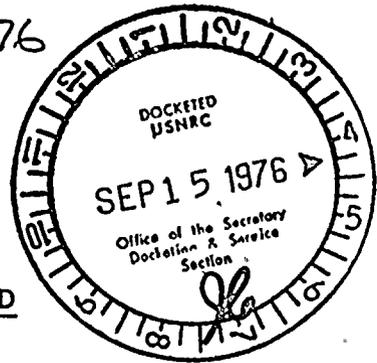


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

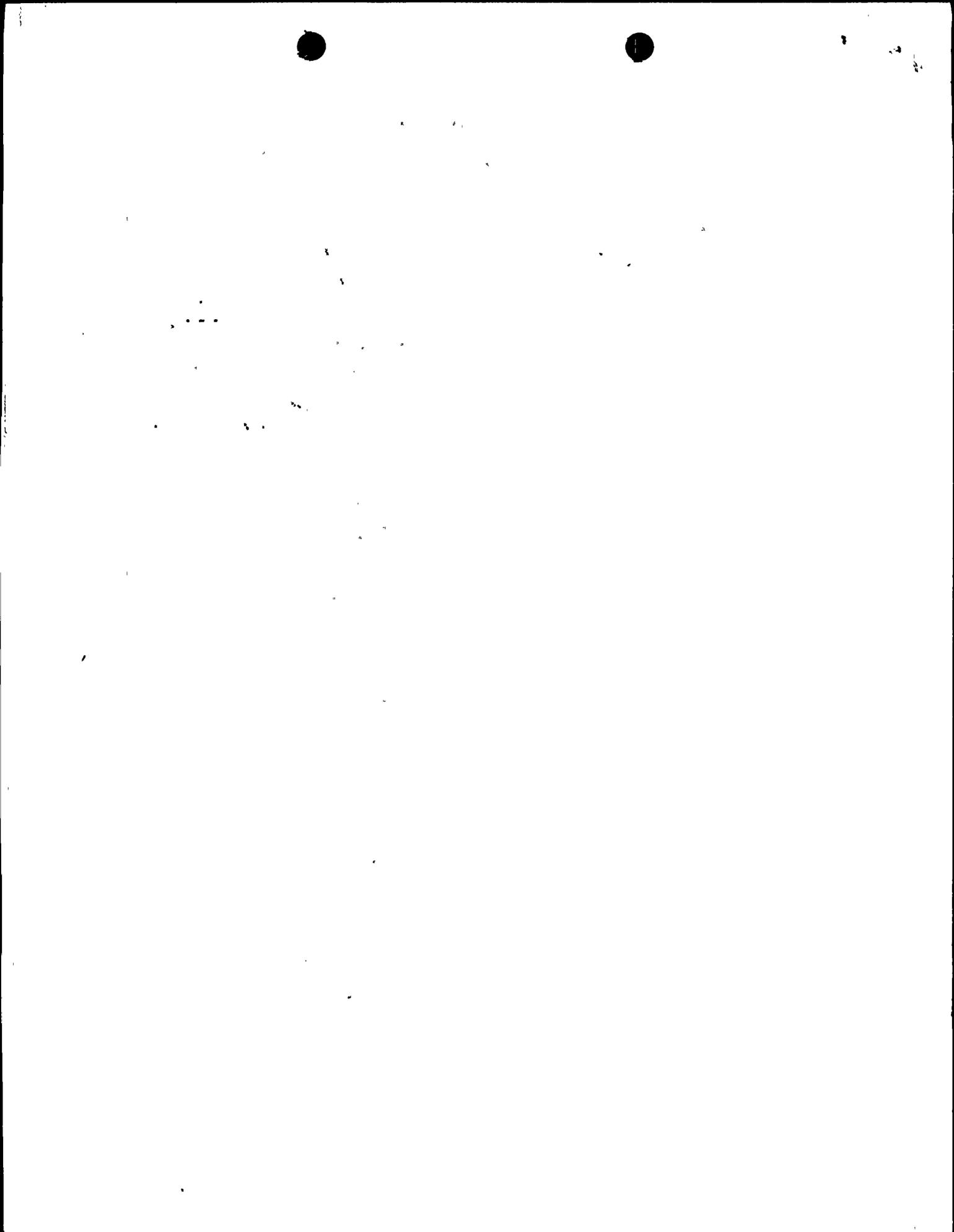
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PACIFIC GAS AND ELECTRIC COMPANY)
)
(Diablo Canyon Nuclear Power Plant,)
Units Nos. 1 and 2))

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

INTERVENORS' MOTION FOR EXTENSION OF TIME OF
THE COMMENCEMENT OF ENVIRONMENTAL
HEARINGS UNTIL DECEMBER 1, 1976

Intervenors SCENIC SHORELINE PRESERVATION CONFERENCE, SAN LUIS OBISPO MOTHERS FOR PEACE, SANDRA SILVER, ECOLOGY ACTION CLUB, AND JOHN J. FORSTER respectfully move this Board to extend the time of commencement of the environmental hearings in the above-captioned proceedings from October 13, 1976 to December 1, 1976. We base this motion on the grounds that intervenors' newly retained counsel and even more recently obtained experts need the additional seven weeks this requested extension will allow to gather reliable scientific and technical evidence and prepare reliable scientific and technical testimony in support of intervenors' contentions and that the requested extension will not prejudice applicants because the extra time requested cannot delay the ultimate licensing of the Diablo Canyon plant. The accompanying Memorandum of Points and Authorities Showing Good Cause for an Extension of Time of the Commencement of the Environmental Hearings explains these grounds more fully. The accompanying affidavits of Sandra Silver and



Gordon Silver, Richard Hubbard, and Brent N. Rushforth also support this motion.

Dated: September 13, 1976

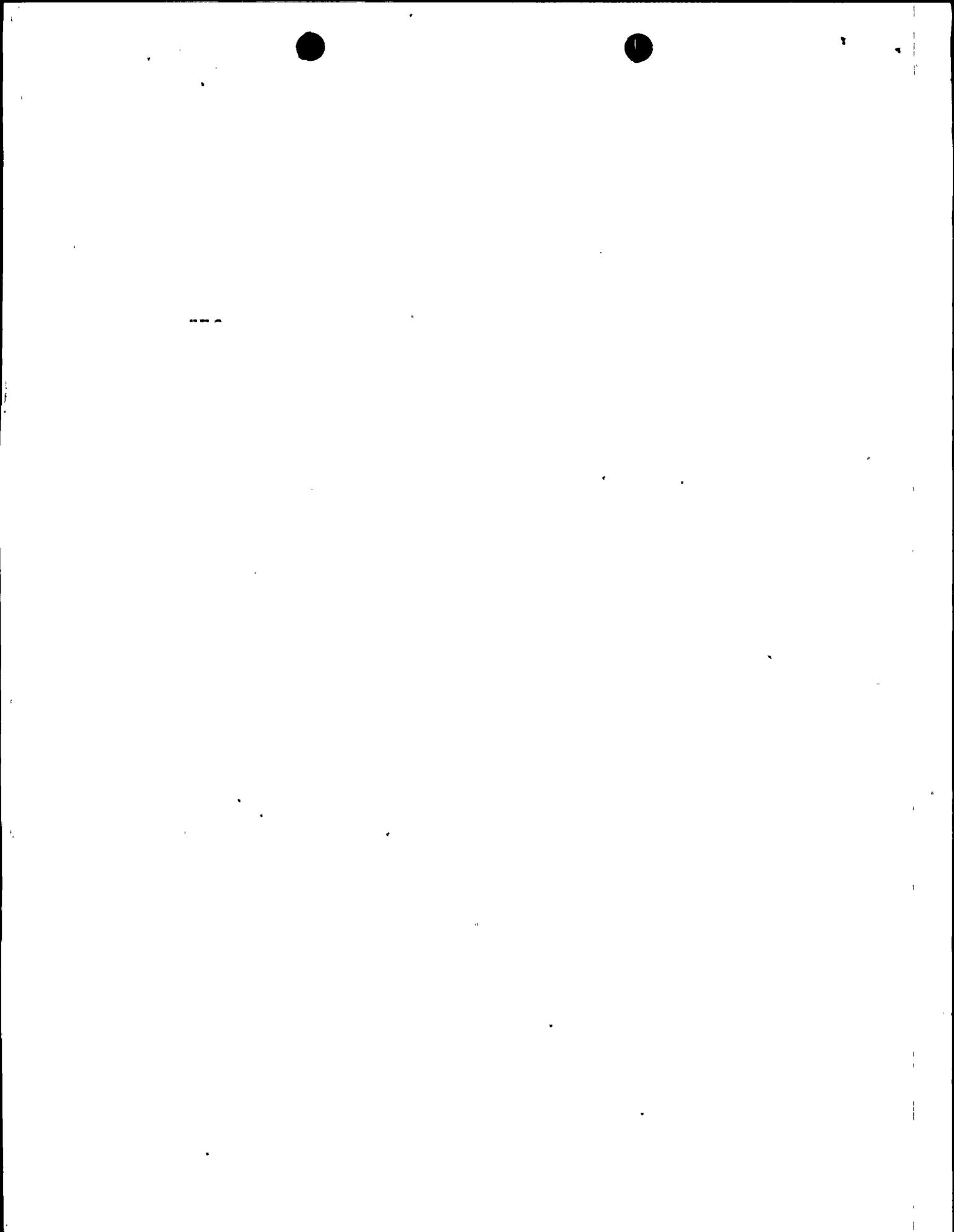
Respectfully submitted,

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Scenic Shoreline Preservation
Conference
San Luis Obispo Mothers For Peace
Sandra Silver
Gordan Silver
Ecology Action Club
John J. Forster

By: Brent N. Rushforth
Brent N. Rushforth

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



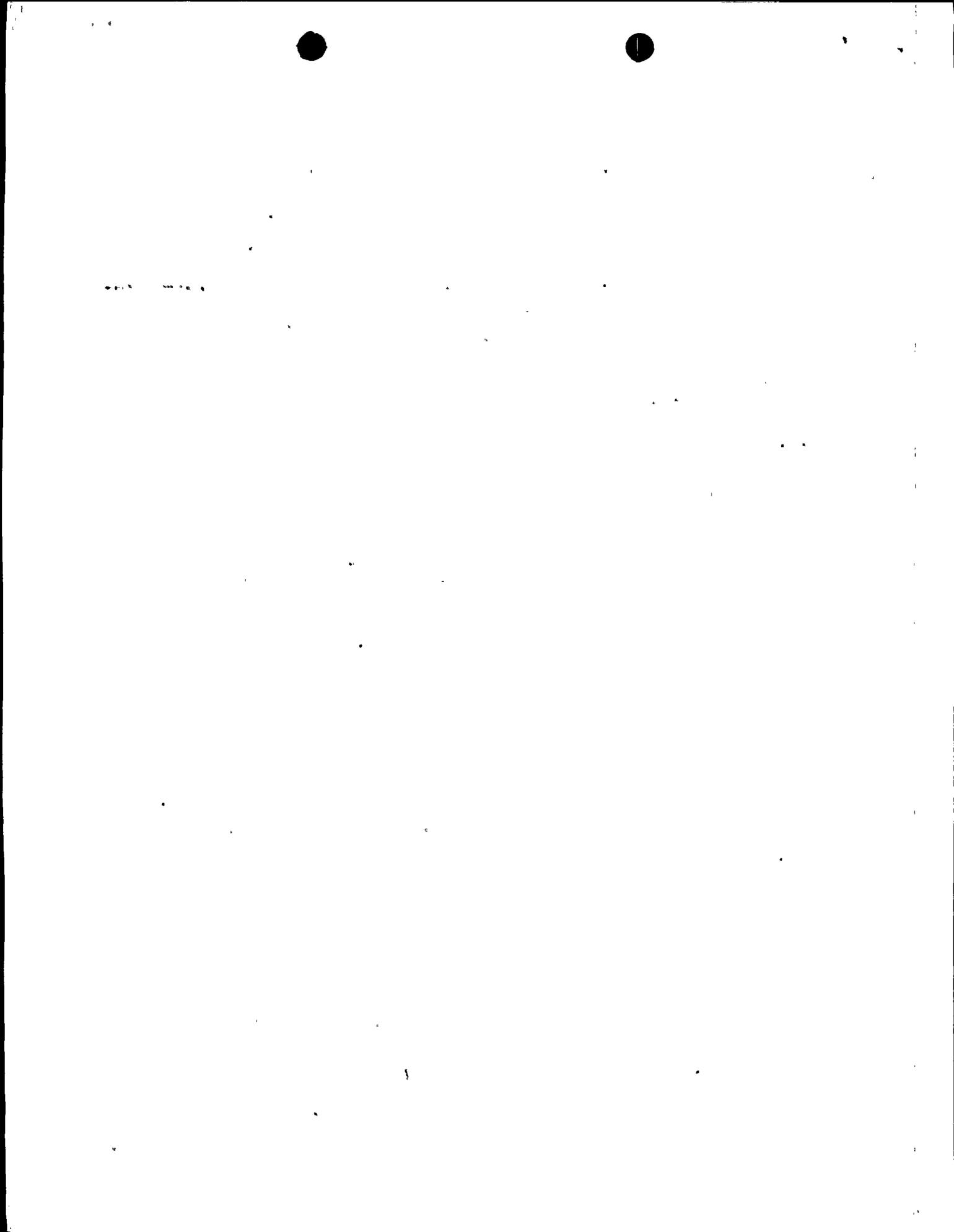
In the Matter of)
PACIFIC GAS AND ELECTRIC COMPANY) Docket Nos. 50-275 O.L.
(Diablo Canyon Nuclear Power Plant,) 50-323 O.L.
Units Nos. 1 and 2)

MEMORANDUM OF POINTS AND AUTHORITIES
SHOWING GOOD CAUSE FOR AN EXTENSION OF TIME
OF COMMENCEMENT OF THE ENVIRONMENTAL HEARINGS

Introduction

Intervenors seek, by this motion, to extend the time for the commencement of the environmental hearings seven weeks from October 13, 1976 to December 1, 1976. Intervenors seek this extension of time because intervenors' newly retained counsel has determined, after trying diligently to prepare for the October hearings, that counsel and recently obtained expert consultants cannot prepare reliable scientific and technical testimony on the several environmental contentions by early October. This inability results from difficulties in contacting technical experts in August, and early September who could devote time to preparing intervenors' case before early October.

