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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION 12/23/80

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)

NRC STAFF'S RESPONSE TO INTERVENORS'
STATEMENT OF CONTENTIONS RELATIVE TO
FUEL LOADING AND LOW POWER TESTING

I. STATEMENT OF THE CASE

In the Board's Order of June 5, 1979, the Board deferred ruling on matters relating to Three Mile Island until the completion of the Staff report on Three Mile Island. On July 14, 1980, the Applicant filed a motion to authorize fuel loading and low power testing pursuant to 10 C.F.R. § 50.57(c). In an Order of October 2, 1980, the Board set October 27, 1980 as a deadline for filing contentions relative to low power testing and fuel loading. On October 24, 1980, the Board extended the time for filing contentions relative to fuel loading and low power testing until December 3, 1980.

On December 3, 1980, the Intervenors, the San Luis Obispo Mothers for Peace, Scenic Shoreline Preservation Conference, Inc., Ecology Action Club, Sandra Silver, Gordon Silver, Elizabeth Apfelberg, and John J. Forster (hereinafter Intervenors) filed a Statement of Contentions. The following is the NRC Staff response to that Statement of Contentions.

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II. DISCUSSION

Pacific Gas & Electric Company (hereinafter PG&E) filed, on July 4, 1980, for a license for fuel loading and low power testing at the Diablo Canyon Nuclear Power Plant, Units 1 and 2. This application was made pursuant to 10 C.F.R. § 50.57(c). That section provides:

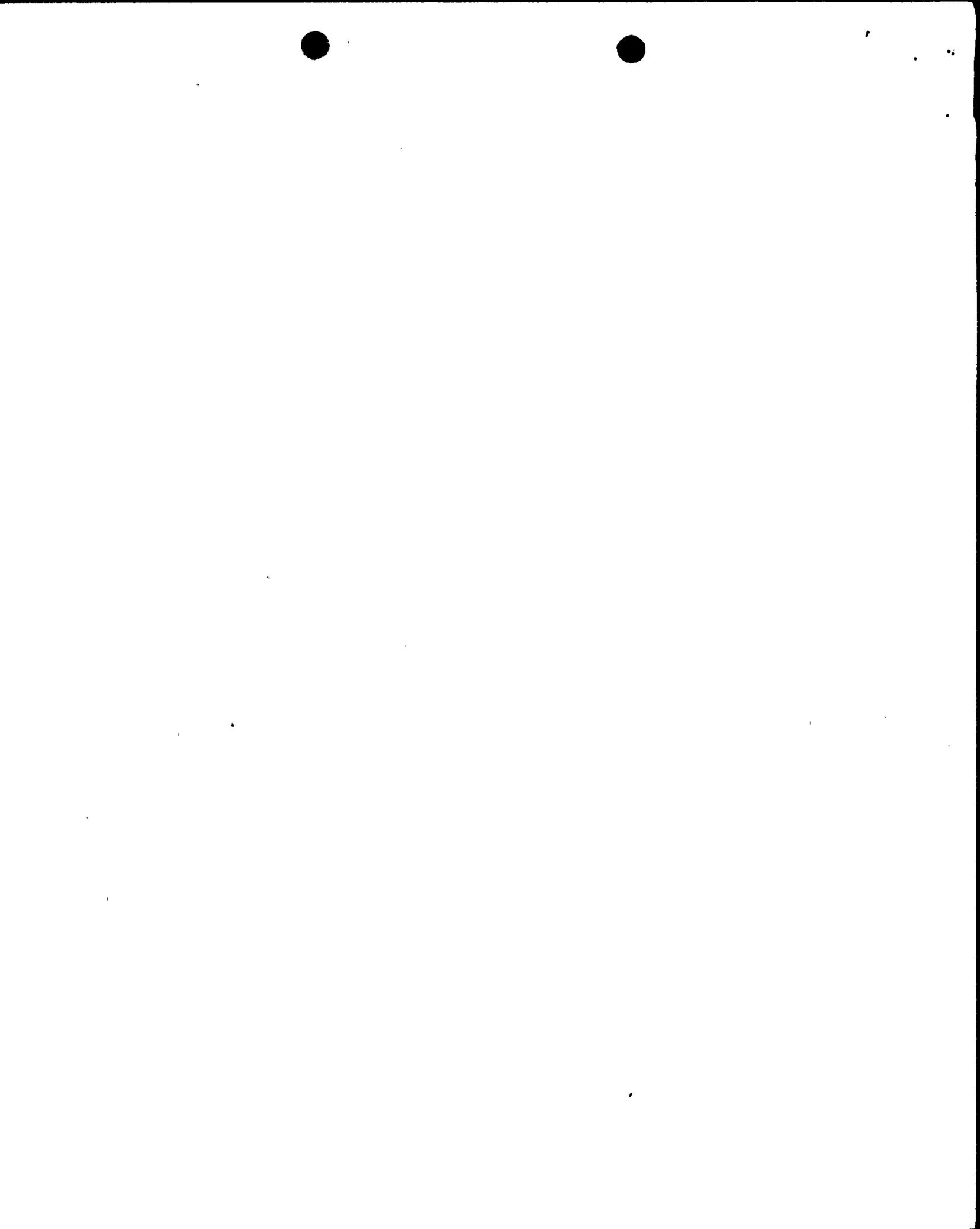
an applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, pursuant to this paragraph (c), for an operating license authorizing low power testing . . . and further operation short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. [emphasis added]

Under normal circumstances, this section would authorize consideration, in a hearing on a low power testing and fuel loading application, of those contentions which have been presented by intervenors in the operating license proceeding, which are related to the authorization of low power testing and fuel loading. In the present proceeding, the Board has deferred ruling on matters relating to TMI.^{1/}

In its October 2, 1980 Order in which the Licensing Board set the due date for filing contentions, the Board adopted the issues as identified by the Staff as being appropriate areas for contentions in the fuel loading and low power testing proceeding.^{2/} The issues identified by the Staff as appropriate areas for contentions were "those already in issue in the full

^{1/} See Board Order of June 5, 1979.

