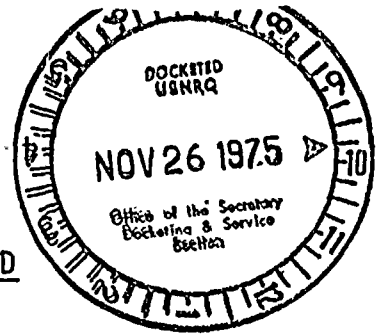


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of
FLORIDA POWER AND LIGHT COMPANY
(St. Lucie Nuclear Power Plant,
Unit No. 2)

Docket No. 50-387

NRC STAFF'S ANSWER TO INTERVENOR'S
MOTION TO REOPEN HEARING RECORD
AND RECONSIDER PARTIAL INITIAL DECISION

On October 28, 1975, Intervenors Martin Hodder, et al., filed a motion to reopen the record and reconsider the Atomic Safety and Licensing Board's ("Board") Partial Initial Decision.^{1/} This motion is essentially the same as the May 5, 1975 motion made by the Intervenors and ruled upon by the Board Order of August 13, 1975.

Both the former and present motions were based upon representations appearing in certain letters and the interpretation of those letters by the Intervenors. In order to place the present motion in perspective, it is necessary to briefly review the letters in question.

^{1/} Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit No. 2) Partial Initial Decision, Environmental and Site Suitability, LBP-75-5, NRCI-75/2, 101 (February 28, 1975); Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit No. 2) Supplement to the Board's Partial Initial Decision re: Applicant's Petition for Reconsideration, LBP-75-25, NRCI-75/4, 463 (April 25, 1975).

The five letters may be described as follows:

1. May 28, 1974 letter from Mr. Peter P. Baljet, State of Florida Department of Pollution Control to Mr. J. J. Hudiburg, Florida Power and Light Company. This letter is a negative certification under Section 401 of the Federal Water Pollution Control Act.
2. An undated letter apparently written on November 25, 1974 from Mr. W. J. Barrow, Jr., of the Florida Power and Light Company to Peter P. Baljet of the State of Florida DPC requesting notification as to whether the DPC intended to issue any further certification in light of the adoption of the EPA regulations appearing at 39 Fed. Reg. 36176, October 8, 1974.
3. A letter from Mr. Peter P. Baljet of the State of Florida DPC to Mr. W. J. Barrow, Jr. of FP&L responding that the DPC had no present intention to issue further certification pursuant to Section 401 of the FWPCA.
4. A letter dated April 24, 1975 from Mr. Hamilton Oven, Jr. State of Florida DPC to the Intervenor, Martin Hodder, which generally explains the processes associated with issuances of negative 401 certifications.
5. A letter of June 10, 1975 from Mr. John W. Wilcox of EPA to Mr. J. D. Boone Kuersteiner, Special Assistant Attorney General

for the State of Florida. This letter is in response to a telephone request, the particulars of which are unknown to the Staff. However, the letter appears to only say that the November 25, 1974 letter from Mr. Baljet to Mr. Barrow should not be interpreted as a 401 certification. That letter goes on to explain the writer's interpretation of certain legal requirements associated with NPDES permits.

A copy of these letters are affixed as attachments 1 through 5.

It should be made clear at the outset that the May 28, 1974 letter is a valid 401 certification as determined by this Board in its Partial Initial Decision of February 28, 1975. The Board reached that decision after considering the effect of the letter of November 25, 1974 from Mr. W. J. Barrow, Jr. to Mr. Peter P. Baljet. The Board reiterated its position in its order of August 13, 1975 in ruling upon Intervenors' May 5, 1975 Motion to Reopen Hearing Record and Reconsider Partial Initial Decision, a Motion based on information set forth in the April 24, 1975 letter from Mr. Owen to Intervenor Hodder. In confirming its Partial Initial Decision findings with respect to the DPC May 28, 1974 certification of the St. Lucie Unit 2 construction permit, the Board found that: (1) the May 28, 1974 negative certification was unambiguous; (2) the negative certification satisfied the FWPCA requirements; and (3) it was final for purposes of issuance of an NRC construction permit for St. Lucie Unit 2.

