

For the Nuclear Regulatory Commission.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendments To Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-58 and DPR-74 issued to Indiana Michigan Power Company (I&M or the licensee) for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, (D. C. Cook) located in Berrien County, Michigan.

The proposed amendment, requested by I&M in its application dated April 6, 2004, represents a full conversion from the Current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG-1431, "Standard Technical Specifications (STS) for Westinghouse Plants," Revision 2, dated April 2001. NUREG-1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the NRC staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TSs) for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement)," published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS and using NUREG-1431 as a basis, proposed an ITS for D. C. Cook. The criteria in the Final Policy Statement was subsequently added to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50.36, "Technical Specifications," in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

In addition to the conversion, the licensee also proposed: (1) To delete three license conditions in the operating

licenses for D. C. Cook Units 1 and 2 and relocate the requirements to either the ITS or the Technical Requirements Manual of the D. C. Cook Updated Final Safety Analysis Report (UFSAR); and (2) 34 beyond scope issues (BSIs) where the proposed requirements are different from the CTS or the STS NUREG-1431. The BSIs are identified later in this notice.

This notice is based on the application dated April 6, 2004, and the information provided to the NRC through the Cook ITS Conversion Web page. To expedite its review of the application, the NRC staff issued its requests for additional information (RAIs) through the Cook ITS Conversion Web page and the licensee addressed the RAIs by providing responses on the Web page. Entry into the database is protected so that only licensee and NRC reviewers can enter information into the database to add RAIs (NRC) or providing responses to the RAIs (licensee); however, the public can enter the database to only read the questions asked and the responses provided. To be in compliance with the regulations for written communications for license amendment requests and to have the database on the D. C. Cook dockets before the amendments would be issued, the licensee will submit a copy of the database in a submittal to the NRC after there are no further RAIs and before the amendments would be issued. The public can access the database through the NRC Web site at <http://www.nrc.gov> by the following process: (1) Click on the tab labeled "Nuclear Reactors" on the NRC home page along the upper part of the web page, (2) then click on the link to "Operating Reactors," which is under "Regulated Activities" on the left hand side of the web page, (3) then click on the link to "Improved Standard Technical Specifications" which is on right hand side of the page, and (4) finally click on the link to "Comments on the application and responses by D. C. Cook," near the bottom of the Web page, to open the database. The RAIs and responses to RAIs are organized by ITS Sections 1.0, 2.0, 3.0, 3.1 through 3.9, 4.0, and 5.0, which are listed first, and the 34 BSIs, which are listed later. For every listed ITS section or BSI, there is an RAI which can be read by clicking on the ITS section or BSI number. The licensee's responses are shown by a solid triangle adjacent to the ITS section or BSI number, and, to read the response, you click on the triangle. To page down through the ITS sections to the BSIs, click on "next" along the top

of the page or on "previous" to return to the previous page.

The licensee has categorized the proposed changes to the CTS into five general groupings within the description of changes (DOC) section of the application. These groupings are characterized as administrative changes (*i.e.*, ITS x.x, DOC A.xx), more restrictive changes (*i.e.*, ITS x.x, DOC M.xx), relocated specifications (*i.e.*, ITS x.x, DOC R.xx), removed detail changes (*i.e.*, ITS x.x, DOC LA.xx), and less restrictive changes (*i.e.*, ITS x.x, DOC L.xx). This is to say that the DOCs are numbered sequentially within each letter designator for each ITS Chapter, Section, or Specification, and the designations are A.xx for administrative changes, M.xx for more restrictive changes, R.xx for relocated specifications, LA.xx for removed detail changes, and L.xx for less restrictive changes. These changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

Administrative changes are those that involve restructuring, renumbering, rewording interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG-1431 and does not involve technical changes to the CTS. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG-1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant); (b) identifying plant-specific wording for system names, etc.; and (c) changing NUREG-1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the STS that is more restrictive than the CTS that the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it has concluded

that adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the 10 CFR 50.36(c) and, therefore, may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Attachment 1 to the licensee's April 6, 2004, application, "Donald C. Cook Nuclear Plant, Units 1 and 2, License Amendment Request—Conversion of Current Technical Specifications (CTS) to Improved Technical Specifications (ITS)." The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TSs to administratively-controlled documents such as the quality assurance program, the UFSAR, the ITS Bases, the technical requirements manual that is incorporated by reference in the UFSAR, the core operating limits report, the offsite dose calculation manual, the inservice testing program, the inservice inspection program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59.

