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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

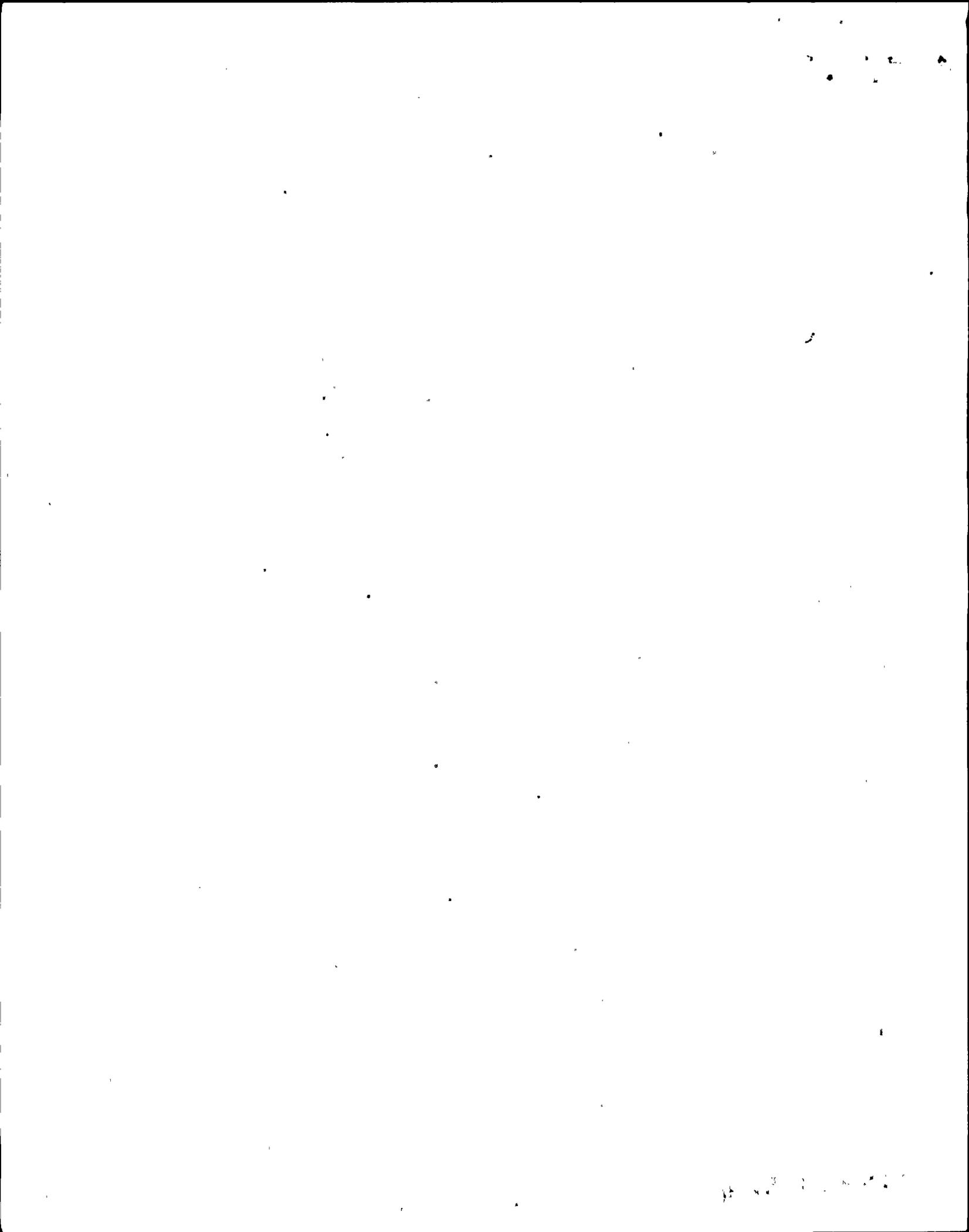
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

PACIFIC GAS AND ELECTRIC COMPANY'S  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

I. FACTUAL BACKGROUND

On July 14, 1980, Applicant filed its motion to load fuel and conduct low power testing to 5% of full power pursuant to 10 C.F.R. §50.57(c). This request was made some 18 months after the record was closed on the full power license application. By Order dated February 13, 1981, this Board admitted Joint Intervenor's proposed contentions 4, 5, 11, 13, and 24. All of the parties to this proceeding objected, in one form or another, to the February 13 Order and requested the Commission to direct certification to the Commission. On April 1, 1981, the Commission issued an order, CLI-81-5, which did not direct certification but instead provided "additional Commission guidance consistent with its Revised Statement of Policy." Applicant takes the position that Joint Intervenor's and Governor Brown have not complied with applicable regulations and policy statements in order to get their contentions in a posture for an evidentiary proceeding. They have done nothing but make "bare allegations", have come forward with no new evidence nor have they



ever made any attempt to comply with 10 C.F.R. §2.714 requirements in these low power proceedings. For these reasons alone, the "contentions" of Joint Intervenors should be summarily stricken. In addition, however, Applicant is entitled to summary disposition on the contentions as a matter of law.

