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National Mining Association
Foundation For America's Future

September 14, 2001

BY ELECTRONIC AND FACSIMILE DELIVERY

U.S. Nuclear Regulatory Commission
Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
Washington, DC 20555

Dear Sir or Madam:

Please find attached the National Mining Association's ("NMA") comments regarding the Nuclear Regulatory Commission's ("NRC") Notice of Proposed Rulemaking as set forth in the April 16, 2001 Federal Register notice from NRC on behalf of NMA's member licensees.

If you have any questions, please feel free to contact me at (202) 463-2627. Thank you for your time and consideration in this matter.

Sincerely,

Katie Sweeney
General Counsel
National Mining Association

Enclosures

1130 17TH STREET, N.W., WASHINGTON, D.C. 20036-4677, (202) 463-2625 FAX: (202) 463-6152

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BY ELECTRONIC AND FACSIMILE DELIVERY

U.S. Nuclear Regulatory Commission
Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
Washington, D.C. 20555

Re: Comments on Nuclear Regulatory Commission's Proposed Rule Regarding Changes to its Adjudicatory Processes: Informal Hearings

The National Mining Association ("NMA") respectfully submits its comments regarding the Nuclear Regulatory Commission's ("NRC" or "Commission") Notice of Proposed Rulemaking ("NPR") addressing changes to NRC adjudicatory processes as set forth in an April 16, 2001 Federal Register notice[1]. The stated purpose of the NPR is to make NRC's adjudicatory processes more efficient and better tailored to the types of licensing and regulatory activities that NRC conducts. The proposal represents a shift to greater reliance on the 10 CFR 2 Subpart L type informal hearing processes. Recent Subpart L hearing proceedings involving uranium recovery ("UR") licensees have been extremely burdensome and expensive. As NRC proceeds with this rulemaking effort, it must prevent the abuse of any new informal hearing processes and ensure that such processes reflect the low level of risk inherent in materials licensing that the Subpart L hearing procedures allegedly were designed to address.

[1] 66 FR 19609, April 16, 2001

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NMA is an organization composed of companies engaged in mining and mineral processing. Member companies include (1) producers of most of the United States' metals, uranium, coal, and industrial and agricultural minerals; (2) manufacturers of mining and mineral processing machinery, equipment, and supplies; and (3) engineering and consulting firms and financial institutions that serve the mining industry. NMA submits these comments on behalf of its member companies who are NRC UR licensees and are, or may be, affected by existing or future NRC adjudicatory processes. These members include the owners and operators of NRC-licensed uranium mills and mill tailings sites and *in situ leach* ("ISL") UR facilities.

I. Background

In the interest of improving the effectiveness of NRC's adjudicatory processes, the Commission began a critical reexamination of its practices and procedures for conducting hearings within the requirements of 10 CFR Part 2, primarily Subpart G. Stimulated by the "recent experience and criticism of agency proceedings"[2], the Commission adopted a new Policy Statement entitled *Policy on Conduct of Adjudicatory Proceedings; Policy Statement* dated August 5, 1998. In this Policy Statement, the Commission stressed the need for Licensing Boards to "reduce the time for completing licensing proceedings while insuring that hearings [are] fair and [produce] adequate records." Noting the need to "avoid unnecessary delays in the NRC's review and hearing

[2] It should go without saying that any efforts to make Subpart G proceedings more efficient because of perceived inefficiencies are, by definition, even more relevant to "informal" Subpart L hearings "which were envisioned [to be] more expedient proceedings 'involv[ing] less...delay for parties and the Commission." CLI-01-04; *See Final Rule; Informal Hearing Procedures for Materials Licensing Adjudications*, 54 FR 8269, 8271, 8275 (February 28, 1989). This critical issue will be discussed *infra* at p. 7-8.

processes" and focus on "genuine issues and real disputes," the Commission expressly recognized that "applicants for a license are also entitled to a *prompt resolution* of disputes concerning their applications."[3]

So that a prompt resolution of disputes may be achieved, the Policy Statement recommended that the Commission, its Licensing Boards ("LBs"), and Presiding Officers ("POs") be given the authority to *instill discipline* in the adjudicatory process to ensure a *prompt yet fair* resolution of contested issues in adjudicatory proceedings[4]. The Commission referenced its "*inherent supervisory authority* including its powers to assume part or all of the functions of the PO in a given adjudication, as appropriate within the context of a particular proceeding."[5] Further, the Commission emphasized its intent "to *promptly respond* to adjudicatory matters placed before it, and *such matters ordinarily take priority over other actions before the Commissioners*."[6] Following the Policy Statement's lead, the reexamination of NRC adjudicatory processes in the proposed rule represents even more formal reconsideration.

