

BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

In the Matter of)
)
Niagara Mohawk Power Corporation) Docket No. 50-410
(Nine Mile Point Unit 2))

APPLICANT'S REPLY TO AEC REGULATORY
STAFF'S PROPOSED MODIFICATIONS OF
APPLICANT'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW

Pursuant to Section 2.754(b) (3) of the Rules of Practice of the U. S. Atomic Energy Commission ("the Commission"), Applicant hereby submits the following response to the proposed modifications of Applicant's proposed findings of fact and conclusions of law filed with the Atomic Safety and Licensing Board ("the Board") on December 13, 1973 by the Commission's Regulatory Staff ("the Staff").

I.

General Reply

In large part the Staff has adopted Applicant's proposed findings and conclusions filed with the Board on



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November 2, 1973. Of the Staff's proposed findings and conclusions that do not conform to those submitted by Applicant, some involve only slight changes in, or additions to, Applicant's proposed language and are, therefore, not opposed. Staff's proposed modifications not objected to by Applicant are listed in Part II of this Reply. Others of the Staff's proposals Applicant specifically objects to; they should be rejected by the Board as being without basis in the record or contrary to law. Those proposed modifications are discussed in Part III.

The remaining proposed modifications by Staff are considered by Applicant to be generally objectionable. They are listed in Part IV. Applicant objects to each such proposed modification and requests that its own proposed findings or conclusions be adopted by the Board in each case.

Applicant submits to the Board that the proposed findings and conclusions filed by Applicant are a preferable basis for decision in this proceeding and are fully supported by the record.



II.

Staff's Proposed Modifications.
Not Opposed by Applicant

2, 3A, 3B, 4, 5, 7, 11, 16, 17, 18A, 18B,
19, 20, 21, 23, 24, 25, and 26E.

III.

Staff's Proposed Modifications
Specifically Objected to by Applicant

1. The Staff erroneously has proposed that the Board strike the word "license" in the second line of Applicant's proposed finding 1 and substitute in lieu thereof the words "a Construction Permit". Section 50.31 of the Commission's Regulations clearly allows an applicant to combine in one application his "several applications for different kinds of licenses under the Regulations in this Chapter". Accordingly, an applicant for a permit to construct a utilization facility may apply for not only a construction permit but also licenses to possess byproduct, source and special nuclear material, as well as a license to operate the facility. Even a simple examination of Applicant's pleading (see pp. 6-7) to the Application will demonstrate that Applicant has properly interpreted the



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Commission's Regulations. Applicant's Application for Licenses is, therefore, correctly termed.

6. See, Applicant's reply to Staff's proposed modification 1.

8. The Staff's last sentence of its proposed modification 8 distorts the record by implying that Applicant is somehow at fault for not having proposed a specific design to reduce an as yet hypothetical adverse impact caused by the projected impingement of fish from Unit 2's operation. All that Section 50.35 of the Commission's Regulations requires at the construction permit stage is a description of the principal architectural and engineering criteria for the design of the facility. In addition, Staff expert witness, Dr. Sharma, stated that the Staff's position was not to have "any recommendation at this time" and that the Staff intended to wait until it received more data from Applicant's monitoring program.^{1/} Further, the record referenced by Applicant in its proposed finding '25 clearly demonstrates Applicant's extensive study of alternate methods of reducing fish impingement and the relatively

^{1/}
Tr. 1071.



