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**ICC Energy
Corporation**

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PUBLIC UTILITY COMMISSION
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February 10, 2003

Texas Public Utility Commission
Attention: Filing Clerk, Project # 14406
1701 N. Congress Ave.
PO Box 13326
Austin, Texas 78711-3326

RE: Application/Registration for Power Marketers

Enclosed please find the required documentation for registration with the State of Texas as a Power Marketer.

Please call me at (214) 744-2204 ext. 117 if you should have any questions or require additional information.

Sincerely,

Cassandra Andrews
Marketing Representative

Enclosure

A Domestic Source of Energy. Produced in the U.S.A.

WEST END HISTORIC DISTRICT
302 N. Market, Suite 500 Dallas, Texas 75202
214-744-2204 • Fax 214-744-2206
e-mail: ICCEnergy@aol.com

254

Application/Registration for Power Marketers

Name: ICC Energy Corporation
Address: 302 N. Market Street, Suite 500
Dallas, Texas 75202
Telephone #: 214-744-2204 ext. 118
Facsimile: 214-744-2206
Contact: Karl R. Butler, President/CEO and Secretary. There are no other directors in this organization. Mr. Butler also holds 100% ownership.
E-mail: kbutler@iccenergy.org
Business Type: Corporation
Location: ICC Energy Corporation's office is centrally located in downtown Dallas, Texas (leasing approx. 2,700 sq. of retail of office space) and has no affiliates or subsidiaries.

Description of Type of Service Provided: ICC Energy Corporation is an energy marketing firm primarily selling natural gas, jet fuel, diesel and gasoline. ICC is also commissioned by FFRC as a Power Marketer (by letter dated June 27, 1996, docket ER96-1819).

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FILED
OFFICE OF SECRETARY
96 MAY 15 PM 4:48
FEDERAL ENERGY
REGULATORY
COMMISSION

ICC Energy Corporation) Docket No. ER96-_____

APPLICATION FOR ACCEPTANCE OF INITIAL RATE SCHEDULE,
WAIVERS, AND BLANKET AUTHORITY

Pursuant to Rules 205 and 207 of the Commission's Rules of Practice And Procedure, 18 C.F.R. §§ 385.205 and 385.207, and section 35.12 of the Commission's regulations, 18 C.F.R. § 35.12, ICC Energy Corporation ("ICC") hereby submits for filing ICC Rate Schedule FERC No. 1, under which ICC will engage in wholesale electric power and energy transactions as a marketer. ICC requests that the Commission accept the rate schedule for filing effective the earlier of 60 days from the date of this filing or the date the Commission issues an order accepting the rate schedule.

ICC requests that the Commission grant blanket authority for ICC to make wholesale sales of electricity at negotiated, market-based rates. ICC further requests that the Commission waive certain regulations and grant certain additional blanket authority necessary for ICC to operate as a power marketer. Specifically, ICC requests that the Commission:

- (i) waive the accounting and related reporting requirements under Parts 41, 101 and 141 of the Commission's regulations;
- (ii) permit abbreviated filing under Part 45 of the Commission's interlocking directorate regulations;

- (iii) waive all parts of subparts B and C of Part 35, except those parts which the Commission has denied waiver to other power marketer applicants;^{1/}
- (iv) waive the avoided cost cap to market-based rates;
- (v) waive notice, if necessary, to allow the rate to go into effect on the earlier of 60 days after the date of initial filing or the date of a Commission order accepting the rate schedule;
- (vi) grant blanket authorization under section 204 of the Federal Power Act for ICC to issue securities and assume obligations and liabilities; and
- (vii) grant any other appropriate waivers and authorizations granted to other power marketers.

In support of its application, ICC respectfully shows as follows:

I.

