



The combined Form 8-K is separately filed by Houston Industries Incorporated (Company) and Houston Lighting & Power Company (HL&P).

ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS.

On August 6, 1997, the Company merged with and into HL&P, and NorAm Energy Corp. (NorAm) merged with and into HI Merger, Inc., a subsidiary of the Company. Upon consummation of the mergers (collectively, the Merger), HL&P, the surviving corporation of the Company/HL&P merger, was renamed "Houston Industries Incorporated" (Houston) and HI Merger, Inc., the surviving corporation of the NorAm/HI Merger, Inc. merger, was renamed "NorAm Energy Corp." and became a wholly owned subsidiary of Houston.

NorAm is principally engaged in the distribution and transmission of natural gas, including the gathering, storage and marketing of natural gas. Through its Entex, Arkla and Minnegasco distribution divisions, NorAm is the nation's third-largest natural gas utility in terms of customers served, with over 2.7 million customers in six states. NorAm operates interstate gas pipeline facilities through NorAm Gas Transmission Company and Mississippi River Transmission Corporation. It also owns natural gas gathering assets in Oklahoma, Louisiana, Arkansas and Texas and is engaged in various other energy-related businesses, including natural gas and electric wholesale trading, gas storage, wholesale electric services and providing unregulated retail energy services to industrial and large commercial customers.

Based on an order of the Securities and Exchange Commission (SEC) issued on July 24, 1997, Houston will continue to be exempt from regulation under Section 3(a)(2) of the Public Utility Holding Company Act of 1935 (1935 Act), except with respect to the (i) acquisition of certain voting securities of other domestic public utility companies and utility holding companies and (ii) the provisions of Section 33 of the 1935 Act regarding the acquisition, ownership and financing of foreign utility companies. On July 30, 1997, the Federal Energy Regulatory Commission (FERC) issued an order approving the Merger without conditions and authorizing NorAm Energy Services, Inc., a subsidiary of NorAm engaged in the power marketing business, to continue its market-based rate schedules in effect. For additional information regarding the FERC and SEC orders, reference is made to Exhibits 99.2 and 99.3 filed with this Report on Form 8-K, which exhibits are incorporated herein by reference.

Merger Consideration. Under the terms of the Agreement and Plan of Merger dated as of August 11, 1996, as amended (Merger Agreement), among the Company, HL&P, HI Merger, Inc. and NorAm, each share of NorAm common stock outstanding immediately prior to the effective time of the Merger was converted, upon consummation of the Merger, into the right to receive (i) 0.74963 shares of the common stock, without par value, of Houston (including associated preference stock purchase rights, Houston Common Stock) or (ii) cash consideration of \$16.3051, representing cash consideration of \$16.00 plus simple interest of two percent per quarter from May 11, 1997 to August 6, 1997 (Cash Consideration). Under the terms of the Merger Agreement, the exchange ratio for the stock consideration (Stock Consideration) was based on \$16.00 per share without interest and the average daily closing price on the New York Stock Exchange of \$21.3438 for the common stock of the Company during the 20 consecutive trading days commencing on July 1, 1997. The Merger Agreement also provides that each holder of an unexpired employee stock option to purchase NorAm common stock, along with any tandem stock appreciation rights, outstanding at the effective time of the Merger was entitled to elect either to have, upon consummation of the Merger, all or any portion of his or her NorAm stock options canceled in exchange for cash or to have all or any portion of such options assumed by Houston at a conversion rate specified in the Merger Agreement.

Based upon preliminary information regarding cash and stock elections made by NorAm shareholders and after giving effect to preliminary proration adjustments, the aggregate

consideration for the Merger consisted of (i) approximately 47.8 million shares of Houston Common Stock and (ii) approximately \$1.4 billion in Cash Consideration. In addition, Houston has issued to NorAm employees options to purchase up to 887,804 shares of Houston Common Stock and paid approximately \$4.9 million in exchange for cancelled NorAm options.

After the Merger, NorAm's existing debentures and convertible securities will remain outstanding as the securities of NorAm, a wholly owned subsidiary of Houston (and will not be assumed by Houston except with respect to the conversion of certain NorAm debt securities into Houston common stock as described below), and NorAm will continue to be a reporting company under the Securities Exchange Act of 1934 (Exchange Act).

As a result of the Merger, NorAm's 6% Convertible Subordinated Debentures due 2012 and NorAm's 6 1/4% Convertible Junior Subordinated Debentures (collectively, Convertible Securities) will be convertible into (in lieu of NorAm common stock) the amount of Stock Consideration and Cash Consideration that the holder of such Convertible Securities would have had the right to receive (i) if such Convertible Securities had been converted into NorAm common stock immediately prior to the Merger and (ii) if, following conversion, the holder had received Stock Consideration with respect to 50 percent of his or her shares of NorAm common stock and Cash Consideration with respect to the remaining 50 percent of such holder's shares of NorAm common stock.

## Financial Statements:

The following documents, previously filed with the SEC pursuant to the Securities Exchange Act of 1934, as amended, are hereby incorporated by reference:

1. The Company's and HL&P's Combined Annual Report on Form 10-K for the year ended December 31, 1996 (File Nos. 1-7629 and 1-3187)
2. The Company's and HL&P's Combined Quarterly Report on Form 10-Q for the quarter ended March 31, 1997 (File Nos. 1-7629 and 1-3187)
3. NorAm's Annual Report on Form 10-K for the year ended December 31, 1996 (File No. 1-3751)
4. NorAm's Quarterly Report on Form 10-Q for the quarter ended March 31, 1997 (File No. 1-3751)

## Unaudited Pro Forma Combined Financial Statements:

The unaudited pro forma combined condensed financial statements included as Exhibit 99.1 give effect to the Merger. The unaudited pro forma condensed balance sheet as of March 31, 1997 is presented as if the Merger had occurred on that date. The unaudited pro forma condensed statements of income for the year ended December 31, 1996 and the three months ended March 31, 1997 assume that the Merger occurred at the beginning of each of the periods presented. The acquisition of NorAm will be treated as a purchase for accounting purposes. The assets acquired and liabilities assumed will be recorded at their fair values.

The unaudited pro forma financial statements included as Exhibit 99.1 should be read in conjunction with the historical financial statements and related notes of the Company and NorAm and "Management's Discussion and Analysis of Financial Condition and Results of Operations" of the Company and NorAm incorporated by reference herein. The unaudited pro forma condensed statements of income are not necessarily indicative of the financial results that would have occurred had the Merger been completed on the indicated dates, nor are they necessarily indicative of future financial results. Results for interim periods do not necessarily indicate results for the full year.

The pro forma adjustments are based on assumptions and estimates made by the Company's management and do not reflect adjustments for anticipated operating efficiencies and cost savings the Company expects to achieve as a result of the Merger. The actual allocation of the consideration paid for NorAm may differ from that reflected in the unaudited pro forma combined condensed financial statements after a more extensive review of the fair value of the assets acquired and liabilities assumed has been completed. Amounts allocated will be based upon the estimated fair values at the effective time of the Merger, which could vary significantly from the amounts as of March 31, 1997.

As described in Item 2 above, the ratio of shares of Houston Common Stock issued to Cash Consideration paid differed from that reflected in these unaudited pro forma combined condensed financial statements. If the actual ratio was reflected in the unaudited pro forma financial statements, pro forma common stock equity would decrease by approximately 4% and pro forma long-term debt would increase by approximately 3%. Pro forma earnings per common share would increase by no more than 2% for the year ended December 31, 1996.

## EXHIBITS

Exhibit No.	Exhibits (Exhibits designated by an asterisk (*) are incorporated herein by reference to a separate filing as indicated.)
*2(a)	Agreement and Plan of Merger dated as of August 11, 1996, by and among Houston Industries Incorporated, Houston Lighting & Power Company, HI Merger, Inc. and NorAm Energy Corp. (Incorporated by reference to Exhibit 2(a) to Form 8-K Combined Current Report of Houston Industries Incorporated and Houston Lighting & Power Company dated August 11, 1996).
*2(b)	Amendment to Agreement and Plan of Merger (incorporated by reference to Exhibit 2(c) to Registration Statement on Form S-4 of Houston Industries Incorporated and Houston Lighting & Power Company (Reg. No. 333-11329)).
2(c)	Agreement dated August 5, 1997, amending Agreement and Plan of Merger.
23.1	Consent of Deloitte & Touche LLP
23.2	Consent of Coopers & Lybrand L.L.P.
99.1	Unaudited Pro Forma Combined Financial Statements
99.2	Memorandum and Opinion and Order Granting Exemption to Holding Company dated July 24, 1997, and issued by the Securities and Exchange Commission.
99.3	Order of the FERC dated July 30, 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: August 7, 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: August 7, 1997

## INDEX TO EXHIBITS

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## AGREEMENT

WHEREAS, NorAm Energy Corp. ("NorAm"), Houston Industries Incorporated ("HI"), Houston Lighting & Power Company and HI Merger Inc. (together, the "Parties") have entered into that certain Agreement and Plan of Merger dated as of August 11, 1996 (the "Merger Agreement"); and

WHEREAS, NorAm and HI have subsequently discussed continuing the participation of NorAm employees in certain annual variable pay plans through December 31, 1997, rather than making pro-rated payments to participants under such plans as provided in Section 5.10(e) of the Merger Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 5.10(e) of the Merger Agreement is hereby amended to read as follows:

"For the calendar year ending December 31, 1996, NorAm will pay to each employee of NorAm and the NorAm Affiliates who is a participant in a NorAm annual incentive compensation plan or a variable pay program the amount of annual incentive compensation or variable pay awarded to such employee for 1996 based on the level of performance goals actually attained by NorAm. The amount of such incentive compensation or variable pay will be determined in accordance with normal practice and will be paid on or before March 15, 1997.

