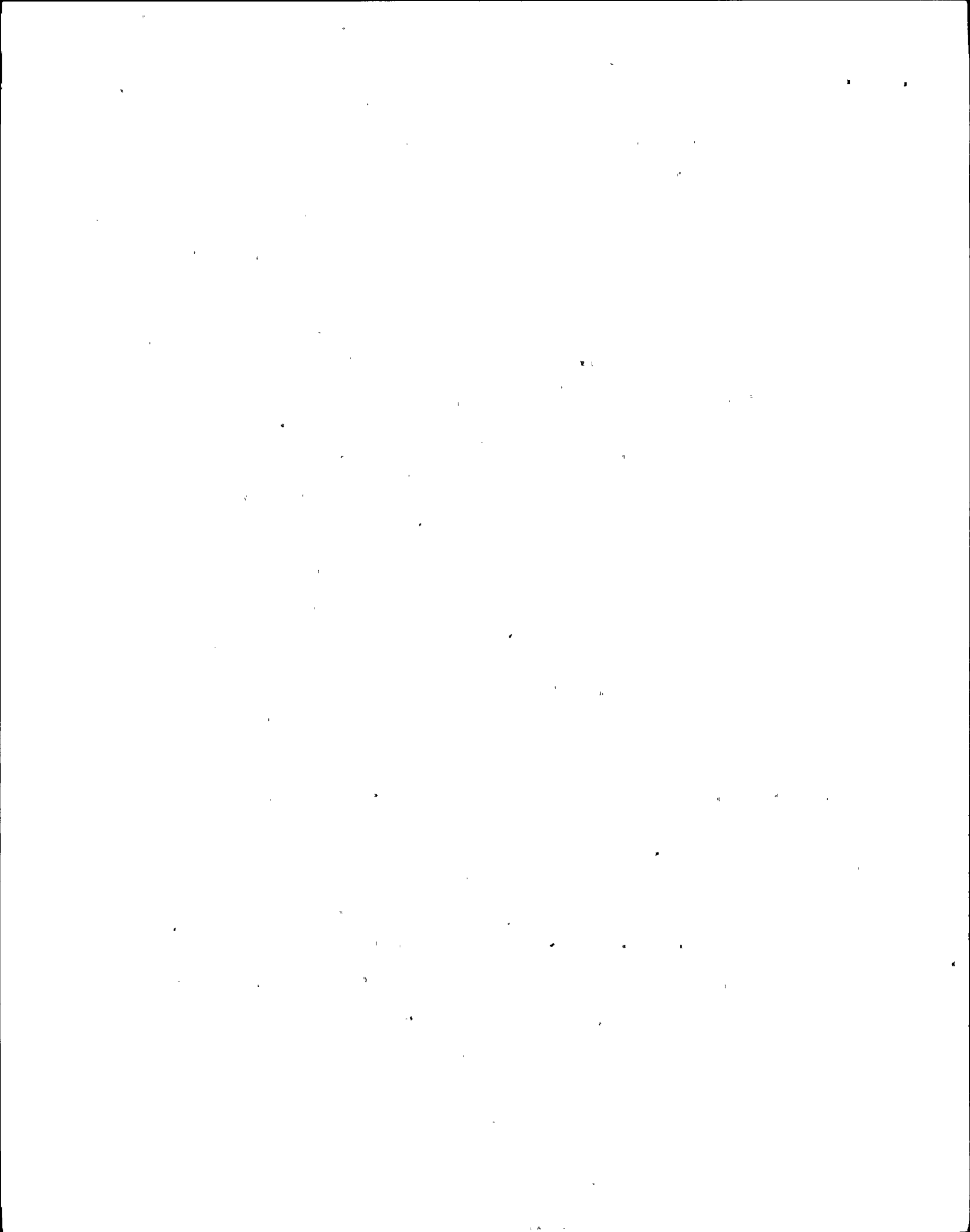


contents of a nuclear fuel supply contract containing proprietary information without the benefit of a protective order. The applicants requested certification of the Licensing Board's order to the extent that the order declined to preclude the intervenors from making public disclosure of the contractual provisions. The Appeal Board granted certification, stating its reasoning as follows:

"Unlike most interlocutory discovery orders, the one here-involved must be reviewed now or not at all. Such a consideration may not always prompt us to invoke our Section 2.718(i) certification authority. In this case, however, the underlying issue appears to be of enough importance, and the affected interests of the parties sufficiently great, that the Licensing Board's ruling should receive appellate review." Id. at 413.

The issue presented by Applicant leading to the November 3, 1976 order was subject to the same constraints as that presented in Kansas City Gas and Electric Co., supra. The issue presented by Applicant had to be reviewed then or not at all. Had the Appeal Board chosen not to grant certification, whatever harm would have resulted could not have been later redressed. Once the security plan had been disclosed to a member of the public, it would be fruitless to determine at the end of the case that disclosure should not have been permitted.

Such is not the case with respect to the issue now presented by Intervenor. The Appeal Board's review of the Licensing Board's finding that Mr. Comey is not qualified can be postponed until the end of the case without harm to Intervenor or the public.

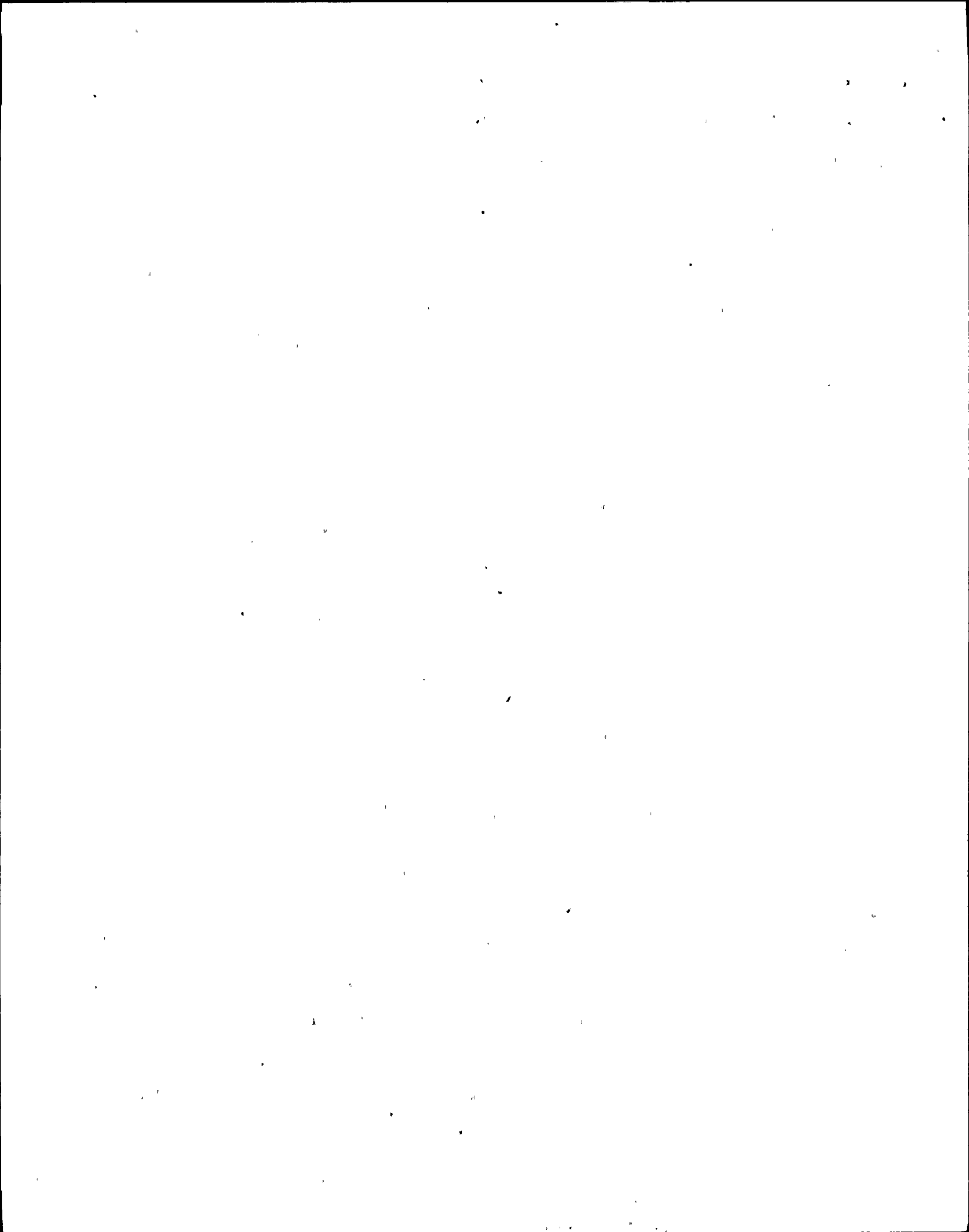


In its Supplemental Memorandum, Intervenor fails to discuss how it or the public interest could be harmed if the Licensing Board's finding is not reviewed until the end of the case. It fails to do so because the available remedy is adequate. Assuming arguendo, that the Appeal Board would determine at the end of the case that the Licensing Board's finding is in error, the hearing could be reopened at that time without undue expense or effort, to allow the then qualified expert to review the security plan, presumably to protect the public interest. As the Appeal Board has noted:

"In the last analysis, the potential for an appellate reversal is always present whenever a licensing board (or any other trial body) decides significant procedural questions adversely to the claims of one of the parties. The Commission must be presumed to have been aware of the fact when it chose to proscribe interlocutory appeals (10 CFR §2.730(f)). That proscription thus may be taken as an at least implicit Commission judgment that, all factors considered, there is warrant to assume the risks which attend a deferral to the time of initial decision of the appellate review of procedural rulings made during the course of trial." Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, NRCI 76/2, 98, 100 (1976).

D. Intervenor's Argument That The Licensing Board Has Placed Unreasonable Burdens Of Proof Or Requirements On Intervenor Is Specious And Does Not Justify Certification.

Although Intervenor argues that the Licensing Board has imposed an unreasonable burden of proof and unreasonable requirements (Int. Supp. Mem., pp. 6-7), Intervenor fails to identify specifically in what way the burden of proof is unreasonable or what requirements are unreasonable. Therefore, one must infer that Intervenor is arguing that either the guidelines set forth in Pacific Gas and Electric Co., supra., are unreasonable or the Licensing Board's



application of those guidelines is unreasonable. If Intervenor is arguing that the guidelines themselves are unreasonable, its present appeal is being made to the wrong body and at the wrong time. Intervenor should have appealed that question to the Commission itself after the decision in Pacific Gas and Electric Co., supra. If, on the other hand, Intervenor is arguing that the Licensing Board's application of the guidelines is unreasonable, Intervenor's argument boils down once again to a challenge of the Licensing Board's evidentiary finding. As stated supra, an appeal made prior to the end of a proceeding of an interlocutory ruling dealing with evidentiary matters does not warrant the granting of certification. See Public Service Co. of Indiana, supra.; Long Island Lighting Co., supra.

For the reasons stated above, Applicant respectfully submits that this matter should not be certified for appeal.

