

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): FEBRUARY 5, 1997

HOUSTON INDUSTRIES INCORPORATED
 (Exact name of registrant as specified in its charter)

TEXAS
 (State or other jurisdiction
 of incorporation)

1-7629
 (Commission
 File Number)

74-1885573
 (I.R.S. Employer
 Identification No.)

1111 LOUISIANA
 HOUSTON, TEXAS
 (Address of principal executive offices)

77002
 (ZIP Code)

Registrant's telephone number, including area code: (713) 207-3000

HOUSTON LIGHTING & POWER COMPANY
 (Exact name of registrant as specified in its charter)

TEXAS
 (State or other jurisdiction
 of incorporation)

1-3187
 (Commission
 File Number)

74-0694415
 (I.R.S. Employer
 Identification No.)

1111 LOUISIANA
 HOUSTON, TEXAS
 (Address of principal executive offices)

77002
 (ZIP Code)

Registrant's telephone number, including area code: (713) 207-1111

This combined Form 8-K is separately filed by Houston Industries Incorporated (Company) and Houston Lighting & Power Company (HL&P). Information contained herein relating to HL&P is filed by the Company and, separately, by HL&P on its own behalf. HL&P makes no representation as to information relating to the Company and its subsidiaries (other than HL&P)

ITEM 5. OTHER EVENTS.

The Company and NorAm Energy Corp. (NorAm) are in the process of obtaining regulatory approvals necessary to close their merger, which was announced in August, 1996. Approvals have been received from all state regulatory commissions and municipalities whose prior approval was required (Arkansas having conditioned its approval on the parties obtaining approvals from other regulatory authorities). The last state approval, from Minnesota, was received on February 6, 1997. In addition, the pre-merger notification period prescribed under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 has expired. There remains pending with the U.S. Securities and Exchange Commission an application for an order exempting the Company from the registration requirements of the Public Utility Holding Company Act of 1935 following the merger.

In September, a subsidiary of NorAm, NorAm Energy Services, Inc. (NES), which is engaged in the business of power marketing in interstate commerce at market-based rates, filed a notification with the Federal Energy Regulatory Commission (FERC) advising of its pending change in status by virtue of the merger. The parties do not believe that FERC action is required prior to consummation of the merger, in response to that notification or otherwise. However, on February 5, 1997, FERC initiated a jurisdictional inquiry to determine whether its prior approval of the merger is required under Section 203 of the Federal Power Act. FERC directed NES to set forth its views as to whether such prior approval may be required because of the jurisdictional status of NES as a power marketer. In the alternative, FERC invited NES to submit an application for approval of the merger transaction under Section 203 of the Federal Power Act. FERC directed NES to submit its views regarding FERC jurisdiction or an application within 30 days of the order. HL&P and NorAm continue to believe that no prior FERC approval is required by law for their merger agreement and that application of FERC jurisdiction to a transaction of this nature would be unprecedented.

The Company and NorAm are studying FERC's order and evaluating their alternatives. They expect to file a response with FERC in the near future. If FERC's inquiry results in an approval proceeding under Section 203, consummation of the merger is likely to be materially delayed. For additional information regarding these matters, reference is made to the Order and HI's press release, each of which is attached as an exhibit to this Form 8-K and is incorporated herein by reference.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS.

- (c) Exhibits.
- 99.1 Press Release dated February 6, 1997
 - 99.2 Order Initiating Jurisdictional Inquiry
(Docket No. EL97-25-000) dated February 5, 1997

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

HOUSTON INDUSTRIES INCORPORATED
(Registrant)

/s/ Mary P. Ricciardello

Mary P. Ricciardello
Vice President and Comptroller

Date: February 10, 1997

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

HOUSTON LIGHTING & POWER COMPANY
(Registrant)

/s/ Mary P. Ricciardello

Mary P. Ricciardello
Vice President and Comptroller

Date: February 10, 1997

EXHIBIT INDEX

Exhibit
Number

Exhibit Description

99.1	Press Release dated February 6, 1997
99.2	Order Initiating Jurisdictional Inquiry (Docket No. EL97-25-000) dated February 5, 1997

