

ISSUE DATE: March 14, 1997

DOCKET NO. G-008/S-96-1581

ORDER GRANTING CERTIFICATION WITH CONDITIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey	Chair
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Mac McCollar	Commissioner
Don Storm	Commissioner

In the Matter of the Petition of Minnegasco, a Division of NorAm Energy Corp., for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79z-5b for Minnegasco's Post-Merger Affiliate, Houston Industries Energy, Inc.

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PROCEDURAL HISTORY

On December 1, 1996, Minnegasco, a Division of NorAm Energy Corp., filed a request for Commission certification to the Securities Exchange Commission (SEC) regarding proposed investment in foreign utilities. Minnegasco's request for Minnesota certification was filed on behalf of Houston Industries, Inc. (HI), whose subsidiary, Houston Industries Energy, Inc. (HIE), contemplated significant foreign utility investment.

Minnegasco submitted the request on behalf of HIE because of the anticipated merger between NorAm and HI in Docket No. G-008/PA-96-950. Since the filing of the petition, the Commission has approved the merger in a February 24, 1997 Order, ORDER APPROVING MERGER SUBJECT TO CONDITIONS.

On January 9, 1997, the Department of Public Service (the Department) filed comments recommending certification with certain conditions.

On February 20, 1997, Minnegasco filed its Unilateral Stipulation and Promise.

On February 20, 1997, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. THE FEDERAL ENERGY POLICY ACT OF 1992

The federal Energy Policy Act of 1992 was signed into law on October 24, 1992. Among other things, the Act exempts from the provisions of the Public Utilities Holding Company Act (PUHCA) a new class of utility, the foreign utility company. Foreign utility companies may be exempt from PUHCA requirements even if they are subsidiaries or affiliates of a state-

regulated holding company or public utility. This exemption from PUHCA requirements applies only if every state commission with jurisdiction over the public utility certifies to the SEC that the commission:

- has the authority and the resources to protect ratepayers subject to its jurisdiction; and
- intends to exercise its authority

II. THE MINNEGASCO PETITION

Minnegasco requested Commission certification so that HIE may pursue post-merger investments. Minnegasco asked for authority for HIE to invest up to \$500 million in as yet unspecified foreign utility investments. The lack of specificity is necessary to preserve the Company's flexibility as it responds to fluid, changing market opportunities.

To date, HIE has invested approximately \$348 million (or approximately 3% of HI's consolidated investments) in foreign utility investments. HIE is actively evaluating further opportunities to acquire electric utility facilities being privatized by foreign governments worldwide.

Minnegasco stated that HIE's investments in foreign utilities will impact only HIE's capital structure and will have no impact on NorAm or on NorAm's gas utility division. Neither NorAm nor HI will be financing the foreign investments through the issuance of securities.

With the investments proposed in this docket and a companion docket, G-008/S-96-1149, HI's and NorAm's combined post-merger foreign utility investment would constitute approximately 8.5% of HI's post-merger consolidated assets.

Minnegasco stated that statutory restrictions under PUHCA and the Energy Act of 1992 will assure that HIE's foreign investments will have no direct impact on Minnegasco's gas distribution operations. As a result, Minnegasco's customers will see no change in their day-to-day utility service.

III. COMMENTS OF THE DEPARTMENT

The Department stated that HIE's proposed total foreign investment, compared to its total capitalization, would be reasonable.

The Department stated that the interest in foreign utilities would be owned by HI's separate subsidiary corporation; this corporate structure would effectively insulate Minnegasco from any transactions or potential liabilities of the foreign investment. The Department agreed with Minnegasco that Minnesota customers would see no change in their day-to-day utility service as a result of the acquisitions.