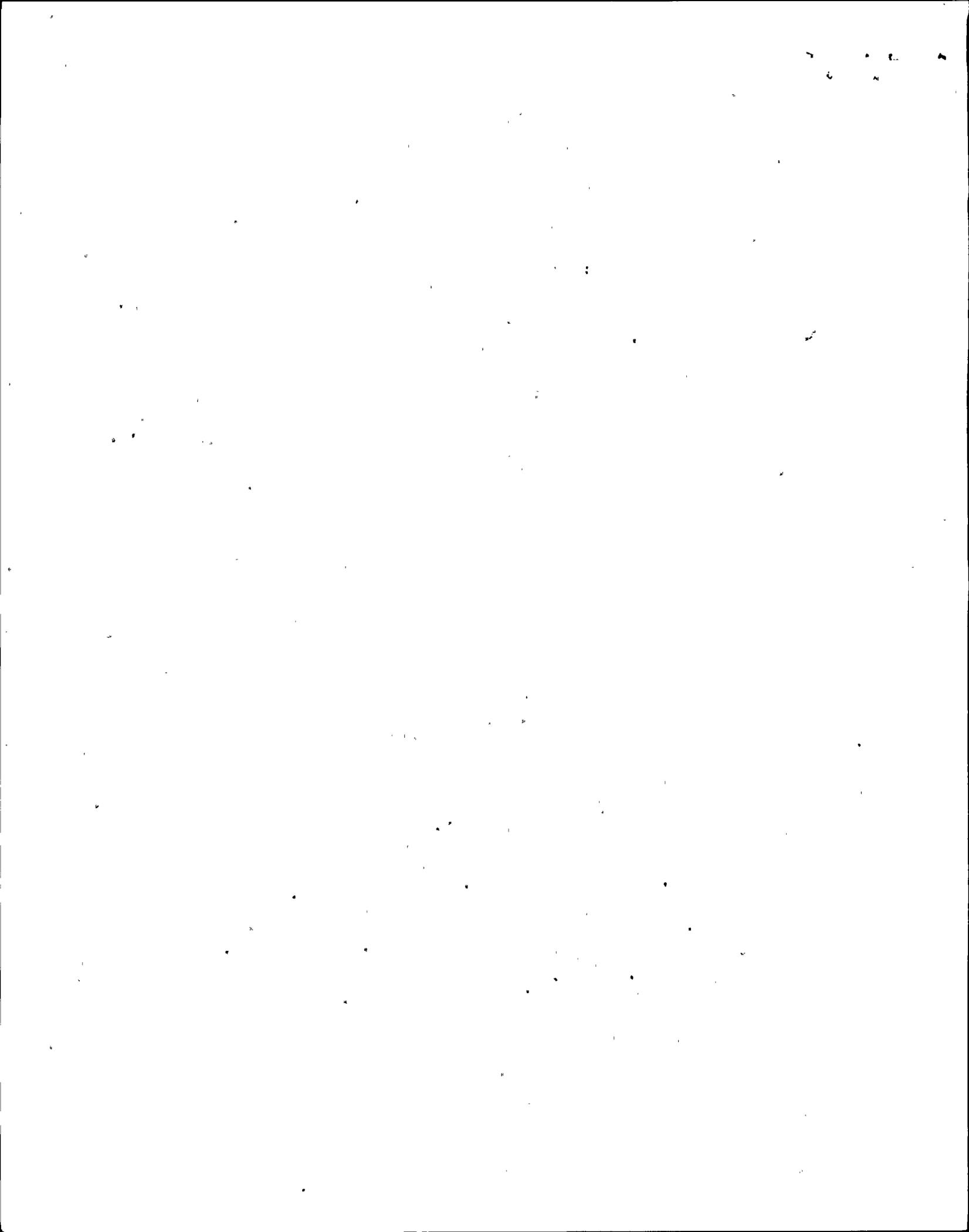
## II. ARGUMENT

### A. General

A motion for summary disposition must be granted by the presiding officer under 10 C.F.R. §2.749(d) where it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law". The regulation also provides that if the motion is properly supported by affidavit that

" . . . a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer . . . must set forth specific facts showing that there is a genuine issue of fact." (10 CFR 2.749(b), emphasis added; see In the Matter of Virginia Electric and Power Company (North Anna Nuclear Power Station Units 1 and 2) ALAB-584, 11 NRC 451 (1980).

The summary disposition procedure provided by §2.749 finds its judicial counterpart in Rule 56 of the Federal Rules of Civil Procedure. In the Matter of Alabama Power Company (Joseph M. Farley Nuclear Plant Units 1 and 2) ALAB 182, 7 AEC 210 (1974). To defeat a motion for summary disposition under the Federal Rules of Civil Procedure a party must present facts in the proper form; conclusions will not suffice. Pittsburgh Hotels Association, Inc. v. Urban



Redevelopment Authority of Pittsburgh, 202 F. Supp. 486 (W.D. Pa. 1962), aff'd 309 F.2d 186 (3rd Cir. 1962), cert. denied, 276 U.S. 916 (1963).

