

basis and specificity per the requirements of 10 CFR §2.714(b) and applicable case law. See, e.g., BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974). A major reason for requiring the articulation of specificity and basis is to help assure that other parties are put on sufficient notice of what they will have to defend against^{2/} and to ensure that the hearing process is invoked solely for the resolution of concrete issues.^{3/} This is especially true in a proceeding for which a hearing is not mandatory. Cf. Cincinnati Gas and Electric Company (Zimmer Nuclear Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities (River Bend Units 1 and 2) ALAB-183, 7 AEC 222, 226 n. 10 (1974).

With regard to environmental contentions, the now familiar "rule of reason" must be applied. See NRDC v. Morton, 458 F.2d 827 (D.C. Cir. 1972); See also Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 48-49 (1978). As the D.C. Circuit stated in NRDC v. Morton:

There is reason for concluding that NEPA was not meant to require detailed discussion of the environmental effects of "alternatives" put forward in comments when these effects cannot be readily ascertained and the alternatives are deemed only remote and speculative possibilities, in view of basic changes required in statutes and policies of other agencies -- making them available, if at all, only after protracted debate and litigation not meaningfully compatible with the time-frame of the needs to which the underlying proposal is addressed. 458 F.2d at 837-38.

^{2/} Philadelphia Electric Company (Peach Botton, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

^{3/} Philadelphia Electric Company (Peach Botton, Units 2 and 3), CLI-73-10, 6 AEC 173, 174 (1973).



The United States Supreme Court recently made the following observation in connection with the assertion of contentions arising under the National Environmental Policy Act (NEPA) in NRC proceedings:

" . . . while it is true that NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action, it is still incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenor's position and contentions.

Vermont Yankee Nuclear Power Corporation v. NRDC, et al., 435 U.S. 519 (1978).

In this regard, the Supreme Court further stated that a petitioner's comments "must be significant enough to step over a threshold requirement of materiality * * * The comment cannot merely state that a particular mistake was made, it must show why the mistake was of possible significance in the results." Id., quoting from Portland Cement Assn. v. Ruckelshaus, 486 F.2d 375, 394 (D.C. Cir. 1973), cert. denied, 417 U.S. 921 (1974).

The Appeal Board has indicated that there is no need to duplicate the review afforded the plant at the operating license stage in connection with a license amendment application:

"Nothing in NEPA or in those judicial decisions to which our attention has been directed dictates that the same ground be wholly explored in connection with a proposed amendment to those 40-year operating licenses. Rather, it seems manifest to us that all that need be undertaken is a consideration of whether the amendment itself would bring about significant environmental consequences beyond those previously assessed and, if so, whether those consequences (to the extent unavoidable) would be sufficient on balance to require a denial of the amendment application." Northern States Power Company (Prairie Island Units 1 and 2), ALAB-455, 7 NRC 41, 46 at n. 4 (1978) (spent fuel pool expansion).



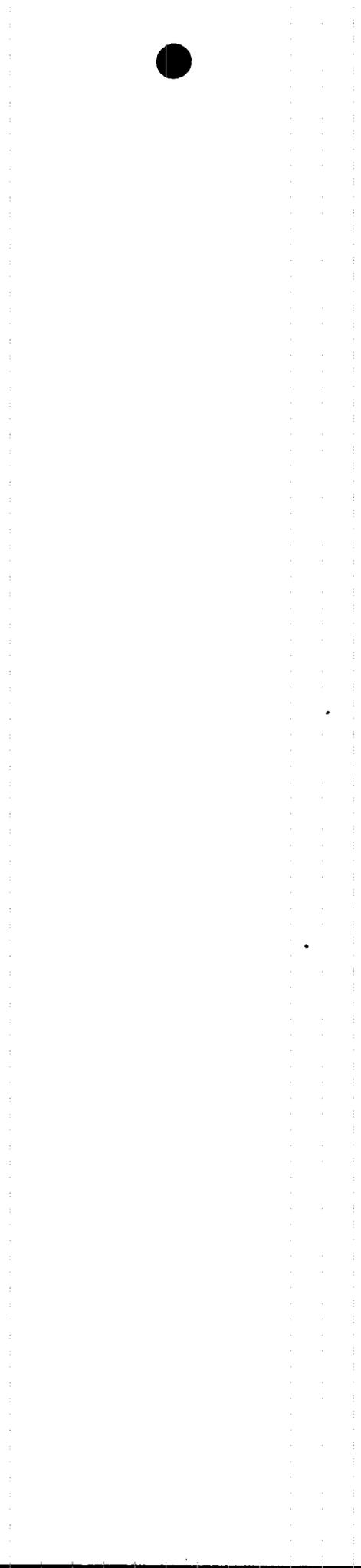
The Staff position on the contentions follows:

STATEMENT OF POSITION AND MOTION TO STRIKE

In general, none of the contentions proposed by the Intervenor contain the necessary basis and specificity required by 10 CFR §2.714(b). Significantly, the contentions of the Intervenor are devoid of any reference to the documentary submissions of either the Licensee or the Staff notwithstanding their importance as licensing documents. The contentions represent sweeping allegations of inadequate or complete failure to comply with various undifferentiated statutes, rules, or regulations without regard to action-specific information. They provide no effective "notice" of the nature of the complained of matters.

A majority of the contentions contain allegations of noncompliance with unspecified provisions of the Federal Water Pollution Control Act (FWPCA). The Environmental Protection Agency (EPA) issued a National Pollutant Discharge Elimination System (NPDES) Permit (No. FLO061562) for the Turkey Point facility on June 14, 1978 pursuant to §402 of the FWPCA. The establishment of effluent limitations and compliance with the NPDES permit is a matter of EPA, rather than NRC, jurisdiction. See §511(c)(2) of the FWPCA, 33 U.S.C. §1371; Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1,25-26 (1978); Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978). Accordingly, the Staff moves to strike those portions of admitted contentions 2, 3, 4 and 6 alleging noncompliance with the FWPCA. Those analogous portions of contentions 8, 11 and 13 are similarly inadmissible as a matter of law.

The Staff now turns to consideration of the contentions individually.



Contention 1

Whether pursuant to requirements of the National Environmental Policy Act (NEPA), 10 CFR Parts 50, 51, the Commission must prepare an Environmental Impact Statement on the proposed operating license (OL) amendments, with specific references to 10 CFR 50.90?

- a. Whether the requirements of the FWPCA are met in the form of inclusion in a NEPA cost/benefit analysis?

This contention was formerly contention 2 in Intervenor's May 2, 1979 statement of contentions. The Board apparently admitted this contention in its Order of August 3, 1979. Nonetheless, the Staff believes that certain references within the contention are inapplicable. References to 10 CFR Part 50, and specifically 10 CFR §50.90, fall within this category. The Commission's regulations implementing NEPA are contained solely in 10 CFR Part 51. Part 50 provides no criteria to assess when or whether an environmental impact statement (EIS) must be prepared. Section 50.90 governs the contents of a construction permit or license amendment application.^{4/} It imposes no obligations whatsoever upon the NRC. It surely does not establish criteria under which the need for an EIS is to be adjudged. Accordingly, the Staff moves to strike the references to "10 CFR Part 50" and "10 CFR §50.90" in this contention.

Though the nature of the reference to the FWPCA in subpart (a) is unclear, the Staff does not construe the context of its usage therein as necessarily violative of the authorities cited at page 4 supra. The Staff does not otherwise concede that the issue has merit.

Significantly, the NRC Staff issued an environmental impact appraisal (EIA) of the proposed action on June 24, 1979. The contention fails to allege any deficiency

4/ That regulation states:

Whenever a holder of a license or construction permit desires to amend the license or permit, application for an amendment shall be filed with the Commission, fully describing the changes desired, and following as far as applicable the form prescribed for original applications.



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in the appraisal which more closely parallels an EIS than the traditional Staff EIA in both form and substance.

Contention 2

Whether the steam generator repairs proposed by the utility comply with 10 CFR Part 20, NEPA, or the FWPCA?

Contention 5

Whether the use of transient workers with unknown radiation exposure histories is in compliance with 10 CFR Parts 20, 51, or NEPA?

These contentions were formerly denominated contentions 5 and 12 in the Intervenor's May 2 statement of contentions. The Board apparently admitted these contentions in its August 3 Order as placing in question "whether the occupational exposure during the repair, especially of transient workers, can be kept ALARA." Order at 28. Nonetheless, the Staff believes that certain references within these contentions are inapplicable. Specifically, the Staff moves that the reference in contention 2 to the FWPCA be stricken on the grounds noted above. The Staff further moves that the reference to 10 CFR Part 51 in contention 5 be stricken on the grounds that this chapter does not contain requirements regarding the use of transient workers with unknown radiation exposure histories and is, therefore, irrelevant to the substance of the contention.

Contention 3

Whether the handling, processing, storing, or discharging of primary coolant is in conformance with requirements of 10 CFR Parts 20, 50, 51, 100, NEPA or FWPCA?

Contention 4

Whether the discharge of untreated laundry waste water complies with 10 CFR Parts 20, 50, 51, NEPA or FWPCA?

These contentions were formerly denominated contentions 6 and 7 in the Intervenor's May 6 statement of contentions. The Board apparently admitted these contentions

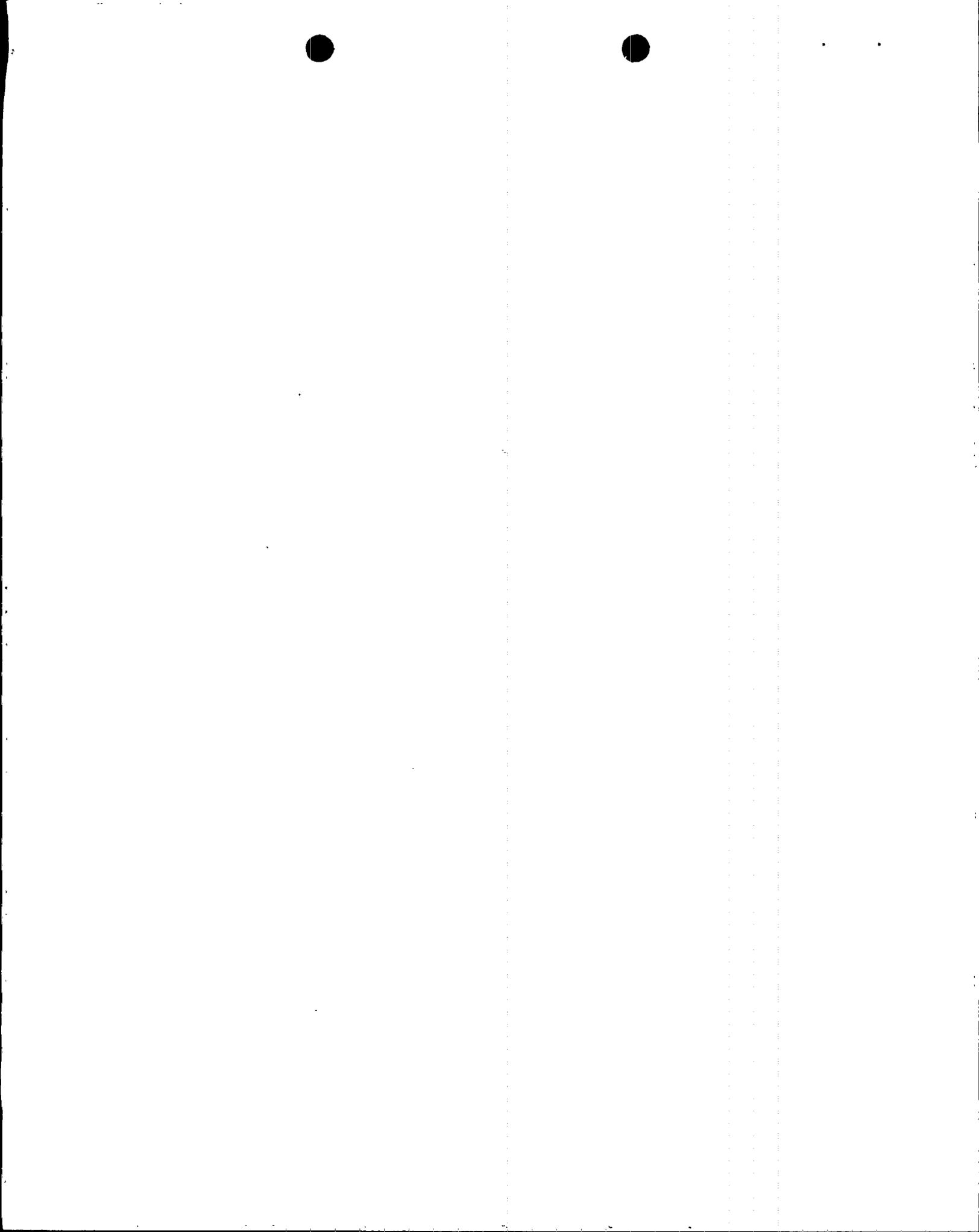


together in its August 3 Order as placing in question whether the releases of radioactive effluent into the cooling system will be within permissible levels. Nonetheless, the Staff believes that certain references within the contentions are inapplicable. Accordingly, the Staff moves that references in these contentions to 10 CFR Parts 51, 100, and the FWPCA be stricken. Compliance with the FWPCA, under the circumstances of this case, is outside NRC jurisdiction for the reasons noted above. Parts 51 and 100 do not prescribe levels of liquid radioactive effluent releases against which the acceptability of the several "releases" referenced in the contentions are sought to be measured. Therefore, the chapters are irrelevant to the substance of the contentions.

Contention 6

Whether the creation of a long-term nuclear waste storage facility at Turkey Point is in compliance with 10 CFR Parts 50, 51, NEPA, FWPCA, or any laws protecting Biscayne Bay or Biscayne National Monument, their surroundings, and their delicate life forms, with particular attention being drawn to the proposed floorless steam generator disposal building?

This contention was formerly denominated contention 18 in the Intervenor's May 2 statement of contentions. The Board apparently admitted this contention in its August 3 Order as placing in question the "adequacy of the method proposed for storing the steam generator assemblies with regard to protecting the assemblies from storm floods." Order at 28. Nonetheless, the Staff believes that the reference in the contention to the FWPCA is inapplicable and moves that it be stricken on the grounds noted above. The Staff will seek through discovery specification of the other applicable "laws" alluded to in the contention and seek such additional relief as may be necessary.



Contention 7

The Licensee has not considered in its cost benefit analysis in violation of 10 CFR Parts 50 and 51, and NEPA:

- a. the cost of a full-flow condensate polishing demineralizing system;
- b. the effluent release from a full-flow condensate polishing demineralizing system; or
- c. the environmental degradation caused by a full-flow condensate polishing demineralizing system.

This contention seeks the introduction of an issue that is irrelevant to the proceeding. The installation and operation of a full-flow condensate polishing demineralizing system is not proposed in the Licensee's Steam Generator Repair Report. Should the Licensee reveal plans to install such a system during the pendency of this proceeding, the Intervenor may attempt to seek the introduction of a contention regarding such a system. Therefore, the Staff opposes the admission of this contention.

Contention 8

The continued operation of Turkey Point Units 3 and 4 should be suspended because:

- a. The impaired condition of the steam generators poses the possibility of accidental loss of coolant;
- b. the impaired condition of the steam generators subjects onsite workers to unacceptable levels of radiation exposure;
- c. the impaired condition of the steam generators poses the possibility of offsite radiation releases endangering the public health and environment and violate the Federal Water Pollution Control Act by the discharge of primary coolant.

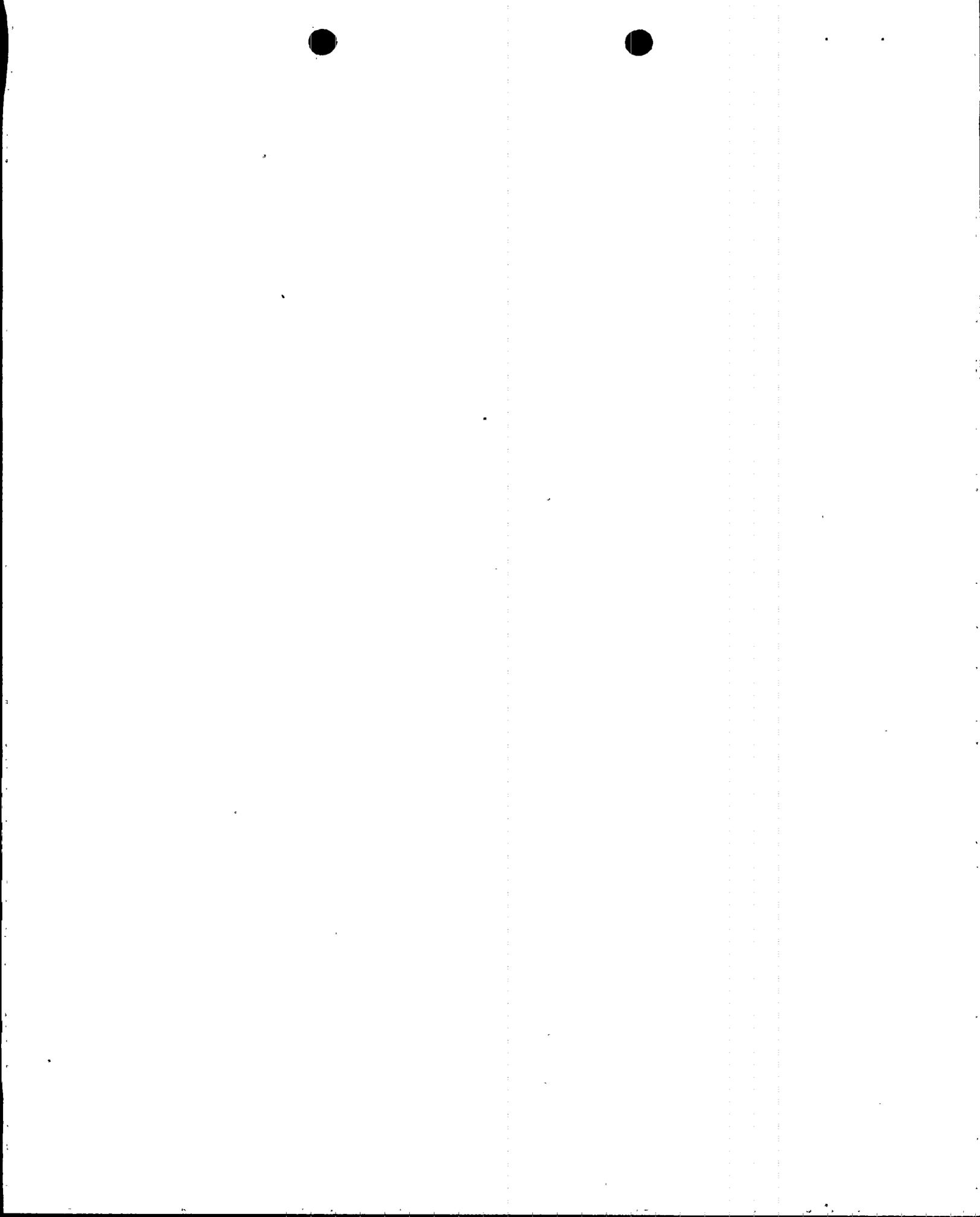


This contention seeks the introduction of an issue that is beyond the scope of this proceeding and outside the jurisdiction of this Board. The scope of the Board's jurisdiction in the instant action is confined to determining whether or not the proposed steam generator repairs should be authorized. Licensing Boards are empowered to hear only those matters which the Commission has designated them to decide in the applicable notice of hearing. 10 CFR §2.104(a); 2.717(a); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976). Continued operation of units 3 and 4 in their existing condition was authorized by license amendments dated October 26, 1978. The amendments were accompanied by Staff safety and environmental evaluations. Notice of the proposed issuance of those amendments was published in the Federal Register on August 9, 1978 with an opportunity to request a hearing. 43 F.R. 3506. No petitions to intervene were filed with respect thereto. Thus, the Staff opposes the admission of this contention.

Contention 9

The cumulative offsite radiation releases as a result of all activity at Turkey Point, during the proposed repairs, are contrary to 10 CFR Parts 20, 50, 51, 100, and the National Environmental Policy Act.

This contention lacks the requisite degree of basis and specificity required by 10 CFR §2.714. On the basis of its detailed evaluation, the Staff concluded that the proposed repairs could be accomplished without exceeding the exposure limits in 10 CFR Part 20, that the efforts proposed to maintain occupational exposures ALARA are acceptable (SE, §2.6.1) and that the resultant occupational radiation dose will be environmentally insignificant (EIA, §4.1.1). It was further concluded that airborne and liquid radioactive effluent releases from the plant during the proposed repairs will be within the design objectives of Appendix I to 10 CFR



Part 50 (SE, §§2.6.3, 2.6.4), less than the releases from normal operation, and will not significantly affect the human environment (EIA, §4.1.2). The Intervenor has not controverted these conclusions nor otherwise supplied the basis for his apparently contradictory claim. It should also be borne in mind that the unit under repair will be shutdown and the core unloaded before repair work is started. Therefore, no gaseous wastes will be generated from reactor operations during the repair period (SE, §2.6.3). Therefore, the Staff opposes the admission of this contention.

Contention 10

The Commission's NEPA Analysis is inadequate in that it fails to adequately consider the following alternative procedures:

- a. arresting tube support plate corrosion;
- b. in-place tube restoration (sleeving);
- c. in-place steam generator tube replacement (retubing);
- d. derating;
- e. decommissioning;
- f. bioconversion;
- g. conservation;
- h. solar energy;
- i. natural gas; or
- j. coal

This contention seeks the consideration of certain alternatives to the proposed action. Since an EIS is not required pursuant to §102(2)(C) of NEPA under the circumstances of this case, the attendant obligation to consider alternatives does not arise. The Staff recognizes an obligation to consider alternatives independent of the EIS requirement under §102(2)(E) of NEPA under certain



circumstances. Assuming arguendo that some obligation to consider alternatives arises under NEPA under the circumstances of this case, such alternatives must, nonetheless, pass some threshold test of reasonableness. See e.g., Vermont Yankee Nuclear Power Corp. v. NRDC, et al., 435 U.S. 519 (1978); NRDC v. Morton, 458 F.2d 827, 837 (D.C. Cir. 1978). The Staff believes that the alternatives considered and rejected by the Staff in the EIA, which encompass proffered alternatives (c) through (e), more than satisfy such obligation. Intervenor has not explained why the consideration of these alternatives is "inadequate" as claimed. The Staff is of the opinion the proffered alternatives (a) and (b) not reasonable or viable alternatives to the proposed action. With regard to "alternative" (a), the Staff is unaware of a technically feasible way to arrest serious tube support plate corrosion. An attempt was made to arrest the wastage (tube wear) and stress corrosion cracking problem at Turkey Point by a change in the secondary water treatment. This attempt was unsuccessful and, in turn, led to the present phenomenon of denting. See SE, §1.1.

With regard to "alternative" (b), sleeving is a temporary measure to control wastage. However, it is not a feasible means to control denting because once denting begins it reduces the diameter of the tubes. Therefore, the sleeves no longer fit the tubes. This is the situation at Turkey Point.

Preferred alternatives (f) through (j) are subsumed with consideration of alternative (e) and are not otherwise reasonable.

