

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

RME Illinois, L.L.C.	:	
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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.	:	08-0490
	:	
	:	(Consol.)
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RME Illinois, LLC	:	
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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.	:	08-0491
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**BRIEF ON EXCEPTIONS OF RME ILLINOIS L.L.C.**

RME Illinois L.L.C. (“RME” or the “Company”), pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission (“Commission”), respectively submits its Brief on Exceptions (“BOE”) including Exceptions to the Proposed Order (“PO” or “ALJPO”) issued by the (“ALJ”) on July 16, 2009, in this proceeding.

**I. PROCEDURAL HISTORY**

On August 14, 2008, 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 08-0490 and 08-0491 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. Each docket was initially set for a pre-hearing conference on September 22, 2008. Staff’s motion to consolidate these

dockets was granted on October 1, 2008. This matter was continued for status to January 29, 2009 and to March 24, 2009. At the March 24 status the record was marked "Heard and Taken."

On July 16, 2009, the ALJ issued the Proposed Order ("PO" or "ALJPO"). The ALJPO determines that the Certificate of Public Convenience and Necessity requested for Falcon Crest in Lake Villa, Lake County, Illinois, on Docket 08-0490 and Eastgate Estates in Long Grove, Illinois, on Docket 08-0491 should be denied. For the reasons given below, RME takes exception to the entire section captioned "Commission Analysis and Conclusions" at pages 11-13 of the ALJPO, and to the related "Findings and Ordering Paragraphs" at pages 13-14. Replacement language is set for in Appendix "A" which is attached hereto.

## II. ARGUMENT

### 1. **The ALJPO's Proposal to Disapprove the Certificate's because of Staff's Analysis of Recommended Investment Levels Unlawfully Alters the Commission's Past Practice Without Following Statutory Procedure and is Not Based on Substantial Evidence of Record.**

RME's Methodology of financing the cost for installation of the wastewater systems without significant adverse financial consequences for RME or the users of the system is in conformance with Section 8-406(b)(3) of the Public Utilities Act ("PUA") and should be approved.

The investment requirement for the wastewater investment by Staff creates rates that are abnormally high. Therefore, Staff recommends that both petitions be denied. (Staff Ex. 4.0 at 3) Staff follows no rules or precedents in the creation of its investment criteria. Staff further attempts to create a "no-win scenario" for a utility company by knowingly proposing extraordinarily high unsubstantiated investment levels which cannot be supported by the rates and then discounting the utilities reasonable approach to sanitary wastewater investment which has been used by other wastewater utilities for the past 9 years. Staff's approach to investment makes it impossible for a wastewater utility company to provide service.

Staff has presented no evidence that supports its contention that a certain level of investment is required to provide a meaningful return. In fact, Staff has formulated investment Rules to generate rates that are out of line and has not cited one example where their invented sanitary investment level has been utilized. In fact, Staff has presented no evidence to support its conjecture that the RME investment methodology is flawed. Staff would rather have the Commission believe that its recommended level of investment is correct when in fact Staff's methodology concerning investment level has never been used in previous sewer rate cases and is totally unsupported by evidence. The investment methodology utilized by RME has been used in recent sewer rate cases and is totally supported by the record. Staff has described RME's investment as negligible but has cited no facts or cases to support their allegation. Staff failed to cite any sanitary rate case where the investment level was as high as they proposed in this case or for that matter any previous rate case investment levels. Staff presented no analysis, of its own, on how investment levels affect rates nor any analysis of how investment levels are determined for other sanitary utilities. This point, however, is lost in the ALJPO. Indeed, the ALJPO chooses unnecessarily to assert jurisdiction to disapprove RME's investment methodology based upon staff's conjecture that RME's investment level is negligible without first looking to other similar rate cases. Staff has presented no evidence as to what investment level's have been used in previous rate cases nor has Staff presented any studies that demonstrate what an appropriate level of investment constitutes. In doing so, the ALJPO ignores the substantiated record evidence that the approval of the Certificates will benefit RMEs' customers.

The Commission should reject the ALJPO's proposal because as discussed below, it unlawfully and arbitrarily alters the Commission's past practice without complying with proper statutory procedures, and is not based on substantial evidence of record.

*First*, the Illinois Supreme Court has held that “[t]he Commission may alter or amend its past practice, but it must follow the procedures set forth in its rules and the Act.” *Business and Prof'l People for Pub. Interest v. Commerce Comm'n*, 136 Ill 2d 192, 226; 555 N.E. 2d 693 (1989) (*citing* 220 ILCS 5/10-101) In *Business and*

Professional People, the Supreme Court found that the Commission violated Section 20-202 of the PUA by altering its past practice concerning test-year ratemaking proceedings by establishing a new test-year standard. Section 10-101 of the PUA provides, in relevant part:

Any proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to either rulemaking or contested case provisions, *provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to.* (emphases added)

220 ILCS 5/10-101; *Business and Prof'l People*, 136 Ill 2d at 226. Additionally, if the Commission alters its past practices, it must set forth **articulable standards** (emphasis added) to enable parties to present relevant evidence and to identify the standards by which future proceedings will be evaluated. (Id. at 226-227)

Clearly, the ALJPO's proposal attempts to amend the Commission's policy and practice regarding sewer investment and the application of Section 600.370. This proposal would be applicable to other sewer utilities and, therefore, compliance with Section 10-101 of the PUA and the rulemaking provisions of the APA would be required. In this case, however, the ALJPO plainly fails to comply with these procedures. Furthermore, the ALJPO fails to set forth any articulable standard by which the parties can expect to be bound in future proceedings. Thus, the Commission's adoption of the ALJPO's proposals would not only contravene the establishment of law in Illinois, but would also result in regulatory uncertainty for future proceedings.

