

March 30, 2004

IA-04-005

Mr. Brian Flynn
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: NOTICE OF VIOLATION
NRC Office of Investigations Report 1-2003-021

Dear Mr. Flynn:

On March 12, 2003, the NRC's Office of Investigations (OI), Region I, initiated an investigation at the Rochester Gas and Electric (RG&E), Ginna Nuclear Power Plant. This investigation, which was completed on November 24, 2003, was initiated to determine if you, as the former Work Scheduling Manager acting as the 2002 Outage Manager, intentionally and without authorization, manipulated valves during cooldown for a refueling outage in March 2002, contrary to plant procedures. Based on the evidence developed during its investigation, OI concluded that you deliberately manipulated two valves during a plant cooldown on March 20, 2002, without authorization as required by procedure. These conclusions were noted in a factual summary of the OI report that was sent to you in our letter dated January 30, 2004.

In our letter dated January 30, 2004, we informed you that an apparent violation of 10 CFR 50.5 was identified and was being considered for escalated enforcement action against you in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. We also provided you the opportunity to address the OI findings and the apparent violation, before we made our final enforcement decision, by either attending a predecisional enforcement conference or by providing a written response. In a telephone conversation on February 6, 2004, you informed Mr. James Trapp (NRC Region I), that you decided to attend a predecisional enforcement conference.

On March 3, 2004, a predecisional enforcement conference was conducted with you in the Region I Office (King of Prussia, PA) to discuss the apparent violation, its significance, root causes, and your corrective actions. At the conference, you admitted that you throttled two service water outlet valves on March 20, 2002, and you knew it was wrong. You stated that this action, throttling the service water valves to increase plant cooldown, was a recommendation from the previous outage for which you were also acting as the Outage Manager. You described that on March 20, 2002, you and the Shift Supervisor had a discussion about throttling these valves in an effort to increase plant cooldown, and the Shift Supervisor said that he would look into it and take the action. You explained that after seeing no change in plant cooldown over the next half hour, you entered the auxiliary building looking for the Auxiliary Operator (AO), and when you could not find the AO, you went to the valves and throttled them open.

After considering the information developed during the OI investigation and the information you

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provided during your predecisional enforcement conference, the NRC has concluded that a violation of NRC requirements occurred. The violation occurred when you throttled two service water outlet valves without the express consent and/or oversight of control room personnel on March 20, 2002, which was a violation of plant procedures. The violation was deliberate because you had knowledge of this procedural requirement, and despite such knowledge, you decided to manipulate these valves. Your deliberate actions placed RG&E in violation of Technical Specification 5.4.1, which requires written procedures to be followed, and you in violation 10 CFR 50.5 "Deliberate Misconduct."

The NRC notes that the safety consequences of your deliberate actions were low because there was no potential to exceed technical specification cooldown rates, and the Shift Supervisor authorized an AO to further throttle the valves. Also, we noted that RG&E took significant disciplinary action against you after identifying that you had manipulated plant components without authorization. In addition, at the conference, you admitted your actions were wrong and you were remorseful. Nevertheless, your unauthorized manipulation of safety related valves (as a licensee official as defined in the Enforcement Policy) is serious, and considering it was done deliberately, the violation has been classified at Severity Level III. The circumstances surrounding the violation are described in the enclosed Notice of Violation (Notice). Enclosure 2 includes a copy of the letter and Notice of Violation issued to RG&E.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved are already adequately addressed on the docket as summarized herein. Therefore, you are not required to respond to this letter. You should also be aware that any additional deliberate violations in the future could result in more significant enforcement action or civil action.

In addition, you pointed out a discrepancy with the factual summary of the subject OI report. Although you did not recant having initially denied throttling the valves, you indicated that the Shift Supervisor did not show you security logs prior to admitting that you had throttled the valves. The NRC acknowledges that the Shift Supervisor provided a signed statement that he had not retrieved, nor shown you any security logs in order for you to take responsibility for operating these valves. However, we note that the Shift Supervisor testified that once he told you that he knew you were in the area of the valves, you admitted to having throttled the valves. This discrepancy did not affect our conclusion.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). The NRC also includes significant

Mr. Brian Flynn

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enforcement actions in its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>. Should you have any questions regarding this letter, please feel free to contact Mr. James Trapp at (610) 337-5186.

