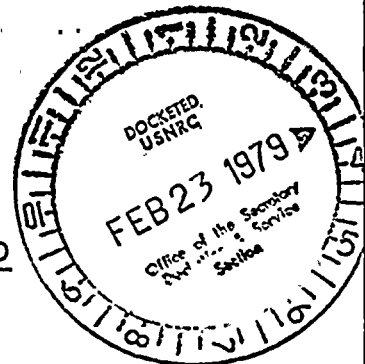


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

2/14/79

In the Matter of)

CAROLINA POWER & LIGHT COMPANY)

(Shearon Harris Nuclear Power)
Plant, Units 1, 2, 3, and 4)

Docket Nos. 50-400
50-401
50-402
50-403

MOTION REQUESTING EVENING HEARINGS

In view of the interest expressed in this hearing by North Carolina citizens and consumer groups, and taking into account (1) the job demands of many citizens and (2) the public interest served by the Atomic Safety and Licensing Board, this intervenor respectfully requests that a minimum of two hearings be held after 6 p.m. during the first weekly session, so interested citizens may observe the hearings and participate at the discretion of the Board.

Respectfully submitted this the 14th day of February, 1979:

RUFUS L. EDMISTEN
Attorney General

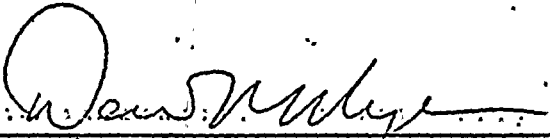
Dennis P. Myers
Special Deputy Attorney General

Post Office Box 629
Raleigh, NC 27602
Telephone (919) 733-7214

CERTIFICATE OF SERVICE

The undersigned certifies that he has served a copy of the foregoing Motion Requesting Evening Hearings upon the parties of record in this proceeding and their attorneys by hand delivering or depositing a copy of the same in the United States Mail.

This the 14th day of February, 1979.



Dennis P. Myers
Special Deputy Attorney General

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

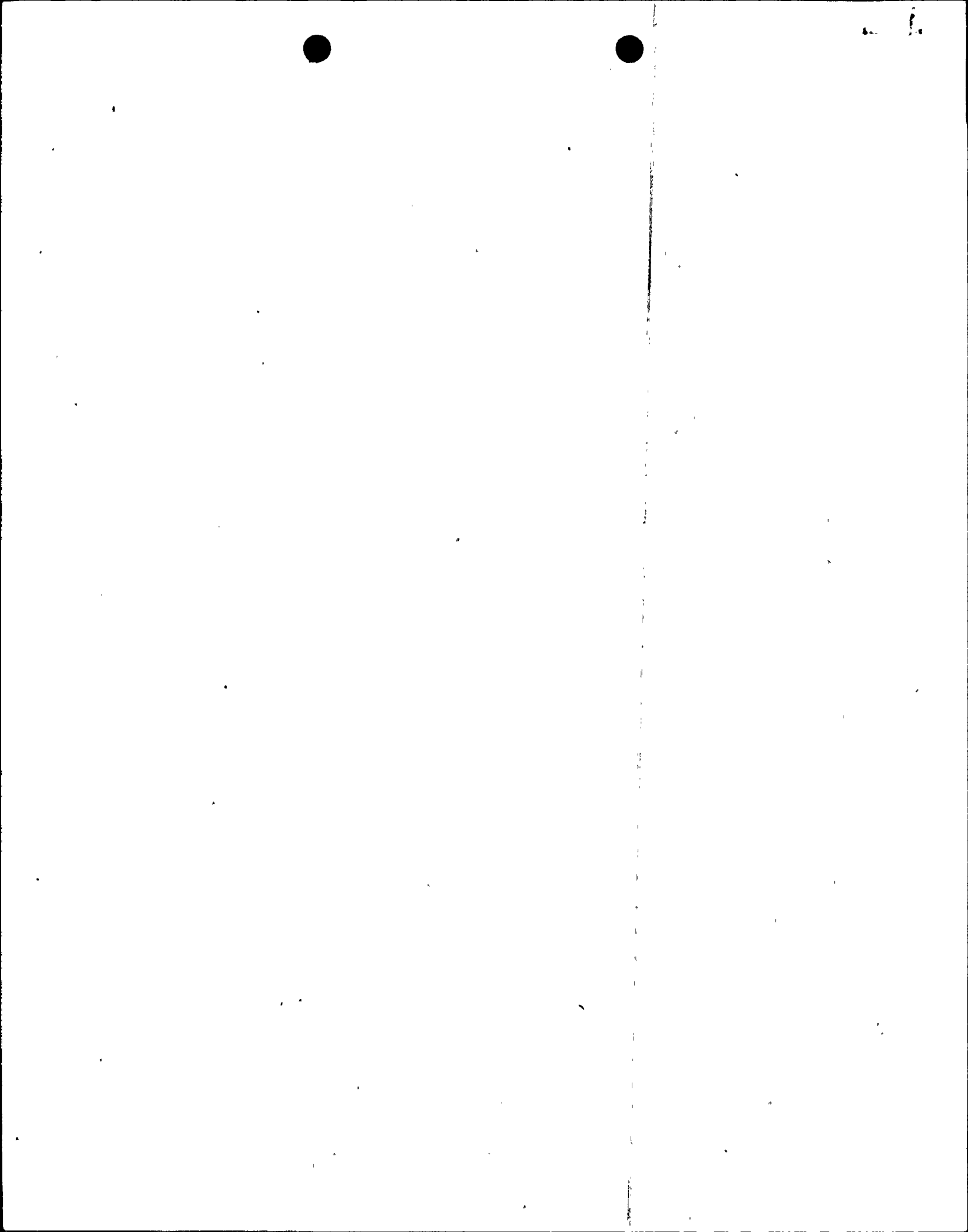
In the Matter of)	
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CAROLINA POWER & LIGHT COMPANY)	Docket Nos. 50-400
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APPLICANT'S ANSWER TO NOTICE OF APPEAL
AND APPEAL BRIEF OF
KUDZU ALLIANCE AND WELLS EDDLEMAN

By Memorandum and Order dated January 10, 1979, the Atomic Safety and Licensing Board denied the petition of Kudzu Alliance and Wells Eddleman (Petitioners) to intervene in this proceeding. Petitioners have appealed this denial by Notice of Appeal and Appeal Brief dated January 17, 1979.

