

January 30, 2004

IA-04-005

Mr. Brian Flynn  
**HOME ADDRESS DELETED**  
**UNDER 10 CFR 2.790**

SUBJECT: NRC OFFICE OF INVESTIGATION REPORT NO. 1-2003-021

Dear Mr. Flynn:

This letter refers to an investigation initiated by the NRC's Office of Investigations (OI), Region I, on March 12, 2003, at Rochester Gas and Electric's (RG&E) Ginna Nuclear Power Plant. This investigation was initiated to determine if you, 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 you deliberately manipulated two valves during a plant cooldown on March 20, 2002, which you had no authority to operate. A letter to RG&E discussing this investigation, including a factual summary of OI Investigation 1-2003-021, is enclosed with this letter.

Based on the results of this investigation, an apparent violation of 10 CFR 50.5 was identified and is 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. The current Enforcement Policy can be found on the NRC's web site at <http://www.nrc.gov/what-we-do/regulatory/enforcement.html>. 10 CFR 50.5, in part, prohibits any licensee employee from engaging in deliberate misconduct that causes a licensee to be in violation of any term, condition, or limitation of any license issued by the Commission. Your actions were deliberate because you had knowledge of this procedural requirement, and despite such knowledge, decided to manipulate these valves. As a result, your deliberate actions caused RG&E to violate Technical Specification 5.4.1, which requires written procedures to be established, implemented and maintained covering certain activities recommended by Regulatory Guide 1.33, Revision 2, Appendix A. Appendix A.1.c requires administrative procedures for "Equipment Control." RG&E Nuclear Operations Directive, ND-OPS, 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 this requirement, you deliberately throttled valves without the express consent or oversight of control room personnel on March 20, 2002.

We believe that we have sufficient information to make an enforcement decision. However, before we make this decision, we are providing you an opportunity to either (1) request a predecisional enforcement conference or (2) respond to the apparent violation within 30 days of the date of this letter. If you request a conference, it will be held at our office in King of Prussia, PA. It will not be open for public observation, but will be transcribed. If you choose not to

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attend a conference, you may provide a written response. The written response should be clearly marked as a "Response to An Apparent Violation" and should include: (1) the reason for the apparent violation, including any pressure you may have felt to operate the valve without authorization, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. In addition, please be advised that the number and characterization of the apparent violation described here-in may change as a result of further NRC review.

Please contact Mr. James Trapp at (610) 337-5186 within 7 days of the date of this letter to notify the NRC of your decision. If we have not heard from you within 7 days, the NRC will proceed with its enforcement decision. You will be advised by separate correspondence of the results of our deliberations on this matter.

The NRC will delay placing a copy of this letter into the NRC Public Docket Room (PDR) and on the NRC website until a final enforcement decision has been made. However, the enclosed letter to RG&E, with its attached OI Factual Summary, has been placed in the NRC PDR in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," and will be accessible from the NRC website at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). Should you have any questions regarding this letter, please feel free to contact Mr. James Trapp at (610) 337-5186.

Sincerely,

**/RA/**

A. Randolph Blough, Director  
Division of Reactor Projects

Enclosure: Letter to RG&E (with attached OI Factual Summary)

Mr. Brian Flynn

-3-

Distribution: w/enclosure

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EWilson, OI

JTrapp, DRP

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