The Department recommended that, pursuant to 15 U.S.C. § 79z-5b, the Commission certify that it has the authority and resources to protect ratepayers subject to its jurisdiction and that it

intends to exercise its authority with respect to HIE's proposed investments in various foreign utility projects. The Department recommended that the Commission condition its certification as follows:

1. The certification is limited to the proposed HIE foreign utility company investments in this filing up to \$500 million, representing a total foreign utility company investment of 8.5 percent of the proposed post-merger capitalization of HI as filed in Docket No. G-008/PA-96-950.
2. HI shall provide advance notification of any other intent to acquire an interest in foreign utility companies and obtain separate certification for any such additional investments.
3. HI will not encumber any Minnesota property because of these foreign investments.
4. HI shall file with the Commission:
 - copies of the required reports relating to HI's foreign utility company investments filed with the SEC at the time it files these reports with the SEC; and
 - an annual report on HI's foreign utility company investment to be filed one year from the date of Commission approval
5. The annual report filed according to the above paragraph shall contain the following information:
 - the total foreign investment, including specific projects
 - a list of all outstanding bonds issued since the Company agreed to acquire foreign investments
 - HI's capital structure, including short term debt; and
 - the ratio of HI's total foreign utility company investments relative to HI's total assets and capitalization
6. The certification is conditioned on and subject to being removed or withdrawn by the Commission as to any future foreign utility company investments if the Commission deems such action is warranted.

IV. COMMISSION ACTION

After examining the facts presented in the Company's petition and the Department's comments, the Commission finds that it has the authority and resources to protect ratepayers, and that it intends to exercise its authority for ratepayer protection.

A. THE COMMISSION'S AUTHORITY TO PROTECT RATEPAYERS

The Commission has the authority under Minn. Stat. §§ 216B.03, 216B.08, and 216B.16 to set just and reasonable rates for Minnegasco and Minnegasco's ratepayers. The Commission will review expenses submitted in Minnegasco's next general rate case to determine their prudence and reasonableness. The Commission has the statutory authority to disallow any cost if disallowance is necessary to insulate Minnegasco ratepayers from any improper cost allocations stemming from, or other harmful effects of, Minnegasco's affiliate's foreign investment.

In previous requests for SEC certification regarding foreign utility investment, the Commission has made similar findings regarding the Commission's authority to protect ratepayers.¹

Since the last time the Commission addressed a request for certification, however, the Minnesota Supreme Court has issued a decision in another proceeding which relates to certain aspects of the Commission's authority to regulate Minnegasco. Minnegasco et al v. MPUC, 549 N.W. 2d 904 (Minn. 1996). In that decision, the Supreme Court found that the Commission did not have the authority to preclude a Minnegasco unregulated affiliate's uncompensated use of Minnegasco's good will. The Court also reversed the Commission's decision regarding the allocation of certain costs incurred by the unregulated affiliate.

In order to address any concerns in this docket which might arise from the Court's decision in Minnegasco et al v. MPUC, Minnegasco filed its Unilateral Stipulation and Promise.

In the Stipulation, Minnegasco made a number of statements which touch upon the Commission's authority to protect ratepayers. The main issues addressed by Minnegasco are as follows:

- Neither Minnegasco, nor any current or future subsidiary or affiliate, will seek to recover from Minnesota ratepayers, either directly or indirectly, any costs or expenses associated with foreign utility investment.
- Minnegasco accepts that the Supreme Court's decision in Minnegasco et al v. MPUC: 1) is limited to its specific facts; 2) "speaks only to a utility's recovery of statutorily-mandated gas leak check costs and the imputation of royalty payments from an unregulated business to the regulated utility business in connection with the common use of the company's name"; 3) does not limit the Commission's authority over affiliate transactions under Minn. Stat. § 216B.48; and 4) does not limit the Commission's authority under Minn. Stat. § 216B.16 to set just and reasonable rates and to disallow costs imprudently incurred.

¹ See, for example, In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79z-5b, Docket No. G-011/S-94-907, ORDER GRANTING CERTIFICATION SUBJECT TO LIMITATIONS AND CONDITIONS (November 30, 1994).

- Minnegasco will not challenge the Commission’s authority to disallow imprudent costs , including allocations of joint and common costs between a utility and affiliate, or to impute revenues when necessary to set just and reasonable rates.
- If a court finds that the Commission lacks authority to consider imprudence (either on the part of the utility itself or in relation to any affiliate) in setting rates, any Commission certification to the SEC can be revoked by the Commission without Minnegasco’s objection as to the Commission’s authority to do so.

The Commission finds that the Minnegasco Stipulation is an appropriate affirmation of the Commission’s long-standing authority to protect ratepayers within its jurisdiction.

