

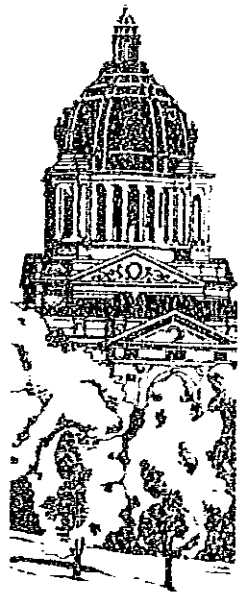
FI 95-010

IN THE MATTER OF THE
APPLICATION BY NORTHERN
STATES POWER COMPANY FOR A
STATEMENT TO THE SECURITIES
AND EXCHANGE COMMISSION
REGARDING INVESTMENT IN A
FOREIGN UTILITY

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue - Pierre, South Dakota 57501-8000

May 30, 1995

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

RE: NORTHERN STATES POWER COMPANY
OUR DOCKET EL95-010

Gentlemen:

Northern States Power Company ("NSP"), doing business in the State of South Dakota as a public utility, has advised this Commission that it is considering acquiring indirectly through a subsidiary, an interest in United Energy, an electricity supplier owned by the state of Victoria, Australia. A consortium proposes to acquire 100% of the stock of United Energy.

NSP has represented that it has filed, or will file, an application for an exemption with the Securities and Exchange Commission under Section 3 (b) of the Public Utility Holding Company Act of 1935 as amended ("PUHCA"), with respect to the investment in connection therewith. NSP has filed or will file with this Commission a copy of its notifications to the Securities and Exchange Commission. NSP has asked this Commission to provide you with the certification contemplated by the applicable provisions of PUHCA.

This Commission has jurisdiction over the retail electric rates of NSP in South Dakota pursuant to Chapter 49-34A, SDCL and herewith certifies that it

- 1) has the authority and resources to protect the ratepayers of NSP subject to its jurisdiction with respect to such an acquisition; and
- 2) intends to exercise that authority

Sincerely,

Ken Stofferahn
James Burg
Laska Schoenfelder

Ken Stofferahn
Chairman

James Burg
Commissioner

Laska Schoenfelder
Commissioner

cc Mr. Robert Wason
Securities and Exchange Commission
Office of Public Utility Regulation
Division of Investment Management
450 Fifth Street, N.W.
Washington, DC 20549

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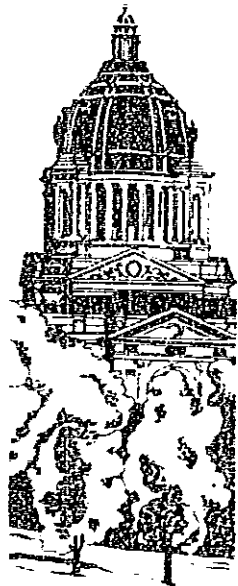
John
M. A. N. S. C. S.

John
L. N. S. C. S.

Gregory A. R. S. C. S.

Robert E. Waldner
Steven M. W. S. C. S.

Relay - Arts W.



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



May 30, 1995

David A. Gerdes
MAY, ADAM, GERDES & THOMPSON
P.O. Box 160
Pierre, SD 57501

RE NORTHERN STATES POWER COMPANY
OUR DOCKET EL95-010

Dear Mr. Gerdes:

Enclosed please find a copy of the letter written in the above mentioned docket for your records. A copy was also mailed to Robert Wason of the Securities and Exchange Commission. Please note that it was mailed on May 30, 1995

if there is anything further that I can do for you please don't hesitate to let me know

Sincerely,

Camron Hoseck
Staff Attorney

CHW

Enclosure

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Ken Stofferahn
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Commissioner

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Kathleen ...

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TELEPHONE
605 224-0803
TELECOPIER
605 224-6269

May 12, 1995

DOCKET
NUMBER EL 95-010

HAND DELIVERED

Mr. William Bullard, Jr.
Executive Director
Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

RECEIVED

MAY 12 1995

STATE OF SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: Northern States Power Company
Our file: 2107

Dear Mr. Bullard:

Enclosed are original and ten copies of a petition for a statement regarding investment in a foreign utility. Please file the enclosure.

