

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-OL
Units 1 and 2) 50-323-OL
Diablo Canyon Site)

BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY
CONCERNING JURISDICTION OF ATOMIC SAFETY
AND LICENSING BOARD

In its order dated May 16, 1975 the Atomic Safety and Licensing Board requested that briefs be submitted relating to the Board's jurisdiction to consider PGandE's application for a special nuclear material license. The issue comes about by reason of a motion filed by the San Luis Obispo Mothers for Peace requesting the Board to issue an order denying PGandE the right to receive and store nuclear fuel assemblies within San Luis Obispo County prior to issuance of an operating license.

PGandE believes that the Board presently lacks jurisdiction to consider the motion. An outline of an argument in support of this proposition is as follows:

1. 10 CFR 50 specifically requires a public hearing whereas 10 CFR 70 does not.
2. PGandE's construction permit application requested all licenses necessary to operate the Units. However, in fact PGandE filed a separate application for a license to receive and store nuclear fuel pursuant to 10 CFR 70. (See NRC Staff's response dated May 5, 1975)



to MFP motion.)

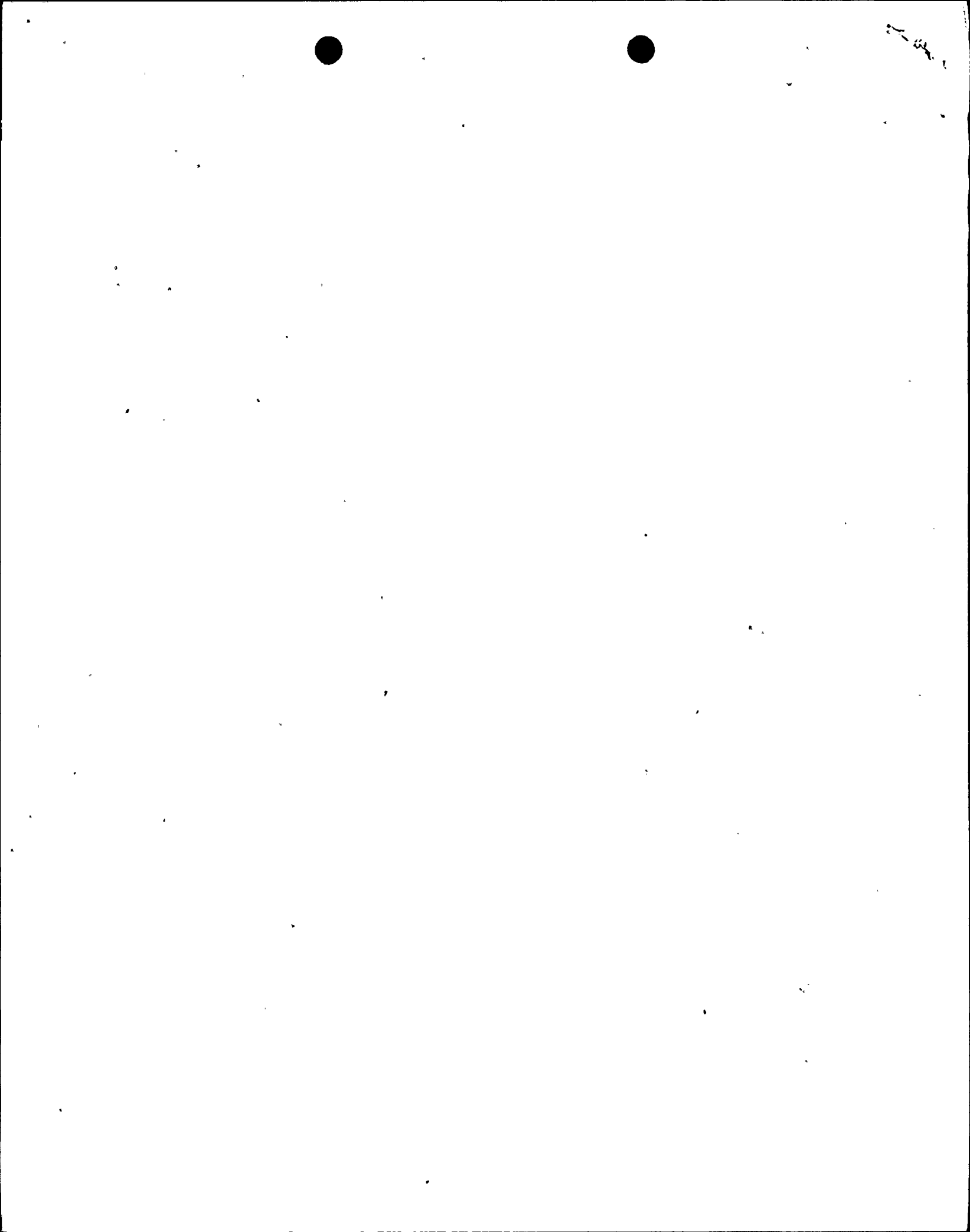
3. The notice establishing this proceeding and thus the purview of the Board's jurisdiction covers only the issuance of operating licenses.

