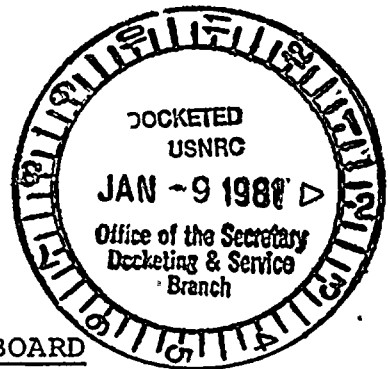


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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

(Low Power Test Proceeding)

JOINT INTERVENORS' REPLY TO RESPONSES
OF PACIFIC GAS AND ELECTRIC COMPANY
AND NRC STAFF TO JOINT INTERVENORS'
STATEMENT OF CONTENTIONS

US NRC
DISTRIBUTION SERVICES
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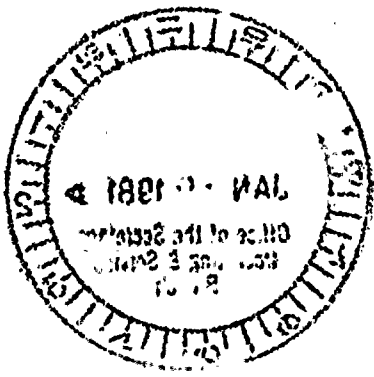
DISTRIBUTION
SERVICES UNIT

Pursuant to 10 C.F.R. § 2.706, 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 ("Joint Intervenors")
hereby reply to the responses of Pacific Gas and Electric
Company ("PGandE") and the NRC Staff ("Staff") to Joint
Intervenors' Statement of Contentions which they intend to
litigate with respect to PGandE's motion for a license to
load fuel and conduct low power testing at the Diablo Canyon
Nuclear Power Plant ("Diablo Canyon"). Although Joint Inter-
venors have in the past deemed unnecessary the filing of a
reply in connection with proposed contentions, they believe

