

**DIRECT TESTIMONY**

**of**

**Thomas L. Griffin**

**Financial Analysis Division**

**Illinois Commerce Commission**

**Illinois Commerce Commission v. Resource Technology Corporation**

**Citation to show cause for continued QSWEF Certification of Pontiac Facility and  
to investigate compliance with final order in Dockets 97-0031 through 97-0045  
Consolidated**

**Resource Technology Corporation – Pontiac Facility**

**Docket No. 02-0461**

**April 27, 2006**

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9

10 **Q. Please state your name and business address.**

11 A. My name is Thomas L. Griffin. My business address is 160 North LaSalle St. Chicago,  
12 Illinois 60601. I am adopting Mr. Borden's direct testimony filed on October 28, 2004 (as  
13 ICC Staff Exhibit 2.0 and the attached exhibits 2.01, 2.02, 2.03 (Confidential and Public),  
14 2.04, 2.05 and 2.06 (Confidential and Public).

15

16 **Witness Qualifications and Education Background**

17 **Q. Please briefly state your qualifications and education background.**

18 A. For sixteen years prior to my employment with the Commission, I served private  
19 industry in various capacities, ranging from Staff Accounting positions to Manager of  
20 Accounting and encompassing all areas of accounting and internal auditing. Since  
21 joining the Commission's Accounting Department in 1978 I have participated in or  
22 supervised the accounting activity in cases involving gas, electric, telephone and water  
23 utilities as well as cases involving companies in the transportation industry. On behalf  
24 of the Commission and the US Government I have prepared training material and  
25 taught Utility Accounting and other Utility Regulation issues in the Republic of  
26 Kazakhstan. I have also made presentations on Utility Regulation Issues to delegates  
27 from the nations of Egypt, Brazil and Romania.

28 I have a degree in Business Administration with a concentration in Accounting  
29 from Governors State University and a degree in Advanced Accounting from  
30 International Accountants.

31

32 **Q. Have you previously offered expert testimony?**

33 A. Yes, I have testified in numerous cases before the Illinois Commerce  
34 Commission. I have also testified as an expert accounting witness before the Circuit  
35 Courts in Rock Island, Illinois and Chicago, Illinois.

36

### 37 **Purpose of Testimony and Recommendations**

38 **Q. What is the purpose of your direct testimony?**

39 A. The purpose of my testimony is to address allegations levied against Resource  
40 Technology Corporation ("RTC") and its operation of a qualified solid waste  
41 energy facility ("QSWEF") at the Livingston Landfill located in or near Pontiac,  
42 Illinois ("RTC Pontiac"), and to recommend appropriate action to the  
43 Commission.

44 **Q. What are the allegations that are the basis for the Citation proceeding**  
45 **against RTC Pontiac?**

46 A. In it's Citation Order, the Commission states:

47 The Staff Report details the significant additions to generating capacity at  
48 the Pontiac facility and also the significant increase  
49 in electricity sales to Commonwealth Edison Company ("Edison"). As  
50 noted in the Staff Report, the additional generating capacity and the  
51 possible significant use of natural gas, rather than landfill-generated  
52 methane gas, to generate power could constitute a  
53 variance from the requirements of Section 8-403.1.

54

55 In addition, the Final Order requires RTC to file bi-annual reports  
56 regarding its energy producing facilities and annual reports regarding  
57 reimbursements providing information specified in the prefatory portion of  
58 the Final Order. See Finding 7 of the  
59 Final Order. The Staff Report indicates that RTC has not filed any of the  
60 required reports. (Order pp. 1-2, July 10, 2002)

61  
62 The purpose of the Citation proceeding can be summarized as seeking  
63 resolutions to the following questions:

- 64 1) Does RTC Pontiac violate a Commission imposed limit on  
65 generating capacity from Docket Nos. 97-0031 – 97-0045,  
66 consolidated?
- 67 2) Does RTC Pontiac violate the law’s requirement that its primary fuel  
68 source be landfill methane?
- 69 3) Does RTC Pontiac violate the Commission’s requirement, in Docket  
70 Nos. 97-0031 – 97-0045, consolidated, that it file bi-annual reports  
71 regarding its energy production facilities and annual reports  
72 regarding the status of its reimbursement fund?