Contention 11

The utility has failed to provide an accurate cost/benefit analysis contrary to 10 CFR Parts 50 and 51, and the National Environmental Policy Act, and the FWPCA because:

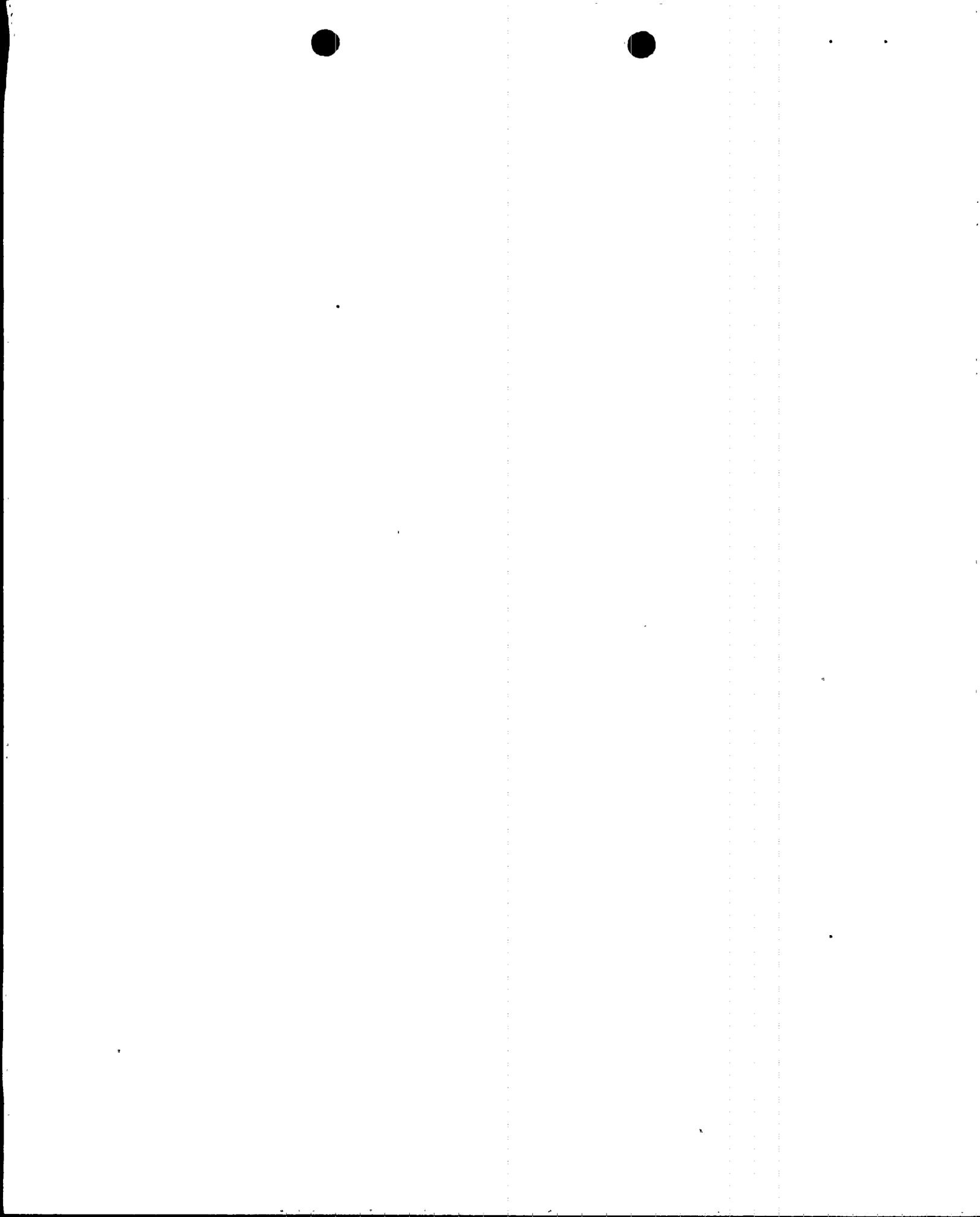
- a. it has failed to consider the cost of future recurring steam generator repairs'



- b. it has used the inaccurate figure of \$300,000 per day per unit for replacement power costs for reactor outage;
- c. the use of a radiation exposure value guideline of \$1,000 per man-rem for plant workers is inaccurate;
- d. it has failed to provide a cost/benefit analysis for an additional commitment of land resources for the creation of a nuclear waste storage facility.
- e. it has failed to consider the costs of addition of a full flow condensate demineralizer and of condenser retubing;
- f. it has failed to consider the additional costs caused by inflation and delay.

Neither NEPA nor 10 CFR Part 51 require the preparation of a cost-benefit analysis in connection with an action for which no EIS is required. See, e.g., 10 CFR §51.7 (contents of EIA). Nonetheless, while it did not perform an overall cost-benefit analysis in its EIA, per se, the appraisal does reflect consideration of the costs and benefits of the proposed action. (See, e.g., EIA, §4.2). Even assuming the presence of such a requirement, it does not derive from 10 CFR Part 50 or the FWPCA as seemingly alleged.

The contention is deficient on alternate grounds. Subpart (a) is speculative and without basis. Proposed mechanical design and material changes, along with a preoperational testing program prior to fuel loading, combine to reduce the potential for recurrent tube leaks. SE, §§2.1 - 2.5. Subpart (b) lacks basis. Yet, even assuming the truth of the matter asserted therein, Intervenor fails to indicate what effect this has on the ultimate decision of whether the proposed action should be authorized or not. Subpart (c) lacks specificity and basis. Subpart (d) lacks basis. Disposal of the replaced steam generator lower assemblies will be onsite and, thus, will not entail any additional commitment of land. The replaced assemblies will be stored in an onsite engineered storage facility consistent with Commission regulations



governing low-level with disposal. See 10 CFR §20.302. Subpart (e) seeks the introduction of an issue that is beyond the scope of the proceeding. See position on contention 7 supra. Subpart (f) lacks reasonable specificity, is unduly vague and not susceptible to a reasonable degree of proof. Thus, the Staff opposes the admission of this contention.

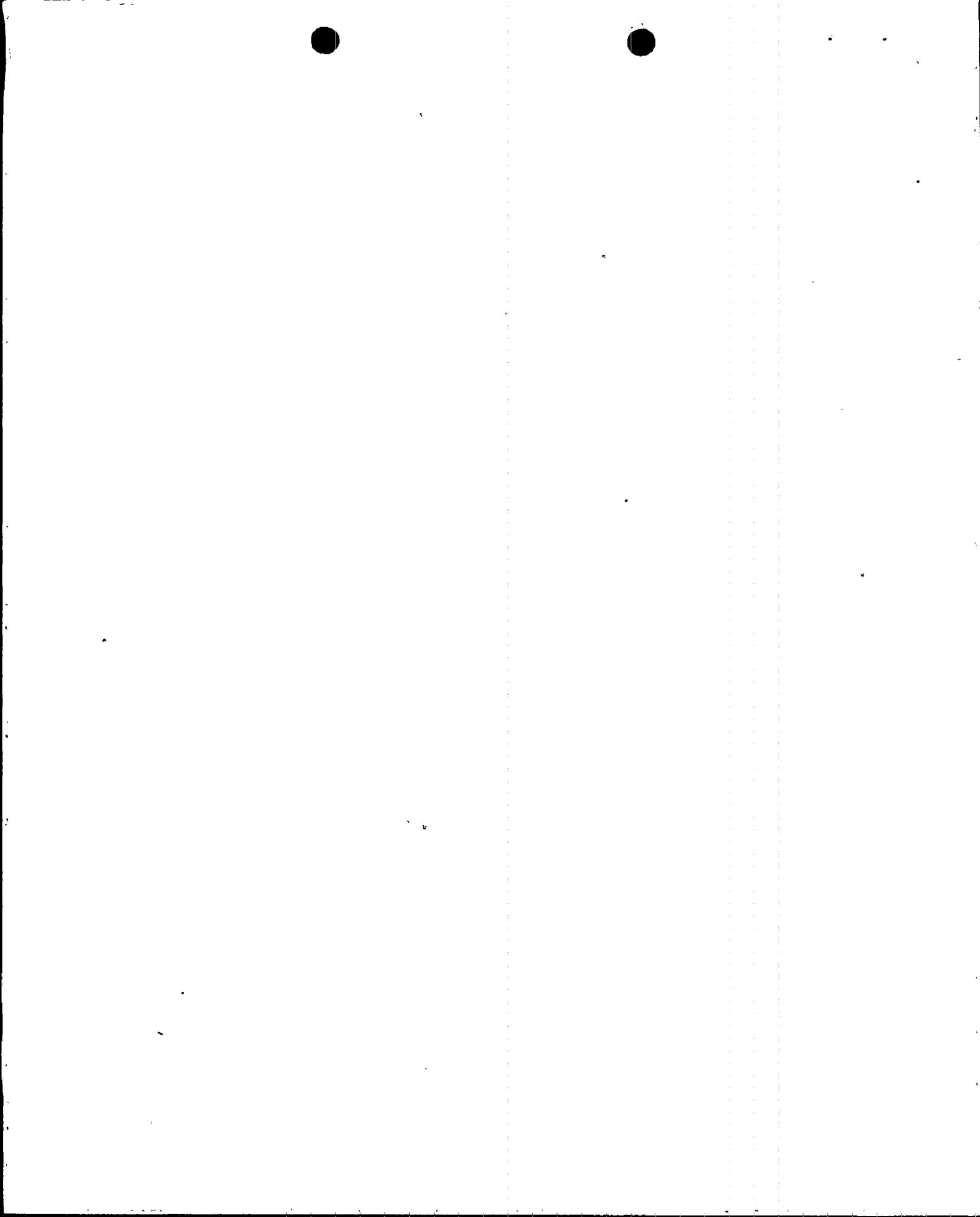
Contention 12

The program and procedures proposed to be followed by the License in making the steam generator repairs demonstrate that it will not make every reasonable effort to maintain occupational exposures at a reasonably safe level and at a level within 10 CFR Part 20 and 51.

The contention lacks the requisite specificity and basis. The reference to 10 CFR Part 51 is irrelevant to the substance of the contention in that this part does not prescribe permissible levels of occupational exposure. See position on contention 2 supra. More fundamental, by inferring that occupational exposures must be kept at a "reasonably safe level and at a level within 10 CFR Part 20", the contention constitutes an impermissible challenge to the applicable regulations establishing permissible dose levels and the ALARA concept in 10 CFR Part 20. See 10 CFR §2.758. At best, the term "reasonably safe level" is unduly vague and not susceptible to a reasonable degree of proof. The contention also appears repetitive in light of contention 2. Thus, the Staff opposes the admission of this contention.

Contention 13

The proposed method of radiation monitoring during repair of the steam generators is inadequate in that it fails to comply with 10 CFR Parts 20, 50, 51, 100, NEPA, and FWPCA.



The contention lacks the requisite specificity and basis and fairly typifies the "shot-gun" approach evidenced in the contentions. First, neither 10 CFR Part 51, 100 nor the FWPCA prescribe radiation levels or radiological monitoring requirements and are, thus, irrelevant to the apparent issue. Second, technical specifications incorporated into the facility operating licenses restrict radiological effluent releases to regulatory levels and prescribe surveillance measures to assure compliance with such level. Intervenor has not indicated why these measures are "inadequate". Personnel radiological monitoring will take place as part of the Licensee's existing plant health physics procedures. SE, §2.6.1.5. Moreover, the Staff has concluded that anticipated occupational exposures during the repair effort will not exceed 10 CFR Part 20 levels and that the proposed efforts to maintain occupational exposure ALARA are acceptable. Id. With regard to offsite radiological releases, such releases will be monitored under the existing surveillance program in the technical specifications to assure compliance with the design objectives in Appendix I to 10 CFR Part 50. SE, §§2.6.3, 2.6.4. Thus, the Staff opposes the admission of this contention.

Contention 14

The measures proposed to be taken to protect against fire hazards associated with the steam generator repairs are inadequate to protect against radioactive releases in violation of 10 CFR Parts 20, 50, 51, 100, NRC guidelines, and NEPA.

The contention lacks the requisite specificity and basis. The relevance of the cited regulations and unspecified "NRC guidelines" can only be surmised.

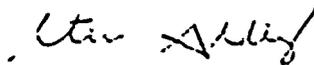


In any case, a favorable evaluation of the plant fire protection program, subject to the imposition of specified license conditions, accompanied a March 21, 1979 amendment to the operating license for Turkey Point, Units 3 and 4. Additional fire protection measures will be taken during the proposed repair activities which the Staff has found acceptable. SE, §3.2.3. Intervenor has not provided any information to question the adequacy of those provisions. Thus, the Staff opposes the admission of this contention.

CONCLUSION

For the reasons stated above, the Staff moves to strike the above-referenced citations in admitted contentions 1 through 6. The Staff opposes the admission of proposed contentions 7 through 14.

Respectfully submitted,



Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of September, 1979.



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-250
FLORIDA POWER AND LIGHT COMPANY	)	50-251
(Turkey Point Nuclear Generating	)	(Proposed Amendments to Facility
Unit Nos. 3 and 4)	)	Operating Licenses to Permit
	)	Steam Generator Repair)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF STATEMENT OF POSITION ON CONTENTIONS AND MOTION TO STRIKE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 14th day of September, 1979:

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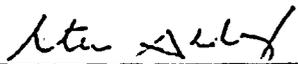
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

9/14/79

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
FLORIDA POWER AND LIGHT COMPANY
(Turkey Point Nuclear Generating
Unit Nos. 3 and 4)

Docket Nos. 50-250
50-251
(Proposed Amendments to Facility
Operating Licenses to Permit
Steam Generator Repair)

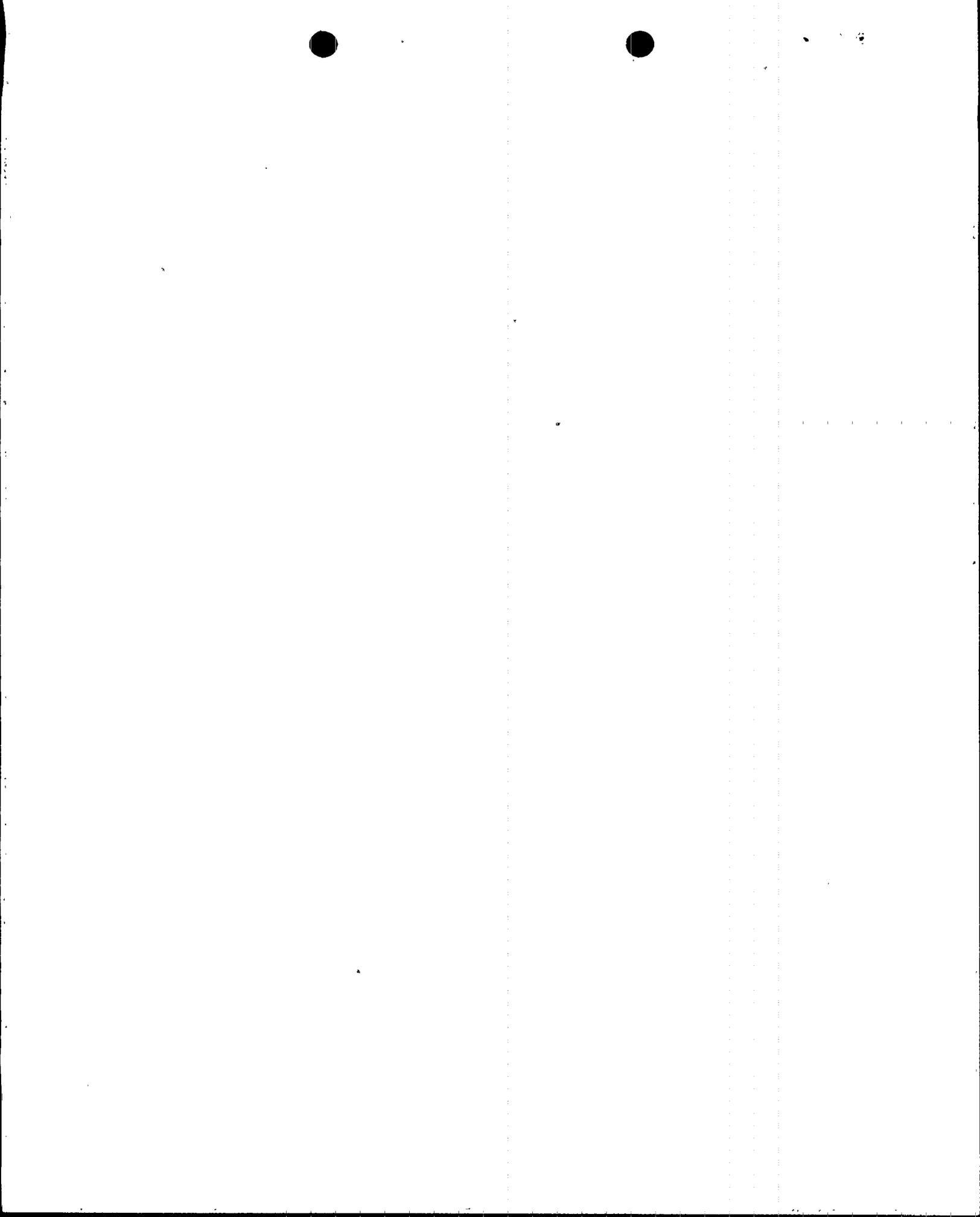
NRC STAFF INTERROGATORIES TO, AND REQUEST
FOR THE PRODUCTION OF DOCUMENTS FROM,
INTERVENOR MARK P. ONCAVAGE

The Nuclear Regulatory Commission (NRC) Staff hereby requests that Intervenor Mark P. Oncavage (Intervenor), pursuant to 10 CFR §2.740(b), answer separately and fully, in writing under oath or affirmation, the following interrogatories within 14 days after service hereof.

For each response to the interrogatories listed below, identify the person or persons who prepared, or substantially contributed to the preparation of, the response.

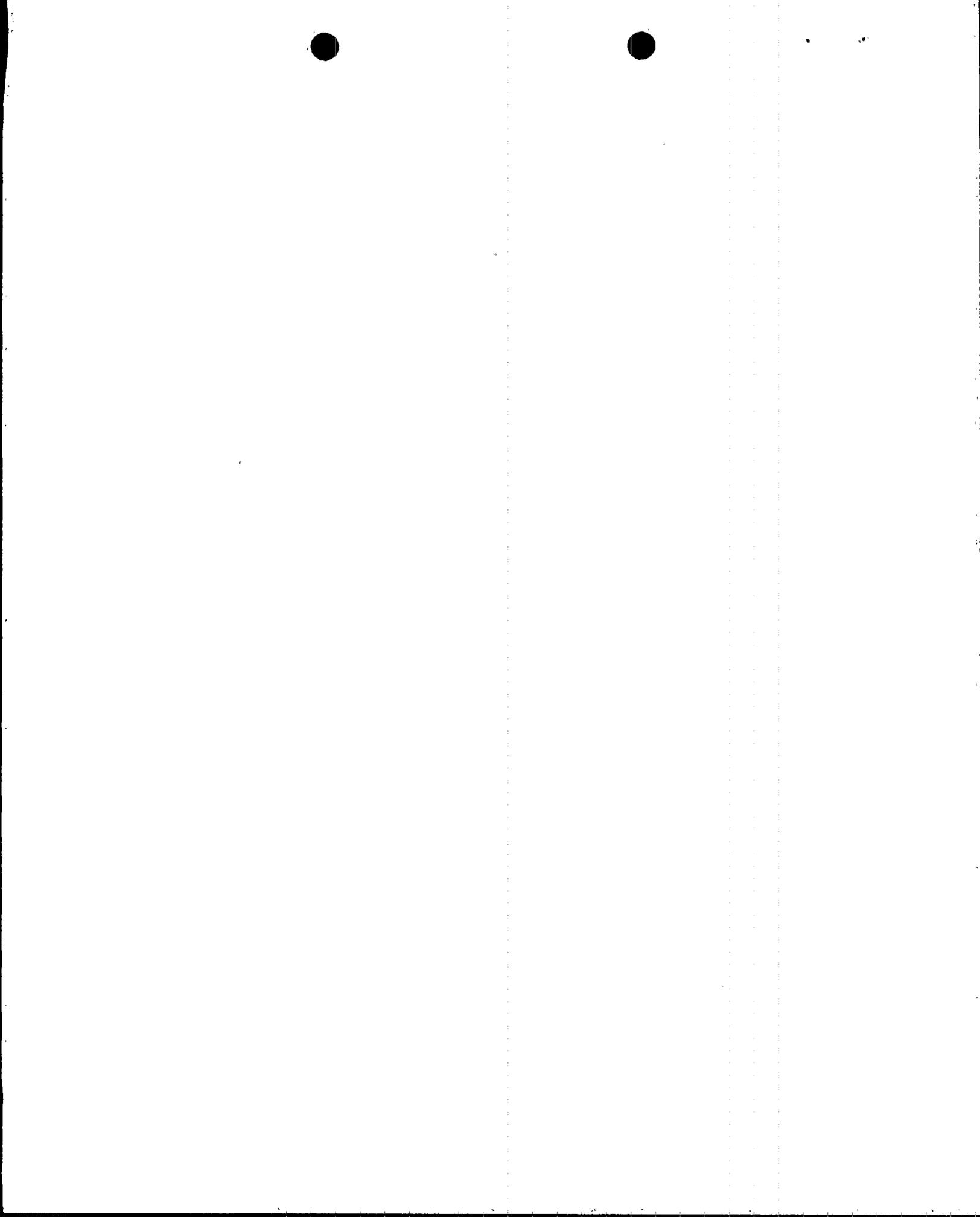
The interrogatories attached are to be considered the Intervenor's continuing obligation. Accordingly, if, after he has answered these interrogatories, additional information comes to his attention with respect to one or more of the answers, the answers should be amended in a timely manner to provide such additional information.

The NRC Staff further requests that the Intervenor, pursuant to 10 CFR §2.741, provide copies of, or make available for Staff inspection and copying, the documents designated by him in response to certain of the accompanying interrogatories within 30 days after service thereof.

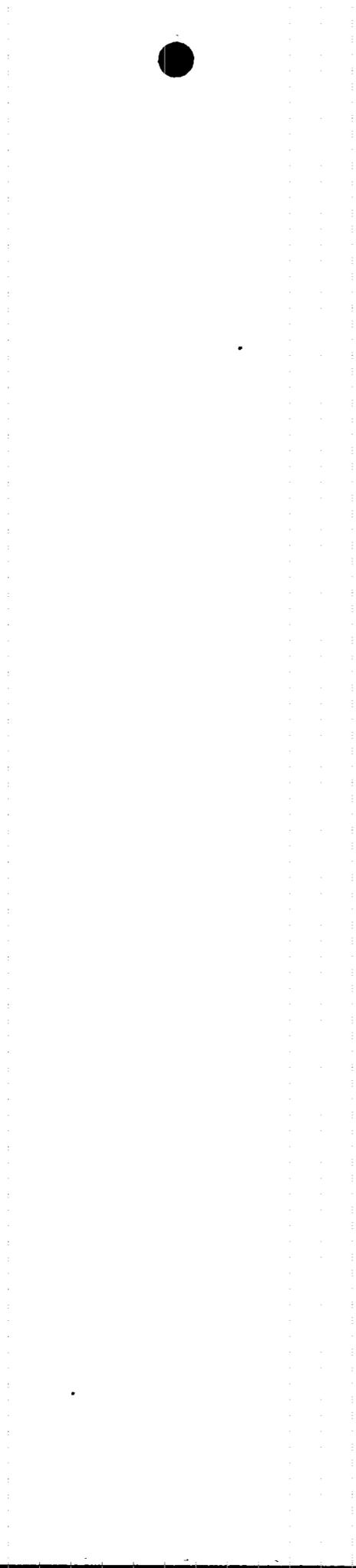


Contention 1

- 1-1 a. State whether you intend to call any person or persons as witnesses in this proceeding in support of Contention 1.
b. Provide the names, addresses, educational background, and professional qualifications of any persons named above.
- 1-2 Provide summaries of the views, positions, or proposed testimony on contention 1 of all persons named in response to Interrogatory No. 1-1 that you intend to present during this proceeding.
- 1-3 Identify by author, title, date of publication and publisher, all books, documents, and papers that you intend to employ or rely upon in presenting your direct case on Contention 1 and provide copies of, or make available for Staff inspection and copying, these items.
- 1-4 Identify by author, title, date of publication and publisher, all books, documents or papers that you intend to employ or rely upon in conducting your cross-examination of prospective NRC Staff witnesses testifying in connection with Contention 1.
- 1-5 If the representations made in Contention 1 are based in whole or in part on any documents prepared by the Applicant or NRC Staff which you contend are deficient, specify which documents, and the particular portions thereof, you regard as deficient and explain why they are deficient.



- 1-6 What specific requirements of NEPA does Intervenor suggest in contention 1 require preparation of an environmental impact statement (EIS) in the instant action?
- 1-7 What specific requirements of 10 CFR Part 50 does Intervenor suggest require preparation of an EIS?
- 1-8 What specific requirements of 10 CFR Part 51 does Intervenor suggest require preparation of an EIS?
- 1-9 What does the phrase "with particular reference to 10 CFR 50.90" mean as utilized in Contention 1?
- 1-10 Does Intervenor contend that an EIS must be prepared in this action. If so, please articulate the factual bases for such contention.
- 1-11 Explain the meaning of subpart (a) to Contention 1.



Contention 2

- 2-1 a. State whether you intend to call any person or persons as witnesses in this proceeding in support of Contention 2.
- b. Provide the names, addresses, educational background, and professional qualifications of any persons named above.
- 2-2 Provide summaries of the views, positions, or proposed testimony on Contention 2 of all persons named in response to Interrogatory No. 2-1 that you intend to present during this proceeding.
- 2-3 Identify by author, title, date of publication and publisher, all books, documents, and papers that you intend to employ or rely upon in presenting your direct case on Contention 2 and provide copies of, or make available for Staff inspection and copying, these items.
- 2-4 Identify by author, title, date of publication and publisher, all books, documents or papers that you intend to employ or rely upon in conducting your cross-examination of prospective NRC Staff witnesses testifying in connection with Contention 2.
- 2-5 If the representations made in Contention 2 are based in whole or in part on any documents prepared by the Applicant or NRC Staff which you contend are deficient, specify which documents, and the particular portions thereof, you regard as deficient and explain why they are deficient.

