

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

BMC Energy, LLC	:	
	:	
Petition for determination that an electric generating	:	
facility fueled by landfill methane and located	:	Docket No. 01-0271
adjacent to the Environ Tech Landfill in Morris,	:	
Illinois is a qualified waste energy facility as defined	:	
in Section 8-403.1 of the Illinois Public Utilities Act.	:	

RESPONSE TO PETITION

On March 16, 2001, BMC Energy, LLC (“BMC”) filed a petition pursuant to Section 8-403.1 of the Public Utilities Act, 220 ILCS5/8-403.1. The BMC facility had been determined by the Commission in Docket No. 00-0323 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). In its Petition, BMC describes various changes in its ownership, and requests determinations from the Commission that the BMC facility 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 its requests, Petitioner submitted 1) a copy of the Commission Order in Docket No. 00-0323, in which it had been originally found to be a QSWEF qualified for a contract with an electric utility 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 (“QF”) under federal law that Petitioner intends to file upon completion of the proposed sale and merger

transactions; 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.”¹

Staff has reviewed the assertions in the Petition, which are supported by the Affidavit of Mr. Augustine. Initially, Staff agrees with Petitioner that the 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 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).

When Petitioner was approved as a QSWEF in Docket 00-0323², it was owned 100% by ZAPCO. The new petition recites that there are two changes that will be made to the ownership structure for the BMC facility. First, AJG Financial Services, Inc. (“AJG”) will acquire a direct 50% interest in the facility. (Petition, par. 8) This will reduce ZAPCO’s direct ownership interest to 50%. Second, the corporate structure of ZAPCO will change, in that the company is merging with the USE Acquisition Corporation. 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”). (Petition, par. 9) 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.

¹ 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.

² In Docket 00-0323, BMC energy petitioned for similar relief, seeking the Commission’s imprimatur for ZAPCO’s ownership purchase of the landfill facility from Morris Genco and its owners. Morris Genco was determined to be a QSWEF and to qualify for a sales contract in Docket 98-0322.

The Commission must then determine whether these percentages of interest, coupled with each interested facility's relevant energy holdings (as shown in Paragraphs 1, 10, 11 and 12 of the Petition), require the Commission to find that the BMC facility can continue to operate under its current contract with the utility. 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 Petitioner has shown that it continues to qualify for the contract awarded pursuant to Section 8-403.1 (c) in Docket 00-0323.

The Petition recites that there is no change to the ownership of the Operator of the Facility. (Petition, pars. 1 and 13) The Commission addressed the aspect of Section 8-403.1 (e) concerning the operation of the landfill facility in Docket 00-0323. In that proceeding, the Commission found that there were no issues to preclude the authorization of a contract between the facility and the utility. Since there have been no changes to the circumstances that supported that Commission determination, the Commission's finding should be the same in this proceeding.

Staff also notes that the Petitioner has established a fund to reimburse the State of Illinois for payments received under the contract, and will continue to maintain the fund until its obligation to the State is fully satisfied, as required by Section 8-403.1 (d). (Petition, Par. 15) BMC further asserts that it will provide annual reports to the Commission showing the status of the reimbursement fund. Staff supports the provision of such reports, in the detail set forth by Petitioners.

In addition, Staff would note Petitioner's continuing obligation to report to the Commission any additional changes in its ownership structure. Staff also believes the

Commission should require, as it did in previous ZAPCO Dockets 97-0073, 97-0074 and 97-0075 (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 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 BMC's name, 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, 97-0074 and 97-0075 (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 Petitioner's 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 several remaining points upon which to comment. Petitioner will need to submit additional documents: the FERC form 556, date-stamped to indicate proof of filing

the re-Certification of the facility as a QF; and, notices of the completion 1) of the sale of 50% of ZAPCO's interest in the BMC facility to AJG, and, 2) of the proposed merger between ZAPCO and USE. These documents will not be available until after the consummation of the separate sale and merger transactions. It is Staff's understanding that Petitioner 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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March 23, 2001