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 50-324 Brunswick Steam Electric Plant, Unit 2, Carolina Power 05000323

AUTH. NAME: REYNOLDS, J.R. AUTHOR AFFILIATION: Center for Law in the Public Interest
 RECIPIENT NAME: DENTON, H. RECIPIENT AFFILIATION: Office of Nuclear Reactor Regulation, Director

SUBJECT: Opposes util 810227 request for relief from certain emergency response planning requirements contained in NUREG-0737, "Clarification of TMI Action Plan Requirement." Emergency planning in contention re low power testing.

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CENTER FOR LAW
IN THE PUBLIC INTEREST

10203 SANTA MONICA BOULEVARD
FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90067
TELEPHONE: (213) 879-5588

LEGAL STAFF

ALLETTA d'A. BELIN
ROBERT BERKE
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March 9, 1981



Dr. Harold Denton
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: In the Matter of Pacific Gas and
Electric (Diablo Canyon Nuclear Power
Plant, Units 1 and 2), Nos. 50-275,
50-323

Dear Dr. Denton:

As counsel to the Joint Intervenors in the Diablo Canyon Nuclear Power Plant ("Diablo Canyon") low power test licensing proceeding, I am writing in response to the recent request from Malcolm Furbush to you regarding Pacific Gas and Electric Company's ("PGandE") pending application for licenses to load fuel and conduct low power tests at the Diablo Canyon facility. By letter dated February 27, 1981, Mr. Furbush requested that PGandE be granted relief from certain emergency response planning requirements contained in NUREG-0737, "Clarification of TMI Action Plan Requirements," which must be complied with prior to fuel loading at Diablo Canyon.

Joint Intervenors oppose this request for several reasons. First, PGandE's compliance with the emergency planning requirements cited by Mr. Furbush is the subject of an admitted contention in the ongoing Diablo Canyon low power test proceeding. A hearing has been scheduled by the licensing board pursuant to agreement by all parties, including PGandE, to commence on May 19. The question whether PGandE is or is not entitled under the applicable regulations to some measure of relief is an issue of fact to be addressed at that hearing with all

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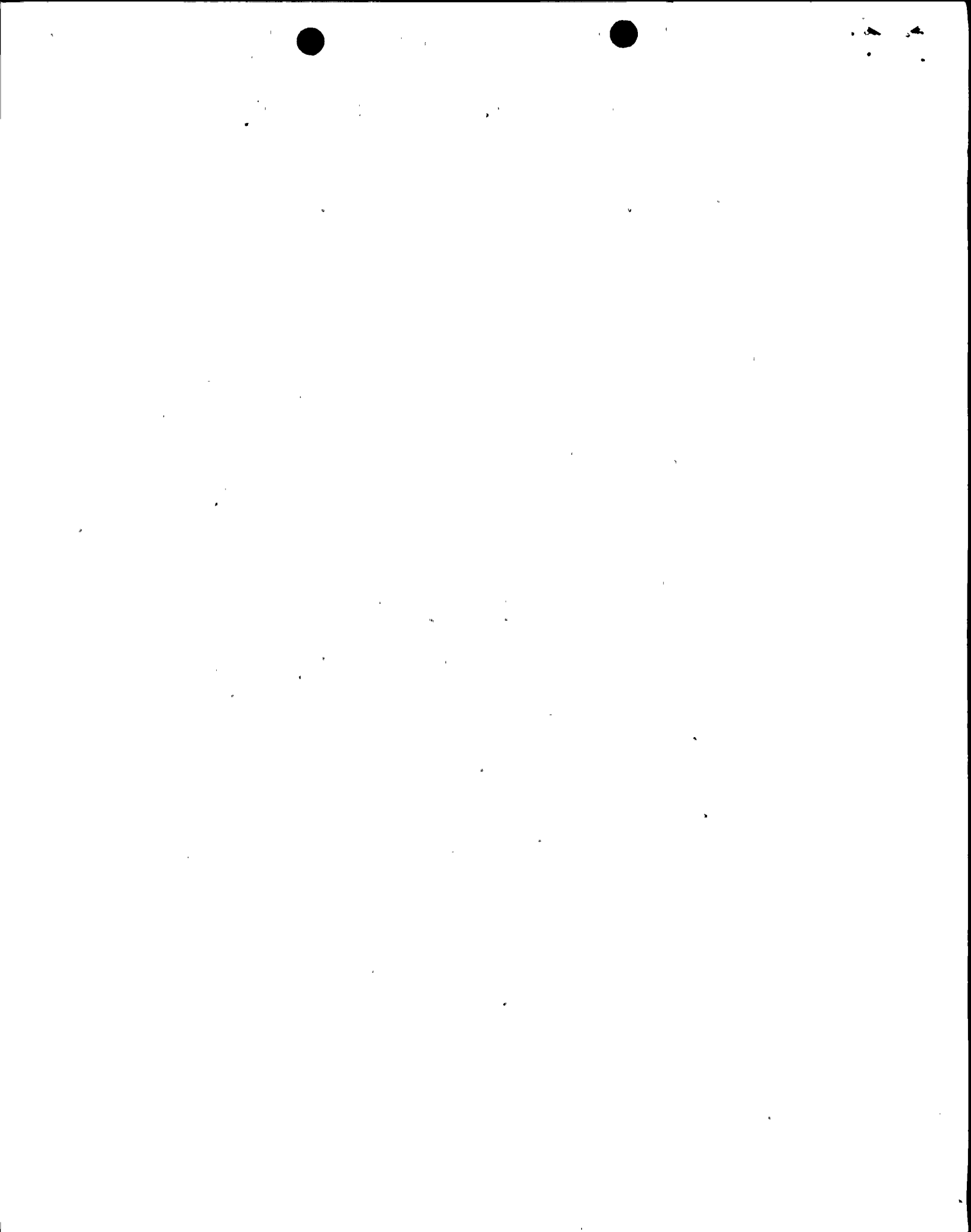
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parties participating and having an opportunity to be heard, not by informal letter to the Commission staff. Principles of fundamental fairness and orderly administrative procedure dictate that PGandE's request be summarily denied, and Joint Intervenors urge that you do so.