NEWS

[HOUSTON INDUSTRIES LOGO] Houston Industries Incorporated
P.O. BOX 4567 HOUSTON, TEXAS 77210 (713) 207-1111

FOR FURTHER INFORMATION, CONTACT:

Sandy Fruhman (713) 207-3123 (Media) - Houston Industries (HOU)
Dennis Barber (713) 207-3042 (Investors) - Houston Industries (HOU)

FOR RELEASE: Thursday, February 6, 1997

Houston Industries Incorporated (HI) announced that the Federal Energy Regulatory Commission (FERC) has initiated an inquiry which could delay HI's completion of its pending merger with NorAm Energy Corp.

Further details follow.

FERC JURISDICTIONAL INQUIRY CONCERNING NORAM MERGER

(Houston, TX) The Federal Energy Regulatory Commission (FERC) yesterday issued an order directing that NorAm Energy Corp.'s power marketing subsidiary make a filing setting forth its views on whether the pending merger between NorAm and HI requires FERC approval under Section 203 of the Federal Power Act. Alternatively, FERC invited NorAm to file an application seeking approval under Section 203. NorAm and HI are studying the FERC order and will file a response in the near future.

NorAm's subsidiary, NorAm Energy Services, Inc. (NES) holds authorization from FERC to make market-based sales of electric power and energy. Under that authorization NES is required to notify FERC if there is a change in the characteristics relied on by FERC in granting that authorization. In September 1996, pursuant to the merger agreement, NES filed a notice with FERC advising that, following the merger, NES would become a subsidiary of a public utility (HI's Houston Lighting & Power Company subsidiary), but NES sought to continue its status as a power marketer based on its compliance with FERC guidelines for utility power-marketer affiliates. That application remains pending at FERC. Generally, changes in a marketer's status are addressed by FERC administratively without hearing.

Under Section 203 of the Federal Power Act, a public utility subject to FERC's jurisdiction must obtain prior approval from FERC for a sale of its assets or a merger of its assets with those of another public utility. By virtue of its authorization from FERC, NES is subject to certain requirements as a public utility under the Federal Power Act, but HL&P is not considered to be a "jurisdictional" public utility under that Act since it does not operate facilities that are engaged in the sale or transmission of electric power and energy in interstate commerce. NorAm and HI believe that approval under Section 203 is not required by law and that the application of FERC jurisdiction in these circumstances would be unprecedented.

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In its order initiating a jurisdictional inquiry, FERC reviewed prior merger cases and noted that, following the merger, NES's jurisdictional facilities (i.e., its tariff and its contracts to sell electric power and energy in interstate commerce) would become controlled by HI through HI's ownership of NorAm Energy Corp. FERC concluded that this situation raised an issue of whether FERC authorization under Section 203 is required for the merger transaction. FERC accordingly required NES to provide, within 30 days, its views as to why such approval is not required or, in the alternative, to file for approval under Section 203.

Although HI and NorAm are still analyzing FERC's order, they remain convinced that no approval is required or warranted under Section 203.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

NorAm Energy Services, Inc.) Docket No. EL97-25-000

ORDER INITIATING JURISDICTIONAL INQUIRY

(Issued February 5, 1997)

In this order, we initiate a jurisdictional inquiry concerning a transaction involving NorAm Energy Services, Inc. (NorAm), a public utility under the Federal Power Act (FPA). Under the transaction, NorAm Energy Corporation (NorAm Energy), the parent company of NorAm, will merge with Houston Industries, Incorporated (Houston Industries) and Houston Industries' subsidiaries, Houston Lighting & Power Company (HL&P) and Houston Industries Energy, Inc. (HI Energy).(1) This transaction may require Commission approval pursuant to section 203 of the FPA. We direct NorAm to make a filing setting forth its views on this issue, and offer other interested persons an opportunity to comment on NorAm's filing. In the alternative, NorAm may file an application for authorization pursuant to section 203.

