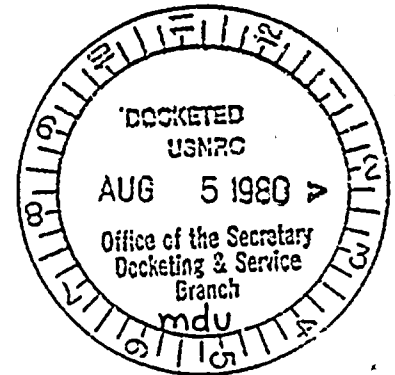


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman
Dr. W. Reed Johnson 1/
Thomas S. Moore



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

Docket Nos. 50-275 OL
50-323 OL

THIRD PREHEARING CONFERENCE ORDER

(Report Of Telephone Conference Call Held July 30, 1980)

August 4, 1980

On July 30, 1980, we held a telephone conference to resolve questions raised by the parties subsequent to our order issued July 15, 1980. Counsel for all parties participated in the conference call: for the intervenor, San Luis Obispo Mothers for Peace, Harry M. Willis; for the applicant, Pacific Gas and Electric Company, Bruce Norton, lead counsel; for the Governor of California, Herbert H. Brown, lead counsel, and Byron S. Georgiou;

1/ Dr. Johnson participated in the decisions reported here and concurs in the results reached; he did not, however, review the final draft.

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for the Nuclear Regulatory Commission staff, William J. Olmstead, lead counsel, and Lucinda Swartz.

1. Intervenor SLOMFP has submitted a document labeled "Notice of Withdrawal as Counsel of Record and Redesignation of Lead Counsel" purporting to effect the withdrawal of Messrs. Paul C. Valentine and Yale I. Jones as intervenor's counsel and designating Mr. W. Andrew Baldwin as SLOMFP's new counsel. We also received a letter signed by Mr. Harry M. Willis and Mr. Baldwin (whose signature was affixed by Mr. Willis) representing, inter alia, that these two individuals would henceforth serve as "co-lead counsel." In addition, the letter stated that counsel has declined to execute non-disclosure affidavits as amended by our July 15 order because, in their judgment, the affidavits might be construed in an unconstitutional manner.

The Board informed Mr. Willis that, first, while we would accept him as the intervenor's counsel for the purpose of the conference call, he must file a formal notice of appearance as required by the Commission's rules^{2/}; second, for reasons previously explained, "co-lead counsel" were unacceptable and SLOMFP must designate promptly either Mr. Baldwin or Mr. Willis

^{2/} 10 C.F.R. §2.713(a).

to serve as lead counsel^{3/}; and, finally, such designation should be by motion and signed by Mr. Baldwin -- the only remaining counsel of record for this intervenor. We also called Mr. Willis' attention to the fact that the Rules of Practice do not authorize requesting relief by letter and that all such future requests must be in motion form served on all parties. We reiterated that all papers in this proceeding were to be served only upon lead counsel and this Board and that we would take care of distribution within the Commission as appropriate.^{4/}

Intervenor's objection to the form of the non-disclosure affidavit was that the phrase "any information obtained by virtue of these proceedings" in paragraph 1(a)(2) might be construed to forbid discussion of information provided by persons other than the NRC, the applicant, or the Governor that was obtained because of this hearing. According to intervenor such a restriction would be unconstitutional. After hearing from all parties, we noted, first, that counsel for the Governor of California and all the expert witnesses (including SLOMFP's own expert) had signed affidavits without objection. Further, we noted that the term "protected information" was expressly

^{3/} See ALAB-592, 11 NRC _____ (May 13, 1980) (Second Prehearing Conference Order at 3-4).

^{4/} Ibid.

defined in the affidavit as information "which is not otherwise a matter of public record" (language suggested by intervenor's counsel at the time, Mr. Jones) and this would foreclose the intervenor's interpretation. We also pointed out that the protective order would be read in conjunction with ALAB-600 and the Commission's decision in CLI-80-24, and that in these circumstances it could not be reasonably given the reading they suggested. We therefore rejected intervenor's objection as without merit and declined to revise the non-disclosure affidavit.