^{2/} Order Relative to PG&E's Motion for Lower Power Testing, October 2, 1980, p. 1.



application plus any contention submitted concerning the low power test requirements set forth in NUREG-0694 'TMI-Related Requirements for New Operating Licenses'" which the Commission has noted in its Statement of Policy are "necessary and sufficient for responding to the TMI-2 accident" [cite omitted].^{3/} NUREG-0694 has been superceded by NUREG-0737: Contentions would, therefore, also be appropriate which concern the requirements of NUREG-0737.

Subsequent to the Licensing Board's October 2, 1980 Order, the Commission issued a revised Policy Statement.^{4/} This Policy Statement clarified the Board's earlier policy statement on treatment of TMI-related requirements. While making clear that intervenors may litigate the sufficiency of the NUREG-0737 requirements, the Commission added that it would be "useful if the parties in taking a position on such [TMI-related] requirements stated (a) the nexus of the issue to the TMI-2 accident, (b) the significance of the issue, and, (c) any differences between their positions and the rationale underlying the Commission consideration of additional TMI-related requirements." The Staff believes the Licensing Board should require intervenors to modify any contentions not otherwise found objectionable to address the above three clarifications the Commission suggests.

^{3/} "NRC Staff Response to Licensing Board's Order For Supplemental Positions on PG&E's Motion for Low Power Testing," September 25, 1980, p. 6.

^{4/} "Revised Statement of Policy" entitled "In re Statement of Policy: Further Commission Guidance for Reactor Operating Licenses" CLI-80-42, 45 Fed. Reg. _____ (December 18, 1980).



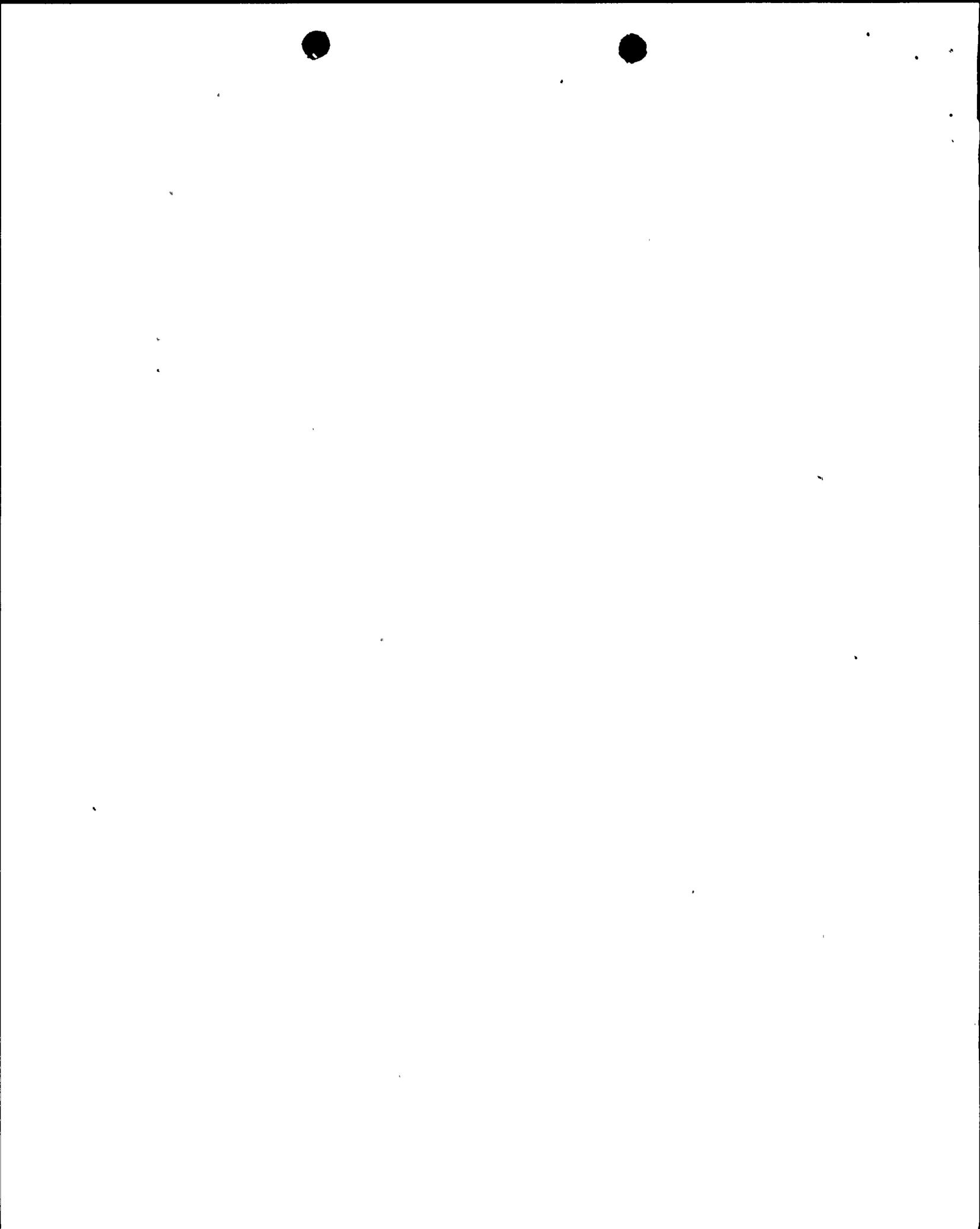
To the extent the intervenors in this proceeding wish to argue contentions going beyond NUREG-0737, these contentions would be beyond those reserved by the Licensing Board, and intervenors would have to comply with the procedural requirements of 10 C.F.R. § 2.714(a)(1) for late filings in addition to addressing the matters identified in the Policy Statement.

10 C.F.R. § 2.714(b) requires that contentions which intervenors seek to have litigated be filed along with the bases for those contentions set forth with reasonable specificity. A contention must be rejected where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

The purpose of the bases requirement of 10 C.F.R. § 2.714 is to assure that the contention in question does not suffer from any of the infirmities listed above, to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding, and to put the other parties sufficiently on notice "so that they will know at least



generally what they will have to defend against or oppose." Peach Bottom, supra at 20. From the standpoint of bases, it is unnecessary for the petition "to detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and bases therefore, a licensing board is not to reach the merits of the contentions. Duke Power Company (Amendment to Materials License SNM01773 - Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra at 20; Grand Gulf, supra at 426. Nonetheless, it is incumbent upon the intervenors to set forth contentions which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose.

