

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-275
)	Docket No. 50-323
Diablo Canyon Units 1 and 2)	(Low Power Motion)
)	

OBJECTIONS OF PGandE TO ASLB ORDER DATED FEBRUARY 13, 1981

Pacific Gas and Electric Company (PGandE), pursuant to 10 CFR 2.752(c), files objections to those portions of the Prehearing Conference Order dated February 13, 1981 admitting Joint Intervenors' Contentions 4, 5, 11, 13, and 24.

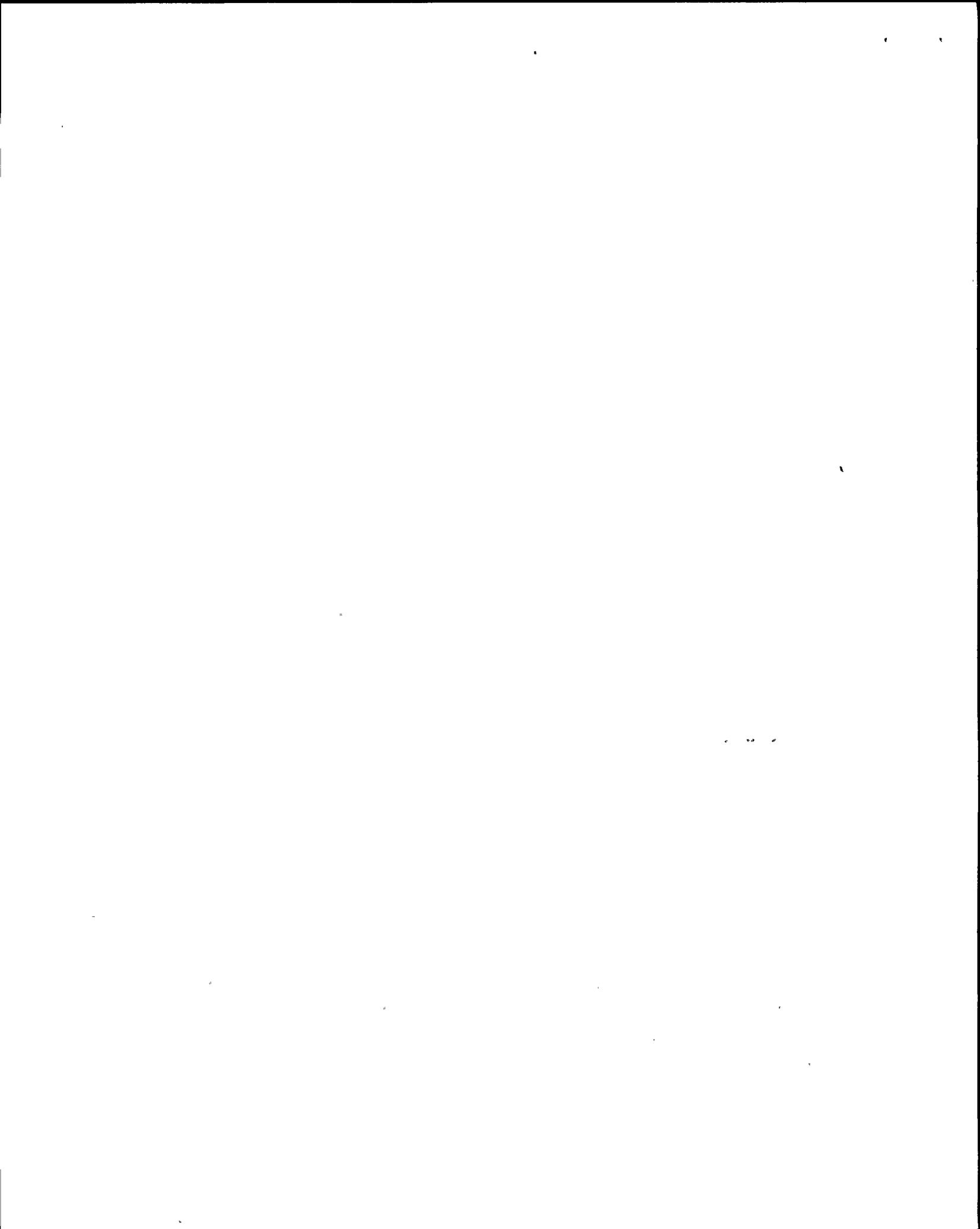
In the first place the Board, although noting

". . . that neither the Governor nor the Joint Intervenors sought to establish good cause for admitting new contentions or reopening the record on old contentions aside from their reliance on NUREG-0737."
 (Order at 16)

nevertheless admitted the five above-numbered contentions. The Board apparently is of the opinion that mere mention in NUREG-0737 is sufficient to make an issue the subject of a valid contention for litigation in a public hearing (Order at 12). Clearly, this is an improper and incorrect interpretation of the Commission's Statement of Policy dated December 18, 1980 (45 F.R. 85236). This statement very clearly provides

"The Commission believes that where the time for filing contentions has expired in a given case, no new TMI-related contentions should be accepted absent a showing of good cause and balancing of the factors in 10 CFR 2.714(a)(1). The Commission expects adherence to its regulations in this regard. Also, present standards governing the reopening of hearing records to consider new evidence on TMI-related issues should be adhered to. Thus, for example, where initial decisions have been issued, the record should not be reopened to take

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evidence on some TMI-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision." (45 F.R. 85238)

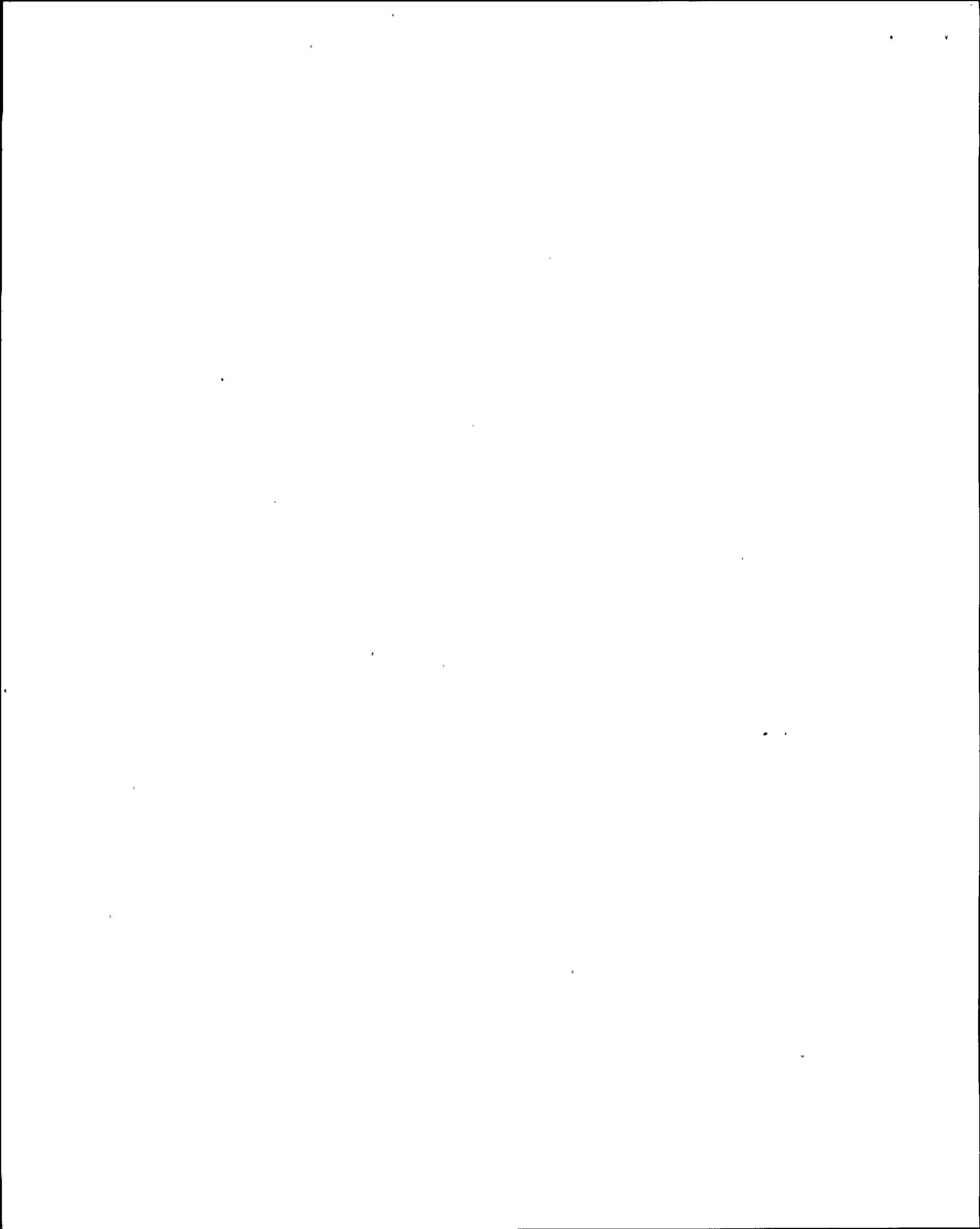
Since the Joint Intervenors totally failed to make any such showing they are not entitled to have any of their contentions accepted, and those portions of the Board's order which purport to do this are wrong and should be amended.

