



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

February 19, 1993

Mr. Harvey Wasserman
Senior Advisor
Greenpeace
1436 U Street N.W.
Washington, DC 20009

Dear Mr. Wasserman:

I have been asked to respond to your letter of January 17, 1993, to Chairman Selin regarding the representation of the NRC staff at the recent prehearing conference held in San Luis Obispo, California, in connection with the Diablo Canyon Nuclear Power Plant. Because your letter addresses issues related to an ongoing adjudicatory proceeding of which the Commission might later take review, it would be inappropriate for the Chairman to express any views at this time. As the Assistant General Counsel for Hearings and Enforcement in the Office of the General Counsel, I can assure you that the conduct of attorneys on my staff is of great importance to me personally.

I have read the transcript of the proceeding and have obtained the perceptions of others who were present at the prehearing conference regarding the conduct of staff counsel. (Incidentally, there were only two attorneys appearing for the staff, not, as your letter states, four.) My review of the matter leads me to conclude that staff counsel's conduct was courteous and appropriate at all times, and I saw nothing that would support your complaint.

As regards your allegation that the NRC staff counsel argued aggressively on behalf of the utility, let me assure you that this was not the case and that your perception is inconsistent with the transcript as I read it. In this proceeding, for example, the NRC staff disagreed with the licensee on several matters, including the very basic and significant issue of whether the Mothers for Peace had standing to intervene in the proceeding.

You express a personal belief that the NRC staff should remain neutral in proceedings such as the one in question. NRC proceedings, such as that associated with the Pacific Gas and Electric Company license amendment application, are conducted under Commission Rules of Practice which provide a certain measure of legal formality, appropriate to assure the orderly conduct of the proceeding and the due process rights of all parties. The NRC staff, like the applicant and any other person admitted to intervene, is a party with a right to express its independent views on both the procedural and substantive matters that are relevant to

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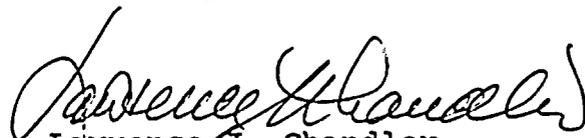
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the proceeding. Thus, while it is not the role of the staff or its counsel to advocate a license applicant's position, neither is the role of the NRC staff to refrain from taking positions on technical, legal or policy issues that are associated with a license application. The NRC staff independently reviews the license application under the Commission's regulations and other published standards. It also reviews pleadings and other material filed in a proceeding by all parties and develops the position it considers to be in the public interest, consistent with the applicable NRC regulations and caselaw. The staff presents its case, through its counsel, to the presiding officer designated by the Commission to conduct the proceeding, usually an Atomic Safety and Licensing Board. It is my expectation that staff counsel's representation of the staff will be fair, professional and vigorous, as I'm sure you would expect of any party's representative. That the staff's position on a legal, technical or policy issue may coincide with that of applicant should not be viewed as ignoring or compromising its independence but rather an agreement on a particular technical or legal point derived from its own evaluation.

Moreover, the NRC's hearing process provides ample protection of the rights of intervenors. In addition to the NRC staff's involvement as a party to the proceeding, the proceeding is presided over by an Atomic Safety and Licensing Board, which is independent of the staff and remains neutral in the proceeding. Further, the record of the proceeding is subject to review by the Commission itself, either on its own initiative or upon request by a party.

In short, I am satisfied that staff counsel performed their responsibilities professionally and courteously at the prehearing conference in San Luis Obispo. I have every confidence in their judgment and their representation of the NRC staff and this office. I am also confident that the Mothers for Peace will be afforded an opportunity to have its views advanced and fairly considered by the NRC in the context of the licensing process.

Sincerely,



Lawrence J. Chandler
Assistant General Counsel
for Hearings and Enforcement



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