

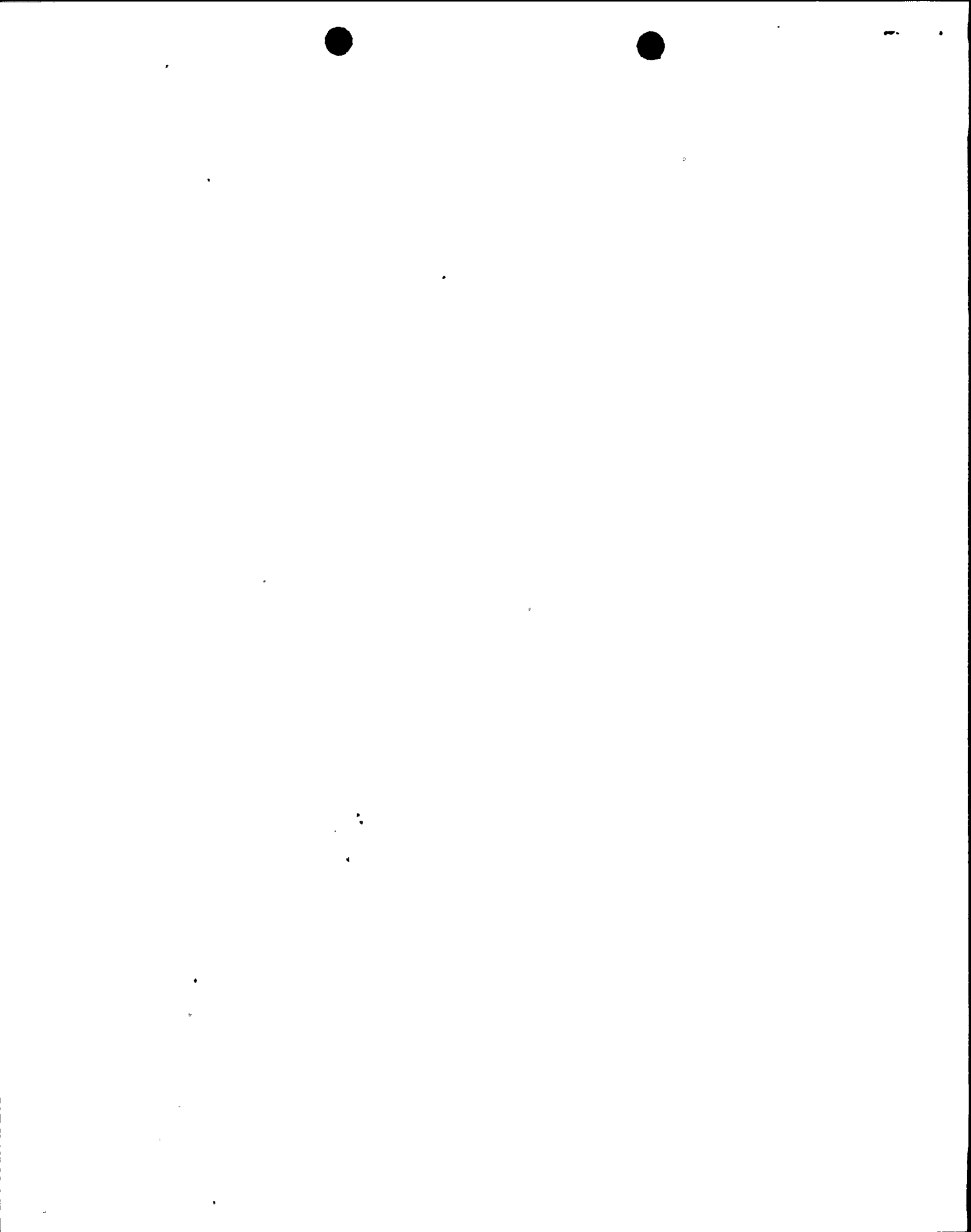
be issued. Below we briefly summarize the points made in the previous filings and show why the Staff and Applicants' arguments cannot save the legally deficient Motion.

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.