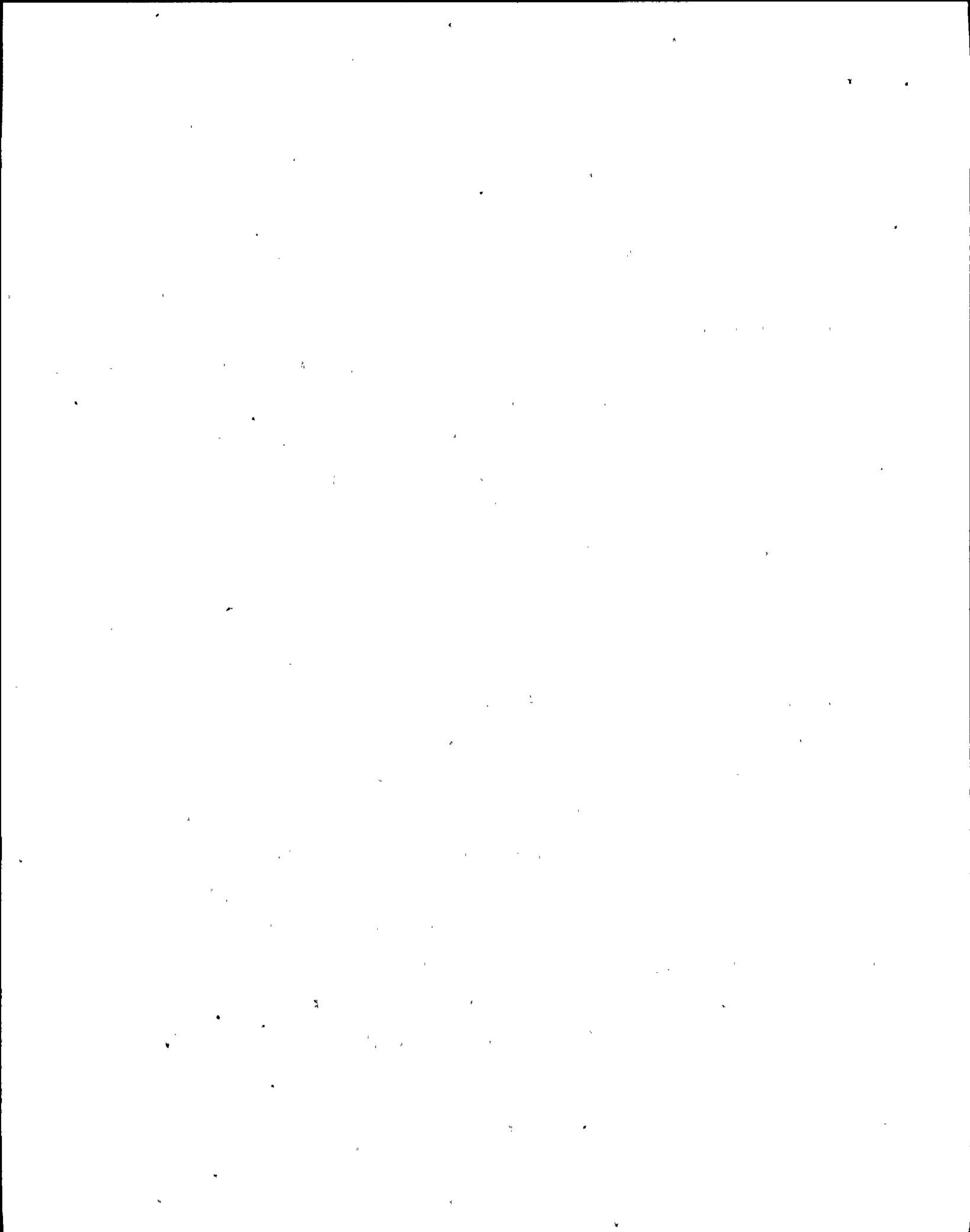




II. THERE HAS BEEN NO SHOWING THAT DAVID COMEY  
HAS SUFFICIENT TECHNICAL EXPERTISE TO REVIEW  
THE DIABLO CANYON SECURITY PLAN

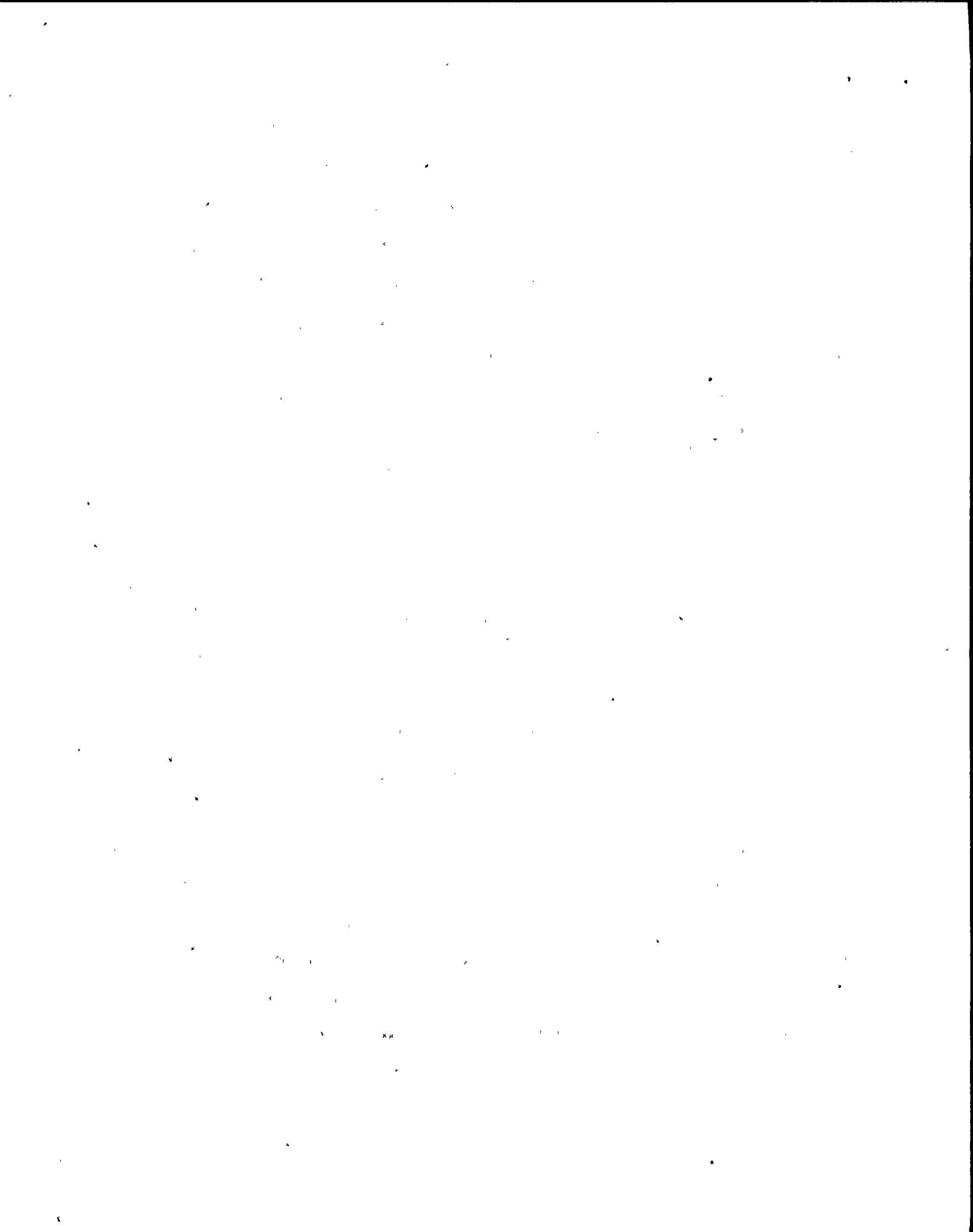
A. Intervenor's Putative Expert Has Not Been Recognized As An Expert  
In Prior Proceedings As Respects Security Plans.

Intervenor, as it did before the Licensing Board, again argues that Mr. Comey has "recognized expertise" in the area of nuclear power plant security plans. (Int. Appeal, p. 3; Int. Supp. Mem., pp. 5, 10.) Intervenor even alleges, completely without foundation in fact, that Mr. Comey was qualified as a "2.733 expert" in the Zion matter. Such is simply not the case. As pointed out below, Mr. Comey has never been recognized by any Licensing Board, Appeal Board or Atomic Committee on Reactor Safeguards as an expert in security matters. In his deposition (Deposition of David Comey, July 5, 1978, hereinafter referred to as "Depo."), Mr. Comey admits that no finding was made as to his being a security expert in either the Cook or Zion cases (Depo., p. 8, et seq.) Mr. Comey's expertise as to security plans was never put in question in either of those proceedings nor was he ever cross-examined, voir dire, or otherwise questioned as to his qualifications. Similarly, his gratuitous appearances before ACRS meetings does not bestow an aura of expertise. In fact, a review of the transcripts available to the NRC Staff of the Zion proceedings show no evidence whatsoever that Mr. Comey participated in any questioning or testimony concerning security matters. (Staff Response to Intervenor's Petition to Establish Qualifications of David Comey, pp. 5, 6, August 14, 1978.)



B. Self Declarations of Expertise Notwithstanding, Mr. Comey Does Not Have More Than A Superficial Knowledge of Security Systems.

In reading his deposition, it is obvious that Mr. Comey has read some materials regarding nuclear security. However, his grasp of the area, and indeed of the materials he has purportedly read, shows his obvious lack of technical expertise. For example, when discussing perimeter detection systems, Mr. Comey states that "[t]here are also infrared systems which work very much like the microwave systems. They simply record any interference in or near the beam between the transmitter and the receiver." Yet when reviewing SAND 76-0554, Vol. I, page 3.3-19 (Infrared Sensors) [a document with which Mr. Comey professes to be intimately familiar] one finds infrared systems do not work like microwave systems at all. In fact, infrared systems are passing systems which detect heat and motion and do not have a transmitter. One could argue, of course, that Mr. Comey was only confused, but Mr. Comey also testified under oath that he had reviewed the above-referenced document in preparation for his deposition which had to be within days of his deposition. There are a number of other places in Mr. Comey's deposition where he exhibits his lack of knowledge or expertise, e.g., at page 38, lines 9-10, where he states that he doesn't know what line supervision in connection with intrusion detection is, "out of context", and at page 65, lines 3-10, when he states that he knows of no electronic countermeasure gear for "microwave of the type that are normally installed at nuclear facilities". In fact, his lack of knowledge about security devices is probably best illustrated in his



discussion of the differences between "microwave" and "radar".

(Depo., pp. 63, 64.) Mr. Comey goes on at length about one kind of detection device, "radar", and then "another", "microwave". His discussion clearly indicates that he perceives these two systems as two entirely different kinds of systems when in fact, the "microwave" he attempts to describe is nothing more than a type of radar. In the security industry, microwave and radar are interchangeable terms.

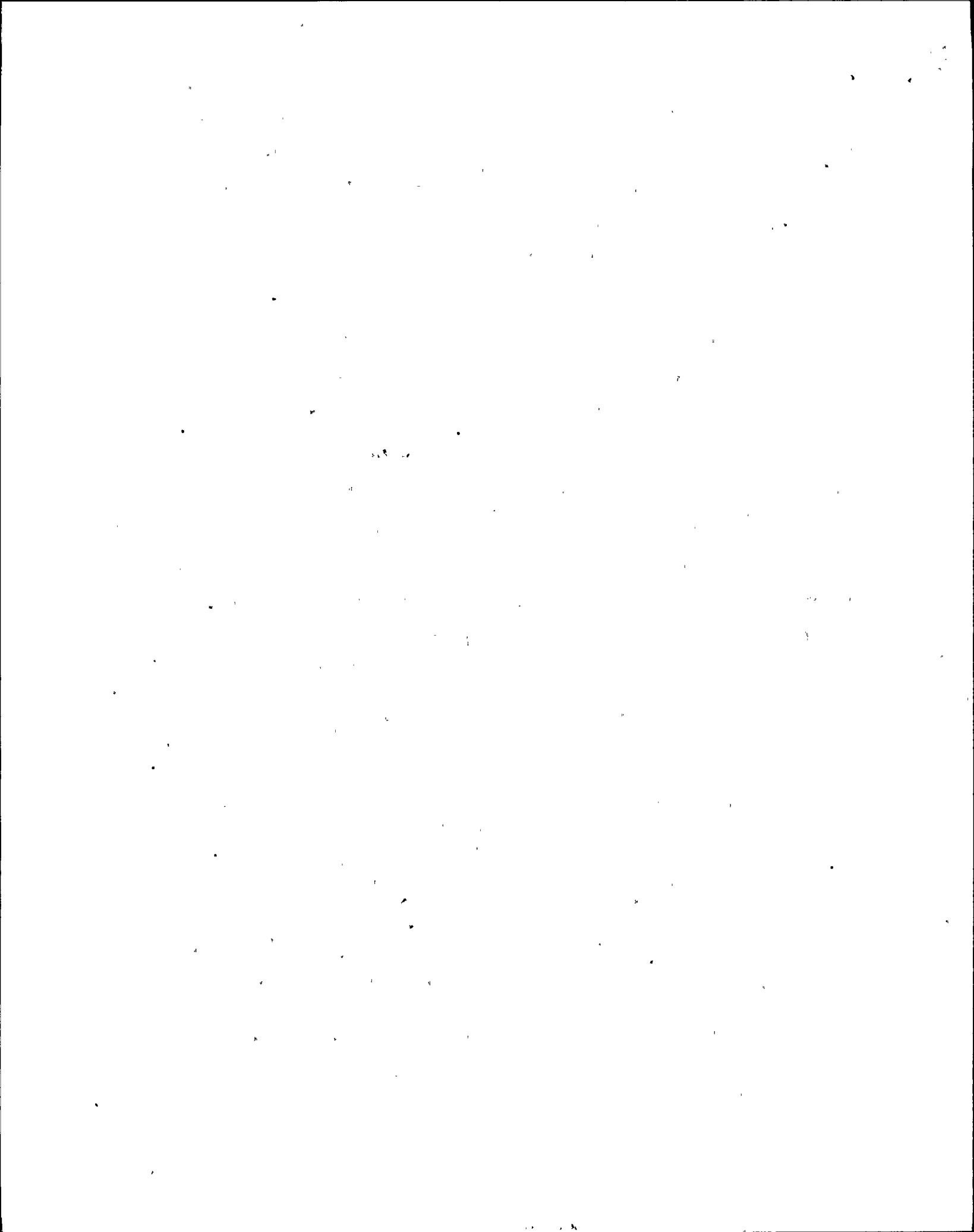
SAND 76-0554, p. 4.8-1.