" . . . the applicant may file a request for a hearing with respect to issuance of the facility operating licenses and any person whose interest may be affected by this proceeding may file a petition for leave to intervene." (38 F.R. 29106)

4. Thus the matter of a license to receive and store nuclear fuel is a part of the Staff review of the application rather than the hearing process.

"The Staff's review and reporting function is largely completed in a setting outside the hearing process and therefore without the purview of the Licensing Board." (In the Matter of Northeast Nuclear Energy Company et al. (Montague Nuclear Power Station), ASLB Order dated April 23, 1975, 3 CCH Atomic Energy Law Reporter par. 11,737.01)

However, PGandE is equally of the opinion that if the Board lacks jurisdiction to consider the MFP motion the Nuclear Regulatory Commission could confer such jurisdiction upon the Board by virtue of the authority contained in such statutes as §§ 161, 189, and 191 of the Atomic Energy Act of 1964 and such regulations as 10 CFR 2.104(a) and 2.721 issued pursuant thereto. PGandE therefore does not propose to challenge the Board's jurisdiction to rule on the pending motion and suggests that the matter of jurisdiction be put to one side and

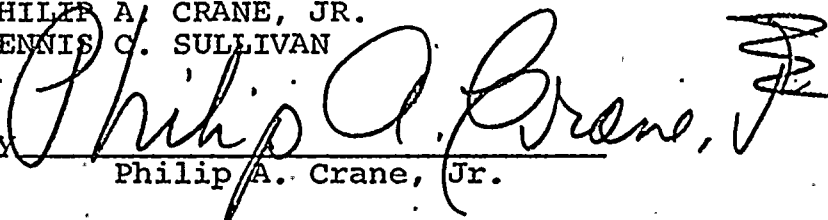


that the Board consider the MFP motion on its merits.