The Commission finds that it clearly possesses the requisite authority to protect ratepayers subject to its jurisdiction, as required for Commission certification under 15 U.S.C. § 79z-5b.

The Commission also finds that its authority will best be preserved if the Commission sets certain conditions to its SEC certification. The Commission will therefore condition the certification as requested by the Department, and will add other conditions as enumerated in the ordering paragraphs of this Order. By placing these conditions and limitations upon the certificate, the Commission ensures that its authority will protect ratepayers from any adverse effects from the proposed foreign investment.

B. THE COMMISSION’S INTENT TO EXERCISE ITS AUTHORITY

The Commission intends to exercise its authority, pursuant to Minn. Stat. §§ 216B.03, 216B.08, and 216B.16, to protect the interests of Minnegasco’s ratepayers.

C. THE RESOURCES NECESSARY TO PROTECT RATEPAYERS

The Commission finds that it has adequate staff and financial resources to protect Minnesota jurisdictional ratepayers from possible harm or liability arising from HIE’s proposed foreign investment.

ORDER

1. The Commission certifies that it has the authority and resources to protect the ratepayers subject to its jurisdiction and that it intends to exercise that authority with respect to HIE’s proposed foreign investment.

The Commission’s certification is subject to the following conditions and limitations:

- a. The certification is limited to the proposed HIE foreign utility company investments in this filing up to \$500 million, representing a total foreign utility company investment of 8.5 percent of the proposed post-merger capitalization of HI as filed in Docket No. G-008/PA-96-950.

- b. HI shall provide advance notification of any other intent to acquire an interest in foreign utility companies and obtain separate certification for any such additional investments.
- c. HI will not encumber any Minnesota property because of these foreign investments.
- d. HI shall file with the Commission:
 - copies of the required reports relating to HI's foreign utility company investments filed with the SEC at the time it files these reports with the SEC; and
 - an annual report on HI's foreign utility company investment to be filed one year from the date of Commission approval
- e. The annual report filed according to the above paragraph shall contain the following information:
 - the total foreign investment, including specific projects
 - a list of all outstanding bonds issued since the Company agreed to acquire foreign investments
 - HI's capital structure, including short term debt; and
 - the ratio of HI's total foreign utility company investments relative to HI's total assets and capitalization
- f. The certification is conditioned on and subject to being removed or withdrawn by the Commission as to any future foreign utility company investments if the Commission deems such action is warranted.
- g. HI will finance its foreign utility investments in such a manner that the 5 percent limit applicable to transactions involving the issuance of securities will not be violated.
- h. Minnegasco, NorAm and its current or future affiliates will inform the Commission in a timely manner of the acquisition of any ownership in any foreign utility.
- I. NorAm and its current and future affiliates will submit copies of all reports filed with the SEC regarding foreign utility investments.

- j. NorAm and its current and future affiliates will file with the Commission quarterly reports listing the total amount invested in foreign utilities. In addition, the quarterly reports shall list the total amount of HI's aggregate investments financed through the issuances of then-outstanding securities and the percent of HI's then-outstanding total capitalization.
 - k. The Commission, the Department, and the OAG shall have access to the relevant books, records and financial statements (or copies thereof) of NorAm's current and future affiliates doing business with foreign utilities, to the extent necessary to protect Minnegasco ratepayers.
 - l. Minnegasco will exclude from rate recovery all costs associated with NorAm's and its current and future affiliates' foreign investments.
 - m. Accounting procedures will be developed to assure that NorAm and its current and future affiliates are adequately and fairly compensated for any common or joint costs incurred for the benefit of the foreign utility. Minnegasco will file a report by May 1, 1998 that will describe these accounting procedures. In addition, Minnegasco will include in all May 1 jurisdictional reports, a report summarizing common costs charged to the foreign utility from NorAm and its current or future subsidiaries.
 - n. Minnesota regulatory agencies' costs charged to Minnegasco for the agencies' future review of foreign investment notification and any related foreign investment compliance reviews will not be charged to Minnegasco's jurisdictional customers. Minnegasco will allocate internal time pursuant to the Cost Allocation Manual.
- 2. The Commission accepts Minnegasco's Unilateral Stipulation and Promise dated February 20, 1997.
 - 3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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