

EL 97-022

DOCKET NO. _____

EL 97-022

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In the Matter of

IN THE MATTER OF THE PETITION OF
 NORTHERN STATES POWER
 COMPANY FOR A STATEMENT TO
 THE SECURITIES AND EXCHANGE
 COMMISSION REGARDING
 INVESTMENT IN FOREIGN UTILITIES

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

DATE	MEMORANDA
11/15/97	Filed and Scketed;
1/21/98	Dismissing Issuance of a Letter,
1/21/98	Letter to Securities and Exchange Commission;
1/21/98	Docket Closed

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EL 97-022

Northern States Power Company
South Dakota

Jim Wilcox, Manager,
Community & Government Relations
500 West Russell Street
P. O. Box 988
Sioux Falls, SD 57101-0988
Telephone (605) 339-8350 fax 339-8204
email wkcj01@nspco.com

November 17, 1997

RECEIVED

NOV 18 1997

Mr. William Bullard, Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Mr. Bullard:

Enclosed for filing please find an original and ten (10) copies of a petition by NSP for a statement to the SEC regarding investment in foreign utilities.

If anyone has any questions, please call me at 339-8350

Sincerely,

Jim Wilcox

c. Mike Hanson

EL 97-022

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NOV 18 1997

STATE OF SOUTH DAKOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

DOCKET NO.: _____

**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**

ORIGINAL FILING**I. SUMMARY OF REQUEST**

Northern States Power Company (NSP) files this Petition requesting the South Dakota Public Utilities Commission (SDPUC or Commission) to certify to the Securities and Exchange Commission pursuant to Section 33 of the Public Utility Holding Company Act of 1935 that the SDPUC "has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority" as it relates to investments in foreign utility companies (FUCOs) made by NSP or its current or future affiliates, including NRG Energy, Inc. (NRG).

Specifically, NSP is seeking a certification letter, in the form of Exhibit 1, to be issued upon decision by the SDPUC. NSP respectfully requests that the Commission decide this matter within sixty (60) days of the original filing. The certification is requested so that NSP and NRG, a subsidiary of NSP, may pursue FUCO equity investments, including equity investments in the areas identified up to a dollar limit of \$500 million.

Without this certification, NSP and its affiliates will be unable to participate in bidding opportunities and will be constrained in its future business development. Therefore, NSP respectfully requests expedited treatment to allow NSP and its affiliates to proceed with bids and other transactions for which FUCO certification may be needed.

II. INTRODUCTION

The Energy Policy Act of 1992 (EPAAct 1992) amended the Public Utility Holding Company Act (PUHCA) and exempts FUCOs from PUHCA regulation. Pursuant to 15 U.S.C. § 79z-5b, the FUCO exemption applies only if "every State commission having jurisdiction over the retail electric or gas rates of a public utility [affiliated with the FUCO] ... has certified 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. Such certification, ... may be revised or withdrawn by the State commission prospectively as to any future acquisition." *Id.*

By virtue of the SDPUC's regulation of NSP, NSP and its affiliates need to obtain a certification letter from this Commission so that its foreign utility investments will qualify as FUCOs under PUHCA Section 33. NSP is making a substantially similar filing in the other states that have jurisdiction over its utility operations, Minnesota Wisconsin, Michigan and North Dakota.

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III. DISCUSSION OF NSP

A. Description of NSP and NRG.

NSP and its subsidiaries are headquartered in Minnesota. NSP is a combined \$6.6 billion company with major utility operations as well as growing domestic and international non-regulated operations. NSP's utility operations provide generation, transmission and distribution facilities and services to 1.4 million customers in Minnesota, Wisconsin, North Dakota, South Dakota and Michigan. NSP also distributes natural gas to more than 400,000 customers and provides a variety of energy-related services throughout its service territories. In short, NSP is a major public utility that has considerable experience in the business.

