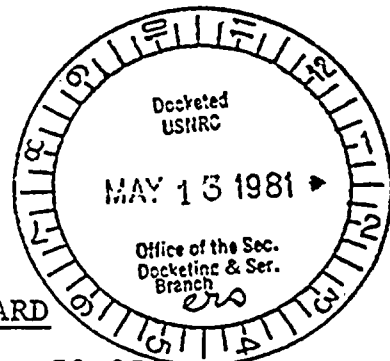


5/13/81



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

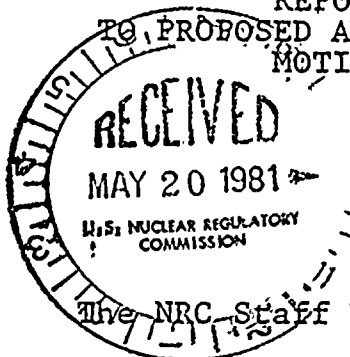
In the Matter of
FLORIDA POWER & LIGHT COMPANY

(Turkey Point Nuclear
Generating Units Nos. 3
and 4)

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

) (Proposed Amendments to
) Facility Operating Licenses
) to Permit Steam Generator
) Repairs)

RESPONSE TO NRC STAFF OBJECTIONS
TO PROPOSED AMENDED CONTENTION 1 AND LICENSEE'S
MOTION TO DISMISS CONTENTION 1



I

INTRODUCTION

The NRC Staff has objected to Amended Contention 1 and the Licensee has filed a response in support of the objections defining this support as a Motion to Dismiss Amended Contention 1. The legal issues involving the objection and the Motion to Dismiss are different than those applicable to the Motions for Summary Disposition and shall be addressed separately. An answer on the merits of the Staff and Licensee's Motions for Summary Disposition shall be filed by May 20, 1981.¹