An additional defect in the Board's order is the use of the wrong standard for reopening records. At page 12 the order speaks in terms of "good cause." However, this is the standard for accepting late-filed contentions." As quoted above, the Statement of Policy provides that in addition to good cause and a balancing of the factors in 10 CFR 2.714(a)(1)

". . . present standards governing the reopening of hearing records to consider new evidence on TMI-related issues should be adhered to. Thus, for example, where initial decisions have been issued, the record should not be reopened to take evidence on some TMI-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision."
(45 F.R. 85238) (Emphasis added)

Further, with respect to Contentions 4 and 5, it is well settled that emergency response plans are not proper subjects for litigation in connection with issuance of licenses to load fuel and conduct low power tests. Footnote 9 to the Statement of Policy provides in full as follows:

"Consideration of applications for an operating license should include the entire list of requirements unless an applicant specifically requests an operating license with limited authorization (e.g., fuel loading and low-power testing)."

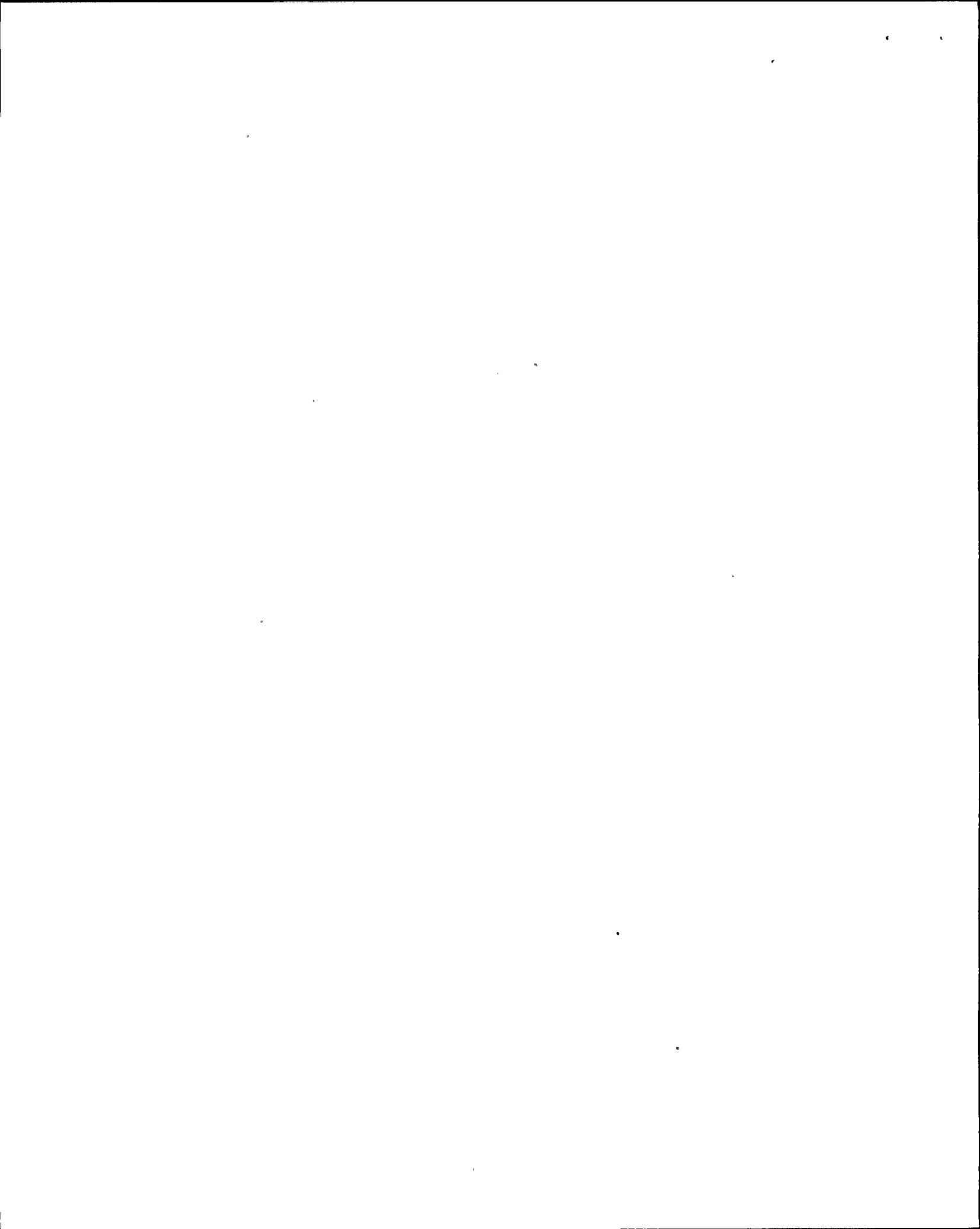


Prior to issuance of NUREG-0737 it was established under NUREG-0694 and the Commission's Statement of Policy dated June 16, 1980 (45 F.R. 41737) that updated emergency preparedness requirements were required before a full-power license as opposed to a license to load fuel and conduct low-power tests (NUREG-0694 p. 25). There is nothing in the revised Statement of Policy and NUREG-0737 to indicate that the Commission intended any change in this regard. Indeed the repetition as Footnote 9 of Footnote 8 in the Statement of Policy dated June 16, 1980 mandates a contrary conclusion. Accordingly, the Board acted improperly in granting Joint Intervenors' Contentions 4 and 5.

Finally, § 109(a)(2) of P.L. 96-295 (94 Stat. 784) provides that if an emergency preparedness plan which complies with the Commission's guidelines is not in effect the Commission is authorized to issue an operating license if it determines that

" . . . there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned."

