

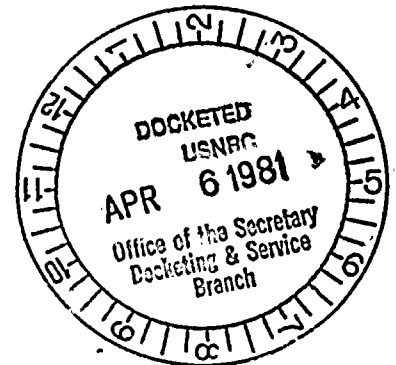
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LICENSEE'S MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR  
SUMMARY DISPOSITION OF  
CONTENTION 5

INTRODUCTION



Contention 5 provides:

In evaluating the steam generator repair,  
the following has not been considered:

- 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.

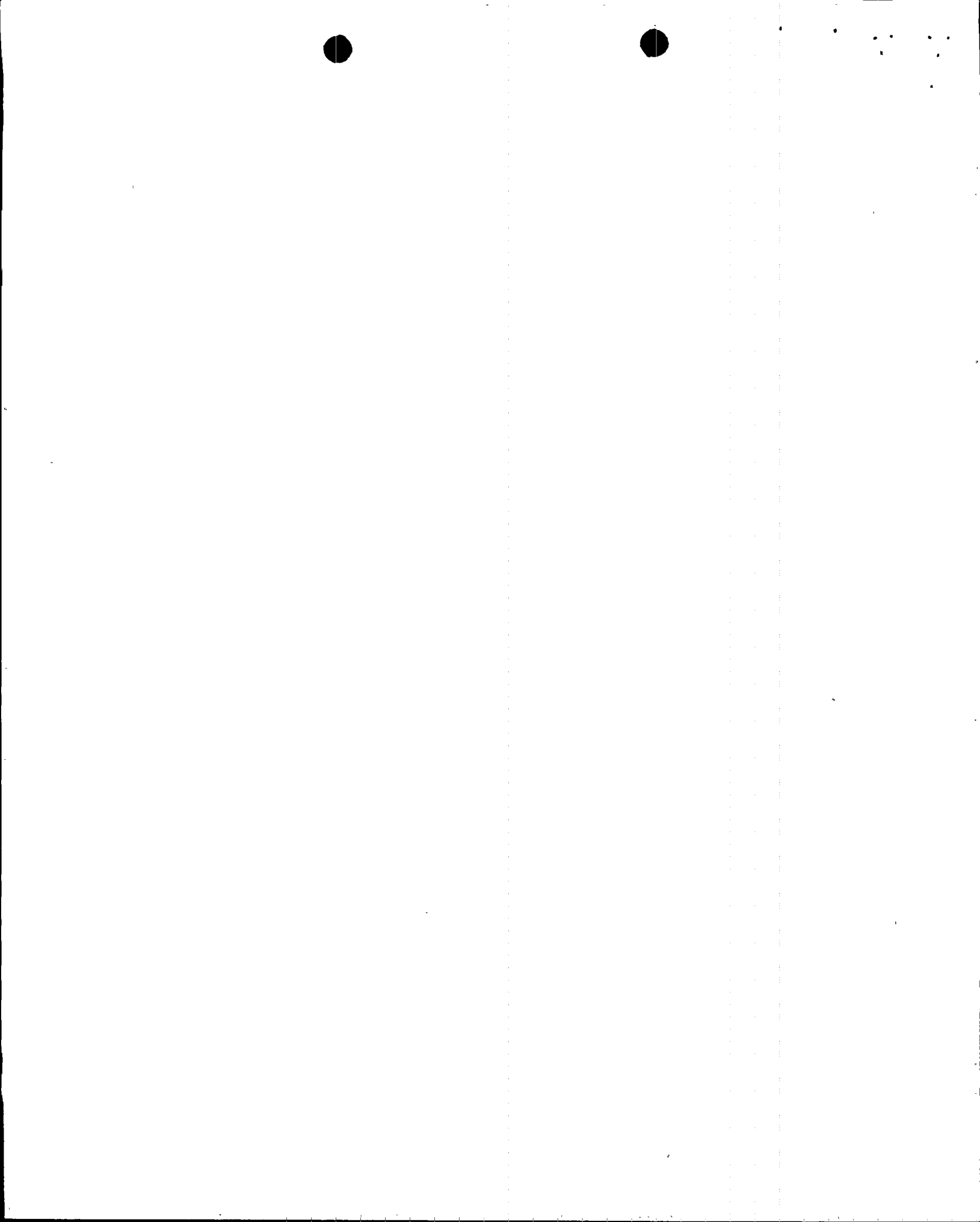


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As set forth in pages 8-10 of the attached affidavit, the NRC Staff has given adequate consideration to the economic and environmental costs of the full-flow condensate polishing demineralizing system in Sections 4.2 and 6.0 of the Draft Environmental Statement (DES) (NUREG - 0743) and in Sections 4.2 and 6 of the Final Environmental Statement (FES) (NUREG - 0743). In addition, the NRC Staff has given adequate consideration to the effluent release from and any environmental degradation to be caused by the condensate demineralizer system in Section 4.3.2 of the DES, in Sections 2.2 and 3.2.4 of the Updated Safety Evaluation Report (SER) (NUREG - 0756), in the NRC Staff's "Assessment of the Impacts of the Steam Generator Repair Program at the Turkey Point Plant on Threatened or Endangered Species", pp. 6, 7 (November 1980), and in Sections 4.3.3 and 4.3.4 of the FES.

#### SUMMARY DISPOSITION PROCEDURES

Licensee respectfully submits that the Board should grant summary disposition of Contention 5. The Commission's regulations provide for summary disposition of all or any part of the matters involved in a proceeding, upon the motion by any party to the proceeding. 10 CFR § 2.749(a). A party is entitled to summary disposition in its favor if the record and the moving papers, including supporting affidavits, show that



there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. 10 CFR § 2.749(d). This procedure has been sanctioned in proceedings involving amendments or modifications of existing operating licenses, as in the instant case. See, e.g., Boston Edison Company (Pilgrim Nuclear Power Station, Unit 1), ALAB - 191, 7 AEC 417 (1974).

Summary disposition procedures provide "an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues." Houston Lighting and Power Company (Allen Creek Nuclear Generating Station, Unit 1), ALAB - 590, 11 NRC 542, 550 (1980). These procedures are analogous to the summary judgment procedures authorized under Rule 56 of the Federal Rules of Civil Procedure. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB - 182, 7 AEC 210, 217 (1974). Summary judgment is properly granted when the record establishes that there is no genuine issue as to any material fact concerning a dispositive issue and that the moving party is entitled to judgment as a matter of law. Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627 (1944); Washington v. Cameron, 411 F.2d 705, 709 (D.C. Cir. 1969); Underwater Storage, Inc. v. United States Rubber Company, 371 F.2d 950, 953 (D.C. Cir. 1966), cert. denied, 386 U.S. 911 (1967).



