

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

RME Illinois, L.L.C.	:	07-0331
	:	
	:	
Petition for Issuance of Certificate of Public	:	
Convenience and Necessity to Provide	:	
Onsite Wastewater, Collection and	:	
Dispersal Services to a Parcel in Lake	:	
Villa, Lake County, Illinois Pursuant to	:	
Section 8-406 of the Illinois Public Utilities	:	
Act.	:	
	:	
	:	
RME Illinois, L.L.C.	:	07-0332
	:	
	:	
Petition for Issuance of Certificate of Public	:	
Convenience and Necessity to Provide	:	
Onsite Wastewater, Collection and	:	(Consolidated)
Dispersal Services to a Parcel in Long	:	
Grove, Lake County, Illinois Pursuant to	:	
Section 8-406 of the Illinois Public Utilities	:	
Act.	:	

**BRIEF ON EXCEPTIONS  
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

The Staff Witnesses of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission (“Commission”), respectfully submits its Brief On Exceptions (“BOE”) including Exceptions to the Proposed Order issued by the Administrative Law Judge (“ALJ”) on April 28, 2008, in this proceeding.

## **I. PROCEDURAL HISTORY**

On May 23, 2007, RME Illinois, L.L.C. (“RME” or the “Company”) filed two separate Petitions seeking issuance by the Commission of Certificates of Public Convenience and Necessity (“CPCN” or “Certificates”) pursuant to §8-406 of the Public Utilities Act (“PUA”), (220 ILCS 5/8-406), authorizing RME to own, operate and maintain facilities as an Illinois public utility and provide wastewater services to two parcels in Lake Villa and Long Grove, Lake County, Illinois, and for such further relief as may be just and reasonable. The proceedings were consolidated on December 10, 2007.

On April 28, 2008, the ALJ issued a Proposed Order (“PO”). Staff recommends several changes of a technical or clarifying nature. Staff did not make the change in its Exceptions, but suggests that Mr. Olson’s name be spelled with an “o” rather than an “e”. Staff recommends changes to the PO adopting Staff’s position clarifying that the Company should establish a line of credit no later than the date on which it provides utility service to its first customer. Finally, Staff recommends a change to the discussion of financial capability in the Commission Analysis and Conclusion section of the PO.

The Staff’s proposed changes to the PO are provided within Staff’s Exceptions to the Administrative Law Judge’s Proposed Order attached to this BOE.

## **II. ARGUMENT**

### **A. Line of Credit**

Although Staff is fully in accord with the PO conclusion regarding RME’s failure to demonstrate that it could finance the construction “without significant adverse financial

consequences for the utility *or its customers*". Staff respectfully requests that the Commission include Staff's proposed language on page 7 of the PO.

Staff's proposed language would clarify that the Company should establish a line of credit no later than the date on which it provides utility service to its first customer. Staff requests the Commission include Staff's proposed language in both the paragraph describing the compliance filing that would occur once the Company establishes a line of credit as well as the paragraph summarizing Staff's alternative proposal for status reports prior to the Company establishing a line of credit. Similarly, Staff requests that the paragraph that summarizes Staff's alternative proposal for status reports prior to establishing the escrow account specify those status reports must indicate the Company has not commenced construction on the wastewater systems.

Staff respectfully requests the Commission include in its Final Order Staff's proposed language, which is set forth in legislative style in the attached Exceptions.

#### **B. Commission's Analysis and Conclusions**

In Staff's view, the high rates are a direct result of the plant investment necessary and operating expenses for such a small number of customers. Without any investment at all, the rates would still be around \$50 just based on operating expenses alone. The high rates are not directly related to RME's inability to finance the project.

### **III. CONCLUSION**

WHEREFORE, for all the reasons set forth above, the Staff urges that its recommendations and proposals be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,



May 12, 2008

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**STAFF'S EXCEPTIONS**

**I. CAPTION**

Staff recommends the following technical corrections to the caption the PO.

