

11/27/79

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 Operating License
(Turkey Point Nuclear Generating	) to Permit Steam Generator
Units Nos. 3 and 4)	) Repairs)
	)
	)

SUPPLEMENT TO  
LICENSEE'S OBJECTIONS TO  
INTERVENOR MARK P. ONCAVAGE'S  
INTERROGATORIES TO, AND REQUEST  
FOR THE PRODUCTION OF DOCUMENTS  
FROM LICENSEE, FLORIDA POWER  
AND LIGHT COMPANY.

On November 7, 1979, Licensee filed and served a number of objections to the voluminous interrogatories and requests for production of documents served by Intervenor October 29, 1979.

Licensee files this Supplement to those objections pursuant to footnote 3 of the November 15, 1979 "Order Relative to Discovery and Scheduling".

In its previous filing, Licensee provided specific written objections with legal citations immediately following each discovery request. In this Supplement, Licensee groups some of those objections into four major categories and provides additional legal authority which supports those particular objections.

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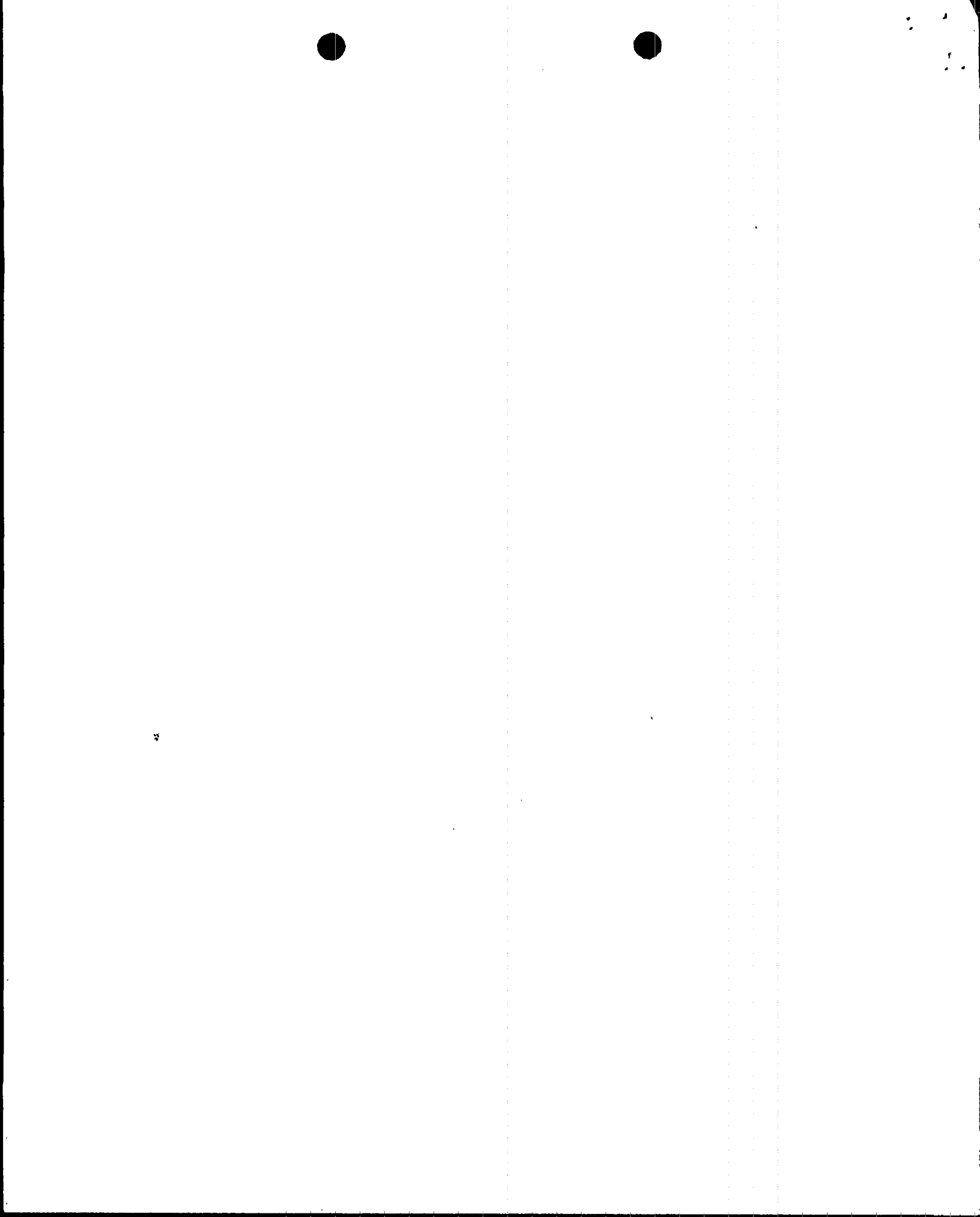
This Supplement does not contain any objections to interrogatories or requests not previously the subject of objections served November 7, 1979. Although the Board's Order finds that in the November 7, 1979 document "The vast majority of the voluminous requests were rejected ..." (Order p. 3), we respectfully submit that objections were filed to only 107 of the 276 numbered paragraphs.