For the calendar year ending December 31, 1997, annual incentive compensation and annual variable pay awarded to employees of NorAm and the NorAm Affiliates under any plan or program including, without limitation, Section 9 of the 1994 Incentive Equity Plan (also known as the Annual Incentive Award Plan), the All Employee Incentive Plan (also known as the All Employee Incentive Opportunity Plan) and the Gas Marketing Incentive Plan (the "Plans") will be paid to such employees in accordance with the terms and conditions on which the awards were originally based, subject to the following modifications:

- (1) In no event shall any individual who is an employee of NorAm or any affiliate of NorAm at the close of business on August 5, 1997 be paid less than an amount equal to 218/365 multiplied by the amount of the award that would have been payable to the employee had the applicable performance goals been achieved at the target level of performance. Any individual whose employment with NorAm and its affiliates terminates on or after the Effective Time and prior to December 31, 1997, shall be paid the award contemplated hereby as soon as practicable following termination of employment, but in no event later than 10 days following termination of employment.

(2) Performance with respect to any goals based on (i) earnings per share, or (ii) cash flow (where applicable), shall be measured utilizing the following assumptions:

(A) The number of shares and the level of convertible securities outstanding at any applicable time shall be deemed to be the same as the number of shares and level of convertible securities outstanding immediately prior to the Effective Time.

(B) Interest expense and distributions on convertible securities will be calculated from August 6, 1997 through December 31, 1997 as if the balances outstanding on August 6, 1997 remained outstanding through December 31, 1997.

(C) Corporate overhead expenses will be determined from August 6, 1997 through December 31, 1997 in accordance with NorAm's 1997 budget.

(D) No costs directly related to the Merger, and no costs related to amortization of new goodwill will be taken into account.

(3) Performance with respect to any goals based on (i) return on capital employed or (ii) cash flow shall be measured assuming continuation of dividend payments with the frequency that such payments were made from August 1, 1996 through August 1, 1997, at the level most recently paid prior to August 6, 1997.

(4) Any other goals that cannot be accurately measured following the Merger without utilization of assumptions similar to those set forth above shall be measured utilizing such assumptions as the appropriate officers of HL&P deem fair and equitable in their sole discretion."

2. NorAm hereby represents that Exhibit A hereto is a true and correct representation of all of the performance goals originally applicable under the Plans for 1997 annual awards.

3. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement, it being understood that all parties need not sign the same counterpart.

IN WITNESS WHEREOF, each Party has caused this Agreement to be signed by its duly authorized officer this 5th day of August, 1997.

NORAM ENERGY CORP.

By: /s/ T. Milton Honea  
-----  
Name: T. Milton Honea  
-----  
Title: Chairman of the Board, President  
-----  
and Chief Executive Officer

HOUSTON INDUSTRIES INCORPORATED

By: /s/ Hugh Rice Kelly  
-----  
Name: Hugh Rice Kelly  
-----  
Title: Executive Vice President, General  
-----  
Counsel and Corporate Secretary

HOUSTON LIGHTING & POWER COMPANY

By: /s/ Hugh Rice Kelly  
-----  
Name: Hugh Rice Kelly  
-----  
Title: Senior Vice President, General  
-----  
Counsel and Corporate Secretary

HI MERGER, INC.

By: /s/ Stephen W. Naeve  
-----  
Name: Stephen W. Naeve  
-----  
Title: President  
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## INDEPENDENT AUDITORS' CONSENT

We hereby consent to the incorporation by reference in this Current Report on Form 8-K of Houston Industries Incorporated ("HII") and Houston Lighting & Power Company ("HL&P") of our reports dated February 21, 1997, appearing in the Annual Reports on Form 10-K of HII and HL&P for the year ended December 31, 1996.

DELOITTE & TOUCHE LLP  
Houston, Texas

August 6, 1997

## CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in this current report on Form 8-K of our report dated March 25, 1997, on our audits of the consolidated financial statements of NorAm Energy Corp. and Subsidiaries as of December 31, 1996 and 1995, and for the three years ended December 31, 1996, which report is included in NorAm Energy Corp. and Subsidiaries Annual Report on Form 10-K.

COOPERS & LYBRAND L.L.P.

Houston, Texas  
August 7, 1997

UNAUDITED PRO FORMA CONDENSED BALANCE SHEET  
MARCH 31, 1997  
(THOUSANDS OF DOLLARS)

ASSETS

	HISTORICAL		PRO FORMA	
	HI	NORAM	ADJUSTMENTS	COMBINED
Net Property, Plant, and Equipment .....	\$ 8,702,379	\$ 2,434,677	\$ 438,277 (d)	\$11,575,333
Current Assets:				
Cash and cash equivalents .....	15,351	34,599	(34,599) (e)	15,351
Accounts and notes receivable - net .....	105,765	752,849	--	858,614
Inventories .....	184,508	56,377	--	240,885
Other .....	19,783	29,108	--	48,891
Total .....	325,407	872,933	(34,599)	1,163,741
Investments and Other Assets:				
Investment in Time Warner securities .....	1,033,250	--	--	1,033,250
Deferred plant costs - net .....	580,906	--	--	580,906
Investments in and advances to unconsolidated affiliates - net .....	501,636	--	--	501,636
Goodwill .....		463,392	(463,392) (e)	1,746,425
Other .....	1,076,561	219,928	19,600 (i)	1,316,089
Total .....	3,192,353	683,320	1,302,633	5,178,306
Total .....	\$12,220,139	\$ 3,990,930	\$ 1,706,311	\$17,917,380

CAPITALIZATION AND LIABILITIES

Capitalization:				
Common stock equity .....	\$ 3,814,240	\$ 864,720	\$ 1,228,968 (a) (864,720) (e)	\$ 5,043,208
Preferred stock - not subject to mandatory redemption .....	9,740	--	--	9,740
HL&P obligated mandatorily redeemable securities of subsidiary trusts holding solely subordinated debentures of HL&P .....	340,810	--	--	340,810
NorAm obligated mandatorily redeemable, convertible preferred securities of subsidiary trust .....		164,427	(164,427) (e)	
Long-term debt, less current maturities .....	3,026,580	1,047,469	1,261,103 (b) 35,169 (c)	5,370,321
Total .....	7,191,370	2,076,616	1,496,093	10,764,079
Current Liabilities:				
Notes payable .....	1,439,622	312,000	--	1,751,622
Accounts payable .....	102,094	478,348	--	580,442
Taxes accrued .....	85,703	94,698	--	180,401
Interest accrued .....	69,894	30,772	--	100,666
Dividends declared .....	92,548	--	--	92,548
Current portion of long-term debt and preferred stock .....	63,054	278,000	--	341,054
Other .....	121,184	112,265	--	233,449
Total .....	1,974,099	1,306,083	--	3,280,182
Other Liabilities and Deferred Credits:				
Accumulated deferred income taxes .....	2,273,235	339,363	114,418 (e)	2,727,016
Unamortized investment tax credit .....	368,870	--	--	368,870
Other .....	412,565	268,868	95,800 (i)	777,233
Total .....	3,054,670	608,231	210,218	3,873,119
Total .....	\$12,220,139	\$ 3,990,930	\$ 1,706,311	\$17,917,380

See Notes to Unaudited Pro Forma Financial Statements.

UNAUDITED PRO FORMA CONDENSED STATEMENT OF INCOME  
FOR THE YEAR ENDED DECEMBER 31, 1996  
(THOUSANDS OF DOLLARS EXCEPT PER SHARE AMOUNTS)

	HISTORICAL		PRO FORMA	
	HI	NORAM	ADJUSTMENTS	COMBINED
<b>Operating Revenues:</b>				
Electric .....	\$ 4,025,027	--	--	\$ 4,025,027
Gas .....	--	\$ 4,788,462	--	4,788,462
Other .....	70,250	--	--	70,250
<b>Total .....</b>	<b>4,095,277</b>	<b>4,788,462</b>	<b>--</b>	<b>8,883,739</b>
<b>Operating Expenses:</b>				
Electric fuel and purchased power .....	1,347,208	--	--	1,347,208
Gas purchased .....	--	3,667,954	--	3,667,954
Operation and maintenance .....	888,699	524,736	\$ (4,482) (i)	1,408,953
Depreciation and amortization .....	550,038	142,362	29,474 (e)	736,483
			14,609 (d)	
Taxes other than income taxes .....	246,288	116,600	--	362,888
Other .....	72,578	22,344	--	94,922
<b>Total .....</b>	<b>3,104,811</b>	<b>4,473,996</b>	<b>39,601</b>	<b>7,618,408</b>
<b>Operating Income .....</b>	<b>990,466</b>	<b>314,466</b>	<b>(39,601)</b>	<b>1,265,331</b>
<b>Other Income (Expense):</b>				
Litigation settlements .....	(95,000)	--	--	(95,000)
Time Warner dividend income .....	41,610	--	--	41,610
Other .....	(2,022)	(14,577)	--	(16,599)
<b>Total .....</b>	<b>(55,412)</b>	<b>(14,577)</b>	<b>--</b>	<b>(69,989)</b>
<b>Interest and Other Charges .....</b>	<b>307,382</b>	<b>138,399</b>	<b>66,032 (c)</b> <b>(5,842) (f)</b>	<b>505,971</b>
<b>From Continuing Operations:</b>				
Income before income taxes .....	627,672	161,490	(99,791)	689,371
Income taxes .....	200,165	66,352	(24,611) (h)	241,906
<b>Income before preferred dividends .....</b>	<b>427,507</b>	<b>95,138</b>	<b>(75,180)</b>	<b>447,465</b>
Preferred dividends .....	22,563	3,597	--	26,160
<b>Income available for common stock .....</b>	<b>\$ 404,944</b>	<b>\$ 91,541</b>	<b>\$ (75,180)</b>	<b>\$ 421,305</b>
<b>Weighted average common shares</b>				
outstanding (000) .....	244,443	131,648	--	299,802 (g)
Earnings per common share .....	\$ 1.66	\$ 0.70	--	\$ 1.41

See Notes to Unaudited Pro Forma Financial Statements.