Contention One alleges that a final decision must be rendered by the Commission as to Applicant's compliance with 10 C.F.R. Part 100, Appendix A prior to fuel loading. Contention Two alleges that a final decision must be rendered by the Commission as to Applicant's compliance with 10 C.F.R. Part 73 prior to fuel loading. The NRC Staff believes both of these contentions are acceptable as written and would be appropriate legal brief or arguments.

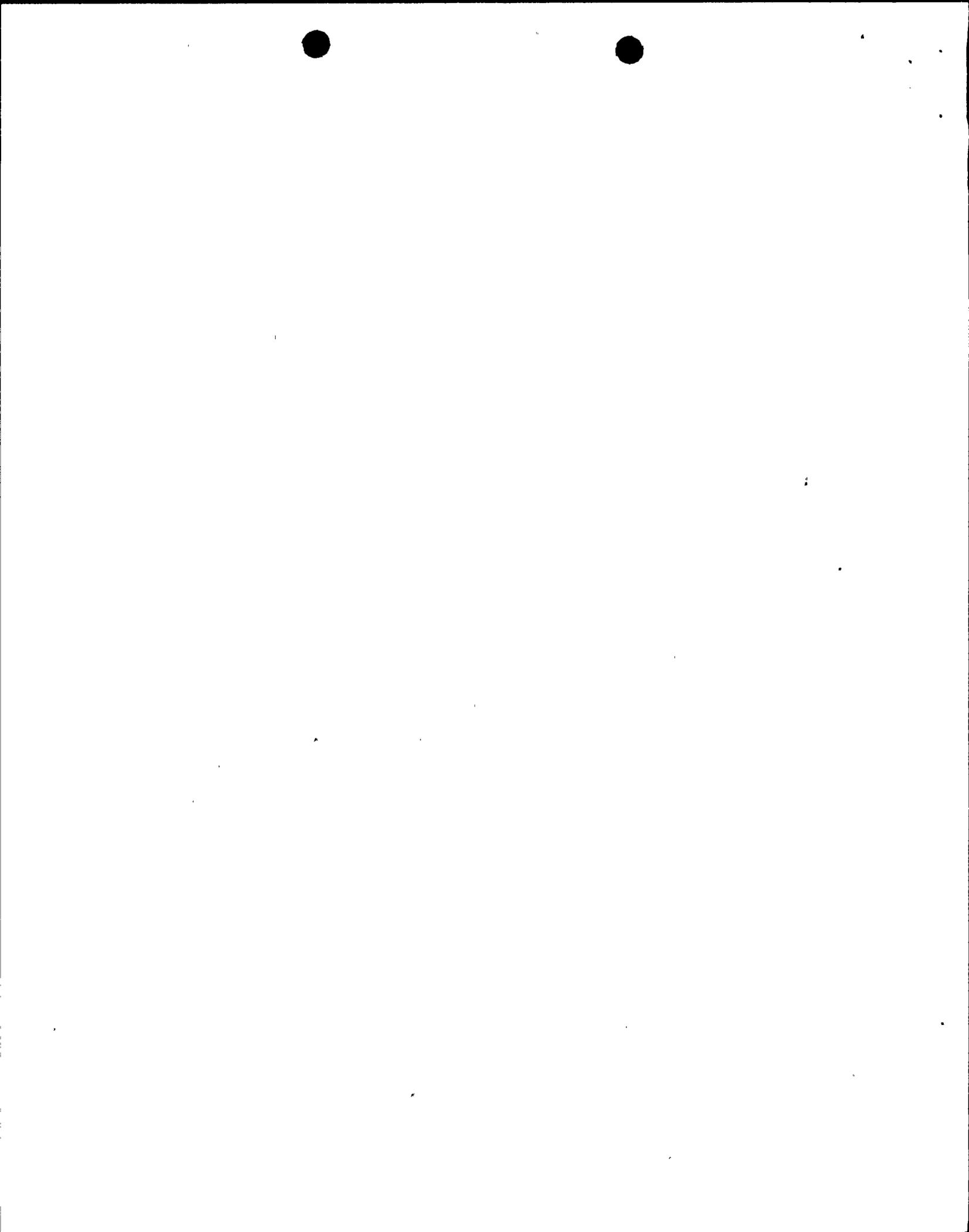
Contention Three alleges the failure of the Applicant to demonstrate compliance with 10 C.F.R. Part 50, Appendix B, regarding quality assurance. The Staff believes this contention is unacceptable for litigation in this proceeding. This contention is not related to requirements which arose as a



result of the Three Mile Island accident as identified in NUREG-0694 or NUREG-0737. This contention has not been admitted in the OL proceeding, a contention substantially the same having been rejected by the Licensing Board in its Order of May 25, 1977. In addition, ample opportunity for the intervenors to put forth quality assurance contentions was present when the Licensing Board held evidentiary hearings on quality assurance on October 18-19, 1977.

Contentions Four, Five, and Twenty-Six relate to emergency planning requirements. However, both are extremely non-specific. In neither contention does intervenor identify which of the various alleged requirements are applicable to a proceeding involving limited issues, such as this portion of the present proceeding which relates only to fuel loading authorization. Similarly, neither contention specifies which of such requirements, if any, intervenors assert applicant fails to satisfy, nor in what manner. Thus, these contentions are not sufficiently specific to be acceptable contentions.

Contention Six alleges the Applicant has failed to demonstrate that the containment at Diablo Canyon can withstand pressures resulting from hydrogen combustion during a loss-of-coolant accident. Contention Seventeen relates to the design of the hydrogen control system being based on the improper assumption of hydrogen production levels as evidenced by the Three Mile Island accident. Although the Staff does not object to contentions on the adequacy of the design of the Diablo Canyon Hydrogen Control System, these contentions lack specificity in that it appears they assume the design of the TMI system and associated assumptions are the same at Diablo Canyon. The systems are, in fact, not the same. Three Mile Island was a Babcock and



Wilcox designed system whereas Diablo Canyon is a Westinghouse system. For the contention to be admissible the Board should require it to clearly state 1) the nexus of the issue to the TMI accident; 2) the significance of the issue and 3) the difference between the intervenors position and the Commission's rationale in considering the TMI-related requirements. This would conform with the suggestion of the Commission in its revised statement of policy. The contention to be admissible, therefore, should specifically identify the Diablo Canyon design assumptions which are believed to be inadequate as a result of the accident at TMI-2.^{5/}

Contention Seven alleges the Applicant has failed to adequately address the safety considerations designated as high priority and/or high risk in Table B.2 of NUREG-0660. Table B.2 consists of 14 pages of items. Some are designated as Priority I items, but do not constitute pre-fuel loading and low power testing considerations. Others are pre-fuel loading and low power testing considerations, but are not Priority I. Some items are both Priority I and are pre-fuel loading and low power testing requirements. Contention Seven fails to identify which, if any, of this last group has been inadequately addressed and in what way their treatment was inadequate. In addition, Table B.2 does not represent requirements which are specifically identified as low power requirements, although many of the items in that table do appear in NUREG-0694 or NUREG-0737 and might be appropriate areas for contentions in this proceeding. The Staff believes this contention is not sufficiently specific to be an acceptable contention.