In 1998, the NRC Office of the General Counsel ("OGC") initiated a reexamination of NRC's current adjudicatory processes under the Atomic Energy Act of 1954 ("AEA") as well as current NRC regulations and relevant provisions of the Administrative Procedure Act ("APA")[7]. After completing its evaluation, OGC released a memorandum detailing the findings of this reexamination and the legal requirements for

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[3] *Emphasis added; See Policy on Conduct of Adjudicatory Proceedings; Policy Statement* at p. 2.
[4] *Emphasis added, id.* at p. 3.
[5] *Id.*
[6] *Id.* NMA notes that if the Commission fails to ensure that this policy is implemented appropriately, any and all of the contemplated rule changes will represent a significant expenditure of time and resources without value in return. *See discussion infra* at 8-9.
[7] *See* 5 U.S.C. §§ 554, 556, 557.

hearings and policy considerations entitled *Reexamination of the NRC Hearing Process*[8]. This memorandum discussed the legal requirements for NRC hearings and policy considerations relevant to any proposed changes to NRC's adjudicatory processes.

Then, in its Staff Requirements Memorandum ("SRM"), the Commission directed OGC to prepare draft legislation and a NPR addressing modifications to 10 CFR Part 2, Subparts G, L, and J[9]. Commissioner McGaffigan opined that the NPR's statement of considerations and its case for legislation revising NRC adjudicatory processes "should make clear that we are not trying to push the public away but instead are actively seeking to engage the public in what we hope will be more timely, useful, and satisfactory ways."[10] Informal hearings should address the system in which hearings currently operate, Commissioner McGaffigan stated, because he had "not heard expressions of great confidence in an adjudicatory system that brings the public in after the staff has largely completed its review, and that pits the staff and the applicant against the intervenor." By balancing the informal nature of NRC hearings with more useful procedures and requirements, Commissioner McGaffigan looked to "transform" the way the Commission deals with the public. On the same note, Commissioner Merrifield added that he would favor "modifying procedures to permit discretionary intervention, or intervention by a party that does not meet the expressed requirements for standing but could provide input to aid the Commission in making sound decisions." Further, to condense the procedures held at hearings, Commissioner Merrifield would not require pre-hearing conferences but allow them and would only allow the Commission, its LBs, and POs to ask questions at hearings.

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[8] *See* SECY-99-006.
[9] Memorandum located at www.nrc.gov/NRC/COMMISSION/SRM/1999-006srm.html, July 22, 1999.

In response to the OGC memorandum, the Commission directed Staff to release the NPR so that they may "evaluate what changes should be made to the NRC hearing process." The Commission's primary focus appears to be a desire to move toward more informal hearing processes. However, since the OGC memorandum merely laid out the pros and cons of changing NRC adjudicatory processes and did not recommend specific changes, the Commission recognized the need for expert advice and meaningful discussions on proposed changes. As a result, the Commission initiated a reexamination workshop described in a Federal Register notice,[11] bringing various affected representatives with different interests in the rulemaking together to discuss viewpoints on major policy issues associated with the proposed revision of hearing processes. The workshop had a pre-defined scope and agenda regarding proposed changes to the adjudicatory process and allowed substantial but limited discussion between the various affected parties on several relevant issues. Such issues included a comparison of formal and informal hearing processes, different proposed models for hearings, and desired "performance goals" for hearings. After completion of the workshop and further deliberations, NRC published its NPR entitled *Changes to the Adjudicatory Process: Proposed Rule* with comments due on or before July 16, 2001.[12] On May 16, 2001, NRC released a Federal Register notice[13] extending the comment period to September 14, 2001 based on the unavailability of certain documents and transcripts from Commission hearings and discussions. Within the context of the foregoing, NMA submits its comments in response to the Commission's NPR on changing NRC's hearing processes.