The NRC Staff has determined that the existing state, local, and utility emergency plans provide sufficient assurance and protection of the public health and safety for purposes of a license to load fuel and conduct low-power tests (SER Supplement 10, page III B-2, NUREG-0675). This position is supported by the language in 10 CFR 50.47(c) which provides for issuance of an "operating license" even if the requirements of 10 CFR 50.47(b) have not been met so long as there is reasonable assurance the public health and safety is not endangered. Accordingly, the Board should not have accepted Contentions 4 and 5 for purposes



of PGandE's motion for a license to load fuel and conduct low-power tests.^{1/}

If the Board chooses not to revise its order in the light of the objections presented herein PGandE urges the Board to certify PGandE's objections to the Commission for a decision pursuant to 10 CFR 2.718(i). The Commission in the Statement of Policy encouraged certifications

" . . . where Boards are in doubt as to the Commission's intentions in approving NUREG-0737." (45 F.R. 85238)

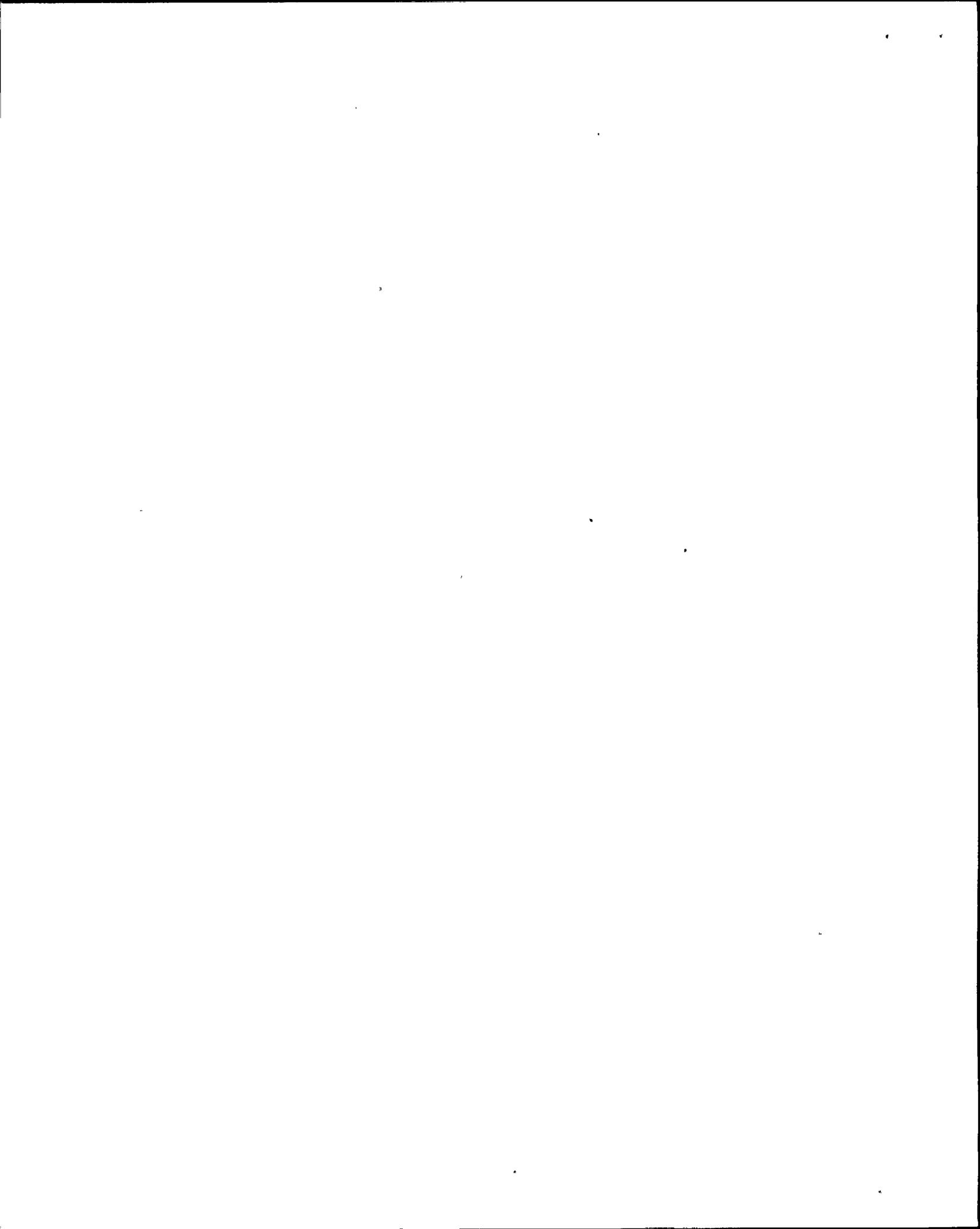
PGandE is preparing a separate request for certification for filing with the Commission.

Respectfully submitted,

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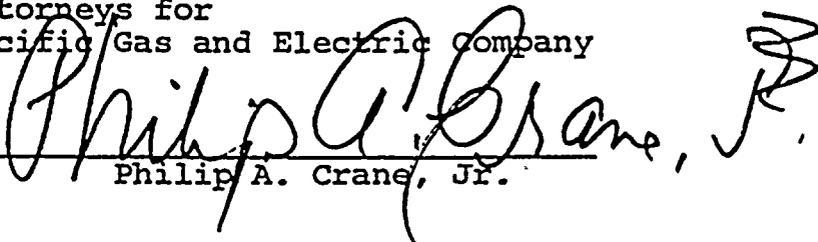
^{1/} 10 CFR 50.57(c) under which PGandE seeks issuance of a low-power testing authorization expressly limits contentions to those relevant to the activity to be authorized. Joint Intervenors' Contentions 4 and 5 are irrelevant to fuel load and low-power testing.



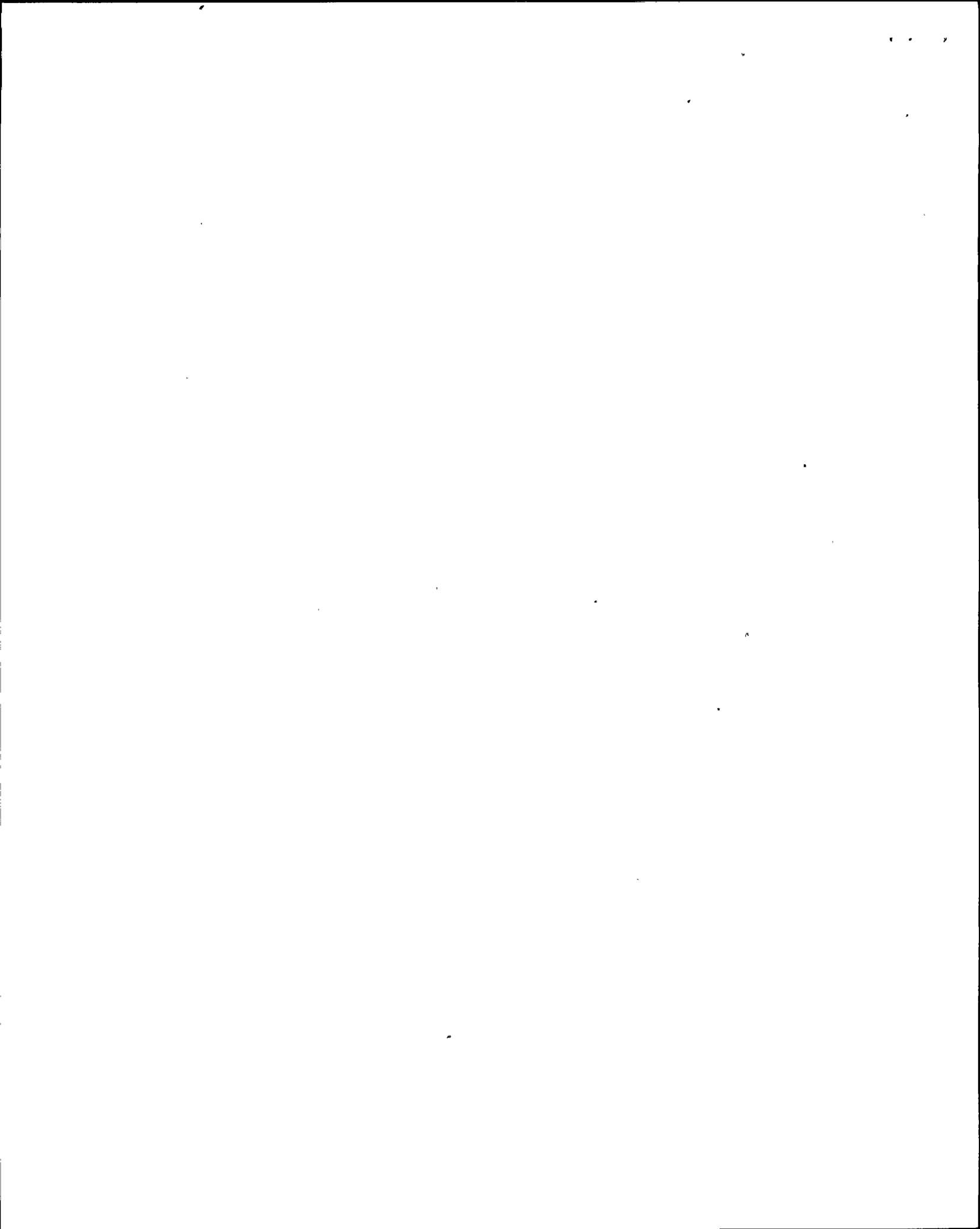
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Attorneys for
Pacific Gas and Electric Company

