

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

Arizona Public Service Co., et al., )  
 ) Docket No. STN 50-530-A  
Receipt of Antitrust Information )

REPLY OF PLAINS ELECTRIC GENERATION AND  
TRANSMISSION COOPERATIVE, INC., TO RESPONSE  
OF EL PASO ELECTRIC COMPANY TO COMMENTS OF  
PLAINS ELECTRIC GENERATION AND TRANSMISSION  
COOPERATIVE, INC., ON ANTITRUST INFORMATION,  
REQUEST FOR FINDING OF SIGNIFICANT CHANGE,  
REQUEST FOR ANTITRUST HEARING AND REQUEST  
FOR IMPOSITION OF LICENSE CONDITIONS

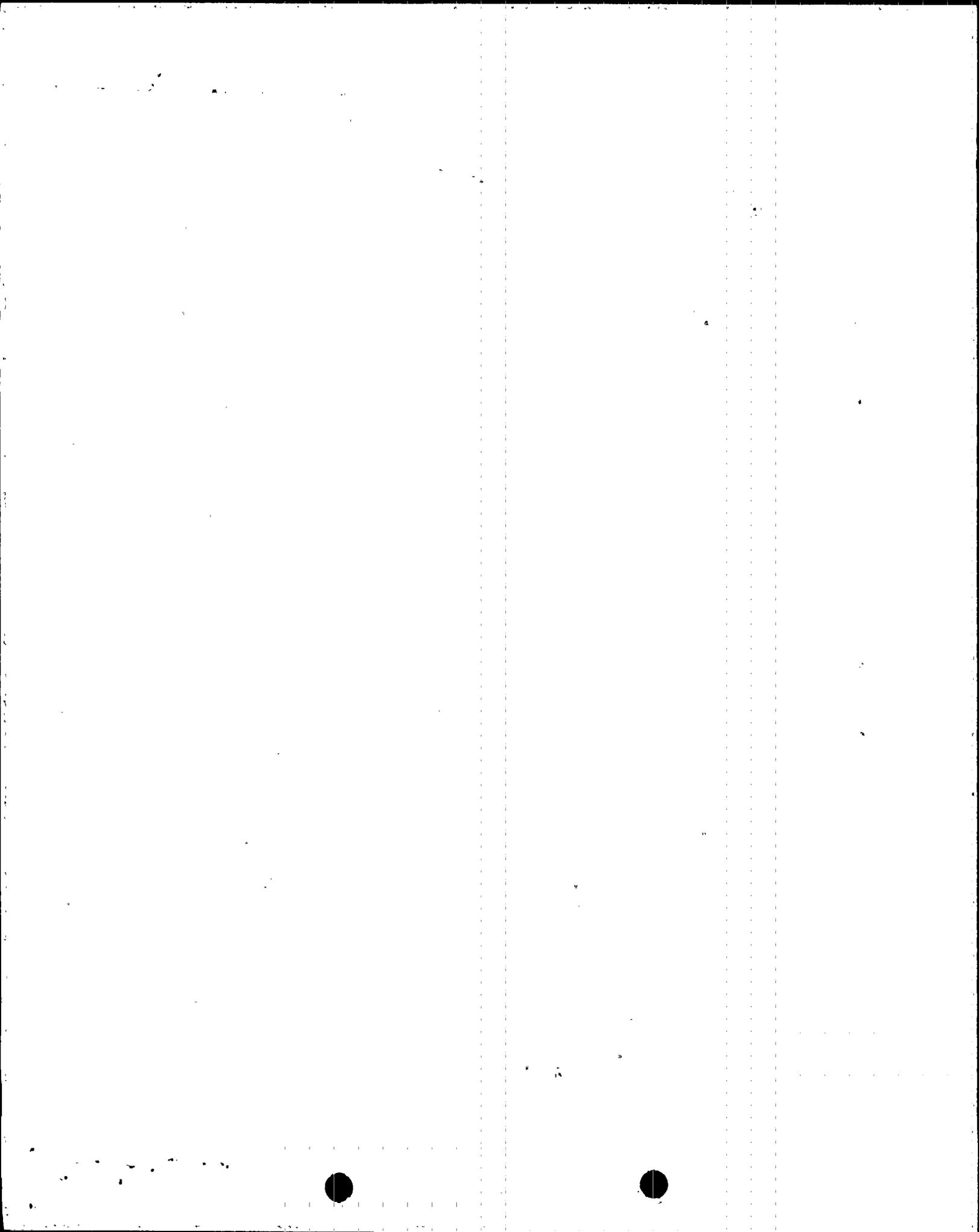
Plains Electric Generation and Transmission  
Cooperative, Inc. ("Plains"), submits this Reply to the Response  
of El Paso Electric Company ("El Paso") to the Comments of Plains  
Electric Generation and Transmission Cooperative, Inc., on  
Antitrust Information, Request for Finding of Significant Change,  
Request for Antitrust Hearing and Request for Imposition of  
License Conditions ("Plains' Comments").

I.

Introduction

El Paso's Response fails to come to grips with the  
major points raised in Plains' Comments. It attempts to direct  
the Commission's attention away from the key issue of El Paso's  
refusals to deal with Plains on transmission access by claiming  
that its refusals are justified, even required, by the N-Minus-1  
policy of the New Mexico Power Pool ("NMPP"). But that policy,  
contrary to El Paso's assertions, in no way justifies or requires  
that El Paso refuse to grant Plains transmission access. It is

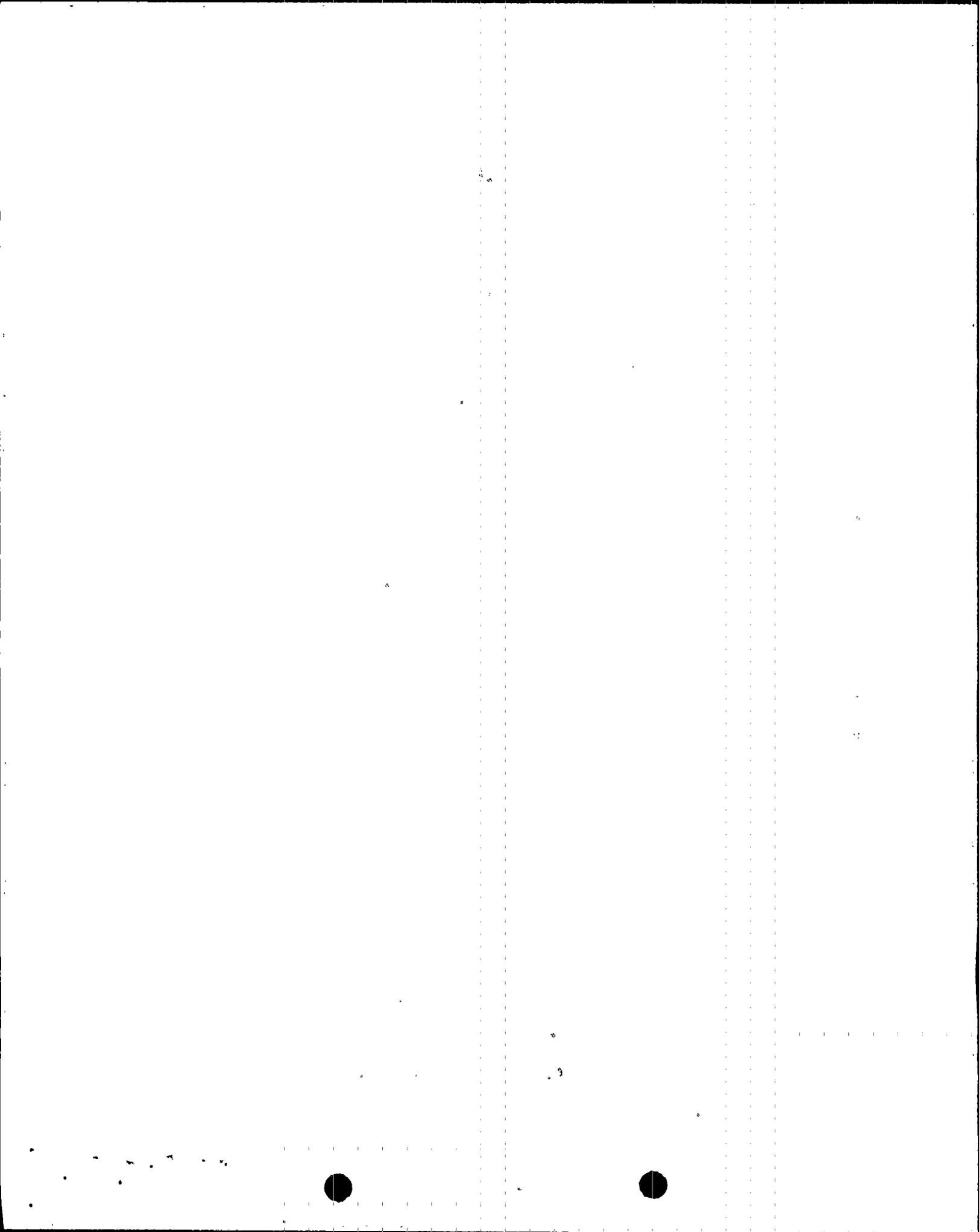
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El Paso's desire to maintain a competitive advantage in the wholesale power market, not the N-Minus-1 policy, which is the source of El Paso's refusal to deal with Plains.

El Paso also seeks to deflect attention from its anticompetitive activities by claiming that Plains' Comments fail to show a nexus between such activities and Commission licensing of Palo Verde Unit 3. But such nexus is patent on the face of Plains' Comments and is highlighted by El Paso's Response. El Paso, as a result of its need to import remote generation to its loads in the El Paso area, controls a transmission bottleneck in New Mexico. This bottleneck situation will be exacerbated by the operation of Palo Verde Unit 3 since importation of El Paso's share of that power will place substantial stress on an already burdened transmission grid, which stress El Paso intends to relieve at Plains' expense.

El Paso further claims that the construction of the Springerville-Luna line will increase transmission capacity by approximately 400 MW and "[t]hus, the limitations on north-south transmission capacity in New Mexico, which lie at the base of Plains' complaint, are expected to be resolved within 30 months." See Response at 42. Plains hopes this is true, but this claim is directly contradictory to statements made by El Paso management personnel to Plains, most recently made in August, 1986, that the Springerville-Luna line would not provide sufficient capacity to meet Plains' needs. Plains is gratified if El Paso is now modifying its position and is willing to provide adequate transmission access to Plains. But until El



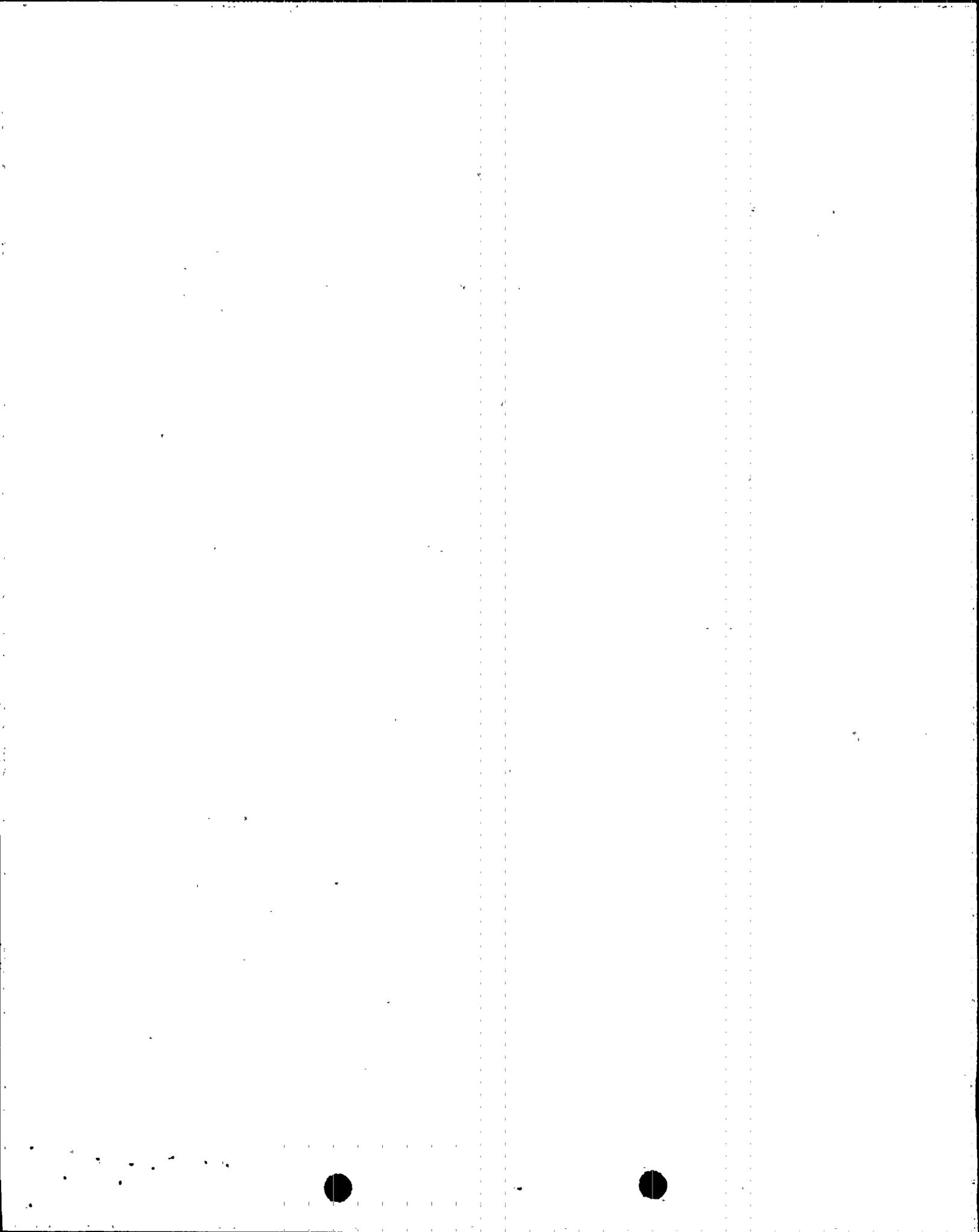
Paso's executives confirm that the company, in fact, has adopted this new position, statements by El Paso's attorneys in their Response cannot be relied upon as a concrete, enforceable commitment by El Paso to provide transmission access to Plains. Further, even if such commitment were appropriately made, Plains will suffer an unjustified competitive disadvantage for the next two and one-half years until the Springerville-Luna line is constructed. This two and one-half year denial of access substantially blocks Plains' ability to attract and serve important new loads, such as the SDI program.