*Second*, the Illinois Supreme Court has repeatedly held that, while the Commission's decisions are generally afforded deference by the courts, "[w]here the Commission's decisions drastically depart from past practices, they are entitled to less deference." *Citizens Util. Bd. V. Commerce Comm'n*, 166 Ill 2d 111, 131; 652 N.E.2d 1089 (1995), *reh'g denied*. The Commission is therefore **required "to articulate a reasoned basis from its sudden departure" from past precedent.** (Emphasis added) (Id at 132) Far from articulating a reasoned basis for its conclusion departing from the Commission's past precedent, however, the ALJPO merely agrees with Staff that RME's investment is insignificant. The conclusory statement does not even come close to constituting a reasoned basis for the ALJPO's decision. *See Citizens Util. Bd.*,

166 Ill. 2d at 126, 131-32 (rejecting arguments that sharing of coal tar remediation expenses should be imposed “simply as a matter of ‘public policy’” or due to the Commission’s need to make a “blunt policy decision”)

*Third*, the ALJPO’s conclusion is not supported by substantial evidence based on the entire record. See *Citizens Util. Bd.*, 166 Ill 2d at 126. For example the ALJPO’s finding that RME’s investment in sewer plant is insignificant ignores the evidence concerning past practices and wastewater agreements approved for other utilities. The ALJPO is assuming, without fact, that unless RME has a greater initial investment in the systems they are in jeopardy of deteriorating over time. The ALJPO again makes the assumption, without fact that RME will make no continuing investment in the sewer facilities. Other sewer utilities follow similar investment procedures which properly and reasonably require the immediate beneficiary of the new facilities, the developer, to absorb the cost of installation (initial investment) just as RME has done in this case. Further, the ALJPO ignores the evidence on the established procedures and past precedents with regard to sewer investment. The same investments created by sewer refunds precisely because of the high level of investment per customer for sewer utilities. There is nothing different in this case than previous rate cases to justify a new investment rule or policy.

In sum, the ALJPO’s proposals concerning refunds of sewer collection system investment radically depart from the Commission’s past precedent without following the requisite statutory procedure, and are not based on substantial evidence of record. Accordingly the Commission should reject the ALJPO’s attempt to unlawfully deny the Certificates because of a non-existent investment policy created by Staff for this rate case which could become precedent setting for future rate cases.

RME’s Methodology of financing the cost of for installation of the wastewater systems without significant adverse financial consequences for RME or the users of the system is in conformance with Section 8-406(b)(3) of the Public Utilities Act (“PUA”) and should be approved.

- 2. The ALJPO’s Proposal to Disapprove the Certificate’s because Petitioner has not Obtained a Line of credit at Staff’s Recommended level which**

**Alters the Commission's Past Practice Without Following Statutory Procedure and is Not Based on Substantial Evidence of Record.**

For the reasons previously stipulated in Argument 1 above there is no established practice or rules concerning the practice of providing a line of credit or a letter of credit by sewer utilities. There are no rules or precedents concerning a line of credit for wastewater utilities. Staff is making up a new rule without proper rule making procedure and attempting to force its introduction into this rate case whereby it may become precedent. The ALJPO's proposals concerning letters of credit for sewer utilities radically depart from the Commission's past precedent without following the requisite statutory procedure, and are not based on substantial evidence of record. Accordingly the Commission should reject the ALJPO's attempt to unlawfully deny the Certificates because of a non existent rule concerning lines of credit for sewer utilities.

However if the Commission finds RME must provide documentation that proves it could draw on the letter of credit and if RME cannot provide such documentation then a line of credit must be established for a total of \$35,000 to be funded as the 43 customers attach to the systems.

### **III. CONCLUSION**

The ALJOP recommends denial of the Certificates because of Staff's statements, not upon substantiated record evidence. Yes, it is a fact that Staff's unsubstantiated investment levels lead to extraordinarily high rates which create adverse financial consequences and should be denied in conformance with Section 8-406(b)(3) of the Public Utilities Act ("PUA"). Yes, it is a fact RME's investment methodology, fully explained in the Wastewater Service Agreements attached to each Petition, is substantiated by the record and should be approved and is in conformance with Section 8-406(b)(3) of the Public Utilities Act ("PUA").

For the reasons set forth herein, the Commission should revise the ALJPO and reject the ALJPO's proposals.

Dated: July 30, 2009

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Respectively submitted,



By: Arthur R. Olson  
Managing Member

**APPENDIX "A"**

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>RME Illinois, L.L.C.</b>	:	
	:	
<b>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.</b>	:	<b>08-0490</b>
	:	
	:	<b>(Consol.)</b>
	:	
<b>RME Illinois, LLC</b>	:	
	:	
<b>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.</b>	:	<b>08-0491</b>
	:	
	:	

**PROPOSED ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

RME recommends the following technical corrections to the PROCEDURAL HISTORY of the ALJPO

Proposed Modification, (ALJPO, p1)

On August 14, 2008, 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 08-0490 and 08-0491 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 showing the location of the Lake Villa parcel is contained in Attachment FC-A to the Lake Villa petition and a legal description of the area is contained in Attachment FC-B. A map showing the location of

the Long Grove parcel is contained in Attachment EG-A to the Long Grove petition and a legal description of the area is contained in Attachment EG-B.

Each docket was initially set for a pre-hearing conference on September 22, 2008. Staff's motion to consolidate these dockets was granted on October 1, 2008. This matter was continued for status to January 29, 2009 and to March 24, 2009. Petitioner appeared each time by its Managing Member, Arthur R. Olson ~~Olson~~ **Olson**. Staff appeared by counsel. The parties waived cross examination. At the March 24 status, Mr. Olson moved for the admission of Petitioner's Group Exhibit A-1, containing his direct testimony regarding Falcon Crest (Exh. 1.0 FC with Attachments 1.01 through 1.07 FC), and his direct testimony regarding Eastgate Estates (Exh. 1.0 EG with Attachments 1.01 EG through 1.07 EG); Petitioner's Group Exhibit A-2, containing Mr. Olson's rebuttal testimony and revised Exhibits 1.06 FC and 1.06 EG; and Petitioner's Group Exhibit A-3, Mr. Olson's surrebuttal testimony and Attachment C, Village of Long Grove Ordinance 2007-O-03.