73 **Q. What are your conclusions with respect to the questions that form the**  
74 **basis for the Citation proceeding?**

75 A. 1) RTC Pontiac does not violate a Commission imposed limit on generating  
76 capacity from Docket Nos. 97-0031 – 97-0045, consolidated, because the Illinois  
77 Appellate Court ruled that the Commission did not impose the alleged 10 MW  
78 capacity restriction on RTC Pontiac. (See Docket No. 02-0455, Commonwealth  
79 Edison Company (“ComEd”) Petition for Declaratory Ruling.)

80

81 2) RTC Pontiac’s usage of natural gas constitutes a violation of the  
82 requirement that landfill methane be the QSWEF’s primary fuel source. This  
83 conclusion is based on the assumption that Federal law is a reasonable basis for

84 defining primary fuel under Section 8-403.1, which I recommend later in my  
85 testimony, and upon the testimony of Staff's expert witness, Mike Carolan.

86

87 3) RTC Pontiac has submitted the required bi-annual and annual reports ,  
88 and the dates on the documents indicate that RTC Pontiac is in compliance with  
89 the Commission's Orders.

90 **Q. What are your Recommendations to the Commission?**

91 A. My recommendations are as follows:

92 1) I recommend that the Commission find that the amount of electric  
93 generating capacity at RTC Pontiac does not violate the Commission's Order in  
94 Docket Nos. 97-0031 – 97-0045, consolidated;

95

96 2) I recommend that the Commission find that as a result of RTC Pontiac's  
97 usage of natural gas, that RTC Pontiac does not use landfill methane as its  
98 primary fuel source. I recommend that the Commission revoke the QSWEF  
99 approval status of RTC Pontiac as a penalty for this violation.

100

101 3) In the event that RTC Pontiac's QSWEF status is not revoked by the  
102 Commission, then I recommend that the Commission initiate a proceeding to  
103 determine the appropriate compliance measures that are necessary to ensure  
104 that landfill methane remains RTC Pontiac's primary fuel source on an ongoing  
105 basis and to ensure that RTC Pontiac does not receive the retail rate payment for  
106 kWhs generated by the use of natural gas.

107

108 4) Regardless of whether the Commission revoke's RTC Pontiac's QSWEF  
109 status, I recommend that the Commission Order RTC Pontiac to immediately  
110 repay to the Commission, \$3,830,318.47, which is the amount that I estimate that  
111 RTC Pontiac received for power sold in 2002, that is in excess of the utility's  
112 avoided cost, by the use of natural gas and in violation of the law;

113

114 5) Regardless of whether the Commission revoke's RTC Pontiac's QSWEF  
115 status, I recommend that the Commission Order RTC Pontiac to immediately  
116 repay to the Commission \$1,457,005.79, which is the amount that I estimate that  
117 RTC Pontiac received for power sold in 2003, that is in excess of the utility's  
118 avoided cost, by the use of natural gas and in violation of the law;

119

120 6) I recommend that the Commission find that RTC Pontiac is in compliance  
121 with the bi-annual and annual reporting requirements set forth in Docket Nos. 97-  
122 0031 – 97-0045, consolidated. RTC provided copies of the documents that were  
123 apparently sent to Staff in the past, in compliance with the Commission's Orders.

124 **Recommendation 1: Generating Capacity**

125

126 **Q. Please explain why you recommend that the Commission find that the**  
127 **amount of electric generating capacity at RTC Pontiac does not violate the**  
128 **Commission's Order in Docket Nos. 97-0031 – 97-0045, consolidated.**

129 A. Based on advise of counsel, a recent Appellate court decision on the amount of

130 capacity that RTC Pontiac can sell at the retail rate precludes the Commission  
131 from pursuing this issue in the citation proceeding.

