



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 5, 2003

Jerry North, Esq.  
Schwabe, Williamson & Wyatt  
Pacwest Center, Suites 1600-1900  
1211 Southwest Fifth Avenue  
Portland, Oregon 97204-3795

RE: Durabrake Company, L.L.C. v. Energy Northwest, Case No. 02-2-00857-4,  
Benton Co. (Wa.) Superior Court;  
NRC File No. TR-03-04 (Declaration);  
NRC File No. TR-03-05 (Testimony or Deposition).

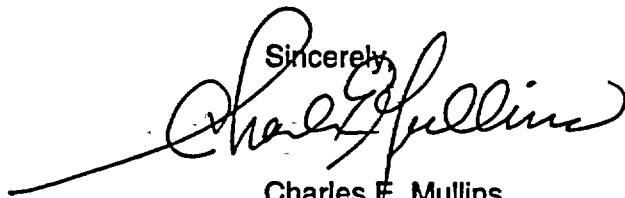
Counselor:

The Office of the General Counsel has received your letter dated May 2, 2003, seeking both the testimony of and a Declaration by Mr. George Replogle, an NRC employee, for use in the above-captioned litigation. This Office has assigned two processing numbers to your request: "TR-03-04" to your request for Mr. Replogle's Declaration and "TR-03-05" to your request for his testimony at trial. Please refer to the appropriate number in any future correspondence regarding this matter.

As we discussed last week, the General Counsel has approved Mr. Replogle's signing a revised Declaration as worded in the attached copy. Accordingly, this letter closes NRC action on File TR-03-04.

Mr. Replogle has advised me that he has a vacation scheduled for late June, either the week of or the week before trial. In addition, the General Counsel does not routinely give permission for employees to testify at trial. However, the General Counsel may approve a deposition in lieu of an appearance at trial if the requesting party agrees to the conditions that (1) the deposition be conducted at or near the employee's duty station, and (2) you provide the NRC a copy of the deposition transcript at no cost. If the matter is continued for trial and you still desire Mr. Replogle's testimony, please so advise me at the earliest possible date. The General Counsel will then review your request.

Sincerely,



Charles E. Mullins  
Senior Attorney

Enclosure: As stated.

cc: George Replogle  
Karla D. Smith, Esq.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF BENTON

DURABRAKE COMPANY, L.L.C., (formerly  
known as DURAMETAL BRAKE  
COMPANY, L.L.C.) a Washington limited  
liability company,

Plaintiff,

vs.

ENERGY NORTHWEST (formerly known as  
WASHINGTON PUBLIC POWER SUPPLY  
SYSTEM), a municipal corporation and joint  
operating agency of the State of Washington,

Defendant.

No. 02-2-00857-4

DECLARATION OF  
GEORGE REPLOGLE

I, George Replogle, hereby certify and declare under penalty of perjury as follows:

1. I have personal knowledge of the facts set forth in this declaration and I am  
otherwise competent to testify.

2. I am the United States Nuclear Regulatory Commission (NRC) Senior  
Resident Inspector at the Columbia Generating Station in Hanford, Washington.

3. I have reviewed the letter dated January 31, 2002, from counsel for Energy  
Northwest to counsel for Durametal Brake Company, which is attached as Exhibit A to this  
Declaration. I see in that letter where the statement is made that: "... Energy Northwest has  
determined that in order to demonstrate compliance with the NRC's regulations and continue  
to operate Energy Northwest's nuclear facility, it is necessary for Energy Northwest to  
terminate all of its leases with third-parties operating within the exclusion zone."

DECLARATION OF GEORGE REPLOGLE - 1

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Attorneys at Law  
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1420 Fifth Avenue  
Seattle, WA 98101-1397  
Telephone (206) 822-1711

1           4.     I have also reviewed the letter dated January 28, 2002, from Energy Northwest  
2 to the NRC, which is attached as Exhibit B to this Declaration. In that letter, Energy  
3 Northwest set out in detail what corrective steps it was committing to take in order to achieve  
4 compliance with NRC regulations. Termination of the leases of third-parties operating within  
5 the exclusion zone is not listed in that letter as a step which Energy Northwest believed was  
6 necessary to achieve compliance with NRC regulations.

7           5.     I know for a fact that the licensee (Energy Northwest) improved their  
8 emergency preparedness controls and came into compliance with the regulations while the  
9 lessees (including DuraBrake) still occupied facilities in the Columbia Generation Station  
10 exclusion zone. The licensee's actions were reviewed during a supplemental NRC  
11 inspection from May 13, 2002 to June 6, 2002. See NRC Inspection Report 50-397/02-07.

12           6.     In addition, I am personally aware of at least one other nuclear facility where  
13 a non-licensee related entity is occupying space in the owner controlled area (where the same  
14 rules apply as for exclusion zones) and that licensee is currently in compliance with the  
15 applicable NRC regulations.

16           7.     I know that, as an alternative way to achieve compliance, Energy Northwest  
17 decided to exclude all non-licensee entities, such as the lessee (DuraBrake) in this case, from  
18 the exclusion zone or owner-controlled area.

19           8.     I know, because of my direct involvement with the relevant issues, that the  
20 NRC did not suggest or require that Energy Northwest terminate these leases in order to  
21 maintain compliance with the NRC's regulations. Energy Northwest could have taken  
22 measures to remain in compliance with the NRC's regulations without terminating the leases.

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DECLARATION OF GEORGE REPLOGLE - 2

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1 I HEREBY CERTIFY AND DECLARE UNDER PENALTY OF PERJURY UNDER  
2 THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE  
3 AND CORRECT.

4 DATED in \_\_\_\_\_, Washington this \_\_\_\_\_ day of \_\_\_\_\_, 2003.  
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George Replogle  
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DECLARATION OF GEORGE REPLOGLE - 3

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