BOCKETED February 27, 1985

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

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDSERVICE

In the Matter of

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CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL. Docket No. 50-440 OL 50-441 OL

(Perry Nuclear Power Plant, Units 1 and 2)

NRC STAFF RESPONSE TO OCPE'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 rule. $\frac{1}{}$ 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. <u>Id</u>. Alternatively, OCRE suggests the Board strike those portions of Applicants' response which address the schedule for implementing the new rule. <u>Id</u>.

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. $\frac{2}{1}$ 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.

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

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

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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 <u>deny</u> OCRE's motion to reply to Applicants' response.

Respectfully submitted, alleen Polardhen

Colleen P. Woodhead Counsel for NRC Staff

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO OCRE'S MOTION FOR LEAVE TO REPLY TO APPLICANTS' RESPONSE TO OCRE'S MOTION" in the abovecaptioned 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, this 27th day of February, 1985:

- *James P. Gleason, Chairman Administrative Judge 513 Gilmoure Drive Silver Spring, MD 20901
- *Mr. Glenn O. Bright Administrative Judge Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, DC 20555
- *Dr. Jerry R. Kline Administrative Judge Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, DC 20555

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