The purpose of the summary disposition rule is " not to cut litigants off from their right of trial if they really have evidence which they will offer in a trial, it is to carefully test this out, in advance of trial, by inquiring and determining whether such evidence exists." Gulf States Utility Company (River Bend Station, Units 1 & 2), LBP - 75-10, 1 NRC 246, 247-48 (1975), citing Whittaker v. Coleman, 115 F.2d 305, 307 (5th Cir. 1940).

The Commission's Regulations make clear that " . . . a party opposing the motion may not rest upon the mere allegations or denials of his answer . . . " and that he " . . . must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered." 10 CFR § 2.749(b). Mere allegations in the pleadings are not sufficient to establish the existence of a triable issue of material fact. Gulf States Utilities Company, supra at 248.

NRC STAFF HAS FULLY COMPLIED WITH NEPA STANDARDS IN CONSIDERING THE CONDENSATE DEMINERALIZING SYSTEM

As set forth in the attached affidavit, the NRC Staff has fully complied with the standards of the National Environmental Policy Act of 1969 (NEPA) in considering the condensate polishing demineralizing system at Turkey Point.





It has been generally held that the environmental review mandated by NEPA is subject to a "rule of reason" and thus need not include all theoretically possible environmental effects arising out of an action, but rather is limited to those environmental effects which are reasonably foreseeable. Long Island Lighting Company (Shoreham Nuclear Power Station), ALAB - 156, 6 AEC 831, 836, 838, 853 (1973); Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), ALAB - 161, 6 AEC 1003, 1011 (1973)<sup>\*/</sup>; Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB - 455, 7 NRC 41, 48 (1978); Public Service Company of Oklahoma, (Black Fox Station, Units 1 and 2), ALAB - 573, 10 NRC 775, 779 (1979), vacated in part, CLI - 80-8, 11 NRC 433 (1980). Under NEPA, the NRC is required to "make a good faith effort . . . to describe the reasonably foreseeable impact" of a proposed action. Long Island Lighting Company, supra at 838; Maine Yankee Atomic Power company, supra at 1011. The agency is not required to consider "mere possibilities unlikely to occur as a result of the proposed activity." Long Island Lighting Company, supra at 836;

