

'86 MAR -5 P3:39

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. W. Reed Johnson
Howard A. Wilber

March 5, 1986

SERVED MAR -5 1986

In the Matter of)

CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.)(Perry Nuclear Power Plant,)
Units 1 and 2))Docket Nos. 50-440 OL
50-441 OLORDER

On January 29, 1986, the NRC staff filed its response to certain questions respecting the Commission's hydrogen control rule, which had been posed in our January 3, 1986 memorandum and order (unpublished).¹ Attached to the response was the January 28, 1986 affidavit of Allen Notafrancesco, a mechanical engineer employed in the Office of Nuclear Reactor Regulation.

Intervenor Ohio Citizens for Responsible Energy (OCRE) has now moved to strike the affidavit on the ground that it contains unsolicited, extra-record opinion testimony.² Upon

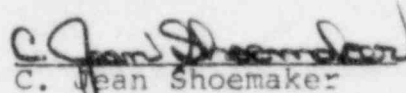
¹ NRC Staff Response to Appeal Board Questions Concerning the Hydrogen Control Rule.

² Motion to Strike NRC Staff Affidavit (February 3, 1986).

consideration of both the motion and the staff's answer to it,³ we grant the motion. In passing upon the hydrogen control questions presented by the OCRE appeal, we will not take into account either the content of the Notafrancesco affidavit or any reference to it in the staff filing to which the affidavit was appended.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

³ NRC Staff Response to OCRE Motion to Strike NRC Staff Affidavit (February 24, 1986).