132  
133 In July 2002, ComEd petitioned the Commission for a declaratory ruling as to  
134 whether ComEd was obligated to purchase power from RTC Pontiac, at the rate  
135 set forth in Section 8-403.1(c) of the Act, (“the Retail Rate”), for power greater  
136 than 10 MWs. (ComEd Petition, Docket No. 02-0455) On September 4, 2002,  
137 the Commission issued an Order in Docket 02-0455, ruling that ComEd was not  
138 obligated to purchase power from RTC Pontiac at the retail rate for power greater  
139 than 10 MWs. In January 2004, the Appellate Court First District, State of Illinois,  
140 issued a mandate to the Commission that reverses the Commission’s Order in  
141 Docket No. 02-0455. (343 Ill. App.3d 37(2003)) It is my understanding, from a  
142 review of this mandate, that based upon the Commission’s Order in Docket Nos.  
143 97-0031 – 97-0045, consolidated, the Commission cannot limit the amount of  
144 capacity installed by RTC Pontiac, as a QSWEF, to 10 MW.

145 **Recommendation 2: Primary Fuel and QSWEF Status**

146  
147 **Q. Please explain why you recommend that the Commission find that**  
148 **as a result of RTC Pontiac’s usage of natural gas, that RTC Pontiac does**  
149 **not use landfill methane as its primary fuel source under Illinois law?**

150 A. Although I am not an attorney, Section 8-403.1(b) of the Act requires that a  
151 QSWEF, as approved by the Commission, must use landfill methane as its  
152 primary fuel. Although the term “primary fuel” is undefined, I recommend that the

153 Commission give reasonable meaning to the term “primary fuel” by evaluating  
154 RTC Pontiac’s usage of fuel through the Federal law governing Qualifying  
155 Facilities (“QFs”). The Federal law is reasonable for the Commission to utilize  
156 because a QSWEF, per Section 8-403.1(b) of the Act, must possess  
157 characteristics that would enable it to qualify as a cogeneration or small power  
158 production facility under Federal law. It is my understanding that there has been  
159 extensive litigation regarding the meaning of the Federal law, and Staff  
160 recommends that the Commission utilize the Federal law in a manner that is  
161 consistent with 16 U.S.C. Section 796(17)(A) and (B), 18 CFR Section  
162 292.204(b) and the United States Appellate Court’s ruling in, Southern California  
163 Edison Company, Petitioner v. Federal Energy Regulatory Commission,  
164 Respondent; Laidlaw Gas Recovery Systems, Inc., Intervenor, No. 98—1439  
165 Unites States Court of Appeals for the District of Columbia Circuit. (338 U.S. App.  
166 D.C. 402; 195 F.3d 17; 1999 U.S. App. LEXIS 28140; 30 ELR 20175) The  
167 specifics of this argument will be provided in Staff’s Brief. The Federal law that  
168 should be utilized by the Commission states:

169

170 (2) Use of oil, natural gas and coal by a facility, under section  
171 3(17)(B) of the Federal Power Act, is limited to the minimum amounts of  
172 fuel required for ignition, startup, testing, flame stabilization, and control  
173 uses, and the minimum amounts of fuel required to alleviate or prevent  
174 unanticipated equipment outages, and emergencies, directly affecting the  
175 public health, safety, or welfare, which would result from electric power  
176 outages. Such fuel use may not, in the aggregate, exceed 25 percent of  
177 the total energy input of the facility during the 12-month period beginning  
178 with the date the facility first produces electric energy and  
179 any calendar year subsequent to the year in which the facility first  
180 produces electric energy. (18 CFR 292.204(b))

181  
182 In order to provide the Commission with an expert opinion of RTC Pontiac's  
183 specific usage of fuel under Federal law, Staff has employed the services of  
184 Mike Carolan, an engineer with extensive professional experience in the QSWEF  
185 industry in Illinois as an owner and President of QSWEFs. Mr. Carolan's  
186 testimony addresses the specifics of RTC Pontiac's usage of natural gas and it is  
187 Mr. Carolan's testimony that RTC Pontiac's use of natural gas does not comply  
188 with the permitted uses set forth in the Federal law.

189 **Q. Should the Commission seek a determination from FERC that RTC Pontiac**  
190 **is in violation of Federal law?**

191 A. No. The Commission has jurisdiction over QSWEFs—not FERC. If the  
192 Commission were to revoke the QSWEF status of RTC Pontiac, such a ruling  
193 would not change RTC Pontiac's self-certification status as a QF and RTC  
194 Pontiac would still be entitled to receive the Federally provided avoided cost rate  
195 for their power sales to utilities.