In essence, Mr. Comey has not shown, and indeed does not possess the relevant technical expertise necessary to review any portion of Applicant's security plan. His expertise is as superficial as is the jargon of the industry with which he liberally sprinkles his speech. His lack of expertise in these matters is further demonstrated by his response to the question of whether there were any limitations to his expertise in the area of nuclear security and he responded:

"I would turn it around, and simply say that there have been times when I have gone into an area having to do with nuclear power plant design, where originally I felt really quite a novice at it. And yet, as a result of reviewing the design of a particular plan, I identified defects in the design which later resulted in retrofitting millions of dollars worth of equipment. So I can't make any promises that I can't contribute to an assessment of the design of something like a security plan in advance, because frankly until I look at something, I can't tell you that I may not have some intuitive insight that will make it a better plan."

(Depo., p. 55, lines 13-24.) (Emphasis added.)

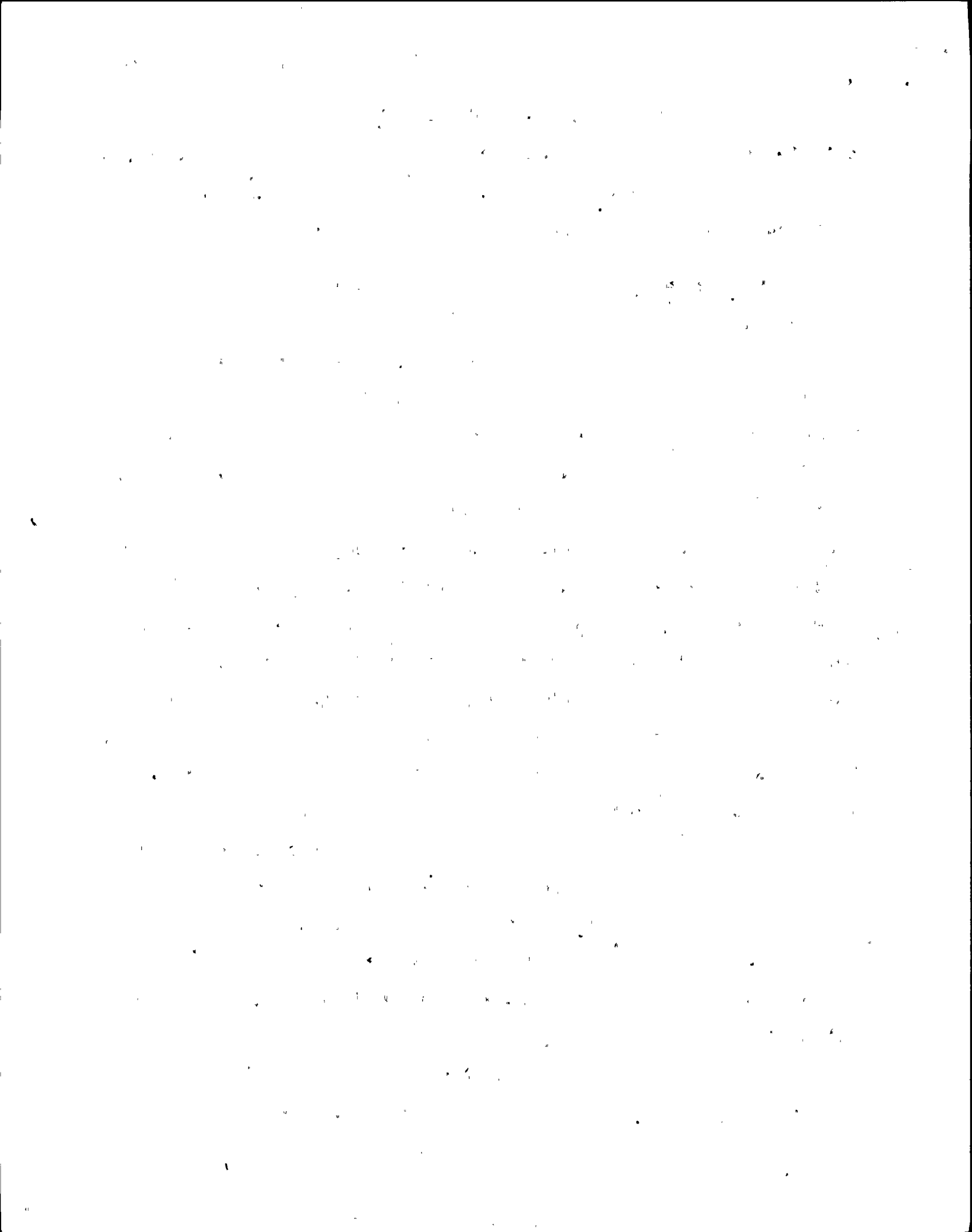
For Mr. Comey to believe that there is nothing within the area of nuclear security about which he is not expert is a



prima facie showing of his lack of expertise. Applicant respectfully submits that the Nuclear Regulatory Commission should not be guided by Mr. Comey's "intuitive insight", but rather, by hard facts, knowledge, and the judgment of qualified experts.

C. Intervenor Has Made No Attempt To Show Which Portions Of The Security Plan Relate To Its "Expert's" Area Of Expertise Or Contention.

As stated supra, this Board held that "one seeking to examine a portion of a security plan must show a relationship between his contentions and the specific portions of the plan he wishes to view". (5 N.R.C., p. 1404.) Additionally, "[a]ccess to the plan or portions thereof should be given only to witnesses who have been shown to possess the technical competence necessary to evaluate the portions of the plan which they may be shown". (Id.) In the instant case, Intervenor has totally ignored the above-referenced portion of this Board's holding, choosing instead to speak in the broadest possible terms of their alleged expert's expertise and the entire security plan. Absolutely no effort has been made by Intervenor to limit its inquiry into discrete portions of the plan as suggested by the majority of this Board (5 N.R.C., pp. 1408-10). Indeed, as can be seen by Mr. Comey's self description of total expertise when asked if there were any areas he might not be familiar with, Intervenor feels that its "intuitive insight" should be sufficient to let them view the entire security plan including the "gory" details (5 N.R.C., p. 1409) which, it is respectfully submitted, would not serve the public interest.





D. Conclusion.

For the reasons stated herein and those contained in the Licensing Board's orders of June 17, 1977, November 3, 1977, May 11, 1978, and September 5, 1978, Intervenor's Petition for Direct Certification and Appeal from the Licensing Board's Order of September 5, 1978, should be denied.

Respectfully submitted,

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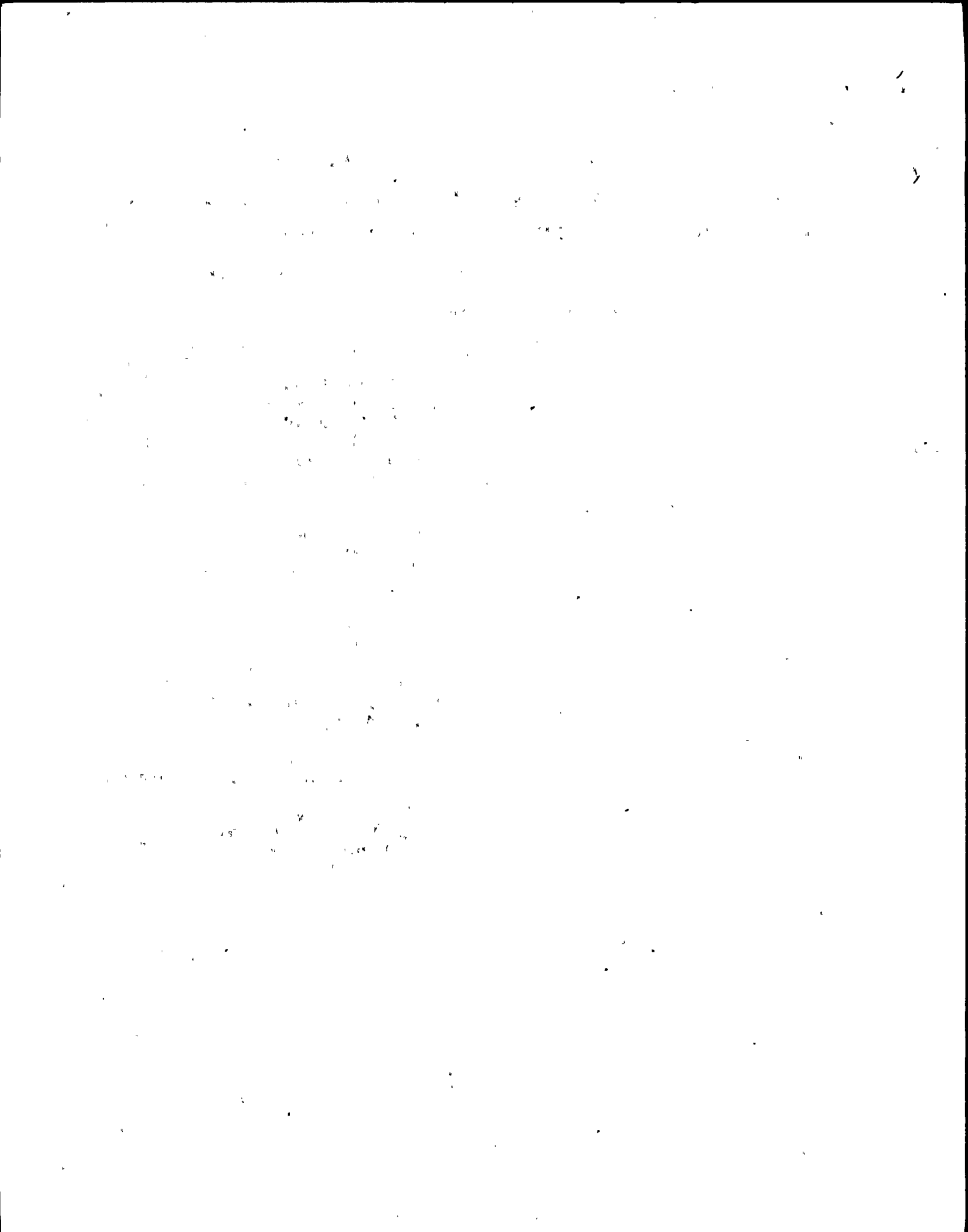
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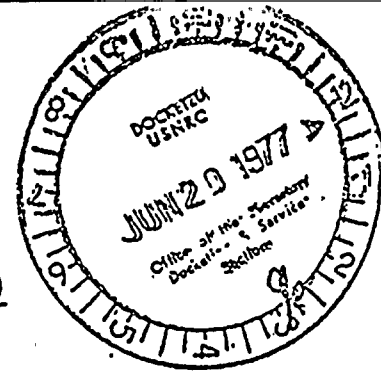
Attorneys for  
Pacific Gas and Electric Company

By   
Bruce Norton

DATED: October 13, 1978.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos.
PACIFIC GAS AND ELECTRIC COMPANY	)	
(Diablo Canyon Nuclear Power Plant,	)	50-275 OL
Units 1 and 2)	)	50-323 OL

ORDER RELATIVE TO DISCOVERY  
OF APPLICANT'S SECURITY PLAN

On June 9, 1977, the Atomic Safety and Licensing Appeal Board (ALAB-410) determined that discovery relative to the PG&E security plan was appropriate within stated guidelines. The first consideration for this Board is to determine the scope of the admitted contentions on security (MFP #7, SS #11 and EC #7). We believe the scope is very broad and was correctly stated by the NRC Staff in the proposed final language for the security contentions to CLPI on August 9, 1976, to wit:

"Whether adequate provisions have been made to guard against domestic sabotage of the facility, including consideration of intentional airplane crashes, bombs, hijacking, blackmail, paramilitary attacks and terrorism."