1. Limitations on Scope of Discovery.

Under 10 CFR § 2.718, the Board has broad discretionary authority to confine discovery within reasonable limits. Consumers Power Company (Midland Plant, Units 1 and 2) ALAB-123, 6 NRC 331, 340 (1973).

Not all of the information possessed by a party is open to discovery, which is limited to relevant information. 10 CFR § 2.740(b)(1). Discovery has such limits "[f]or the rules do not require, and the public interest does not warrant, an application which would make all documents and information possessed by a person (whether or not a party) available to a discoverer." Commonwealth Edison (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 461 (1974). (Emphasis original.)

In objections already filed and served, Licensee has noted that some of the information requested is related to Intervenor contentions which have been rejected by the Board (Interrogatories 1-1 through 1-10; 1-30 through 1-36; 2-14



through 2-16), or is not relevant to the contention under consideration. (Interrogatories 1-11; 1-12; 1-14; 1-16 through 1-22; 1-24; 1-29; 1-30 through 1-36; 2-14 through 2-16; 2-25; 2-31; 3-2 through 3-12; 3-14 through 3-17; 3-20; 3-21; 3-31 through 3-34; 6-1 through 6-3; 6-20; 6-30 through 6-34; 7-8 through 7-10; 7-15 through 7-18; 7-23; 9-1 through 9-3; 9-12; 9-22; 9-23; 9-27; 9-28; 11-5; 11-9 through 11-12; 11-14; 11-18; 11-20; 11-24 through 11-30; 11-33; 11-34; 11-37; 13-5; 13-6(g) and (h) through 13-18(g) and (h); 14-1 through 14-3; 14-8(c) (3) (f) and (g); 14-9; 14-11(a); 14-13; 14-14; 14-20 through 14-26.)

Although judicial case law can be found establishing broad definitions of "relevancy", the Commission's regulations (10 CFR § 2.740(b)(1)) only permit discovery of information or documents "relevant to the subject matter involved in a proceeding" and then further qualify and limit the term "subject matter" to the specific contentions admitted by the presiding officer in the proceeding. Allied General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), LBP 77-13, 5 NRC 489, 492 (1977). See also 10 CFR Part 2, App. A, para. IV(a), stating that discovery is limited to "the key issues in controversy".

It has been specifically held that objections to interrogatories directed to the subject matter of contentions excluded by the Board will be sustained and need not be answered.



Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP 75-42, 2 NRC 159, 171 (1975).

The Appeal Board has similarly held such requests to be improper, stating:

"It [the Licensing Board] should have taken steps to narrow the request to documents relevant to the particular contention under consideration. Not to do so was an abuse of discretion in the circumstances of the present case."

Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 471 (1974).

2. Burdensome, oppressive, and Unreasonable Requests.

Some of the discovery requests are overly broad and unlimited in scope as to time so as to be oppressive and burdensome. (See, e.g., Interrogatories 1-16; 1-17; 1-34; 1-35; 3-2 through 3-6; 3-9 through 3-12; 3-14 through 3-17; 6-4 through 6-9; 6-33; 6-34; 7-6; 7-8; 7-15; 9-1; 9-22; 11-14; 11-35; 11-37.) In determining the relevancy of discovery requests, it should be noted that "... the authorities have also held that as a rule of necessity, there must be limitations on the concept of relevancy so as '... to keep the inquiry from going to absurd and oppressive bounds.'" Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975).





Some of the discovery requests seek the identity or production of "all documents" pertaining to specified issues. (See Interrogatories A, B, G, H, 6-1, 6-2, 6-3, 6-4, 6-5, 6-6, 6-7, 6-8, 6-9, 7-6, 9-1, 9-3.)

