

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

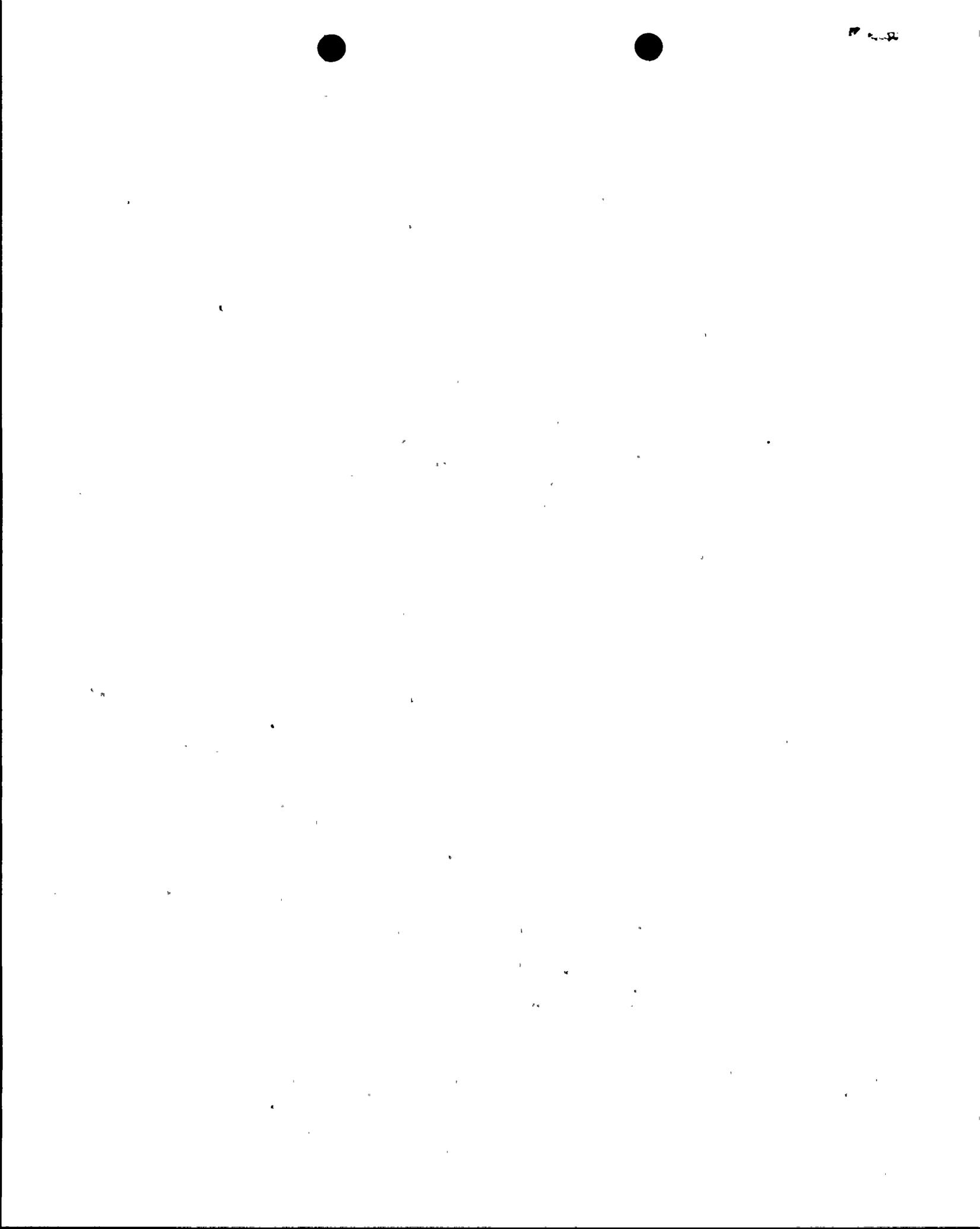
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