We reminded intervenor's counsel that its expert witness, Mr. Taylor, was now entitled to see the sanitized version of the security plan immediately, but could do so only if counsel executed the non-disclosure affidavit. Mr. Willis stated that he would discuss the matter with Mr. Baldwin and would let us know promptly whether they would execute the affidavit.

2. The Governor of California has submitted the names and qualifications of five individuals whom he asked be permitted to see the sanitized security plan. He sought the Board's approval of them for that purpose. There were no objections to the qualifications of Messrs. Darel R. Sievers, Richard E. White, or Louis O. Giuffrida. However, applicant's counsel

suggested that Mr. Giuffrida might have a conflict of interest in this case, but was unable to substantiate that possibility at this time. Counsel stated that he was not interested in deposing Mr. Giuffrida. The Board took the matter under advisement.

We conclude that these three individuals are, by reason of their education and extensive experience, qualified within the meaning of ALAB-410 to examine the sanitized security plan. We advised the parties by telephone on August 1st that they could do so immediately in accordance with the provisions of our earlier orders. Any conflict of interest involving Mr. Giuffrida would not bar the Governor's use of Mr. Giuffrida as an expert consultant and, in any event, would go to Mr. Giuffrida's credibility should his testimony subsequently be offered as that of an expert witness. Therefore, there was no reason to delay his access to the sanitized plan.

The two remaining individuals proffered as experts by the Governor were Messrs. Alex R. Cunningham and John J. Kearns. The applicant and the staff objected to them as lacking in the type of expertise useful in reviewing the security plan. For this reason those parties opposed allowing them access to it.^{5/}

^{5/} See ALAB-410, 3 NRC at 1398, 1406 (1977).

These individuals are respectively the Director and Assistant Director of the California Office of Emergency Services. After a discussion of the relevancy of their qualifications to the matters at issue in this proceeding, it was decided that counsel for applicant, staff and the Governor would confer to determine whether and to what extent they might agree that these individuals possessed expertise pertinent to matters at issue. Counsel were instructed to report back to us whether there had been any agreement reached on the question. That report should be in our hands no later than August 11, 1980, or earlier if possible, so that we may rule promptly if need be.

As we have mentioned, intervenor's expert Mr. Taylor, while qualified to review the plan, will not be permitted to do so if counsel for intervenor decline to sign the non-disclosure affidavit. We noted, however, that the Governor of California had also proposed to sponsor this witness. We advised counsel that we have no objection to the Governor's doing so, but that we would expect him first to get permission from Mr. Baldwin, counsel of record for SLOMFP. The Governor's counsel stated that he would withdraw for the time being the proposal to sponsor this witness.

In summary, the Governor's counsel (Messrs. Herbert H. Brown, Byron S. Georgiou and Lawrence C. Lampher) and the three expert witnesses whose qualifications we have approved (Messrs. Sievers, White and Giuffrida) may examine the security plan immediately in accordance with the conditions set out in the protective order, the affidavits of non-disclosure, and our earlier prehearing conference orders.

Mr. Taylor, the SLOMFP witness, may also have access to the plan if counsel for that party executes a non-disclosure affidavit as required by ALAB-600 and counsel hand-delivers an executed copy to one of the applicant's San Francisco counsel and mails another to this Board.

3. In response to the inquiry of the Governor's counsel whether he could submit the names of additional experts to view the security plan, we ruled that we would not foreclose the possibility provided the Governor could show a genuine need for such additional experts, but that we would look on such a motion with disfavor, particularly if it might delay the proceeding.

4. At our request, counsel for the parties had negotiated the arrangements whereby security information would be hand-delivered. The details of the arrangements are specified in Mr. Norton's letter to the Board of July 17th and Mr. Olmstead's


letter to us of July 28th. The arrangements are sufficient to the board and are henceforth to be followed by all parties.

5. Counsel for the Governor of California inquired whether a copy of the security plan in its sanitized form could be made available for his use in Washington, D.C. We instructed the staff and the applicant to confer and then report back to us whether such request could reasonably be accommodated.