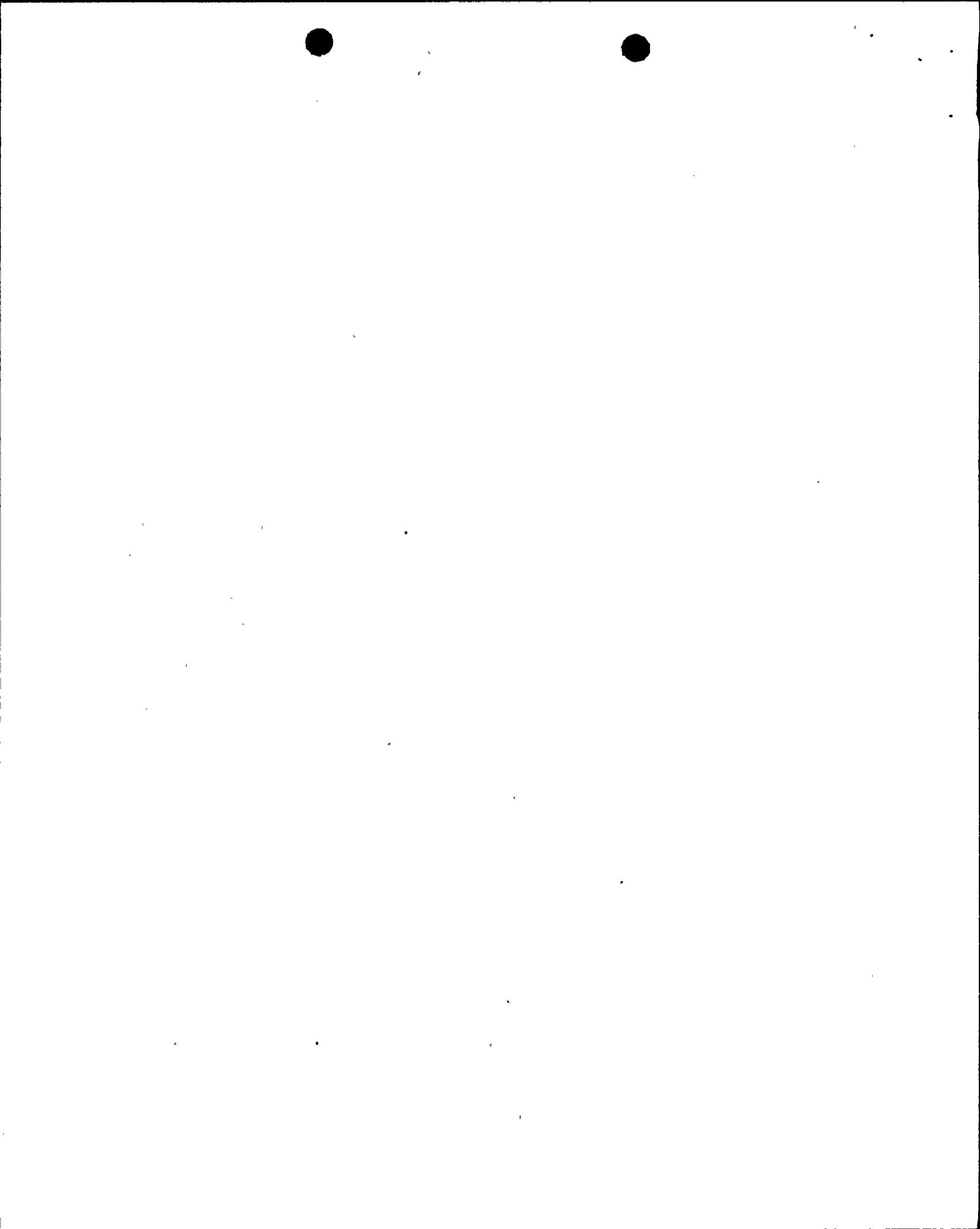
^{5/} See also, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1) CLI-80-16, 11 NRC 674 (May 16, 1980).



Contention Eight questions the adequacy of Applicant's test program for "demonstrating a reliable method" for forced cooling of the reactor in the event of a small LOCA, particularly with regard to two-phase flow and with voids such as occurred at TMI. The quoted language above does not reflect NRC requirements for the testing program. It is unclear whether this is intended to be an assertion that applicant fails to satisfy a requirement of NUREG-0737, in which case it does not correctly state such requirements, or whether it asserts that a further requirement should be imposed, in which case no basis at all is provided.

Contention Nine alleges: (1) reactor coolant pumps; (2) residual heat removal system; and (3) the emergency core cooling system in the "bleed and feed" mode do not meet the NRC's regulations applicable to systems important to safety and are not sufficiently reliable to protect public health and safety. The Staff believes this contention is unacceptable for litigation in this proceeding, since the contention does not relate to requirements arising from the Three Mile Island accident as identified in NUREG-0694 and NUREG-0737. The contention also is not presently an accepted contention in the OL proceeding for Diablo Canyon. The contention is therefore late and unacceptable.

