radiological event at the owner's facility in Indiana, Pennsylvania.

The NRC acknowledges that the Licensee has taken corrective actions and is aware of the Licensee's past performance. However, in this case, the NRC exercised discretion to escalate the civil penalties, which supersedes the normal application of the adjustment factors, as explained above. In addition, civil penalties are imposed, in part, to deter *future* violations by not only the involved licensee, but other licensees conducting similar activities. *See* Enforcement Policy, Section VI.B.

The civil penalties proposed in this case are within the authority of the NRC. The Licensee's comparison of the civil penalty in this case with civil penalties in other cases does not bring NRC's exercise of its lawful authority into question. Of decisive importance is the NRC's clear authority to exercise discretion in the choice of enforcement sanctions and the ordering of enforcement priorities. *Advanced Medical Systems, Inc.*, (CLI–94–6), 39 NRC 285, 320 (1994). A sanction is not rendered invalid because it is more severe than that issued in other cases. *Id.* As explained above, the NRC acted within its statutory authority and the bounds of the Enforcement Policy when NRC exercised its discretion to escalate the civil penalties in this case. A rigid uniformity is neither required nor possible in enforcement decisions, which inherently involve the exercise of informed judgement on a case-by-case basis. *Id.* See also, *Radiation Technology, Inc.*, (ALAB–567), 10 NRC 533, 541 (1979).

*NRC Conclusion*

The NRC has concluded that: (1) With the exceptions of Examples A.3 and G., the violation occurred as stated in the Notice; (2) Examples A.3 and G are being withdrawn; (3) the withdrawal of these two examples of the violation does not change the fact that the violation occurred nor does it affect the appropriateness of the amount of the civil penalty assessed for the violation; and (4) an adequate basis for mitigation of the civil penalty was not provided by the Licensee. Consequently, the proposed civil penalty in the amount of $80,000 is being imposed.

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**[Docket No. 50–244]**

## Rochester Gas and Electric Company (R. E. Ginna Nuclear Power Plant); Exemption

### I

Rochester Gas and Electric Corporation (RG&E) is the holder of Facility Operating License No. DPR–18, which authorizes operation of R. E. Ginna Nuclear Power Plant at steady-state power levels up to a maximum of 1520 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Wayne County, State of New York. The license provides among other things, that the facility is subject to all rules, regulations, and Orders of the Commission.

### II

Appendix J of Part 50 of Title 10 of the Code of Federal Regulations, ''Primary Reactor Containment Leakage Testing for Water-Cooled Reactors,'' Section III.D.3, requires that Type C leakage rate testing be performed each reactor shutdown for refueling, but in no case at intervals greater than 2 years.

By letter dated March 15, 1995, RG&E requested a one-time Exemption from two parts of 10 CFR Part 50, Appendix J, Section III.D.3. First, RG&E requests an Exemption from performing Type C tests during the 1995 refueling outage except for isolation valves which have maintenance performed on them or valves which have not demonstrated acceptable leakage during the previous two leakage rate tests. Second, RG&E requests an Exemption from performing Type C tests within a 2-year interval, as required by the regulation. RG&E requests up to a 1-month extension of the 2-year interval for 129 containment isolation valves.

The last Type C tests were performed during the 1994 refueling outage after March 10, 1994. RG&E stated in the March 15, 1995, letter that the 1996 refueling outage will commence on March 31, 1996, with Cold Shutdown reached on April 1, 1996. RG&E requested an Exemption from the 2 year test interval until April 10, 1996, an interval 1 month greater than the required 2 year test interval.

The R. E. Ginna Nuclear Power Plant has a total of 151 containment isolation valves. RG&E has proposed to exempt 129 of these valves from Type C testing during the 1995 refueling outage. The other valves would be tested during the 1995 refueling outage either because maintenance has been done on them or they have not passed the RG&E's criterion for exemption of two successful consecutive tests.

The NRC staff finds RG&E's proposal to be acceptable for several reasons. As discussed in RG&E's March 15, 1995 letter, the performance of the containment isolation valves and the R. E. Ginna Nuclear Power Plant overall containment integrity have been good. The as-left Type A test leakage rate is 35% of $L_a$. The current Type B and C as-left maximum path leakage rate is 61% of the 0.6 $L_a$ Appendix J limit. Therefore, there is reasonable assurance that the 1-month extension of the 2-year interval will not result in exceeding the Appendix J limits.

In addition, RG&E has proposed to limit the Exemption only to those valves on which no maintenance has been done and which have passed the last two consecutive Type C leakage rate tests. The NRC staff has granted similar requests in the past. On February 2, 1994, the NRC staff granted a similar Exemption to the River Bend Station licensee, and by letter dated April 29, 1987, the NRC staff granted a similar request to the Washington Public Power Supply System, Unit 2 licensee.

The NRC staff, therefore, grants the requested one-time Exemption to the R. E. Ginna Nuclear Power Plant licensee subject to the condition that the Exemption apply only to those valves on which no maintenance has been done and which have passed the last two consecutive Type C leakage rate tests. The Exemption is granted until plant shutdown for the 1996 refueling outage, not to extend beyond April 10, 1996.

### III

Section 50.12 of the Commission's regulations permit granting an Exemption from the regulations when special circumstances are present. According to 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in question is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of Appendix J, Section III.D.3, is to assure a leak tight containment to mitigate the consequences of an accident. The past leakage rate data and available margin to the allowed technical specifications, as discussed above, are sufficient to assure that the underlying purpose of Appendix J, Section III.D.3, is achieved.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an Exemption from 10 CFR Part 50, Appendix J, Section III.D.3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (60 FR 20513).

Dated at Rockville, Maryland, this 26th day of April 1995.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

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