

04/13/81



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 )  
Unit Nos. 1 and 2 )

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

RESPONSE TO MOTION TO REOPEN

INTRODUCTION

The record in the Diablo Canyon Nuclear Facility full power proceeding, as discussed in the background section below, is presently closed. On March 24, 1981 the San Luis Obispo Mothers for Peace, Scenic Shoreline Preservation Conference, Inc., Ecology Action Club, Sandra Silver, Gordon Silver, Elizabeth Apfelberg, and John Forster ("Joint Intervenors") filed pursuant to 10 CFR §2.718(j) a Motion to Reopen the record in the Diablo Canyon full power proceeding to consider 17 contentions put forth in the motion. The NRC Staff opposes the March 24, 1981 Motion to Reopen.

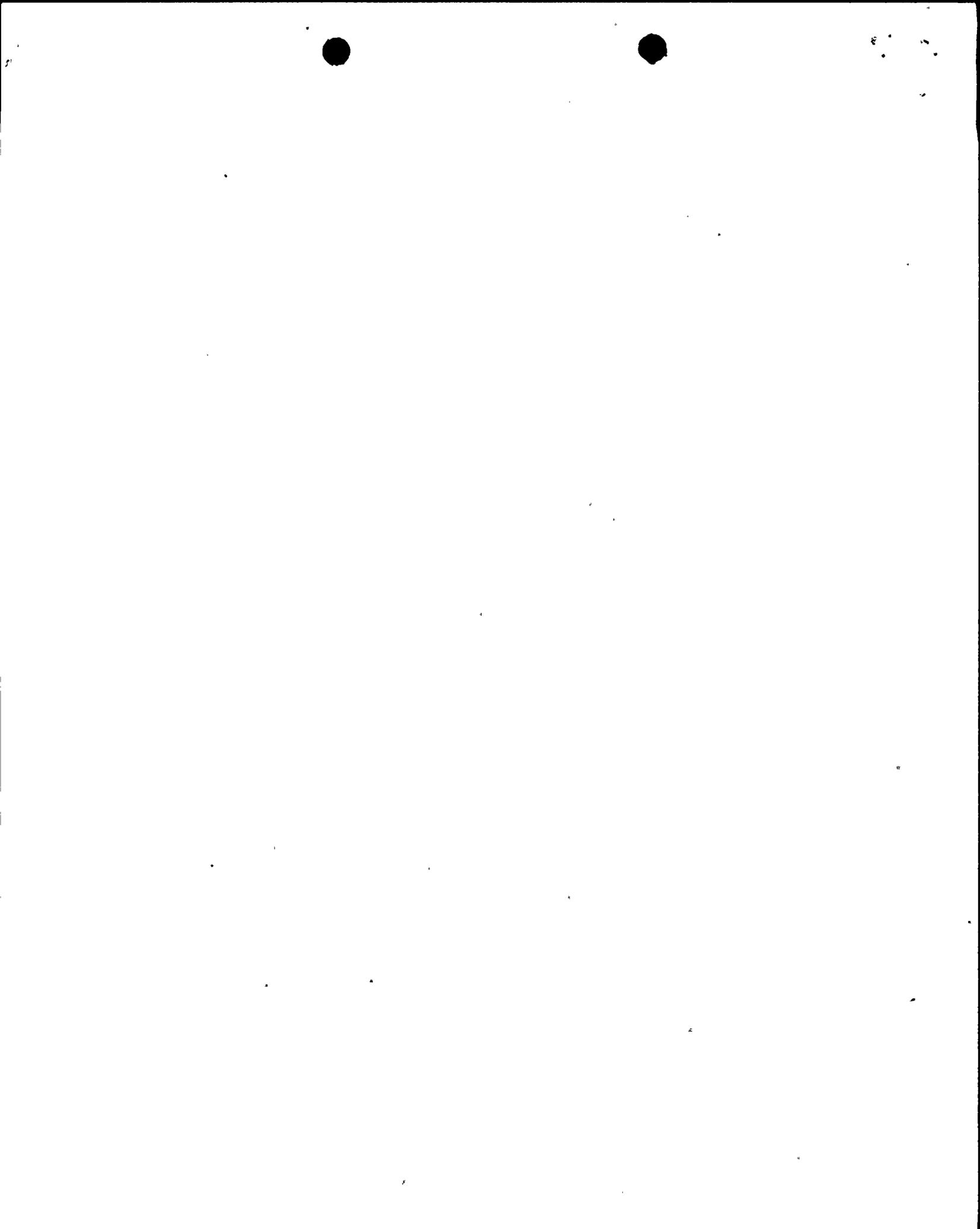
BACKGROUND

The Diablo Canyon proceeding is a contested operating license proceeding which commenced after applications were docketed in 1973. The Licensing Board completed all required hearings in February 1979 and closed the evidentiary record on March 12, 1979. The Licensing Board resolved some of the safety issues in a Partial Initial Decision issued September 27, 1979. Decision on other issues was deferred pending receipt of the Staff's report on TMI-related matters. The Staff's report is now documented in SER supplements 10 and 14 and deferral is no longer

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necessary. Following appeal of the Licensing Board's September 27, 1979 decision, the Appeal Board reopened the record on two issues: the adequacy of PG&E's security plan and the effect, if any, of the new information concerning near field accelerations arising from the 1979 Imperial Valley Earthquake on the seismic design testimony in the record. Joint Intervenors filed a motion to reopen the record on the environmental consequences of Class-9 accidents and emergency planning in 1979. The Joint Intervenors based their motion on the grounds that the TMI accident had rendered the previous record inadequate. The Licensing Board issued an Order on June 5, 1979 deferring its ruling on the motion to reopen until it had received and considered the Staff's report on the implications of the TMI accident with respect to the Diablo Canyon proceeding. A year later the Nuclear Regulatory Commission issued a "Statement of Policy for Further Commission Guidance for Power Reactor Operating Licenses" dated June 20, 1980. That policy statement referenced a document dated June 1980 entitled "TMI-related Requirements for New Operating Licenses" (NUREG-0694). NUREG-0694 was subsequently superseded and clarified by NUREG-0737. On December 18, 1980, the Commission issued a revised "Statement of Policy; Further Commission Guidance for Power Reactor Operating Licenses" (CLI-80-92) (hereinafter Revised Policy Statement) which announced the Commission's approval of NUREG-0737, "Clarification of TMI Action Plan Requirements." On April 3, 1981 the NRC Staff issued SER Supplement No. 14 addressing the NUREG-0737 items applicable to Diablo Canyon. Supplement 14 completes the Staff's report on TMI matters related to full power operation of Diablo Canyon.

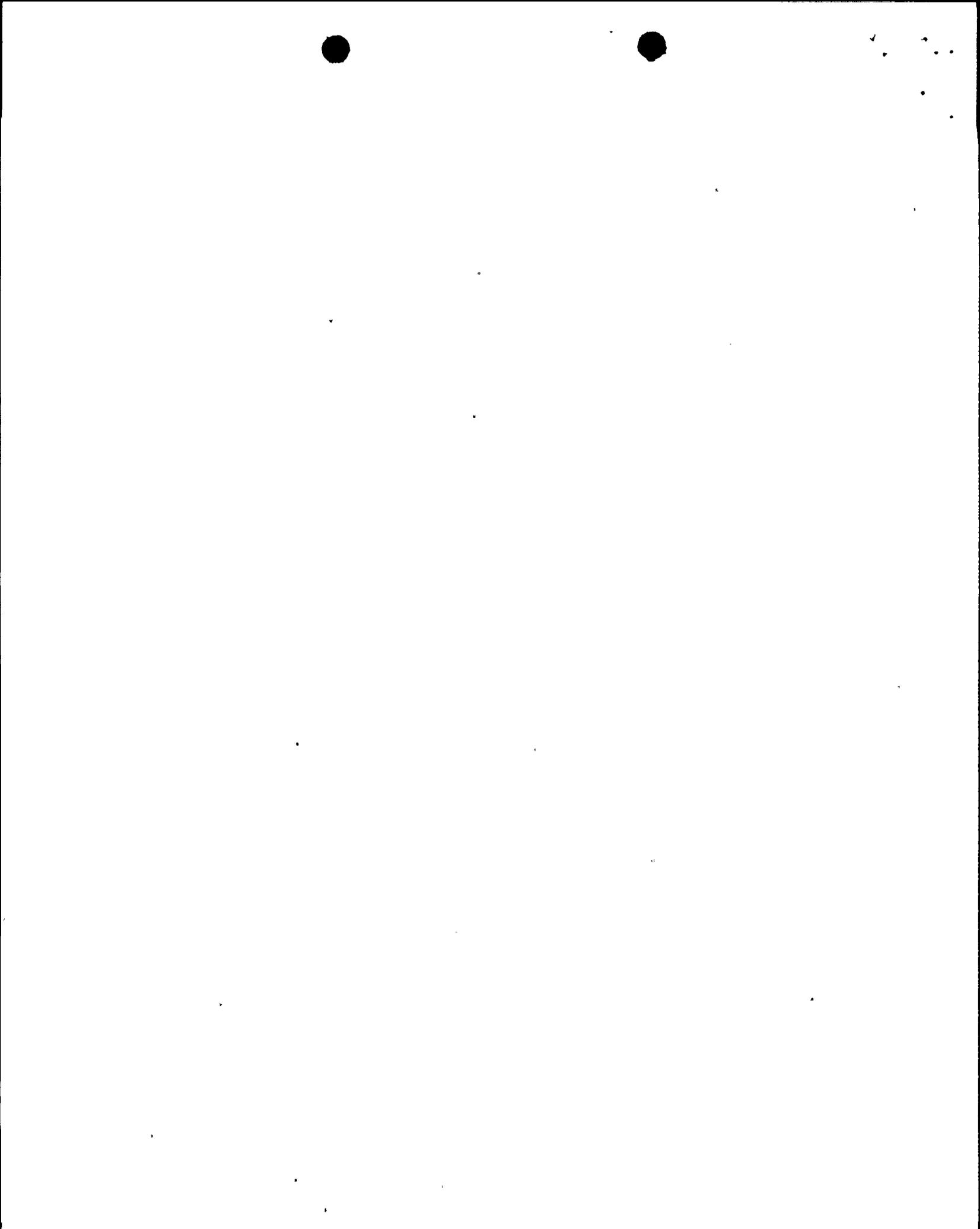


On July 14, 1980, PG&E filed a motion before the Atomic Safety and Licensing Board (ASLB) requesting authorization for fuel loading and low power testing. In December of 1980 Joint Intervenors filed contentions and Governor Brown (who was allowed in the proceeding on November 16, 1979 as an interested state after the record had closed) filed a list of "subjects" on which he desired to participate. After a Prehearing Conference the Licensing Board issued a Prehearing Conference Order on February 13, 1981 admitting 5 of Joint Intervenor's contentions and 4 of Governor Brown's subjects to the extent they raised the same issues as the admitted contentions.

On March 24, 1981 the Joint Intervenors filed a second motion to reopen the record on full power to consider additional new contentions which is the subject of this response.

