

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

RME Illinois, L.L.C.)	
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.)	Docket No. 08-0490
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RME Illinois, L.L.C.)	
Petition for Issuance of Certificate of Public Convenience and Necessity to Provide Onsite Wastewater, Collection and Dispersal Services To a Parcel in Long Grove, Lake County, Illinois Pursuant to Section 8-406 of the Illinois Public Utilities Act.)	Docket No. 08-0491
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**VERIFIED REBUTTAL TESTIMONY OF ARTHUR R. OLSON TO ILLINOIS
COMMERCE COMMISSION STAFF DIRECT TESTIMONY TO
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Q. Please state your name, business address, telephone, and e-mail address for the record.

A. My name is Arthur R. Olson. My business address is RME Illinois LLC, 965 Westshore Drive, Fox Lake, Illinois, 60020. My telephone number is 847-651-1150, and my e-mail address is arthurolson@gmail.com.

Q. Are you the same Arthur R. Olson who previously filed Direct Testimony in this matter?

A. Yes.

Q. What is the purpose of your prepared rebuttal testimony?

A. To respond to the prepared direct testimony of Staff witnesses of the Illinois Commerce Commission.

Q. What is your response to Staff witness Thomas Q. Smith concerning the following: 1) Is the proposed construction necessary to provide adequate, reliable and efficient service to customers within the proposed areas; 2) Does the system have adequate capacity to meet the customers estimated demand; 3) Is the proposed construction the least cost means of satisfying the service needs of the customers?

A. RME Illinois, LLC, concurs that the proposed construction is necessary, has adequate capacity and is the least-cost means of satisfying the service needs of the customers.

Q. What is your response to staff witness Thomas Q. Smith concerning his recommendation that RME Illinois, LLC (the “Company”) be required to invest \$172,508 in the wastewater system for Eastgate Estates and \$465,388 in the wastewater system for Falcon Crest?

A. The Company disagrees with the investment level recommended by Mr. Smith and the application of the methodology used to determine those investments

Q. Did Mr. Smith express the methodology that he was utilizing?

A. Yes. Mr. Smith stated he was “relying upon 83 Ill. Adm. Code 600.370 (Service to New Customers) of the Commission’s regulations as investment policy.”

Q. Did Mr. Smith in his testimony state that the methodology he was using was required under rules adopted by the Commission?

A. No.

Q. Do you know of any rules that require a sewer utility to invest funds in the construction of the sewer facilities?

A. There are basically no codified sewer rules. However, in recent past, the Commission has used water rules as a guideline for the regulation of sewer utilities. As a result, some sewer utilities have rules that require investment by the utilities in contributed plant.

Q. Would it be reasonable to use generic sewer rules, as developed from 83 Ill. Adm. Code 600.370, as a guideline for the regulation of sewer operations in this case?

A. Yes it would. Because the Commission has not explicitly promulgated rules for the expansion of sewer plant, it is necessary to look elsewhere. Water and sewer systems are very similar and it is reasonable to apply the same rules to the two systems.

Q. Has the commission previously applied the guidelines contained in 83 Ill. Adm. Code 600.370 to sewer facilities?

A. Yes it has. In its order in Docket 00-0194, Citizens Utility Company of Illinois, the Commission stated that it has ...”no difficulty interpreting Section 600.370(a) as also pertaining to supply plant....”

Q. Do you agree with the investment policy utilized by Mr. Smith when he stated that he is “relying upon 83 Ill. Adm. Code 600.370 (Service to New Customers) of the Commission’s regulations as investment policy.?”