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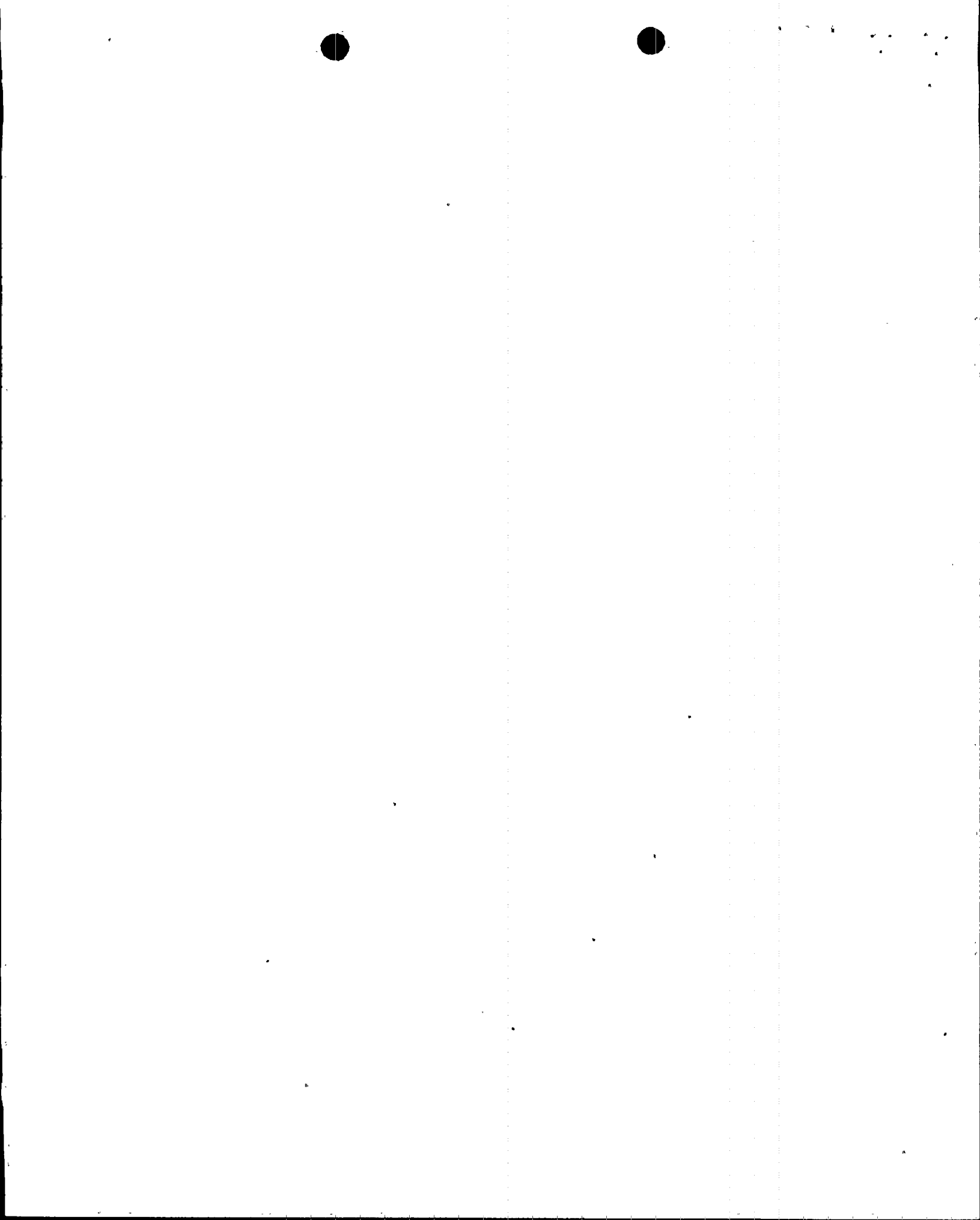
<sup>\*/</sup>Petition for review denied sub nom., Citizens for Safe Power v. Nuclear Regulatory Commission, 524 F.2d 1291 (D.C. Cir. 1975).



Maine Yankee Atomic Power Company, supra; see also Northern States Power Company, supra at 48.

The NEPA "rule of reason" standard, as applied in NRC proceedings, draws direct support from judicial interpretations of NEPA. See, e.g., Public Service Company of Oklahoma, supra at 779, citing Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827 (D.C. Cir. 1972). In Morton, the Bureau of Land Management issued a Draft Environmental Impact Statement (DEIS) and a Final Environmental Impact Statement (FEIS) in connection with a general oil and gas lease sale of tracts of submerged lands off the coast of eastern Louisiana. Id. The court adopted the rule of reason test. Id. at 834. Although the court in Morton primarily addressed the consideration of alternative courses of action under NEPA, the rule of reason test is not limited in its application to evaluating alternatives; it applies to the entire NEPA evaluation process. Public Service Company of Oklahoma, supra at 779; County of Suffolk v. Secretary of Interior, 562 F.2d 1368, 1375 (2d Cir. 1977); Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

The court in Morton stated that the complying agency may limit its discussion of environmental impact to a brief statement, when that is the case, that there is no effect on the



environment or that the effect is simply not significant. 458  
F.2d at 834. The court further stated:

We reiterate that the discussion of environmental effects of alternatives need not be exhaustive. What is required is information sufficient to permit a reasoned choice of alternatives so far as environmental aspects are concerned.