Background

NorAm was authorized to make wholesale electric power and energy sales in interstate commerce at market-based rates by order issued July 25, 1994.(2) The July 25 order required NorAm to notify the Commission of any change in status that would reflect a departure from the characteristics that the Commission relied upon in authorizing market-based pricing. On September 30, 1996, NorAm filed a notice of change in status in Docket No. ER94-1247-010 to inform the Commission of the planned merger of its parent company, NorAm Energy, with Houston Industries and HL&P. In its notice of change of status, NorAm requested authority to continue to charge market-based rates after the

(1) Houston Industries is an exempt public utility holding company. Its subsidiary, HL&P is an electric utility located in the Electric Reliability Council of Texas (ERCOT) engaged in the generation, transmission, distribution and sale of electric energy. HI Energy, also a subsidiary, owns various interests in foreign utilities, exempt wholesale generators, and a qualifying facility.

(2) NorAm Energy Services, Inc., letter order (unpublished).

merger is consummated based on a finding that its post-merger affiliation with HL&P raises no market power concerns. The Commission will address NorAm's request for continued authority to sell power at market-based rates in a separate order.

NorAm's notice of change of status describes the planned merger as follows. Houston Industries would be merged into HL&P, with HL&P, renamed Houston Industries, Incorporated, (New Houston Industries) as the surviving corporation. NorAm Energy would then be merged into HI Merger, Incorporated (HI Merger), a wholly-owned subsidiary of Houston Industries, with HI Merger, renamed NorAm Energy Corporation (New NorAm Energy), as the surviving corporation. As a result, New Houston Industries would be the parent company, with HL&P operating as a division of New Houston Industries, and HI Energy and New NorAm Energy as subsidiaries. NorAm would become a second-tier wholly-owned subsidiary of New Houston Industries and a wholly-owned subsidiary of New NorAm Energy.(3)

Discussion

Section 203

The Commission's jurisdiction over corporate restructurings involving public utilities is derived from section 203 of the FPA, (4) which reads in pertinent part:

- (a) No public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission . . . or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person . . . without first having secured an order of the Commission authorizing it to do so.
- (b) The Commission may grant any application for an order under this section in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the

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- (3) NorAm's notice of change of status also described alternative merger plans, which would be used under certain circumstances to effect the merger of the companies. However, under each alternative merger plan, NorAm would become a direct or indirect wholly-owned subsidiary of the Houston Industries corporate organization.
- (4) 16 U.S.C. Section 824b (1994).

Commission. The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.

Prior Cases

In Central Vermont Public Service Corporation,(5) the Commission determined that the transfer of all of a public utility's stock to a newly-created holding company is a transfer of ownership and control of the utility's jurisdictional facilities and that such transfer constitutes a disposition of jurisdictional facilities requiring Commission approval under section 203.

In Central Illinois Public Service Company,(6) the Commission explained that its assertion of jurisdiction in Central Vermont was not based solely on the transfer of stock, but rather that the Commission's concern lies in the transfer of control of public utilities and, thereby, control over the jurisdictional facilities of those public utilities. After considering the legislative history of section 203, the Commission found that "Congress' intent was to ensure that the Commission maintain oversight over any transfer of jurisdictional utility property . . ."(7)

In Missouri Basin Municipal Power Agency,(8) the Commission determined that ownership of a public utility's stock does not render a holding company a public utility under the FPA. Because section 203 only encompasses action taken by public utilities, the merger of two public utility holding companies does not automatically fall within the Commission's section 203 jurisdiction.

