




REPRESENTING  
**ALEX SINK**  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

**FILED**

JUL 20 2010

Docketed by 

In The Matter Of:

ERIC A. NEILINGER,

Case No.: 110360-10-FM

Petition for Declaratory Statement to the  
Florida Department of Financial Services

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DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (hereinafter "Petition") by Eric A. Neilinger (hereinafter "Petitioner"). The Petition was received by the Department of Financial Services, Division of State Fire Marshal (hereinafter "Department"), on May 4, 2010. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's questions are being answered as purely hypothetical. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

#### BACKGROUND AND FACTS ASSERTED

4. The Declaratory Statement was requested pursuant to the provisions of Section 633.01(6), *Florida Statutes*, and Rules 28.105 and 69A-60.007, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's interpretation of its statutes, rules, and orders, as they apply to the Petitioner's particular set of circumstances. Section 633.01(6), *Florida Statutes*, requires the Department to issue a Declaratory Statement when requested by a substantially affected person and the Petition relates to the Florida Fire Prevention and Life Safety Code (hereinafter referred to as "the Code").

5. The subject of the Petition is the application of National Fire Protection Association (hereinafter "NFPA") Standard 72, and Rule 69A-48.008, *Florida Administrative Code*, relating to monitored fire alarm systems, to the Petitioner's particular set of circumstances.

6. Petitioner alleges the following:

A. Petitioner has installed an AES brand U.L. 864 listed intelligent radio self-healing mesh network system in many locations in South Florida. The system is operating as a type 6 one-way system, and has two-way interrogation and response

sequence to verify signal transmissions and acknowledgement, exceeding the minimum requirements for a type 6 system.

B. The network is operating in Dade, Broward and Palm Beach Counties and has been widely accepted in most jurisdictions within the area.

C. The Broward County Fire Marshal (“AHJ”) did not approve the system in his jurisdiction in 2007, based upon the fact that the documents presented to him did not demonstrate the two-paths of communication shown in the manufacturer’s manual and required by NFPA 72-4.3.1 and NFPA 72-8.5.2.5.2. The issue was taken to the Broward County Fire Committee who agreed with the AHJ and rejected the system. Petitioner was advised that he could file an appeal with the Broward County Board of Rules and Appeals. There is no evidence of the outcome of such an appeal, if one was taken.

D. Documents submitted with the Petition indicate that Petitioner asked for approval of the system a second time by email on April 23, 2010, and was given the same answer, together with the suggestion to seek a declaratory statement.

7. No litigation is currently pending on this matter.

8. Receipt of the Petition herein was published in Volume 36, Number 20 of the *Florida Administrative Weekly*, on May 21, 2010.

#### QUESTIONS

9. A. Does the State Fire Marshal have any objection to the use of AES brand radio systems instead of phone lines?

B. Does the AES brand radio system comply with the appropriate NFPA 72 standard and is it an acceptable means of complying with the Code's requirements for transmitting fire alarm signals when emergency resources notification is required?

C. Can the AHJ reject the use of the AES brand radio mesh network as an alternative means of emergency resources notification as long as compliance is maintained with NFPA 72 installation, and the network is installed per manufacturer's instructions?

D. The AHJ is requiring proof of two paths at the time of inspection and acceptance. The installation manual (exhibit 1), new for U.L. 864, provides an on-site method of verification for the system to meet the minimum requirement of two paths using a handheld programmer. The AHJ can verify that a network connectivity rating of 0 to 5 has been established for a U.S. fire installation. Is this an acceptable means to verify compliance?

#### DISCUSSION

10. The Department of Financial Services has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements when requested by a substantially affected person regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the Petitioner's particular set of circumstances. The Department is required to issue a declaratory statement when requested by an AHJ and the request involves the application of the Code to the Petitioner's particular set of circumstances.<sup>1</sup>

11. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt the Code, and to update it every three years. NFPA 1, "Uniform Fire Code, Florida

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<sup>1</sup> Section 633.01(6), *Florida Statutes*.

Edition” and NFPA 101, “Life Safety Code, Florida Edition,” are adopted by reference in the Code. Section 633.025, *Florida Statutes*, provides that the Code is deemed adopted by each municipality, county, and special district having firesafety responsibilities, and is enforceable by the local government.

12. The Department promulgated Rule 69A-48.008, *Florida Administrative Code*, which directs that monitored fire alarm systems be installed and operate in accordance with the 2002 edition of NFPA 72 (hereinafter referred to as NFPA 72). The rule was amended at the direction of the Florida legislature, effective November 1, 2009, to address managed facilities-based voice networks (hereinafter “MFVN”), defined at 69A-48.008(3), *Florida Administrative Code* as:

a physical facilities-based communication network that:

- (a) Is managed and maintained by the service provider to ensure service quality and reliability from the service subscriber location to the point at which a call is transferred or handed off to another MFVN peer network such as the public switched telephone network (PSTN), defined as a single or an interconnected collection of local, long distance and international phone companies;
- (b) Conforms to all relevant PSTN standards with respect to:
  - 1. Dialing,
  - 2. Dial plan,
  - 3. Call completion,
  - 4. Carriage of alarm signals and protocols, and
  - 5. Loop voltage treatment;
- (c) Provides real-time transmission of voice and real-time transmission of signals that carry alarm industry standard alarm formats unchanged;
- (d) Preserves primary line seizure for alarm signal transmission;
- (e) Provides a method of electrical power backup such as a battery that provides a minimum of 8 hours of continued uninterrupted voice service availability to the attached alarm system, and
- (f) Provides disaster recovery plans to address individual customer outages and network power restoration procedures. The plans shall be provided to the authority having jurisdiction upon request.