The time extension requested has been carefully considered to enable intervenors to prepare reliable scientific and technical testimony on the environmental issues without unduly prejudicing

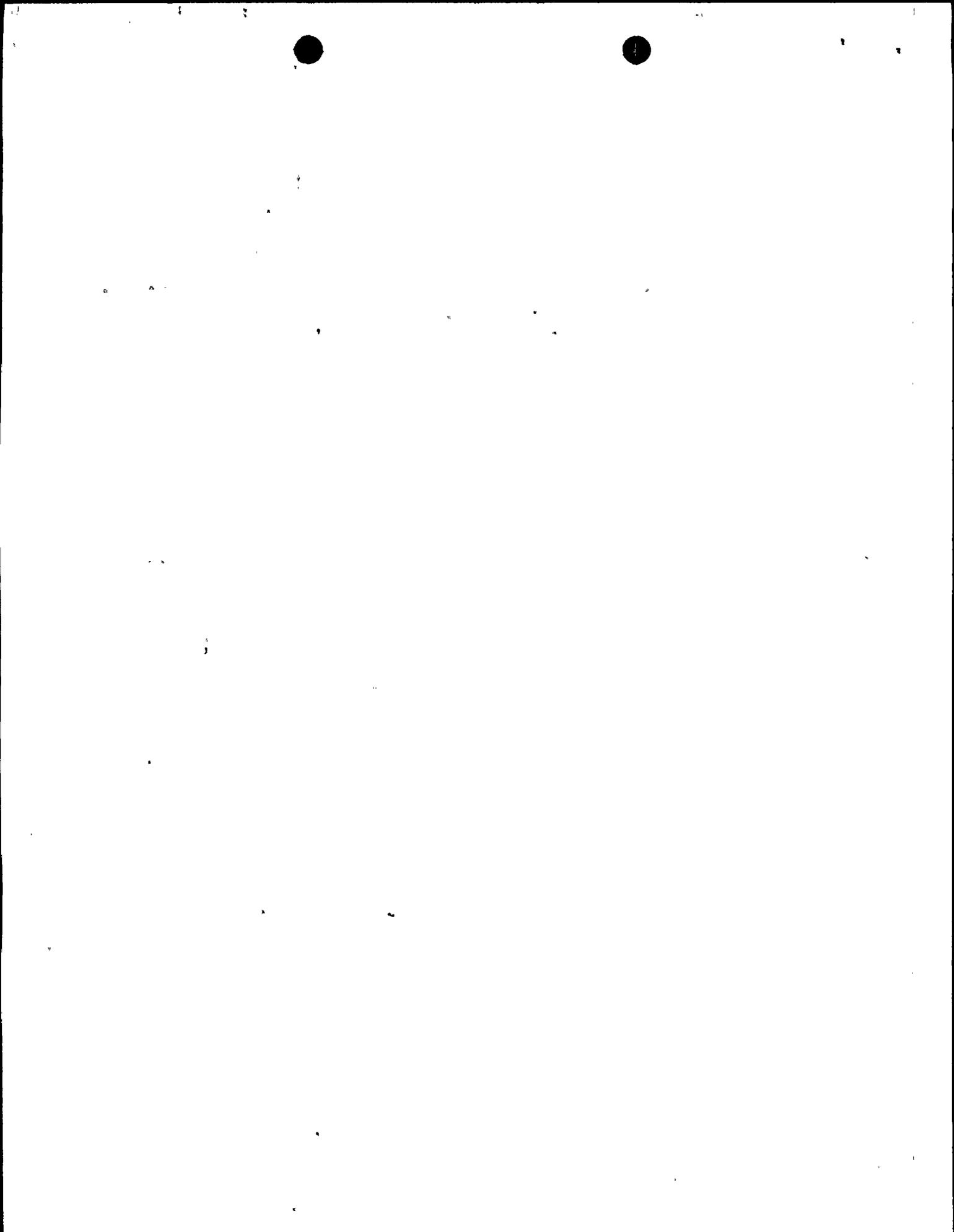


the applicant. Because the intervenors have obtained experts who can perform substantial work in intervenors' behalf during October and November, the requested extension will allow these experts to analyze the documents supporting the applicant's and staff's positions and to write testimony for the intervenors' claims (see accompanying affidavits of Brent N. Rushforth and Richard Hubbard). The applicant will not be prejudiced because the date requested for the hearings in this motion, December 1, 1976, is still before the earliest expected date of the final report of the Advisory Committee on Reactor Safeguards (ACRS), which now is mid-December, 1976 and the safety hearings on almost all the safety contentions cannot even be scheduled until the ACRS issues this final report. Consequently, the extension of time requested will cause no delay in the safety hearings and, therefore, no delay in the final resolution of these proceedings.

I.

THE RECENT RETENTION BY INTERVENORS OF NEW COUNSEL AND THE EVEN MORE RECENT RETENTION BY INTERVENORS OF EXPERT TECHNICAL CONSULTANTS IS GOOD CAUSE FOR THE REQUESTED EXTENSION OF TIME.

Throughout these proceedings, until only last month, the citizen intervenors have acted virtually without the benefit of counsel or technical expert consultants. As the accompanying affidavit of Sandra Silver and Gordon Silver shows, these citizen intervenors did not have the financial resources, legal experience, or technical expertise to marshal technical evidence and bring it to the Board's attention. As of early August, 1976 these citizen



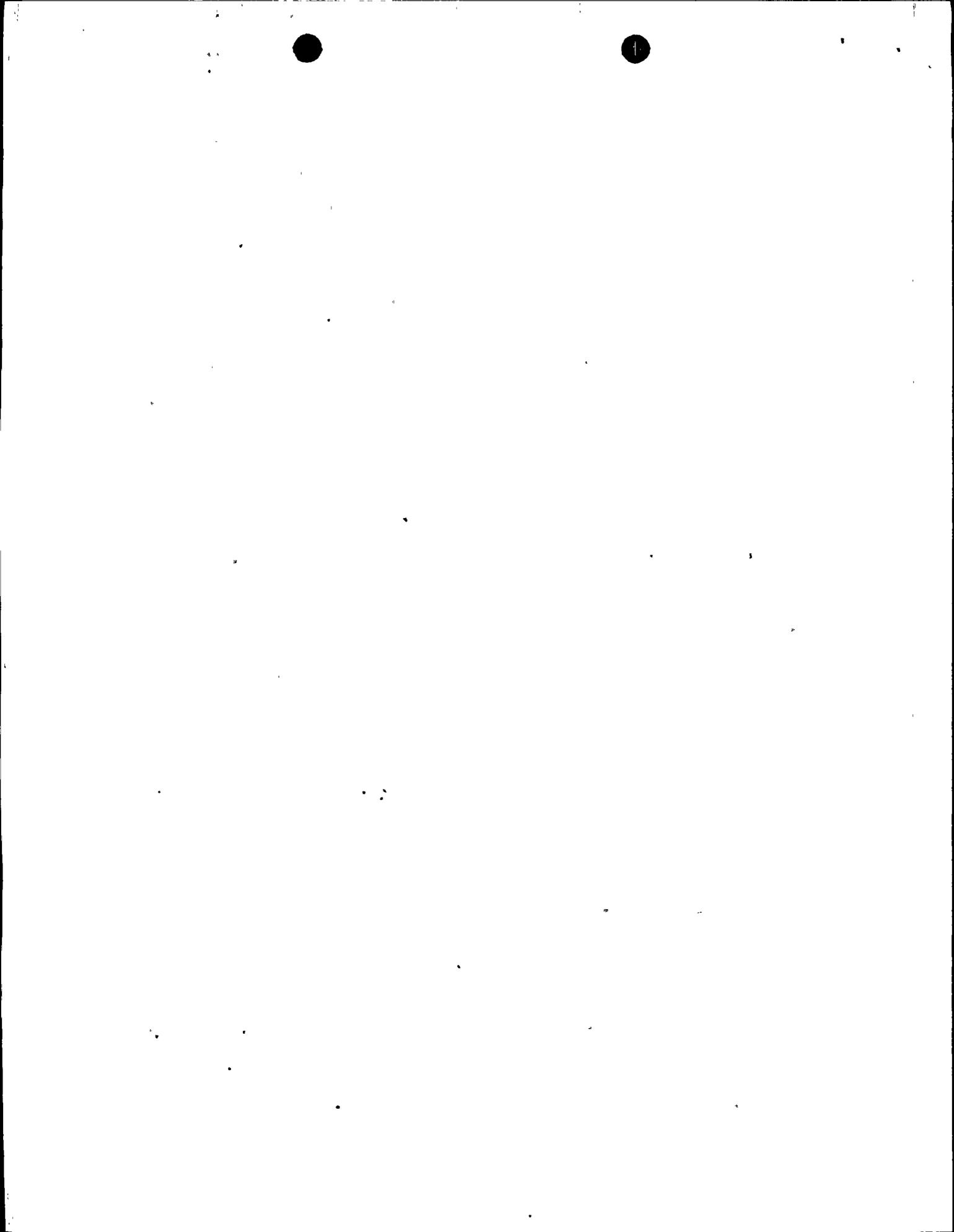
intervenors were not even close to preparing a case consisting of reliable scientific evidence and informed technical opinion to support their contentions which encompassed many difficult, complex and highly technical issues.

On August 4, 1976, the resources available to the intervenors changed dramatically. The intervenors retained as counsel the Center for Law in the Public Interest of Los Angeles, California, a firm with considerable experience in environmental litigation. The Center not only had attorneys available to assist the intervenors without charge, but also had funds available to retain technical consultants (see accompanying affidavit of Brent N. Rushforth at p. 2).

Upon taking the Diablo Canyon matter, the Center attorneys realized they could not adequately prepare a substantive technical case for the environmental hearings without assistance from expert technical consultants. Intervenors' new counsel attempted to contact experts in fields relevant to the environmental contentions who would be willing to assist them in preparing for the environmental hearings.

Intervenors' new counsel quickly encountered considerable difficulty in obtaining experts who could devote substantial time to the Diablo case before October for two reasons. First, many of the technical experts who have been willing to consult for intervenors in Nuclear Regulatory Commission proceedings in California are academics.¹ (See Rushforth affidavit, p. 3) These academic experts

^{1/} Other observers have noted that the main source of experts for intervenors in NRC matters are people associated with universities. These observers report that non-university experts with training in relevant fields consult or work for the Commission itself or the nuclear industry and therefore are unwilling to assist intervenors. See, for example, W. Thomas Jacks, "The Public and the Peaceful Atom: Participation in AEC Regulatory Proceedings", 52 Texas Law Review 466 (1974), pp. 500-501.



generally were away from their campuses during August, either for research purposes or on vacations. Consequently, intervenors' counsel could not even contact these experts.

Second, several of the few experts intervenors' counsel could contact in August and other experts intervenors' counsel contacted this month, while willing to help, had made prior work or personal commitments for August and September. Consequently, they cannot begin to do substantive work on the intervenors' behalf until October 1 or early November. (See accompanying affidavits of Brent N. Rushforth and Richard Hubbard.)

This second difficulty is entirely understandable. In order to present reliable scientific evidence and testimony, intervenors need responsible scientific experts who can devote considerable time to analyzing the information compiled by the applicant and the staff, consult other sources of information, and write their own testimony. Intervenors counsel essentially must build a staff of technical consultants to rival the panel of expert consultants both the applicant and the NRC staff have long retained in these proceedings. The responsible scientists intervenors require can hardly be expected to be able to drop all other responsibilities immediately to assist intervenors. Instead, it could be reasonably expected that such technical consultants would need a month or two to clear their schedules in order to make time available for this matter.

Once the consultants can begin work on intervenors' behalf, preparation of responsible, informed scientific testimony by them reasonably will take two to three months. The expert consultants must review the submissions by the applicant and the staff (Final Safety Analysis Report, Environmental Report, Final Environmental

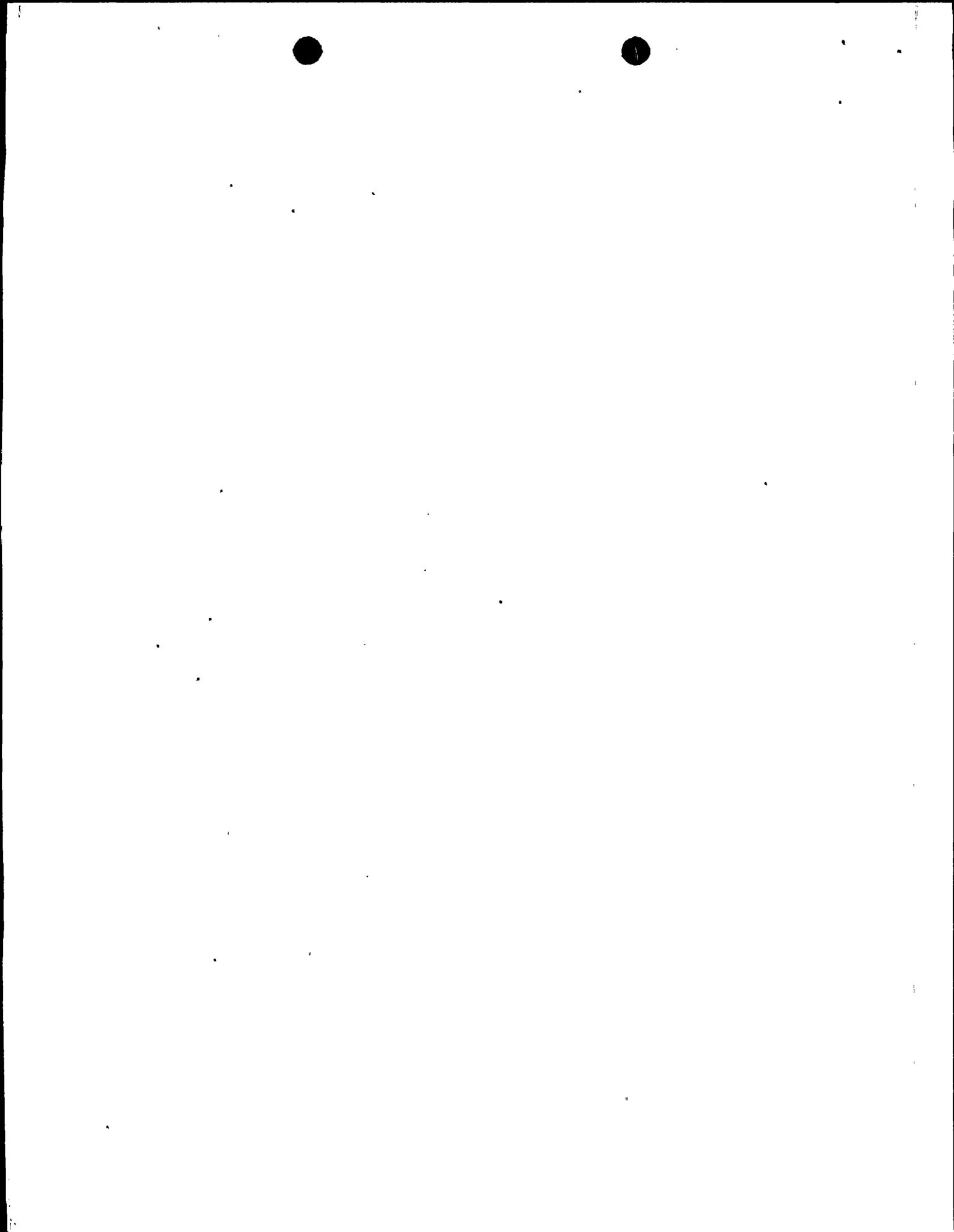


Statement, etc.) and other relevant documents obtained through discovery. They must consult and analyze relevant technical literature and other sources of relevant data. Finally, they must write informed scientific testimony of a caliber that will benefit this Board.

Essentially, then, intervenors, by this motion for extension of time, request that their newly retained counsel be given a reasonable time to obtain additional experts and that the experts who are already retained by intervenors and those who will be contacted in the next two or three weeks be given a reasonable time to review data and prepare testimony on several complex issues. These factors of retention of new counsel and need for a reasonable time to review data and prepare testimony on complex issues constitute good cause for an extension of time as several decisions by the Atomic Licensing Appeals Board discussed below clearly demonstrate.

A. Good cause for Extension of Time Exists When New Counsel is Retained or When Existing Counsel Must Prepare for Proceedings Involving Complex Technical Issues.