Staff moved for the admission of the following Exhibits: 1.0, Thomas Q. Smith direct, with Attachments 1.1 and 1.2; 2.0, Theresa Ebrey direct, with Attachments 2.1 FC through 2.9 FC and 2.1 EG through 2.9 EG; 3.0, Rochelle Phipps direct; 4.0, Philip Rukosuev direct and 4.1, Rukosuev affidavit; 5.0, William R. Johnson direct and 5.1, Johnson affidavit; 6.0, Smith rebuttal and 6.1, Smith affidavit; 7.0, Ebrey rebuttal and 7.1, Ebrey affidavit; and 8.0, Phipps rebuttal and 8.1, Phipps affidavit. Petitioner and Staff exhibits were admitted into evidence. At the conclusion of the status on March 24, the record was marked "Heard and Taken."

## II. APPLICABLE STATUTORY AUTHORITY

RME recommends the following replacement language to the APPLICABLE STATUTORY AUTHORITY of the ALJPO

Proposed Modification, (ALJPO, p3)

220 ILCS 5/8-406:

No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

~~Standards of Service for Water Utilities, 83 Ill. Adm. Code 600.370(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.~~

**Standards of Service for Water Utilities, 83 Ill. Adm. Code 600.370 part a)**

**and part b):**

- 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 ½) 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 ½) 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 ½) 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 ½) times the actual annual revenue received.

## II. POSITIONS OF THE PARTIES

RME recommends the following replacement language and technical corrections to the POSITIONS OF THE PARTIES of the ALJPO

Proposed Modification, (ALJPO, p 4, 5, 11, 12, 13)

### A. Petitioner's Position

#### Olson Direct

Mr. Olson testified that the public need for onsite wastewater services for both Falcon Crest and Eastgate Estates is reflected in Attachments 1.01 FC, 1.01 EG, 1.02 FC and 1.02 EG to his direct testimony in Group Exhibit A-1. Petitioner expects to serve 44 units in Falcon Crest (35.1 acres) and nine units in Eastgate Estates (22.5 acres). To Petitioner's knowledge, there are no other sanitary sewer systems willing and able to provide the same service. Construction of the proposed wastewater systems is necessary to provide adequate, reliable and efficient service to the proposed

areas. Petitioner's proposed construction is the least-cost means of satisfying the wastewater needs of the customers in each development and it is capable of efficiently managing and supervising the construction necessary to provide wastewater service to the proposed areas. Petitioner has the technical and managerial ability to construct, own, operate and maintain wastewater systems to provide services to these areas.

He testified that the capacity of Petitioner's proposed wastewater system for Falcon Crest is rated at 17,720 gallons per day ("gpd") (Exhibit 1.0 FC, line 137, Group Exh. A-1), while the customer demand is 8,800 gpd (Exh. 1.0 FC, line 133), and that the capacity of the system for Eastgate Estates is rated at 4,320 gpd (Exh. 1.0 EG, line 133), while the customer demand is 1,800 gpd (Exh. 1.0 EG, line 130). Petitioner will have sufficient capacity to meet the estimated demand from customers without constructing additional facilities.

Mr. Olson provided a detailed description of each wastewater system to be installed. He testified that, as a result of environmental and historical studies, there were no significant historical, architectural or archaeological resources located within the proposed developments. He also stated that no easements were necessary, because the each sewer system would be contained entirely within each proposed subdivision. Additionally, no permits were needed, except that Petitioner filed a Class V Injection Well inventory form with the Illinois Environmental Protection Agency ("IEPA") on March 1, 2007.

Mr. Olson testified that since the Falcon Crest system would cost approximately \$829,000 and Eastgate Estates approximately \$257,000, Petitioner's investment in Falcon Crest and Eastgate Estates would consist of a refund to the developer of \$934 and \$963 per lot respectively, as customers attach over ten years. Such refunds would be made pursuant to 83 Ill. Adm. Code 600.370(a) and (b), but would cover only a portion of the cost of the facilities for each development. **The refund methodology is discussed in the Wastewater Service Agreement for Eastgate Estates (EG-C) and Falcon Crest (FC-C). The Agreements in this consolidated docket are based on the reasoning developed in Docket 00-0194 confirmed by the appellate court. (IAWC v. ICC, 331 Ill. App. 3d 1030, 1037: 772 N.E. 2<sup>d</sup> 390, 396 (2<sup>nd</sup> Dist 2002)) The agreement states that the developer will construct the wastewater system. (RME Pet. Ex. EG-C at 1-2, FC-C at 1-2) The Agreements provide for refunds by RME in accordance with the methodology developed and approved in Docket 01-0645. (Id at 5-6) In that case, the appropriate amount of the utility's investment in a wastewater collection system was extensively addressed and it was ultimately agreed to use the methodology set forth on Attachment "A" to a Stipulation referenced in the Commission's Order. (Order 01-0645 etc) (Pet. Attachment "A") RME has utilized the approved methodology in Docket 01-0645 in developing the Wastewater Service Agreements. (RME Pet. Ex. EG-C at 1-2, FC-C at 5-6)** He explained that, because there will only be a few customers in each development when wastewater service begins and extensive wastewater plant will be required, receipt of a contribution regarding the facilities will be necessary to avoid undue risk for Petitioner and its customers. Since Petitioner's investment in the facilities is provided as

customers attach, the risk that development may not occur as planned is placed on the developer, not Petitioner or customers. If Petitioner were required to invest the full cost of construction for each development, the rate base per customer would be unreasonably high.