Plains' Comments demonstrate that El Paso has changed its activities in three critical areas causing anticompetitive harm to Plains: (1) El Paso prevented Plains from serving the load of Rio Grande Electric Cooperative ("Rio Grande"), and, by implication, any additional new load in southern New Mexico, by taking the position that Plains could transmit only 35 MW <sup>1/</sup> of power through Plains' own 60 MW transmission line; <sup>2/</sup> (2) El Paso refused to allow Plains access to additional transmission to be made available by the Springerville-Luna line; and (3) El Paso refused to participate in studies of corrective actions that could be taken to increase the capability of the existing or

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1/ While El Paso currently recognizes Plains' right to 35 MW of north to south transmission, El Paso's interpretation of its contractual rights would result in a decrease of Plains' right ultimately to 6 MW of north to south transmission. See discussion at 14-16, infra.

2/ The 60 MW rating is an operating rating and not a design capability rating. The design capability rating of the line is 106 MW.



proposed transmission system. El Paso's Response falls far short of rebutting these points.

II.

El Paso Has Prevented Plains From Serving The  
Load of Rio Grande and Other Load Growth  
In Southern New Mexico

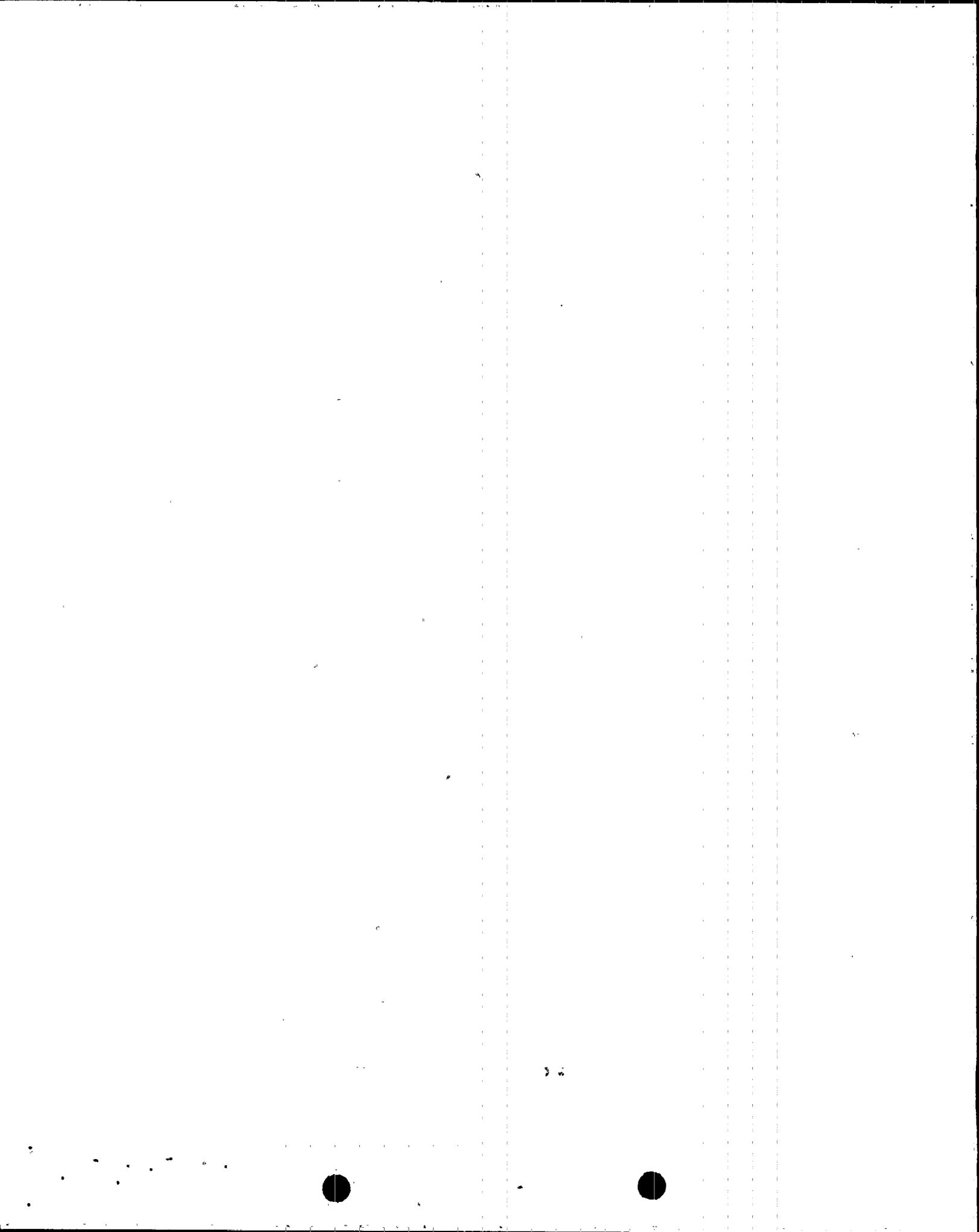
A. The N-Minus-1 Policy

El Paso's Response relies primarily on the N-Minus-1 policy of the NMPP and El Paso's unsupportable interpretation of Contract 1605 <sup>3/</sup> to attempt to justify El Paso's position that Plains has a right to utilize only 35 MW of Plains' 60 MW line. Based on this position, El Paso refused to accept Plains' power into the El Paso system for delivery to Rio Grande and has erected a bottleneck preventing Plains from serving other load growth in southern New Mexico.

El Paso is correct in stating that under the N-Minus-1 policy, "[t]he system must be operated in a manner capable of withstanding the loss of the most critical transmission facility," but El Paso completely misconstrues the meaning and relevance of that policy in this case. That policy means that the New Mexico transmission system, operated as a whole, must be capable of withstanding the loss of the most critical transmission line in the system. The most critical transmission line for north-south transmission is considered to be the Greenlee-Hidalgo line in western New Mexico. Given this N-Minus-1 policy, and given the transmission operating constraints measured by the

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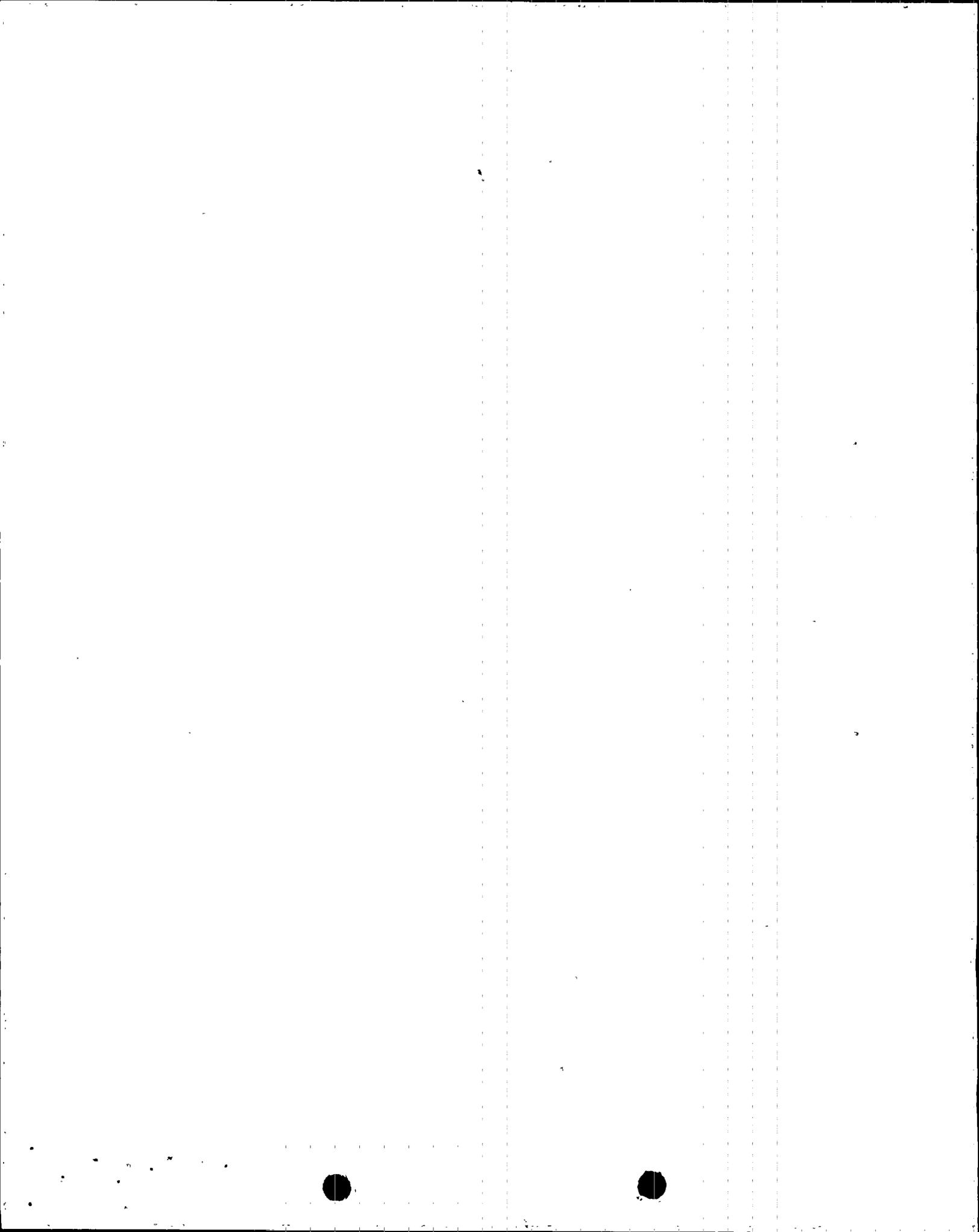
<sup>3/</sup> See Plains' Comments, Exhibit 11.



nomograms contained in exhibits to Plains' Comments, the north-south transmission cannot be safely operated above a level of 500 MW. Currently imports into southern New Mexico are at or near 500 MW; therefore, no additional imports are currently possible.

However, none of this has any relevance to the key issue of El Paso's refusal to recognize Plains' rights to transmit power and to otherwise allow transmission access to Plains. These issues involve the rights which each New Mexico utility has in the 500 MW of transmission capacity that can be used given the N-Minus-1 policy, and, concomitantly, what priorities are extant in a curtailment situation. The N-Minus-1 policy contributes to the establishment of a 500 MW north-south transfer limit. It does not define which entities have a right to share in the 500 MW nor does it define each entity's share.

As stated in Plains' Comments, Plains' ownership of the 115 kv West Mesa-Dona Ana line, which was constructed prior to El Paso's 345 kv West Mesa-Las Cruces line, gives Plains 60 MW of capacity between West Mesa and Dona Ana. The later construction of El Paso's 345 kv parallel line resulted in approximately 90% of the power previously flowing over the 115 kv line now flowing over the 345 kv line. But this circumstance, until recently, was never used by El Paso to deny Plains transmission access and to suggest that Plains did not have the right to transmit 60 MW between West Mesa and Dona Ana. In 1986, for the first time, El Paso asserted that because Plains' power flows over El Paso's lines, Plains lost 25 MW of transmission capacity in its 60 MW



line to El Paso. <sup>4/</sup>

However, when it is to El Paso's advantage to utilize Plains' 115 kv line, the 35 MW limitation apparently disappears. Plains' control center tapes reflect that El Paso requested Plains to schedule and deliver 50 MW of power over Plains' 115 kv line for delivery to Las Cruces during the 1700 hour on December 11, 1986.