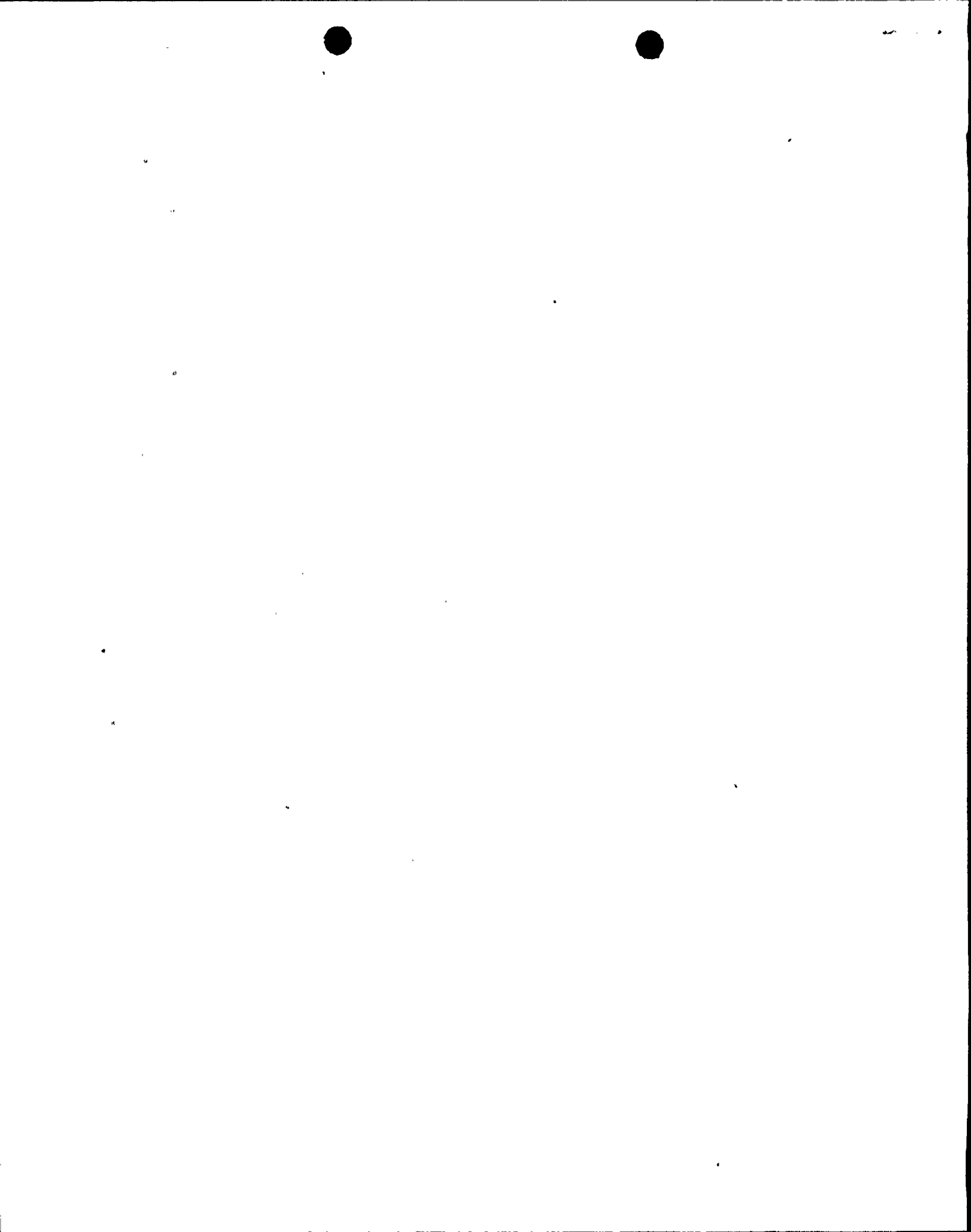
Second, the motion contains absolutely no probative information tending to show that it should be granted. The



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.