Mr. Olson testified that the treatment facilities shall be depreciated over 25 years at a rate of 4% per year. Petitioner's projected rate of return on each development is 9.7%. Detailed estimates of construction costs are contained on Exhibits 1.04 FC and 1.04 EG, Group Exh. A-1, and Annual Operating Expenses are contained on Exhibits 1.05 FC and 1.05 EG, Group Exh. A-1. Revenue requirement schedules are attached as Exhibits 1.06 FC and 1.06 EG: 1.06-1 Statement of Operating Income, Schedule 1.06-2 Rate Base, Schedule 1.06-3 Interest Synchronization Adjustment, Schedule 1.06-4 Payroll Tax Expense and Schedule 1.06-5 Working Capital Allowance. Pro forma income statements and balance sheets are attached to his testimony as Exhibits 1.03 FC and 1.03 EG. Mr. Olson testified that Petitioner's proposed wastewater accounting entries are shown on Exhibits FC-D and EG-D attached to the petition. These entries would have no initial effect on rate base, but rate base would increase due to refund payments as customers attach.

Mr. Olson testified that, pursuant to Rule 11.01(m) of the Standard Sewer Rules, construction cost and refund requirements for sewer mains serving six or more residences are subject to special contracts negotiated by the utility and the developer. Under such contracts, developer constructs the wastewater system and Petitioner provides refunds according to the methodology contained on Attachment A to a stipulation approved in Docket 01-0645. Attachment A is appended to the petitions in this Docket. Mr. Olson advocated that developer refunds in this matter be calculated using the same methodology.

### Olson Rebuttal

Mr. Olson contested Mr. Smith's recommendation that the certificates be denied, arguing that Petitioner has demonstrated the need for providing these services, its ability to provide the services and that it can provide the services at rates in accordance with Section 8-406(b) of the Act.

Mr. Olson disagreed with ~~Ms. Phipps'~~ **Mr. Smith's** recommended level of investment, \$637,896, stating that such an investment would result in rates so high they would violate Section 8-406(b)(3) of the Act, which requires utilities to finance construction without significant adverse financial consequences for the utility or its customers. He ~~further~~ disagreed with Ms. Phipps' recommendation that Petitioner provide a \$35,000 line of credit. The developer is already providing a letter of credit for five years and has included the costs in its sales figures. If Petitioner were to do the same, customers would be charged twice.

Mr. Olson also disagreed with Mr. Smith that Petitioner was not capable of efficiently managing and supervising construction of the sewer plant, that Petitioner has

not taken sufficient steps to ensure adequate and efficient construction and that Petitioner engaged in inappropriate behavior or in any way acted irresponsibly regarding Eastgate Estates. He stated that Mr. Smith's own inspection of the site on September 29, 2008 failed to reveal any installation activity by Petitioner. Developer posted a letter of credit with the Village of Long Grove and a permit was issued by the Lake County Department of Health Health Department to begin construction.

Mr. Olson disagreed with Ms. Ebrey's Revenue Requirement Schedules, insofar as they are based upon Mr. Smith's \$637,896 level of investment. He reiterated his concerns regarding the "significant adverse financial consequences" clause of Section 8-406(b)(3) of the Act.

Mr. Olson testified that he also disagreed with Ms. Ebrey's recommendation to approve the proposed accounting journal entries to record the projected costs of each system and the appropriate level of Petitioner's investment proposed by Staff as set forth in Schedules 2.9FC and 2.9EG (Staff Exh. 2.0). Mr. Olson endorsed the use of accounting entries proposed by Staff in Docket 05-0253, which entries were the same for both water and sewer plant construction. Staff in that Docket proposed recording the original cost of the facilities in Account 101, Utility Plant in Service. The anticipated amount of refunds would be recorded in Account 252, Advances for Construction. The difference between the actual construction costs for the water facilities and the amount recorded in Account 252 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 accounting entries would be the same in this Docket. Petitioner's wastewater accounting entries, shown on Attachment FC-D to the petition, would have no initial effect on rate base. Rate base would increase due to refunds made as customers attach.

Mr. Olson stated that he agreed with Mr. Rukosuev's recommendation that the two service areas could be treated as one for ratemaking purposes by combining the revenue requirement and charging all customers a single rate. Under this process, termed single tariff pricing, customers would pay \$53.30 per month.

#### Olson Surrebuttal

Mr. Olson conceded that Ms. Ebrey's statement that "the Commission should decide which proposed plant investment is appropriate and the accounting method will follow" is correct. (Staff Exh. 7.0 at 3). He also stated that Petitioner would not contest the three recommendations proposed by Ms. Ebrey. (Staff Exh. 7.0 at 4).

Mr. Olson disagreed with Ms. Phipps' recommendation to fund an escrow account in the amount of \$637,896 (Staff Exh. 3.0 at 2) and further disagreed with Staff's proposed methodology that created such a recommended level of investment. He stated that developer refunds for 2009 would likely be no more than \$1926, below the \$19,968 originally projected. Mr. Olson added that the language of Long Grove

Ordinance 2007-O-03 (Applicant Group Exh. A-3) provides the security for the line of credit that Ms. Phipps stated is lacking.

Mr. Olson also disagreed with the Mr. Smith's proposed investment methodology, which would translate into a monthly charge of \$181.08 per customer for Falcon Crest and \$297.34 per customer for Eastgate Estates. Petitioner's methodology provides for single tariff pricing of \$53.30 per month.