Removed detail changes, are changes to the CTS that eliminate detail and relocate the detail to a licensee-controlled document. Typically, this involves details of system design and function, or procedural detail on methods of conducting a surveillance requirement (SR). These changes are supported, in aggregate, by a single generic no significant hazard consideration. The generic type of removed detail change is identified in italics at the beginning of the DOC.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant "less restrictive"

requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of: (a) Generic NRC actions; (b) new NRC staff positions that have evolved from technological advancements and operating experience; or (c) resolution of the Owners Groups' comments on the Improved STSs. Generic relaxations contained in NUREG-1431 were reviewed by the NRC staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design is being reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG-1431, thus providing a basis for the ITS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different from the requirements in both the CTS and the STS NUREG-1431. The BSIs are listed below in which the first 21 were identified by the licensee and addressed in Enclosure 4 to its application. In some cases, the BSI is addressed as a justification for deviation (JFD) from the STS, and identified as ITS x.x, JFD x. These BSIs to the conversion, listed in the order of the applicable ITS specification or section, are as follows [note that the words below that are capitalized are terms that are defined in the ITS]:

(1) Surveillance Frequencies for certain CHANNEL CALIBRATION Surveillance Requirements (SRs) are being changed from 18 months in the CTS to either 31 days or 184 days in the ITS. (ITS 3.3.1, DOC M.16; ITS 3.3.2, DOC M.10; ITS 3.3.5, DOC M.2)

(2) Changing certain ALLOWABLE VALUES as a result of extending the CHANNEL CALIBRATION surveillance frequency from 18 months to 24 months. (ITS 3.3.1, DOC M.17; ITS 3.3.1, DOC L.19; ITS 3.3.2, DOC M.11; ITS 3.3.2, DOC L.22)

(3) Certain surveillance frequencies are being changed from 7 days, 31 days, or 92 days to 184 days. (ITS 3.3.1, DOC L.18; ITS 3.3.2, DOC L.19; ITS 3.3.5,

DOC L.5; ITS 3.3.6, DOC L.9; ITS 3.4.15, DOC L.8; ITS 3.6.9, DOC L.3; ITS 3.7.10, DOC L.3; ITS 3.7.12, DOC L.3; ITS 3.7.13, DOC L.5)

(4) Decreases the number of manual channels required OPERABLE to one per train. (ITS 3.3.2, DOC L.20)

(5) Decreases the number of manual channels required OPERABLE to one per train. (ITS 3.3.6, DOC L.10)

(6) Deletes the once per shift SOURCE CHECK requirement on the containment radiation instrumentation. (ITS 3.3.6, DOC L.11)

(7) Changes the number coolant loop required to be in operation and/or OPERABLE, based on the status of the rod control system. (ITS 3.4.6, DOC L.1)

(8) Requirement to specifically state the required water level as referenced to a specific point inside the steam generators instead of using a specific indication from one instrument is being changed. (ITS 3.4.6, DOC L.5; ITS 3.4.7, DOC L.3)

(9) Changes for Unit 1 only to: (1) Decrease the unidentified LEAKAGE limit and provide additional REQUIRED ACTIONS; and (2) add the requirement to analyze grab samples of the containment atmosphere every 12 hours instead of every 24 hours. (ITS 3.4.13, DOC M.1; ITS 3.4.15, DOC M.2)

(10) Increasing the pressure constant value, resulting in a decrease in the calculated seal line resistance flow. (ITS 3.5.5, DOC M.1)

(11) Require two of the three refueling canal drains to be OPERABLE, and, due to this change, the word "required" has been added to the Actions and the SRs since not all installed refueling drains are required to be OPERABLE. (ITS 3.6.14, DOC L.2)

(12) Increasing the condensate storage tank volume requirements. (ITS 3.7.6, DOC M.1)

(13) Delete the 1-hour allowance to delay declaring inoperable the opposite unit essential service water (ESW) train, and adds requirements to address the opposite unit ESW train. (ITS 3.7.8, DOC M.3)