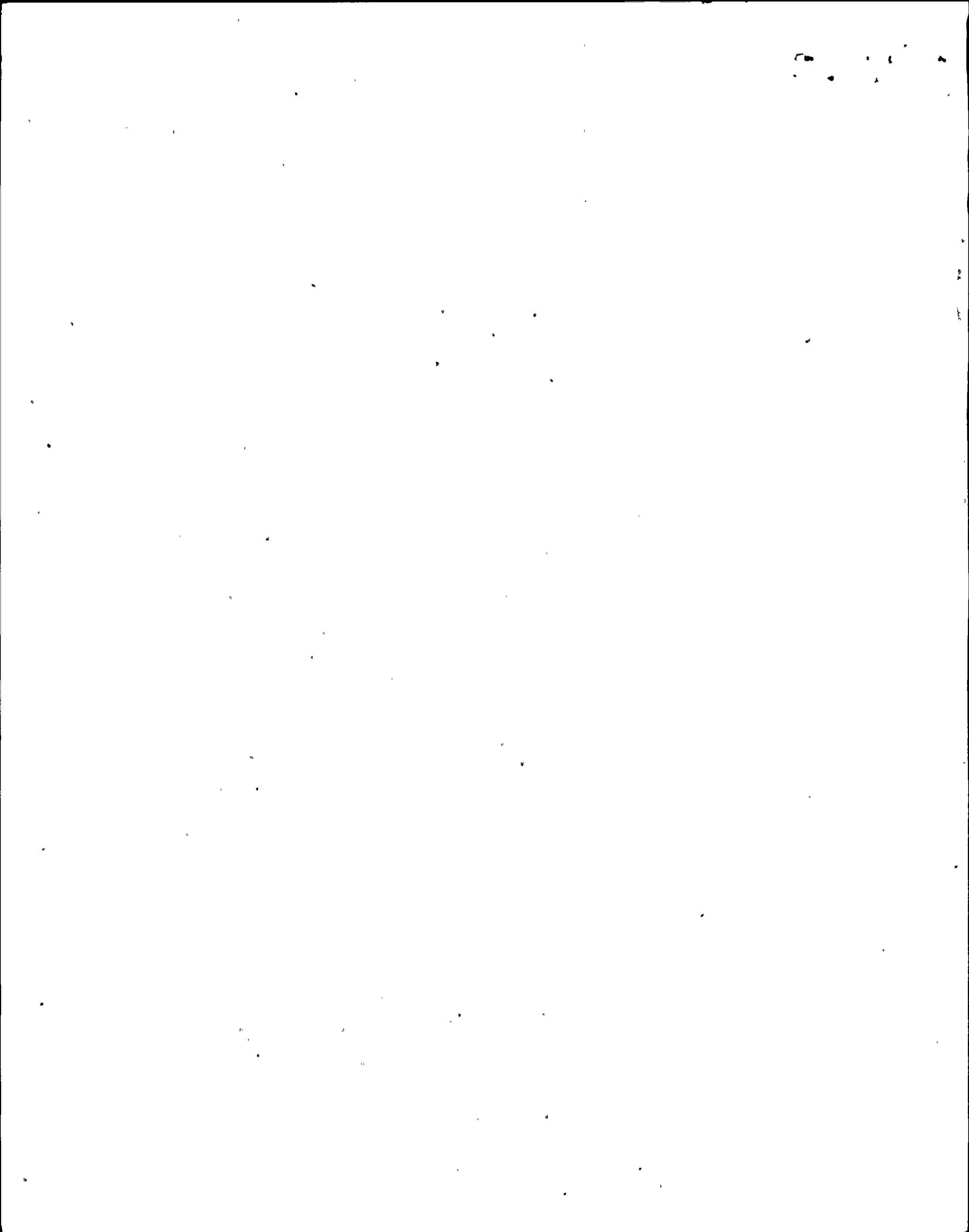
B. Contentions 4 and 5

Contention 4. Numerous studies arising out of the accident of TMI recognized the necessity of upgrading emergency response planning. Based upon these studies, the Commission has promulgated revised emergency planning regulations effective November 3, 1980. The Applicant has failed to demonstrate that the combined Applicant, state, and local emergency response plans for Diablo Canyon comply with those revised regulations ("Final Regulations on Emergency Planning," 45 Fed. Reg. 55402 (August 19, 1980)).

Contention 5. The Applicant has failed to demonstrate that the combined Applicant, state and local emergency response plans for Diablo Canyon comply with the requirements of Sections III.A.1.1 and III.A.1.2 of NUREG-0694.

These two contentions dealing with emergency response planning have been admitted by this Board only "insofar as they pertain to issues related to fuel loading and low power testing."

Pacific Gas and Electric Company submits that the present site emergency plans for Diablo Canyon along with the off-site county and state plans provide the necessary level of emergency response capability to justify operation at the low power testing levels requested in Applicant's July 15, 1980, motion.