As has been the case with all of Petitioners' filings with the Licensing Board, no copies of the Notice of Appeal or Appeal Brief were served on Carolina Power & Light Company (Applicant) or its counsel. Copies of the Notice of Appeal and Appeal Brief were obtained by Applicant's counsel from the Docketing and Service Section of the Office of the Secretary.

Each of the Petitioners appeals the denial of what Petitioners characterize as two separate petitions to intervene



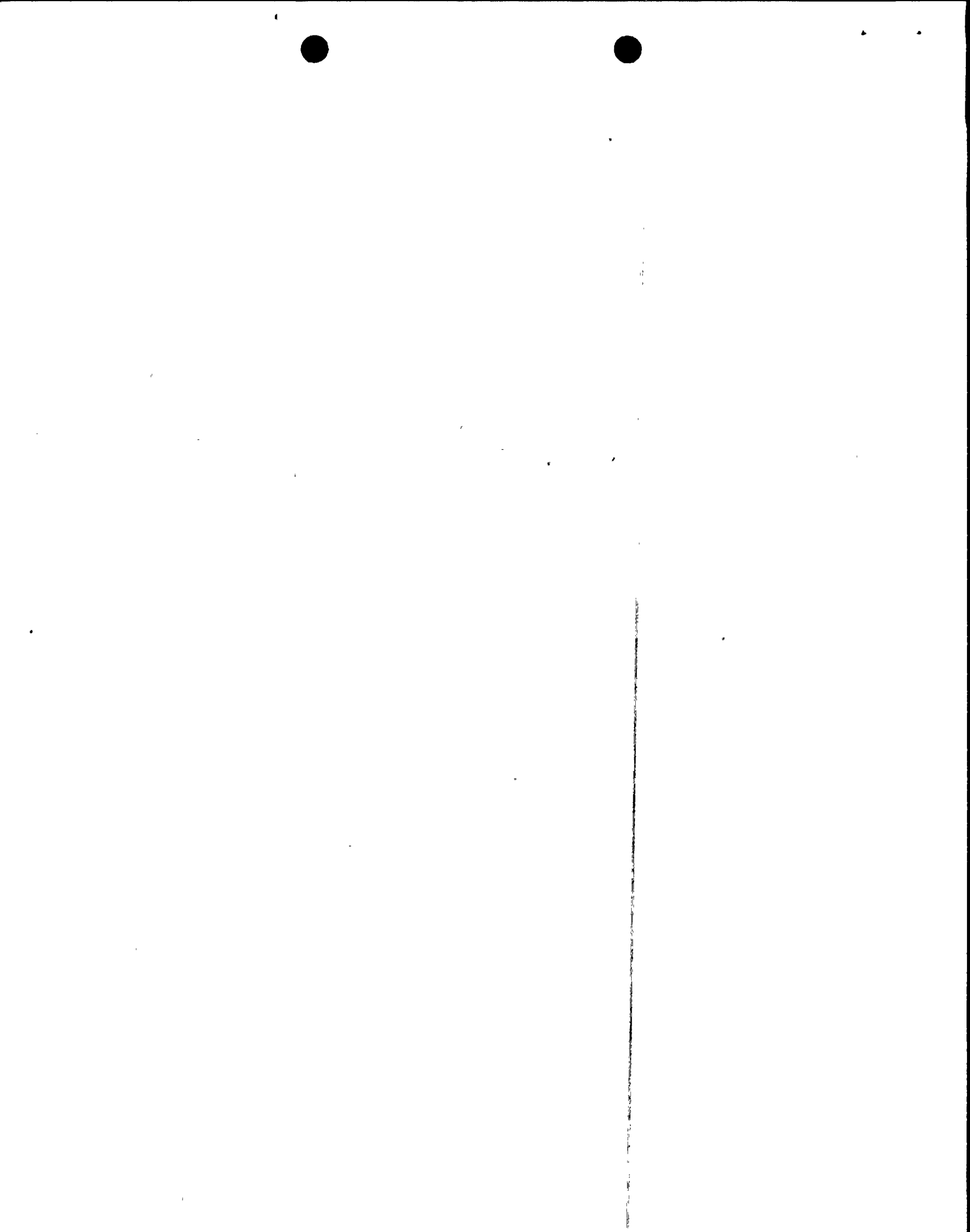
-- one a petition for "general intervention" and the other a petition to intervene in the hearings on Applicant's management capabilities to be held by the Atomic Safety and Licensing Board pursuant to remand by Order of the Commission dated September 5, 1978.