6. Finally, all parties shall adhere to the schedule set forth in our July 15, 1980 order for all remaining prehearing procedures.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

(Diablo Canyon, Units 1 and 2))
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Docket No. (s) 50-2750L
50-3230L

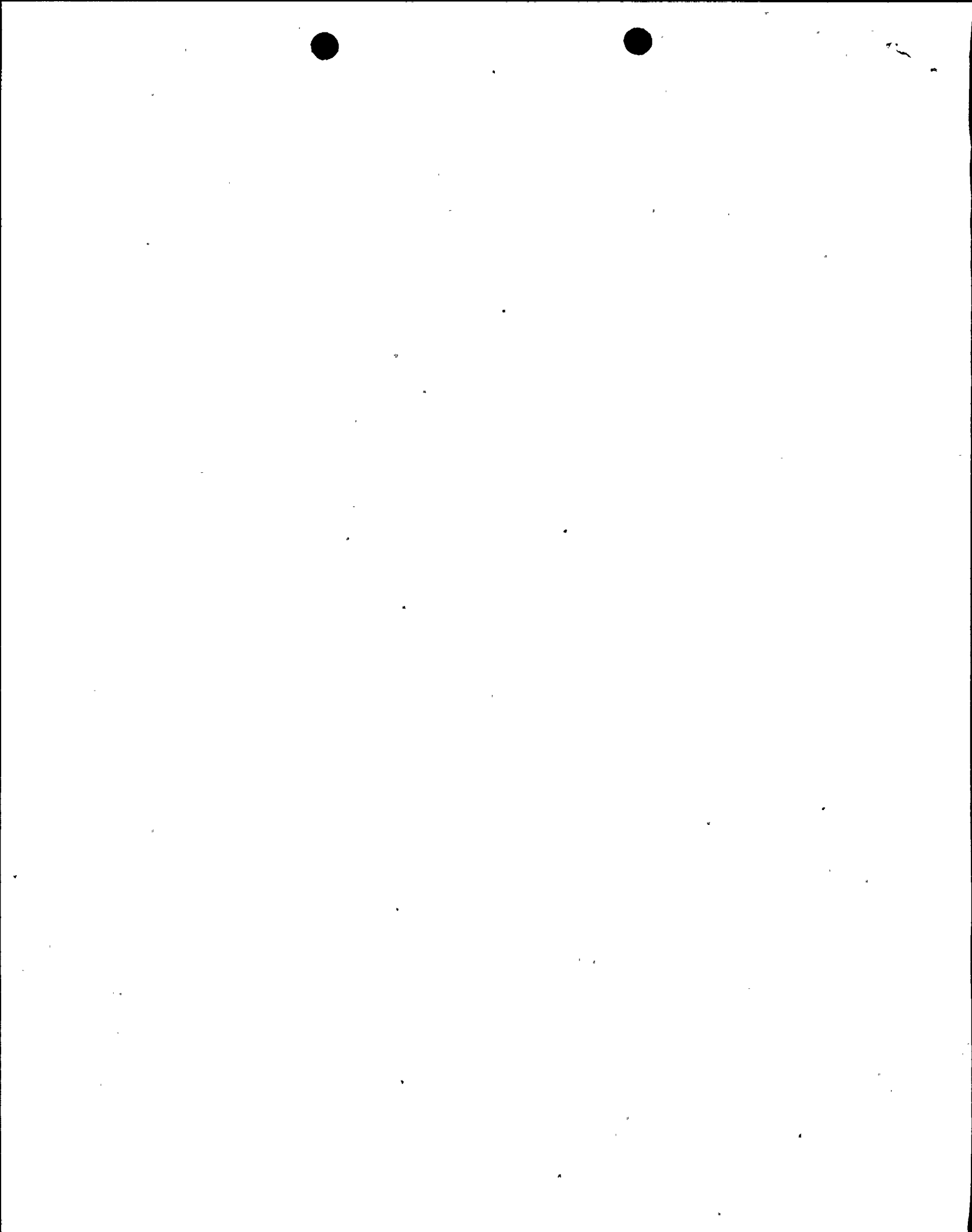
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

5th day of Aug 1980.