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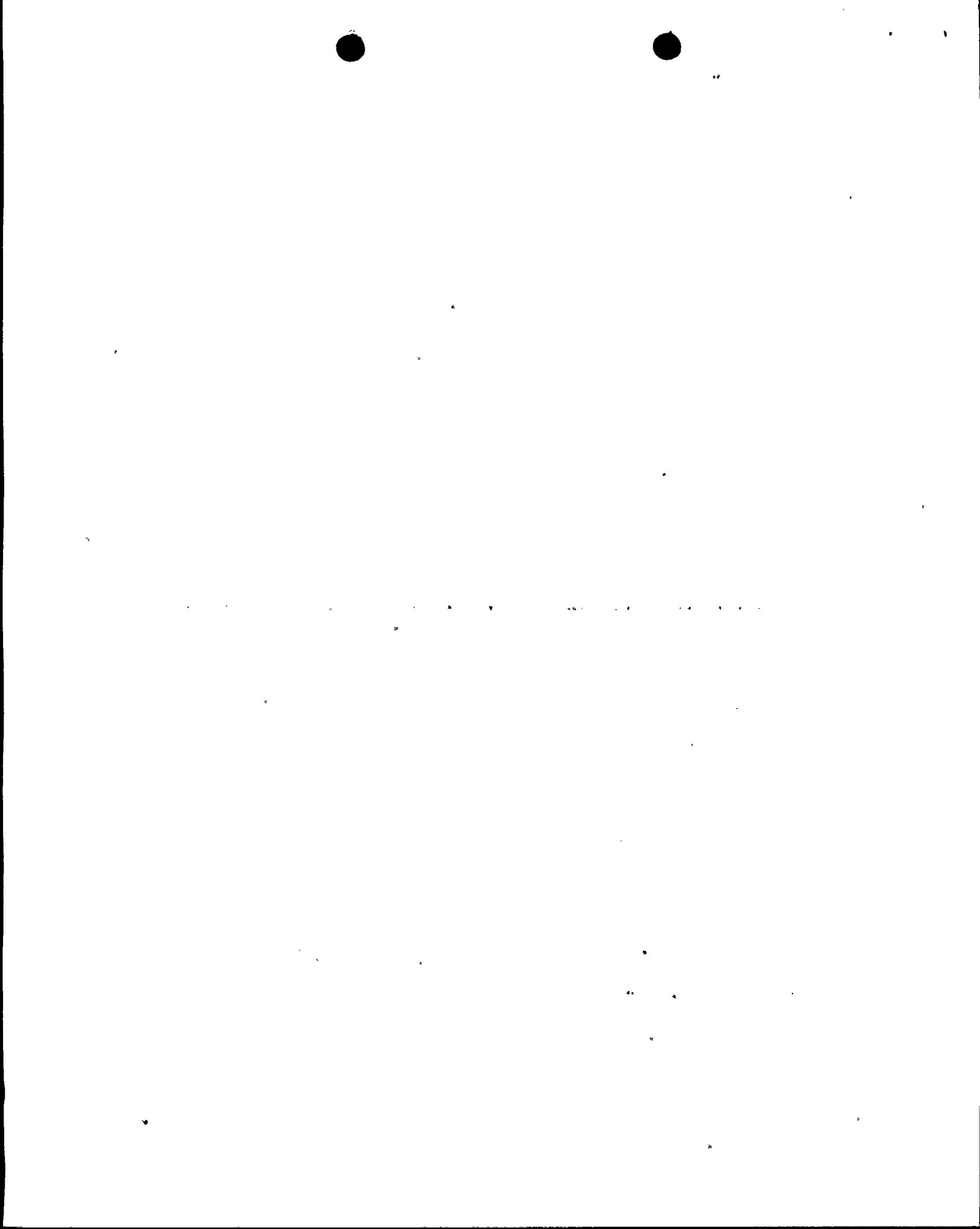
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untried nature of the solutions being proffered by experts in the field.

9B and C. The record does not support Staff's emasculation of Applicant's proposed finding 26. Extensive testimony by both Applicant's and Staff's expert witnesses on the parameters of the plume from Unit 2 clearly establishes that the surface temperature rise of 3°F will be restricted to the allowable 6.5 acre mixing zone.^{2/} It is Applicant's opinion that a proper Initial Decision should show that the Applicant will comply with applicable New York State law.

10A and B. Applicant opposes Staff's deletion of the first two sentences of Applicant's proposed finding 27. Applicant's statements contained in those sentences are supported in the record. Furthermore, Staff offers no basis for its proposed modification and Applicant can find no such basis in the record. Applicant's opposition to Staff's proposed further deletion of the word "however," is premised upon its position that the first two sentences of the proposed finding should not be stricken.

