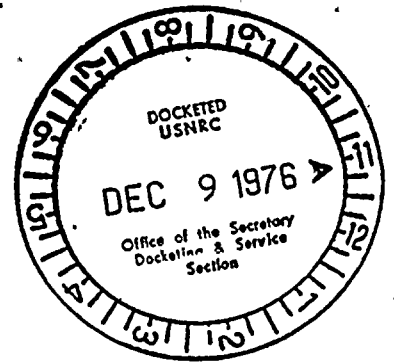


UNITED STATES
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman
Dr. Lawrence R. Quarles
Dr. W. Reed Johnson

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.

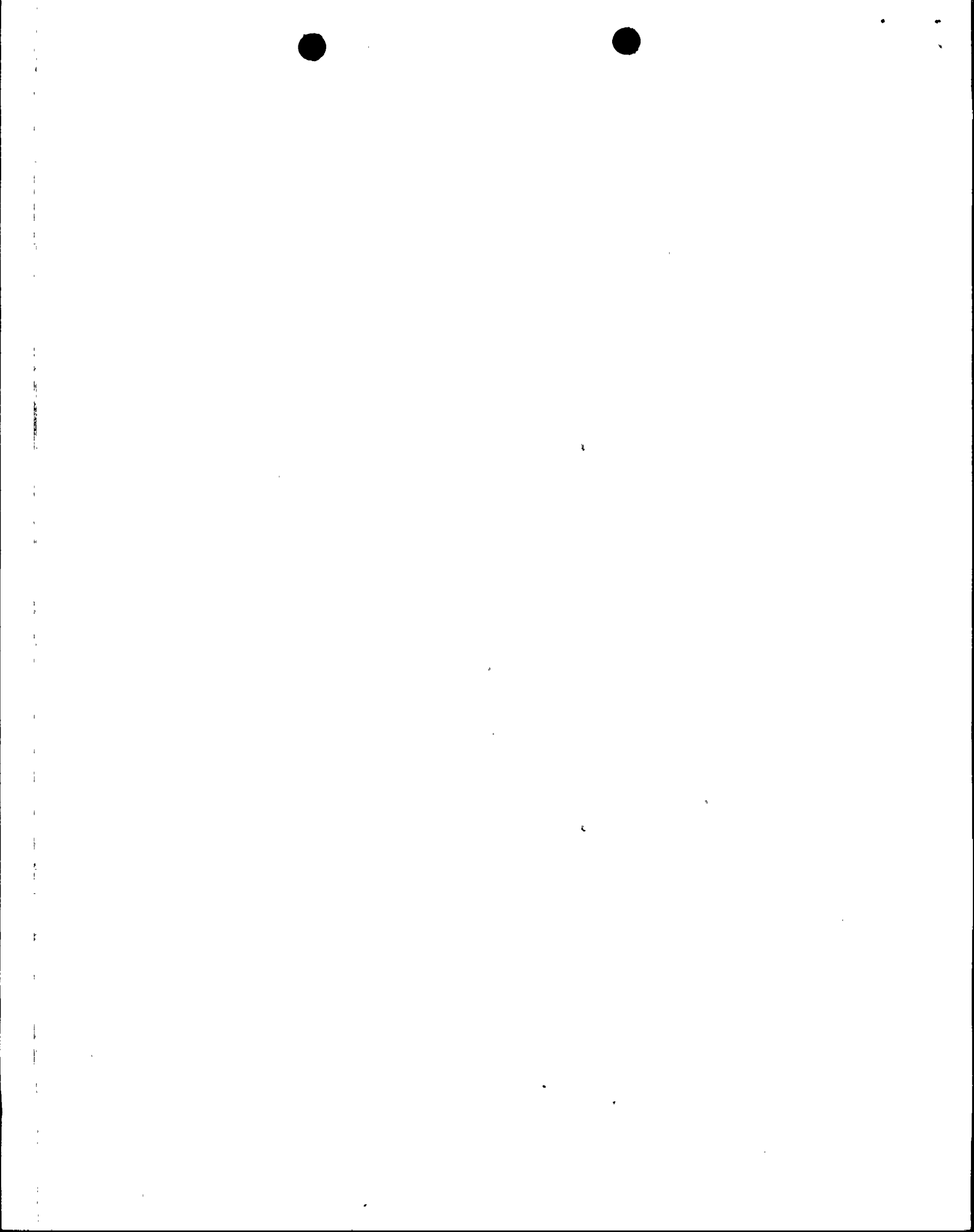
RESPONSE OF APPLICANT, PACIFIC GAS
AND ELECTRIC COMPANY, TO BRIEFS OF
INTERVENORS AND STAFF