By


Philip A. Crane, Jr.

Dated: February 25, 1981





UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MEMORANDUM FOR: Harold R. Denton, Director, Office of Nuclear Reactor Regulation, NRC

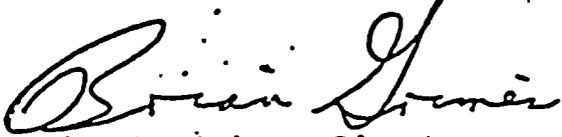
John W. McConnell, Assistant Associate Director for Population Preparedness, FEMA

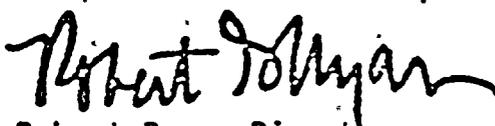
FROM: FEMA/NRC Steering Committee

SUBJECT: EMERGENCY PREPAREDNESS CRITERIA FOR LOW POWER TESTING

In accordance with your exchange of letters, both dated February 14, 1980, the joint FEMA/NRC Steering Committee has made a determination on whether specific emergency preparedness criteria should be developed for low power testing authorizations at new commercial nuclear power facilities. The Steering Committee has determined that the position in the enclosure with regard to emergency preparedness for low power testing is adequate and can serve as an interim basis for licensing facilities for low power testing. The Steering Committee concludes that in view of the minimal nature of the potential hazard, the development of specific low power testing criteria is not warranted.

We conclude that an appropriate objective for those facilities beyond North Anna, Salem and Diablo Canyon is to assess against the upgraded NRC/FEMA criteria and make findings with regard to the significance of any deficiencies for low power testing authorizations.

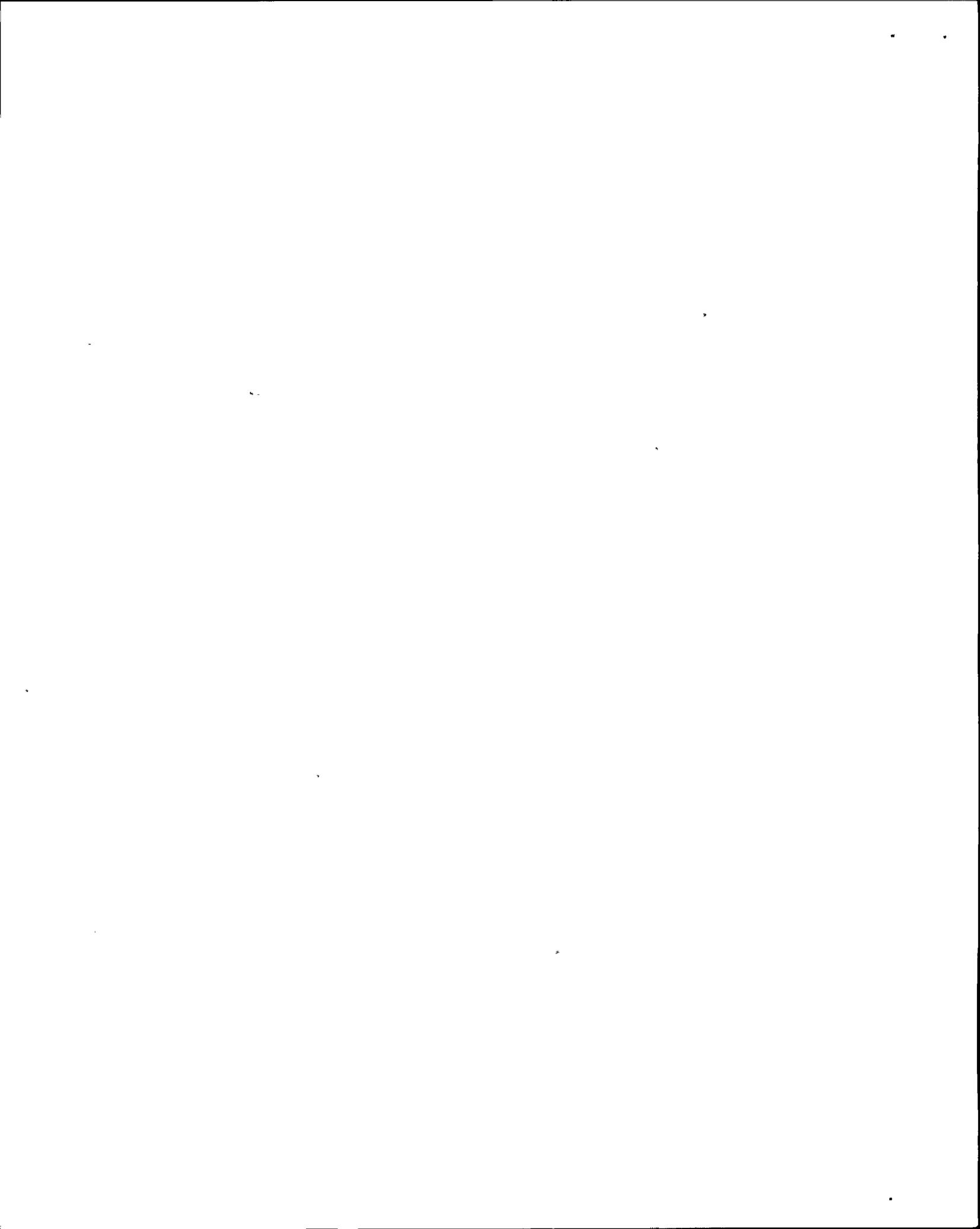

Brian K. Grimes, Director
Emergency Preparedness Task Group
Office of Nuclear Reactor Regulation - NRC


Robert Ryan, Director
Division of Radiological Emergency Preparedness - FEMA

Co-Chairmen
of the
FEMA/NRC Steering Committee

Enclosure:
Criteria for Low Power Testing

cc w/enclosure:
FEMA/NRC Steering Committee
K. Cornell
F. Camm



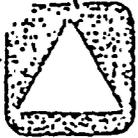
FEMA/NRC INTERIM AGREEMENT ON CRITERIA FOR LOW
POWER TESTING AT NEW COMMERCIAL NUCLEAR FACILITIES

The FEMA/NRC Steering Committee has agreed that for the purposes of low power testing (up to 5% power) at new commercial nuclear facilities that the public health and safety is adequately protected if such facility is located in a State which had received a concurrence under the previous voluntary concurrence program, administered by the NRC and based on evaluation by a multi-agency Federal Regional Advisory Committee. In addition, operator plans at individual sites must be consistent with both the existing NRC Appendix E to 10 CFR Part 50 and NRC Regulatory Guide 1.101 in order to assure adequate protection of the public health and safety prior to low power testing.

