

September 27, 2001

The Honorable Barbara Boxer
United States Senate
Washington, D.C. 20510

Dear Senator Boxer:

I am writing on behalf of the Nuclear Regulatory Commission (NRC) in response to your letter of August 17, 2001, in which you express your objection to the NRC's proposed changes to its procedures for the conduct of agency hearings. We appreciate your interest in the Commission's efforts to improve the NRC's hearing process.

At the outset, we must note that the Commission has had a longstanding concern that its hearing process may not be as effective and efficient as it could be. Commission experience during the 1980s and early 1990s shows that the use of a formal, trial-type, adversarial format for hearings on many technical issues is neither essential nor always conducive to the development of an adequate evidentiary record, and quite often results in needlessly protracted, costly, and complicated proceedings. The Commission generally is of the view that a less formal and less adversarial hearing process in which the presiding officer -- a hearing board or a single administrative judge -- more directly controls the development of the hearing record could be more effective and could reduce the burdens and litigation costs for all participants in certain types of proceedings. Accordingly, the Commission has proposed changes to its rules of practice to extend and increase the use of informal hearing procedures.

The Commission's proposal would not eliminate evidentiary hearings or adversely affect the maintenance of a full and open public record of NRC's adjudicatory proceedings. Rather, the Commission's proposal would simply modify the procedures that apply to the hearings and make the hearing proceedings more accessible to the public. In fact, the Commission has proposed to modify its hearing procedures to ensure that oral public hearings with live witnesses (rather than strictly "paper hearings," such as those provided for materials licensing under the current regulations) would be the norm. Although the proposed rules would limit cross-examination by the parties in many cases, the proposed procedures would allow the parties to suggest questions for the presiding officer to ask at the hearing. Moreover, in proceedings in which cross-examination by the parties would be prohibited, the proposed procedures, with some exceptions, would allow parties to cross-examine when the presiding officer determines that cross-examination by the parties is necessary to ensure the development of an adequate record for decision. The proposed procedures also would ensure that relevant information bearing on the decision is available to the parties. As has been the case under our existing practice, the presiding officer's decision and the record developed in the proceeding would be available to the parties and would be a matter of public record. Thus, we believe that the proposed hearing procedures would continue to provide the opportunity for a full and open dialogue regarding the safety of nuclear power and of the possession and use of Atomic Energy Act materials. Nonetheless, we will maintain an open mind on the merits of the proposal in our review of the matter.

As you may know, these proposals were published in the *Federal Register* as part of the NRC's proposed rulemaking on "Changes to Adjudicatory Process" on April 16, 2001 (66 Fed. Reg. 19,610). The Commission is seeking public comment on these proposals, and we will include your letter in the rulemaking docket. The Commission will consider your comments and those of others before promulgating a final rule incorporating any of the proposals.

Again, we appreciate your interest in our procedures.

Sincerely,

/RA/

Richard A. Meserve