12-3

Applicant, Staff and Intervenors have all agreed in their briefs-in-chief that the statutes and regulations under which the Commission must act give the Commission full discretion as respects the issue before this Board. However, neither the Intervenors nor the Staff have stated any basis upon which the Commission or this Board can determine that the Intervenors' interest in disclosure of the security plan overrides the public interest in protecting the security of the Diablo facility.

As respects the question of whether the security plan should be disclosed, in full or in part, the Commission must,

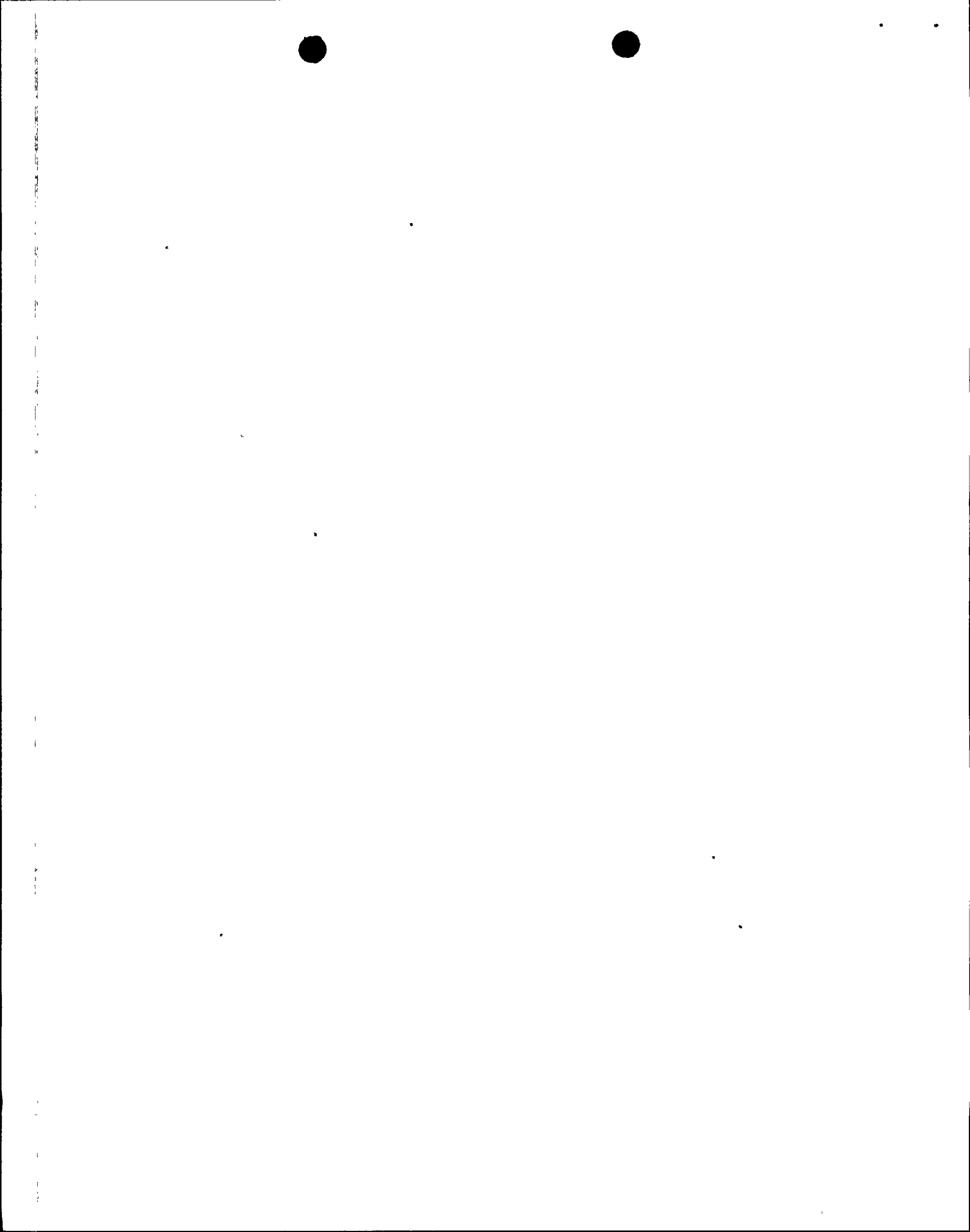
50-323
174



at least, follow the balancing process set forth in §§ 2.790(b) (4) through (6). Neither Intervenors nor Staff have set forth any legitimate reason as to why the security plan should not be withheld from disclosure.

Intervenors have relied heavily on two cases, Commonwealth Edison Co. (Zion Station, Units: 1 and 2), ALAB-185, 7 AEC 240 (1974) and Consolidated Edison Co. of N. Y. (Indian Point Station, Unit No. 2), ALAB-197 and 197R, 7 AEC 86 (1974). In the Zion case, the opinion was concerned with the right to inspect design calculations of containment vessels. The question of discovery in that opinion was not addressed to a security plan, the security of the facility, national security, or the like. The question was simply one of whether a party had discovery rights to what the manufacturer of the containment vessel considered to be privileged commercial information. In Indian Point, the issue before this Board was never reached. In a telephone conference on December 1, 1976, Applicant's counsel contacted the attorneys involved in Indian Point and was informed that the security plan was voluntarily given to the attorney for Intervenors. As previously stated, the fact that someone in the past has voluntarily disclosed a security plan for another facility does not in any way support the theory that the security plan for Diablo Canyon is discoverable.