As the application will indicate, time is a consideration because of deadlines imposed upon the transaction. Accordingly, we would appreciate it if the Commission would afford NSP expedited issuance of the requested statement, in no event later than June 15, 1995.

I am in the process of preparing and will submit to the Commission a proposed text of the statement which NSP is requesting. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON

BY: 

DAG:mw

Enclosures

cc: Dave Lawrence
Michael J. Bradley

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RECEIVED

MAY 17 1995

STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

DOCKET NO. 95-010

Northern States Power Company,)
Application for a Statement to)
the Securities and Exchange)
Commission Regarding Investment)
in a Foreign Utility.)

DOCKET NO. _____
APPLICATION FOR
STATEMENT

Northern States Power Company ("NSP") applies to the South Dakota Public Utilities Commission pursuant to SDCL 49-34A for an order authorizing the issuance of a certification statement to the Securities and Exchange Commission, and states in support thereof:

1. NSP is in the business of generating and distributing electrical energy and providing natural gas service to residential and business customers in the State of South Dakota. NSP, acting through its subsidiary NRG Energy, Inc., a Delaware corporation ("NRG"), proposes to participate in a consortium which will prepare and submit a bid to acquire United Energy through the acquisition of United Energy's stock. NRG is not a public utility. United Energy is one of five state-owned electrical distribution companies being sold by the State of Victoria, Australia, in order to privatize its electrical distribution industry. This filing seeks a statement from the South Dakota Public Utilities Commission ("Commission"), which will be submitted to the Securities and Exchange Commission in connection with a filing requesting exemption from the Public Utility Holding Company Act of 1935, as amended, that the Commission has reviewed the proposed acquisition and determined that it:

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. . . has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority.

In support of this Petition, NSP respectfully represents the following:

DESCRIPTION OF PARTIES AND TRANSACTION.

1. NSP is a Minnesota corporation, in good standing in all respects, with its principal office and place of business at 414 Nicollet Mall, Minneapolis, Minnesota, 55401. NSP is in the business of generating and distributing electrical energy and providing natural gas service to residential and business customers in the State of Minnesota.

2. NSP proposes to participate in a transaction which will result in its indirect acquisition of an ownership interest in United Energy, a state-owned electricity distribution company located in Melbourne, Australia.

3. NSP proposes to indirectly acquire this interest through its wholly-owned subsidiary, NRG. NRG is not a public utility subject to regulation by the Commission.

4. The government for the Australian state of Victoria (the "Government") is expected to accept non-binding indicative bids and indications of interest for the purchase of United Energy until May 12, 1995. The following week, ending May 19, the Government is expected to announce a "short list" of two to five interested parties who will be given further consideration as potential purchasers and who will be authorized to conduct due diligence inquiries through July 21. These selected parties will then be

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allowed to make final, binding offers by July 21, 1995. The Government's selection of the successful bidder for United Energy is expected by July 24, 1995.

5. On May 9, 1995, NRG joined in a consortium formed to submit a bid to the Government for the acquisition of United Energy (the "Consortium"). The other members of the Consortium are: UtiliCorp United, Inc. ("UtiliCorp"); Lend Lease Corporation and its subsidiaries MLC Life Ltd. and Australian Eagle Life Ltd.; State Authorities Superannuation Board; Infrastructure Investment Corporation Limited; and AMP Investors.

6. The Consortium's non-binding bid submitted to the Government provides that NRG will fund between approximately U.S. \$44 and \$119 million of the Consortium's bid of between U.S. \$444 and \$592 million. This is between approximately 10 percent and 20 percent of the Consortium's bid for 100 percent of the equity of United Energy.

7. NSP has provided all of the equity investment in NRG. NRG expects to finance the acquisition of its interest in United Energy primarily from cash generated from its ongoing operations. NSP will not guaranty or in any way secure repayment of any loan or loans to NRG for this proposed acquisition.

8. The Government has requested that all parties bidding for the acquisition of United Energy obtain the required regulatory approvals, prior to submitting final bids by July 21, 1995. Accordingly, NSP is requesting the Commission's action on this

petition as soon as is convenient for the Commission, and in no event later than June 15, 1995.

REGULATORY APPROVAL REQUESTED.

9. On April 14, 1995, UtiliCorp filed an application (the "Application") with the SEC, pursuant to Section 3(b) of the Public Utility Holding Company Act of 1935 ("PUHCA" or the "Act"), 15 U.S.C. §79(c), for an exemption for United Energy from the SEC's registration requirements. That filing was made with respect to UtiliCorp's proposed acquisition of an interest in United Energy. The filing will be amended to include NSP as one of the requesting parties.

10. Section 3(b) of the Act provides for a general exemption from the registration requirements of the SEC where:

- (a) the SEC finds application of the Act is not necessary to satisfy the public interest or for the protection of investors;
- (b) the foreign subsidiary derives no material part of its income directly or indirectly, from sources within the United States; and
- (c) neither the subsidiary nor any of its subsidiaries is a public utility company operating in the United States.

A copy of the prior SEC Application is attached as Exhibit A to this Petition. A copy of the amended SEC filing will be supplied in the near future, when available.

11. In making its determination pursuant to Section 3(b) of the Act, the SEC has in the past required the requesting public utilities to obtain the certification found in Section 33(a)(2) of the Act, 15 U.S.C. §79z-5b(a)(2). That provision establishes a general exemption for foreign utility company affiliates, provided that any state commission with jurisdiction over a domestic affiliate certify to the SEC, "that it has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority." As of the date of this filing, the SEC has not specifically identified the form of "certification," if any, required from state public utilities commission in order to grant an exemption from the filing requirements of PUHCA. NSP will supplement this filing as any additional information becomes available from the SEC.

12. In order to obtain an exemption from the SEC under Section 3(b) of the Act, NSP requests that the Commission issue a statement to the SEC that the Commission has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its a authority.

EFFECT ON NSP AND RATEPAYERS.

13. The proposed capital investment by NRG for its acquisition of an interest in United Energy is too small to jeopardize the financial health of NSP. In addition, since the acquisition will occur through a separate entity, NSP will have no liability related to the project. To put the proposed transaction in perspective, for the 12 months ending December 31, 1994, NSP on

a consolidated basis had operating revenues of \$2,486,547,000 and assets of \$5,953,571,000. The capital investment of between \$44 and \$119 million, therefore, equals no more than two percent (2%) of NSP's assets on a consolidated basis.

14. No securities will be issued by NSP to finance this acquisition. NSP's capital investment will be derived entirely through retained earnings. Accordingly, the acquisition will have no impact on the capital structure of NSP. No South Dakota property will be encumbered as a result of this transaction.

15. NSP's customers will see no change in their utility services as a result of the acquisition of United Energy, and the customers will continue to be served effectively and efficiently.

16. The Commission's authority is fully adequate to protect South Dakota ratepayer interests with respect to the proposed acquisition. In future NSP rate cases, the Commission and the intervenors have the authority to fully investigate any significant transactions between NSP, NRG and other affiliated interests to verify the accuracy and appropriateness of all charges.

CONCLUSION.

It is reasonable for the Commission to issue an Order for the requested statement to the SEC, because the acquisition will have no impact on NSP's ratepayers:

(a) There will be no effect on NSP's capital structure and the proposed investment by NSP from retained earnings is negligible, in comparison to its assets.

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(b) No South Dakota property will be encumbered as a result of the acquisition.

(c) The Commission has sufficient authority to protect the interests of South Dakota ratepayers by investigating any affiliated interest transactions.

(d) That the Commission intends to exercise its regulatory authority over NSP in the future cannot be seriously questioned.

Therefore, NSP respectfully requests that this Commission expedite this matter and issue an Order not later than June 15, 1995. Stating that it has the authority and resources to protect South Dakota ratepayers and that it intends to exercise its authority.

Dated this 12th day of May, 1995.

MAY, ADAM, GERDES & THOMPSON

BY: 
DAVID A. GERDES

Attorneys on Behalf of Northern States
Power Company
503 South Pierre Street
P.O. Box 160
Pierre, South Dakota 57501-0160
(605) 224-8803