




REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

MAY 3 2010

Docketed by 

In The Matter Of:

RANDY PINKHAM, S.E.T.

Case No.: 108878-10-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services.

FINAL ORDER DENYING
PETITION FOR DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement and supplemental information ("Petition"), from Randy Pinkham, S.E.T. ("Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal ("Department"), on February 10, 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 party 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. This Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 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 opinion as to the applicability of a statutory or rule provision as it applies to the Petitioner's particular set of circumstances.

5. The subject of the Petition is Rule 69A-48.008, *Florida Administrative Code*, regarding fire alarm monitoring.

6. The Petition alleges the following facts:

A. Petitioner's company, SiteSecure, is currently under contract with the School District of Osceola (SDOC) to provide fire alarm retrofits, inspections, service, and remote station monitoring to all facilities owned and/or operated by the SDOC (currently 61 facilities.)

B. Mark Cavinee is the authority having jurisdiction (AHJ) regarding fire alarm monitoring at SDOC.

B. In anticipation of the discontinuance of analogue telephone (POTS) lines, Petitioner was requested by the SDOC Facilities Maintenance Department to provide a quote for the installation of internet protocol digital alarm communicator transmitters (IPDACT) at each of SDOC's facilities.

C. Since IPDACT is accepted in most jurisdictions, Petitioner discussed the protocols with the AHJ. Petitioner forwarded numerous documents to the AHJ which provide that the devices meet the requirements of "other transmission technologies" and that, pursuant to National Fire

Protection Association (“NFPA”) 72 and Rule 69A-3, *Florida Administrative Code*, since the devices perform an integrity test every 90 seconds, no redundant communication path is required.

D. The AHJ stated that Petitioner would also need to show how the redundancy requirement for monitoring will be met, should the internet/IP be down.

E. Petitioner disagrees with the AHJ’s interpretation because NFPA 72 (2002 edition) 8.5.4.4 states that a redundant communications path is only required if the primary communications path’s integrity is not annunciated at the supervising station within 5 minutes of failure.

7. No litigation is currently pending on this matter.

8. Receipt of the Petition herein was published in Volume 36, Number 8 of the *Florida Administrative Weekly*, on February 26, 2010.

QUESTIONS

9. The Petition poses the following questions:

A. [Is] a listed fire alarm communicator which communicates via a packet-switched network (internet), and meets the requirements of NFPA 72 (2002) 8.5.4 “Other Technologies,” an acceptable alternate to other sections of chapter 8 such as those for active multiplex (DACT)?

B. If so, and the communications path is tested for integrity in intervals of less than 5 minutes, is a redundant path of communications required?

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 or a substantially affected person and the request involves the application of the Code to the Petitioner's particular set of circumstances.¹

11. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt the Code, and to update it every three years. National Fire Protection Standards ("NFPA") 1 "Uniform Fire Code, Florida Edition" and 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 districts having firesafety responsibilities, and enforced at the local level.

12. Rule 69A-48.008(1), *Florida Administrative Code*, provides that "monitored fire alarm systems shall be installed and operate in accordance with the applicable NFPA standards adopted in subsection 69A-3.012(1), F.A.C., and incorporated by reference therein." Rule 69A-3.012(1), *Florida Administrative Code*, adopts the 2002 edition of National Fire Protection Association ("NFPA") Standard 72.

13. Rule 69A-48.008(3), *Florida Administrative Code*, was added effective November 1, 2009, to specifically address alternative technologies to the standard telephone monitoring systems. The rule provision authorizes a managed facilities-based voice network (MFVN) as an acceptable alternative technology. A MFVN is defined 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 Section 633.01(6), *Florida Statutes*.

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.
- (4) The provider must demonstrate that the network is an MFVN as described in this rule by submitting to the authority having jurisdiction an attestation that the company's network meets the criteria in paragraphs (a) through (f), above. (Emphasis added)**

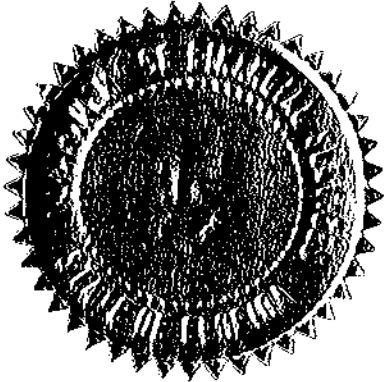
14. If the proposed system meets the above rule requirements, it can be approved by the AHJ. However, the Department cannot opine on the application of its rule to Petitioner's particular set of facts, because insufficient facts have been provided to make that determination.

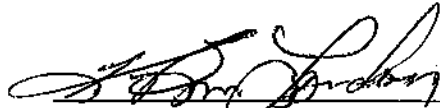
NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that the Petition for Declaratory Statement herein is DENIED.

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, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-0333, 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, on the 3 day of May, 2010.




Brian London, Deputy Chief Financial Officer

Copies furnished to:

Randy Pinkham, S.E.C.
SiteSecure, Inc.
627 Progress Way
Sanford, Florida 32771

Mark Cavinee
School District of Osceola County
817 Bill Beck Boulevard
Kissimmee, Florida 34744

Lesley Mendelson, Assistant General Counsel
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0340