A. I agree with the investment policy but disagree on Mr. Smith’s application of the policy. 83 Ill. Adm. Code 600.370 part a) and b) state as follows:

The utility shall extend service to customers under the following terms and conditions:

- a) *The utility will provide all supply plant (backbone plant) at its cost and expense without requiring contributions or tap-on-fees from customers, developers or promoters, except in those unusual cases where extensive plant additions are required before customers can be attached. In such instances the utility may require the customer, developer and/or promoter to advance funds, subject to refund as customers are attached, or require a revenue guarantee in lieu of customers being attached. Each contract for such an advance or revenue guarantee shall be filed with the Commission for approval.*
- b) *Unless other terms and conditions are formally approved by the Commission, the utility shall extend its waster mains from the end of existing mains on the following terms and conditions:*
 - 1) *Upon application being made for an extension of a water main, the utility shall determine the necessary size, location and characteristics of the main and of all valves, fittings and other appurtenances and shall make an estimate of the cost of the proposed extension, including pipes, valves, fittings, all other appurtenances and other materials and all other costs such as labor, permits, etc., including the utility’s expense of supervision, engineering, insurance, tools and equipment, accounting and other overhead expenses. Extensions made under this Section shall be on the basis of a main size of eight (8) inches in diameter unless the requirement of the customer or customers to be served call for a larger main, in which case the cost shall be based on the larger main. In special cases, exceptions to the size of the main can be made by the utility to comply with good engineering principals.*
 - 2) *If the estimated cost of the extension is not greater than one and one-half (1 ½) times the utility’s estimate of annual revenue to be received from the customers who will immediately attach to the extension, the utility will finance and make the extension without the requirement of any payment.*
 - 3) *If the estimated cost of the extension exceeds one and one-half (1 ½) times the utility’s estimate of annual revenue to be received*

from customers who will immediately attach to the extension, the applicant or applicant's authorized agent shall contract for such extension and shall deposit with the utility the estimated cost of the extension less one and one (1 1/2) times such estimated annual revenue.

- 4) Original prospective customers to be considered in (2) and (3) above shall be those who sign a contract for at least one year's water service and guarantee to the utility that they will take water service at their premises within thirty (30) days after the date water is turned into the main, and whose street service connections are directly connected to the mains installed under said extension. Estimates of annual revenues shall be made by the utility and shall be average revenue received from similarly situated customers. Where there are no similarly situated customers, the utility shall make an estimate of the annual bill.*
- 5) The utility shall make refunds during the first ten (10) years after the date upon which the deposit aforesaid was made and only to the depositor, his successors or assigns, as follows:*
 - A) Should the actual cost of the extension be less than the estimated cost, the utility shall refund the difference as soon as the actual cost has been ascertained. Should the actual cost of the extension exceed the estimated cost, the difference shall be used as an offset against any refunds that may become due pursuant to (B), (C) and (D) below*
 - B) Upon completion of the first yearly billing period of the original customers, for whom there were no similarly situated customers, as defined in subparagraph (4) above, the utility shall refund an amount equal to one and one-half (1 1/2) times the difference between the annual revenue originally estimated by the utility and the actual revenue received, provided the actual revenue is greater than the estimated revenue. If the actual revenue is less than the estimated revenue, the difference shall be used to offset against revenues which would otherwise become the basis for refund pursuant to (C) below.*
 - C) During the first ten (10) years from the date of the aforesaid deposit the utility shall refund, for each additional new customer taking service from said extension under a regular yearly contract, at the end of the first year's billing for service to such additional new customer, an amount equal to one and one-half (1 1/2) times the annual average water revenue from similarly situated customers. If there are no similarly situated customers, the utility shall refund one and one-half (1 1/2) times the actual annual revenue received.*

Mr. Smith states he is relying upon “83 Ill Adm. Code 600.370 (Service to New Customers) of the Commission’s regulations as investment policy. 83 Ill. Adm. Code 600.370 (a) requires a utility to provide all backbone plant (treatment-central plant costs) at its cost and expense without requiring contributions from developers.”

Q. Is Mr. Smith investment policy relying on 83 Ill. Adm. Code 600.370 (a) by taking the first sentence out of context?

A. Yes. The complete 83 Ill. Adm. Code 600.37 (a) states as follows:

The utility will provide all supply plant (backbone plant) at its cost and expense without requiring contributions or tap-on-fees from customers, developers or promoters, except in those unusual cases where extensive plant additions are required before customers can be attached. In such instances the utility may require the customer, developer and/or promoter to advance funds, subject to refund as customers are attached, or require a revenue guarantee in lieu of customers being attached. Each contract for such an advance or revenue guarantee shall be filed with the Commission for approval.