The Atomic Licensing Appeals Board has ruled that recent retention of counsel by citizen intervenors constitutes good cause for granting extensions of time. The Appeals Board in In the Matter of Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3) ALAB-177, AEC 6, pp. 261-62 (April 20, 1973) granted intervenor's request for extension of time to file an appellate brief because the intervenor recently had retained counsel to prepare the brief. The Appeals Board noted its reluctance to prolong proceedings, but granted intervenor's request because:

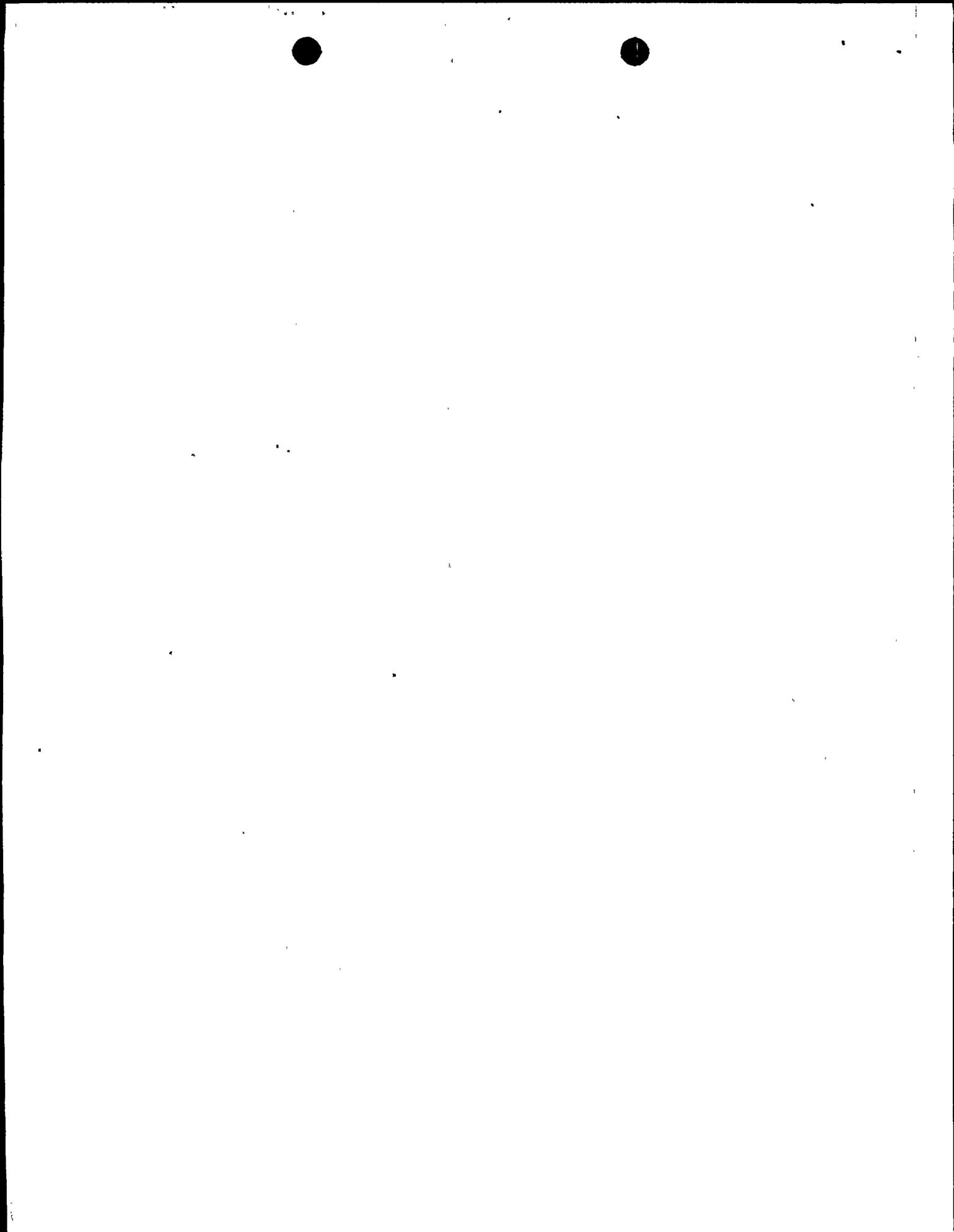


". . . one of the reasons cited in support of the requested extension of time is the recent retention of additional appellate counsel. That reason, establishing unusually good cause for an extension, is sufficient to overcome our extreme reluctance to permit any further delay and justifies the granting of this extension of time." (emphasis in original) (AEC 6 at p. 262)

In addition, Atomic Licensing Appeals Boards routinely grant extensions of time to counsel who are not new to a proceeding if the requested extension is reasonably necessary for counsel to prepare in light of a heavy workload in other matters and the complexity of the issues in the proceeding for which the extension is desired. Grants of extensions by ALAB on grounds of workload and complexity of issues occurred in In the Matter of Boston Edison Company (Pilgrim Nuclear Power Station) ALAB 74, AEC 5, (October 27, 1972), p. 308 and in In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) ALAB-44, AEC4, pp. 751-52 (January 6, 1972).

Here the intervenors recently retained counsel for environmental hearings which involve several complex technical issues. The extension of time requested is reasonably necessary for counsel's preparation for these hearings in light of the substantial amount of work the new counsel must accomplish with recently retained technical experts in order to present reliable scientific testimony and evidence at the hearing.

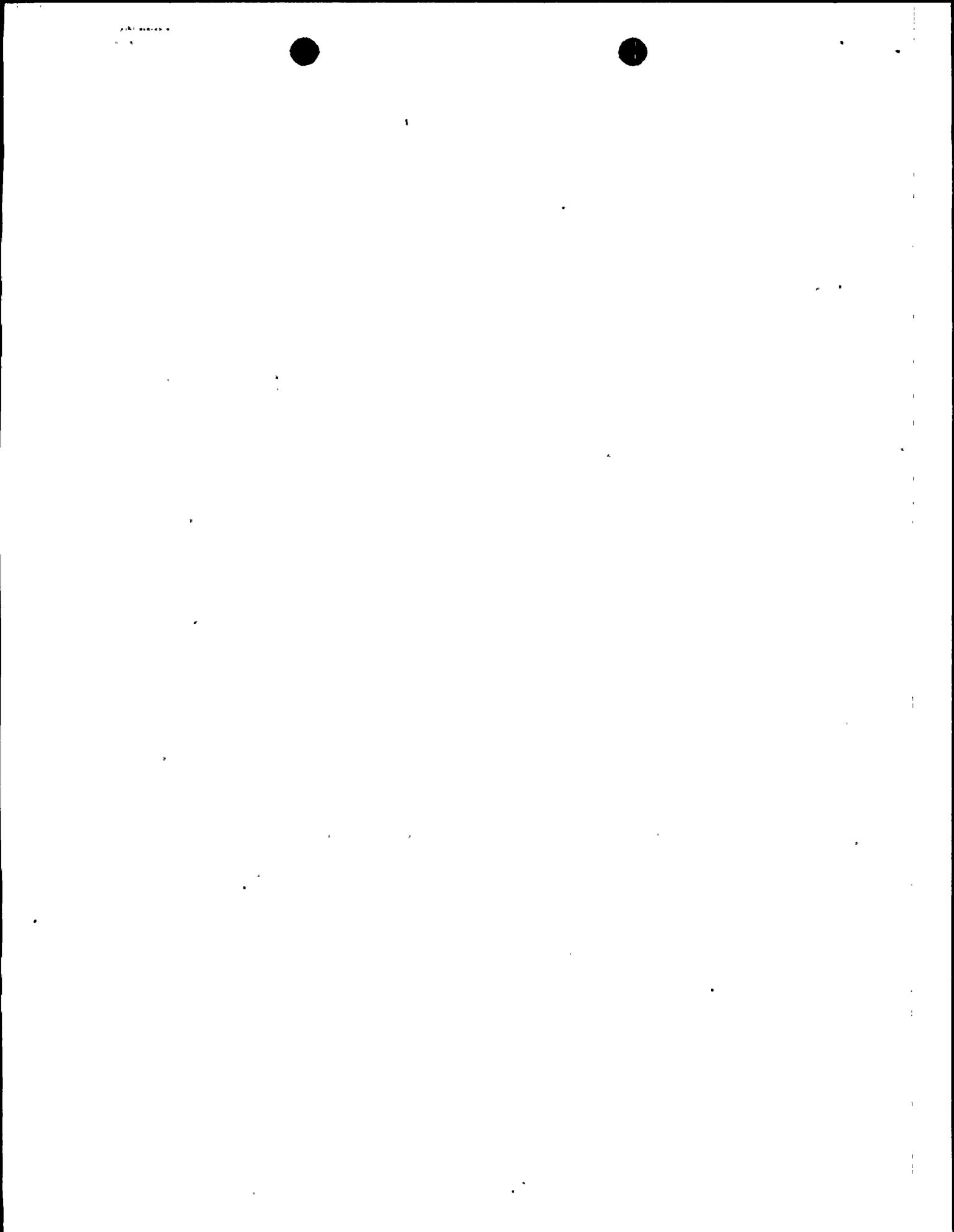
B. The Need for Expert Review and Analysis of Technical Data, in Itself Constitutes Good Cause for Extension of Time



In addition to granting extensions of time for new attorneys or attorneys facing complex technical issues to prepare their case, Atomic Licensing Appeal Boards have also granted extensions of time for adequate review of scientific data by technical experts themselves. For example, in In the Matter of Consolidated Edison Co. (Indian Point Station, Unit No. 2) ALAB 174, RAI 74-1, pp. 55-61, the Appeals Board granted an applicant a six month extension of time to gather data on once-through cooling for its plant and a three month extension of time for evaluation and analysis of the data and the writing of a report. In passing on the three month extension of time for data analysis and report writing, the Appeals Board ruled:

There remains for our consideration whether an additional three months . . . are necessary to analyze data and prepare the environmental report. In our judgement, three months is not an unreasonable period to allow the applicant to evaluate the data and to prepare a report.
(RAI 74-1 at p. 61)

In another ALAB decision In the Matter of Trustees of Columbia University in the City of New York, ALAB, AEC 4, p. 640 (May 19, 1974), the Appeals Board granted intervenors a five week extension of time to file exceptions to an initial decision because the intervenors needed more time for, inter alia, review of technical matters. As the Board stated the grounds for its decision, it granted the extension of time because of ". . . the technical review and legal research which they [the intervenors] view as requisite to respond to the exceptions." (AEC 4 at p. 640)



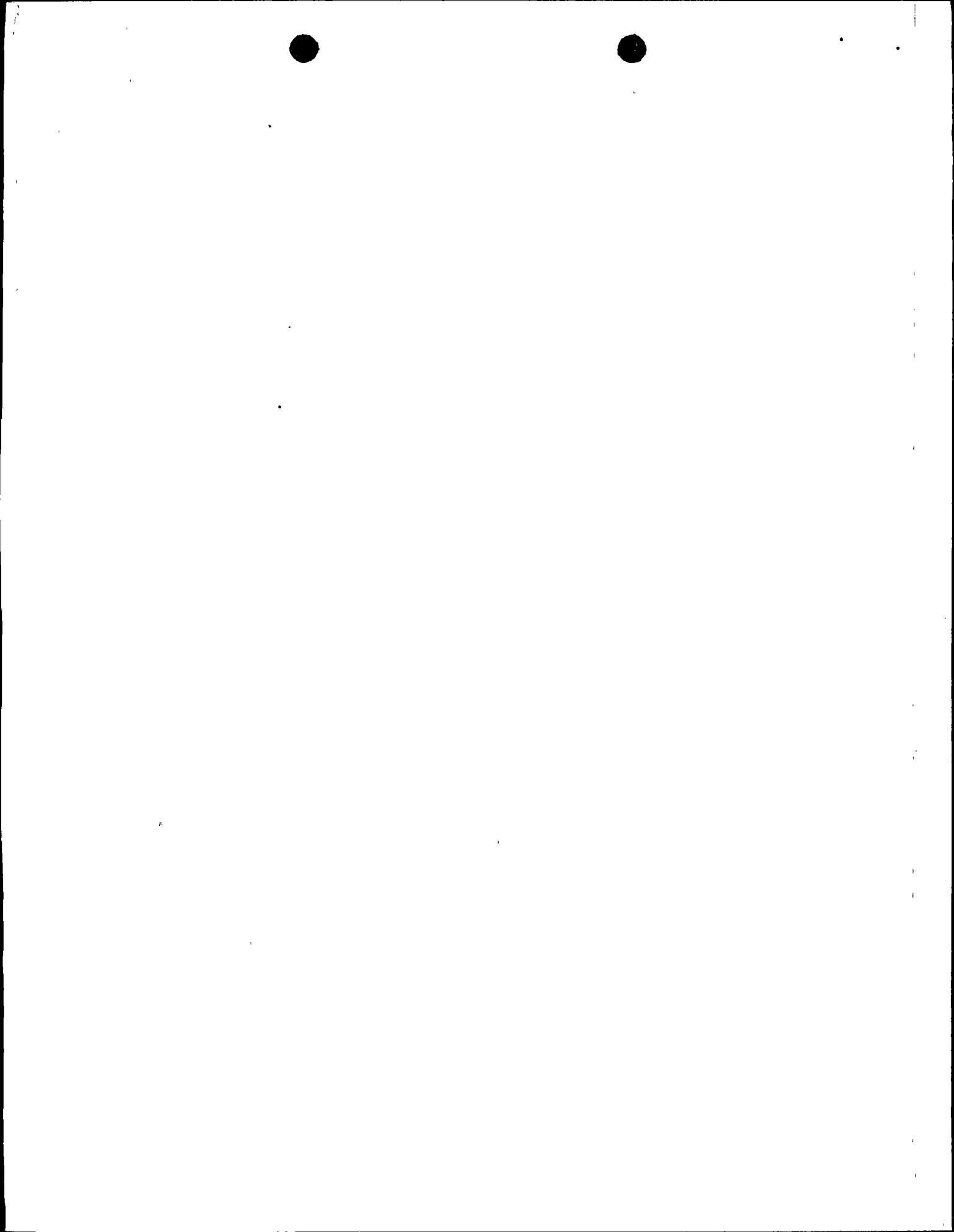
Fundamentally, intervenors make this motion for an extension of time to allow their recently retained technical experts a reasonable time to review data and write their testimony in an informed and reliable scientific manner. In light of the complexity of the technical issues for the environmental hearings and the extensions of time granted for technical review in Consolidated Edison and Columbia University, the seven week extension here clearly is justified.

II

THE REQUESTED EXTENSION OF TIME WILL NOT UNDULY PREJUDICE THE APPLICANT BECAUSE THE EXTRA TIME REQUESTED WILL NOT DELAY THE ULTIMATE LICENSING OF THE PLANT.

Intervenors carefully framed this request for extension of time to avoid undue prejudice to the applicant. While intervenors would prefer a three month extension of time to enable them to more fully prepare reliable scientific testimony on all the environmental issues, they realize that an extension of that length may prejudice applicant by delaying the safety hearings and, therefore, the ultimate licensing of the plant. However, the extension to December 1 requested here will result in no delay of the safety hearings and ultimate licensing.

The safety hearings and ultimate licensing of the plant will not result from the requested extension to December 1 because the pre-hearing scheduling conference for almost all safety contentions cannot occur until mid-December at the earliest. This situation prevails because the Advisory Committee on Reactor Safeguards must issue its final safety report before that pre-hearing.