NRC and FEMA agree that State, local and nuclear facility operator plans must be adequate when judged against the criteria contained in NUREG-0654 and FEMA/REP-1 prior to full scale commercial operation.

This agreement is based on the considerations discussed in the exchange of letters between H. Denton, NRC and J. McConnell, FEMA, both dated February 14, 1980.

The parties note that the North Anna, Salem and Diablo Canyon sites are located in Virginia, New Jersey and California respectively, all of which have received prior NRC concurrence in State Plans. The Salem facility is located near the Delaware border; the radiological emergency plan of the State of Delaware has also received prior NRC concurrence. NRC stipulates that individual nuclear facility operator plans at these plants are in compliance with Appendix E and are consistent with Regulatory Guide 1.101.



FEDERAL EMERGENCY MANAGEMENT AGENCY
 Region IX 211 Main Street, Room 220 San Francisco, CA 94105

May 8, 1980

MEMORANDUM FOR: THE RECORD

FROM: *J. Eldridge*
 Jack W. Eldridge, Jr., Emergency Management Specialist
 Plans & Preparedness Division

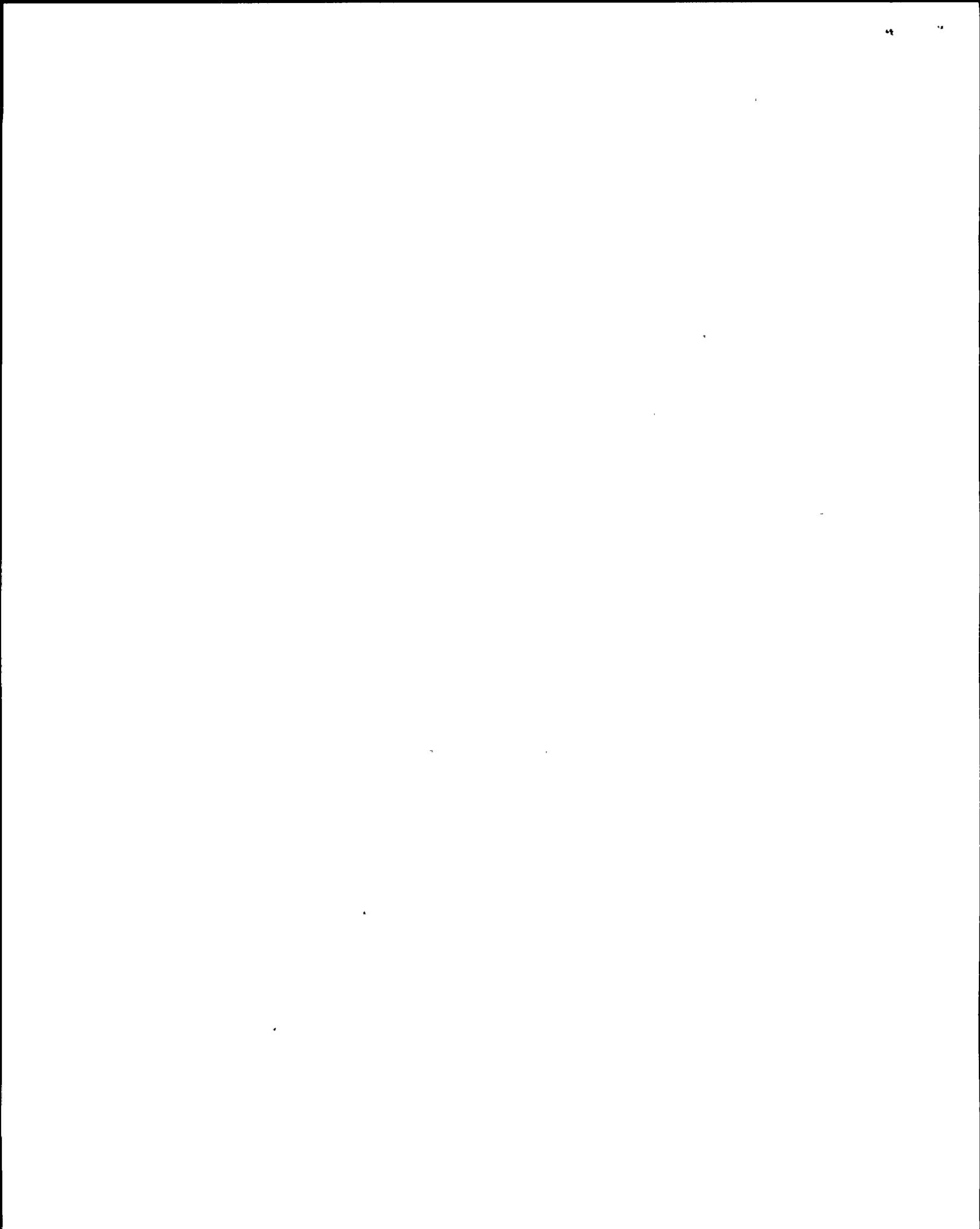
SUBJECT: Consolidated RAC IX Comments on the San Luis Obispo County
 "Nuclear Power Plant Emergency Response Plan".

FEMA

General Comments: The existing plan was developed based on a 6 mile emergency planning zone and other standards that have been superceded. This plan must be updated to meet the new criteria for planning shown in NUREG 0654. Although this plan does address many essential areas there is little evidence that regular drills and exercises have actually been carried out to develop trained people in the county capable of responding effectively to an incident involving this plan.

Specific Comments:

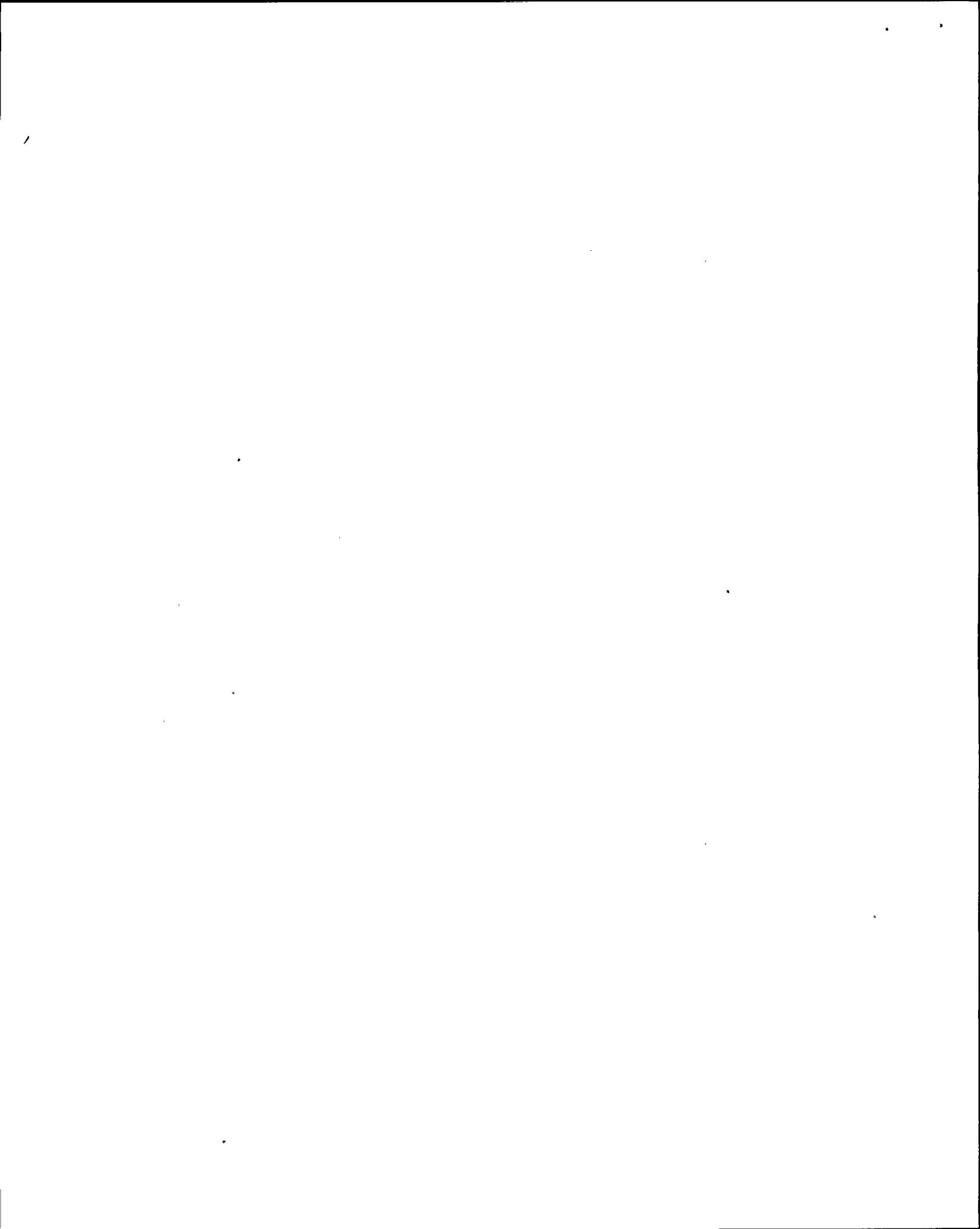
- C.2. When the location and specific functions of the "near-site Emergency Operations Facility" are determined these assignments should be made and recorded in the plan.
- D.3. The emergency classification and action levels should be revised in accord with NUREG 0610.
- E. The notification procedure must be revised in accord with NUREG 0610. The need for an immediate and authoritative link between the sounding of sirens and announcement of over the media of what action to take is essential.
- F. A communications plan should be developed to cover the elements in this section and show medical communications coverage and the radiological monitoring communications system.
- G. The public information operations in this plan should address the rumor control aspects of this operation and how to handle it.
- J. Many of these issues are addressed in the plan but must be extended to meet the new plume exposure and ingestion pathway distance criteria.