Respectfully submitted,

JOHN C. MORRISSEY
PHILIP A. CRANE, JR.
DENNIS C. SULLIVAN

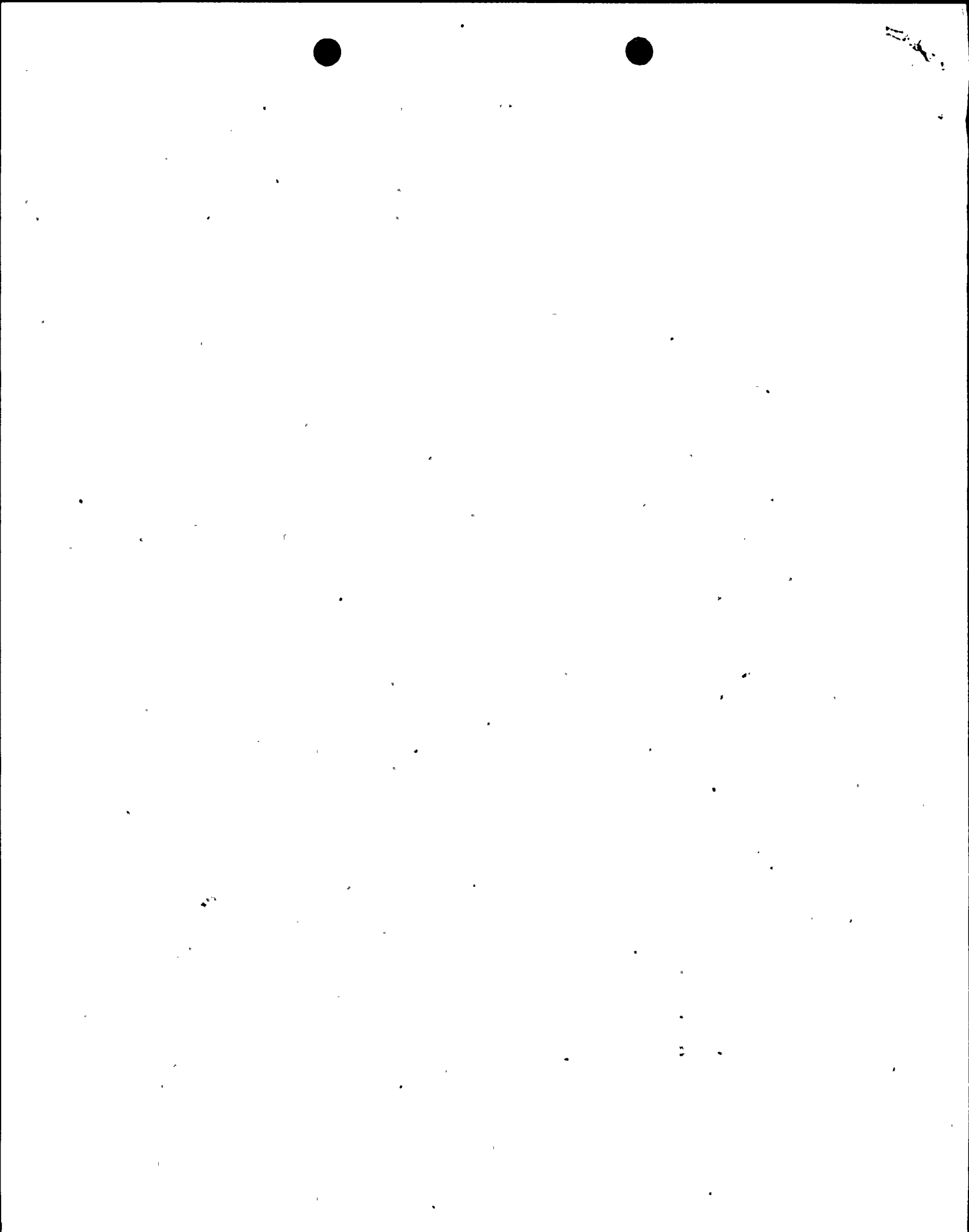
By



Philip A. Crane, Jr.

Attorneys for
Pacific Gas and Electric Company
77 Beale Street
San Francisco, California 94106