Q. Is it important to rely on the complete 83 Ill. Adm. Code 600.370 (a)?

A. Yes it is. When the cost of the backbone plant is extensive and the utility must bare the entire cost of backbone plant without developer contributions the revenue requirements become extraordinarily high and the cost of these extraordinarily high revenue requirements will be borne by the customer with exceptionally high rates. In this case Mr. Smith has taken 83 Ill. Adm. Code 600.370 (a) out of context by excluding developer advances and refunds in his methodology.

Q. What was Mr. Smith’s recommendation concerning the Company’s proposed Rules, Regulations, and Conditions of Service tariffs for sewer

service attached to the original petitions as Attachment FC-3 and Attachment EG-3?

A. Mr. Smith stated that “If the commission grants the certificates, I recommend that the Commission also approve the Company’s proposed Rules, Regulations, and Conditions of Service tariffs for sewer service. The Company’s proposal is consistent with the standard tariffs that have been developed by Staff, provided to other Illinois regulated utilities, and approved by the Commission in numerous Docketed proceedings, most recently in Docket No. 06-0522 for Rockwell Utilities, LLC.”

Q. Is it important that Staff recommend approval of the Company’s proposed Rules, Regulations, and Conditions of Service tariffs for sewer service?

A. Yes it is important because they are similar to the generic sewer rules developed from 83 Ill. Adm. Code 600.370, as a guideline for the regulation of sewer operations.

Q. Would it be reasonable to use generic sewer rules, as developed from 83 Ill. Adm. Code 600.370, as a guideline for the regulation of sewer operations in this case?

A Yes it would. The Commission has not explicitly promulgated rules for the expansion of sewer plant and to develop a guideline therefore it is necessary to look to generic water rules. Water and sewer systems are very similar and it is reasonable to apply the same rules to each of these systems. This practice is in common use by the ICC in prior cases.

Q. Has the commission previously applied the guidelines contained in 83 Ill. Adm. Code 600.370 to sewer operations?

A Yes, the guidelines have been applied in many dockets.

Q. Can you give an example of how the guidelines were applied?

A. In the Docket 00-0194 Order, the Commission determined that the Original Agreement was unreasonable in that it did not provide for a refund to Terra Cotta of the cost advanced for the TC Sewer Backbone Plant. The Commission concluded that, for the purposes of Docket 00-0194, the principles of 83 Illinois Administrative Code Section 600.37(a), which apply by its terms to water backbone plant, would also apply to evaluating proposed levels of developer contribution to the TC Sewer Backbone plant. The Commission found specifically that Citizens should refund to Terra Cotta the cost advanced for the TC Sewer Backbone Plant. The Commission's decision was affirmed on appeal by the Illinois Appellate Court (IAWC v. ICC, 331 Ill. App. 3d 1030, 1037: 772 N.E. 2d 390, 396 (2nd Dist 2002)

Q. Have there been any other Commission actions regarding sewer refunds that you are aware of?

A. Yes, in Docket No. 84-0344, a Citizens' (formerly Derby Meadows) certificate case, entered on March 20, 1985, it was recognized that a sewer main extension should be treated equally to the water main extension by stating (p. 14) "The Commission is of the opinion that the financing methodology set out in Part 600 should apply to both the proposed water and sewer extensions and the backbone plant."

Q. In previous Dockets has Staff supported the use of refunds as mentioned in 83 Ill. Adm. Code 600.370 for sewer facilities?

A. Yes. In Docket 01-0645 Staff argued “that Part 600 requires the utility to provide refunds to developers for installation of sewer facilities. Without such a provision, the Agreements are unjust and unreasonable as contrary to Sections 8-101 and 9-101, Staff supports the concept of the developer advancing funds for construction of both water and sewer facilities; however the advances should be subject to refunds.”