The basis for the Intervenor's present motion is the letter dated June 10, 1975. The position taken by the Intervenor in this motion is essentially the same as that taken in its May 5, 1975 motion which was disposed of by the Board Order of August 13, 1975. The only difference in the two motions is that Intervenor now uses a different letter as a basis for their argument. An examination of the June 10, 1975 letter clearly indicates that the Intervenor's new motion is without merit. In the simplest terms, the May 28, 1974 letter was a proper negative certification and the June 10, 1975 letter in no way refutes that fact. The June 5, 1975 letter does not even mention the May 28, 1974 certification but says only that the November 25, 1974 letter was not to be interpreted as a 401 certification. Moreover, Intervenor's do not explain why the June 10, 1975 letter repudiates the May 28, 1974 certification but states only that:

"The letter speaks for itself in clearly establishing that no 401 certification has been issued for St. Lucie Unit 2."

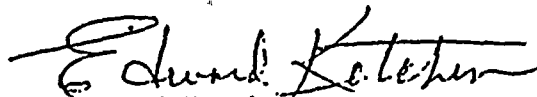
The Staff submits that the Intervenor's are not only factually incorrect but have failed to meet the legal requirement of supporting their motion.

As stressed by the Board in its April 15, 1975 Order in which it upheld the validity of the May 28, 1974 certification, DPC has rightly recognized its right pursuant to Section 401(a)(3) to modify its present certification in connection with later permits or licenses to be issued by the Federal agencies involved. The Board also stressed in that Order

CONCLUSION

For the foregoing reasons, Intervenors' Motion to Reopen Hearing Record and Reconsider Partial Initial Decision should be certified to the Atomic Safety and Licensing Appeal Board, or, in the alternative, should be denied by this Board.

Respectfully submitted,



Edward Ketchen
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 24th day of November, 1975



Exhibit UD^L

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
2562 EXECUTIVE CENTER CIRCLE, EAST
MONTGOMERY BUILDING, TALLAHASSEE, FLORIDA 32301

P. BALJET
VICE DIRECTOR

May 28, 1974

DAVID H. LEVIN
CHAIRMAN

Mr. J. J. Hudiburg
Executive Vice President
Florida Power & Light Company
P.O. Box 3100
Miami, Florida 33101

Re: Florida Power & Light Co.
St. Lucie Plant, Unit No. 2

Dear Mr. Hudiburg:

This is to advise that the Department of Pollution Control, in accordance with Section 401 of the Federal Water Pollution Control Amendments of 1972, hereby certifies that as of this date there are no federal effluent limitations or other effluent limitations established under Sections 301(b) and 302 of the Act that are applicable to the above named facility. The Department further certifies that there are no standards established under Section 306 or 307 that are applicable to the above named facility.

Very truly yours,

Peter P. Baljet

PPB:asp

cc: Mr. Angelo Giambusso, Atomic Energy Commission
Mr. Paul Traina, Environmental Protection Agency
Mr. W. J. Barrow, Jr., Dept. of Environmental Affairs

bc: Mr. Hamilton S. Owen, Jr.

that State certification actions in proceedings before the EPA for issuance of a Section 402 NPDES discharge permit for St. Lucie 2 do not in any way affect the current, and valid, May 28, 1974 Section 401 certification issued by the DPC with respect to the NRC construction permit. To summarize, nothing said in the June 10, 1975 letter from EPA to the DPC, with respect to DPC's certification of EPA's forthcoming Section 402 permit for St. Lucie 2 supports Intervenor's assertion in its October 28, 1975 motion "that no 401 Certification has been issued for St. Lucie Unit No. 2."