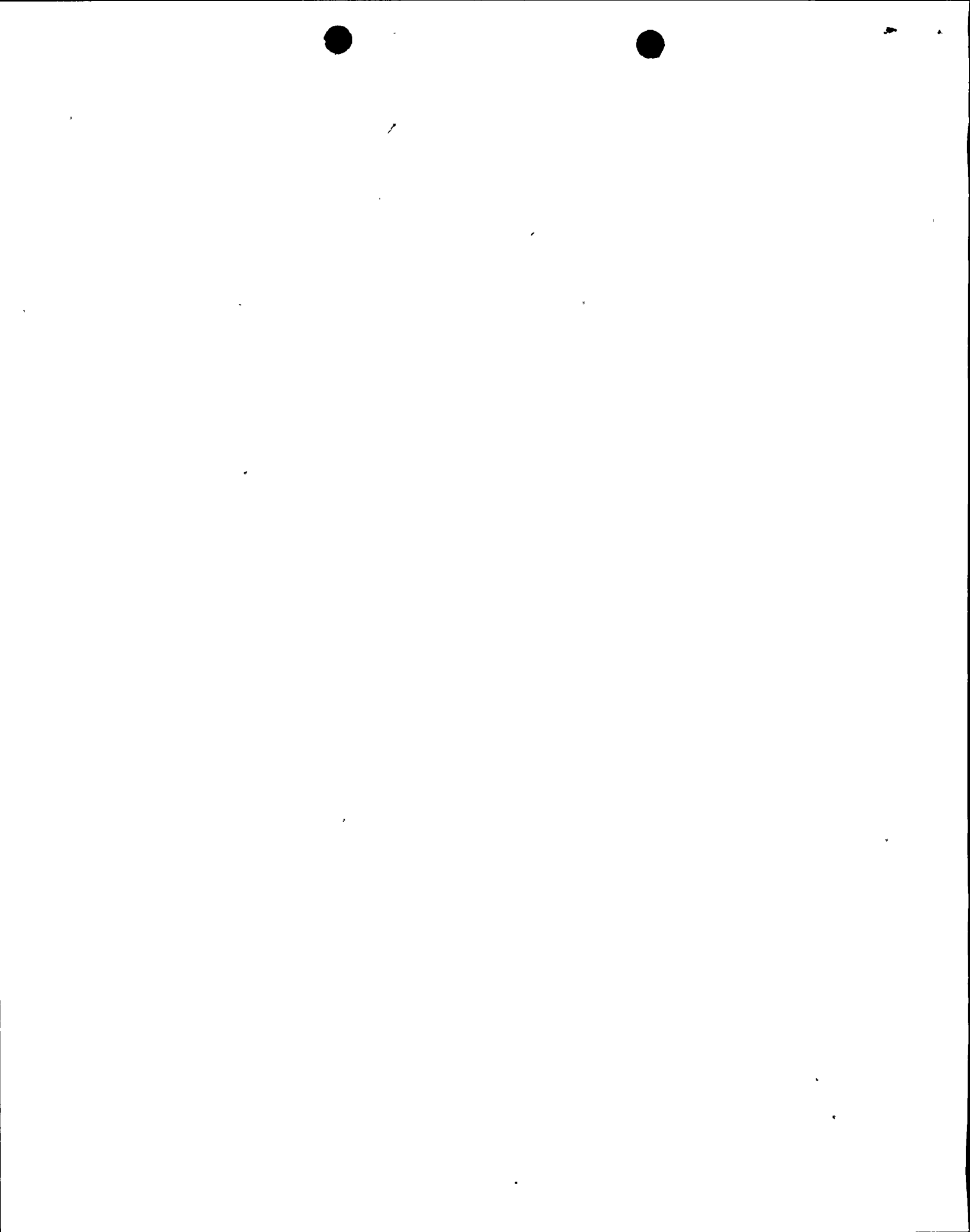


PG&E's response that it had or will comply with the TMI-related requirement established in NUREG 0694 misses the point. Even assuming that PG&E can meet those requirements, no operating license -- low power or full power -- may issue absent a definitive finding of safety on the security plan and seismic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