Second, PGandE's request betrays a dismaying failure to comprehend the importance of the Commission's revised emergency planning regulations and the purpose they are intended to serve. One of the fundamental lessons learned from the March 28, 1979 accident at Three Mile Island was that the emergency response planning previously required for issuance of an operating license was seriously deficient and that reforms were necessary to assure that the health and safety of the public would be protected in the event of an accident.^{1/} As a direct consequence of these findings, the Commission promulgated new regulations, effective November 3, 1980 ("Final Regulations on Emergency Planning," 45 Fed.Reg. 55402 (August 19, 1980)). These revised regulations reflect the Commission's conclusion that "adequate emergency preparedness is an essential aspect in the protection of the public health and safety," *id.* at 55404, and, as is explained in the introduction to the revised Appendix E to 10 C.F.R. Part 50, they establish "minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness." No exemption is authorized for operation at less than full power.

In its Revised Statement of Policy, issued on December 18, 1980, the Commission adopted NUREG-0737 as a "necessary and sufficient" response to the TMI-2 accident and directed that its requirements should govern future litigation of TMI-related issues. As adopted, NUREG-0737 describes not only the required

^{1/} See, e.g., "Report of the President's Commission on the Accident at Three Mile Island -- The Need for Change: The Legacy of TMI" (Kemeny Commission), at 38-42, 76-77; "Three Mile Island: A Report to the Commissioners and to the Public" (Rogovin Commission), v. 1, at 129-137; NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations," at 13, A-57-59; NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," at Chapter III.



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items, but also an implementation schedule directing compliance prior to a specified date or the taking of a particular action (i.e., fuel load, full power, etc.). The emergency planning requirements, which are the focus of PGandE's concern here, are to be satisfied prior to "fuel load." NUREG-0737, at 2-11. Those requirements are clear and unequivocal, and although PGandE would obviously prefer to have its performance measured against the lesser standard of NUREG-0694, that document has been revised and superseded by NUREG-0737. To grant the relief requested by PGandE on the basis of its February 27 letter would constitute a reversion to requirements considered inadequate by the Commission and discredited by the TMI-2 accident.

Mr. Furbush denigrates the significance of these developments and relies instead on outdated and now irrelevant findings and concurrences received prior to promulgation of the revised emergency planning regulations, prior to issuance of NUREG-0737, and prior to its adoption by the Commission in its Revised Policy Statement. In the aftermath of TMI and the Commission's response to it, to assert, as Mr. Furbush does, that "nothing has occurred that would change the conclusions regarding the safety implications of a license to load fuel and conduct low-power tests," demonstrates PGandE's gross underestimation of the accident's implications for emergency planning. As the TMI Lessons Learned Task Force emphasized in its Final Report, at 2-7, "[e]veryone connected with nuclear power technology must accept as a fact that unusual situations can occur and accidents can happen." This is particularly true at Diablo Canyon where the unique seismic dangers increase the potential for a breach of containment at the site and destruction of roads and facilities off-site. Because Diablo Canyon is more vulnerable to earthquake damage than virtually any other plant in the United States, it poses a correspondingly greater risk of significant emission levels and, consequently, warrants particular attention to the adequacy of its emergency response planning.

Footnote nine of the Revised Policy Statement provides no support for PGandE's request. That sentence indicates simply the Commission's view that any requirements contained in NUREG-0737 for which the implementation date is later than fuel load need not be complied with prior to fuel loading and low power testing. Contrary to PGandE's assertion, it does not authorize

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exempting an applicant from requirements for which the implementation date is prior to fuel loading.

Granting of the requested relief would be entirely inappropriate in light of the TMI accident and subsequent developments. Such an action could not be reconciled with the Commission's obligation under the Atomic Energy Act of 1954 to protect the health and safety of the public. 42 U.S.C. §2133(d); 10 C.F.R. §50.57(a)(3) and (6). Any issues of fact relating to Joint Intervenors' admitted emergency planning contentions are properly considered in the context of the scheduled May 19 low power test hearing. Notwithstanding PGandE's obvious desire for relief from its obligation at Diablo Canyon to meet the standard currently imposed by law, the Commission has characterized its regulations as the "minimum requirements . . . in attaining an acceptable state of emergency preparedness," and those requirements must not be ignored.