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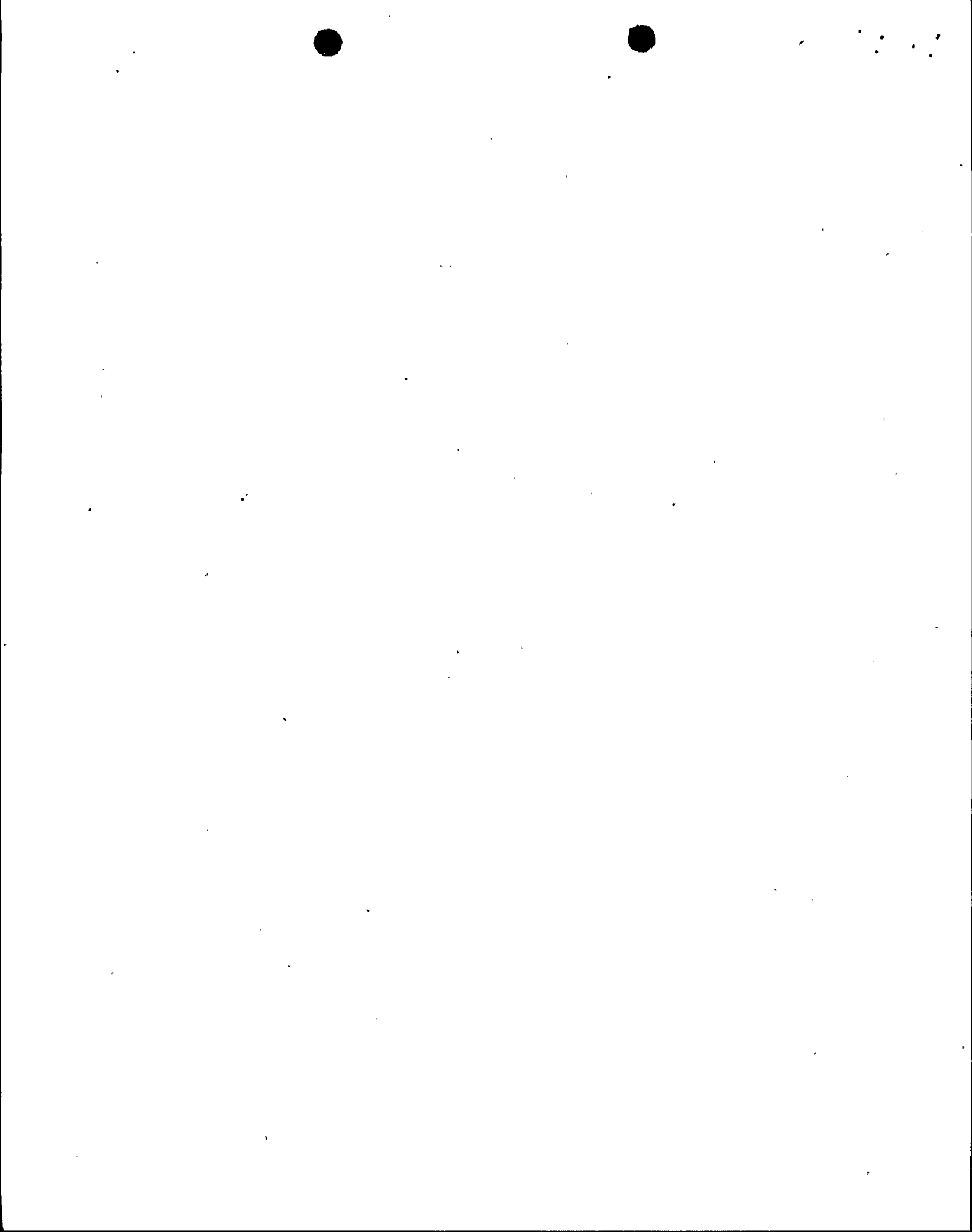
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that a brief reply as to several objections raised by both PGandE and the Staff is appropriate and necessary in this instance, primarily in view of the recent issuance by the Commission of its "Revised Statement of Policy," entitled "Further Commission Guidance for Reactor Operating Licenses," CLI-80-42, 45 Fed. Reg. _____ (Dec. 18, 1980). As appears from the discussion below, Joint Intervenors submit that this recent Commission policy statement bears profoundly both on the scope of the Licensing Board's jurisdiction in this proceeding and the validity of many of the objections raised by PGandE and the Staff in opposition to the proposed contentions.

In its response, PGandE objects to Joint Intervenors' contentions 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 23, 24, and 25 on the ground that they "are neither required by existing Commission regulations nor are they requirements of the Commission under NUREG-0694." (PGandE Response, at 38.) In addition, in its stated objections to contentions 3, 6, 8, 9, 18, 19, 22, and 27, PGandE notes that none of these is contained in NUREG-0694 as a requirement for low power testing. Similarly, the Staff finds "unacceptable" contentions 3, 9, 19, 22, 23, 24, 25, and 27, in part because they "fall outside the scope of the issues to be considered in [the low power test] proceeding." (Staff Response, at 15.)

Any basis which these objections may have had at the time the contentions in question were filed has been substantially undermined by the Commission's recent revision



of its June 20, 1978 "Statement of Policy," entitled "Further Commission Guidance for Power Reactor Operating Licenses," 45 Fed. Reg. 41738. In that now partially discredited document, the Commission, by a vote of 3-2, deemed the licensing requirements contained in NUREG-0694 a "necessary and sufficient" response to the March 1979 accident at Three Mile Island and imposed the following limitation on the jurisdiction of the Atomic Safety and Licensing and Appeal Boards to entertain contentions:

The TMI-related "Requirements For New Operating Licenses" adopted herein can, in terms of their relationship to existing Commission regulations, be put in two categories: (1) those that interpret, refine or quantify the general language of existing regulations, and (2) those that supplement the existing regulations by imposing requirements in addition to specific ones already contained therein. * * *

Insofar as the second category -- supplementation of existing regulations -- is concerned, boards are to apply the new requirements unless they are challenged, but they may be litigated only to a limited extent. Specifically, the boards may entertain contentions asserting that the supplementation is unnecessary (in full or in part) and they may entertain contentions that one or more of the supplementary requirements are not being complied with; they may not entertain contentions asserting that additional supplementation is required. The board's authority to raise issues sua sponte shall be subject to the same limitations. * * *

Id. (Emphasis added.)