A discovery request for "all documents" is oppressive and unduly burdensome and expensive. A blanket request for the production of all documents, books, papers, and records is objectionable, even though the documents may be relevant and relate to the subject matter in question. Illinois Power Company (Clinton Power Station, Units 1 and 2), ALAB-340, 4 NRC 27, 34 (1976).

The Licensee is prepared to provide relevant information or specific relevant documents. However, these discovery requests would require the Licensee to undertake exhaustive searches of its files at great expense. Without a showing by the Intervenor of a compelling need for "all documents", rather than for specific information, these requests must be considered unduly burdensome and oppressive.

Finally, Licensee recognizes that in its "Order Relative to Discovery and Scheduling" of November 15, 1979, the Board "... determined that sufficient justification has been presented by the Intervenor to rule that the document is acceptable" (Order p. 4). However, we respectfully submit that

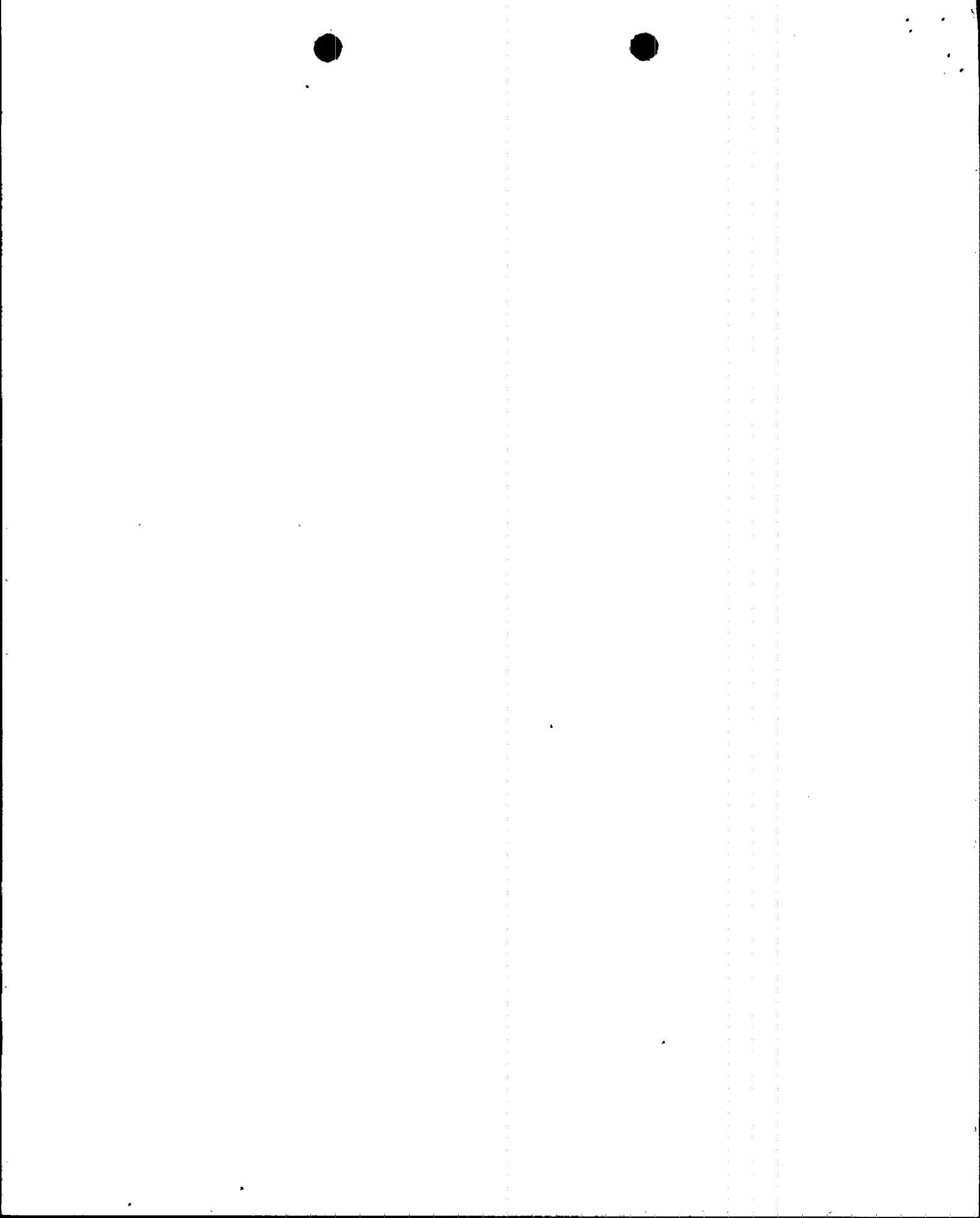


even though the Board has permitted Intervenor to file these discovery requests late, the Board must consider whether the requests are objectionable, as being unreasonable and oppressive, because of their untimeliness. Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-196, 7 NRC 457, 462-3(1974). In that decision, the Appeal Board held that "discovery requests filed outside the time period prescribed by the Commission's rules (or such different time period as may be specified by the licensing board for pre-trial discovery) are to be regarded as prima facie unreasonable." Id. at p. 463. At a minimum, they are subject to "a higher standard of probative value...". Toledo Edison Company (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), 3 NRC 199, 201 (1976).

3. Proprietary and Confidential Commercial Information,

In objections already filed and served, Licensee has noted that some of the interrogatories and requests for production seek proprietary and confidential business information of Licensee such as contracts with third parties, its future plans for seeking rate relief, and its future plans for obtaining financing. (See, e.g., Interrogatories 1-3, 1-31, 1-32, 1-34(E), 1-36, 2-25, 7-15, 11-26, 11-28 and 11-30.)

The information sought is of the type customarily held in confidence by Licensee. There is a rational basis for having customarily held it in confidence, because significant commercial injury might be sustained by Licensee, or, in the