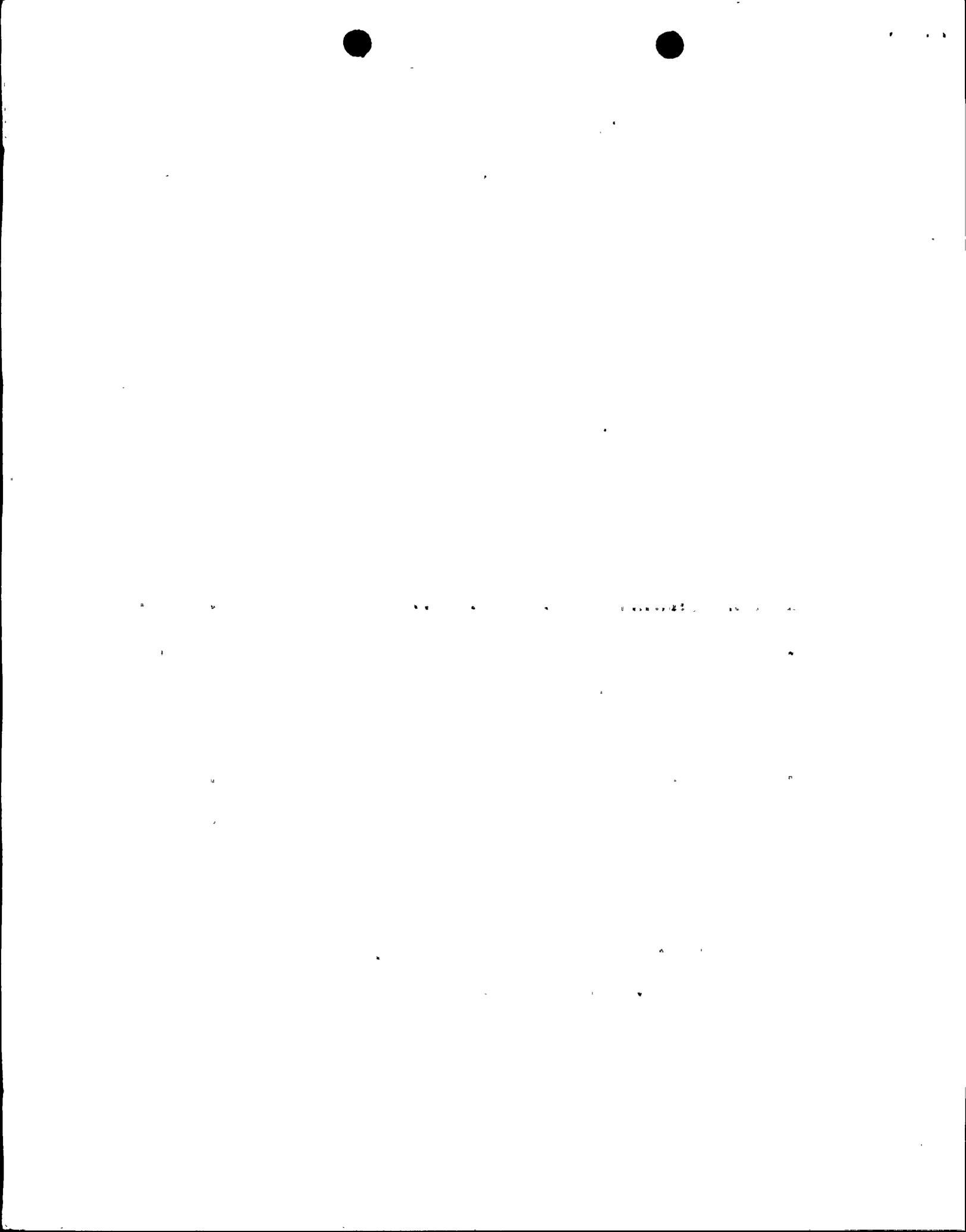
^{2/}
Tr. 983-997.



12. The Staff's proposed modification of Applicant's language in its proposed finding 31 distorts the Staff's own testimony. Applicant's proposed finding very carefully took the Staff's language from p. 10-6 of Staff Exhibit 2, which the Staff has now chosen to rewrite by use of the phrase "in the light of the potential impact of fish impingement" as opposed to "with resolution of the question of impact on fish populations". Applicant specifically opposes the variation suggested for the first time in this proposed modification.

13B. Applicant opposes the Staff's proposed deletion of a sentence from Applicant's proposed finding 32 on the ground that possible occasional non-compliance with applicable New York State discharge criteria of necessity concerns the projected operation of Unit 2 and not its proposed design and is best left to solution at the operating license stage of the proceeding.

14. The Staff's proposed insertion of the word "serious" prior to the phrase "adverse effect" in Applicant's proposed finding 33 distorts the Staff's own testimony on the impact of chemical discharge from Unit 2. The Staff concluded that these discharges "are



not expected to have any adverse effects on aquatic life."^{3/}

15. Applicant vigorously opposes Staff's proposed deletion of Applicant's proposed finding 34 as being contrary to paragraph 5a(2) of the Commission's Interim Policy Statement governing licensing board procedures under the Federal Water Pollution Control Act Amendments of 1972. Under that paragraph a licensing board must determine an applicant's compliance with applicable state water quality limitations and must evaluate the proposed plant's environmental impact on the basis of discharges at the level of these limitations. Thus, Applicant's proposed finding that the Staff has conducted a cost-benefit analysis in its FES at the levels of these limitations and that analysis is adequate conforms to the Commission's Regulations. To delete this finding, as Staff proposes, would be a gross error and contrary to the intent of the Commission's own Regulations as expressed in Appendix D to Part 50.

18C. The use of the word "these" in the Staff's proposed modification to Applicant's proposed finding 38 slightly distorts the record by implying that there is

^{3/}
Staff Ex. 2, p. 5-39.



more than one difference between Applicant and Staff concerning the calculated child thyroid dose.^{4/}

IV.

Staff's Proposed Modifications
Generally Objected to by Applicant

3C, 6A, 6B, 9A, 13A, 22, 26B, 26C, and 26D.