I. Petition for General Intervention

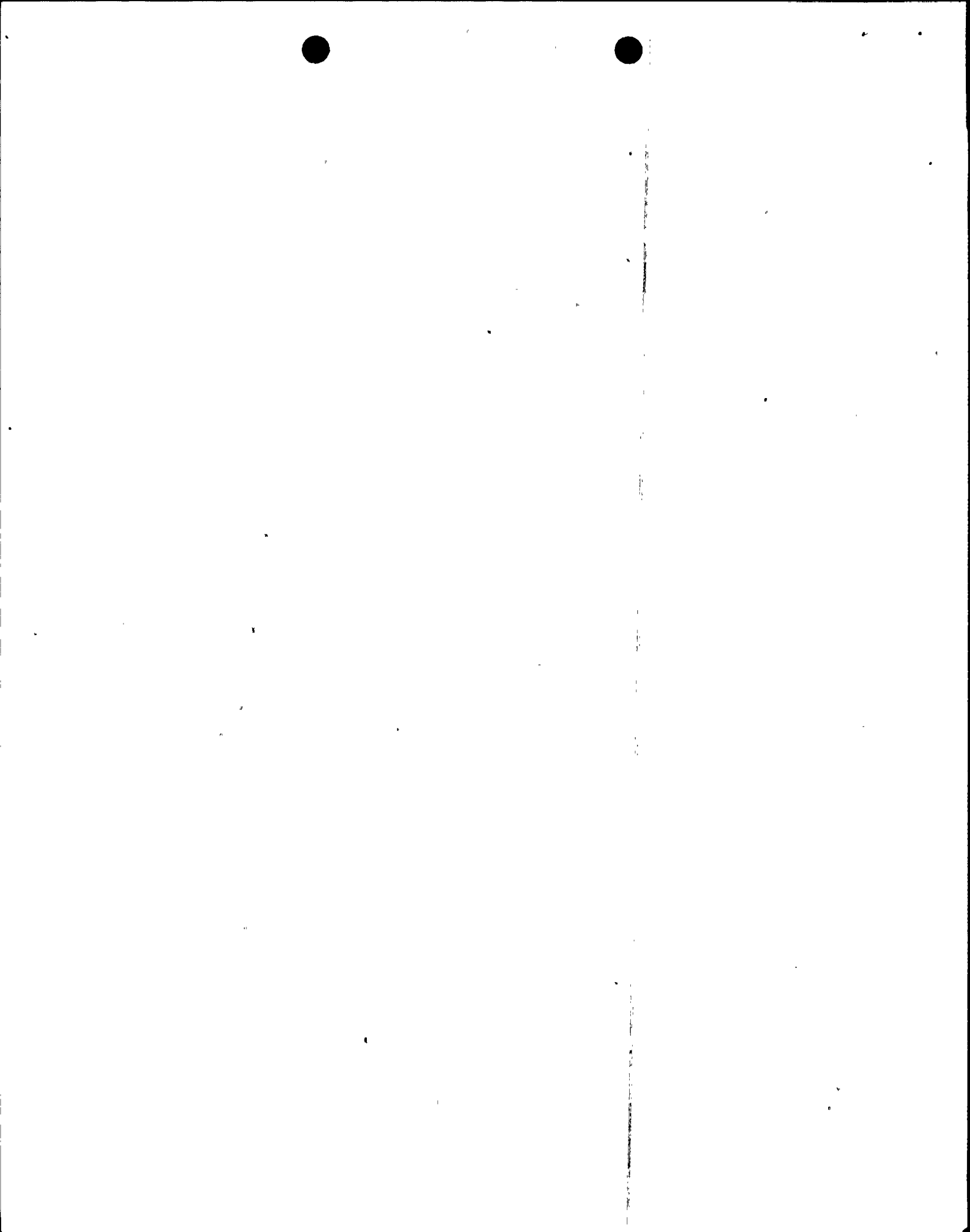
In its Memorandum and Order denying Petitioners' request to intervene the Licensing Board treated three letters from Mr. Eddleman dated November 7, 27 and 29, 1978, as a petition to intervene on behalf of both Petitioners. The Licensing Board construed the petition as requesting in part that the Board reopen the Harris construction permit hearings on all of the issues raised therein. The Licensing Board denied this part of the petition for want of jurisdiction.

Petitioners' Appeal Brief explains, however, that it was not Petitioners' intent to request at this time a reopening of the hearing by the Licensing Board on all of the issues identified in their letters to the Licensing Board.^{1/} Petitioners describe their petition for general intervention

^{1/} Petitioners have, however, made such a request to the Nuclear Regulatory Commission by a communication dated January 17, 1979. Applicant will respond to this request as appropriate after the Commission determines how the request is to be treated procedurally.



instead as a request that they "be made parties to the entire Harris plant case, dockets 50-400 through 50-403, and allowed to participate in any future hearings on it, including any we [Petitioners] may request." As so explained, the petition for general intervention must be denied as inconsistent with the Commission's regulations. Under the Commission's Rules of Practice the construction and operation of a nuclear power plant may entail a variety of proceedings involving hearings or opportunity for hearings, e.g. hearings on applications for a construction permit, for an operating license, for amendments of a construction permit or an operating license; hearings for antitrust review; and hearings initiated by the NRC on its own initiative or upon request of an interested person on the modification, suspension or revocation of a construction permit or operating license. Section 2.714 of the Rules of Practice clearly contemplates that an interested person desiring to participate in such hearings must petition to intervene in each such hearing and that licensing boards established to rule on petitions to intervene in each such hearing will consider with respect to that hearing the interest of the petitioner in specific aspects of the issues specified in the notice of hearing, the timeliness of the petition in relation to the notice of hearing, the responses of other parties to the petition, and the possible conditioning of an order permitting intervention to avoid repetition and duplication



or to limit participation to issues in which the petitioner has an interest. There is no place in the NRC licensing procedures for a blanket request that a person automatically be made a party to any and all hearings associated with a docketed application for construction and operation of a nuclear power plant.