case of contract information, by one or more of the parties to such contracts were those provisions to be publicly disclosed. Some, if not all, of the contracts sought contain provisions which require Licensee to treat the provisions as proprietary. Licensee has in fact kept such information in confidence and not disclosed it and it is not to be found in public sources.

Intervenor has made no attempt to demonstrate the relevancy or materiality of the information sought. It has been held that "' ... practical consideration dictate that the parties should not be permitted to roam in shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.'"

Allied General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), LBP 77-13, 5 NRC 489, 492 (1977). See also 10 CFR Part 2, App. A, para. IV(a), which states "In no event should the parties be permitted to use discovery procedures to conduct a 'fishing expedition' or to delay the proceedings".

The unrestricted production of materials such as trade secrets, secret processes, developments, or research has been held to be "unreasonable and oppressive." Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-196, RAI-74-4, 457, 463 (1974).



4. Preparation of Research and Calculations.

Licensee has objected to some of the interrogatories and requests for production on the grounds that they seek to require the Licensee to perform research, new calculations, conduct new analyses or generate new data, or to provide information which is equally available to Intervenor. (See, e.g., Interrogatories 1-8, 1-9, 1-12, 1-13, 1-29, 1-30, 1-33, 1-34 (E), 2-7, 2-8, 2-14, 2-21, 2-28, 3-19, 3-21, 3-22, 3-23, 3-25, 3-26, 3-27, 3-30, 3-31, 3-32, 3-33, 3-34, 6-21, 6-27, 6-33, 6-34, 6-35, 9-2, 9-3, 9-4, 9-8, 9-14, 9-15, 11-14, 11-25, 11-26, 11-29, 11-30.)

Where documents are equally available to either party, one party cannot compel another party to undertake the burden of preparation of the former's own case. Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP 75-30, 1 NRC 579, 588 (1975).

And, while a party must furnish in its answer to interrogatories whatever information is available to it, ordinarily it will not be required "to make research and compilation of data not readily known to him." Id. at p. 584.





CONCLUSION

Licensee has filed objections, as supplemented herein, with respect to some of the Intervenor discovery requests. Under 10 CFR § 2.740(f), Intervenor "may" file a Motion to Compel Discovery with respect to some or all of the discovery requests to which objections, as supplemented, have been filed. In the event such a Motion to Compel is filed, Licensee requests that the Board sustain its objections for the reasons stated.