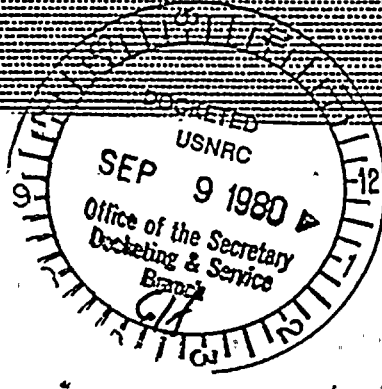
Respectfully submitted,

*David S. Fleischaker*

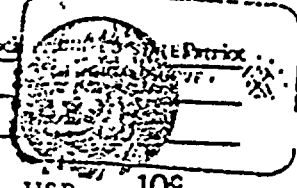
David S. Fleischaker  
Counsel to Joint Intervenors

September 19, 1980





9-2-80



U.S. Postage 10¢

N.R.C.

~~State Capital~~

~~Washington, D.C.~~

Washington, D.C. 20555

© USPZ 1972

DOCKET NUMBER  
PROD. & UTIL. FAC.

50-275-323

Sept. 2/80

Sirs:  
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.S. & 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

6/11/80

Acknowledged by card



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )

PACIFIC GAS AND ELECTRIC COMPANY )

(Diablo Canyon, Units 1 and 2) )

) 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.

*Karenia M. Pleasant*  
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) )  
)  
)  
)  
)  
)

Docket No.(s) 50-275  
50-323

SERVICE LIST

Elizabeth S. Bowers, Esq., Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Philip A. Crane, Jr., Esq.  
Pacific Gas & Electric Company  
77 Beale Street, Room 3127  
San Francisco, California 94106

Mr. Glenn O. Bright  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. William E. Martin  
Senior Ecologist  
Battelle Memorial Institute  
Columbus, Ohio 43201

Janice E. Kerr, Esq.  
California Public Utilities Commission  
5246 State Building  
San Francisco, California 94102

Richard S. Salzman, Esq., Chairman  
Atomic Safety and Licensing Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mrs. Raye Fleming  
1920 Mattie Road  
Shell Beach, California 93440

Dr. W. Reed Johnson  
Atomic Safety and Licensing Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mr. Frederick Eissler  
Scenic Shoreline Preservation  
Conference, Inc.  
4623 More Mesa Drive  
Santa Barbara, California 93105