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[10] *See Commissioners Seek Flexibility for Informal Hearings*, *Inside NRC*, p. 11-12, August 2, 1999
[11] *See* 64 FR 55176 (October 12, 1999).
[12] *See* 66 FR 19610 (April 16, 2001).
[13] *See* 66 FR 27045-6, (May 16, 2001).

II. NMA's General Comments

Generally, NMA supports periodic reassessment of regulatory procedures and requirements. In this current NPR, the Commission has admitted that it, "has had a longstanding concern that the hearing process associated with licensing and enforcement actions taken by the NRC is not as effective as it could be."[14] Even as far back as 1983, the Commission concluded that a formal, adversarial proceeding was not, in many instances, necessary to developing an adequate administrative record.[15] Thus, in this current NPR reconsidering its hearing processes, the Commission states that making NRC adjudicatory processes "open, understandable, and *accessible*" to all interested parties is "one of the cornerstones of the NRC's regulatory program."[16]

The importance of keeping NRC's regulatory procedures and requirements up-to-date and consistent with Commission policies as expressed in its adjudicatory decisions or policy statements cannot be overstated. For example, the Commission has adopted a policy favoring *risk-informed, performance-based* regulatory oversight to maximize the cost-effective use of NRC and license resources in their efforts to protect public health and safety[17]. As a result, it is imperative that the Commission's new hearing procedures be formulated within the fundamental policy construct that more rigorous hearing procedures should be reserved for more serious potential public health and safety concerns.

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[14] *See* 66 FR 19610 (April 16, 2001).
[15] *Id.*
[16] *See* 66 FR 19610 (April 16, 2001).

It can be fairly said that, as noted above, Subpart L proceedings were intended to result in more expedient hearings for materials licenses because the public health risks associated with such licenses do not rise to the same level of concern as those associated with commercial nuclear reactors[18]. So, in a sense, Subpart L, which was enacted in advance of the Commission's adoption of a *risk-informed, performance-based* regulatory policy, was and is completely in sync with that current policy. However, to ensure meaningful compliance with that policy, the philosophy underlying Subpart L must be adhered to by POs, LBs, and the Commission itself.

Based on the recent experience of UR licensees with the Subpart L hearing process, NMA has some grave concerns about the way NRC adjudicatory processes are working as opposed to the way they are supposed to work. In fact, if recent experience is any indication, the abject failure of NRC authorities, including specifically the Commission itself, to maintain the *informal, expeditious* nature of Subpart L hearings raises serious questions regarding the value of the proposed rule changes. Indeed, if Subpart L does not function effectively in the UR materials licensing context, what chance will it have to do so in the commercial reactor licensing context? The underlying reason for revising NRC adjudicatory processes, especially when dealing with materials licenses, is to provide guidance to LBs and POs so that proceedings may be handled in an efficient and manageable fashion[19]. If the POs, LBs, and the Commission cannot maintain a disciplined process in the materials license context, it seems likely that Subpart L hearings under the new rules will just become a hybrid version of Subpart G

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[17] *See Strategic Assessment Issue Paper: DSI 12: Risk-Informed, Performance-Based Regulation*
[18] *See* 66 FR 19611 (April 16, 2001).

proceedings *without* the crucible of cross-examination. If POs, LBs, and Commissioners' are inexperienced with the technical issues involved, it is unlikely that they will make effective use of oral proceedings, as proposed, such that adjudicatory records will be adequate, the process will be efficient, and the costs reasonable.

NMA members have commented that apparently simple, straight-forward standing issues require months of hearings and extensive written pleadings that cost UR licensees multiple thousands of dollars. POs often offer *pro se* intervenors multiple opportunities to amend pleadings and then go on to examine, in considerable detail, what are *de minimis* at best potential public health issues. As noted above, the Commission has a "long-standing commitment to the *expeditious* completion of adjudicatory proceedings," and the Policy Statement says that the applicant/licensee is entitled to a *prompt resolution* of disputes[20]. But, as the attached slide[21] provided by Hydro Resources, Inc. ("HRI"), a UR licensee, indicates, the similarities between the infamous Louisiana Energy Services ("LES") Subpart G case which, to some extent, stimulated this hearing procedure reexamination, and the HRI Subpart L case still before the Commission, are very troubling. In fact, NMA's UR licensee members find the Commission's failure to monitor and, as necessary, supervise the HRI hearing so that Subpart L hearing procedures would not be abused by intervenors, positively chilling[22].