II

POINT

AMENDED CONTENTION 1 IS PLEAD
WITH SUFFICIENT PARTICULARITY IN COMPLIANCE
WITH 10 CFR 2.714

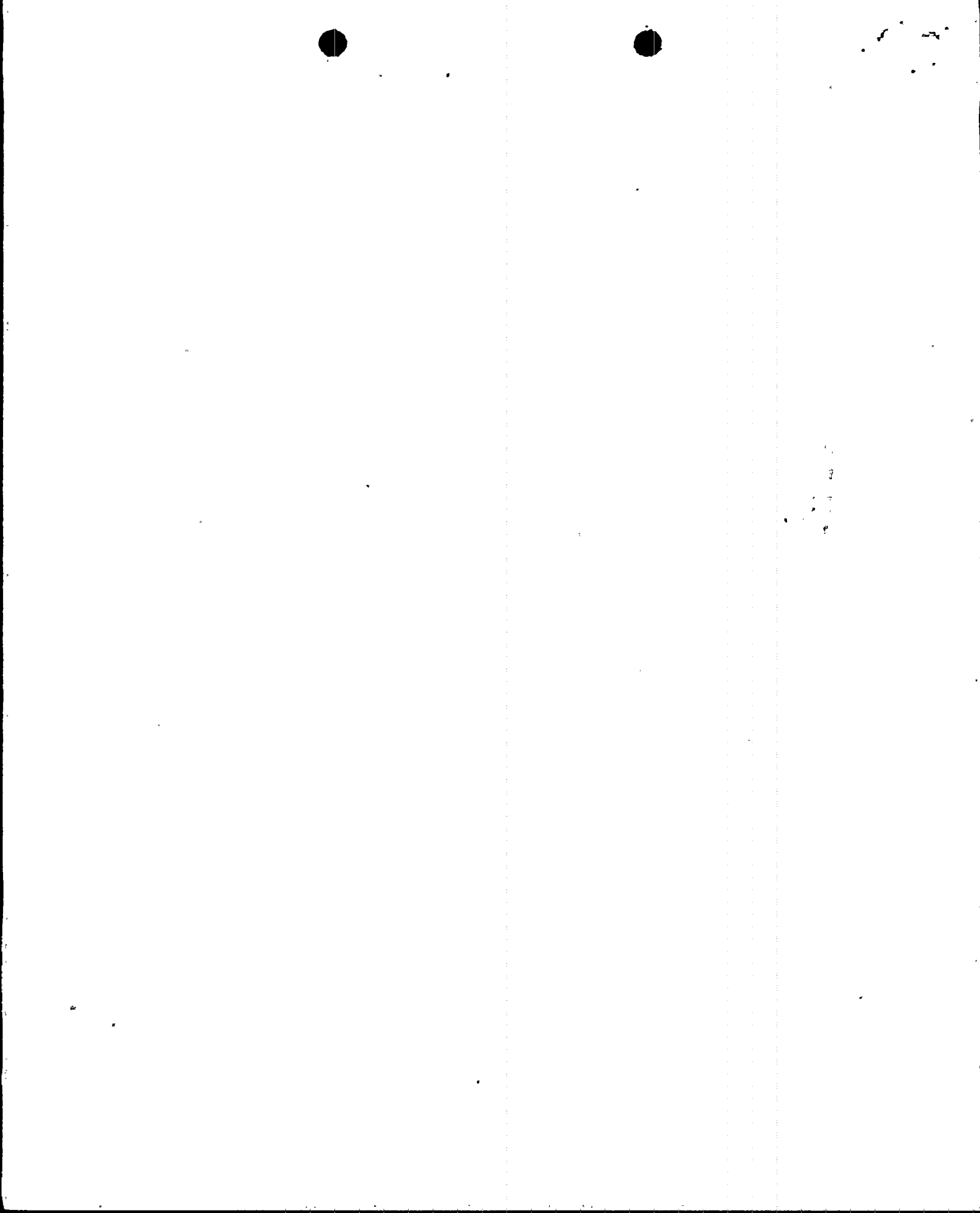
The Chairman, at the March 24-25, 1981 Hearing, ruled that Amendment 1 was not plead with sufficient particularity and an

¹Memorandum and Order Pre-Hearing Conference, March 24-25, 1981.

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Amendment was necessary. Contention 1 on that date read as follows:

Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. §4332(2)(C) (NEPA) or 10 CRF §51.5 requires the preparation of an Environmental Impact Statement prior to the issuance by the Nuclear Regulatory Commission of amendments to the operating licenses for Turkey Point Units Nos. 3 and 4 (Facility Operating Licenses Nos. DPR-31 and DRP-41) authorizing the Licensee to repair the steam generators now in use in each facility.

