October 15, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of CLEVELAND ELECTRIC ILLUMINATING COMPANY, Et Al. (Perry Nuclear Power Plant, Units 1 and 2)	Docket Nos. 50-440 50-441 (Operating License)

OCRE RESPONSE TO APPLICANTS' REPLY TO OCRE RESPONSE REGARDING SPECIFICATION OF A CREDIBLE SCENARIO UNDER ISSUE #8

In their reply to the response of Intervenor Ohio Citizens for Responsible Energy ("OCRE") to their Motion for Specification of a Credible Accident Scenario Under Issue #8, Applicants claim that OCRE's arguments on the applicability of Metropolitan Edison (TMI-1 Restart), CLI-80-16, 11 NRC 674 (1980) to this proceeding are "without legal basis," citing Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 805 (1983). The use of CLI-80-16 is appropriate for Diablo Canyon, a PWR with a large dry containment for which the NRC Staff apparently will require no further hydrogen control measures. The use of CLI-80-16 in such a manner as to preclude the litigation of hydrogen control at Perry, however, is plainly illegal, as this would violate the Atomic Energy Act by denying the right to a hearing on an issue material to the licensing of PNPP. See Union of Concerned Scientists v. NRC, Case #82-2053, May 25, 1984 (DC Cir), which Applicants do not controvert.

Applicants also assert that the application of SECY-83-357 would require the dismissal of Issue #8, as the scheduling section

of that draft final rule would allow two years for the implementation of its requirements. When proposing SECY-83-357 as the standard for litigation of Issue #8, OCRE meant that the criteria for the hydrogen control system, not the proposed scheduling, be made controlling. See p. 4 of OCRE's Response, dated October 3, 1984. The Staff has now made hydrogen control for degraded core accidents a licensing condition for Perry.[1/] Applicants are presently attempting to meet these requirements. To dismiss the contention, which can be litigated (and must be resolved to the Staff's satisfaction) before Unit 1 can operate, because the draft final rule would allow a longer time is both foolish and illegal.[2/]

Finally, Applicants apparently believe that OCRE in its response was trying to submit a new contention based on SECY-83-357. This is manifestly untrue. What OCRE suggested was that a standard be adopted that would save time and effort, focus on the real issues, and eliminate the confusion and inaction (resulting from Staff and Applicant attempts to have this issue dismissed) which have marred the consideration of Issue #8. No new contention is proffered here. Issue #8 is the same now as it has always really been: that Applicants' hydrogen control system is insufficient to prevent breach of the Perry containment from the combustion of hydrogen gas generated in a degraded core accident. When first admitting this issue, the Licensing Board worded it in terms of recombiner

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1/ See NUREG-0887, SSER 4, Feb. 1984, p. 1-9, Section 1.11, item (5) which states that information is required from Applicants on hydrogen control before fuel load of Unit 1.

2/ This move is illegal on two grounds: (1) it would remove from the hearing an issue of material fact, cotnrary to UCS v. NRC, supra; (2) it is tantamount to referring a contested issue to the Staff for resolution, which is prohibited by Consolidated Edison (Indian Point Unit 2), CLI-74-23, 7 AEC 947, 981 (1974) and numerous other decisions.

adequacy, as this was the only hydrogen control measure proposed by Applicants at that time. In ALAB-675, the Appeal Board, noting that Applicants' hydrogen control system will now rely principally on a distributed igniter system,stated that "the Licensing Board should determine applicants' present plans in this regard and the effect this will have on the contention here at issue." ALAB-675, slip op. at 20-21. In February 1983 OCRE sought the rewording of this issue to better reflect this reality. (OCRE's motion was deferred by the Board pending issuance of the final hydrogen rule.) By stating that it is OCRE's contention that Applicants cannot meet the standards of SECY-83-357 (OCRE Response at 4), OCRE was again suggesting rewording of the issue to fit the facts and the evaluation standards. In no way does this mean that OCRE is submitting a new contention; to claim that it is now necessary to supply "basis, specificity, and justification for late filing under 10 CFR 2.714" (Applicants' Reply at 3, footnote 5) is simply ridiculous.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing were served by deposit in the U.S. Mail, first class, postage prepaid, this 15th day of October, 1984 to those on the service list below.

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