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U.S. House of Representatives
 Committee on Energy and Commerce
 Room 2125, Rayburn House Office Building
 Washington, D.C. 20515

FRANK M. POTTER, JR.
 CHIEF COUNSEL AND STAFF DIRECTOR

February 23, 1982

The Honorable Nunzio Palladino
 Chairman
 Nuclear Regulatory Commission
 Washington, D.C. 20555

Dear Mr. Chairman:

Your response of February 1, 1982 to our letter of November 13, 1981 concerning the independence of the Diablo Canyon Audit is, quite frankly, unsatisfactory. Despite the amount of time required to provide your response, for which no explanation was given, your reply failed to adequately address the issues. This establishes an unacceptable level of performance for the Commission.

While recognizing that the ultimate responsibility of the Commission is the protection of public health and safety, the Committee's concern, expressed in our November 15, 1981 letter, is the establishment and maintenance of competent and credible procedures by which technical issues are addressed throughout the licensing process.

In the case of the Diablo Canyon nuclear power plant, the NRC's failure to discover the utility's numerous technical errors before issuing an operating license points to a problem which may be far more serious than the errors themselves. As a result of the sequence of events in this case, we are no longer confronted with simply technical errors amenable to technical solutions. Rather, we are faced with the erosion of the public confidence in not only the NRC's ability, but also its willingness, to fulfill its responsibility as the protector of public health and safety.

Subsequent to the discovery of the errors at Diablo Canyon, the NRC suspended the license of the utility and required an independent audit of the plant's seismic design. The purpose of the audit is to determine what, if any, additional protections are needed at the plant to ensure the public's health and safety and to restore public confidence in the safety of the plant. In order to accomplish these goals, the integrity of the audit must be guaranteed by the unimpeachable propriety of its process.

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Enclosure 7

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The criteria contained in your letter appear to do little to ensure the integrity of the audit. Your letter seems to confuse "independence" with "competence" and "avoidance of conflict of interest"; all of which are required in the Commission order for the audit. Indeed, your letter ultimately fails to provide any meaningful standard by which the independence of the audit can be judged.

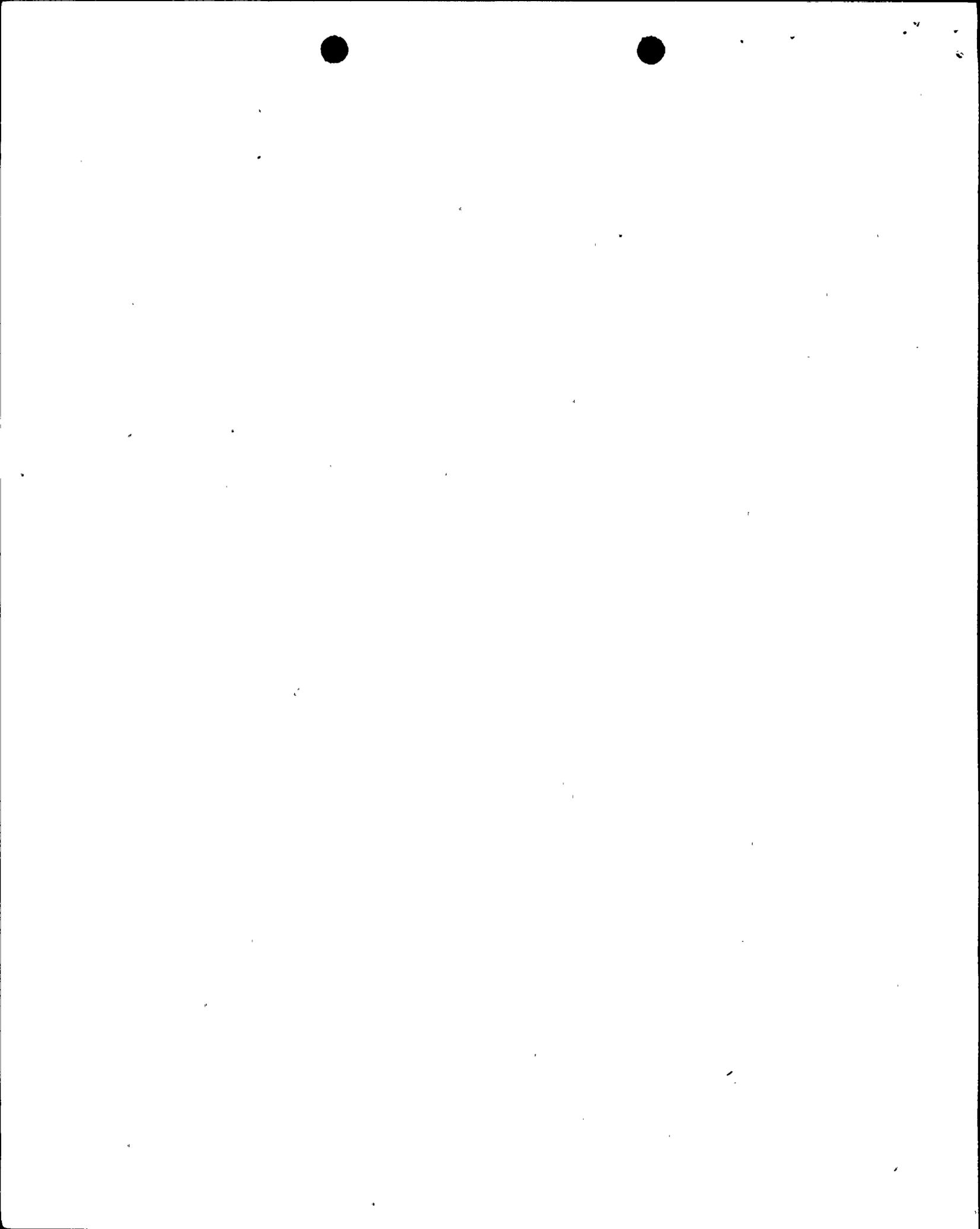
For example, even if R. L. Cloud and Associates met the independence through lack of conflict of interest requirements described in your response to our letter, the independence of the firm has been brought into question by evidence in the Inspection Report (NUREG-0862) that Cloud and PG&E together tailored the scope of the audit to meet the needs of the utility. This degree of cooperation between the auditor and the audited is inconsistent with the concept of independence. The independent auditor must clearly understand its client to be, in cases like this, the public as represented by the Commission and the intervenors, not the utility. If this is not a view shared by the Commission, we should be so informed.

