NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Gregory B. Jaczko

SUBJECT: SECY-12-0066 – CRIMINAL PENALTIES FOR THE UNAUTHORIZED INTRODUCTION OF WEAPONS INTO FACILITIES DESIGNATED BY THE U.S. NUCLEAR REGULATORY COMMISSION AND FOR SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Approved in Part X Disapproved in Part X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___

SIGNATURE

5/30/12

DATE

Entered on "STARS" Yes X No ___

Chairman Jaczko's Comments on SECY-12-0066,
"Criminal Penalties for the Unauthorized Introduction of Weapons into the Facilities Designated by the U.S. Nuclear Regulatory Commission and for Sabotage of Nuclear Facilities or Fuel"

I appreciate the staff's work in this area and I approve in part and disapprove in part. I disapprove the staff's recommendation that the wrongful introduction of weapons on the premises of facilities possessing byproduct material should not be subject to criminal sanctions under the Atomic Energy Act. The staff's principle concern was that criminal penalties under AEA would not be a deterrent. Currently, we have no data or analysis to support the conclusion that the penalties would or would not be a deterrent. Further, it is speculative to conclude that anyone who wrongfully introduces weapons into a hospital or university is suicidal or willing to die during the commission of their crime, and is therefore not deterred by criminal penalties. NRC's role is to provide for adequate security of licensed radiological materials, and an essential part of the security of these materials is the establishment of a weapons-free zone around them. We should authorize criminal penalties for compromising the security of radiological sources, and allow the courts to determine the mental state of those that violate the law.

I also note that the AEA is not specific about the location of signs warning of criminal penalties for the wrongful introduction of weapons into areas with radiological sources. It uses ambiguous terms, including "the location" and "the facility," which would allow for broad interpretation by the licensee. Licensees that may be concerned about calling attention to the exact location of radiological sources have flexibility to post signs at the entrance of the hospital or university.

Second, I approve the staff's recommendation to defer a decision on whether to proceed with a rulemaking to add certain radioactive materials or other property to the scope of criminal penalties for sabotage identified in Section 236 of the Atomic Energy Act. The staff cited the ongoing analysis of issues related to Section 236, and suggested that a decision should be deferred until the analysis is complete, since there is no compelling need for a rulemaking at this time. I agree with Commissioner Ostendorff that that staff should make a determination regarding the expansion of the scope of Section 236 once the related analysis is complete, and that if the staff determines that an expansion is necessary, the staff should provide a notation vote paper to the Commission.

5/30/12

Gregory B. Jaczko Date