RESPONSE OF EDMUND G. BROWN, JR.,
GOVERNOR OF THE STATE OF CALIFORNIA,
TO PACIFIC GAS AND ELECTRIC COMPANY'S MOTION
RESPECTING THE GOVERNOR'S PARTICIPATION IN THIS PROCEEDING

Pacific Gas & Electric Company ("PG&E"), in a Response and Motion dated November 5, 1979, requests this Board either (1) to deny Governor Brown the opportunity to participate in this proceeding as representative of an interested state pursuant to Section 274(1) of the Atomic Energy Act, as amended ("Act"), and Section 2.715(c) of the Nuclear Regulatory Commission's ("NRC") Regulations thereunder, or (2) to require the Governor, should this Board afford him the opportunity to participate in this proceeding, "to state with specificity, and within fifteen (15) days [after such permission is granted], the subject matters on which he desires to participate and the issues he intends to raise."

PG&E's Response and Motion should be rejected and denied for the following reasons:



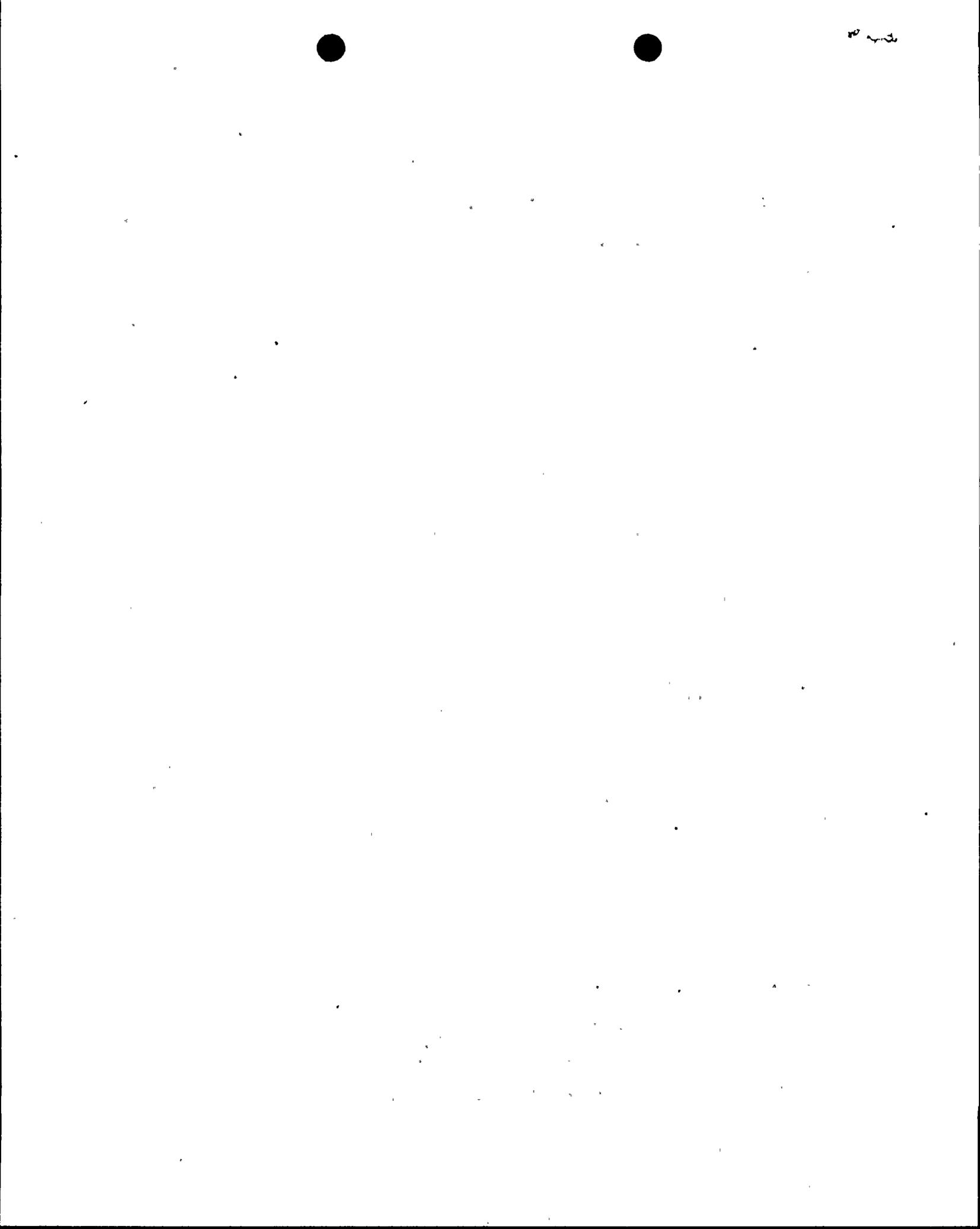
(1) Section 274(1) of the Act and Section 2.715(c) of the NRC's Regulations establish the right of representatives of an interested state to enter and participate in licensing proceedings. California, the site of the subject nuclear power plants, is an interested state; and Governor Brown, the state's elected chief executive, is a qualified representative. The full requirements of the Act and Regulations are thus satisfied, and in such case Section 2.715(c) provides that the Board "will" permit participation.

