

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND
LICENSING BOARD

----- x
In the matter of: | Docket No.
| 50-423-LA-3
NORTHEAST NUCLEAR ENERGY COMPANY | ASLBP No.
| 00-771-01-LA
(Millstone Nuclear Power Station,
Unit No. 3) |
----- x

DEPOSITION OF: DAVID LOCHBAUM

Taken before Robin L. Balletto, Registered
Professional Reporter, a Notary Public in and for the
State of Connecticut, at the Holiday Inn, New London,
Connecticut, on May 10, 2000, commencing at 8:35 a.m.

1

2 APPEARANCES:

3

4

For the Nuclear Regulatory Commission

5

Ann P. Hodgdon, Esq.
United States Nuclear Regulatory Commission
Washington, D.C. 20555

6

7

For Northeast Nuclear Energy Company

8

9

WINSTON & STRAWN
David A. Repka, Esq.
Donald P. Ferraro, Esq.
1400 L Street, N.W.
Washington, D.C. 20005-3502

10

11

12

For the Intervenors

13

Nancy Burton, Esq.
147 Cross Highway
Redding Ridge, Connecticut 06876

14

15

16

Also Present:

17

18

19

20

21

22

Index of examination at conclusion of transcript.

23

24

25

1 STIPULATIONS

2

3 IT IS STIPULATED by the attorneys that each party
4 reserves the right to make specific objections in open
5 court to each and every question asked and the answers
6 given thereto by the witness, reserving the right to move
7 to strike out where applicable, except as to such
8 objections as are directed to the form of the question.

9

10 IT IS STIPULATED and agreed between counsel for the
11 parties that the proof of the authority of the Notary
12 Public before whom this deposition is taken is waived.

13

14 IT IS FURTHER STIPULATED and agreed that the reading
15 and signing of this deposition are not waived and any
16 defects in the Notice are waived.

17

18

19

20

21

22

23

24

25

1 DAVID LOCHBAUM,
2 having been first duly sworn, was examined
3 and testified as follows:
4

5 DIRECT EXAMINATION BY MR. REPKA
6

7 Q I'll introduce myself on the record. I'm David
8 Repka, I'm with the law firm of Winston & Strawn, I
9 represent Northeast Nuclear Energy Company. This is the
10 deposition of David Lochbaum who is an expert witness for
11 Connecticut Coalition Against Millstone and Coalition
12 Against Millstone.

13 I would state some stipulations at the outset
14 for the deposition that this is a deposition for discovery
15 for use as evidence only in this proceeding. Objections
16 and motions to strike will not be considered to be waived
17 as long as they're made when the material is introduced in
18 whatever form it is introduced in the proceeding. The
19 deponent, Mr. Lochbaum, will have a right to read and sign
20 the transcript if he wishes, I don't know if that is
21 something he wants to waive, but he does have that right.
22 The original of the transcript I'm assuming will be sent
23 to me, and after the signature process it will be filed
24 with the Commission in accordance with the Commission's
25 rules.

1 project, and I was also working on a -- it was a vertical
2 slice done in the spent fuel pool cooling system, spent
3 fuel pool and spent fuel pool cooling system, and I was on
4 that team to go through and verify everything was in the
5 FSNR and license and basis broader was being done. So
6 part of that looked at the surveillance procedures, but
7 that was probably less than half a day out of the whole
8 project, so it wasn't a huge effort.

9 Q Have you ever personally done a chemistry
10 surveillance related to the spent fuel pool anywhere?

11 A No, but also as an engineer, generally we would
12 write those procedures or review those procedures. We're
13 not or I'm not a technician, I never take those kinds of
14 results, that wasn't my job function.

15 Q Do you have an impression as to whether that
16 particular surveillance is relatively complicated or
17 relatively simple or somewhere in between?

18 A I think my impression, again, it is a
19 relatively simple procedure to do, and that impression is
20 based on licensee event reports. To my knowledge there
21 haven't been a huge number of reports saying people are
22 not doing this right or having trouble doing this right.

23 Q Do you have an opinion as to whether relying on
24 soluble boron or taking credit for soluble boron as a
25 criticality control measure is legal or not?

