

6-17-75
J.W.
Docket file

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 Plant, Unit No. 2)

DOCKET NO. 50-389

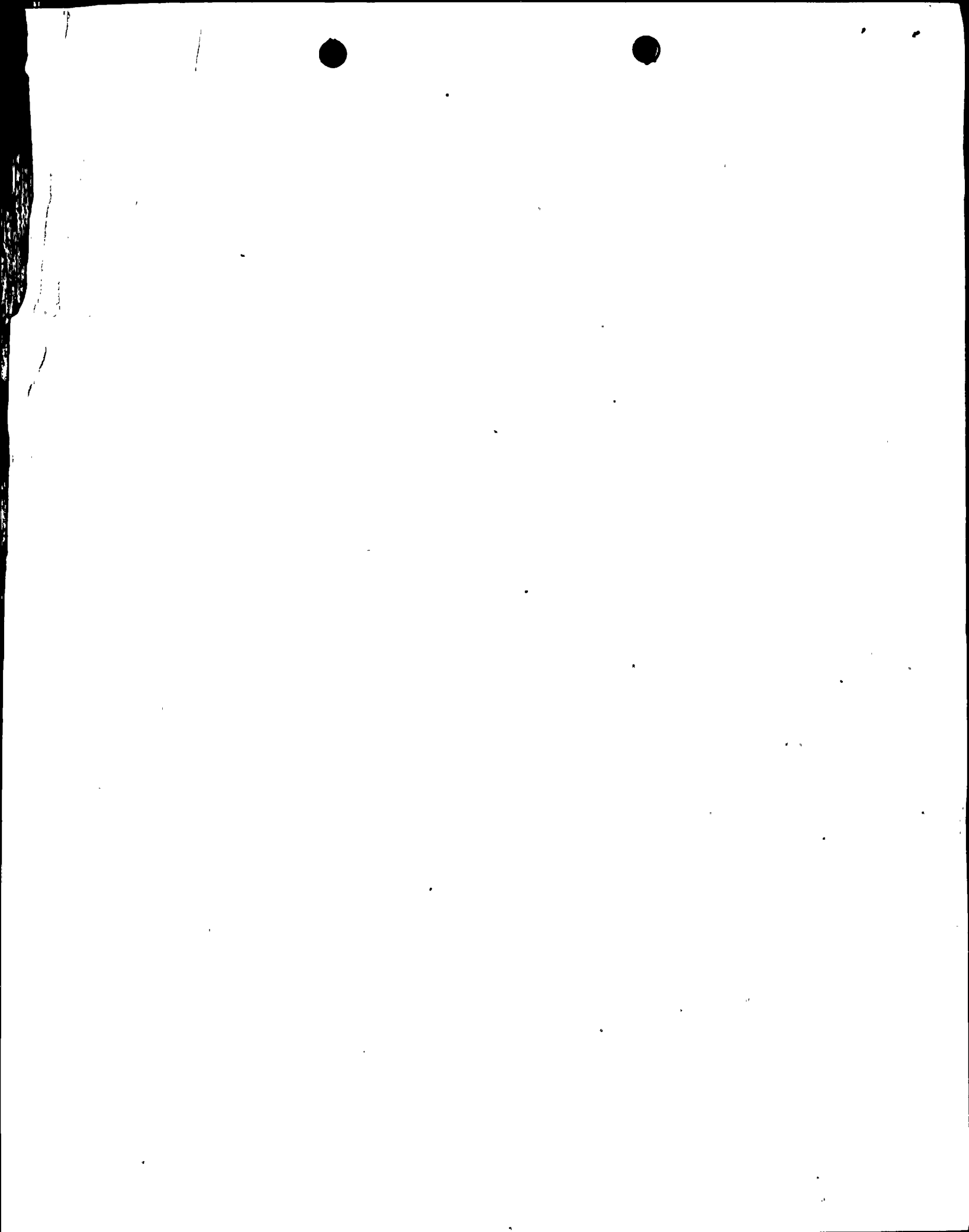
OPPOSITION TO REQUEST FOR FURTHER
EXTENSION OF TIME TO BRIEF EXCEPTIONS

In a Motion dated June 12, 1975, postmarked June 13, 1975, and received by Applicants' counsel on June 16, 1975, Intervenor request an indeterminate extension of time to brief their exceptions. Applicant hereby opposes the request on the merits^{1/} and because it is untimely.

The brief supporting the numerous exceptions filed by the Intervenor was originally due on May 19, 1975.^{2/} However, in

1/ The Motion recites that Applicants' counsel stated that they were "unable to agree to any extension of time for briefing exceptions." On June 12, 1975, Applicants' counsel were asked orally to agree to a two-week extension beyond June 13. No lesser extension (e.g., a few days to complete a brief already commenced) was suggested to Applicants' counsel, and their failure to assent related only to the two-week extension suggested to them.