#### DISCUSSION

Several points should be addressed at the outset. Joint Intervenors' original motion to reopen was timely filed following the TMI accident. That motion sought to reopen on emergency planning and Class 9 accidents. Since Joint Intervenors had a previously filed and admitted contention on emergency planning, the showing required for late-filed contentions is unnecessary although the standards for reopening the record must be met. The Class 9 issue was formerly barred by Commission rules and practice. However, whether the record should be reopened on that issue will depend upon demonstrating special circumstances. That demonstration is not possible on the current record, but the Staff has suggested deferring on this matter until the Appeal Board renders its decision on the seismic issue since the opinion on that issue may address



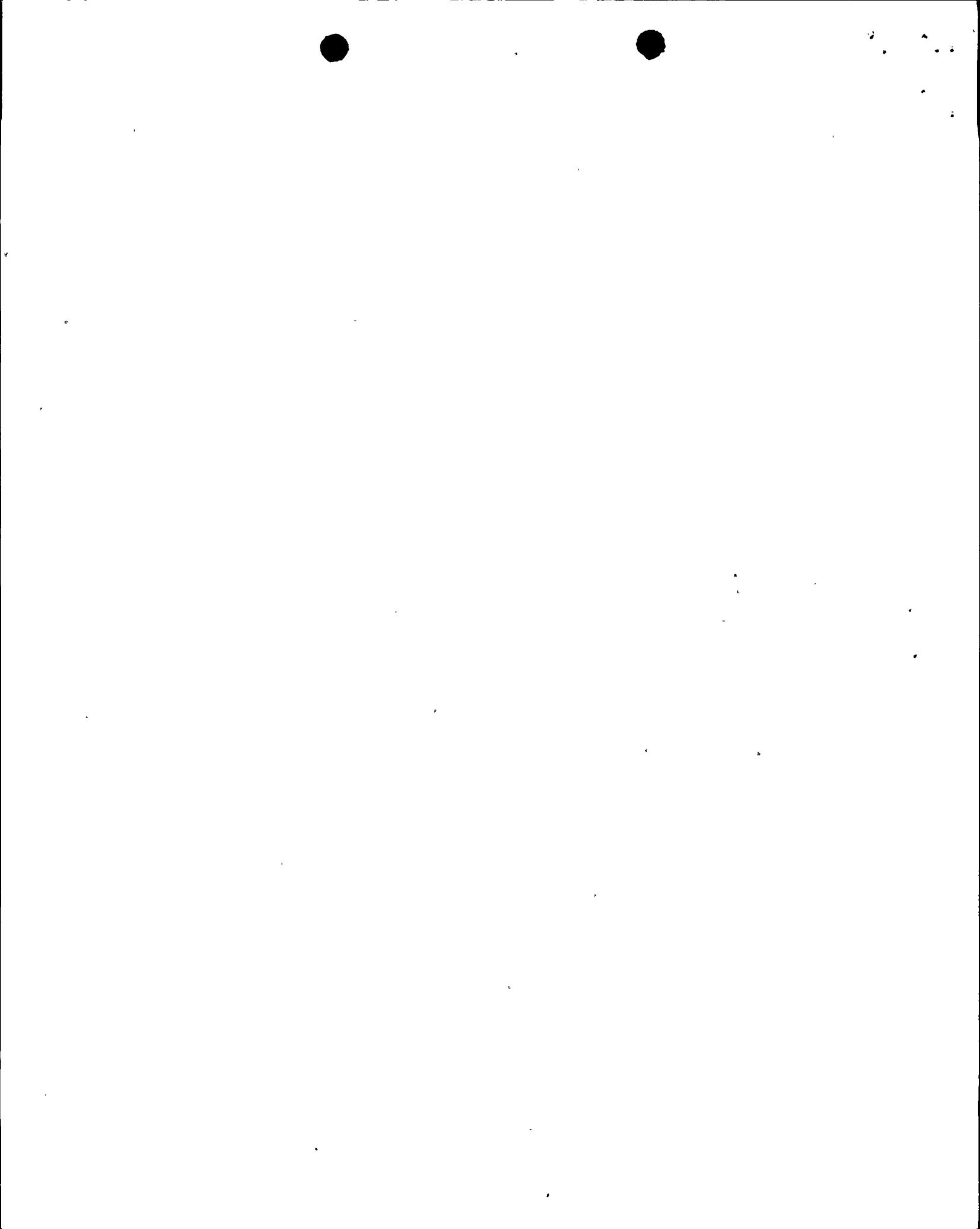
matters which Joint Intervenors may argue constitute special circumstances. While Joint Intervenors need to demonstrate significant new information which would have changed the result in order to justify reopening on Class 9 accidents and/or emergency planning, the late-filed contention requirements of §2.714 are not applicable. However, as to the other contentions Joint Intervenors now seek to raise, the requirements for late filing must be met.

Finally, Joint Intervenors' Contentions 7, 9, and 10 in the March 24, 1981 Motion to Reopen are essentially the same as Contentions 11, 24, and 13 admitted by this Board as relevant to PG&E's motion for low power authorization. To the extent this Board either grants the motion for summary disposition of these contentions or proceeds to hearing on them, the contentions will be resolved and therefore not subject to further litigation in a full power proceeding since the record will be complete and res judicata as to Joint Intervenors.

The contentions presented by Joint Intervenors to justify reopening the Diablo Canyon full power record to hold an evidentiary hearing, must meet several requirements before the Board would be justified in reopening the record.

10 CFR §2.714(b) requires that a list of 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).

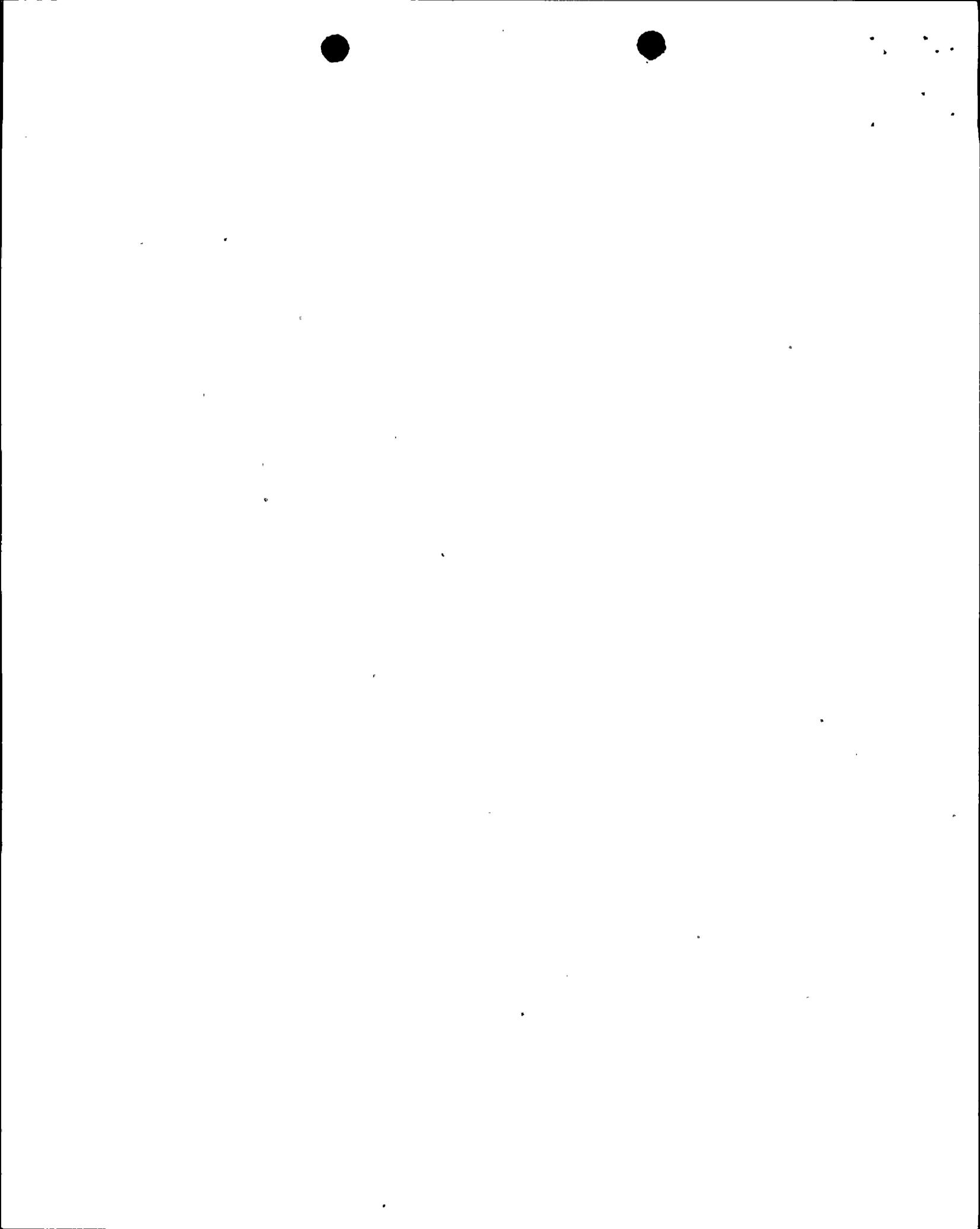
The purpose of the basis requirement of 10 CFR §2.714 is to assure that the contention in question does not suffer from any of the infirmities listed above, to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding, and to put other parties 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.

10 CFR §2.714(a) and (b) also set forth the requirements for filing late contentions. The intervenor; in order to be allowed to file late contentions, must show that a balancing of the following factors weighs in favor of allowing a late filing.

- (i) Good cause, if any, for failure to file on time;
- (ii) The availability of other means whereby the petitioner's interest will be protected;
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden issues or delay the proceeding.

10 CFR §2.714(a)(1).

Since the time for filing contentions has past in the Diablo Canyon proceeding, Joint Intervenors will have to demonstrate that the above

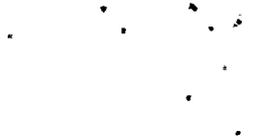


factors for late filing weigh in favor of allowing them to file late contentions.

Finally, if the above requirements are met, so that potentially valid contentions exist, the Joint Intervenors must still meet the requirements for reopening a closed record, as the Diablo Canyon full power licensing record is presently closed. The test for reopening a closed record is 1) there must be significant new information and 2) that information must be such as would have changed the result if considered originally. Kansas Gas & Electric Co. et al. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978).

The Commission has recently affirmed the above process for admitting TMI-related contentions in the Diablo Canyon operating license proceeding. Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2) CLI-81-5, (1981). In that Order the Commission also clarified how contentions related to NUREG-0737 were to be treated under the Revised Policy Statement.

The Commission noted that an intervenor may challenge compliance with the NUREG-0737 items or the sufficiency of an item in NUREG-0737. However, the Commission noted, in challenging the sufficiency of an item in NUREG-0737 the intervenor must focus on the same safety concern as the NUREG item. If the challenge to the NUREG-0737 item does focus on the same safety concern, the proponent of the contention may rely on the information in the NUREG to satisfy the "significant new information" portion of the requirement for reopening the record. The proponent must still show that the information would have changed the initial result if originally considered. If the contention does not focus on the same safety concern



as the NUREG-0737 item(s) the proponent of the new contention must show both that the information is significant and that it would have changed the initial result if originally considered. CLI-81-5 at p. 5-6.

With the above standards in mind an examination of each of the individual contentions proposed by Joint Intervenors reveals they have not made the required showing with respect to any of their new contentions. Therefore the full power record should remain closed and a decision on full power issued as soon as reasonably possible.

Joint Intervenors Contention 1 reads:

1. The Applicant has failed to demonstrate compliance at Diablo Canyon with 10 C.F.R. Part 50, Appendix B, regarding quality assurance.

As indicated by Joint Intervenors in their discussion of this contention, evidence has already been taken on the Quality Assurance issue prior to the closing of the Diablo Canyon record. Joint Intervenors have failed to present adequate evidence to justify reopening the Diablo Canyon record to again consider Quality Assurance issues.

The Joint Intervenors have failed to show the existence of significant new information on quality assurance as regards Diablo Canyon. The reciting of the word "TMI" is not some magic formula to make any information significant. The Joint Intervenors must show some significance to the plant in question. This they have failed to do. Stating that there was some quality assurance problem at TMI does not indicate that there is any such problem at Diablo Canyon.

Secondly, the Joint Intervenors have not shown that the information they put forward as significant would change the result of the initial decision. In fact, their "evidence" as regards the April 17, 1980 letter



from Richard Locke simply demonstrates that the quality assurance program is working by identifying problems to be corrected. The intervenors have in no way demonstrated by their contention or their elaboration that there is any evidence of a deficiency in the Diablo Canyon quality assurance program. Thus they have not presented evidence which would have changed the initial result if originally considered.

Finally, Joint Intervenors have not indicated why they are only now raising this issue as one deserving reopening. The late filed contention requirements should have been addressed. Having failed to address those requirements Joint Intervenors Contention 1 should be dismissed.