NRG is a wholly-owned subsidiary of NSP which, among other things, develops and operates non-regulated domestic and international energy projects. NRG has considerable experience in the electric generation market, fuel supply and steam distribution business. Formed in 1989, NRG has grown to be in the top 25 largest independent power producers in the world. With offices worldwide, NRG has significant capabilities to develop FUCOs worldwide.

To date, NSP's FUCO investments have been through NRG. NRG's FUCO equity investments to date have totaled approximately \$ 24 million. This represents only 0.3% of NSP's consolidated assets. Individual FUCO projects may range from nominal amounts to significant investments. None of which will have any effect on NSP's retail customers.

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An aggregated FUCO amount is likewise immaterial to ratepayers. For example, if NRG or another affiliate invests an additional \$500 million of equity in FUCOs, the combined FUCO investments of \$524 million will still constitute only 7.6% of NSP's consolidated assets and approximately 10.7% of total capitalization.

NSP's and NRG's management includes individuals with extensive experience in the electric utility or energy industry and in the development, operation and management of international projects. NRG has established branch offices in Melbourne and Brisbane, Australia; Prague, Czech Republic; Tallin, Estonia; Berlin, Germany; and London, United Kingdom. NSP personnel have extensive experience in areas of corporate management, utility operations, engineering, finance and legal. They also have experience performing project specific and market analysis for international energy projects.

B. Project Evaluation Process.

NSP and its affiliates have chosen to invest in different markets around the world in order to create a portfolio with diversified risks while creating a critical mass of projects and dollars in each locale. Through NRG, NSP evaluates projects on the basis of operational and technical feasibility, profitability, political stability, and the potential for long term growth, and risk.

Lead time for foreign investments varies greatly. Sometimes the process of evaluating development projects takes many months or years. Other times, there may be only a few

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weeks from the date a company learns of the investment opportunity to the time the bid proposal is due. For example, in 1995, NSP had to seek expedited FUCO treatment of a deal in Australia. The lead time was less than one month. NSP had to scramble to obtain emergency review of its petition to be in a position for NRG to submit a bid. If project-specific FUCO approvals cannot be obtained within the short time available, NSP and NRG may have to forego opportunities. This request, if granted will remove a serious potential obstacle in the development process.

1. NRG's FUCO Investments and Efforts.

NRG has successfully invested in two FUCO projects in Australia and the Czech Republic with an aggregate investment of \$24 million. In addition, since January 1995, NRG has considered in depth the possibility of investing in a number of additional FUCO projects, in various countries including the United Kingdom, Argentina, Turkey, Germany, Italy, and Brazil. In each case, the transaction did not go forward for a variety of reasons, including the possible delay associated with needing to obtain project-specific FUCO approval.

2. NSP's Investment Plans for the Future.

NSP and NRG are actively evaluating opportunities to acquire electric utility facilities being privatized by foreign governments worldwide. In particular, many European

countries are presently privatizing their infra-structure industries. Facilities being privatized include both electric transmission and distribution assets and operations.

It is these types of investments for which NSP requests the SDPUC's certification letter. Without that certification, NSP and NRG will experience difficulties in competitive bidding situations, and in developing favorable partnerships. This, in turn, will constrain NSP and NRG in their future business development activities.

NSP's plans include pursuing additional FUCO investment opportunities in Canada, Central and South America, including Bolivia, Peru, and Brazil; Europe, including the United Kingdom, the Baltic States, Germany, the Czech Republic, Italy and Turkey; Australia and Asia. While timing is uncertain, NSP expects bidding and/or negotiation on at least some projects to take place in late 1997 and into 1998.

Unfortunately, NSP cannot predict the precise timing of its future projects or the investment opportunities that may present themselves. In some cases opportunities to invest in FUCOs become available on short notice while other projects have long lead times. NSP and its affiliates do not bid on every project it evaluates and does not succeed in acquiring an interest in every project on which they bid. By way of example, NRG has a FUCO in the Czech Republic. That petition was approved some months ago. On the other hand, one deal in Australia required emergency treatment to get certification. There, NRG lost the opportunity so the individual certification went unused.