Applicant is of the firm opinion that the "adequacy of a security plan" should only be a part of the licensing



proceedings insofar as the Commission may satisfy itself as to adequacy by review of those plans. However, if this Board should determine that an Intervenor has a right to "test" the "adequacy" of the security plan, that right should be limited to inquiring of Applicant and/or Staff as to whether the Applicant has complied with the applicable regulations. Intervenors quote the testimony of Dr. Ted Taylor in their brief which supports Applicant's position in this regard:

I have a suggestion. It is something that I have not worked out in complete detail; a possible approach as to how to assure the public that what is being done is adequate. The cornerstone of that should be a public release by NRC, at whatever time it is able to do so, of all of the details concerning the method, the technique, by which NCR (sic) will review the physical security plans of licensees and determine whether or not the standards set by NRC are met by what is proposed to them.

That method, I think, wherever it exists - and as far as I know it does not exist today - could be published without revealing the gory details concerning exactly what physical security measures are being (sic) used at a particular facility. I think most of us would agree that should not be public information. The method by which NRC will reveal such plans should, I think, be made public and subject to intensive review by people who will take the trouble to review what, I am sure, will be a very complex technique.^{1/}
(Emphasis added.)

The approach suggested by Dr. Taylor and by Applicant are quite similar. Applicant would have no objection to Intervenors' cross-