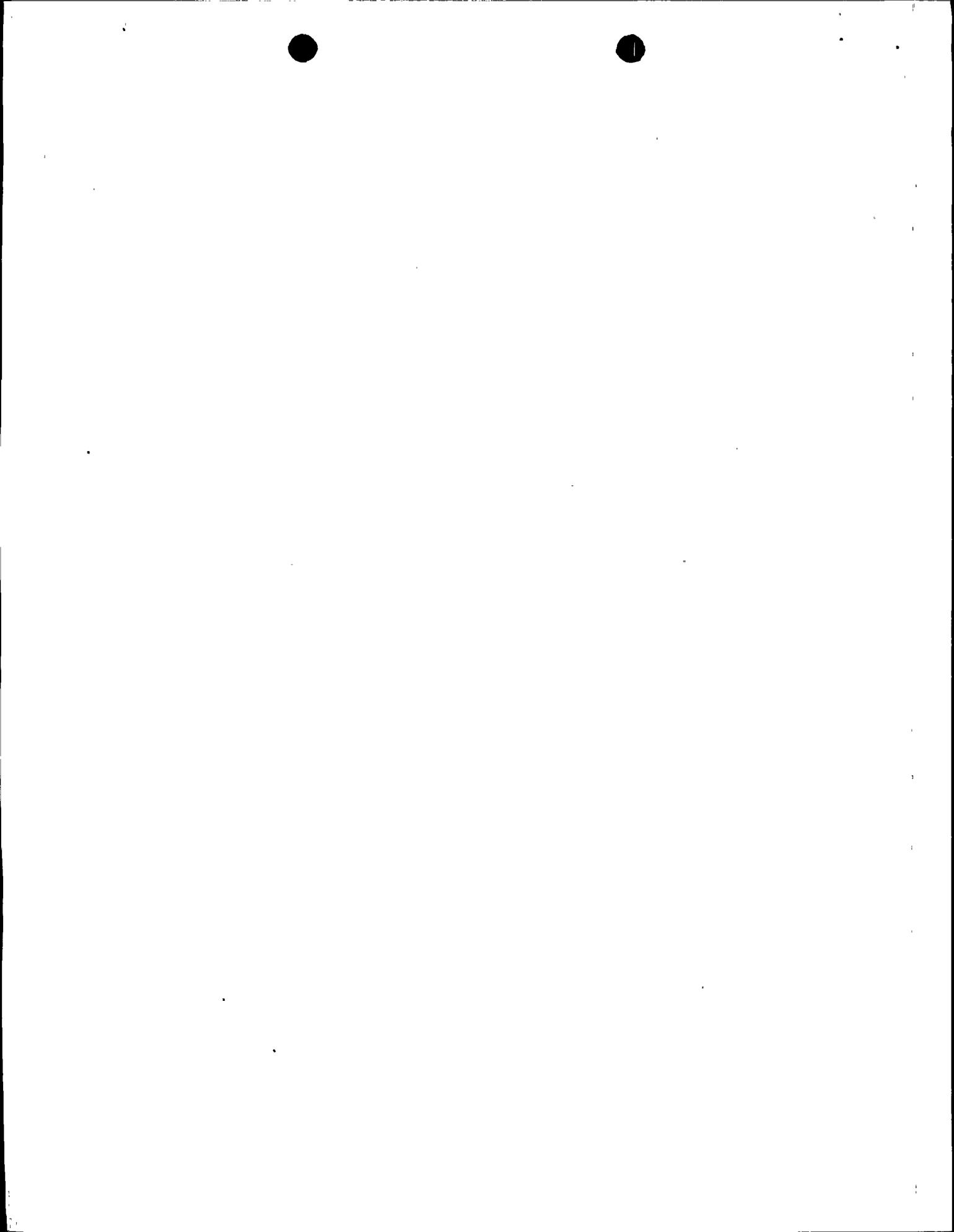
conference can occur for almost all of the safety contentions. The ACRS staff forecasts that the earliest time this report can be complete is mid-December. Therefore, this extension of time will still allow the environmental hearings on non-seismic issues to be completed before the earliest date on which the Board can have the pre-hearing conference and set the schedule for the safety hearings.

The intervenors essentially ask, then, that this Board allow their new counsel and recently obtained experts a more reasonable amount of time to prepare for the environmental hearings, but also an amount of time that will not delay the ultimate licensing of the plant. Therefore, this extension of time will allow intervenors to present more reliable scientific evidence regarding environmental matters to the Board, evidence the Board must consider under the mandate of the National Environmental Policy Act, without unduly prejudicing the applicants interest in receiving a license as soon as the resolution of the safety hearings will permit.

III

GRANTING THE REQUESTED EXTENSION OF TIME WILL HELP THE BOARD MEET THE FEDERAL COURTS CONCERN THAT INFORMED SCIENTIFIC OPINION IN SUPPORT OF INTERVENORS' POSITIONS BE HEARD BY THE BOARD

Federal courts, especially the Court of Appeals for the District of Columbia, have become increasingly concerned that the lack of resources of citizen intervenors to marshal adequate technical evidence to support their case illegitimately skews the administrative process of the Nuclear Regulatory Commission against them. In light of these concerns, it would be anomalous for the



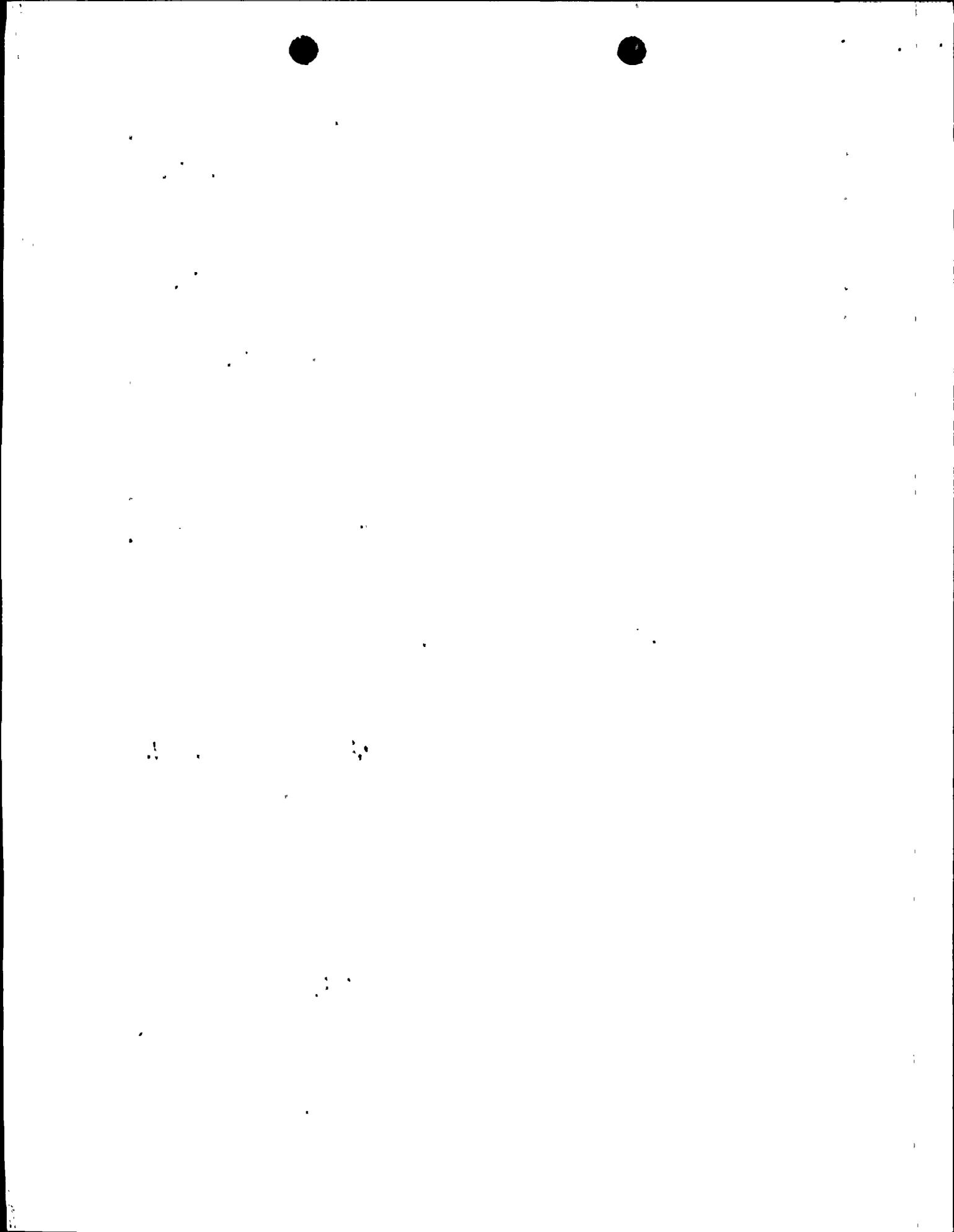
Board not to allow intervenors here adequate time to marshal informed scientific and technical evidence just when the intervenors have obtained adequate resources to present such evidence.

The United States Court of Appeals for the District of Columbia expressed its concern for the plight of citizen intervenors in the landmark NEPA case Calvert Cliffs v. AEC 449 F.2d 1109 (D.C. Cir. 1971). In that case, the Appeals Court overturned a Commission procedural rule that limited the Commission's consideration of environmental issues relating to NEPA to those issues affirmatively raised by a party to the hearings. The Appeals Court found that the Commission could not reasonably rely on citizen intervenors to raise all the environmental issues that NEPA mandates an agency to consider because such citizen intervenors usually do not have the resources to fully present their case:

"It is, moreover, unrealistic to assume that there will always be an intervenor with the energy, information and money required to challenge a staff recommendation which ingores environmental costs." (449 F.2d at 1118-19)

More recently, in NRDC v. NRC, slip opinion (D.C. Cir., July 26, 1976), the Court of Appeals for the District of Columbia, citing Calvert Cliffs, restated its concern for citizen intervenors' ability to present a sound technical case. As the Appeals Court put it in this recent decision, ". . . poorly financed public interest intervenors may lack the wherewithal to marshal technical evidence and bring it to the Commission's attention." (at slip opinion, n. 34, p. 22).

Judge Bazelon of the District of Columbia has suggested that the need for the Commission to hear responsible scientific views

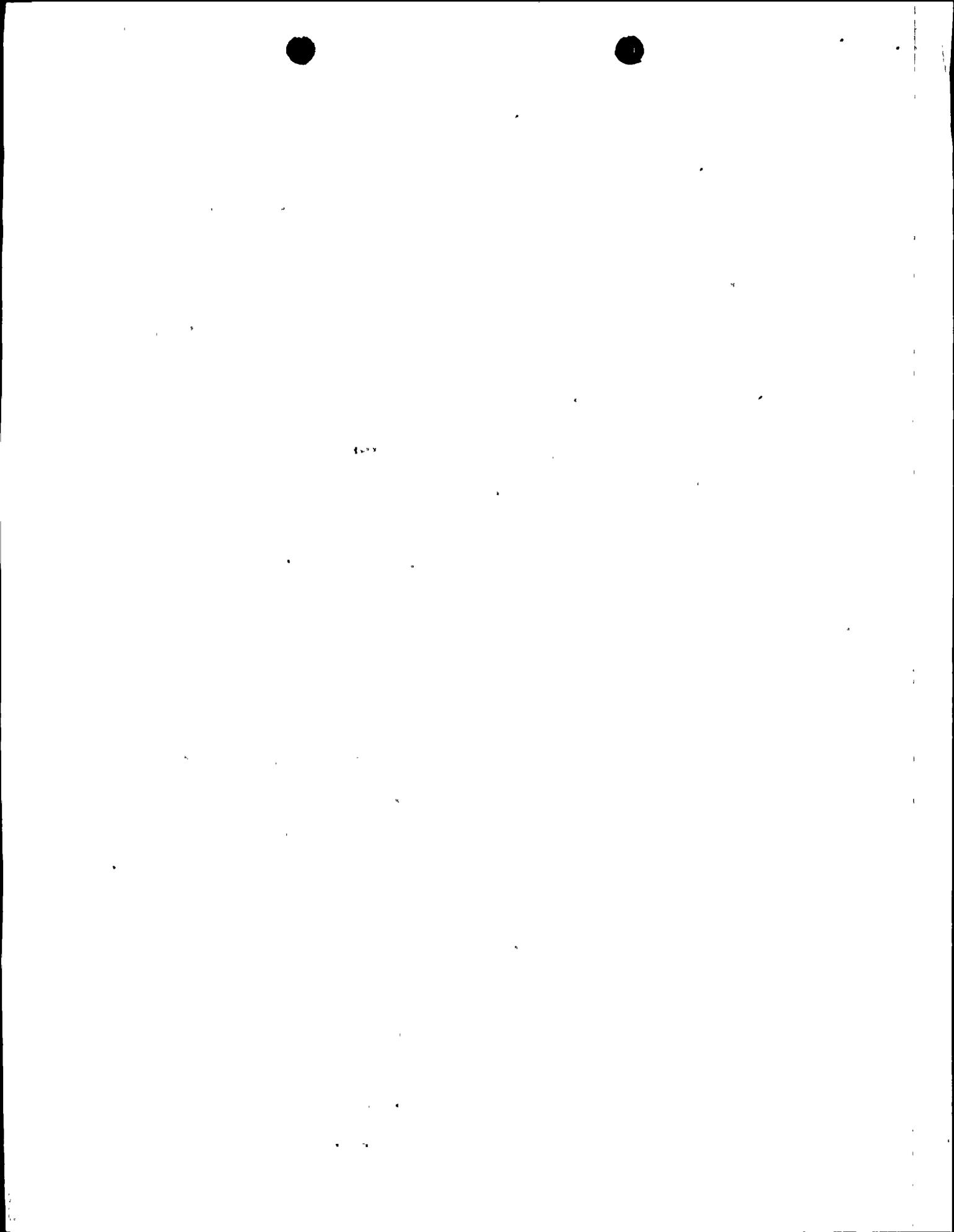


in support of intervenors' positions may require the Commission to seek out experts holding such views on its own or to fund intervenors in Commission proceedings so that intervenors can obtain their own technical consultants. For example in Friends of the Earth v. AEC 485 F.2d 1031 (D.C. Cir. 1973) Judge Bazelon wrote in a concurring opinion that:

"In future proceedings it may be necessary for the Commission to seek out experts representing varied and opposing technical views to insure that issues such as these are resolved in the "crucible of debate through the clash of informed but opposing scientific and technological viewpoints." Only that sort of approach can "establish a decision-making process which assures a reasoned decision that can be held up to the scrutiny of the scientific community and the public." (at 485 F.2d 1031)

More recently, in Citizens for Safe Power v. Nuclear Regulatory Commission, 524 F.2d 1291 (D.C. Cir. 1975) Judge Bazelon, again in a concurrence, wrote of the need for Commission funding of citizen intervenors:

"If society is to rely upon the suspension mechanism for protection against the risk of gross errors in scientific understanding, it must not only insure that the threshold for inquiry is reasonable, but also assist the objectors to state their case. For example, the Federal Trade Commission Improvement Act of 1974, expressly grants to the FTC authority to reimburse intervenors' expenses in the interest that rulemaking serve the broadest possible

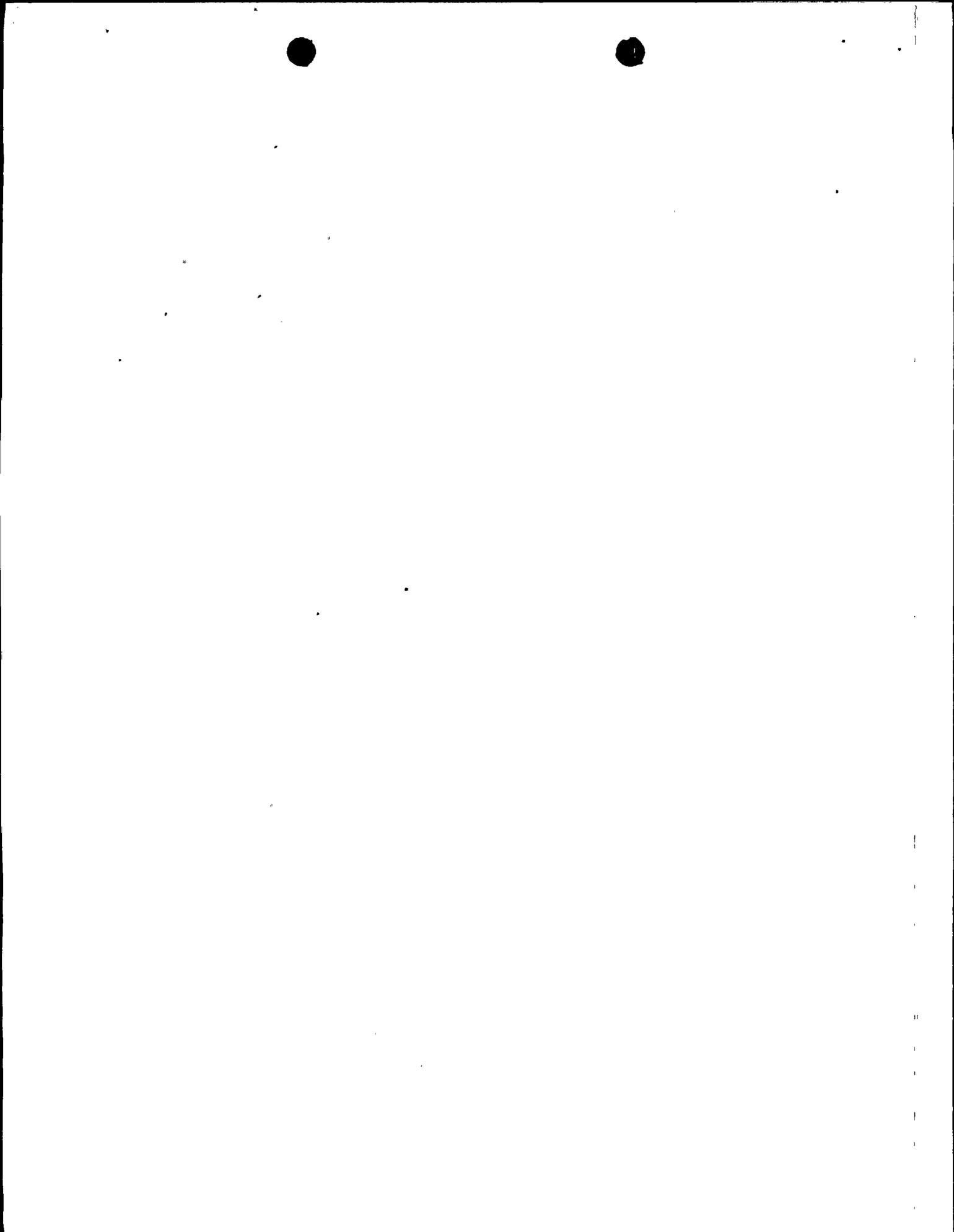


public interest. An alternative to such direct public funding might be a university consortium, in which professors and students offset the financial burdens of fact-gathering and agency appearances by conducting public seminars or publishing their research."