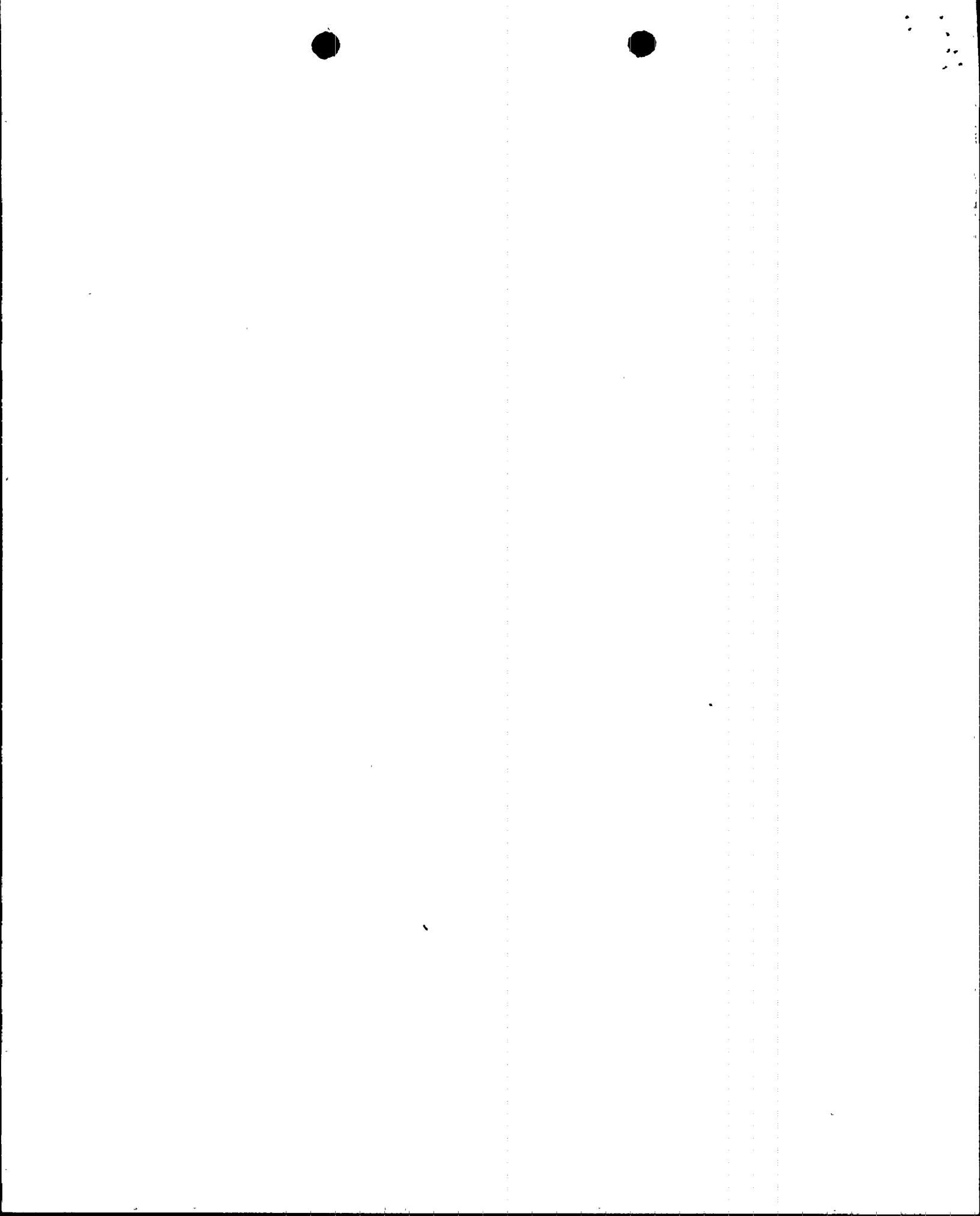
DATED this 27 day of NOVEMBER, 1979.

