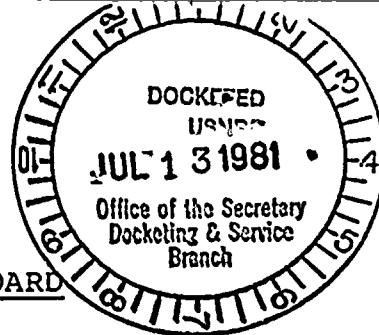


7/10/81

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	)	(Proposed Amendments to
Generating Units Nos. 3	)	Facility Operating License
and 4)	)	to Permit Steam Generator
	)	Repairs)

LICENSEE'S ANSWER IN OPPOSITION TO INTERVENOR'S  
APPLICATION FOR STAY OF FINAL ORDER

I. Introduction

In an order dated June 19, 1981, the Licensing Board authorized the issuance of amendments to the Turkey Point operating licenses to perform steam generator repairs.<sup>1/</sup> On June 27, 1981, Mark P. Oncavage (Intervenor) filed an application for a stay of that order pending appeal.<sup>2/</sup> Pursuant to 10 CFR § 2.788(d), Florida Power & Light Company (Licensee or FPL) hereby submits its answer in opposition to the Intervenor's Application.

II. Summary of Decision Which Is Requested To Be Stayed

During the course of this proceeding, the Licensing Board admitted eleven of the Intervenor's contentions.

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<sup>1/</sup>Final Order (June 19, 1981).

<sup>2/</sup>Application for Stay of Final Order (June 27, 1981) [Intervenor's Application].

<sup>3/</sup>See Order Relative to Contentions and Discovery (September 25, 1979); Memorandum and Order (April 2, 1981).



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However, the Intervenor agreed to or did not oppose, and the Licensing Board granted, summary disposition of nine of the contentions.<sup>4/</sup> The Intervenor opposed the motions for summary disposition of the remaining two contentions (Contentions 1 and 4B). By way of the Memorandum and Order dated May 28, 1981, the Licensing Board granted summary disposition of those two contentions, but directed the parties to submit information to the Board regarding the subject of solid low-level waste generated by the repairs. In its order of June 19, 1981, the Licensing Board concluded "that the impact of a hurricane or tornado on the LLW [low-level waste] produced by the steam generator repairs and stored temporarily on site at Turkey Point will not pose a significant radiological hazard to the public." Final Order, p. 6. Based upon the entire record in the proceeding, the Board authorized the issuance of the operating license amendments to perform the steam generator repairs.<sup>5/</sup> The amendments were issued on June 24, 1981, and the repairs were immediately begun. The Intervenor seeks to stay the Final Order authorizing the issuance of the amendments.