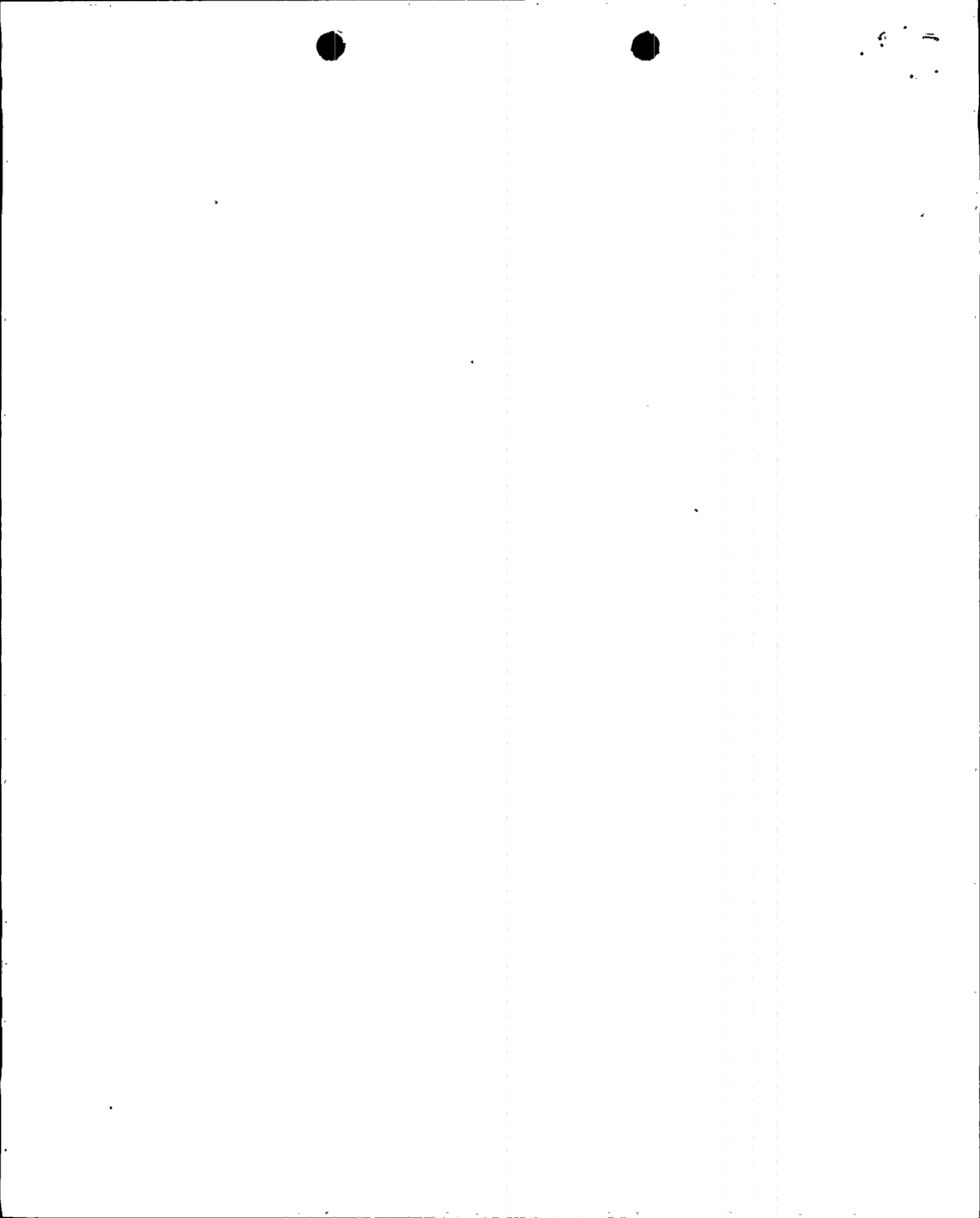
The Commission's NEPA Analysis is inadequate in that it fails to adequately consider the following alternative procedures:

- a. Arresting tube support plate corrosion
- b. In-place tube restoration (sleeving)
- c. In-place steam generator tube replacement (retubing)
- d. Derating
- e. Decommissioning
- f. Bioconversion
- g. Solar energy
- i. Natural gas
- j. Coal.²

The Intervenor felt, on March 24, that the alternative issue had been plead with sufficient particularity, however in order to comply with the Order of that date filed Amended Contention 1.³ The Staff and Licensee now take the position that in order to put into litigation the EIS issues, the Petitioner is required to plead with more particularity. The Staff and Licensee's position would require the Intervenor

²Order adopting contentions dated Sept 25, 1979.

³Amended Contention 1 filed on April 20, 1981.



to plead, evidence in order for them to prepare for trial. Previous cases decided by this Commission show that the Staff and Licensee's position is incorrect. (See Grand Gulf Nuclear Station Units 1 and 2, ALAB-130, 6AEC 423, 424 (1973) and cases cited in note 7.) In Grand Gulf, the Board was confronted with the question of sufficiency for pleading purposes of a contention that read "the alternatives of conserving electricity or utilizing other methods of producing energy have not been adequately considered."

The Licensing Board determined that such a Contention fulfilled the requirement of particularity as is now in 10 CFR 2-714(b).