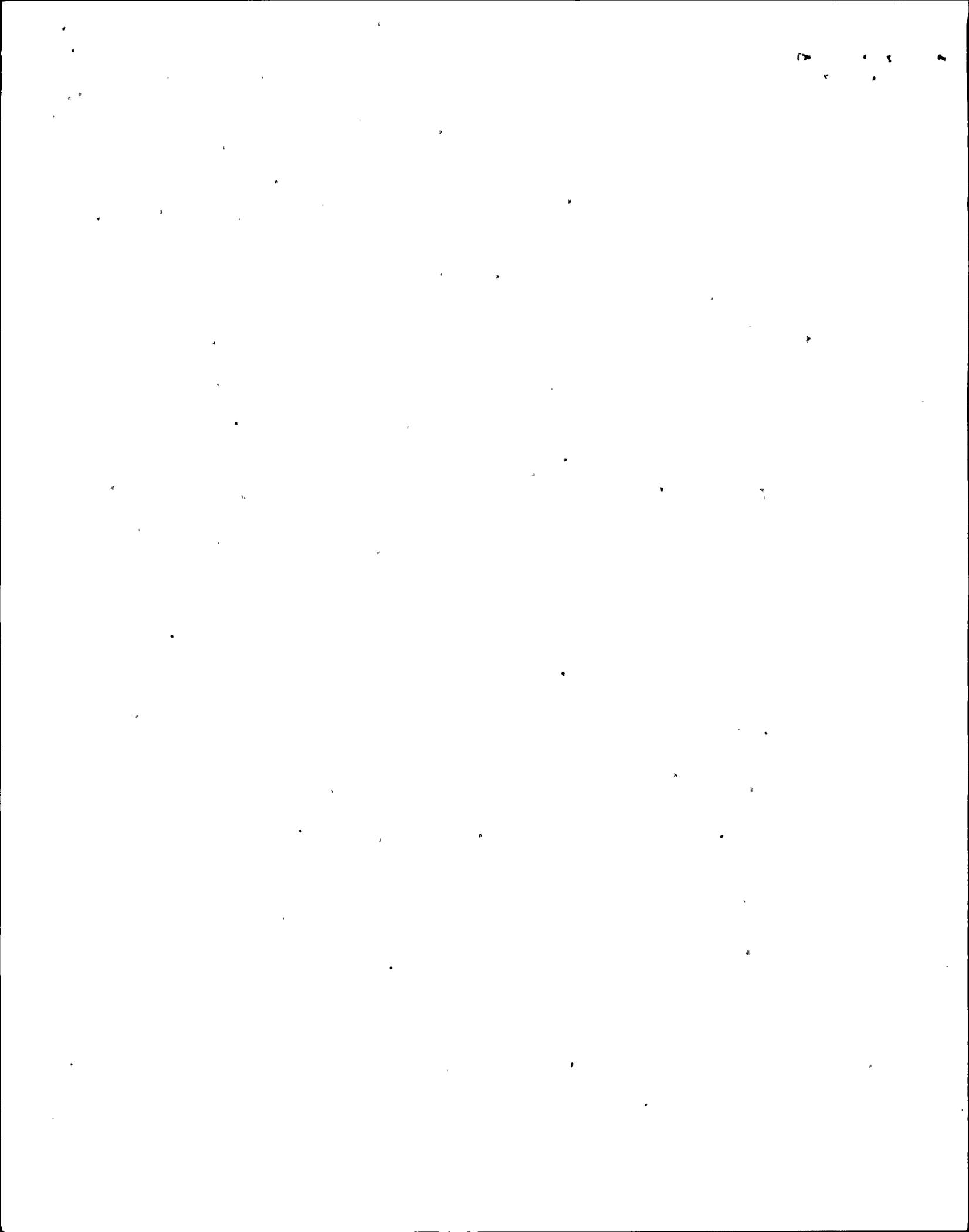


In order to place this matter in perspective, a brief recapitulation of the evolving NRC emergency planning requirements is helpful. During earlier hearings on PGandE's application for a full power operating license, evidence was presented to this Board as to the state of emergency preparedness in the event of a radiological emergency at Diablo Canyon. The record was then closed on this issue.

Subsequent to the accident at TMI-2, the NRC, inter alia, adopted interim requirements for upgrading emergency response plans.<sup>1/</sup> These new requirements were incorporated into NUREG-0694 which was issued in June, 1980. Item III.A.1.1 of NUREG-0694, essentially required that for low power operation the site plan meet the then existing requirements of Appendix E to 10 C.F.R. Part 50 (38 Fed. Reg. 1272, January 11, 1973) and Regulatory Guide 1.101, "Emergency Planning for Nuclear Power Plants." It further required that the off-site plans meet the essential requirements of NUREG-75/111 or have a favorable finding from FEMA. Item III.A.1.2 of NUREG-0694 required PGandE to have: (1) an interim on-site Technical Support Center with satisfactory space, display, and communications capabilities, (2) an on-site Operational Support Center which is separate from, while having communication to the Control Room, and (3) an interim off-site Emergency Operation Facility with communication to the plant.

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<sup>1/</sup>See NUREGs-0578, -0585, and -660.



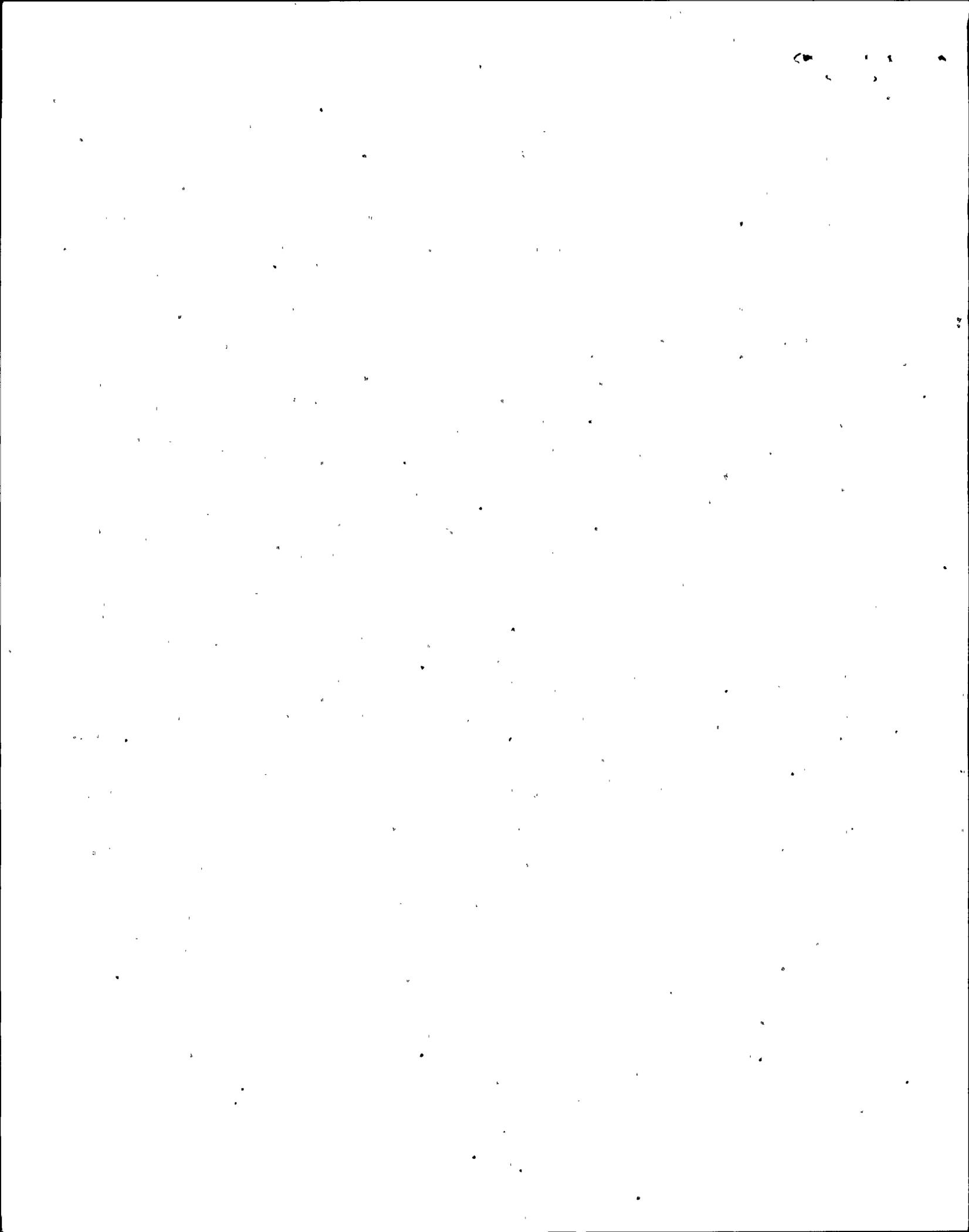
As noted by the NRC Staff in SER Supplement 10 issued in August, 1980, at pages III.A-1 to III.A-5, PGandE met these requirements. Additionally, the Staff concluded at pages III.B-1 to III.B-3 that the requirements of III.A.1.1 were also met since PGandE's site emergency response plan met the then existing requirements of Appendix E to 10 C.F.R. Part 50 and conformed to the requirements of Revision 1 to Regulatory Guide 1.101. (See attached affidavit of Mr. Shiffer) Moreover, since the California Emergency Response Plan had been concurred in by NRC, it was determined that state and local off-site plans met the requirements of NUREG-75/111 and, hence, the NUREG-0694 requirements.<sup>2/</sup>

Subsequently, the NRC issued NUREG-0737 which incorporated the additional emergency planning requirements of the revised 10 C.F.R. Part 50 (August 19, 1980) and NUREG-0654 Revision 1 (October, 1980).