Nevertheless, PG&E asks this Board to create a new requirement for participation by an interested state: namely, a timeliness requirement. Thus, PG&E states (at page 2 of its Response and Motion):

Although the Commission's Rules of Practice do not provide a specific time by when a petition to participate under Section 2.715(c) must be filed, Applicant submits, based on the language that representatives of an interested State need only be afforded a "reasonable opportunity" to participate, that a petition not filed within a reasonable time may be denied.

PGE's proposed interpretation of Section 2.715(c) conflicts with the language and intent of the Regulations. Indeed, whereas Section 2.714 of the Regulations, which governs intervention of parties, contains a timeliness requirement, Section 2.715(c), which governs the instant situation, does not.

PG&E's effort to fashion such a requirement by extravagantly

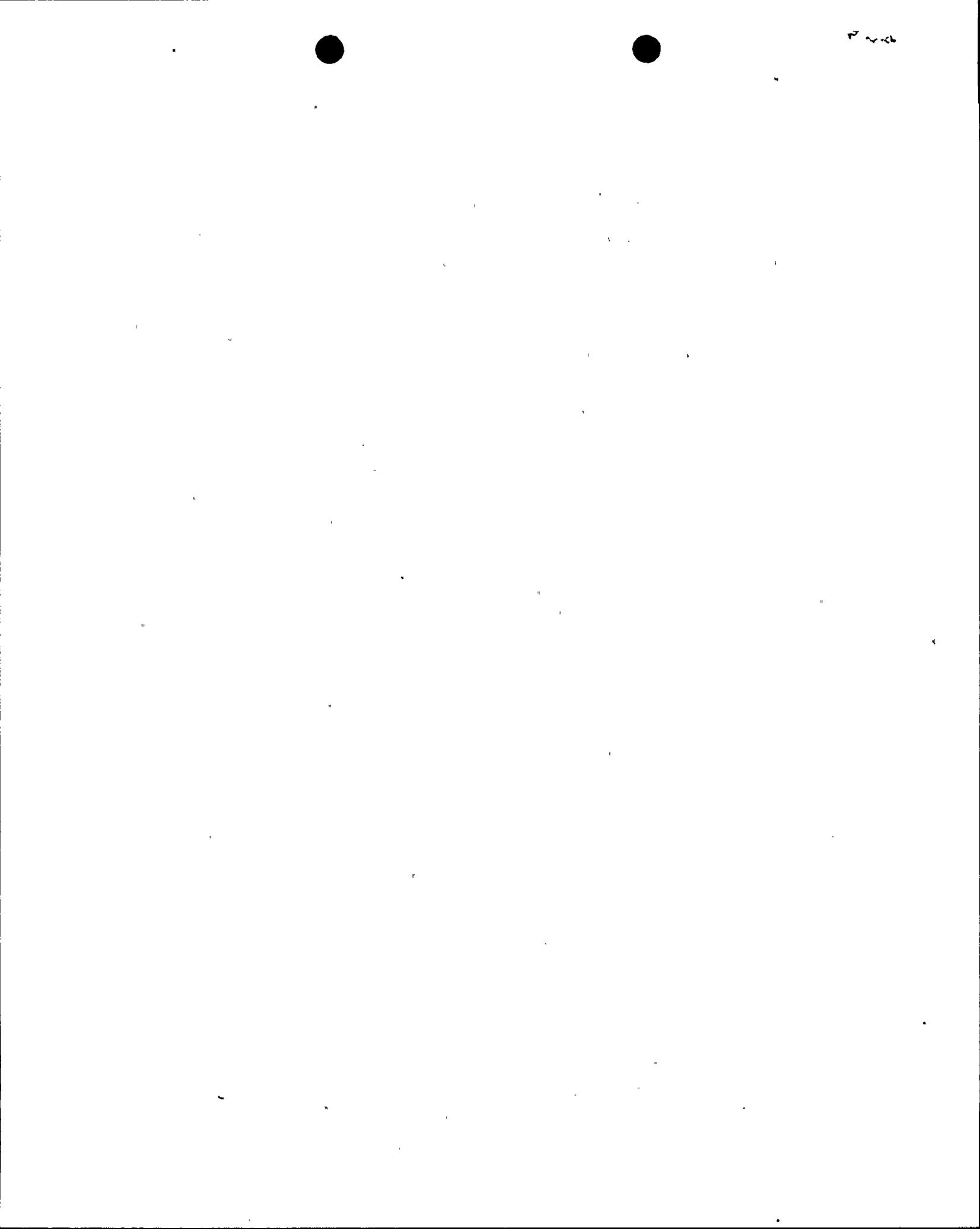


construing the language of Section 2.715(c) vitiates the clear meaning of this Section and defeats Congress' intent to foster Federal-State comity under Section 274 of the Act.

Governor Brown's participation in this proceeding, even if there were a threshold of timeliness in Section 2.715(c), would still be proper and desirable in light of recent events. The recent accident at Three Mile Island has revealed various shortcomings and lessons for the NRC, the nuclear industry, and the states, including the serious need for effective emergency response planning and for proven capabilities to act decisively in an emergency. And, the report of the Kemmeny Commission, the hearings before Congressional committees, and the NRC's own investigations have underscored the