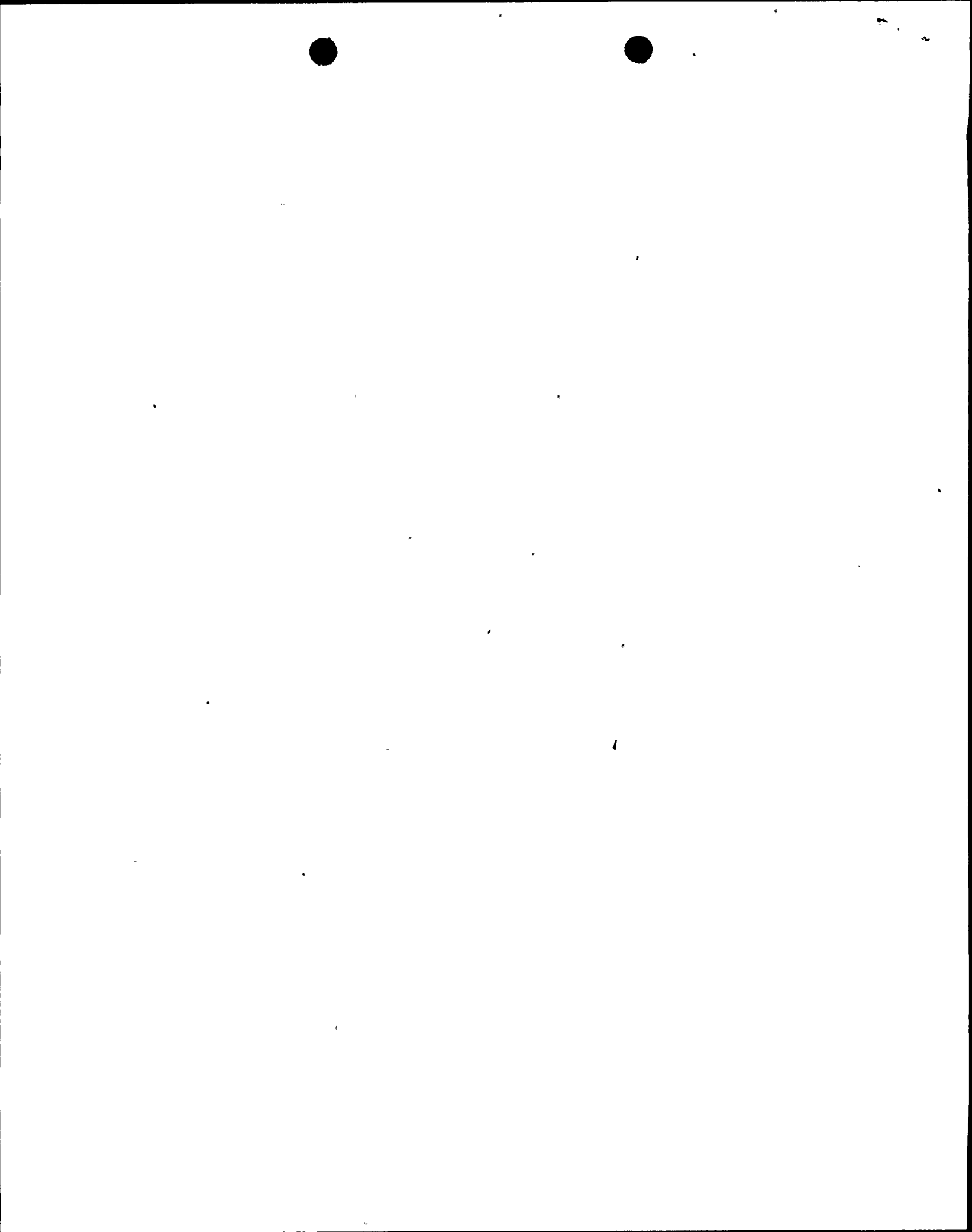
Thomas S. Moore, Esq.  
Atomic Safety and Licensing Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mrs. Sandra A. Silver  
1760 Alisal Street  
San Luis Obispo, California 93401

Counsel for NRC Staff  
Office of the Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mr. Gordon A. Silver  
1760 Alisal Street  
San Luis Obispo, California 93401

Mrs. Elizabeth Apfelberg  
c/o Ms. Nancy Culver  
182 Luneta Drive  
San Luis Obispo, California 93401





Brent Rushforth, Esq.  
Stephen M. Kristovich, Esq.  
Center for Law in the Public Interest  
10203 Santa Monica Drive  
Los Angeles, California 90067

David F. Fleischaker, Esq.  
1735 I Street, N.W., Apt. 709  
Washington, D.C. 20006

Arthur C. Gehr, Esq.  
Snell & Wilmer  
3100 Valley Center  
Phoenix, Arizona 85073

Mr. James O. Schuyler  
Nuclear Projects Engineer  
Pacific Gas & Electric Company  
77 Beale Street  
San Francisco, California 94106

Bruce Norton, Esq.  
3216 North Third Street, Suite 202  
Phoenix, Arizona 85012

Mr. W. Andrew Baldwin, Esq.  
Friends of the Earch  
124 Spear  
San Francisco, California 94105

Herbert H. Brown, Esq.  
Hill, Christopher & Phillips, P.C.  
1900 M Street, N.W.  
Washington, D.C. 20036

Mr. J. Anthony Klein  
Governor's Office  
State Capitol  
Sacramento, California 95814

Mr. Carl Neiburger  
San Luis Obispo Telegram-Tribune  
P.O. Box 112  
San Luis Obispo, California 93406

Mr. James Hanchett  
Public Affairs Officer, Region V  
U.S. Nuclear Regulatory Commission  
1990 N. California Boulevard, Suite 202  
Walnut Creek, California 94596