In SER Supplement 12, issued March 4, 1981, the Staff determined after review that PGandE's Site Emergency Response Plan Revision 2, substantially met the requirements of NUREG-0654 and, accordingly, was satisfactory for low power testing. The Staff noted that the off-site plans (state and county) do not currently meet NUREG-0654 Revision 1 requirements, though they are in the process of being revised and upgraded and would be completed later in the year (1981). The NRC Staff concluded in SER Supplement 12 at pages III-1

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<sup>2/</sup>NRC and FEMA jointly agreed that the level of emergency preparedness for the Diablo Canyon facility (site, state, and local) was sufficient to allow fuel load and low power testing.



to III-3 that for low power operation, the overall state of emergency preparedness for Diablo Canyon was sufficient even though it did not meet all the requirements of NUREG-0654 Revision 1. The Staff technical position was premised on the conclusion that the low fission inventory and decay heat rate reduced the public risk due to fuel loading and low power testing by a factor of from about 400 to 3000 compared to full power operation.

PGandE has reached a similar conclusion by consideration of potential accident consequences which might occur during low power testing. As is amply demonstrated by the analyses presented in the attached affidavits of James D. Shiffer, William K. Brunot, and David K. Goeser, the calculated doses due to the postulated LOCA's at the site boundary and the LPZ boundary are within the exposure criteria of the state and federal government for members of the public of .5 to 5 rem total body or 5-25 rem thyroid with the lower values preferred. Moreover, Mr. Goeser stated that in the more likely small break LOCA the core would remain covered for up to six (6) hours even without any operative action to remedy the situation. Clearly, this gives sufficient time to notify public officials and initiate on-site and off-site corrective and protective actions.

It is readily apparent that the risk to the public is small in that in an accident at power levels less than 5%, exposures within the LPZ would not exceed dose criteria for emergency planning which have been established for full power operation for distances out to 30 miles.



Joint Intervenors appear to argue that all the requirements of 10 C.F.R. Part 50 and NUREG-0654 must be met before fuel load and low power operation. As support for that position, they cite among other things the provisions in Enclosure 2 to NUREG-0737 as well as 10 C.F.R. Part 50.47(b). However, they fail to acknowledge the provisions of 10 C.F.R. Part 50.47(c)(1) which provides that an applicant may demonstrate to the Commission that any deficiencies in the on-site and off-site emergency response plans are not significant for the plant in question and, hence, plant operation or issuance of any operating license may be permitted.<sup>3/</sup>

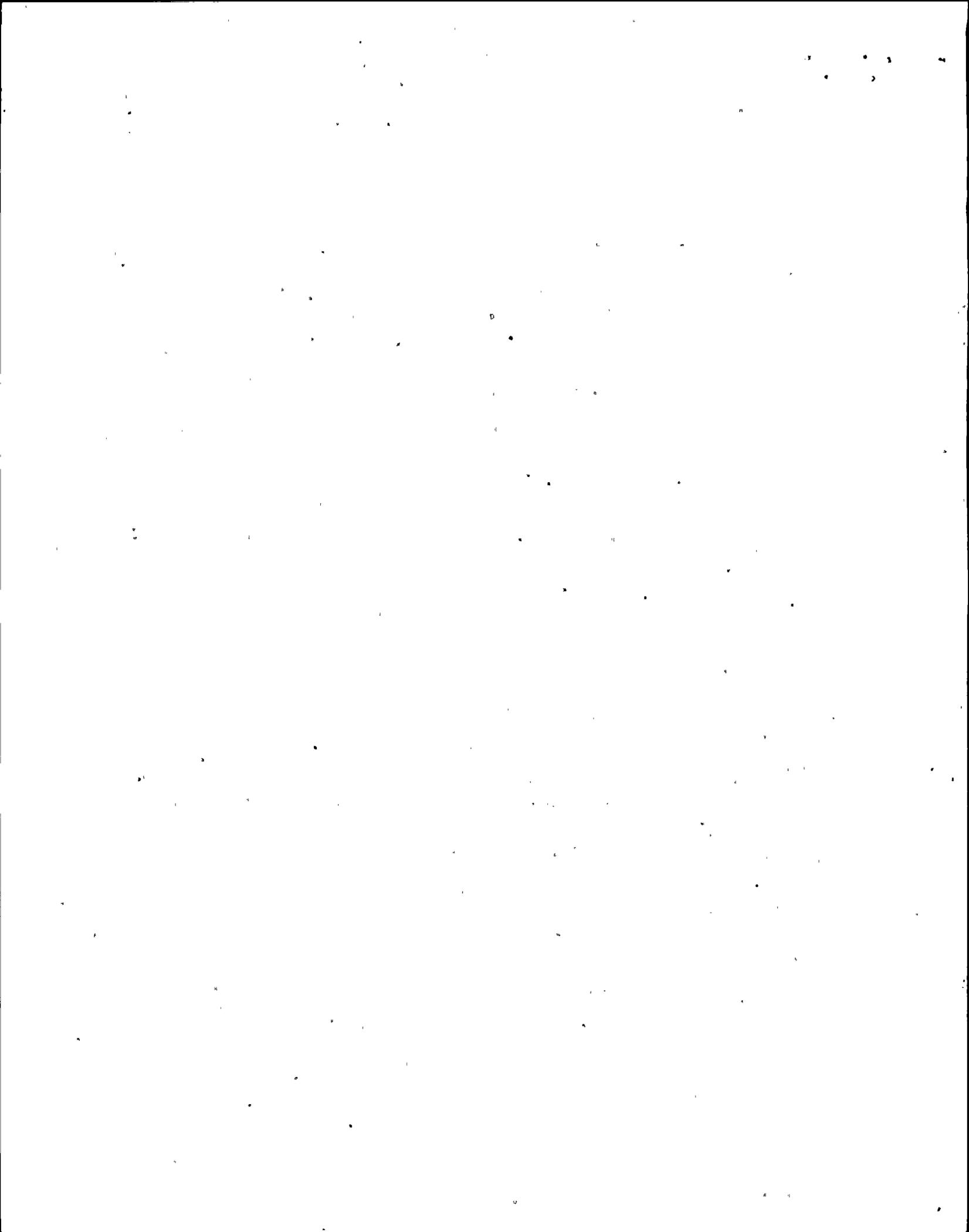
Section 50.47(c)(1) manifestly provides the regulatory authority to support the Staff determination that low power operation of Diablo Canyon should be permitted even though all the current emergency planning requirements (NUREG-0654) for full power operation are not yet in place.<sup>4/</sup>