critical importance of licensing proceedings in considering safety-related issues. These recent events are clearly legitimate predicates for interest by a Governor in the very regulatory proceeding which concerns the licensing of nuclear power plants in his state.

Accordingly, PG&E's request that this Board deny Governor Brown the opportunity to participate in this proceeding should be rejected.

(2) The procedural obligations of a representative of an interested state do not include any requirement to identify issues of concern within 15 days of entering a proceeding. PG&E's Response and Motion calls upon this Board to re-write the Act and Regulations by imposing such a pre-condition on

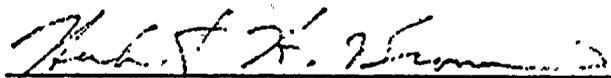


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the participation of Governor Brown. PG&E's request is devoid of any basis in law and should accordingly be denied.

(3) Finally, PG&E states (at page 2 of its Response and Motion) that this proceeding is "nearly complete." The facts, however, do not square with this statement. Indeed, not only are important appellate procedures underway within the NRC, but hearings on emergency response planning, quality assurance, TMI-related concerns, and other issues are yet to be held. Governor Brown, in his capacity as a participant under Section 2.715(c), will participate in these matters in accordance with the procedural rights afforded by NRC Regulations and this Board's directives for the conduct of orderly process, including the practical need to state issues or contentions with adequate specificity at the appropriate stage of this proceeding.

Respectfully submitted,



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November 15, 1979