Proposed Modification, (PO, p. 1):

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**RME Illinois, LLC**

<b>Petition for Issuance of Certificate of Public</b>	<b>:</b>	
<b>Convenience and Necessity to Provide Onsite</b>	<b>:</b>	<b>07-0331</b>
<b>Wastewater, Collection and Dispersal Services</b>	<b>:</b>	

**to a Parcel in ~~Long Grove~~ Lake Villa, Lake County, Illinois** :  
**Pursuant to Section 8-406 of the Illinois Public** :  
**Utilities Act.** : **(Consol.)**  
 :  
**RME Illinois, LLC** :  
 :  
**Petition for Issuance of Certificate of Public** :  
**Convenience and Necessity to Provide Onsite** : **07-0332**  
**Wastewater, Collection and Dispersal Services** :  
**to a Parcel in ~~Lake Villa~~ Long Grove, Lake County, Illinois** :  
**Pursuant to Section 8-406 of the Illinois Public** :  
**Utilities Act.** :

## II. PROCEDURAL HISTORY

Staff recommends the following technical corrections to Section I of the PO.

Proposed Modification, (PO, pp. 1-2):

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### I. PROCEDURAL HISTORY

On May 23, 2007, RME Illinois, LLC (“Petitioner” or “RME”) filed petitions for Certificates of Public Convenience and Necessity pursuant to Section 8-406 of the Public Utilities Act (220 ILCS 5/8-406) (“the Act”) in Dockets 07-0331 and 07-0332 to provide onsite wastewater, collection and dispersal services to the Falcon Crest subdivision in Lake Villa, Lake County, Illinois and to the Eastgate Estates subdivision in Long Grove, Lake County, Illinois, respectively. A map disclosing the location of each subdivision is shown on ~~Attachment~~ Revised Exhibit A to the petition in each Docket and a legal description of each subdivision is contained on ~~Attachment~~ Exhibit B to the petition in each Docket. Staff’s motion to consolidate these dockets was granted on December 10, 2007.

Each docket was initially set for a pre-hearing conference on June 26, 2007. This matter was continued for status sessions on July 26, August 9, August 28, September 18, October 10, October 30 and December 18, 2007, and January 31, 2008. Thereafter, pursuant to notice as required by law and the rules and regulations of the Commission, this matter was set for hearing ~~before~~ hearing by a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois, on February 21, 2008. Petitioner appeared pro se and submitted the direct testimony of Arthur R. Olsen (Exh. 1.0), a managing member of RME, Mr. Olsen’s supplemental direct testimony (Exh. 1.0.1), Mr. Olsen’s

rebuttal testimony (Exhs. RB-1 and RB-3) to Staff direct and Staff rebuttal testimony and Mr. Olsen's supplemental rebuttal testimony to Staff supplemental rebuttal testimony (Exh. RB-4). Petitioner also furnished the rebuttal testimony of Kurt Vietinghoff (Exh. RB-2), a Certified Public Accountant ("CPA"), to Staff direct testimony.

Staff filed the direct testimony of William Marr, Financial Analysis Division (Exh. 1.0 and attachment 1.01) and affidavit (Exh. 1.1), Rochelle Phipps, Financial Analysis Division (Exh. 2.0), Theresa Ebrey, Financial Analysis Division (Exh. 3.0 and attachments schedules 3.01-3.14), Mike Luth, Financial Analysis Division (Exh. 4.0), Luth rebuttal (Exh. 5.0), schedule (Exh. 5.1) and affidavit (Exh. 5.2), Phipps rebuttal (Exh. 6.0), Ebrey rebuttal (Exh. 7.0 and attachments A and B) and affidavit (Exh. 7.1), and Phipps supplemental rebuttal (Exh. 8.0) and affidavit (Exh. 8.1). Petitioner's and Staff's exhibits were admitted into evidence. At the conclusion of the hearing on February 21, the record was marked "Heard and Taken."