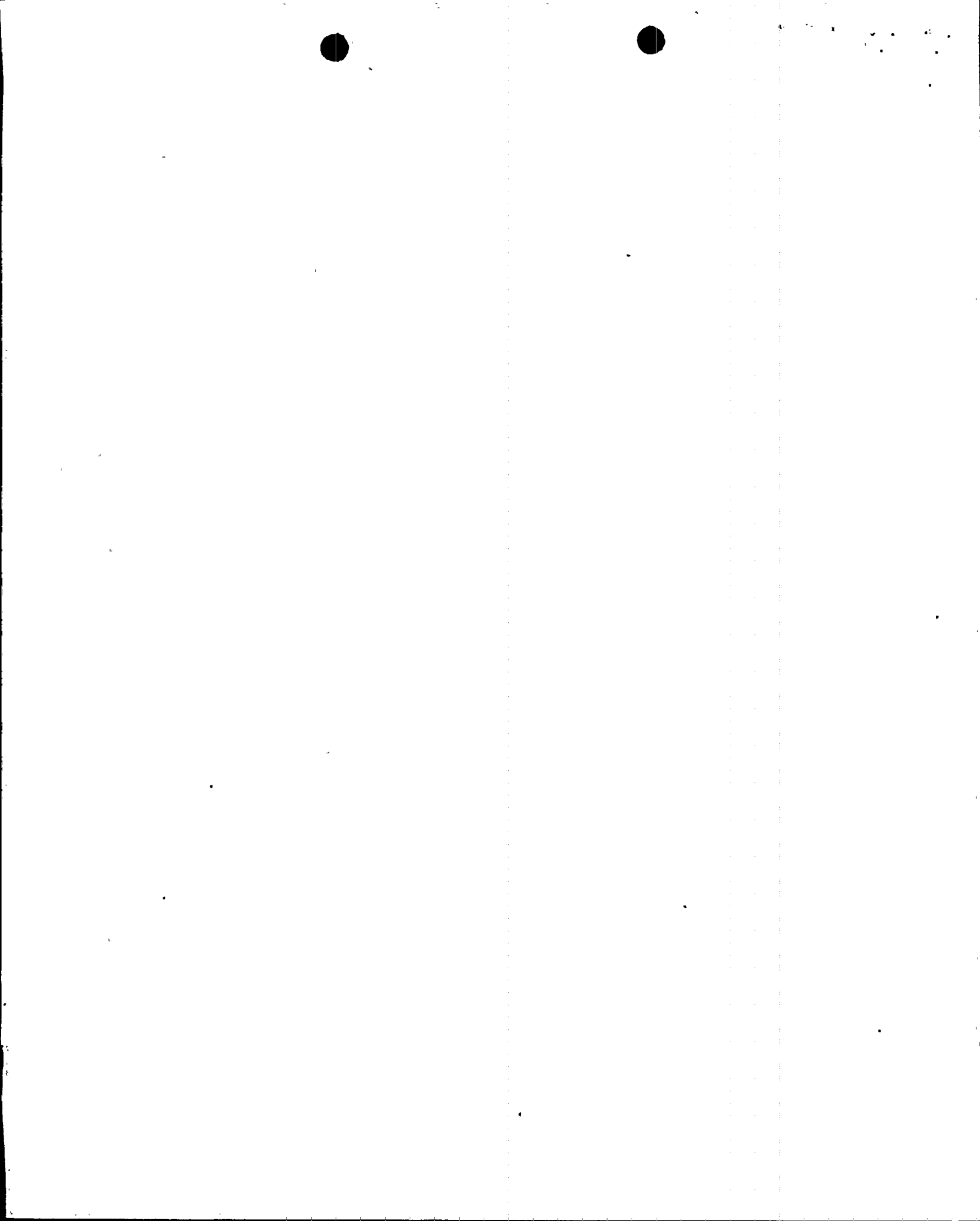
458 F.2d at 836.

and

Furthermore, the requirement in NEPA of discussion as to reasonable alternatives does not require "crystal ball" inquiry.