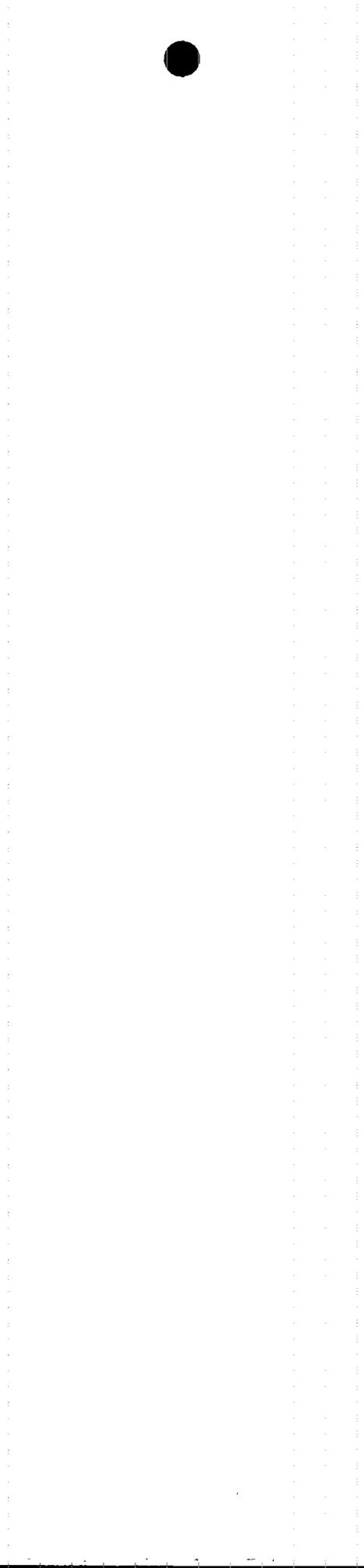


2-6 What specific provisions of 10 CFR Part 20 are alluded to in Contention 2?

2-7 What specific provisions of NEPA are alluded to in Contention 2?

2-8 What specific provisions of the FWPCA are alluded to in Contention 2?

2-9 Does Intervenor contend that the proposed "repairs" will not comply with the above-referenced provisions? If so, please articulate the precise activities complained of and the bases for such contention.

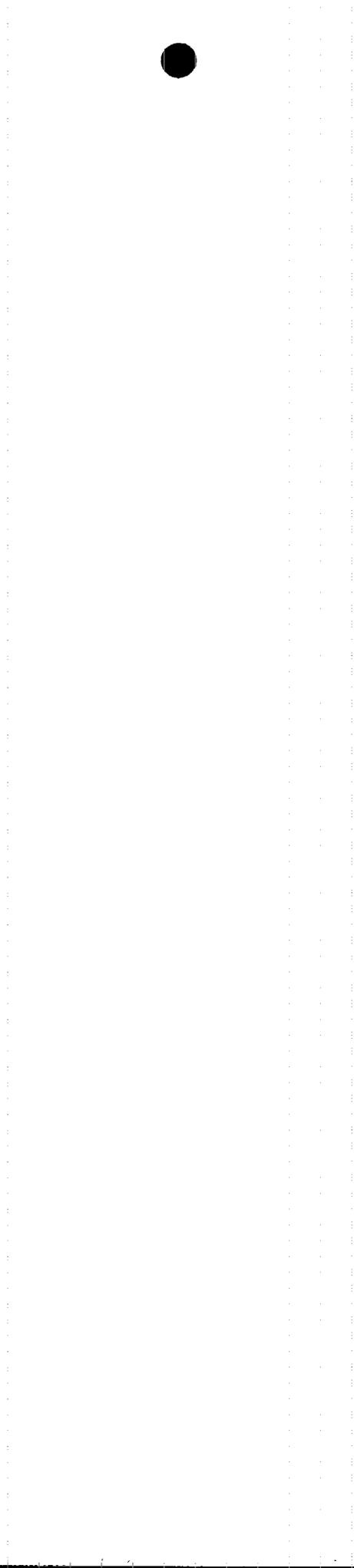


Contention 3

- 3-1 a. State whether you intend to call any person or persons as witnesses in this proceeding in support of Contention 3.
- b. Provide the names, addresses, educational background, and professional qualifications of any persons named above.
- 3-2 Provide summaries of the views, positions, or proposed testimony on Contention 3 of all persons named in response to Interrogatory No. 3-1 that you intend to present during this proceeding.
- 3-3 Identify by author, title, date of publication and publisher, all books, documents, and papers that you intend to employ or rely upon in presenting your direct case on Contention 3 and provide copies of, or make available for Staff inspection and copying, these items.
- 3-4 Identify by author, title, date of publication and publisher, all books, documents or papers that you intend to employ or rely upon in conducting your cross-examination of prospective NRC Staff witnesses testifying in connection with Contention 3.
- 3-5 If the representations made in Contention 3 are based in whole or in part on any documents prepared by the Applicant or NRC Staff which you contend are deficient, specify which documents, and the particular portions thereof, you regard as deficient and explain why they are deficient.

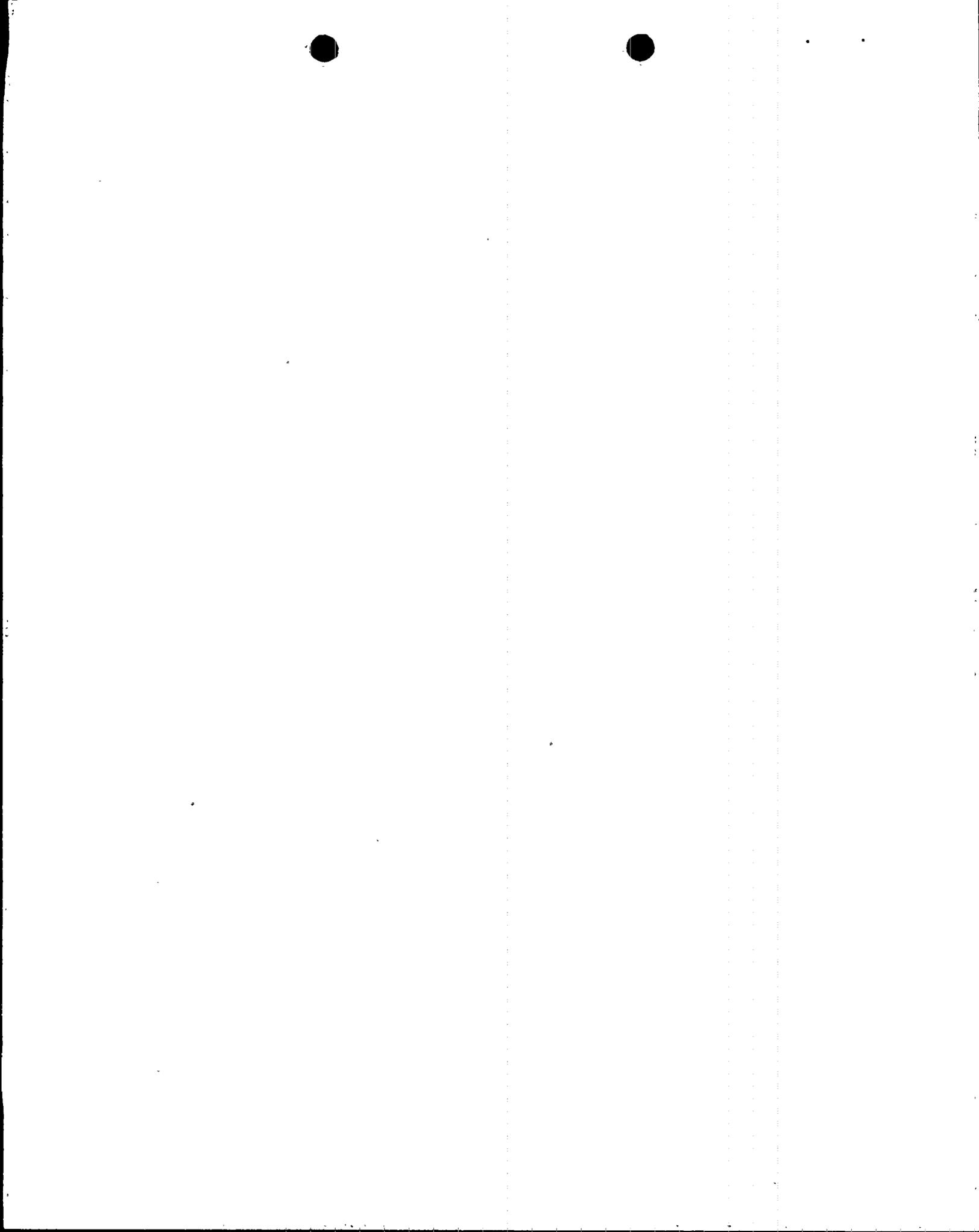


- 3-6 What specific requirements of 10 CFR Part 20 are alluded to in Contention 3?
- 3-7 What specific requirements of 10 CFR Part 50 are alluded to in Contention 3?
- 3-8 What specific requirements of 10 CFR Part 51 are alluded to in Contention 3?
- 3-9 What specific requirements of 10 CFR Part 100 are alluded to in Contention 3?
- 3-10 What specific requirements of NEPA are alluded to in Contention 3?
- 3-11 What specific requirements of FWPCA are alluded to in Contention 3?
- 3-12 Specify what "handling, processing, storing or discharging of primary coolant" is alluded to in Contention 3.
- 3-13 Does Intervenor contend that the "handling, processing, storing or discharging of primary coolant", as explained in response to interrogatory 3-12, will not conform to the several provisions specified in response to interrogatories 3-7 through 3-11 above? If so, please articulate the bases for such contention.

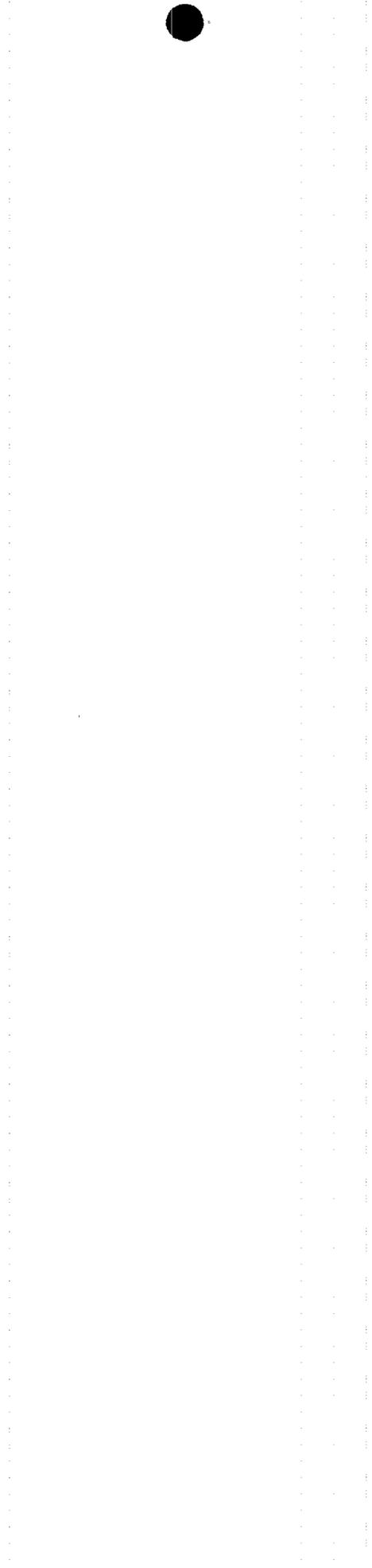


Contention 4

- 4-1 a. State whether you intend to call any person or persons as witnesses in this proceeding in support of Contention 4:
- b. Provide the names, addresses, educational background, and professional qualifications of any persons named above.
- 4-2 Provide summaries of the views, positions, or proposed testimony on Contention 4 of all persons named in response in Interrogatory No. 4-1 that you intend to present during this proceeding.
- 4-3 Identify by author, title, date of publication and publisher, all books, documents, and papers that you intend to employ or rely upon in presenting your direct case on Contention 4 and provide copies of, or make available for Staff inspection and copying, these items.
- 4-4 Identify by author, title, date of publication and publisher, all books, documents or papers that you intend to employ or rely upon in conducting your cross-examination of prospective NRC Staff witnesses testifying in connection with Contention 4.
- 4-5 If the representations made in Contention 4 are based in whole or in part on any documents prepared by the Applicant or NRC Staff which you contend are deficient, specify which documents, and the particular portions thereof, you regard as deficient and explain why they are deficient.



- 4-6 What specific requirements of 10 CFR Part 20 are alluded to in Contention 4?
- 4-7 What specific requirements of 10 CFR Part 50 are alluded to in Contention 4?
- 4-8 What specific requirements of 10 CFR Part 51 are alluded to in Contention 4?
- 4-9 What specific requirements of NEPA are alluded to in Contention 4?
- 4-10 What specific requirements of FWPCA are alluded to in Contention 4?
- 4-11 Specify what "discharge of untreated laundry waste water" is alluded to in Contention 4 and the perceived source thereof?
- 4-12 Does Intervenor contend that the "discharge of untreated laundry waste water"; as explained in response to interrogatory 4-11, will not comply with the several provisions specified in response to interrogatories 4-7 through 4-10 above? If so, please articulate the bases for such contention.



Contention 5

- 5-1 a. State whether you intend to call any person or persons as witnesses in this proceeding in support of Contention 5.
- b. Provide the names, addresses, educational background, and professional qualifications of any persons named above.
- 5-2 Provide summaries of the views, positions, or proposed testimony on Contention 5 of all persons named in response to Interrogatory No. 5-1 that you intend to present during this proceeding.
- 5-3 Identify by author, title, date of publication and publisher, all books, documents, and papers that you intend to employ or rely upon in presenting your direct case on Contention 5 and provide copies of, or make available for Staff inspection and copying, these items.
- 5-4 Identify by author, title, date of publication and publisher, all books, documents or papers that you intend to employ or rely upon in conducting your cross-examination of prospective NRC Staff witnesses testifying in connection with Contention 5.
- 5-5 If the representations made in Contention 5 are based in whole or in part on any documents prepared by the Applicant or NRC Staff which you contend are deficient, specify which documents, and the particular portions thereof, you regard as deficient and explain why they are deficient.

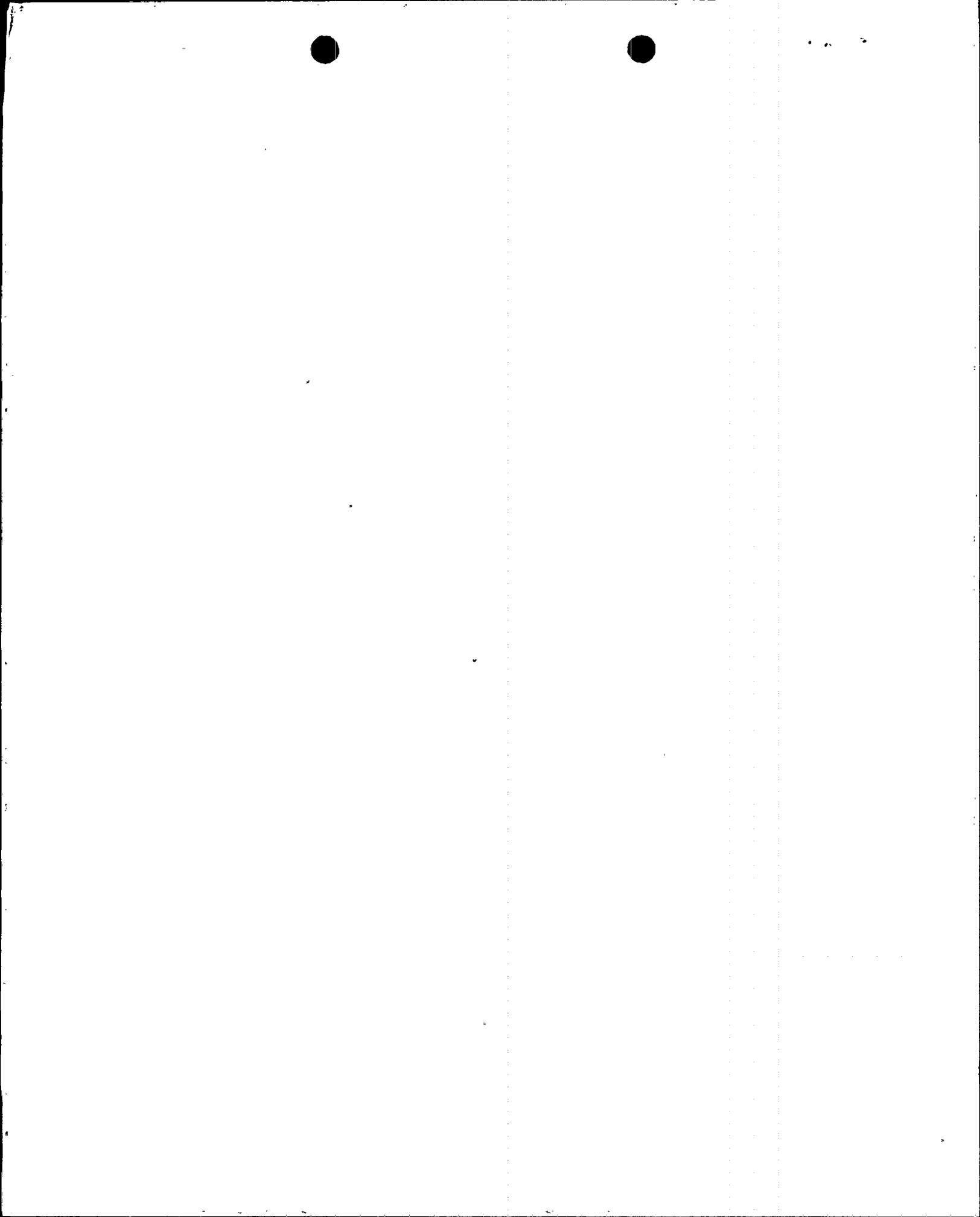


- 5-6 What specific requirements of 10 CFR Part 20 are alluded to in Contention 5?
- 5-7 What specific requirements of 10 CFR Part 51 are alluded to in Contention 5?
- 5-8 What specific requirements of NEPA are alluded to in Contention 5?
- 5-9 What is the basis for the supposition in Contention 5, that transient workers with unknown radiation histories will be utilized in the proposed action?
- 5-10 Does Intervenor contend that the postulated utilization of transient workers will not comply with the several provisions specified in response to interrogatories 5-6 through 5-8? If so, please articulate the bases for such contention.



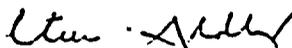
Contention 6

- 6-1 a. State whether you intend to call any person or persons as witnesses in this proceeding in support of Contention 6.
- b. Provide the names, addresses, educational background, and professional qualifications of any persons named above.
- 6-2 Provide summaries of the views, positions, or proposed testimony on Contention 6 of all persons named in response to Interrogatory No. 6-1 that you intend to present during this proceeding.
- 6-3 Identify by author, title, date of publication and publisher, all books, documents, and papers that you intend to employ or rely upon in presenting your direct case on Contention 6 and provide copies of, or make available for Staff inspection and copying, these items.
- 6-4 Identify by author, title, date of publication and publisher, all books, documents or papers that you intend to employ or rely upon in conducting your cross-examination of prospective NRC Staff witnesses testifying in connection with Contention 6.
- 6-5 If the representations made in Contention 6 are based in whole or in part on any documents prepared by the Applicant or NRC Staff which you contend are deficient, specify which documents, and the particular portions thereof, you regard as deficient and explain why they are deficient.



- 6-6 What specific requirements of 10 CFR Part 50 alluded to in Contention 6?
- 6-7 What specific requirements of 10 CFR Part 51 alluded to in Contention 6?
- 6-8 What specific requirements of NEPA are alluded to in Contention 6?
- 6-9 What specific requirements of FWPCA are alluded to in Contention 6?
- 6-10 What specific "laws protecting Biscayne Bay [etc.]" are alluded to in Contention 6?
- 6-11 What is the basis for the supposition that the proposed action will lead to the creation of a "long-term nuclear waste storage facility" as that phrase is used in Contention 6?
- 6-12 What "particular attention" does Intervenor assert in Contention 6 should be drawn to the "proposed floorless steam generator disposal building".
- 6-13 Does Intervenor contend that the postulated "waste storage facility" and/or "steam generator disposal facility" will not comply with the several provisions specified in response to interrogatories 6-7 through 6-10. If so, please articulate the bases for such contention.

Respectfully submitted,



Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of September, 1979.



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

FLORIDA POWER AND LIGHT COMPANY)

(Turkey Point Nuclear Generating)
Unit Nos. 3 and 4)

Docket Nos. 50-250
50-251

(Proposed Amendments to Facility
Operating Licenses to Permit
Steam Generator Repair)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF INTERROGATORIES TO, AND REQUEST FOR THE PRODUCTION OF DOCUMENTS FROM, INTERVENOR MARK P. ONCAVAGE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 14th day of September, 1979:

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

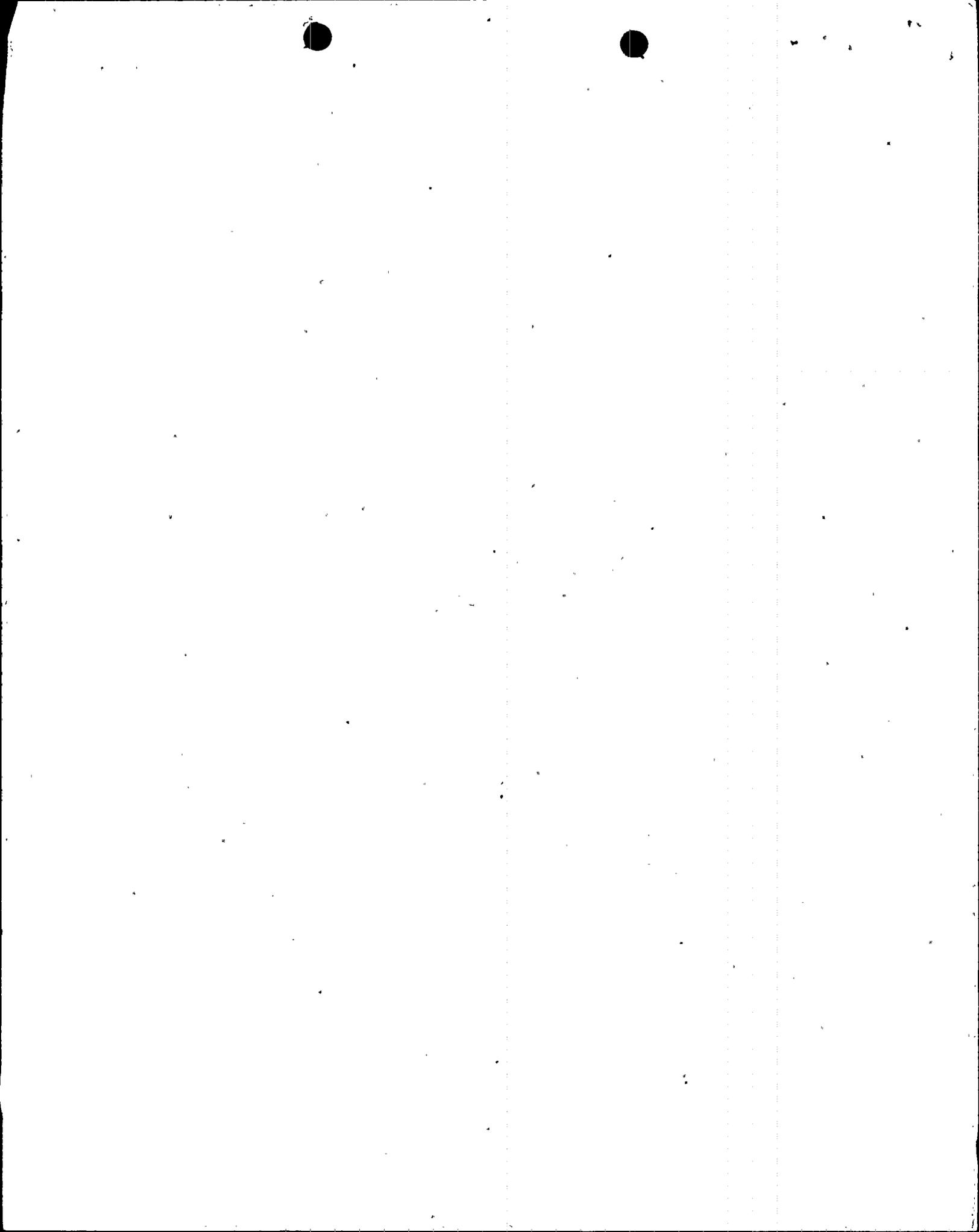
In the Matter of	)	Docket Nos. 50-250-SP
	)	50-251-SP
FLORIDA POWER & LIGHT COMPANY)	
	)	(Proposed Amendments to Facility
(Turkey Point Nuclear Generating	)	Operating License to Permit
Units 3 and 4)	)	Steam Generator Repairs)

LICENSEE'S STATEMENT CONCERNING
INTERVENOR'S AUGUST 30, 1979, CONTENTIONS

Introduction

On September 20, 1977, Florida Power & Light (FPL or Licensee) submitted to the Nuclear Regulatory Commission (NRC) a Steam Generator Repair Report (SGRR), which described the Licensee's program for repair of its steam generators at the Turkey Point Plant, Units 3 and 4. On December 6, 1977 (42 F.R. 62569, December 13, 1977), the NRC issued a public notice stating that the repair:

program will entail amendments of Facility Operating Licenses Nos. DPR-31 and DPR-41. Accordingly, notice is hereby given that the NRC has under consideration amendments to these licenses which would authorize the licensee to repair the steam generators now in use in each facility, replacing major portions of such steam generators with new components, and to return the units to operation using the steam generators, so repaired. The work on each unit would be carried out while the other unit is in operation.

