and NRC regulations,'' that Terracon had done all that was required by its license, and that NRC's enforcement action should have been focused on the technician, not Terracon.

Terracon also challenges the rationale for the proposed penalty as contradictory, in that the NRC gave Terracon credit for its corrective actions in assessing the civil penalty, but cited the need to prevent similar events from occurring as one of the reasons for the penalty.

**NRC Evaluation of Licensee's Request for Mitigation**

First, the technician informed the NRC inspector during the inspection that he had placed a nuclear moisture/density gauge in its case, had chained and locked the gauge case to the bed of the truck, and had placed a padlock in the hasp of the gauge case, but inadvertently had failed to secure the padlock. The inspection's findings are reflected in the NRC's May 15, 1998 Notice. The NRC did not conduct an investigation to determine whether the technician willfully violated NRC requirements. Had the NRC conducted an investigation and concluded that the technician willfully failed to secure the moisture/density gauge from unauthorized removal, the enforcement sanction against Terracon could have been more significant. Regardless of the cause of the technician's action (i.e., inadvertent error or willful act), a failure to secure NRC-licensed material in a public area is of significant concern to the NRC because of the potential for radiation exposures to members of the public.

Second, as Terracon notes, the ''General Statement of Policy and Procedure for NRC Enforcement Action'', NUREG–1600 (Enforcement Policy), provides at Section VIII that enforcement actions may be taken against individuals when their conduct is willful and when they fail to take required actions which have actual or potential safety significance. However, the Enforcement Policy also provides that ''[M]ost transgressions of individuals at the level of Severity Level III or IV violations will be handled by citing only the facility licensee. More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee.'' Terracon's suggestion that the technician, and not Terracon, should not be held responsible for the Severity Level III violation, especially when the integrity of the technician was not involved, is contrary to the Enforcement Policy.

Third, notwithstanding the issue of willfulness, the Licensee is responsible for violations caused by its employees, whether arising from inadvertent error or willful acts. The Commission has formally resolved the issue of a licensee's responsibility for violations caused by licensee employees. In Atlantic Research Corporation, CLI–80–7, 11 NRC 413 (March 14, 1980), the Commission held that ''a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field'' and that the licensee is ''accountable for all violations committed by its employees in the conduct of licensed activities.'' Id. at 418. The licensee uses, and is responsible for the possession of, licensed material. The licensee hires, trains, and supervises its employees. All licensed activities are carried out by employees of the licensee and, therefore, all violations are caused by employees of the licensee. A licensee enjoys the benefits of good employee performance and suffers the consequences of poor employee performance. To not hold the licensee responsible for the actions of its employees, whether such actions result from incompetence, negligence, or willfulness, is tantamount to not holding the licensee responsible for its use and possession of licensed material. If the NRC were to adopt such a regime, there would be no incentive for licensees to assure compliance with NRC requirements.

Finally, the NRC finds no contradiction between giving Terracon credit for its corrective actions and citing the need to prevent recurrence of the violation as a reason to propose a civil penalty. In the civil penalty assessment process, the NRC routinely considers whether the licensee should be given credit for identification of the violation [1] and for corrective actions, in determining whether a civil penalty should be assessed and, if so, the size of the penalty. See Enforcement Policy, Section VI.B.2. Because the violation in this case was self-disclosing, (e.g., the violation was apparent as a result of the theft of the gauge), credit for identification was not warranted. Id. at Section VI.B.2.b. The Licensee was, however, given credit for its corrective actions. Consideration of the identification and corrective action factors yielded a civil penalty of 100% of the base penalty for this Severity Level III violation. The NRC staff found no reason to exercise its discretion to either mitigate or escalate the civil penalty yielded by standard application of the identification and corrective action factors. Nor has the Licensee presented any reason to mitigate the penalty. Once it had been determined that a civil penalty was warranted, there was nothing contradictory about noting that a civil penalty would serve the purpose of preventing similar incidents from occurring. The Enforcement Policy specifies that one of the purposes of civil penalties is to deter future violations. Id. at Section V.B. In short, the NRC followed the assessment process of the Enforcement Policy in determining the civil penalty proposed in the Notice.

**NRC Conclusion**

The NRC concludes that Terracon is responsible for the violation caused by its technician, and that the proposed civil penalty was properly assessed in accordance with the NRC's Enforcement Policy. The Licensee has not presented a basis for withdrawal of the violation nor for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $2,750 should be imposed by Order.

