

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-10-0106 – PROPOSED RULE – 10 CFR PARTS
2, 51, AND 54 “AMENDMENTS TO ADJUDICATORY
PROCESS RULES AND RELATED REQUIREMENTS”
(RIN 3150-AI43)

Approved X (in part) Disapproved X (in part) Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

12/14/10

DATE

Entered on “STARS” Yes x No _____

Chairman Jaczko's Comments on SECY-10-0106
Proposed Rule – 10 CFR parts 2, 51, and 54 “Amendments to Adjudicatory Process
Rules and Related Requirements”

I approve of publication of the proposed rule, with some modifications. Our adjudicatory process is one of the primary means by which we encourage public participation. Keeping those rules current and modifying them as necessary is an essential part of our public confidence mandate and I appreciate the staff's efforts in this regard.

I appreciate OGC's thoughtful analysis of the variety of ways to approach appeals of contention admissibility determinations. I believe, however, that the appropriate approach is to allow for contentions to be appealed upon the Board's original ruling of admissibility rather than waiting until the end of the proceeding. In my time on this Commission I have seen a number of cases where all parties would have been better served to have the answers regarding contention admissibility handled up front rather than at the end of a proceeding. While I appreciate concerns about the Commission's work load, I also appreciate the negative impacts on our stakeholders of our current practice that does not allow them to raise contention admissibility issues to the Commission until after the close of the proceeding. Commission decisions at this late stage can require additional hearings, adding significantly to the length of time for the adjudication and consuming additional resources. While this approach could increase the number of appeals, this is mitigated by the fact that applicants are encouraged to appeal all contentions under the existing procedures. Therefore, I am not yet persuaded that this change would require a significant increase in resources. I do, however, understand there are a variety of views on this matter and I believe the proposed changes described in Enclosure 2 would provide ample opportunity to receive comments on this change and hear directly from our stakeholders on this issue. Thus, I support adding the proposed rule language and discussion to the proposed rule.

I do not support additional delegation of Commission authority at this time. I understand and appreciate the desire to free the Commission from having to formally affirm “minor matters”, but I am not yet convinced that the Commission has not already delegated such authority. I believe we must first establish precisely what types of “minor matters” the Commission would be comfortable delegating, and then, if necessary, adjust the rule accordingly. It is possible that all of the items that we identify as “minor matters” are already captured by the “minor procedural matters” the Commission currently has delegated to the Secretary. Thus, I believe it would be helpful for OGC first to do an analysis of what “minor procedural matters” as currently captured by our regulations means; and then, explain what, if any specific types of actions they would recommend having the Commission delegate that are not already captured by that language. This information could then inform a later Part 2 rulemaking effort.

Finally, I believe this proposed rule provides the Commission with the opportunity to clean up the regulations relevant to the mandatory hearings as we anticipate the first Commission mandatory hearings in new reactor proceedings. This is an issue the Commission has been