Contention Ten alleges that pressurizer heaters and associated controls should be classified as "components important to safety" and required to meet all applicable safety-grade design criteria. The contention alleges that the Applicant's proposal to connect two out of four of the heater groups to the present on-site emergency power supplies does not provide an equivalent or acceptable level of protection. Contention Eleven alleges



that the Applicant has failed to demonstrate that the addition of pressurizer heaters will not degrade the capacity, capability and reliability of onsite emergency supplies. Contention Twelve alleges the power operated relief valves, associated block valves and the instruments and controls for these valves must be classified as components important to safety and required to meet all safety-grade design criteria. Contention Twenty alleges that all systems and components which can either cause or aggravate an accident or can be called upon to mitigate an accident must be identified and classified as components important to safety and required to meet all safety-grade design criteria. In the October 2, 1980 Order, the Board noted that the only appropriate contentions would be those relating to the requirements of NUREG-0694 (which has been superceded by NUREG-0737) or those contentions already admitted in the OL proceeding. The above four contentions are not contentions presently admitted in the OL proceeding in Diablo Canyon. The above contentions lack specificity in that they fail to identify any requirements of NUREG-0694 or NUREG-0737 that are not being complied with, or how any requirement is not being complied with. For the contention to be admissible the Board should require it to clearly state 1) the nexus of the issue to the TMI accident; 2) the significance of the issue and 3) the difference between the intervenors position and the Commission's rationale in considering the TMI-related requirements. This would conform with the suggestion of the Commission in its revised statement of policy. If the contentions fail to fall under the TMI issues reserved by the Board in its June 5, 1979 order, the contentions would be late and must comply with the requirements for filing late contentions.



Since these contentions do not appear to be within the scope of issues as identified in the October 2, 1980 order, the intervenors will also have to comply with the requirements of 10 C.F.R. § 2.714(a)(1) for late filing of contentions. Absent such specification, these contentions do not appear to be within the issues the Board held appropriate for contentions in its October 2, 1980 Order and they should not be accepted for litigation in this proceeding.

Contention Thirteen alleges that the absence of instrumentation to directly measure the water level in the fuel assemblies poses a threat to public health and safety. Contention Fourteen alleges that the corrective actions taken as a result of TMI have not fully addressed the inadequacy of protection against small LOCA's. The Staff believes Contentions Thirteen and Fourteen present appropriate areas for litigation in this proceeding; however, the intervenors should amend the contentions to specify which requirements of NUREG-0694 and NUREG-0737 are not being complied with.

Contention Fifteen states that "the accident at TMI-2 was substantially aggravated by the fact that the plant was operated with a safety valve unoperable, to wit: two auxiliary feedwater system valves were closed which should have been open. The principal reason why this condition existed was that TMI does not have an adequate system to inform the operator that a safety system has been deliberately disabled. To adequately protect the health and safety of the public, a system meeting the Regulatory Position of Reg. Guide 1.47 or providing the equivalent is required." The Staff does not disagree with the above statement, however the statement is not in the form of a contention. If the intervenor could restate the contention relating



it to some perceived issue relevant to Diablo Canyon fuel loading and low power testing, the "contention" might be admissible.

Contention Sixteen alleges that the safety systems at Diablo should be modified so that no operator action can prevent completion of a safety function once initiated. The contention alleges that Section 4.16 of IEEE 279, as incorporated by 10 C.F.R. § 50.55(a)(h), is the requirement being violated at Diablo Canyon. By its terms, 10 C.F.R. § 50.55(a)(h) only applies to plants with construction permits issued after January 1, 1971. The intervenors should be required, therefore, to specify whether they are arguing that Section 4.16 IEEE 279 does apply, or are arguing that it should apply even if it doesn't apply under present rules.

Contention Eighteen alleges that "Diablo Canyon should not be permitted to load fuel until all safety-related equipment has been demonstrated to be qualified to operate as required by GDC 4. The criteria for determining qualification should be those set forth in Regulatory Guide 1.89 or equivalent." The Staff does not disagree with the above statement, but it is not in the form of a contention. The "contention" does not specify how the Applicant has failed to meet a requirement. In addition, the Intervenor has not alleged a requirement of NUREG-0694 or NUREG-0737 which Applicant has failed to meet. This contention would not be appropriate for litigation without modification to provide further specificity.

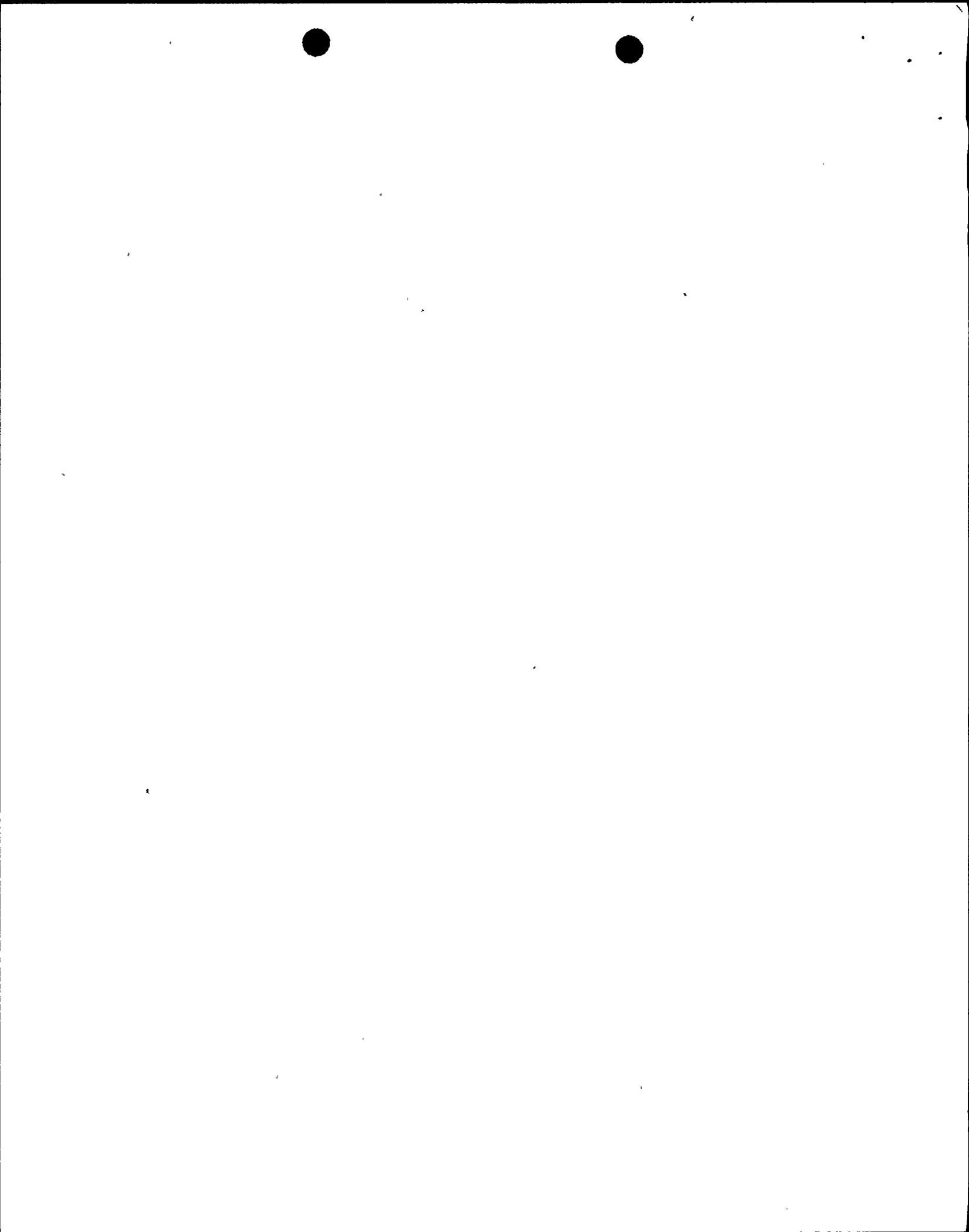
Contention Nineteen alleges inadequate protection against "Class 9" accidents at the Diablo Canyon site. The Licensing Board, in its October 2, 1980 Order, ruled that consideration of Class 9 issues would be deferred until the Appeal Board had ruled on the seismic issues at Diablo. The