The NRC staff has understood the importance of avoiding real or apparent improprieties in an audit if its findings are to merit public confidence. The staff has taken steps to guarantee the independence of audits for nuclear units seeking licenses in the near term. These precautions are being taken for plants that are not now contested by intervenors and have no record of construction irregularities. It is ironic that the Diablo Canyon plant, so heavily contested and with such a deplorable construction record, is not subject to at least equivalent standards.

In extemporaneous remarks before the Interior and Insular Affairs Subcommittee on Energy and the Environment on November 19, 1981, you stated that freedom from editorial comment would be an essential element in determining the independence of an audit. We are dismayed that after three months you have discarded even this minimal standard of independence and replaced it with an entirely different concept: no conflict of interest.

We, too, wish the audit to avoid a conflict of interest. But we also believe it must be independent. Absent special definitions, it must be assumed that the Commission intends commonly accepted definitions of words used in its orders. The dictionary defines "independent" to mean:

Political autonomy, free from influence, guidance, or control of another or others.

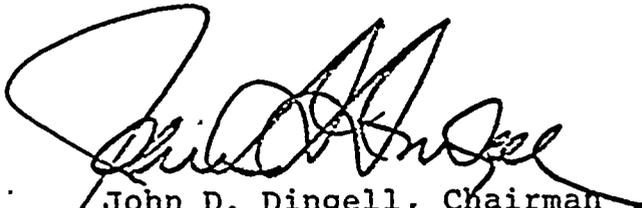


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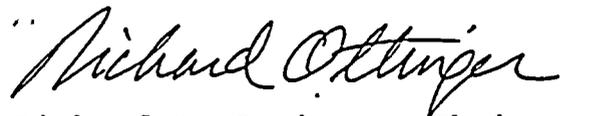
Failure to use precise language in Commission orders, or later substitution of words that are by no means synonymous, confuses staff and applicants alike, and makes the task of conforming actions to Commission orders more difficult.

As the NRC considers the applications for operating licenses of plants with histories of poor quality assurance during construction, the importance of a credible audit increases. The value of such an audit will increase proportionally to the perception of its independence from the utility. In this manner, public confidence which was lost through the disclosures at Diablo Canyon and other constructions sites can be regained by the Commission. In view of the foregoing, we request the Commissioners to review the response contained in the February 1, 1982 letter and reformulate the criteria by which they will evaluate the "independence" of the audit ordered on November 19, 1981 of the Diablo Canyon nuclear power plant.