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Examples of future FUCO opportunities which may be studied by NSP or its affiliates include electric distribution privatization projects in Turkey, Germany, the Czech Republic, Italy, South America and the Pacific Rim. However, NSP and NRG cannot predict the exact amount of each investment until the due diligence process is completed and the extent of partnership interest have been determined -- sometimes very late in the process. Nor can the timing of an opportunity be predicted with any precision.

Consequently, NSP is requesting this overall certification to enable it, or its affiliates, to make additional investments in FUCOs as described above. A certification in this form will allow NSP the flexibility to continue its business activities without disabling interruptions. It would also eliminate the need to occupy valuable Commission time on the many potential deals that do not go forward.

IV. CERTIFICATION LETTER SHOULD BE ISSUED

A. Investments in FUCOs will not jeopardize NSP's financial health.

Investments in FUCOs will have no impact on NSP's utility operations. In part, this is due to the corporate structure of the transactions. NRG is separate from NSP's utility operations. Likewise, its investments are further insulated by using project-specific structures. It is also due to the protection arising from the Commission's authority to review NSP's rates. In reviewing other utilities' applications for Section 33 certification, SDPUC has found that it has the resources to undertake that task.

B. SDPUC has authority and resources to protect ratepayers.

The SDPUC's authority (1) to set NSP's rates, (2) to approve or disapprove NSP's resulting capital structure and (3) to undertake prudence review of NSP's utility operations, provide ample authority to protect ratepayers. The Commission has previously determined it has sufficient resources to protect ratepayers from the effects of FUCO investments by unregulated affiliates.

In NSP's 1996 petition regarding its Czech project the Commission found that it had such authority and issued the requested letter. NSP notes that on March 14, 1997 the Minnesota Public Utilities Commission granted the request for up to \$500 million FUCO authorization made by Minnegasco on behalf of its new corporate affiliate, Houston Industries.¹ NSP's request in this Petition is substantially similar to that made by Minnegasco in Minnesota. This Commission should likewise find that it has sufficient resources to protect ratepayers.

Other protections are derived from PUHCA. FUCOs by definition must operate entirely outside the United States. 15 U.S.A. § 792-5b(a)(3). In addition, Section 33 prevents NSP from "issu[ing] any security for the purpose of financing the acquisition, or for the purposes of financing the ownership or operation, of a foreign utility company" and from

¹ *In the Matter of the Petition of Minnegasco, MPUC Docket No. G-008/S-96-1581 (March 14, 1997 Order).*

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"assum[ing] any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of a [FUCO]." 15 U.S.C. § 79z-5b(f)(1). Moreover, Section 33 prohibits NSP from "pledg[ing] or encumber[ing] any utility assets or utility assets of any subsidiary thereof for the benefit of an associate foreign utility company." 15 U.S.C. § 79z-5b(g). These statutory restrictions assure that FUCO investments will have no direct impact on NSP's utility operations and NSP's customers will see no change in their day-to-day utility service. Service will remain effective and efficient.

C. NSP's FUCO Commitments.

Finally, NSP makes the following additional commitment to further assure the Commission that NSP's retail ratepayers will be held neutral in regard to any FUCO.

Neither NSP nor any current or future subsidiary or affiliate will ever seek to recover either directly or indirectly from South Dakota ratepayers through regulated utility rates any costs or expenses associated with any investment in any FUCO. Without limitation of the foregoing, NSP intends to exclude from South Dakota rate recovery all expenses, depreciation, return and associated taxes, interest or other financial costs and the effect such investments might have on the costs of capital or capital structure of NSP or any present or future affiliate arising directly or indirectly from any participation in any form of any such FUCO.

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NSP will also file with the SDPUC copies of required SEC reports and an annual report of its foreign investments. The annual report will include: NSP's total foreign investment including specific projects.

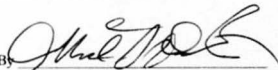
V. CONCLUSION

For the reasons stated above, NSP respectfully requests that the Commission issue an Order certifying that it has authority and resources to protect South Dakota ratepayers and intends to exercise such authority.

