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DIVISION OF ECONOMIC REGULATION
(850) 413-6900

Public Service Commission

November 26, 2002

Mr. F. Marshall Deterding, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Re: Docket No. 020091-WS, Application for transfer of facilities and Certificate Nos. 517-W and 450-S in Brevard County from Service Management Systems, Inc. to IRD Osprey, LLC d/b/a Aquarina Utilities.

Dear Mr. Deterding:

Staff has met and discussed your August 27, 2002, response to staff's April 2, 2002, letter. While the response satisfied a number of staff's concerns, there are several items for which the information was insufficient or which raised other concerns, as indicated below:

ADDITIONAL INFORMATION / CLARIFICATION / MODIFICATION

1. Closing Date. In the August 27, 2002, response, it was indicated that, after consultation with you, the buyers moved forward with the acquisition of the utility before final approval by the Commission with the understanding that they will be required to unwind the transaction if approval is not received. Section 367.071(1), Florida Statutes, provides that the transfer may occur prior to Commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval. (Emphasis added.) By letter filed October 2, 2002, an Indemnification In Event of Licensure Denial (indemnification) was filed. Unfortunately, the indemnification was not in the form of an amendment to the Agreement for Sale and Purchase nor was it signed by any of the parties to the contract.

Since the parties were advised by legal counsel prior to closing on the transfer, there do not appear to be any mitigating circumstances for which staff can recommend that the seller not be required to show cause in writing why the seller should not be fined for violation of Section 367.071(1), Florida Statutes. Therefore, it is will be important that this matter be corrected in the manner provided for in the statutes.

2. Financial Ability. The August 27, 2002 response, addressed a number of staff's concerns with

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regard to an adequate showing of financial ability. Of particular interest was the statement that Indian River No. 1 Developers, LLC (developer), had recently entered into an agreement which it intended to close within two weeks of the August 27, 2002, response. In the agreement the developer was selling assets valued at \$4 million to retire the majority of the outstanding mortgage debt reflected in the financial statements of \$4.9 million. Please provide a copy of the Mortgage Payoff as verification that this matter was consummated as indicated.

3. Name Change. Also, in the August 27, 2002 response, it was indicated that the final sale transaction was a stock transfer rather than an asset purchase as originally filed. As you are aware, the name of the utility is automatically changed in an asset purchase to reflect the name of the buyer. In a stock transfer, which is considered a transfer of majority organizational control, the assets remain as originally certified. If the parties intend for the name of the utility to change as a result of the stock transfer, please refer to Rule 25-30.039, Florida Administrative Code, for the additional information that needs to be filed. In addition, please provide a copy of a recorded warranty deed in the new name of the utility. If the parties intend for the name of the utility to remain as currently certificated, please refile the proposed tariff pages.
4. Proposed Tariffs. In a phone conversation with Patti Daniel, you indicated that the utility is providing reuse service at a zero rate. As you are aware, Commission staff believes that the appropriateness of all rates and charges, including a zero rate, should be reviewed by the Commission. In addition to furnishing the appropriate rate sheets(s) for inclusion in the utility's tariffs, please provide the justification for a zero rate. Included in that justification should be a description of the reuse facilities, including capacity, when the retrofit was constructed, and why.

In addition, please ensure that the proposed tariffs are updated to include the new RWO class of service recently approved by the Commission and the utility's recent index(es).

If you have any questions regarding the information requested, please contact Ms. Patricia Brady at (850) 413-6686 or pbrady@psc.state.fl.us.

Sincerely,



Patti Daniel
Supervisor of Certification

PD:PB

cc: Division of Economic Regulation (Brady, Redemann, Bass)
Office of the General Counsel (Vining)
Division of Commission Clerk and Administrative Services (2 copies)