

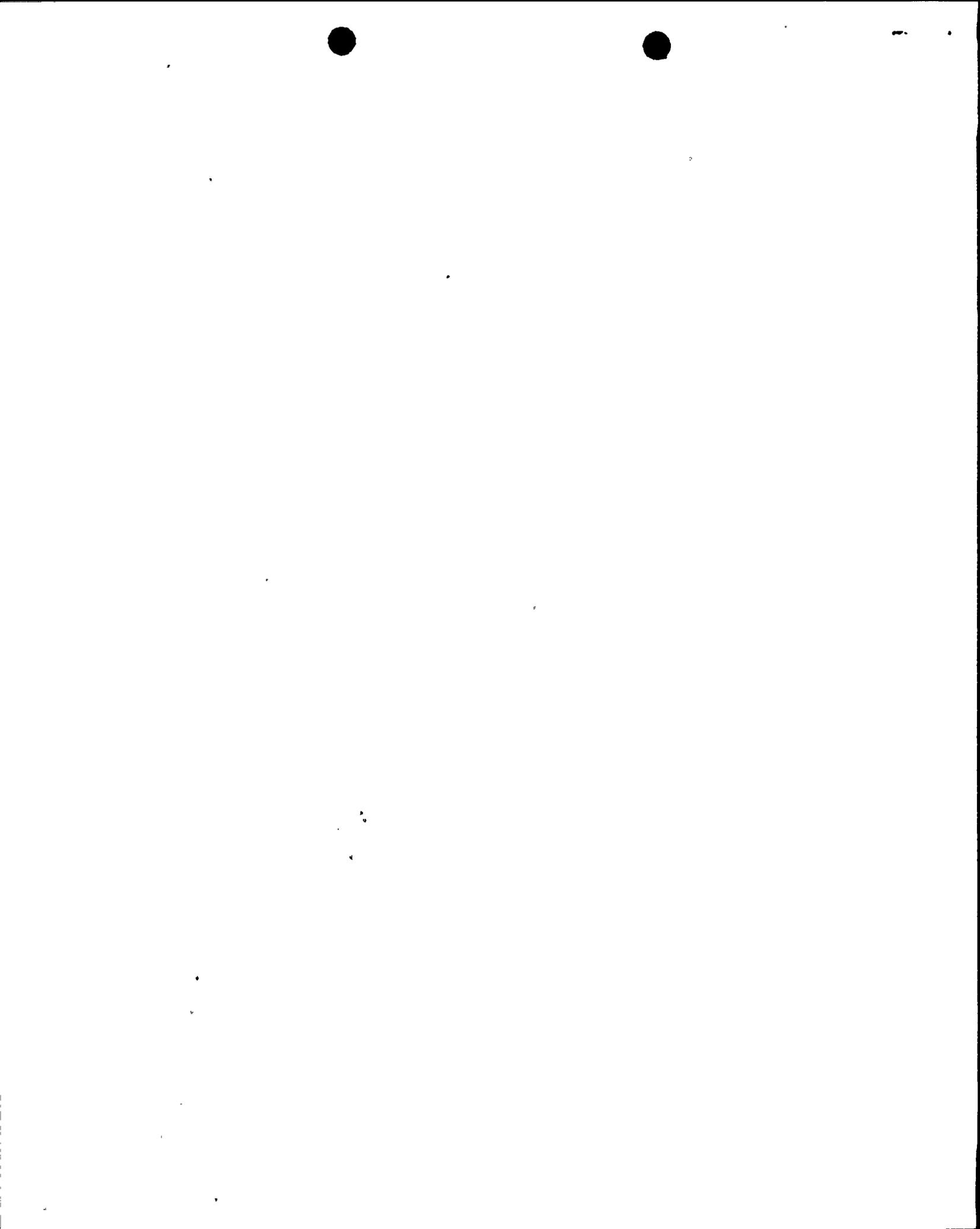
be issued. Below we briefly summarize the points made in the previous filings and show why the Staff and Applicants' arguments cannot save the legally deficient Motion.

First, PG&E's Motion violates 10 C.F.R. §2.730(b) which states that "...a motion shall...state with particularity the grounds and the release sought...". This requirement is designed to ensure that parties to proceedings are apprised of the precise nature of a request for release so that issues can be framed and litigated. As Governor Brown pointed out, PG&E's request for a license "substantially in the form previously approved by the Nuclear Regulatory Commission ("NRC") for other facilities" does not meet that requirement.

PG&E responds that "the reference in the motion to licenses in the form previously approved would be understood to refer to the three most recently issued low power licenses." Even assuming that the three recent low power testing licenses are identical -- and they are not -- there is nothing in the record to indicate that the terms of those licenses would be appropriate here. In fact, the experience obtained during the low power test operations at the three facilities may require changes in the low power test licenses subsequently issued.