Therefore, we have determined that discovery should not be limited to only certain components due to the fact that the contentions admitted challenge the adequacy of the entire security plan.

While the listing on pages 23 and 24 of the Appeal Board decision was presented only for guidance, we believe that it is an



excellent presentation of the various components of the security system. We also believe that it is a correct analysis of the detail of which the various categories should be revealed. We adopt the listing as our determination of the information which can be disclosed through discovery.

In accordance with the Appeal Board guidelines, detailed information in each category may be released only to counsel and to each fully qualified expert witness in his or her category under a protective order with the full expectation that the protective order will be honored. The security plan will be reviewed in the offices of PG&E. No notes may be taken by counsel or the expert witnesses.

The parties are directed to confer within thirty (30) days to attempt to reach agreement on the expert witnesses to be proposed by the intervenors. The NRC Staff is requested to report to this Board (with service, of course, to all parties) the result of this meeting. The Board will then determine the future course of action.

IT IS SO ORDERED.

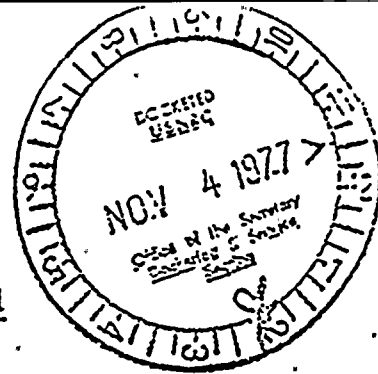
ATOMIC SAFETY AND LICENSING BOARD

*Elizabeth S. Bowers*  
Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland,  
this 17th day of June, 1977.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of	)	
PACIFIC GAS & ELECTRIC COMPANY	)	Docket Nos.
(Diablo Canyon Nuclear Power Plant,	)	50-275 OL
Units 1 & 2)	)	50-323 OL

ORDER RELATIVE TO MOTIONS CONCERNING  
INTERVENORS' SECURITY CONTENTION

The parties have referenced the various documents issued by the Licensing Board, the Appeal Board, and the Commission concerning ACSmith Intervenor's security contention.

Intervenors moved on August 29, 1977, to have the Licensing Board determine that Dr. L. Douglas DeNike is qualified to proceed with discovery on all information described in the Licensing Board's Order of June 17, 1977. PG&E opposed the motion on September 21, 1977, and moved that the Board dismiss the security contention or at least limit the time for Intervenor's to propose an acceptable expert to proceed with discovery under the security contention.

On October 4, 1977, the NRC Staff opposed Intervenor's motion and also PG&E's motion to dismiss the security contention but did support PG&E's motion that a time limit be placed on the offering of a qualified expert and supported the suggested revision of the contention. On October 14, 1977, Intervenor's opposed PG&E's motion.





After considering the position of the parties on all matters, the Board has determined that (1) Dr. L. Douglas DeNike is not a qualified expert to proceed with discovery of the components of the security system referenced in the Board's Order of June 17, 1977; (2) the Intervenor's contention will not be dismissed but should be amended and particularized in order to relate to the present Part 73; and (3) Intervenor is granted sixty (60) days after receipt of this Order to refine the contention and produce a qualified expert or experts on security to participate in the discovery process. Therefore, Intervenor's motion is denied and PG&E's motion is denied in part and granted in part.

IT IS SO ORDERED.

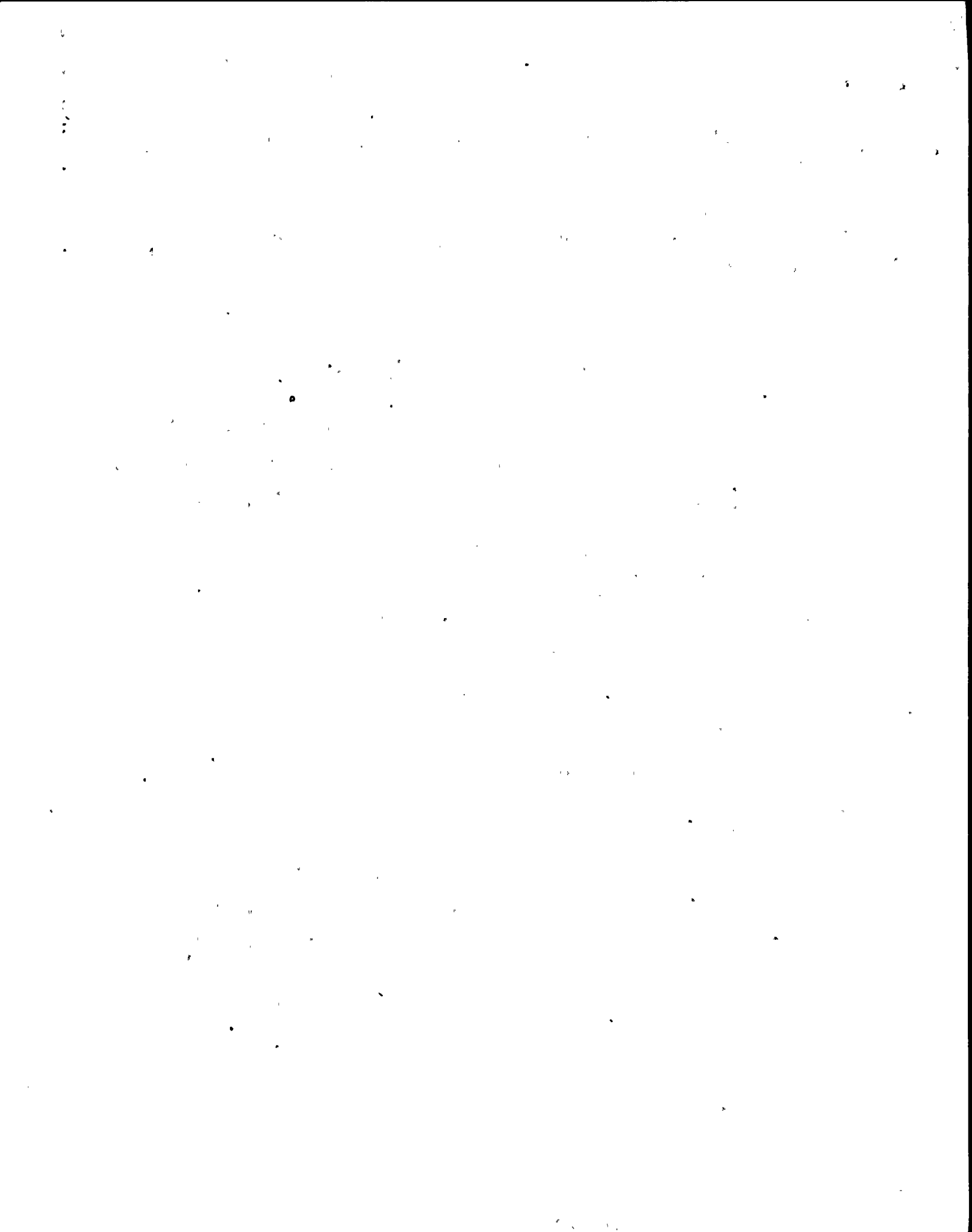
FOR THE ATOMIC SAFETY AND LICENSING BOARD

*Elizabeth S. Bowers*  
Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland;  
this 3rd day of November, 1977.







which govern them. The Board was requested to deny Intervenor's petition to qualify Dr. DeNike and Dr. Welch. On March 31, 1978, the Intervenor responded to PG&E and requested that Dr. DeNike and Dr. Welch be permitted to examine those limited matters which related to certain identified paragraphs of the Amended Security Contention filed by the Intervenor on January 17, 1978. The Intervenor also requested that Mr. Richard L. Hubbard be qualified as an expert witness and be permitted to examine certain identified matters.

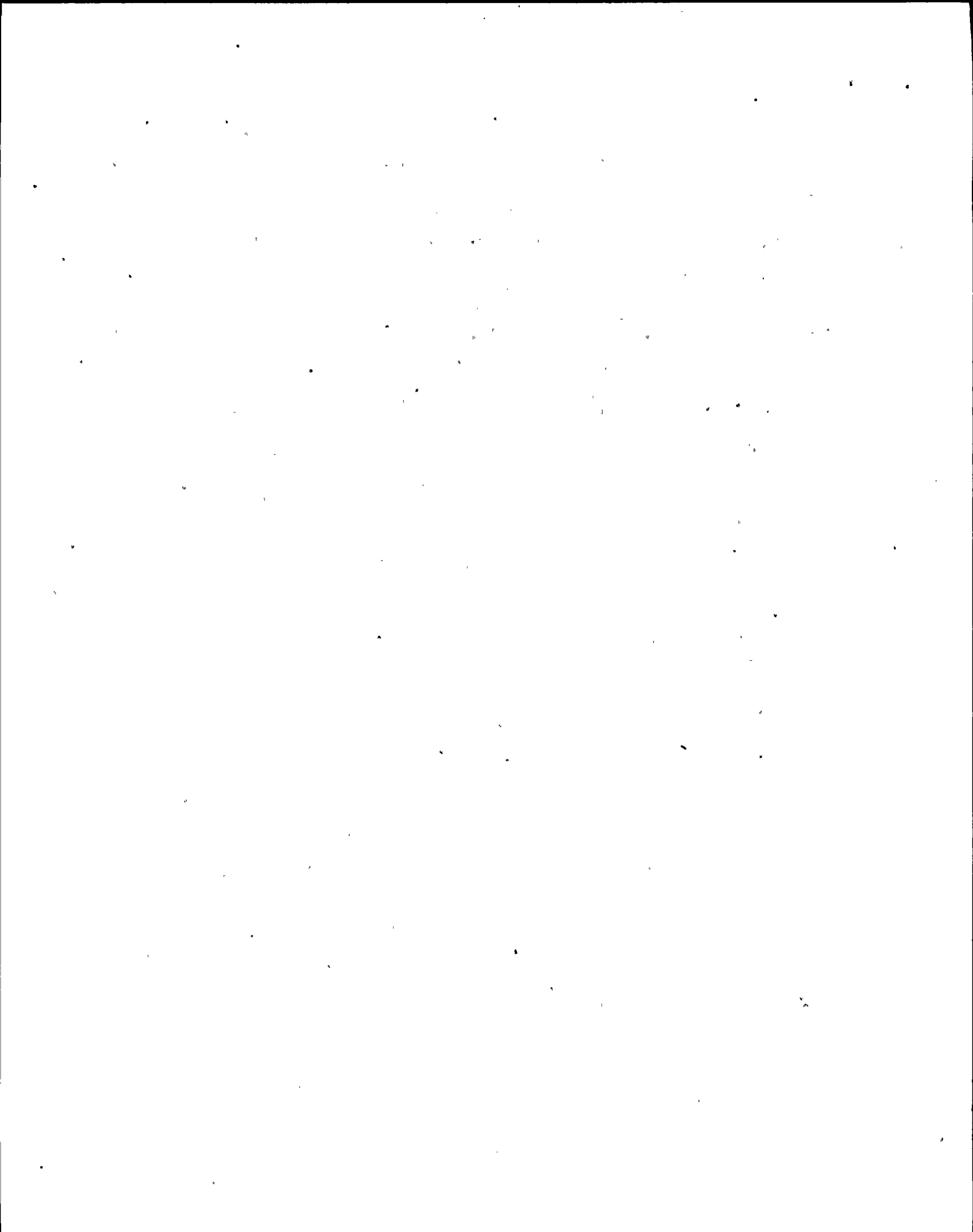
On April 11, 1978, PG&E reiterated its reasons why the Board should not accept Dr. DeNike and Dr. Welch and further stated that the submittal of Mr. Hubbard is not only out of time but Mr. Hubbard does not have the necessary expertise. The Board received the Staff's filing on May 8, 1978. The Staff requested the Board to reject Dr. DeNike, Dr. Welch, and Mr. Hubbard because their expertise in other areas does not qualify them as experts in the security area. Intervenor requested a ruling by the Board since their proposed witnesses were interested in an upcoming conference on security.