### **III. POSITIONS OF THE PARTIES, Subsection A: Petitioner Position**

Staff recommends the following corrections to paragraph one of Section III, Subsection

A: Petitioner Position, of the PO.

1. Proposed Modification, (PO, p. 3):

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### **III. POSITIONS OF THE PARTIES**

#### **A. Petitioner Position**

Petitioner asserted that certain matters in this docket are not in dispute. Construction of the proposed wastewater systems is necessary to provide adequate, reliable and efficient service to the proposed areas. Mr. Olsen testified that there are no existing public utilities or municipality sewer systems for which connection is feasible. Petitioner's proposed construction is the least-cost means of satisfying the wastewater needs of the customers in each development. Petitioner is capable of efficiently managing and supervising the construction necessary to provide wastewater service to the proposed areas and Petitioner has the technical and managerial ability to construct, own, operate and maintain wastewater systems to provide services to these areas.

2. Staff recommends the following clarification to paragraph two of Section III, Subsection A: Petitioner Position, of the PO.

Proposed Modification, (PO, p. 3):

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Petitioner also stated that Staff recommended that Petitioner's proposed certificated service areas, shown as Revised Exhibit A and legally described in Exhibit B, be approved and that the areas are necessary and properly defined. Petitioner has a need for certificates to provide wastewater service to Falcon Crest and Eastgate Estates. Petitioner asserted that Staff recommended that the Commission approve Petitioner's proposed Rules, Regulations and Conditions of Service tariffs for sewer service and order the Petitioner to file the tariffs within ten days of the final order, with an effective date of not less than five business days after the date of filing, for service rendered on and after the effective date, with individual tariff sheets to be corrected within that time period, if necessary.

3. Staff recommends the following corrections to paragraphs four and five of Section III, Subsection A: Petitioner Position, of the PO.

Proposed Modification, (PO, p. 4):

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Petitioner agreed with Staff's recommended level of investment of \$465,388 for Falcon Crest and \$172,508 for Eastgate Estates. Petitioner also agreed with Staff that, for monthly service, Falcon Crest customers should pay \$166.56 and Eastgate Estate customers should pay \$263.19. Petitioner added that a summary of Annual Operating Expenses attached to Mr. Olsen's testimony was marked 1.0.1-C and 1.0.1-D and a revenue requirement schedule is included as ~~Amended~~ Revised Attachment 5 to the original petition.

Petitioner agreed with Staff's recommendation that the Commission approve Staff's proposed Revenue Requirements as shown on Schedules 3.01 – 3.13 (FC) and Schedules 3.01 – 3.13 (EE); approve the proposed accounting journal entries to record the projected original cost of each wastewater system as shown on Schedules 3.14 (FC) and 3.14 (EE); direct Petitioner to file with the Chief Clerk of the Commission, with a copy to the Manager of the Accounting Department, copies of actual accounting journal entries used to record the wastewater systems within six months of

closing the transactions; and if the transactions have not occurred within six months of the date of this Order, Petitioner should file a report regarding the status of the transaction within six months of the date of this Order and every six months thereafter until the actual journal entries have been filed with the Commission; require Petitioner to file financial information to the Chief Clerk's office, with a copy to the Manager of Accounting, by March 31 and September 30 of each year until rates are set in a rate proceeding; and recommend that Petitioner retain the services of a ~~Certified Public Accountant~~ ("CPA") familiar with public utility regulation to set up Petitioner's books and advise Petitioner on matters of reporting to the Commission.

4. Staff recommends the following corrections and clarification to paragraph seven of Section III, Subsection A: Petitioner Position, of the PO.