In light of these high judicial concerns, it would be improper for the Board to fail to grant the citizen intervenors here time to prepare a substantive technical case just when they have finally obtained the wherewithal to marshal technical evidence and informed scientific views opposed to those of the applicant and the staff. Instead, the Board should allow the intervenors and their recently retained counsel and experts the time they require to present informed scientific and technological viewpoints supporting their position to the Board.

Conclusion

The National Environmental Policy Act mandates that this Board consider all responsible scientific opinion regarding all adverse environmental impacts from and alternatives to the operation of the Diablo Canyon nuclear plant. Intervenors by this motion ask that their recently retained counsel and technical experts be given a reasonable period of time to formulate such responsible scientific opinion and bring it to the attention of this Board. The reasonable extension of time hereby requested will not prejudice the applicant because the extension will not delay the ultimate licensing of the Diablo Canyon plant. Accordingly, we respectfully urge that this Board grant the extension of time for the commencement of the environmental hearings hereby requested.



Dated: September 13, 1976

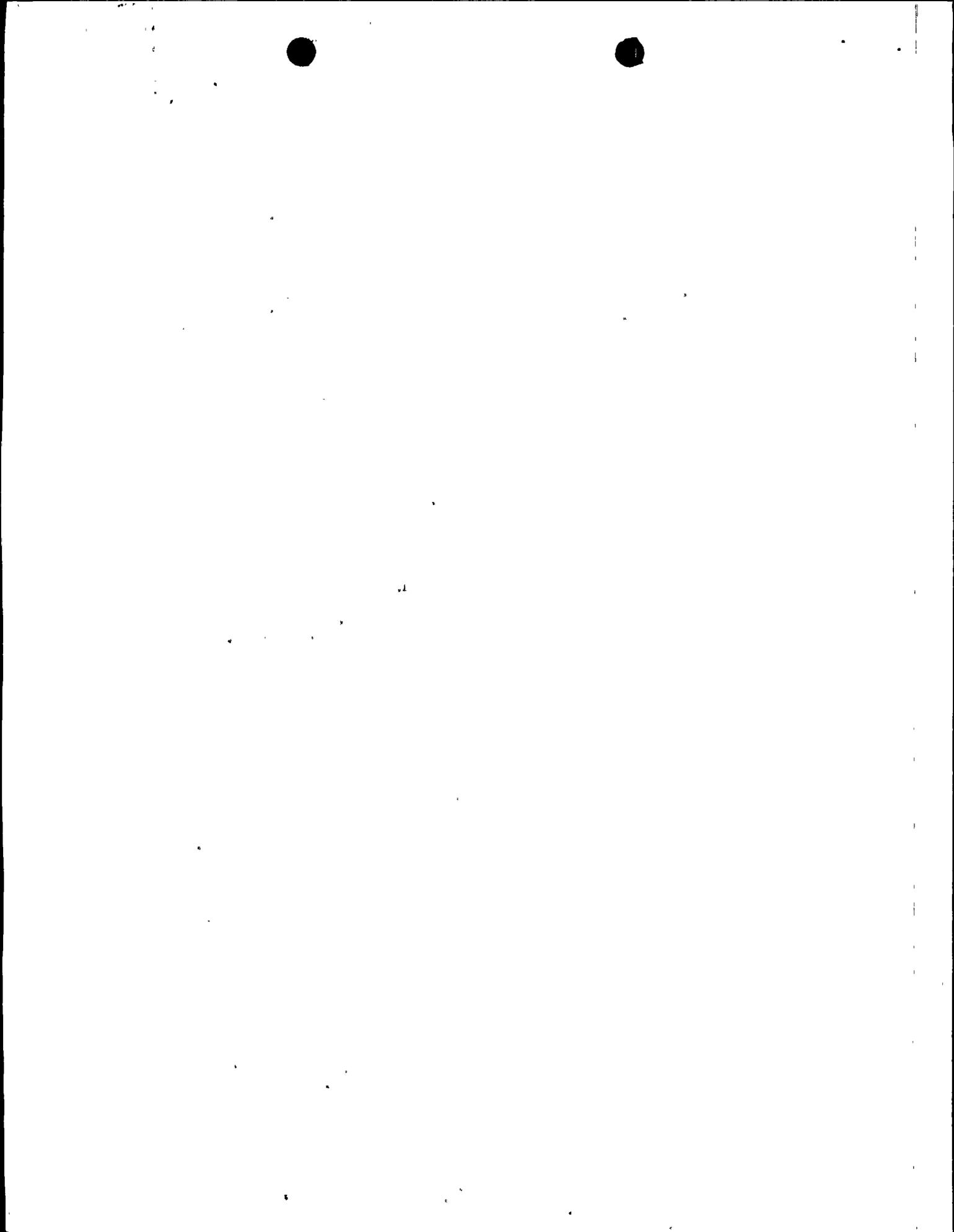
Respectfully submitted,

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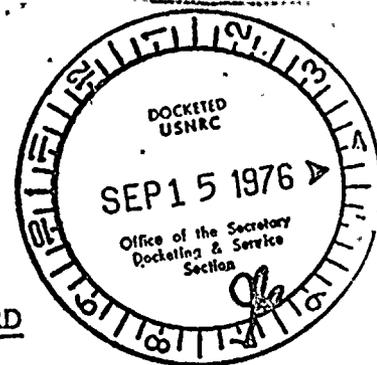
By: Brent N. Rushforth
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Los Angeles, California 90067



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

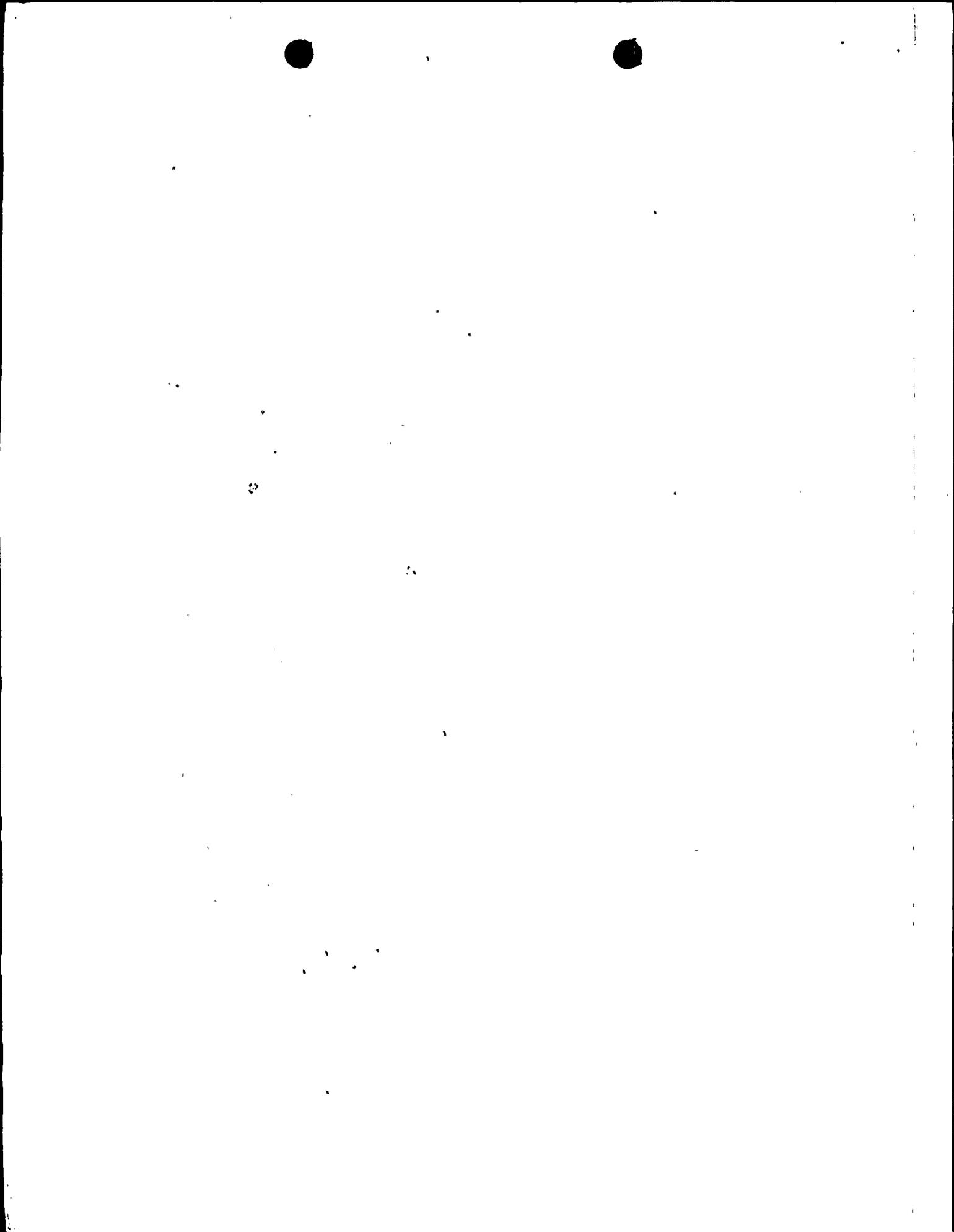


In the Matter of)
PACIFIC GAS AND ELECTRIC COMPANY) Docket Nos. 50-275 O.L.
(Diablo Canyon Nuclear Power Plant,) 50-323 O.L.
Units Nos. 1 and 2))

AFFIDAVIT OF RICHARD HUBBARD

Richard Hubbard deposes and says under oath as follows:

1. I am a nuclear power plant engineer thoroughly familiar with nuclear power plant component quality control problems. I received a B.S. in Electrical Engineering from the University of Arizona in 1960 and an MBA from the University of Santa Clara in 1969. For the past sixteen years, until February, 1976, I worked with General Electric in electric power generation. For the last twelve of those sixteen years I worked in the nuclear power division. The final eleven of my twelve years in the nuclear division were in management positions. My most recent position at General Electric was as Manager of Quality in the Department of Energy Control and Instrumentation where I had a work force of 150 people reporting to me. In that position I was responsible for the quality of all reactor components manufactured at General Electric's Nuclear Division Headquarters in San Jose, California including reactor internals, fuel handling equipment, plant electrical control and electrical systems, and containment electrical penetrations. I am also a member of the Institute of



Electrical and Electronics Engineers' Standards Subcommittee
for Nuclear Quality Assurance.

2. For the past several months I have served as a technical consultant to various groups that have been questioning the safety of nuclear power generation in several public forums. In these consulting activities I have become acquainted with numerous scientific and technical experts in different aspects of nuclear power generation, its costs and benefits, and its adverse environmental effects. In mid-August, 1976, I also agreed to become a technical consultant to the intervenors in the Diablo Canyon operating hearings. I also agreed to help the intervenors' attorneys contact experts for consulting and testimony in all fields of expertise relevant to the operating license proceedings.

3. The purpose of this affidavit is to support intervenors' request for an extension of the Atomic Safety and Licensing Board Environmental Hearings from October 13, 1976 to no sooner than December 1, 1976. The extension until December is necessary, as a minimum, to allow time for independent scientific experts to responsibly assess the Diablo Canyon Units 1 and 2 Nuclear Power Plant's design documentation and other evidence relevant to the environmental contentions in order to form reasonable scientific opinions on all relevant matters. Under the present



schedule which sets the Environmental Hearings on October 13, inadequate time is available to secure the services of technical witnesses, to participate in the discovery process of relevant technical documents, and to review and assess the technical adequacy of the applicable design, design verification documents and other relevant data.

4. From my familiarity with many experts in fields relating to the adverse environmental impacts and costs and benefits of nuclear power, I have found that almost all the scientific and technical authorities qualified and willing to participate in an independent assessment of the Diablo Canyon units on behalf of intervenors are active or retired members of the academic community. Because these academic experts usually take family vacations or engage in off-campus research projects during the summer, it has been impossible for me to recruit qualified technical witnesses from the academic community as consultants and witnesses for intervenors in these operating license proceedings. For example, Dr. John Gofman, an emeritus professor from the University of California at Berkeley, an expert in nuclear medicine, has been on vacation during the latter part of August. Scientific experts presently employed at the Universities of California at Berkeley and Santa Cruz whom I have attempted to contact also have been absent from their campuses this summer.

5. Other experts are willing to help the intervenors, but, because of other commitments made before intervenors contacted



them this month, cannot begin significant work for the intervenors until mid-October. For example, Dr. Roland Finston of Stanford, an expert on health physics, has academic commitments during September and early October, but has agreed to review data, do research and prepare testimony for these proceedings after that time. Dale Bridenbaugh and Gregory Minor, both nuclear power plant engineers, also recently agreed to serve as consultants and witnesses for intervenors. But Bridenbaugh had a prior commitment for a three-week speaking tour of Australia from September 19th to October 11th, while Minor had a prior commitment for a four-week speaking tour of New Zealand from August 31st to September 28th. I have previous commitments to provide technical assistance in the six states which will be voting on nuclear safeguards initiatives on November 2nd.

6. Once the appropriate technical witnesses are available, the discovery process to identify the relevant technical documents will be quite time consuming. For instance, familiarizing oneself with the twelve volumes of the Final Safeguards Analysis Report (FSAR) by itself will require a significant amount of time. In addition, there have been numerous technical exchanges among the regulatory agency-Nuclear Regulatory Commission, the utility-Pacific Gas and Electric, and the reactor manufacturer-Westinghouse Electric, all of which must be reviewed. An extension of the hearing date until after December 1, 1976 will enable the intervenors' experts to adequately search out and



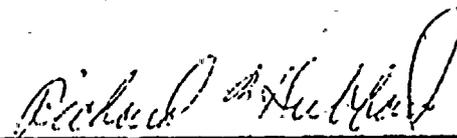
review such relevant technical documents.

7. In my own area of expertise, I am certain that a thorough review of the technical adequacy of the applicable design and design verification documents relevant to the environmental contentions and obtainable through the discovery process cannot be accomplished by October 13th. For instance, for one of the contentions, in order to analyze the structures, systems, and components that could cause plant malfunctions, breakdowns, downtime, or reduced operational efficiency causing a low reliability factor will require studying over 1000 drawings. The study will include analysis of the reactor system design requirements, the detailed equipment specifications, the equipment mechanical and electrical characteristics, and the design verification documentation. Drawings will be analyzed in detail for technical consistency, design adequacy, and verification proof method. The detailed review, with participation by all relevant disciplines, requires coordinated and time-consuming analysis by a number of scientists.