In a conference call on May 10, 1978, the Board informed the parties that it had determined that the proposed witnesses were not qualified in the security-plan area and that this determination would be the subject of a forthcoming Order.

In the Order of November 3, 1977, the Board determined that Dr. DeNike is not a qualified expert to proceed with discovery of the components of the security system. The Board has determined that no new information has been furnished that would affect this determination. A review of Dr. Welch's deposition on February 24, 1978, and the filings of the parties establishes that while Dr. Welch has expertise in other areas, he is not knowledgeable about security systems at nuclear power plants. The Board agrees with PG&E and the Staff that he is not qualified as an expert to review the security plan at Diablo Canyon. While Mr. Hubbard has experience in the fields of engineering and quality assurance in the nuclear industry, neither his resume nor clarifying statements by Intervenors indicates either the education or experience that would qualify him as a security expert.

In a preliminary conference call on May 8, 1978, before the Staff's filing had been released, counsel for the Intervenors mentioned proceeding with the security Contention






limited to cross-examination of Staff and PG&E witnesses if the Board determined that Intervenors' witnesses are not qualified. The Board tabled the suggestion since the first matter to be determined was the question of Intervenors' witnesses. Now that that has been determined, the Board requests the Intervenors to consider if they wish to proceed with the Contention and will expect the Staff and PG&E to respond. If the Board determines that there will be discovery and an evidentiary hearing, no discovery is permitted until Protective Orders have been executed, the Board has received the responses of PG&E and Staff on the amended Contention, and PG&E releases information on its witnesses as requested by Intervenors.

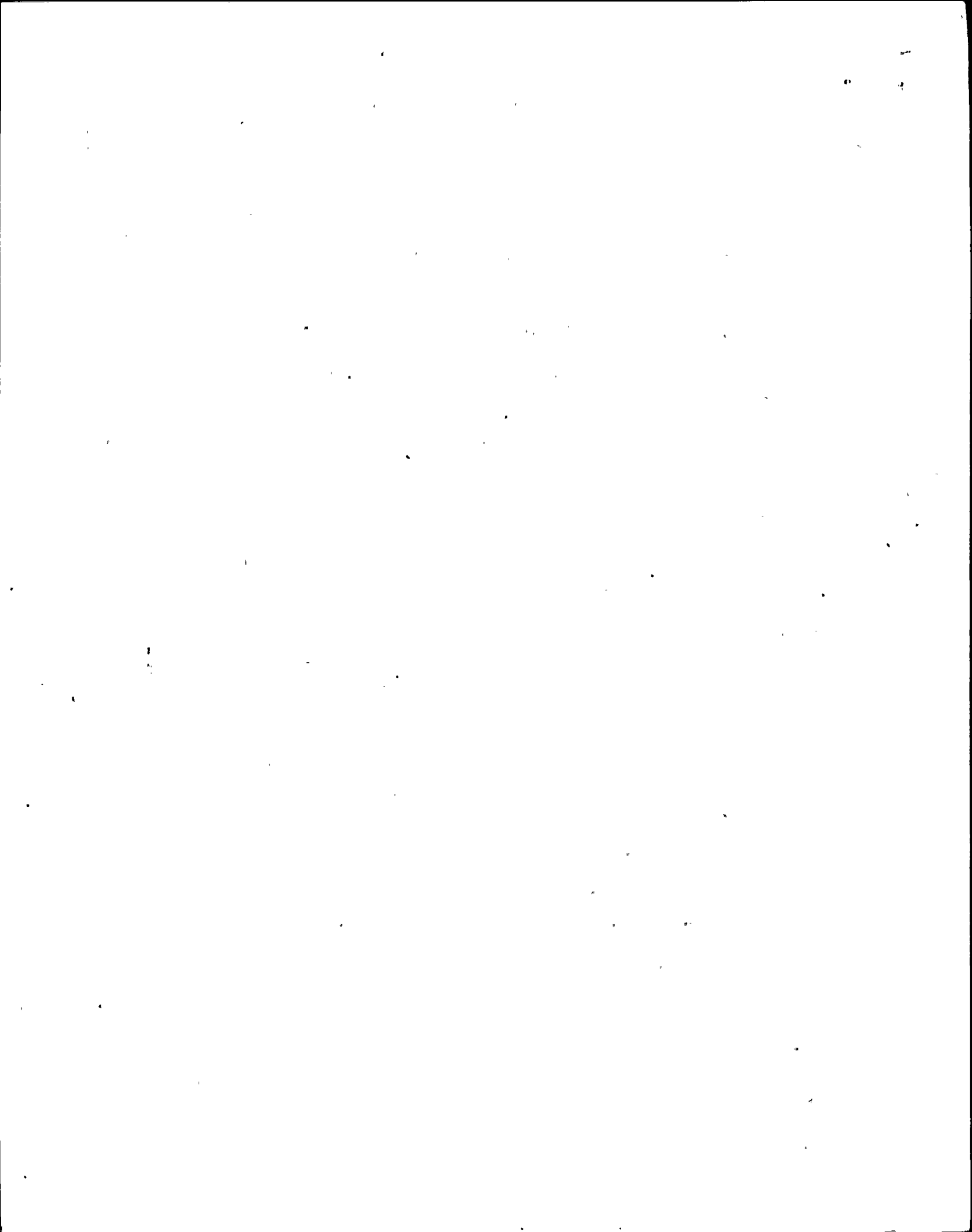
IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland

This 11th day of May 1978.





UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

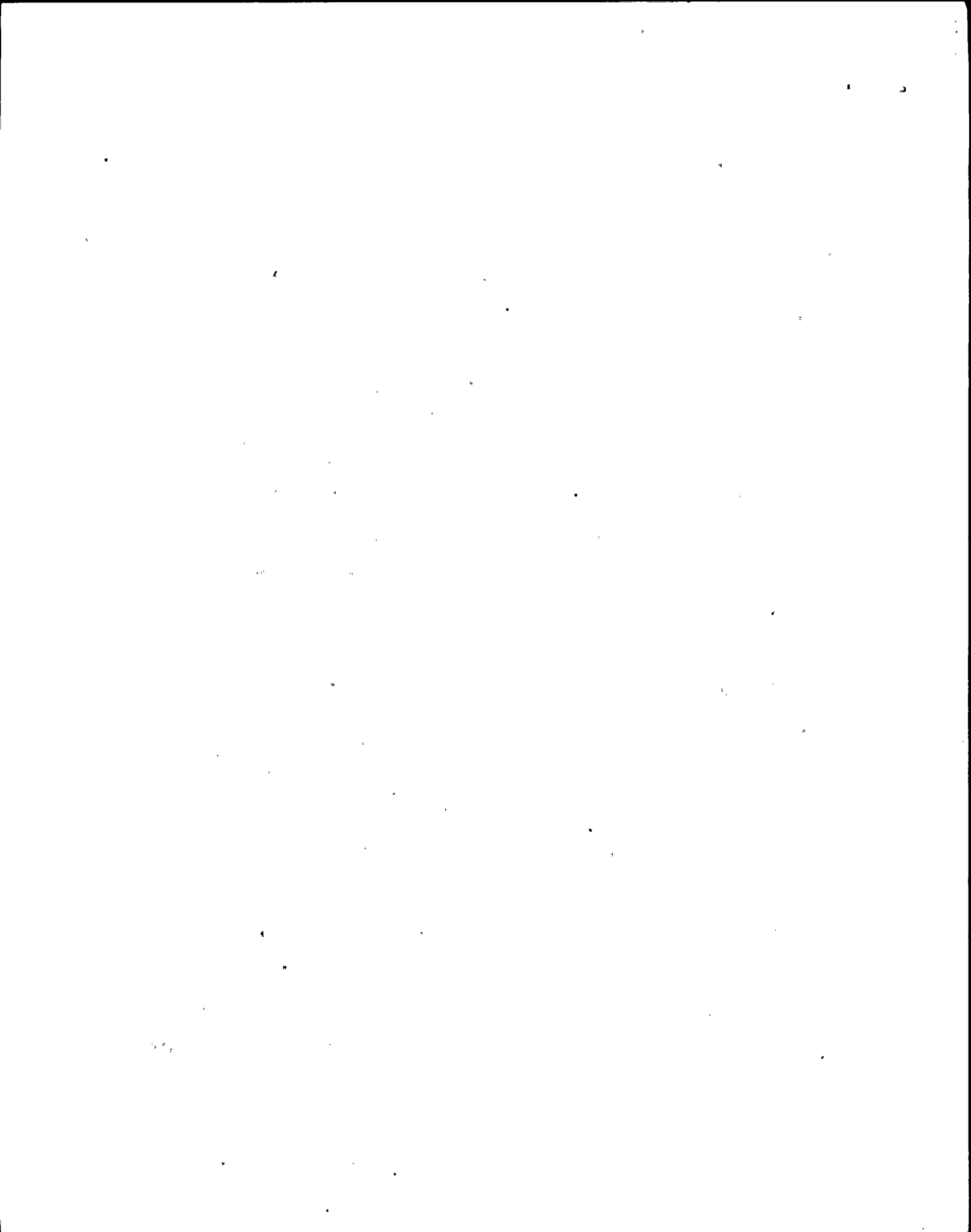
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

the Matter of )  
)  
PACIFIC GAS AND ELECTRIC COMPANY ) Docket Nos. 50-275-OL  
) 50-323-OL  
(Diablo Canyon Nuclear Power Plant, )  
Units Nos. 1 and 2) )

ORDER RELATIVE TO INTERVENORS' PETITION  
TO QUALIFY DAVID COMEY AS A SECURITY EXPERT

On May 23, 1978, the San Luis Obispo Mothers for Peace (MFP) petitioned the Board to accept Mr. David Comey as an expert for discovery for the Diablo Canyon security plan. On June 5, 1978, both PGandE and the NRC Staff stated that there was insufficient information to determine if Mr. Comey is an expert in security matters and suggested deposing Mr. Comey. By Order of June 13, 1978, the Board deferred its ruling until the parties deposed Mr. Comey. The deposition was taken July 5, 1978, in Chicago, Illinois.

