

September 13, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	)	Docket No. 50-142
(UCLA Research Reactor)	)	(Proposed Renewal of Facility License)

NRC STAFF RESPONSE IN OPPOSITION  
TO THE CBG MOTION TO STRIKE  
A PORTION OF TESTIMONY ADMITTED TO THE RECORD

I. INTRODUCTION

By motion filed August 26, 1983 the Committee to Bridge the Gap (CBG) moved the Atomic Safety and Licensing Board (Board) to strike one sentence of testimony presented during the July 1983 hearing, on the ground that the sentence will result in prejudice to CBG. The testimony in question was a statement by UCLA witness Pearlman that:

In the year 2000, (for) exposure (of) 53.08 megawatt-days operation, essentially as it has been for the past 23 years, stored energy maximum (will be) equivalent to a temperature rise of no more than 15° centigrade. Pearlman, Tr. 1870.

Since a CBG motion to strike the testimony in question was overruled by the Board during the hearing, this present motion constitutes a renewal of the motion to strike (in essence, a motion to reconsider), and should likewise be denied since no showing of prejudice to CBG has been made.

II. BACKGROUND

On July 22-23, 1983, Dr. Harry Pearlman, a UCLA witness, testified concerning possible effects of Wigner energy in the UCLA Argonaut-UTR.

At the time UCLA counsel proffered Dr. Pearlman's prefiled written testimony for incorporation into the record, he also distributed to the Board and parties a set of calculations performed and identified by Dr. Pearlman in regard to the conclusions in his written testimony. Tr. 1747. The calculation had not been prefiled. CBG objected to the presentation of the supporting calculations as untimely. Tr. 1755. However, UCLA counsel explained that the calculations were offered only for information and the calculations were not offered nor admitted as evidence for the record. Tr. 1757, 1761. Yet, CBG objected to the admission of Dr. Pearlman's written testimony on the basis that CBG was not prepared to cross-examine Dr. Pearlman about his supporting calculations. In light of CBG's objections, the Board provided CBG the opportunity to recall Dr. Pearlman after CBG had an opportunity to study the calculations. Tr. 1762. The Board requested notification by CBG of its intent to recall Dr. Pearlman by August 26, 1983. Tr. 1873.

Dr. Pearlman's written testimony was admitted to the record. Dr. Pearlman's testimony explained his opinion that Wigner energy is not significant in an Argonaut and contained an estimate of maximum temperature increase from Wigner energy, described as very conservative. Tr. ff. 1762. CBG engaged in extensive cross-examination. Tr. 1763-1806, 1844-1868.

Subsequently, during redirect examination by UCLA counsel, CBG objected to and moved to strike an answer by Dr. Pearlman which stated his opinion of a more realistic temperature for Wigner energy release than the conservative figure in his written testimony. The Board at first deferred ruling on the motion (Tr. 1870) but later overruled it.

Tr. 1871. The Board, rather than striking the answer, allowed CBG an additional opportunity for cross-examination to explore the answer deemed objectionable, either at the July hearing or upon recall of Dr. Pearlman. Tr. 1871-1873. CBG rejected the additional opportunity to cross-examine at the July hearing (Tr. 1873), and also informed the Licensing Board that it did not wish to recall Dr. Pearlman for further cross-examination.

### III. DISCUSSION

Contrary to the facts of record, CBG's present motion incorrectly states that the Board provided CBG an opportunity to move to strike a portion of Dr. Pearlman's testimony after close of the first session of hearings in July, 1983. Motion at 1. CBG states in its motion that it notified the Board by telephone prior to filing this motion that it did not wish to recall Dr. Pearlman, yet now complains, without explaining, that it has been injured by the explanatory calculations distributed at hearing but that this "injury ... cannot be rectified by recalling Dr. Pearlman in October ...." Motion at 4. CBG claims, further, that the one statement by Dr. Pearlman, consisting of his opinion of a realistic temperature rise from Wigner energy, is prejudicial because it was a "figure [which] had never come up before" and was "snuck in." Motion, pp. 4, 5. CBG states that the foundational calculations for Dr. Pearlman's opinion "remain unknown" and that the matter can only be remedied by striking the statement. Motion, at 5.

Nevertheless, as explained above, CBG's motion to strike Dr. Pearlman's answer was denied by the Board during hearing. To accommodate CBG's concerns, the Board provided CBG the opportunity to recall Dr. Pearlman for cross-examination of both the explanatory calculations and

the statement on realistic temperature rise from Wigner energy by Dr. Pearlman which CBG views as harmful. Since CBG refused the opportunity to cross-examine the answer by Dr. Pearlman at the July hearing and has refused the opportunity to recall Dr. Pearlman for cross-examination of the calculations and/or the statement in question, CBG has no cause to complain and certainly has not shown prejudice. To the contrary, CBG has been provided every opportunity to explore the subject at issue, at CBG's convenience, which CBG refuses to use to elicit the information it describes as "unknown." It is obvious that no injury can occur from the calculations provided at hearing since they were not admitted into evidence and cannot be relied upon by the Licensing Board. In addition, since Dr. Pearlman's written testimony plainly states that a Wigner energy release would be insignificant (Pearlman, pp. 2, 5 Tr. ff. 1762), it is also evident that Dr. Pearlman's oral estimate of realistic temperature increase, considerably less than that in his written testimony, cannot be prejudicial.

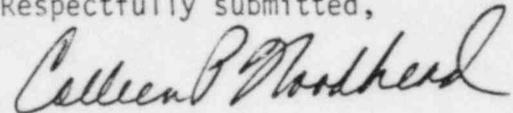
In sum, CBG wishes the Board to reconsider its previous ruling denying a motion to strike and to remove testimony from the record which merely estimates a degree of temperature increase more realistic than the very conservative estimate in the written testimony. CBG's motion is procedurally incorrect and its conclusory claim of prejudice is wholly unsupported. The oral statement by Dr. Pearlman was no more "prejudicial" than the written testimony which states that the temperature rise in graphite from Wigner energy release would be insignificant. Consequently, no basis has been provided for the Board to reconsider or to reverse its previous ruling. CBG has been given more than ample opportunity to substantively challenge the statement in question and to explore the

basis for the testimony through cross-examination. It has rejected all such opportunities and should not now be heard to complain further.

III. CONCLUSION

For the reasons stated above, the Board should deny CBG's motion to strike.

Respectfully submitted,



Colleen P. Woodhead  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 13th day of September, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN OPPOSITION TO THE CBG MOTION TO STRIKE A PORTION OF TESTIMONY ADMITTED TO THE RECORD" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by double asterisks, by express mail, this 13th day of September 1983:

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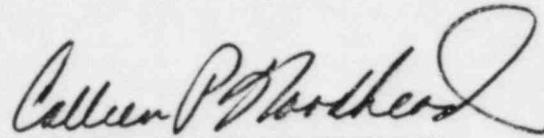
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