458 F.2d at 837.

NEPA does not impose minimal environmental standards which must be satisfied as a condition precedent to licensing. On the contrary, NEPA requires a balancing of costs and benefits rather than a measuring against absolute environmental standards. Maine Yankee Atomic Power Company, supra at 1007; Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB - 422, 6 NRC 33, 43 (1977). Thus, consideration under NEPA will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be



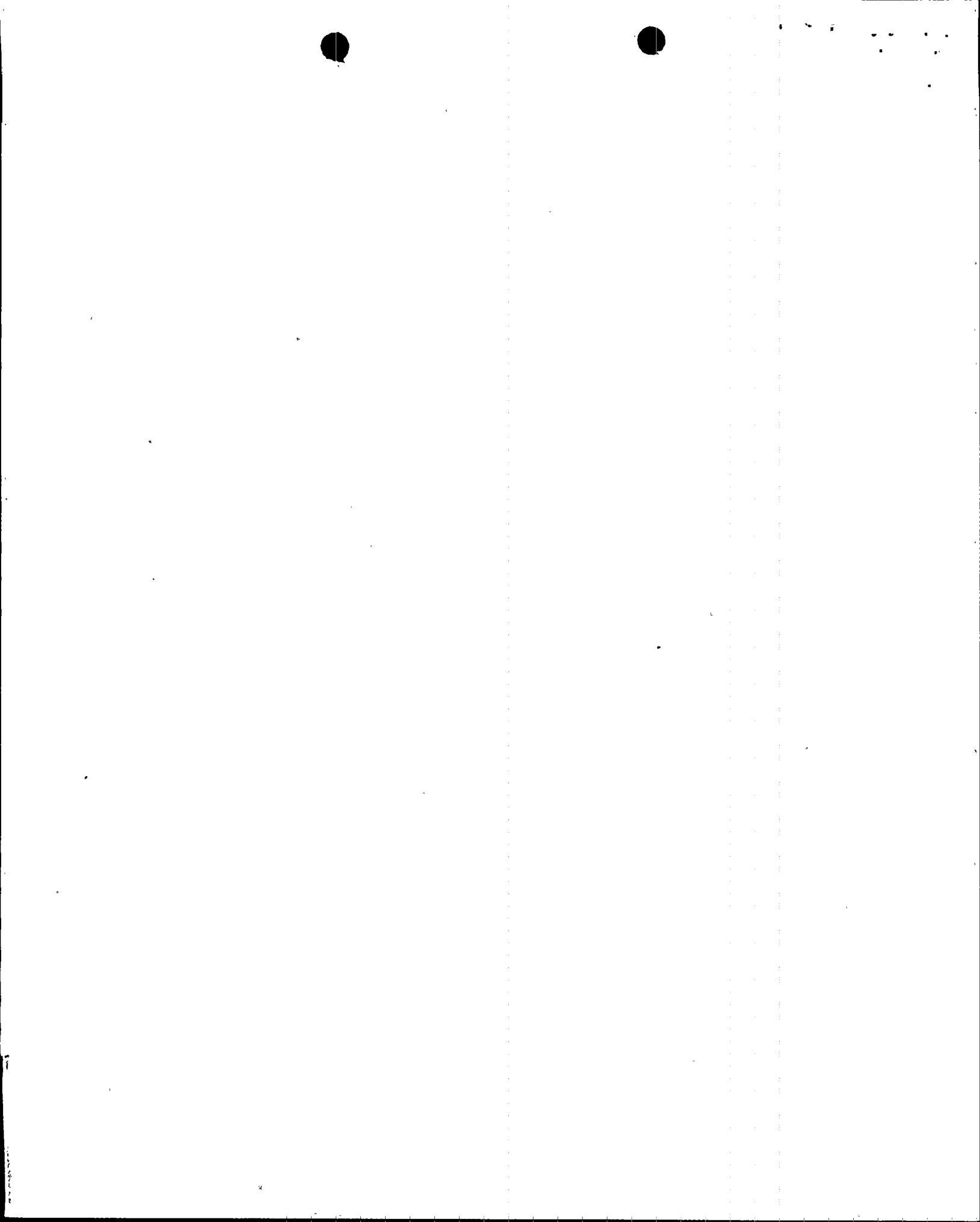
derived from the proposed action. County of Suffolk v. Secretary of Interior, 562 F.2d at 1375; see also Environmental Defense Fund, Inc. v. Corps of Engineers of U.S. Army, 492 F.2d 1123, 1136 (5th Cir. 1974).

In FPL's view, consideration of the condensate demineralizing system should not be required in connection with the instant proceedings to obtain a license amendment for the steam generator repairs at Turkey Point. Because the demineralizers are not part of the repairs, any consideration of the demineralizer is beyond the scope of the amendment proceedings. See Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP - 78-11, 7 NRC 381, aff'd ALAB - 470, 7 NRC 473 (1978).