II. Petition to Intervene in Remanded Hearing

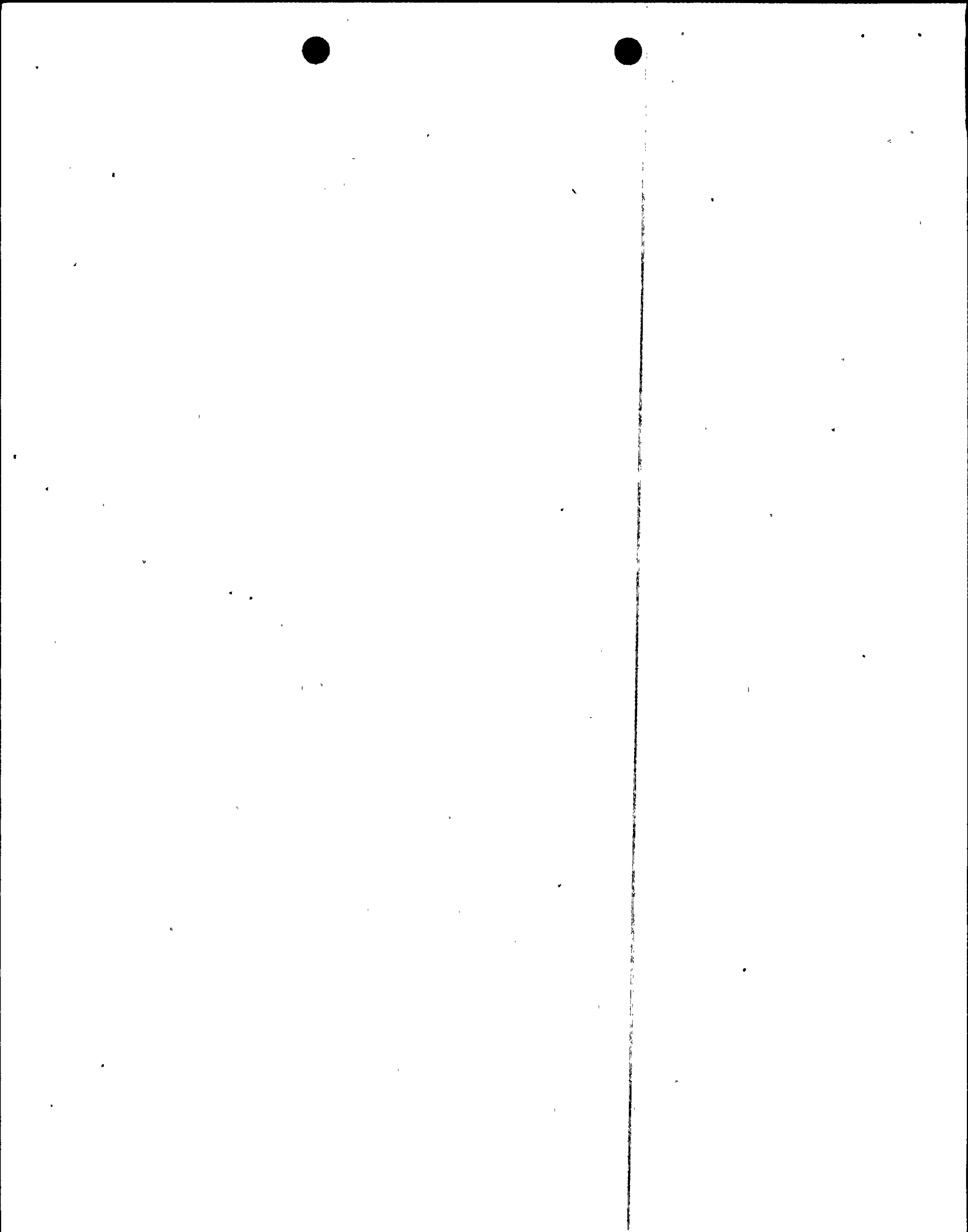
In considering the Licensing Board's denial of Petitioners' request to intervene in the remanded hearing on Applicant's management capabilities, and the reasons assigned by the Licensing Board for that denial, it is important first to review the occasion for the remand and the purpose and focus of the remanded hearing.

The occasion for the remand was the letter of August 30, 1978, from the Licensing Board to the Nuclear Regulatory Commission stating that, in the light of a line inspector's report which surfaced after the hearing, the Licensing Board had been misled by the testimony of two NRC supervisory inspectors regarding Applicant's management capabilities in the light of experience in the operation of Applicant's Brunswick nuclear units.

The Nuclear Regulatory Commission remanded the proceeding solely because the Licensing Board's letter to the

Commission raised "questions regarding the forthrightness and accuracy of certain staff testimony concerning the management capabilities of Carolina Power & Light Company" and because "The Licensing Board's letter concerns the integrity of the adjudicatory process." The Commission further ordered the Office of Inspector and Auditor (OIA) to conduct a thorough inquiry into the basis for, and seriousness of, the alleged omission of the concerns of the line inspector from the written and oral testimony of the staff. OIA was to file a report on its inquiry with the Licensing Board and the record of the remanded hearing was not to be closed until the parties had an opportunity to assess what bearing, if any, the facts disclosed in the OIA inquiry have on Applicant's management capability.

Thus the purpose and focus of the remand was to explore further the testimony of the NRC supervisory inspectors and the line inspector's report and views. Such exploration could reasonably include further inquiry into the accuracy, completeness and implications of events noted and reported in the course of inspections or contained in the licensee event reports referenced by the line inspector. But the purpose of the remand was not, as Petitioners would have it, to conduct a new and far-reaching inquiry on topics ranging from the fitness of Applicant's contractors to contingency plans for decommissioning the Harris units, which could conceivably have



a bearing on Applicant's management capabilities but no relationship to the occasion or purpose of the remand.^{2/}

In the context of the Commission's remand order Applicant submits that the Licensing Board's findings on and balancing of the five factors enumerated in 10 CFR 2.714(a)(1) were eminently sound.