November 17, 1997.

Respectfully submitted,

BRIGGS AND MORGAN

By 

Samuel L. Hanson
Michael C. Krikava

2400 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 334-8400

and

Jeffrey C. Paulson
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

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EXHIBIT 1
LETTERHEAD OF
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DATE

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, DC 30549

Dear Mr. Katz:

Northern States Power Company (NSP) is a public utility subject to the jurisdiction of the South Dakota Public Utilities Commission (SDPUC).

NSP has advised this Commission that NSP and its affiliates, including NRG Energy, Inc., is considering acquiring an interest in one or more foreign utility companies (FUCOs), including FUCOs in Canada, Central and South America, the Caribbean, the United Kingdom, Europe, Australia, New Zealand and Asia with a total equity investment not to exceed \$500 million. In connection with such acquisitions, NSP has asked this Commission to provide to you the certification contemplated in Section 33(a)(2) of the Public Utility Holding Company Act of 1935, which was added to that Act by Section 715 of the Energy Policy Act of 1992.

The SDPUC has jurisdiction over the retail electric and gas rates of NSP. The SDPUC hereby certifies that it:

- (i) has the authority and resources to protect the ratepayers of NSP subject to its jurisdiction with respect to such acquisitions; and
- (ii) intends to exercise that authority.

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This certification is intended to be applicable to acquisitions by NSP or its affiliates (including NRG Energy, Inc.) of interests in such future FUCO ventures as FUCO investments in Canada, Central and South America, the Caribbean, the United Kingdom, Europe, Australia, New Zealand or Asia, subject to a cumulative equity investment cap of \$500 million. This certification is further expressly conditioned on and is subject to being revised or withdrawn on a going-forward basis by this Commission if it deems that action to be appropriate.

Sincerely,

cc: Office of Public Utility Regulation
Securities and Exchange Commission



South Dakota Public Utilities Commission



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

January 22, 1998

Mr Michael C. Krikava
Attorney at Law
Briggs and Morgan
2400 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Re Northern States Power Company
Docket EL97-022

Dear Mr. Krikava:

Enclosed please find a copy of the letter written in the above mentioned docket for your records. Also enclosed is a copy of the Order Approving Issuance of a Letter. A copy of the letter was also mailed to Robert Wason of the Securities and Exchange Commission. The letter was mailed on January 22, 1998.

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

Very truly yours,

Camron Hoseck
Staff Attorney

CH dk
Enc.

Capitol Office
Telephone (605) 773-3203
FAX (605) 773-3809

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Warehouse Division
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Relay South Dakota
1-800-877-1113

Internet
http://ps.state.sd.us

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Marlene Fruehlich
Marlene Fugge
Lynne Hammond
Katie Hartford
Lynn Healy
Camron Hoseck
Dave Jacobson
Holt Knudde
Debbie Kulis
Jeffrey P. Lutzman
Lynn Norstrom
Gregory A. Rindin
Tamara Mangoch
Steven M. Wagman
Wendy Kelle Wason

01412816

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

**IN THE MATTER OF A PETITION BY) ORDER APPROVING
NORTHERN STATES POWER COMPANY FOR) ISSUANCE OF A LETTER
A STATEMENT TO THE SECURITIES AND)
EXCHANGE COMMISSION REGARDING) EL97-022
INVESTMENT IN A FOREIGN UTILITY)**

On November 18, 1997, Northern States Power Company (NSP) filed a request with the South Dakota Public Utilities Commission (Commission) that the Commission issue a letter to the Securities and Exchange Commission pursuant to 15 USCS Section 79z-5b indicating that the Commission has jurisdiction over NSP. The certification would represent that the Commission has authority and resources to protect ratepayers of NSP with respect to such acquisitions and that it intends to exercise that authority.

As part of its application, NSP represented to the Commission that it and its affiliates intended, including through NRG Energy, Inc., a subsidiary of NSP, to acquire interests in foreign utility companies in Canada, Central and South America, the Caribbean, the United Kingdom, Europe, Australia, New Zealand and Asia with a total equity investment not to exceed five hundred million United States dollars.