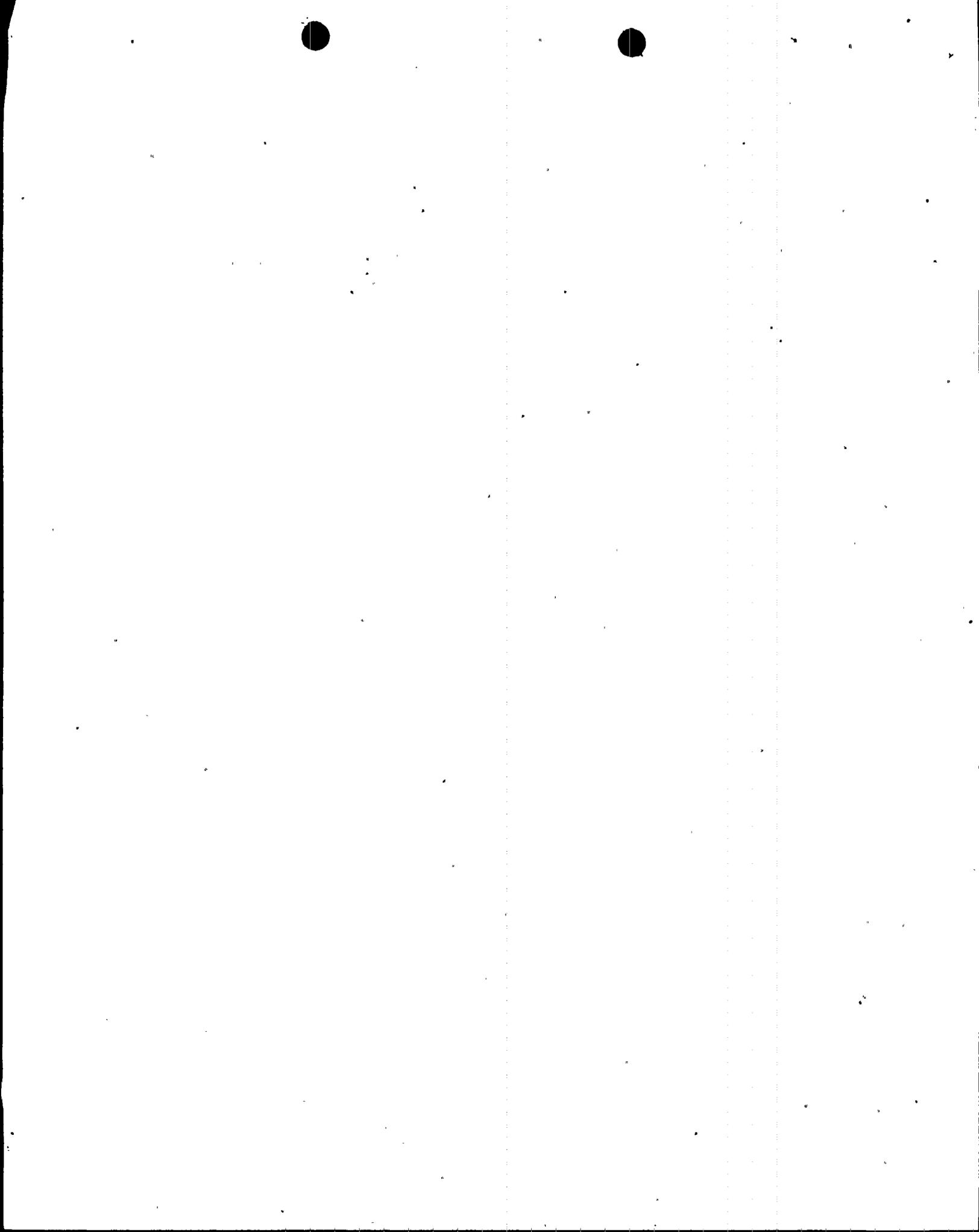


The notice stated that the Licensee, or, by way of a petition to intervene, other persons whose interest may be affected may file a request for a hearing. It specifically required that each petitioner to intervene file an affidavit:^{1/}

identifying the specific aspect or aspects of the subject matter of the proceeding as to which he wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. Contentions shall be limited to the matters within the scope of the amendments under consideration. A petition that sets forth contentions relating only to matters outside the scope of the amendments under consideration will be denied. Persons whose petitions are denied for such reason, and persons whose contentions are denied as outside of the scope of the amendments under consideration, may file requests with respect to such matters with the Director of the Office of Nuclear Reactor Regulation in accordance with 10 CFR 2.206.

Ibid. More than a year after the issuance of the notice, Mark P. Oncavage requested a "full hearing." In consequence, there were initiated the procedures described in this Board's August 3, 1979, "Order Ruling on the Petition of Mark P. Oncavage" (August 3 order). The order granted Mr. Oncavage's petition to intervene and admitted six of nineteen contentions which Mr. Oncavage had submitted at a

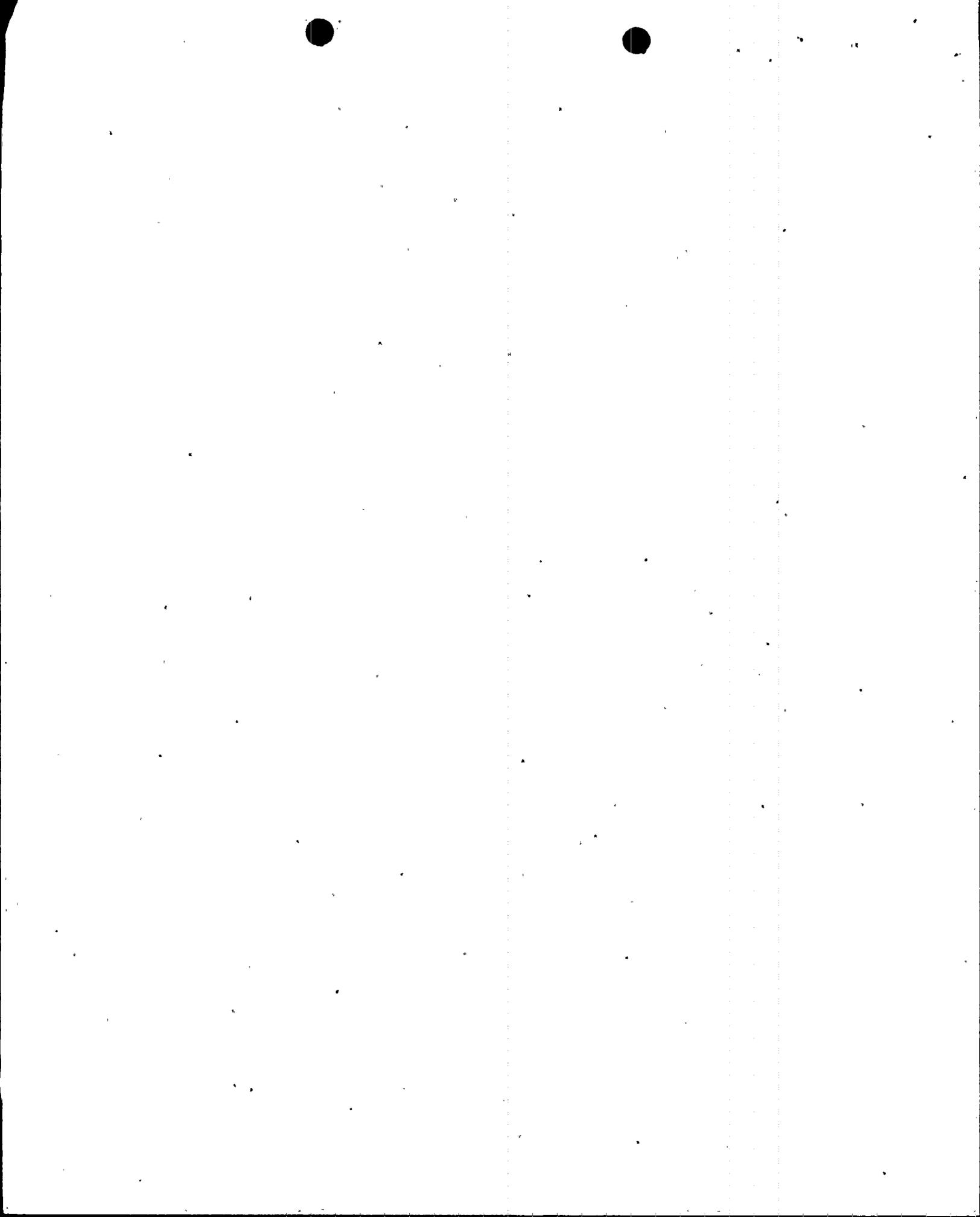
^{1/} The affidavit requirement was dropped by virtue of a subsequent amendment of 10 CFR § 2.714. See 43 F.R. 17798, April 26, 1978. However, the requirements of specificity and particularization have been retained in the regulation in its current form.



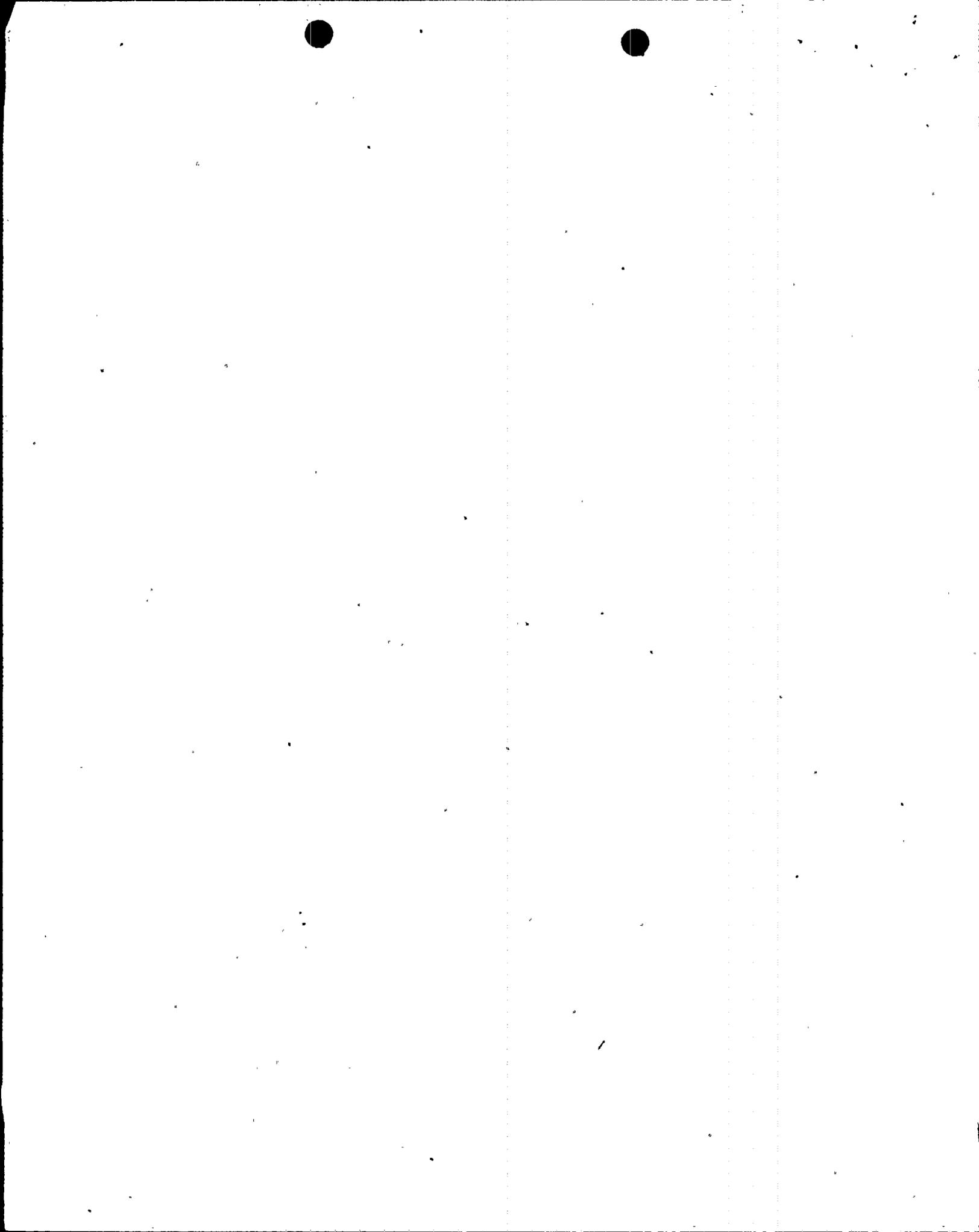
May 2 Special Prehearing Conference. The Board also suggested that the parties meet to attempt to reach an agreement on the remaining thirteen contentions upon which the Board did not rule and to try to agree on a realistic discovery schedule.

Accordingly, the parties met on August 30, 1979. By letter of August 31, 1979, the Licensee reported to the Board that the parties had agreed to a discovery schedule which had the effect of initiating discovery on the six admitted contentions; in addition Licensee and the Intervenor had, subject to the Board's approval and reservations stated in the letter, agreed to dates for filing prepared testimony and for the evidentiary hearing. On September 4, 1979, the Licensee filed a motion requesting the Board to adopt the schedule.

The August 31 letter forwarded a new list of the Intervenor's contentions, dated August 30, which "now supersede all prior contentions and contain all of the matters which Intervenor wishes to litigate in this proceeding." However, the letter explained that the parties had failed to agree on the "refinement" of the six admitted contentions (now renumbered as Contentions 1 through 6 of those transmitted with the August 31 letter) or the admissibility of the unadmitted contentions (now restated as Contention 7 through 14). Finally, the letter stated that each party would file a statement with the Board no later than September 14, 1979, setting forth its position concerning the contentions. This statement does so on behalf of the Licensee.



We first discuss the contentions not ruled upon in the August 3 order (now Contentions 7 through 14) and then turn to the contentions covered by that order. Preliminarily, however, it should be emphasized that there are inadequacies in practically every one of the contentions. As indicated by the August 31 letter, these include wholesale references to statutes and sets of regulations (e.g., "10 CFR Parts 20, 50, 51, NEPA or FWPCA") without specification of the particular part of the statute or the particular section of the regulations which it is alleged is being violated. Nor, in most cases, is there a reasonably specific description of the actions proposed to be undertaken by FPL which would constitute whatever violation is alleged. In short, although now represented by counsel, with respect to most contentions the Intervenor is still unable to identify particular actions which would violate specific provisions of law or regulation. Consequently, these contentions fail to meet the requirements of specificity and basis. 10 CFR § 2.714(b); Offshore Power Systems, LBP-77-48, 6 NRC 249 (1977); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-76-24, 3 NRC 725 (1976); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1979). As reflected in the August 31 letter, the lack of such specificity and basis was one of the reasons counsel for the Staff and the Licensee were unable to agree to the new contentions.



I

The Unadmitted Contentions

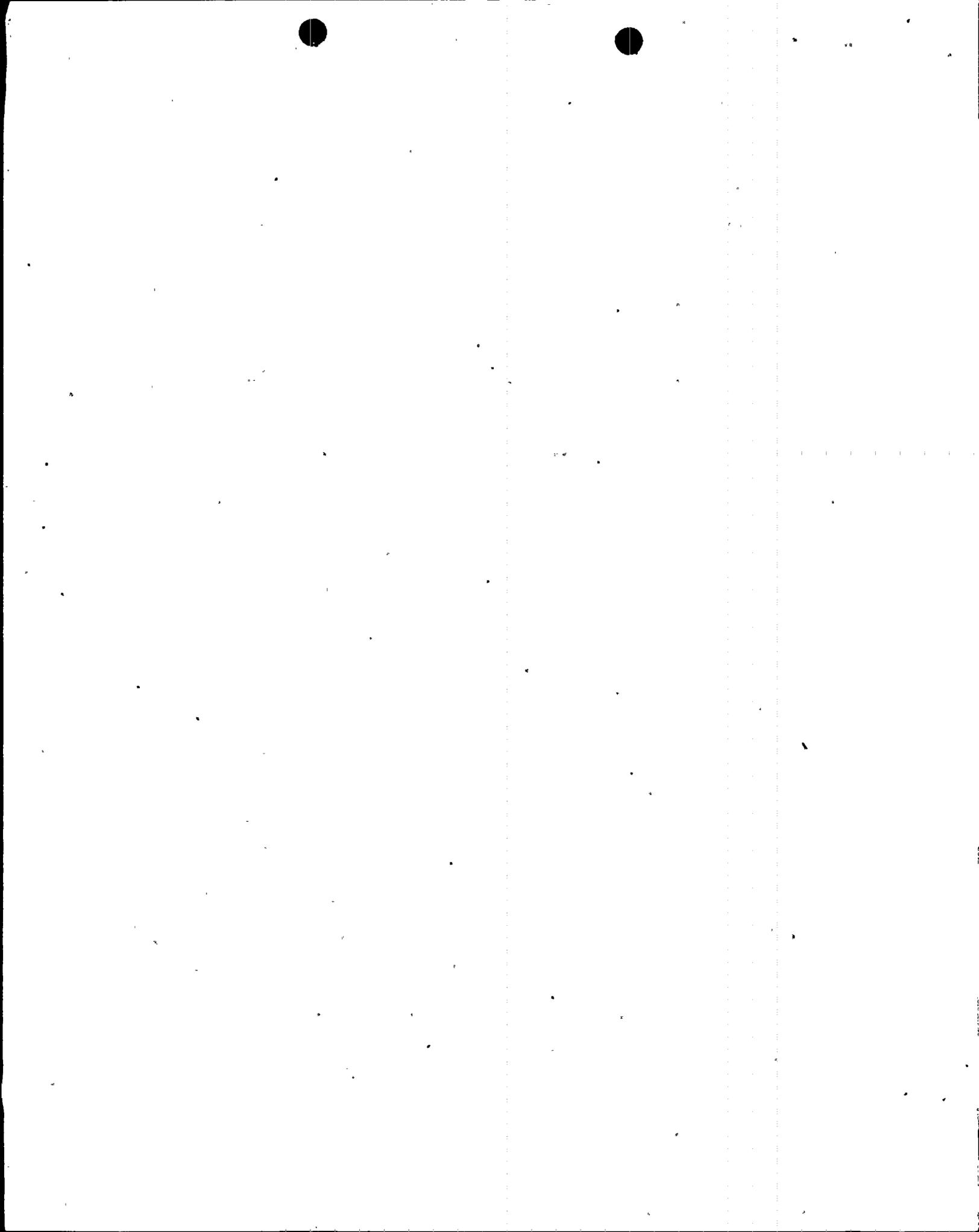
New Contentions 7 and 8 are inadmissible because they are not within the scope of this proceeding. We discuss Contention 8 first and out of numerical order because it so clearly delineates the issues involved.

Contention 8. In this contention the Intervenor alleges:

The continued operation of Turkey Point Units 3 and 4 should be suspended because:

- a. the impaired condition of the steam generators poses the possibility of accidental loss of coolant;
- b. the impaired condition of the steam generators subjects onsite workers to unacceptable levels of radiation exposure;
- c. the impaired condition of the steam generators poses the possibility of offsite radiation releases endangering the public health and environment and violate the Federal Water Pollution Control Act by the discharge of primary coolant.

As the notice makes clear, this proceeding relates only to the issuance of amendments "which would authorize the licensee to repair the steam generators now in use in each facility . . ." and "[c]ontentions shall be limited to matters within the scope of the amendments under consideration." A determination to suspend (or not to suspend) operation without repair is not related to whether the repairs should be authorized, to the method of repair, to the return of the repaired units to operation or to any other matter



which would be covered by the amendments. Hence Contention 8 relates only to matters outside "the scope of the amendments under consideration" and should be denied.

The limitations imposed by the notice are wholly consistent with NRC precedent. It is well settled that the jurisdiction of a licensing board is confined to the issues delineated in the Commission's notices regarding the proceeding. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). An intervenor is correspondingly constrained to keep his contentions within the scope of the proceeding, and any contentions straying outside these bounds must be denied admission. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-524, 9 NRC 65, 70 (1979). The scope of a proceeding to amend an operating license is limited to the amendment itself; other issues cannot be considered. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 221-22 (1976). Only those "matters arising directly from the proposed change" in the facility are cognizable by a licensing board in an amendment proceeding. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974). Moreover, an intervenor cannot request a shutdown of a facility based upon factors which are outside of the scope of an amendment to an operating license. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451, 457 (1975).



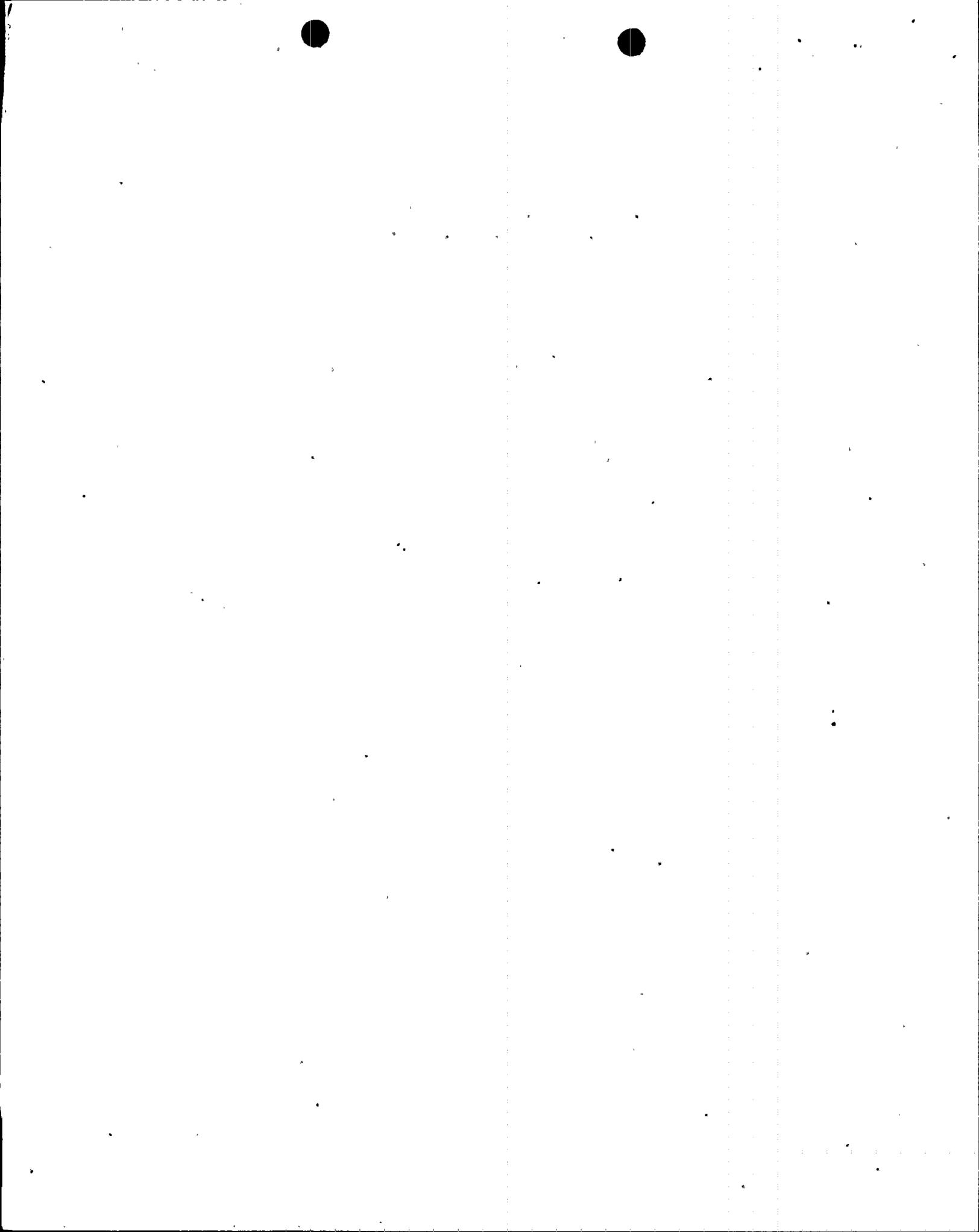
Contention 7. This contention alleges:

The Licensee has not considered in its cost benefit analysis in violation of 10 CFR Parts 50 and 51, and NEPA:

- a. the cost of a full-flow condensate polishing demineralizing system;
- b. the effluent release from a full-flow condensate polishing demineralizing system; or
- c. the environmental degradation caused by a full-flow condensate polishing demineralizing system.