COMMUNICATIONS

All communications and service related to this application should be directed to the following:

Michael Newsome
Director, Gas Marketing
ICC Energy Corporation
311 N. Market, Suite 300
Dallas, Texas 75202

telephone: (214) 744-2204

Kenneth R. Carretta, Esq.
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2604

telephone: (202) 662-0200

^{1/} The Commission has declined to waive sections 35.12(a), 35.13(b), 35.15 and 35.16.

II.

DESCRIPTION OF APPLICANT

ICC is a Texas corporation whose principal place of business is located in Dallas, Texas. ICC has no affiliates and is not a subsidiary or otherwise under the control of any other business entity. ICC is currently engaged in marketing Canadian and domestic supplies of natural gas throughout the United States and also provides related gas management services. ICC does not, however, own, operate or control any facilities for the production, distribution or transportation of natural gas. Further, ICC does not own, operate, or control any electric power transmission or distribution facilities, nor does ICC does hold a franchise or service territory for the transmission, distribution, or sale of electric power. ICC does not own, operate, or control any electric generation assets.

In addition to its current business as a natural gas marketer, ICC proposes to act as a power marketer, purchasing electricity and reselling it to wholesale customers. As a power marketer, ICC will be a "public utility," subject to the Commission's jurisdiction under Section 201 of the Federal Power Act. See Citizens Power & Light Co., 48 FERC ¶ 61,210 (1989). ICC may also engage in other, nonjurisdictional, activities to facilitate efficient trade in the bulk power market, such as facilitating the purchase and sale of wholesale energy without taking title to the electricity, and arranging services in related areas such as transmission and fuel supplies. All transactions between ICC and its purchasers and sellers will be at rates negotiated between the parties to the transaction.

III.

REQUEST FOR BLANKET AUTHORIZATION TO PURCHASE AND RESELL ELECTRICITY AT NEGOTIATED, MARKET-BASED RATES

ICC requests authorization to sell electricity at market-based rates pursuant to the attached ICC Rate Schedule FERC No. 1. The Commission has recognized that pricing flexibility is critical for power marketers to operate effectively in the market, and that pricing flexibility will further the Commission's goals of promoting efficiency and coordination in the bulk power market. Accordingly, the Commission has granted open-ended market rate authority to marketers in several recent cases when the Commission determined that the marketer and its affiliates do not have, or have adequately mitigated, market power in generation and transmission; cannot engage in anticompetitive practices through preferential affiliate transactions or reciprocal dealing; and cannot otherwise erect barriers to market entry by competing suppliers. See e.g., Heartland Energy Services, Inc., 68 FERC ¶ 61,223, at p. 62,060 (1994). Under the analysis used by the Commission in these cases, ICC lacks the ability to engage in anticompetitive actions.

A. Generation Dominance

The Commission considers the market share of installed and uncommitted generating capacity owned or controlled by the marketer/applicant and its affiliates to determine dominance in the generation market. ICC does not own, operate, or control any generation assets and is not affiliated with any entity that does so. Thus, ICC exerts no influence over the market.

B. Transmission Market Power

ICC does not own or control electricity, transmission or distribution facilities and is not affiliated with any entity that does so. Accordingly, ICC cannot bar entry to the market by virtue of transmission market power.

C. Other Barriers To Entry

ICC does not own or control resources that could be used to restrict market entry by competing power suppliers and is not affiliated with any entity that does so. ICC does not own or control any sites for the construction of new generating capacity, fuel supply transportation facilities, or other essential resources or inputs that could be used to restrict market entry and is not affiliated with any entity that does so. Further, ICC's activities as a marketer of natural gas are not indicative of market power. See Enron Power Marketing, Inc., 65 FERC ¶ 61,305, at p. 62,405 (1993).