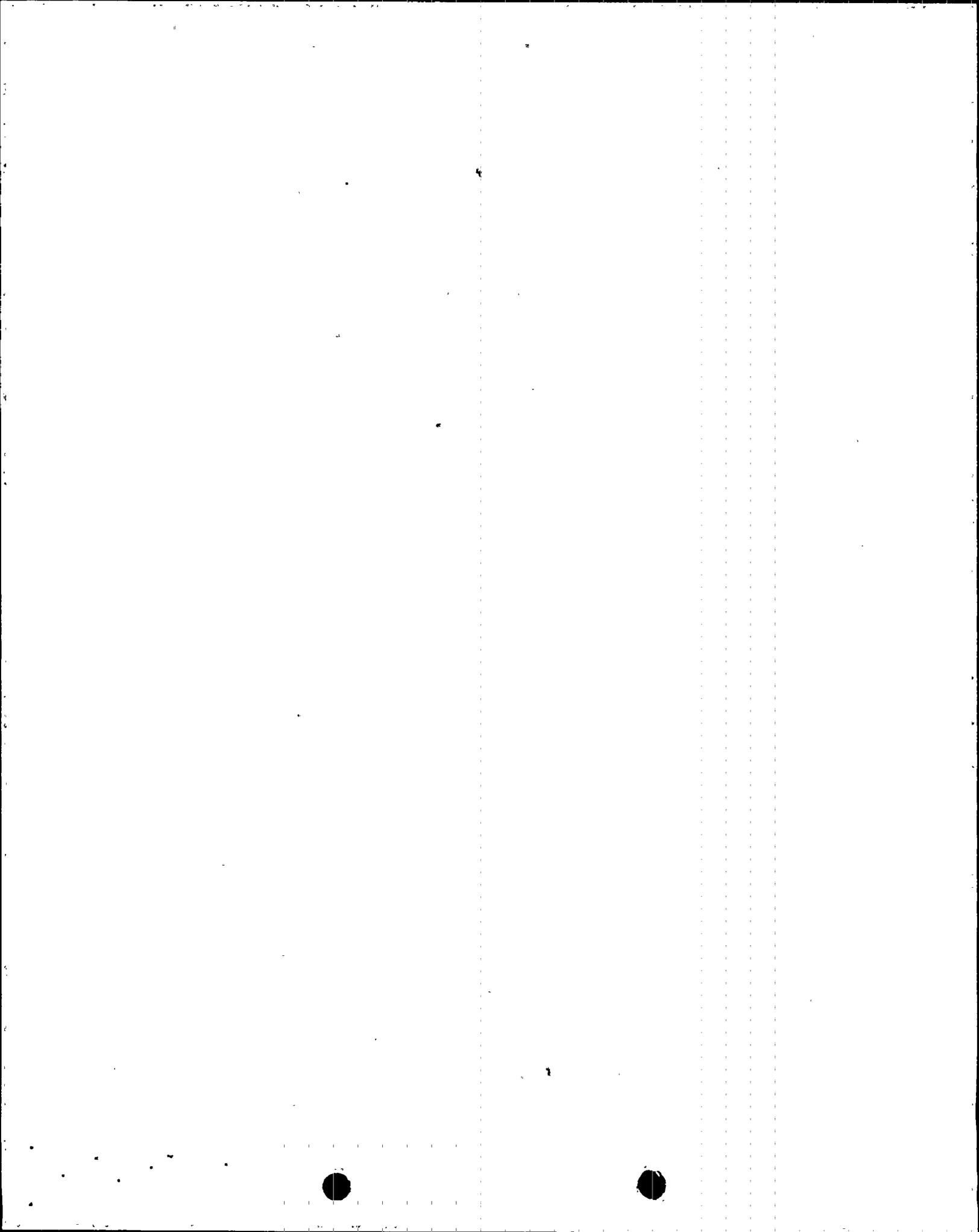
El Paso's allegations concerning limitations on Plains' rights are not only false, as demonstrated in Plains' Comments and as reiterated below, they are inapposite to the consequences of the transmission capacity limitation in New Mexico of 500 MW.

El Paso further asserts, in the same vein, that Plains' demand to utilize its full 60 MW of transmission capacity requires El Paso to absorb transmission curtailments caused by the 500 MW limit on north-south transmission which should have been borne by Plains. This assertion is susceptible to short answer.

First, El Paso totally misconstrues the N-Minus-1 policy. The 500 MW limitation on imports to southern New Mexico does not, in itself, cause any "reliability curtailments" in north-south transmission. Reliability curtailments occur only if utilities attempt to transmit more than 500 MW. In that event, Public Service Company of New Mexico ("PNM"), as control agent for the NMPP, will undertake corrective action. But this

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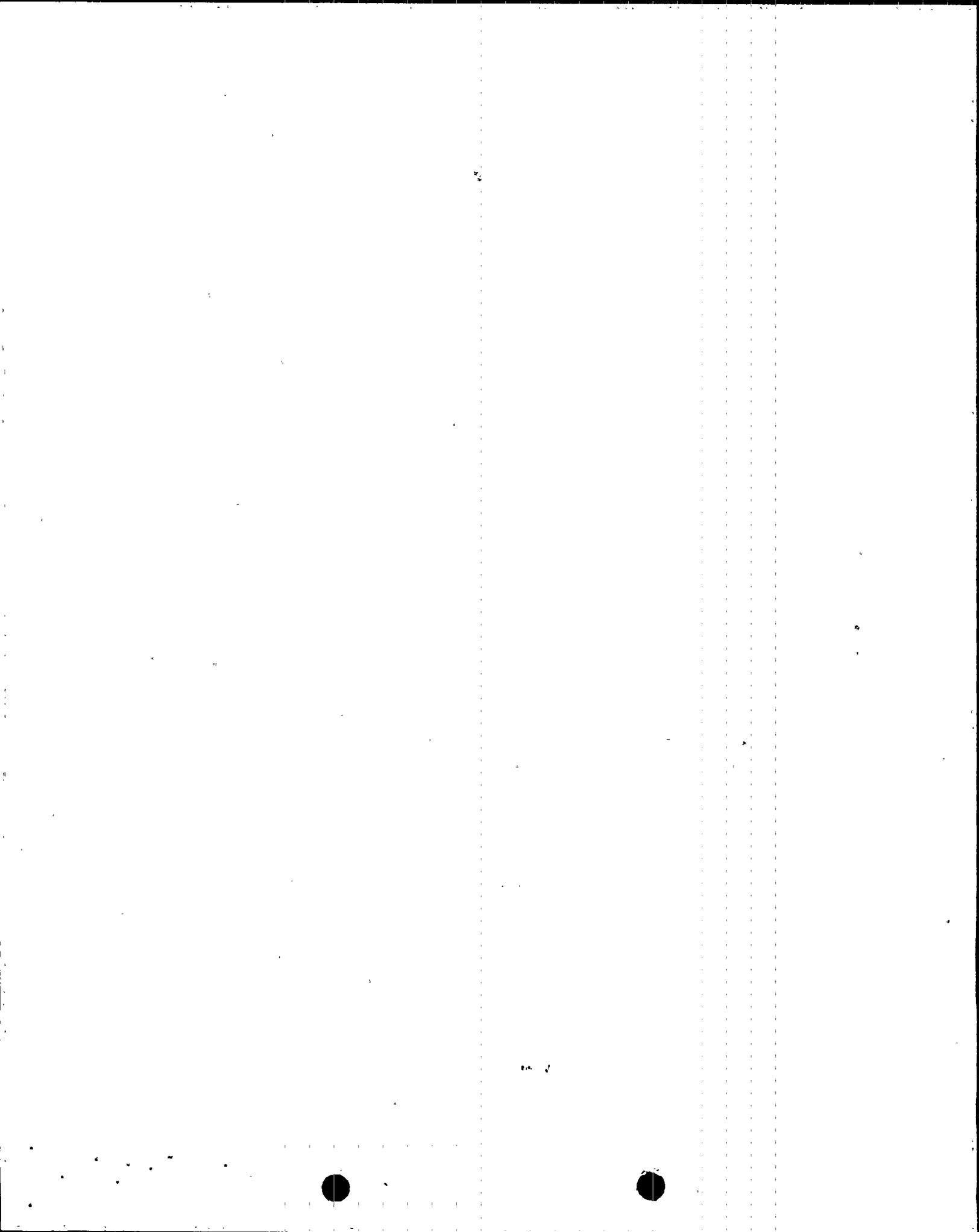
<sup>4/</sup> As discussed below, utilizing El Paso's interpretation of Contract 1605, El Paso ultimately can oust Plains from 54 MW of its entitlement to the West Mesa-Dona Ana line capacity (90% of 60 MW equals 54 MW).



inability to transmit more than 500 MW of power does not affect Plains' base right to its 60 MW share - or any other utility's share - of the 500 MW available on the system. Those rights will be affected by curtailments undertaken by PNM.

More significantly, on February 27, 1987, Plains and PNM formalized curtailment procedures, which had been agreed to in September of 1986, by entering into contracts whereby Plains agrees, in the case of system conditions that may result in a violation of the N-Minus-1 criteria in southern New Mexico, to a curtailment scheme which includes a provision for a pro rata curtailment of Plains' 60 MW allocation of the available capacity. El Paso's arguments, which appear throughout its Response, that Plains is shirking its responsibilities or otherwise getting a free ride, simply fail.

Further, El Paso falsely claims that its 345 kv parallel line provides additional back-up to Plains' 115 kv line without compensation. See Response at 7, n.6. El Paso claims that, absent the 345 kv line, a fault on the Plains' 115 kv line necessarily would result in loss of service to customers on that line. This is not the case. Prior to the construction of the 345 kv line, the Bureau of Reclamation (prior owner of the 115 kv line) and El Paso had emergency support agreements which provided a generation "fix" rather than a transmission "fix" for such faults. If a fault occurred, each party would provide the generation needed to serve customer load to the fault point. For example, assuming a fault on an isolated West Mesa-Dona Ana line, with Bureau generation from the north and El Paso generation from



the south, each would supply generation to the fault point to serve customers. In contrast, the 345 kv line was constructed solely to move El Paso bulk power from generating sources in the north to the El Paso geographic load areas in the south. While there are resulting increases in reliability from that line construction, the 115 kv line already had reliability support.

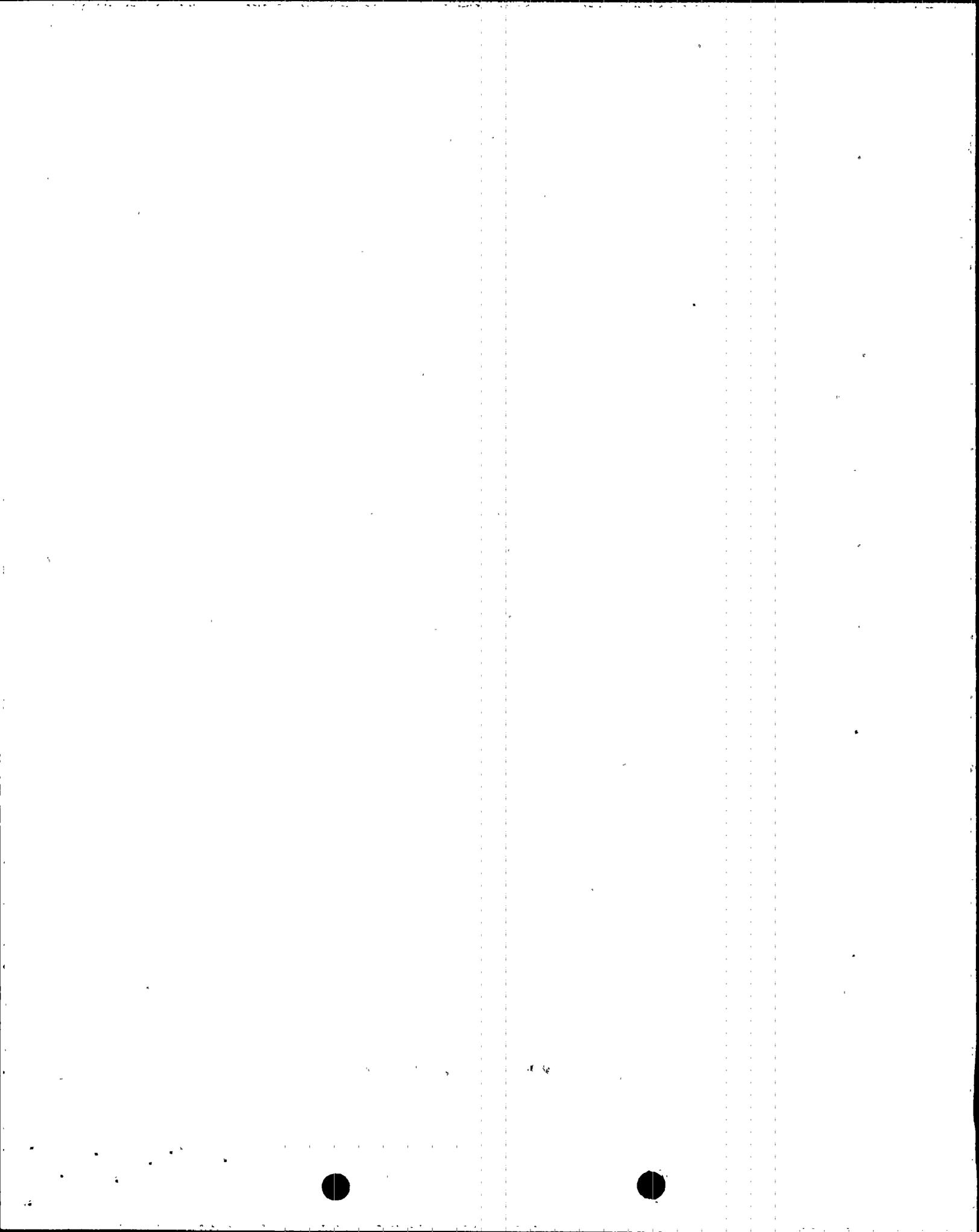
El Paso's N-Minus-1 smokescreen does not work. El Paso's actions, not the N-Minus-1 operating criteria, injure Plains.