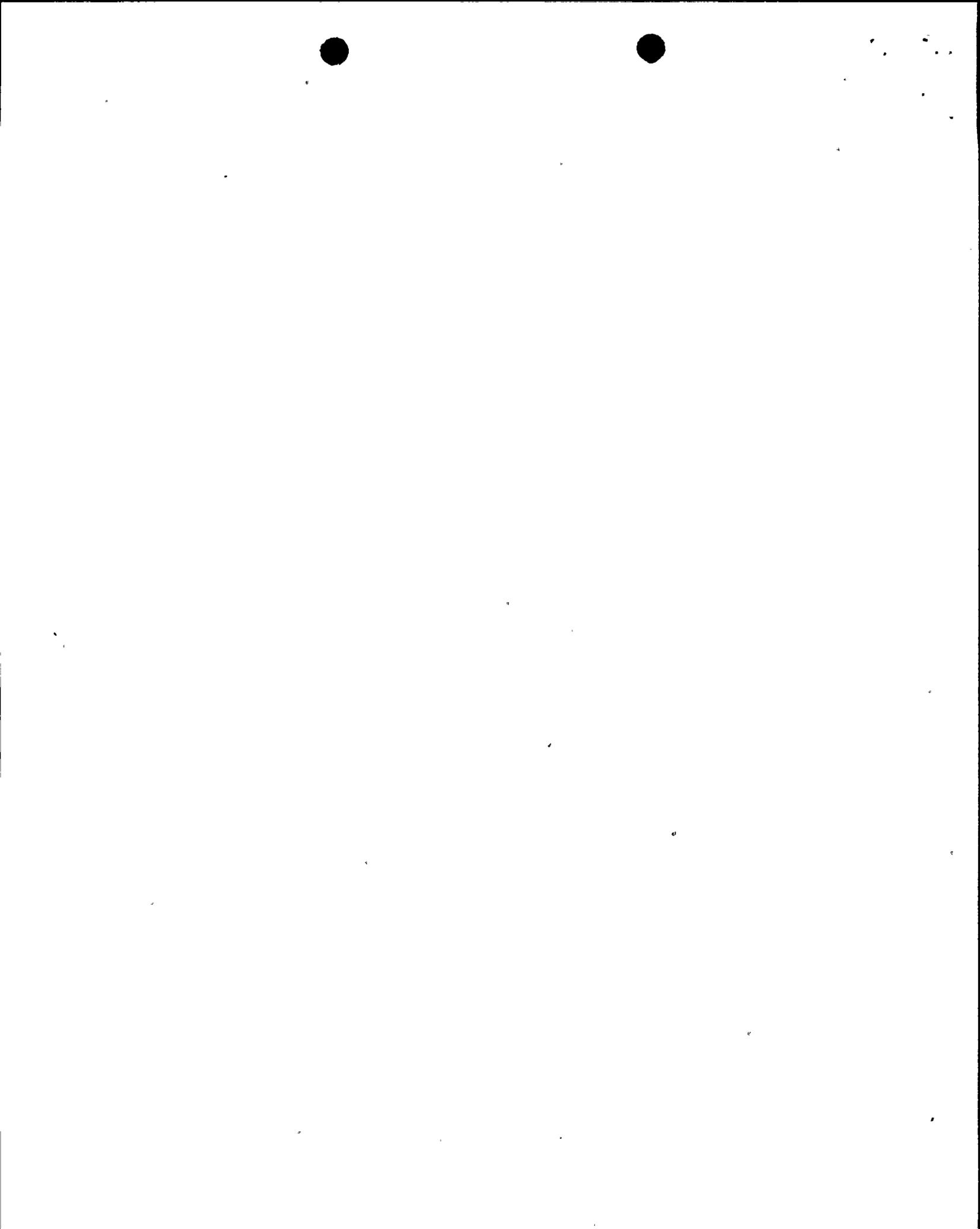
Joint Intervenors Contention 2 reads:

2. The Applicant has failed to demonstrate that the containment at Diablo Canyon can withstand pressures resulting from the combustion of hydrogen likely to be generated by the reaction of zirconium cladding with water during a loss-of-coolant accident at the facility.

Joint Intervenors Contention 3 reads:

3. The design of the hydrogen control system at TMI was based upon the assumption that the amount of fuel cladding that could react chemically to produce hydrogen would, under all circumstances, be limited to less than 5%. The accident demonstrated both that this assumption is not justified and that it is not conservative to assume anything less than the worst case. Therefore, the Diablo Canyon hydrogen control systems should be designed on the assumption that 100% of the cladding reacts to produce hydrogen.

These contentions are unrelated to any previously admitted contention in the Diablo Canyon proceeding. As such the contentions must satisfy the requirements of 10 CFR 2.714 for late filing. In the Joint Intervenor's explanation of their contentions it becomes clear that they rely on NUREG-0578 as having initially raised this issue. Under this circumstance the Joint Intervenors have not demonstrated good cause for late filing of these contentions at this time. NUREG-0578 was issued in



July of 1979, almost two years ago. The fact that other TMI related documents have issued since that time does not extend indefinitely the Joint Intervenors ability to file contentions on issues which are based on concerns identified 21 months ago. Joint Intervenors argue that, since an initial decision has not been issued in this proceeding, all these late filings are not untimely. That is not the test for admitting late filed contentions. If it were there would be lengthy delays in proceedings as intervenors think of new issues after evidentiary proceedings are closed, but prior to the issuance of an initial decision. Joint Intervenors were parties to this proceeding long before TMI occurred. Further, they have been represented by competent counsel in this proceeding. They should, therefore, have been aware of the public documents on which they rely, such as NUREG-0578 for these contentions, within a relatively short time after the documents were made public. Joint Intervenors should not be allowed to recite some NUREG-0737 item on the same issue, but which provides no new information on which Joint Intervenors base their Contentions, to justify late filing of the contentions. This is particularly true when they have shown no interest in the issue for almost two years after their basis for the contention was made public. In addition, the admission of these contentions would result in delay of the proceeding by necessitating an evidentiary hearing on them. A balancing of the factors in 10 CFR §2.714, therefore, weighs in favor of not accepting these late filed contentions. Even if these late filed contentions were accepted for the purpose of deciding whether to reopen the record, they fail to meet the tests for reopening.



The Joint Intervenors have again failed to identify any significant new information about Diablo Canyon. They request that PG&E be required to demonstrate the ability of the containment to withstand certain highly speculative situations. The burden is on Joint Intervenors, however, to demonstrate there is some significant new information relating to Diablo Canyon. They have failed to identify even one possible deficiency at Diablo Canyon, and in fact acknowledge that Diablo Canyon has internal recombiners to deal with the particular circumstances Joint Intervenors are concerned with. They have not identified any new information which indicates a safety problem or shortfall at Diablo. Under these circumstances not only have they failed to satisfy the specificity requirements of 10 CFR §2.714 by not identifying their problem with the Diablo Canyon facility, but they have failed to make any showing that the new information would have changed the initial result if originally considered. The Joint Intervenors, therefore, in addition to filing late and lacking specificity in their contentions, have failed to satisfy the requirements for reopening and these contentions should be dismissed.

Contentions 4 and 5 read:

4. The accident at TMI Unit 2 demonstrated that reliance on natural circulation to remove decay heat is inadequate. During the accident, it was necessary to operate at least one reactor coolant pump to provide forced cooling of the fuel. However, the cooling systems at Diablo Canyon do not provide a reliable method for forced cooling of the reactor in the event of a small loss-of-coolant accident ("LOCA"), particularly with regard to two-phase flow and with voids such as occurred at TMI-2. This is a threat to health and safety and a violation of both General Design Criterion ("GDC") 34 and GDC 35 of 10 C.F.R., Part 50, Appendix A.
5. Using existing equipment at Diablo Canyon, there are three principal ways of providing forced cooling of the reactor: (1) the reactor coolant pumps; (2) the residual heat removal



system; and (3) the emergency core cooling system in a "bleed and feed" mode. None of these methods meets the NRC's regulations applicable to systems important to safety and is sufficiently reliable to protect public health and safety:

- a. The reactor coolant pumps do not have an adequate on-site power supply (GDC 17), their controls do not meet IEEE 279 (10 C.F.R. 50.55a(h)) and they are not adequately qualified (GDC 2 and 4).
- b. The residual heat removal system is incapable of being utilized at the design pressure of the primary system.
- c. The emergency core cooling system cannot be operated in the bleed and feed mode for the necessary period of time because of inadequate capacity and radiation shielding for the storage of the radioactive water bled from the primary coolant system.

These contentions are unrelated to any previously admitted contention in the Diablo Canyon proceeding. As such the contentions must satisfy the requirements of 10 CFR §2.714 for late filing. In the Joint Intervenors explanation of these contentions they note that the issue of reduction of challenges to the ECCS was raised in NUREG-0578. NUREG-0578 was issued 21 months ago. Although the Joint Intervenors footnote some NUREG-0737 requirements, they do not identify anything other than the general concern in NUREG-0578 as the basis for their contentions. Indeed, they do not specifically allege any insufficiency or non-compliance with NUREG-0737. Rather they cite the incident at TMI and allege non-compliance with GDC 34 and 35. Since GDC 34 and 35 are not newly issued and NUREG-0578 identified the concern addressed by contentions 4 & 5 almost two years ago, good cause has not been demonstrated by Joint Intervenors for their untimely filing.

In addition, the delay which litigation of the contentions would cause in the Diablo Canyon proceeding is another factor weighing against



allowing this late filing. The Staff believes a balancing of the factors in 10 CFR §2.714 weigh against admitting these late filed contentions and they should be dismissed.

Even if these late filed contentions were accepted for the purpose of deciding whether to reopen the record, they fail to meet the requirements for reopening the record. While the referenced sections of NUREG-0737 identified by Joint Intervenors address specific concerns related to the ECCS, the intervenors have not focused on those specific concerns, but have made general allegations concerning the ECCS at Diablo Canyon. The Commission has noted that "bare allegations or simple submission of new conditions is not sufficient" to satisfy the "significant new information" requirement for reopening the record. CLI-81-5 at 3. In addition, these general allegations fail to identify any specific deficiency in the Diablo Canyon ECCS and as such fail the basic specificity requirement of 10 CFR §2.714.

Finally, the Joint Intervenors have not demonstrated that the information is such as would have changed the initial result if originally considered. Indeed, the allegations are so general as to make it impossible to tell what affect the information might have on the initial decision if originally considered.

Having failed to meet the specificity and late filing requirements of 10 CFR §2.714, and the requirements for reopening of closed record, Contentions 4 & 5 should be dismissed from this proceeding.

Contentions 6 and 7 state:

6. The staff recognizes that pressurizer heaters and associated controls are necessary to maintain natural circulation at hot stand-by conditions. Therefore, this equipment should be

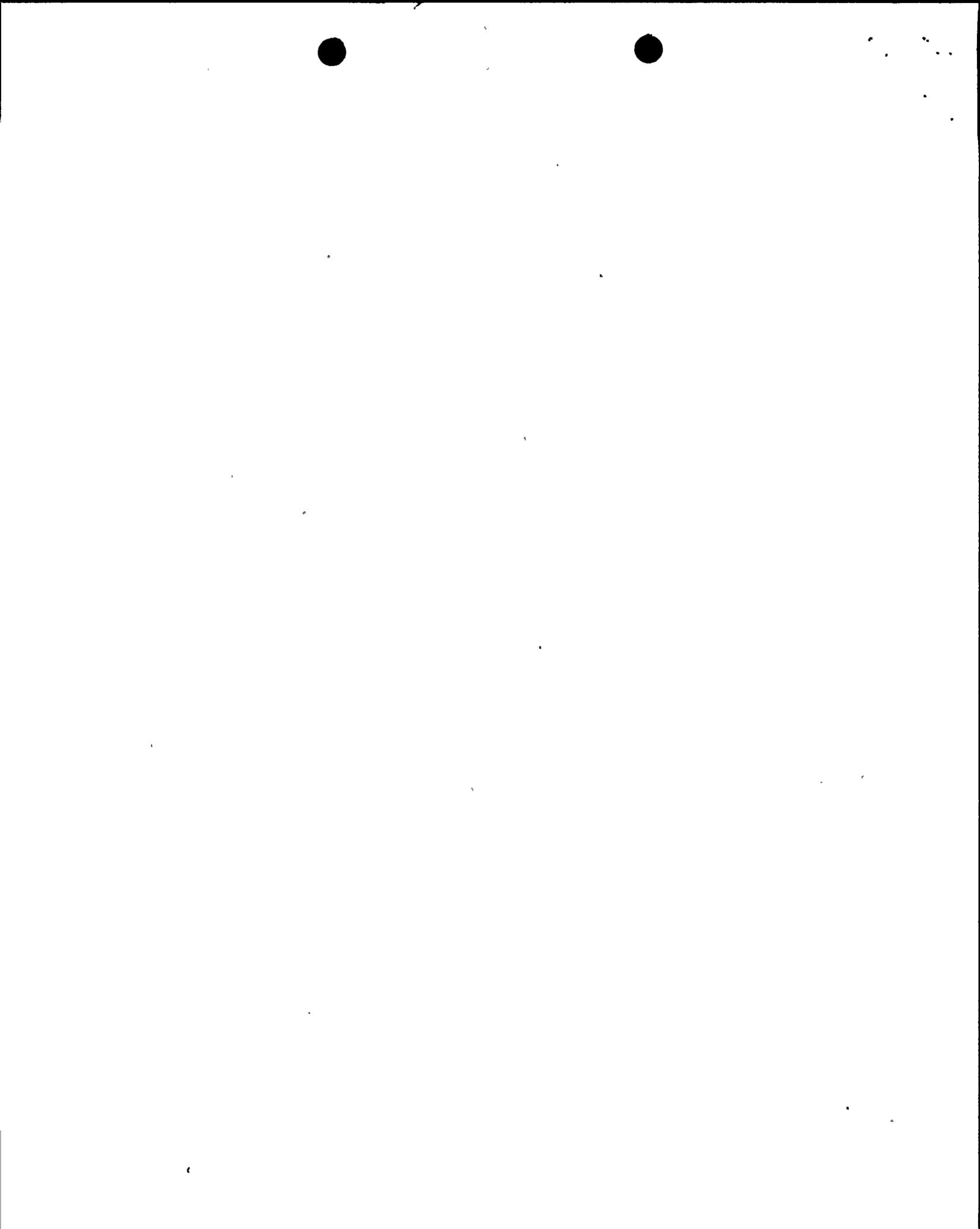


classified as "components important to safety" and required to meet all applicable safety-grade design criteria, including but not limited to diversity (GDC 22), seismic and environmental qualification (GDC 2 and 4), automatic initiation (GDC 20), separation and independence (GDC 3 and 22), quality assurance (GDC 1), adequate, reliable on-site power supplies (GDC 17) and the single failure criterion. 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.