Dated: May 22, 1975



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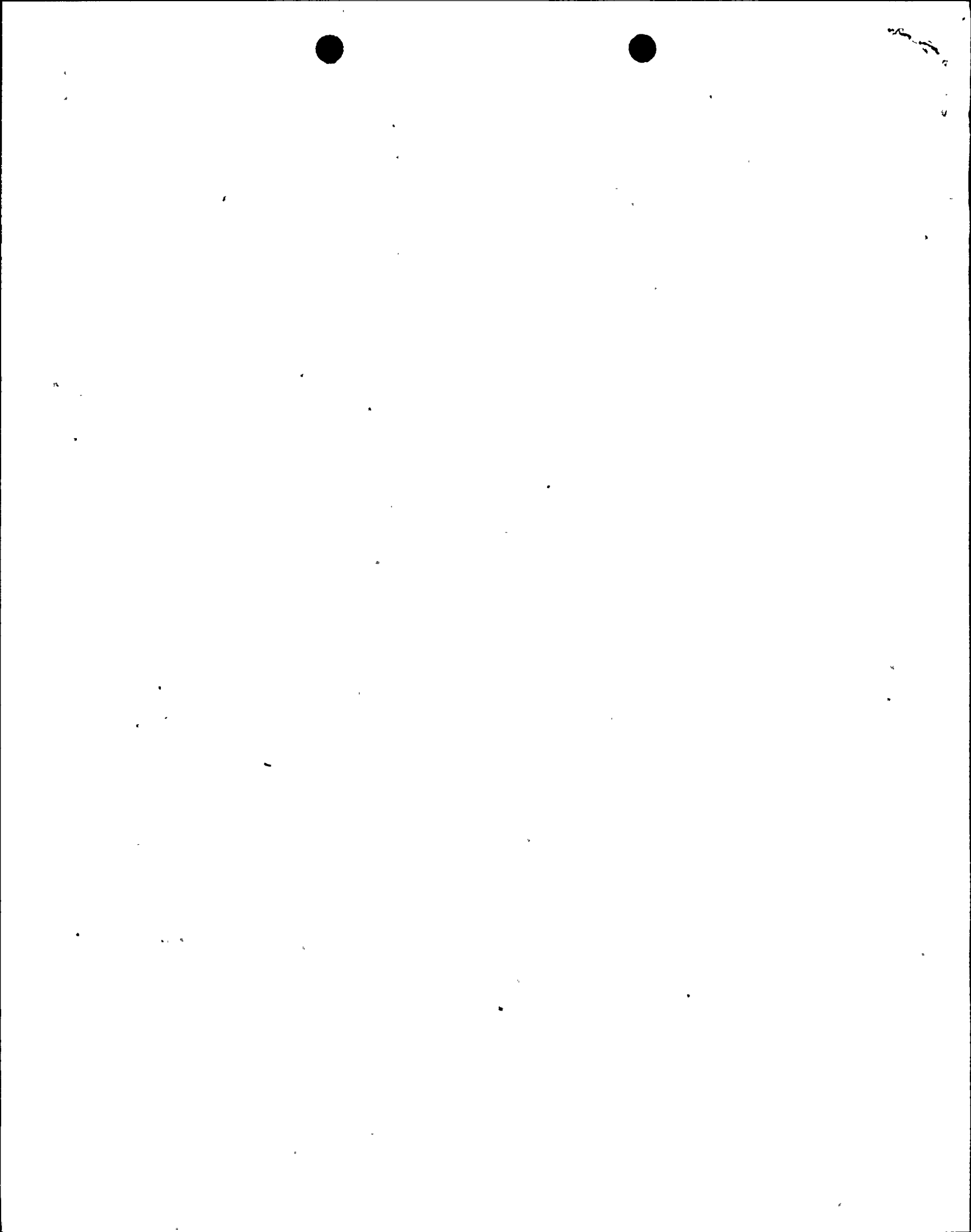
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REQUEST FOR EXTENSION OF TIME

On May 13, 1975 PGandE received a set of 48 interrogatories from Mr. Gordon Silver, presumably in his capacity as representing John Forster. Under NRC regulations PGandE's time to respond expires May 27, 1975. For the reasons outlined below PGandE requests that its time to respond be extended to June 27, 1975.

1. The interrogatories are extensive and the additional time requested is needed to prepare responsive answers.

2.. The individuals qualified to prepare the responses to the interrogatories have been engaged in preparing for other meetings and hearings relating to the Diablo Canyon Units, namely, the ACRS Subcommittee meeting in Los Angeles on May 23, 1975, and the Regional Water Quality Control Board hearing in San Luis Obispo



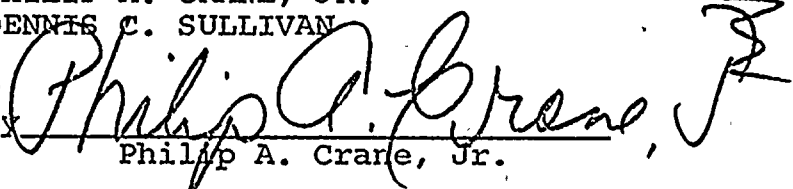
on May 29, 1975.

PGandE has not contacted any other party regarding this requested extension of time.