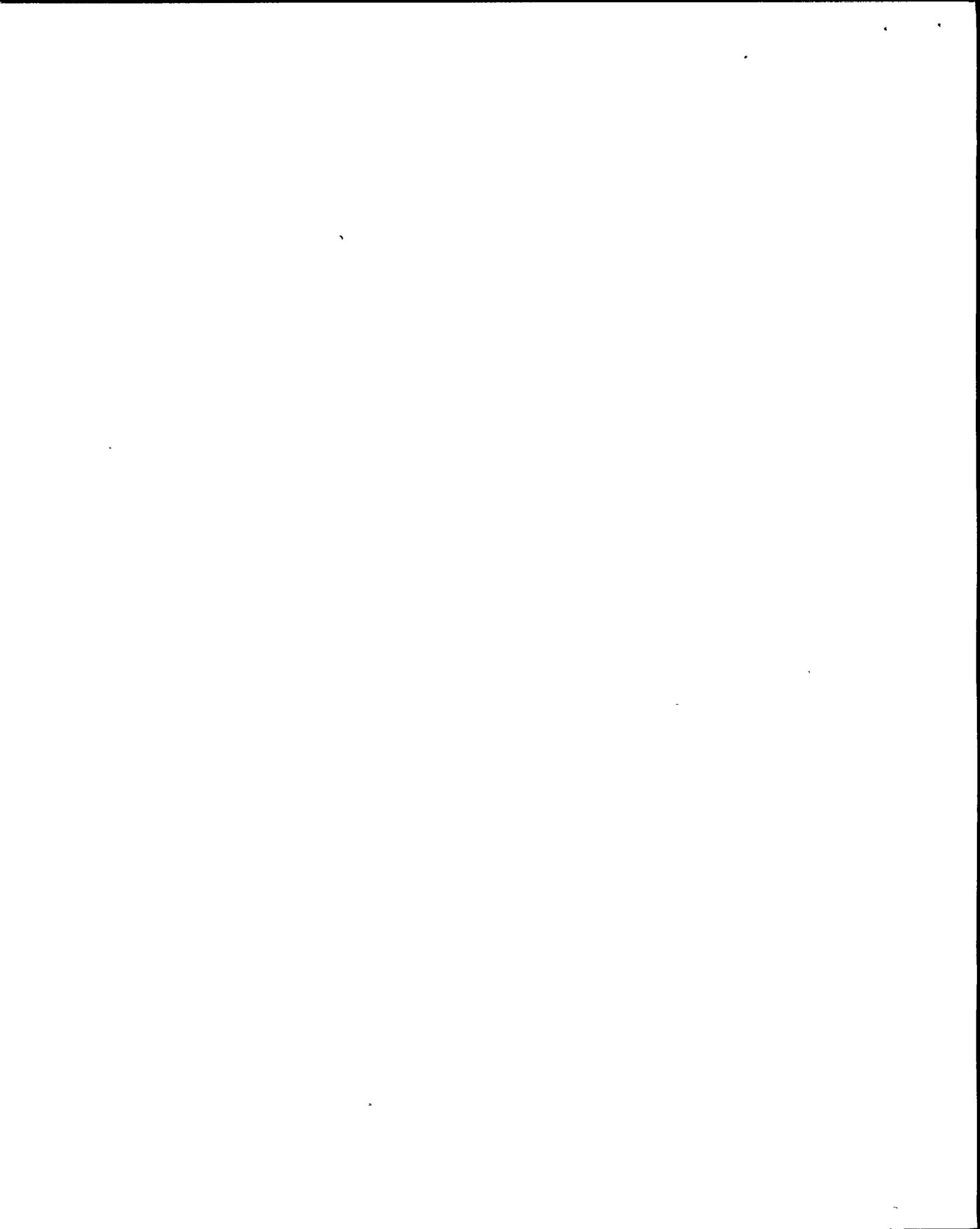
- K. The assessment role of the County Health Department in the EOC should be clearly stated. Procedures for radiological exposure control for both emergency workers and the general public should be clearly stated and grouped into one section of the plan. Specific assignment for monitoring the exposure of the two groups should be made and a 24 hour capability specified. If the County Health Department can only field two monitoring teams it would seem that they should develop another monitoring resource to check cars and people who are being evacuated. The plan does indicate that this type of monitoring would be done by CHP and others, but there should be a more definite assignment with training and procedures specified.
- L. The plan assigns emergency medical and hospital planning to the Emergency Medical Care Division of the County Health Service but there is no S.O.P. for that division with details or methods and procedures. The breakout of responsibility between Emergency Medical and Environmental Health is good but each one should have S.O.P.
- N. Exercises and drills must be scheduled in accord with NUREG 0654 and actually carried out on a regular basis.

Specific Comments Nuclear Regulatory Commission

- C.1. While there is some reference to the RAP/IRAP teams on page 6 of Appendix to the Department of Social Services SOP. There is no explanation of who would call (would it be the County Health Officer, the OES Director or Social Services Director) nor is there any discussion of either resources available or the RAT role. Do the teams supplement or replace county resources? There is mention of the RAT teams on page 13 of the County Evacuation Team, but no discussion of who makes the decisions.
- C.3&4. There is an excellent listing of resources which could be made available in an emergency, but I have rated this item "no" because there is little focus on nuclear or radiological organizations or skills.
- D.3. 1. must be updated to conform to NUREGs 0654 (including NUREG 0610).
- E.1. These two items will have to be updated to conform to NUREG 0654. Since the plan now contains a notification procedure it needs to be broken down and specified how the procedure will work for each of the four new accident categories. See pps 2-4 of S.L.O. County OES S.O.P.
- E.6. Must be updated to conform to 0654.
- E.7. Appendix 9 to the SLO Emergency plan contains a prewritten form for the operator to supply info to the county. The index list a message on identification procedures but my copy of the plan did not include such procedures.



