

STATE OF FLORIDA

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TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

Public Service Commission

January 30, 2003

F. Marshall Deterding, Esq.
Rose, Sundstrom & Bentley, LLP
2548 Blainstone Pines Drive
Tallahassee, FL 32301

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 Aquarina Utilities.

Dear Mr. Deterding:

As you are aware, this docket is scheduled for the April 15, 2003 agenda conference. In order to meet that schedule, please file your response to the following outstanding items previously identified by staff on or before February 17, 2003.

1. Closing Date. Your August 27th response 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 dated 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 (contract) nor was it signed by any of the parties to that contract.

Please provide either an amendment to the contract signed by all parties to the contract that the sale is contingent upon Commission approval or an explanation of any mitigating circumstances as to why the seller should not be required to show cause in writing why it should not be fined for violation of Section 367.071(1), Florida Statutes.

2. Financial Ability. Your August 27th response addressed a number of staff's concerns with 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 was intended to be closed within two weeks of the August 27th 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.

DOCUMENT NUMBER DATE

01062 FEB-03

FPSC-COMMISSION CLERK

3. Name Change. Your August 27th response indicated that the final sale transaction was a stock transfer rather than an asset purchase, as originally filed, and that SMS was subsequently dissolved at the end of May. As you are probably aware, the name of the utility is changed in an asset purchase to reflect the fact that the assets have transferred to another corporation. On the other hand, the name of the utility generally remains as certificated in a stock transfer to reflect the fact that the assets have not transferred. The exception would be if the request for approval of the stock transfer was also accompanied by a request for a name change.
 - a. 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.
 - b. If the parties intend for the name of the utility to remain as currently certificated, please refile the proposed tariff pages to change the utility name back to SMS while still reflecting the change in majority control owner.

4. Proposed Tariffs. In a recent phone conversation, you indicated that the utility is providing reuse service at a zero rate. As you are aware, all rates and charges, including a zero rate, must be approved by the Commission.
 - a. In addition to furnishing the appropriate rate sheets(s) for inclusion of the reuse service in the utility's tariffs, please provide justification for a zero rate. At a minimum, the justification should:
 - o describe the reuse facilities, including capacity
 - o explain when the retrofit was constructed and why
 - o identify all users including their capacity
 - o provide copies of any reuse agreements.
 - b. In addition, please ensure that the proposed tariffs are updated to include all tariff changes that have been approved since the application for transfer was filed.

If you have any questions regarding the information requested, please contact Ms. Patricia Brady at (850) 413-6686 or pbrady@psc.state.fl.us or Commission counsel, Ms. Adrienne Vining at (850) 413-6183 or avining@psc.state.fl.us.

Sincerely,



Patti Daniel
Supervisor of Certification

PD:PB

cc: James Bates, Service Management Systems, Inc.
Division of Economic Regulation (Brady, Redemann)
Office of the General Counsel (Vining)
Division of the Commission Clerk and Administrative Services (docket, security)