B. Significant Changes Determination

Having misconstrued the N-Minus-1 policy, El Paso also misconstrues Plains' argument that El Paso's actions represent significant antitrust changes. Under South Carolina Electric and Gas Company and South Carolina Public Service Authority, 11 NRC 817 (June 30, 1980) and South Carolina Electric & Gas Company and South Carolina Public Service Authority, 13 NRC 862 (June 26, 1981): (1) such changes must have occurred since the previous antitrust review; (2) the significant changes must be reasonably attributable to the licensee; and (3) the significant changes must have antitrust implications that would be likely to warrant remedy by the Commission.

1. Occurrence since the previous antitrust review.

El Paso asserts that its anticompetitive actions against Plains could have been raised in the previous antitrust review in 1983, based on the claim that El Paso's actions were motivated, indeed driven by, the N-Minus-1 policy and that such policy has been in place since 1968. See Response at 12-14.



As noted above, the N-Minus-1 policy was in no way responsible for El Paso's refusal to recognize Plains' right to the full 60 MW of its line. Such policy, combined with the operating limitations shown in the nomograms, merely limits north-south transmission in New Mexico to 500 MW. It does not affect the allocation of the 500 MW of import capacity. Having purchased a 60 MW line, Plains has always correctly assumed that it had a right to 60 MW of that 500 MW, and not until recently did El Paso attempt to limit Plains' access to transmission relying on its interpretation of Contract 1605. Only in October, 1986, well after the last antitrust review in this case, did El Paso take the position that 25 MW of Plains' 60 MW "belong" to El Paso.

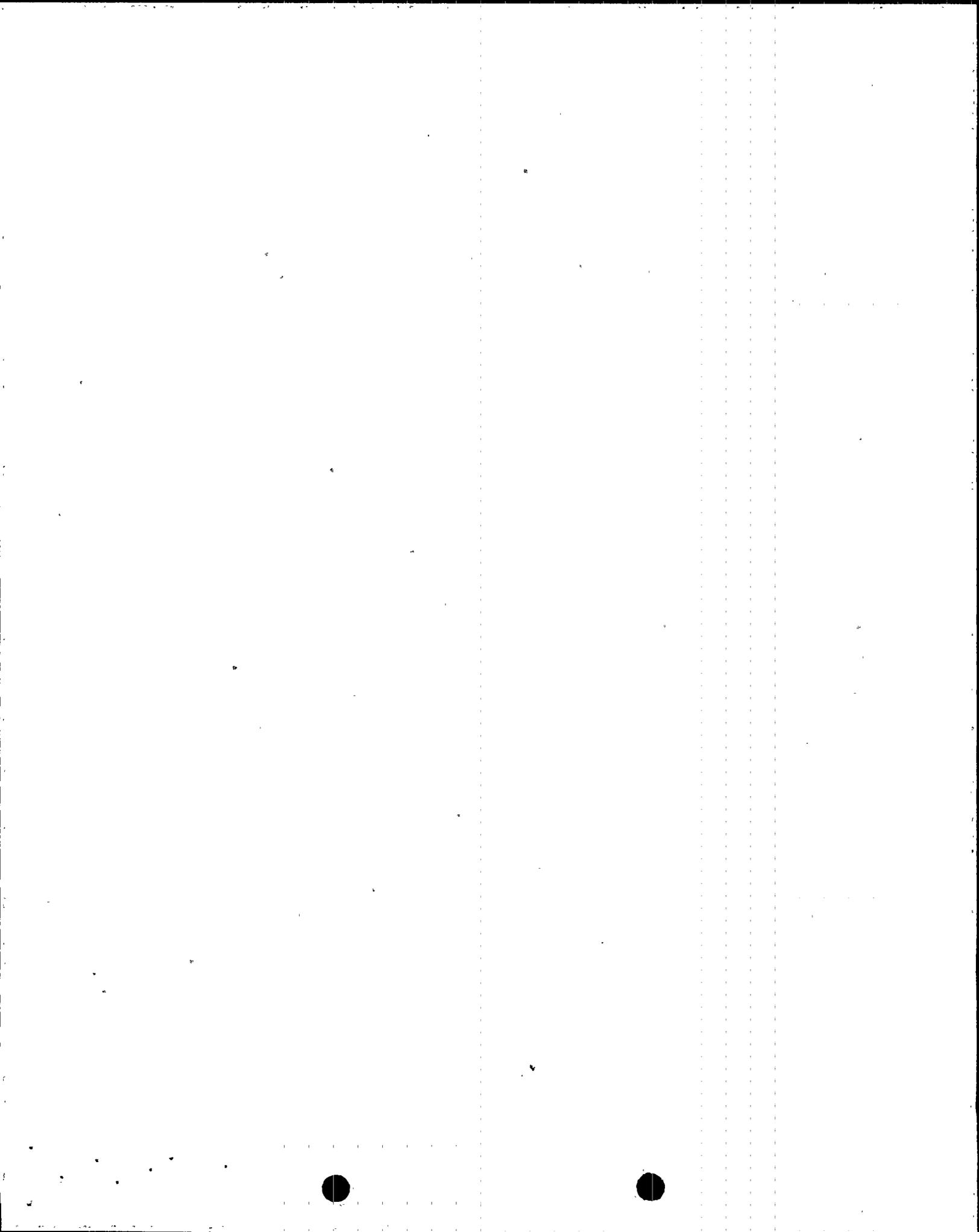
2. Reasonably attributable to licensee.

El Paso further claims that its refusal to make the full 60 MW of transmission available to Plains is not attributable to El Paso but is required by the N-Minus-1 policy. See Response at 14-15. Again, as noted above, the N-Minus-1 policy did not dictate that El Paso preempt 25 of Plains' 60 MW. El Paso made that decision, pure and simple.

3. El Paso's action would be likely to warrant Commission remedy.

a. The Nexus Requirement

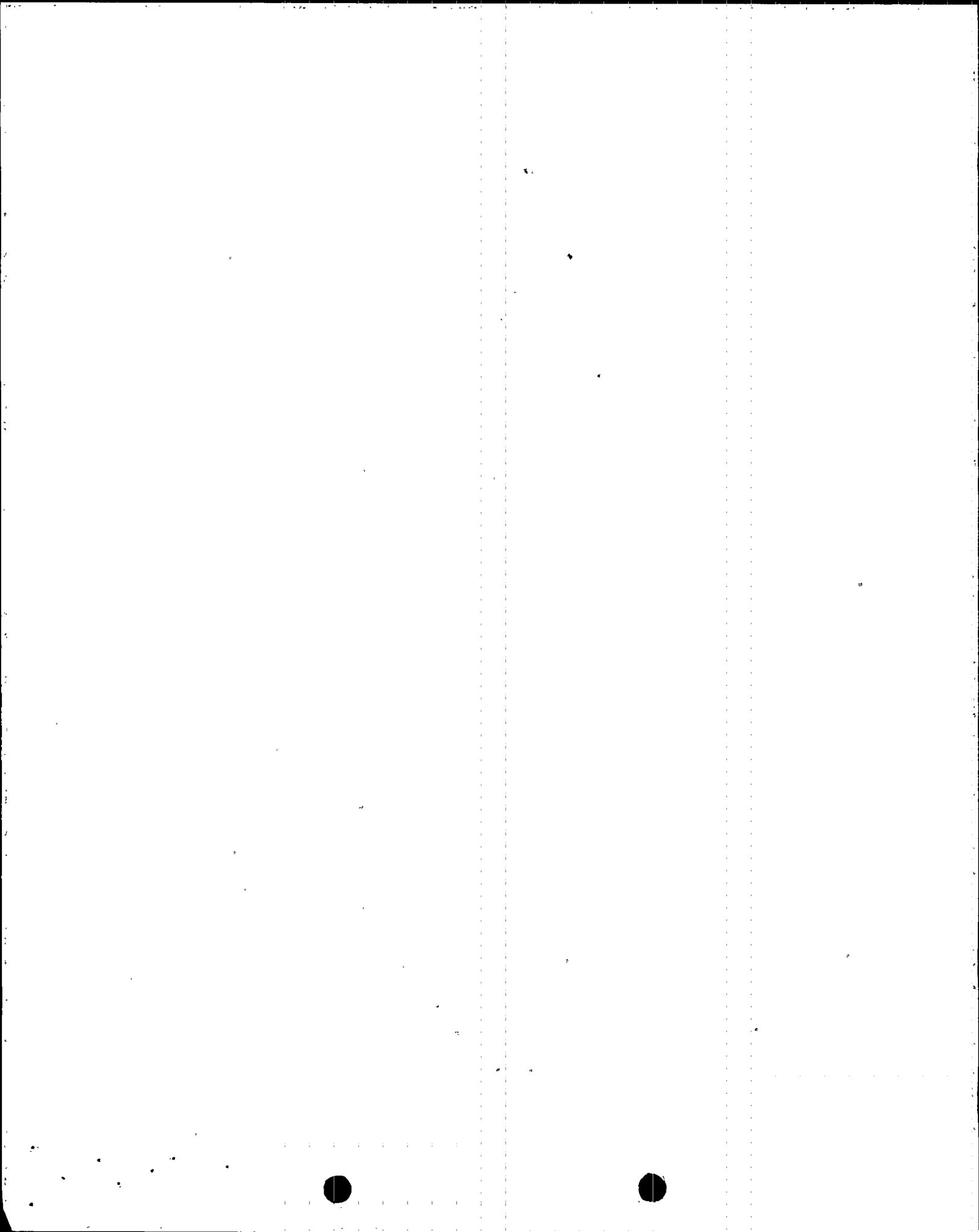
El Paso alleges that Plains failed to establish a nexus between the activities under the license and the situation alleged to be inconsistent with the antitrust laws. Such nexus is clear and is highlighted by El Paso's Response.



As El Paso itself recognizes, the underlying dispute between El Paso and Plains is caused by a transmission shortage from northern to southern New Mexico. Simply put, utilities wish to transport more than 500 MW to southern New Mexico, but are prevented from doing so by the operating limitations on the system.

In this context, El Paso has been able to use its control of transmission to prevent Plains from competing for wholesale and retail loads in southern New Mexico. El Paso has blocked Plains from using the full 60 MW of its 115 kv line, its management personnel have told Plains that it will not make capacity available to Plains on the proposed Springerville-Luna line, and it has refused to cooperate on transmission planning. The result has been that Plains was, and is, unable to compete with El Paso for the Rio Grande load, and will be unable to serve new loads in southern New Mexico.