On August 14, 1978, the NRC Staff concluded that Intervenor failed to meet their burdens of showing : (1) that Mr. Comey is an expert in physical security, or; (2) that there is a relationship between the portion of the security plan which Mr. Comey seeks to examine and Intervenor's contentions. The Staff concludes that Intervenor's petition

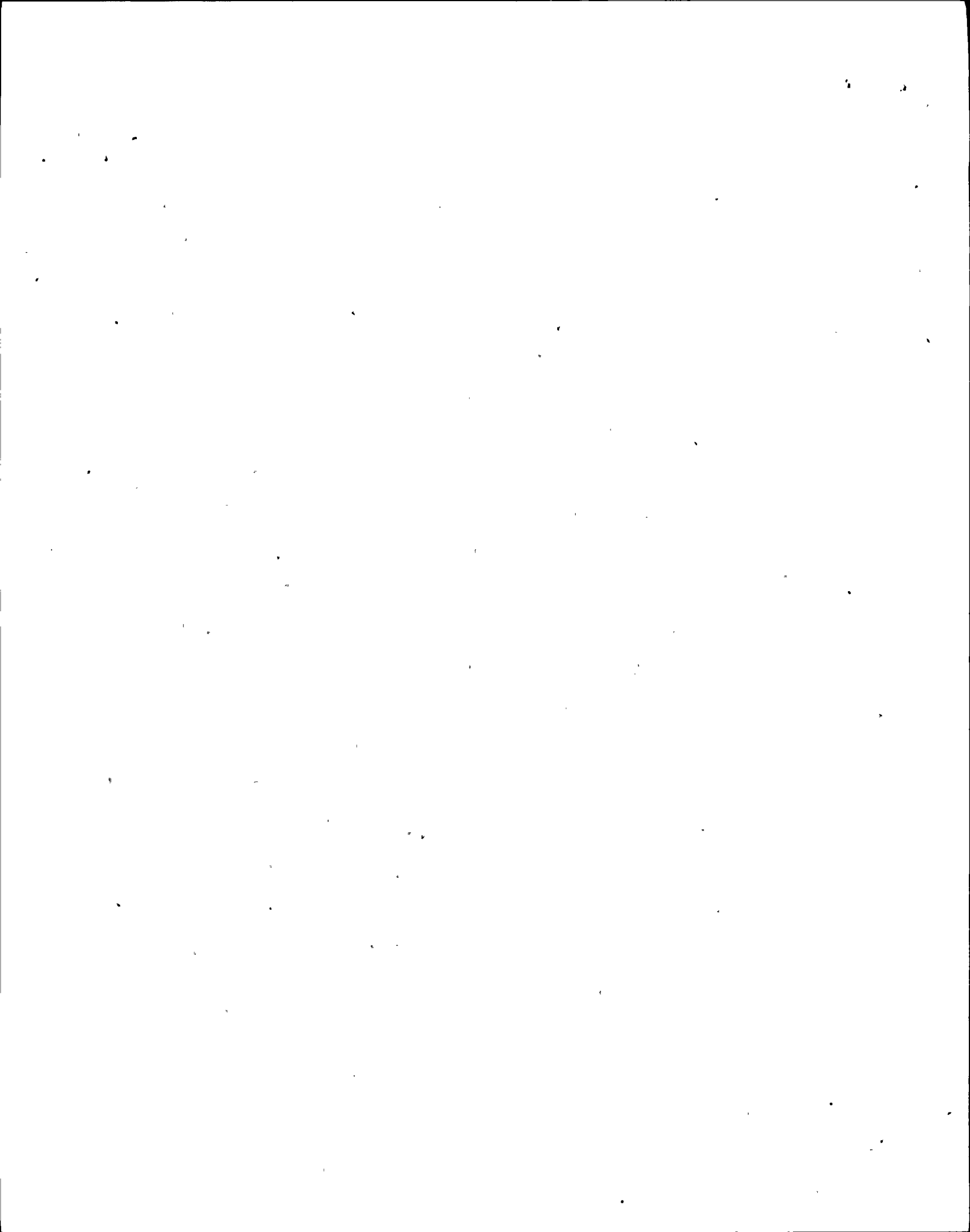


should be denied. The Staff quoted the criteria established by the Appeal Board in ALAB-410 relative to the conditions which must be met in order for any discovery to proceed. <sup>1/</sup> The Staff contends that Mr. Comey's role in the Cook and Zion proceedings do not establish his expertise since although he was allowed to participate in the proceedings, there was no formal recognition given that he was an expert and the regulations and standards for disclosure were significantly different from those in existence today. The only voir dire conducted related to matters other than security. The Staff also mentioned that appearance before the ACRS, often at the request of the individual, does not connote that expertise has been established. The Staff contends that an attempt during the deposition to have Mr. Comey specify his area of expertise within the delineation of the Appeal Board in ALAB-410, did not result in establishing any specific portion of the plan as being within his qualifications.

On August 25, 1978, Intervenors petitioned for an immediate order that Mr. Comey is qualified as a security

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<sup>1/</sup> Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977).



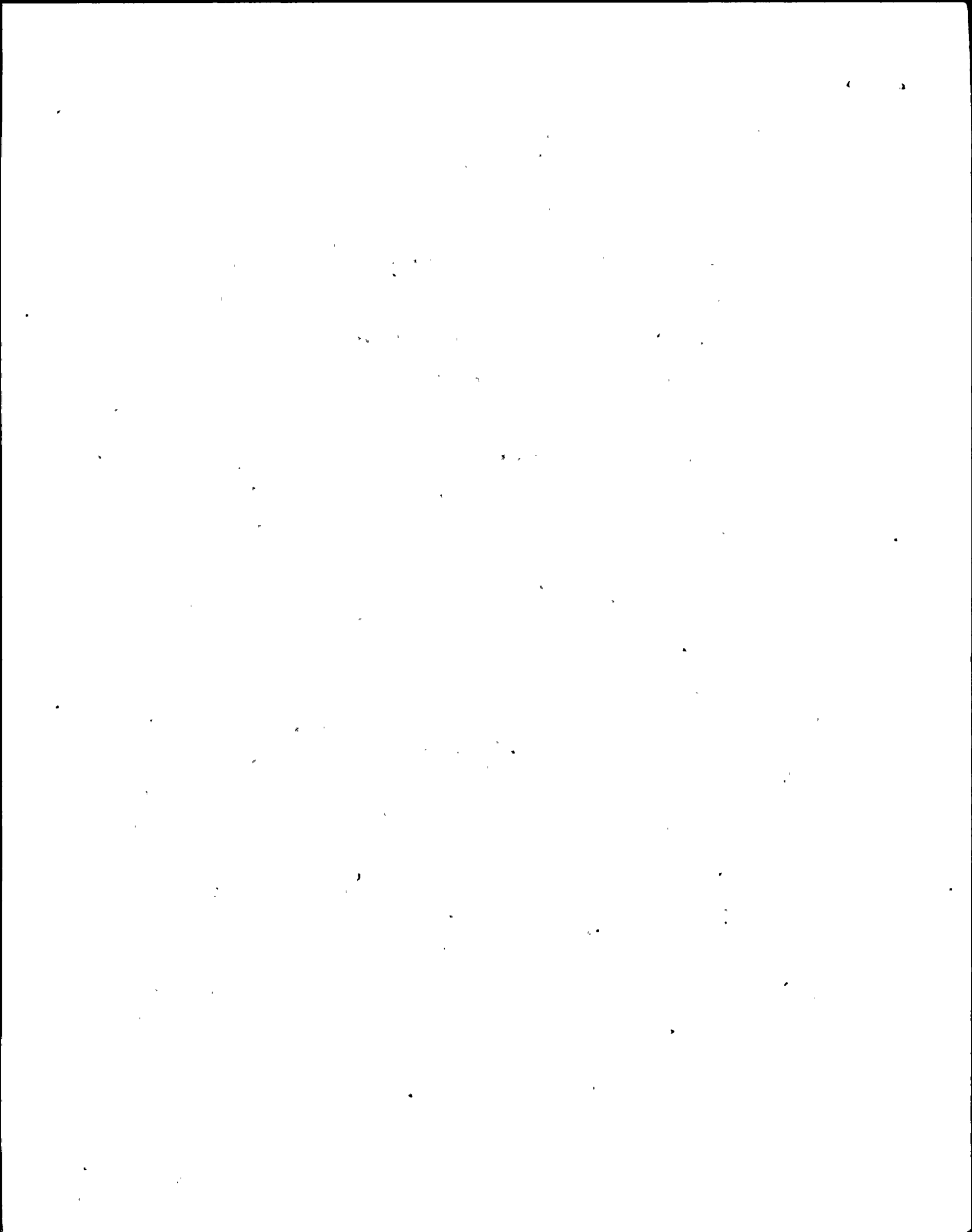
expert for discovery and Intervenor's responded to the Staff's filing of August 14, 1978. 2/ The Intervenor's also quoted ALAB-410 in depth.

The Intervenor's contend that Mr. Comey's participation in Zion and Cook does establish his expertise. 3/ They further contend his appearance before the ACRS and numerous meetings with AEC/NRC further establishes his expertise. Reference was also made to his review of relevant literature, his demonstrated expertise when he was deposed and his appearance before the California Energy Commission as an expert witness. Intervenor's also contend that Mr. Comey cannot make a decision as to the specific portions of the security plan without at least a review of a summary or sanitized version of the plan.

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2/ On August 28, 1978, the Staff requested the Board to disregard the filing since it "is in the nature of a reply which is not allowed under the rules of the Commission." Since the matter at hand is voir dire, the Board considers the filing appropriate and entitled to consideration.

3/ Intervenor's mention that although the Staff reviewed the Zion and Cook transcripts, which neither Mr. Comey nor his counsel has access to, and the records show that Mr. Comey was mistaken in his recollection that he actually conducted the cross-examination, the Board does not attach significance to this error in recollection. Also it is noted that no allegation was made by the Intervenor's that they had requested and had been refused access to the transcripts.

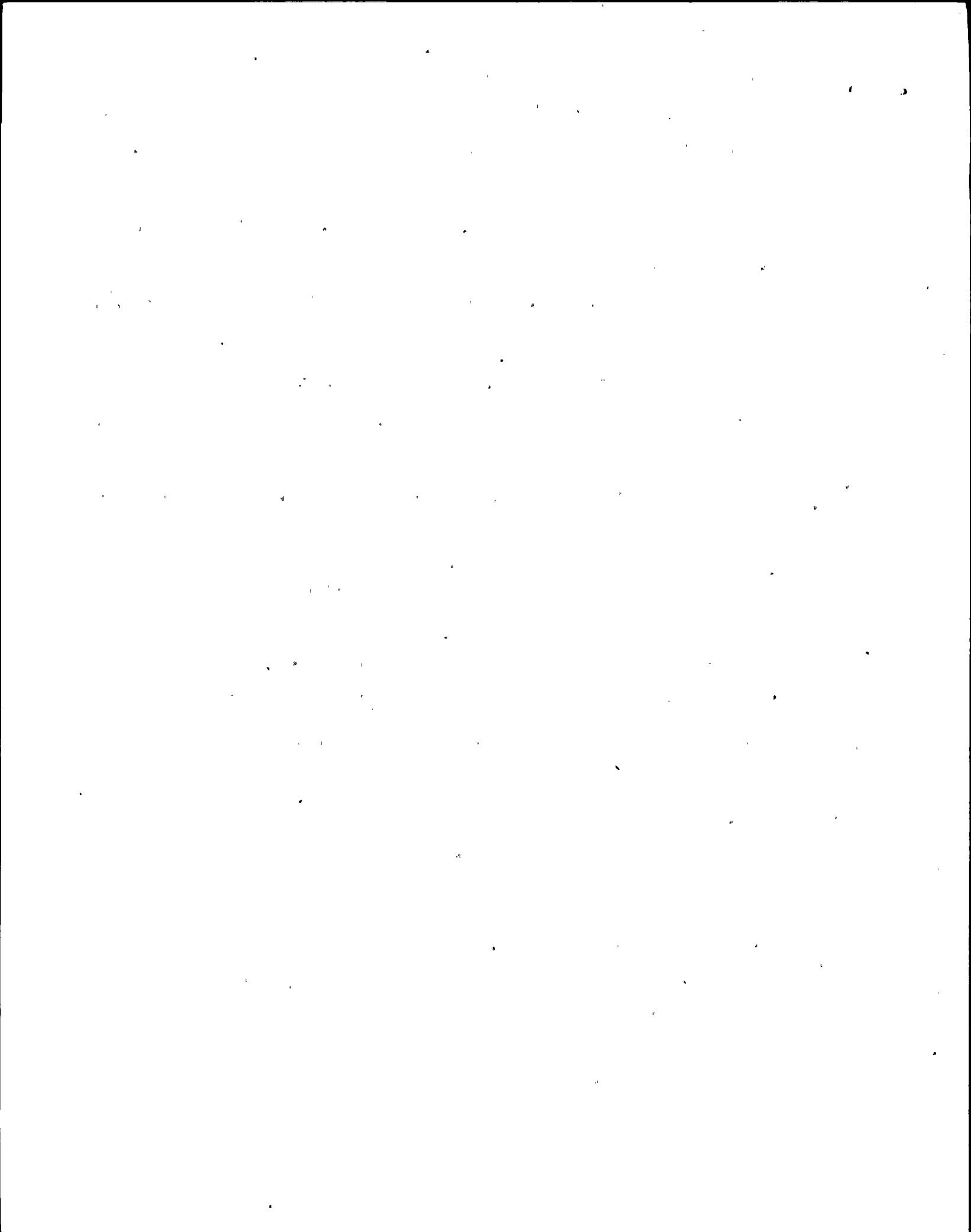




On August 28, 1978, before PGandE received Intervenors' filing, it filed a response to Intervenors' petition to establish the qualifications of Mr. Comey. PGandE stated that it "fully supports the Staff response and incorporates same as though set forth in full herein." PGandE contends that while it is obvious Mr. Comey has read some literature on nuclear security his responses under oath at the time he was deposed establishes that he exhibits a lack of knowledge or expertise -- citing examples. PGandE also alleged that Mr. Comey failed to identify specific portions of the plan he wished to examine. PGandE requested that the petition be denied.

