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Ivan Selin, Chairman
Nuclear Regulatory Commission

Dear Chairman Selin,

It has been an eventful time since you and I both testified in front of Congressman Peter Kostmayer on the Yankee Rowe case.

At that hearing you made history by agreeing to shut Yankee Rowe if the NRC staff found substance in findings by Robert Pollard of the Union of Concerned Scientists on the question of embrittlement. Your word was good, and Yankee Rowe has since been shut. Your actions went a long way to restore public hope that change could come to the NRC.

Indeed, many of us anticipated at the time that your willingness to move on Yankee Rowe would signal a new era of genuine respect for and responsiveness to citizen concerns.

However, on December 10 and 11, 1992, the Commission may have taken a giant step backward, and done serious damage to its public credibility.

At hearings on "recapture" for Diablo Canyon, the staff of the Nuclear Regulatory Commission argued aggressively on behalf of the utility.

The Commission has the legal right to do so. But in this case that meant four paid lawyers from PG&E, plus four more from the NRC, were fighting the fine points of procedure against the Mothers for Peace.

The Mothers are a volunteer organization with no paid staff and, in this case, no attorney.

Had this been a capital case with the Mothers as defendants, it would have been an automatic mis-trial. At very least, they would have been entitled to a public defender. As Hugo Black put it in *Gideon*: "Any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."

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The Mothers for Peace are a popular group in San Luis Obispo, for good reason. In the public comment section of these hearings, a number of supporters of Diablo Canyon thanked the Mothers for their work over the years in making the plant safer.

Thus the presence of NRC lawyers arguing against them in addition to the PG&E lawyers could only give the appearance of an unfair piling on.

It did not help matters that the NRC staff appeared at times to be rude and arrogant. Though certainly open to interpretation, many found the staff's attitude toward the Mothers to be condescending at very best, bordering on the contemptuous.

In matters of such extreme sensitivity, I'm sure you'll agree this is entirely unacceptable. I personally believe the NRC staff should remain neutral in such proceedings.

But at very least it should conduct itself with a certain respect for, if not deference to, citizen groups that are struggling with complex issues on a volunteer basis, often without the help of a paid attorney.

Suffice it to say that while it may carry the case in a legal sense, the legal staff did the Commission no favor in the public eye.

In stark contrast, by the way, the three men who comprised the ASLB in this hearing were as courteous, patient and compassionate as any I have seen in my twenty years of involvement with this issue. Their demeanor seemed to confirm the era of openness which your Yankee Rowe decision seemed to inaugurate.

We understand they have now admitted at least some of the Mothers' contentions. We hope this signals a more open appeals process and, by inference, a more open and responsive 2.206 vehicle.

Thank you for your time and attention. Perhaps our paths will cross at yet another hearing.

Best,



Harvey Wasserman
Senior Advisor
January 17, 1993