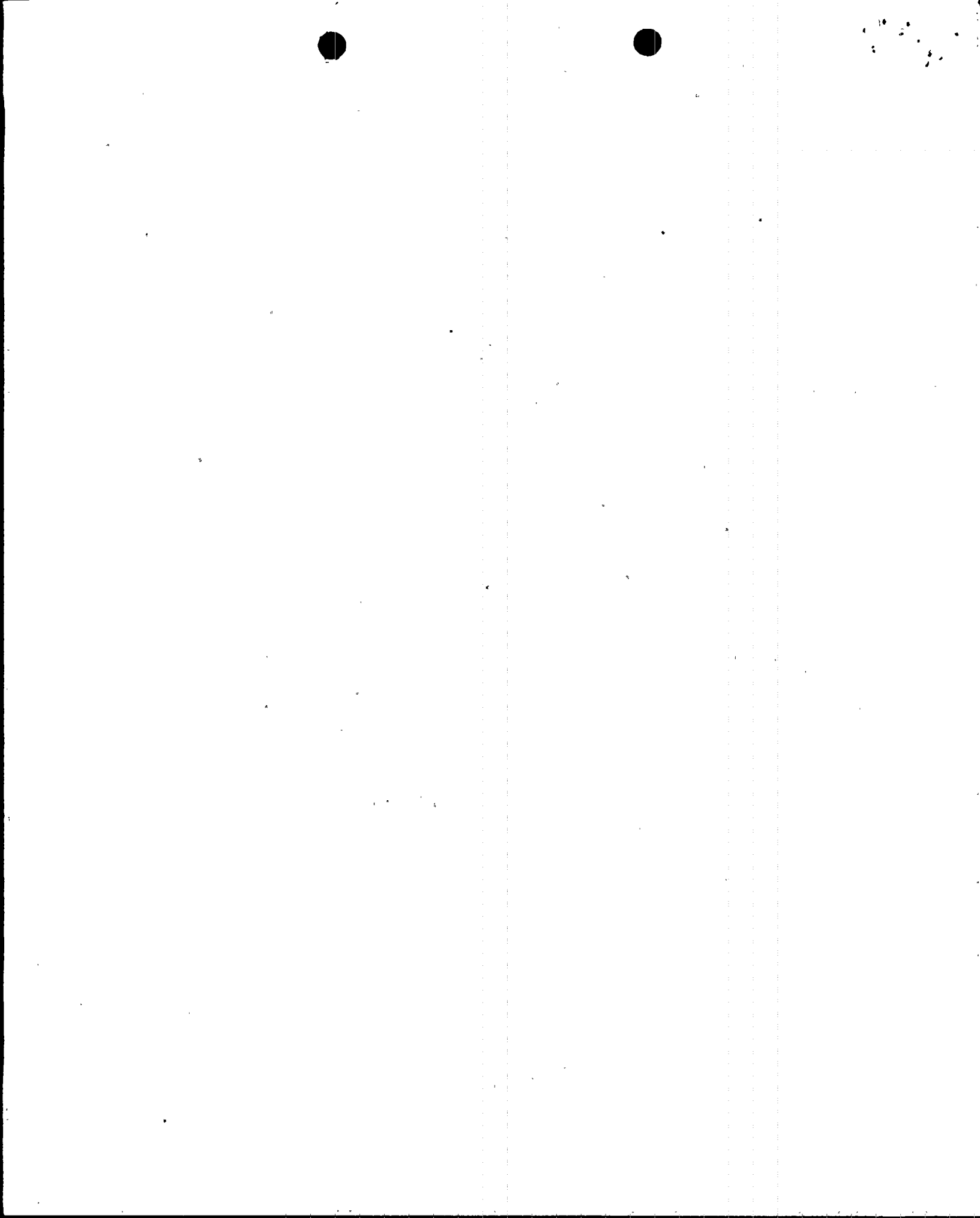
### III. Discussion of Four Factors

10 CFR § 2.788(e) enumerates four factors which should be considered in determining whether to grant or deny an application for a stay. No single one of the four factors is of

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<sup>4/</sup>See Memorandum and Order (April 2, 1981), pp. 5-6; Memorandum and Order (April 29, 1979); Order (May 7, 1981).

<sup>5/</sup>Final Order, pp. 8-9.



itself necessarily dispositive; rather, "the strength or weakness of the showing by the movant on a particular factor influences principally how strong his showing on the other factors must be in order to justify the sought relief." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-338, 4 NRC 10, 14 (1976). As demonstrated below, the Intervenor has failed to make an affirmative showing on any of the four factors.

A. Whether the Intervenor has made a strong showing that he is likely to prevail on the merits.

It is the Intervenor's "burden to make a strong showing that it is likely to prevail on the merits of its appeal. Mere establishment of possible grounds for an appeal does not meet this standard." Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-7, 5 NRC 452, 454 aff'd. ALAB-385, 5 NRC 621 (1977), (emphasis in original). In the instant case, not only has the Intervenor failed to make a strong showing on the merits, but he has failed even to address this factor in his Application. In the absence of a strong showing on the merits, "it has been suggested that there is no right to a stay 'even if irreparable injury might otherwise result.'" Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-385, 5 NRC 621, 631 (1977). That suggestion would appear to be especially well taken when an intervenor fails to make any showing on the likelihood of success on the merits. At a minimum, absent a strong showing on the merits,