The Board has considered the filings of the parties and the transcript of the deposition. The Board perceives Mr. Comey a layman who is familiar with some of the available literature. The Board also recognizes that there exists today not only a different climate from the days of the Zion and Cook proceedings but there now exists 10 CFR §73.55 and ALAB-410 plus peripheral ACRS concerns and the general rise in civil disobedience -- all of which cause this Board to approach this matter with extreme care.

The Staff and PGandE have both made two points: (1) that expertise had not been established, and (2) there is no claim of expertise relative to specific portions of the security



plan identified by the Appeal Board in ALAB-410. The Board agrees with the analysis of the Staff and PGandE and the Intervenors' petition to qualify David Comey for discovery of the security plan is denied.

IT IS SO ORDERED.

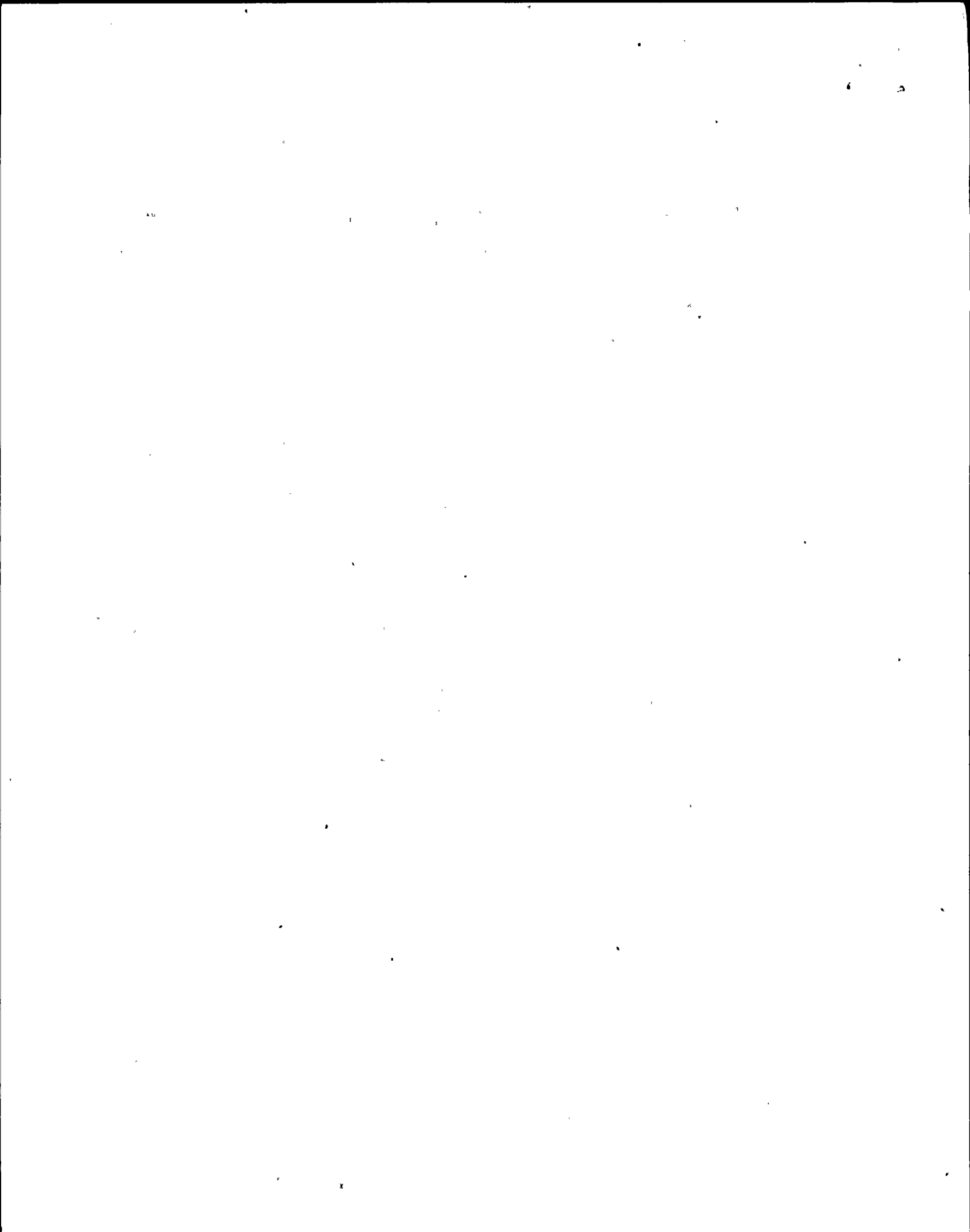
FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

*Elizabeth S. Bowers*

Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland

this 5th day of September 1978.



# COPY

FEB 22 1977

## PACIFIC GAS AND ELECTRIC COMPANY

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ASSISTANT GENERAL COUNSEL

February 17, 1977

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DAVID J. WILLIAMSON  
SHIRLEY WOOD

Paul C. Valentine, Esq.  
P. O. Box 210  
Palo Alto, California 94302

Re: Diablo Canyon

Dear Paul:

As I explained over the telephone the other day, I am prepared to release a "sanitized" version of the site security plan for examination by your expert. The expectation would be that the portions of the plan revealed to your expert would be sufficient to permit him to reach a conclusion as to its adequacy, but not be so detailed as to jeopardize security of the plant if they become public.

The next question, then, concerns the identity of your expert. As I believe we have made it abundantly clear, we do not think that Dr. De Nike has the requisite qualifications to pass upon the adequacy of site security plans. Our plan was prepared in accordance with Regulatory Guide 1.17 and ANSI N18.17, an examination of which will indicate the type of information which the plan contains and thus areas in which a consultant should have expertise. I have made no survey of the situation to ascertain what experts in this field are available in the Bay Area. I am acquainted with an expert available through the consulting firm of KMC, Inc., 1747 Pennsylvania Avenue, N.W., Washington, D. C. 20006, and I enclose a copy of his resume. I do not know whether he would be available, but his resume indicates the type of person we believe to be qualified to examine site security plans.

Please let me know the name and qualifications of your expert so that we can proceed. If we are unable to agree on the further steps to be taken we should advise the Appeal Board promptly.

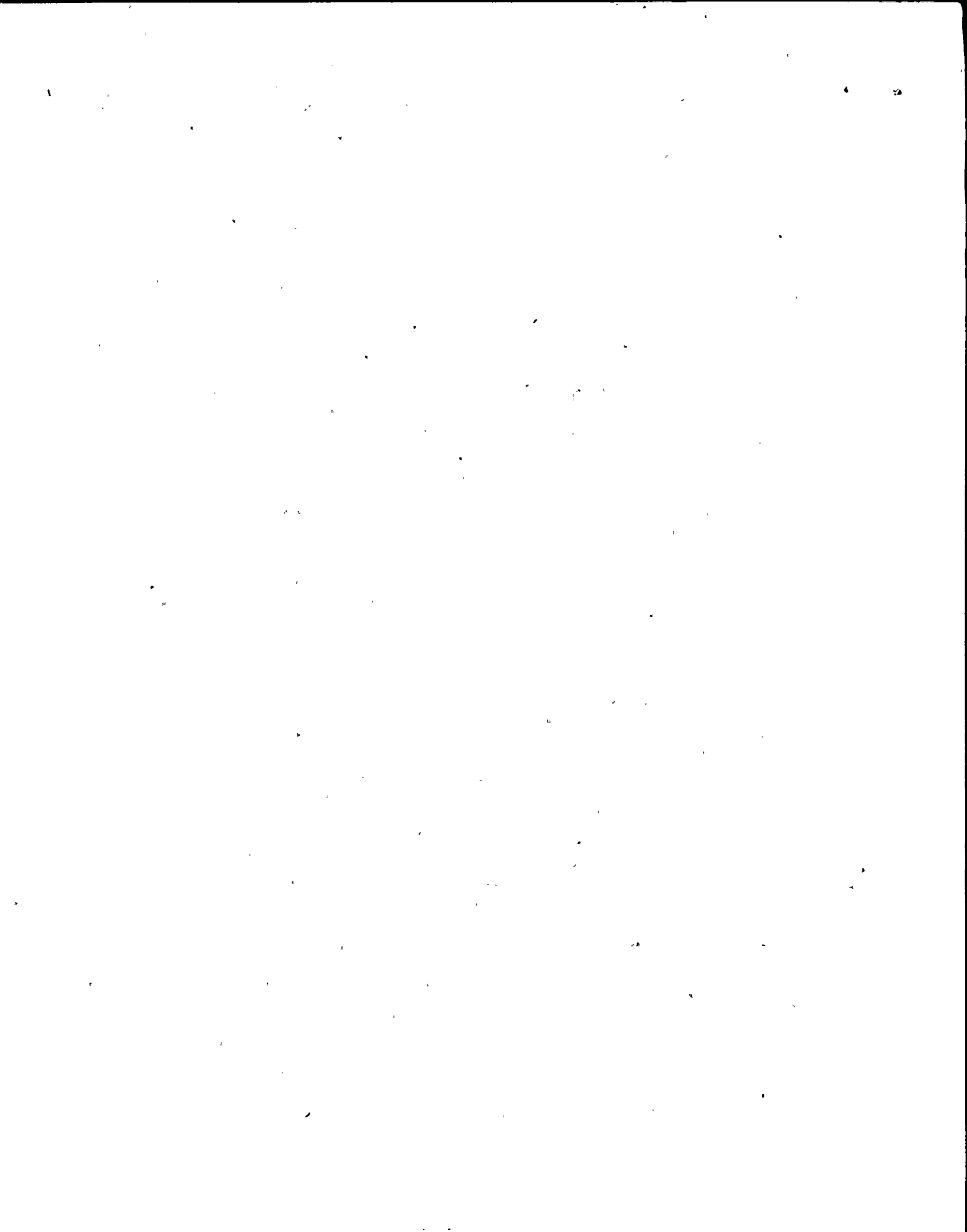
Very truly yours,

Philip A. Crane, Jr.

Enclosure

CC w/enc.: Yale I. Jones, Esq.  
Thomas F. Engelhardt, Esq.

EXHIBIT 5



NAME:

Lawrence D. Low

EDUCATION:

Mr. Low received an LLB Degree in June, 1941 from National University School of Law (later merged with George Washington University), and is a member of the Bar in the District of Columbia.

EXPERIENCE:

Prior to 1947, Mr. Low was an investigator in the security field and was a security officer in the Federal Government. During World War II, he was a Naval Officer in Intelligence. (Assignment for about one year, included evaluation of investigations, including suspect sabotage cases.) Following the War he was active in Naval Intelligence reserve units in Washington, D. C. and Aiken, South Carolina, and currently holds the rank of Captain, USNR-I. (In 1947-48, taught a course in Security. Each class consisted of nine two-hour sessions per calendar quarter with 20-30 officer students. Course taught for two years.)