UNAUDITED PRO FORMA CONDENSED STATEMENT OF INCOME  
FOR THE THREE MONTHS ENDED MARCH 31, 1997  
(THOUSANDS OF DOLLARS EXCEPT PER SHARE AMOUNTS)

	HISTORICAL		PRO FORMA	
	HI	NORAM	ADJUSTMENTS	COMBINED
Operating Revenues:				
Electric .....	\$ 856,534	--	--	\$ 856,534
Gas .....	--	\$ 1,924,182	--	1,924,182
Other .....	21,567	--	--	21,567
Total .....	878,101	1,924,182	--	2,802,283
Operating Expenses:				
Electric fuel and purchased power .....	320,322	--	--	320,322
Gas purchased .....	--	1,579,178	--	1,579,178
Operation and maintenance .....	183,633	127,640	\$ (1,121) (i)	310,152
Depreciation and amortization .....	130,990	35,988	7,368 (e)	177,998
			3,652 (d)	
Taxes other than income taxes .....	62,811	36,155	--	98,966
Other .....	24,129	--	--	24,129
Total .....	721,885	1,778,961	9,899	2,510,745
Operating Income .....	156,216	145,221	(9,899)	291,538
Other Income (Expense):				
Time Warner dividend income .....	10,403	--	--	10,403
Other .....	(1,762)	6,309	--	4,547
Total .....	8,641	6,309	--	14,950
Interest and Other Charges .....	82,630	38,177	16,508 (c)	134,610
			(2,705) (f)	
From Continuing Operations:				
Income before income taxes .....	82,227	113,353	(23,702)	171,878
Income taxes .....	20,482	44,943	(5,717) (h)	59,708
Income before preferred dividends .....	61,745	68,410	(17,985)	112,170
Preferred dividends .....	2,125	--	--	2,125
Income available for common stock .....	\$ 59,620	\$ 68,410	\$ (17,985)	\$ 110,045
Weighted average common shares outstanding (000) .....	233,689	137,956	--	289,048 (g)
Earnings per common share .....	\$ 0.26	\$ 0.50	--	\$ 0.38

See Notes to Unaudited Pro Forma Financial Statements.

## NOTES TO UNAUDITED PRO FORMA FINANCIAL STATEMENTS

## (a) NorAm Common Stock to be exchanged:

	(THOUSANDS EXCEPT PRICE PER SHARE)
	-----
NorAm common shares outstanding at March 31, 1997.....	138,229
Common stock equivalents and other dilutive securities assumed to be converted or exercised prior to closing:	
NorAm obligated mandatorily redeemable, convertible preferred securities of subsidiary trust ("Convertible Preferred Securities") - 3.289 million shares outstanding at March 31, 1997, to be converted at a rate of 4.1237 shares of common stock per share of preferred stock, \$50 par value .....	13,563
NorAm stock options and restricted stock at March 31, 1997.....	1,829
	-----
Pro forma NorAm common stock and stock equivalents outstanding at March 31, 1997.....	153,621
Purchase price per share.....	\$ 16
	-----
Total consideration.....	\$2,457,936
	=====
Value of HI common stock consideration.....	\$1,228,968
	=====
Cash consideration.....	\$1,228,968
	=====

Total consideration is calculated assuming a purchase price of \$16 per share of NorAm Common Stock, an average HI Common Stock price per share of \$22.20 (the average of the closing prices of HI Common Stock during a 20-trading-day period commencing 25 trading days prior to March 31, 1997), conversion of all NorAm Convertible Preferred Securities, exercise of all outstanding NorAm stock options with exercise prices less than or equal to \$16 per share and that the number of shares of NorAm Common Stock outstanding at the effective date of the acquisition is equal to that outstanding on March 31, 1997.

Total consideration is dependent upon the number of shares of NorAm Common Stock outstanding as of the effective date of the acquisition and the price per share of HI Common Stock. The actual number of equivalent HI common shares exchanged will depend upon the average daily closing price of HI Common Stock on the NYSE during a 20-trading-day period commencing 25 trading days prior to the effective date of the acquisition ("Average Price"). The Stock Consideration will have a value (based upon the average closing price) of \$16.00 per share of NorAm Common Stock if the Average Price of HI Common Stock is greater than or equal to \$21.25 and less than or equal to \$26.00. The Stock Consideration will have a value (based on the average closing price) greater than \$16.00 per share of NorAm Common Stock if the Average Price of HI Common Stock is greater than \$26.00, and a value (based on average closing price) less than \$16 per share of NorAm Common Stock if the Average Price of HI Common Stock is less than \$21.25.

## (b) Acquisition debt is calculated based on the following assumptions:

	(THOUSANDS)
	-----
Cash consideration - see note (a).....	\$1,228,968
Transaction costs.....	32,000
Severance costs.....	44,000
Less:	
NorAm cash balance as of March 31, 1997.....	(34,599)
Proceeds from exercise of NorAm stock options.....	(9,266)
	-----
Total acquisition debt.....	\$1,261,103
	=====

## NOTES TO UNAUDITED PRO FORMA FINANCIAL STATEMENTS - (CONTINUED)

- (c) Interest expense and fair value adjustments for long-term debt are as follows:

	(THOUSANDS)
	-----
Acquisition debt - see note (b).....	\$1,261,103
Assumed interest rate on acquisition debt.....	6.07% (1)
	-----
Adjustment to 1996 interest expense for acquisition debt.....	76,549
	-----
Adjustment to interest expense for acquisition debt for the first three months of 1997.....	19,137
	-----
NorAm long-term debt assumed at March 31, 1997:	
Principal amount.....	\$ 1,325,469
Fair value.....	1,360,638
	-----
Revaluation adjustment of debt assumed to fair value.....	\$ 35,169
	=====
Adjustment to 1996 interest expense for revaluation of long-term debt assumed (using the effective interest method).....	(10,517)
	-----
Adjustment to interest expense for revaluation of long-term debt assumed for the first three months of 1997.....	(2,629)
	-----
Total interest expense adjustment for 1996.....	\$ 66,032
	=====
Total interest expense adjustment for the first three months of 1997.....	\$ 16,508
	=====

- (1) For purposes of the unaudited pro forma condensed statements of income, the annual interest rate on the acquisition debt is assumed to be 6.07%. A 1% change in the interest rate on the acquisition debt would change 1996 interest expense by \$12.6 million and interest expense for the first three months of 1997 by \$3.15 million. The cash portion of the consideration is expected to be obtained through a bank loan under a revolving credit and letter of credit facility which has been negotiated with a syndicate of banks and financial institutions. The annual interest rate will be based upon either the London interbank offered rate ("LIBOR") plus .25% or the greater of the federal funds rate plus .5% or prime rate, plus a .125% facility fee. LIBOR was 5.69% at March 31, 1997. At the date of the Merger, August 6, 1997, LIBOR was 5.63%.

- (d) Based on preliminary analyses, the following adjustments have been made to reflect the fair value of property, plant and equipment:

	(THOUSANDS)
	-----
Revaluation of property, plant and equipment to fair value.....	\$ 438,277
	=====
Adjustment to 1996 depreciation expense (assumes 30 year average depreciable life).	\$ 14,609
	=====
Adjustment to depreciation expense for the first three months of 1997.....	\$ 3,652
	=====

## NOTES TO UNAUDITED PRO FORMA FINANCIAL STATEMENTS - (CONTINUED)

- (e) The excess of the total purchase price over the allocation of fair value to the net assets will be recorded as goodwill. HI's calculation of goodwill is based on the following assumptions and calculations:

	(THOUSANDS)
	-----
Value of HI Common Stock consideration - see note (a) .....	\$ 1,228,968
Acquisition debt - see note (b) .....	1,261,103
Net asset value of NorAm at March 31, 1997:	
Total stockholders' equity .....	(864,720)
Conversion of NorAm Convertible Preferred Securities .....	(164,427)
NorAm cash (used to offset acquisition debt) .....	34,599
	-----
Initial purchase price in excess of historical net asset value .....	1,495,523
Increase (decrease) from fair value allocations:	
Property, plant and equipment - see note (d) .....	(438,277)
Elimination of NorAm historical goodwill .....	463,392
Unrecognized pension liability (asset) - see note (i) .....	(19,600)
Unrecognized postretirement benefits liability - see note (i) .....	95,800
Debt assumed - see note (c) .....	35,169
Deferred income tax on fair value allocation adjustments .....	114,418
	-----
Total goodwill .....	\$ 1,746,425
	=====
Increase in goodwill amortization expense (assumes 40 year life) .....	\$ 43,661
Less NorAm historical goodwill amortization .....	(14,187)
	-----
Adjustment to 1996 amortization expense .....	\$ 29,474
	=====
Adjustment to amortization expense for the first three months of 1997 .....	\$ 7,368
	=====

- (f) Assumes full conversion of NorAm Convertible Preferred Securities into shares of NorAm Common Stock and cash at the effective date of the acquisition (see note (a)). Because of the assumed conversion, \$5,842,000 and \$2,705,000 of preferred dividends of subsidiary trust have been eliminated for 1996 and the first three months of 1997, respectively.

- (g) Pro forma number of common shares outstanding represents the historical weighted average shares outstanding of HI Common Stock in addition to the pro forma number of shares of HI Common Stock assumed to be issued in exchange for the NorAm Common Stock and stock equivalents. The pro forma number of shares assumed to be issued is 55,359,000.

- (h) Represents the tax effect at the statutory rate of all pre-tax pro forma adjustments after excluding nondeductible goodwill amortization.