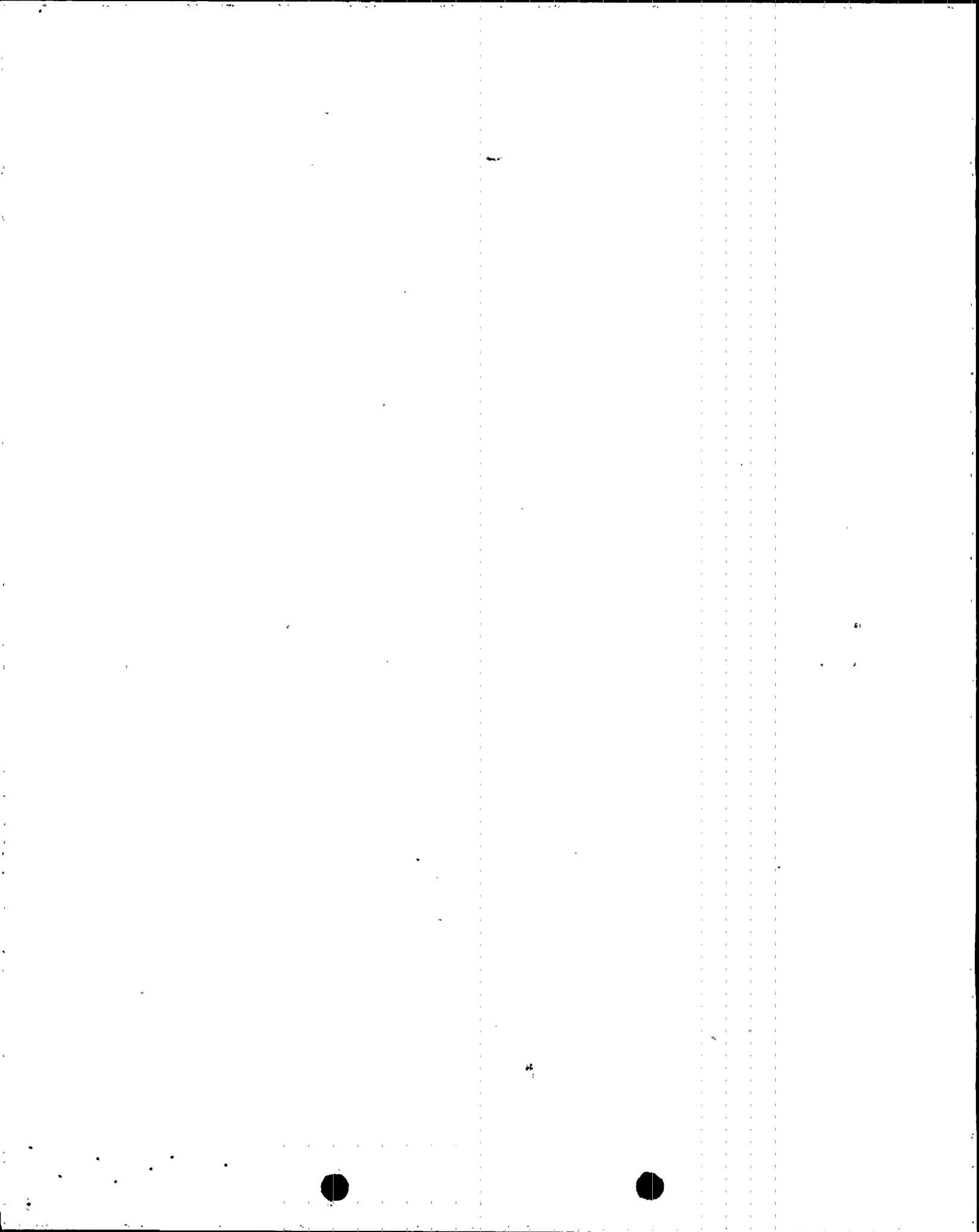
In this context, El Paso, and the other license applicants for Palo Verde Unit 3, propose that this Commission license a new nuclear power plant. A major part of El Paso's share of that power would be transmitted by El Paso to southern New Mexico. The impact of additional new power would be to further tax what El Paso describes as an already overtaxed transmission system. As will be shown more fully below, a denial by El Paso of Plains' access to transmission springs from El Paso's interpretation of Contract 1605 to provide that, as El Paso "grows into" the capacity on its 345 kv line, El Paso can force Plains off that line. See Response at 24-25. As El Paso



takes Palo Verde Unit 3 deliveries, it can be expected to further limit Plains' access by taking the position that Plains' utilization of El Paso's 345 kv line, through inadvertant flow, decreases, thus limiting Plains' ability to transmit to the south and to compete with El Paso in southern New Mexico. It is the operation of Palo Verde Unit 3 which provides the factual predicate for El Paso's anticompetitive conduct.

Further, the Springerville-Luna line, over which El Paso had intended to transmit its Palo Verde entitlement, is not scheduled for completion until June 1989. Even when that line is energized, El Paso's management personnel have taken the position that such line cannot be used by Plains, in major part because of El Paso's need to transmit its Palo Verde Unit 3 entitlement. Thus, operation of Palo Verde Unit 3 will exacerbate the existing transmission bottleneck and the adverse impact of that operation will fall on Plains as a result of El Paso's espoused interpretation of Contract 1605.

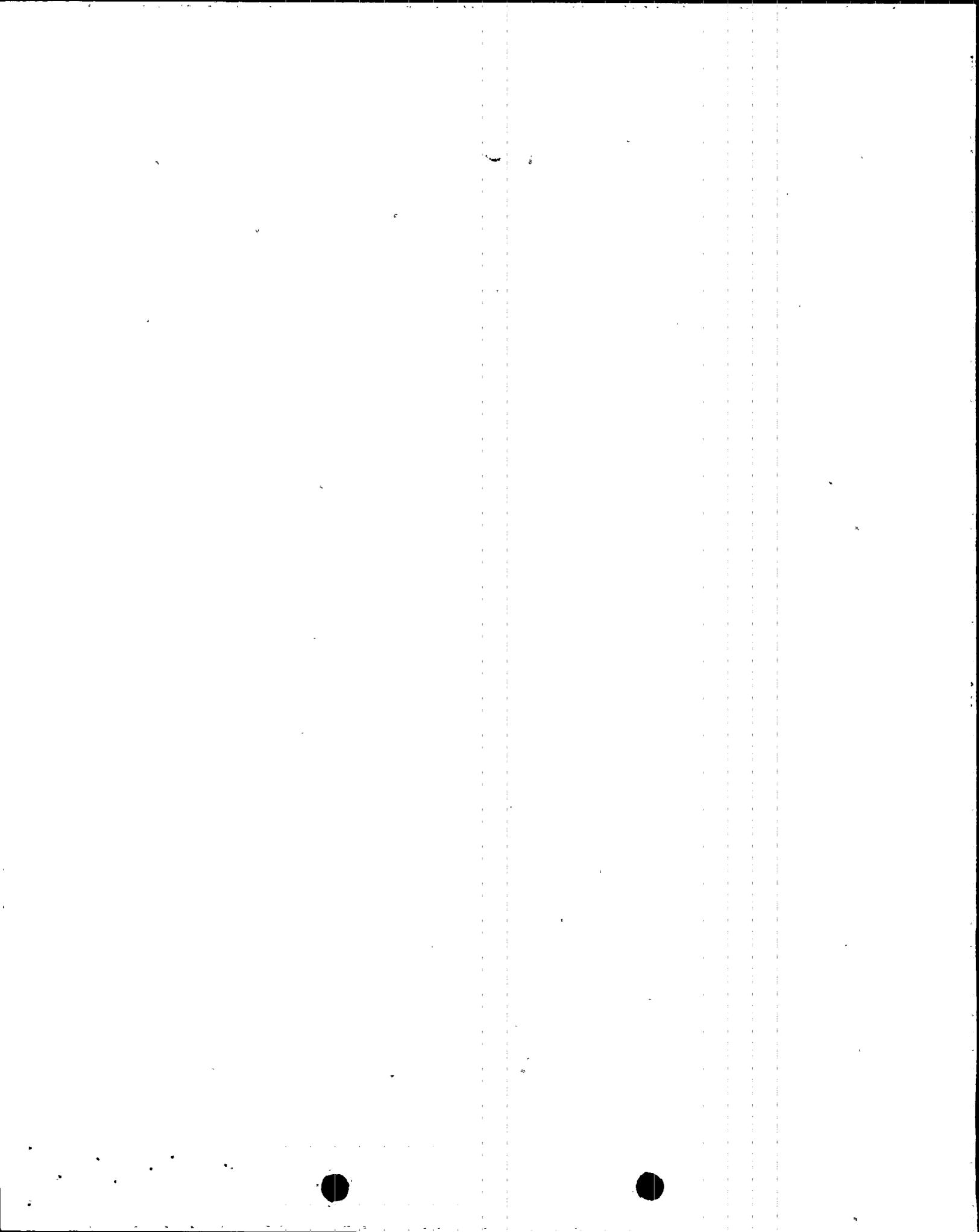
As El Paso recognizes, Section 105c of the Atomic Energy Act, 42 U.S.C. § 2135c, requires this Commission to investigate whether activities under a license would create "or maintain" a situation inconsistent with the antitrust laws. Commission precedent recognizes that this standard requires the Commission to analyze a license applicant's conduct "apart from its license activities." Kansas Gas & Electric Co., 1 NRC 559, 568 (1975). The Commission must examine "anticompetitive situations intertwined with or exacerbated by the award of a license to construct or operate a nuclear facility." Id. at 569.



In fact, in its proceeding in the licensing of Palo Verde Units 1 and 2, this Commission recognized the appropriateness of examining the entire transmission system of a licensee in an antitrust review. There, the Department of Justice found potential problems in two areas, one of which related to transmission restrictions on the Arizona Public Service Company ("APS") and Salt River Project ("SRP") systems: power supply agreements between APS and SRP and certain of their respective wholesale customers contained provisions limiting wholesale customers to serving irrigation pumping loads and allowing APS and SRP to serve residential, commercial and industrial loads. See 40 Fed. Reg. 17349, 17351 (April 18, 1975). Both APS and SRP agreed to license conditions removing such restrictions for all utilities with which they were, or would be in the future, interconnected. See id.

In reviewing the project at the operating permit stage, the NRC found no significant change. One of the reasons for such findings is the following statement by NRC staff regarding APS compliance with its license conditions:

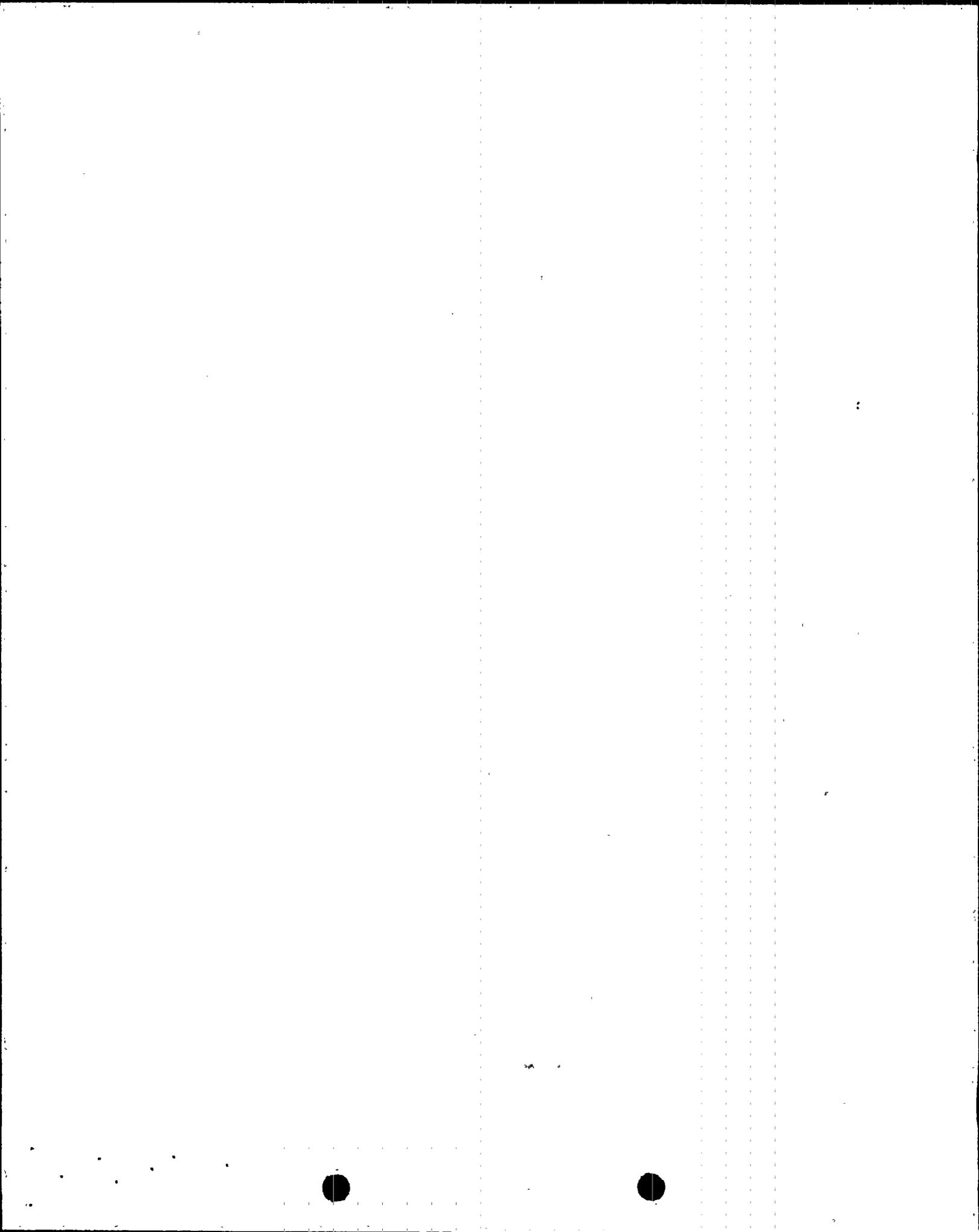
Staff's review of transmission arrangements entered into by APS since issuance of the Palo Verde CP suggests that APS has generally complied with the wheeling license condition. The most notable example of APS's compliance arises from its dealings with Plains Electric Generation and Transmission Cooperative (PGT), a G&T cooperative operating primarily in New Mexico, and with Navopache Electric Cooperative (Navopache), a distribution cooperative operating in Arizona. Under the terms of a wholesale power agreement executed in 1962, APS served as the full-requirements supplier for Navopache until 1980. At that time Navopache



elected to obtain its power supply from PGT, but because the two utilities were not directly connected, wheeling by APS (and SRP) would be necessary. Thus, in April, 1980, APS executed the "Power Coordination Agreement," affording, among other services, wheeling of up to 75 MW of power for 20 years.