This contention should not be admitted for a number of reasons. First, it incorrectly assumes that the installation of a condensate polishing demineralizer system is part of the repair program referred to in the notice. None of the relevant documents, i.e., the SGRP, the Safety Evaluation Report (SER) and the Environmental Impact Appraisal, mention that system.

It is true that FPL plans to upgrade the feedwater and condensate system on all of its nuclear units. The upgrading will include a condensate polishing demineralizer system and is designed to improve the quality of the secondary system water chemistry in order to reduce the potential for corrosion of secondary system materials, including the steam generators. However, the demineralizer and related improvements are independent of and in addition to the repair program here involved and do not involve a change in technical specifications or the need for a license amendment.

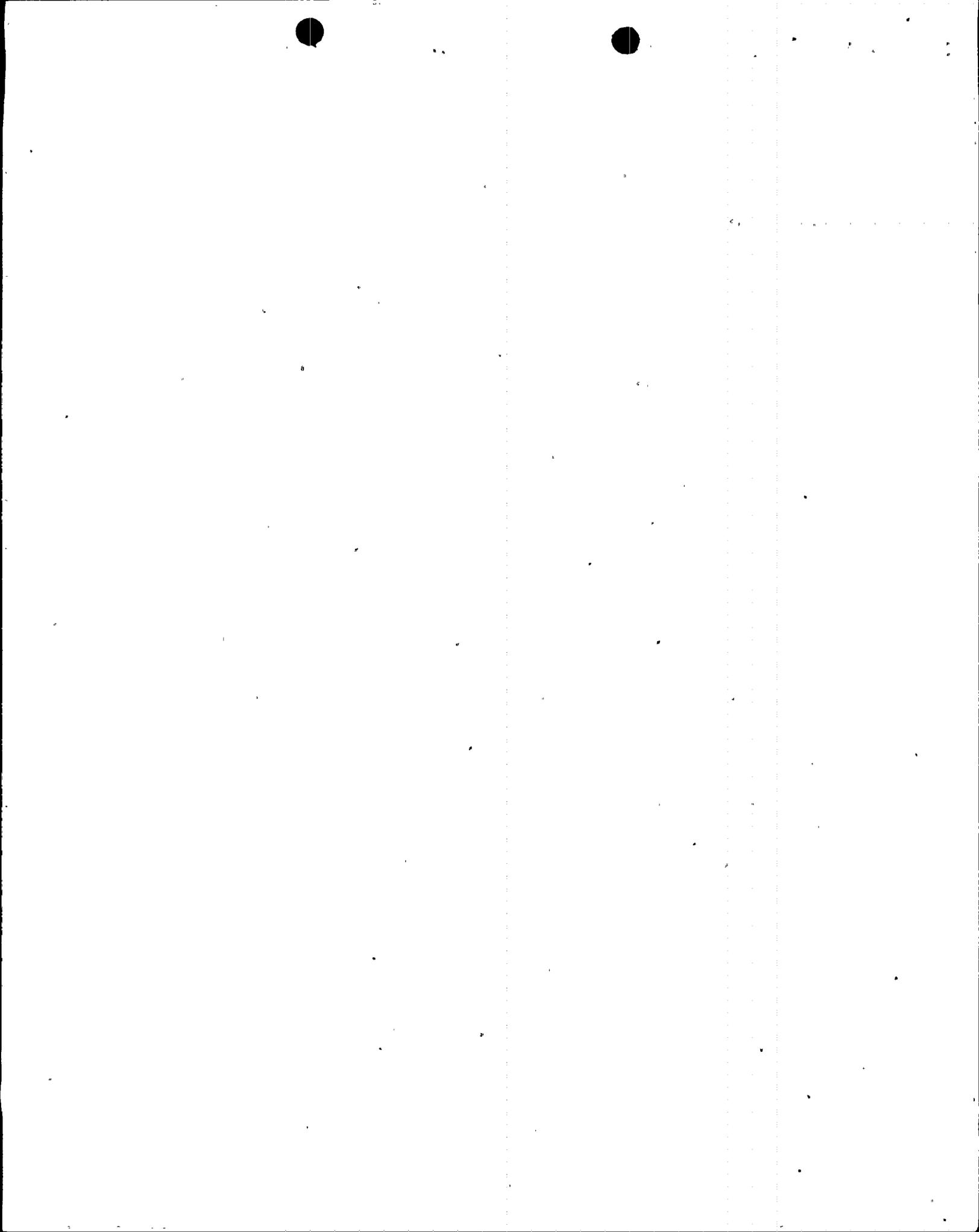


Second, 10 CFR Part 50 is inapplicable. It does not require the preparation of a cost-benefit analysis, and mere reference to Part 50 is an insufficient basis upon which to rest a contention.

10 CFR §§ 51.20 and 51.21 do require applicants for construction permits and operating licenses to prepare an environmental report containing a cost-benefit analysis. However, these sections explicitly state that an applicant must file an environmental report only if the proposed activity falls within 10 CFR § 51.5(a). Since an amendment to an operating license is covered in § 51.5(b), not in § 51.5(a), no environmental report, or cost-benefit analysis, need be submitted by the Licensee.

NEPA^{2/} is also inapplicable. As the wording of the Act plainly indicates (42 U.S.C. § 4332(2)), only federal agencies, and not private persons, are obligated to take the actions there specified. Bradford Township v. Illinois State Toll Highway Authority, 463 F.2d 537, 540 (7th Cir. 1972), certiorari denied 409 U.S. 1047 (1972); Biderman v. Morton, 497 F.2d 1141, 1146-7 (2nd Cir. 1974). Consequently, the Licensee has no legal responsibility to conduct a cost-benefit analysis.

^{2/} National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et. seq.



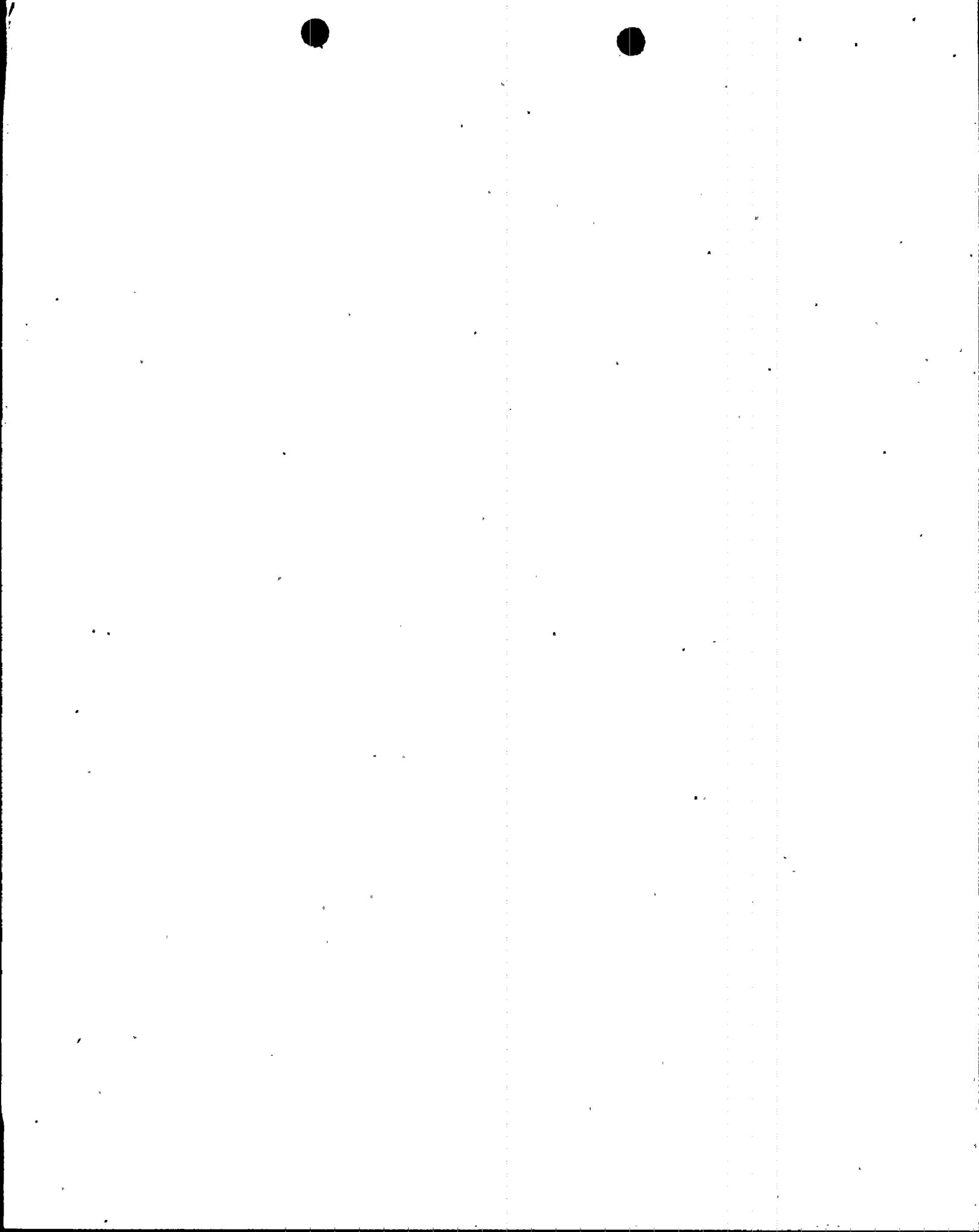
In sum, Intervenor's Contention 7 relates to an activity outside the scope of this proceeding; and even if the activity referred to were within the scope of the proceeding, the contention contains no legally coherent description of a litigable issue.

Contention 9. This contention alleges that:

The cumulative offsite radiation releases as a result of all activity at Turkey Point, during the proposed repairs, are contrary to 10 CFR Parts 20, 50, 51, 100, and the National Environmental Protection [sic] Act.

10. CFR Part 51 and NEPA are simply not applicable. Nothing contained in either regulates radioactive releases, on or off-site. Part 100 is also inapplicable. It governs the suitability of proposed sites; it does not deal with releases from existing plants. Consequently, the references to Parts 51 and 100 and to NEPA cannot form the basis for a contention.

Part 20 does have provisions relating to releases to unrestricted areas (see 10 CFR § 20.106 and Appendix B, Table II) as does Part 50 (see 10 CFR § 50.36a and Appendix I), but in each case the regulations are detailed and complex. A general statement that off-site releases "are contrary to" Parts 20 and 50 is conclusory and does not contain the requisite "reasonable specificity." 10 CFR § 2.714(b). Contention 9 should be denied.

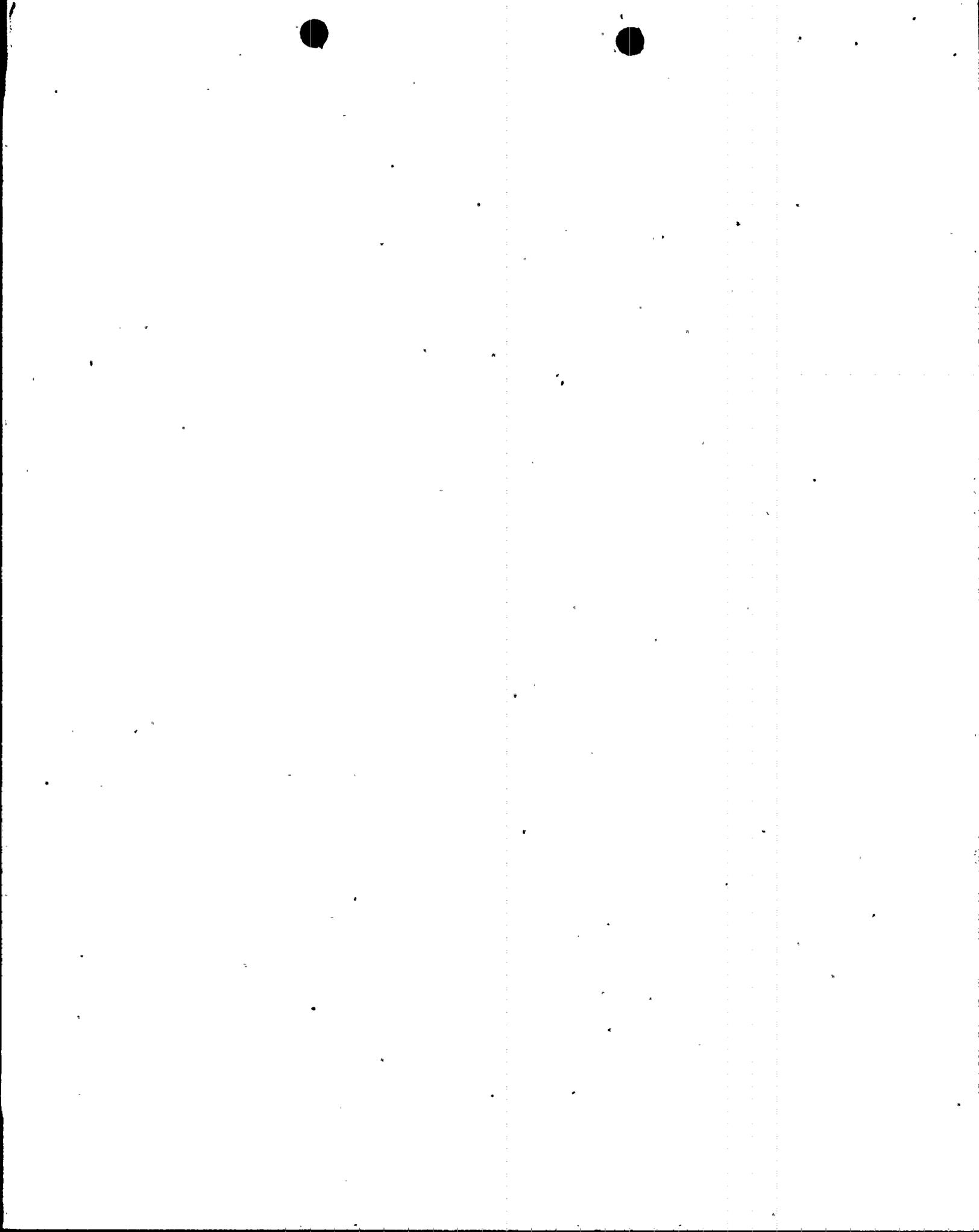


Contention 10. This contention alleges that:

The Commission's NEPA Analysis is inadequate in that it fails to adequately consider the following alternative procedures:

- a. arresting tube support plate corrosion;
- b. in-place tube restoration (sleeving);
- c. in-place steam generator tube replacement (retubing);
- d. derating;
- e. decommissioning;
- f. bioconversion;
- g. conservation;
- h. solar energy;
- i. natural gas; or
- j. coal

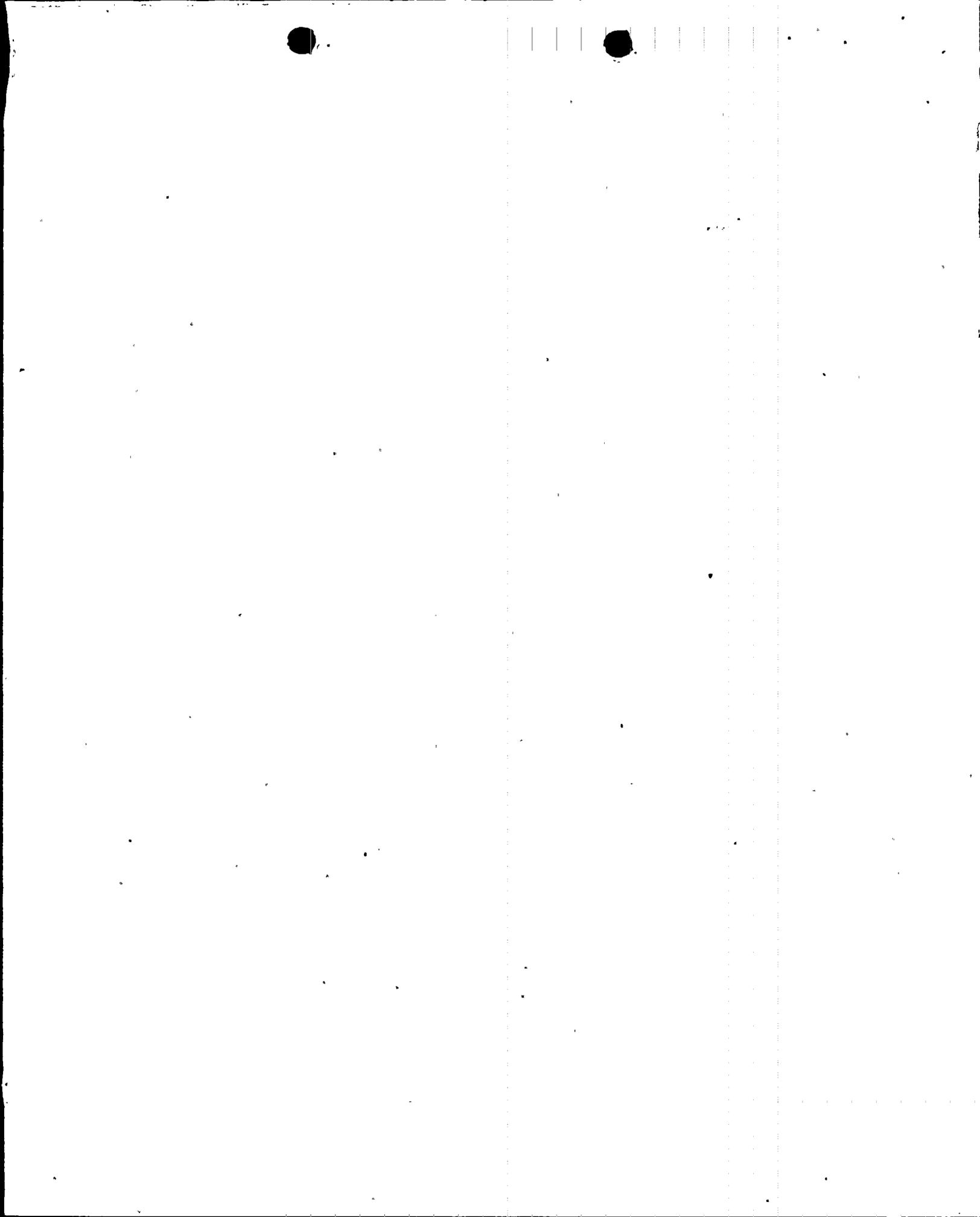
In considering the contention, it should be emphasized that this Board has already admitted the contention that an environmental impact statement should have been prepared (May 2 Contention 2; now Contention 1). If one was required, it would have had to consider alternatives as well as contain a cost-benefit analysis (10 CFR §§ 51.23, 51.26) and the adequacy of that consideration would have been subject to review pursuant to the substantial body of interpretative case law that has developed under NEPA. Since Contention 10 has been submitted--in addition to admitted Contention 1--we assume that what is being argued is that even in the absence of the requirement of an environmental impact statement the agency is required under NEPA to consider alternatives in some circumstances.



Assuming this to be the case, at most what is required is a "brief discussion of alternatives." See 40 CFR § 1508 9(b); Nucleus of Chicago Homeowners Association v. Lynn, 524 F.2d 225, 232 (7th Cir. 1975), certiorari denied 424 U.S. 967 (1976).^{3/} What has been done here clearly meets that test. See Section 5 (pages 5-1 through 5-7) of the Environmental Impact Appraisal. That document describes the basic choices presented as repair; continuation of the present mode of operation; and replacement by generating plants of different design. Within this framework, some of the alternatives enumerated in Contention 10 are in fact considered. Thus, the Impact Appraisal expressly refers to the cost of new fossil units and gas turbine units (p. 5-1) and discusses the possibility of retubing (p. 5-3). In the context of "operation in the present mode," the Impact Appraisal considers the consequences of "derating" (p. 5-1; see also pp. 4-9 through 4-11).^{4/} In no way does the contention indicate why the discussion "is inadequate" or "fails to adequately consider" those specific alternatives. Consequently, again there is an absence of the required "reasonable specificity."

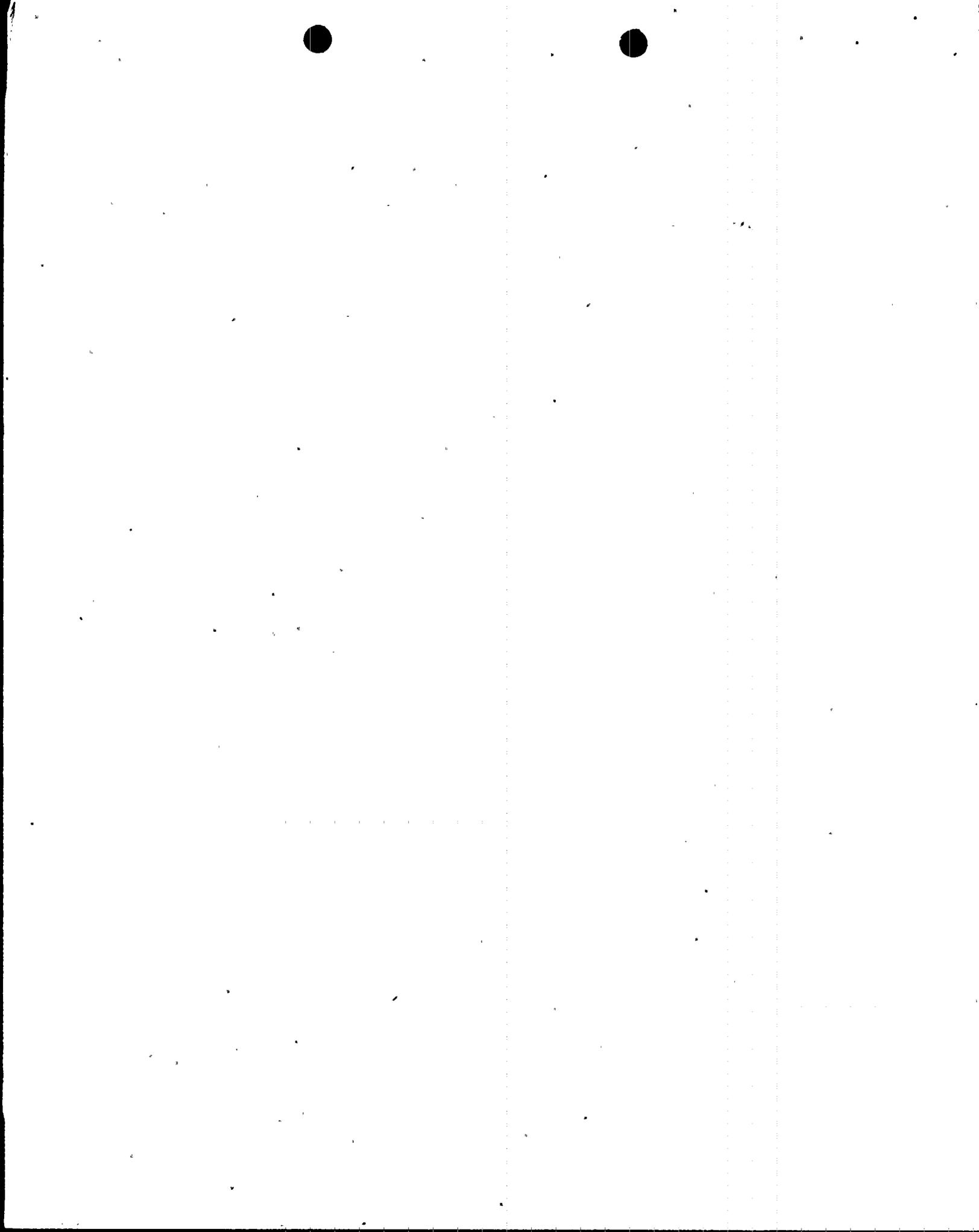
^{3/} Indeed, the following discussion demonstrates that some of the alternatives which the Intervenor seeks to have considered would not have to be considered in an environmental impact statement.

