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SUBJECT: Submits Governor Brown comments on NUREG-0862, Issue 2, "Insp Rept of Preliminary Rept, Seismic Reverification Program at Diablo Canyon Nuclear Power Plant, Units 1 & 2." Truly independent audit should be initiated.

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U. S. Nuclear Regulatory Commission
Washington, D. C. 20555



Re: Diablo Canyon Inspection Report; NUREG-0862

Dear Members of the Commission:

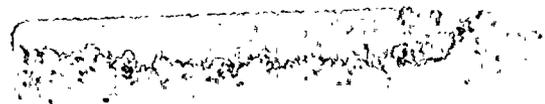
This is in reply to the Commission's request for the comments of Governor Brown on the NRC's "Inspection Report of 'Preliminary Report, Seismic Reverification Program at Diablo Canyon Nuclear Power Plant, Units 1 and 2,' NUREG-0862", Issue 2. The Governor's comments are set forth below.

1. The decision whether to take enforcement action lies particularly within the NRC's discretion. The Governor accordingly offers no comments as to how the Commission should proceed on the enforcement issue. Whatever enforcement decision is reached, it is essential that the Commission issue a thorough public explanation of the bases of that decision and the Commission's underlying reasoning.

2. At the Staff's November 3 meeting with PG&E, PG&E's consultant stated that the reverification program had been "all my own ideas, and I formulated it myself without any help from the people at PG&E." (See November 3 transcript; p. 215, lines 11-14). Several statements in the Inspection Report, however, indicate that PG&E was involved in the process of developing the reverification program. (See Inspection Report, p. 338, line 23 through p. 339, line 14; also p. 122, line 9 through p. 123, line 5.) This should interest the Commission for at least two reasons: first, because it has been clear since the Staff's October 9 meeting with PG&E that the proposed reverification program has been defined too narrowly; and, second, because such involvement of PG&E in defining the reverification program contradicts the existence of an independent relationship between PG&E and its consultant.

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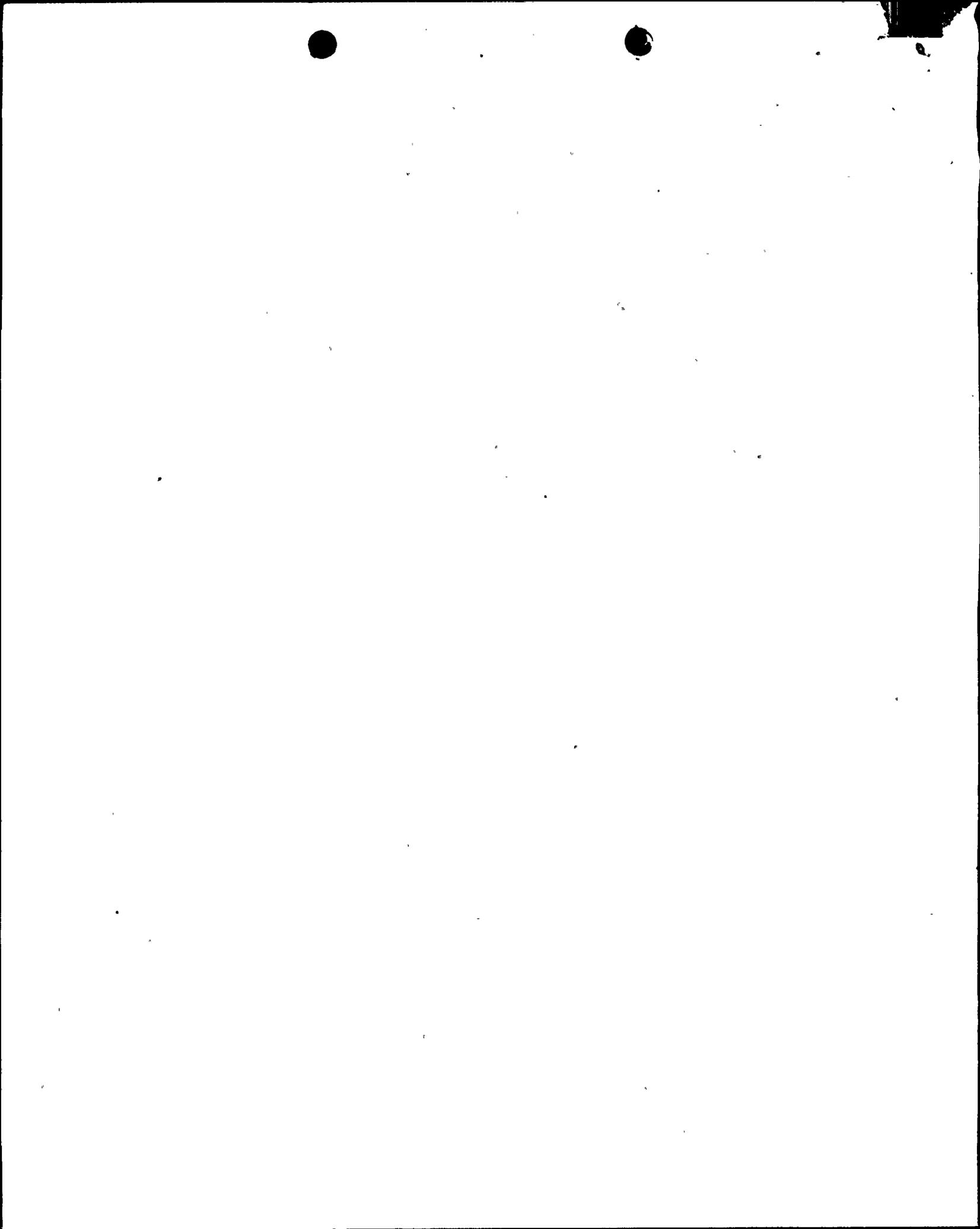
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3. The central issue before the Commission remains what is has been since PG&E's design, construction, and quality assurance errors were discovered last September: namely, whether PG&E should be permitted to perform an audit of itself through consultants chosen exclusively and unilaterally by PG&E. The Governor's position has been, and remains, that the NRC should not permit such an audit by PG&E for the following reasons:

a. PG&E has no credibility to play a significant role in the audit or in the selection of the consultants. The public record is replete with exaggerated statements by PG&E, including the assertion that Diablo Canyon is "the most thoroughly studied nuclear power plant in the history of the world." For four years, PG&E made such statements in order to attract support for Diablo Canyon, while at the same time the most elementary technical errors at Diablo Canyon went unnoticed by PG&E and its technical consultants. The conclusions of PG&E and its own consultants as to the meaning and implications of the technical errors at Diablo Canyon, therefore, would not be credible now.

b. The collaboration between PG&E and its consultant from the outset of their relationship and the editorial privileges that were afforded to PG&E confirm that a truly independent audit was not established. Indeed, PG&E withheld from the NRC the fact that PG&E had reviewed and commented on three separate drafts of its consultant's purportedly independent report to the NRC during the very time-period that this matter had become a sensitive and visible public issue. We refer the Commission to the discussion concerning the need for a truly independent audit that occurred at the NRC Staff's October 9 meeting with PG&E (see October 9 meeting transcript, pp. 120-123), the Governor's letter to the Commission dated October 30, 1981, and the widespread press and editorial coverage of the independent audit issue during the months of October and November. We also refer the Commission to the colloquies of Chairman Palladino and Commissioner Gilinsky concerning the independent audit issue before the House Subcommittee on Energy and Environment on November 19, 1981. (See November 19 hearing transcript, pp. 88-89.) It was only after being confronted by the NRC with evidence of the edited October 21 draft report (marked "Do Not Duplicate") that PG&E came forth with the fact that it had exercised privileges to review and to comment on the report.

4. The extraordinary posture of Diablo Canyon precludes a business-as-usual decision by the Commission on the process of selecting a truly independent auditor. Diablo Canyon is not a commonplace proceeding in which a routine or even novel technical problem has arisen. Diablo Canyon, rather, involves a nuclear plant that was sited by PG&E on the mistaken belief that an earth-



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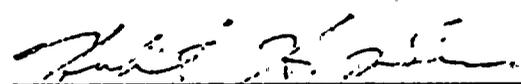
quake fault was not nearby. This unprecedented mistake was then compounded by fundamental design, construction, and quality assurance errors which exacerbated the seriousness of the original siting mistake. No matter how the Commission would deal with audit requirements in other situations, therefore, the Commission in this case must tailor its actions to reach circumstances of the most exceptional nature.

The Investigation Report reveals that PG&E has treated its consultant as a member of PG&E's management team. Such teamwork has become an inappropriate fixture of PG&E's relationship with its consultant.

5. The Commission is responsible to the public, which is the intended beneficiary of the NRC's regulatory authority. The public interest will not be served in this proceeding unless the NRC assures that there is in fact a truly independent audit and that there is a solid basis upon which to build public confidence in that audit. The Governor submits that the Commission has only one option: to order a halt to the reverification program which PG&E commenced with its own selected consultants and to commence a forthright process of initiating a truly independent audit which can garner the confidence of the public. The Governor has called for this NRC action by letter dated December 17, 1981. The Commission has the authority to take this action, and the public interest requires that it do so promptly.

The fact that PG&E has rushed forward with its own consultant and reverification program should be deemed immaterial by the NRC. PG&E, of course, is entitled to perform any studies it wishes for its own purposes. The NRC, however, is not bound by what PG&E has chosen to do.

Very truly yours,



Herbert H. Brown
Attorney for Governor Edmund G. Brown Jr.
of the State of California

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