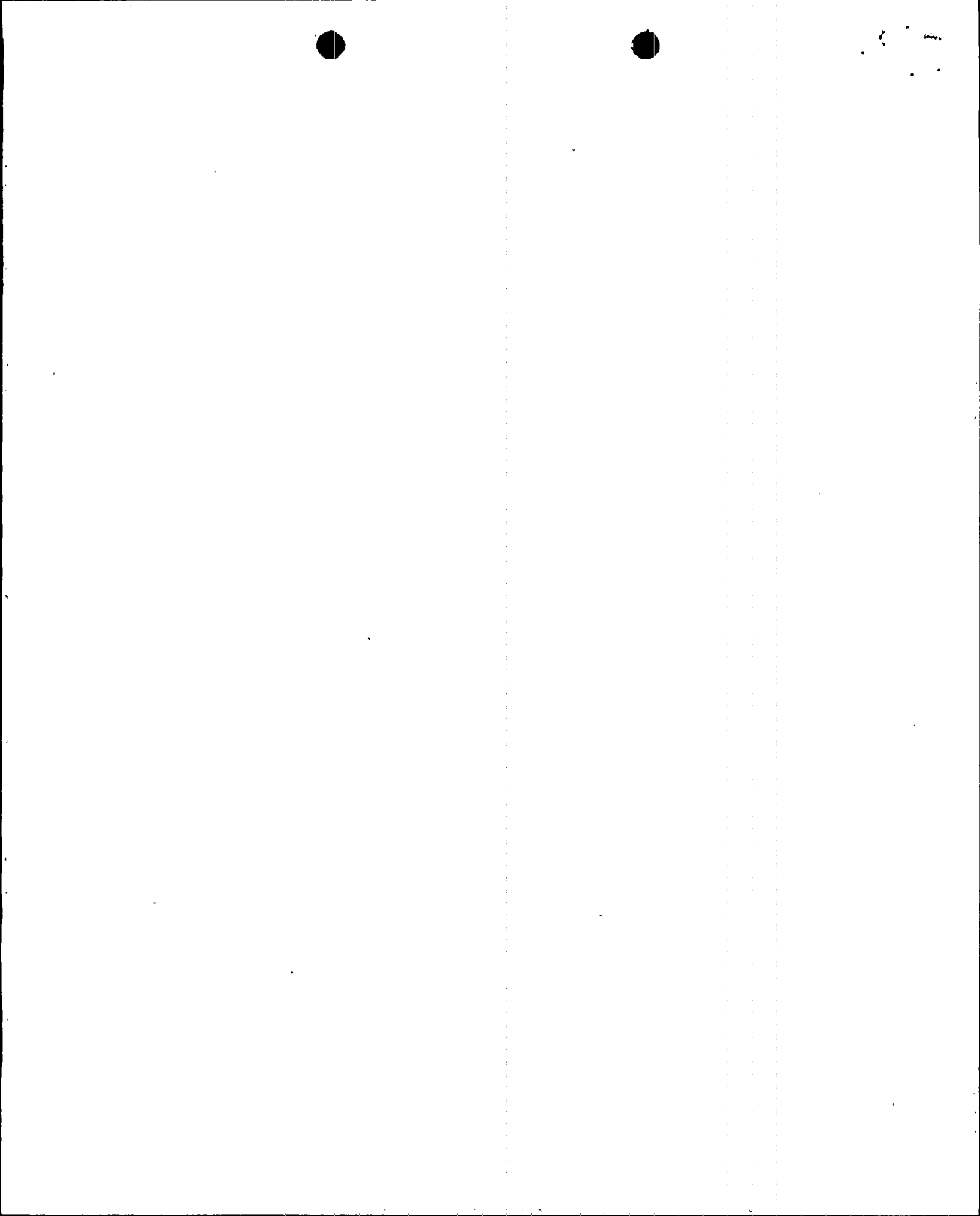
Prior to the required Amendment of March 24, 1981, this Board had ruled that Contention 1 was sufficiently plead.⁴ The original Contention 1 was known to the Staff and Licensee as early as May 2nd, 1979.⁵ The Intervenor filed a Statement of Admissibility of Proposed Contentions.⁶ To this day the Staff and Licensee have not propounded any discovery to the Intervenor concerning Contention 1, yet they complain of being in the dark.