2/ The exceptions were filed on May 2, 1975. Accordingly, the brief would ordinarily have been due 15 days thereafter, May 17, 10 CFR §2.762(a). However, that day was a Saturday. Accordingly, the brief was due on Monday, May 19, 10 CFR §2.710.



ALAB-274, pp. 4-5 (May 28, 1975), an extension until June 13, 1975 was granted. Accordingly, Intervenors have already received a 25-day extension.

The sole basis for the request for the additional extension is that Intervenors' counsel, already heavily burdened, is preparing for a Florida State Site Certification proceeding scheduled to commence on June 16, 1975, and he is also required to participate in a related suit in the United States District Court.^{3/} However, the Appeal Board has stated "counsel who participate in AEC [now NRC] proceedings have an obligation not to over-extend their commitments so as to frustrate the objective of bringing licensing proceedings to a conclusion within a reasonable time frame."^{4/}

Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-123, RAI-73-5, 331, 353 (May 23, 1973). It is only if this obligation is enforced that other participants in such proceedings will be relieved of unreasonable delay and expense; and it is only where this obligation is met that the requirements of administrative efficiency and expedition will be accommodated.

3/ The status of that suit and the burden it has or will impose upon Intervenors' counsel is not set forth.

4/ The Motion states that the Intervenors "cannot afford to hire additional legal assistance." Not a single iota of evidence concerning the financial status of any of the Intervenors has been offered, and for all that appears, the failure to hire additional counsel merely represents a desire to avoid bearing "costs to the extent of Intervenors' capabilities." Consumers Power Company (Midland Plant, Units 1 and 2), CLI-74-26, RAI-74-7, 1, 2 (July 10, 1974).

In addition to lacking merit, the Motion is out of time.

The Appeal Board has advised counsel that:

"Equally important, we do not approve of the practice of submitting motions for extensions of time by mail on the date the substantive document is due for filing. To be sure, the Commission's rules provide that documents are deemed filed when mailed. 10 CFR 2.701(c). But when the document being filed is a motion for an extension of time, rather than the substantive document itself, we think it appropriate that the motion be transmitted in sufficient time to be in our hands no later than the day before the substantive document is due. We have previously expressed our expectation that this practice would generally be followed, and the Appendix to a recently-revised section of the rules specifically requires that it be followed in connection with appeals from initial decisions." Hereafter, we will view the failure to follow this practice in connection with any motion for an extension of time as providing a sufficient basis, in and of itself, for denying the motion. Any motion which is not transmitted in compliance with the time frame set out above must contain, in addition to the reasons relied upon to justify the extension, a showing of good cause for the failure to transmit the motion in timely fashion." (footnotes omitted; emphasis in original)

Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3, ALAB-117, RAI-73-4, 261-262 (April 20, 1973). And 10 CFR, Part 2, Appendix A, ¶IX(d)(3) provides in pertinent part:

"There must be strict compliance with the time limits prescribed for the filing of exceptions or briefs by the rules of practice or by an order of the Appeal Board which extends or shortens those limits in the particular case. Absent a showing of extraordinary and unanticipated circumstances, motions for extensions of time must be received by the Appeal Board at least 1 day prior to the date upon which the document in question is then due for filing. In no circumstances will a document be accepted by the Appeal Board on an untimely basis unless it is accompanied by a motion for leave to file it out of time, which similarly must be founded upon extraordinary and unanticipated circumstances. . . ."

ALAB-274 cited (p. 4, no. 4) both the Waterford decision and para. IX(d)(3). It also expressly informed the Intervenors of their obligation to "file the required brief by that date [June 13, 1975] unless they have previously submitted and we have granted a motion for further extension of their briefing time. . . ." (footnote omitted).

This admonition has simply been ignored. Obviously the Board would be most unlikely to receive and be in a position to grant a motion on June 13 if it was not mailed until June 12, particularly under circumstances where it might not even be forwarded from the local post office until June 13. Moreover, no good cause for the delay in making the request -- let alone "extraordinary and unanticipated circumstances" -- is even suggested in the Motion. The Intervenors have long known of the existence of the proceedings now claimed to occupy their counsels' time. The District Court litigation was commenced on May 15, 1975. The Florida Site Certification hearing has been scheduled to commence on June 16 since at least May 7.^{5/}

5/ See pleadings in Martin County Conservation Alliance v. Florida Power & Light Company, (S.D. Fla. Miami Division) Case No. 75-821-CIV-CA; see also schedule contained in "Pre-Hearing Conference Order," dated May 7, 1975, p. 5 in re Florida Power & Light Company, State of Florida Division of Administrative Hearings, Case No. 75-006.