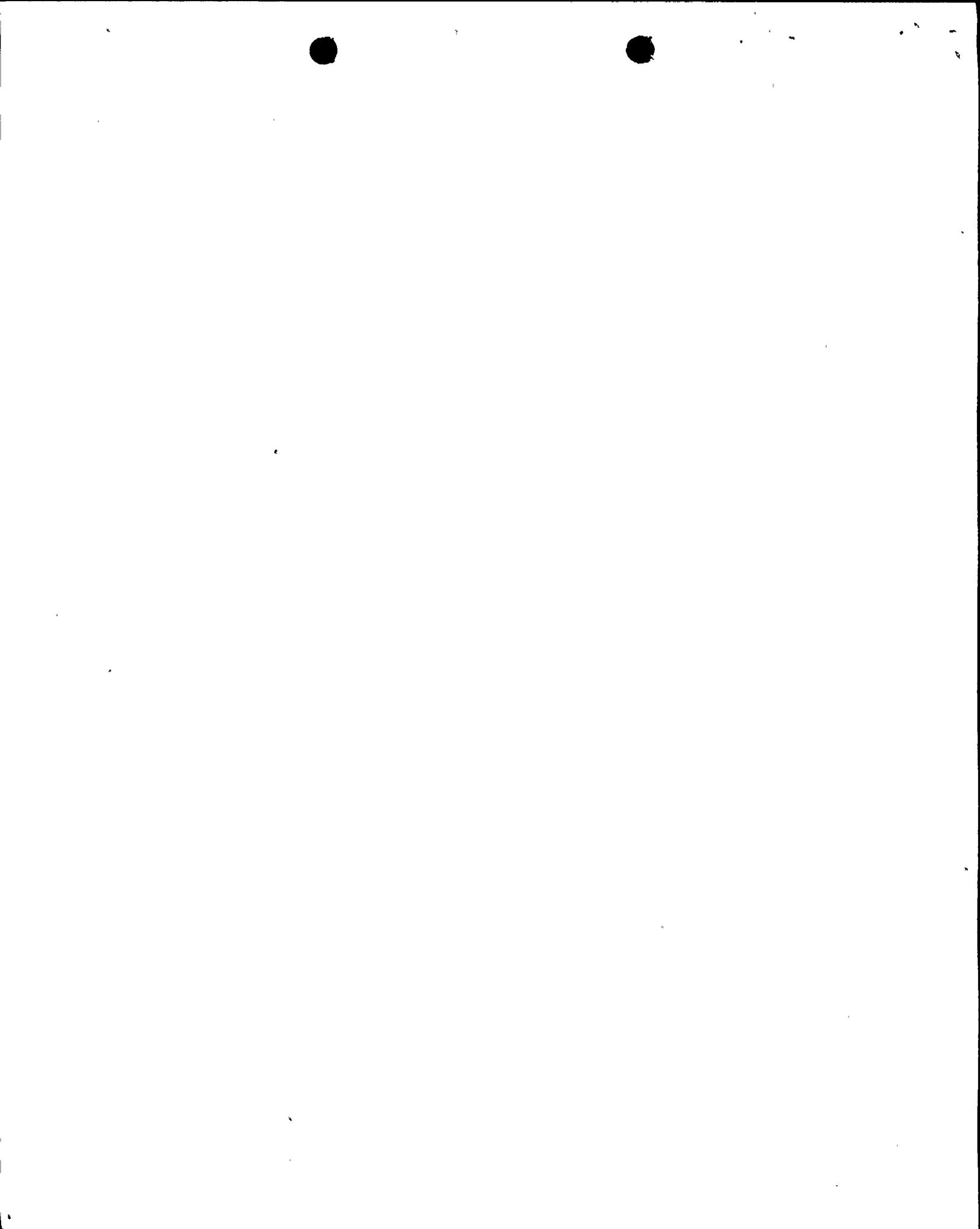
Sincerely,



John D. Dingell, Chairman
Committee on Energy
and Commerce



Richard L. Ottinger, Chairman
Subcommittee on Energy
Conservation and Power
Committee on Energy
and Commerce



2117 Mr. PANETTA. Does independence also include that the
2118 report be made to the NRC or directly to the utility? Would
2119 independence involve who reports?

2120 Mr. GILINSKY. We would presumably get it at the same
2121 time.

2122 Mr. PANETTA. You would get it at the same time and I
2123 guess the other issue is does independence involve
2124 selection. Does the NRC participate in the selection of
2125 that independent audit?

2126 Your answer is yes?

2127 Mr. PALLADINO. Yes, we will select and I think will
2128 approve.

2129 Mr. GILINSKY. We would have to be satisfied. The point
2130 I wanted to make earlier was that that review is not the end
2131 of the line.

2132 The NRC has to review that report.

2133 Mr. MARKEY. Is it the NRC's intention to make editorial
2134 comment upon or editorial changes in the report made by the
2135 independent auditor or is the independent auditor's
2136 statement going to remain as reported to the NRC?

2137 Mr. PALLADINO. If it's going to be an independent audit,
2138 we should not be editing it. However, we don't have to buy
2139 everything that comes in that report.

2140 Mr. MARKEY. But what I am saying is before the
2141 independent auditor makes their return to you, do you have



2142 any intention of making a judgment upon or consulting with
2143 or allowing PG&E to consult with the editorial comments of
2144 that report?

2145 Mr. PALLADINO. I can only say I hope that PG&E will not
2146 interfere with the independence.

2147 Mr. MARKEY. I think it is just as important that you do
2148 not interfere as well. And is that your intention?

2149 Mr. PALLADINO. I would say we would not want to see PG&E
2150 interfere with the independence in that report, nor would we
2151 want to do that, but I would expect that we might reach
2152 different conclusions.

2153 Mr. GILINSKY. There is going to be a continuing
2154 relationship among these various parties if for no other
2155 reason they have to exchange information. We will stay in
2156 touch with the progress of this work undoubtedly.

2157 If for one reason or another we believe it is inadequate,
2158 I am sure we will comment on that.

2159 Mr. MARKEY. This is the indispensable first step. Is it
2160 your intention to have public hearings that allow for
2161 comment upon the reopening of the power plant and the
2162 problems that now exist, as a part of this independent
2163 audit?

2164 Is that your intention?

2165 Mr. PALLADINO. The Commission hasn't spoken to that. My
2166 own intention would be not to do that.