Phillip Nicholson, Palo Verde Nuclear Generating Station Units 1 and 2 Significant Change Analysis at 7. If this Commission has determined there is a sufficient nexus to examine transmission restrictions relating to wholesale sales of power by competitors of APS, a co-owner of Palo Verde Unit 3, it must determine there is a sufficient nexus to determine whether El Paso has improperly limited transmission access in relation to Plains.

Here, there is not only a general transmission restriction of the type that required conditioning of the license of APS and SRP for Palo Verde Units 1 and 2, the licensing and operation of Palo Verde Unit 3 would also exacerbate El Paso's transmission bottleneck and help it maintain its ability to prevent Plains from competing in the wholesale power market in southern New Mexico. Such licensing, by allowing El Paso to transmit additional power into southern New Mexico, would enable El Paso to perpetuate and extend its monopoly bottleneck to Plains' detriment. Its operation would, according to El Paso's management personnel, prevent Plains from obtaining additional capacity made available through the new Springerville-Luna line and could result in additional improper constraints on Plains' use of its 115 kv line. There is, therefore, a clear nexus between Commission licensing of Palo Verde Unit 3 and the



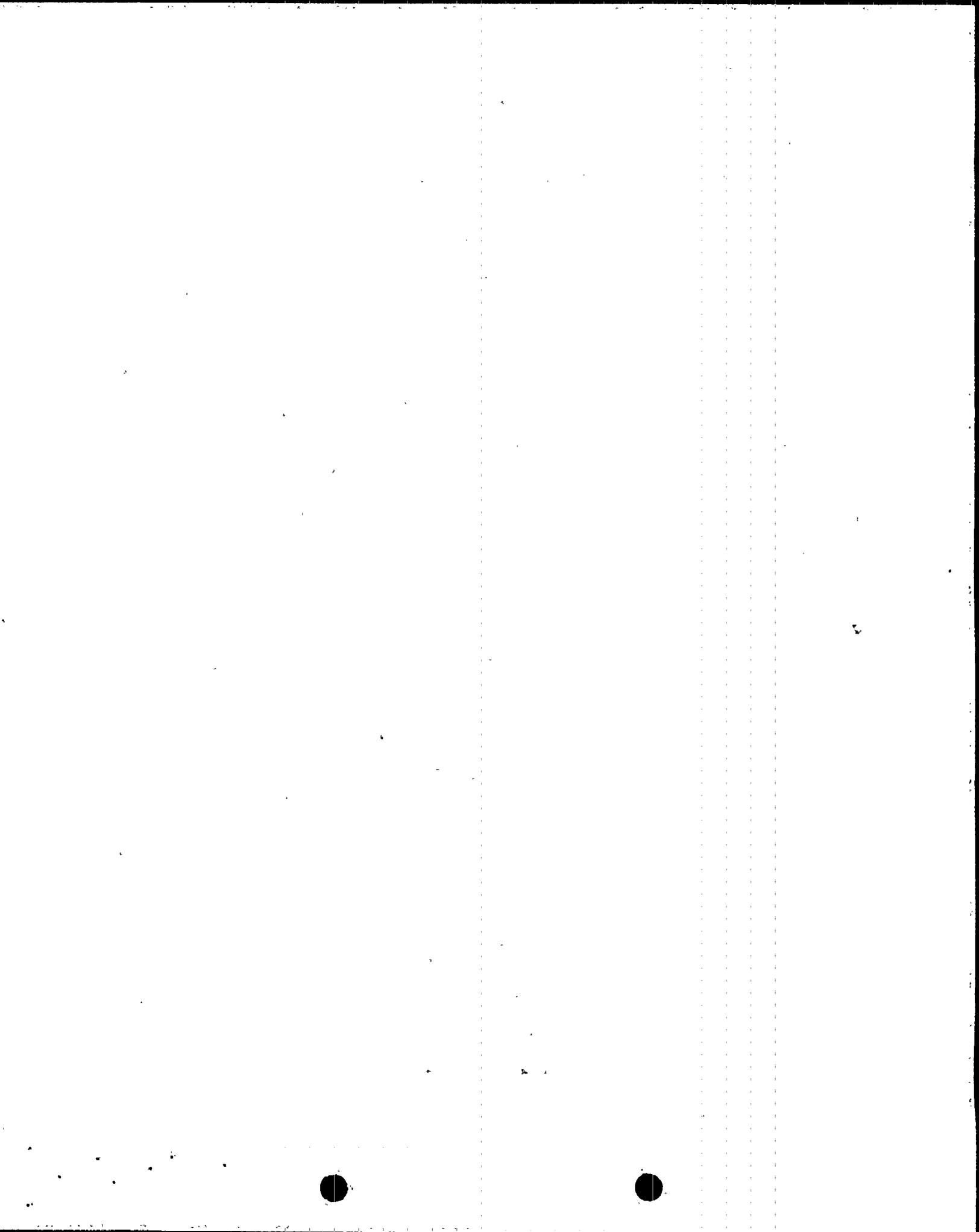
anticompetitive conduct alleged in this proceeding.

b. Antitrust Merits

El Paso maintains that Plains' Comments fail to establish an anticompetitive situation within the meaning of Section 105c because El Paso's attempted ouster of Plains from full utilization of the 115 kv line is permitted by Contract 1605. El Paso further claims that Plains' argument would require El Paso to reserve capacity in its 345 kv line, and that such reservation would violate Section 7(c) of Contract 1605 between El Paso and the Bureau of Reclamation. See Response at 23-30.

El Paso's reading of Section 7(c), which reflects and is an example of El Paso's anticompetitive behavior, is so stilted as to border on the ludicrous. El Paso claims that under Section 7(c), El Paso is not required to reserve any capacity in its 345 kv line to accommodate inadvertent flows from the 115 kv line. El Paso concedes, however, that because of the different voltage levels of the lines, "most" (the figure is approximately 90%) of the power in the 115 kv line will actually flow in the 345 kv line. El Paso's argument, in effect, is that the Bureau conceded, in executing Contract 1605, that approximately 90% of its power would flow over El Paso's 345 kv line, but that El Paso would not have to accommodate such flows. In other words, as soon as El Paso required the full capacity of its parallel 345 kv line, the Bureau (or its successors; here Plains) would lose 90% of its line.

Simply to state this argument is to show its absurdity. El Paso misreads the contract to justify its decision



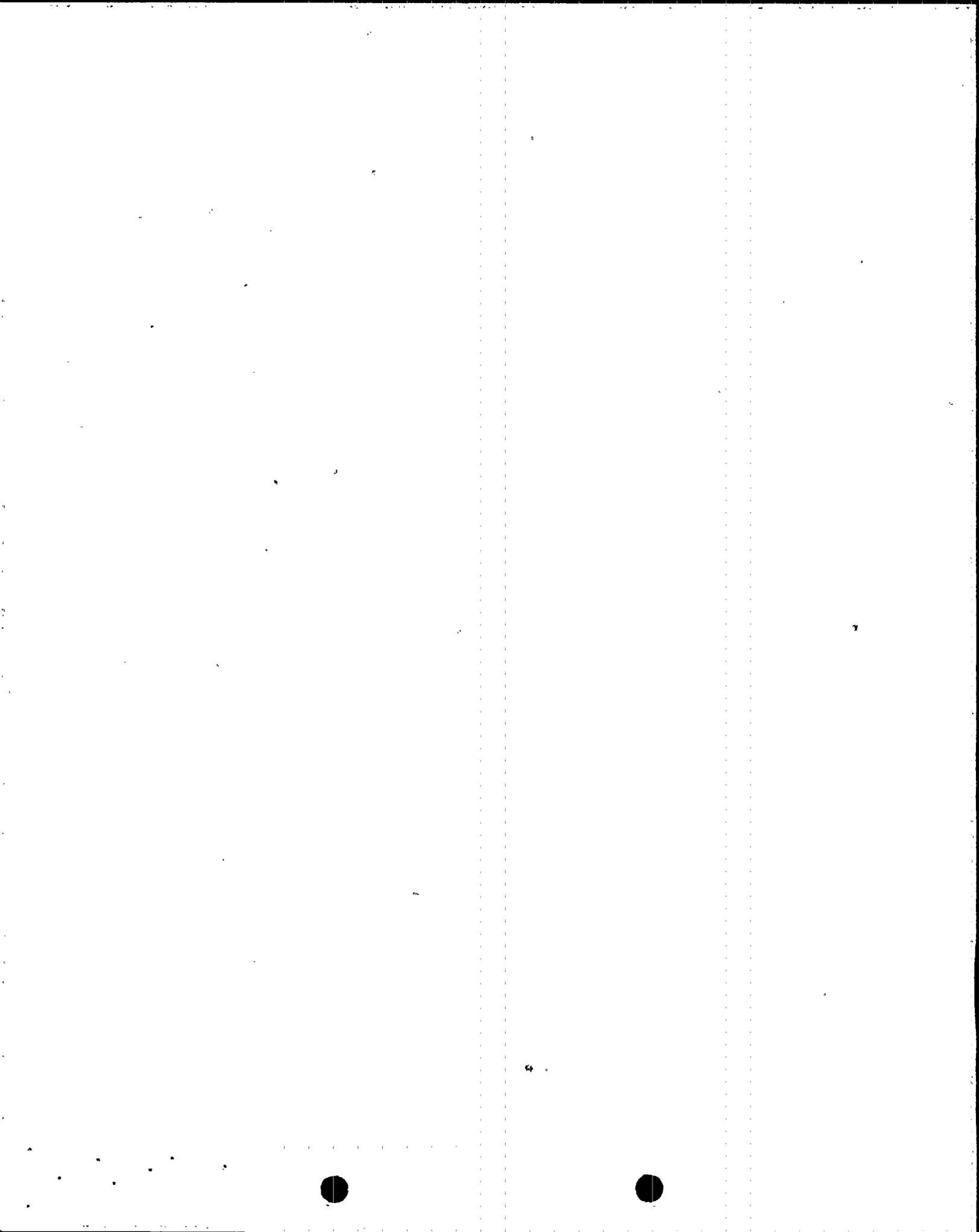
to prevent Plains from competing for load in southern New Mexico. El Paso's analysis omits the key phrase in Section 7(c) by which the Bureau protected its rights (and Plains', as successor to the Bureau's interests) in its 115 kv line:

"Nothing herein contained shall ... restrict the party owning the paralleling line from enjoying its full usage and capability."

Plains, as successor in interest to the Bureau on the parallel 115 kv line, wishes simply to exercise its right under Section 7(c) to enjoy the full 60 MW use of that line.

Plains recognizes that the contract requires El Paso, in effect, to accommodate 54 MW of transmission (90% of 60 MW) on its 345 kv line. This is a correct and accurate interpretation of Contract 1605. The language in section 7(c), with respect to reservations of capacity, cannot be read to include the 54 MW of capacity that both the Bureau and El Paso knew, when they signed the contract, would flow over El Paso's line as a result of the laws of physics. Such language must be construed as referring to additional capacity, above the 60 MW capacity of the Bureau's line, that the Bureau might wish to transmit. Any other reading of the contract would emasculate the full usage and enjoyment clause of Section 7(c), lead to the absurd result described above and, in truth, make the Bureau look rather foolish for entering into such a contract.

El Paso also claims that Plains' position does not have merit as a matter of equity since, as the story goes, Plains is not willing to undergo any transmission curtailments. See Response at 26-29. But El Paso's argument in this regard is



based on its misapprehension that the N-Minus-1 policy dictates who is entitled to use the 500 MW of transmission capacity available under the operating nomograms and ignores the fact that Plains agrees to bear its respective fair share of transmission curtailments.