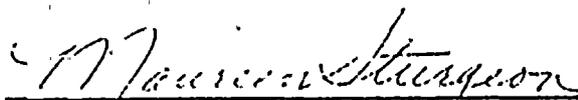
8. For the reasons summarized herein, the October 13th ASLB hearing date does not allow sufficient time to secure witnesses who can participate in adequate discovery and technically assess the applicable data in order to form responsible scientific opinions regarding the matters encompassed in the environmental

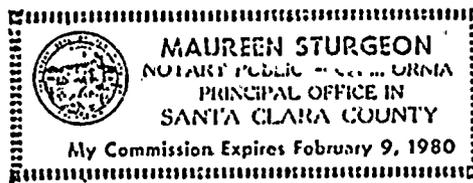


contentions. In my own area of technical expertise, for example, an adequate independent review of the contentions concerning the inadequacies in the Diablo Canyon Units 1 and 2 design documents will require delaying the hearings until at least December 1, 1976.


Richard Hubbard

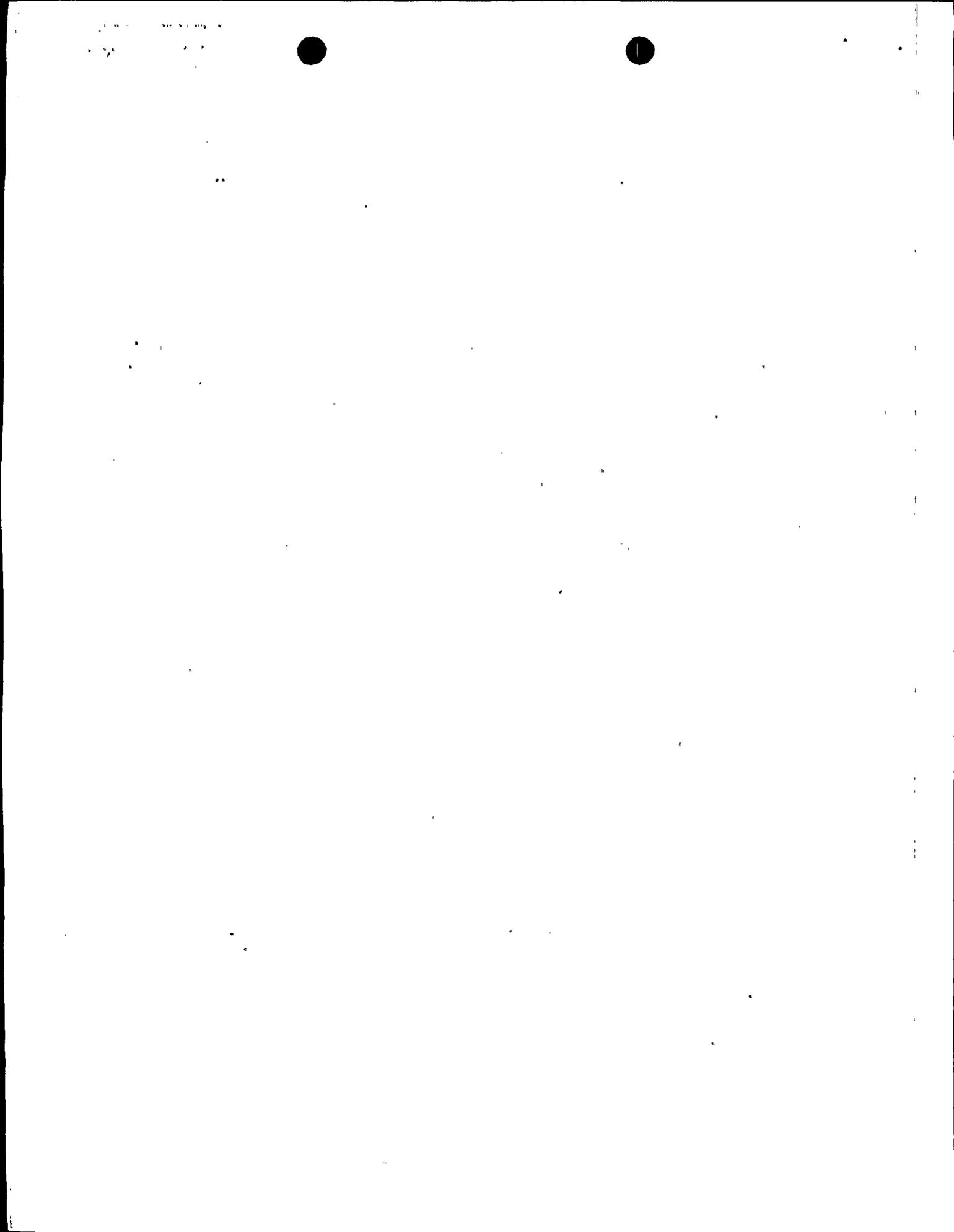
Subscribed and sworn to before me this 5 day of September, 1976.


Notary Public



My Commission Expires _____

(SEAL)



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
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PACIFIC GAS AND ELECTRIC COMPANY) Docket Nos. 50-275 O.L.
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AFFIDAVITS OF GORDON SILVER AND SANDRA SILVER.

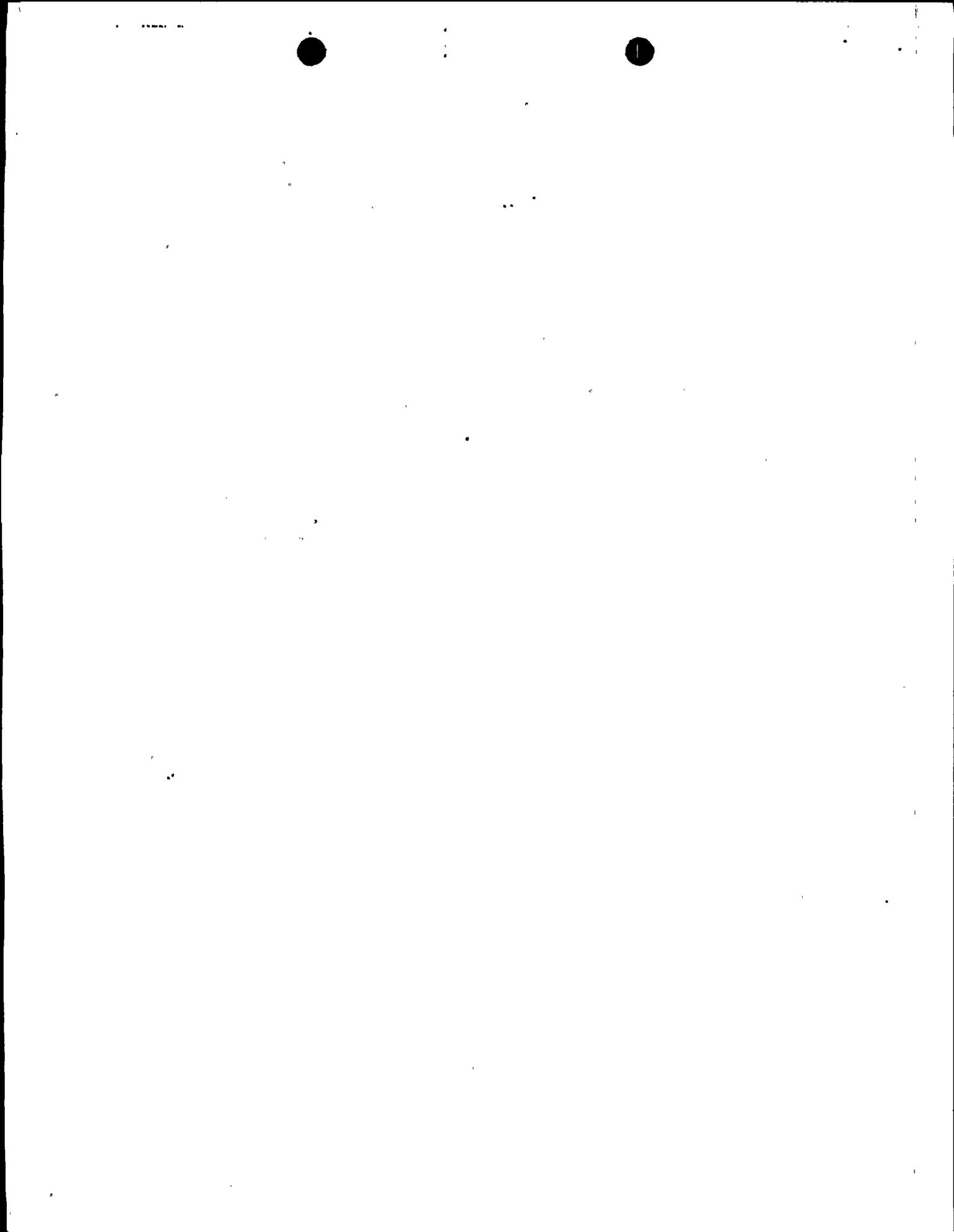
Gordon Silver and Sandra Silver depose and say under oath as follows:

1. We have both had an interest in the Diablo Canyon nuclear plant operating license proceedings for the past three years. One of us, Sandra Silver, is a named individual intervenor and has represented another intervenor, San Luis Obispo Mothers for Peace. Gordon Silver has represented intervenors Ecology Club and John J. Forster.
2. Neither of us has had training as a lawyer. Nor does either of us have formal training in the technical disciplines relevant to the Diablo Canyon operating license proceedings. Furthermore, neither we nor any of our fellow citizen intervenors in these proceedings have had funds to expend on preparing our case in the proceedings.



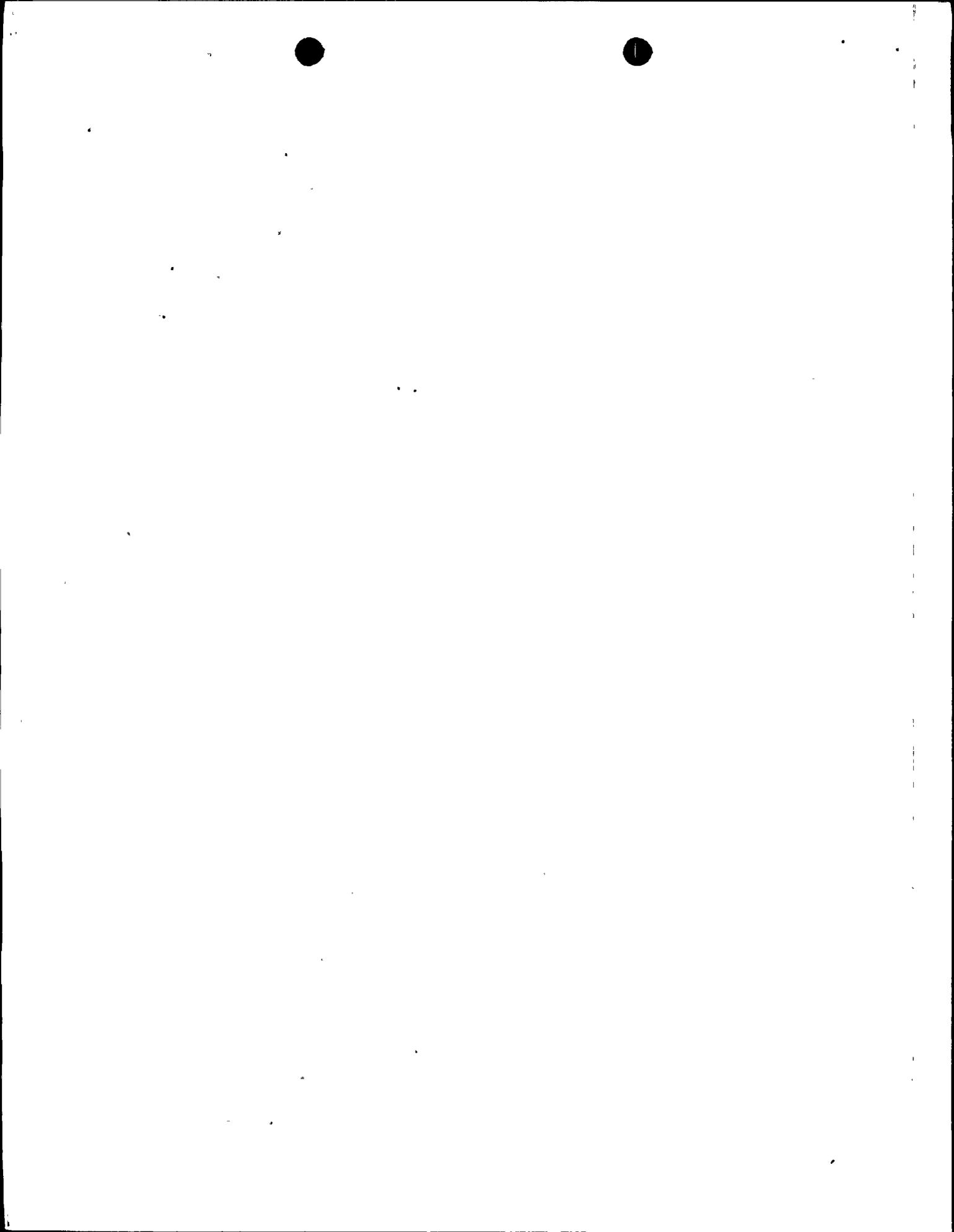
3. We have participated in the Diablo Canyon operating license hearings because of several serious environmental and health and safety problems the operation of the Diablo Canyon plant presents, especially those related to seismicity and radiological pollution. But because of our total lack of training, experience and resources, we have been unable to develop and present any reliable scientific and technological evidence and expert opinion opposing the operation of the Diablo Canyon nuclear plant. Only the applicant and the Staff of the Nuclear Regulatory Commission have been able to present such technical cases in these proceedings. In short, our lack of expertise and money, especially when compared to the substantial resources of P.G. & E. and the N.R.C. Staff, has made it impossible for us to function as vigorous, informed advocates of our position in these proceedings.

4. Since we began to participate in these proceedings, we have operated with a budget of such meager proportions that even xeroxing, service of documents by mail and other clerical costs have been significant burdens for us. We have not had the funds to purchase important documents, travel to meetings, interview willing witnesses or conduct necessary telephone conversations. The few technical experts we could afford to telephone have not been willing to help us because we could not pay even their travel expenses to hearings and, of course, we could not pay even modest fees for their time.



5. Because we realized that our lack of funds prevented us from accomplishing even the bare mechanical necessities of building our case against licensing the Diablo Canyon plant, we applied to the Nuclear Regulatory Commission last year for financial assistance. However, our motion was not granted. Consequently, we continued to be virtually without funds in these licensing proceedings.

6. Neither we nor any other of the citizen intervenors are lawyers. We have little familiarity with the laws applicable to these proceedings, such as the National Environmental Policy Act. The only laws or regulations relevant to these proceedings to which we have had access are 10 C.F.R. and xerox copies of a few cases sent to us by the N.R.C. staff. We do not know how to use legal materials to look up points of law favoring our positions. Although we know that there are two parts to these proceedings, environmental hearings and safety hearings, we are uncertain as to the law governing which technical subjects are appropriate to which part. We know little about framing interrogatories, wording contentions, taking depositions, preparing expert testimony, etc. We have little idea of how to use discovery, technical consultants, documents and other sources of evidence to build our case for a hearing. Despite our almost complete lack of legal knowledge, we were unable, until just over a month ago, to obtain any legal advice except on the single issue of plant security.



7. We realized from the start of these proceedings that a full presentation of our case requires expert testimony and expert evaluation of technical evidence from a number of fields including biology, nuclear medicine, geology, seismology, structural engineering, and energy economics. Neither we nor any other citizen intervenor has any training or expertise in any of these relevant technical fields. We have consulted by telephone with a few experts from relevant fields, but none has offered to testify in our behalf, with the exception of one expert trained in the narrow issue of plant security. Their reluctance to assist us has been due to our inability to pay any expenses or fees, as well as their belief that poorly financed, inexperienced citizen intervenors such as ourselves have no chance of prevailing in these proceedings. Consequently, we have gone without the assistance of informed scientific and technical advice throughout these proceedings.

8. On August 4, 1976, the Center for Law in the Public Interest at Los Angeles, California, agreed to represent us and several other intervenors in the Diablo Canyon operating license proceedings. We asked the lawyers at the Center to represent us because of their considerable experience in environmental litigation. Our new attorneys have assured us that, given sufficient time, they have the funding and acquaintances in scientific and technical circles to obtain experts who can evaluate evidence and testify in behalf of the intervenors' position. However,



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because we and the other intervenors could not obtain expert help before we retained the Center only a month ago, the Center must begin to build the technical case for our position from scratch.