On December 18, 1980, however, the Commission issued a clarification of the June 20 statement in the form of a "Revised Statement of Policy," cited supra at 2. This most



recent policy revision removed the artificial limitation of licensing and appeal board jurisdiction and explicitly provided for the right of intervenors to litigate the sufficiency of NUREG-0737 (successor to NUREG-0694) requirements. Specifically, the Commission stated that "parties may challenge either the necessity for or sufficiency of [those requirements that supplement the existing regulations by imposing requirements in addition to specific ones already contained therein]." 45 Fed. Reg. at _____. Thus, the various NRC boards now have jurisdiction to consider contentions properly raising such issues.

To the extent objections are submitted asserting that proposed contentions are beyond the scope of NUREG-0694 or 0737, those objections must be rejected and the contentions admitted in this proceeding; at the least, Joint Intervenors must be given an opportunity to demonstrate the insufficiency of the Commission's TMI-related requirements to protect the health and safety of the public. That this was the intention of the Commission in issuing the December 18 statement is demonstrated by its recent disposition of Joint Intervenors' Request for Directed Certification of several questions regarding application of the June 20 policy statement. In an order filed on December 22, 1980, the Commission cited the Revised Statement of Policy in support of its conclusion that "the Licensing Board now has the authority to rule on the issues raised by Joint Intervenors." Absent other proper bases for objection, the contentions are within the jurisdiction of the Licensing



Board and should be admitted.

Further objections have been raised by the Staff and, in some instances, by PGandE directed essentially to the form of a number of proposed contentions. More precisely, they claim that many are unacceptable because "nonspecific," "overbroad," or "not framed as a contention." Joint Intervenors dispute these characterizations. Indeed, it is notable that contentions virtually identical to Joint Intervenors' contentions 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 24 have recently been admitted by the licensing board in the TMI-1 Restart Proceeding. See In the Matter of Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), No. 50-289, First Special Prehearing Conference Order (Dec. 18, 1979). Moreover, contentions 14, 18, and 20 in particular were derived from TMI-1 contentions admitted therein and subsequently adopted as board issues when, due to a shortage of resources, the intervenor Union of Concerned Scientists was compelled reluctantly to withdraw them.

Joint Intervenors respectfully submit that their proposed contentions are equally appropriate for admission in this proceeding. Should the Licensing Board conclude, however, that some are insufficiently specific or have been improperly presented, Joint Intervenors request an opportunity to refine the objectionable contentions in accord with the Board's direction.

Finally, both PGandE and the Staff have taken the position in effect that Governor Brown, as representative



of an interested state, has no independent right to participate with respect to "subjects" or "contentions" not first raised by Joint Intervenors and admitted by the Board. Without conceding the validity of this novel and unprecedented proposition, it should be noted that in the final paragraph of their Statement of Contentions, Joint Intervenors explicitly reserved the right to "submit testimony and other evidence with respect to any contentions filed by Governor Brown" in this proceeding. In order to preserve the right so reserved and to assure the fullest possible examination of important safety issues, Joint Intervenors hereby adopt as their own contentions each of the "subjects" filed by Governor Brown in the low power test proceeding.