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[19] As stated in the Commission's Policy Statement, POs and LBs are encouraged to set schedules for deciding disputes, regulate discovery disputes, and take other action as appropriate to the particular proceeding. *See id.*

[20] *Emphasis added; See Policy on Conduct of Adjudicatory Proceedings; Policy Statement* at p. 2.

[21] *See* attached slide comparing Louisiana Energy Services LES and HRI proceedings.

[22] The Commission's statement in a recent opinion in that case (CLI-01-04) that NRC staff had spent six years on the license application coupled with the suggestion that HRI had been offered the option of reducing the scope of its license, after all that time and expense, suggests a total disconnect with reality. The Commission's decision to close Uranium Recovery Field Office ("URFO") in Denver left it without ***any*** qualified ISL licensing expertise and was the proximate cause of a six year licensing proceeding. What

During the HRI Subpart L hearing, the PO allowed various intervenors to challenge *de minimis* and redundant standing issues, engage in substantial numbers of interlocutory appeals, and, in total, to file over 15,000 pages of pleadings[23] in a so-called *informal hearing*. By permitting the superfluous filing of repetitive pleadings and appeals, the PO effectively caused the expenditure of hundreds of thousands of dollars by HRI on a licensing proceeding which the Commission's rules were supposedly designed to make less burdensome. Given the Commission's aforementioned goal of alleviating the burden of costly and inefficient adjudicatory processes placed on applicant licensees and parties to NRC regulatory hearings, only changes that can assure that the HRI proceeding will not happen again will be of any use now or in the future.

Finally, NMA strongly believes that the existing rules on standing should be maintained and should not be expanded to allow participation by parties that do not meet the traditional standing requirements. Presently, standing rules allow only truly affected parties to participate in proceedings while, at the same time, protect licensees from abuses of the system by unaffected parties. It is extremely important to maintain this balance.

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are UR licensees to think when they see such an abject inability to evaluate a simple ISL license in an expeditious manner that is further compounded by loss of control of the Subpart L adjudicatory process.

III. NMA's Specific Comments

A. Issue: **Limitation of discovery on NRC staff until after the Safety Evaluation Report ("SER") and Final Environmental Statement ("FES") is overly broad and could delay the proceeding.**

Comment: -To the extent that discovery is relevant and appropriate under the proposed rules, it is not relevant and appropriate prior to completion of the SER and FES. NMA agrees that such early discovery would divert staff and perhaps applicant/licensee resources prior to the development of a complete regulatory record. No decisions should be made on preliminary approaches that may be modified substantially or eliminated entirely in final actions. Potential intervenors have the opportunity to review the license file as it develops and the opportunity to comment on the draft FES.

B. Issue: **Limitations on cross-examination with the opportunity for parties to submit questions to the Presiding Officer to question witnesses and where the Presiding Officer has the authority to allow cross-examination to develop an adequate record.**

Comment: -NMA's experience with "legislative-type" hearing procedures suggests that, more frequently than not, they are ineffective. They are ineffective because the PO or LB member frequently lacks the expertise and/or motivation to properly follow-up on responses to questions. A careful witness, if not pressed, can frame answers in such a manner that they are not responsive or are otherwise lacking in value to the decision-making process. In other words, witnesses who are in fact not competent can sound good to the untrained observer. Without expert follow-up on questions, any such inadequacies will go unnoticed and can contribute to errors in the record. Indeed, the result can be dueling oral affidavits that both seem reasonable on their face.
-If the Commission's concern is endless and repetitious cross-examination, then the answer lies with the PO. Any competent trial judge should be capable of managing limits on excessive and irrelevant cross-examination.

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[23] In the recent opinion regarding HRI, the Commission stated, "We must note, additionally, that the intervenors petition for review is marred by frequent generalized claims followed by citations to lengthy, multi-page sections of earlier briefs..." *See* CLI-01-04.