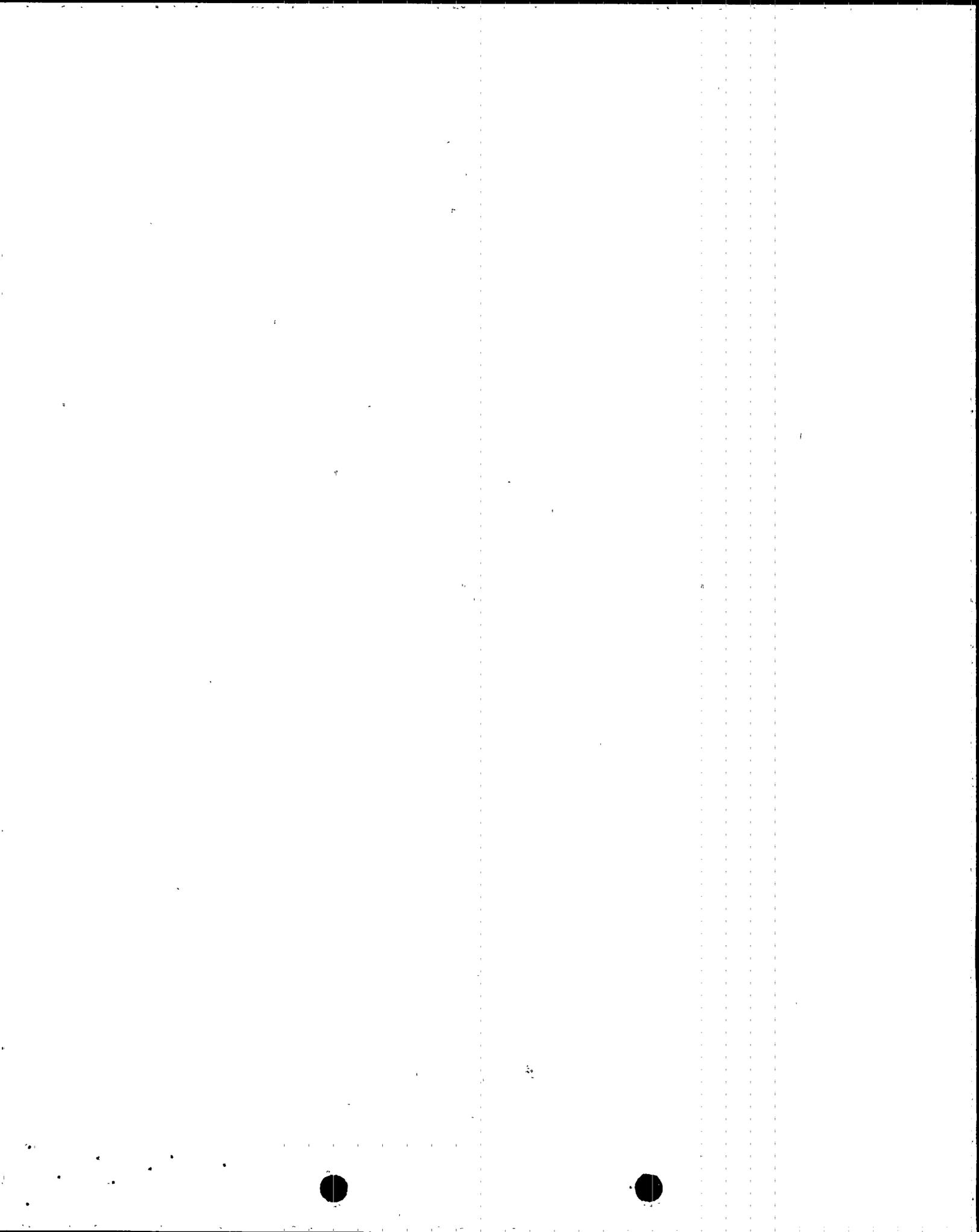
El Paso's interpretation of and conduct surrounding Contract 1605 provides a clear example of El Paso's anticompetitive activities. Plains' antitrust assertions are meritorious and deserving of relief.

c. The Rio Grande Sale

El Paso's justification for scuttling the Plains/Rio Grande transaction can be dealt with in short order.

El Paso claims first that its refusal to accept Plains' power for the account of Rio Grande was based on Plains' inability to deliver power to Las Cruces due to the lack of capacity in El Paso's 345 kv West Mesa-Las Cruces line. This justification is based on its erroneous interpretation of Contract 1605 through which ruse El Paso has co-opted 25 MW of capacity that should be available for Plains' use in the 345 kv line. Plains does not require capacity from El Paso since it already has excess capacity remaining in its allocation but El Paso has usurped that capacity to itself.

El Paso also claims that there is no capacity available in its Las Cruces-Lane 115 kV line for transmission of power to Rio Grande's delivery points. See Response at 32-35. This is absurd. El Paso currently serves Rio Grande through that line. If Plains were to serve Rio Grande, it would be able to use the

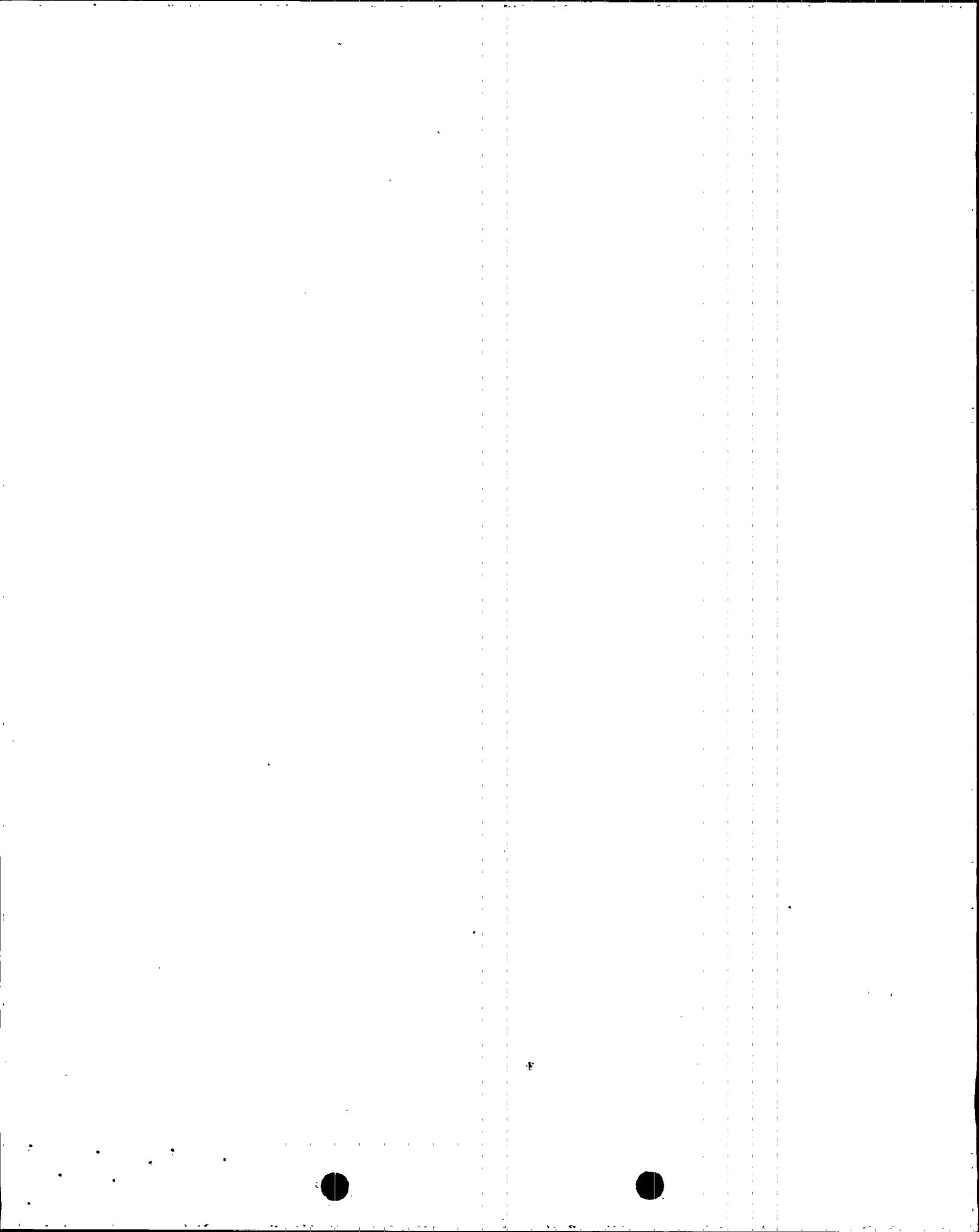


same transmission capacity that El Paso is now using. Again the capacity is available, but El Paso prefers to co-opt it for its own use.

El Paso further argues that transmission of power to Rio Grande's delivery points over the Las Cruces to Lane line will result in higher generating costs for El Paso and argues in related fashion that a flat refusal to wheel did not occur; rather Rio Grande was unwilling to pay some generation adder over and above normal wheeling costs from Las Cruces to Lane. The flat assertion regarding increased generating costs is supported by no analysis. Numerous engineering and factual matters must be established to support this bald assertion, such as incremental inertial and/or voltage support requirements, efficiency levels and other matters. El Paso did not factually support its assertion regarding generation. Plains, obviously, cannot reply.

The implication left by El Paso's argument is that Rio Grande chose to maintain service from El Paso due to its unwillingness to pay the generation adder for service from Plains. See Response at 34. Plains suggests that Rio Grande, in providing for its bulk power needs, was unwilling to await the outcome of a transmission access battle between Plains and El Paso. The circumstances surrounding the Rio Grande sale continue to evidence El Paso's anticompetitive conduct.

The Commission must face the simple fact that El Paso wants to maintain service to Rio Grande to maintain its income flow from Rio Grande and to exclude its competitor, Plains, from that market. El Paso fails to mask that intent despite its



development of an array of "technical problems" to excuse its failure to grant Plains transmission access.

III.

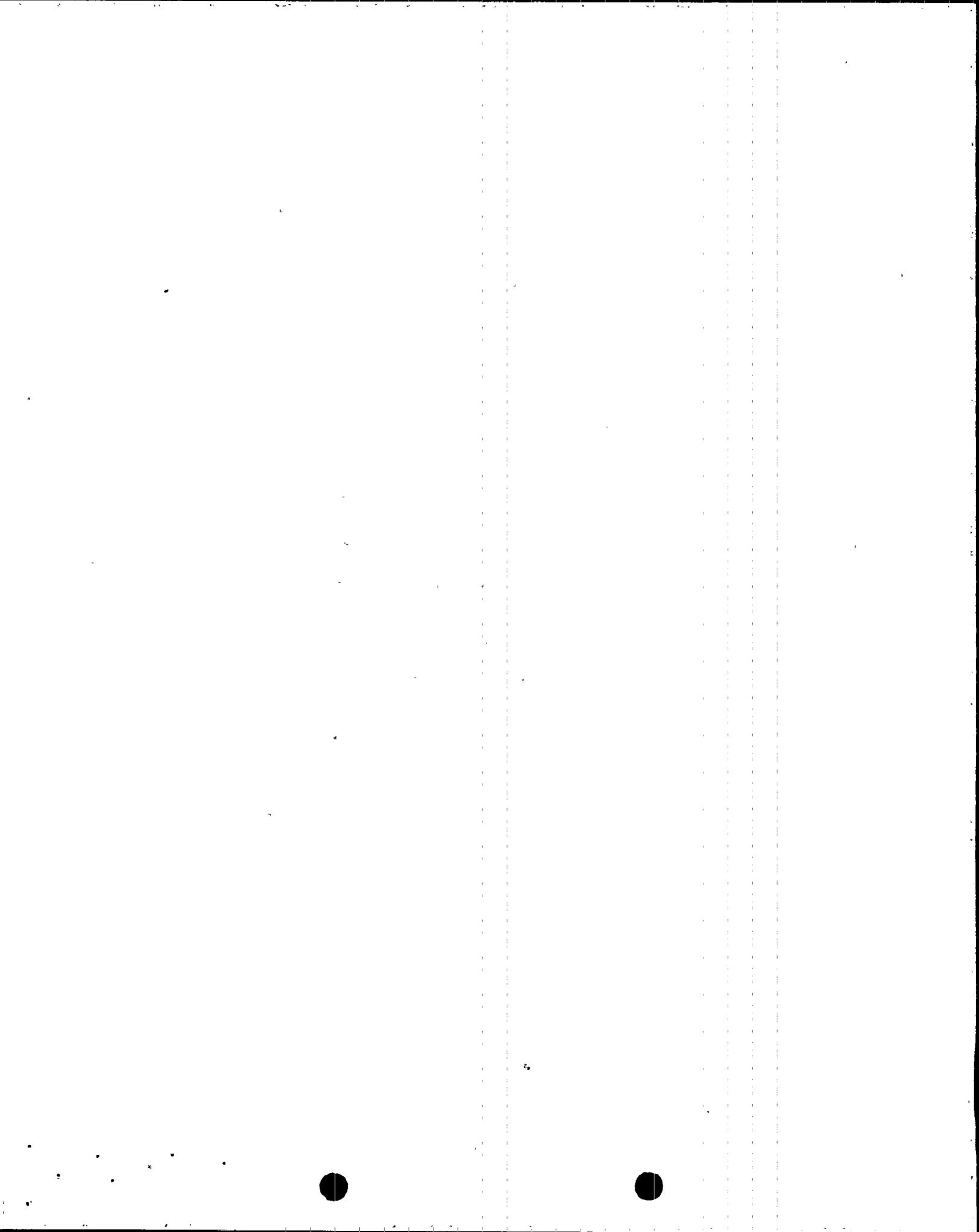
The Springerville-Luna Line

El Paso flatly states in its Response that if there is available capacity in the Springerville-Luna line, "it will be made available to Plains and other utilities." See Response at 38-40. But El Paso is not certain that such capacity will be available in 1989 or at any time. See id. at 39. However, despite these reservations, at the end of its Response, El Paso makes this remarkable statement:

El Paso's preliminary analysis suggests that the line will increase capacity to transmit power from north to south by over 70%, from 550 mW to 950mW. The Springerville-Luna line is scheduled for service in June 1989. Thus, the limitations on north-south transmission capacity in New Mexico, which lie at the base of Plains' complaint, are expected to be resolved within 30 months.

Response at 42.