- F.1. The plan does list various communications resources but does not establish or identify a reliable primary and backup communications capability. The plan does say who will be contacted but not how or with what.
- G.3&4. The plan says the County OES Emergency Organization, Public Information Section will coordinate news releases off site, pg 21 of the County Emergency Response Plan. It says the NRC/Operator will coordinate on site releases but it doesn't address how the two will be coordinated.
- H.12. The working relationship and communications capabilities between the new site EOF and the County EOC need clarification.
- I.7. Unable to determine from the information provided on pg 11 of the S.L.O. Health Agency SOP.
- I.8. In order to determine the actual county capabilities in these areas more information will be required. I understand that some training has been provided by PG&E and the State OES but I am unable at this time, on the basis of the information contained in this plan, to determine the County Health Department's actual capability to undertake field monitoring and dose assessment activities.
- J.10. Existing procedures will have to be expanded to include the EPZ OF 10 miles (or whatever distance the State imposes). The plan presently provides maps showing evacuation routes, and assembly areas which will also require updating. There is no population distribution map included. Plan does include a list of school buses and schools.
- M.1. Not enough information is provided to make a determination. Suggest FEMA NRC, EPA, and DOE meet with County to discuss the County's radiological capabilities.
- M. Exercises & Drills
- N.2. Page 23 of the SLO plan says exercises to be held, "as often as they (individual agencies) deem necessary." This is not an adequate response.
- N.3. These scenarios are not yet available from NRC/FEMA.
- N.5. I could find no statement indicating how agencies would assign responsibility for implementing corrective actions as a result of drills and exercises.
- O.1. There is, as noted earlier, a statement on pg 22 regarding training but not enough information on procedures is presented to be able to rate this category.



- P.4. The plan indicates that it will hold an annual comprehensive exercise (pg 23) but does not spell out procedures as to how the updating will take place.

Specific Comments - Department of Transportation (DOT)

- E-6 No time frame for instructions to public. Method is problem-10 Mile Zone.
- E-7 No instructions message for evacuation.
- F-I c No provision to notify US DOT ICC, US Post Office (for postal vehicles)
- J-10 b No population distribution.
- K-10 c No means of notifying transients.
- J-10 d No means of protecting mobility, impaired people; (provisions, hospitals et
- J-10 j No inventory of vehicles-list schools w/busses but do not show agreements.
- J-10 h No relocation center designated.
- J-10 i No projected evacuation routes.
- J-10 j No titles for control of access.
- J-10 k No method of dealing with evacuation route impedements.
- J-10 l No time estimate for sector evacuation.
- J-10 m Conditions for ordering evacuation not clear.
- K-8 No provision for registering evacuees.
- L-3 No medical facility maps.
- L-4 No arrangements for transportation of victims.
- M-1 No 10 Mile Zone.
- M-1 a Drills and exercises too general.
- N-2 a No monthly communications drill.
- N-5 No means of evaluating drills and exercises.
- P No definite plans for training.

Specific Comments-Food and Drug Administration (DHEW)

- C3 - N/A
- C4 - O. K.
- D3 - O. K.
- E1 - O. K.
- E2 - O. K.
- E-7 - N/A
- G1 - Incomplete-no channels or sample warning or instruction messages are included.
- H12 - N/A
- I10 - N/A
- J9 - O.K.
- J10e Use of KI is mentioned but no detailed mechanism as to its use, necessity, or availability is included.
- J10f O. K.
- J10m N/A
- J11 N/A



- L1 - In evacuation plan
- L4 - In evacuation plan
- M1 - Partially covered - no specific delegation of authorities for the relaxation of emergency that I could find.
- M4 - N/A
- N2c - Methodology included in organization charts but specifics for a drill are not defined.
- N2d - N/A
- N2e - N/A
- Note: N/A means not specifically required in local plans by NUREG-0654.

Specific Comments-Emergency Medical Services (DHEW)

- E.1. Reference is made to the procedures and verification but there is nothing in the plan that could be interpreted as a procedure.
- E.2. The Health Department plan contains a reference to check list No's 1.a and 1.b which is supposed to set forth procedures for alerting staff. The reference document is not contained in the plan.
- G.1. The plan does not contain a provision for periodic dissemination. (In the event of an accident the Public Information Section of the Emergency Operation Center will coordinate all news releases).
- L.4. Does not contain a plan for transporting victims.
- L.1. The availability of an integrated emergency medical services system and a public health emergency plan serving the area in which the facility is located and, as a minimum, equivalent to the Public Health Service Guide for Developing Health Disaster Plans, 1974, and to the requirements of an emergency medical services system as outlined in the Emergency Medical Services System Act of 1973 (P.L. 93-154), should be a part of and consistent with overall State or local disaster control plans and should be compatible with the specific overall emergency response plan for the facility.
- L.2. Beyond a list of hospitals and other medical facilities, the plan does not address the issue.
- N.2. Other than saying that drills should be held, there is no evidence that drills are planned or carried out.

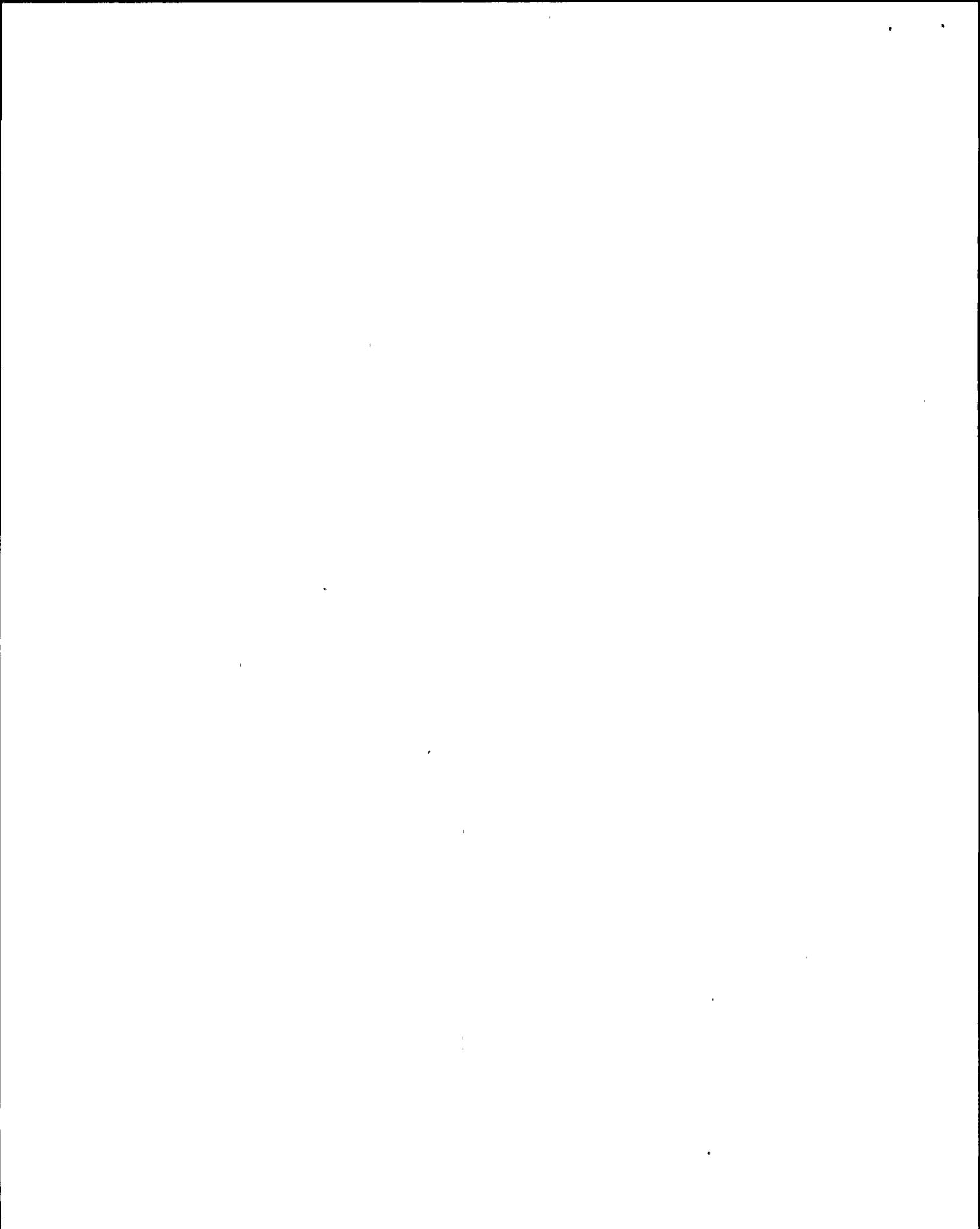
Specific Comments - Department of Energy (DOE)