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<sup>3/</sup>See also Section 109(a)(2) of P.L. 96-295 (94 Sta. 784) which provided that if an emergency preparedness plan which complies with the Commission's guidelines is not in effect the Commission is authorized to issue an operating license if it determines that ". . . there exists a state, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility."

<sup>4/</sup>Further support for this position is found in footnote 9 to the Commission's Statement of Policy of December 18, 1980 (45 Fed. Reg. 85236), which provides as follows:

"Consideration of applications for an operating license should include an entire list of requirements unless an applicant specifically requests an operating license with limited authorization (e.g., fuel loading and low power testing)."



PGandE's request for authorization to load fuel and conduct low power testing is similar to those requests recently granted by the Commission for the Sequoyah, Salem, North Anna, Farley, and Maguire facilities under the old emergency planning criteria. We submit that the necessary level of emergency preparedness is currently in place to adequately respond to radiological emergencies in the highly unlikely event that any should occur during low power testing at Diablo Canyon.

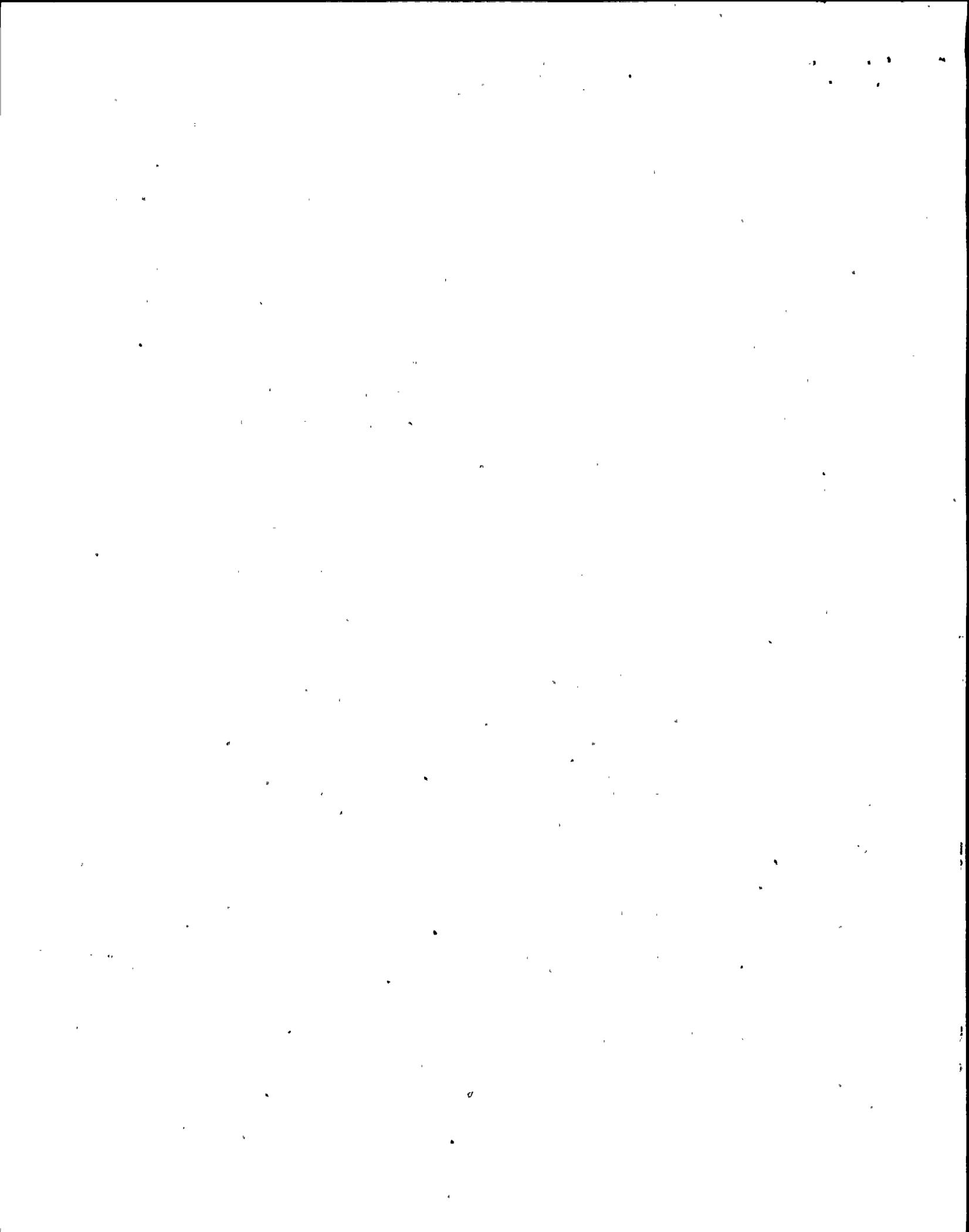
PGandE acknowledges that for a full power license, NUREG-0737, 10 C.F.R. Part 50 Appendix E, and NUREG-0654 must be substantially complied with, and PGandE is actively engaged in finalizing an upgraded site emergency plan and working with state and local authorities to upgrade these emergency plans to meet NUREG-0654 requirements.<sup>5/</sup>