Staff asserted “that requiring the developer to advance funds protects the utility and the customers it serves from a slow or failed development. Advancing funds places the risk of development on the developer, who will earn a profit. A public utility provides a service and is allowed to recover its operating expenses, plus earn a reasonable profit.”

In Docket 05-0452 the Commission stated “under the sewer rules that Petitioner appears to be operating under at the present time, no contribution to capital would be required. The Commission notes that upon adoption of the updated sewer rules, this issue should not be in question in any dockets in the future.”

The sewer rules approved by Staff in the dockets in question discuss sewer refunds on pages 19 and 20 see Attachment FC-3 to the Original Petition in Docket 08-0490 and Attachment EG-3 to the Original Petition Docket 08-0491.

Q. Could you describe how the methodology the Company utilizes is in compliance with 83 Ill. Adm. Code 600.370?

A. Yes. In both dockets extensive sewer plants are required. The developers have agreed to advance the funds for sewer plant construction subject to refund as customers are attached. The Wastewater Service Agreement for Eastgate Estates (EG-C) and Falcon Crest (FC-C) are attached to their respective Petitions for Commission approval per Code 600.370. In accordance with Code 600.370 because of the limited initial customer base and the extensive backbone plant required to serve the area, receipt of a contribution with respect to those facilities is necessary to avoid undue risk for RME and its customers. Under the Agreement attached to each Petition, the Company's investment in the backbone plant is provided as customers attach. Accordingly, the risk that the Area may not develop as planned is retained by the Developer, and not imposed upon RME or its user customers. Under the Agreement, the developer will construct the Wastewater System. The Agreement further provides for refunds by RME in accordance with the methodology approved in Docket 01-0645. The developer constructing the wastewater mains should receive a credit (refund) from the utility equivalent to one-and-one-half times the Company's estimate of the annual wastewater revenues to be provided by "Original Prospective Customers". The amount refunded will not exceed the amount of the original deposit. In this case the developer would receive a refund over a period of ten years at one and one half times the expected annual revenues from new customers attaching to the Wastewater Facilities over a ten year period. Further, Section 8-406(d) provides, "in making its determination. The Commission shall attach primary weight to the

cost or cost savings to the customers of the utility. The Commission may consider any or all factors which will or may affect such cost or cost savings.”

Q. Did Mr. Smith have any comments on the Wastewater Service Agreements attached to the original petition as Exhibit FC-C and Exhibit EG-C?

A. No.

Q. What is your response to staff witness Thomas Q. Smith concerning the Company’s capability of efficiently managing and supervising the construction process and has it taken sufficient action to ensure adequate and efficient construction and supervision thereof.

A. RME disagrees with Mr. Smith concerning his testimony that (i) RME, Illinois is not capable of efficiently managing and supervising the construction necessary to provide sewer service to the proposed areas and (ii) that RME has not taken sufficient action to ensure adequate and efficient construction and supervision thereof and (iii) that RME engaged in any inappropriate behavior or in any way acted irresponsibly regarding the Eastgate Estates project. Mr. Smith in his testimony attempts to impute to RME some imagined conspiratorial plan wherein RME, in concert with the developer, sought to by pass the ICC requirements for installation of a sewer system when in fact Mr. Smith’s own inspection of the site on September 29, 2008 did not reveal that RME was in any way involved in the installation of the sewer system at the subject property. The developer posted its letter of credit with the Village of Long Grove pursuant to the wastewater plans prepared by Arthur R. Olson and Company and approved by the Lake County Health Department (the regulating authority with respect to septic wastewater

plans) whereupon a construction permit was issued by the Lake County Health Department to begin construction of the subdivision.

Q. Do you agree with the quote Mr. Smith paraphrased from “Accounting for Public Utilities” in which “ a utility..... is allowed to earn (but not guaranteed) a “reasonable profit” and a utility “...is obligated to provide adequate service to its customers, on demand.”