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

Neither of the above contentions are related to a previously admitted contention in the Diablo Canyon proceeding. As such these contentions are late and must meet the requirements of 10 CFR §2.714 for late filing of contentions.

As the Joint Intervenors pointed out in their expansion on these contentions in their motion to reopen, the requirement that pressurizer heaters be connected to on-site power supplies was identified almost two years ago in NUREG-0578. In addition, there has been no change to the GDC 17 requirements cited by Joint Intervenors in the last two years. The Joint Intervenors explain no additional events with respect to these contentions which would justify a delay of almost 2 years from the identification of the pressurizer heater item and their raising this issue. In addition, the admitting of these contentions would require an additional evidentiary hearing and would substantially delay the Diablo Canyon full power proceeding. A balancing of the factors in 10 CFR §2.714, therefore, weighs in favor of not admitting these contentions.



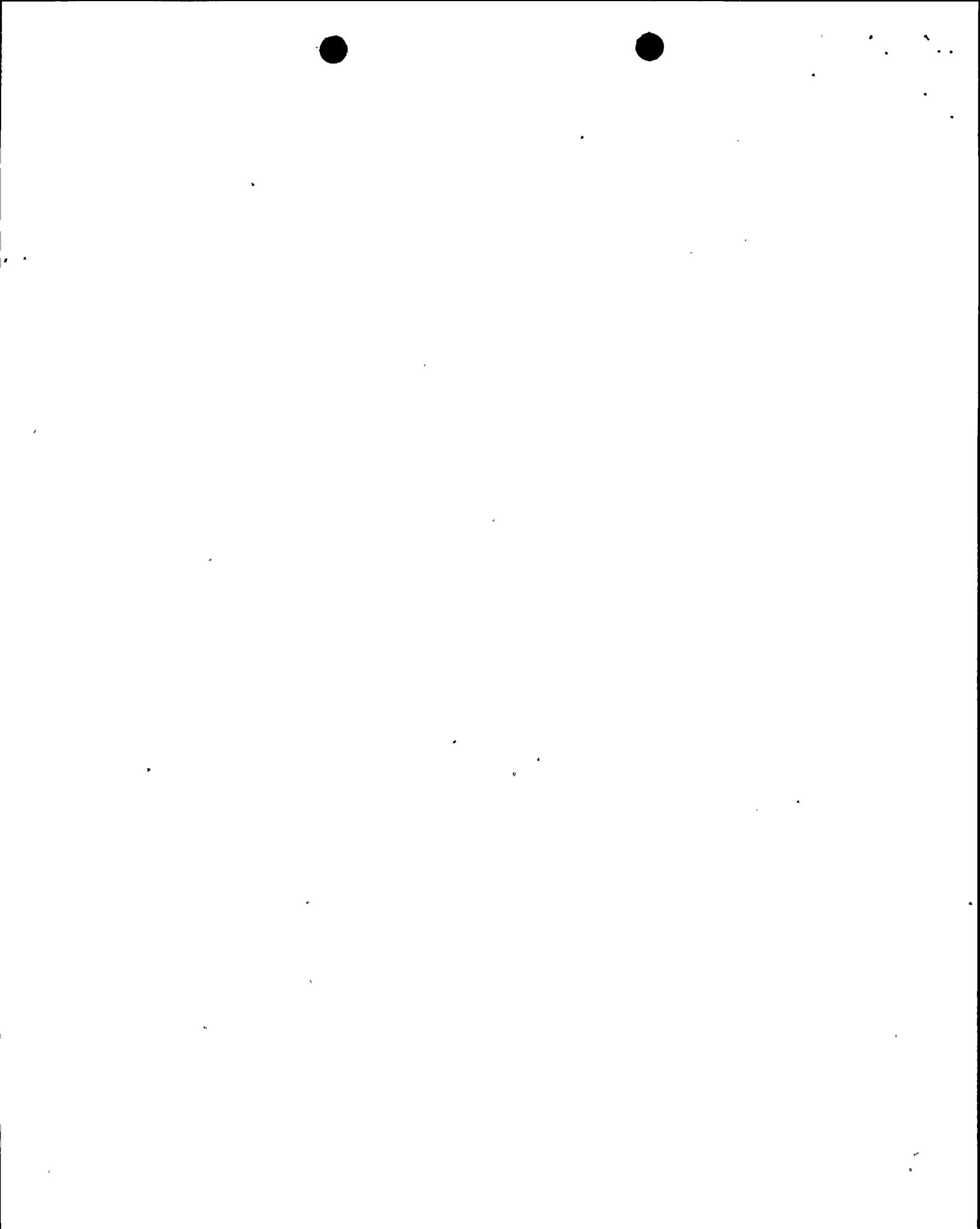
Even if these late filed contentions were admitted for the purpose of determining whether the record should be reopened, the Joint Intervenor's have failed to meet the requirements for reopening the record. The Joint Intervenor's contentions address the issue of the effects of and reliability of power supplies to which pressurizer heaters have been attached. Since the NUREG requirements cited by Joint Intervenor's focuses on the need for pressurizer heaters, they can not rely on the NUREGs as establishing "significant new information", but must demonstrate that the information is significant as regards the power supplies. They have presented no evidence of downgrading of the power supplies other than bare allegations, which the Commission has indicated will not meet this requirement, CLI-81-5 at 3.

Further, there is no evidence that the fact that pressurizer heaters will be attached to the power sources, (which is the only new information cited about the power source at Diablo Canyon), would change any initial determination on whether to license the Diablo Canyon facility. The Joint Intervenor's have, therefore, failed to meet the reopening requirement in that they have failed to show the new information is such as would have changed the initial result if originally considered.

In view of the above discussed failure by Joint Intervenor's to meet the requirements for late filing and reopening, the Staff requests the Licensing Board to dismiss contentions 6 and 7.

Contentions 8 and 9 state:

8. Proper operation of power operated relief valves, associated block valves and the instruments and controls for these valves is essential to mitigate the consequences of accidents. In addition, their failure can cause or aggravate a LOCA. Therefore, these valves must be classified as components



important to safety and required to meet all safety-grade design criteria.

9. 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.

Neither of these contentions is related to a previously filed contention in the Diablo Canyon proceeding. As such they must meet the requirements of 10 CFR §2.714 for late filing of contentions. As noted by Joint Intervenors the question of relief and safety valve operation was raised in NUREG-0578 some 21 months ago. The issues raised by Joint Intervenors do not relate specifically to information contained in NUREG-0737 or other recent documents. Their contentions raise issues that arise from a general concern identified almost two years ago. The Joint Intervenors have not presented any evidence that would justify the lengthy delay in raising any questions on these long identified concerns. In addition, admission of these contentions would result in there being an additional evidentiary hearing which would delay the conclusion of this proceeding. The above factors, therefore, weigh for dismissing Contention 8 and 9 as being untimely under 10 CFR §2.714.

Even if these contentions were not untimely, the Joint Intervenors have failed to meet the requirements for reopening a closed record.

The first of the above contentions addresses the classification of the relief and block valves as safety or non-safety grade. The safety issue on which the NUREG items focus is the testing of these valves. The intervenors, therefore, are not focusing on the same safety issue as the



NUREG requirement. As such, for Contention 8, Joint Intervenors must demonstrate that the new information is "significant new information" as regards the issue of classification of the valves. As regards Contention 9, it appears to focus on the same safety concern as the NUREG items and, as such, may satisfy the "significant new information" requirement for reopening. Nevertheless, both Contention 8 and 9 must satisfy the second part of the reopening requirement in order to justify reopening the record in this proceeding. Neither contention, nor the elaboration on them by Joint Intervenors in their Motion to Reopen, establish that the information is such as would have changed the initial result if originally considered. Since the Joint Intervenors have failed to meet the requirements for late filing of contentions and reopening of the record, Contentions 8 and 9 should be dismissed from this proceeding.

Contention 10 states:

10. 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 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.

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.

This contention is not related to any prior admitted contention in this proceeding and must, therefore, meet the requirements of 10 CFR §2.714 for late filing. The basic recommendation that accurate and



unambiguous measurements of variables be made available, based on the accident at TMI, was identified in NUREG-0578 some 21 months ago as noted by Joint Intervenors. Since Diablo Canyon did not have any direct water level indicator at that time, the basis for Joint Intervenors Contention has been or should have been known to them for almost 2 years. The Joint Intervenors have not demonstrated that any more recent information justifies bringing this issue up at this late date. As such the Joint Intervenors have completely failed to justify the Board accepting this contention at this time. In addition acceptance of this contention would result in an additional evidentiary hearing which would delay the final resolution of this proceeding. In view of these circumstances Joint Intervenors have failed to show that a balancing of the factors in 10 CFR §2.714 justify accepting these late filed contentions.

Even if this contention were not rejected for being untimely, the Joint Intervenors have failed to meet the requirements for reopening a closed record. The NUREG items identified by Joint Intervenors as the basis for their contention relate to a requirement that there be unambiguous, accurate measures of variables at nuclear plants. The contention, however, focuses on the need for a particular kind of readout instrument, a direct water level indicator, which is not the same safety concern as the NUREG items. Joint Intervenors therefore, to justify reopening the closed record, must demonstrate that the new information is significant as regards water level indicators and that this information is such as would change the initial result if originally considered. The Joint Intervenors have presented no evidence that the information, even if



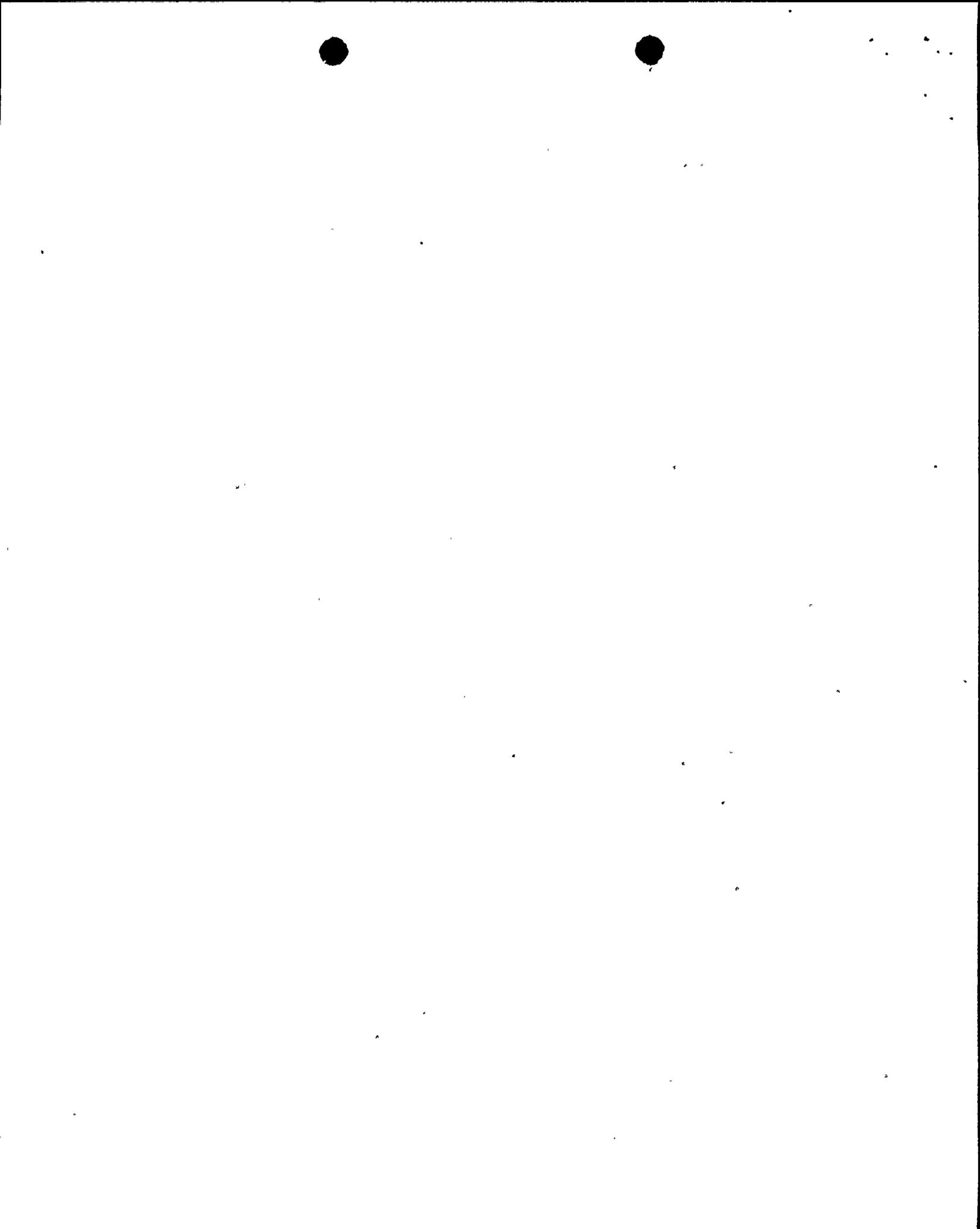
considered significant, will meet the second requirement that it change the initial result.