Nevertheless, there is no question in the instant case that the NRC Staff's consideration of the full-flow condensate polishing demineralizing system is sufficient under the aforescribed firmly established legal standards for NEPA.

#### CONCLUSIONS

The attached affidavit fully supports Licensee's position that the costs, effluents and environmental effects of





the full-flow condensate polishing demineralizing system have been adequately considered and shows that there is no genuine issue as to any material fact. Therefore, summary disposition of Contention 5 should be granted in Licensee's favor.

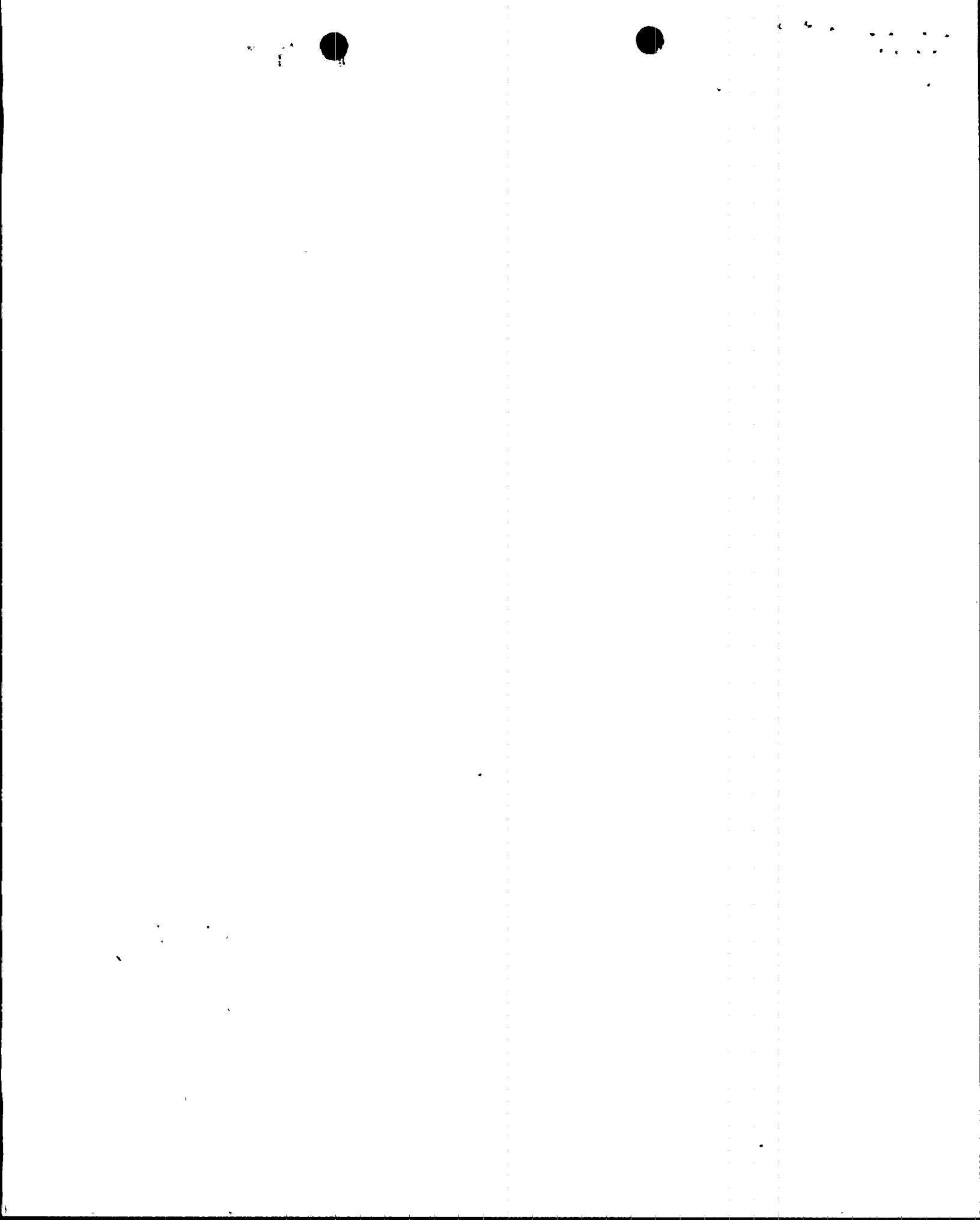
Respectfully submitted,

STEEL HECTOR & DAVIS  
Co-Counsel for Licensee,  
Florida Power & Light Company  
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Bank Building  
Miami, Florida 33131  
(305) 577-2863

Date: April 2, 1981

By: 

Norman A. Coll



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket Nos. 50-250-SP  
50-251-SP