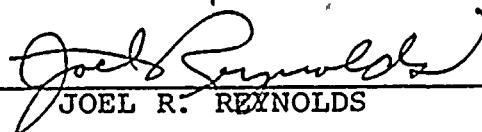
Dated: January 8, 1980

Respectfully submitted,

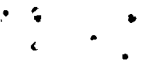
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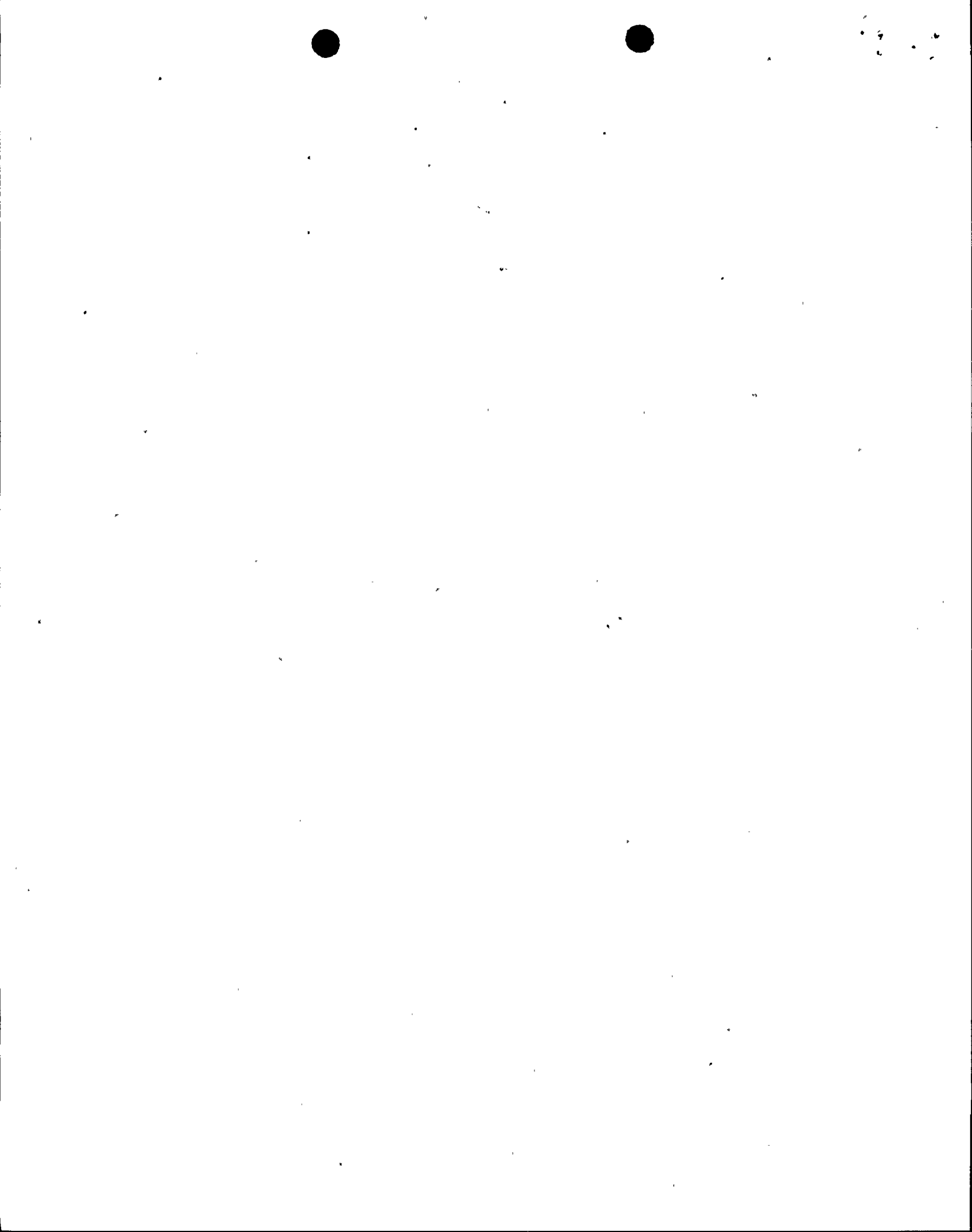
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)	

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 1981, I have served copies of the foregoing JOINT INTERVENORS' REPLY TO RESPONSES OF PACIFIC GAS AND ELECTRIC COMPANY AND NRC STAFF TO JOINT INTERVENORS' STATEMENT OF CONTENTIONS, mailing them through the U.S. mails, first class, postage prepaid.

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