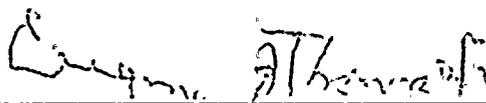
Conclusion

The Board should reject the proposed modifications opposed by Applicant in Parts III and IV of this Response for the reasons stated therein and should adopt the findings proposed by Applicant in their stead.

Respectfully submitted,

LEBOEUF, LAMB, LEIBY & MACRAE

By



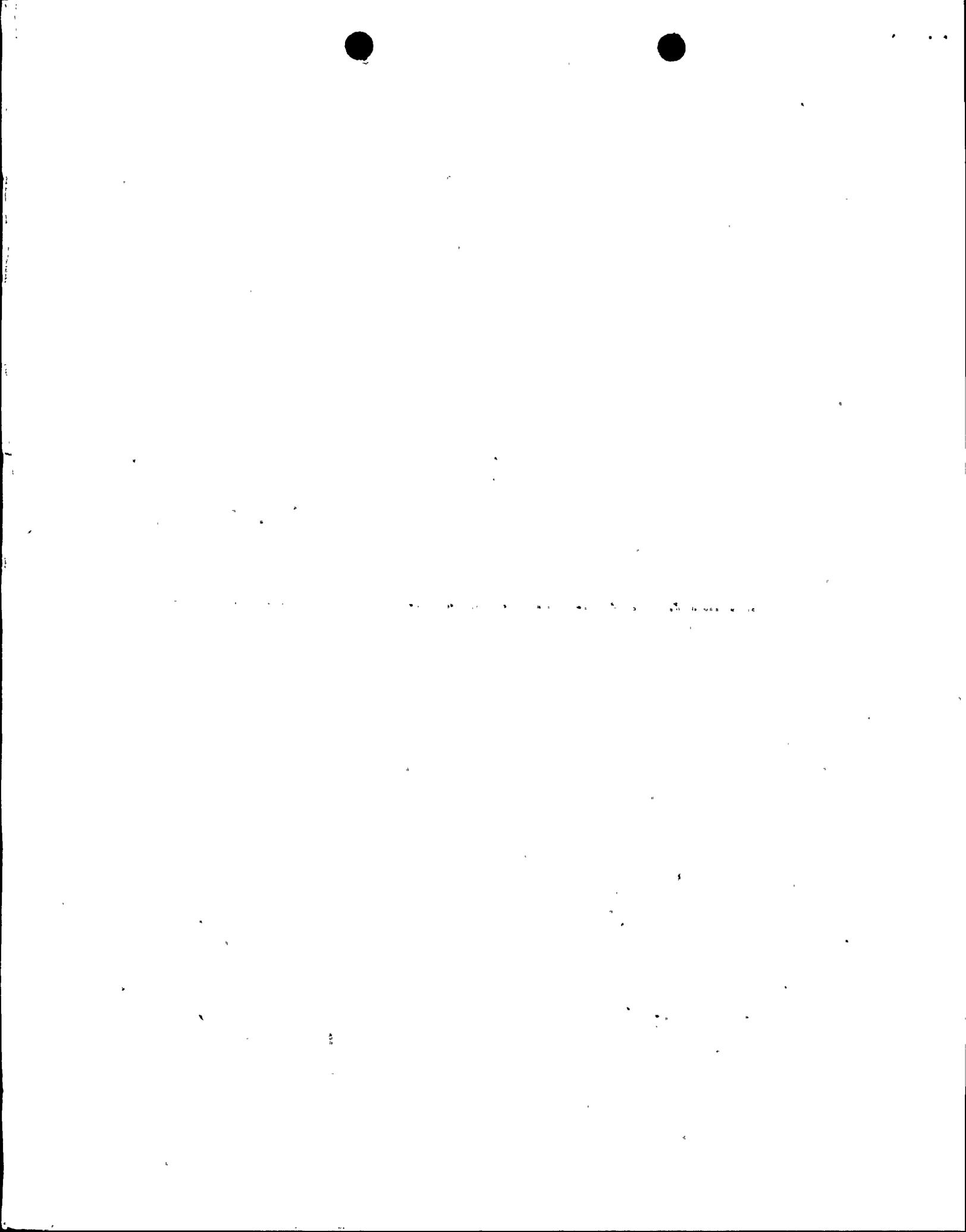
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Dated: December 26, 1973

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Staff Ex. 7, "Radwaste Concerns", pp. 3, 4.



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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the Applicant's Reply to AEC Regulatory Staff's Proposed Modifications of Applicant's Proposed Findings of Fact and Conclusions of Law in the above-captioned proceeding upon the following persons by mailing them first class, postage prepaid, this 26th day of December 1973:

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