In view of the above deficiencies the Board should dismiss this contention as both late and as not justifying reopening the record.

Contention 11 reads:

11. 10 C.F.R. 50.46 requires analysis of ECCS performance "for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the entire spectrum of postulated loss-of-coolant accidents is covered." For the spectrum of LOCAs, specific parameters are not to be exceeded. At TMI, certain of these were exceeded. For example, the peak cladding temperature exceeded 2200° fahrenheit (50.45(b)(1)), and more than 1% of the cladding reacted with water or steam to produce hydrogen (50.46(b)(3)). The measures proposed by the staff address primarily the very specific case of a stuck-open power operated relief valve. However, any other small LOCA could lead to the same consequences. Additional analyses to show that there is adequate protection for the entire spectrum of small break locations for the Diablo Canyon design have not been performed. Therefore, there is no basis for finding compliance with 10 C.F.R. 50.45 and 50.46 and GDC 35. None of the corrective actions to date have fully addressed the demonstrated inadequacy of protection against small LOCAs.

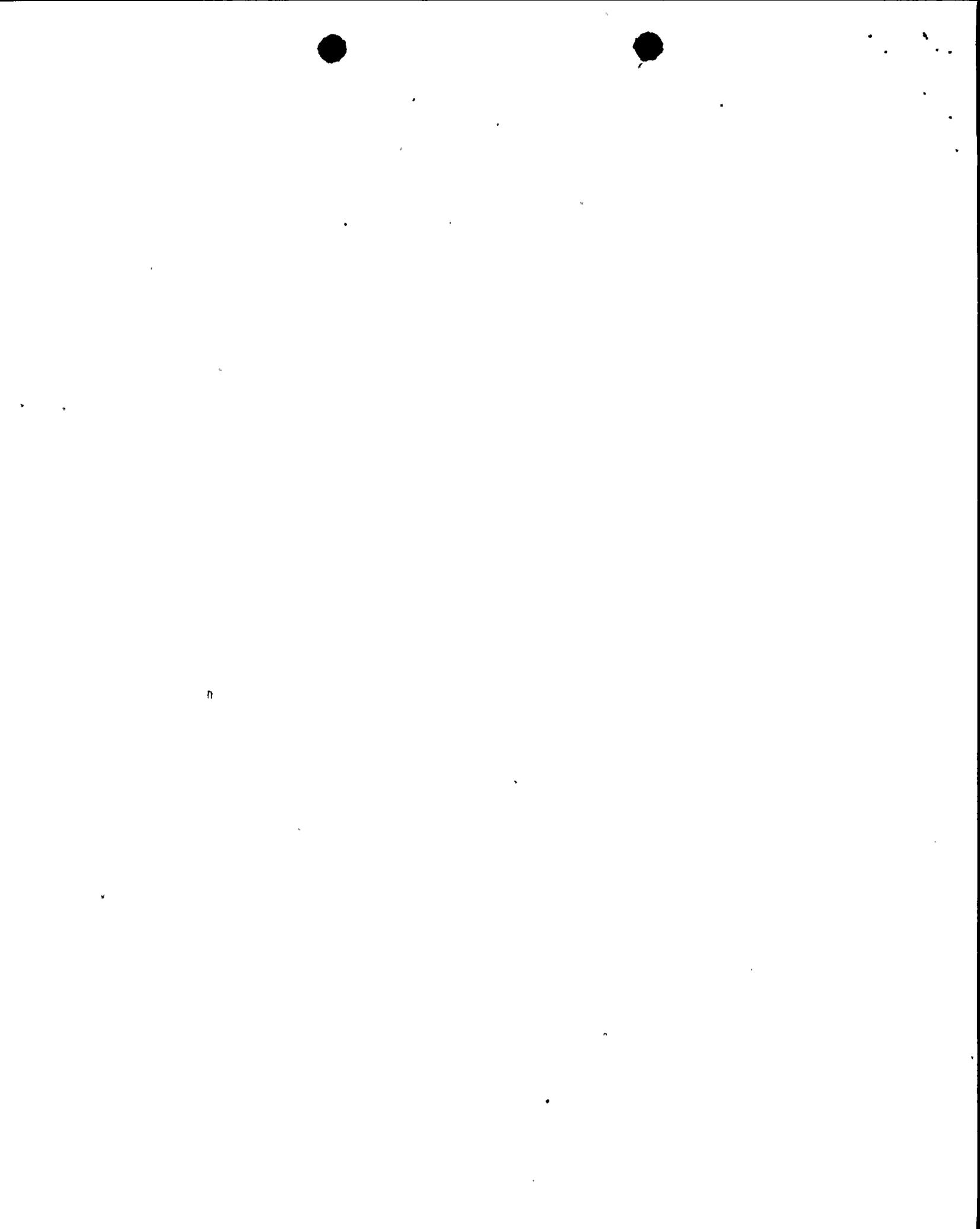
This contention is not related to any previously admitted contention in the Diablo Canyon proceeding and as such must meet the requirements of 10 CFR §2.714 for late filing. As becomes clear in the Joint Intervenors elaboration on this contention in their Motion to Reopen, they rely on information appearing in the Standard Review Plan, NUREG-0578 and NUREG-0585 as the basis for this contention. The latest of these documents is NUREG-0585 which was published in October of 1979. Although Joint Intervenors footnote a requirement in NUREG-0737, they do not identify any new information in that document which serves as the basis for their contentions. Based on the above facts, the Joint Intervenors have not demonstrated why it took them 18 months to raise this issue,



after the last of the documents which form the basis for their contention was issued. In addition, the admission of this Contention would require an additional evidentiary hearing on this issue and would delay the ultimate resolution of this proceeding. A balancing of the factors in 10 CFR 2.714 for filing late contentions, therefore, weighs against admitting Contention 11.

Even if the Joint Intervenors were justified in filing this contention in so untimely a fashion, they have still failed to meet the requirements for reopening a closed record.

The Joint Intervenors contention, as elaborated upon in their Motion to Reopen, alleges that the full spectrum of postulated loss-of-coolant accidents at Diablo Canyon need be analyzed. They then continue to list some particular items they believe should be considered during such analysis. What Joint Intervenors have failed to do is show that there is significant new information on the question of whether the analysis should be made. Their preface to demanding the analysis is that certain performance criteria was exceeded at TMI-2 during the TMI accident. However, there is no logical progression from that preface to the demand for an analysis of the full spectrum of postulated accidents at Diablo Canyon. In fact, TMI is a Babcock and Wilcox plant and Diablo Canyon is a Westinghouse plant. Thus any relationship between them is not self-evident. In addition to failing to show that there is significant new information justifying such wide range analysis, Joint Intervenors have not shown, nor presented evidence which indicates, that the information they have cited is such as would have changed the initial result if originally considered. The Joint Intervenors, therefore, have failed to

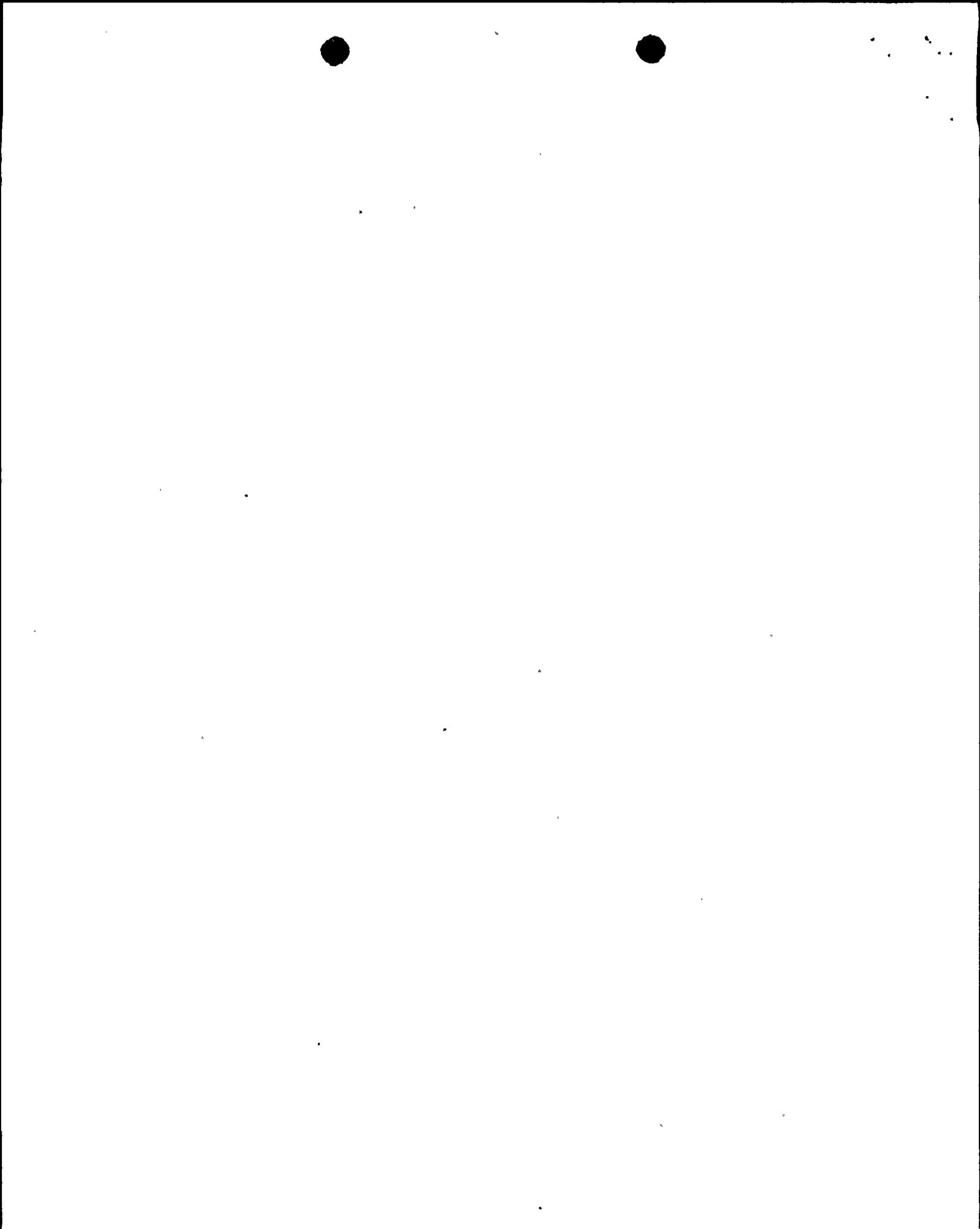


meet either of the requirements for reopening the record and late filed Contention 11 should be dismissed.

