

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 29, 2003
TO: Division of the Commission Clerk and Administrative Services
FROM: Division of Economic Regulation (Brady) *pb JD*
RE: Docket No. 020091-WS, Application for transfer of facilities and Certificates Nos. 517-W and 450-S in Brevard County from Service Management Systems, Inc. to IRD Osprey, LLC d/b/a Acquarina Utilities.

Please add to the docket file the attached letter dated October 2, 2002, from F. Marshall Deterding, Esq., for the firm, to Ms. Pat Brady, Commission staff. The letter transmits an indemnification agreement as a proxy for an unwind provision for the sale of the utility prior to Commission approval.

Attachment

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

DOCUMENT NUMBER-DATE

00960 JAN 30 8

FPSC-COMMISSION CLERK

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October 2, 2002

VIA HAND DELIVERY

Ms. Pat Brady
Division of Regulatory Oversight
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: IRD Osprey, LLC d/b/a Aquarina Utilities; PSC Docket No. 020091-WS
Our File No. 36082.01

Dear Pat:

Attached is a copy of the agreement whereby both parties to the sale of the Utility agree that there will be an unwind of the sale of the Utility, in fact the Commission denies approval. That is the sole purpose of this indemnification agreement. It was executed at the time the final closing was accomplished.

If you have any further questions with regard to that issue, please let me know. Hopefully, we can move forward with the finalizing of this transfer approval quickly, now that this issue is resolved.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP


F. Marshall Deterding
For The Firm

FMD\tms
cc: Patti Daniel
Robert Frazier, Jr., Esq.
Marty Sadkin
James Bates
indian\brady.ltr

02 OCT -3 AM 11:01
REGULATORY SERVICE

**INDEMNIFICATION IN EVENT OF
LICENSURE DENIAL**

WHEREAS, IRD Osprey, LLC, a Florida limited liability company (hereinafter "IRD") has applied to the Public Service Commission to assume the license of Service Management Systems, Inc., a Florida corporation (hereinafter "SMS") for providing utilities at the "Aquarina" project; and

WHEREAS, prior to approval, IRD has paid the purchase price to Petrus Group, L.P., a Kansas limited partnership (hereinafter "Petrus"), current owner of the stock of the license holder, SMS; and

WHEREAS, in the unlikely possibility that IRD is denied permission to assume the license and operate the utility.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Aquarina Developments, Inc., a Florida corporation, hereby indemnifies and holds harmless IRD for the cost of purchasing the utility in the event that licensure is denied. This indemnification is based upon the Settlement Statement attached hereto and made a part hereof.
3. The parties hereto recognize that the stock is being held in escrow until PSC approval. In the event approval is not forthcoming, the stock will be returned to SMS and IRD will be repaid the purchase price as set forth above.

AQUARINA DEVELOPMENTS, INC., a Florida corporation

By: _____