A. Yes, I agree with the paraphrased quote.

Q. Do you agree with Mr. Smith interpretation of the above paraphrased quote when he states “In essence, a utility would not be able to fulfill its service obligations without an adequate amount of investment. If a utility were inadequately funded, there would be no basis upon which to earn a profit and the utility would be unable to support it duty to “provide adequate service” on demand.”

A. I disagree with Mr. Smith’s interpretation of the paraphrased quote. Mr. Smith’s interpretation is his personal opinion and is unsubstantiated by any data. There is no reason to believe or conclude that a utility’s investment must be over-funded in order for adequate service to be provided.

Q. Do you agree with Mr. Smith in his conclusion that the Certificate should be denied.

A. No. It has been established that there is a need to provide onsite wastewater services to small and medium sized developments as demonstrated in the letter from the Lake County Health Department and Mr. Smith’s Attachment 1.2 Voluntary National Guidelines for Management of Onsite and Clustered

(Decentralized) Wastewater Systems written by the EPA. To satisfy this need the services of a public utility company are necessary. RME Illinois L.L.C. has demonstrated (i) the need for providing these services, (ii) the capability of providing these services and (iii) providing these services at a reasonable rate in accordance with Section 8-406(b) (1), (2) and (3) of the Illinois Public Utility Act.

Q. What is your response to staff witness Rochelle Phipps?

A. With regard to the testimony of Staff witness Rochelle Phipps, I agree with Ms. Phipps' recommended rate of return on rate base for the Company of 10.82% and I have attached revised the Schedules based on the 10.82% rate of return as Exhibit 1.03 FC Revised and Exhibit 1.03 EG Revised.

Q. Do you agree with Ms. Phipps and Staff's recommendation that RME demonstrate it is capable of funding Staff's recommended level of investment. i.e. \$637,896, without significant adverse financial consequences for the utility or its customers, as required by Section 8-406(b)(3)?

A. No. I disagree with the recommendation to fund Staff's recommended level of investment, i.e., \$637,896. This level of investment will create customer rates that 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 of its customers. This same level of investment which created the high customer rates was already rejected by the Commission in Docket 07-0331/07-0332 consolidated. RME Illinois, LLC has no intention of funding a level of investment that creates extraordinarily high customer rates that the Commission will ultimately reject.

Q. Do you agree with Ms. Phipps recommendation that the Company provide a letter of Credit of \$35,000?

A. No. The developer of each of the systems is providing a letter of credit for five years. If RME Illinois, LLC were to provide a similar letter of credit the cost of the letter of credit would be borne by the customer with higher rates. The developer has already included that cost in their sales figures therefore the customer would be charged twice for the same letter of credit. I do find a need for a letter of credit if the developer does not provide one. I therefore recommend that a letter of credit be provided by the developer or the Company prior to transfer of any wastewater system to the Company but not both.

Q. Do you agree with Staff witness Ebrey's Revenue Requirement Schedules?

A. No. I do not agree with Ms. Ebrey's Revenue Requirement Schedules in that they are based on Staff witness Smith's recommended level of investment, i.e., \$638,896, which will create customer rates that 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 of its customers. This same level of investment which created the high customer rates was already rejected by the Commission in Docket 07-0331/07-0332 consolidated.

Q. Do you agree with Ms. Ebrey's recommendation to approve the proposed accounting journal entries to record the projected cost of Falcon Crest and Eastgate Estates systems and the appropriate level of Company investment proposed by Staff as set forth in Schedules 2.9 (FC) and 2.9 (EG)?

