

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the exceptions of Examples A.3 and G., the violation occurred as stated in the Notice; (2) Examples A.3 and G are being withdrawn; (3) the withdrawal of these two examples of the violation does not change the fact that the violation occurred nor does it affect the appropriateness of the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.*

[FR Doc. 95-10734 Filed 5-1-95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35649; File No. SR-DTC-94-19]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Regarding Implementation of New Guidelines Regarding Principal and Income Payments in a Same-Day Funds Environment

April 26, 1995.

On December 5, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-94-19) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ As filed, the proposal consisted of changes to the depository-eligibility requirements for securities issues to require that principal and income distributions be made in same-day funds and provided for the use of a "Blanket Letter of Representations" in lieu of individual letters of representations for each securities issue.² Notice of the proposal was published in the **Federal Register** on February 14, 1995.³ On April 3, 1995, DTC amended the proposed rule change by requesting that the Commission withdraw from consideration the portion of the proposed rule change that related to implementing the use of a Blanket Letter of Representations for making securities depository-eligible.⁴ The Commission received one comment letter opposing a part of DTC's proposal.⁵ For the reasons discussed

below, the Commission is approving the proposed rule change.

I. Description

A. Background

In 1988, the Group of Thirty⁶ determined that international agreement on a set of practices and standards for clearance and settlement systems was desirable. Accordingly, a Working Committee appointed by the Group of Thirty issued a report in March 1989 containing nine recommendations to reduce risk, improve efficiency, and reduce costs in the world's clearance and settlement systems.⁷ One recommendation called for making payments associated with the settlement of securities transactions consistent across instruments and markets by adopting a same-day funds payment convention. The U.S. Working Committee of the Group of Thirty⁸ concluded that payment for settlements among financial intermediaries and between financial intermediaries and their institutional customers should be made using same-day funds. In particular, the U.S. Working Committee concluded that payments for dividends, interest, redemptions, and reorganizations, commonly referred to as "principal and income payments," also should be made using same-day funds.

Thereafter, the U.S. Working Committee encouraged DTC and the National Securities Clearing Corporation ("NSCC") to focus on developing a same-day funds settlement system for U.S. trades in equity securities and corporate and municipal debt. Accordingly, in June 1992, DTC and NSCC published a memorandum entitled "A Same-Day Funds Settlement System Proposal for Industry Evaluation." In response to the memorandum, issues were raised regarding the appropriate handling of principal and income payments in a same-day funds settlement environment. Accordingly, a task force comprised of issuers, trustees, paying

agents, depositories, depository participants and their customers, and the respective representative organizations for these various groups was formed ("Same-Day Funds Task Force" or "Task Force") to explore ways that principal and income payments could be made to a depository for pass through to participants in same-day funds on payment date.⁹

The Task Force determined that converting to a same-day funds settlement system for principle and income payments would have a significant impact on industry participants, including a change in the timing of payments to depositories by paying agents. Paying agents will have to make payments to depositories earlier in the day so that depositories can settle with their participants before the Fedwire closes.

The Task Force recommended that several principles be adopted in order to convert to a same-day funds settlement system for principal and income payments. As discussed below, DTC proposes to incorporate the relevant provisions in its operational arrangements memorandum.

B. Proposed Rule Change

DTC's operational arrangements that are necessary for securities issues to be eligible for DTC services are designed to maximize the number of issues that can be made depository-eligible while ensuring orderly processing and timely payments to participants. DTC's experience demonstrates that when issuers, underwriters, and their counsel are aware of DTC's requirements those requirements can be met almost without exception.¹⁰ The purpose of the rule change is to incorporate in DTC's operational arrangements memorandum

⁹In the current next-day funds settlement ("NDFS") system, paying agents make payments in same-day funds to depositories for corporate income payments (e.g., interest and dividends) and reorganization actions (e.g., tenders and exchanges) for the majority of issues. Although corporate and municipal redemption payments and municipal income payments may be paid in next-day funds, generally paying agents make these payments in same-day funds on payment date to ensure their timely arrival at the depositories. DTC invests these funds overnight and rebates to the paying agents interest on the deposits as compensation for holding the funds overnight.

¹⁰During 1993, a total of 392,000 new issues were made eligible for DTC's services. This was 99.94% of all new issues submitted to DTC's Underwriting Department for eligibility determinations. These figures include equity, corporate debt, municipal debt, and U.S. Government and Agency securities. In the unusual circumstance where the processing characteristics of a new issue that is being structured would not meet DTC's operational arrangements, if contacted early enough in the planning process DTC staff often is able to assist in suggesting restructuring alternatives that would permit the issue to be made depository eligible.

¹ 15 U.S.C. 78s(b)(1) (1988).

² Same-day funds, which are also known as "Fed funds," are immediately available for redelivery on the day of receipt.

³ Securities Exchange Act Release No. 35342 (February 8, 1995), 60 FR 8434.

⁴ Letter from Piku Thakkar, Assistant Counsel, DTC, to Peter Geraghty, Senior Counsel, Division of Market Regulation, Commission (April 3, 1995).

⁵ Letter from Terrence Hassett, President, North East Securities Transfer Association, Inc. ("NESTA"), to Jonathan Katz, Secretary, Commission (March 16, 1995). NESTA opposes the part of DTC's proposal that would deny depository eligibility to issues brought to market by agents who fail to make principal and income payments in same-day funds. In response, DTC stated that agents will not be penalized for isolated incidents of a failure to pay DTC in same-day funds on payment date and that the sanction of denying depository eligibility to an issue would be a last resort mechanism used in very limited circumstances. Furthermore, DTC indicated that it will make efforts to accommodate the needs of issuers and agents and will work closely with them in converting to a same-day funds payment standard for principal and income payments. Telephone conversation between Piku Thakkar, Assistant Counsel, DTC and Katherine Horan, Attorney, Commission (April 11, 1995).