1 A No, I don't really have an opinion. That goes
2 back to the Contention 6. I guess the answer is still the
3 same.

4 Q Do you have an opinion as to whether
5 administrative control is too complex to be relying upon
6 apart from the law as a practical matter?

7 A No, because on Contention 5 we were concerned
8 that surveillance was not going to be done except during
9 the period of fuel movements, and it would be
10 discontinued. That was not consistent with the standard
11 technical specifications for pressurized water reactors,
12 so it seemed to be less stringent or less protective than
13 the standard tech spec, so we thought the surveillance, or
14 I thought the boron surveillance was a necessary thing to
15 continue doing.

16 Q At all times throughout the -- whenever there
17 is fuel in the pool, that's what you mean?

18 A At all times.

19 Q Not just during fuel movements?

20 A That's correct.

21 Q Now, are you familiar with the supplemental
22 submittal the company made to revise the proposed tech
23 spec to require surveillance at all times?

24 A The one on April 17, I believe?

25 Q I think that is the correct date.

1 A Around that date. Yes, I've seen that.

2 Q Does that particular proposal resolve your
3 concern on Contention 5?

4 A If it is implemented the way it was submitted,
5 it would address my concerns about Contention 5. When
6 Nancy Burton faxed me that submittal, or actually I
7 received the one you mailed me before I got the fax, but
8 when I saw that and talked to Nancy, my advice was to
9 continue going to Contention 5, because the submittal
10 could be withdrawn or the NRC could elect to do something
11 different, so that if it were implemented the way it is
12 submitted, my concerns about Contention 5 would go away.
13 It is whether that will happen or not is why it is still
14 on the table in my mind.

15 Q Do you have any reason to believe it won't be
16 implemented that way, and when you say implement, I assume
17 you mean that that tech spec will be incorporated by the
18 NRC the way it's been written?

19 A I would just, whether than withdrawing the
20 contention I would wait, unless the ASLB issued an order
21 saying it had to be done that way, I wouldn't want to
22 withdraw the contention because there is too many things
23 that could happen down the road.

24 Q Like what?

25 A It could be withdrawn. You could issue a

1 letter tomorrow withdrawing the contention going back to
2 the original submittal.

3 Q You are a distrustful sort.

4 A Just cautious. I would prefer cautious to
5 distrustful.

6 Q But if this is implemented in the amendment as
7 issued by the NRC, if this tech spec is incorporated, then
8 you would have, or your Contention 5 would be satisfied?

9 A My concerns about Contention 5 would be
10 satisfied, that's correct.

11 Q Have you had an opportunity to reread the
12 supplemental submittal the company made on May 5, 2000,
13 which is a response to a request for additional
14 information made of the company by the NRC staff on the
15 license and application?

16 A No, I don't even know that I had them.

17 Q Probably missed you in transit. This
18 submittal, among other things, describes some of the fuel
19 movement procedures as they currently exist and how they
20 will be adapted for the proposed new racks. Well, it is
21 probably not efficient if I -- I'll hand it to you. It is
22 a submittal from Northeast Nuclear Energy Company dated
23 May 5 to the NRC, and I guess what I was looking for was
24 any reaction you might have to that submittal, but if you
25 haven't read it --

1 no boron? That's a question.

2 A I don't recall if that's the requirement. I
3 wouldn't disagree, I just don't recall.

4 Q I believe that part of your statement in your
5 contention did reference that part of the licensee's
6 proposal, and that the in pure water was part of that
7 description.

8 MR. REPKA: I think the document will speak
9 for itself.

10 MS. HODGDON: Yes, the document will speak
11 for itself. I just wanted to know whether he knew it
12 or not.

13 A I don't recall that aspect. I would have to go
14 back and look, but I don't recall that part of it. Oh,
15 wait, I think you are right, because that was the reason
16 why the requirement for the parts per million was
17 introduced. I'm a little slow sometimes. That's right.

18 MS. BURTON: I have no questions.

19 MR. REPKA: Mr. Lochbaum, thank you for
20 your testimony this morning.

21 (Deposition concluded at 10:50 a.m.)

22 _____
23 Witness signature
24 Subscribed and sworn to before me this ____ day of
25 _____, 200____.

Notary Public
My commission expires: _____