- (i) Pension and postretirement benefits liabilities:

	(THOUSANDS)
	-----
Unrecognized pension liability (asset) - see note (e) .....	\$(19,600)
	=====
Unrecognized postretirement benefits liability - see note (e) .....	\$ 95,800
	=====
Adjustment to 1996 operation and maintenance expense (assumes 17-year amortization period) .....	\$ (4,482)
	=====
Adjustment to operation and maintenance expense for the first three months of 1997 .....	\$ (1,121)
	=====

## SECURITIES AND EXCHANGE COMMISSION

(RELEASE NO. 35-26744; 70-8907)

HOUSTON INDUSTRIES INCORPORATED, ET AL.  
MEMORANDUM OPINION AND ORDER GRANTING EXEMPTION TO HOLDING COMPANY

JULY 24, 1997

Houston Industries Incorporated ("HI"), an exempt public utility holding company, and its electric utility subsidiary company, Houston Lighting & Power Company ("HL&P"), both of Houston, Texas, have filed an application under section 3(a)(2) of the Public Utility Holding Company Act of 1935, as amended ("Act"). HI and HL&P intend to merge, with the surviving entity being renamed Houston Industries Incorporated ("Houston"), and Houston will then acquire NorAm Energy Corp. ("NorAm"), a gas utility company, as a new subsidiary company. The application requests that the Commission issue an order to the effect that, upon consummation of the merger transactions, Houston and its subsidiaries will be exempt, under section 3(a)(2) of the Act, from all provisions of the Act except section 9(a)(2).

The Commission issued a notice of the filing of the application on October 18, 1996 (Holding Co. Act Release No. 26594). On November 8, 1996, the Arkansas Public Service Commission filed a Motion to Intervene. The Arkansas commission did not comment on the application but reserved the right to do so in the future. No further comments were received from the Arkansas commission. On November 12, 1996, Entergy Services, Inc. filed a Motion for Leave to Intervene,<sup>(1)</sup> which was withdrawn on December 5, 1996.

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(1) The Motion for Leave to Intervene was filed on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Power, Inc., and Entergy Power Marketing Corp.

## I. BACKGROUND

HI, which is incorporated and maintains its principal place of business in Texas, is a public utility holding company(2) that is exempt under section 3(a)(1) from most provisions of the Act.(3) HI owns all of the common stock of its subsidiary company, HL&P, an electric utility company(4) that is incorporated in Texas and conducts all of its utility operations within that state. HL&P is engaged in the generation, transmission, distribution and sale of electric power to 1.5 million customers in a 5,000 square-mile area of the Texas Gulf Coast, including the City of Houston.

HL&P is subject to original jurisdiction of the Public Utility Commission of Texas over retail rates and service in unincorporated areas and in incorporated municipalities that have relinquished original jurisdiction. The remaining incorporated municipalities, including the City of Houston, have original jurisdiction over retail rates and service, with the Public Utility Commission of Texas having appellate jurisdiction. The utility operations currently engaged in by HL&P will continue to be subject to this regulatory jurisdiction after consummation of the merger transactions described

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(2) A "holding company" is defined in section 2(a)(7) of the Act to include any company that directly or indirectly owns 10% or more of the outstanding voting securities of a public utility company. Section 2(a)(5) defines a "public-utility company" to mean an electric utility company or a gas utility company.

(3) Section 3(a)(1) provides an exemption if the holding company and all of its material utility subsidiaries operate substantially in one state, in which they are all incorporated.

(4) Section 2(a)(3) defines an "electric utility company" to mean any company that owns or operates facilities used for the generation, transmission or distribution of electric energy for sale.

below.

HL&P accounts for a substantial part of the consolidated income and common stock equity of HI. HI's other significant subsidiary, Houston Industries Energy, Inc. ("HI Energy"), participates in the development and acquisition of foreign independent power projects and the privatization of foreign generation, transmission and distribution facilities.(5) HI also has a nonutility subsidiary company, Houston Industries Power Generation, Inc., which participates in domestic power generation projects, and another nonutility subsidiary company formed to engage in providing energy-related services.

For the year ended December 31, 1996, HI had consolidated revenues of approximately \$4.095 billion and consolidated operating income of approximately \$990 million, of which \$4.025 billion and \$732 million, respectively, were attributable to HL&P's utility operations. As of December 31, 1996, HI had consolidated assets of \$12.288 billion, of which \$10.596 billion represented HL&P's utility assets.

NorAm, which is incorporated in Delaware and maintains its principal executive offices in Texas, is a gas utility company(6) that provides retail natural gas service to over 2.7 million

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(5) Each foreign project in which HI Energy has invested or otherwise holds an interest is either a "foreign utility company" ("FUCO") pursuant to section 33 of the Act or a foreign "exempt wholesale generator" ("EWG") pursuant to section 32 of the Act. HI has direct and indirect interests in FUCOs and foreign EWGs in Argentina, Brazil and India, in which it had invested \$557 million as of December 31, 1996.

(6) Section 2(a)(4) defines a "gas utility company" to include any company that owns or operates facilities used for the distribution at retail of natural gas for heat, light or power.

customers in six states. NorAm's natural gas distribution business operates through three divisions -- (i) Entex, which distributes natural gas in Houston and in other areas in Texas, Louisiana, and Mississippi;(7) (ii) Arkla, which distributes natural gas to retail customers in Arkansas, Louisiana, Oklahoma, and Texas;(8) and (iii) Minnegasco, which distributes natural gas to retail customers in Minnesota(9). These divisions are subject, as appropriate, to the jurisdiction of the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Minnesota Public Utilities Commission, the Mississippi Public Service Commission, and the Oklahoma Corporation Commission with respect to retail rates and certain other matters. In Texas, Entex and Arkla are subject to the jurisdiction of the Texas Railroad Commission with respect to retail rates charged to customers for gas delivered outside of incorporated cities and towns and certain other matters; and to the original jurisdiction of the relevant city council with respect to retail rates within incorporated cities and towns, with appellate jurisdiction by the Texas Railroad Commission. NorAm will continue to be subject to this regulatory jurisdiction after consummation of the proposed merger transactions described below.

NorAm also owns several nonutility subsidiary companies engaged in gas-related activities. NorAm operates interstate gas pipeline facilities through two subsidiary companies, NorAm Gas Transmission Company and Mississippi River Transmission Corporation, and operates natural gas gathering assets in Oklahoma, Louisiana, Arkansas and Texas through NorAm Field Services Corp.

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(7) Entex serves approximately 127,000 customers in the southern half of Louisiana, approximately 116,000 customers in the southern half of Mississippi and approximately 1,166, 000 customers in Texas.

(8) Arkla serves approximately 425,000 customers in 59 counties in Arkansas, 132,335 customers in the northern half of Louisiana, 111,000 customers in 35 counties and 96 communities in Oklahoma, and 46,700 customers in Texas.

(9) Minnegasco serves approximately 625,000 customers in 200 communities in Minnesota.

NorAm Energy Services, Inc. ("NorAm Services") markets natural gas and electric power in wholesale markets and provides risk management services. Finally, NorAm Energy Management, Inc. provides retail energy services to industrial and large commercial concerns.

For the year ended December 31, 1996, NorAm had revenues of approximately \$4.788 billion and operating income of approximately \$314 million, of which \$2.114 billion and \$178 million were attributable to utility operations. As of December 31, 1996, its total assets were \$4.017 billion, including utility assets of \$1.921 billion.

On August 11, 1996, HI, HL&P and a new HI subsidiary company, HI Merger, Inc. ("HI Merger"), entered into an Agreement and Plan of Merger with NorAm. Under the agreement, as amended on October 23, 1996 ("Merger Agreement"), HI will merge with HL&P and the outstanding common stock of HI will be converted into common stock of HL&P, which will be renamed Houston Industries Incorporated. Thereafter, NorAm will merge with HI Merger, which will be renamed NorAm Energy Corp. After these two mergers ("Basic Mergers"), the electric utility business of HL&P will be conducted by Houston under the name of HL&P, and the new NorAm Energy Corp. will be a wholly owned subsidiary company of Houston.

The applicants state that the proposed merger is not driven by the potential for near-term cost savings, which are expected to be modest and offset by related costs. Instead, the applicants state that the merger is desirable because the combined entity will be better positioned to respond more rapidly and effectively to the changing nature of the electric and gas industries and to take advantage of opportunities presented by the convergence of the electricity and natural gas markets. NorAm and HI believe that benefits will accrue to shareholders, customers and employees as a result of an

increased customer base and opportunities to provide additional energy-related services to these customers, combination and expansion of expertise and skills, increased financial strength, and complementary development strategies.

Each state, except Texas, (10) in which NorAm conducts utility operations must review the proposed transaction. Orders have been obtained from the Arkansas Public Service Commission, (11) the Louisiana Public Service Commission, (12) the Minnesota Public Utilities Commission, (13) the Mississippi Public Service Commission, (14) and the Oklahoma Corporation Commission. (15) Where

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(10) Texas state regulators do not formally review the merger. The applicants state that they have discussed the Basic Mergers with the commissioners and staff of the Public Utility Commission of Texas and the Texas Railroad Commission, have furnished them with copies of orders issued by other state regulators, and have committed to provide Texas ratepayers with the same commitments as have been made for the benefit of ratepayers in other jurisdictions.

(11) The Arkansas Public Service Commission issued an order on November 6, 1996 (Dkt. No. 96-286-U, Order No. 7), approving the proposed transactions, conditioned on there being no provisions in other regulatory approvals that are detrimental or unfair to Arkansas customers. On March 12, 1997, a final, unconditional order approving the transactions was issued (Order No. 8), incorporating the conditions contained in the order of the Minnesota Public Utilities Commission, discussed below. In approving the transaction, the Arkansas commission was required to find that the transaction is not detrimental to the customers of the domestic utility and is in the public interest.