Respectfully submitted,

JOHN C. MORRISSEY
PHILIP A. CRANE, JR.
DENNIS C. SULLIVAN

By

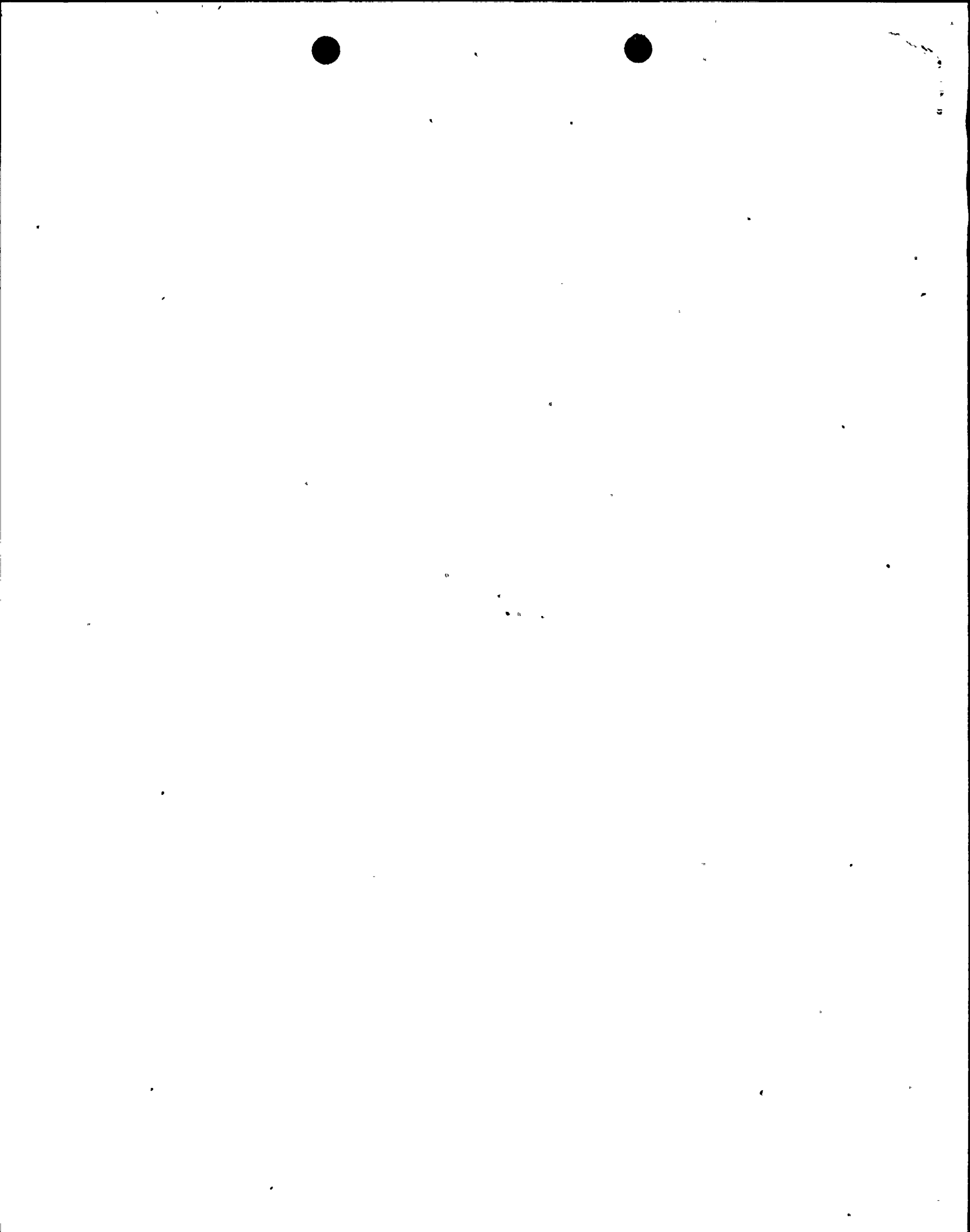

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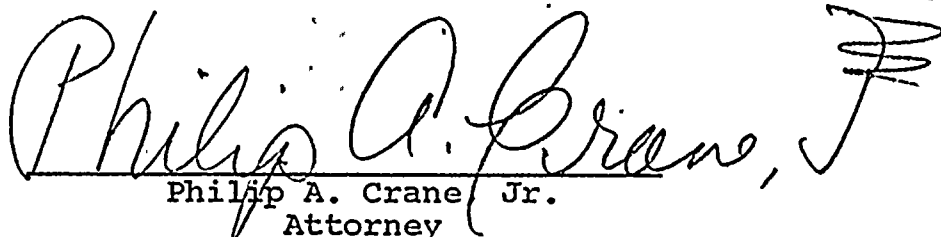
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Andrew Skaff, Esq.
Counsel
Public Utilities Commission
of the State of California
State Building
San Francisco, California 94102

A handwritten signature in cursive script that reads "Philip A. Crane, Jr." with a stylized flourish at the end.

Philip A. Crane, Jr.
Attorney
Pacific Gas and Electric Company

Dated: May 22, 1975



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