Respectfully submitted,

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

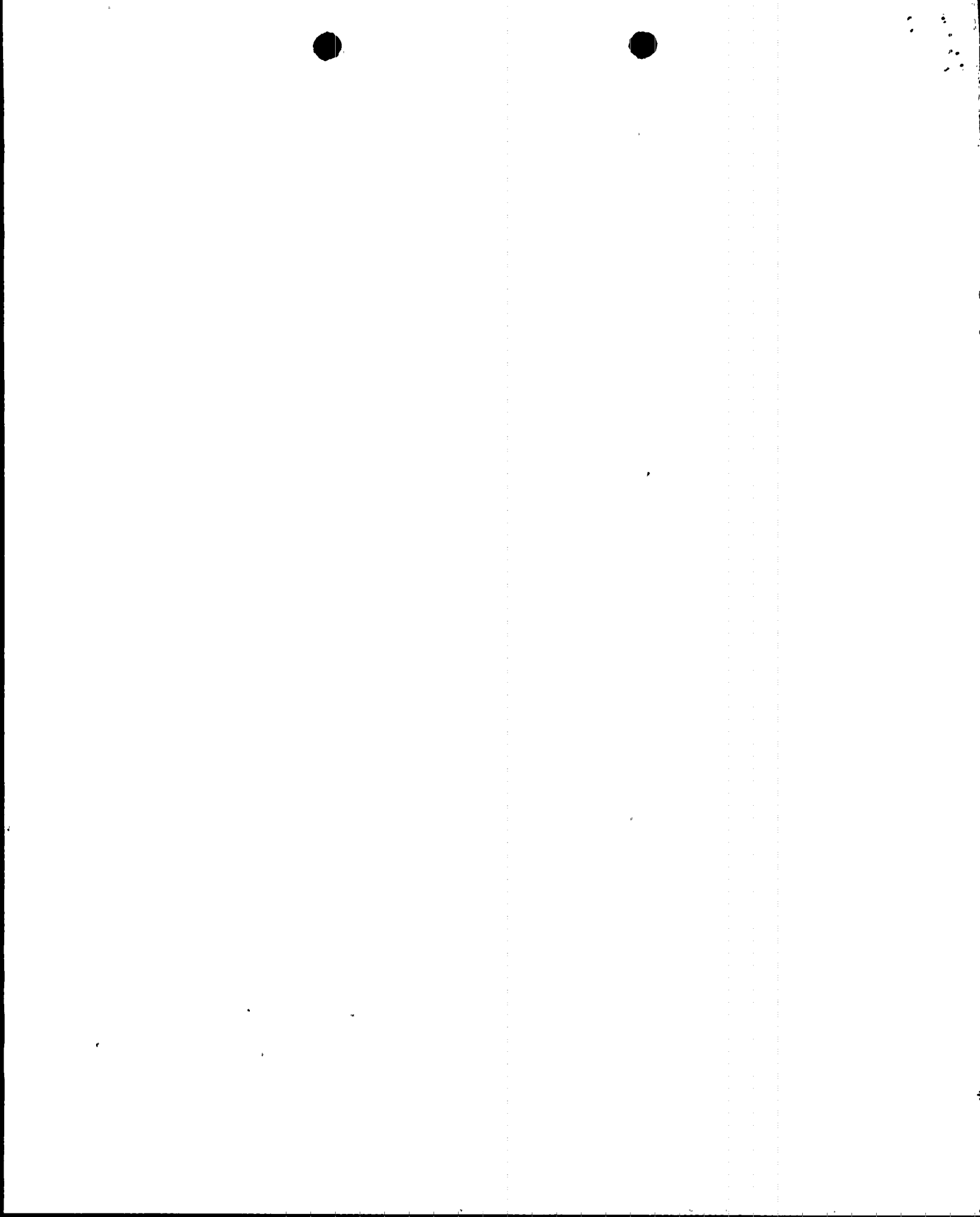
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	)	50-251-SP
FLORIDA POWER & LIGHT COMPANY	)	
	)	(Proposed Amendments to Facility
(Turkey Point Nuclear Generating	)	Operating License to Permit
Units Nos. 3 and 4)	)	Steam Generator Repair)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the attached Supplement to Licensee's Objections to Intervenor Mark P. Oncavage's Interrogatories to, and Request for the Production of Documents from Licensee, Florida Power and Light Company captioned in the above matter were served on the following by deposit in the United States mail, first class, properly stamped and addressed, on the date shown below.

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U.S. Nuclear Regulatory Commission  
Washington, DC 20555
- \* Dr. Oscar H. Paris  
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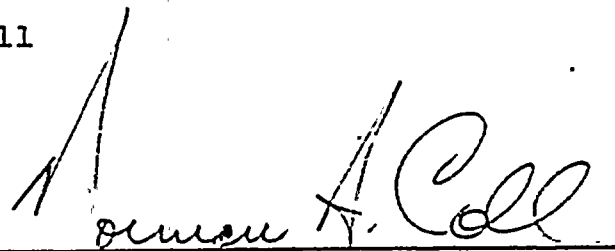
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Dated: November 27, 1979

\* Delivered to Union Courier Service, Inc. on November 27, 1979  
for immediate hand delivery.

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