D. Affiliate Abuse/Reciprocal Dealing

The Commission has indicated that its concern over affiliate abuse and reciprocal dealing arises in the context of a seller affiliated with an electric utility having a franchise territory. Kansas City Power & Light Co., 67 FERC ¶ 61,183 at p. 61,552 and p. 61,557 n. 1, n. 16 (1994). See also Morgan Stanley Capital Group Inc., 69 FERC ¶ 61,175 at p. 61,693 (1994) ("Morgan Stanley I"). ICC does not have a franchised service area, captive wholesale or retail customers, or rates established on a cost of service basis and is not affiliated with any entity that does so. Accordingly, ICC does not have the power to gain a competitive advantage by pass-through to ratepayers of excessive costs paid to affiliates for power or by ratepayer cross-subsidy of preferential pricing of services. Moreover, to obviate any possibility of affiliate abuse, ICC agrees

not to sell electricity to any future affiliates under the authority sought here without first filing a specific proposal. See Morgan Stanley I, 69 FERC at 61,693-94.

With respect to the possibility of reciprocal dealing, the Commission eliminated a previously imposed business and financial arrangements reporting requirement with respect to transactions involving the marketer or any of its affiliates with the marketer's suppliers and customers. Morgan Stanley Capital Group Inc., 72 FERC ¶ 61,082 at pp. 61,435-36 (1995) ("Morgan Stanley II"). ICC submits that the rationale for not imposing this reporting requirement applies to it as well and, to the extent that an issue involving reciprocal dealing might arise, that it would be appropriately addressed through a complaint mechanism.

IV.

REQUEST FOR WAIVERS AND ADDITIONAL BLANKET AUTHORITY

ICC requests the same waivers and blanket authority that have been granted to other power marketers. See e.g., Morgan Stanley I, 69 FERC ¶ 61,175; Enron, 65 FERC ¶ 61,305, 66 FERC ¶ 61,244; Citizens Energy Corp., 35 FERC ¶ 61,198, (1986).

A. Effective Date

ICC requests waiver of the prior notice requirement of the Commission's regulations consistent with the waivers granted in a number of Commission orders, such as Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106 (1992), Enron, and Morgan Stanley. A waiver of the notice requirement will allow the rate schedule to become effective on the earlier of 60 days from the date of initial filing of the rate schedule or the date of a Commission order accepting the rate schedule for filing.

B. Accounting and Reporting Requirements

ICC requests that the Commission waive the accounting and related reporting requirements under Parts 41, 101, and 141 of the Commission's regulations, consistent with the Commission's decisions in Enron, Morgan Stanley and other cases.

C. Interlocking Directorate Regulations

ICC requests that the Commission waive the requirements of Part 45 and require instead only the abbreviated affidavit filing required in Enron with respect to any person now holding or who may hold an otherwise proscribed interlocking directorship involving ICC.

D. Rate Schedule Filing Requirements

ICC requests that the Commission waive all parts of subparts B and C of Part 35, except those parts for which the Commission has denied waiver to other power marketer applicants. ICC will comply with the transmittal requirements of sections 35.12(a) and 35.13(b), and the requirements of sections 35.15 and 35.16 for notification of succession and cancellation of service, respectively.

E. Blanket Authority to Issue Securities and Assume Obligations

ICC requests blanket authorization under section 204 of the Federal Power Act for ICC to issue securities and assume obligations and liabilities for any lawful object within the corporate purposes of ICC, compatible with the public interest, and reasonably necessary or appropriate for such purposes. The Commission has granted such authority after notice in several power marketer orders, including Morgan Stanley and Enron.

F. Other Waivers and Authorities

ICC requests that the Commission grant any other appropriate waivers and authorizations granted to other power marketers that ICC has not herein specifically requested.

V.

QUARTERLY FILINGS

The Commission has required other marketers to submit quarterly reports of the purchase and sale transactions that result in the actual delivery of electricity. See e.g., Morgan Stanley and Enron. ICC agrees to submit such reports on a quarterly schedule consistent with the schedule established by the Commission in other power marketing orders or as may be prescribed by the Commission in this case.

VI.