⁶ The Group of Thirty, established in 1978, is an international, nonprofit organization charged with broadening the understanding of international economic and financial issues, exploring the international repercussions of decisions taken in public and private sectors, and examining the choices available to policymakers.

⁷ Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets, New York and London, March 1989.

⁸ The U.S. Working Committee of the Group of Thirty is an organization made up of representatives from broker-dealers, banks, and financial intermediaries charged with analyzing the existing clearance and settlement systems in the U.S. in light of the Group of Thirty's nine recommendations.

principles for the processing of principal and income payments in same-day funds.¹¹ Towards this end, the operational arrangements memorandum incorporates the relevant provisions of the "Standards for Principal and Income Payments Guidelines" established by the U.S. Working Committee of the Group of Thirty. Pursuant to this rule change, the relevant provisions of these principles, as set forth below, will become a part of DTC's income and reorganization/redemption payments standards.

First, all new issues are required to meet depository-eligibility requirements and must be structured so that all payments to depositories of principal and income are made in same-day funds on payment date by 2:30 p.m. Eastern Standard time.

Second, for all depository-eligible issues already outstanding, paying agents must remit to DTC all principal and income payments in same-day funds on payment date by 2:30 p.m. Eastern Standard time according to existing arrangements between the paying agent and DTC. Recognizing that paying agents for certain issues may need to modify their current business arrangements to account for this change, DTC will continue through July 31, 1996, to pay the same rebates it now pays to paying agents that pay municipal interest and municipal and corporate redemptions to DTC in same-day funds on payment date.¹²

However, once DTC converts to same-day funds settlement for all security transactions, DTC will make all payments to its participants on payment date in same-day funds. As a result, DTC will not have funds resulting from overnight investing available to rebate to paying agents. Recognizing that participants will benefit by receiving all their expected payments in same-day funds on payment date DTC will charge participants in proportion to their holdings in each issue for which a rebate applies the funds needed to pay the rebate from the date of the conversion to same-day funds settlement for all security transactions until July 31, 1996. With respect to

¹¹ DTC's operational arrangements were published in a June 1987 memorandum and were updated in both June 1988 and February 1992. For a complete description of the operational arrangements memorandum, refer to Securities Exchange Act Release No. 24818 (August 19, 1987), 52 FR 31833 [File No. SR-DTC-87-10] (order approving the implementation of DTC's operational arrangements for the eligibility of security issues), and Securities Exchange Act Release No. 30625 (April 30, 1992), 57 FR 18534 [File No. SR-DTC-92-06] (order approving modifications to DTC's operational arrangements).

¹² *Supra* note 9.

payments made on or after August 1, 1996, these charges to participants will no longer be required. The rebate will not be applied to payments of corporate interest, dividends, and reorganizations for which the paying agents already pay DTC in same-day funds on payment date and which currently are not subject to interest earnings rebates. However, DTC will require that 100% of corporate interest, dividend, and reorganization payments to paid to DTC in same-day funds on payment date by 2:30 p.m. Eastern Standard time.

Third, DTC will require paying agents to provide DTC with the CUSIP numbers for each issue for which payment is being sent as well as the dollar amount of the payment for each issue no later than noon Eastern Standard time on the payment date. Notification of payment details should be made using automated communications.

Finally, if an issuer or agent continually fails to make payment as called for in DTC's guidelines, DTC may decide to systematically prevent the allocation of such payments to participants on the payable date. Eventually, DTC also may elect to deny depository-eligibility to issues brought to market by noncomplying issuers or agents.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) because it provides a framework for the conversion of principal and income payments to same-day funds. Making principal and income payments in same-day funds is consistent with the goal of prompt and accurate clearance and settlement because it will give participants same-day access to their funds. Requiring paying agents to provide DTC with the corresponding CUSIP numbers for each issue for which payment is being made will make the processing of such payments more accurate. The Commission also believes that the guidelines for converting to a same-day funds payment standard for principal and interest payments are consistent with the goal of fostering cooperation and coordination among persons engaged in the clearance and settlement of securities transactions. Specifically, in order to allow paying

agents time to modify their current business practices, DTC will continue to pay rebates through July 31, 1996, to those paying agents currently making payments to DTC in same-day funds on payment date for municipal interest and municipal and corporate redemption payments.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (File No. SR-DTC-94-19) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-10790 Filed 5-1-95; 8:45 am]

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[Release No. 34-35647; File No. SR-MSTC-94-12]

Self-Regulatory Organization; Midwest Securities Trust Company; Order Granting Temporary Approval of Proposed Rule Change Enabling Midwest Securities Trust Company To Enter Into Contracts With Participants To Provide Custodial, Transactional, and Related Services

April 25, 1995.

On October 11, 1994, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSTC-94-12) pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal appeared in the **Federal Register** on October 19, 1994, to solicit comment from interested persons.² For the reasons discussed below, the Commission is approving the proposed rule change through October 1, 1995.

I. Description of the Proposal

The purpose of the proposed rule change is to permit MSTC to enter into contracts with any of its participants whereby MSTC will provide certain

¹³ 15 U.S.C. 78s(b)(2) (1988).

¹⁴ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b) (1988).

² Securities Exchange Act Release No. 34835 (October 13, 1994), 59 FR 52851.