Proposed Modification, (PO, pp. 4-5):

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Petitioner also accepted Staff's recommendation that it should file a compliance report with the Office of the Chief Clerk and with the Manager of the Finance Department no later than ten business days after establishing the line of credit. The line of credit should be established no later than the date on which Petitioner renders service to its first customer. The report should include: 1) a copy of the agreement; 2) the dollar amount of the line of credit; 3) a description of each condition attached to the line of credit; and 4) the date on which Petitioner begins ~~anticipates~~ providing utility service to its first customer. The Commission should require Petitioner to file reports on March 31, June 30, September 30 and December 31 of each year Petitioner has not established the line of credit, with verification that Petitioner has not established the line of credit and has not begun ~~construction~~ providing utility service to its first customer.

#### **IV. POSITIONS OF THE PARTIES, Subsection B: Staff Position**

1. Staff recommends the following corrections to paragraph one of Section III, Subsection B: Staff Position, of the PO.

Proposed Modification, (PO, p. 5):

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##### **B. Staff Position**

Staff stated that Petitioner's proposed construction of the wastewater systems is necessary to provide adequate, reliable and efficient sewer service to 44 single family residences in the Falcon Crest subdivision and nine single-family residences in the Eastgate Estates development. The wastewater systems will have sufficient capacity to meet the estimated customer demand without construction of additional sewer facilities. Staff also stated that Petitioner's proposed construction constitutes the least-cost means of satisfying the wastewater needs of customers within the proposed areas.

2. Staff recommends the following corrections to paragraphs three and four of Section III, Subsection B: Staff Position, of the PO:

Proposed Modification, (PO, p. 5)

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Staff evaluated Petitioner's financial ability to construct, operate and maintain onsite wastewater, collection and dispersal services to each area without significant adverse financial consequences for the utility or its customers pursuant to Section 8-406(b)(3) of the Act and recommended a 9.7 % rate of return on rate base for Petitioner. Staff's cost of capital recommendation for Petitioner is comprised of 1) a capital structure for a hypothetical water utility that is financed equally with debt and equity, which approximates the average capital structure for the water utility industry as a whole; 2) a 12% rate of return on common equity, based on a cost of equity analysis for a publicly traded water utility, plus a liquid premium; and 3) a 7.4% cost of debt, equal to the actual cost of indebtedness for another small sewer company.

Staff recommended that Petitioner invest \$465,388 in Falcon Crest's wastewater system and \$172,508 in Eastgate Estates' wastewater system. Staff also recommended that Petitioner demonstrate that it is capable of funding the total recommended level of investment, \$637,896, without significant adverse financial consequences for the utility or its customers pursuant to Section 8-406(b)(3) of the Act. Staff noted that Petitioner intends to fund the recommended level of investment by establishing an escrow account that would hold capital contributions that are free from encumbrances, represent equity in the company and are earmarked for public utility purposes only. Staff also said that Petitioner has pledged not to borrow any funds for investment in the proposed construction.

3. Staff recommends the following corrections to paragraphs six and seven of Section III, Subsection B: Staff Position, of the PO:

Proposed Modification, (PO, p. 6):

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Staff stated that it does not object to Petitioner's proposed method of funding construction, however Petitioner has not provided documentation to show that it has done as it proposes and has thus failed to address Staff's concerns regarding adherence to Section 8-406(b)(3) of the Act. Insofar as Petitioner is not an Illinois public utility and has no existing utility operations, retained earnings or revenue, Staff cannot find that Petitioner is capable of funding the recommended level of investment until Petitioner provides supporting data regarding the escrow account and line of credit. Such data is needed to protect customers from potential adverse financial consequences and ensure that the escrow account and line of credit satisfy the requirements of Section 8-406(b)(3) of the Act.

In the absence of a copy of the escrow account agreement that includes contributed capital totaling \$465,388 for Falcon Crest and \$172,508 for Eastgate Estates, Staff recommended that Petitioner provide through testimony the reason it cannot furnish a copy, the name of each person and entity who would contribute capital to the escrow account, the dollar amount to be contributed, a description of each condition attached to the funds held in escrow, the expected date Petitioner will establish the account and the expected date Petitioner will begin construction of the wastewater systems.