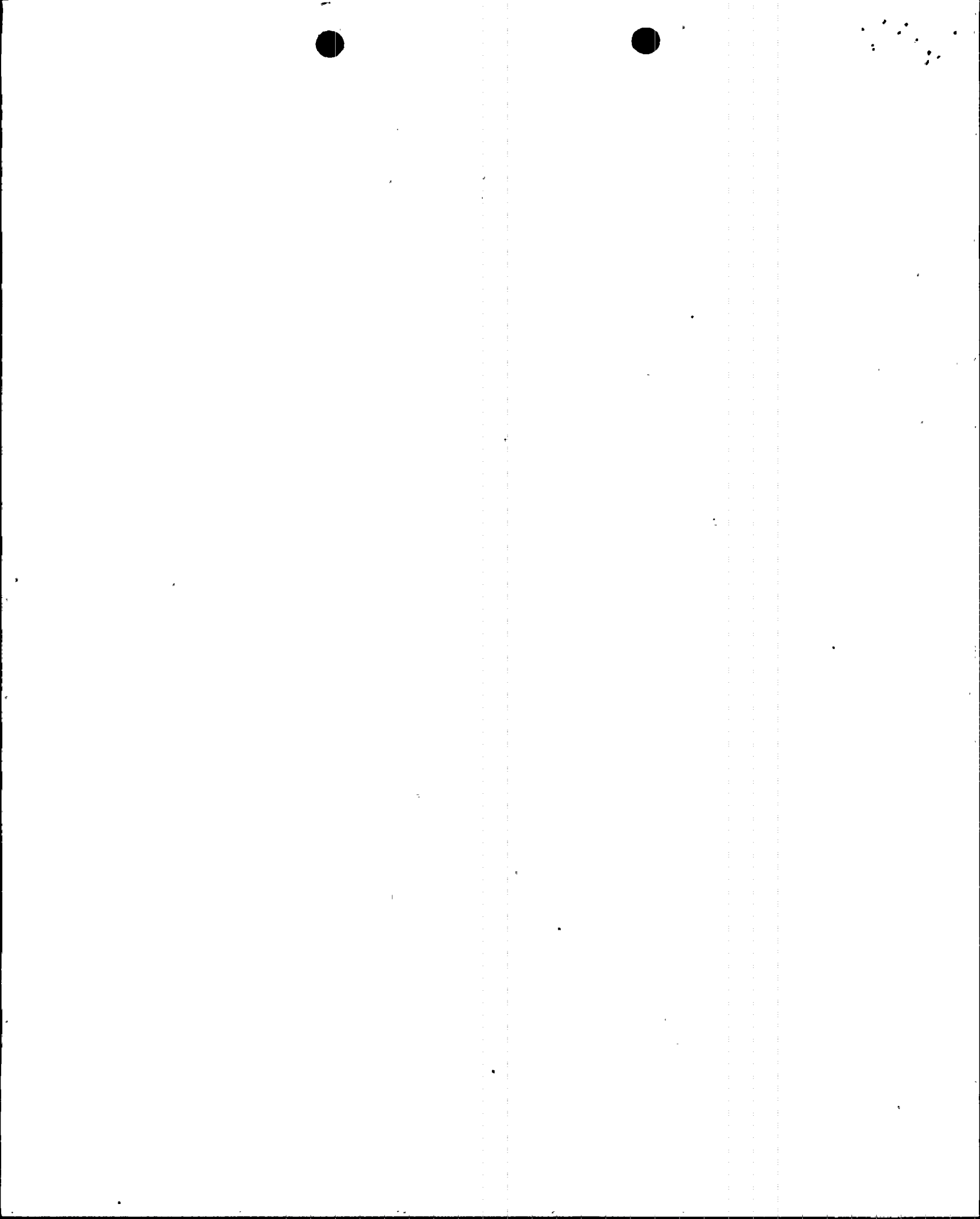
"the entitlement to a stay depends upon whether the [movant has] made an especially persuasive demonstration" on the other three factors. Seabrook, supra, 4 NRC 10, 14-15. Review of the Intervenor's discussion of the other three factors clearly reveals that the Intervenor has not satisfied this burden.

B. Whether the Intervenor will be irreparably injured unless a stay is granted.

The factor which has proven most crucial in determining whether a stay should be granted is the question of irreparable injury to the moving party absent a stay. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-437, 6 NRC 630, 632 (1977). It is the "'established rule that a party is not ordinarily granted a stay of an administrative order without an appropriate showing of irreparable injury.'" Id., quoting from Permian Basin Area Rate Cases, 390 U.S. 747, 773 (1968). See also Seabrook, supra, 4 NRC 10, 18-19.

The Intervenor has not established that he will be irreparably injured absent a stay of the Licensing Board's order authorizing the issuance of the amendments to perform the repairs. The Intervenor's only allegation of irreparable injury is as follows:

If the waste, containing from 1470-3270 ci., is released to the marine environment during a hurricane there will be irreparable injury not only to the Intervenor, but also to the general public.