In addition, the Applicant's promise to serve the parties with a proposed low power testing license does not save the legally deficient motion. Rather it is tacit recognition that the motion was filed prematurely.

Second, the motion contains absolutely no probative information tending to show that it should be granted. The



affidavit attached to the motion contains no substantive information supporting issuance of a low power testing license. It fails even to identify those portions of the Final Safety Analysis Report ("FSAR") on which the Applicant relies to satisfy the Commission's requirement for issuance of a low power testing license -- NUREG 0694.

Applicants respond that "the affidavit permits the Board to accept the statements in the motion as affirmative evidence" does not help its cause. The conclusory statements in the motion establish no basis for issuance for a low power testing license. Furthermore, the Applicant cannot save the motion by requesting the Licensing Board to incorporate the NRC Staff Safety Evaluation Report ("SER") into the record. The SER presents the staff position -- not the Applicant's. Incorporating the SER into the record does not relieve the Applicant of its legal duty to identify specifically the substantive information upon which it relies.

Third, PG&E's motion fails to address the criteria of 10 C.F.R. §50.57(a) which must be satisfied before a low power testing license can be issued. Specifically, §50.57(a) requires a finding that issuance of a low power testing license will not be inimical to the public health and safety and to the common defense and security. PG&E fails even to address how this requirement can be satisfied when (a) there is no definitive finding of safety with respect to the Diablo Canyon security plan and (b) the adequacy of the Licensing Board's findings on seismic design have been put in doubt by the Appeal Board's order reopening the evidentiary record.