(12) The Louisiana Public Service Commission issued a letter of nonopposition dated December 23, 1996, as amended January 23, 1997, in which it states that the merger will not impair its ability to regulate and audit the Louisiana operations of NorAm effectively.

(13) The Minnesota Public Utilities Commission issued an order dated February 24, 1997 (Dkt. No. G-008/PA-96-950), approving the merger transactions, subject to various conditions, including agreements to provide local access to books and records required for Minnesota regulatory purposes, not to seek recovery of merger-related costs from ratepayers and to reduce corporate cost allocations in the next rate case below those currently allowed.

(14) The Mississippi Public Service Commission issued a final order on December 11, 1996 (Dkt. No. 96-UA-0438), finding, among other things, that the merger is consistent with the public interest.

(15) The Oklahoma Corporation Commission issued a final order on October 15, 1996 (Order No. 406074, Cause No. PUD 960000264), finding, among other things, that the transactions are consistent with the public interest and the interest of NorAm's Oklahoma customers.

required, municipalities that have issued franchises to NorAm (including the City of Houston) have approved the transactions or the transfer of the franchise.(16) Various other regulatory approvals have also been obtained.(17)

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(16) On October 2, 1996, the City Council of Stafford, Texas adopted an ordinance approving the Basic Mergers. The City Council of Longview, Texas, adopted an ordinance approving the transfer of Arkla's franchise and recognizing the Basic Mergers on November 7, 1996. On December 15, 1996, approval of an application to the City of Tyler, Texas, for transfer of the franchise became effective by operation of law. On December 18, 1996, the Houston City Council adopted an ordinance approving the transfer of Entex's franchise.

(17) On December 9, 1996, the Nuclear Regulatory Commission ("NRC") notified HL&P that the staff believes that no NRC action is required to be taken in connection with the proposed transactions, other than a technical amendment of the operating license for the South Texas Project Electric Generating Station, for which HL&P is the project manager, to reflect HL&P's change of name in connection with the Basic Mergers. Notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 were submitted on August 26, 1996 to the Department of Justice and the Federal Trade Commission. The required waiting period expired on October 31, 1996 and, unless the Department of Justice takes affirmative action to prevent it, the Basic Mergers may be consummated at any time during the succeeding 12-month period.

Finally, certain filings have been made with the Federal Energy Regulatory Commission ("FERC") in connection with NorAm Services' wholesale energy marketing activities. NorAm Services is authorized by the FERC to make wholesale electric power and energy sales in interstate commerce at market-based rates by order dated July 25, 1994. On September 30, 1996, NorAm Services and HI filed with the FERC a notice of the proposed transactions and requested authorization to continue power marketing activities at market-based rates after consummation of the merger. The FERC issued an order on February 5, 1997 ordering NorAm Services either to file a response stating why it believes the FERC does not have jurisdiction over the merger under the Federal Power Act, or to file an application for FERC approval of the merger. In its response filed March 7, 1997, NorAm Services stated that it believes the FERC does not have jurisdiction over the merger. On March 27, 1997, without conceding the jurisdictional issue, NorAm Services filed an application for FERC approval of the merger under the Federal Power Act. On April 30, 1997, the FERC issued an Order Asserting Jurisdiction over the proposed merger between Houston and NorAm. 79 FERC paragraph 61, 108. The FERC concluded that the proposed merger involves the disposition of NorAm Services' jurisdictional facilities through a change of control of those facilities, and thus falls within the jurisdiction of the FERC under section 203 of the Federal Power Act. The application for FERC approval of the proposed merger is pending. The Commission's order in this matter granting Houston the requested exemption under section 3(a)(2) of the Act is conditioned on NorAm Services' receiving an order of the FERC that approves the proposed merger transactions without imposing any conditions that change the facts underlying the Commission's decision.

Upon completion of the proposed transactions, Houston would be both a public utility company under the Act, by virtue of HL&P's electric operations, and a holding company, by virtue of its ownership of 100% of the voting securities of NorAm.

## II. DISCUSSION

The applicants request that the Commission grant Houston and its subsidiaries an exemption, pursuant to section 3(a)(2), from the provisions of the Act (except section 9(a)(2)). Under section 3(a)(2), the Commission will exempt a holding company and its subsidiaries from any provision or provisions of the Act that would apply to such companies if it finds that "such holding company is predominantly a public-utility company whose operations as such do not extend beyond the state in which it is organized and states contiguous thereto . . .", unless it finds the exemption "detrimental to the public interest or the interest of investors or consumers . . . ." The Commission finds that the standards of section 3(a)(2) are satisfied with respect to Houston and that the requested exemption should be granted.

By its terms, section 3(a)(2) has no specific numerical test to determine when a company is "predominantly" a utility rather than a holding company. In making this determination, the

Commission has often used numerical indicators to compare the utility operations of the holding company, as a separate entity, and the utility operations of its subsidiaries, with the greatest emphasis placed on the relative gross revenues of the companies in question.(18) Other indicia, such as operating income and utility assets, have also been considered in determining whether to grant an exemption.(19) The Commission has noted that, in considering whether the exemption under section 3(a)(2) is available, it must "construe the statute according to a fair interpretation of its terms."(20) In this case, the Commission has examined all of the factors indicative of the relative size of the utility operations of Houston and NorAm and on the basis of all of these particular facts and circumstances finds that Houston is predominantly a utility rather than a holding company within the meaning of section 3(a)(2).

As of December 31, 1996 and for the year then ended, NorAm's utility operating revenues were 52.5% of HI's, its utility operating income was 24.3% of HI's, and its utility assets were 18.1% of HI's. The ratios of operating income and utility assets are consistent with ratios in prior orders granting an exemption. The ratio of operating revenues is higher than the same ratio in past cases

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(18) See, e.g., Union Electric Co., 40 SEC 1072 (1964). When applying these criteria, the Commission has generally granted exemptions where the ratio of the subsidiaries' gross utility revenues to those of its parent was not more than approximately 25%. See, e.g., Ohio Edison Co., Holding Co. Act Release No. 21019 (Apr. 26, 1979) (16.9%); Delmarva Power & Light Co., Holding Co. Act Release No. 19717 (Oct. 19, 1976) (25.8%); and Washington Gas Light Co., Holding Co. Act Release No. 1964 (Mar. 5, 1940) (23.7%). Exemptions have generally been denied in cases where this ratio was 35% or more. See, e.g., Union Electric Co., 5 SEC 252 (1939) (35.7%); and Wisconsin Electric Power Co., Holding Co. Act Release No. 8741 (Dec. 20, 1948) (54.7%).

(19) See, e.g., Union Electric Co., 40 SEC 1072, 1077 (1962); and Northern States Power Co., Holding Co. Act Release No. 22334 (Dec. 23, 1981).

(20) Union Electric Co., 5 SEC 252, 261 (1939).

where exemptions were granted; even in this category, however, Houston is approximately twice as large as NorAm.(21)

This legal conclusion is supported by the underlying policy and purposes of the Act. The applicants have demonstrated that Houston will not be an unregulated entity through which potential abuses could be perpetrated, but will instead be a public utility, with utility operations in only one state, subject to regulation by the Public Utility Commission of Texas and by the City of Houston, Texas, and various other municipalities that have granted a utility franchise to HL&P. There appears to be little possibility in this case that the holding company structure will be used to evade state and local regulation, or that regulation under the Act is needed to supplement state regulation in order to prevent detriment to the interests protected by the Act.(22)

Various state and local regulatory bodies that have continuing jurisdiction over the utility operations of Houston and NorAm have formally authorized the proposed business combination.(23)

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(21) As HI's utility operations are entirely electric and NorAm's are entirely gas, a comparison of units of energy sold is not relevant. Similarly, because HI's customer mix is significantly different from that of NorAm, the relative number of customers is not indicative of the size of the two utility businesses.

(22) See Order of the Minnesota Public Utilities Commission, Dkt. No. G-008/PA-96-950 (Feb. 24, 1997) (noting possible exemption from the Act, and stating that "the merger would not impair Minnesota regulators' ability to perform their duties under the [Minnesota statute], since the holding company structure that would result from the merger has not been a barrier to the effective regulation of other Minnesota utilities."). See also Northern States Power Co., 36 SEC 1 (1954) (finding that granting an exemption would not create a "regulatory gap" that would be detrimental to the public interest or the interest of investors or consumers); and Union Electric Co., 5 SEC 252, 262 (1939) (section 3(a)(2) must be construed in light of the fundamental policy of the Act that mandates federal regulation where state regulation cannot be effective).

All were aware that Houston was seeking an exemption from most provisions of the Act.(24) In each case where a specific finding to the effect that the transaction is consistent with, or not opposed to, the public interest was required, such a finding was made. The Commission traditionally has given great weight to the views of the states in this regard.(25)

### III. CONCLUSION

The Commission has carefully examined the request for an exemption for Houston, has considered the complete record before it under the applicable standards of the Act, and has concluded that granting the exemption is consistent with those standards and does not require adverse findings.

Fees, commissions or expenses of approximately \$200,000 are expected to be incurred in connection with the application for exemption.

Due notice of the filing of the application has been given in the manner prescribed in rule 23 under the Act, and no hearing has been requested or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder

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(23) As described above, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Minnesota Public Utilities Commission, the Mississippi Public Service Commission and the Oklahoma Corporation Commission, which have jurisdiction over various aspects of NorAm's gas utility operations in their respective states, have each issued an order or a statement of nonopposition to the transaction. The transaction has also been reviewed by the City Councils of Houston and of several other Texas municipalities that have granted utility franchises to NorAm.

