

Empresa Nacional de Electricidad S.A. ("Endesa"), notwithstanding that it owns less than 25% of its voting securities.

FILING DATE: The application was filed on April 28, 1994 and amended on July 8, 1994 and October 6, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 23, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Santo Domingo 789, Santiago, Chile.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942-0570, or Barry Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Chilean holding company primarily engaged through its majority-owned subsidiaries and related companies in the utility business. Applicant is not registered under the Investment Company Act by virtue of its reliance on rule 3a-1.¹

2. Endesa is a Chilean electric generation company. Applicant owns directly and indirectly approximately 17% of Endesa and is Endesa's largest shareholder. Four of the five remaining

largest shareholders of Endesa are entities comparable to United States pension funds. Under Chilean law, the amount one of these entities can invest in a company similar to Endesa is the lesser of 7% of its assets or 7% of Endesa's equity. The fifth large shareholder of Endesa is a company owning approximately 3.4% of Endesa's shareholder equity. Applicant, therefore, owns more than twice as many shares as the next largest shareholder.

3. Three of Endesa's nine member board are Enersis officers or directors. Enersis's equity ownership gives it the power to elect two of Endesa's directors; a third Enersis official on Endesa's board publicly campaigned for the position. These persons also hold the positions of Enersis's Chairman of the Board, its Chief Executive Officer, and its Director of Planning and Development. Applicant's Chief Executive Officer is the Chairman of the board of Endesa. The Chairman is entitled to cast a second vote in the event of a tie of Endesa's board of directors, thereby giving Enersis an additional vote.

4. Enersis, previously a government-owned utility, was privatized in 1987 and restructured to become a holding company. Since its privatization, all of Enersis's stock acquisitions have been of utility businesses. Enersis's strategy has been to concentrate its activities on its core utility business and to take stock positions in other entities only under circumstances where it is the dominant shareholder or where it and Endesa together are the dominant shareholders of the entity whose stock is being acquired.

5. Jose Yuraszcek, Enersis's Chief Executive Officer, became Endesa's Chairman in April 1992. He is commonly referred to as the "Electricity Czar" in Chile and is identified by the public as personifying Endesa.² Mr. Yuraszcek is also Chairman of Endesa's subsidiary formed to build, own, and manage Endesa's major power plant development.

6. Endesa's Director of Planning and Development was assigned to Endesa at Enersis's direction and the planning and development staffs of Enersis and Endesa have collaborated on various projects.

Applicant's Legal Analysis

1. Section 2(a)(9) defines "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official

position with such company." Section 2(a)(9) also creates a presumption that owners of more than 25% of a company's voting securities control such company, and the owners of 25% or less of a company's voting securities do not control such company. A securityholder may obtain an SEC order rebutting either presumption by producing evidence to the contrary.

2. Applicant seeks an order of the SEC declaring that it controls Endesa, notwithstanding the presumption under the Act that ownership of less than 25% of a company's voting securities is insufficient to establish control.³

3. Applicant argues that the facts set forth in the application are sufficient to support a finding that applicant controls Endesa. Applicant holds the largest share of Endesa's voting securities and has significant representation on Endesa's board of directors.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.
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[Release No. IC-20926; File No. 812-9230]

The Equitable Life Assurance Society of the United States, et al.

February 27, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account No. 45 of Equitable (the "Account"), any other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by equitable ("Other Account"), and Equitable Capital Securities Corporation ("ECCS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of: (i) a mortality and expense risk charge from the assets of the Account in

³ Any order concerning the application will be limited to determining whether Enersis controls Endesa under section 2(a)(9). Enersis is not seeking any determination as to whether it "primarily" controls Endesa for purposes of rule 3a-1 or whether applicant falls within the definition of investment company under the Act.

¹ Rule 3a-1 provides that an issuer meeting the statutory definition of an investment company is not an investment company if: (a) no more than 45% of the value of its total assets (exclusive of government securities and cash items) consists of securities other than government securities, securities issued by employee securities companies, securities of certain majority-owned subsidiaries, and securities issued by companies under the primary control of the issuer that are not investment companies; and (b) no more than 45% of its income after taxes (over the last four fiscal quarters combined) is received from such securities.

² "Electricity Czar," *Que Pasa*, May 1992.