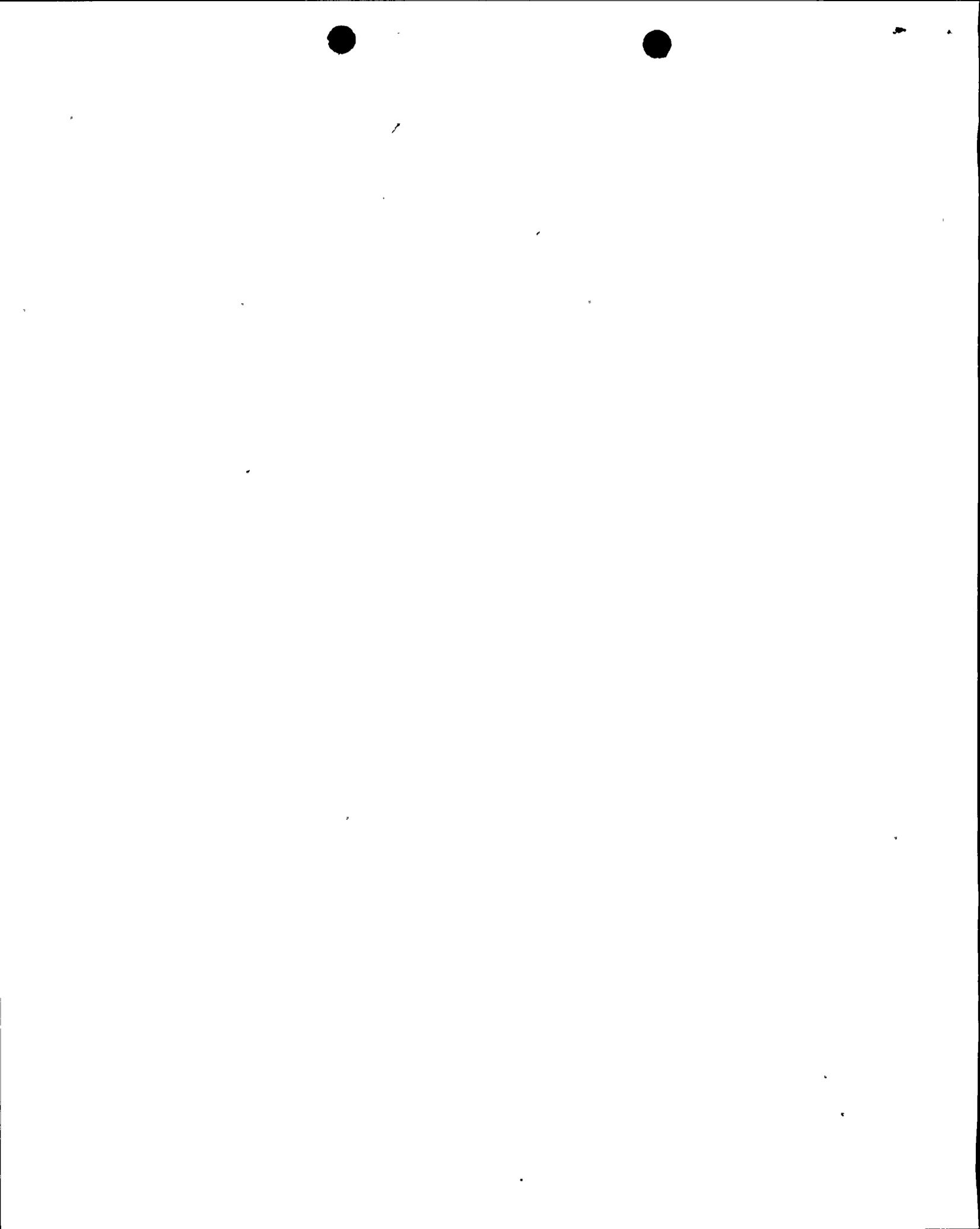


PG&E's response that it had or will comply with the TMI-related requirement established in NUREG 0694 misses the point. Even assuming that PG&E can meet those requirements, no operating license -- low power or full power -- may issue absent a definitive finding of safety on the security plan and seismic design.

The NRC Staff did not address the legal adequacy of PG&E's motion in its response. The Joint Intervenors' position is that until a legally sufficient motion is submitted, further discussion of a low power testing license is premature. Nevertheless, we will comment briefly on the Staff's position.

The Staff proposes that the parties "begin the process of examining the adequacy of the Applicant's low power testing proposal" because (a) the requirements established in NUREG 0694 are substantially satisfied and (b) other issues pertinent to the low power testing license have been resolved as required by 10 C.F.R. §50.57(c). However, the argument that the Licensing Board's findings satisfy §50.57(c) ignores the record. The Staff fails to address that the Licensing Board's findings on the security plan have been vacated and those on seismic design are placed in serious doubt by the Appeal Board's order reopening the evidentiary record.

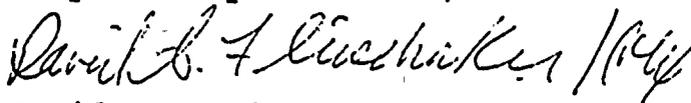
With respect to the need for a Class Nine accident analysis, the Staff argues that the Joint Intervenors have failed to establish the special circumstances needed to justify such an analysis where, as here, a final environmental impact statement ("FES") has already been issued. We disagree. The special circumstances are the late discovery of the Hosgri fault



and the determination that it is capable of generating earthquake forces at the site substantially greater than those for which the plant was originally built. Moreover, the FES should be supplemented prior to low power operation because contamination of the reactor may foreclose engineering safeguards or increase substantially their economic and health costs. In addition, the Staff dismisses the need for a Class Nine accident analysis at this stage with the unsupported assertion that low power testing presents no risks of a core melt and breach of containment. At a minimum, the Staff should substantiate that assertion.

In closing, the Joint Intervenors reiterate their requests that the Licensing Board dismiss the Applicant's motion for a low power testing license.

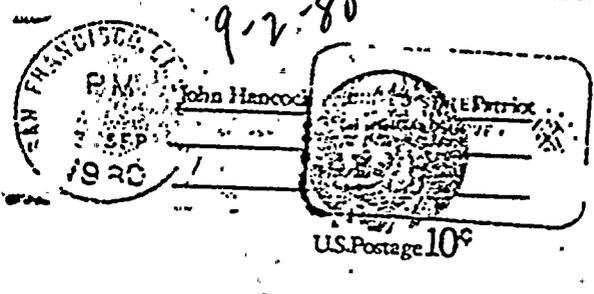
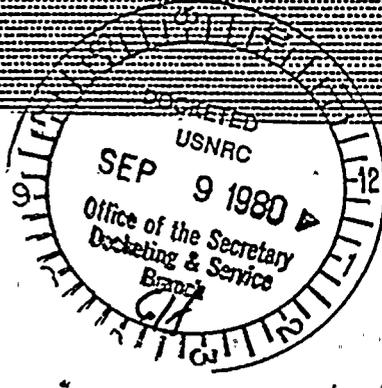
Respectfully submitted,



David S. Fleischaker  
Counsel to Joint Intervenors

September 19, 1980





N.R.C.  
~~State Capital~~  
~~Washington, D.C.~~  
Washington, D.C. 20555

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Sirs:  
DOCKET NUMBER 50-275-323 Sept. 2/80  
PROD. & UTIL. FAC.  
I demand to know why you are stalling the licensing of Diablo Canyon Nuclear Power Plant? as a citizen who voted to have nuclear power (Prop 13) and we were in the majority who voted it in, I cannot understand how a handful of protesters can keep you people and the P.U.C from licensing it. I understand the plant is ready to go and licensing is long overdue. Stop playing politics or get out. I'm not paying rising prices to P.D. & just because you people are derelict and don't take a stand for the majority of voters. What you're doing is not a democracy. I am one angry citizen along with many others. Sincerely,  
Priscilla R. Lamb, 716 Cindy Lane, Petaluma, Ca. 94952