A provider can demonstrate that the network is an MFVN as described in this rule by submitting to the AHJ an attestation that it meets the criteria in paragraphs (a) through

(f), above. The AHJ can then approve the network.<sup>2</sup> The AHJ is the local official.<sup>3</sup>

13. NFPA 72 requires fire alarm systems to be continuously monitored by a central station and a supervising station by:

The use of a system or a group of systems in which the operations of circuits and devices at a protected property are signaled to, recorded in, and supervised from a listed central station that has competent and experienced operators who, upon receipt of a signal, take such action as required by this Code. Related activities at the protected property, such as equipment installation, inspection, testing, maintenance, and runner service, are the responsibility of the central station or a listed fire alarm service local company. Central station service is controlled and operated by a person, firm, or corporation whose business is the furnishing of such contracted services or whose properties are the protected premises.<sup>4</sup>

14. NFPA 72-8.5 addresses communications methods for supervising station fire alarm systems. Regarding one-way private radio alarm systems such as the Petitioner's system, NFPA 72-8.5.3.1 requires that the signals from each radio alarm transmitter be received and supervised by at least two independently powered, independently operating, and separately located radio alarm repeater station receivers or radio alarm supervising station receivers, or by one of each. "At least two separate paths shall be provided from the radio alarm transmitter to the ultimate radio alarm supervising station receiver", NFPA 72-8.5.3.1. A type 6 system such as the Petitioner's system must have one radio alarm supervising station receiver and at least two radio alarm repeater station receivers.<sup>5</sup>

15. An alternative system can also be approved pursuant to NFPA 72-8.5.2.2 if it provides "a level of reliability and supervision consistent with the

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<sup>2</sup> Rule 69A-48.008(4), *Florida Administrative Code*.

<sup>3</sup> Section 633.121, *Florida Statutes*.

<sup>4</sup> NFPA 72-3.3.27 (2002 edition).

<sup>5</sup> NFPA 72- 8.5.3.5.5(1) (2002 edition).

requirements of Chapter 4 and the intended level of protection.” Chapter 4 addresses the fundamentals of fire alarm systems.

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. The Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement.

2. The answers to Petitioner’s questions are as follows:

Question A: Does the State Fire Marshal have any objection to the use of AES brand radio systems instead of phone lines?

Answer: The question is ambiguously worded and incomplete in its factual recitation and is therefore too broad to be answered by the Department in a Declaratory Statement.

Question B: Does the AES brand radio system comply with the appropriate NFPA 72 standard and is it an acceptable means of complying with the Code’s requirements for transmitting fire alarm signals when emergency resources notification is required?

Answer: Not unless it is demonstrated to the satisfaction of the AHJ that the system is functionally equivalent to the requirements set forth in Rule 69A-48.008, *Florida Administrative Code*.

Question C: Can the AHJ reject the use of the AES brand radio mesh network as an alternative means of emergency resources notification as long as compliance is maintained with NFPA 72 installation, and the network is installed per manufacturer’s instructions?

Answer: The Department cannot answer this question because it is not specific to Petitioner's set of circumstances. The Department's rule sets forth the standards and process by which the AHJ can evaluate an alternative system for approval, and, as set forth in Section 633.0245, *Florida Statutes*, the AHJ is in the best position to evaluate the installation and operation of the system.

Question D: The AHJ is requiring proof of two paths at the time of inspection and acceptance. The installation manual (exhibit 1), new for U.L. 864, provides an on-site method of verification for the system to meet the minimum requirement of two paths using a handheld programmer. The AHJ can verify that a network connectivity rating of 0 to 5 has been established for a U.S. fire installation. Is this an acceptable means to verify compliance?

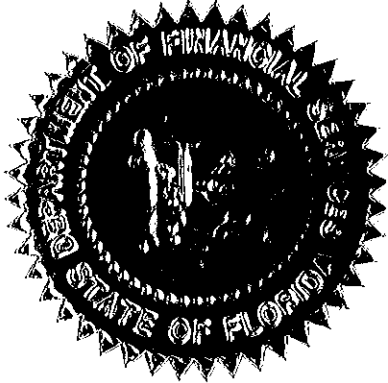
Answer: The question cannot be answered by the Department. The Department's rule sets forth the standards and process by which the AHJ can evaluate an alternative system for approval, and, as set forth in Section 633.0245, *Florida Statutes*, the AHJ is in the best position to evaluate the installation and operation of the system.

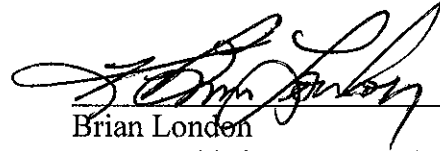
#### NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, *Florida Rules of Appellate Procedure*, because pursuant to Section 120.565, *Florida Statutes*, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, *Florida Statutes*. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, Agency Clerk, at 612 Larson Building, Tallahassee, Florida, 32399-0390, and a copy of the same with the

appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, this 20 day of July, 2010.



  
Brian London  
Deputy Chief Financial Officer

Copies furnished to:

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