1. Good cause for late intervention. Petitioners do not dispute that their petition to intervene is late. They argue that the fact that Mr. Eddleman was not a resident of the area and that the Kudzu Alliance had not been formed at the time of the initial notice of hearing in 1972 or subsequent re-notice in 1977 constitutes good cause for a late filing. The Licensing Board rightly rejected this argument. A contrary ruling would mean that applicants for nuclear power plant permits and licenses would be subject to perpetual litigation as new opponents of the plant took up residence in the area and as existing residents formed new organizations to oppose the plant.^{3/}

^{2/} For this reason the Licensing Board was correct in singling out point 11 in Petitioners' letter of November 7 as the only issue raised by Petitioners bearing directly on the Staff testimony with respect to Applicant's operating experience and management capabilities.

^{3/} Petitioners argue that one member of Kudzu Alliance, Mr. John Speights, "tried to intervene in 1971 (sic) and was denied." Mr. Speights did on October 2, 1972, within the time prescribed by the original notice of hearing, send a postcard to the Secretary of the Commission expressing his interest in participating in the hearing as an "intervention party." Both the Staff and Applicant answered
(continued)



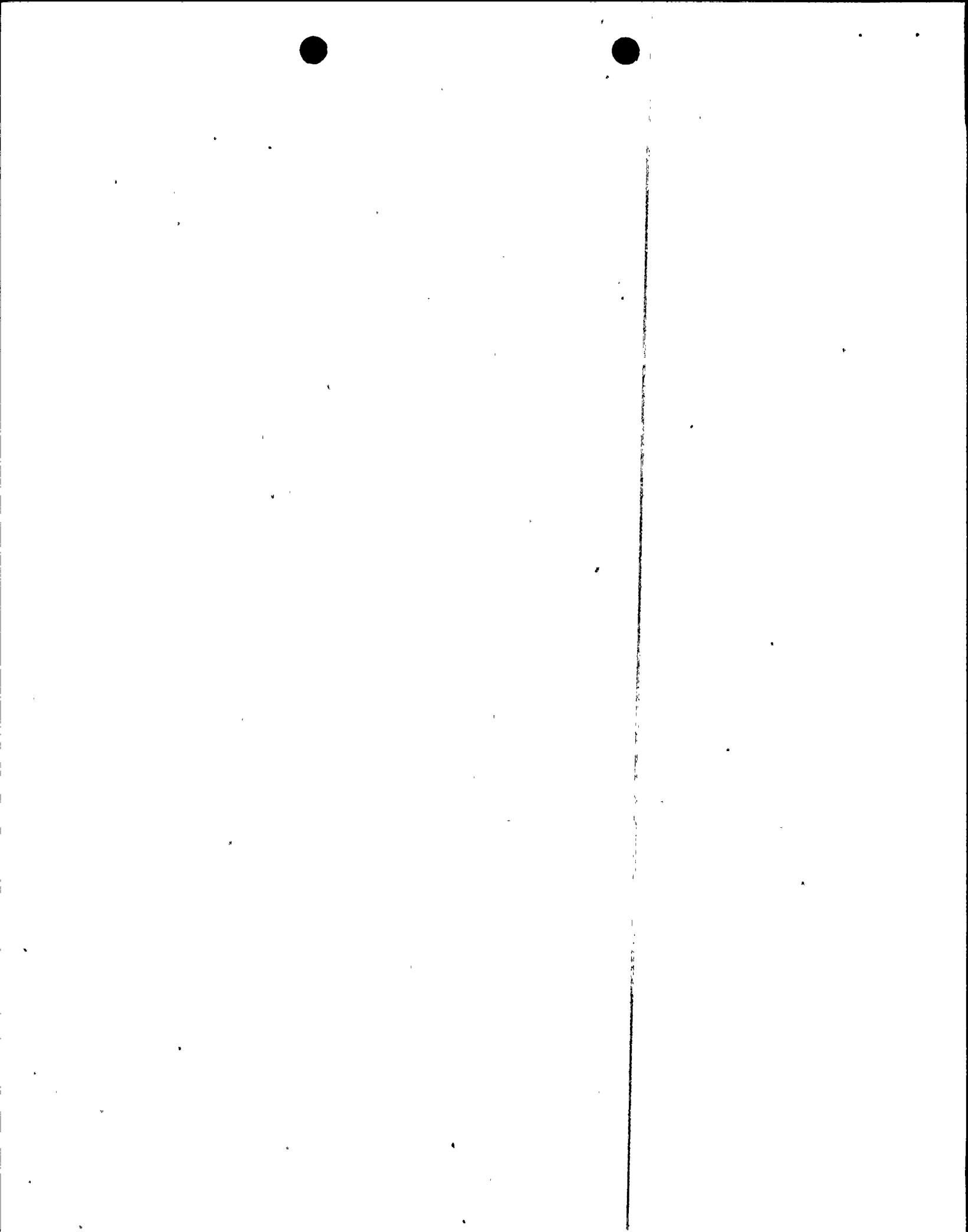
2. Availability of other means for protecting Petitioners' interests. The Licensing Board found that there are no other means by which the Petitioners' interests in the remanded issue will be protected.^{4/} It expressly took this factor into account in Petitioners' favor in weighing all of the factors to be considered.