(24) See, e.g., Order of the Arkansas Public Service Commission, Dkt. No. 96-286-U, Order No. 7 (Nov. 6, 1996), at 3 (noting that the parties filed an application for an order finding Houston to be an exempt holding company under section 3(a)(2) of the Act); and Order of the Minnesota Public Utilities Commission, cited in note 22 above.

(25) See, e.g., Northern States Power Co., 36 SEC 1 (1954) (conclusions of state and local regulators should be given "great weight" in determining whether a combination utility system will have an adverse effect on the public interest).

are satisfied, and that no adverse findings are necessary:

Provided, that NorAm Services shall have received an order of the FERC approving the proposed merger transactions between Houston and NorAm without imposing any conditions that change the facts underlying the Commission's decision in this matter, IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that the application be, and it hereby is, granted.

By the Commission.

Jonathan G. Katz  
Secretary

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

NorAm Energy Services, Inc. ) Docket No. EC97-24-000  
)  
NorAm Energy Services, Inc. ) Docket No. ER94-1247-010

ORDER APPROVING DISPOSITION  
OF JURISDICTIONAL FACILITIES AND  
ACCEPTING FOR FILING CODE OF CONDUCT, AS MODIFIED

(Issued July 30, 1997)

On March 27, 1997, NorAm Energy Services, Inc. (NorAm), a power marketer authorized to sell power at wholesale at market-based rates, (1) filed an application pursuant to section 203 of the Federal Power Act (FPA) (2) for an order approving the merger of NorAm's parent company, NorAm Energy Corporation (NorAm Energy), which is principally engaged in the distribution and transmission of natural gas, with: (1) Houston Industries, Inc. (Houston Industries), an exempt holding company; and (2) Houston Industries' subsidiary, Houston Lighting & Power Company (HL&P), an electric utility located in the Electric Reliability Council of Texas (ERCOT) engaged in the generation, transmission, distribution, and sale of electric energy within the State of Texas.

On April 30, 1997, the Commission issued an order in Docket No. EL97-25-000 (3) asserting jurisdiction over the disposition of the jurisdictional facilities of NorAm that would occur as a

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- (1) NorAm Energy Services, Inc., Docket No. ER94-1247-000, Letter Order (issued July 25, 1996) (unpublished).
- (2) 16 U.S.C. # 824b (1994).
- (3) NorAm Energy Services, Inc., 79 FERC 61,108 (1997), reh'g pending (April 30 Order). The Commission initiated its jurisdictional inquiry concerning the proposed merger by order issued on February 5, 1997. NorAm Energy Services, Inc., 78 FERC 61,111 (1997).

consequence of the merger of NorAm Energy and Houston Industries and HL&P. (4) While the Commission's jurisdictional inquiry was pending, NorAm filed the instant merger application conditioned upon the Commission asserting jurisdiction over the merger.

As discussed more fully below, the proposed corporate realignment involves the disposition of NorAm's jurisdictional facilities. We conclude that it is unlikely that the proposed disposition of NorAm's facilities will create or enhance horizontal or vertical market power in the most relevant market, i.e., the wholesale generation market within ERCOT. Therefore, we will approve the proposed disposition of facilities, as discussed below. We will also accept NorAm's proposed code of conduct, as modified by this order.

I. Description of the Corporate Realignment, Participants, and Contents of the Application

A. Description of Corporate Realignment Participants

1. NorAm Energy and Its Affiliates

NorAm, a wholly-owned subsidiary of NorAm Energy, is a wholesale electric power marketer. It also engages in wholesale gas marketing. NorAm makes wholesale electric power sales at market-based rates in both interstate and intrastate commerce. The application states that NorAm owns no generation or transmission assets and is not party to any contracts that would give it the ability to control energy generation or transmission in any way.

NorAm Energy also owns interstate gas transmission companies that originate in Texas, Oklahoma, Arkansas, and Louisiana. (5) These are NorAm Gas Transmission Co. (NGT) and Mississippi River Transmission Corp. (MRT). Both NGT and MRT are open-access pipelines and are regulated by the Commission. Only a minor quantity of their sales is to customers within ERCOT.

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(4) In that order, the Commission noted that it was not exercising jurisdiction over the merger between NorAm Energy and Houston Industries.

(5) The application does not specify where these pipelines operate, but it states that they deliver gas to customers, which, with a few insignificant exceptions, are located outside of ERCOT. Application, Vol. 1, Attachment 1 (Affidavit of Dr. Pace), p. 11.

NorAm Energy's intrastate retail operations include three gas local distribution companies (LDCs) -- Arkla, Minnegasco, and Entex -- plus two intrastate pipelines, Unit Gas Transmission Company (Unit Gas) and Industrial Gas Supply Corporation (IGS). Entex serves very much the same service area as the electric service territory of HL&P. Arkla's service territory is in Arkansas, Louisiana, and Texas (outside ERCOT). Minnegasco serves an area entirely in Minnesota. The two intrastate pipelines serve large-volume customers within ERCOT but do not serve any electric generators connected to ERCOT.

NorAm also owns a small gas gathering operation, NorAm Field Services, that amounts to 2.9 percent of its total business.

## 2. Houston Industries and Its Affiliates

As noted, Houston Industries is an exempt holding company under the Public Utility Holding Company Act of 1935 (PUHCA). HL&P, the principal subsidiary of Houston Industries, is a member of ERCOT and is also interconnected with the Southwest Power Pool (SPP). HL&P is a traditional electric generation, transmission, and distribution company, but it is not a public utility under the FPA. Its open access transmission and wholesale transactions are regulated principally by the Public Utility Commission of Texas (Texas Commission). HL&P has a "to, from, and over" (TFO) tariff on file with the Commission for high voltage direct current (HVDC) transmission service between ERCOT and SPP. HL&P has recently filed a revised tariff application to reflect changes in the pro forma tariff adopted in Order No. 888-A. (6)

Houston Industries has two other subsidiaries, Houston Industries Energy (HI Energy) and HI Power Generation. HI Energy owns interests in foreign utilities, foreign exempt wholesale generators, and two qualifying facilities. HI Power Generation's purpose is to invest in domestic generation projects; it had no investments as of the date of NorAm's application.

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(6) See Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs., Regs. Preambles 31,048 (1997), reh'g pending.

The Commission conditionally accepted for filing HL&P's current TFO tariff by order issued on November 1, 1996 in Docket No. ER96-2960-000, Houston Lighting & Power Company, 77 FERC 61,113 (1996). On April 11, 1997, as amended on May 23, and June 20, 1997, HL&P filed a revised TFO tariff to reflect changes in the pro forma tariff in Order No. 888-A.

## B. Description of the Corporate Realignment

Under the proposed merger, Houston Industries would be merged into HL&P; HL&P, renamed Houston Industries, Inc. (New Houston Industries), would be the surviving corporation. NorAm Energy would then be merged into HI Merger, Inc. (HI Merger), a wholly-owned subsidiary of New Houston Industries; HI Merger, renamed NorAm Energy Corporation (New NorAm Energy), would be 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 thus would become a second-tier, wholly owned subsidiary of New Houston Industries and a wholly-owned subsidiary of New NorAm Energy. (7)

NorAm states that to date, Houston Industries and NorAm Energy have received all the necessary state and local approvals required to close the transaction, including approvals from the state commissions of Arkansas, Louisiana, Minnesota, Mississippi, and Oklahoma and from various municipalities. In addition, NorAm states that the merging parties, application to the SEC for an exemption from the registration requirement under PUHCA is unopposed, and the United States Department of Justice (DOJ) concluded its investigation of the proposed merger without raising any concerns.

## II. Notice of Filing and Interventions

Notice of NorAm's application was published in the Federal Register, (8) with protests or motions to intervene due on or before May 27, 1997. Notices of intervention raising no substantive issues were filed by the Arkansas Public Service Commission (Arkansas Commission) and the Mississippi Public Service Commission (Mississippi Commission). Timely motions to intervene raising no substantive issues were filed by Southern Union Gas Company (Southern Union) and Electric Clearinghouse, Inc. (Clearinghouse).

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(7) NorAm states that if the Securities and Exchange Commission (SEC) does not find that the merged entity will qualify for exemption from registration under section 3 of PUHCA, then alternative merger plans would be used to effect the merger of the companies. Under one alternative merger plan, NorAm Energy would be merged into a Houston Industries subsidiary, with the Houston Industries subsidiary as the surviving company. Under the other alternative, NorAm Energy and Houston Industries would be merged with and into HL&P, with HL&P as the surviving corporation.

(8) 62 Fed. Reg. 16,801 (1997).

The Texas Commission filed a notice of intervention stating that it is investigating whether it has any authority over the corporate restructuring or merger under state law and whether the merger may tend to restrict or impair competition in Texas.

On June 6, 1997, Anoka Electric Cooperative (Anoka) filed a motion to intervene out of time raising no substantive issues.

### III. Discussion

#### A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, (9) the notices of intervention and timely, unopposed motions to intervene serve to make the Arkansas Commission, the Mississippi Commission, the Texas Commission, Southern Gas and Clearinghouse parties to this proceeding. Further, due to the early stage of this proceeding and the absence of any undue prejudice or delay, we will grant the late, unopposed motion to intervene of Anoka.

#### B. Standard of Review Under Section 203 of the FPA

##### 1. Statutory Criteria

Section 203 of the FPA 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 any part thereof of a value in excess of \$50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. . . . After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.

(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

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(9) 18 C.F.R. # 385.214 (1996).

adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the 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.