Appeal Board has not ruled on the seismic issues as of this time. This contention should therefore be rejected as inappropriate for consideration in the low power testing proceeding. In addition, the contention lacks specificity as to what "inadequacies" are present which cause the public to be inadequately protected and it does not specify in what way 10 C.F.R. 51.20(a) and 51.20(d) are not complied with. The contention also is unrelated to NUREG-0694 and NUREG-0737. It, therefore, is not within the issues the Licensing Board reserved for contentions in its October 2, 1980 order and must comply with the requirements of 10 C.F.R. § 2.714(a)(1) for late filing of contentions.

Contention Twenty-one alleges "the public health and safety require that this record demonstrate conformance with or document deviations from the Commission's regulations and each Regulatory Guide presently applicable to the plant." This statement is not in the form of a contention. Intervenor should be required to identify any NRC requirement they believe is not being complied with, as well as the basis for their position. This would provide the information required under 2.714(b) which would allow the other parties to this proceeding to respond to the contention.

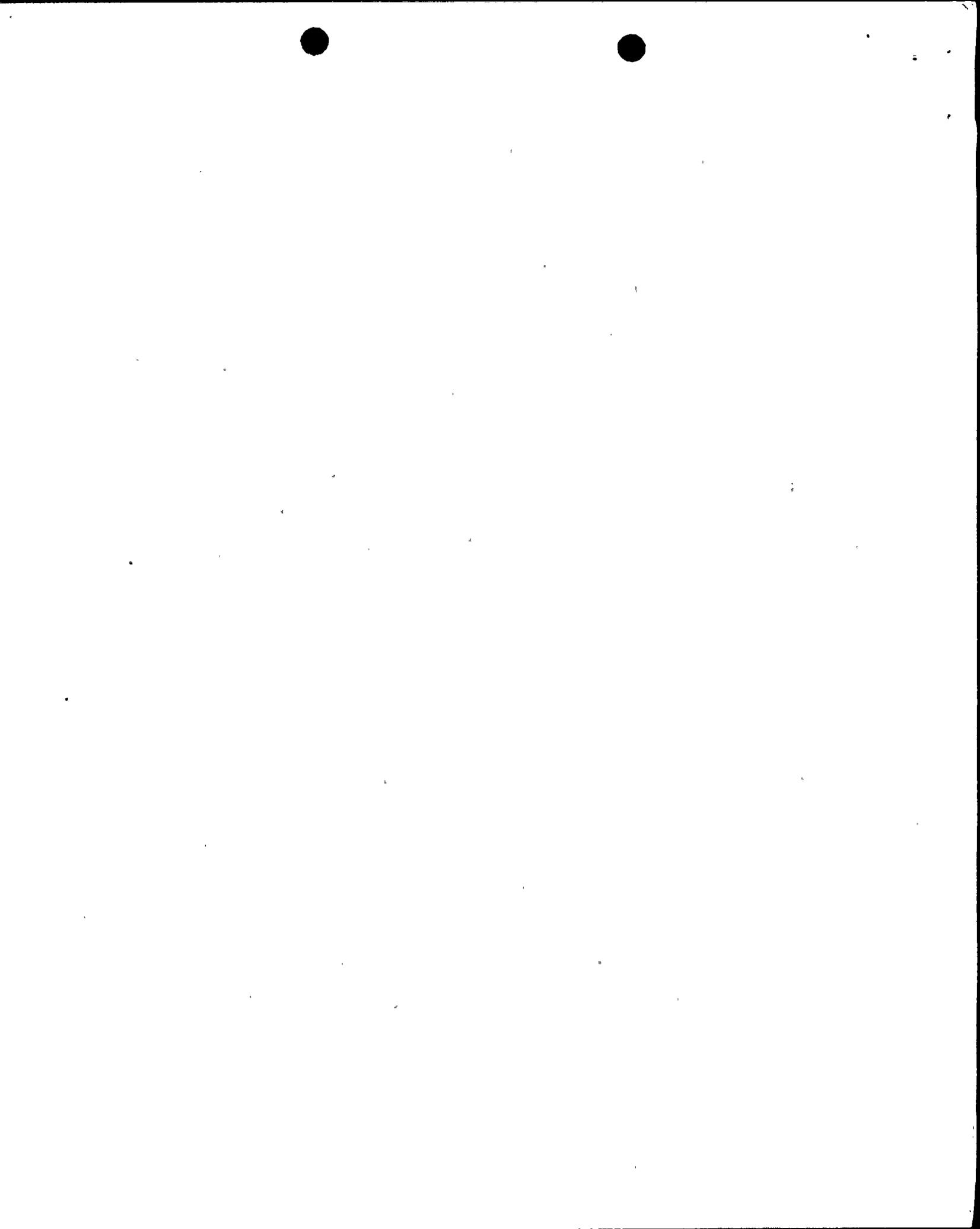
Contention Twenty-two alleges a failure of Applicant to demonstrate compliance with the Commission's regulations concerning fire protection. This contention is not presently admitted in the OL proceeding and is not related to NUREG-0694 or NUREG-0737. It, therefore, does not fall within the designation of appropriate issues for consideration in this proceeding as identified by the Board in its October 2, 1980 Order. It further fails to comply with the requirements of 10 C.F.R. 2.714(a)(1) for late filing of