On March 6, 1980, the Staff agreed to the Intervenor's Contention 1 as framed and stated the Final Environmental Impact Statement would be prepared. It was filed on April 1, 1981.

⁴Order of September 25, 1979.

⁵See list of contentions presented to Atomic Safety & Licensing Board, United States Nuclear Regulatory Commission by Mark Oncavage, dated May 2, 1979.

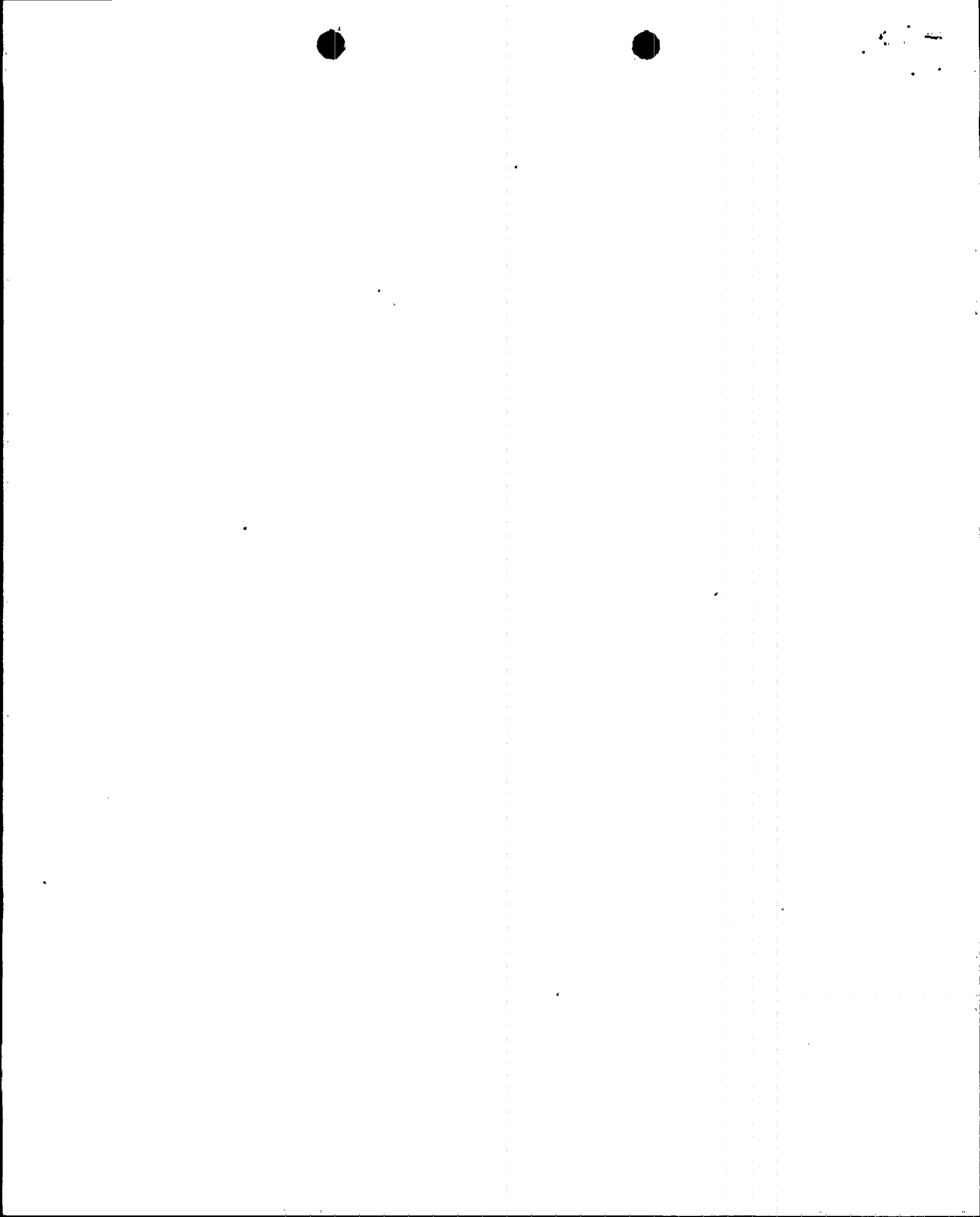
⁶Intervenors statement of Admissibility of Proposed Contentions dated Sept. 15, 1979.



