



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

March 9, 1982

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The Honorable John D. Dingell, Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

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Dear Mr. Chairman:

The Commission is in receipt of your letter dated February 23, 1982 concerning our response of February 1, 1982 on the Diablo Canyon independent audit. We regret that our response was unsatisfactory to you.

We can only answer that the Commission is attempting to do its best to deal with a unique and difficult situation. While we seek to promote and maintain a high level of public confidence in all our actions, our paramount responsibility under the law is to protect the public health and safety.

We recognize your concerns over this issue and the importance of having a technical auditor who is competent, yet is as independent as possible. In our deliberations, we will certainly keep these in mind.

Sincerely,

Nunzio J. Palladino

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 Committee on Energy and Commerce  
 Room 2125, Rayburn House Office Building  
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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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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:

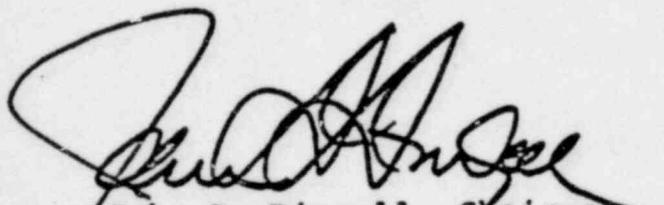
Political autonomy, free from influence, guidance,  
or control of another or others.

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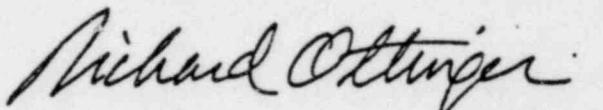
Failure to use precise language in Commission orders, or later substitution of words that are by no means synonymous, confuses staff and applicants alike, and makes the task of conforming actions to Commission orders more difficult.

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