## B. Staff's Position

### Smith Direct

Mr. Smith testified that the need for Petitioner to provide adequate, reliable and efficient sewer service to the customers within the proposed certificated areas is reflected in letters from the developer and the Lake County Health Department, identified as Exhibits 1.01 FC, 1.02 FC, 1.01 EG and 1.02 EG, contained in Petitioner's Group Exh. A-1. Petitioner's proposed construction of the wastewater systems is the least-cost means of satisfying the needs of customers within the proposed service areas. Petitioner indicates that no public utility or municipal corporation is willing or able to provide the service. The proposed systems have sufficient capacity to meet the estimated demand without having to construct additional facilities.

Mr. Smith testified that it is necessary for Petitioner to invest in a wastewater system to demonstrate that it is sufficiently funded, which would allow it to earn a reasonable return on its investment and thereby provide adequate service to customers. Inadequate funding provides no basis for profit, rendering the utility unable to provide service on demand. For Falcon Crest, Petitioner will refund \$934 per lot to developer as customers attach over ten years for a total investment of \$41,096. The total cost of the Falcon Crest wastewater treatment plant is \$465,388 and the total cost of wastewater collection plant is \$363,612, totaling \$829,000 for the entire Falcon Crest system. For Eastgate Estates, Petitioner will refund \$963 per lot to developer as customers attach over ten years for a total investment of \$8,667. The total cost of the Eastgate Estates wastewater treatment plant is \$172,508 and the total cost of wastewater collection plant is \$84,492, totaling \$257,000 for the entire Eastgate Estates system.

Mr. Smith recommended that Petitioner be required to invest \$465,388 in the Falcon Crest system and \$172,508 in the Eastgate Estates system. These are the amounts that Petitioner has described as central plant costs, which Staff has determined is backbone plant for the wastewater systems.

He calculated Petitioner's proposed investment for Falcon Crest at 5% of its total cost and for Eastgate Estates at 3.4% of its total cost. He characterized these percentages as negligible. Petitioner will be prohibited from recovering enough investment to replace the system as it deteriorates. The lack of profit resulting from inadequate investment is a disincentive to efficiency, creates difficulty in obtaining lines of credit and reduces the utility's incentive to protect its investment. Improper system

maintenance can cause inadequate service and result in even greater plant replacement costs in the future. Because Petitioner is required to invest in the wastewater systems as set forth in Part 600.370(a), the Commission should reject both the proposal to provide refunds to the developer and the refund mechanism itself, and the certificates should be denied.

Mr. Smith asserted that Petitioner is not capable of efficiently managing and supervising construction as required by Section 8-406(b)(2) of the Act. He inspected the proposed service areas on September 29, 2008, and found that the developer had begun construction of the wastewater system in Eastgate Estates, even though the Commission has not issued the necessary certificate. Section 8-406(b) of the Act requires issuance of a certificate before construction begins and supervision of the construction by the utility. Petitioner was a participant in the certification process in Docket 07-0330/07-0331 (Consolidated) and should have been aware that Commission approval is needed prior to the start of construction. It was not reasonable for Petitioner to enter into a working relationship with a developer that had begun construction prior to obtaining the proper certificate and it is managerially imprudent for Petitioner to agree to own and operate a sewer system as a public utility without first obtaining Commission approval. Petitioner's agreement to take ownership of the system from the developer means that it has participated in construction without Commission approval.

#### Smith Rebuttal

Mr. Smith reiterated that Petitioner should bear the entire cost of the backbone plant. If so, it would then have an adequate amount of investment, no contributions will exist and no developer refunds would be necessary. (Staff Exh. 6.0 at 4). He explained stated that in Docket 01-0645, Staff argued that Part 600 requires the utility to provide refunds to developers for sewer facility installation. The issue in that Docket, however, was solely main extensions, not backbone plant.

Mr. Olson's rebuttal testimony at page 9 cites Docket 05-0452, Galena Territory Utilities, Inc., which states: "Under the sewer rules that Petitioner appears to be operating under at the present time, no capital contribution 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." Mr. Smith stated that Commission orders contain no precedential value and it is clear that the phrase "any dockets in the future" refers solely to Galena Territory Utilities, Inc. (Id. at 6).

Also, Docket 05-0452 makes clear that no investment by the utility was required. Improvements were mandated by the EPA. Moreover, it was a customer, not a developer, who contributed the improvements to the system. The utility had already made its investment. In this consolidated Docket, a developer, not a customer, is constructing wastewater systems at its option, not pursuant to order. (Id. at 6-7).

Mr. Smith stated that Mr. Olson's suggestion that Petitioner was not involved in the construction process was evidence of its inability to efficiently manage and supervise construction. (Id. at 9).

#### Ebrey Direct

Ms. Ebrey testified that she prepared a separate set of Schedules designated 2.1 through 2.9 for both Falcon Crest (FC) and Eastgate Estates (EG). In Petitioner's Exhibits FC-D and EG-D, it proposed to record the original cost of each plant acquired as Utility Plant in Service, Account 101, Debit \$829,000; Customer Advances, Account 252, Credit \$41,105; and Contributions in Aid of Construction, Account 271, Credit \$787,895. Ms. Ebrey recommended that the Commission accept the journal entry changes presented on Schedule 2.9. She further recommended that Petitioner file with the Chief Clerk of the Commission, with a copy to the Manager of Accounting, the actual accounting journal entries used to record wastewater systems within six months of the order date in this Docket. If the transactions have not occurred within six months of the order date, Petitioner should file a report regarding the status of the transaction and every six months thereafter until the journal entries have been filed with the Commission.

Ms. Ebrey explained that the original cost of plant should be recorded to accounts 351 through 398, for which Account 101 is the control account. Petitioner's investment in plant should be recorded as a credit to Cash, not to Account 252, Customer Advances. Petitioner's proposed entries to Account 252 are based upon refunds to be provided to the developer as customers attach, however, since Staff opposes the refund mechanism, entries to Account 252 would be inappropriate because there would be no refunds. The proper alternative would be to record investments as a credit to Account 131, Cash.