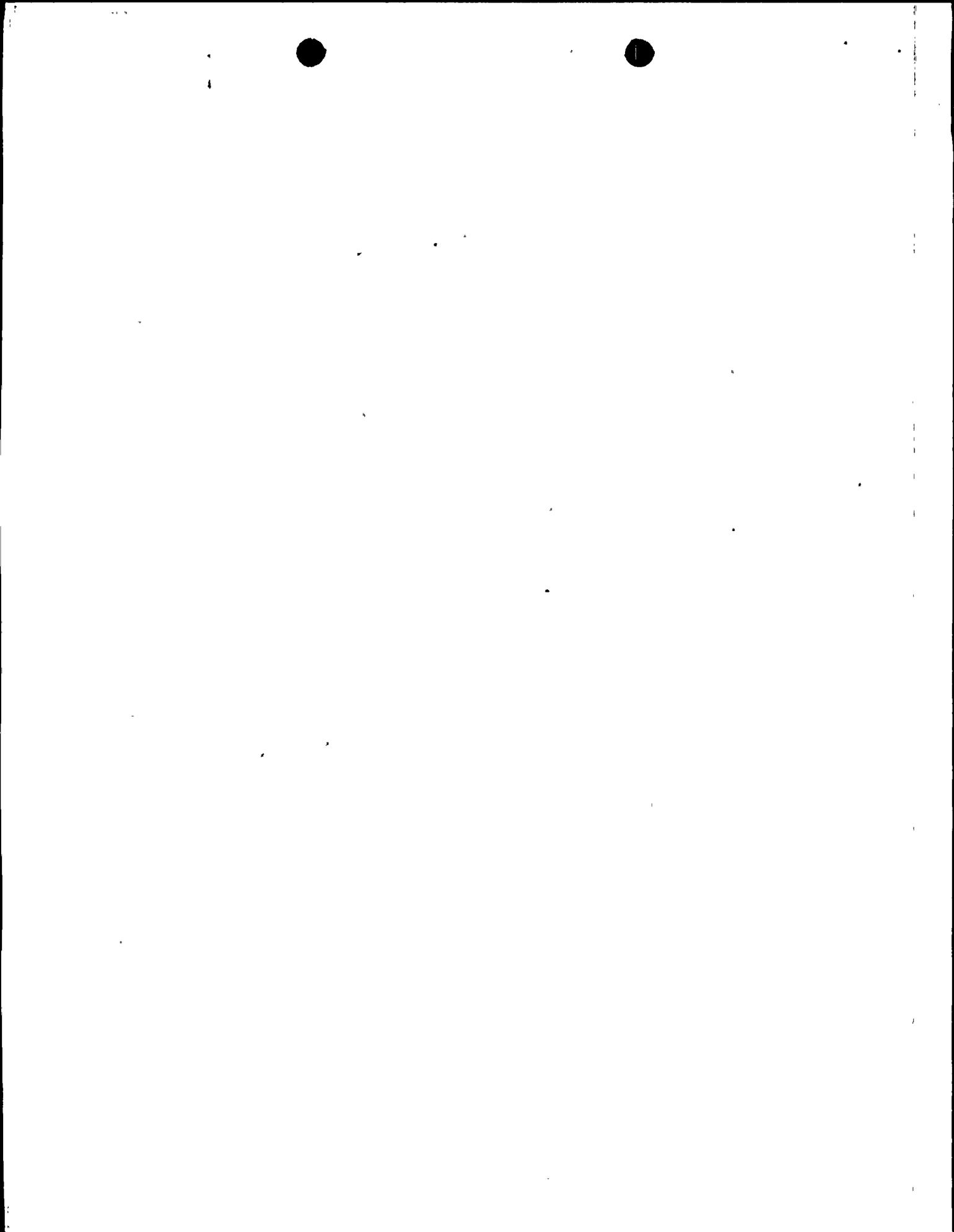
Gordon Silver
GORDON SILVER

Sandra Silver
SANDRA SILVER

Subscribed and sworn to us this 9th day of September, 1976.

Deborah Klinger
Notary Public in and for said County and State.







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 Plant,) 50-323 O.L.
Units Nos. 1 and 2))

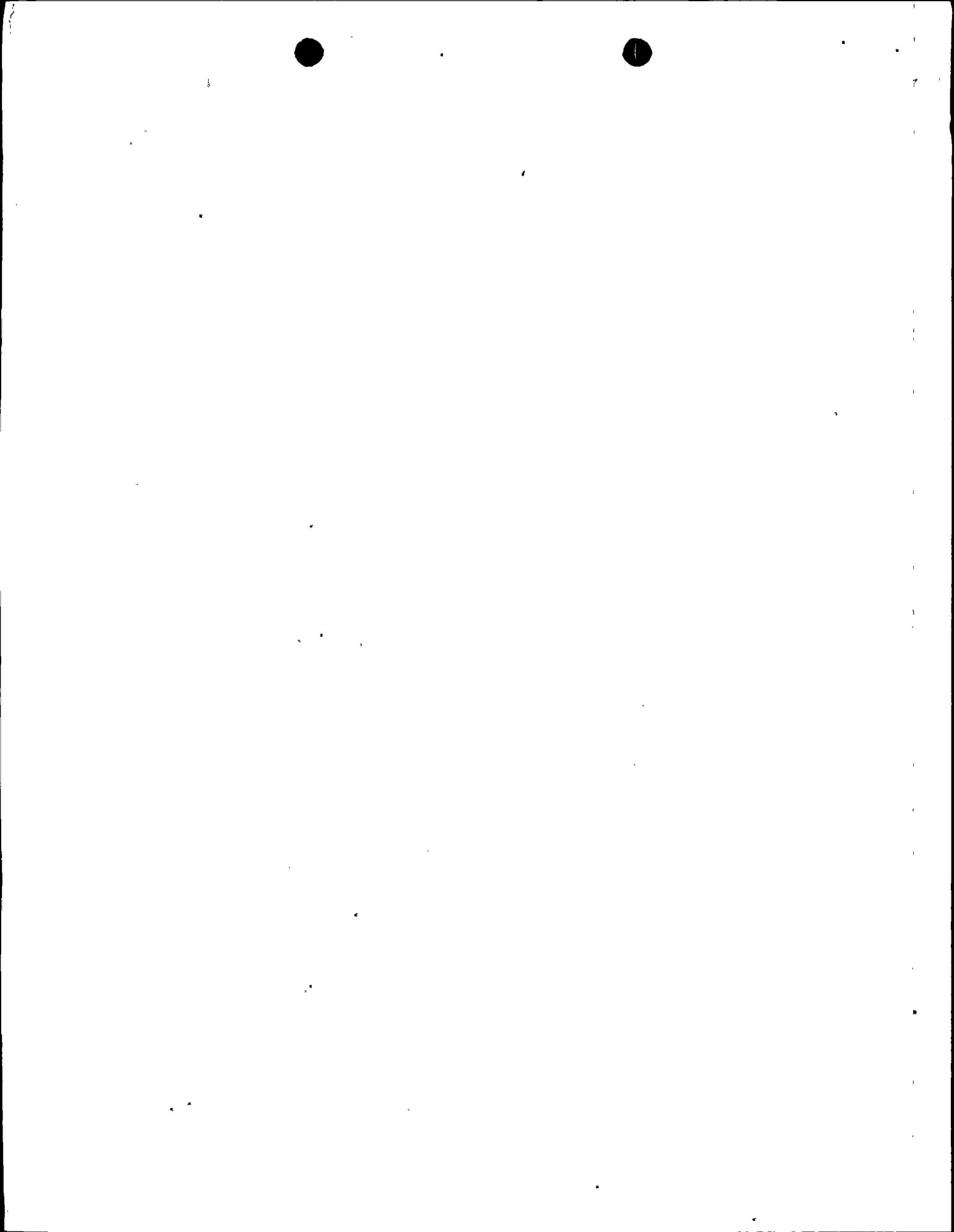
AFFIDAVIT OF BRENT N. RUSHFORTH

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

Brent N. Rushforth deposes and says under oath as follows:

1. I am a staff attorney of the Center for Law in the Public Interest of Los Angeles, California. I helped found the Center for Law and became a staff attorney for the Center in 1971. From 1968 to 1971 I was an associate with the Los Angeles law firm of O'Melveny and Myers.

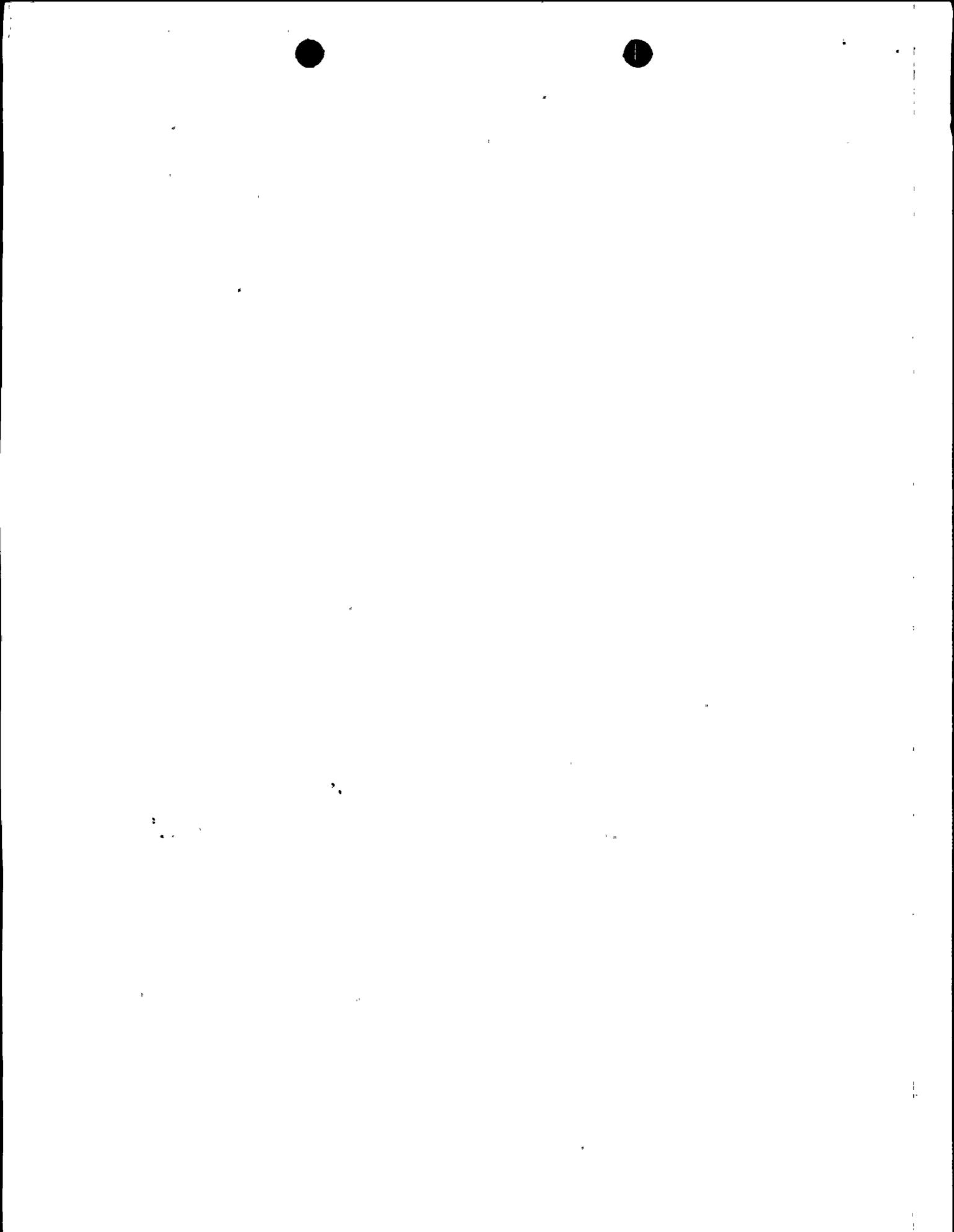
2. Since founding the Center for Law in the Public Interest, I have gained considerable experience in litigation and agency proceedings where provisions of the National Environmental Policy Act (NEPA) and its nearly identical state counterpart, the California Environmental Quality Act (CEQA), have been at issue. I have been lead attorney in more than half of the approximately 25 NEPA/CEQA cases the Center has litigated over the past five years. During the course of our considerable NEPA/CEQA practice, my partners and I personally have engaged in all phases of preparing the technical



cases appropriate to NEPA and CEQA matters, including discovery of technical data, consultations with scientific experts, and preparation of expert testimony for hearing or trial.

3. The full preparation of an environmental case in NEPA and CEQA proceedings normally takes at least nine months to one year. In order to insure that we bring all scientific and technological evidence and expert opinion supporting our positions to the attention of the trier of fact, discovery of technical documents, review of those documents by our own expert consultants, depositions and interrogatories, and independent research, investigations and calculations by our own expert consultants are necessary. This comprehensive process of technical review and evaluation requires the nine month to one year preparation period, especially when contentions ranging over several complex technical fields are involved in the proceedings.

4. On August 4, 1976, we agreed to represent several intervenors in the Diablo Canyon operating license proceedings. We understood, upon taking the case, that the Licensing Board intended to schedule environmental hearings for early October. Upon accepting the case, we reviewed what case preparation our clients had accomplished prior to August, 1976. We discovered that our clients had proceeded essentially in pro per as citizen intervenors. They had no legal training and no scientific training relevant to the issues in contention. In addition, our clients had had no funds to retain

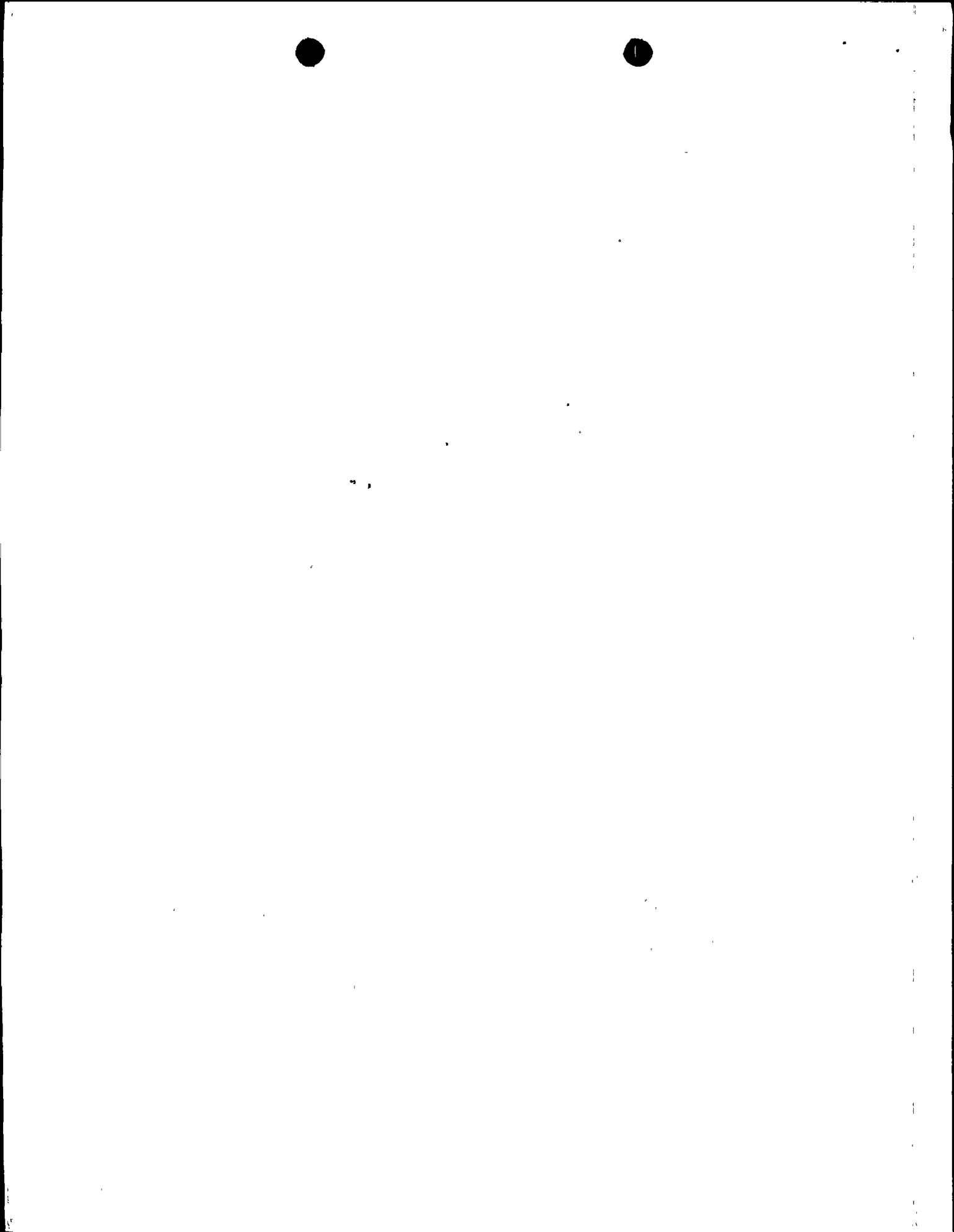


attorneys or expert consultants* and had conducted little discovery of relevant evidence in the possession of the applicant and the staff beyond the normal submissions to the public docket (FSAR, ER and FES) and some interrogatories. In sum, the intervenors, due to lack of experience and resources, had done virtually nothing to prepare a substantive case in their own behalf. Consequently, we faced the task of preparing a case on several complex technical issues in only two months.