4. Staff recommends the following corrections to paragraph ten of Section III, Subsection B: Staff Position, of the PO:

Proposed Modification, (PO, p. 7):

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Staff stated in the alternative that, if the Commission were to find that Petitioner had demonstrated compliance with Section 8-406(b)(3) of the Act, it recommended that the Commission require Petitioner to provide the supporting documentation in compliance filings. Staff explained that requiring compliance reports would provide the Commission with data on the escrow account and the line of credit and enable the Commission to review the terms of each account. Staff added that the compliance report should be filed with the Chief Clerk and the Manager of the Finance

Department within ten business days of the establishment of the escrow account and the escrow account should be established no later than the date on which Petitioner begins construction of the wastewater systems. Furthermore, the compliance report should be filed under this Docket and contain a copy of the escrow agreement, the identity of each person or entity who contributed capital to the account, the dollar amount each person or entity contributed to the account, a description of each condition attached to the funds in the account and the date on which Petitioner begins construction. The compliance report should also contain verification from Mr. Olsen.

5. Staff recommends the following corrections to paragraphs eleven and twelve of Section III, Subsection B: Staff Position, of the PO.

Proposed Modification, (PO, p. 7):

A compliance report should also be filed under Docket 07-0331/0332 (Consol.) with the Chief Clerk's office and the Manager of the Finance Department within ten business days of the establishment of the line of credit, which line of credit should be established no later than the date on which the Company provides utility service to its first customer. The compliance report should~~and~~ include a copy of the agreement, the dollar amount of the line of credit, a description of each condition attached to borrowing under the line of credit and the date that Petitioner provides utility service to its first customer. The compliance report should also contain a verification from Mr. Olsen.

Staff recommended that if the certificates are granted, the Commission require Petitioner to file status reports for both the escrow account and the line of credit on March 31, June 30, September 30 and December 31 of each year. The status report for the escrow account should include,~~with verifications by~~from Mr. Olsen stating that Petitioner has not established the escrow account and the utility has not commenced construction on the wastewater systems. The status report for the line of credit should also include verification from Mr. Olsen stating that Petitioner has not established~~or~~ the line of credit and it is not providing utility service to any customers. Staff finally recommended that if the certificates are granted, the Commission should accept Staff's recommendation regarding the date that the escrow account is opened and reject Mr. Olsen's proposal to meet certain conditions prior to opening the account. ~~The Commission should also adopt the filing requirements set out in Staff Exh. 6.~~

6. Staff recommends the following corrections to paragraph fifteen of Section III, Subsection B: Staff Position, of the PO:

Proposed Modification, (PO, p. 8):

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Staff recommended that, until the Commission makes a revenue requirement determination in a rate proceeding, Petitioner furnish to the Chief Clerk of the Commission by March 30 and September 30 of each year a copy of the actual financial information pertaining to the wastewater systems. This data should include, but not be limited to, aggregated plant investment, annual revenues, direct expenses, allocated expenses, Contributions in Aid of Construction, and number of customers. The report should also include an explanation of any significant changes in the status of the systems, which would enable the Commission to determine if the rates need to be reassessed. Petitioner agreed with Staff's recommendation to retain the services of a ~~Certified Public Accountant~~ familiar with public utility regulation to set up its books and advise Petitioner on matters of reporting to the Commission.

7. Staff recommends the following corrections and clarifications to paragraph seventeen of Section III, Subsection B: Staff Position, of the PO:

Proposed Modification, (PO, p. 8):

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Staff further recommended that, if the Commission grants the certificates, the Commission approve Petitioner's proposed Rules, Regulations and Conditions of Service tariffs for sewer service. These tariffs have been previously approved by the Commission in other docketed proceedings. Staff also recommended that the Commission direct Petitioner to file its tariffs for sewer service within ten days of the date of the final Order, with an effective date of not less than five business days after the date of filing, for service rendered on and after the effective date, with individual tariff sheets to be corrected within that time period, if necessary. Petitioner agreed with Staff's recommendations.