STATUS CHANGE REPORTING REQUIREMENT

The Commission has routinely required public utilities with market rate authorization to report any change in business operations that is a departure from the facts the Commission relied upon in its market analysis. See e.g., Morgan Stanley, 69 FERC at p. 61,695; Cenergy, Inc., 69 FERC ¶ 61,316 at p. 62,209 (1994). Specifically, the Commission has required power marketers to report:

- (1) ownership of generation or transmission facilities or other power production inputs;
- (2) affiliation with any entity that owns generation or transmission facilities or power production inputs;
- (3) affiliation with any entity that has a franchised service area; and

- (4) business arrangements (including the sale of accounts receivable) involving the marketer or any of its affiliates and the marketer's customers or suppliers.

Recently, the Commission has permitted power marketers to exercise the option available to traditional utilities to submit new market analyses every three years rather than to report continually changes in investments or other entry barriers. See Morgan Stanley, 69 FERC at p. 61,695. ICC understands that the triennial reporting option does not apply to its obligation to comply on an ongoing basis with section 203 of the Federal Power Act, requiring Commission authorization of the transfer or other disposition of jurisdictional facilities. ICC further understands that the sale of accounts receivable is not considered to be such a disposition of jurisdictional facilities. See Enron, 65 FERC at p. 62,405.

ICC agrees to comply with the obligation to report changes, and requests the option of submitting a triennial marketing analysis in lieu of continual reporting of those changes the Commission has determined may be reflected in the triennial report.

WHEREFORE, ICC Energy Corporation requests that the Commission accept ICC Rate Schedule FERC No. 1 and grant the waivers and authorizations requested in this Application.

Respectfully submitted,

ICC ENERGY CORPORATION



Kenneth R. Carretta, Esquire
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2604
(202) 662-4609

May 15, 1996

An Attorney for ICC Energy Corporation

ICC Energy Corporation

RATE SCHEDULE FERC NO. 1

1. Availability: ICC Energy Corporation ("ICC") makes electric energy and capacity available under this Rate Schedule for wholesale sales to any purchaser with whom ICC has contracted.
2. Applicability: This Rate Schedule is applicable to all sales of electric energy or capacity by ICC not otherwise subject to a particular rate schedule of ICC.
3. Rates: All sales shall be made at rates established by agreement between the purchaser and ICC.
4. Other Terms and Conditions: All other terms and conditions shall be established by agreement between the purchaser and ICC.
5. Certain Affiliate Transactions Prohibited: No sale may be made pursuant to this Rate Schedule to any entity which either controls, is controlled by, or is under common control with ICC.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ICC Energy Corporation

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Docket No. ER96-_____

NOTICE OF FILING

(_____, 1996)

Take notice that on May __, 1996, ICC Energy Corporation ("ICC") applied to the Commission for acceptance of ICC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

ICC is currently engaged in marketing natural gas. In addition to continuing this business, ICC intends to engage in wholesale electric power and energy purchases and sales as a power marketer. ICC is not in the business of generating, transmitting, or distributing electric power. ICC has no affiliates and is not a subsidiary or otherwise under the control of any other business entity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 and 18 C.F.R. 385.214). All such motions or protests should be filed on or before _____. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell
Secretary

AFFIDAVIT

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on their oath that they are entitled to make Affidavit, and that the statements contained below and in the foregoing are true and correct.

I swear or affirm that I have personal knowledge of the facts stated in the attached application, that I am competent to testify to them, and that I have the authority to submit this application form on behalf of the applying party. I further swear or affirm that all statements made in the application form are true, correct and complete and that any substantial changes in such information will be provided to the Public Utility Commission of Texas in a timely manner. I swear or affirm that the applying party understands and will comply with all requirements of the applicable law and rules.

Karl R. Butler

Signature of Authorized Representative

KARL R. BUTLER

Printed Name

ICC ENERGY CORPORATION

Name of Applicant

Sworn and subscribed before me this 10TH day of FEB., 2003

Trina F. Nance
Notary Public in and for the State of Texas