Acknowledged by card

6/11/80



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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PACIFIC GAS AND ELECTRIC COMPANY )

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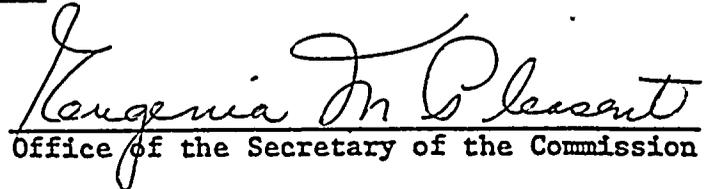
Docket No. (s) 50-2750L  
50-3230L

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

9th day of Sept 1980.

  
Office of the Secretary of the Commission



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) 50-275  
50-323

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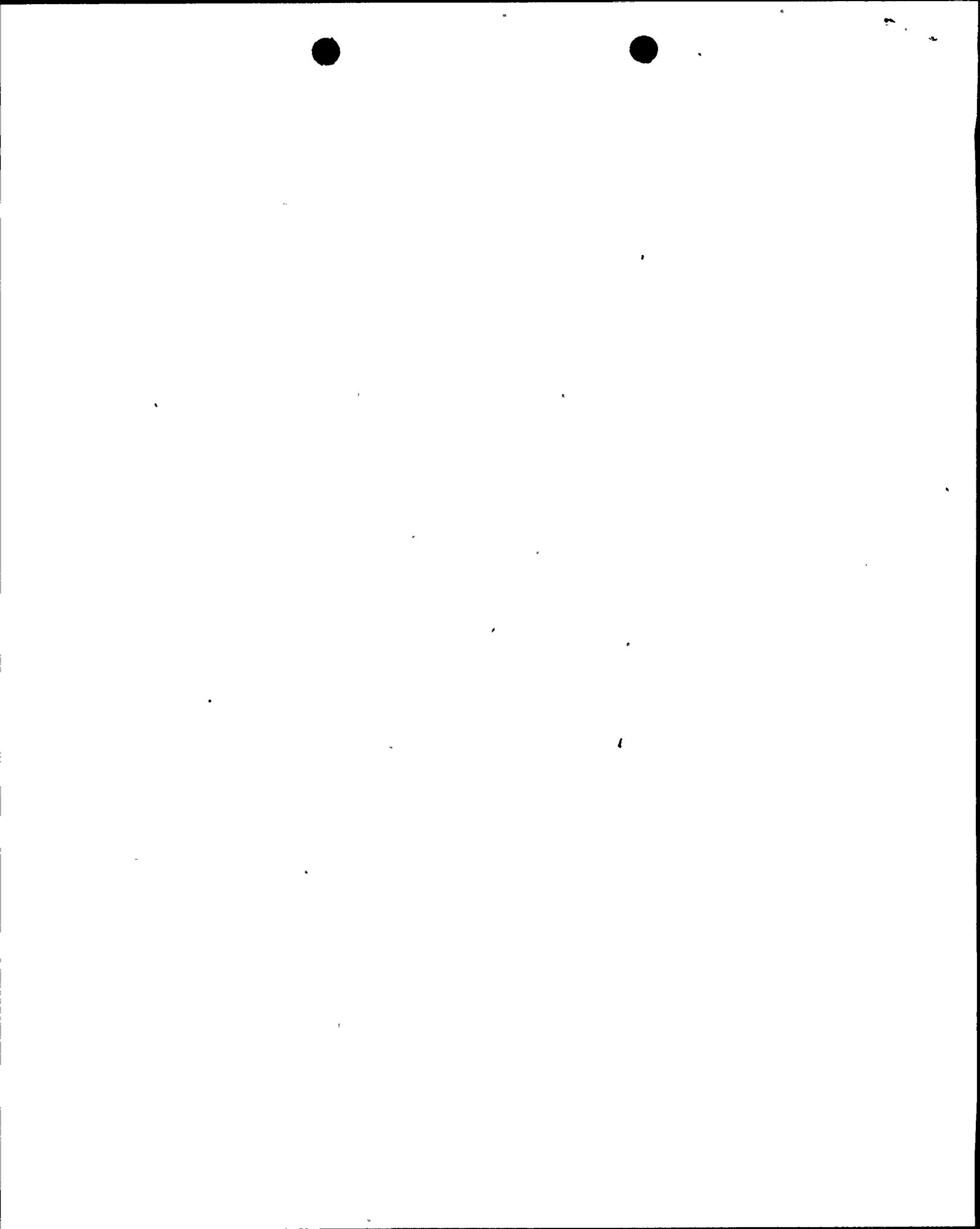
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