



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

PDR

August 12, 1985

50-275  
50-323

The Honorable Edward J. Markey, Chairman  
Subcommittee on Energy Conservation and Power  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:


This is to respond to your request at the July 10, 1985 Subcommittee hearing for the Commission's views on the "appropriateness or inappropriateness of an additional hearing on the issues which have been raised with regard to Diablo Canyon specifically, and with regard to the generic question of earthquake emergency planning." From the context in which this request arose, the Commission understands it to be both a request that the Commission reconsider its formal adjudicatory decision not to consider the effects of earthquakes on emergency planning at Diablo Canyon, and a request to reconsider its proposed rule not to consider the effects of earthquakes on emergency planning as a generic matter.

The Commission continues to believe that its decision in the Diablo Canyon case was correct and entirely proper. Moreover, it would be inappropriate in any circumstance for the Commission now to reconsider its decision in the Diablo Canyon proceeding for at least two reasons. First, the decision is now pending for review in the U.S. Court of Appeals for the D.C. Circuit and under 28 U.S.C. § 2347(c) the Commission should not, without judicial approval, reconsider a decision after the filing of a petition for judicial review. See, e.g., American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 540 (1970). Second, at this time any Commission reconsideration of the Diablo Canyon adjudicatory decision at your suggestion would be an outgrowth of oversight hearings that were critical of the Commission's decision. Adjudicatory reconsideration in these circumstances would raise grave questions regarding adherence to the Commission's statutory mandate as an independent regulatory agency, and duty to the parties in its adjudicatory proceedings, to decide issues in a manner that preserves both the reality and appearance of independence and impartiality. E.g., Pillsbury v. FTC, 354 F.2d 952 (5th Cir. 1966).

On the generic rulemaking matter, we have yet to receive our staff's analyses of the numerous public comments and recommendations on the final rule. We believe that we should await them before reaching any decision in this matter lest we be accused of prejudging the rulemaking issue and failing to give adequate consideration to the public comments as we must do under applicable law in notice and comment rulemaking proceedings.

Commissioner Asselstine is on official travel. He will provide his views on these issues by the end of this week.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frederick M. Bernthal". The signature is fluid and cursive, with a prominent initial "F" and a long, sweeping underline.

Frederick M. Bernthal  
Acting Chairman