3. Assistance in developing a sound record. The Licensing Board correctly notes that Petitioners make only passing reference to the central issue in the remand proceeding, namely a reexamination and reassessment of the results and implications of NRC inspection reports and testimony, and that Petitioners give no indication that they are in a position to make a significant contribution to the record of the

(Footnote continued)

the postcard opposing it as a petition to intervene on the ground that it met none of the most elementary requirements of the Rules of Practice then in effect, including a failure to state either his interest or any contentions. He was provided ample opportunity by the Licensing Board at a prehearing conference on January 30, 1973, to expand on his interest and concerns. (Tr. 14-24) The Board denied his petition on the ground that "his petition fails to meet the requirements of § 2.714, and, further, that a consideration of the factors listed in paragraph (d) of that section and the generalized nature of his expressed concerns rule out his qualifying as an actively participating party." (Special Prehearing Conference Order, pp.1-2)

4/ Since under the Commission's order the remanded issue includes Applicant's management capability to operate as well as construct the Harris units, the Board's finding overstates the situation. Petitioners themselves recognize in their Appeal Brief the further opportunity for hearings at the operating license stage.



proceeding. With respect to this central issue -- in fact in respect to any of the issues sought to be raised by Petitioners -- there is no showing whatsoever that Petitioners have new information to contribute,^{5/} the technical expertise to evaluate information provided by others or any experience in the management of a nuclear power plant. While Mr. Eddleman asserts that he is "knowledgeable in general engineering, systems engineering, and energy issues," that he has "access to many other knowledgeable professional and lay persons," and that Kudzu Alliance has "several other members with professional experience in medicine, health, engineering and alternative energy sources," he gives no hint how this knowledge or experience would be brought to bear on the subject of Applicant's management capabilities.^{6/}

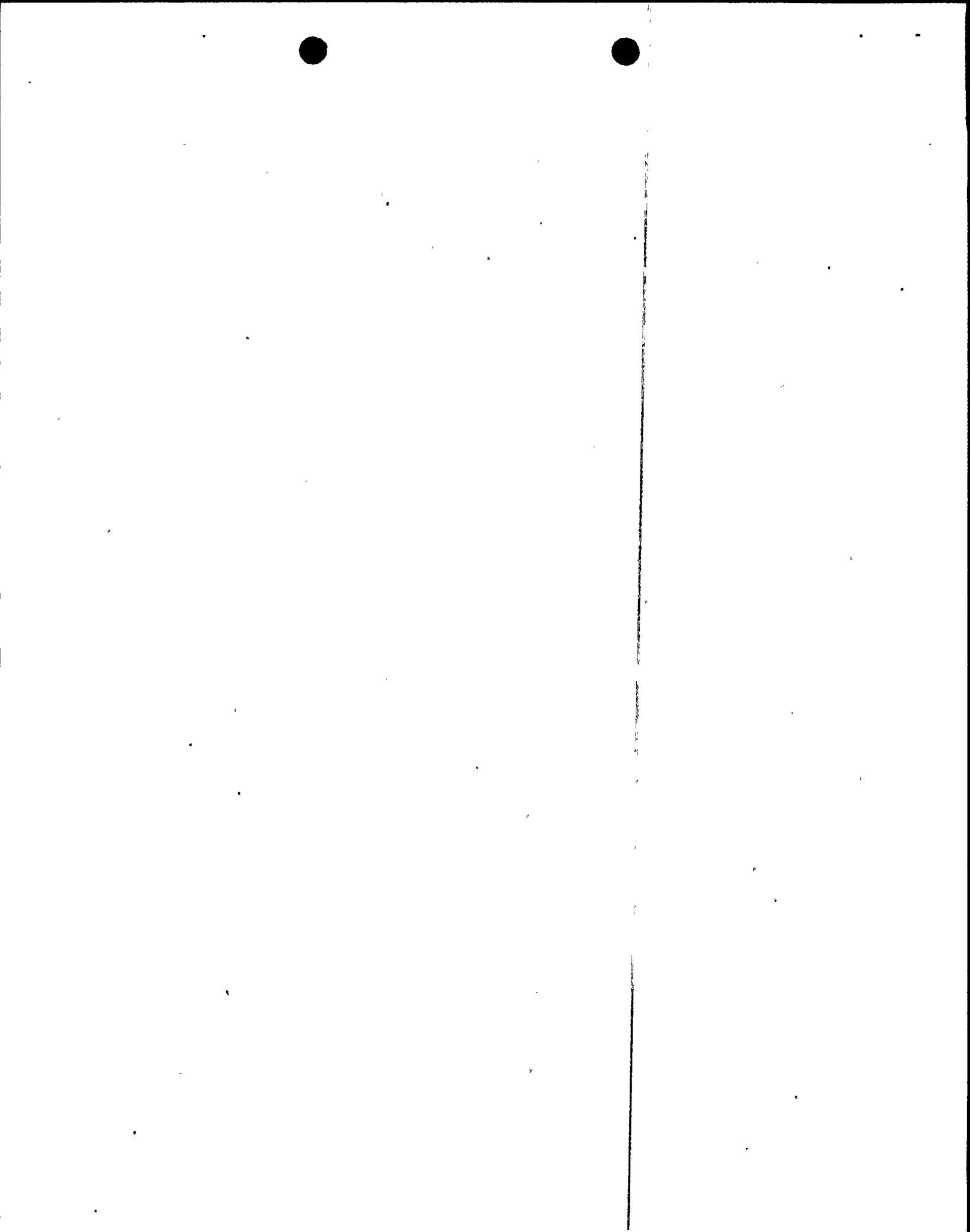
^{5/} Petitioners assert in their letter of November 29 (p.5) that they have spoken to unidentified residents and people within CP&L, many of whom would not give their names, at the NC State Fair, and are thus in a position to provide information on "many things that go wrong in construction." No other description of the alleged information is provided. "It is to be hoped that we are long past that sorry day in this Nation's history when reliance was placed upon statements assertedly made by anonymous informants unwilling to come forward and be confronted on the accuracy of those statements." Metropolitan Edison Company et al (Three Mile Island Nuclear Station, Unit No. 2), ALAB 525, 9 NRC (February 1, 1979), Slip Op. at pp.6-7.

^{6/} Mr. Eddleman also claims that many members of Kudzu Alliance, including himself, have investigative experience which will also be helpful. He recites as his own experience his investigation of "the educational policies, history, dining policies, and CIA connections to MIT while he was a student there, as well as an investigation of General Motors policies." Letter of November 29, p.5.