The Intervenor is not required to voluntarily disclose its entire case to the Staff and Licensee, but through proper Rules of Procedure the process will disclose to the Staff and Licensee the theory of the Intervenor's case concerning Contention 1. This Board has consistently held that Section 2.714(b) does not require the Petitioner to detail the evidence which will be offered in support of the contention.⁷

The Intervenor will in its response to the Staff's Motion for Summary Disposition demonstrate that a genuine issue of fact exists respecting the environmental superiority of any one of the suggested alternatives. The Licensee, as usual implies that the Intervenor has done things to delay these proceedings. The Intervenor will point out that the Staff took over one year to prepare its final environmental statement. The Licensee has amended its SGRR seven times: The Intervenor has had six weeks to prepare his case as to the final environmental impact statement. The Intervenor could not prepare a case as to Contention 1 until such time as the FES was filed.

⁷Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2, ALAB-522, 9 NRC 54, 56 (1979); Duke Power Company (Transportation of Spent Fuel from Oconee to McGuire, ALAB-528, 9 NRC 146, 151 (1979); Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3) ALAB-216, 8 AEC13 20-21 (1974)).



The Intervenor throughout this process has apprised the Staff and Licensee as to their theory of the case concerning Contention 1.

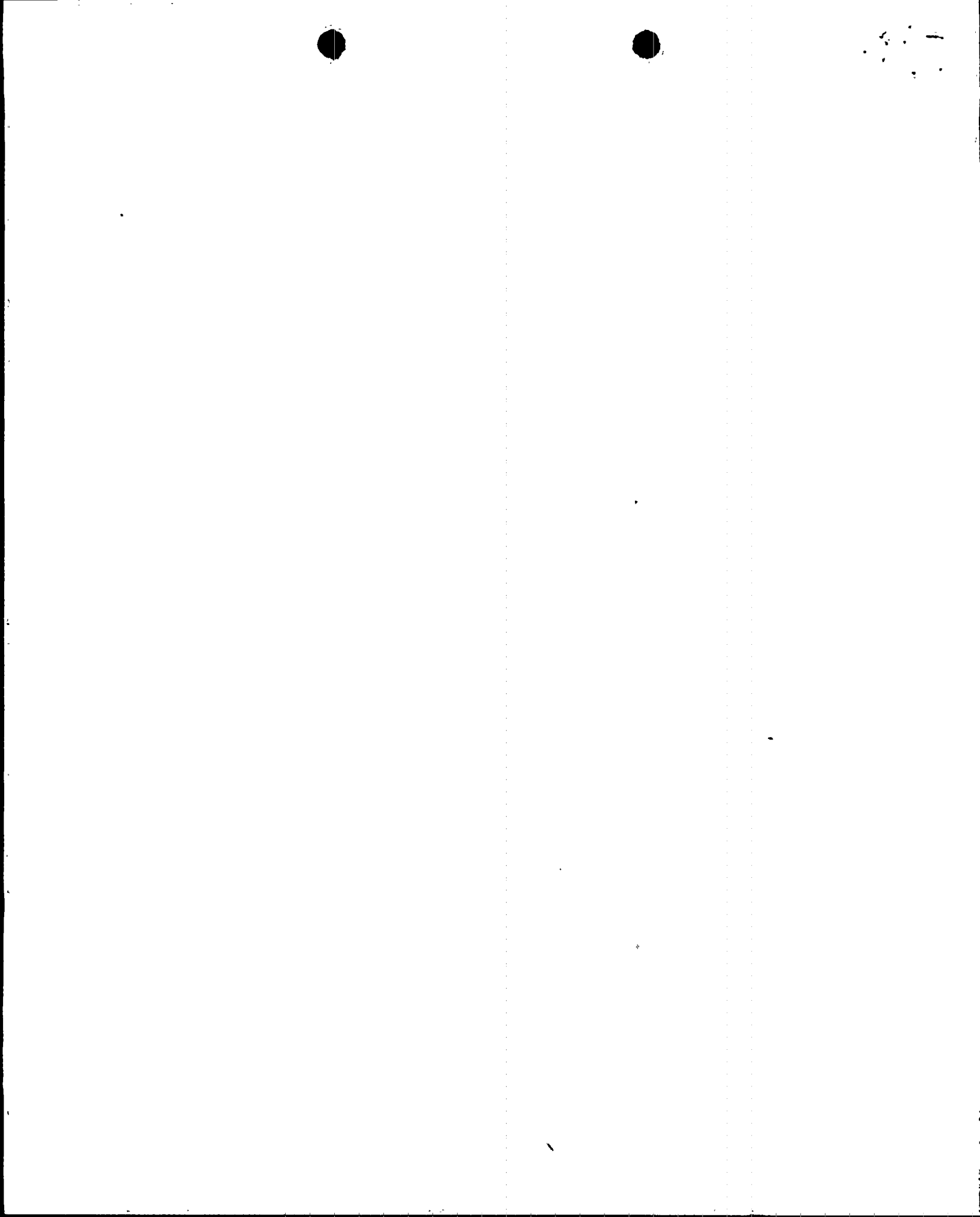