Debra H. Downing
Office of the Secretary of the Commission



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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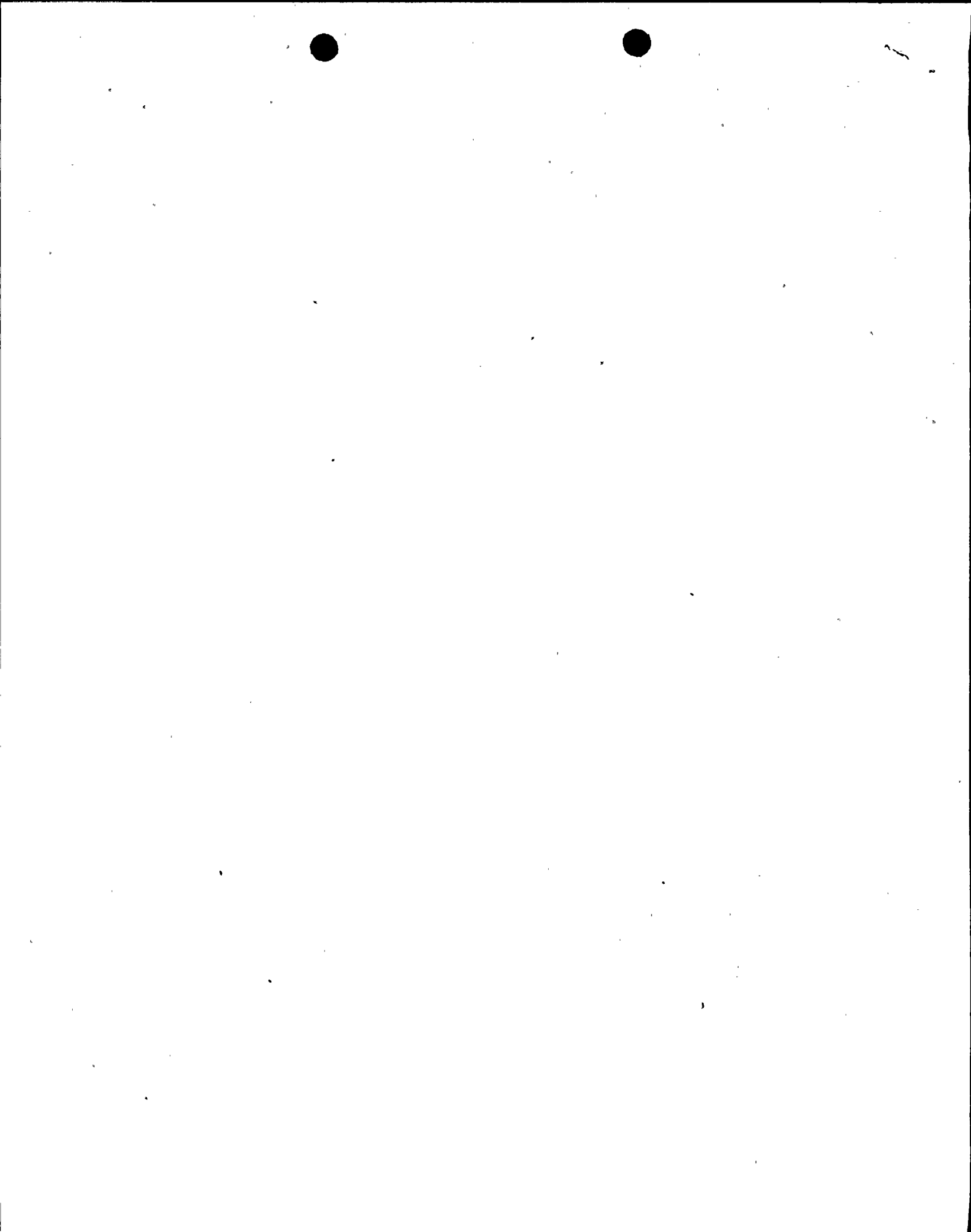
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