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DOCKETED February 27, 1985  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION MAR -1 A8:58

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
OFFICE OF SECRETARY  
SERVICE  
BRANCH

In the Matter of  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, ET AL.  
(Perry Nuclear Power Plant,  
Units 1 and 2)

Docket No. 50-440 OL  
50-441 OL

NRC STAFF RESPONSE TO OCRE'S  
MOTION FOR LEAVE TO REPLY TO  
APPLICANTS' RESPONSE TO OCRE'S MOTION

I. INTRODUCTION

By motion dated February 11, 1985, the Ohio Citizens for Responsible Energy (OCRE) asked the Atomic Safety and Licensing Board (the Board) for permission to file a response to Applicants' February 6, 1985 response to OCRE's January 23, 1985 motion to reword Issue #8, or in the alternative, to strike certain portions of Applicants' response. The NRC Staff supports the motion to strike and opposes OCRE's motion to respond to Applicants' response, for the reasons explained below.

II. DISCUSSION

OCRE argues that Applicants' recent response contains arguments which go beyond OCRE's motion to reword Issue #8. The arguments referenced discuss the scheduling provisions of the new hydrogen control

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rule. <sup>1/</sup> Motion, p. 1. OCRE states that since this matter was not addressed in OCRE's motion to reword the issue, OCRE requests permission to respond to the "new arguments" by Applicant. Id. Alternatively, OCRE suggests the Board strike those portions of Applicants' response which address the schedule for implementing the new rule. Id.

The Staff believes Applicants' arguments about schedules in the new rule, in response to OCRE's motion to reword, are indeed premature and extraneous to the subject of OCRE's motion. OCRE presented various reasons which, in OCRE's view, support rewording Issue #8 to include provisions of the new hydrogen control rule. <sup>2/</sup> The only issue raised by OCRE's motion to reword Issue #8 is whether or not the proposed reworded or new Issue #8 is admissible under the rules of practice, and the late filing criteria of 10 CFR § 2.714. Although OCRE proposes to incorporate certain sections of the new rule in Issue #8, this does not put at issue the rule itself, nor interpretations of the rule such as schedular provisions, contained in Applicants' response at pp. 5-7. Arguments over the scheduling provisions of the new rule would only be appropriate if the rewording were permitted and the present Issue #8 were changed to assert noncompliance with the new rule. However, argumentative interpretations of the new rule are clearly not relevant to OCRE's motion to reword. Therefore, the Board should reject such arguments by Applicants and OCRE.

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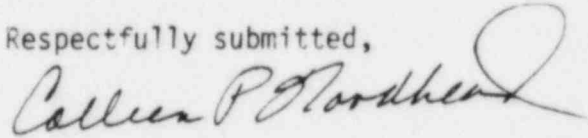
<sup>1/</sup> 50 Fed. Reg. 3498 (January 25, 1985).

<sup>2/</sup> OCRE Motion to Reword Issue #8, January 23, 1985, p. 4.

III. CONCLUSION

The Board should grant OCRE's alternative motion to strike arguments concerning schedular interpretation of the new hydrogen control rule in Applicants' February 6, 1985 response, and deny OCRE's motion to reply to Applicants' response.

Respectfully submitted,



Colleen P. Woodhead  
Counsel for NRC Staff

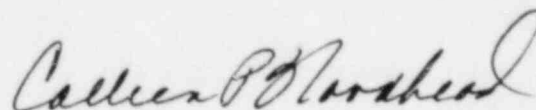
Dated at Bethesda, Maryland  
this 27th of February, 1985.



\*Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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Appeal Board Panel  
U.S. Nuclear Regulatory Commission  
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