^{4/} In fact, derating need not have been considered. Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 265-266, n. 6 (1979).



To the extent that this contention may suggest that there was a legal obligation for the NRC to consider the alternatives of total shutdown or reducing power generation (i.e., "conservation," "derating" and "decommissioning"), Intervenor is in error. Issuance of amendments to operating licenses need not depend upon "a prior exploration of the environmental impact of continued operation and consideration of the alternatives to that operation (e.g., energy conservation)." Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 46-47, n. 4 (1978), remanded on other grounds, Minnesota v. NRC ___ F.2d ___ (D.C. Cir., May 23, 1979). Nor is consideration of derating required. ALAB-531, supra. The issuance of the Turkey Point operating licenses was preceded by a full environmental review and nothing in NEPA "dictates that the same ground be wholly replowed in connection with the proposed amendment . . ." to the operating license. Ibid.

Nor is it adequate merely to enumerate without further elaboration certain alleged "alternatives" not expressly referred to in the Appraisal, e.g., "bioconversion," "conservation," and "solar energy." The Supreme Court has made it clear that even in environmental impact statements "every alternative device and thought conceivable by the mind of man" need not be considered. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 551 (1978). Such "alternatives" should not have to be addressed unless intervenors make at



least some minimal showing "sufficient to require reasonable minds to inquire further." 435 U.S. at 554. Although more than adequate opportunity has been available, Intervenor has simply failed to show why these are realistic alternatives.

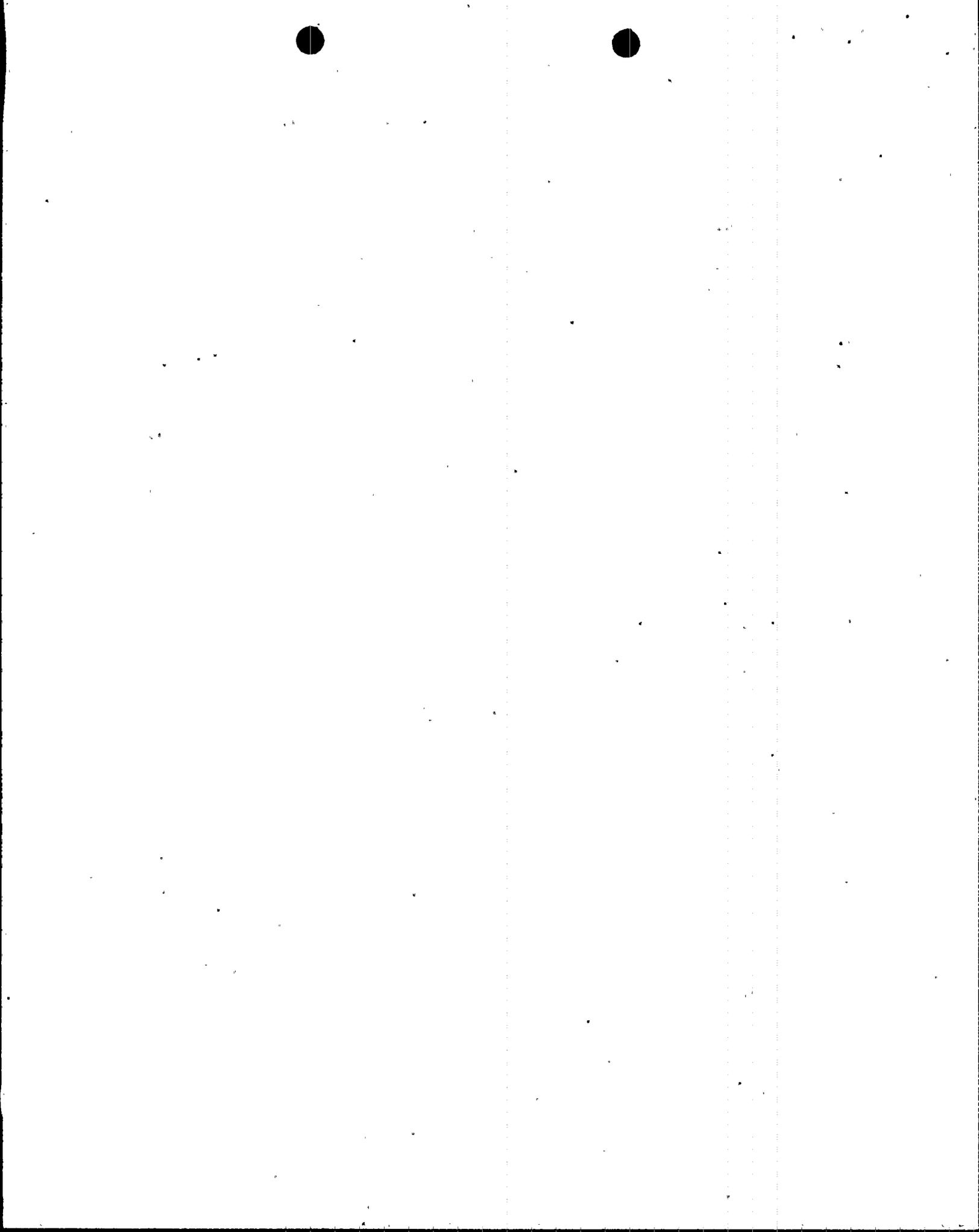
Contention 10 should be denied.

Contention 11. Contention 11 alleges:

The utility has failed to provide an accurate cost/benefit analysis contrary to 10 CFR Parts 50 and 51, and the National Environmental Policy Act, and the FWPCA because:

- a. it has failed to consider the cost of future recurring steam generator repairs;
- b. it has used the inaccurate figure of \$300,000 per day per unit for replacement power costs for reactor outage;
- c. the use of a radiation exposure value guideline of \$1,000 per man-rem for plant workers is inaccurate;
- d. it has failed to provide a cost/benefit analysis for an additional commitment of land resources for the creation of a nuclear waste storage facility;
- e. it has failed to consider the costs of addition of a full flow condensate demineralizer and of condenser retubing;
- f. it has failed to consider the additional costs caused by inflation and delay.

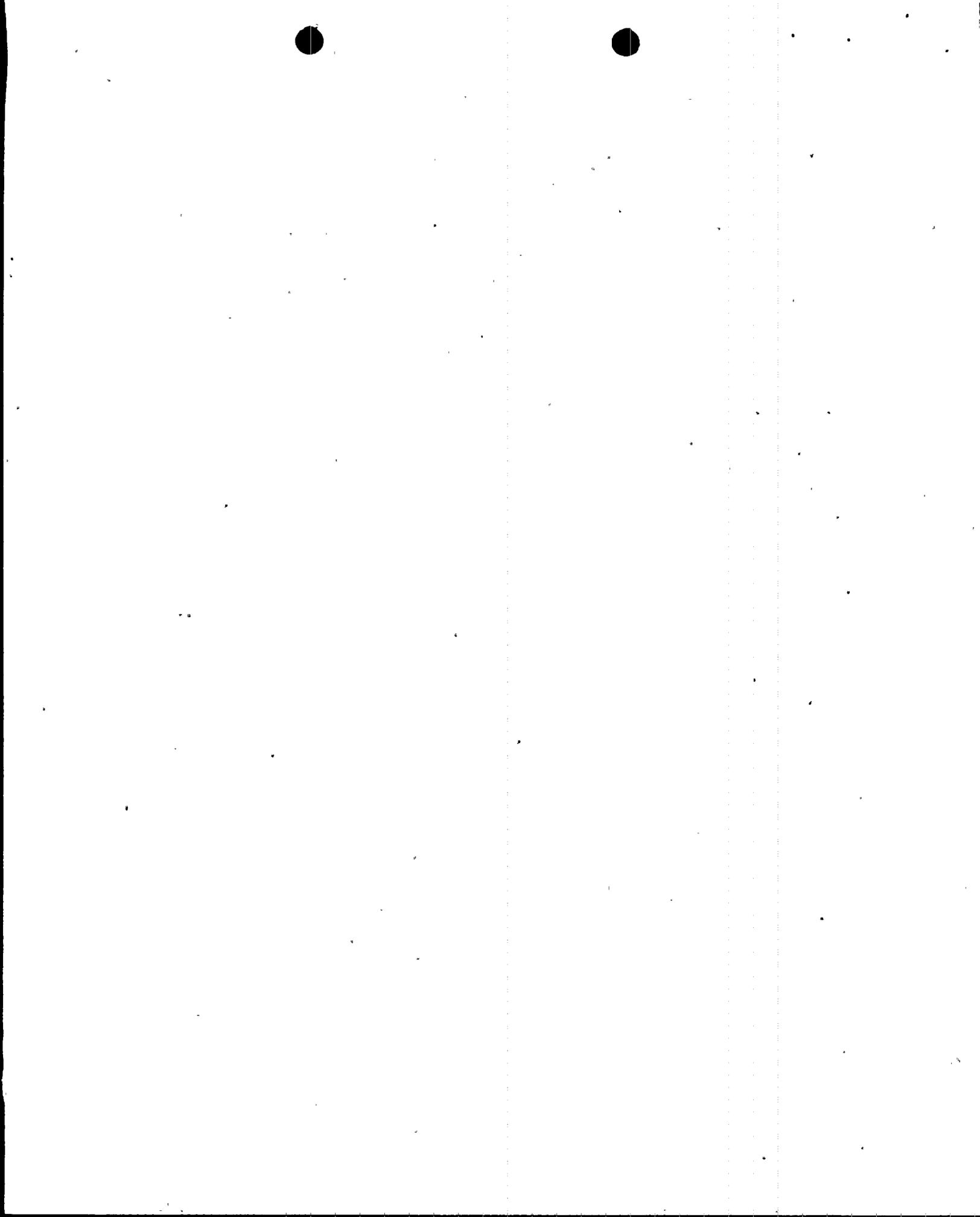
Like Contention 7, this contention relates to alleged omissions or inaccuracies in the cost-benefit analysis. In the preceding discussion of Contention 7, we



have demonstrated that in these circumstances the "utility" is not required to perform a cost-benefit analysis by 10 CFR Parts 50 or 51 or by NEPA. Contention 11 adds a reference to the FWPCA but does not explain the relevance of that statute. In fact, the NRC has no responsibility for enforcing or authority to enforce the provisions of the FWPCA, since that Act delegates that responsibility to the Environmental Protection Agency and to the states. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978). Therefore, the FWPCA is irrelevant to the instant amendment proceedings.

For these reasons alone the contention should be denied. The specific allegations of failures or inaccuracies do not cure the defects and are inadmissible for separate reasons.

Subpart (a) states that in the cost-benefit analysis, FPL "has failed to consider the cost of future recurring steam generator repairs." Even if a cost-benefit analysis were required, Intervenor offers nothing to support the assumption that "future recurring steam generator repairs" will be necessary and that, therefore, the costs of such repairs should be included. To the contrary, Sections 2.2 and 2.2.3 of the SGRR reveal that the proposed changes are designed to prevent denting and degradation of the steam generators, i.e., to prevent the need for "recurring" repairs.



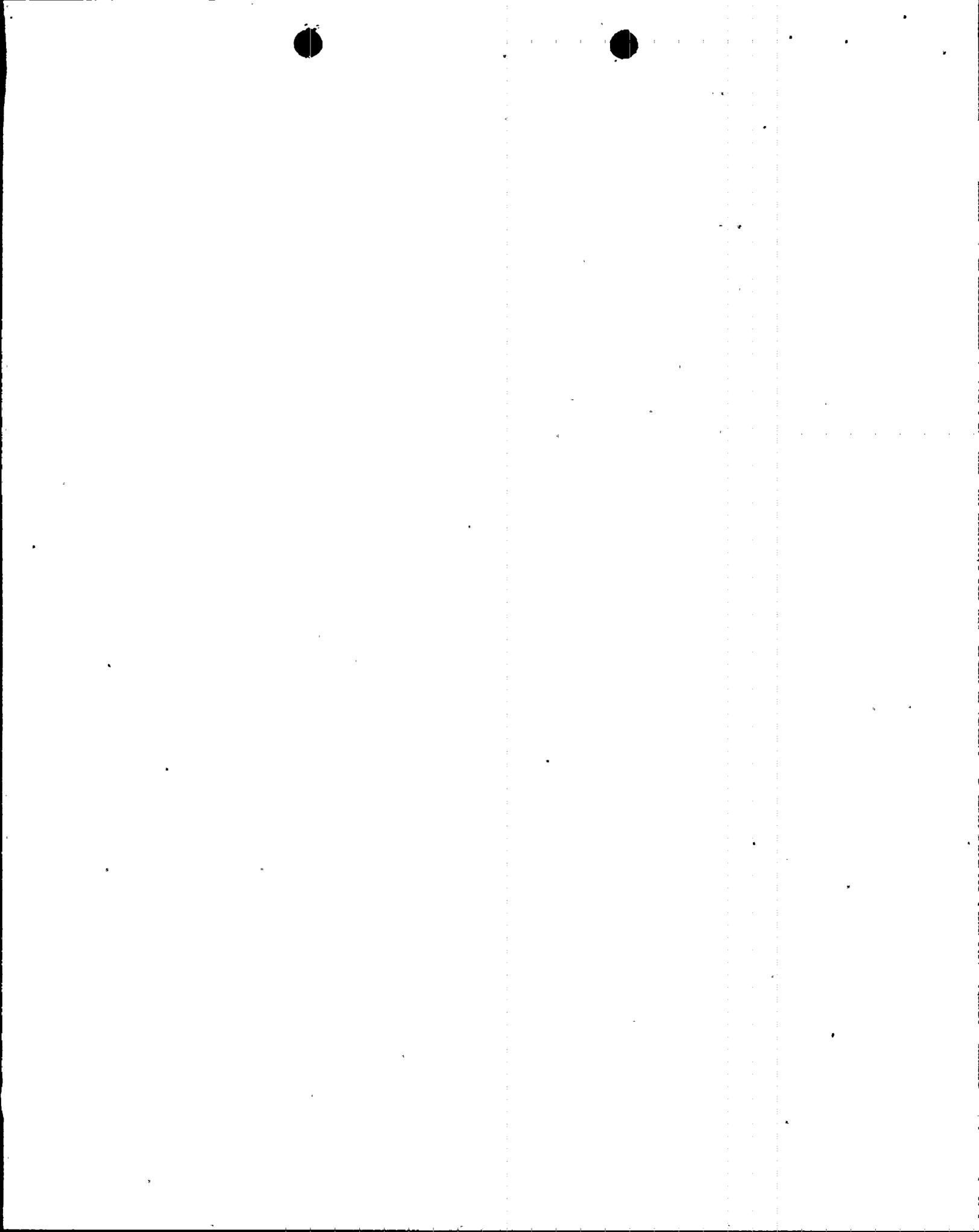
The NRC Staff confirms this judgment (SER, Section 3.1, p. 3-2; Environmental Impact Appraisal Section 6.0, p. 6-1), and Intervenor offers nothing to place it in issue. Subpart (a) wholly fails to meet the requirements of specificity and basis.

Subparts (b) and (c) simply assert that the Licensee's analysis is "inaccurate" without offering any basis for such an allegation. They, too, are inadmissible for they lack of specificity and basis.

Subpart (d) assumes that the Licensee is committing additional resources of land for the storage of the steam generators. Actually, it is presently planned to store the steam generators on-site (SGRR § 3.4.2) and will not require the expenditure of any future land resources. Subpart (d) is unnecessary to any cost-benefit analysis.

Subpart (e) is essentially a duplication of the Intervenor's Contention 7, which has been discussed previously. For the reasons stated in that discussion and to avoid repetition, subpart (e) should be eliminated. Offshore Power Systems, LBP-77-48, 6 NRC 249, 253 (1977).

Subpart (f) is irrelevant. At the present time, no delays are projected for the repair and none are referred to in the statement. Consequently, this factor need not be evaluated. More fundamentally however, inflation operates to increase the costs of both the proposed repair and of any alternatives. As a general projection, while inflation may



increase the cost of the repair in absolute dollars, it will also increase the cost of alternatives proportionally. In the absence of specificity, it is impossible to determine the comparative impact of the effect of inflation on costs and benefits, and a mere reference to inflation without such specificity is without meaning.

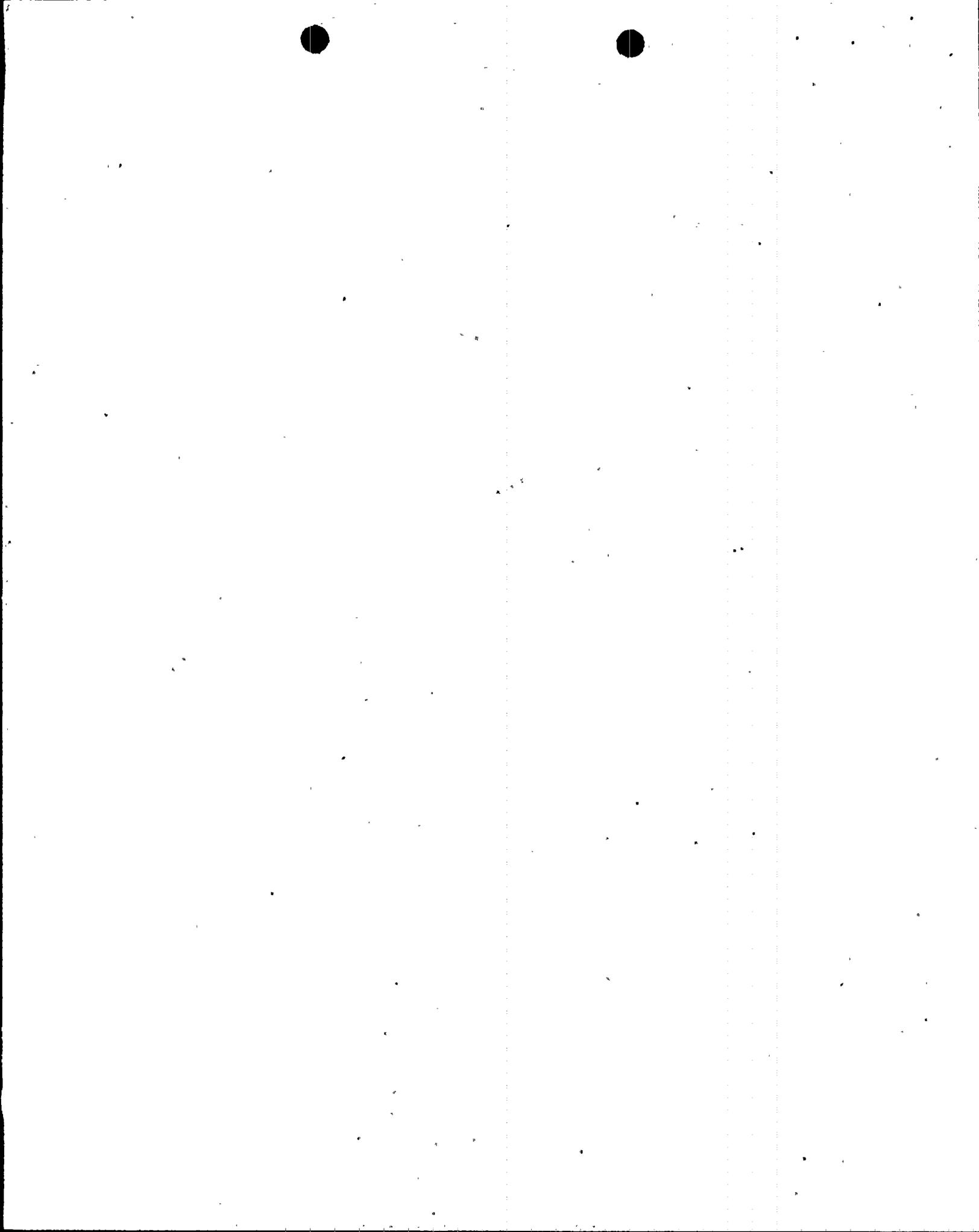
Contention 12. This contention alleges that:

The programs and procedures proposed to be followed by the Licensee in making the steam generator repairs demonstrate that it will not make every reasonable effort to maintain occupational radiation exposures at a reasonably safe level and at a level within 10 CFR Parts 20 and 51.

The contention is defective for a number of reasons.

First, 10 CFR Part 51 does not contain substantive provisions regulating occupational exposures. Therefore, any reference to Part 51 is irrelevant and should be omitted.

Second, 10 CFR Part 20 does not contain a "reasonable safe level" standard. The appropriate standard is "as low as is reasonably achievable" (ALARA). 10 CFR § 20.1(c). If the Intervenor is attempting to question the validity of the ALARA standard or add another, he has a vehicle for doing so under 10 CFR § 2.758. It is not proper for the Intervenor to attack the Commission's regulations in the present proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63 (1978). Therefore the phrase "reasonably safe level" should be eliminated.



Third, with the foregoing necessary excisions, this contention is essentially a duplicate of admitted Contentions 2 and 5. To avoid repetition, Contention 12 should be eliminated. Offshore Power Systems, supra.

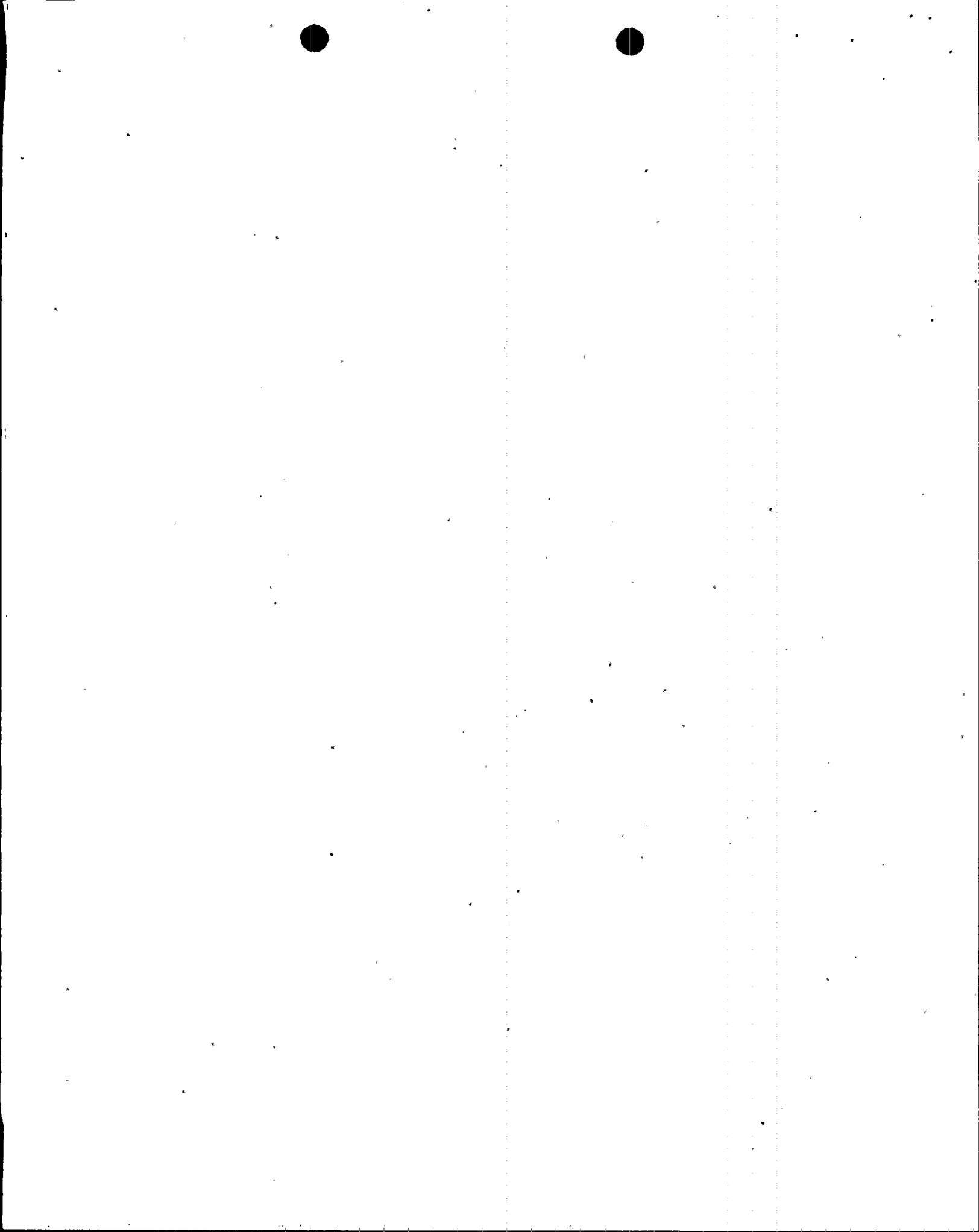
Finally, the contention is wholly unspecific concerning how "the programs and procedures" involved fail to meet the standards referenced. It should be denied for lack of specificity and basis.