196 **Q. Please explain why you recommend that the Commission revoke the**  
197 **QSWEF approval status of RTC Pontiac as a penalty for the violation of**  
198 **Illinois law?**

199 A. RTC Pontiac's QSWEF status should be revoked in order to protect tax payers  
200 from paying above market rates for power, and to serve as a deterrent to this  
201 behavior for other QSWEFs.

202

203 Section 8-403.1(c) of the Act requires an electric utility to enter into long-term  
204 contracts with a QSWEF to purchase the QSWEF's output at the retail rate.  
205 Pursuant to Section 8-403.1(d) of the Act, the purchasing utility is allowed to take  
206 a tax credit against the amount that it owes under the Electricity Excise Tax law  
207 for the difference between the retail rate and the then current rate at which the  
208 utility must purchase the output of QFs, pursuant to the federal Public Utility  
209 Regulatory Policies Act of 1978 ("PURPA"). The PURPA purchase rate for a QF  
210 is commonly referred to as a public utility's "avoided cost" for power. The  
211 Commission's rules, 83 Illinois Administrative Code Part 430 define avoided cost  
212 as:

213 "Avoided costs" means the incremental costs to the electric utility of  
214 electric energy or capacity or both which, but for the purchase from  
215 the qualifying facility or qualifying facilities, the utility would  
216 generate itself or purchase from another source (18 CFR 292).  
217  
218

219 ComEd, the purchasing utility in the instant proceeding, determines its avoided  
220 cost according to the terms that it pays for power under a Power Purchase  
221 Agreement ("PPA") that ComEd negotiated with a wholesale supplier. The PPA  
222 is a full requirements contract, meaning that the entire load served by ComEd  
223 must be met per the terms of the PPA, including any incremental swings in  
224 electric energy or capacity.

225  
226 When ComEd pays more than the price of their PPA for electricity (or their  
227 avoided cost) from a QSWEF, they are essentially paying an above market price

228 for power. ComEd is not harmed by this above market purchase because under  
229 the QSWEF law the State provides a direct offset to the above market purchases  
230 via the tax credits for the amount paid that exceeds ComEd's avoided cost.

231  
232 The legislature, through the enactment of Section 8-403.1 of the Act, has  
233 determined that such above market purchases are warranted for QSWEFs that  
234 use landfill methane as their primary fuel source. For example, Section 8-  
235 403.1(a) of the Act states:

236 It is hereby declared to be the policy of this State to encourage the  
237 development of alternative energy production facilities in order to conserve  
238 our energy resources and to provide for their most efficient use.  
239

240 Since RTC Pontiac does not meet this primary fuel standard the State is wasting  
241 resources by subsidizing power purchases that ComEd would otherwise procure  
242 more cost effectively through its PPA, and the State is providing subsidies to  
243 methods of power production that are ineligible under the legislation.

244 **Q. Is a QSWEF considered to be an alternative energy production facility?**

245 A. Yes, if it is fueled by landfill methane. Utility load in Illinois has been commonly  
246 served by a diverse generation portfolio fueled by nuclear, coal, natural gas, and  
247 oil. Since the passage of the Electric Service Customer Choice and Rate Relief  
248 Law of 1997, Illinois has experienced a dramatic increase in investment in large  
249 natural gas fueled generators. Given that there appears to be a market for  
250 natural gas supplied power in Illinois without a State subsidy, and that Section 8-  
251 403.1 of the Act expressly limits the retail rate payment to QSWEFs that are

252 fueled by landfill methane, it would be disingenuous to claim that the legislature  
253 intended, through the QSWEF law, to pay an above market subsidy for  
254 alternative energy production facilities that are fueled by natural gas. Because  
255 the capital cost of natural gas generation is typically lower than for other fuels,  
256 but its fuel cost is higher, natural gas generation is typically reserved for peaking  
257 use, for a few hours per year when wholesale electric prices are high. However,  
258 RTC Pontiac, receiving the retail rate for the natural gas fired generation, found it  
259 profitable to run its natural gas unit continuously and at times when the fuel cost  
260 exceeded the wholesale power price. I think it is safe to say that the legislature  
261 did not intend for QSWEFs to be fueled by nuclear fuel or coal for that matter  
262 either, and that the alternative energy production facility referred to in the law is  
263 one that is fueled by landfill methane.