A. I do not agree. The proposed accounting entries are only correct for staff's recommended methodology and level of investment which has been rejected by RME Illinois, LLC. Based on the Company's proposal for developer contribution and refunds based on approved Commission policy I recommend the use of accounting entries as proposed by Staff witness King in his testimony in Docket 05-0253 whereby he stated in his discussion of accounting: "In accordance with Commission policy and the Uniform System of Accounts (83 Ill. Admin. Code, Part 605, Accounting Instruction 17), Illinois American Water proposes to record the original cost of water and wastewater facilities for the area in the applicable Utility Plant In Service (Account 101 – for water and sewer service, separately). The original cost of the Water System and Development Wastewater Collection System facilities for the area will be the gross cost of the facilities. The Company proposed to record the anticipated amount of the refunds for water facilities (using the above – described methodology) in Account 252 – Advances for Construction. The difference between the actual construction costs for water facilities and the amount recorded in Advances for Construction will be recorded in Account 271 – Contributions in Aid of Construction. As refund are paid to the Developer, the amount of refunds would be entered as a debit to Account 252. the accounting entries for sewer assets would be the same as those for water in that the original cost for construction of sewer assets would be recorded as Utility Plant in Service (Account 101), and the anticipated amount of refunds (using the above-described methodology) would be recorded in Account 252. The difference between the construction cost and the Advances for Construction would be recorded in

Account 271- Contributions in Aid of Construction. The balance in Account 252 would be offset by a debit for refunds made in accordance with the methodology approved in Docket 01-0645.” The wastewater accounting entries proposed by RME are shown in Exhibit FC-D. For rate-making purposes, the above accounting entries would have no initial effect on rate base (the amount recorded as utility plant being offset entirely by contributions and advances). Rate base would increase as customers attach due to Utility’s payment of sewer construction cost refunds (which reduces the amount of advances) under the refund approach discussed above.

This is the same methodology RME proposed in its Petition paragraphs 17 and 18.

Q. Do you agree with staff witness Johnson’s recommendation that the Commission find that it is reasonable for RME to apply a composite depreciation rate of 4% and a 25 year average service life for all wastewater utility plant?

A. Yes.

Q. Do agree with staff witness Rukosuev’s methodology for developing the proposed rates for the Dockets in question?

A. I agree with the methodology but I disagree with the proposed rates.

Q. Did Mr. Rukoseuev state what source was utilized for the revenue requirements used in his rate calculation?

A. Yes. Mr. Rukoseuev stated “I used Staff’s total revenue requirement which is presented in Staff witness Theresa Ebrey’s Direct Testimony (ICC Staff Exhibit 2.0, Schedule 2.1, suffix FC for Falcon Crest and suffix EG for Eastgate Estates).

Q. Do you agree with Mr. Rokoseuev use of Staff’s total revenue requirement?

A. No. I disagree with Mr. Rokoseuev’s use of Staff’s total revenue requirement as I previously explained because they are based on a recommended level of investment, which will create customer rates that 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 of its customers. This same level of investment which created the high customer rates was already rejected by the Commission in Docket 07-0331/07-0332 consolidated.

Q. Do you agree with Mr. Rokoseuev’s recommendation that the customers of Falcon Crest should each pay \$181.08 per month and Eastgate Customers should each pay \$297.34 per month.

A I disagree with Mr. Rokoseuev’s recommendation and I recommend that the Commission accept the Rates proposed by RME Illinois that each customer at Falcon Crest be required to pay \$53.00 per month and that each customer at Eastgate Estates be required to pay \$54.75 per month..

Q. Do you agree with Mr. Roskoseuev’s that “That the two service areas could be treated as one service area for ratemaking purposes by combining their respective revenue requirements and charging all customers in both service areas the same average rate, also known as Single Tariff Pricing (“STP”)?

A. Yes, I agree with Mr. Roskoseuev's concept of Single Tariff Pricing and after combining RME Illinois, LLC proposed revenue requirements for both Dockets the resulting rate each customer would be required to pay would be \$53.30 per month.

Q Does this conclude your Rebuttal Testimony?

A. Yes it does.

STATE OF ILLINOIS)
COUNTY OF LAKE)

Arthur R. Olson, being first duly sworn on oath, disposes and states that he has read the rebuttal testimony and the answers made therein are true, correct and complete to the best of my knowledge and belief.

Arthur R. Olson
Signature

SUBSCRIBED AND SWORN to before me this 9th day of January, 2009

Cheryl L. Olson
NOTARY PUBLIC

My Commission expires 8/20/11