## 2. Merger Policy Statement

The Commission's Merger Policy Statement (10) sets forth the criteria and considerations for evaluating applications under section 203. The Commission examines three factors in analyzing whether a merger is consistent with the public interest: the effect on competition; the effect on rates; and the effect on regulation. (11) The Merger Policy Statement also recognized that new forms of mergers would occur as a result of the changes in the industry:

[A]s the industry evolves to meet the challenges of a more competitive marketplace, new types of mergers and consolidations will be proposed. For example, in addition to mergers between public utilities, market participants already are considering restructuring options that include mergers between public utilities and natural gas distributors and pipelines, consolidations of electric power marketer businesses with other electric or gas marketer businesses, and combinations of jurisdictional electric operations with other energy services. As a consequence, our merger policy must be sufficiently flexible to accommodate the review of these new and innovative business combinations that are subject to our jurisdiction under section 203 and to determine their implications on competitive markets. We believe that the analytical framework in this Policy Statement provides a suitable methodology for determining whether such mergers will be consistent with the public interest. [(12)]

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- (10) Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (Dec. 30, 1996), FERC Stats. & Regs. 31,044 (1996) (Merger Policy Statement), order on reconsideration, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC 61,321 (1997).
- (11) Merger Policy Statement at 30, 111.
- (12) Merger Policy Statement at 30,113 (footnotes omitted).

## C. Evaluation of the Proposed Disposition of Facilities

## 1. Jurisdiction

As noted above, on April 30, 1997, the Commission issued an order in which it determined that the corporate realignment of NorAm Energy and Houston Industries would result in the disposition (via a transfer of control) of the jurisdictional facilities of NorAm, which requires Commission authorization under section 203 of the FPA. (13)

## 2. Effect on Competition

In the Merger Policy Statement, the Commission adopted the DOJ and Federal Trade Commission (FTC) Horizontal Merger Guidelines (Guidelines) as the analytical framework for evaluating the effect of a proposed merger on competition. (14) Our analysis of the competitive issues follows the general framework in the Merger Policy Statement and our specific framework for evaluating market power arising from vertical mergers first enunciated in San Diego Gas & Electric Company and Enova Energy, Inc., 79 FERC 61,372 (1997) (Enova).

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- (13) Because we have already determined that the Commission has jurisdiction over the proposed transaction under section 203 of the FPA by virtue of the proposed disposition of NorAm's jurisdictional facilities, we do not need to reach the question of whether the proposed transaction also involves a direct or indirect merger or consolidation of NorAm's jurisdictional facilities with those of any other person.
- (14) The Guidelines set out five steps for merger analysis: (1) define the markets likely to be affected by the merger and measure the concentration and the increase in concentration in those markets; (2) evaluate whether the extent of concentration and other factors that characterize the market raise concerns about potential adverse competitive effects; (3) assess whether entry would be timely, likely, and sufficient to deter or counteract any such concern; (4) assess any efficiency gains that reasonably cannot be achieved by other means; and (5) assess whether either party to the merger would be likely to fail without the merger, causing its assets to exit the market.

a. Horizontal Market Power Issues

The three potential horizontal market power concerns are: (1) whether the consolidation of HL&P's generating facilities with NorAm's electricity marketing activities will result in enhanced market power for the merged company in wholesale generation markets; (2) whether the merger will lead to increased opportunities for the exercise of transmission market power; and (3) whether the consolidation of HL&P's electric retail franchise with Entex's gas retail franchise will result in enhanced market power for the merged company in the end use energy services market.

Generation Market Power

In the Merger Policy Statement, the Commission stated that:

it will not be necessary for the merger applicants to perform the screen analysis or file the data needed for the screen analysis in cases where the merging firms do not have facilities or sell relevant products in common geographic markets. In these cases, the proposed merger will not have an adverse competitive impact (i.e., there can be no increase in the applicants' market power unless they are selling relevant products in the same geographic markets) so there is no need for a detailed data analysis. [(15)]

NorAm generally followed the Merger Policy Statement's Appendix A analytical framework although, in light of the factual circumstances of this case, NorAm did not fully explore certain aspects of the Appendix A analysis. (16) We find that this was an appropriate approach in this case, and we have relied on the information contained in the application to reach the conclusions set forth herein. (17)

NorAm's witness, Dr. Pace, contends that this merger raises no horizontal market power issues in the short-term capacity, long-term capacity, or the non-firm energy markets. He looked at

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- (15) Merger Policy Statement at 30,113.
- (16) Because NorAm owns no generation, as described below, Dr. Pace only analyzed non-firm energy market concentration before and after the merger. See Application, Vol. 1, Attachment 1 (Affidavit of Dr. Pace), p. 14-16.
- (17) See, e.g., Duke Power Company and PanEnergy Corp., 79 FERC 61,236 at 62,037 (1997) (Duke/PanEnergy).

two geographic markets: the HL&P service area and ERCOT. (18) He calculates a zero or negligible change in the Herfindahl-Hirschman Index (HHI) (19) from the merger in any of these markets. His general conclusion is that adding NorAm Energy's marketing activity (through NorAm) would have no effect on HL&P's market position because: (1) NorAm controls no generation or transmission facilities, physically or contractually; (2) NorAm's first sales in the ERCOT territory were in 1996 and are estimated to comprise less than one percent of the non-firm energy market in ERCOT; and (3) the electric power marketing business is easy to enter.

Our concern is whether the consolidation of HL&P's generating facilities with NorAm's power marketing activities will enhance the ability of the merged company to exercise market power in the relevant product market. NorAm's analysis supports the conclusion that the proposed corporate realignment will not contribute to an increase in generation market power. We agree, and note that no party has offered evidence contradicting this conclusion. Our conclusion is based on the following evidence and analysis.

While we do not necessarily agree with NorAm concerning the definition of the relevant product market or the concentration analysis performed by Dr. Pace, we accept NorAm's representation that it does not own or control generation resources by virtue of its purchase power contracts or its interconnection agreements with entities from which it buys power. NorAm states that if it tried to withhold generation that it had under purchase contracts from other sellers in order to exercise market power, the seller would be free to sell the generation. Thus, NorAm states that its contracts do not give it the ability to withhold generation from the market. No one disputes this assertion. Therefore, we find that the consolidation of HL&P's generation resources with NorAm's power marketing activities will not enhance generation market power.

#### Transmission Market Power

We find that the proposed merger will not result in increased transmission market power. NorAm does not own or control any transmission facilities, and the proposed transaction therefore will have no effect on control of transmission.

We also note that transmission service provided by HL&P within ERCOT is provided under a tariff regulated by the Texas Commission. This service is subject to the open access

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- (18) Dr. Pace states that he "adopted this truncated approach rather than going through all the steps of a detailed delivered price analysis since NorAm neither owns nor controls any generation or electric transmission facilities." Application, Vol. 1, Attachment 1, p. 14.
- (19) The HHI is a measure of market concentration.

requirements of the Texas Commission, which requires utilities within ERCOT to offer third parties open access transmission services at rates, and on terms and conditions, comparable to those available to the transmission-owning utilities. In addition to service within ERCOT, HL&P also provides transmission service to, from and over the HVDC interties with the Southwest Power Pool (SPP) under its TFO tariff.

#### Gas-Electric Competition in End Use Markets

Competition between gas and electricity occurs primarily in retail markets. The proposed transaction can change the incentive and ability to discourage the substitution by end users of one fuel (gas or electricity) for the other. Here, there is almost complete overlap between HL&P's retail electricity franchise service territory and Entex's retail gas franchise service territory. After the merger, the merged firm will be the single supplier of both gas and electricity in the Houston area. As such, the merged company will be able to discourage and possibly prevent the substitution of whichever fuel is most profitable to the firm's interests to sell or deliver.

However, we emphasize that it is unlikely that such effects of the transaction at issue here could spill over into wholesale power markets and affect competition in those markets. Additionally, no state commission has indicated that it is not capable of addressing retail-related competition issues or asked us to consider such issues. In these circumstances, we see no need to further consider this issue in this proceeding.

#### b. Vertical Market Power Issues

Vertical mergers pose different concerns than horizontal mergers. While a vertical combination may result in efficiencies from integrating input and output operations, it may also increase a merged firm's incentives to use its market position in one segment of its vertically integrated business to adversely affect competition in a related segment of its business. The consolidation of facilities in an "upstream," or input, market with facilities in a "downstream," or output, market raise potential concerns regarding the vertical effects on market power.

As we have explained in recent orders, (20) the Commission has developed a framework for evaluating the competitive effects of vertical mergers. This framework, which is consistent with our Merger Policy Statement, is informed by the DOJ/FTC approach to evaluating the competitive effects

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(20) See Enova, 79 FERC at \_\_\_\_\_, slip op. at 17-24; Destec Energy, Inc. and NGC Corporation, 79 FERC 61,373 at \_\_\_\_\_, slip op. at 12-17 (1997) (Destec).

of vertical mergers. (21) However, the Commission's approach to evaluating the competitive effects of vertical mergers is evolving. Additional experience will undoubtedly bring new insights to bear in refining our analysis.

Vertical mergers raise three types of general competitive concerns: (1) denying rival firms access to inputs or raising their input costs; (2) increased anticompetitive coordination; and (3) regulatory evasion. These potential actions can affect competition through higher prices or reduced output in the downstream output market. (23)

As a starting point for evaluating the vertical effects of the proposed transaction, we have used the basic principles laid out in the 1992 Horizontal Merger Guidelines and adopted in the Commission's Merger Policy Statement, applied to both the upstream market and downstream wholesale power market to determine whether those markets are conducive to the exercise of market power after the merger. The Commission views this approach as the correct framework in which to evaluate the competitive effects of vertical mergers. This framework generally includes the following steps: (1) define relevant product and geographic markets; (2) examine the competitive circumstances in the upstream market; (3) examine the competitive circumstances in the downstream market; and (4) determine, based on the circumstances in the upstream and downstream markets, whether the likely net effect of the merger would be to significantly raise wholesale electricity prices.