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[1] The identification factor is considered if a licensee has been the subject of enforcement action for Severity Level III violations within in the past two years or previous two inspections. See Enforcement Policy, Section VI.B.2. Since Terracon had previously been the subject of enforcement action in 1997 for a Severity Level III violation (EA 97–425), the identification factor was considered in this case.

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–410 AND 50–244]**

## Rochester Gas and Electric Corp.; Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station, Unit 2; R. E. Ginna Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding a transfer of control of the operating license for R. E. Ginna Nuclear Power Plant (Ginna) and the operating license for the Nine Mile Point Nuclear Station, Unit No. 2 (NMP2) to the extent held by Rochester Gas and Electric Corporation (RG&E or Applicant). The transfer would be to a holding company, not yet named, to be created over Applicant in accordance with the ''Amended and Restated Settlement Agreement'' before the Public Service Commission of the State of New York dated October 23, 1997 (Case 96–E–0989) (see Exhibit A in the application dated July 30, 1998). Applicant is licensed by the Commission to own and possess a 14-percent interest in NMP2, located in the town of Scriba, Oswego County, New York, and to wholly own, maintain and operate the R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would consent to the transfer of control of the licenses to the extent effected by Applicant becoming a subsidiary of the newly formed holding company in connection with a proposed plan of restructuring. Under the restructuring plan, the outstanding shares of Applicant's common stock are to be exchanged on a share-for-share basis for common stock of the holding company, such that the holding company will own all of the outstanding common stock of Applicant. The holding company, and not RG&E, would be the owner of any

unregulated non-utility subsidiaries. Applicant will continue to be an ''electric utility'' as defined in 10 CFR 50.2 engaged in the transmission, distribution, and generation of electricity. Applicant would retain its ownership interest in NMP2 and Ginna, continue to operate Ginna, and continue to be a licensee of NMP2 and Ginna. No direct transfer of the operating licenses or ownership interests in the stations will result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation (NMPC), which is responsible for operating and maintaining NMP2 and is not involved in the restructuring of Applicant, and would not involve any change in the nuclear management or technical qualification of RG&E. Also, the transaction would have no effect upon the financing of the RG&E nuclear plants. The proposed action is in accordance with Applicant's application dated July 30, 1998, as supplemented August 18, 1998, and September 14, 1998.

*The Need for the Proposed Action*

The proposed action is required to enable Applicant to restructure as described above.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that it is an administrative action having no effect upon the operation of either plant. There will be no physical changes to NMP2 or Ginna. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate and maintain NMP2 and Ginna, as NMPC will continue to be responsible for the maintenance and operation of NMP2 and is not involved in the restructuring of RG&E, and RG&E will continue to be responsible for the maintenance and operation of Ginna.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or offsite radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there are no significant environmental impacts that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2, (NUREG–1085) dated May 1985, and in the Final Environmental Statements Related to the Operations of the R.E. Ginna Nuclear Power Plant, dated December 1973.

*Agencies and Persons Contacted*

In accordance with its stated policy, on August 31, 1998, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see Applicants' application dated July 30, 1998, as supplemented August 18, 1998, and September 14, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126, and the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, MD, this 16th day of October 1998.

For the Nuclear Regulatory Commission.

**S. Singh Bajwa,**

*Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–498 and 50–499]**

## South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–76 and NPF–80 for the South Texas Project, Units 1 and 2 (STP) issued to the STP Nuclear Operating Company (the licensee).

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action is in response to the licensee's application dated June 17, 1998, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Updated Final Safety Analysis Report (UFSAR). Under the proposed exemption the licensee would submit revisions to the UFSAR to the NRC no later than 24 calendar months from the previous revision. In addition, pursuant to 10 CFR 50.54(a)(3) and 10 CFR 50.59(b)(2), revisions to the Operations Quality Assurance Plan (OQAP) and the safety evaluation summary reports for facility changes made under 10 CFR 50.59 for STP, respectively, may be submitted on the same schedule as the UFSAR revisions.

*The Need for the Proposed Action*

10 CFR 50.71(e)(4) requires licensees to submit updates to their UFSAR annually or within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since Units 1 and 2 of STP share a common UFSAR, the licensee must update the same document annually or within 6 months after a refueling outage for either unit. The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by