Emergency Response and Resources

- 1.a. References state plan but state plan does not provide the information needed; does not specify person authorized to request assistance.
- 1.b. State plan referenced does not provide the needed information.
- 1.c. State plan referenced does not provide the needed information.

Emergency Facility and Equipment

- 7. Included in the plan.
- 10. Not addressed in the plan.
- 11. Not included in the plan.
- 12. Not specified in the plan.



I. Accident Assessment

7. Capability not addressed or referenced.
8. Capability not addressed or referenced.
9. Specific methods not addressed or referenced.
10. Not addressed.

M. Recovery & Re-entry

1. Not included in the plan.
4. General re-entry plans need to be developed.

N. Exercises & Drills

- 2.a. Not addressed in the plan.
- 2.d. Not addressed in the plan.
- 2.e. Not addressed in the plan.

O. Radiological Emergency Response Training

- 1.a. Included in the plan; does not specify who receives training or minimum training requirements.
- 1.b. Not specified in the plan.
4. Program not described in the plan.

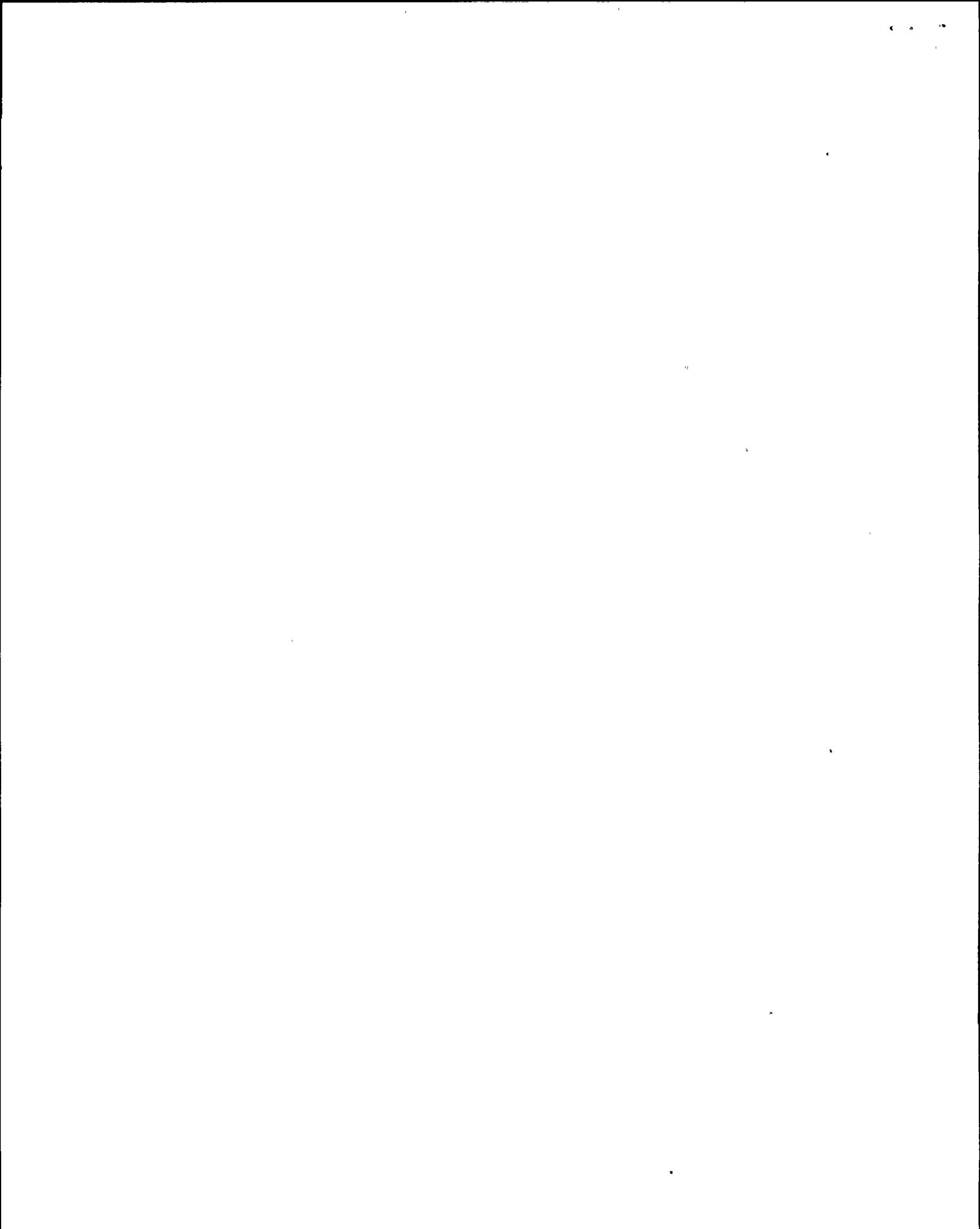
Environment Protection Agency

Comments:

The detail in this plan is not satisfactory to meet the criteria of 0654. The plan needs to be expanded and the LOP's should have a one or two page action sequence for emergency operation.

The IRAP notification of page 15 is incorrect. I believe DOE/Oakland should be notified.

<u>Element Number</u>	<u>Element Present</u>	<u>Comment</u>
A.2.a.	Yes/No	Yes - listed, No - summary tables
A.3	Yes/No	Yes - State Authority, No - Federal
C.1.c	No	Not listed
C.3	No	Not listed
D.3	No	Not consistent with 0610
E.1	No	Not consistent with 0610
E.2	Yes/No	Yes - alerting, no - notifying
E.3	No	No messages included
E.3	No	Not indicated
E.6	No	Not planned at present
E.7	No	Not included
G.1	No	Not included
H.3	Yes	



<u>Element Number</u>	<u>Element Present</u>	<u>Comment</u>
H.7	Yes	
H.10	No	Not listed in SOP
H.11	Yes/No	Included but not complete
H.12	No	Not indicated
I.7	No	No counting equipment listed
I.8	No	Not well described
I.9	No	Not described
I.10	No	Not discussed
J.9	No	Not consistent with EPA PAG's
J.10.m	No	No protection action except evacuation noted.
J.11		None included but this is a State function.
L.3	No	Not included
M.1	No	No discussion about decisions included
M.3	No	Not included
M.4	No	Not included (no information collected initially)
N.1.a	?	No exercise but one drill to date; however, Diablo Canyon is not on line.
N.2.d	No	Not done to my knowledge
N.2.e(1)	No	Not done to my knowledge
O.1	No	Included but not done to my knowledge
O.1.b	No	Included but not done to my knowledge
O.4.a	No	No plan or course included
O.4.b.	No	No plan or course included
O.4.c	No	No plan or course included