Joint Intervenors Contention 12 reads:

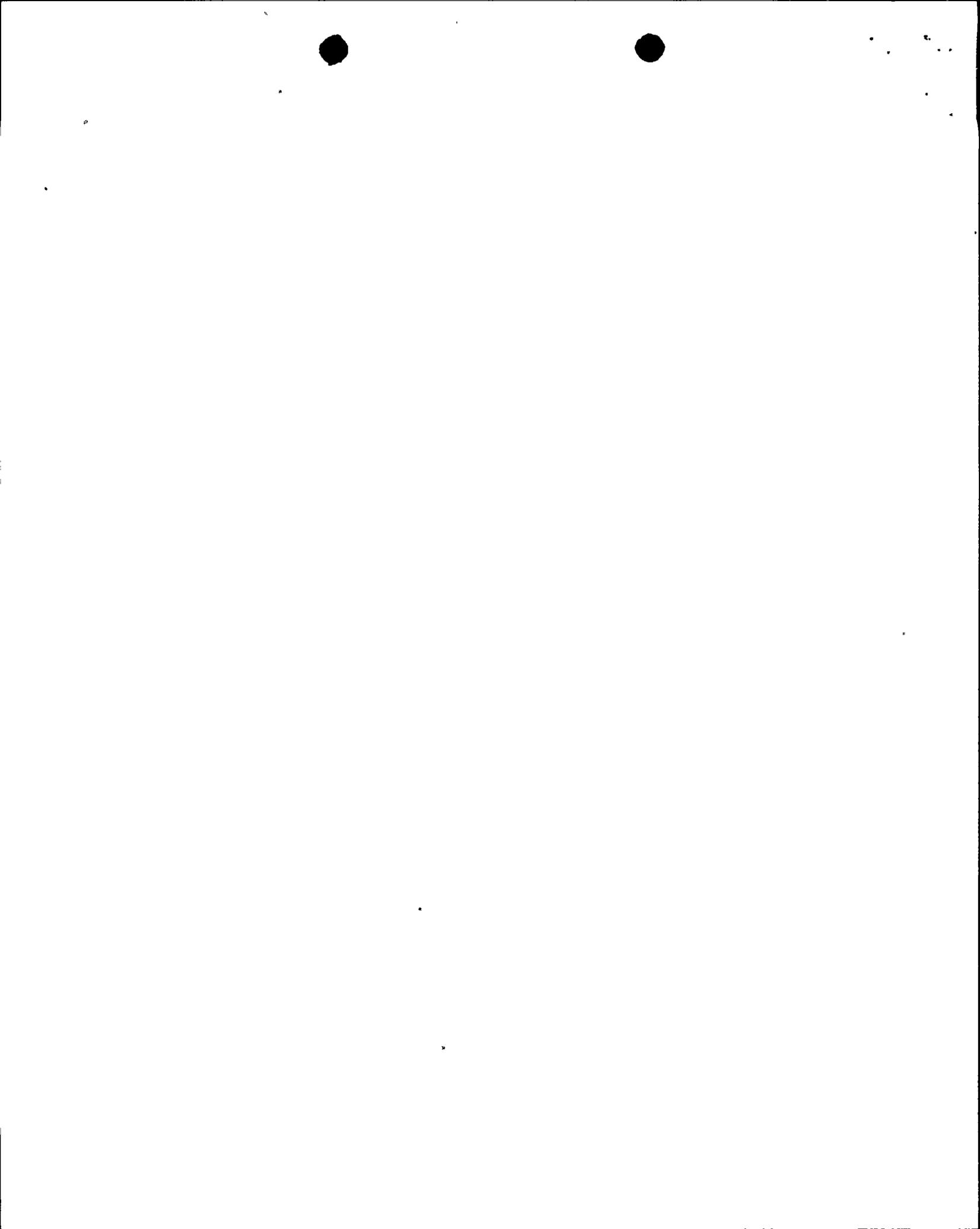
12. The accident at TMI-2 was substantially aggravated by the fact that the plant was operated with a safety system inoperable, to wit: two auxiliary feedwater system valves were closed which should have been open. The principal reason why this condition existed was that TMI does not have an adequate 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 equivalent protection is required.

Contention 12 is not related to any previously admitted contention in this proceeding and as such must meet the requirements of 10 CFR §2.714 for late filing. Joint Intervenors contention alleges Diablo Canyon must have a system meeting Reg. Guide 1.47. This Reg. Guide, as Joint Intervenors point out, has been in existence for over 7 years. Further, the TMI concern on which Joint Intervenors rely in putting forth this contention was identified in NUREG-0578 p. A32 and A60-63. This document was published 21 months ago. Therefore, for almost 2 years Joint Intervenors have had the information they claim justify this contention, and yet they did not put forward this issue until the present. Having failed to justify so late a filing of this contention the Joint Intervenors have failed to show good cause for late filing. In addition, admission of this contention would require an additional evidentiary hearing which would substantially delay a resolution of this proceeding. Based on the above factors this contention should be dismissed as Joint Intervenors have not met their burden to show the factors in 10 CFR §2.714 weigh for admitting the contention.



In addition to the above infirmity, the Joint Intervenors have failed to meet the specificity requirements of 10 CFR §2.714. They simply allege that the proceeding should be reopened to consider how the TMI experience has been applied to Diablo Canyon. This utterly fails to identify anything about Diablo Canyon which Joint Intervenors claim is inadequate. Further, it gives the other parties no idea of what it is about Diablo Canyon Joint Intervenors wish to litigate. The reciting of the words "TMI experience" does not give Joint Intervenors the right to have this proceeding reopened for discussion where there is no evidence of any problem in this area at Diablo Canyon. This is particularly true where, as is the case here, the Diablo Canyon plant is a Westinghouse Plant and TMI is a Babcock and Wilcox Plant. Joint Intervenors should, at least, demonstrate some nexus between the problem at TMI and Diablo Canyon. This they have failed to do.

In addition, particularly in view of the unspecific nature of this contention, the Joint Intervenors have not met the requirements for reopening a closed record. They have not demonstrated there is any information on this contention which is significant as regards Diablo Canyon. They have not in fact, shown that the information they have presented is even related to anything at Diablo Canyon. The Joint Intervenors have even more clearly failed to show that the information they have presented would be such as would have changed the initial result if originally considered. Having not alleged anything specifically wrong with Diablo Canyon, there is no evidence the information would have any effect on any decision related to the plant.



For the above reasons Joint Intervenors Contention 12 should be dismissed.

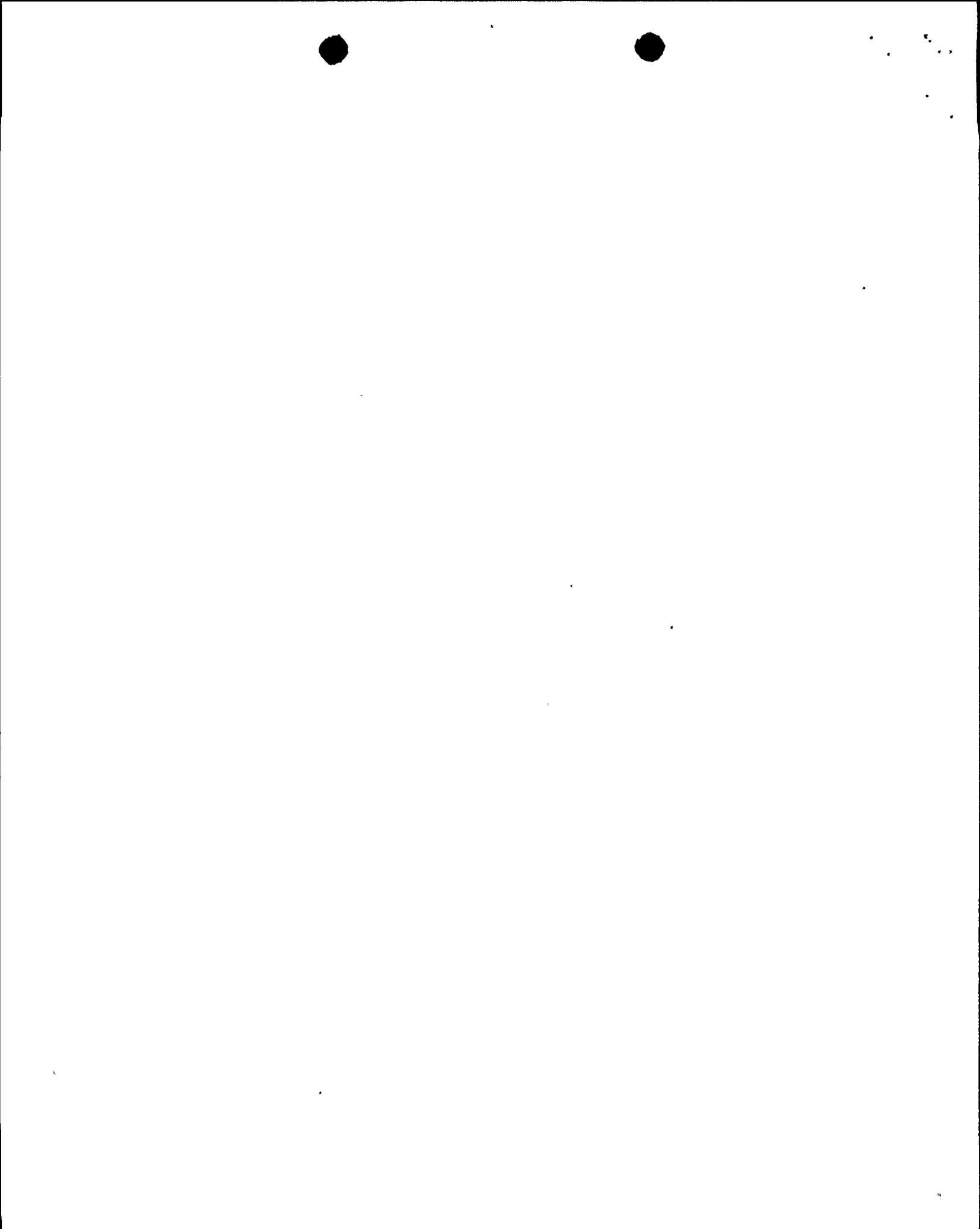
Joint Intervenors Contention 13 reads:

13. The design of the safety systems at TMI was such that the operator could prevent the completion of a safety function which was initiated automatically; to wit: the operator could (and did) shut off the emergency core cooling systems prematurely. This violated §4.16 of IEEE 279 as incorporated in 10 C.F.R. 50.55(a)(h) which states:

The protection system shall be so designed that, once initiated, a protection system action shall go to completion.

The Diablo Canyon design is similar to that at TMI and must be modified so that no operator action can prevent the completion of a safety function once initiated.

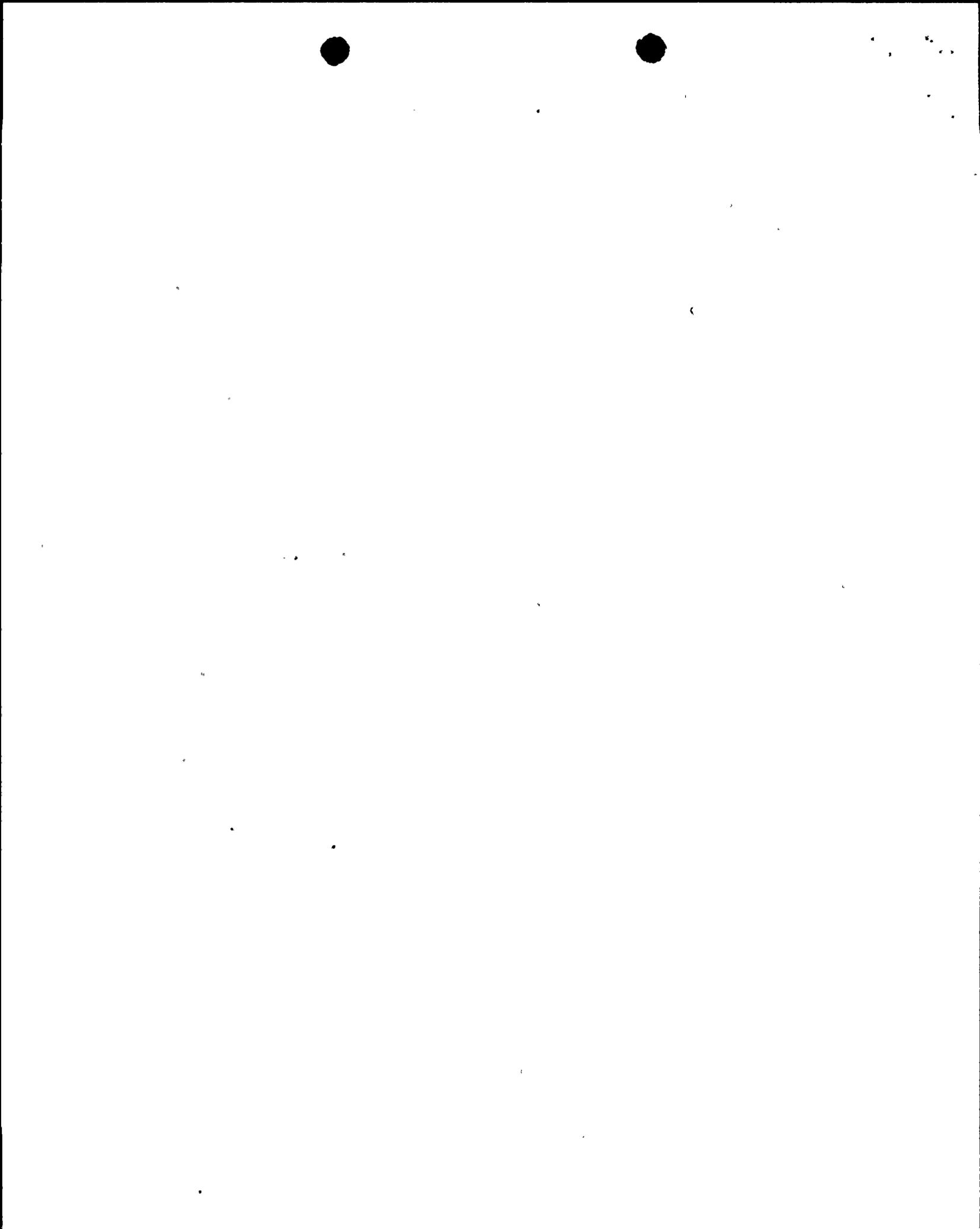
This Contention is unrelated to any previously admitted contention and as such must meet the requirements of 10 CFR §2.714 for late filing. The information concerning TMI operator actions, on which Joint Intervenors rely in their elaboration on this contention in their Motion to Reopen, was made public in NUREG-0600. The operator actions of TMI were discussed at p. 2-10 and in sections I-2-1 thru I-2-50 of NUREG-0600. This public document was published in August of 1979 approximately 20 months ago. Further, §4.16 of IEEE 279 and 10 CFR §50.55, which are cited by Joint Intervenors, were both in existence prior to the publication of NUREG-0600. Joint Intervenors have not identified any information on which their contention depends which is of more recent vintage. Joint Intervenors have, therefore, been on notice of the facts necessary to make this contention for over a year and a half. They have not presented any reason for filing this contention so long after the information was available and thus have not demonstrated