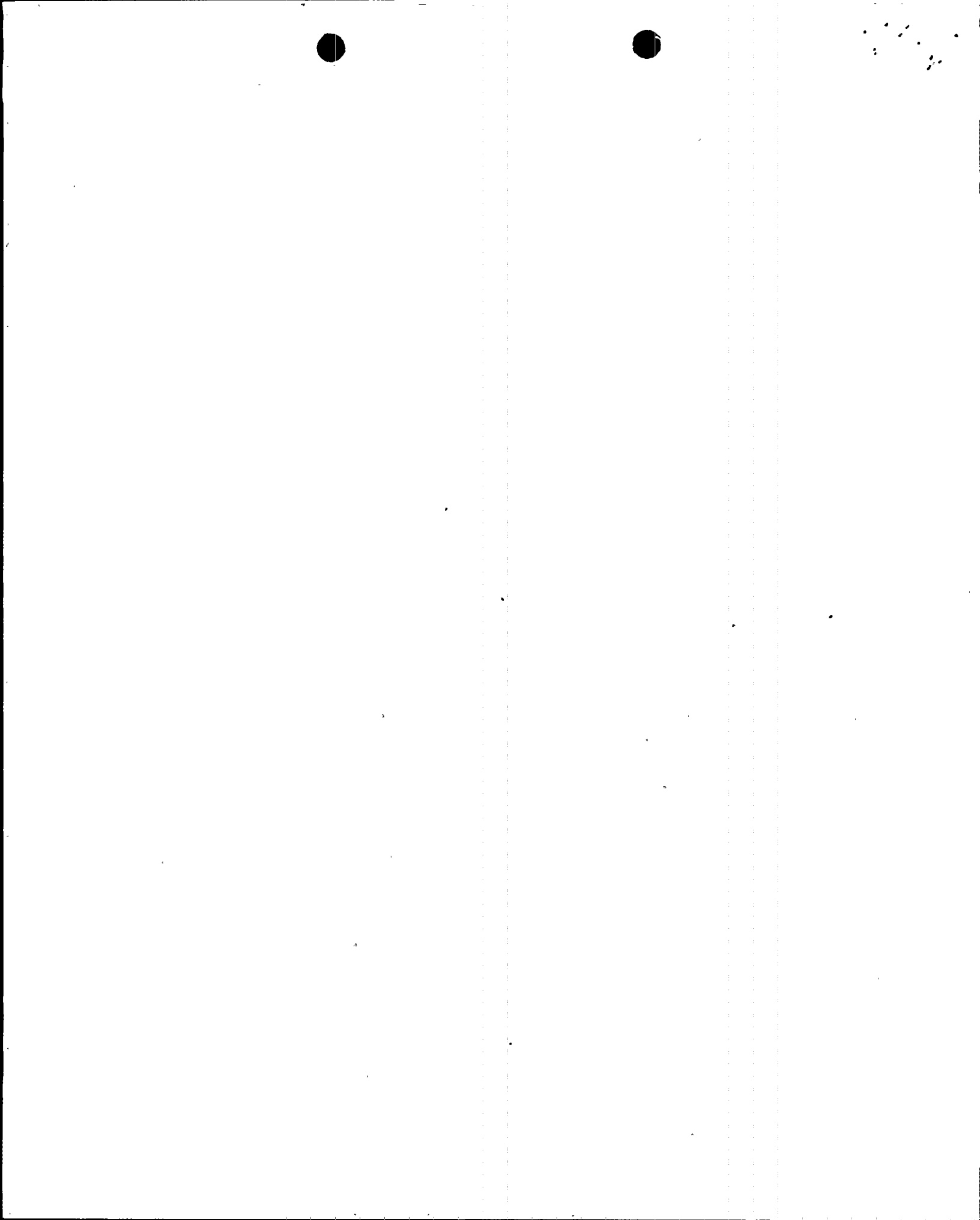




Intervenor's Application, p. 3. This allegation apparently stems from estimates made in the affidavit of Douglas King of June 27, 1981 regarding the amount of radioactive solid waste to be generated from the processing of primary coolant, initial decontamination of containment and decontamination of channel heads and divider plates. However, Mr. King's estimates of the amounts of such wastes are greatly overstated; his assumptions that all such wastes must be stored on site and that no precautions have been taken by the Licensee for the handling of such wastes are erroneous; and his speculation regarding the possibility of an undefined "irreversible contaminating accident" is unfounded. See attached Affidavit of Alan J. Gould. As Mr. Gould's affidavit also notes, the Licensee has previously described to the Board the precautions to be taken for the handling of such wastes so that a hurricane<sup>6/</sup> would

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<sup>6/</sup>In this regard, the Intervenor makes much of the fact that the Licensee has changed its proposed commencement date for the repairs from October to before the height of the hurricane season. See Intervenor's Application, pp. 1-3. However, this change in schedule is not material to an evaluation of the safety of the repairs. In all of the Licensee's and NRC Staff's evaluations, no credit was taken for the repair schedule, and consideration of the change in the schedule would not affect the results of those evaluations. See NRC Staff Second Motion for Summary Disposition (March 23, 1981); Licensee's Answer Supporting NRC Staff Motion for Summary Disposition of Contention 4A (April 17, 1981); NRC Staff Objections to Proposed Amended Contention 1 and Third Motion for Summary Disposition (April 27, 1981); Licensee's Response in Support of NRC Staff Motion for Summary Disposition of Contention 4B (May 5, 1981); letter from Steven C. Goldberg to Atomic Safety and Licensing Board members (June 13, 1981); letter from Norman A. Coll to Atomic Safety and Licensing Board (June 12, 1981).



pose no significant radiological hazard. Nothing in the Intervenor's Application or supporting affidavits suggests that the previous conclusion of the Board to that effect is erroneous.

