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

Public Service Commission

May 7, 2008

Kenneth A. Hoffman, Esq. &
Marsha E. Rule, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302

Re: Docket No. 080183-WU, Joint Application for approval of transfer of Tamiami Village Water Company, Inc.'s water system and Certificate No. 388-W in Lee County to Ni Florida, LLC

Dear Mr. Hoffman and Ms. Rule:

Staff has preliminarily reviewed the above referenced filing made on March 31, 2008, and determined that it is not deficient. However, as you are aware, a protest was filed on April 30, 2008. Therefore, a recommendation on the transfer will be suspended until it can be determined if the protest will be set for hearing. Also, it has been 13 years since rate base was last established for the utility.¹ Therefore, an audit is being performed to update rate base to December 31, 2007. Meanwhile, staff is requesting a response to the following additional items of information.

Request for Additional Information

- Purchase Price.** According to Section 2.2 of the Asset Purchase Agreement, filed as Exhibit C to the application, the purchase price for the Tamiami Village Water Company, Inc.'s (seller's) water system was \$745,000. According to Exhibit F to the application, rate base for the system was estimated to be \$79,005 as of December 31, 2007. Therefore, the seller's utility assets were purchased for approximately 10 times estimated rate base.

Please provide an explanation why Ni Florida, LLC (Ni Florida) acquired the system at such a premium.

- Financial Ability.** According to Exhibit D to the application, the purchase of the seller's water system was financed through the use of equity financing by Ni Florida's sole member.

¹ Rate base was last established as of December 31, 1994, by Order No. PSC-95-1441-FOF-WU, issued November 28, 1995, in Docket No. 950015-WU, In Re: Application for transfer of Certificate No. 388-W in Lee County from Tamiami Village Utility, Inc.; and for a limited proceeding to increase rates to recover increased operation and maintenance expenses as a result of pending transfer to Tamiami Village Water Company, Inc.

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Ni American Capital Management, LLC (Ni Management). In composite Exhibit E to the application, Ni Management's financial statements were provided along with a letter from the CFO of Ni Management attesting to Ni Management's ability to provide funding necessary to Ni Florida. Exhibit E to the application also indicated that Ni Management is funded through a private equity source, MetalMark Capital LLC (MetalMark). Ni Management's financial statements indicate cash assets as of December 31, 2007, in the amount of \$15,378,129. Staff is concerned about the extent to which those cash assets will be sufficient should Ni Management continue to acquire water and wastewater systems in Florida and elsewhere.

- 2a. Please provide a description of all entities, other than Ni Florida, which are relying on Ni Management as a source of funding.
 - 2b. Please provide a financial statement for Ni Management's, private equity source, MetalMark. The financial statement should include a pledge from the CFO of MetalMark to provide funding necessary to Ni Management. The financial statement should also list all entities, other than Ni Management, which are relying on MetalMark as a private source of funding.
3. **Technical Ability.** According to the application, the only water or wastewater utility owned by Ni Florida, is Hudson Utilities, Inc., the transfer of which was recently approved by the Commission in Order No. PSC-08-0226-FOF-SU, issued on April 7, 2008, in Docket No. 070740-SU.

Please describe any water or wastewater utilities which may be owned or operated by affiliates of Ni Florida. The description should include the affiliate's name; the type and size of the facilities; the location of the facilities; and the length of time the facilities have been owned or operated by the affiliate.

4. **Territory Map.** Rule 25-30.037(2), Florida Administrative Code, does not require a copy of territory map(s) for transfers of certificate as such maps should have been previously filed with the Commission. However, staff has been unable to locate any territory maps for the seller's water system. Enclosed are copies of Order No. 11734,² granting original territory, and Order No. 22449,³ granting an amendment to the original territory.

Please provide one copy of a territory map for seller's water system which incorporates the territory granted by Order Nos. 11734 and 22449. Such map should show township, range, and section with a scale such as 1" equals 200' or 1" equals 400' with the legal description plotted along the boundary of the territory in metes and bounds and with a defined reference point of beginning. Also, by use of triangles, please indicate the location of all connections served by the utility.

² Order No. 11734, issued March 18, 1983, in Docket No. 820183-WS (MC), In Re: Application of Tamiami Utility Company for an original certificate to operate a water and sewer utility in Lee County, Florida.

³ Order No. 22449, issued January 23, 1990, in Docket No. 891148-WS, In Re: Application of Tamiami Village Utility, Inc. for amendment of Certificates 388-W and 332-S in Lee County.

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5. **Regulatory Assessment Fees.** According to Section 2.2(b) of the Asset Purchase Agreement, filed as Exhibit C to the application, FPSC annual assessments (RAFs) will be prorated as of the date of closing. It is preferable that the seller's prorata share of 2008 RAFs be made payable to the Commission at the time of the closing.

If possible, please provide a statement that the seller's prorata share of 2008 RAFs will be made payable to the Commission as of the date of closing and that the payment will be included with the notification to the Commission of the closing date.

In addition to the above items, changes to the proposed tariffs may be needed to accommodate future system acquisitions. Any request for modifications or suggested changes to Ni Florida's proposed tariff will be forwarded later under separate cover. Otherwise, the utility's response to the information requested above, should be filed with the Commission on or before May 30, 2008. If you have any questions regarding Item 4, please contact Mr. Richard Redemann at (850) 413-6999 or rredeman@psc.state.fl.us. If you have any questions regarding Item 5, please contact Ms. Anne Marsh at (850) 413-6554 or amarsh@psc.state.fl.us. Any other questions to be addressed to Ms. Patricia Brady at (850) 413-6686 or pbrady@psc.state.fl.us.

Sincerely,



Patti Daniel
Public Utilities Supervisor
Bureau of Certification, Economics & Tariffs

PD:pb

Enclosures (Order Nos. 11734 and 22449)

cc: Caroline Klancke, Esq.
Richard Redemann
Pat Brady

~~Office of Commission Clerk~~