Ms. Ebrey recommended that Petitioner file with the Chief Clerk of the Commission, with a copy to the Manager of Accounting by March 31 and September 30 of each year, a copy of the financial information through June 30 and December 31 for the two systems, until the Commission makes a revenue requirement determination in a rate proceeding. The data should include aggregated plant investment, annual revenues, direct expenses, allocated expenses, Contributions in Aid of Construction and number of customers. It should also include an explanation of any changes in the status or operations of the system, as this will allow the Commission to determine whether the rates granted need to be reassessed.

#### Phipps Direct

Ms. Phipps testified that developers propose to construct a wastewater system for each Lake County area at an estimated total cost of \$1,086,000. Upon completion, developers would transfer ownership to Petitioner in exchange for reimbursement of \$49,763, assuming that all 53 lots are occupied within ten years. She stated that Mr. Olson asserted that Petitioner meets the requirements of Section 8-406(b)(3) of the Act,

since it does not propose to borrow funds for investment. According to Ms. Phipps, Petitioner has not shown that it can raise sufficient capital to fund construction at Staff's recommended level of investment.

She testified that to ensure that it can finance the proposed construction without significant adverse consequences for the utility or its customers, Petitioner should document establishment of an escrow account containing the above sums for each development. Such account should be designated solely for investment in the subject wastewater systems and a copy of the escrow agreement should be submitted prior to or in rebuttal testimony to enable Staff to evaluate its provisions. If Petitioner cannot provide a copy of the escrow agreement, it should state in testimony why it cannot, the name and amount of money each person and/or entity will contribute to the account, and a description of each condition attached to the funds. If Petitioner does not establish an escrow account, the Commission should reject the request for the certificates.

Ms. Phipps also recommended that Petitioner establish a line of credit of at least \$35,000 to cover unanticipated expenses, or if it incurs higher costs or lower expenditures than anticipated. This could reduce the impact of significant adverse consequences for the utility or its customers. This sum approximates one year of operating expenses. Ms. Phipps testified that Petitioner should provide a copy of the agreement for Staff's evaluation and if it cannot, it should take the same steps listed in the preceding paragraph regarding the escrow account. If Petitioner does not establish a line of credit, the Commission should reject the request for the certificates.

#### Phipps Rebuttal

Ms. Phipps stated that because Petitioner has not shown it is capable of funding any level of investment in the wastewater systems and has not obtained a line of credit from an external lender, it has not satisfied the requirements of Sections 8-406(a) and 8-406(b)(3) of the Act.

Ms. Phipps explained that if Petitioner established an escrow account at Staff's recommended level of investment, it would demonstrate that Petitioner is capable of funding a level of investment sufficient for an investor-owned wastewater utility. It would also ensure that investment in the systems is reserved solely for utility purposes. What Petitioner proposes, however, is to rely solely on internally generated funds for investment and system operation. It assumes that it will generate \$19,968 in 2009, which is significantly lower than Staff's recommended level of investment and less than Petitioner's projected developer refunds (\$23,553) for 2009.

Ms. Phipps further explained that she recommended that Petitioner obtain a \$35,000 line of credit, not a letter of credit, which equals approximately one year of system operating expenses. The developer's letter of credit for Eastgate Estates is an inadequate substitute for a line of credit, because a line of credit would allow Petitioner to borrow at any time up to an established limit. A letter of credit is guarantee of

payment by a bank in favor of a counterparty. Also, it is not likely that Petitioner could draw on the Eastgate Estates letter of credit, because the sole beneficiary is the Village of Long Grove. Ms. Phipps added that the costs of a line of credit would not be borne by customers. She concluded that Petitioner is not capable of funding its proposed level of investment without significant adverse financial consequences to the utility and its customers.

#### Rukosuev Direct

Mr. Rukosuev testified that for Petitioner to recover the revenue requirement proposed by Staff, customer monthly wastewater charges should be \$181.08 at Falcon Crest and \$297.34 at Eastgate Estates. These rates were determined by dividing Staff's recommended annual revenue requirements for each area by 12 months and dividing the respective results by the number of customers in each development. (Staff Exh. 2.0, Schedules 2.1FC and 2.1EG). He explained that the disparity in monthly rates is the result of the higher rate base at Eastgate Estates, \$18,409, as opposed to \$10,162 at Falcon Crest, and the annual depreciation expense.

Mr. Rukosuev explained that the purpose of single tariff pricing is to mitigate future price increases for a group of customers in a single year due to large plant additions, while increasing the costs to another group by averaging such costs across multiple service territories. The effect is to smooth the rates for customers in each of the service territories. He did not recommend single tariff pricing as an alternative rate-determining method in this consolidated Docket because of the disparity in the number of customers (44 Falcon Crest; 9 Eastgate Estates) and the plant cost per customer (\$18,841 Falcon Crest; \$28,556 Eastgate Estates). The smoothing effect would be tantamount to a permanent, unjustified subsidy for Eastgate Estates customers at the expense of those at Falcon Crest.

#### Johnson Direct

Petitioner's proposes a depreciation rate of 4% over a 25 year service life for all wastewater plant. (Petitioner Exh. 1.0FC, lines 304-305 and Exh. 1.0EG, lines 300-301, Group Exh. A-1). Petitioner's composite average service life method is similar to other wastewater utilities regulated by the Commission and is the preferred method, because it is simplistic and not as cost prohibitive as an account-by-account depreciation study. Since Petitioner is a small utility whose facilities are more of a septic tank system than a traditional wastewater treatment or lagoon system, Staff recommends that the Commission find that the 4% depreciation rate and average service life of 25 years is reasonable.