4. During August and the first week of September, we encountered considerable difficulty in preparing our substantive technical case for the environmental hearings. Our difficulties were due in part to a heavy workload of other matters in our office, but more importantly to the impossibility of contacting potential academic technical consultants who were away from their homes and offices on summer holiday or field work during August.

5. The legal staff of the Center for Law in the Public Interest during August was both short handed and burdened with commitments made prior to our taking the Diablo Canyon case. I could do little work on the case because of prior commitments in several other matters. Other staff attorneys at the Center also had prior commitments and

*Nor are the intervenors able to pay the Center or the expert consultants we retain in these proceedings. The Center is able to assist the intervenors without charge as counsel and to retain technical consultants because it is funded by foundation grants, individual contributions and court awarded attorney's fees.



could do no work on the Diablo Canyon matter. Our usual contingent of five law student research assistants, on semester away from school intern programs, was reduced to zero because August falls between summer and fall law school terms. We did assign an associate in our office, Mr. James Geocaris, to the Diablo case. Mr. Geocaris did legal research for and briefing of the several motions and memoranda we filed in the past few weeks. He also attempted to contact experts in the fields relevant to the established environmental contentions of marine biology, economics of power plant operation, and radiology, as well as potential environmental contentions we thought should be added. However, most of the experts he tried to reach during August were not available. Consequently, neither he nor I had the benefit of expert consultation to help us conduct meaningful discovery regarding the environmental contentions.

6. In contrast to our attorney workload difficulties last month, the Center will be able to devote considerable attorney time to the Diablo Canyon matter in the coming months. I have refused other work to free myself to devote considerable time to Diablo Canyon this fall. Mr. Geocaris will continue to be available for work on this case. In addition, we have assigned a recent law school graduate who joined our office this week and a law student who will be with us this fall to the Diablo Canyon case.

7. I have found through my experience in environmental litigation that the main source of experts willing to help public interest plaintiffs or intervenors in environmental cases against major corporations is from the universities. This situation is especially true



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in proceedings involving nuclear power. In early August we contacted several laymen critics of nuclear power for names of technical experts who might be willing to help us. The names of potential experts we received came predominately from universities. We have attempted to contact these experts, but they generally were away from their campuses doing field research or on vacation during August.

8. We have encountered another problem with experts we have contacted, both within and without the academic community, that will make it impossible for us to be prepared for a mid-October hearing. While several experts have indicated that they are willing to consult with and testify for us, they had made prior commitments for September and early October before we contacted them that will prevent them from doing substantial work for us until later in October or even in early November. This situation is understandable, as these experts we have contacted are capable technical experts employed in other responsible positions and involved in many other projects. For example, Dr. Roland Finston, Chairman of the Department of Health Physics at Stanford University, the one academic expert we could contact in August, was willing to help us on the radiological environmental contentions, but prior commitments will prevent him from doing substantial work for us until later this month or perhaps early October. Dale Bridenbaugh, Richard Hubbard and Greg Minor, three nuclear power plant engineers familiar with plant operations problems, have prior commitments which will prevent them from doing substantial work for us until November 1. Professor David Goldstein, an academic expert we contacted just last week upon his return from his summer vacation, may be able to consult with and testify for us regarding



the issues of energy conservation and alternative sources, but he cannot devote substantial time to the Diablo case until next month.

8. Once the experts who have agreed to assist us can free themselves from prior commitments, they clearly will need considerable time to prepare meaningful, reliable, technical testimony for the environmental hearings. The experts will have to review the applicant's and staff's submissions and any underlying data we obtain through discovery that support those submissions. Then our experts will have to obtain data and studies from other sources that call into question the applicant and staff positions we contest, and write testimony supporting our contrary positions. This expert work cannot possibly be done by early October. However, experts we have already contacted and academic experts we hope to contact in the next three weeks will be able to prepare such meaningful technical testimony by the latter part of November in time for a December 1 hearing.

9. In sum, other work commitments of Center attorney time and unavailability of technical experts over the past several weeks will make it impossible to prepare a substantive technical case in support of intervenors' environmental contentions in time for October 13 environmental hearings. However, an extension of time for the environmental hearings until December 1 will enable the Center to devote the attorney time and obtain the expert assistance necessary to present the Board with informed scientific and technical



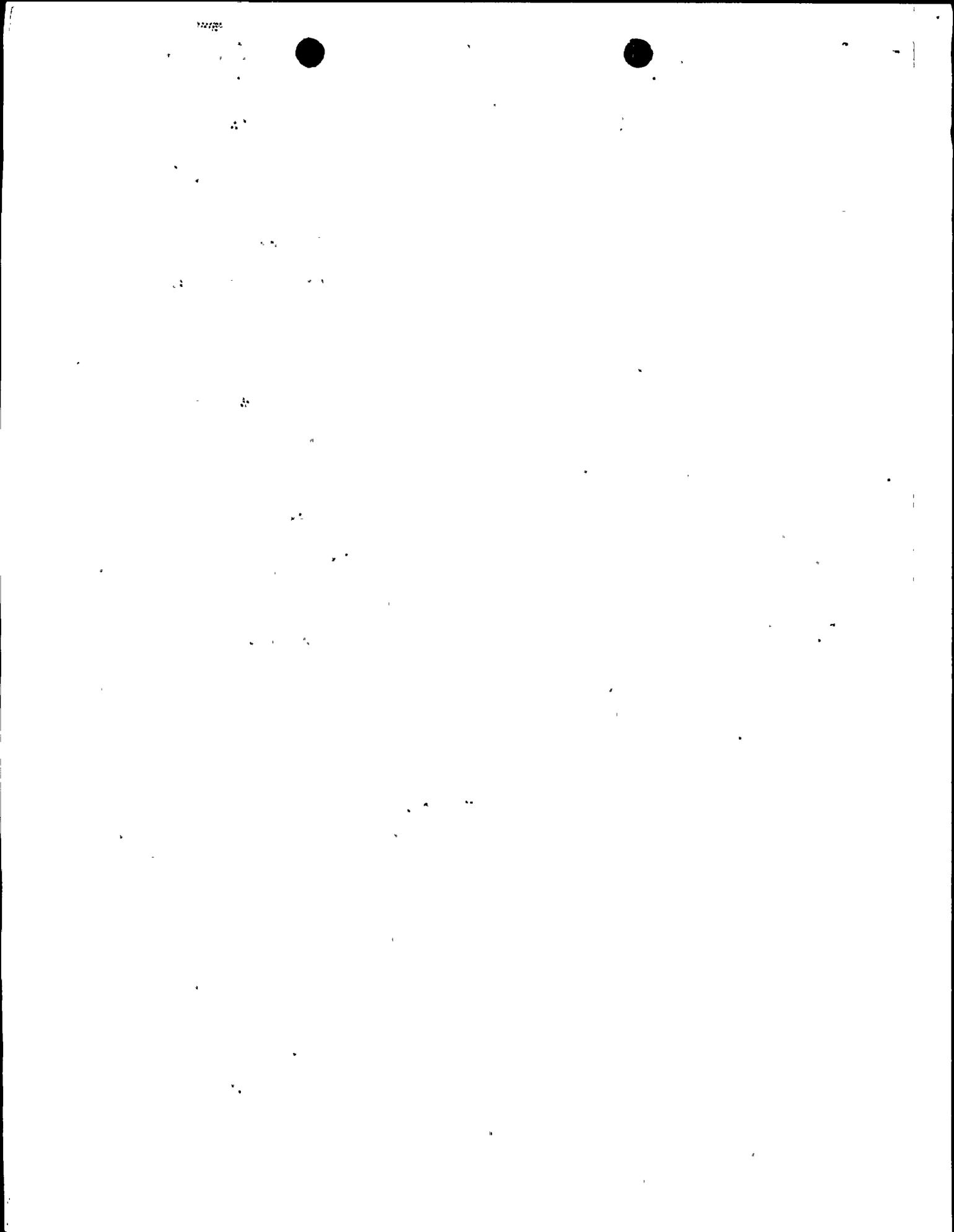
testimony at the environmental hearings.

Brent N. Rushforth
Brent N. Rushforth

Subscribed and sworn to before
me this 13th day of September,
1976.

Deborah Klinger
Notary Public in and for
said County and State





CERTIFICATE OF SERVICE BY MAIL



The foregoing documents entitled INTERVENORS' MOTION FOR EXTENSION OF TIME OF THE COMMENCEMENT OF ENVIRONMENTAL HEARINGS UNTIL DECEMBER 1, 1976, MEMORANDUM OF POINTS AND AUTHORITIES SHOWING GOOD CAUSE FOR AN EXTENSION OF TIME OF COMMENCEMENT OF THE ENVIRONMENTAL HEARINGS, AFFIDAVIT OF RICHARD HUBBARD, AFFIDAVITS OF GORDON SILVER AND SANDRA SILVER, AFFIDAVIT OF BRENT N. RUSHFORTH have been served today, September 13, 1976, by deposit in the United States mail, properly stamped and addressed:

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Attn: Docketing and Service
Section

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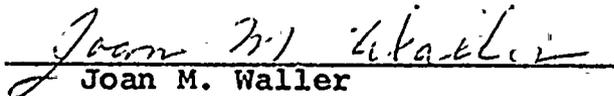
Andrew Skaff, Esq.
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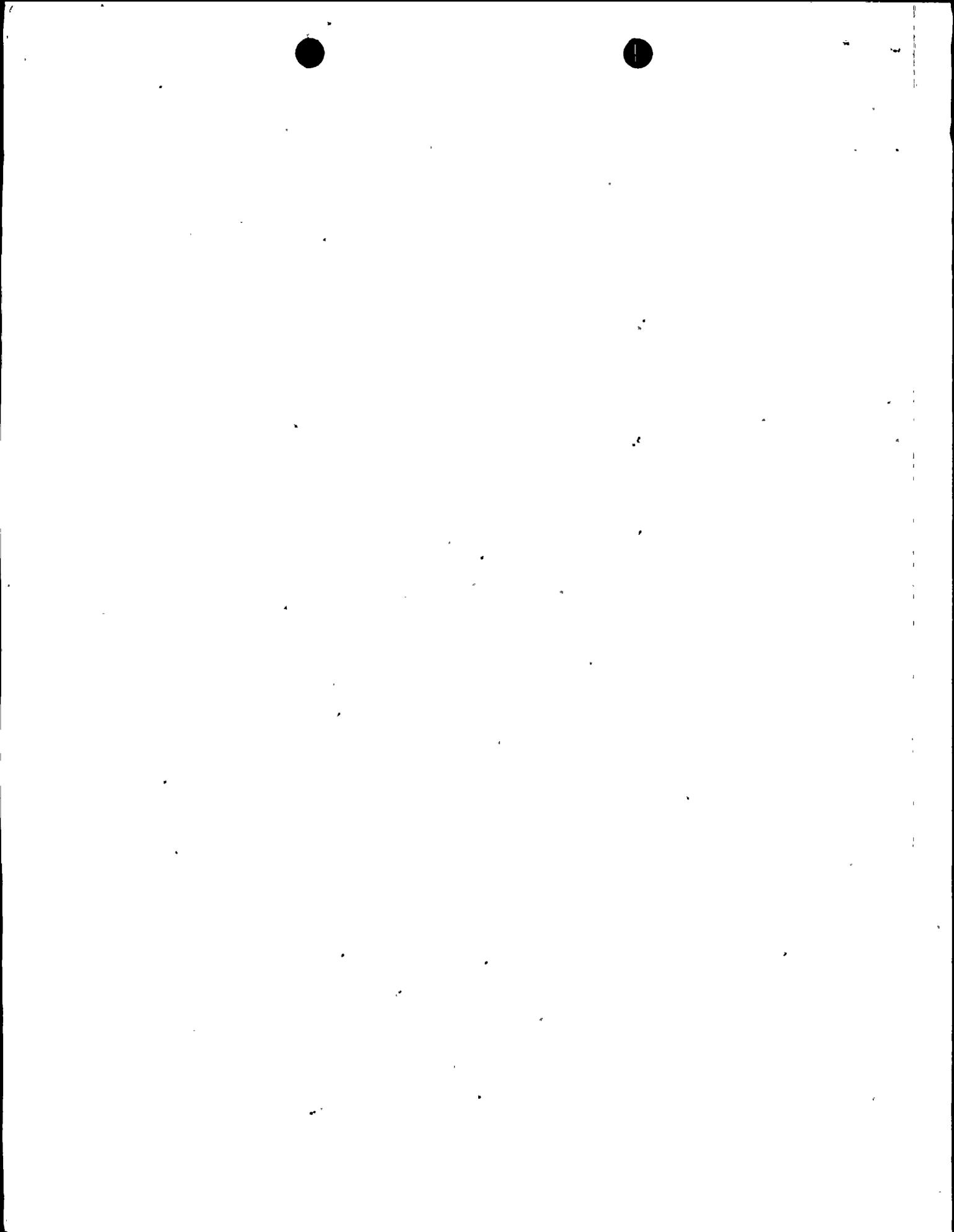
September 13, 1976

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

REQUEST FOR REPORTING SERVICE
Work Order No. AF-865

OFFICE OF THE SECRETARY

Case: PACIFIC GAS & ELECTRIC COMPANY (Diablo Canyon Units 1 & 2)

Docket No.: 50-275, 323

Address of: Prehearing _____

Hearing	(10-15/20-76) Madonna Inn 100 Madonna Road San Luis Obispo, Calif. (Contact: Edna Mayes, 805/543-3000)	(10-21/22-76) Golden Tee 1910 Country Club Road Morro Bay, Calif. (Contact: Randy Kleinhammer, 805/772-7313)
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Duration: Prehearing _____ Hearing Seven/eight days

Date of: Prehearing _____ Hearing 10-15/22-76

Time of: Prehearing _____ Hearing 9:30 a.m.

Service Required: Prehearing _____

Hearing Schedule D

Type of Hearing: Evidentiary Hearing on Environmental Issues

Board: Chairman Bowers; Members Bright, Martin

Copies of the transcript may be sold.

Date of oral request: 9-13-76

Date of confirmation: 9-25-76

By: _____

Docketing and Service Section

bcc: Mrs. Bowers
ELD
ASLBP
ASLAP
Rec. Fac. Br.
Ms. Hylton
Ms. Slater
Controller

SPECIAL INSTRUCTIONS:

