

EL97-011

Northern States Power Company

500 West Russell
P.O. Box 988
Sioux Falls, SD 57101-0988
Telephone (605) 339-8200

Michael J. Hanson
General Manager and Chief Executive

May 27, 1997

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

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MAY 29 1997

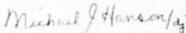
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: In the Matter of a Petition by Northern States Power Company
for a Statement to the Securities and Exchange Commission
Regarding Investment in a Foreign Utility

Dear Mr. Bullard:

Enclosed please find an original and ten copies of Northern States Power Company's Petition for a Statement in the above-entitled matter. The statement of the Commission sought by NSP is similar to the statement provided by the Commission in 1996 in Docket No. EL96-004. Please contact the undersigned if you have any questions regarding this filing.

Very truly yours,



Michael J. Hanson
General Manager & Chief Executive

Enclosures

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STATE OF SOUTH DAKOTA
BEFORE THE PUBLIC UTILITIES COMMISSION
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of a Petition by
Northern States Power Company
for a Statement to the Securities
and Exchange Commission Regarding
Investment in a Foreign Utility

Docket No. _____

PETITION 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:

NSP is in the business of generating and distributing electrical energy service to residential and business customers in the State of South Dakota. NSP, acting through its wholly-owned subsidiary NRG Energy, Inc., a Delaware corporation ("NRG") and subsidiaries of NRG, has purchased a passive, non-voting ownership interest of approximately 7 percent of the shares of Energy Developments Limited ("EDL"). NSP has an option to increase its ownership interest (through subsidiaries of NRG) up to 35 percent and has the right to convert its ownership interest to a voting interest. In addition, NSP (through subsidiaries of NRG) may make further investments in EDL in the future to fund expansion and may also purchase shares of EDL in open market transactions. NRG is not a public utility.

EDL is a publicly traded Australian company. EDL develops, owns and operates independent power generation projects in Australia, New Zealand, Asia and the United Kingdom and related natural gas and distillate, coal seam methane and landfill gas

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processing production and supply assets. EDL may in the future develop, own and operate other types of infrastructure assets. EDL currently owns and operates 200 MW of generation and also owns and operates a 22 KV 72 kilometer transmission line. At the time of the initial acquisition, NRG planned to qualify the project as an exempt wholesale generator ("EWG"). However, NRG was later advised that EDL's ownership and operation of a transmission line makes it unlikely that EWG exemption for the project could be obtained. To avoid immediately having a holding company issue, NRG has initially acquired a passive, non-voting interest. Now NRG is pursuing foreign utility company ("FUCO") exemption for its contemplated interest in EDL. This filing seeks a certification from the South Dakota Public Utilities ("Commission"), which will be submitted to the Securities and Exchange Commission ("SEC") in connection with a filing claiming exemption from the Public Utility Holding Company Act of 1935, as amended, that the Commission has reviewed the proposed acquisition and determined that it:

. . . 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 to residential and business customers in the State of South Dakota.

2. NSP proposes to participate in a transaction which will result in its indirect acquisition of an approximately 7 percent active ownership interest in EDL, with an option to increase its ownership up to 35 percent. EDL is a publicly traded Australian company which develops, owns and operates independent power generation projects in Australia, New Zealand, Asia and the United Kingdom and related natural gas and distillate, coal seam methane and landfill gas processing production and supply assets. EDL currently owns and operates 200 MW of generation and also owns and operates a 22 KV 72 kilometer transmission line.

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

4. In February 1997, NRG purchased an initial 7 percent of the shares of EDL.

5. NRG will fund its approximately U.S. \$28 million equity contribution. NRG has an option to increase its ownership up to 35 percent and has the right to convert its ownership interest to a voting interest. In addition, NSP (through subsidiaries of NRG) may make further investments in EDL in the future to fund expansion and may also purchase shares of EDL in open market transactions.

6. NRG expects to finance the acquisition of its interest in EDL in the approximate total amount of U.S. \$28 million through earnings, available monies (including NRG external financing activities), and equity provided by its parent corporation, NSP. No more than U.S. \$28 million of equity is expected to come from NSP. NSP will not guaranty or in any way secure repayment of any loan or loans to NRG for this proposed project.

7. NSP requests the Commission's action on this petition as soon as is convenient for the Commission.

REGULATORY APPROVAL REQUESTED

8. Section 33(a) of the Public Utility Holding Company Act of 1935, as amended (the "Act"), states that a company shall be exempt from the Act and not deemed to be a public utility company under Section 2(a)(5) of the Act, so long as it qualifies as a "foreign utility company" under the Act. Section 33(a)(3) of the Act defines a foreign utility company as any company that:

- a) owns or operates facilities that are not located in any state and that are used for the generation, transmission or distribution of electric energy for sale or distribution at retail of natural or manufactured gas for heat, light or power, if such company:
 - i) derives no part of its income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light or power, within the United States; and
 - ii) neither the company nor any of its subsidiary companies is a public utility company operating in the United States; and
- b) provides notice to the SEC, in such form as the SEC may prescribe, that such company is a foreign utility company.

9. Section 33(a)(2) of the Act states that a foreign utility company's exemption will not be effective unless every state commission having jurisdiction over the retail electric

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or gas rates of a public utility company that is an associate company or an affiliate of that foreign utility company certifies 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."

10. In order to obtain an exemption under Section 33(a) of the Act, NSP requests that the Commission issue a certification to the SEC affirmatively stating that the Commission has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority. The certificate should be provided to NSP which will forward it to the SEC upon making the application. A proposed form for the certificate is included as Attachment 1 to this filing.

EFFECT ON NSP AND RATEPAYERS

11. The proposed capital investment by NSP for NRG's acquisition of an interest in EDL is too small to have a material impact on the financial condition of NSP. In addition, since the acquisition will occur through a separate entity, NSP will have no liability other than its equity investment of up to U.S. \$28 million. To put the proposed transaction in perspective, for the 12 months ending December 31, 1996, NSP had gross utility operating revenues of U.S. \$2.65 billion and assets of U.S. \$6.64 billion. A capital investment of U.S. \$28 million, therefore, equals less than one-half percent (0.5%) of NSP's assets.

12. 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.

13. NSP's customers will see no change in their utility service as a result of the

development of EDL, and the customers will continue to be served effectively and efficiently.

14. 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.

CONCLUSIONS

It is reasonable for the Commission to issue an Order for the requested certification pursuant to Section 33(a)(2) of the Act 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.
- 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 issue an Order certifying to the SEC that it has the authority and resources to protect South Dakota ratepayers and that it intends to exercise its authority.

Dated: 5-27-97

Respectfully submitted,

By:



David A. Lawrence
Assistant General Counsel
Northern States Power Company
414 Nicollet Mall
Minneapolis, Minnesota 55401



South Dakota Public Utilities Commission

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



June 4, 1997

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Mr. Michael J. Hanson
General Manager & Chief Executive
Northern States Power Company
P. O. Box 988
Sioux Falls, SD 57101-0988

Re: Northern States Power Company
Docket EL97-011

Dear Mr. Hanson:

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 June 4, 1997.

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

Very truly yours,

Tricia Zimmer
Intern

TZ:dk
Enc.



South Dakota Public Utilities Commission



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

June 4, 1997

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

Re: Northern States Power Company
EL97-011

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 Energy Developments Limited ("EDL") in Australia.

NSP has represented that it has filed, or will file, an application for an exemption with the Securities and Exchange Commission under Section 33(a)(3) of the Public Utility Holding Company Act of 1935, as amended ("PUHCA"), with respect to the investment. In connection herewith, NSP has filed or will file with the 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 SDCL 49-34A 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,

James A. Burg
James A. Burg
Chairman

Pam Nelson
Pam Nelson
Commissioner

Laska Schoenfelder
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, D. C. 20549

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