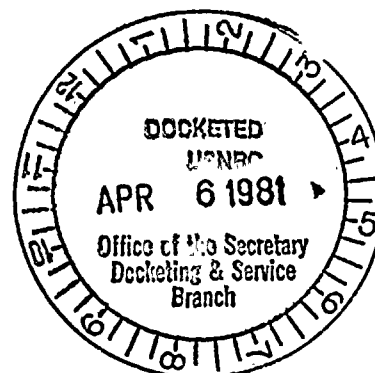
IN THE MATTER OF	)	
FLORIDA POWER & LIGHT COMPANY	)	(Proposed Amendments to
(Turkey Point Nuclear Generating)	)	Facility Operating
Units Nos. 3 and 4	)	License to Permit Steam
		Generator Repairs)

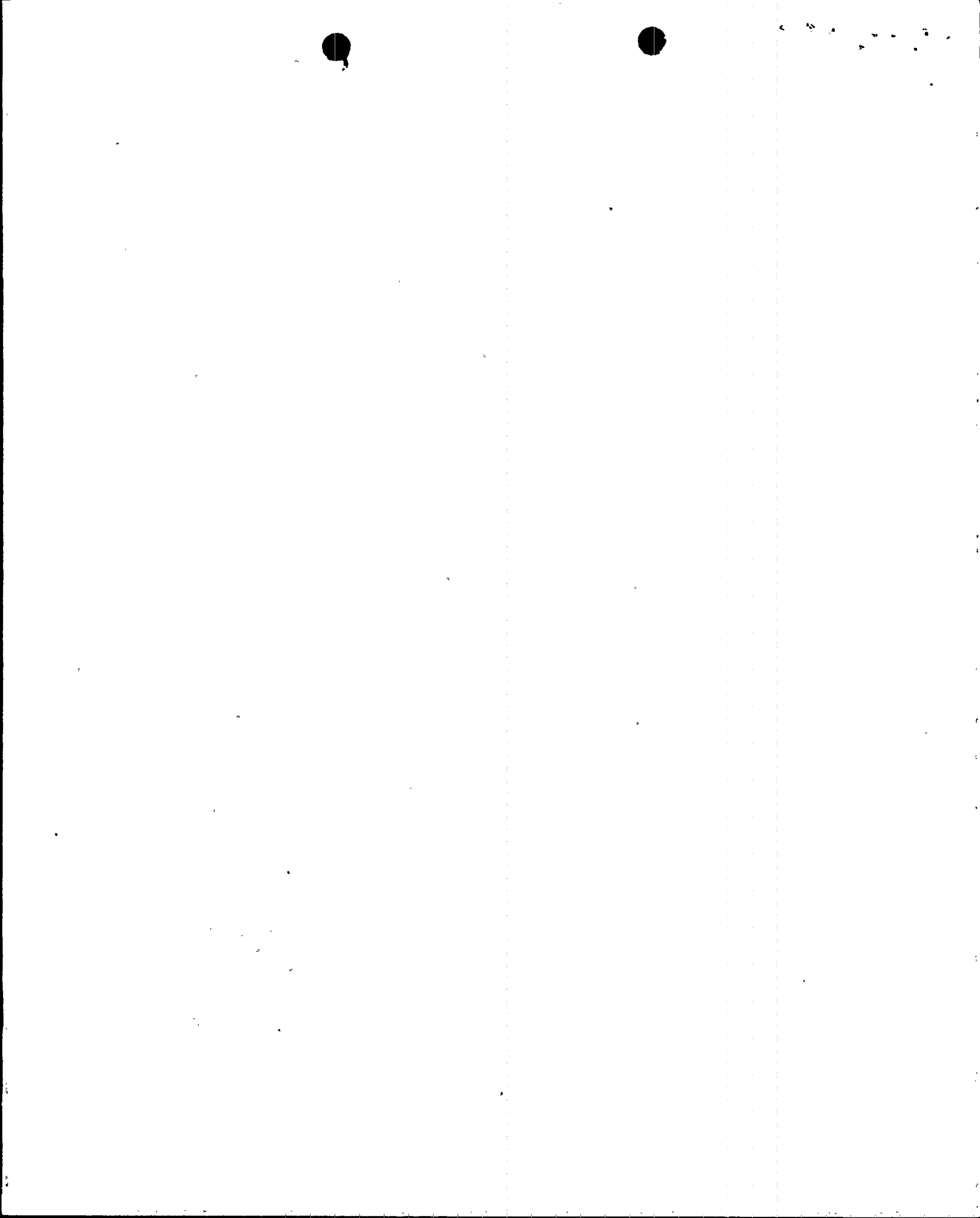
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Licensee's Motion for Summary Disposition of Contention 5, Joint Affidavit of A.J. Gould and J.M. Pugsley in Support of Motion for Summary Disposition of Contention 5, Statement of Material Facts as to Which There is No Genuine Issue to be Heard (Contention 5), and Licensee's Memorandum of Law in Support of Motion for Summary Disposition of Contention 5 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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Washington, D.C. 20555