Contention 13. The contention alleges:

The proposed method of radiation monitoring during repair of the steam generators is inadequate in that it fails to comply with 10 CFR Parts 20, 50, 51, 100, NEPA and FWPCA.

Again Intervenor has included references to statutes and regulations which are totally irrelevant to the subject of his contention. 10 CFR Part 51 and NEPA contain no substantive standards dealing with radiation monitoring; 10 CFR Part 100 pertains to proposed siting of reactors, not to monitoring of repairs for existing plants; and the FWPCA is not within the jurisdiction of the NRC.

And again Intervenor has failed to state in what respect "[t]he proposed method of radiation monitoring" is "inadequate" or how it "fails to comply" with any relevant regulation. Therefore, the contention fails to comply with 10 CFR § 2.714(b) and should be denied.



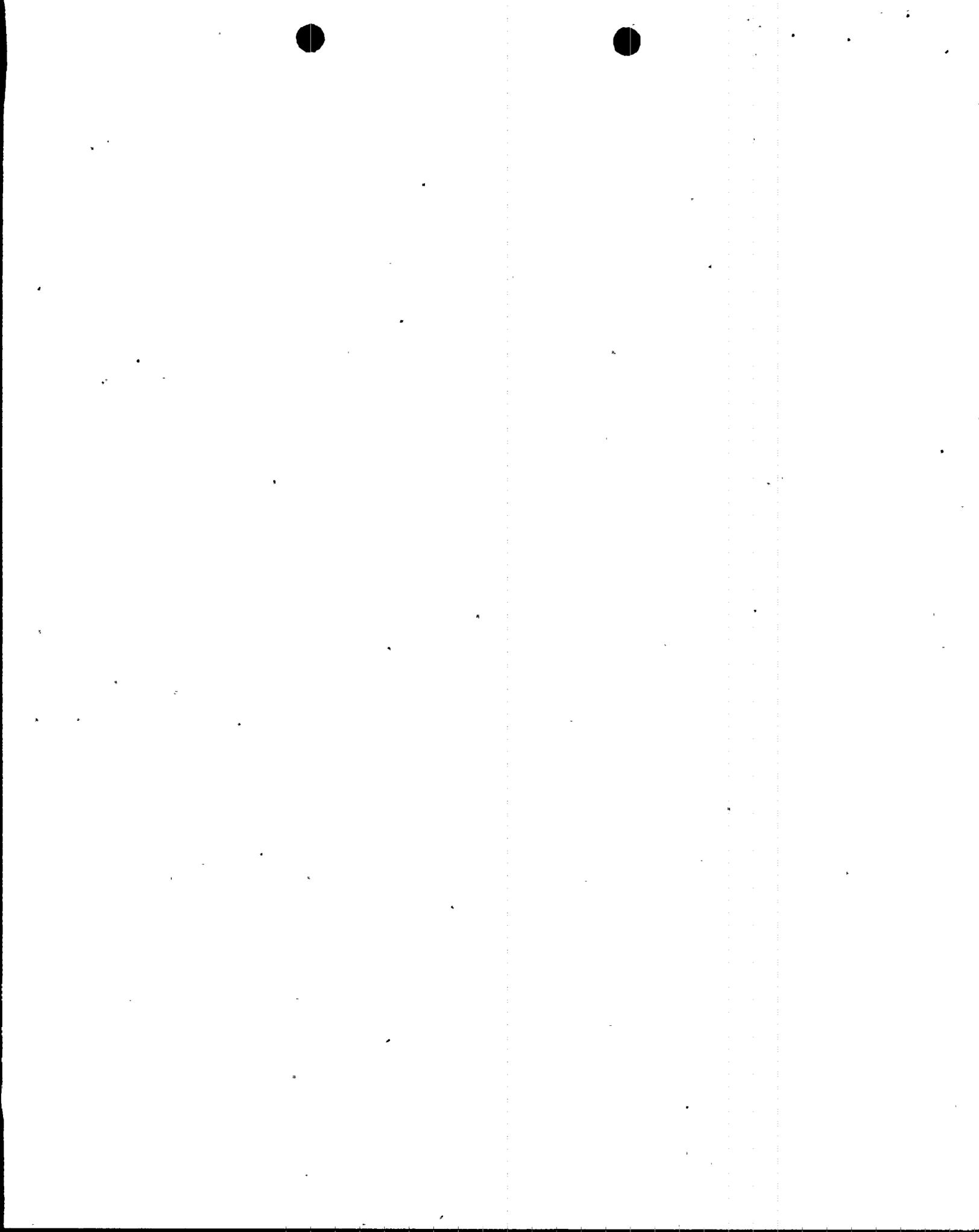
Contention 14. This contention alleges:

The measures proposed to be taken to protect against fire hazards associated with the steam generator repairs are inadequate to protect against radioactive releases in violation of 10 CFR Parts 20, 50, 51, 100, NRC guidelines, and NEPA.

In respect to 10 CFR Part 51 and 100 and NEPA, the foregoing comments on Intervenor's Contention 13 are wholly applicable. Nor does the reference to NRC guidelines add anything. Guidelines are not mandatory and failure to comply with them will not necessarily render a proposal invalid.

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-217, 8 AEC 61, 68 (1974); Project Management Corp. (Clinch River Breeder Plant), LBP-76-14, 3 NRC 430, 432 (1976).

The Commission's regulations governing fire prevention are designed to prevent impairment of safety-related systems by fire or explosion. See 10 CFR Part 50, App. A, Criterion 3. Thus the regulations are intended to reduce the likelihood of a fire which might hinder the performance of systems designed to ensure the safe operation and shutdown of the reactor. However, in the case of the steam generator repair, the reactor core is totally unloaded. In these circumstances, the need for the specificity and basis required by 10 CFR § 2.714 is especially great, and their absence requires denial of the contention.



II

The Admitted Contentions

The Intervenor's final list of contentions of August 30, 1979, contains the six contentions found to be "acceptable for litigation" by the Board in its August 3 order.^{5/}

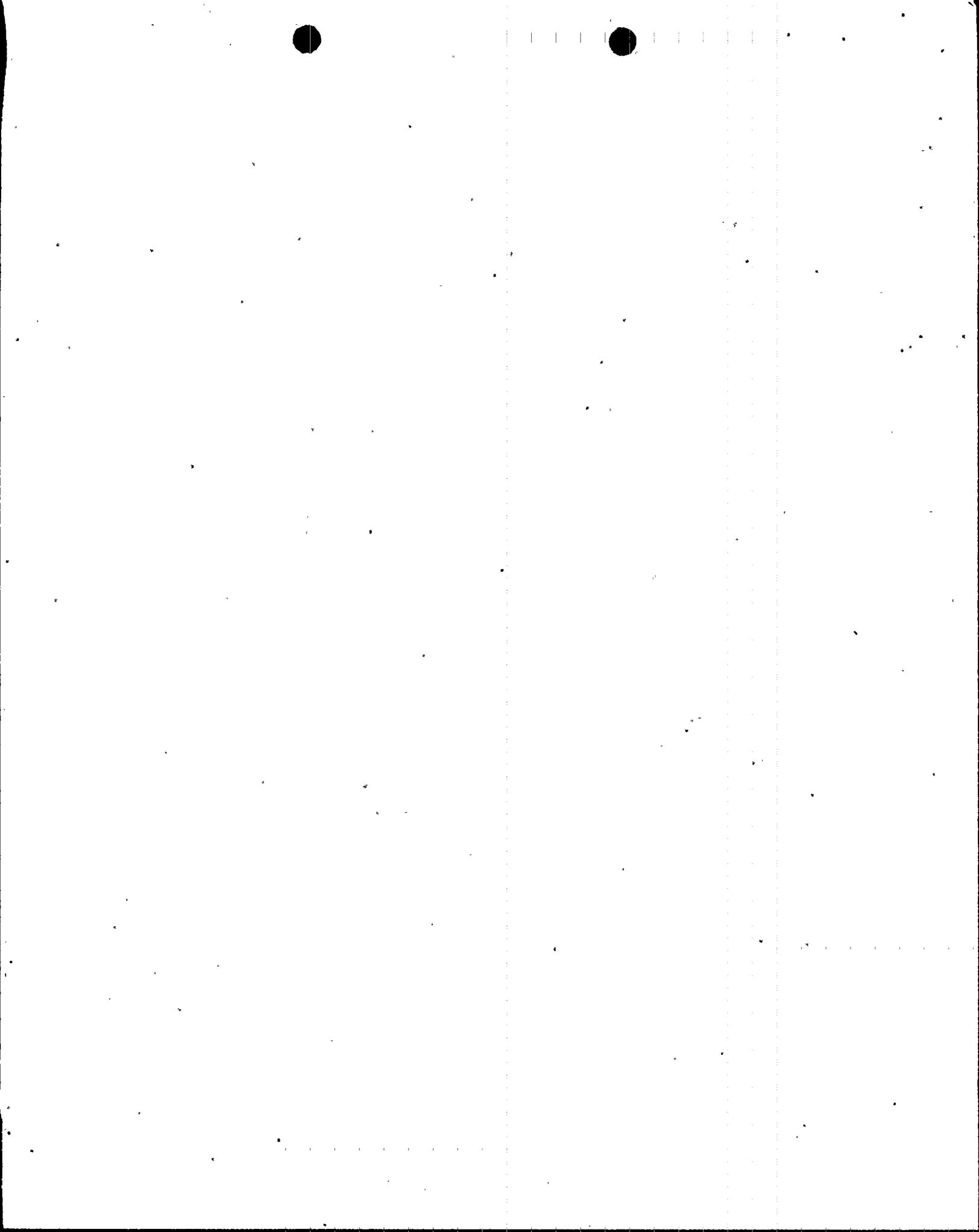
Licensee's efforts to have the parties jointly refine these contentions at the meeting of August 30, 1979, were unsuccessful. Both Intervenor and the NRC Staff Counsel^{6/} declined further refinement because the contentions had been admitted by the Board. The six contentions are therefore included as originally framed.

Licensee acknowledges that the August 3 order precludes further argument on the admissibility of the subject matters contained in the six contentions. Licensee submits, however, that the order suggests that improvement or modification of the wording of those contentions may be in order.

Chairman Bowers referred to "non-specific 'bare bones' contentions" and Dr. Paris described the "filings as far less than perfect" (August 3 order, pp. 19, 30; see also p. 20). In addition, the order (p. 28) described the admitted contentions as directed at four areas of inquiry: 1) "the adequacy

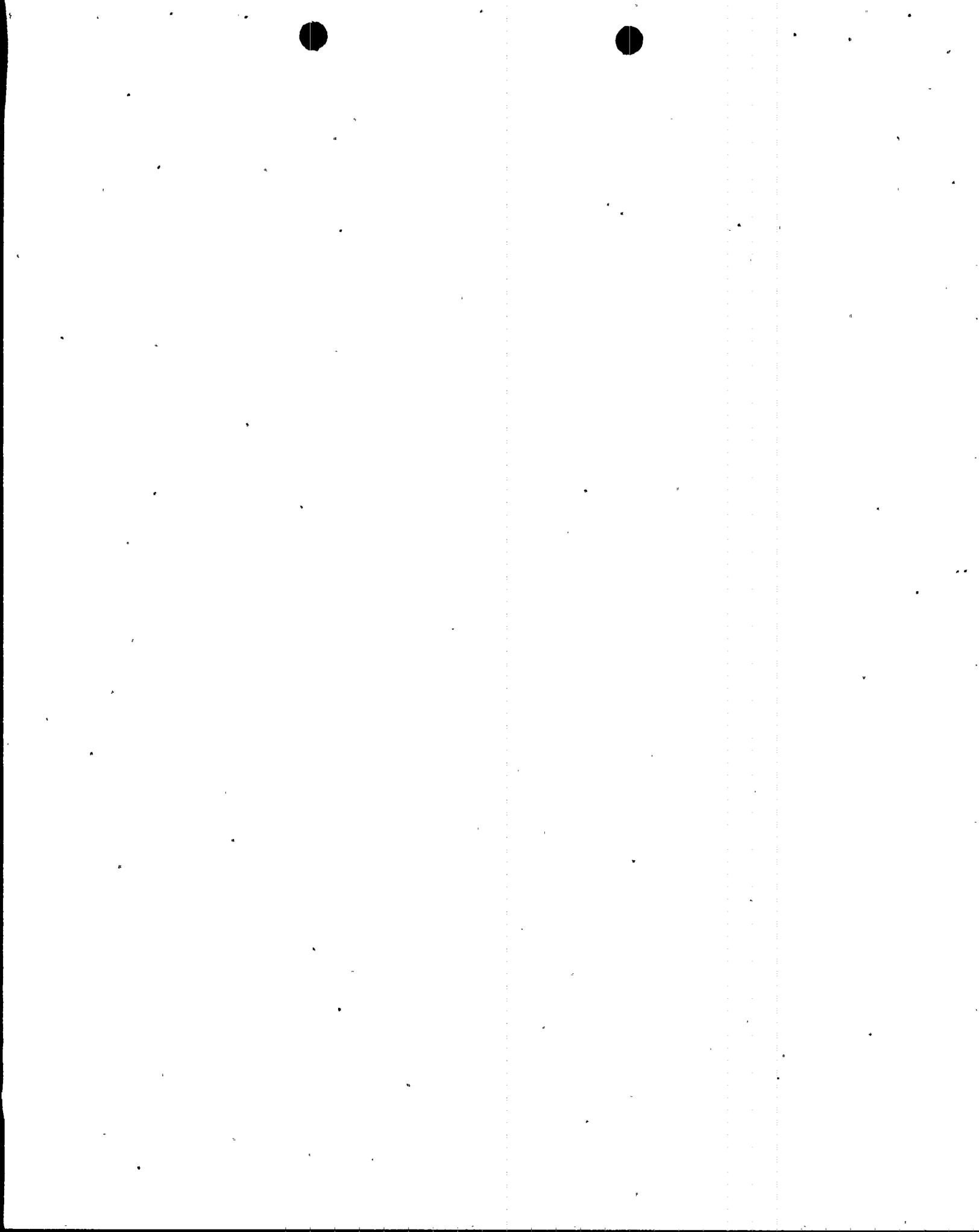
^{5/} Contentions 2, 5, 6, 7, 12 and 18 from the May 2, 1979, submittal of Intervenor are now numbered 1 through 6, respectively, in the attachment to the Licensee's report to the Board of August 31, 1979.

^{6/} NRC Staff Counsel reserved the right to submit that certain statutes and regulations referenced in the six contentions were inapplicable.



of the method proposed for storing the steam generator assemblies with regard to protecting the assemblies from storm floods . . ."; 2) "whether the occupational exposure during the repair, especially of transient workers, can be kept ALARA . . ."; 3) "whether the liquid effluent that will be discharged as a result of the repair will meet the requirements of Parts 20, 50, 51 and NEPA"; and 4) whether an "Environmental Impact Statement should be issued in connection with the repair."

Consequently Licensee submits that the six contentions should be refined to combine those involving the same subject matter, to specifically address concerns expressed by the Board in the August 3 order and to focus upon those statutes and regulations which are relevant. The Board has the power to rewrite contentions to make them acceptable. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2) LBP-79-6, 9 NRC 291 (1979). However, if the Board should decide that retention of the original wording is appropriate, Licensee reserves the right to later contend, by motion for summary disposition or by way of other appropriate procedure, that certain statutes and regulations referenced therein are inapplicable.



1. Preparation of an Environmental Impact Statement.

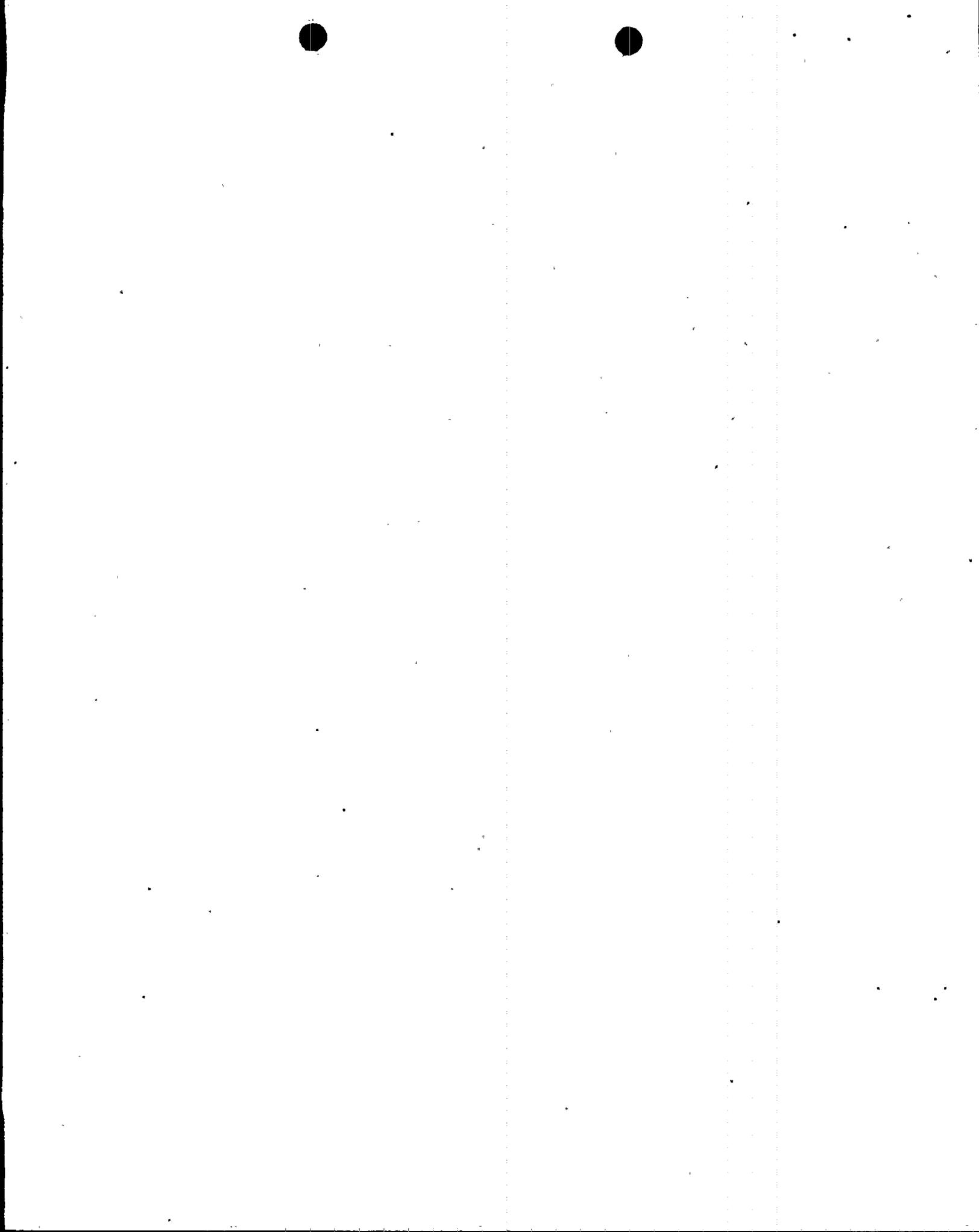
Licensee submits that Intervenor's Contention 1 of August 30, 1979 (formerly Contention 2 of May 2, 1979), should be refined to read:

Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. § 4332(2)(C)) or 10 CFR § 51.5 requires the preparation of an Environmental Impact Statement prior to the issuance by the Nuclear Regulatory Commission of amendments to the operating licenses for Turkey Point Units Nos. 3 and 4 (Facility Operating Licenses Nos. DPR-31 and DPR-41) authorizing the Licensee to repair the steam generators now in use in each facility.

This revised contention omits any reference to 10 CFR Part 50, including in particular 10 CFR § 50.90 because those regulations do not address the issuance of an environmental impact statement (EIS), and are irrelevant. To the extent that the reference by the Intervenor to 10 CFR § 50.90 is meant to suggest that an amendment to an operating license requires an EIS, 10 CFR § 51.5 clearly distinguishes an amendment from an original operating license in relation to the need for an EIS. Moreover, not all amendments to an operating license require the issuance of an EIS. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-77-51, 6 NRC 265 (1977).

2. Occupational Exposures. Licensee submits that

Intervenor's Contentions 2 and 5 of August 30, 1979 (Contentions 5 and 12 of May 2, 1979), should be combined and refined to read:



A. The programs and procedures proposed to be followed by the Licensee in making the steam generator repairs demonstrate that it will not make every reasonable effort to maintain occupational radiation exposures as low as is reasonably achievable (ALARA) within the meaning of 10 CFR Part 20 or that it will not comply with 10 CFR § 20.101, in that the Licensee intends to use transient workers with unknown radiation exposure histories.

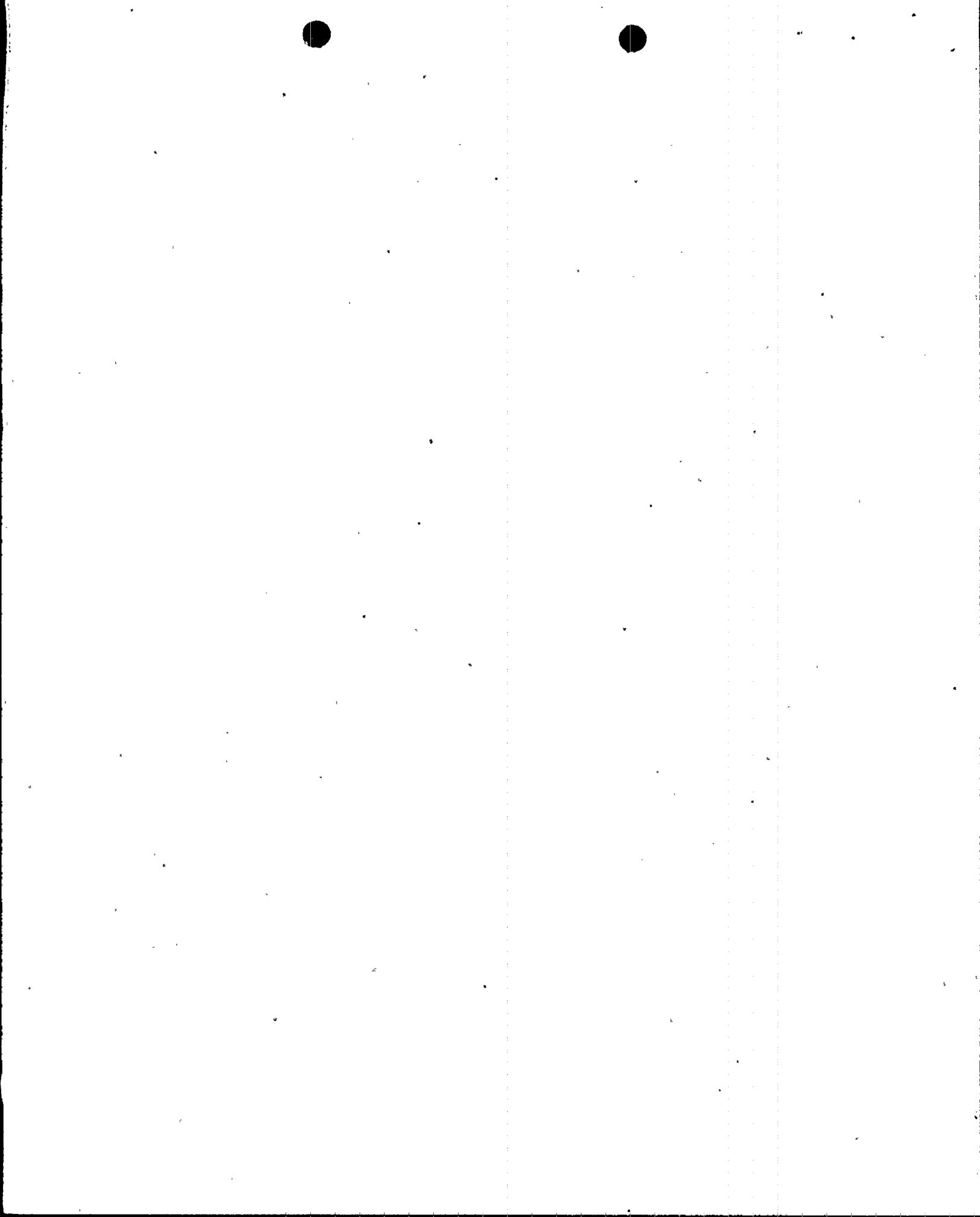
B. A sufficient work force, both skilled and unskilled, cannot be obtained to perform the repairs without violating the limits on individual exposures contained in 10 CFR § 20.101.

