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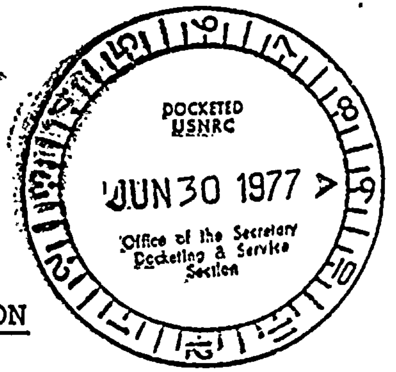


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

Marcus A. Rowden, Chairman
Victor Gilinski
Richard T. Kennedy

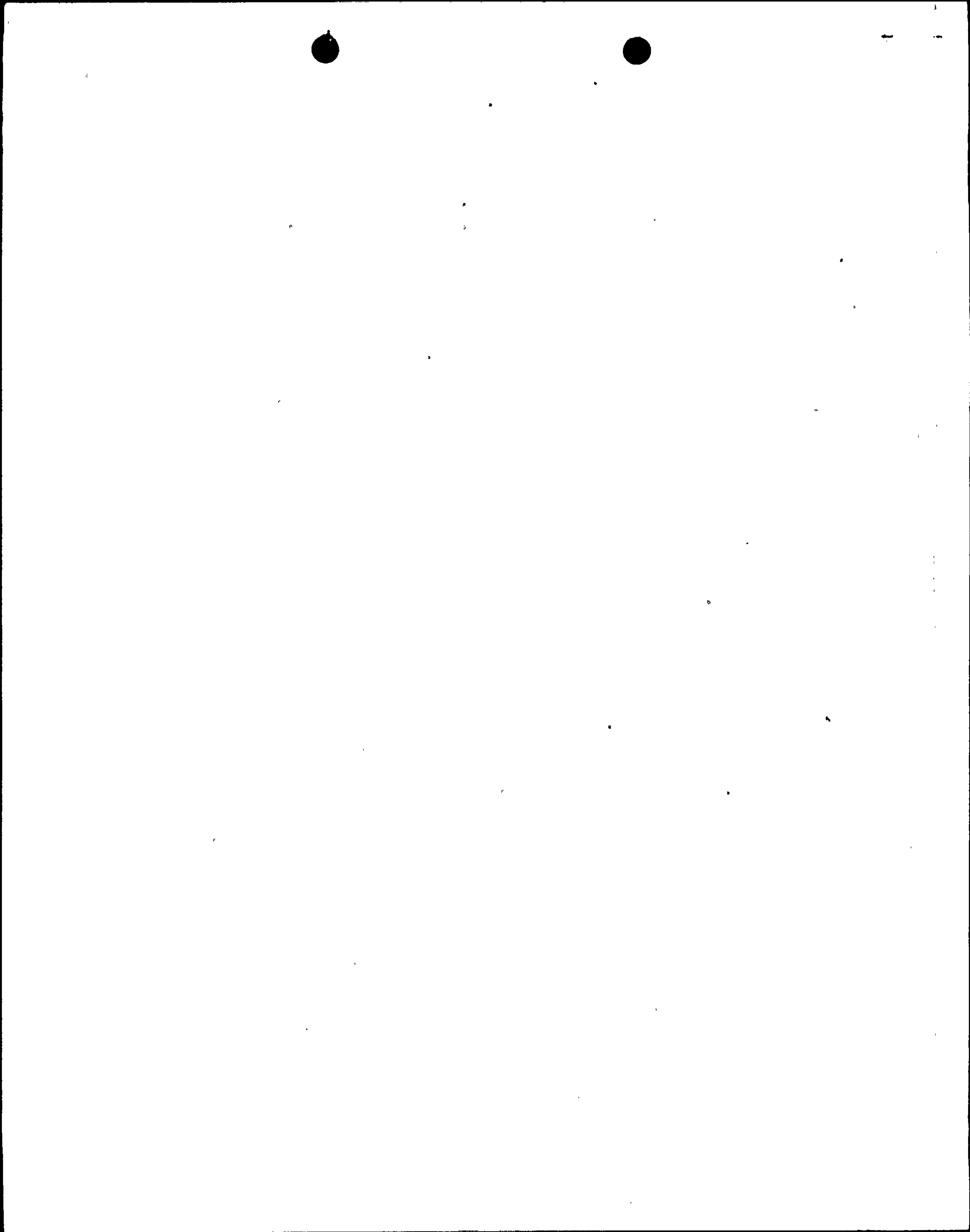
In the Matter of PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2)	Docket Nos. ~~50-275 O.L.~~ 50-323 O.L.