264 **Recommendation 3: Compliance Measures for Natural Gas Usage**

265  
266 **Q. Please explain why you recommend that in the event that RTC Pontiac's**  
267 **QSWEF status is not revoked by the Commission, that the Commission**  
268 **initiate a proceeding to determine the appropriate compliance measures**  
269 **that are necessary to ensure that landfill methane remains RTC Pontiac's**  
270 **primary fuel source on an ongoing basis and to ensure that RTC Pontiac**  
271 **does not receive the retail rate payment for kWhs generated by the use of**  
272 **natural gas.**

273 **A.** The rationale for commencing a proceeding to establish the compliance  
274 measures is to ensure, as best as one can, that the State does not pay the

275 subsidized rate (or above market rates) for power generated by natural gas. In  
276 addition, since the scope of the Citation Order does not include establishing  
277 ongoing compliance measures, I will not recommend such measures at this time  
278 in this proceeding. But if RTC Pontiac wishes to propose compliance measures  
279 in their direct testimony, then I will address the issue in my rebuttal testimony. If  
280 no compliance measures are proposed by RTC Pontiac and the Commission  
281 does not revoke their QSWEF status, then the Commission should address the  
282 issue through a separate proceeding that commences at the conclusion of the  
283 instant proceeding.

284 **Recommendation 4: Estimate of 2002 RTC Pontiac Repayment**

285  
286 **Q. Please explain how you estimated the 2002 dollar amount that must be**  
287 **repaid by RTC Pontiac for using natural gas in 2002, in violation of the law,**  
288 **to generate power that was sold to ComEd at the retail rate?**

289 A. Based upon the testimony of Staff witness Carolan, and from my review of the  
290 Solar Reports, it is apparent to me that the Titan Unit was the only generating  
291 unit that utilized natural gas in 2002 and was not utilize landfill gas. As such, all  
292 money received for power delivered from the Titan Unit to ComEd, and sold at  
293 the retail rate, in excess of ComEd's avoided cost rate, should be repaid to the  
294 State. I used data provided by RTC Pontiac for the Titan Unit for 2002, and  
295 overall 2002 sales to ComEd by RTC Pontiac to calculate the amount that should  
296 be repaid by RTC Pontiac for 2002.

297

298 ICC Staff Exhibit 2.01 sets forth my estimate for the 2002 dollar amount  
299 repayment that RTC should make as a result of using natural gas to generate  
300 electricity. I started with the retail rate payment from ComEd and subtracted  
301 ComEd's avoided cost rate to arrive at the subsidy rate that is paid to RTC  
302 Pontiac, ICC Staff exhibit 2.01, columns (E) and (F). I then calculated a weighted  
303 average subsidy rate based upon the overall split between peak and off-peak  
304 sales by RTC Pontiac. I applied the weighted average subsidy rate to the  
305 amount of power delivered to ComEd from the Titan Unit to arrive at the \$  
306 amount that is set forth in column (H) on ICC Staff Exhibit 2.01, this amount in  
307 total is \$3,830,318.47.

308  
309 ICC Staff exhibit 2.02 sets forth 2002 peak/off-peak sales from RTC Pontiac to  
310 ComEd and forms the basis for the weighted average subsidy rate on ICC Staff  
311 Exhibit 2.01, column (G).

312  
313 ICC Staff Exhibit 2.03 sets forth 2002 natural gas usage by RTC Pontiac and the  
314 resulting power delivered to ComEd. I applied the weighted average subsidy rate  
315 set forth on ICC Staff Exhibit 2.01, column (G), to the power delivered to ComEd  
316 set forth on ICC Staff Exhibit 2.03, column (E), to arrive at the total \$ amount to  
317 be repaid by RTC Pontiac that is set forth on ICC Staff Exhibit 2.01, column (H).