\*Dr. Emmeth A. Luebke, Administrative Judge  
Atomic Safety and Licensing Board Panel  
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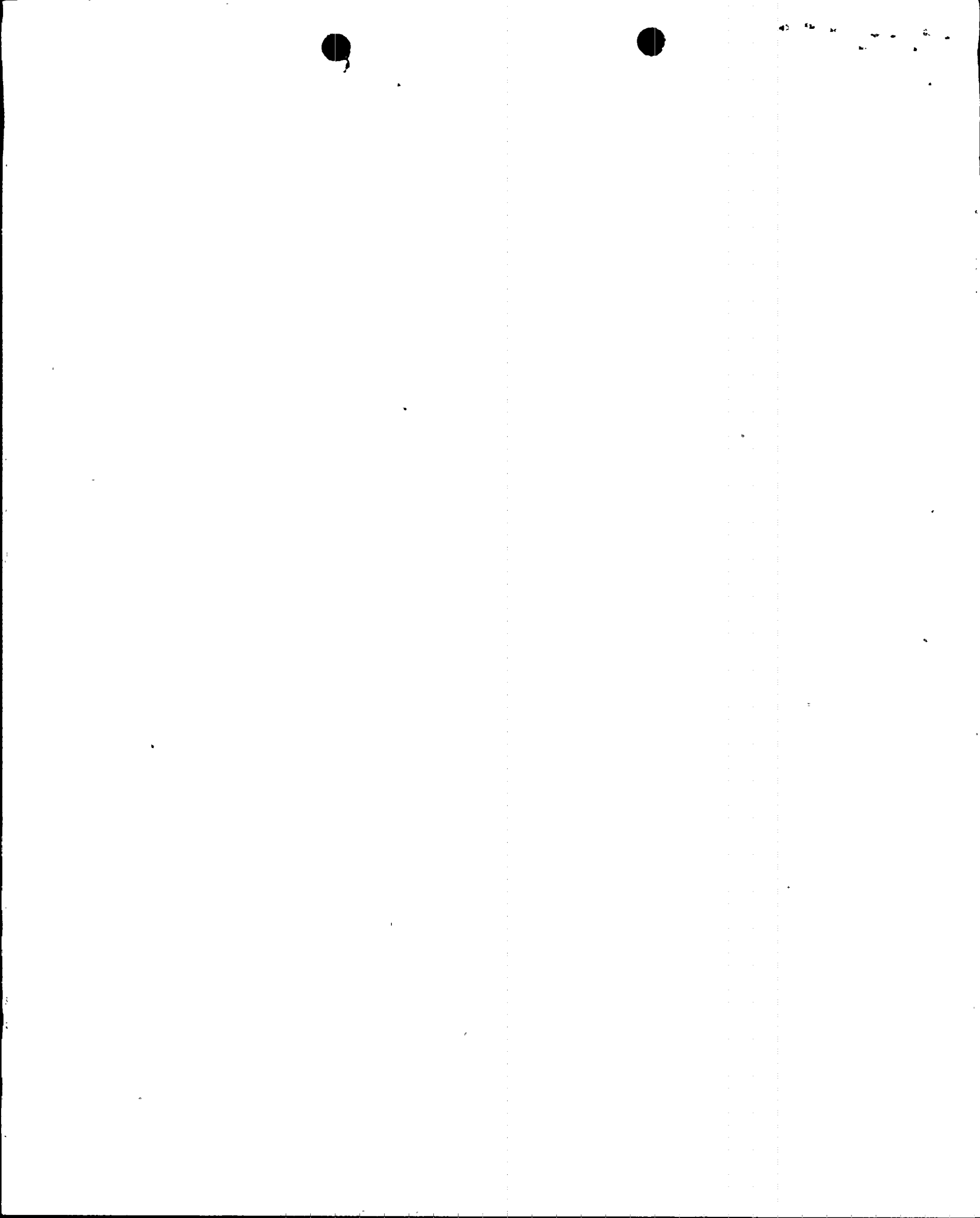
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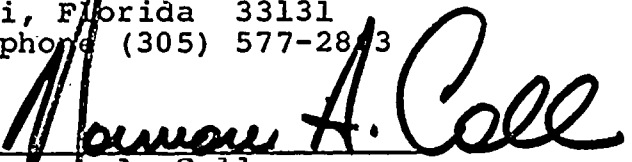
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By

  
Norman A. Coll

April 2, 1981

\*Additional Service By  
Hand or Courier