PETITION FOR REVIEW OF
ATOMIC SAFETY AND LICENSING APPEAL BOARD
MEMORANDUM AND ORDER OF JUNE 9, 1977 (ALAB-410)

I. SUMMARY OF DECISION

Petitioner PACIFIC GAS AND ELECTRIC COMPANY hereby seeks the Commission's review of ALAB-410, a decision of the Atomic Safety and Licensing Appeal Board dealing with the question of discovery by intervenors of Petitioner's (applicant's) security plan for the Diablo Canyon Nuclear Power Plant. The Appeal Board vacated the Licensing Board's orders of June 18, 1976 and June 23, 1976 which permitted full disclosure of the security plans for Diablo Canyon to intervenors and their putative expert and remanded the cause for further proceedings.

The Appeal Board held that the plan was discoverable as respects ". . . those portions of a [security] plan which an intervenor can demonstrate are relevant to its contentions." (ASLAB Decision, p. 11) The Appeal Board went on to say that:

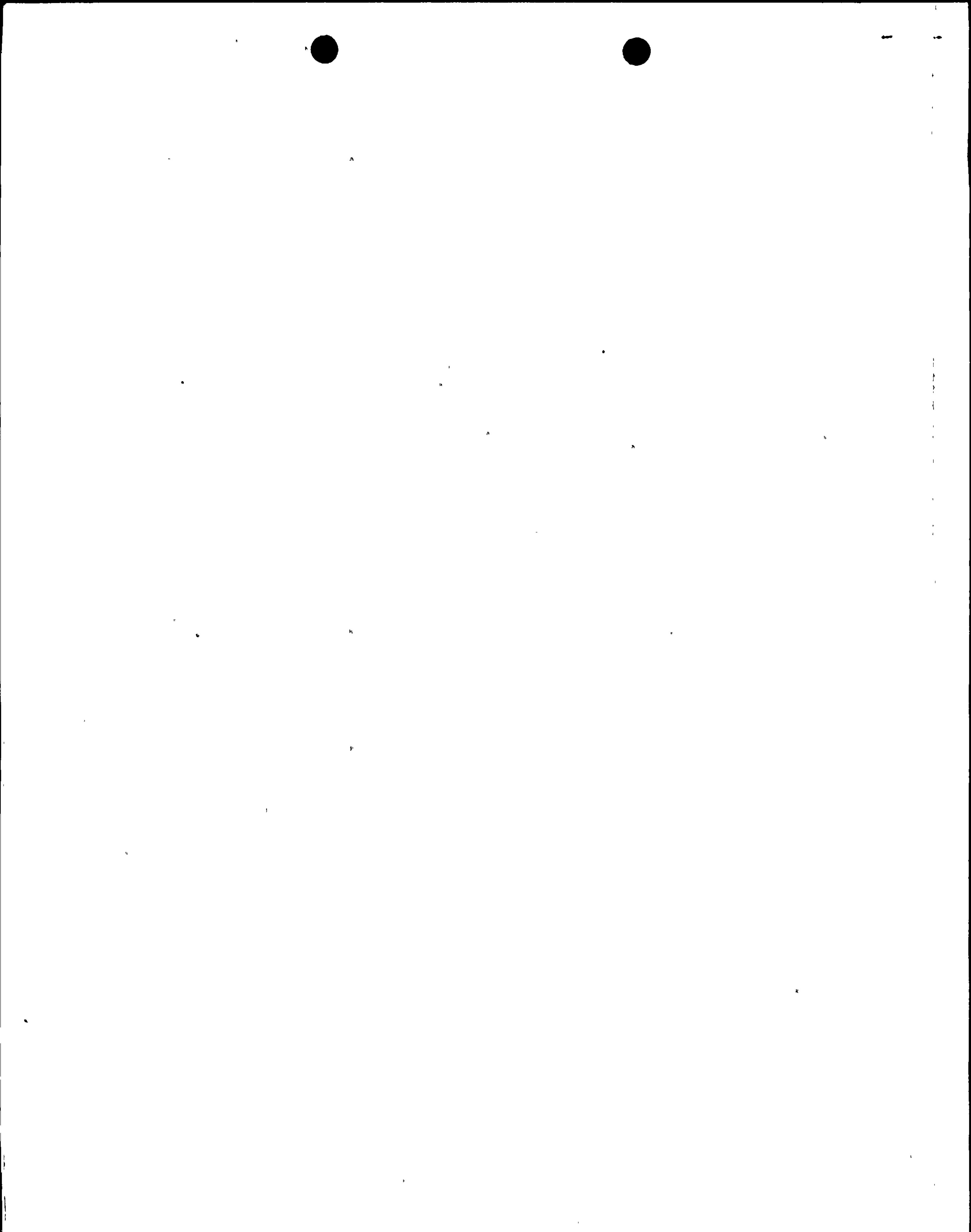


> ". . . one seeking to examine a portion of a security plan must show a relationship between his contentions and the specific portions of the plan he wishes to view. In that connection, an intervenor obviously must be allowed sufficient information about the plan to ascertain which if any particular portions of it bear on his contentions." (ASLAB Decision, p. 12)