The revised contention omits any reference to NEPA and 10 CFR Part 51, which do not contain any substantive standards regulating occupational exposure, and therefore are inapplicable. The environmental effects of occupational exposures are more appropriately considered under Contention 1, as revised.

Reference to the FWPCA is also eliminated under the authority of Tennessee Valley Authority (Yellow Creek Nuclear Plant Units 1 and 2), ALAB-515, 8 NRC 702 (1978).

The revision is also intended to address the concerns about occupational exposure raised by Dr. Paris in the August 3 order (pp. 43-49).

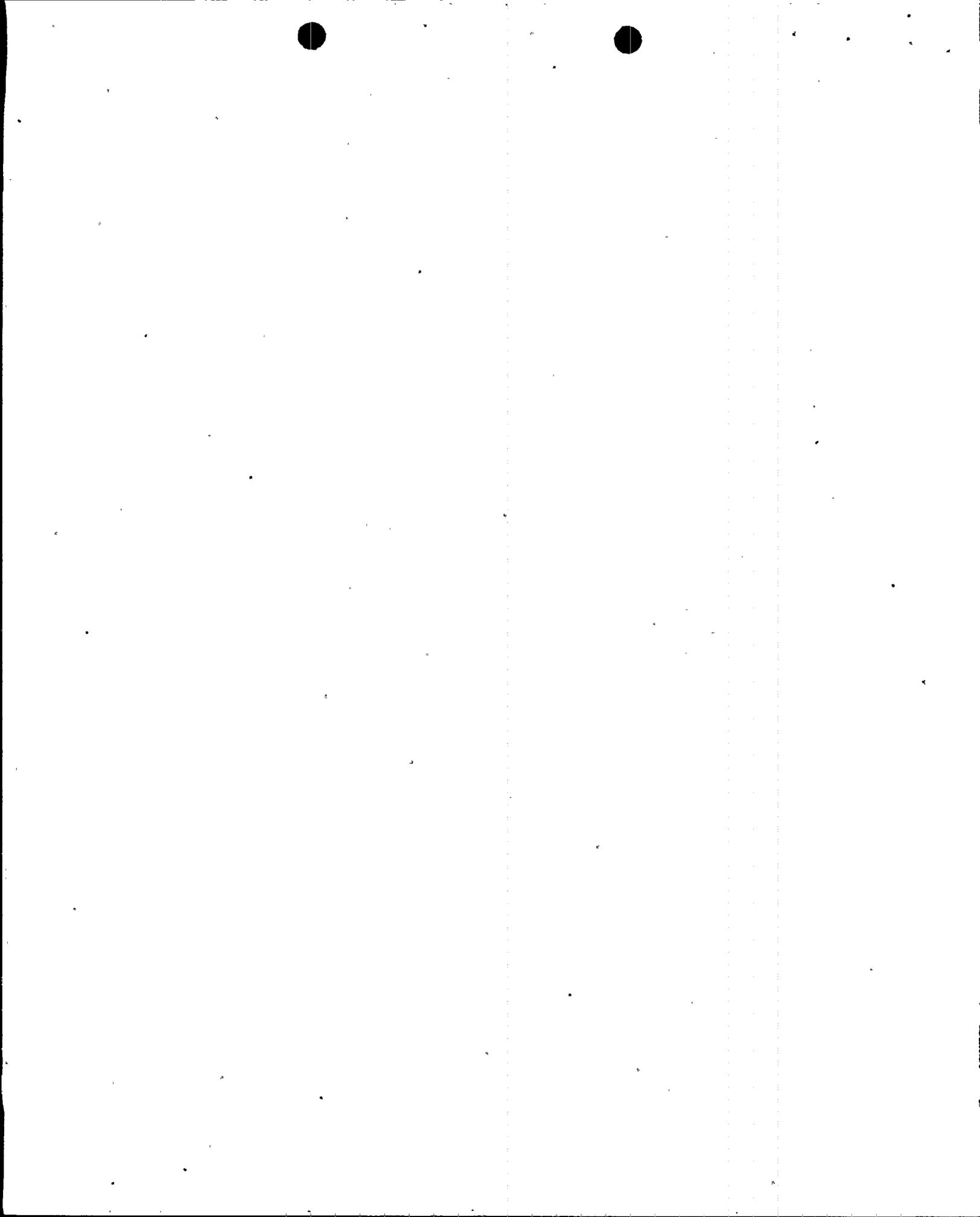
3. Release of Radioactive Material. Licensee submits that Intervenor's Contentions 3 and 4 of August 30, 1979 (Contentions 6 and 7 of May 2, 1979), should be combined and refined to read:



During the course of the repairs proposed by the Licensee, (a) the handling, processing, storing or discharging of primary coolant or (b) the discharging of laundry waste water is likely to result in the release of radioactive material to unrestricted areas in violation of 10 CFR Part 20 or of radioactive effluents to unrestricted areas in quantities which will not be as low as is reasonably achievable within the meaning of 10 CFR Parts 20 and 50.

This revised contention omits any reference to NEPA and 10 CFR Part 51 because they contain no substantive standards regulating effluents, and therefore are inapplicable. The environmental effects of the release of radioactive effluents are more appropriately considered under Contention 1, as revised. Reference to the FWPCA is eliminated under the authority of the Yellow Creek decision, supra.

Reference to 10 CFR Part 100 is also omitted. Part 100 is intended to guide "the Commission in its evaluation of the suitability of proposed sites for stationary power" reactors. 10 CFR § 100.1(a). It has no relevance to amendments to operating licenses of existing plants. 10 CFR Parts 20 and 50 contain the relevant regulations governing amendments to operating licenses which might result in the release of radioactive effluents to the areas surrounding the site. Any site-related factors affecting radioactive releases and exposures in unrestricted areas are taken into account in 10 CFR Parts 20 and 50, and Part 100 is irrelevant to any of the issues in this proceeding.



4. On-site Storage of Steam Generator Assemblies.

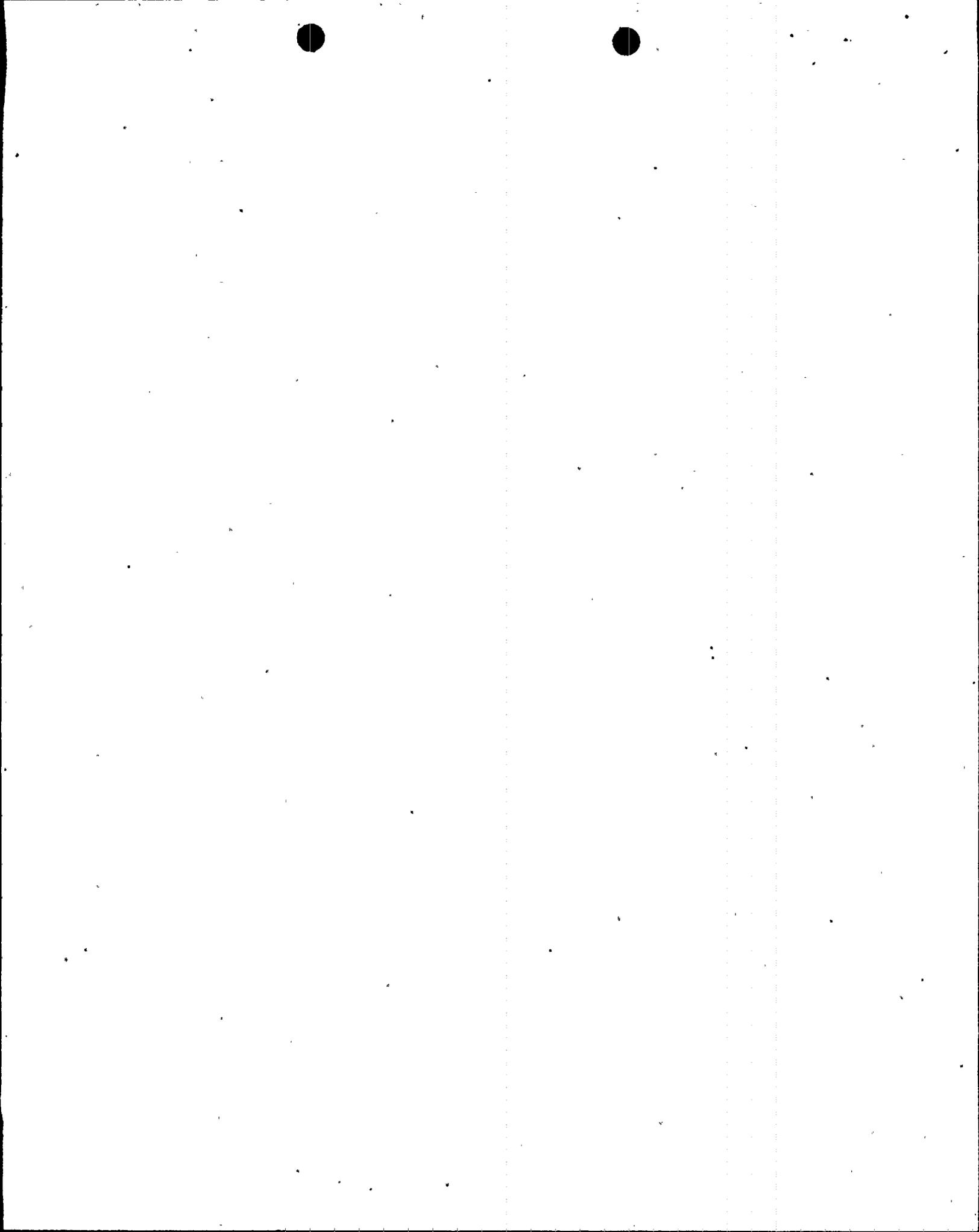
Licensee submits that Intervenor's Contention 6 of August 30, 1979 (Contention 18 of May 2, 1979), should be refined as follows:

There are likely to occur radioactive releases from one or more stored assemblies to unrestricted areas which violate 10 CFR Part 20 or are not as low as is reasonably achievable within the meaning of 10 CFR Part 50, as a result of:

- a. substantial immersion of the steam generators in sea water during a hurricane;
- b. movement of steam generators while so immersed;
- c. impact of such moving steam generators upon the walls of the structure in which they are stored or upon another object or objects;
- d. corrosion resulting from moisture, sea water, or salt spray; or
- e. leakage through the floor beneath the stored steam generators.

This revised contention is intended to reflect the concerns about radioactive releases identified by Dr. Paris in the August 3 order (pp. 34-43). It eliminates the lack of specificity contained in the original contentions, and sets forth a basis for the allegation that the storage facility will not be in compliance with the regulations. A reference to 10 CFR Part 20 has also been included.

The redrafted contention also eliminates any issue as to whether the Licensee can create a nuclear waste



storage facility under 10 CFR Part 50. The present operating licenses for Turkey Point Units 3 and 4 (issued on July 19, 1972, and April 10, 1973, respectively) permit the Licensee to possess all radioactive wastes generated by operation of the plant. Therefore, the question of whether the Licensee is legally permitted to store the steam generators is not an issue in this proceeding.

The revised contention eliminates any reference to the National Environmental Policy Act and 10 CFR Part 51, which contains the NRC regulations implementing NEPA. Neither NEPA nor Part 51 specifies any limits on effluents, nor do they specify any other substantive requirements regarding storage facilities. Therefore, they are inapplicable to this contention.

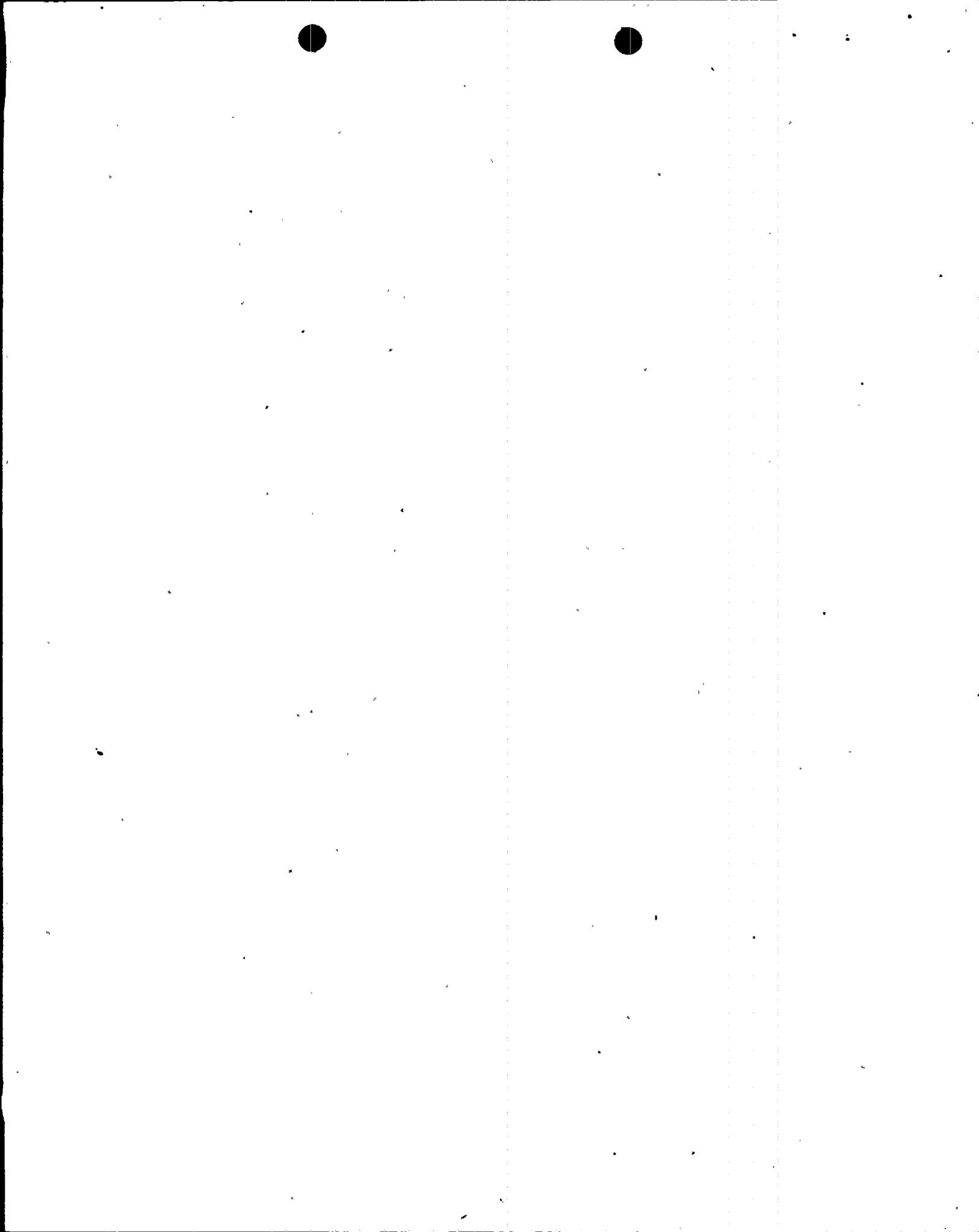
If the Intervenor intends to argue that storage will produce environmental costs that must be evaluated, the appropriate place to consider these effects is under Contention 1, as revised.

Reference to the FWPCA has also been eliminated under the authority of the Yellow Creek decision, supra.

III

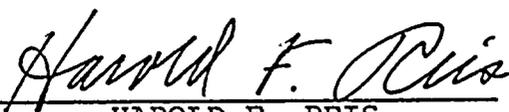
Conclusion

For the reasons set forth in detail above, Licensee requests that the Board issue an order which finds (a) that



proposed Intervenor Contentions 7 through 14 of August 30, 1979, are not acceptable for litigation in this proceeding; and further finds (b) that the six contentions previously found by the Board to be "acceptable for litigation" in its August 3 order should be combined and refined into the four contentions described above which correspond to the four areas of inquiry referred to in the Board's August 3 order.

Respectfully submitted,


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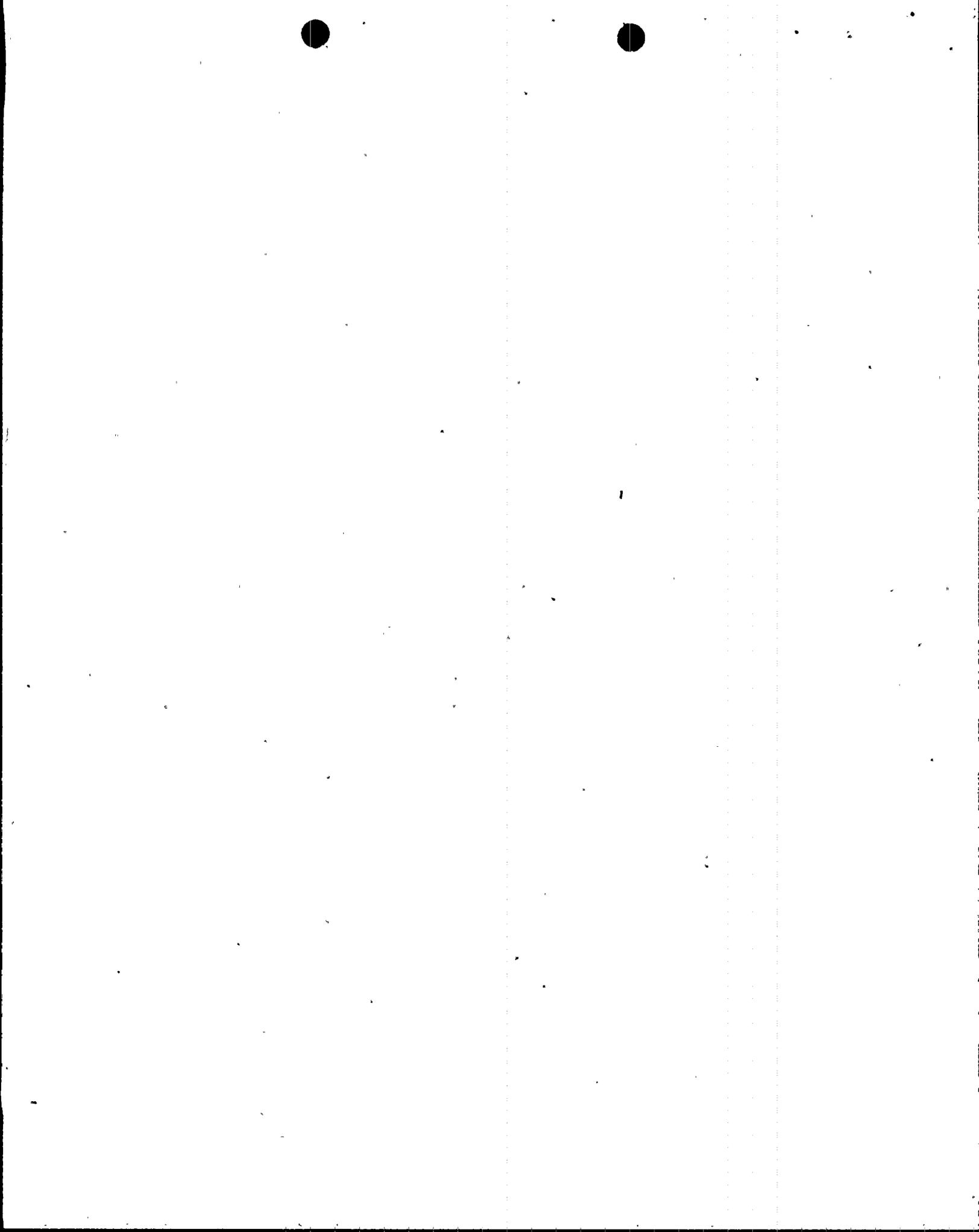
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Attorneys for Licensee
FLORIDA POWER & LIGHT COMPANY

DATE: September 14, 1979



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

In the Matter of) Docket Nos. 50-250-SP
) 50-251-SP
FLORIDA POWER & LIGHT COMPANY)
) (Proposed Amendments to Facility
(Turkey Point Nuclear Generating) Operating License to Permit
Units Nos. 3 and 4)) Steam Generator Repair)

CERTIFICATE OF SERVICE

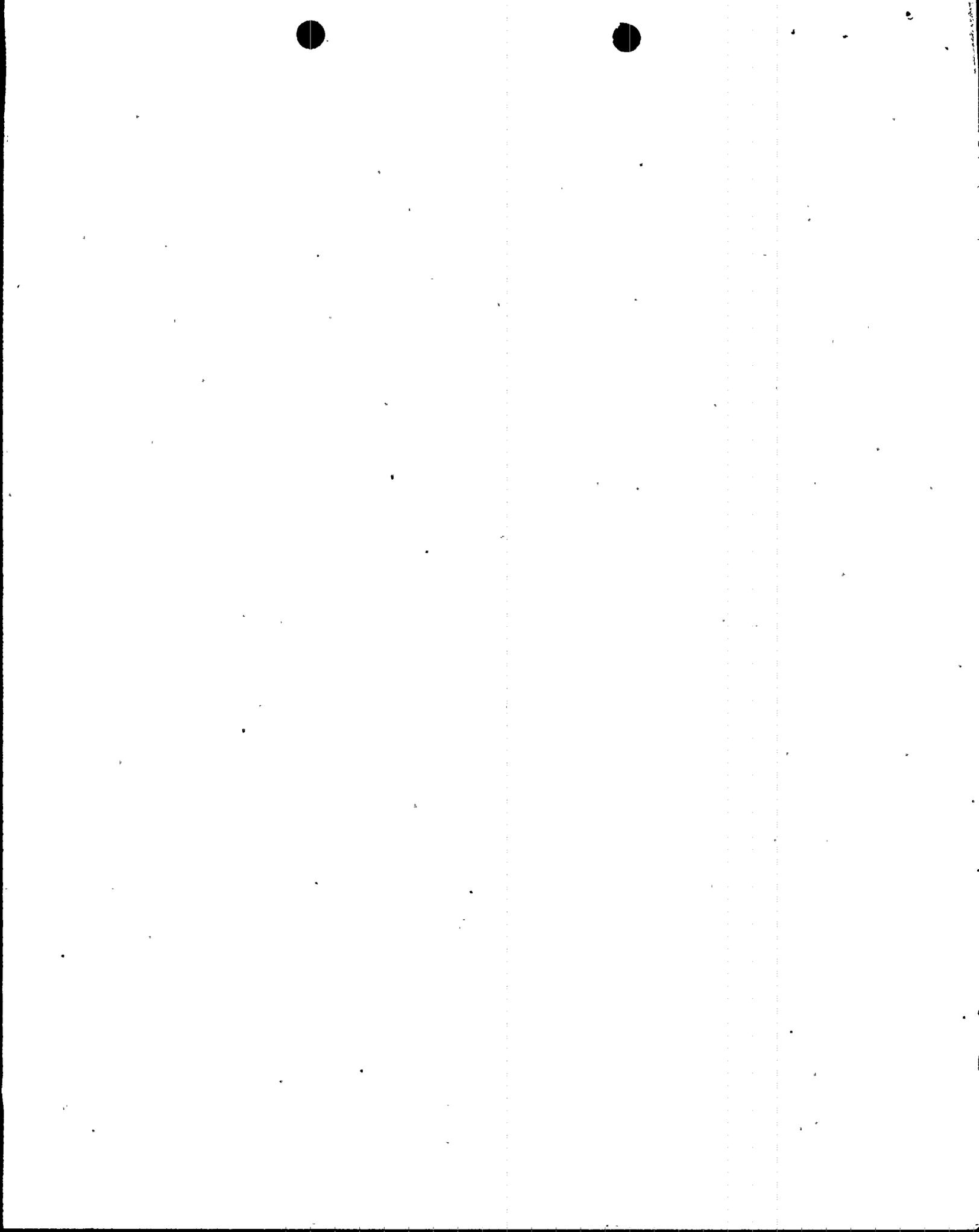
I HEREBY CERTIFY that copies of the attached "Licensee's Statement Concerning Intervenor's August 30, 1979, Contentions" captioned in the above matter, were served on the following by deposit in the United States mail, first class, properly stamped and addressed, this 14th day of September, 1979:

Elizabeth S. Bowers, Esquire
Chairman
Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Oscar H. Paris
Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
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Dr. Emmeth A. Luebke
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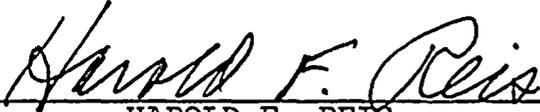
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