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- (21) The 1984 Guidelines, which are incorporated by reference in the 1992 Horizontal Merger Guidelines discussed at length in the Merger Policy Statement, describe four concerns raised by vertical mergers and the corresponding basis upon which DOJ would challenge a merger. Those four concerns are: elimination of potential entrants, barriers to entry, facilitating collusion, and evasion of rate regulation. The first two of these concerns can be restated as foreclosure/raising rivals costs. The third and fourth concerns can be restated as increased anticompetitive coordination and regulatory evasion, respectively.
- (22) A related concern is denying or giving rival firms limited access to downstream customers.
- (23) For a vertical merger to have a potentially adverse effect on competition in the wholesale electricity market, resulting in lower output or higher prices, it is necessary for the downstream market in which the merging firm controls facilities to be served by the upstream market in which the merging firm controls inputs or facilities necessary for delivering those inputs. The upstream market and downstream wholesale power market generally need to be conducive to the exercise of market power after the merger. A vertical merger is unlikely to have an adverse effect on competition unless the merged company has the incentive and ability to affect prices or quantities in the upstream and downstream markets. See, e.g., Destec, 79 FERC at \_\_\_\_\_, slip op. at 16.

Relevant Markets

Product Market

NorAm does not identify the relevant product markets in its vertical analysis, and it does not provide any analysis which could be used to determine the relevant product markets. For purposes of our vertical analysis, the relevant product in the upstream market is delivered gas. It is the input product that the merged company could conceivably exercise some control over and thereby affect competition in the downstream market.

With respect to the downstream market, for purposes of our analysis, the relevant product is wholesale electric energy and capacity, because it is these downstream products that could be affected by the potential exercise of market power in the upstream delivered gas market. (24)

Geographic Market

NorAm does not identify the geographic market in the discussion of vertical market power and has not performed a delivered price test which could be used to define the geographic market. In its analysis of horizontal market power, NorAm identifies two relevant geographic markets -- HL&P's control area and ERCOT. We use NorAm's identification of these two geographic markets as a starting point for determining the appropriate geographic markets for both the upstream and downstream markets. NorAm identified the HL&P control area as the smallest plausible geographic market within which HL&P competes to make wholesale sales. In addition, it is roughly the same geographic area as the area in which HL&P and Entex's retail franchise service territories overlap. For these reasons, we will accept the HL&P control area as a relevant geographic market. NorAm also identified ERCOT as a relevant market because: all of HL&P's facilities are located within ERCOT; currently, HL&P makes all of its wholesale sales within ERCOT; and there is open access transmission service provided by HL&P within ERCOT subject to the jurisdiction of the Texas Commission. On this basis, we also accept ERCOT as a relevant geographic market.

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(24) We note that in this case it does not matter whether the relevant downstream product is specified as electric energy or capacity. As discussed below, our analysis shows that the merged company is unable to exercise market power in the upstream delivered gas market, and the merger therefore will not enhance the merged company's market power for any conceivable product in the downstream market. As a general matter, the relevant product in the downstream market includes any product for which control of inputs in the upstream market could affect competition.

Upstream Market: Competitive Conditions

NorAm argues that NorAm Energy is a minor supplier of delivered gas to gas-fired generators in the relevant geographic markets. In addition, it argues that in all of Texas, but particularly in the Houston area, the delivered gas market is highly competitive, and entry into this market is easy. A number of non-affiliated gas pipelines criss-cross the Gulf Coast of Texas, including HL&P's service territory, and these pipelines have excess capacity. Therefore, NorAm Energy companies could not profitably deny access to or raise the cost of delivered gas to new gas-fired generators that compete with the merged company in the relevant market, because those new generators would have significant alternatives to NorAm Energy companies for delivered gas.

We agree with NorAm's analysis for the following reasons. FERC Form 423 data show that NorAm Energy companies are not suppliers for any gas-fired generators owned by ERCOT electric utilities. (25) Within the HL&P area, NorAm Energy claims that only one small cogenerator (6.4 MW) in this market capable of selling power into the grid takes delivered gas service from a NorAm Energy company (Entex). (26) We therefore conclude that any attempt by the NorAm Energy companies to restrict delivered gas to wholesale market generators that could compete with HL&P would be unsuccessful. Because HL&P does not own or control any gas facilities, the proposed transaction will not change this situation. We thus have no need to examine entry conditions.

Downstream Markets: Competitive Conditions

Because NorAm Energy cannot exercise market power in the relevant upstream market, we conclude that the merger does not affect the merged company's opportunity to exercise market power in the relevant downstream market.

3. The Effect on Rates

The Merger Policy Statement explains that the protection of wholesale ratepayers and transmission customers is the Commission's primary concern regarding the effects of a section 203 transaction on rates. (27) The Merger Policy Statement also describes various commitments which may, in particular cases, be an acceptable means of protecting ratepayers, such as hold harmless

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(25) Form 423 collects monthly data on the cost and quality of fossil fuels delivered to electric generating plants.

(26) The output of this facility is generally consumed by the owner (Rice University).

(27) See Merger Policy Statement at 30, 123.

provisions, open seasons for wholesale customers, rate freezes, and/or rate reductions. (28)

NorAm argues that its market-based rates fluctuate based on market forces rather than NorAm's underlying costs, and cannot be affected by the proposed merger. Therefore, it argues that there will be no change in its rates as a result of the proposed merger. It further argues that no other jurisdictional rates will be affected by the proposed merger, because: (1) the merger will not cause, directly or indirectly, the merger or consolidation of any NorAm Energy facilities with those of any other entity for ratemaking purposes; (29) (2) HL&P commits not to increase rates for wholesale transmission service under its TFO tariff for four years following the close of the merger, thus protecting TFO customers from any merger-related costs; and (3) regulatory authorities in the various states in which NorAm Energy and HL&P operate have broad authority to review and set rates for the NorAm Energy and HL&P utility operations within their jurisdiction and can ensure that the rates are not adversely affected by the merger.

There will be jurisdictional rates in two sectors of the merged company that are of concern to us with regard to the proposed transaction. They are NorAm's rates for electric marketing and the TFO transmission rates of HL&P.

NorAm charges market-based rates for its electricity marketing. The application argues correctly that NorAm will only be able to recover market prices in its rates. (30)

As to HL&P's commitment not to increase its TFO tariff transmission rates for four years after the completion of the merger, the Commission has found similar provisions acceptable to protect transmission customers from the costs of a merger. (31) No party has alleged that such a commitment is an inadequate protection measure. Therefore, on these facts we find HL&P's commitment acceptable.

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(28) Id. at 30, 123-24.

(29) As noted supra, we make no determination herein concerning whether the proposed merger between NorAm Energy and Houston Industries involves an indirect merger or consolidation under section 203 of the FPA.

(30) See, e.g., Enron, 78 FERC at 61,738 n.45.

(31) See, e.g., Duke/PanEnergy, 79 FERC at 62,039-40.

## 4. The Effect on Regulation

By order issued on July 24, 1997, the SEC determined that, after the Houston Industries-NorAm Energy merger, the newly formed holding company would be an exempt holding company under PUHCA. (32) Consequently, we find that federal regulatory authority would not be impaired by the proposed corporate realignment.

The Merger Policy Statement also expresses concern with the impact of mergers on state regulatory authority. (33) NorAm states that post-merger, NorAm Energy and New Houston Industries will continue to be subject to the jurisdiction of the state commissions and municipalities which currently exercise jurisdiction over their respective operations, and no regulatory agency's legal or practical power over the regulated entities will be affected by the transaction. The Texas Commission, however, said that it "is investigating whether it has jurisdiction to protect Texas' ratepayers by determining whether it has authority over the corporate restructuring or merger under state law." As noted above, although the Texas Commission is investigating that issue, no state or local regulatory authority, including the Texas Commission, has asked for our assistance in this regard. Consequently, we find no need to further investigate this issue.

## 5. Other Matters

As noted above, NorAm's notice of change of status filing, in Docket No. ER94-1247-010, contained a proposed code of conduct governing its relationship with its prospective affiliate HL&P so that NorAm could continue to make sales at market-based rates. NorAm has included a provision which provides for the simultaneous disclosure of all non-public market information. However, NorAm has limited the provision to apply only to HL&P employees engaged in marketing or transmission service and only to information which HL&P shares with NorAm. Consistent with UtiliCorp United, Inc., 75 FERC 61,168 (1996), NorAm, shall revise its code of conduct to provide that any communication between any employee of NorAm and HL&P concerning non-public market information must be simultaneously communicated to all non-affiliates. Therefore, we will accept NorAm's proposed code of conduct, as modified above.

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- (32) Houston Industries Incorporated, et al., SEC Release Nos. 35-26744, 70- 8907, 1997 SEC LEXIS 1536 (July 24, 1997) (order granting exemption to holding company pursuant to section 3 (a) (2) of PUHCA)
- (33) See Merger Policy Statement at 30,125 (if the state lacks authority to act on a merger and raises concerns about the effect on regulation, the Commission may set the issue for hearing; the Commission will address this issue on a case-by-case basis).

The Commission orders:

(A) We hereby accept HL&P's commitment not to increase its TFO tariff transmission rates for four years after the completion of the merger.

(B) The proposed disposition of NorAm's jurisdictional facilities is hereby approved.

(C) NorAm's code of conduct is hereby accepted for filing, as modified by this order, effective as of the date of this order, (34) and NorAm is hereby directed to modify the code of conduct as discussed herein within 30 days.

(D) The Commission retains authority under section 203(b) of the FPA to issue supplemental orders as appropriate.

(E) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(F) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(G) NorAm is hereby directed to promptly notify the Commission when the disposition of jurisdictional facilities is effectuated.

By the Commission.

( S E A L )

/s/ Lois D. Cashell

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Lois D. Cashell,  
Secretary.

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- (34) Rate Schedule Designation:  
NorAm Energy Services, Inc.
  - (1) Rate Schedule FERC No. 1
  - (2) Supplement No. 1 to Rate Schedule FERC No. 1 (Code of Conduct)