The only information which exists on the record contradicts the assumptions presented in the Intervenor's Application. As has been previously demonstrated, and as is uncontradicted or even referred to by the Intervenor, the steam generator lower assemblies (SGLAs) will be adequately protected from hurricanes while stored in the steam generator storage compound (SGSC),<sup>7/</sup> an SGLA outside of the containment would be immovable by hurricane winds or wind-driven water,<sup>8/</sup> a tornado-borne missile could not penetrate the steel walls of an SGLA,<sup>9/</sup> and the solid wastes with relatively high concentrations of radioactivity will be kept inside the Turkey Point Radwaste Building (which is designed to withstand hurricanes) pending shipment.<sup>10/</sup> The solid waste with relatively low concentrations of radioactivity which might

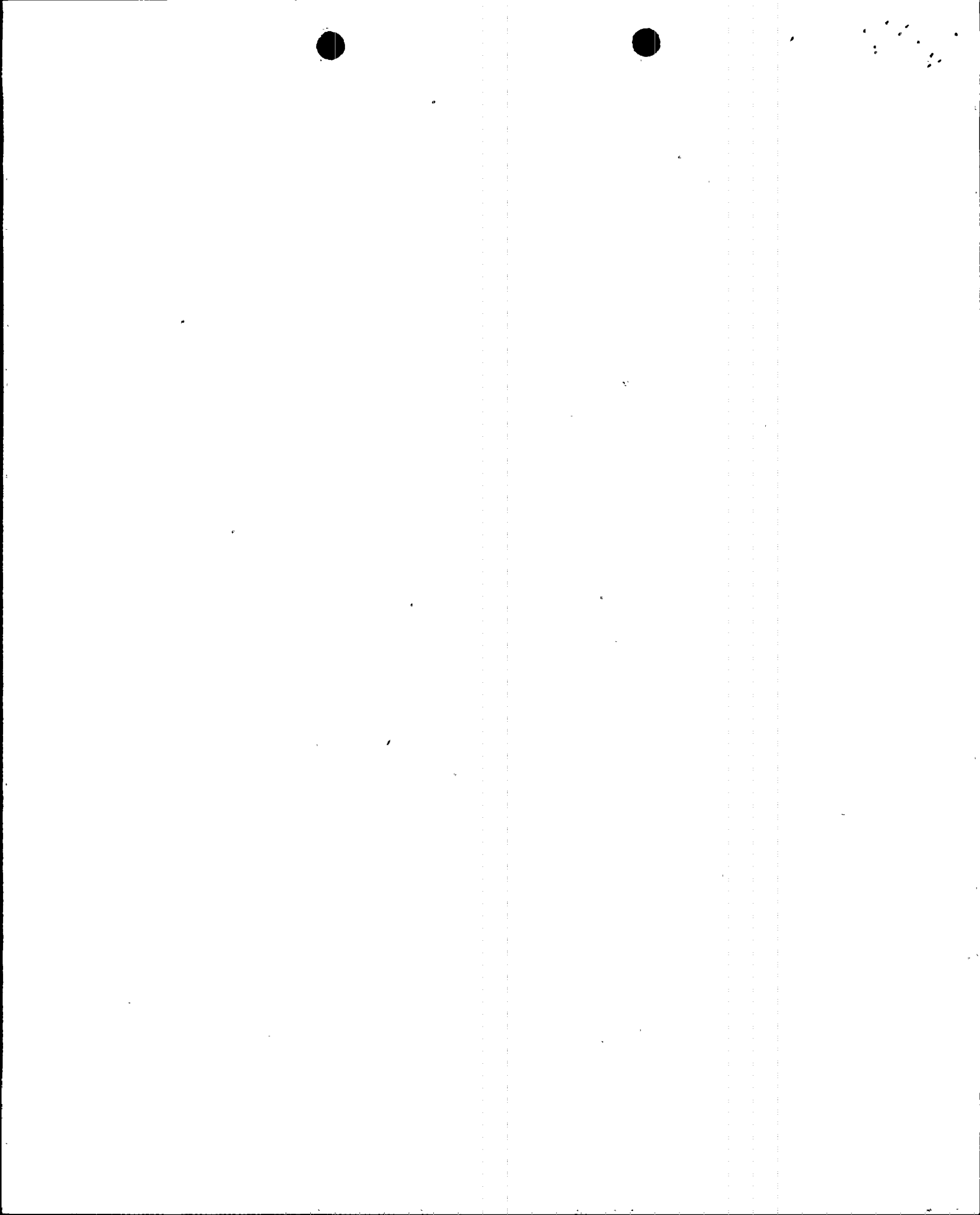
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<sup>7/</sup>Memorandum and Order (May 28, 1981), p. 36. . .

