NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Niagara Mohawk Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–69, issued to Niagara Mohawk Power Corporation (NMPC, the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), located in Scriba, New York.

The proposed amendment would revise Technical Specification (TS) Section 3.6.1.7, ''Suppression Chamber-to-Drywell Vacuum Breakers,'' to allow an exception to the periodic functional testing requirements for two specific vacuum breakers (cycling the vacuum breakers open and closed). Specifically, the proposed change revises Surveillance Requirement 3.6.1.7.2 such that the functional testing requirement would not apply to vacuum breakers 2ISC*RV35A and 2ISC*RV35B for the remainder of Cycle 8 (the current operating cycle).

The licensee found that limit switch(es) on vacuum breaker 2ISC*RV35A began operating intermittently during the last functional test. The limit switches provide position indication to verify that vacuum breaker 2ISC*RV35A is closed. The limit switches also provide input to a permissive logic that allows opening vacuum breaker 2ISC*RV35B when vacuum breaker 2ISC*RV35A is confirmed closed. An alternate pressure test method for verifying that vacuum breaker 2ISC*RV35A is closed is available for use only if vacuum breaker 2ISC*RV35B can be opened. Currently, both vacuum breakers 2ISC*RV35A and 2ISC*RV35B are verified closed. Future performance of functional tests on vacuum breaker 2ISC*RV35A could cause failure of the position indication, which is the normal method for verifying the vacuum breaker is closed. Furthermore, because the permissive logic inputs from vacuum breaker 2ISC*RV35A are not operating correctly, exercising vacuum breaker 2ISC*RV35B may not be possible in order to satisfy its functional testing requirement. Loss of the capability to exercise vacuum breaker 2ISC*RV35B would prohibit use of the alternate pressure testing method for verifying that vacuum breaker 2ISC*RV35A is closed.

Thus, failure of the limit switch would require NMP2 to be placed in Mode 3 within 84 hours and Mode 4 within the following 24 hours due to a loss of position indication for verifying vacuum breaker 2ISC*RV35A is closed and the inability to perform a pressure test. The degradation of the limit switches was observed during the last functional testing surveillance conducted on July 30, 2001. The limit switches are located in the drywell and cannot be accessed for repair or replacement during power operation due to the inerted environment. Per the TSs, the next functional test of the vacuum breakers must be performed by September 6, 2001 (31 days plus 25 percent).

The licensee stated that the limit switches for the vacuum breakers are currently replaced every other refueling outage (RFO). The limit switches for vacuum breakers 2ISC*RV35A and 2ISC*RV35B were replaced during the last RFO7. The eight vacuum breakers had all passed their 31-day functional tests since RFO7 with no evidence of impending failure until the last tests on July 30, 2001. Therefore, there was no prior indication that the limit switches would degrade.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proper functioning of the suppression chamber-to-drywell vacuum breakers is required for accident mitigation. Failure of the vacuum breakers is not assumed as an accident initiator for any accident previously evaluated. Therefore, any potential failure of a vacuum breaker to perform when necessary will not affect the probability of an accident previously evaluated.

During a LOCA [loss-of-coolant accident], the vacuum breakers are assumed to initially be closed to limit drywell-to-suppression chamber bypass leakage and must be capable of reclosing following a suppression pool swell event. The vacuum breakers open to prevent an excessive negative differential pressure across the suppression chamber-to-drywell boundary. The proposed change will not affect the capability of the vacuum breakers to perform their open and closed safety functions. Therefore, all four vacuum breaker pairs will remain operable and available to mitigate the consequences of a LOCA. Accordingly, the proposed amendment will not significantly increase the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The suppression chamber-to-drywell vacuum breakers are used to mitigate the potential consequences of an accident. The proposed change does not affect the capability of the vacuum breakers to perform their open and closed safety functions. Thus, the initial conditions assumed in the accident analysis are not affected. Since the vacuum breakers have demonstrated high reliability, proper functioning of the four vacuum breaker pairs is assured in order to satisfy the current accident analysis. The proposed amendment does not involve a change to plant design and does not involve any new modes of operation or testing methods. Accordingly, the vacuum breakers will continue to perform their accident mitigation safety functions as previously evaluated. Therefore, operation with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The deferral of functional testing for one vacuum breaker pair for the remainder of Cycle 8 is not risk significant, in that the increase in core damage frequency and large early release frequency were found to be less that $10^{minus;8}$/yr. The vacuum breakers are not modified by the proposed amendment. Reviews of vacuum breaker failure history show that the vacuum breakers have a high reliability to open or close when necessary. Thus, both vacuum breakers in each of the four vacuum breaker lines are expected to remain available to perform their accident mitigation safety functions. Furthermore, the 14-day surveillance that verifies the vacuum breakers are closed will continue to be performed to ensure a potential bypass leakage path is not present. Accordingly, all four vacuum breaker pairs are considered operable. The accident analysis assumptions for the closed safety functions of the vacuum

breakers are satisfied when at least one vacuum breaker in each of the four vacuum breaker lines are fully closed and capable of reclosing following a suppression pool swell event. The additional vacuum breaker in each line satisfies the single failure criterion. The open safety function of the vacuum breakers is satisfied when three of the four vacuum breaker pairs open during a design basis accident. The fourth vacuum breaker pair satisfies the single failure criterion. Since all of the vacuum breakers are considered operable and available to perform their open and closed safety functions, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 24, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 17, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 20th day of August 2001.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–21436 Filed 8–23–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44717; File No. SR–CBOE–2001–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Regarding Its Marketing Fee

August 16, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items the CBOE has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to reduce the amount of its marketing fee from $0.40 per contract to $0.00. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In July 2000, the CBOE imposed a $0.40 per contract marketing fee to collect funds to be used by the appropriate Designated Primary Market Maker (''DPM'') to attract order flow to the CBOE.[3] The CBOE now proposes to reduce the amount of the marketing fee, effective August 1, 2001, to $0.00 per contract. The effect of this fee reduction is that the CBOE is suspending the assessment of the marketing fee. The CBOE is reserving the right to reinstate the marketing fee at a future date. Any reinstatement of the fee would be done pursuant to a rule filing with the Commission.[4]

The CBOE will continue to perform administrative functions under the current marketing fee program until all previously collected funds are distributed. The CBOE also will continue to pay interest on the funds in the DPM marketing fee accounts until these funds are distributed. Effective September 1, 2001, the CBOE also proposes to suspend the $10,000 monthly fee that has been imposed to help cover expenses related to its administration of the marketing fee program.[5] The CBOE expects that this administrative fee will remain suspended until such time as the CBOE determines, if at all, to reinstate the marketing fee described above.[6]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act[7] and furthers the objectives of Section 6(b)(4) of the Act[8] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CBOE neither solicited nor received comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission

Because the CBOE has designated the foregoing proposed rule change as a fee change pursuant to Section 19(b)(3)(A)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43112 (August 3, 2000) 65 FR 49040 (August 10, 2000) (File No. SR–CBOE–2000–28).

[4] The CBOE notes that if it were to reinstate the marketing fee, it could establish a per-contract fee different from the $0.40 currently charged.

[5] *See* Securities Exchange Act Release No. 44469 (June 22, 2001) 66 FR 35301 (July 3, 2001) (File No. SR–CBOE–2001–25).

[6] The CBOE states that any decision to reinstate the administrative fee would be filed with the Commission as a rule change.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).