C. Contention 11

Contention 11. The Applicant has proposed simply to add the pressurizer heaters to the on-site emergency power supplies. It has not been demonstrated that this will not degrade the capacity, capability and reliability of these power supplies in

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<sup>5/</sup>We are informed and believe that a revised California Emergency Response Plan meeting the requirements of 10 C.F.R. Part 50 and NUREG-0654 Revision 1 was completed on or about March 22, 1981. Additionally, we are informed and believe that a draft revised San Luis Obispo County Emergency Response Plan meeting the revised emergency response criteria of NUREG-0654/FEMA REP-1 will be completed and submitted to the San Luis Obispo County Board of Supervisors on or before May 17, 1981.



violation of GDC 17. Such a demonstration is required to assure protection of public health and safety.

The contention argues that in implementing the requirements of item II.E.3.1 of NUREG-0737 it hasn't been demonstrated that the capacity, capability and reliability of the emergency power supplies will not be degraded in violation of GDC 17. The attached affidavits of Messrs. Hoch and Shiffer directly contravene the conclusion of Contention 11. As stated in that affidavit:

"PGandE's design for providing power to the pressurizer heaters from the emergency power supply is not in violation of GDC-17 since it does not jeopardize the capability of the emergency power supply of fulfilling its safety function of ". . . providing sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents," as stated in GDC 17.

"Further, PGandE's design does not violate the GDC 17 requirement that "the onsite electric power supplies, including the batteries, and the onsite electrical distribution system, shall have sufficient independent, redundancy, and testability to perform their safety functions assuming a single failure," as stated in GDC 17. Consequently the addition of the pressurizer heaters to the emergency power supply will not degrade the capacity, capability and reliability of these power supplies in violation of GDC 17 at the time required for heater operation."

Contention 11 is nothing more than a bald assertion. It is not based upon any facts and is totally conclusionary in nature. There are no facts, material or otherwise, before this Board to warrant a decision



other than to summarily dismiss the contention.

D. Contention 13

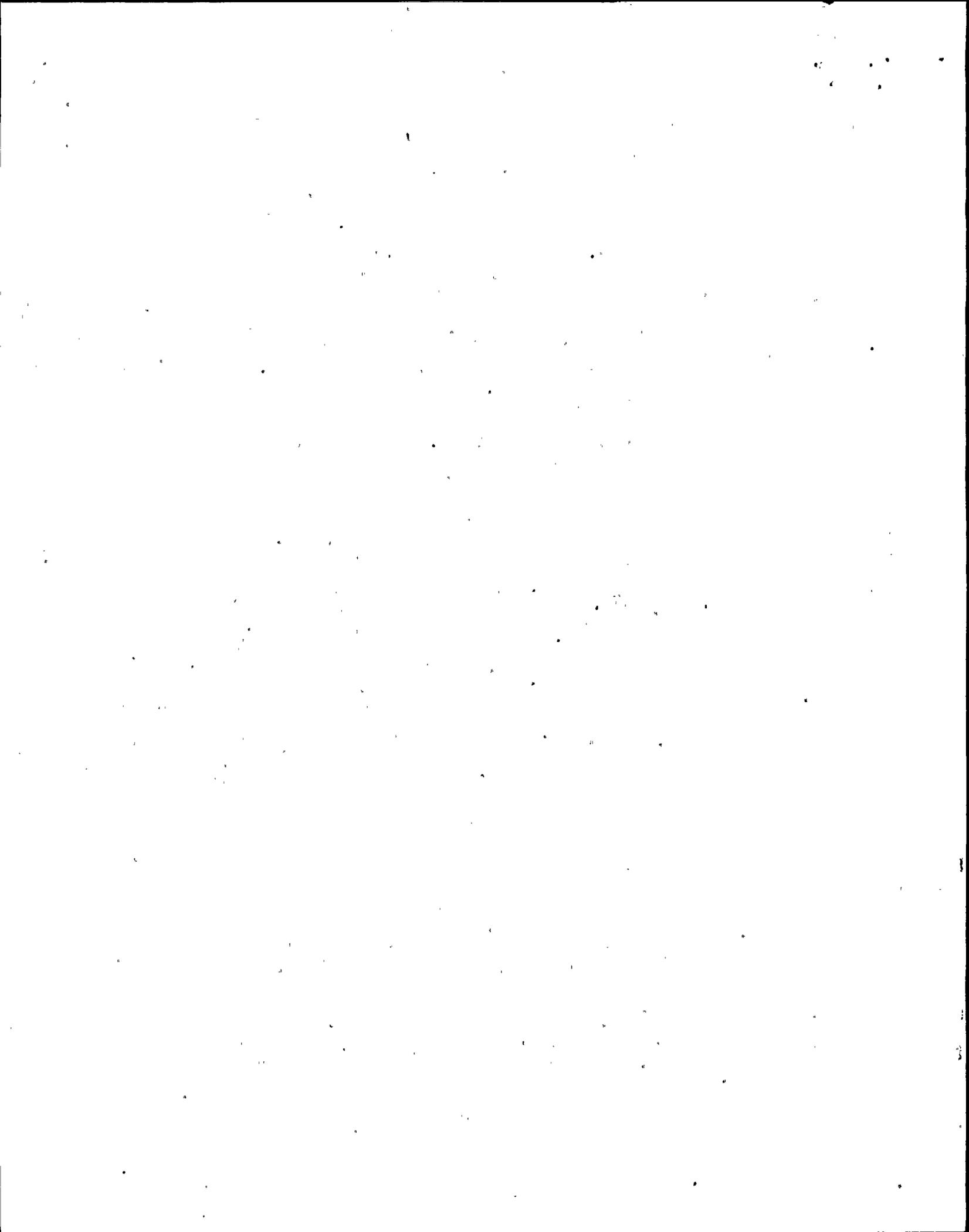
Contention 13. NRC regulations require instrumentation to monitor variables as appropriate to ensure adequate safety (GDC 13) and that the instrumentation shall directly measure the desired variable. IEEE 279, §4.8, as incorporated in 10 CFR 50.55a(h), states that:

"To the extent feasible and practical protection system inputs shall be derived from signals which are direct measures of the desired variables."