In Illinois Power Company,(9) the Commission reviewed its merger policy and clarified its jurisdiction under section 203 over indirect mergers of public utilities owned by public utility

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- (5) Central Vermont Public Service Corporation, 39 FERC Paragraph 61,295 at 61,690 (1987) (Central Vermont).
 - (6) Central Illinois Public Service Company, 42 FERC Paragraph 61,073 at 61,328 (1988) (Central Illinois).
 - (7) Id. (emphasis in original).
 - (8) Missouri Basin Municipal Power Agency, 53 FERC Paragraph 61,368 (1990), reh'g denied, 55 FERC Paragraph 61,464 (1991) (Missouri Basin).
 - (9) Illinois Power Company, 67 FERC Paragraph 61,136 (1994).

holding companies. The Commission stated that such clarification was "necessary to ensure the continued adequacy of our merger policies in protecting the public interest," since "most mergers of public utility holding companies will simultaneously involve an indirect merger of the public utility subsidiaries of such holding companies." (10) In *Illinois Power*, the Commission described the three-step process some utilities were following to reorganize, and explained how section 203 jurisdiction applied at each step:

In step one, a public utility transfers ownership of all of its stock to a newly-formed holding company. The Commission stated that under Central Vermont such a transfer constitutes a transfer of the ownership and control of the utility's jurisdictional facilities and, therefore, is a disposition of facilities subject to section 203 approval.

In step two, the newly-formed public utility holding company merges with another public utility holding company. The Commission followed its previous determination that it does not have jurisdiction over the merger of holding companies unless the holding companies themselves directly own or operate jurisdictional facilities and, consequently, are public utilities. However, the Commission also adopted a rebuttable presumption that when public utility holding companies merge, their public utility subsidiaries likely retain no real corporate independence, that decision-making for the public utilities would typically rest with the new holding company, and that, therefore, an indirect merger of the public utilities occurs requiring section 203 authorization.

In step three, the public utility subsidiaries of the merged holding companies formally merge and section 203 approval is required.

The Instant Transaction

NorAm is a public utility marketer. Its jurisdictional facilities include its market-based power sales tariff under which it is authorized to engage in sales of electric energy at wholesale in interstate commerce and its contracts for sales for resale in interstate commerce. (11) Pre-merger, the public utility NorAm, and its jurisdictional facilities, are controlled by its parent, NorAm Energy. Post-merger, it appears that the

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(10) *Id.* at 61, 352-53.

(11) During the first three calendar quarters of 1996, NorAm sold approximately 1.3 million kwh at wholesale in interstate commerce.

new parent holding company, New Houston Industries, will control the jurisdictional facilities of the public utility NorAm through its ownership of NorAm Energy. Thus, there is an issue of whether Commission authorization under section 203 is required for this transaction.(12)

Without deciding the issue, we note that in Central Vermont we indicated that, in reviewing corporate transactions and relationships, we would focus on the substance of transactions and relationships rather than their form.(13) Moreover, section 203 was intended to be prophylactic in operation. Under section 203, the enumerated activities can only be undertaken after the applicant has "secured an order of the Commission authorizing it to do so." Although NorAm has not sought a ruling on this issue, we believe the jurisdictional question must be resolved prior to consummation of the transaction.

Further Procedures

NorAm is directed to file a response within 30 days of the date of this order either (1) providing arguments as to why the transaction does not require Commission authorization under FPA section 203 or (2) an application for authorization under section 203. If it elects the former, interventions, protests, or comments will be due 15 days after its filing. If it files an application for authorization, a notice of filing will be issued pursuant to the procedures discussed in the Merger Policy Statement.(14)

The Commission orders:

(A) NorAm is hereby directed to make a filing as discussed in the body of this order within 30 days.

(B) If NorAm files a response arguing that authorization under section 203 of the Federal Power Act is not required, interventions, protests or comments will be due 15 days after NorAm's filing.

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(12) In our Merger Policy Statement we acknowledged that new types of mergers in addition to mergers between public utilities may be subject to our jurisdiction under section 203. See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. Paragraph 31,044 (1996) (Merger Policy Statement), mimeo at pp.7-8.

(13) 39 FERC at 61,690.

(14) See Merger Policy Statement.

(C) If NorAm files an application for authorization under section 203 of the Federal Power Act, interventions, protests, or comments will be due as specified in a further notice to be issued by the Commission.

By the Commission.

(S E A L)

/s/ LOIS D. CASHELL
Lois D. Cashell,
Secretary.