(14) Ensure only one control room air conditioning (CRAC) train is in operation and change the temperature limit from 95 °F to 85 °F during the 12-hour surveillance, and add a specific requirement to verify that each CRAC train can maintain control room air temperature < 85 °F every 31 days, and add requirements to verify control room air temperature. (ITS 3.7.11, DOC M.2)

(15) Add the requirement that the required fuel handling area exhaust ventilation (FHAEV) train must be in operation, add an ACTION to take if the required FHAEV train is not in operation, add a new surveillance

requirement to periodically verify the required FHAEV train is in operation, and delete a surveillance requirement to verify the train automatically directs its exhaust flow through the charcoal adsorber banks on an actuation signal. (ITS 3.7.13, DOC M.1)

(16) Reduce the steady-state voltage range from 4160 ± 420 V to $4160 +240$ V, -250 V, and the steady-state frequency range from 60 ± 1.2 Hz to $60 + 1.2$ Hz, -0.6 Hz. (ITS 3.8.1, DOC M.5)

(17) Delete the requirement to perform the surveillance requirement in accordance with the Diesel Generator (DG) Test Schedule Table, and change the nominal test frequency to 92 days. (ITS 3.8.1, DOC L.19)

(18) Deletes requirements in CTS SR 4.8.1.1.2.e.10 on testing the DG. (ITS 3.8.1, DOC L.20)

(19) Changes the time to perform surveillance requirement checks from 8 hours or 24 hours, to 12 hours. (ITS 3.8.1, DOC L.21)

(20) Certain CTS SRs are not required in the ITS. (ITS 3.8.2, DOC L.6)

(21) Extend the surveillance frequency for various surveillance requirements to 24 months, consistent with the guidelines provided in NRC Generic Letter 91-04. (ITS 3.1.4, DOC L.9; ITS 3.3.1, DOCs L.1, L.2, L.3 and L.11; ITS 3.3.2, DOCs L.1, L.2, L.4 and L.13; ITS 3.3.3, DOC L.6; ITS 3.3.4, DOC L.1; ITS 3.3.6, DOCs L.5 and L.6; ITS 3.3.7, DOC L.2; ITS 3.3.8, DOC L.3; ITS 3.4.1, DOC L.2; ITS 3.4.9, DOC L.1; ITS 3.4.11, DOC L.3; ITS 3.4.12, DOC L.3; ITS 3.4.14, DOC L.4; ITS 3.4.15, DOC L.6; ITS 3.5.2, DOC L.3; ITS 3.6.3, DOC L.5; ITS 3.6.6, DOC L.1; ITS 3.6.7, DOC L.1; ITS 3.6.8, DOC L.3; ITS 3.6.9, DOC L.2; ITS 3.6.13, DOC L.1; ITS 3.7.5, DOC L.8; ITS 3.7.7, DOC L.2; ITS 3.7.8, DOC L.2; ITS 3.7.10, DOC L.2; ITS 3.7.12, L.2; ITS 3.7.13, DOC L.4; ITS 3.8.1, DOC L.3; ITS 3.8.4, DOC L.2; and ITS 5.5, DOCs L.1 and L.3)

(22) The surveillance frequency is changed from prior to reactor startup if not performed within the previous 7 days to 24 months. (ITS 3.3.1, DOC L.12)

(23) CTS Table 4.3-1 requires a CHANNEL CALIBRATION of Functional Units 7 and 8, the Overtemperature delta T and Overpower delta T channels, respectfully. The ITS specifies the normalization of the delta T channels is not required to be performed until 72 hours after Thermal Power is greater than or equal to 98 percent rated thermal power. (ITS 3.3.1, DOC M.10)

(24) CTS Table 4.3-1 Functional Units 18.A and 18.B specify the SRs for the Turbine Trip—Low Fluid Oil Pressure and Turbine Stop Valve Closure

Functions, but does not include a CHANNEL CALIBRATION requirement. ITS SR 3.3.1.13 has been added which requires a CHANNEL CALIBRATION of these channels every 24 months. (Table 3.3.1-1 Functions 16.a and 16.b). (ITS 3.3.1, DOC M.14)

(25) The CTS is being changed by adding the explicit Automatic Actuation Logic and Actuation Relays SRs for ITS Function 5.a, Turbine Trip and Feedwater Isolation. The frequency proposed for the slave relay (24 months) is consistent with the frequency proposed for the simulated actuation tests. (ITS 3.3.2, DOC M.2)