C. Issue: **Lack of control by Presiding Officers who allow multiple opportunities to amend pleadings and unlimited replies not routinely authorized by the current Subpart L rules [and multiple interlocutory appeals of every procedural decision.]**

Comment: -NMA agrees with the Commission's statements that case management is "an integral part of an efficient and effective hearing process." Having said that, as noted above, the Commission has not enforced strong case management controls on POs.
-NMA agrees that intervention requirements for informal hearings should require the submission of specific, well-supported contentions.
-NMA also agrees that informal hearing procedures should be modified to reduce the amount of motion practice generally allowed to prevent obvious abuses of hearing practices.
-Further, NMA would recommend that all POs be required to hold a scheduling/settlement conference within thirty days of the commencement of every hearing so that parties may have a clear understanding of relevant issues, the hearing schedule, settlement proceedings, and the limitations to be imposed on filings and pleadings.

D. Issue: **Cross-examination should not be used as it often is not an effective or efficient way to determine the truth.**

Comment: -This position appears to be at odds with fundamental, traditional common law assumptions (i.e., nothing can be regarded as the truth without going through the crucible of cross-examination.) Indeed, NMA's predecessor, the American Mining Congress ("AMC"), has advocated the use of cross-examination in "informal" *rulemaking* proceedings when necessary. In any event, whether more or less formal and/or with or without cross-examination, the hearing process must be risk-informed and disciplined to be efficient.

E. Issue: **Liberalize the rules for standing.**

Comment: -Liberalizing the rules for standing, aside from perhaps being illegal, virtually assures that the hearing process will be a costly, time-consuming, fruitless exercise that will make a mockery out of risk-informed, performance-based regulatory oversight, much less a fair and efficient hearing process. The licensee, which has the primary responsibility for safe management and use of AEA nuclear materials must have *some* protection against endless, repetitious, and baseless procedural filings designed to stall and delay proceedings while bleeding applicant/licensee resources.
-NMA also does not understand the reference to "persons who do not have a direct interest and cannot demonstrate standing nevertheless are able to make a substantial contribution to the development of the record in the proceeding." What kind of person and what kind of contribution does NRC have in mind? The record contains no examples. Without more explanation, NMA would regard this proposal as a clear-cut invitation to destroy any semblance of a fair and efficient hearing process apparently in the name of some feel-good, politically correct notions.
-Standing should continue to be based upon the requirement that a party meet the existing criteria for standing, including that the party can demonstrate immediate and actual harm. Parties meeting existing criteria have a vested interest in ensuring that the best arguments are put forward to support their position, including enlisting the assisting of any experts or the assistance of any other party that is not itself entitled to standing. Any party not entitled to standing as a matter of right may nonetheless file an amicus curiae brief under existing rules and procedures. Licensees should remain protected by existing standing rules from parties that are not entitled to standing as a matter of right but wish to improperly use Subpart L proceedings to stall licensing proceedings with the specific intent of closing down or driving out of business existing licensees and their licensed facilities. NMA-member licensees have had experience with and have expended considerable resources on standing issues against parties who have expressed such intentions.

F. Issue: **Should the informal Subpart L hearing processes be augmented or even supplemented by more informal, legislative-style hearing procedures where the Commission or Presiding Officer is responsible for framing the issues, the development of the record, and acting as the primary decision-maker? This concept would also increase relaxing the "legal" component of standing requirements to allow participation by those with the ability to contribute to a careful discussion of the issues.**

Comment: -See NMA's comment in paragraph B & E above. This appears to be an entirely unrealistic proposal. Again, it presupposes that the Commission and/or POs and LBs possess the experience to properly grasp and frame the issues that will determine the course of the hearing which seems to be a dubious assumption at best. NMA says this without any intent to question the ability of Commissioner's, POs or LBs, but rather to point out that, without the necessary expertise/experience in these matters, even the most talented individuals frequently cannot be efficient and, in some cases due to time constraints, even marginally competent to frame and decide the issues. Here, NMA notes the prior reference to NRC staff failures due to loss of URFO's experience and institutional knowledge.