## V. COMMISSION ANALYSIS AND CONCLUSIONS

Staff recommends the following corrections to paragraphs two through four of the Commission Analysis and Conclusions of the PO:

Proposed Modification, (PO, pp. 10-11):

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Petitioner has not demonstrated compliance with Section 8-406(b)(3) of the Act. Section 8-406(b)(3) of the Act requires financing “without significant adverse financial consequences for the utility *or its customers*”. (emphasis added). Staff’s recommended monthly rates (agreed to by Petitioner) for Falcon Crest, \$166.56, and Eastgate Estates, \$263.19, are so high that the Commission finds them to be nothing short of draconian. (Staff Exh. 4 at 3) Staff’s recommended rates are precisely the “significant adverse financial consequences” that Section 8-406(b)(3) of the Act prohibits in the financing of proposed construction. ~~Petitioner’s need for such exorbitantly high rates is a direct result of its inability to capably finance construction of the needed wastewater systems, as is~~ evidenced by the escrow account and line of credit requirements, as well as the multitude of filings that will subsequently be required. Any adverse financial consequences resulting from Petitioner’s insufficient funding would fall squarely upon the customers of Falcon Crest and Eastgate Estates. The proposed wastewater rates are clear evidence of this and they are unacceptable to the Commission.

The Commission considers the proposed rates standing alone to be excessive, but they become magnified when compared to wastewater rates charged by other Commission-regulated utilities at various developments in the same area. Staff’s own evidence shows that customers of Aqua Illinois, Inc. at Ivanhoe Country Club in Lake County pay only \$23.97 per month for sewer service. Customers at Eastgate Estates would pay over ten times that amount each month for the same service. Other customers served by Aqua Illinois, Inc. at Hawthorn Woods in Lake County pay \$50.70 per month, while customers at Harbor Ridge Utilities, Inc. served by Utilities, Inc. in Lake County pay \$43.02 per month and customers of Illinois-American Water Co. in the Chicago area pay \$45.52 per month. Staff’s proposed rates, and those cited for the other developments, cover only wastewater treatment and are exclusive of any other utility service. (Staff Exh. 4 at 5-6)

Staff’s characterization of the proposed rates as “pricey” and “steep” understates the case. Petitioner’s need for such exorbitantly high rates is a direct result of the plant investment necessary and operating expenses for such a small number of customers. These rates are completely out of line with other rates charged for the same service in the

same area. Moreover, Staff's admonition to disclose to potential home purchasers the proposed wastewater rates is, in our view, an inadequate remedy to say the least. (Staff Exh. 4 at 5-6) We regard these rates to well exceed the boundaries of affordability and such rates could very likely pose an insurmountable barrier to anyone contemplating the purchase of a home in either the Falcon Crest or Eastgate Estates subdivision. (Staff Exh. 5 at 4) Additionally, the fact that Petitioner is the only source of wastewater service for these developments provides no justification for such incongruous rates. As a result, the Commission finds that Petitioner is not in compliance with that portion of Section 8-406(b)(3) of the Act requiring Petitioner to finance construction of the wastewater systems without significant adverse financial consequences for the utility or its customers. On that basis we conclude that Petitioner's request for Certificates of Public Convenience and Necessity in Dockets 07-0331 and 07-0332 should be denied.

## VI. FINDINGS AND ORDERING PARAGRAPHS

Staff recommends the following correction to Finding 7 in the Findings and Ordering Paragraphs of the PO:

Proposed Modification, (PO, p. 12):

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- (7) the proposed rates set forth in Finding (4~~6~~) are so high that they violate the provisions of Section 8-406(b)(3) of the Act requiring Petitioner to finance construction of the wastewater systems without significant adverse financial consequences for the utility or its customers;