Appeal Board decisions have stressed the discretion vested in Licensing Boards in acting on late petitions to intervene and that the role of the Appeal Board is confined to deciding whether that discretion has been abused. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-339, 4 NRC 20, 24 (1976). Here, where the Licensing Board itself raised at the construction permit hearing the issue of Applicant's operating experience and its bearing on Applicant's management capabilities and has announced its intention to actively participate in the further development of the record, special deference is due the Licensing Board's determination as to whether Petitioners' participation would assist in the development of a sound record on the remand issue.

4. Representation of Petitioners' interests by existing parties. Mr. Eddleman and Kudzu Alliance have asserted no interest cognizable in the proceeding other than a legitimate interest common to other residents of the area in the safety and environmental impact of the Harris units. The interest of Petitioners is thus identical to the interest of the existing Intervenors, Conservation Council of North Carolina and Wake Environment, Inc., as set forth in their Petitions for Intervention dated October 30, 1972, and October 28, 1972, respectively.

The question posed by this factor is not whether existing Intervenors or their counsel represent Mr. Eddleman or



Kudzu Alliance but whether they represent the same interest. It may well be that Petitioners, if allowed to intervene, would pursue their common interest differently than existing Intervenors and would advance different contentions. This, however, goes only to the question, previously discussed, as to whether Petitioners have shown special expertise or information in some area not covered by existing Intervenors which would contribute to the development of a sound record on the remand issue. Petitioners have made no such showing.

5. Whether Petitioners' intervention would broaden the issues or delay the proceeding. We have already pointed out that Petitioners seek to inject in the remand proceeding a number of issues which could conceivably have a bearing on Applicant's management capabilities but which in the context of the Commission's remand order are outside the scope of the remand proceeding. As to the question of delay, a late intervention by Petitioners would inevitably delay the proceeding. The Licensing Board has scheduled the remand hearing commencing February 27, 1979. If Petitioners are allowed to intervene in the hearing, the only practicable course open to the Licensing Board will be either to postpone the hearing or to proceed as scheduled with existing parties and to reconvene the hearing later to accommodate Petitioners' intervention. It is inconceivable to Applicant that participation in the hearing by Petitioners could start on February 27. We do not

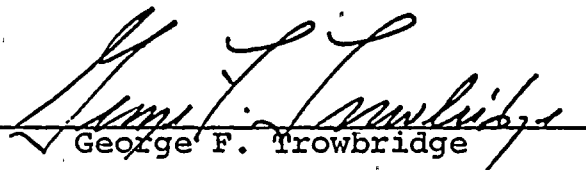


know, of course, how long it would take Petitioners "to get on with preparing our case," to assemble unidentified "new information such as we wish to present" or to complete "investigation such as we wish to conduct." (Appeal Brief, pp. 18 and 19) We do know, however, that Applicant would insist in accordance with the Commission's Rules of Practice that Petitioners file specific contentions, and that Applicant have the opportunity to question the allowability of such contentions, before Petitioners embark on testimony or cross-examination.

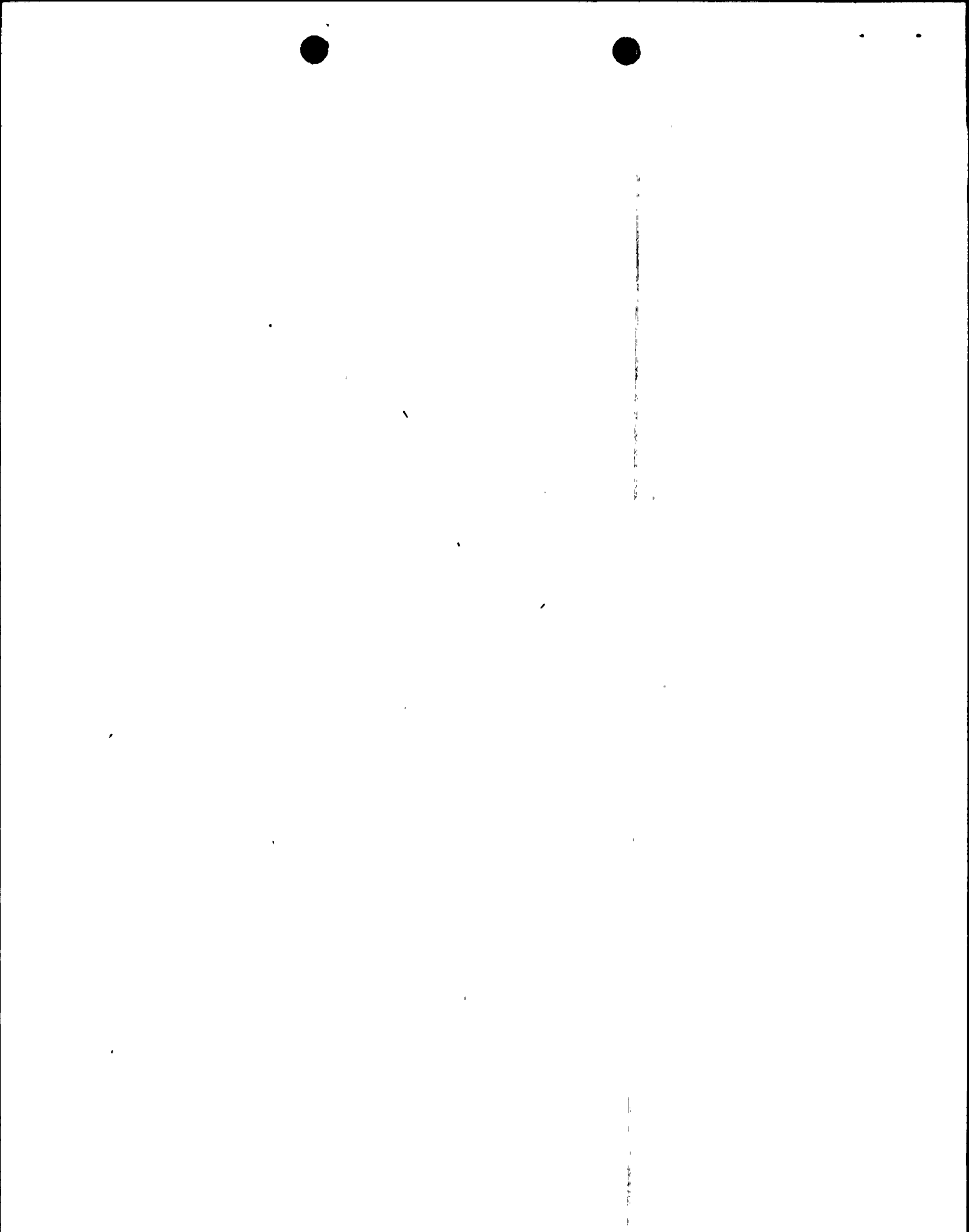
Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