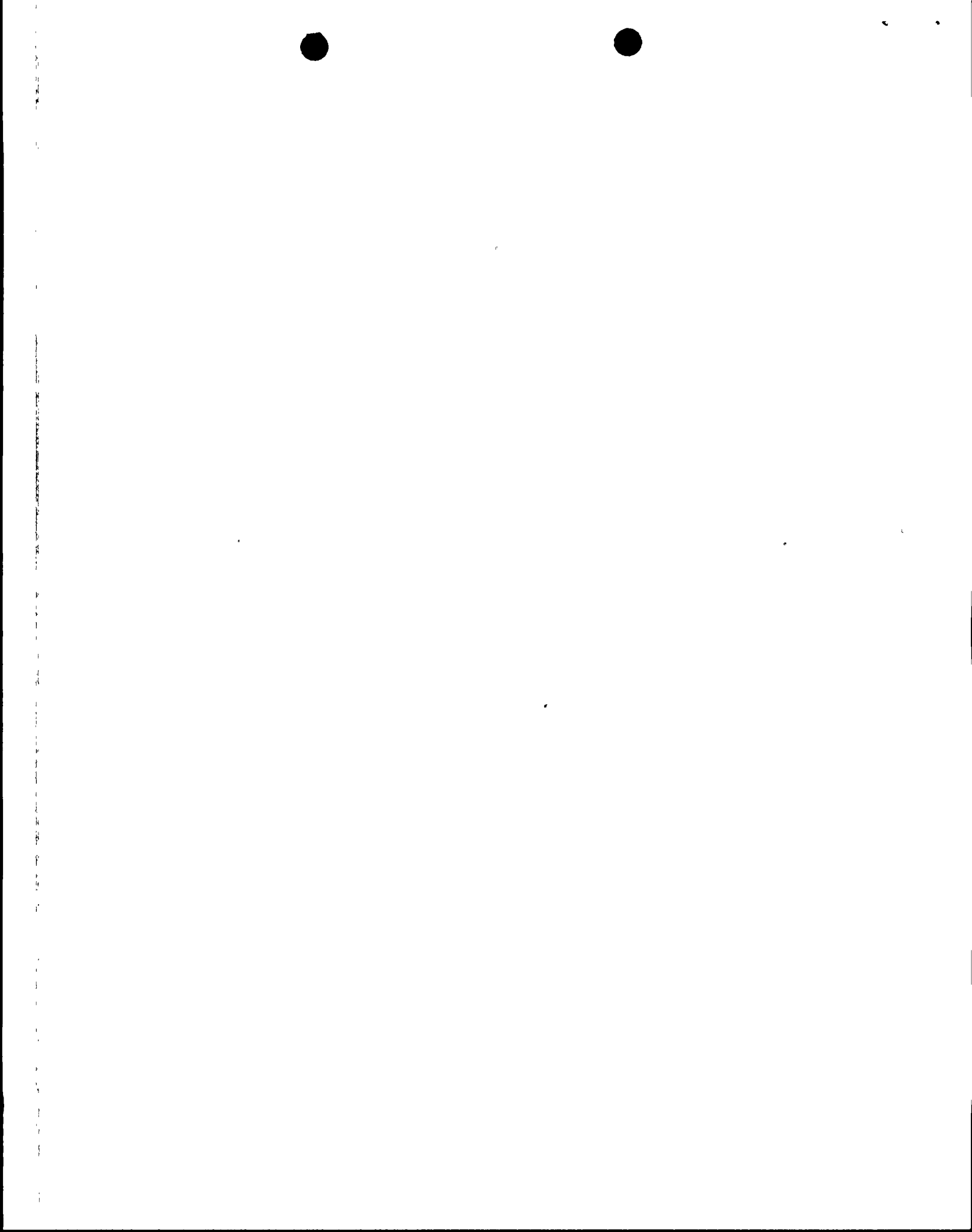
^{1/} Intervenors' Brief, page 6.



examination of Staff witnesses as to how the adequacy of the Diablo Canyon security plan was determined. Such a method would, with proper Board control, allow for an adequate testing of the adequacy of the security plan and still maintain the integrity of the plan itself.

Intervenors have submitted, as Appendixes A and B to their brief, testimony and articles written by their purported expert; Dr. DeNike. Applicant respectfully but strongly urges that these submittals establish that Dr. DeNike has absolutely no qualifications which would render him an expert as respects a security plan. The submittals show only that Dr. DeNike may be an expert on the psychological makeup of terrorists and/or saboteurs and the difficulty one has in determining who might be a terrorist and/or saboteur. There is no evidence or showing which would indicate that Dr. DeNike has any expertise or background whatsoever as respects surveillance devices, warning systems, communications, number of security personnel necessary, etc. Such a background would obviously be necessary for one to meaningfully review a security plan and physical security devices for purposes of testing the "adequacy of a security plan".