<sup>8/</sup>Id.

<sup>9/</sup>Id.

<sup>10/</sup>Final Order, p. 3. See also Affidavit of Alan J. Gould, p. 6, attached to letter from Norman A. Coll to Atomic Safety and Licensing Board (June 12, 1981).



be retained on site during the repairs only would amount to approximately 23.2 Ci, and the consequences of a postulated release from this waste during a hurricane would be insignificant.<sup>11/</sup> An impact which is not significant does not warrant the issuance of a stay to preserve the status quo pending appeal. See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-199, 7 AEC 478, 480 (1974); see also Seabrook, supra, 4 NRC 10, 15. Thus, the Intervenor has not established that he may be irreparably injured as a result of a denial of a stay. This factor weighs heavily against the grant of a stay.

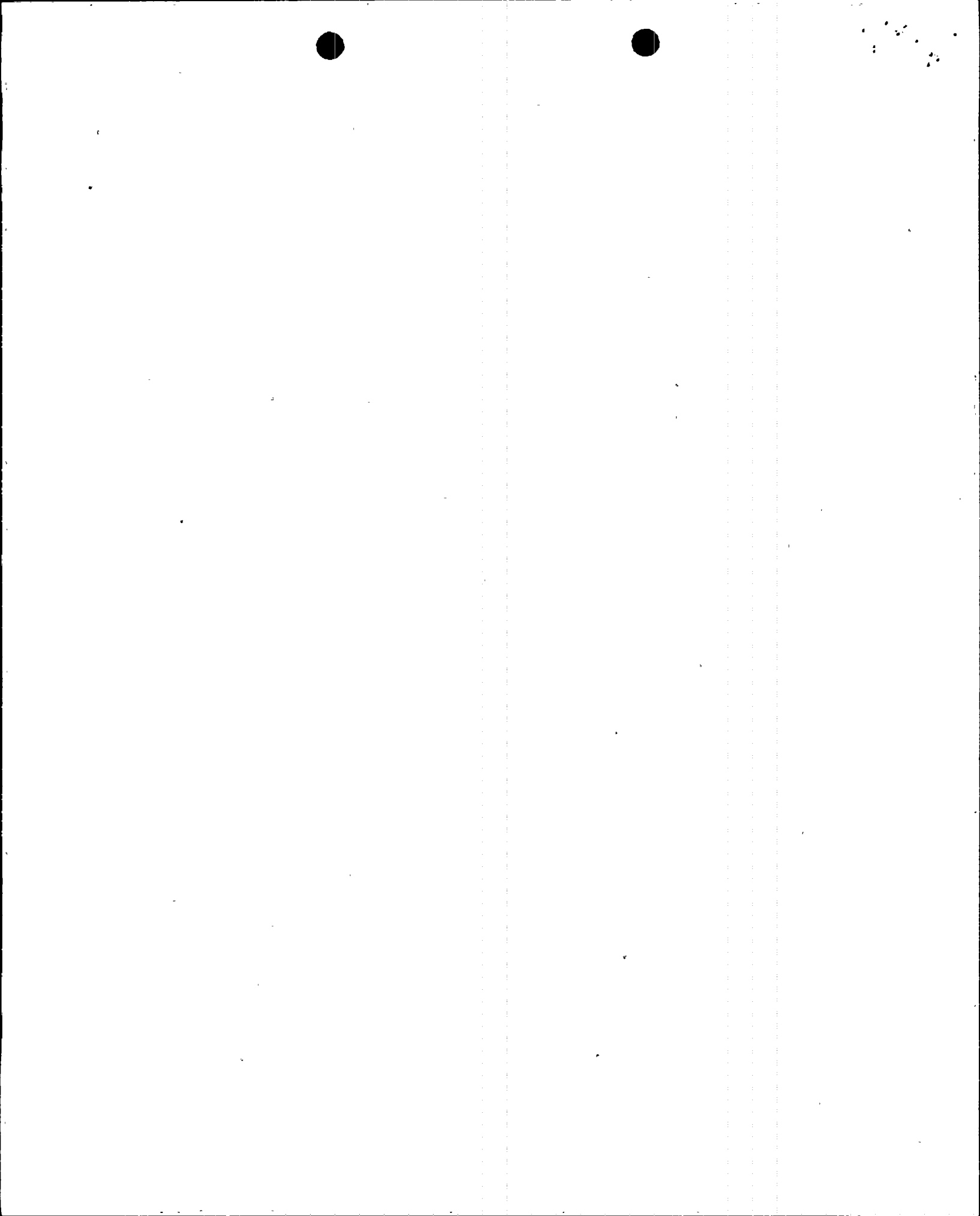
C. Whether the granting of a stay would harm other parties.