-Further, it conflicts with NRC's role as an independent regulatory agency that reacts to licensee proposals since licensees have the primary responsibility for safely using and managing nuclear materials under the AEA. With that responsibility, the licensee also assumes the burden of justifying its proposed action. If NRC is suggesting that the licensee is to be relieved of this burden, then give the PO the responsibility for framing the issues. Thus, "this approach places too much responsibility and burden on the PO rather than on the parties to establish the record on which the decision is to be based.[24]

-Finally, as noted above, the amorphous standing proposal is an invitation to gridlock in NRC's hearing process is in the name of making the *concerned* public "feel good" about those processes. Currently, neither the concerned public nor the NRC staff have the burden of justifying a licensing action. The licensee has this responsibility. But, the concerned public must be held to some standards of relevance and substance of NRC's regulatory processes will grind to a halt.

[24] *See* 66 FR 19620 (April 16, 2001).

G. Issue: **Petitioners will be allowed to file a written reply to licensee/applicant and staff answers. No other written answers and replies will be entertained.**

Comment: -Strict limitations on petitioner replies are absolutely necessary.

H. Issue: **Compelling circumstances standard.**

Comment: -This standard must be included in the final rule to minimize or eliminate procedural stalling tactics designed to prolong the proceeding and increase applicant/licensee costs by constant interlocutory appeals. The expanded referral authority for "novel issues" is reasonable and recognizes that POs and LBs may need Commission guidance on such issues. This implicitly seems to recognize the fact that too much responsibility can be placed on the POs and LBs by making them primarily responsible for framing issues and developing an adequate record.

I. Issue: **Requiring petitioners to present specific contentions.**

Comment: -NMA agrees that requiring specific contentions is necessary to efficiently develop an adequate record. Written submissions are, or should be, all that is necessary in most informal materials license hearings. The proposed oral hearing process with the PO asking the questions will, in NMA's estimation, lead to more expensive hearings, due to travel alone, and will not necessarily provide a basis for efficient hearings. Attempting to question witnesses through the PO in most cases will be a waste of time and money and will not produce desired results.
-Additionally, NMA believes that written contentions setting out the relevant and important contentions in a proceedings are vital to the compiling of an adequate record. With that said, any proceedings requiring an oral component must still require

J. Issue: **Requiring all hearings to be oral except when parties agree unanimously to base the hearing on written submissions.**

Comment: -As noted in B and I above, NMA disagrees with this approach for most materials licensing issues which for UR licensees should, due to the low risk involved, be resolvable on the basis of written submissions with the flexibility for the PO to hold oral hearings on complex issues. Again, the proposal may put too much burden on POs who may not have the requisite expertise and experience.

K. **Issue:** **Timeliness of requests for hearings by persons other than applicants in low-risk licensing proceedings and criteria excusing untimely requests.**

Comment:

-NMA recommends that Section 2.1205 of Subpart L be revised to require publication in the Federal Register of all proposed licensing actions and to allow ninety (90) days from the date of publication for any person to file a request for a hearing.
-Unless good cause is shown, the filing of a hearing request after ninety days from the date of publication should be considered untimely and therefore denied. Implementation of these requirements would simplify the adjudicatory process and provide certainty as to the necessary criteria for timely filing of hearing requests.
-These proposed changes will confine the hearing request process to a single, post-licensing action review period rather than allowing hearing requests in connection with licensing *applications* and then additional hearing requests after NRC announces its intended licensing action. This would be consistent with NMA's comment in paragraph A above that hearings should not proceed until there is a final action and a final record on which the action is raised.

L. **Issue:** **Requirements for written submissions by parties to the Presiding Officer.**

Comment:

-NMA recommends that NRC revise Section 2.1233 to require that the written presentations submitted by a party address separately each of the areas of concern deemed to be germane by the PO.
-Page limits should be imposed for each of the admitted areas of concern and a page limit for the entire presentation, including exhibits and attachments submitted in support of the presentation. Page limits should be exceeded only upon a showing of good cause.
-NMA believes that an adequate record can be formed if the PO is strongly encouraged to follow-up, orally or in writing, parties' written submissions with specific questions designed to elicit specific information to supplement the written submissions. Appropriate page limits should apply to all written responses to the PO's questions.
-Submittals in reply to any written presentation, including answers to the PO's questions, must be strongly discouraged and permitted only upon a showing of compelling circumstances by a party (i.e.,

where new facts or opinions are first offered in response to questions posed by the PO.)