318  
319 Since RTC Pontiac used natural gas illegally they should be required to repay the  
320 State for the cost of their power sales that were fueled by natural gas and that

321 exceed the utility's avoided cost. The amount set forth on ICC Staff Exhibit 2.01  
322 should be repaid to the Commission by RTC Pontiac within 30 days of the  
323 issuance of a Final Order in this proceeding. Had RTC Pontiac petitioned the  
324 Commission for a determination on the fuel usage issue, prior to using natural  
325 gas in their generator sets, then the issues could have been resolved and the  
326 instant proceeding could have been unnecessary.

327 **Q. Are you aware of any other QSWEF in Illinois that utilizes natural gas as its**  
328 **fuel source?**

329 A. Yes, but only one and that facility is owned and operated by RTC at the  
330 Congress-Hillside landfill. Once Staff learned that RTC Pontiac and later RTC  
331 Congress-Hillside were using natural gas to fuel their generators, Staff began  
332 requiring, in Commission Orders approving QSWEF petitions, prohibitions on the  
333 use of fuel other than landfill methane by a QSWEF without first receiving  
334 Commission approval.

335 **Recommendation 5: Estimate of 2003 RTC Pontiac Repayment**  
336

337 **Q. Please explain how you estimated the 2003 dollar amount that must be**  
338 **repaid by RTC Pontiac for using natural gas in 2003, in violation of the law,**  
339 **to generate power that was sold to ComEd at the retail rate?**

340 A. Based upon Mr. Carolan's testimony, my review of the Solar Reports, and my  
341 review of natural gas bills provided to RTC Pontiac, it is apparent that only the  
342 Taurus Units generated power in 2003 at RTC Pontiac and that only the Taurus  
343 units consumed natural gas. I estimated the amount of power deliver to ComEd

344 that was generated by the use of natural gas and applied the subsidy rate to  
345 arrive at the total dollar amount that must be repaid for 2003. Since the Taurus  
346 Units are connected to the landfill gas system I used the monthly heat rate of the  
347 combined plants to estimate the amount of power generated by the use of natural  
348 gas. ICC Staff Exhibit 2.04, column (H), sets forth the total amount to be repaid  
349 by RTC Pontiac for 2003, which is \$1,457,005.79. Again, I subtracted the utility  
350 avoided cost from the retail rate to determine the subsidy rate and then  
351 calculated a weighted average subsidy rate based upon 2003 peak/off-peak  
352 sales to ComEd. ICC Staff Exhibit 2.05 sets forth my calculation of the split  
353 between peak/off-peak hours that is used to determine the weighted average  
354 subsidy rate on ICC Staff Exhibit 2.04, column (G). I applied the rate set forth on  
355 ICC Staff Exhibit 2.04, column (G), to my estimated amount of power sold by  
356 using natural gas that is set forth on ICC Staff Exhibit 2.06, column (J). ICC Staff  
357 Exhibit 2.06, column (J), sets forth my estimate of the amount of kWhs sold in  
358 2003 by using natural gas. I used the actual combined monthly heat rates that  
359 can be calculated from the data provided in the Solar Reports to convert natural  
360 gas used into gross power produced. I reduced the gross power produced by the  
361 parasitic load set forth in the Solar Reports to determine net power delivered to  
362 ComEd by use of natural gas.

363 **Recommendation 6: Compliance with Reporting Requirements**

364 **Q. Please explain why you recommend that the Commission find that RTC**  
365 **Pontiac is in compliance with the bi-annual and annual reporting**  
366 **requirements set forth in Docket Nos. 97-0031 – 97-0045, consolidated?**

367 A. Because subsequent to the initiation of this docket, Staff received the reports that  
368 are required to be filed by RTC Pontiac, per the Commission's Order. The  
369 documentation indicates to me that the reports were apparently sent to Staff in  
370 the past, in compliance with the Commission Orders. I have no basis to doubt  
371 the veracity of the dates on the reports and recommend that the Commission find  
372 that RTC Pontiac is in compliance with its filing requirements.

373 **Q. Does this conclude your direct testimony?**

374 A. Yes.