Accordingly, Joint Intervenors oppose PGandE's request for relief and urge that it be denied.

Respectfully submitted,

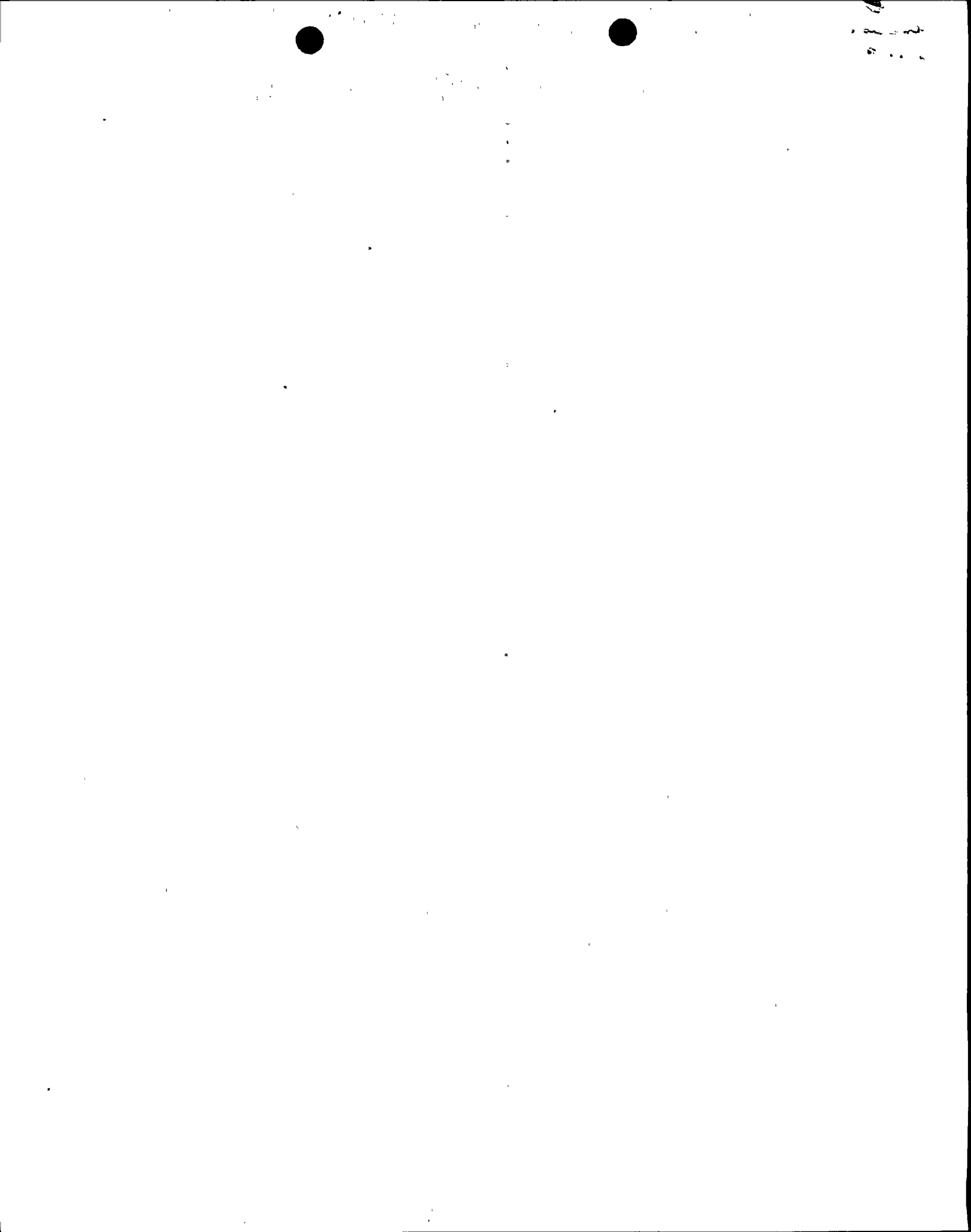
JOHN R. PHILLIPS, ESQ.
JOEL R. REYNOLDS, ESQ.
Center for Law in the
Public Interest
10203 Santa Monica Boulevard
Fifth Floor
Los Angeles, CA 90067
(213) 879-5588

DAVID S. FLEISCHAKER, ESQ.
1735 Eye Street, N.W.
Washington, D.C. 20006
(202) 638-6070

By


JOEL R. REYNOLDS

Attorneys for Intervenors
SAN LUIS OBISPO MOTHERS FOR
PEACE
SCENIC SHORELINE PRESERVATION
CONFERENCE, INC.



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ECOLOGY ACTION CLUB
SANDRA SILVER
GORDON SILVER
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cc: Diablo Canyon Service List