M. Issue: **Requirements for orders allowing oral presentations.**

Comment:

-NMA recommends a revision to Section 2.1235 explicitly stating that oral presentations will be ordered only upon a showing of extraordinary circumstances in a motion by a party or by order of its PO when written responses to questions may be too complicated and burdensome.
-Questioning of witnesses only by the PO, with any party allowed to submit a limited number of questions, to be determined in the discretion of the PO appropriate to the circumstances of the overall proceeding, will not work as noted in B above.

N. Issue: **Power of the Presiding Officer to sanction parties for misconduct during the adjudicatory process.**

Comment:

-NMA recommends that Subpart L should be amended to allow a PO to sanction parties engaging in misconduct. Commission intolerance of, and unwillingness to sanction, frivolous pleadings and other abusive tactics should be codified.
-NMA agrees with the proposed language of Subpart C, Section 2.333 allowing the PO to strike repetitious, cumulative or irrelevant evidence and take necessary and proper steps to prevent
-However, NMA disagrees with NRC's decision to authorize the payment of attorney's fees *only* for adjudications under the Program Fraud Civil Remedies Act, which, by law, must be on-the-record. If changes to the rules governing NRC adjudicatory processes are to encourage efficient case management, then POs must have the power to sanction parties for misconduct on-the-record even if the law does not require it.

Louisiana Energy Services Quotations*	HRI Crownpoint Comparisons
"…after more than seven years of effort and $34 million in costs."	*Ten years and $16 million in costs.*
"…the inability of the licensing process to operate in a predictable, efficient and timely manner…"	***Comparative licensing history***

April 22, 1998 Letter from Roland J. Jenson, President, Louisiana Energy Services to Shirley Ann Jackson et al., NRC.

Louisiana Energy Services Quotations*	HRI Crownpoint Comparisons
"... proven technology which has been operating safely in Europe for decades;"	*ISL has proven safe and environmentally benign in Nebraska, Texas and Wyoming. NRC has directly licensed these types of facilities for years or oversees agreement state licensing.*

*April 22, 1998 Letter from Roland J. Jenson, President, Louisiana Energy Services to Shirley Ann Jackson et al., NRC.

Louisiana Energy Services Quotations*	HRI Crownpoint Comparisons
"Even a facility as safe and as attractive as the CEC can be delayed indefinitely, beyond the patience of the most committed and able private partners and investors."	*HRI's delays have drawn serious questions from the investment community as to whether New Mexico uranium can be licensed at all. Time will answer this question.*

*April 22, 1998 Letter from Roland J. Jenson, President, Louisiana Energy Services to Shirley Ann Jackson et al., NRC.

Louisiana Energy Services Quotations*

"Unless serious reforms are undertaken, perhaps with express mandates from Congress, there may be little interest in the private business community for future nuclear facility investment in the United States."

HRI Crownpoint Comparisons

Similar conclusions can be drawn for ISL uranium development in New Mexico or any location where there are protestors.

*April 22, 1998 Letter from Roland J. Jenson, President, Louisiana Energy Services to Shirley Ann Jackson et al., NRC.

Louisiana Energy Services Quotations*

"…the project is nonetheless bound to linger on indefinitely, resolving issues remanded by the Commission, awaiting still other Commission rulings on long pending issues, staving off inevitable requests for further hearings, opposing motions for reconsideration and defending further appeals to the Commission and the courts, with no real controls on nor confidence in, the timing and responsiveness of the process."

HRI Crownpoint Comparisons

The current order by the ASLB has left HRI with similar serious concerns over the finality of the NRC hearing process. Petitioners have been granted party status more or less "carte blanc". There seems to be little effort made by the ASLB to limit issues or understand the phased nature of the NRC license process. It may be impossible to satisfy the petitioner's questions without all the information that is available from an ISL facility through the last day of restoration.

Louisiana Energy Services Quotations*

"... might prompt consideration of the sort of dramatic licensing process reforms that could someday provide a real opportunity for new nuclear energy development in this country."

HRI Crownpoint Comparisons

*April 22, 1998 Letter from Roland J. Jenson, President, Louisiana Energy Services to Shirley Ann Jackson et al., NRC.