George F. Trowbridge

Dated: February 9, 1979



February 9, 1979

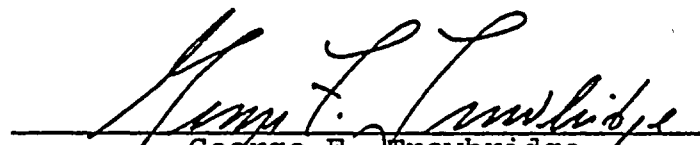
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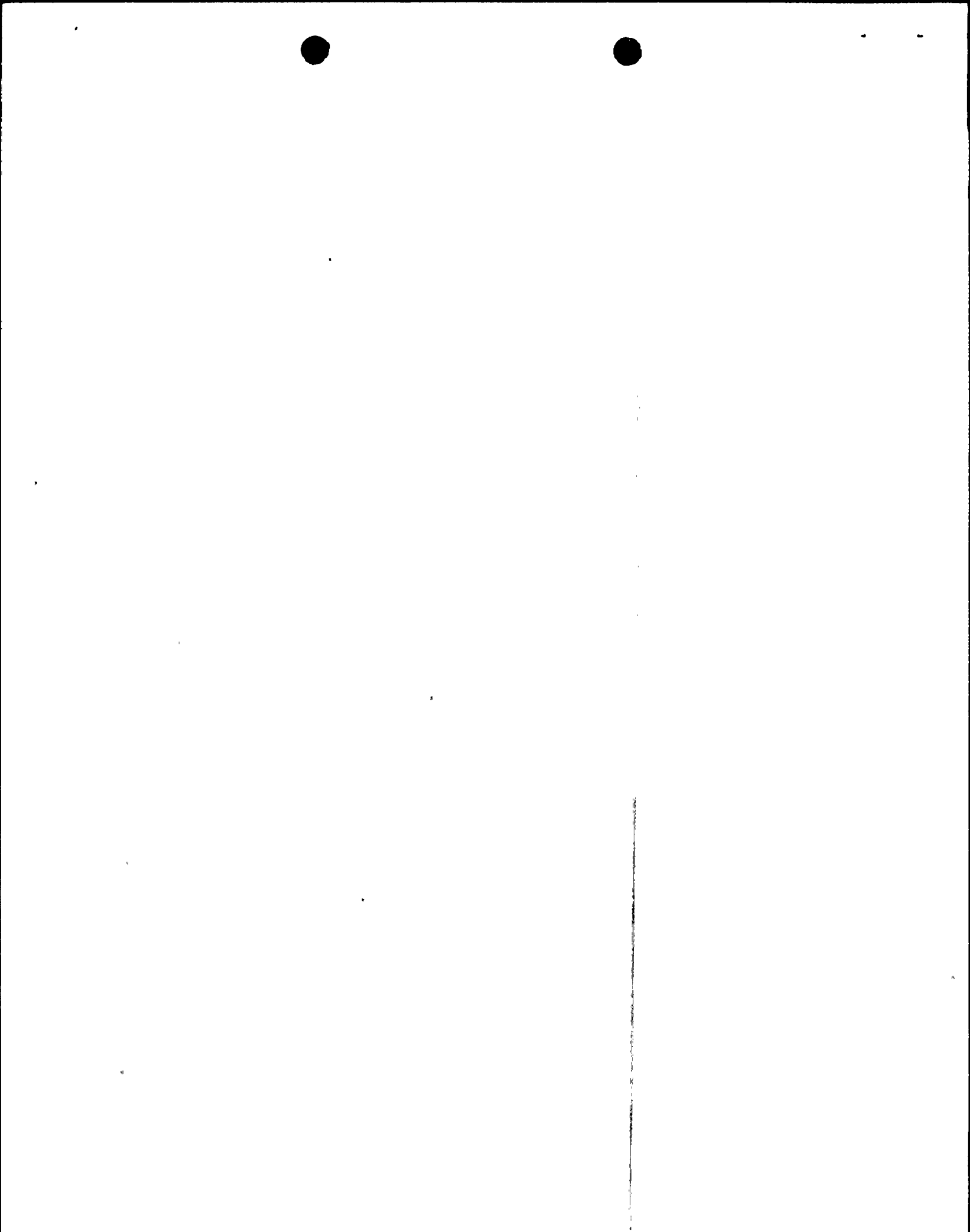
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Notice of Appeal and Appeal Brief of Kudzu Alliance and Wells Eddleman," dated February 9, 1979, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 9th day of February, 1979.


George F. Wrowbridge

Dated: February 9, 1979



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