#### IV. COMMISSION ANALYSIS AND CONCLUSIONS

Petitioner has demonstrated pursuant to Section 8-406(b)(1) of the Act that the proposed construction of wastewater systems for the Falcon Crest and Eastgate Estate developments is necessary to provide adequate, reliable and efficient service to its

customers and is the least-cost means of satisfying the service needs of the customers. This complies with Section 8-406(b)(1) of the Act. Staff has questioned Petitioner's ability to obtain the necessary capital to acquire and sustain the proposed wastewater systems. (Staff Exh. 3.0 at 3-4). This raises the issue whether Petitioner can provide service without significant adverse financial consequences for the utility or its customers, pursuant to Section 8-406(b)(3) of the Act. Staff also asserts that Petitioner cannot efficiently manage and supervise construction as required by Section 8-406(b)(2) of the Act. (Staff Exh. 1.0 at 7-8).

According to Petitioner, if it invests in the wastewater systems at the level required by Staff, \$637,896 total, the revenue requirement will be extraordinarily high and Petitioner will be compelled to pass the requirement on to customers in the form of similarly high rates. (Olson Rebuttal at 13). Petitioner instead proposes to invest a total of \$49,763 in the wastewater systems in order to keep the monthly rate at \$53.30 per customer under a single tariff pricing format. (Olson Surrebuttal at 7).

~~Neither scenario is acceptable to the Commission.~~ Section 8-406(b)(3) of the Act requires financing "without significant adverse financial consequences" for the utility or its customers. Staff's proposed investment level for Petitioner would result in monthly rates of \$181.08 for Falcon Crest and \$297.34 for Eastgate Estates. (Staff Exh. 4.0 at 3). Staff characterizes these rates as abnormally high and recommends that both petitions be denied on this basis. (Id. at 6, 8). We agree with Staff. The proposed rates are nothing short of exorbitant and clearly would create the "significant adverse financial consequences" for customers prohibited by Section 8-406(b)(3) of the Act.

~~Petitioner acknowledges that Staff's recommended level of investment is too high and would result in rates that violate Section 8-406(b)(3) of the Act. (Olson Rebuttal at 13). Its counterproposal is to invest such a small sum of money (\$49,763 total; \$1926 for 2009) that the resulting \$53.30 monthly customer rate would be roughly 30% of Staff's rate for Falcon Crest and 20% of Staff's rate for Eastgate Estates. (Staff Exh. 3.0 at 3; Olson Surrebuttal at 3). We concur with Staff that Petitioner's proposed investment would be too insignificant to earn a meaningful return and could put the entire system in jeopardy as it deteriorates over time. Staff described Petitioner's total investment as negligible (Staff Exh. 1.0 at 16), as it would amount to no more than 5% of the total cost of the Falcon Crest system and no more than 3.4% of the total cost of the Eastgate Estates system (Staff Exh. 1.0 at 15). Such an anemic investment creates the likelihood that customers would ultimately bear the primary economic risk for system operation and upkeep. The Commission deems such a risk intolerable.~~

**RME is asking the Commission for approval of the Wastewater Agreements in this consolidated docket based on the reasoning developed in Docket 00-0194 confirmed by the appellate court. (IAWC v. ICC, 331 Ill. App. 3d 1030, 1037: 772 N.E. 2<sup>d</sup> 390, 396 (2<sup>nd</sup> Dist 2002)) The agreement states that the developer will construct the wastewater system. (RME Pet. Ex. EG-C at 1-2, FC-C at 1-2) The Agreements provide for refunds by RME in accordance with the methodology developed and approved in Docket 01-0645. (Id at 5-6) In that case, the appropriate amount of the utility's investment in a wastewater collection system was extensively addressed and it was ultimately agreed to use the methodology**

set forth on Attachment "A" to a Stipulation referenced in the Commission's Order. (Order 01-0645 etc) (Pet. Attachment "A") RME has utilized the approved methodology in Docket 01-0645 in developing the Wastewater Service Agreements. (RME Pet. Ex. EG-C at 1-2, FC-C at 5-6) The per customer amount to be repaid to the developer is \$934 for Falcon Crest and \$963 for Eastgate Estates and funded as each new customer is attached to the respective system. (Staff Ex. 1.0 at 14-15) The Rates proposed by RME Illinois are \$53.00 for customers of Falcon Crest Subdivision and \$54.75 for the customers of Eastgate Estates. (RME Gp. Ex. A2 at 17) Combining the proposed revenue requirements in this consolidated rate case into a single tariff rate would result in each customer paying \$53.30 per month. (RME Gp. Ex. A2 at 18)

The Commission also agrees with Staff that establishing an escrow account at Staff's recommended level of investment would demonstrate that Petitioner is capable of funding a level of investment that Staff deems sufficient for an investor-owned wastewater utility. Holding the investment in an escrow account would also ensure that investment in the systems is for utility purposes only, however, Petitioner has not shown that it can raise sufficient capital to fund construction at Staff's recommended level of investment. (Staff Ex. 3.0 at 5). However the Commission finds that by establishing an escrow account at Staff's recommended funding level the corresponding rates will be extraordinarily high so high that they violate the provision of Section 8-406(b)(3) of the Act.

~~Additionally, as long as the investment amount remains at the miniscule level set by Petitioner, it is irrelevant whether the investment is made pursuant to refunds to developer or otherwise. Petitioner's proposed investment level is inadequate regardless of how it is made. We repeat our caveat that an inadequate investment level will provide an inadequate return and this would ultimately set the stage for system breakdown because the necessary funds for proper maintenance and repair were not available.~~

The Commission further disagrees with Staff that Petitioner's Eastgate letter of credit for five years is an unsatisfactory substitute for Staff's proposed \$35,000 line of credit. (Olson Rebuttal at 14; Staff Ex. 3.0 at 6). The letter in question was provided by the developer pursuant to Village of Long Grove Ordinance 2007-O-03. Long Grove is the sole beneficiary. Staff points out that it is unclear whether Petitioner could draw upon the letter at all or, if it could, what source of external funds would be available to Petitioner after the letter expires. (Staff Ex. 8.0 at 6-7). The Commission finds RME must provide documentation that proves it could draw on the letter of credit and if RME cannot provide such documentation then a line of credit must be established for a total of \$35,000 to be funded as the 43 customers attach to the systems.