(26) The proposed test frequencies are based on consistency with either other functions or with simulated actuation tests. (ITS 3.3.2, DOC M.3)

(27) Licensee is applying WCAP-10271 to the Containment Air Recirculation Fan Actuation logic, and Containment Pressure—High Functions. (ITS 3.3.2, DOC L.5)

(28) Licensee applying WCAP-10271, WCAP-15376 and WCAP-14333 for the required actions, completion times, and surveillance test intervals for the functions listed in DOC L.5 and L.17. (ITS 3.3.2, DOC L.5 and L.17)

(29) Deviation from STS for the P-12 interlock action to place in “trip” instead of “place in the required state.” (ITS 3.3.2, JFD 23)

(30) Eliminate requirements for residual heat removal trip bypass when the refueling water storage tank level instrumentation becomes inoperable. (ITS 3.3.3, DOC L.4)

(31) Relax the CTS surveillance frequency for the hydrogen analyzer by deleting the requirement to test on a STAGGERED TEST BASIS. (ITS 3.3.3, DOC L.13)

(32) Adopt the STS repair allowed outage time of 6 hours before the channel must be placed in trip. (ITS 3.3.5, DOC L.2)

(33) Add a setpoint methodology citation to the ITS Bases. (ITS 3.3.5, Bases Insert 4—Reference 4)

(34) Revise the wording in Required Action A.1 of ITS 3.5.5. (ITS 3.5.5, JFD 4)

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

Within 60 days after the date of publication of this notice, 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 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (First Floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, [E T=’03’][http://www.nrc.gov/reading-rm/doc-collections/cfr/\[.E\]](http://www.nrc.gov/reading-rm/doc-collections/cfr/[.E]) If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor 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 general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for 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. The petition must include 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/requestor to relief. A petitioner/requestor who fails to satisfy 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.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to OGCMAILCENTER@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent David W. Jenkins, Esq., 500 Circle

Drive, Buchanan, MI 49107, attorney for the licensee.

For further details with respect to this action, see the licensee's application for amendment dated April 6, 2004, and the Cook ITS Conversion Web page (as discussed above). Documents may be examined, and/or copied for a fee at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (First Floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to pdr@nrc.gov.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 23rd day of September, 2004.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50417; File No. SR–CHX–2003–07]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Stock Exchange, Incorporated Relating to Out-of-Range Execution Rules

September 21, 2004.

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 March 20, 2003, the Chicago Stock Exchange, Incorporated (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 10, 2004, the Exchange filed Amendment No. 1 to the proposed rule change,³ and on September 15, 2004,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 13, 2004 (“Amendment No. 2”). Amendment No. 2 replaced the original proposal and Amendment No. 1 in their entirety.

the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, “out-of-range” executions. The text of the proposed rule change, as amended, appears below. Additions appear in *italics*; deletions are in [brackets].

* * * * *

Chicago Stock Exchange Rules

ARTICLE XX

Guaranteed Execution System and Midwest Automated Execution System

RULE 37. (a)Guaranteed Executions.

* * * * *

6. Executions Outside of Range.

Since executions are guaranteed on the basis of the size and price of the best bid or offering, the order may be executed out of the primary market range for the day but in a Dual Trading System issue a stop must be granted if requested.]

[7.]6. No change to text.

* * * * *

(b) Automated Executions.

* * * * *

(9) [All market orders received through the MAX System that would result in an out of range execution shall be deemed to be received with a request to STOP. Additionally, specialists may stop limit orders that are marketable when entered into the MAX System. Subject to Interpretations and Policies .03 under this Rule 37, a specialist may execute a stopped order out of the primary market range, at no worse than the stopped price, provided the specialist receives approval to do so from two floor officials.]

* * * * *

(d) SuperMAX 2000.

SuperMAX 2000 shall be a voluntary automatic execution program within the MAX System. SuperMAX 2000 shall be available for any security trading on the

Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated March 10, 2004 (“Amendment No. 1”). Amendment No. 1 clarified the purpose and effects of the proposal.

⁴ See letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 13, 2004 (“Amendment No. 2”). Amendment No. 2 replaced the original proposal and Amendment No. 1 in their entirety.