contentions. The contention also fails to identify the basis for the allegation of inadequacy with reasonable specificity as required by 10 C.F.R. § 2.714(b). The Staff believes this contention is not appropriate for litigation in this proceeding as presently written.

Contention Twenty-three alleges that multiple failure sequences at TMI exceeded the single failure criterion utilized in the Diablo Canyon design basis accident assessment. The contention continues that certain studies should be required in order to assure Diablo Canyon can be operated without endangering the health and safety of the public. This contention is not within the scope of the low power testing proceeding as defined by the Board's October 2, 1980 Order, since it is not an admitted contention in the OL proceeding, and Intervenors have failed to identify a requirement of NUREG-0694 or NUREG-0737 which is not being complied with. It further fails to comply with the requirements of 10 C.F.R. 2.714(a)(1) for late filing of contentions. The Staff believes this contention is not appropriate for litigation in this proceeding as presently written.

Contention Twenty-Four alleges appropriate qualification testing has not been done to verify the capabilities of reactor coolant system relief and safety valves to function during normal, transient, and accident conditions. The contention continues that, in the absence of such testing, certain GDC requirements will not be complied with. This contention is inappropriate in that it does not fall within the scope of issues appropriate for contentions as identified in the October 2, 1980 Order. It is not an admitted OL contention and does not identify requirements from NUREG-0694 and NUREG-0737 which are not being complied with. It also fails



to comply with the requirements of 10 C.F.R. 2.714(a)(1) for late filing of contentions. This contention would, therefore, not be appropriate for litigation in this low power testing proceeding.

Contention Twenty-Five alleges that all safety problems indentified by the accident at Three Mile Island must be corrected prior to fuel loading. This contention is not within the scope of the fuel loading and low power testing proceeding as defined by the Licensing Board's October 2, 1980 Order. It is not an admitted contention in the OL proceeding, and Intervenors have failed to identify any requirement of NUREG-0694 or NUREG-0737 which has not or is not being complied with. In addition, the contention is non-specific in that it fails to give the basis for requiring the correction of all safety problems prior to fuel loading. The contention also fails to comply with the requirements of 10 C.F.R. § 2.714(c)(1) for late filing. The Staff believes this contention is inappropriate for litigation in the present proceeding.

Contention twenty-seven alleges that the Diablo Canyon Record must show either that each applicable generic safety issue has been resolved for the particular reactor or the existence of measures employed at the plant to compensate for the lack of solution to the problem. This contention is not within the scope of the fuel loading and low power testing proceeding as defined by the Licensing Board's October 2, 1980 Order. It is not an admitted contention in the OL proceeding, and Intervenors have failed to identify any requirement of NUREG-0694 or NUREG-0737 which has not or is not being complied with. In addition, in an "Order Relative to Generic Safety Issues" of February 26, 1979 the Licensing Board declared generic all safety issues



resolved except ATWS (Anticipated Transients without Scram) or Generic Issue A9. The Staff believes Contention Twenty-seven is inappropriate for litigation in the present proceeding.

CONCLUSION

The Staff believes Contentions One and Two are acceptable as written.

The Staff believes Contentions Three, Nine, Twenty-Two thru Twenty-Four and Twenty-Seven are unacceptable for litigation in the low power testing proceeding, as they fall outside the scope of the issues to be considered in that proceeding.

The Staff believes Contentions Four thru Eight, Ten thru Fourteen, Seventeen, Twenty, Twenty-One, and Twenty-Six are unacceptable for litigation in the low power testing proceeding as they lack specificity.

The Staff believes Contentions Fifteen and Eighteen are unacceptable for litigation in the low power testing proceeding as they lack specificity and are not framed as a contention.