The Intervenor claims that "the granting of a stay will not harm the licensee, because it has represented throughout this litigation that the repairs at Turkey Point were not to begin until October 1, 1981."<sup>12/</sup> Intervenor's Application,

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<sup>11/</sup>Final Order, p. 5.

<sup>12/</sup>This statement contains the implicit assumption that any stay would not extend beyond October 1981, or three months. However, it is not unusual for the appeal process to extend for much longer durations. See, e.g., Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), LBP-79-25, 10 NRC 234 (1979) and ALAB-584, 11 NRC 451 (1980), where the appeal process consumed seven months in an amendment proceeding involving summary disposition of all contentions.



p. 3. The Intervenor's claim does not comport with the record in this proceeding. As the Licensing Board itself has stated:

In response to questions from the Board during the Special Prehearing Conference [of May 2, 1979], Licensee indicated its plans for initiating the work are indefinite. (Tr. 77-79). Mr. Coll [attorney for Licensee] stated, "We do not know at this time when it will be required to make the repairs," and went on to explain that the company's objective is "to be ready to perform the repairs when it becomes necessary or economically desirable to do so." (Tr. 78). According to Project Manager Mantz,

"\*\*\* the exact date of initiation of the repair program will depend upon FPL's analysis of the extent of degradation of the existing steam generators, maintenance schedules and unplanned repair outages, refueling schedules, the availability of alternate oil fired generation, and other factors. (Mantz Affidavit at 3)."

Order Ruling on the Petition of Mark P. Oncavage (August 3, 1979), p. 24 (emphasis added). In a letter dated June 3, 1980 from Robert E. Uhrig to Darrel G. Eisenhut, the Licensee stated that it had "decided to commence the repair of Turkey Point Unit 4 steam generators in October, 1981." However, as stated in the letter from Norman A. Coll to the Atomic Safety and Licensing Board (June 12, 1981), Turkey Point Unit No. 3 recently experienced an unplanned repair outage due to the failure of the electrical generator and FPL was considering making the electrical generator and steam generator repairs concurrently. The decision to do so was in fact made, and immediately following receipt of the license amendments of June 24, 1981, the Licensee commenced the steam generator repairs to Unit No. 3. If the Licensee is required to interrupt the steam