The foregoing discussion is related to the merits of Intervenor's motion. The Staff invites the attention of the Board to the fact that the same motion in essence is presently pending review before the Atomic Safety and Licensing Appeal Board by reason of Intervenor's Exception number 5 taken to the Partial Initial Decision of February 28, 1975. In the circumstance, it would be appropriate for this Board to certify this motion to the Appeal Board so that it could be considered in conjunction with Exception number 5.



STATE OF FLORIDA
 DEPARTMENT OF POLLUTION CONTROL
 2562 EXECUTIVE CENTER CIRCLE, EAST
 MONTGOMERY BUILDING, TALLAHASSEE, FLORIDA 32301

May 28, 1974

DAVID H. LEVIN
 CHAIRMAN

P. BALJET
 VICE DIRECTOR



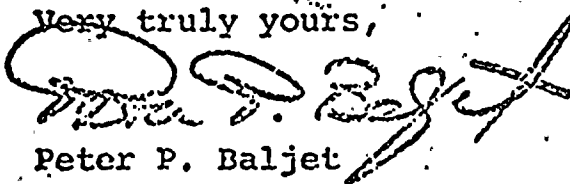
Mr. J. J. Hudiburg
 Executive Vice President
 Florida Power & Light Company
 P.O. Box 3100
 Miami, Florida 33101

Re: Florida Power & Light Co.
 St. Lucie Plant, Unit No. 2

Dear Mr. Hudiburg:

This is to advise that the Department of Pollution Control, in accordance with Section 401 of the Federal Water Pollution Control Amendments of 1972, hereby certifies that as of this date there are no federal effluent limitations or other effluent limitations established under Sections 301(b) and 302 of the Act that are applicable to the above named facility. The Department further certifies that there are no standards established under Section 306 or 307 that are applicable to the above named facility.

Very truly yours,


 Peter P. Baljet

PPB:asp

cc: Mr. Angelo Giambusso, Atomic Energy Commission
 Mr. Paul Traina, Environmental Protection Agency
 Mr. W. J. Barrow, Jr., Dept. of Environmental Affairs

bc: Mr. Hamilton S. Owen, Jr.

ATTACHMENT NO. 1



~~SECRET~~

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL

2562 EXECUTIVE CENTER CIRCLE, EAST
MONTGOMERY BUILDING
TALLAHASSEE, FLORIDA 32301

PETER P. DALJET
Director of Dept.

November 25, 1974

WD FREDERICK, JR.
Assistant Secretary

Mr. W. J. Barrow, Jr.
Environmental Affairs
Florida Power & Light
Post Office Box 3100
Miami, Florida 33101

F.P.C.L.



RE: St. Lucie Plant Unit 2

Dear Mr. Barrow:

In response to your letter of November 25, 1974, we wish to advise you that the Department has no present intention to issue further certification, pursuant to Section 401 of the Federal Water Pollution Control Act (FWPCA), with respect to the St. Lucie Plant Unit No. 2. Consequently, our "negative certificate" of May 28, 1974 will not, at this time, be modified in light of the adoption of the FPA regulations (39 FR 36176, October 8, 1974) to which you refer in your letter.

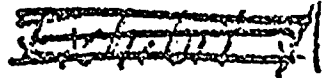
Very truly yours,

Peter P. Daljet

PFB/bm

cc: Mr. Angelo Giambusso, Atomic Energy Commission
Mr. Paul Traine, Environmental Protection Agency

ATTACHMENT NO. 3



STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL

2562 EXECUTIVE CENTER CIRCLE, EAST
MONTGOMERY BUILDING
TALLAHASSEE, FLORIDA 32301

ER P. BALJET
EXECUTIVE DIRECTOR

W.D. FREDERICK, JR.
CHAIRMAN

April 24, 1975

Martin Hodder, Esquire
1130 Northeast 86th Street
Miami, Florida 33131



Dear Mr. Hodder:

As discussed in our telephone conversation on April 23, 1975, the Department of Pollution Control issued a "negative 401" declaration for St. Lucie Unit No. 2 in May of 1974. That letter stated that in accordance with Section 401 of the Federal Water Pollution Control Amendments of 1972 that there were no federal effluent established under provisions of Sections 301 (b) and 302 of the aforementioned Act that were applicable. Also the Department stated that there were no standards established under Sections 306 or 307 that were applicable to St. Lucie.