Sincerely,

/RA/ James T. Wiggins Acting For

Hubert J. Miller
Regional Administrator

Enclosures: 1) Notice of Violation
2) Letter and Notice of Violation to RG&E

cc w/encl 1 only:

Dr. Robert C. Mecredy
Vice President, Nuclear Operations
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, New York 14649

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DATE	03/12/04	03/16/04	03/16/04	03/16/04	03/16/04

OFFICE	RI/ORR	RI/RA	HQ/OGC	HQ/OE
NAME	Kfarrar (KLF)	Hmiller (JTW for)	J McGurren* (RJU for)	Fcongel (RJU for)**
DATE	03/16/04	03/22/04	03/29/04	03/26/04

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* Per e-mail from F. Ramirez (OE) ** Per e-mail from J. Dixon-Herrity (OE)

NOTICE OF VIOLATION

Mr. Brian Flynn
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

IA-04-005

During an NRC investigation completed on November 24, 2003, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(1), in part, prohibits any licensee employee from engaging in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule or regulation issued by the Commission,

Technical Specification 5.4.1, requires written procedures to be established, implemented and maintained covering certain activities as recommended by Regulatory Guide 1.33, Revision 2, Appendix A. Regulatory Guide 1.33, Appendix A.1.c, requires administrative procedures for "Equipment Control." RG&E Nuclear, ND-OPS, "Operations," Rev. 10, Section 3.8, Control of Plant Equipment, specifies that equipment manipulations are not allowed without the express consent and/or oversight of control room personnel.

Contrary to the above, on March 20, 2002, while acting as the 2002 Outage Manager, you engaged in deliberate misconduct that caused RG&E (the licensee) to be in violation of an NRC regulation. Specifically, you throttled open two service water outlet valves to the component cooling water heat exchanger without obtaining the express consent and/or oversight of control room personnel.

This is a Severity Level III violation (Supplement VII).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in the letter forwarding this Notice. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description herein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, your written response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA 19406, and marked "Open by Addressee Only" within 30 days of the date of the letter transmitting this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation."

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Dated this 30th day of March 2004.

March 30, 2004

EA-04-003

Dr. Robert C. Mecredy
Vice President, Nuclear Operations
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, New York 14649

SUBJECT: NOTICE OF VIOLATION
NRC Office of Investigations Report 1-2003-021
Ginna Nuclear Power Plant

Dear Dr. Mecredy:

On March 12, 2003, the NRC's Office of Investigations (OI), Region I, initiated an investigation at the Rochester Gas and Electric (RG&E), Ginna Nuclear Power Plant. This investigation, which was completed on November 24, 2003, was initiated to determine if the acting 2002 Outage Manager, contrary to plant procedures, intentionally and without authorization, manipulated valves during cooldown for a refueling outage in March 2002. Based on the evidence developed during its investigation, OI concluded that the manager deliberately manipulated two valves during a plant cooldown on March 20, 2002, without authorization as required by procedure. These conclusions were noted in a factual summary of the OI report that was sent to you in our letter dated January 30, 2004.

In our letter dated January 30, 2004, we informed you that the manager's deliberate actions apparently caused you to violate Technical Specification 5.4.1, which requires written procedures to be followed. We also provided you the opportunity to address the OI findings and the apparent violation, before we made our final enforcement decision, by either attending a predecisional enforcement conference or by providing a written response. In a telephone conversation on February 4, 2004, Mr. Joseph Widay (RG&E) informed Mr. James Trapp (NRC Region I), that RG&E did not feel it necessary to discuss this finding in a predecisional enforcement conference, but would be providing a written response.

In your response dated February 27, 2004, you stated that you did not contest the apparent violation. You indicated that the actions of the manager were contrary to RG&E standards and operational protocol as delineated in Nuclear Directive ND-OPS, "Operations," because he adjusted the valves without the consent or oversight of control room personnel. Your response also addressed the question raised in our letter dated January 30, 2004, as to why this issue was not entered into the corrective action program. You contended that the disciplinary process was an appropriate mechanism to use for this incident. However, you stated that any future violations of NRC requirements caused by deliberate actions of employees, or any deliberate acts that affect installed plant equipment or procedures, will be entered in the corrective action process to provide trending and lessons learned capability for such incidents.

After considering the information developed during the OI investigation and the information provided in your response, the NRC has concluded that a violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation and the circumstances

surrounding it were described in our letter dated January 30, 2004. The violation occurred when the manager throttled two service water outlet valves without the express consent and/or oversight of control room personnel on March 20, 2002, which was a violation of plant procedures. The violation was deliberate because the manager had knowledge of this procedural requirement, and nevertheless, decided to manipulate these valves.