The Intervenor will prove that the Staff failed to adequately consider alternatives to the proposed repair as required by Section 102(C)(III) and 102(D) of the National Environmental Policy Act (NEPA, 42 U.S.C. §4332.) More particularly the Intervenor will show that the FES is fatally defective for its failure to examine energy conservation as an alternative to the repair of the steam generators. The evidence will be set forth in the Intervenor's Pre-Filed Testimony and in his Response to the Motions for Summary Disposition.

The FES will further be shown to be inadequate as a result of the failure of the Staff to examine solar energy as an alternative to the repair of the steam generators. This alternative will be substantiated by the Pre-Filed Testimony and the preparation of the Intervenor's Response to the Motions for Summary Disposition. The evidence will show that conservation and solar energy would allow the derating and decommissioning of the Turkey Point Plant.

III

CONCLUSION

10 CFR §51.52 requires a public hearing relative to the adequacy of the Final Environmental Impact Statement. 10 CFR §51.52(b)(1) requires the Staff to offer the Final Environmental Impact Statement into evidence at the June 2nd Hearing. There has not been a hearing relative to the Amendment issue and the



Intervenor would assume that such a hearing will take place on June 2, 1981. This hearing should not be short circuited by a Dismissal with Prejudice of Amended Contention 1. The Intervenor has plead with sufficient particularity. The issues for trial will be properly framed according to the schedule adopted by the parties.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to NRC Staff Objections to Proposed Amended Contention 1 and Licensee's Motion to Dismiss Contention 1 was mailed on this the 12th day of May, 1981, to the following addressees.

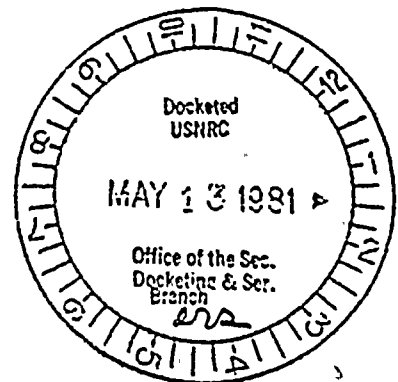
Marshall E. Miller, Esq. Administrative Judge
Chairman, Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

