

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Avon Energy Partners, L.L.C.	:	
	:	Docket No. 01-0269
Petition for determination that an electric generating facility fueled by landfill methane and to be located at 2000 East 122 <sup>nd</sup> Street, in Chicago, IL. is a qualified solid waste energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.	:	
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Devonshire Energy Partners, L.L.C.	:	
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Petition for determination that an electric generating facility fueled by landfill methane and to be located at 138 <sup>th</sup> Street and Cottage Grove Avenue, Dolton, IL. 60419 is a qualified solid waste energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.	:	
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Riverside Resources Recovery, L.L.C.	:	
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Petition for determination that an electric generating facility fueled by landfill methane and to be located at 1371 North Joliet Road, Romeoville, IL. 60441 is a qualified solid waste energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.	:	
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**RESPONSE TO PETITION**

On March 15, 2001, Avon Energy Partners, LLC (“Avon”), Devonshire Power Partners, LLC (“Devonshire”), and Riverside Resource Recovery, LLC (“Riverside”) filed a joint petition pursuant to Section 8-403.1 of the Public Utilities Act, 220 ILCS5/8-403.1. Each Petitioner owned a facility that had been determined by the Commission to be a Qualified Solid Waste Energy Facility (“QSWEF”) under Section 8-403.1 (b), and, to qualify for a contract with an electric utility pursuant to Section 8-403.1 (e). Those determinations were made in consolidated Docket Nos. 97-0073 (Avon), 97-0074 (Devonshire) and 97-

0075 (Riverside). In this Petition, Avon, Devonshire and Riverside describe a change in their common ownership, and request determinations from the Commission that each of the three facilities 1) remains a Qualified Solid Waste Energy Facility (“QSWEF”) under Section 8-403.1 (b), and, 2) continues to qualify for a contract with an electric utility pursuant to Section 8-403.1 (e).

In support of their requests, Petitioners submitted 1) a copy of the Commission Order in Docket Nos. 97-0073/0074/0075 (consolidated), in which they were each originally found to be a QSWEF qualified for a contract with an electric utility (Commonwealth Edison) for the sale of electricity generated at the landfill facility; 2) a copy of the Federal Energy Regulatory Commission (“FERC”) Form 556 for re-Certification of the landfill generating facility as a Qualifying Facility under federal law that each Petitioner intends to file upon completion of the proposed merger (one from for each Petitioner); 3) the Affidavit of Richard J. Augustine, the Chief Financial Officer of the Zahren Alternative Power Co. (“ZAPCO”); and 4) what purports to be an “Agreed Order.”<sup>1</sup>

Staff has reviewed the assertions in the Petition, which are supported by the Affidavit of Mr. Augustine. Initially, Staff agrees with Petitioners that each facility continues to qualify as a QSWEF under Section 8-403.1 (b), and has met the filing requirement of 83 Ill. Admin. Code 445.30 (c). And, as established through the discussion below, Staff believes that each Petitioner’s facility also continues to qualify for the contract to sell the electricity it generates to a utility, pursuant to Section 8-403.1 (c).

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<sup>1</sup> Although Staff reviewed and discussed a preliminary draft proposed order with Petitioner, Staff did not have an opportunity to review the final draft of the proposed order submitted with the Petition.

When the Avon, Devonshire and Riverside facilities were initially approved as QSWEFs, each facility was owned 50% by ZAPCO and 50% by the A.J. Gallagher Company (“Gallagher”). The new petition recites that there is no change in the interest held by Gallagher. However, the interest held by ZAPCO does change, in that the company is merging with the USE Acquisition Corporation. The change is identical for each Petitioner. After the consummation of that transaction, ZAPCO will be held as follows: 54.26 percent by US Energy Systems, Inc. (“US Energy”) and 45.74 percent by Cinergy Energy Solutions, Inc (“CES”). This latter figure is effectively increased to 49.93 percent through CES’s 7.7 percent interest in US Energy. In addition, the relevant analysis under 8-403.1 (e) must acknowledge that CES is wholly owned by the Cinergy Corporation, a utility company.

The Commission must then determine whether these percentages of interest, coupled with each interested company’s relevant energy holdings (as shown in Paragraphs 9 and 10 of the Petition), require the Commission to find that the Avon, Devonshire and Riverside facilities can continue to operate under their current contracts with Commonwealth Edison. And, based on the information provided in the Petition and supported by the Affidavit of Mr. Augustine, and under the required analysis established by the Commission in previous dockets, Staff concludes that the Petitioners have shown that they continue to qualify for the contract awarded pursuant to Section 8-403.1 (c) in Docket Nos. 97-0073/0074/0075 (consolidated).

Staff also notes that each Petitioner has established a fund, and will continue to maintain the fund, to reimburse the State of Illinois for payments received under the contract, as required by Section 8-403.1 (d). (Petition, Par. 14) Avon, Devonshire and Riverside further assert that they will provide annual reports to the Commission showing the

status of the reimbursement funds. Staff supports the provision of such reports, in the detail set forth by Petitioners.

In addition, Staff would note the Petitioners' continuing obligation to report to the Commission any additional changes in their ownership structure. Staff also believes the Commission should require, as it did in previous ZAPCO Dockets 97-0073/0074 /0075 (consolidated), to disclose any changes or additions to the non-QSWEF energy production and sales entities owned or operated by the entities involved in the ownership and operation of each Petitioner's facilities. Such filings should disclose:

1. the location (State) of all such energy producing or selling facilities;
2. the maximum gross power production capacity of each such electric generation facility, and the production or sales capacity of any such gas company.

All annual reports as required by the Commission in this Docket, and any other required reports and filings, should set forth the filing facility's name (Avon, Devonshire or Riverside), the location of the landfill, and the docket number of the proceeding. All reports and filings shall be submitted to the Office of the Chief Clerk, as well as to the Director of the Accounting Department of this Commission, on the last day of each anniversary month of the month in which the facility began commercial operation.

As determined by the Commission in prior ZAPCO Docket Nos. 97-0073/0074 /0075 (consolidated), the purpose of these reports is to provide the Commission with sufficient and timely information needed to effectively address any enforcement issues that may arise. The requirement of filing the reports is not intended to supercede Petitioners' duties and requirements pursuant to Section 8-403.1 and 83 Ill. Admin. Code 445. The

requirements of the statute and the Rule must be met and maintained on a continuous basis.

There are two remaining points upon which to comment. Each Petitioner will need to submit two additional documents: the FERC form 556, date-stamped to indicate proof of filing the re-Certification of the facility as a QF; and, a notice of the completion of the proposed merger. Neither of these documents will be available until after the consummation of the merger. It is Staff's understanding that the Petitioners will undertake to submit these documents as soon as they are available.

WHEREFORE, for the foregoing reasons, Staff agrees that the Petition should be granted. As there do not appear to be any controverted issues, Staff does not believe that a hearing is necessary in this matter.

Respectfully submitted,

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David L. Nixon  
Counsel for the Staff of the  
Illinois Commerce Commission

160 North LaSalle Street  
Suite C800  
Chicago, Illinois 60601  
(312) 793-2877

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