In addition to ruling on the degree or amount of disclosure of a security plan, the Appeal Board held that:

> "Access to the plan or portions thereof should be given only to witnesses who have been shown to possess the technical competence to evaluate the portions of the plan which they may be shown." (ASLAB Decision, p. 13)

The decision of the Appeal Board contained the additional comments of Dr. Quarles and Dr. Johnson, as well as the separate additional comments of the Chairman, Mr. Salzman. In essence, it was the position of Drs. Quarles and Johnson that while they were full participants in the development of the conclusions arrived at in the decision, they were ". . . constrained to note . . . that this result is disturbing . . . and, had the regulations and precedents favoring it not been so clearly drawn, we would have found that nuclear power plant site security plans should not be disclosed in the hearing process." (ASLAB Decision, p. 19) Mr. Salzman, in his separate comments, disassociated himself from the views of his colleagues. (ASLAB Decision, p. 26)



II. ISSUES RAISED BY THIS PETITION

Section 2.786(b)(2)(ii) of 10 C.F.R. Part 2 prescribes that one must set forth the record citation where the matters of fact or law raised in the petition were previously raised before the Appeal Board. Petitioner respectfully submits that it seeks review, primarily on policy grounds, of that portion of the decision which allows disclosure of a security plan, and, insofar as that question is one of law, the question was raised fully in applicant's brief filed with the Appeal Board on November 24, 1976, at page 6.

Petitioner does not seek review of that portion of the Appeal Board's decision which requires that the plan should be given (once the decision, as a matter of policy, has been reached to disclose) only to witnesses who have been shown to possess the necessary technical competence.

III. THE DECISION IS ERRONEOUS AND CONTRARY TO POLICY NECESSARY FOR THE PROTECTION OF THE PUBLIC

Petitioner respectfully submits that the Appeal Board's decision is both contrary to public policy and erroneous. The decision attempts to limit the impact of allowing disclosure by limiting same to only those portions of a plan which an intervenor can demonstrate are relevant to its contention. In reality however, it is difficult to imagine a safety contention so narrowly or inartfully drawn that any portion of a security plan would not be somehow relevant. For example, if one were to state simply that a plan was "inadequate to protect the

public health" it would seem to make relevant all portions of the plan in question. In fact, in response to the Appeal Board's decision of June 9, the Licensing Board in these proceedings issued an order on June 17, 1977, wherein it stated that ". . . we have determined that discovery should not be limited to only certain components [of the security plan] due to the fact that the contentions admitted challenge the adequacy of the entire security plan." The security contention at issue in these proceedings is:

> "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."

The Appeal Board felt constrained to follow dicta and inferences from past decisions of this Commission and Appeal Boards. (ASLAB Decision, pp. 8-10) While there are decisions where the question of whether the adequacy of security plans should be raised, petitioner is unaware of decisions raising the issue of whether the disclosure of the details of a security plan was necessary to determine the adequacy of a security plan. Contrary to the Appeal Board's determination (ASLAB Decision, fn. 16, p. 12), petitioner would submit that 10 C.F.R. §2.740(c) does indeed give a licensing board the latitude to prohibit, by protective order, discovery of the details of a security plan altogether.

IV. COMMISSION REVIEW SHOULD BE EXERCISED IN THIS MATTER

As so aptly stated in the separate opinion of Drs. Quarles and Johnson, "[p]lant site security regulations and security plans have been drastically upgraded in recent years in response to an increased awareness of the risks of sabotage, special nuclear material diversion, and terrorist activity to which these plans may be exposed. We have no reason to dismiss these risks as illusory." (ASLAB Decision, p. 19) Petitioner, of course, shares these concerns and most strongly believes that the chances of endangering the security plan of a facility are greatly enhanced by disclosure of that facility's security plan for purposes of an adjudicatory hearing.

The cases cited by the Appeal Board as supportive of disclosure were decided at a time when what was to be disclosed was of far less detail than what is required in a security plan today as set forth in the most recent regulations and guidelines. (10 C.F.R. §73.55 [February 24, 1977] and NUREG-0207) While the Appeal Board's attempt at limiting the degree of disclosure is surficially heartening, upon close examination it does not do the job. As stated earlier, the limit of "relevancy" is illusory.

The question presented, whether viewed as a matter of policy or of law (i.e., the scope of the Licensing Board's authority to prevent disclosure of the details of a security plan), is important and carries broad implications. Commission

action is required to give Licensing and Appeal Boards guidance in resolving the proper balance of the impelling considerations for increased protection against sabotage against the need for disclosure in every adjudicatory proceeding where a security contention is broadly framed.

Petitioner submits that this Commission must in the interest of public health and safety exclude the details of security plans for nuclear facilities from the hearing process as a matter of policy and regulation.

Respectfully submitted,

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DATED: June 27, 1977.

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DATED: June 27, 1977.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served on the following by deposit in the United States mail, first class, this 27th day of June, 1977:

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