good cause for their late filing. In addition, admission of this contention would require an additional evidentiary hearing and would substantially delay a resolution of this proceeding. A balancing of the factors in 10 CFR §2.714, therefore, shows that Joint Intervenors have not met their burden and this contention should be dismissed as being impermissably late.

The Joint Intervenors, even if Contention 13 was not untimely, have also failed to meet the requirements for reopening the record in this proceeding to consider the contention. Since the Joint Intervenors have admitted their concern is with the design of the plant and the NUREG's they cite were concerned with operator training, they can not rely on the NUREG's to provide the "significant new information" for reopening the record. The information which Joint Intervenors have identified does not, inherently, have significance for equipment design, as the information shows operator error, not equipment failure. Thus Joint Intervenors have not demonstrated there is significant new information relevant to their contention.

The Joint Intervenors have also failed to demonstrate that their "new" information would have changed the initial result if originally considered. They have, therefore, failed to meet the second requirement for reopening a closed record. Since Joint Intervenors acknowledge that NUREG-0737 requires further operator training to deal with the problem they have identified, they should be required to show that their information shows operator training is inadequate to address the problem. If they can not give some evidence of this inadequacy they have not shown the information is such as would have changed the initial result if



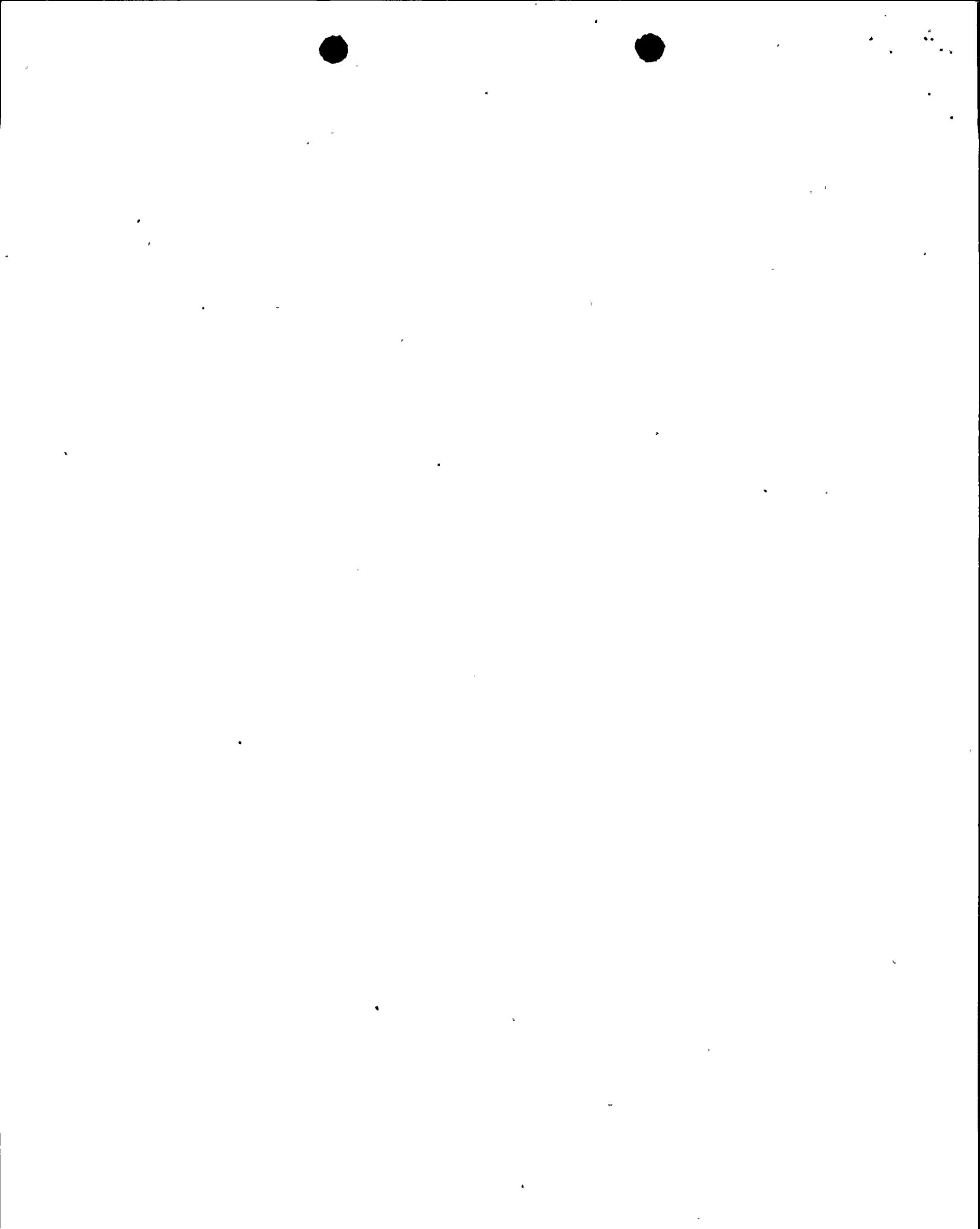
originally considered. The Joint Intervenors have simply made the bare allegation that operator training will not be adequate, and the Commission has stated such unsupported allegations will not suffice to open a closed record. CLI-81-5 at 3.

The Joint Intervenors have failed to demonstrate compliance with 10 CFR §2.714 or the requirements for reopening a closed record and Contention 13 should be dismissed.

Joint Intervenors Contention 14 reads:

14. The TMI-2 accident demonstrated that the severity of the environment in which equipment important to safety must operate was underestimated and that equipment previously deemed to be environmentally qualified failed. One example was the pressurizer level instruments. The environmental qualification of safety-related equipment at TMI is deficient in three respects: (1) the parameters of the relevant accident environment have not been identified; (2) the length of time the equipment must operate in the environment has been underestimated; and (3) the methods used to qualify the equipment are not adequate to give reasonable assurances that the equipment will remain operable. Diablo Canyon should not be permitted to operate 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 the equivalent.

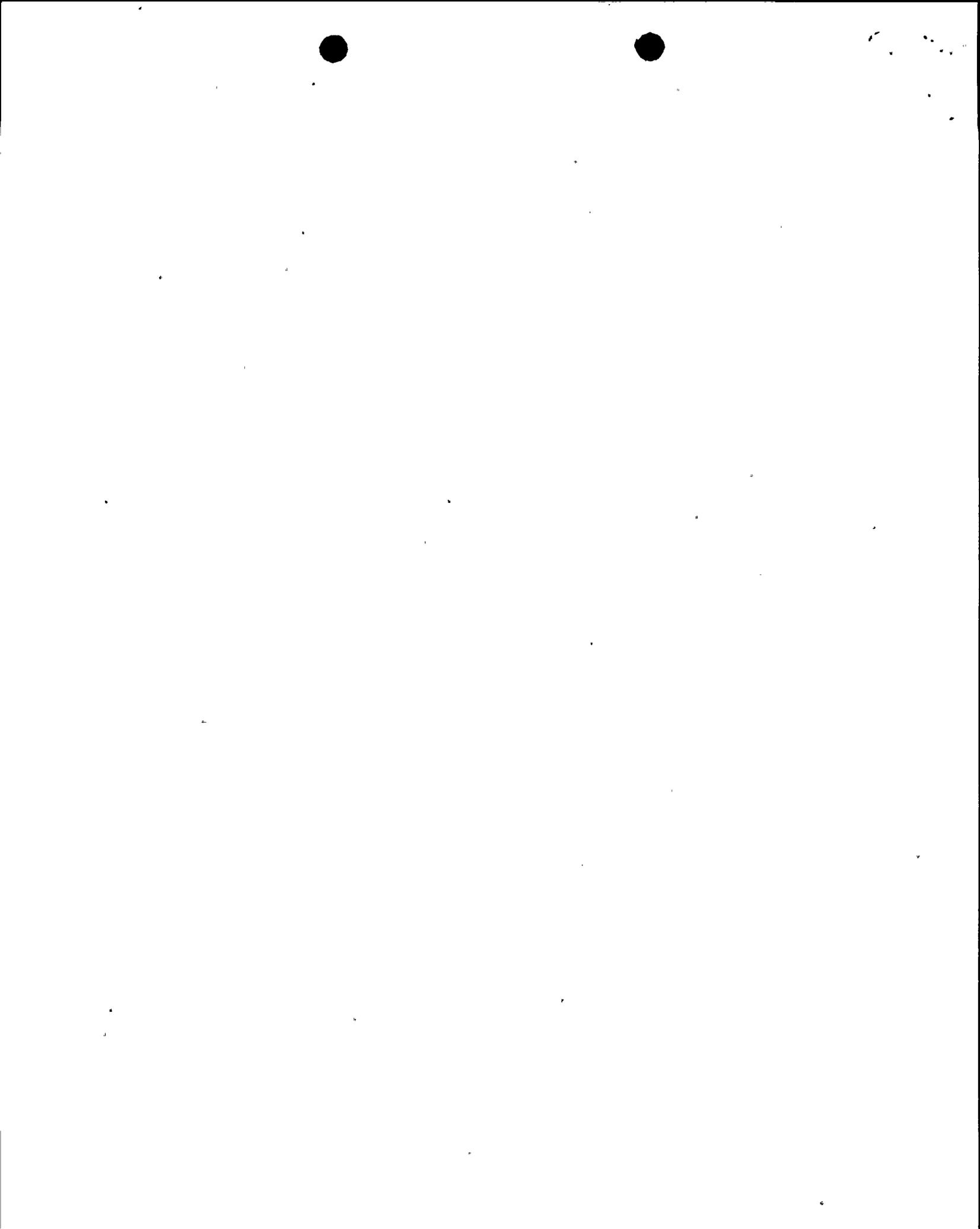
This Contention does not relate to any previously admitted contention in this proceeding and as such must meet the requirements of 10 CFR §2.714 for late filing. The TMI example, which the Joint Intervenors rely upon in calling for a reopening of the record on the issue of environmental qualifications, is the failure of the pressurizer level instruments at TMI. The failure of these instruments was identified and explained in NUREG-0600 which was published in August of 1979. GDC 4 and Reg. Guide 1.89 have not changed since NUREG-0600 was published. Thus, Joint Intervenors have had the information on which



they base their contention for over a year and a half. While the Joint Intervenors cite In the Matter Of Petition For Emergency and Remedial Action, CLI-80-21, \_\_\_ NRC \_\_\_ (May 27, 1980), they do so only to show the importance of the issue and not to show a basis for their concern. Joint Intervenors, therefore, have not shown good cause for filing this Contention late. If this contention is admitted it will require an additional evidentiary hearing which will substantially delay the ultimate resolution of this proceeding. Based on the above it does not appear that the Joint Intervenors have met their burden of demonstrating a balance of the factors in 10 CFR §2.714 weighs in favor of admitting their late filed contention and this contention should be dismissed.