From 1947 to 1950, Mr. Low was a security officer, and later Assistant Chief, Washington Area Security Office, AEC, Washington, D. C. He and staff prepared initial plans and devised programs to protect AEC Headquarters and contract operations administered directly by Headquarters.

Mr. Low was Director, Division of Security, at the AEC Savannah River Operations Office, Aiken, South Carolina, from the inception of the project in 1950 until January, 1956, during which time the plant became operational. He was responsible for the planning and the implementation of the AEC security program for all aspects of the Savannah River Plant which comprised the design, construction, and operation of five nuclear reactors; two separations plants; and fuel fabrication and related facilities for the production of classified nuclear (weapons) material. This project involved numerous contractors and subcontractors and over 100,000 persons.

Prior to the establishment of the Division of Compliance in 1960, Mr. Low was with the Division of Inspection, first as an Inspection and Investigation Specialist in the compliance area and later as a Branch Chief.

From 1960 to July, 1972, he was Director of the Division of Compliance (renamed Directorate of Regulatory Operations on April 25, 1972) on the AEC regulatory staff. In this position he was responsible for the Commission's programs of licensee inspection and enforcement with respect to nuclear power, test and research reactors under construction and in operation, and all source, special nuclear, and by-product material subject to licensing and control by the AEC.



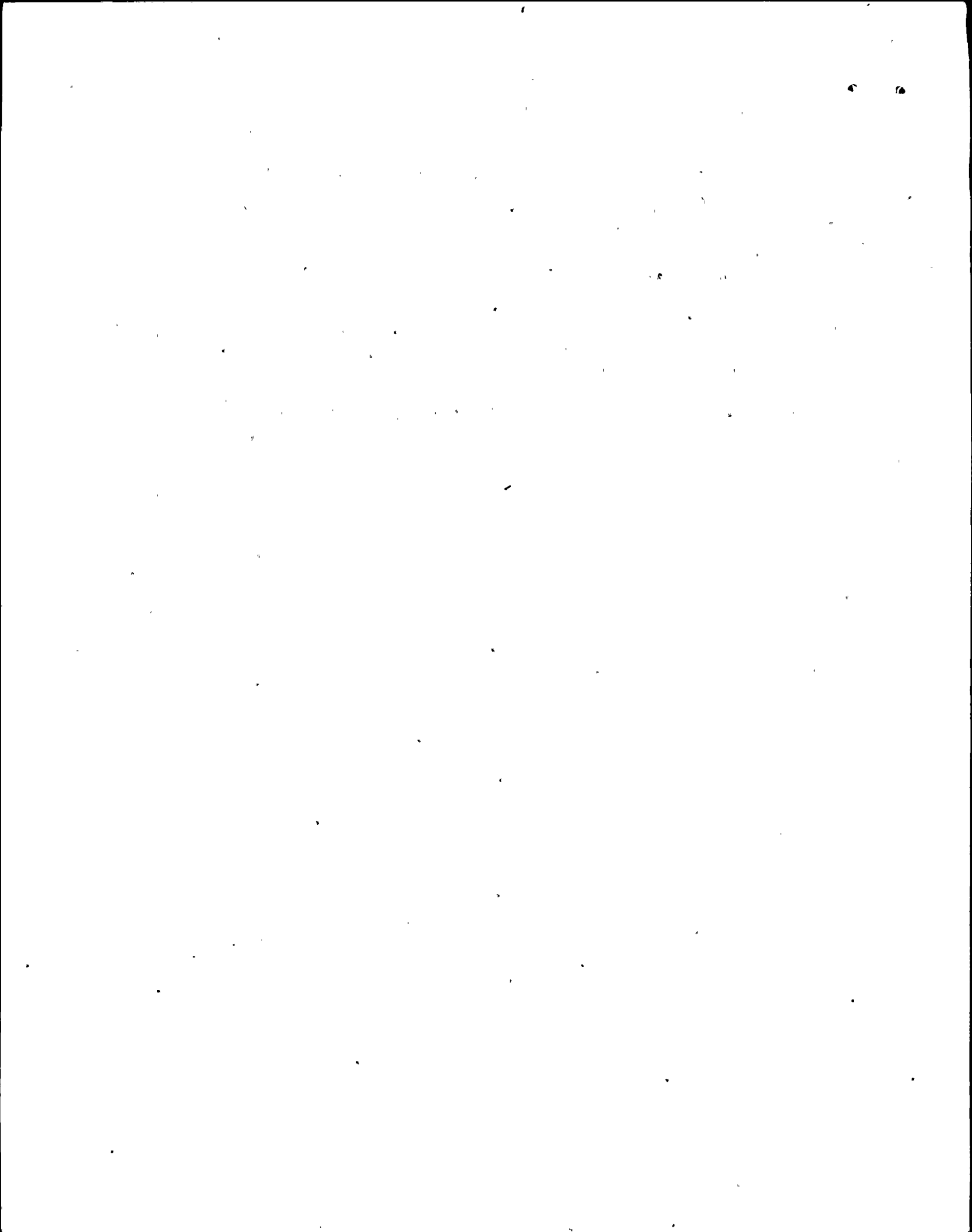


After his retirement from the AEC in June, 1972, Mr. Low became an industry consultant on industrial security for nuclear facilities. In December, 1973, he joined NuSAC as Vice President, Materials and Plant Protection, directing the company's program of assistance to the nuclear industry.

OTHER PERTINENT INFORMATION:

Mr. Low authored and presented a paper, "Planning a Protection Program", at the Atomic Industrial Forum Workshop on Protection of Special Nuclear Material and Facilities, at Key Largo, Florida, on February 19, 1973. He also authored and presented a paper, "Implementation of 10 CFR Part 73" at the Institute of Nuclear Materials Management 1974 Annual Meeting at Atlanta, Georgia on June 19, 1974.

Mr. Low is listed in Who's Who in America, beginning with Volume 32.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
PACIFIC GAS AND ELECTRIC COMPANY ) Docket Nos. 50-275 O.L.  
(Diablo Canyon Nuclear Power ) 50-323 O.L.  
Plant, Units No. 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO INTERVENOR'S SAN LUIS OBISPO MOTHERS FOR PEACE PETITION FOR DIRECT CERTIFICATION AND APPEAL FROM LICENSING BOARD ORDER OF SEPTEMBER 5, 1978", dated October 13, 1978, have been served on the following by deposit in the United States mail, this 13th day of October, 1978:

Elizabeth S. Bowers, Chairman  
Atomic Safety and Licensing Board  
Panel  
U. S. Nuclear Regulatory Comm'n  
Washington, D.C. 20555

Mr. Glenn O. Bright  
Atomic Safety and Licensing Board  
Panel  
U. S. Nuclear Regulatory Comm'n  
Washington, D.C. 20555

Dr. William E. Martin  
Senior Ecologist  
Battelle Memorial Institute  
Columbus, OH 43201

Mrs. Elizabeth Apfelberg  
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San Luis Obispo, CA 93401

Mrs. Raye Fleming  
1920 Mattie Road  
Shell Beach, CA 93449

Mr. Frederick Eissler  
Scenic Shoreline Preservation  
Conference, Inc.  
4623 More Mesa Drive  
Santa Barbara, CA 93105

Mrs. Sandra A. Silver  
1792 Conejo Avenue  
San Luis Obispo, CA 93401

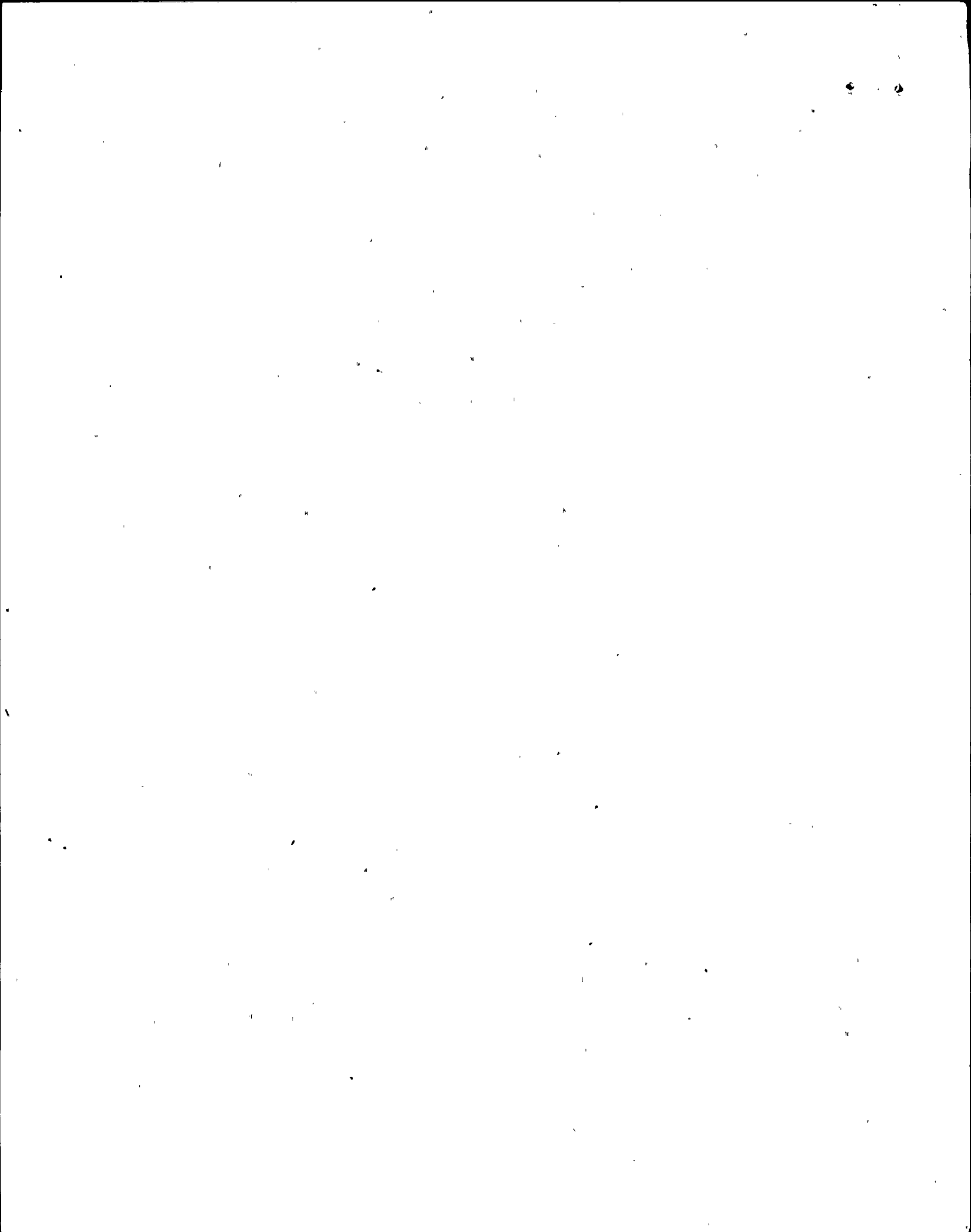
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Simon Klevansky, Esq.  
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5th Floor  
Washington, D.C. 20005



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California Public Utilities Comm'n  
5246 State Building  
350 McAllister Street  
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James R. Tourtellotte, Esq.  
L. Dow Davis, Esq.  
Richard Goddard, Esq.  
Lawrence Brenner, Esq.  
Office of Executive Legal Director  
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U. S. Nuclear Regulatory Comm'n  
Washington, D.C. 20555

Atomic Safety and Licensing Board  
Panel  
U. S. Nuclear Regulatory Comm'n  
Washington, D.C. 20555

Atomic Safety and Licensing Appeal  
Panel  
U. S. Nuclear Regulatory Comm'n  
Washington, D.C. 20555

Docketing and Service Section  
Office of the Secretary  
U. S. Nuclear Regulatory Comm'n  
Washington, D.C. 20555

*Susan Rockwell*