Diablo Canyon has no capability to directly measure the water level in the fuel assemblies. The absence of such instrumentation delayed recognition of a low-water level condition in the reactor for a long period of time. Nothing proposed by the Staff would require a direct measure of water level or provide an equivalent level of protection. The absence of such instrumentation poses a threat to public health and safety.

It is important here to look very carefully at this Board's February 13, 1981 ruling on Contention 13. The Board stated:

"This contention raises an issue which is clearly TMI-related, and is included in NUREG-0737 (II.F.2) as an action item. As presented, the contention lacks specificity, as there is no argument among the parties that a water level indication will be required. During discussion of the contention (Tr. 258-252) it was revealed that the Intervenor's concern was that



installation of the indicator would not be required until 1/1/82, rather than before fuel loading and low power testing. With that understanding the Board accepts contention #13 as a litigable issue."

If indeed the sole issue is whether the indicator would not be required until 1/1/82 rather than before fuel loading then there is no issue. As set forth in the affidavit of Messrs. Hoch and Shiffer, Item II.F.2 of NUREG-0737 will be complied with prior to full load.

"To fulfill the requirements of item II.F.2 of NUREG-0737, PGandE will install two other types of instrumentation to aid in determining the approach of ICC. This instrumentation includes 1) a subcooling Margin Meter and 2) a Reactor Vessel level Instrumentation System (RVLIS), both of which will be installed prior to fuel load. (emphasis added)

"The combination of the above described instruments, procedures, and training will provide assurance that the requirements of item II.F.2 of NUREG-0737, for an unambiguous and easy to interpret indication of ICC, will be met." (Hoch and Shiffer affidavit.)

Joint Intervenors and Governor Brown, however, are apparently choosing to ignore the Board's interpretation of Contention 13. In their answers to Applicant and Staff interrogatories Joint Intervenors and Brown argue that the systems being installed by Applicant under item II.F.2 are not "direct" measurements in contravention of NRC regulations. Even though this argument is not even permissible under the Board's ruling on Contention 13, it is easily disposed of. First, IEEE 279, 54.8, as incorporated in 10 C.F.R. §50.55a(h) states that:



"To the extent feasible and practical protection system inputs shall be derived from signals which are direct measures of the desired variables."

Item II.F.2 of NUREG-0737 provides that the Applicant

"shall provide a description of any additional instrumentation or controls (primary or backup) proposed for the plant to supplement existing instrumentation (including primary coolant saturation monitors) in order to provide an unambiguous, easy-to-interpret indication of inadequate core cooling (ICC)."

As quoted above from the Hoch and Shiffer affidavit, Applicant will have additional instrumentation, including a reactor vessel level system, operating procedures, and training all in place and operable prior to fuel load which will provide assurance that there will be an unambiguous and easy to interpret indication of approach to ICC. Summary disposition is appropriate for contention 13.

E. Contention 24

Contention 24. Reactor coolant system relief and safety valves form part of the reactor coolant system pressure boundary. Appropriate qualification testing has not been done to verify the capabilities of these valves to function during normal, transient and accident conditions. In the absence of such testing and verification, compliance with GDC 1, 14, 15 and 30 cannot be found and public health and safety are endangered.

As with contention 13, the Board clarified contention 24 as follows:



"NUREG-0737, at II.D.1, sets out test schedules for relief valve, safety valve and block valve tests. The RV and SV tests must be completed before fuel load. However, the block valve tests completion schedule is for before fuel loading or 7/1/82, whichever is later. Intervenors believe that all these tests should be completed prior to fuel loading, and that the NUREG-0737 requirements are not sufficient in this manner. (Tr. 250-258) With this understanding by the Board, the contention is accepted."

Again, Joint Intervenors make nothing more than a conclusory statement. A review of Joint Intervenors and Brown answers to Staff and Applicant interrogatories and requests for admissions show them to be similarly conclusory in nature. The attached affidavit of Mr. Hoch sets forth the salient and material facts as respects this contention. The valves specific to Diablo Canyon are undergoing testing pursuant to the requirement of item II.D.1 of NUREG-0737. The specific Diablo Canyon valves tested to date have passed. The valves specific to Diablo Canyon have been designed to all applicable industry and regulatory codes and standards. This Board may take judicial notice of the fact that reactor coolant system relief and safety valves are currently in use in operating nuclear plants throughout the country. One must assume the Commission, in promulgating NUREG-0737, was aware of that fact also. For intervenors to argue that a long-term, generic, industry wide test program must be completed and verified on the valves in question prior to their use at Diablo Canyon during low power testing is simply without a substantive basis. There is no evidence before this Board to indicate that the valves in use at Diablo Canyon will



not perform as designed or that their use in any way presents a threat to the public health and safety.

III. CONCLUSION

For the reasons set forth in this Motion for Summary Disposition and the attached Memorandum of Points and Authorities and supporting affidavits; it is respectfully submitted that Contentions 4, 5, 11, 13 and 24 be summarily dismissed.

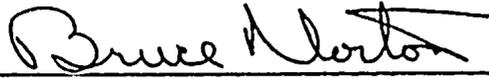
Respectfully submitted,

MALCOLM H. FURBUSH  
PHILIP A. CRANE, JR.  
Pacific Gas and Electric Company  
77 Beale Street  
San Francisco, California 94106  
(415)781-4211

ARTHUR C. GEHR  
Snell & Wilmer  
3100 Valley Center  
Phoenix, Arizona 85073  
(602)257-7288

BRUCE NORTON  
Norton, Burke, Berry & Junck  
3216 N. Third Street  
Suite 300  
Phoenix, Arizona 85012  
(602)264-0033

Attorneys for  
Pacific Gas and Electric Company

By   
Bruce Norton

DATED: April 3, 1981.