The effect of the delay in requesting the extension is to place the Board in the position of either enforcing its rules -- rules which were carefully called to Intervenor's attention -- or to appear to be unduly severe with professedly disadvantaged parties. This Board should not permit itself to be so manipulated.

For the foregoing reasons, the Motion should be denied.

Respectfully submitted,

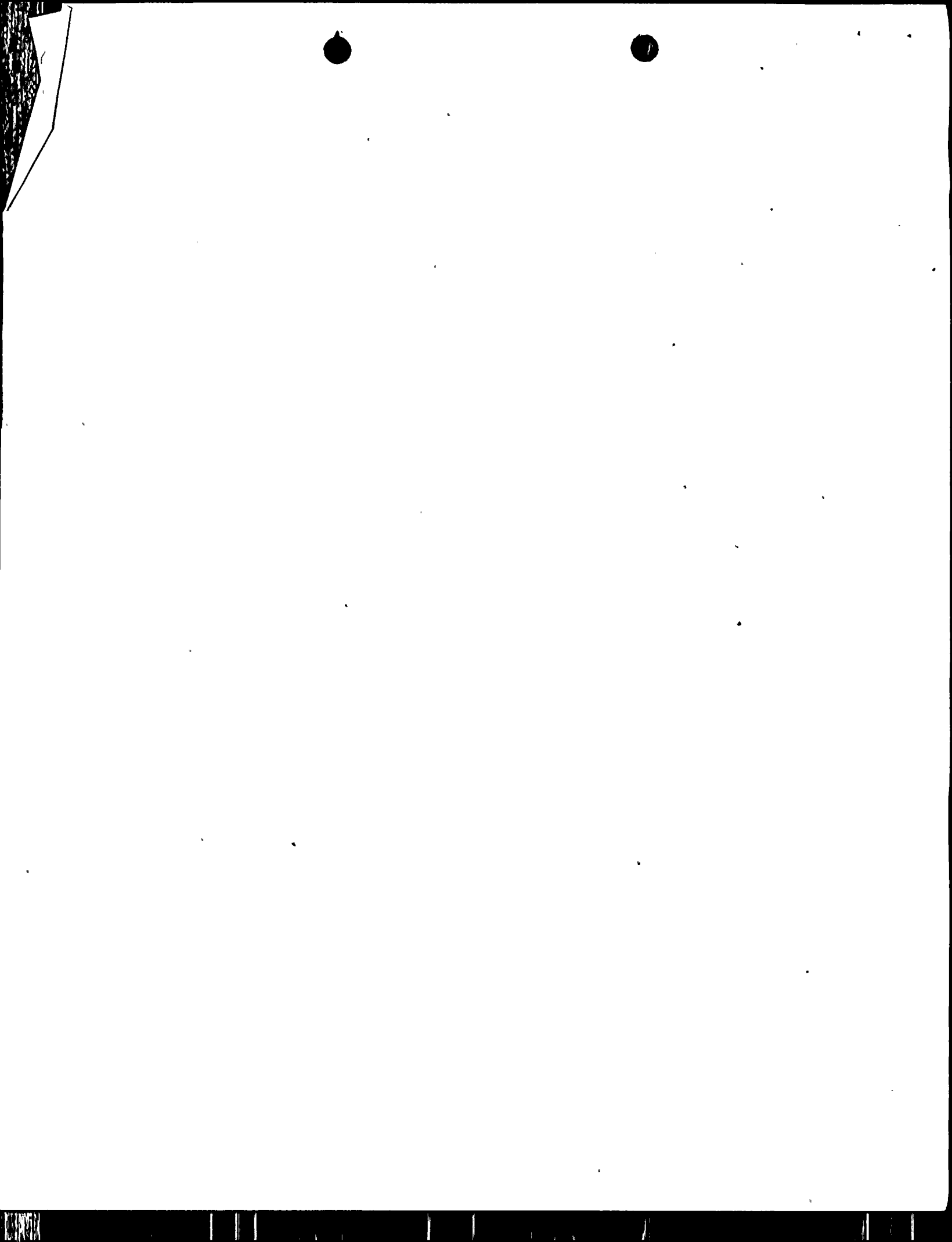
LOWENSTEIN, NEWMAN, REIS
& AXELROD

Co-Counsel for Applicant

June 17, 1975

By

Harold F. Reis
Harold F. Reis

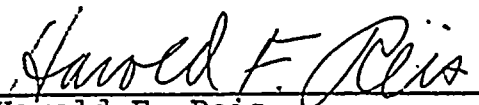


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing,
"Opposition to Request for Further Extension of Time to
Brief Exceptions," dated June 17, 1975, have been served on
the persons listed on the attached Service List by deposit
in the United States mail, first class or air mail, this
17th day of June, 1975.



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