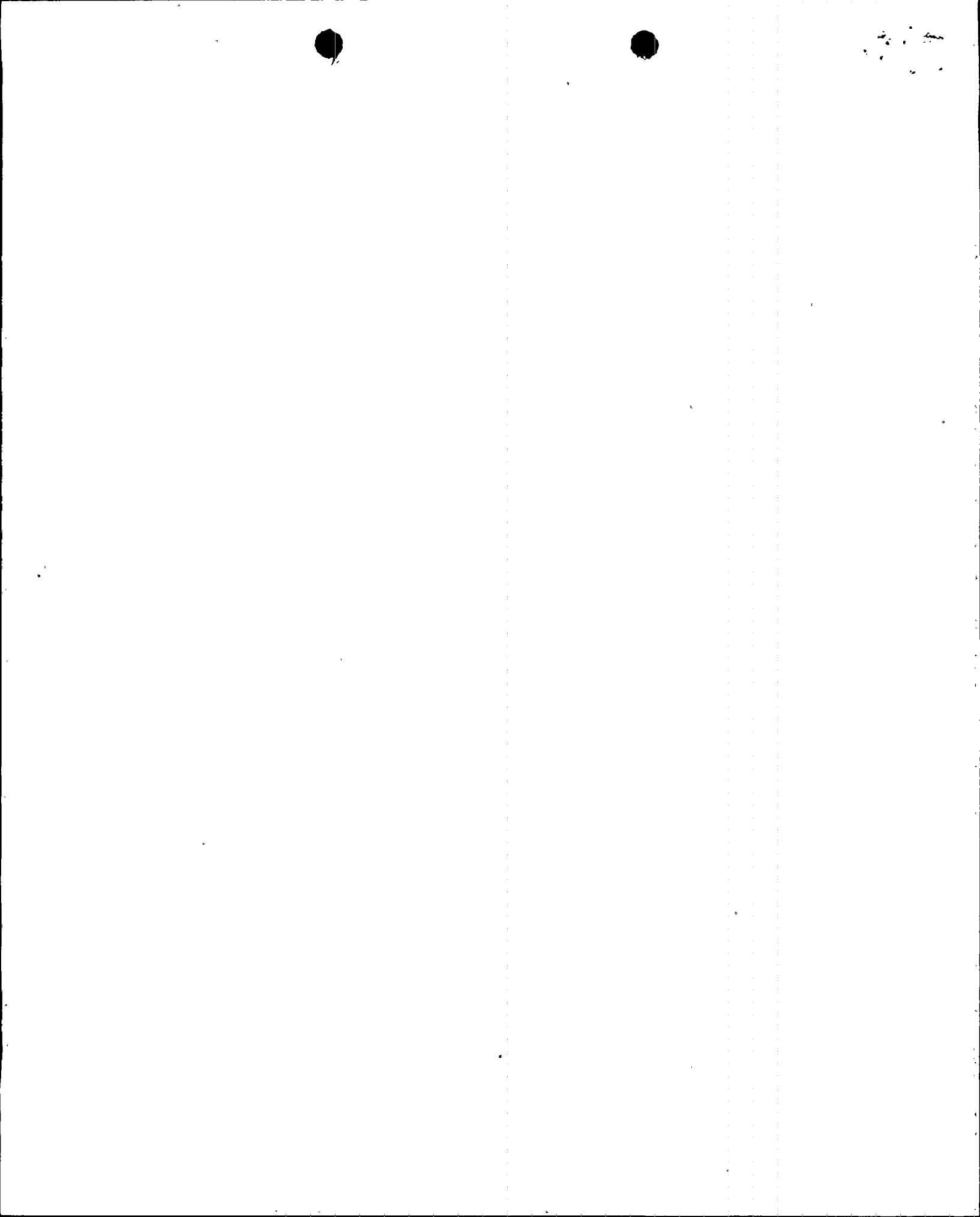
Dr. Emmeth A. Luebke, Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
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Dr. Oscar H. Paris, Administrative Judge
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