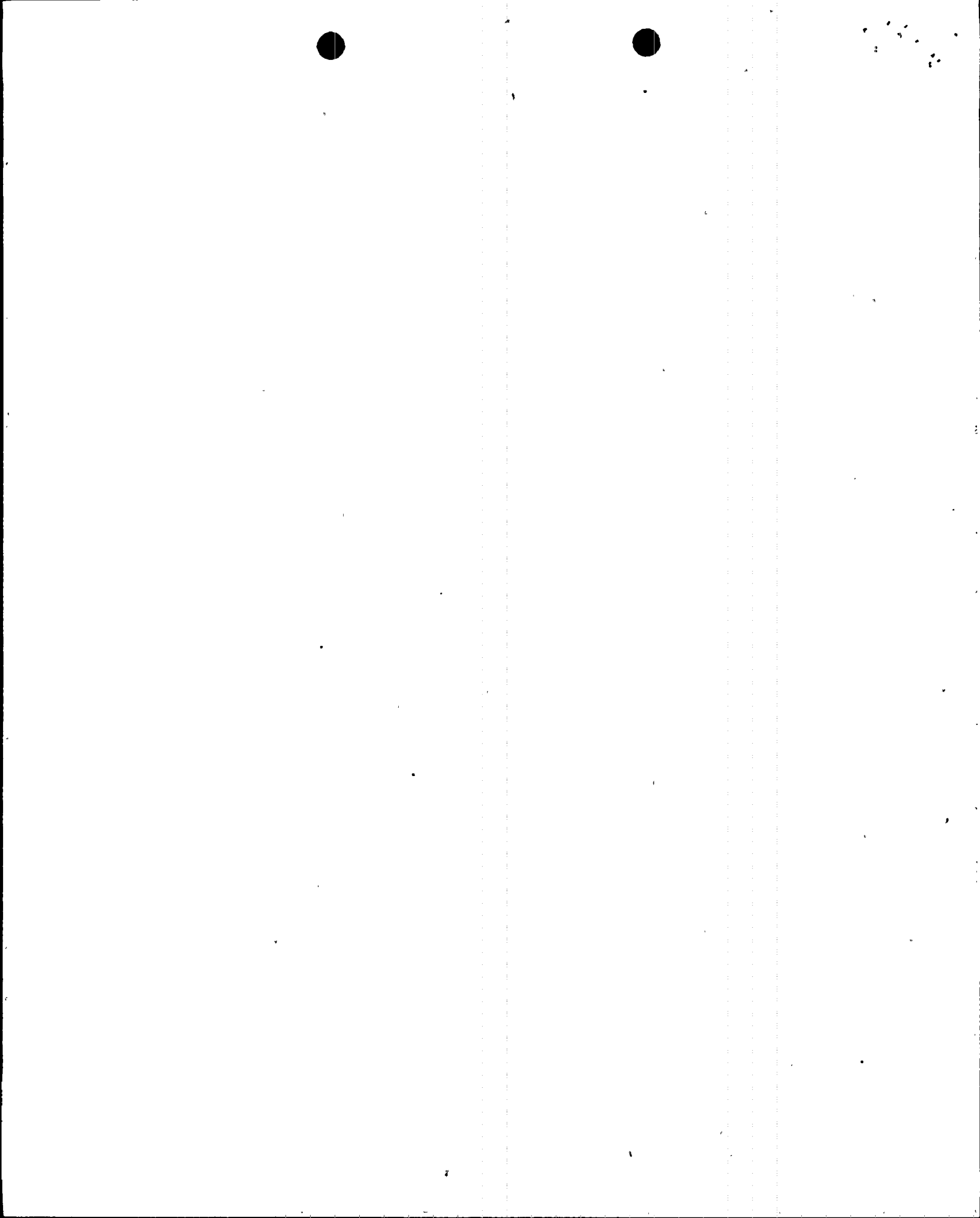
generator repairs as a result of a stay, the Licensee will incur substantial economic injury.

As shown in the attached Affidavit of H. D Mantz, the costs associated with a stay lasting two and one-half months would be approximately \$63,000,000 and with a stay lasting seven months would be approximately \$219,000,000. These costs are attributable to such factors as the cost of replacement power during a period in which Turkey Point Unit No. 3 would otherwise be operating, escalation costs, and costs of relocating discharged personnel. The costs attributable to delay in completion of a project have previously been recognized as factors opposing the grant of a stay. Marble Hill, supra, 6 NRC 630, 634; Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-404, 5 NRC 1185, 1188 (1977).

This factor weighs against the grant of a stay.

D. Where the public interest lies.

The Intervenor alleges that the "public interest lies in delaying the storage of these very high amounts of radioactivity until after the height of the hurricane season." Intervenor's Application, p. 3. However, as previously stated, the Licensing Board has found that "the impact of a hurricane or tornado on the LLW produced by the steam generator repairs and stored temporarily on site at Turkey Point will not pose a significant radiological hazard to the public." Final Order, p. 6. Consequently, the Intervenor's public interest claims are without merit.



Additionally, it should be noted that a stay of 2 1/2 months would result in the discharge of approximately 400 persons and a 7 month stay would result in the discharge of approximately 450 persons. Although the impact upon those discharged may not be "quantifiable", it would nevertheless be real and argues against the grant of a stay. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-349, 4 NRC 235, 269 (1976).

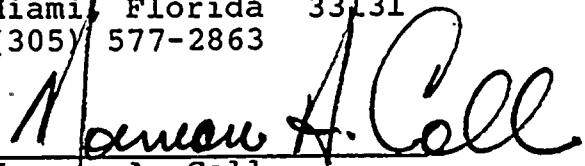
This factor does not weigh in favor of a stay.

IV. Conclusion

Because the Intervenor has not established that any of the four factors weigh in favor of a stay, his request for a stay should be denied.

Respectfully submitted,

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Norman A. Coll

Dated: July 10, 1981

cc: See Attached Certificate of Service