The key questions, then, are whether El Paso really believes that there will be capacity available for Plains' use, and, if so, whether it will be made available to Plains. The only official word Plains has received from El Paso's management personnel is that there will not be capacity available to Plains based on El Paso's conclusion that the line would increase total transfer capability in New Mexico to 850 MW. However, in the testimony cited in Plains' Comments, El Paso's witness Maloney testified in the New Mexico certificate proceeding for the line that there would be 20-120 MW of available capacity based on an



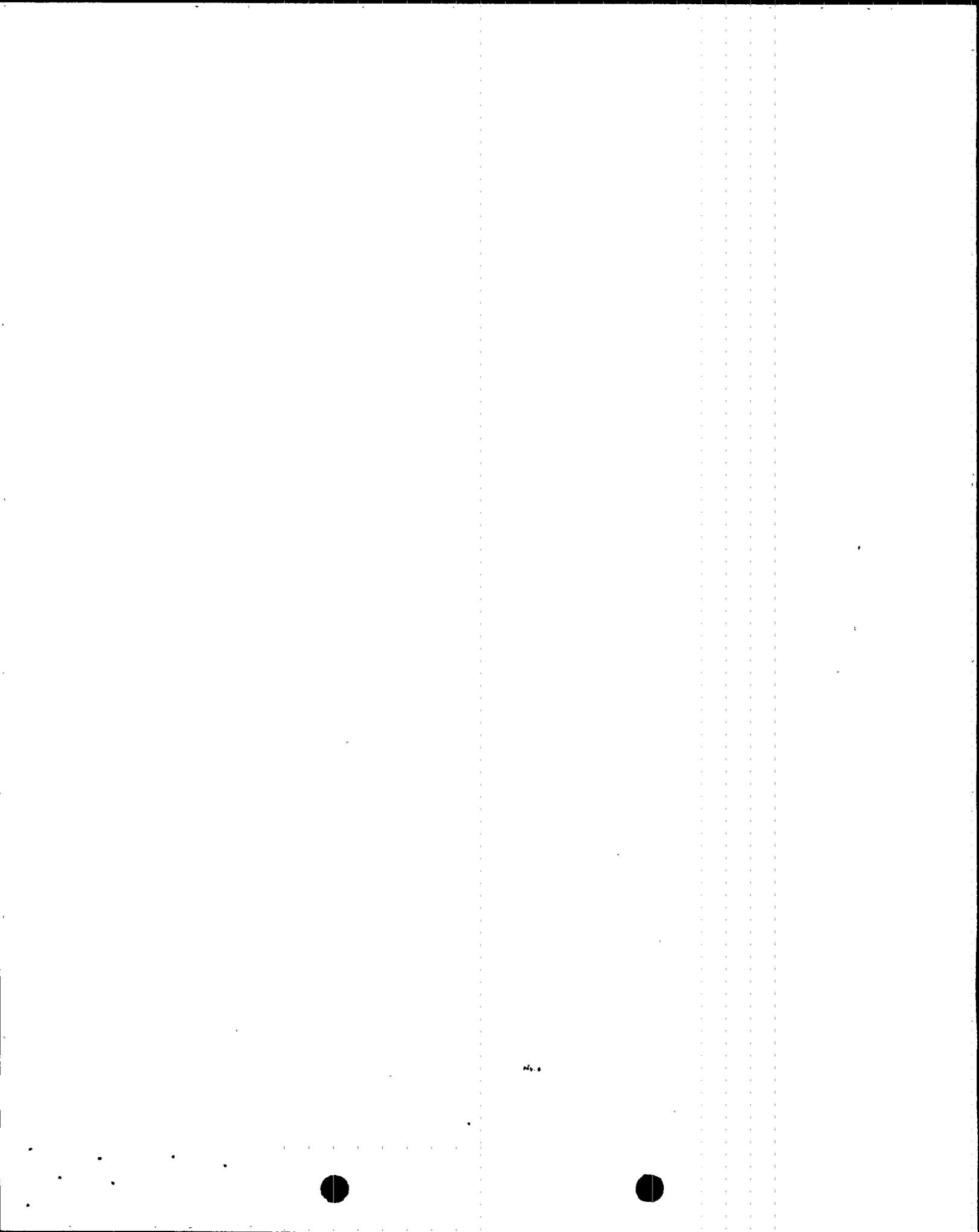
increase of total transfer capabilities to 880 MW. See Plains Comments at 8. Now, in its Response here, El Paso claims that Plains' concerns will be resolved within 30 months, based on an increase of transfer capability to 950 MW. <sup>5/</sup>

Plains welcomes the statement in El Paso's Response that there will be sufficient capacity in the Springerville-Luna line to meet Plains' needs and Plains stands ready, willing and able to utilize and pay for any capacity resulting from this line. However, such statement has not been communicated from El Paso's management to Plains' management and, more importantly, El Paso has made no offer to commit that capacity to Plains. Until commitments are made, Plains has no assurance that El Paso's position will not remain as previously stated to Plains. It is evident that El Paso wishes this Commission to believe the the problem is about to go away. But the problem will persist until El Paso formalizes an offer to make transmission available to Plains. Until it does so, this Commission must closely scrutinize El Paso's actions.

Further, even if Plains obtains relief in 1989, Plains will have suffered an inability to compete effectively with El Paso for new load in southern New Mexico for two and one-half years. During that time substantial new customer load may be booked by El Paso, including service for the SDI program. See Plains' Comments at 10. Plains is hurt now and that damage will not be undone by transmission access in 1989.

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<sup>5/</sup> No attempt is made by El Paso to reconcile these figures.

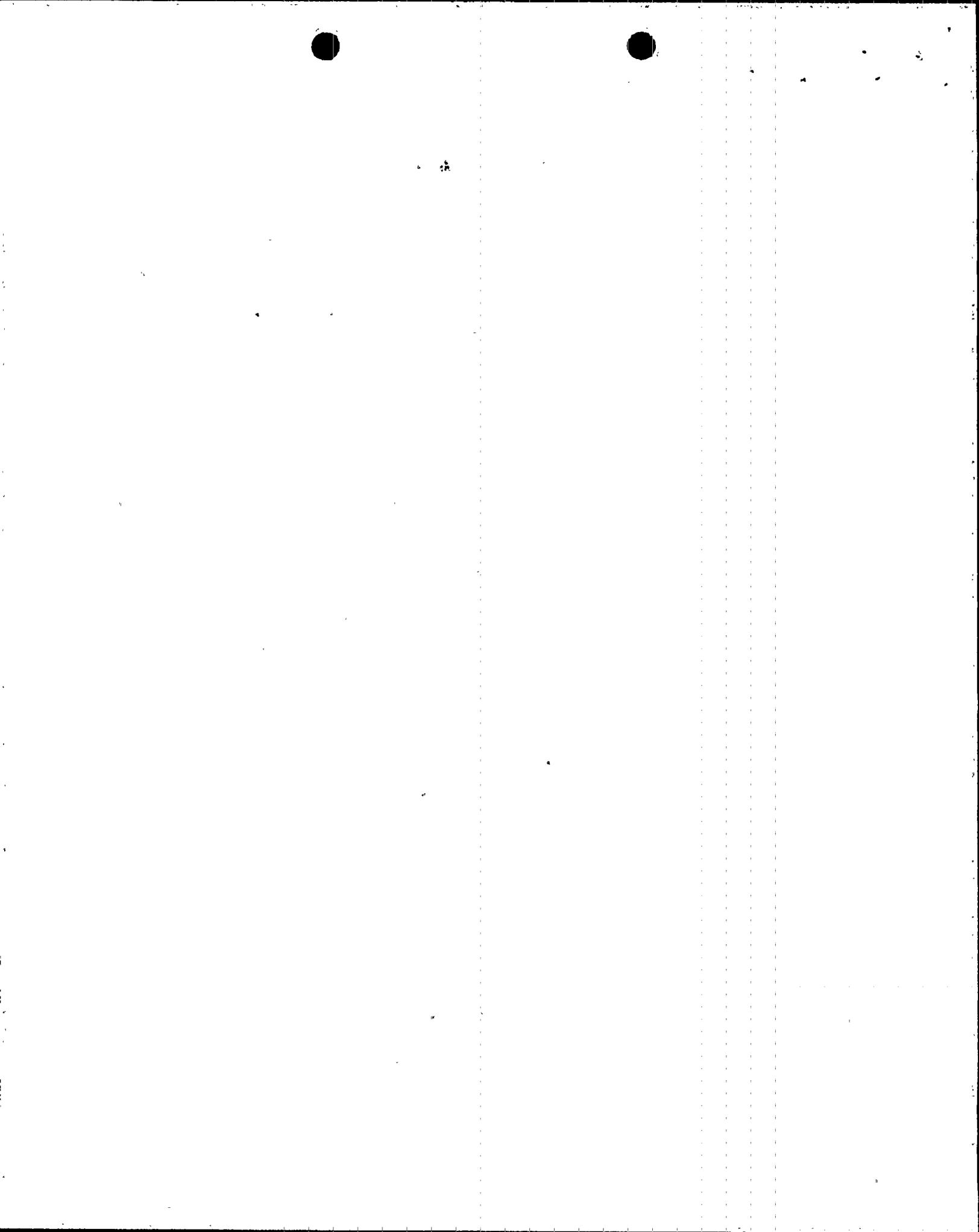


Finally, the possibility exists that this line will not be constructed due to environmental problems, a certification denial by the New Mexico Public Service Commission or for other reasons. There are two significant results of a failure to construct the line. First, this Commission will have licensed El Paso's share of Palo Verde Unit 3 where El Paso has no ability to deliver that power to its load centers and southern New Mexico. Second, El Paso's proposed panacea for Plains' complaints regarding transmission access simply will not come into existence. The Commission must act now, rather than denying relief to Plains while waiting for the anticipated construction of the Springerville-Luna line, which indeed, may never occur.

IV.

Cooperative Transmission Enhancements

In another late blooming position, El Paso's Response claims that El Paso has always been willing to plan cooperatively with Plains. It relies on a letter written by El Paso to PNM on January 28, 1987, which was developed well after Plains filed its Comments herein and, conveniently, nine days before El Paso's Response to this Commission. El Paso has not informed Plains that it is willing to participate in the study and, if feasible, to undertake the enhancements of the transmission system, in response to Plains' request of August, 1986. See Plains' Comments at 16. Statements in El Paso's Response and a letter written to the Chairman of the Planning Committee of the NMPP and copied to all other members, under the pressure of Plains' Comments herein, cannot be relied upon as concrete or enforceable



expressions of El Paso's intentions. The Commission cannot foreclose an antitrust review until El Paso makes a binding commitment to act.

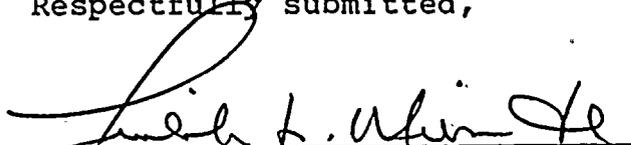
V.

Conclusion

Wherefore, Plains reiterates the requests contained in its November 28, 1986 filing that this Commission: (1) find that El Paso's actions constitute a significant change; (2) conduct a hearing regarding El Paso's anticompetitive conduct; and (3) impose the conditions set forth in Section V of Plains' Comments of November 28, 1986, in the Palo Verde Unit 3 operating license.

Dated: March 17, 1987

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of March, 1987  
I caused a copy of the foregoing document to be delivered by  
United States mail, first class, postage prepaid (except Benjamin  
Vogler who was served by hand delivery), upon the following  
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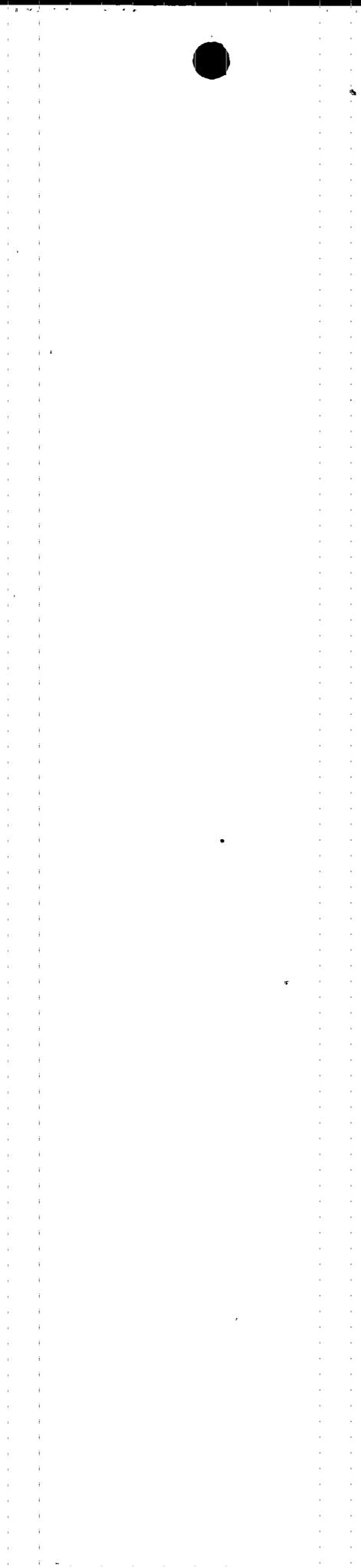
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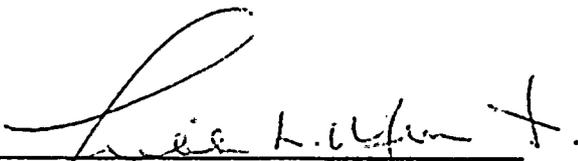
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