Commission staff recommended granting a letter of certification with the following conditions:

1 This certification is limited to the proposed NRG foreign utility company investments in the filing with a maximum amount to be spent thereon being five hundred million United States dollars.

2 In the event NSP acquires interests in foreign utility companies and the sum total of these acquisitions exceed the amount of five hundred million United States dollars upon which this certification is premised, NSP shall provide advance notification to the South Dakota Public Utilities Commission of its intent to acquire those interests in foreign utility companies and it shall obtain separate certification for any such additional investment.

3 NSP will not encumber any South Dakota property because of these foreign investments.

4 Neither NSP nor any of its current or future subsidiaries or affiliates will ever seek to recover, either directly or indirectly, from South Dakota ratepayers through any regulated utility rates of any costs, expenses or losses of any nature whatsoever which may result from this or any other investment in foreign utility companies.

5 This certification is conditioned on and subject to being removed or withdrawn at any time by the Commission as to any future foreign utility company investments if the Commission deems such action is warranted

At its regularly scheduled January 20, 1998, meeting, the Commission considered this matter. The Commission voted unanimously to grant the letter of certification, subject to the conditions delineated above as recommended by staff.

The Commission has jurisdiction in this matter pursuant to 15 USCS Section 79z-5b and SDCL 49-34A-6. It is therefore

ORDERED that the Commission shall issue a letter of certification as petitioned for by NSP upon the five conditions specified above.

Dated at Pierre, South Dakota, this 21st day of January, 1998.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>William Kalbo</u>
Date	<u>1/22/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner



South Dakota Public Utilities Commission

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



January 21, 1998

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, DC 20549

Re: Northern States Power Company
EL97-022

Dear Mr. Katz:

Northern States Power Company (NSP), is a public utility subject to the jurisdiction of the South Dakota Public Utilities Commission (SDPUC).

NSP has advised this Commission that NSP and its affiliates, including NRG Energy, Inc., is considering acquiring an interest in one or more foreign utility companies (FUCOs), including FUCOs in Canada, Central and South America, the Caribbean, the United Kingdom, Europe, Australia, New Zealand and Asia with a total equity investment not to exceed \$500 million. In connection with such acquisitions, NSP has asked this Commission to provide to you the certification contemplated in Section 33(a)(2) of the Public Utility Holding Company Act of 1935, which was added to that Act by Section 715 of the Energy Policy Act of 1992.

This SDPUC has jurisdiction over the retail electric rates of NSP pursuant to SDCL Chapter 49-34A. The SDPUC hereby 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.

This certification is intended to be applicable to acquisitions by NSP or its affiliates (including NRG Energy, Inc.) of interests in such future FUCO ventures as FUCO investments in Canada, Central and South America, the Caribbean, the United Kingdom, Europe, Australia, New Zealand or Asia, subject to a cumulative equity

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Jim Berg
Chairman
Pam Nelson
Vice-Chairman
Laska Schneiderler
Commissioner

William Bullard Jr.
Executive Director

Edward R. Anderson
Harlan Best

Martin C. Bettmann
Charles Bull
Sue Cullen

Karen E. Cromer
Marjorie Eschbach
Marleen Fugitt

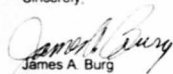
Lewis Hammond
Karin Harford
Lene Healy

Carroll Hovick
Dave Jacobson
Jodi Kuehler
Debra Kuehler

Jeffrey P. Lomomon
Terry Norman
Gregory A. Pauer
Lanette Stangorle
Sharon M. Wegman
Rosalene Aulisio

investment cap of \$500 million. This certification is further expressly conditioned on and is subject to being revised or withdrawn on a going-forward basis by this Commission if it deems that action to be appropriate.

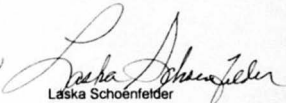
Sincerely,



James A. Burg
Chairman



Pam Nelson
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