The actual safety consequence of throttling these valves was not significant because there was no potential to exceed technical specification cooldown rates. In addition, the Shift Supervisor, after being asked by the manager to have these valves throttled, directed an Auxiliary Operator (AO) to perform this task. However, the manager adjusted the valves to an acceptable position without waiting for the AO to throttle the valves or without the Shift Supervisor's permission to do so. The NRC considered the unauthorized manipulation of safety related valves by the manager (a licensee official as defined in the Enforcement Policy) to be serious, and considering it was done deliberately, the violation has been classified at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III violation. Because the violation was willful, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Your facility identified the violation, so credit was given for the *Identification* factor. The corrective actions you have taken included: (1) taking disciplinary action against the manager and providing additional coaching and monitoring by senior management of his work performance; and (2) RG&E management continually stressing to plant staff the importance of correctly accomplishing activities, and continually expressing expectations concerning human performance improvements. Based on these actions, credit was given for the *Corrective Action* factor.

Therefore, to encourage prompt and comprehensive correction of violations and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved are already adequately addressed on the docket as summarized in your response dated February 27, 2004. Therefore, you are not required to respond to this letter.

In addition, in your February 27, 2004 response, you pointed out a discrepancy with the factual summary of the subject OI report. Although you did not take exception to the statement that the manager initially denied having throttled the valves, you indicated that the Shift Supervisor did not retrieve or show security logs to the manager at the time he took responsibility for manipulating the valves. We note, however, that the Shift Supervisor testified that once he told the manager that he knew he was in the area of the valves, the manager admitted to having throttled the valves. This discrepancy did not affect our conclusion.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/>

Dr. R. C. Mecredy

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Sincerely,

/RA/ James T. Wiggins Acting For

Hubert J. Miller
Regional Administrator

Docket No: 50-244
License No. DPR-18

Enclosure: Notice of Violation

cc w/encl: J. Laurito, President, Rochester Gas and Electric
P. Eddy, Electric Division, Department of Public Service, State of New York
C. Donaldson, Esquire, State of New York, Department of Law
N. Reynolds, Esquire, Winston & Strawn
P. R. Smith, Acting President, New York State Energy Research
and Development Authority
J. Spath, Program Director, New York State Energy Research
and Development Authority
D. Stenger, Ballard, Spahr, Andrews and Ingersoll, LLP
T. Wideman, Director, Wayne County Emergency Management Office
M. Meisenzahl, Administrator, Monroe County, Office of Emergency
Preparedness
T. Judson, Central New York Citizens Awareness Network

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 GCaputo, OI
 LTremper, OC
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 BSheron, NRR
 MSykes, NRR
 RLaufer, NRR
 RFranovich, NRR
 RClark, PM, NRR
 PMilano, PM, NRR (Backup)
 HMiller, RA/JWiggins, DRA
 WLanning, DRS
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 DScrenci/NSheehan, PAO-RI
 DHolody/RUrban, ORA
 KFarrar, ORA
 KKolaczyk, SRI Ginna
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DATE	03/12/04	03/16/04	03/16/04	03/16/04	03/16/04

OFFICE	RI/OR A	HQ/OE	HQ/OGC	RI/RA
NAME	KFarrar (KLF)	FCongel (RJU for)*	HMcGurren (RJU for)**	HMiller (JTW for)
DATE	03/16/04	03/26/04	03/29/04	3/22/04

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* Per e-mail from F. Ramirez (OE)

** Per e-mail from J. Dixon-Herrity (OE)

NOTICE OF VIOLATION

Rochester Gas and Electric Corporation
Ginna Nuclear Power Plant

Docket No. 50-244
License No. DPR-18
EA-04-003

During an NRC investigation completed on November 24, 2003, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

Technical Specification 5.4.1, requires written procedures to be established, implemented and maintained covering certain activities as recommended by Regulatory Guide 1.33, Revision 2, Appendix A. Regulatory Guide 1.33, Appendix A.1.c, requires administrative procedures for "Equipment Control." RG&E Nuclear Directive, ND-OPS, "Operations," Rev. 10, Section 3.8, Control of Plant Equipment, specifies that equipment manipulations are not allowed without the express consent and/or oversight of control room personnel.

Contrary to the above, on March 20, 2002, the acting 2002 Outage Manager throttled open two service water outlet valves to the component cooling water heat exchanger without obtaining the express consent and/or oversight of control room personnel.

This is a Severity Level III violation (Supplement I).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in your response dated February 27, 2004. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," include the EA number, and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region I, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 30th day of March, 2004.