Intervenors complain bitterly that Applicant has done nothing to investigate Dr. DeNike's trustworthiness or background. Applicant submits that such a background check is not within its purview. Applicant firmly believes that it is the Commission's duty to conduct any such investigation and, further, Federal,



State and case law raise serious doubts as to whether any utility can conduct "investigations" of a person outside of its employ without violating that person's civil, or other, rights.

There is no dispute that the Commission has the authority to withhold disclosure of a facility's security plan. Intervenors argue simply that the public interest will be aided by such disclosure without citing any basis for that conclusion. Further, there has been no showing that Intervenors' putative expert has any background by way of education or experience which would be of assistance to the Commission in reviewing the adequacy of a security plan. Therefore, it is respectfully requested that this Board use its regulatory authority to deny Intervenors access to the Diablo Canyon security plan.

DATED this 3rd day of December, 1976.

JOHN C. MORRISSEY
PHILIP A. CRANE, JR.
77 Beale Street
San Francisco, CA 94106
(415) 781-4211

and

SNELL & WILMER

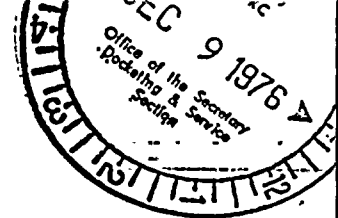
By



Arthur C. Gehr
Bruce Norton
3100 Valley Center
Phoenix, Arizona 85073
(602) 257-7283

ATTORNEYS FOR APPLICANT

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 3rd day of December , 1976.

Elizabeth S. Bowers, Esq.
Chairwoman
Atomic Safety & Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety & Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. William E. Martin
Atomic Safety and Licensing Board
Senior Ecologist
Battelle Memorial Institute
Columbus, OH 43201

James R. Tourtellotte, Esq.
L. Dow Davis, Esq.
Office of Executive Legal Director
BETH 042
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Philip A. Crane, Jr., Esq.
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94106

Brent N. Rushforth, Esq.
James Geocaris, Esq.
Center for Law in the Public Interest
10203 Santa Monica Boulevard
Los Angeles, CA 90067

Andrew J. Skaff, Esq.
California Public Utilities Commission
350 McAllister Street
San Francisco, CA 94102

Paul C. Valentine, Esq.
321 Lytton Street
Palo Alto, CA 94302

Yale I. Jones, Esq.
100 Van Ness Avenue
19th Floor
San Francisco, CA 94102

Chairman
Atomic Safety and Licensing Board
Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chairman
Atomic Safety and Licensing Appeal
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Mrs. Elizabeth E. Apfelberg
1415 Cazadero
San Luis Obispo, CA 93401

Mr. William P. Cornwell
P. O. Box 453
Morro Bay, CA 93442

Mr. Frederick Eissler
Scenic Shoreline Preservation
Conference, Inc.
4623 More Mesa Drive
Santa Barbara, CA 93110

Ms. Raye Fleming
1746 Chorro Street
San Luis Obispo, CA 93401

Mr. John J. Forster
c/o Mr. Gordon Silver
5055 Radford Avenue
North Hollywood, CA 91607



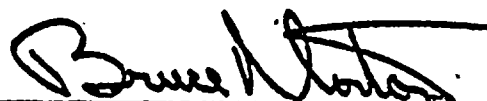
Vertical text or markings along the left edge of the page, possibly a page number or header.

Richard S. Salzman, Chairman
Atomic Safety and Licensing Appeal
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mrs. Thelma Hirdler
811 Fair Oaks Avenue
Arroyo Grande, CA 93420

Dr. Lawrence R. Quarles
Atomic Safety and Licensing
Appeal Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. W. Reed Johnson
Atomic Safety and Licesning
Appeal Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555



Bruce Norton, Esq.
SNELL & WILMER
3100 Valley Center
Phoenix, AZ 85073
Attorneys for PACIFIC
GAS AND ELECTRIC COMPANY