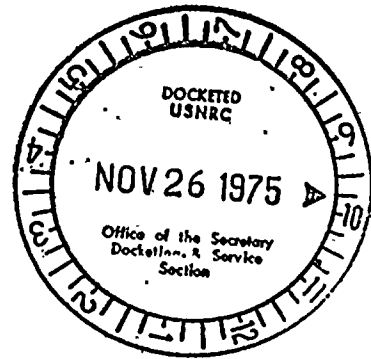
In November of 1975 the Department further advised Florida Power & Light that we had no intention at that time of modifying our original negative 401 certificate. This does not mean that the Department will not submit to EPA a revised certification when the Department comments on a draft permit issued by EPA pursuant to Section 402 of the Act. Sections 401 (a) (3), 401 (b) and 401 (d).

The Department will also participate in any federal hearing on the thermal discharge from the plant under provisions of Section 316(a) of the Act. The Department will submit to EPA any particular effluent limitations and monitoring requirements developed for St. Lucie Unit 2, that are made part of the conditions of certification of the power plant site, if said site



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Mr. Martin Hodder
April 24, 1975
Page two



should be certified. The Department will request that EPA include in their NPDES permit, issued pursuant to Section 402, all such discharge and monitoring conditions deemed necessary to protect the waters of the State.

Sincerely,

Hamilton S. Owen, Jr.
Hamilton S. Owen, Jr.
Administrator,
Power Plant Siting

HSOJr/bm

cc: Boone Kuersteiner
Rip Caleen
Angelo Giambusso
Paul Traina



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

1421 PEACHTREE ST., N. E.
ATLANTA, GEORGIA 30309

ENFORCEMENT DIVISION

4AEL:JW

RECEIVED

JUN 11 1975

JUN 10 1975

Department of Pollution Control
Environmental Law Section

Mr. J. D. Boone Kuersteiner, Esq.
Special Assistant Attorney General
Florida Department of Pollution Control
2562 Executive Center Circle, East
Tallahassee, Florida 32301

In Re: Section 401 Certification
For the St. Lucie Plant, Unit
No. 2 of the Florida Power &
Light Company

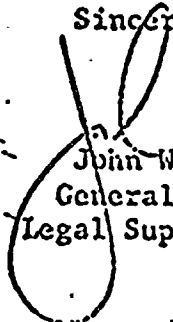
Dear Boone:

In response to your telephone request today I have undertaken a complete review of our files to ascertain the status of the permit for St. Lucie Plant, Unit No. 2. We have no plans as of this date to issue a permit for that unit within the foreseeable future. As a result we have not prepared a draft permit for your comments or to which a Section 401 Certification could attach. While we are cognizant of the November 25, 1974, letter from Mr. Baljet to Buzz Barrow, we did not interpret that letter to be 401 Certification.

You will recall that as per our memorandum of agreement on permit certification, the state of Florida is not required to certify an NPDES permit until after a draft NPDES permit has been prepared and submitted for comment. Your certification would then be necessary within 45 days in order to avoid waiving your 401 certification authority. In this case obviously, we have not entered that 45 day period. Although we are not entirely sure of the intent of the November 25 letter, as it was informational, as far as we were concerned, we did not interpret the letter to be a 401 certification.

I trust that this letter will suffice to keep you abreast of the permitting status for the plant. If you need additional information, however, please do not hesitate to call.