The Commission also regards Mr. Olson to be mistaken in his belief that Mr. Rukosuev endorsed single tariff pricing for Falcon Crest and Eastgate Estates. (Olson Rebuttal at 18). Mr. Rukosuev clearly stated that the revenue requirements of the two

systems should not be combined, due to the disparity in the number of customers as well as the plant cost per customer (44 customers/\$18,841 for Falcon Crest; 9 customers/\$28,556 for Eastgate Estates). Combining the costs of the two systems would require Falcon Crest customers to subsidize Eastgate Estates with no corresponding benefit and would result in an average monthly customer rate of \$200.82. (Staff Exh. 4 at 4-6). **The Commission is of the opinion that Mr. Rukosuev comments are based on the customer rates proposed by Staff not the customer rates proposed by RME and that Mr. Olson's comments were based on RME's proposed rates not Staff's proposed rates.**

We do not find that that Petitioner acted improperly with regard to developer construction of the Eastgate Estates system. Section 8-406(b) prohibits only a public utility from beginning construction without a certificate, and Staff acknowledges that it is the developer, not the utility, who has begun construction. (Staff Exh. 1.0 at 8). Moreover, we can find no language in Section 8-406(b) of the Act that establishes a reasonableness standard or addresses managerial imprudence. Section 8-406(b)(2) of the Act requires efficient management and supervision of the construction process and there is no evidence that enables us to conclude that Petitioner failed to adhere to that provision.

The Commission concludes that Petitioner is ~~too undercapitalized to~~ **capable of sustaining** service to the customers of Falcon Crest and Eastgate Estates without significant adverse financial consequences for the utility or its customers under Section 8-406(b)(3) of the Act. For this reason, the requested petitions should be ~~denied~~ **approved**.

#### IV. FINDINGS AND ORDERING PARAGRAPHS

RME recommends the following replacement language and technical corrections to the POSITIONS OF THE PARTIES of the ALJPO

Proposed Modification, (ALJPO, p 13, 14)

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

1. RME Illinois, LLC has petitioned for Certificates of Public Convenience and Necessity to construct wastewater systems and provide wastewater services to 44 units in the Falcon Crest development in Lake Villa, Lake County, Illinois under Docket 08-0490 and to 9 units in the Eastgate Estates development in Long Grove, Lake County, Illinois under Docket 08-0491;
2. the Commission has jurisdiction of the parties hereto and the subject matter hereof;
3. the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
4. the Certificates of Public Convenience and Necessity requested for Falcon Crest in Lake Villa, Lake County, Illinois and for Eastgate Estates in Long Grove, Lake County, Illinois are necessary to provide adequate, reliable and efficient utility service to customers at the least-cost means available;
5. Petitioner is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof;
6. Staff's calculated that for Petitioner to sufficiently invest in the wastewater systems, it would be necessary to place a total of \$637,896 in an escrow account; this would result in monthly rates of \$181.08 charged to customers in the Falcon Crest subdivision and \$297.34 charged to customers in the Eastgate Estates subdivision;
7. Staff characterized the monthly rates as abnormally high and recommended that the petitions be denied;
8. Petitioner proposed to invest a total of \$49,763 for both wastewater treatment systems and charge all customers \$53.30 per month under a single tariff pricing format;
9. the Commission finds that the proposed rates set forth in Finding (6) are so high that they violate the provision 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;
10. the Commission finds that Petitioner's proposed investment amount is inadequate and reflects the fact that Petitioner is ~~too~~ insufficiently capitalized to invest the necessary amounts in the respective wastewater

systems to provide service at rates that do not violate the provisions of Section 8-406(b)(3) of the Act;

11. the petition for a Certificate of Public Convenience and Necessity requested for Falcon Crest in Lake Villa, Lake County, Illinois in Docket 08-0490 should be ~~denied~~ **approved**;
12. the petition for a Certificate of Public Convenience and Necessity requested for Eastgate Estates in Long Grove, Lake County, Illinois in Docket 08-0491 should be ~~denied~~ **approved**.

IT IS THEREFORE ORDERED that the Certificate of Public Convenience and Necessity requested in Docket 08-0490 for Falcon Crest in Lake Villa, Lake County, Illinois, is ~~denied~~ **approved**.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity requested in Docket 08-0491 for Eastgate Estates in Long Grove, Lake County, Illinois, is ~~denied~~ **approved**.

**IT IS FURTHER ORDERED that the Wastewater Service Agreement requested in Docket 08-0491 for Eastgate Estates in Long Grove, Lake County, Illinois, is approved.**

**IT IS FURTHER ORDERED that the Wastewater Service Agreement requested in Docket 08-0491 for Eastgate Estates in Long Grove, Lake County, Illinois, is approved.**

IT IS FURTHER ORDERED that any petitions, motions or objections not disposed of in this proceeding shall be considered disposed of consistent with the findings and conclusions set forth in this Order.

IT IS FURTHER ORDERED that pursuant to the provisions of Section 10-113 of the Public Utilities Act (220 ILCS 5/10-113) and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

John T. Riley  
Administrative Law Judge

DATED:  
BRIEFS ON EXCEPTIONS DUE:  
REPLY BRIEFS ON EXCEPTIONS DUE:

July 16, 2009  
July 30, 2009  
August 6, 2009