In addition to the above failing of Contention 14, Joint Intervenors have also failed to meet the requirements for reopening a closed record. The Joint Intervenors have not presented evidence to show the significance of the given information about TMI's Babcock and Wilcox plant to Diablo Canyon's Westinghouse plant. Joint Intervenors may not rely on mere allegations that the adequacy of the qualifications program must be considered at Diablo Canyon to assure plant safety. Joint Intervenors have failed to identify any specific shortfall in the Diablo Canyon qualification program, but instead request this Board to allow them to reopen the record for them to indiscriminately explore this issue. In this respect they have not only failed to show significant new information, but they have also failed to meet the specificity requirements of 10 CFR §2.714.

Finally, the Joint Intervenors have not shown that the information on which they base their contention is such as would change the initial



result of the licensing decision if originally considered. This is particularly true in view of the fact that they have not identified any specific shortfall in the Diablo Canyon qualification program.

In view of all of the above infirmities Contention 14 should be dismissed from this proceeding.

Joint Intervenors Contentions 15 and 16 read:

15. The TMI-2 accident demonstrated that there are systems and components presently classified as non-safety-related which can have an adverse effect on the integrity of the core because they can directly or indirectly affect temperature, pressure, flow and/or reactivity. This issue is discussed at length in Section 3.2, "System Design Requirements," of NUREG-0578, the TMI-2 Lessons Learned Task Force Report (Short Term). The following quote from page 18 of the report describes the problem:

There is another perspective on this question provided by the TMI-2 accident. At TMI-2, operational problems with the condensate purification system led to a loss of feedwater and initiated the sequence of events that eventually resulted in damage to the core. Several nonsafety systems were used at various times in the mitigation of the accident in ways not considered in the safety analysis; for example, long-term maintenance of core flow and cooling with the steam generators and the reactor coolant pumps. The present classification system does not adequately recognize either of these kinds of effects that nonsafety systems can have on the safety of the plant. Thus, requirements for nonsafety systems may be needed to reduce the frequency of occurrence of events that initiate or adversely affect transients and accidents, and other requirements may be needed to improve the current capability for use of nonsafety systems during transient or accident situations. In its work in this area, the Task Force will include a more realistic assessment of the interaction between operators and systems.

The Staff proposes to study the problem further. This is not a sufficient answer. 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.



16. The accident at TMI-2 was a multiple failure accident involving independent and dependent failures. The multiple failure sequences exceeded the single failure criterion utilized in the Diablo Canyon design basis accident assessment. Therefore, comprehensive studies of the interaction of nonsafety grade components, equipment, systems, and structures with safety systems and the effect of those interactions during normal operation, transients, and accidents need to be made by the Diablo Canyon Applicant in order to assure that the plant can be operated without endangering the health and safety of the public.

Neither of these Contentions is related to a previously admitted contention in this proceeding and, as such, the Joint Intervenors must comply with the requirements of 10 CFR §2.714 for late filing for these contentions to be admissible.

The Joint Intervenors in the above contentions and as they attempt to clarify the contentions in their Motion to Reopen, rely heavily on factors which they reference as coming from NUREG-0578 and NUREG-0585. The latest of these two documents was published in October, 1979, some 1½ years ago. In fact, it is the recommendations of these two NUREG's which Joint Intervenors have attacked. Although the Joint Intervenors cite to a November 1980 Board Notification, they have not claimed or identified any new information which it provided. In view of this failure, the Joint Intervenors have not demonstrated good cause for waiting almost 18 months after the bases for their contentions was made public to file this contention. This is particularly true as Joint Intervenors were parties to this proceeding throughout this period and should have been aware of public documents which might affect the proceeding. Admission of these contentions would result in substantial delay by requiring an additional evidentiary hearing before there would be a resolution of this proceeding. In view of the above discussion it does not appear Joint



Intervenors have met their burden to show a balancing of the factors in 10 CFR §2.714 favor allowing this untimely filing. Those contentions should, therefore, be dismissed.

Even if these contentions were not rejected for being untimely, they fail to meet the requirements for reopening a closed record. The Joint Intervenors have claimed that a number of interactions had not been analyzed which took place at TMI. However, they allege no failure of the systems as a result of not analyzing these interactions. Nor do they show the nexus between the interactions at TMI and at Diablo Canyon. They have, therefore, failed to show any significant new information affecting health and safety related to these contentions. Even if this information was considered significant, the Joint Intervenors have not shown that the information is such as would have changed an initial result if originally considered. Having failed to make the required showings to reopen a closed record, these contentions should be dismissed.

Joint Intervenors Contention 17 reads:

17. The accident at TMI-2 was caused or aggravated by factors which are the subject of Regulatory Guides not used in the design of TMI. For example, the absence of an automatic indication system as required by Regulatory Guide 1.47 contributed to operation of the plant with the auxiliary feedwater system completely disabled. 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.

Contention 17 is not related to a previously admitted Contention in this proceeding and as such must meet the requirements of 10 CFR §2.714 for late filing. This contention relates to documenting deviations, if any exist, from Commission regulations at Diablo Canyon. As noted by the



Joint Intervenors, this proposal as applied to all plants, has been under consideration since at least June 18, 1976. Thus, this concern predated the TMI accident. The Diablo Canyon licensing proceeding had begun prior to that June 18, 1976 date. Nevertheless, although several documents in 1976 and 1977 are cited by Joint Intervenors, they have expressed no interest in this issue as regards this proceeding, until 1981. Under these circumstances the Joint Intervenors have not shown good cause for this late filing of Contention 17. Admission of Contention 17 would result in an additional evidentiary hearing which would substantially delay a resolution of this proceeding. Considering the magnitude of the review Joint Intervenors propose this delay could be extraordinarily great. A balancing of the factors in 10 CFR §2.714 does not, therefore, favor admitting this late filed contention.

Even if this contention were not untimely, the Joint Intervenors have failed to satisfy the requirements for reopening a closed record. The Joint Intervenors have presented no significant new information on Diablo Canyon which would justify reopening the closed record on this issue. The Joint Intervenors have not identified any deficiency at Diablo Canyon, or any history of deficiencies which would justify allowing a regulation by regulation examination of Diablo Canyon. In effect, Joint Intervenors want this Board to embark on the most comprehensive of fishing expeditions. This is not the type of information on which a closed record should be reopened. Indeed, in failing to identify any failure to comply with the regulations at Diablo Canyon, the effect on the initial result of such a documentation requirement as that proposed by Joint Intervenors, absent such information, is purely



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speculative at best. Contention 17 should, therefore, be dismissed since the requirements for reopening a closed record have not been met by Joint Intervenors.

#### CONCLUSION

All the Joint Intervenors Contentions are based, as demonstrated above, on information which was made public months, and in some cases, years ago. In no case have the Joint Intervenors identified recent events or information which is fundamental to the basis of their contentions. The references to NUREG-0737 reveal that it is not something in that document which forms the bases for Joint Intervenors concerns relative to TMI, but rather those bases come from earlier TMI documents. Reciting some recent TMI document should not allow intervenors to introduce all TMI related contentions into a proceeding where that recent document does not provide some new basis for the concern. The Joint Intervenors contentions, therefore, should be dismissed as being untimely.

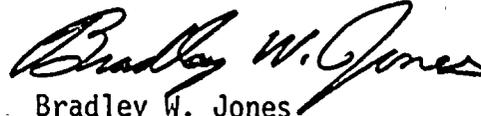
Even if not dismissed for being untimely, the above discussions have demonstrated that the Joint Intervenors have not met the requirements for reopening the closed Diablo Canyon record. In each case they have failed to show either significant new information as it concerns Diablo Canyon or that the information is such as would change the initial result if originally considered. Having failed to meet their burden, all of Joint Intervenors contentions should be dismissed as not justifying reopening the record.



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For the above reasons, the Staff requests that this Board dismiss all of Joint Intervenors Contentions appearing in their March 24, 1981 Motion to Reopen.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bradley W. Jones".

Bradley W. Jones  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 13th day of April, 1981.



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.  
 ) 50-323 O.L.  
(Diablo Canyon Nuclear Power Plant )  
Unit Nos. 1 and 2 )

CERTIFICATE OF SERVICE

I hereby certify that copies of RESPONSE TO MOTION TO REOPEN in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 13th day of April, 1981.

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U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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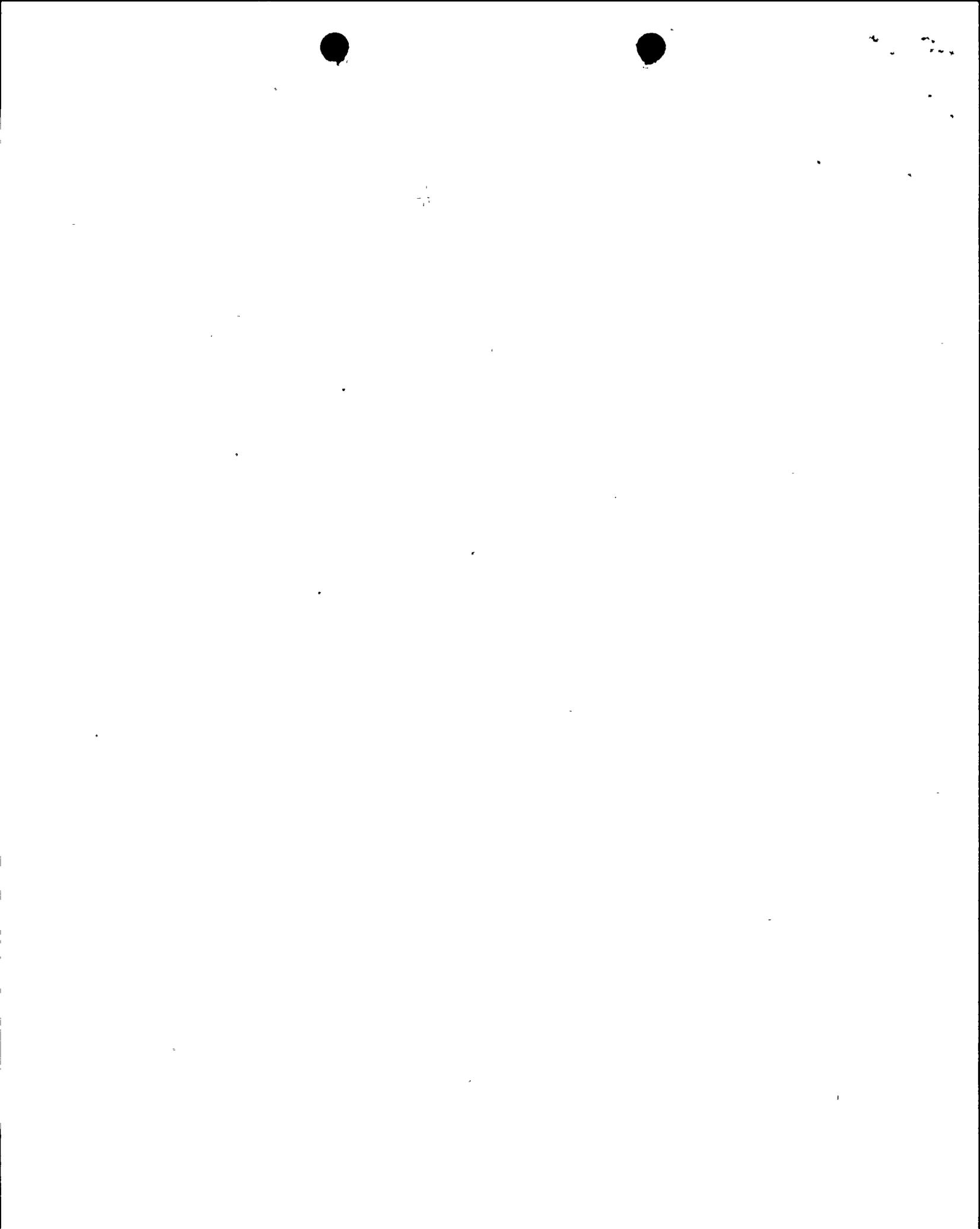
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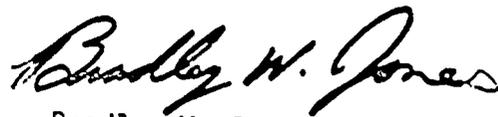
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