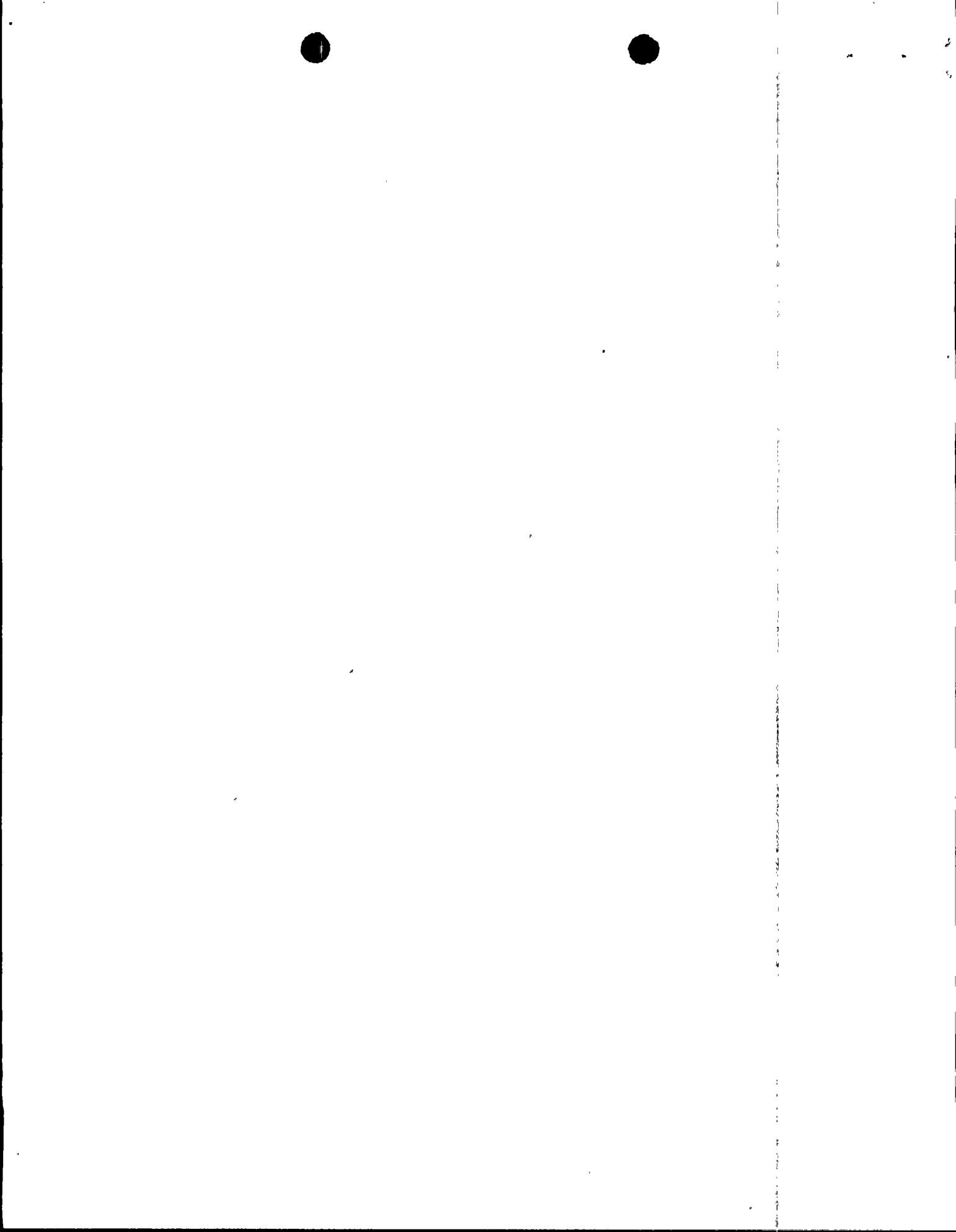
Sincerely,

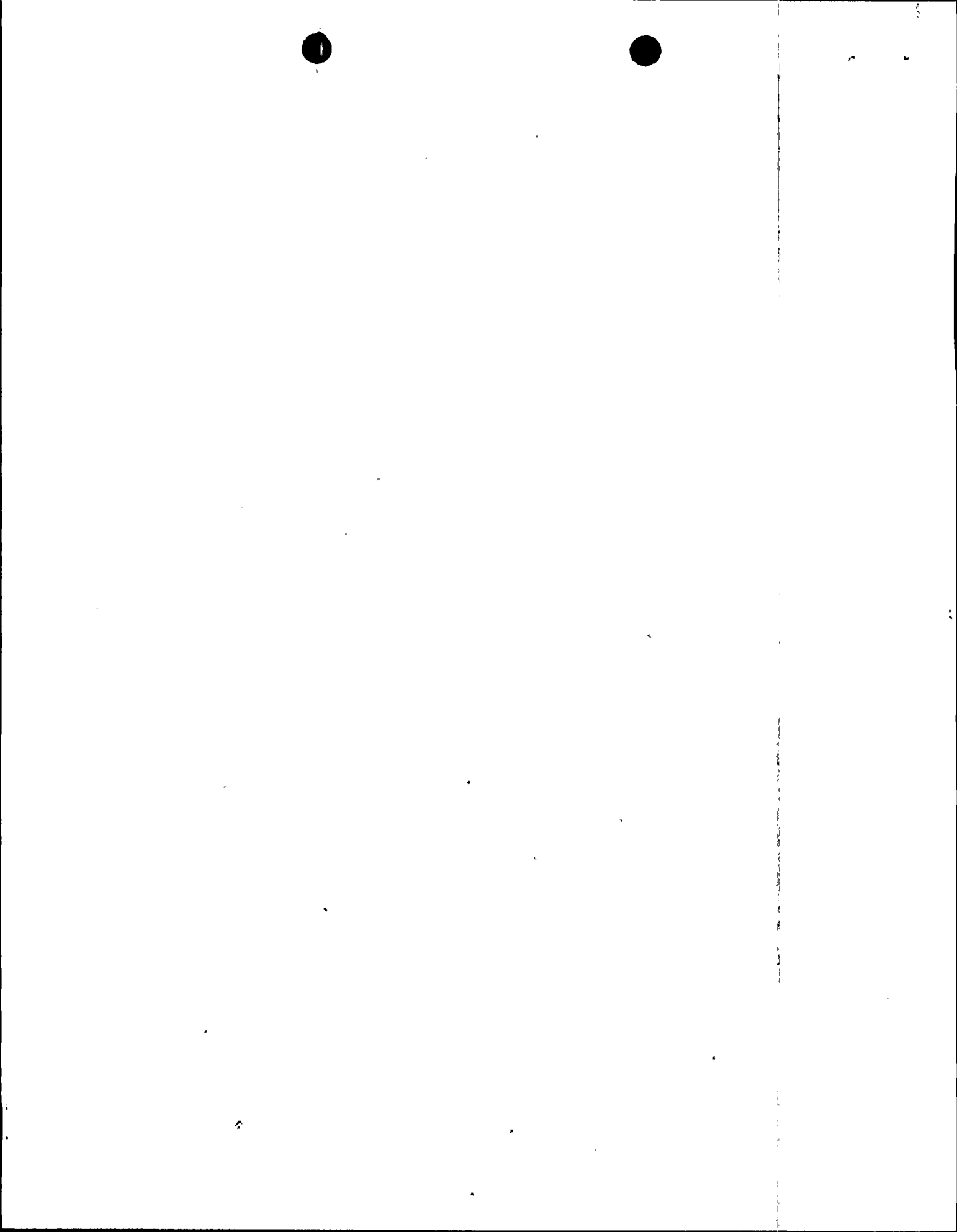

John W. Wilcox
General Attorney
Legal Support Branch

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USNRC
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Office of the Secretary
Docketing & Service
Section

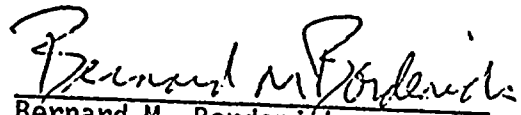
cc: Mr. W. J. Barrow, Jr.
Mr. William H. Green, Esq.

ATTACHMENT NO. 5





Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555


Bernard M. Bordenick
Bernard M. Bordenick
Counsel for NRC Staff



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