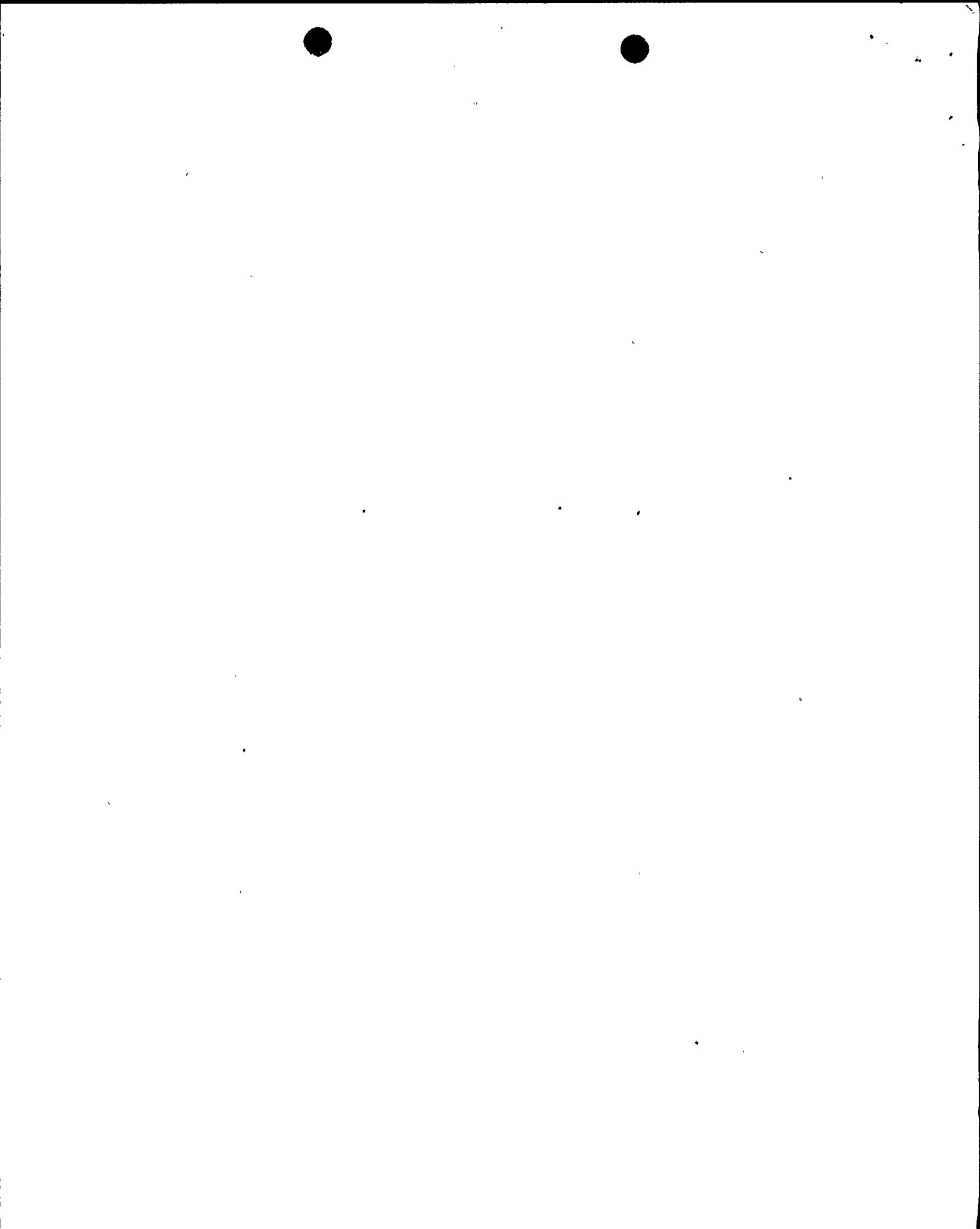
The Staff believes Contentions Nineteen and Twenty-Five are not acceptable for litigation in the low power testing proceeding as they both lack specificity and relate to issues falling outside the scope of the proceeding.

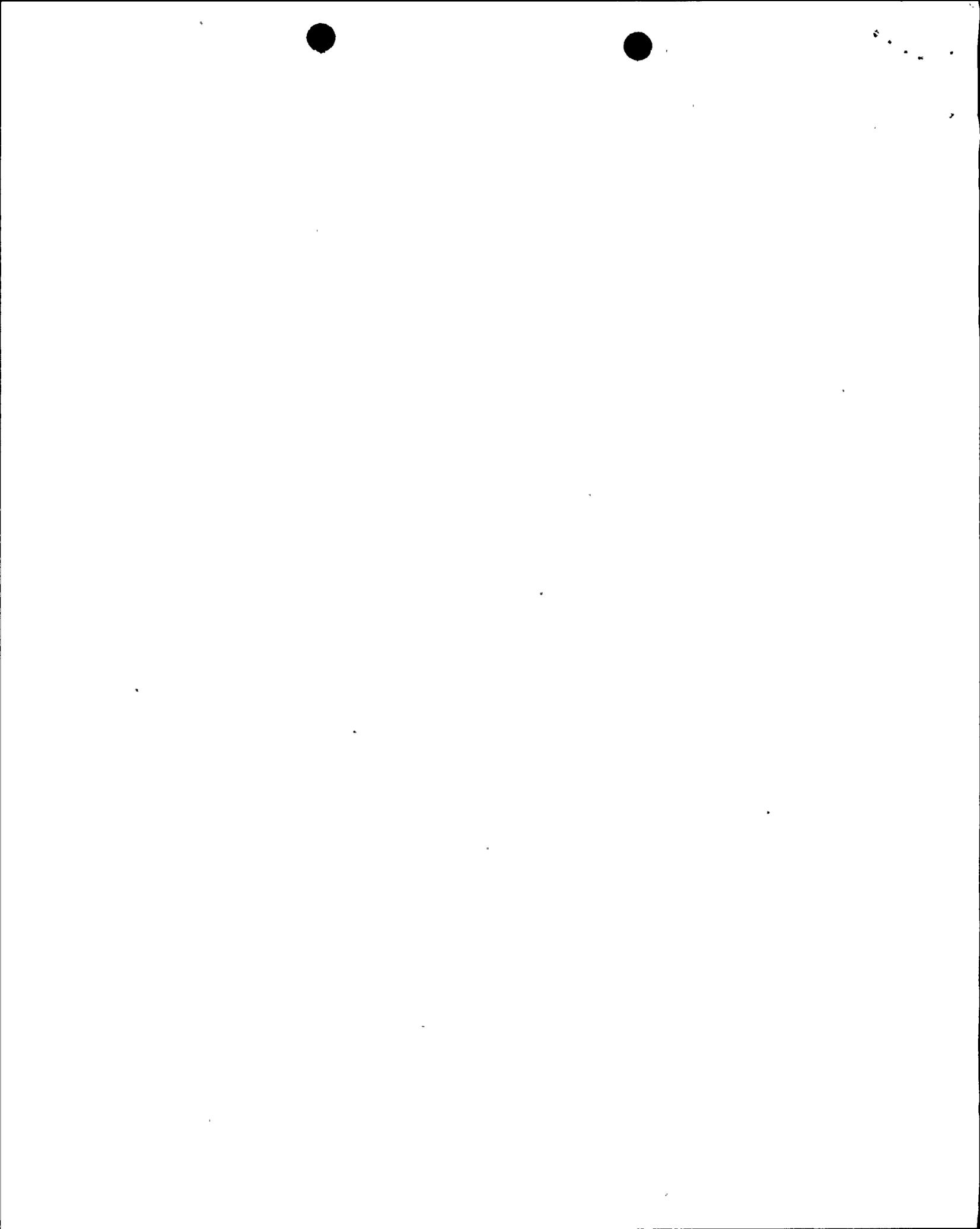
Respectfully submitted,



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Dated at Bethesda, Maryland
this 23rd day of December, 1980.





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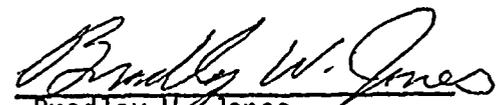
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