

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEYARD  
TALLAHASSEE, FLORIDA 32399-0850

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



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RECORDS AND REPORTING

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**DATE:** FEBRUARY 4, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF WATER AND WASTEWATER (WALKER, REDEMAN) *dgm NRe*  
DIVISION OF LEGAL SERVICES (MCRAE, REYES) *rm gaw bl*

**RE:** DOCKET NO. 981508-WS - APPLICATION FOR APPROVAL OF TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF CRYSTAL RIVER UTILITIES, INC., HOLDER OF CERTIFICATE NOS. 123-W, 396-W, 507-W, 441-S, 53-W, 594-W, AND 510-S IN POLK, SUMTER, LAKE, CITRUS, AND PALM BEACH COUNTIES, TO AQUASOURCE UTILITY, INC.

**AGENDA:** 02/16/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\981508.RCM

### CASE BACKGROUND

Crystal River Utilities, Inc., (Crystal River) is a Class B utility system that provides water and wastewater services for customers who reside in the following counties: Citrus, Lake, Polk, Sumter, and Palm Beach. According to its annual report, Crystal River provides water service for about 1,100 equivalent residential connections and wastewater service for about 150 connections. In 1997, Crystal River recorded operating revenues of \$255,529 and net operating income of \$11,173 for its combined water and wastewater systems.

On November 3, 1998, an application for authority to acquire majority organizational control of Crystal River was filed by AquaSource Utility, Inc. (AquaSource). AquaSource is purchasing all of the utility's outstanding stock from Mr. Richard Bowles and

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Mr. Robert Sterling, III. AquaSource is a wholly owned subsidiary of DQE, Inc. (DQE), a self-described energy services holding company with assets exceeding \$4.6 billion dollars. AquaSource recently acquired several water and wastewater systems in Florida. Formed on June 1, 1997, AquaSource is now reportedly the largest investor-owned water utility in Texas. In its mission statement, AquaSource proclaims that it is dedicated to providing clean water and superior service to its customers at the lowest practical cost.

According to the purchase agreement, AquaSource agreed to pay \$475,000 for all of Crystal River's common stock. Crystal River operates three utility systems in Citrus County, two systems in Lake County, and one system, each, in Sumter, Polk and Palm Beach Counties. In Citrus County, the Commission approved a \$17,301 rate base balance for the Seven Rivers water system and a \$31,880 rate base balance for the Rhinelander water system, both measured as of December 31, 1995. In Lake County, the Commission approved a \$7,377 rate base balance for the Ravenswood water system as of April 11, 1996, and a \$4,747 rate base balance for the Haines Creek water system as of December 31, 1995. In Sumter County, a \$23,402 rate base was established for that system's water and wastewater systems. In Palm Beach County, a \$1,842 rate base was established for the Lake Osborne water system. The Commission did not set rate base values for the Polk County systems, as grandfather certificates were issued in that proceeding. Referring to Crystal River's 1997 Annual Report, a \$267,977 approximate rate base balance is suggested for the combined water and wastewater systems.

The stock purchase agreement concerning Crystal River's common stock closed on December 22, 1998, before this Commission's approval of the proposed transfer was obtained. This topic is discussed further in Issue 1.

The staff recommends approval of the application to transfer majority organizational control of Crystal River to AquaSource. Our review indicates that Crystal River is current with regard to submission of annual reports and payment of regulatory assessment fees.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Crystal River Utilities, Inc. be ordered to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Section 367.071, Florida Statutes?

**RECOMMENDATION:** No. A show cause proceeding should not be initiated. (MCRAE)

**STAFF ANALYSIS:** As stated in the case background, Crystal River closed on the transfer of majority organizational control of its facilities to AquaSource on December 22, 1998, prior to obtaining Commission approval. Section 367.071(1), Florida Statutes, states that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof..., without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest...

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In closing on the transfer prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Although Crystal River's failure to obtain Commission approval prior to transferring majority organizational control of its facilities to AquaSource is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances which appear to mitigate the utility's apparent violation. According to counsel for the utility, Crystal River needed to close on the sale as close to January 1, 1999, as possible to facilitate the bookkeeping and filing of regulatory reports and to eliminate any requirement to

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file bifurcated reports with the various regulatory agencies. Furthermore, there is a provision in the contract between Crystal River and AquaSource which states that the sale is subject to this Commission's jurisdiction and if the application is denied by the Commission, the parties will "unwind" the transaction.

Staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Crystal River to show cause for failing to obtain Commission approval prior to transferring majority organizational control of its facilities to AquaSource.

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**ISSUE 2:** Should the transfer of majority organization control of Crystal River to AquaSource be approved?

**RECOMMENDATION:** Yes, the transfer of majority organizational control should be approved. (WALKER, REDEMANN)

**STAFF ANALYSIS:** The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of majority organizational control. The application contains a check in the amount of \$2,250, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The applicant has provided evidence that the utility owns, leases, or has valid easements with respect to the land upon which its treatment facilities are presently located pursuant to Rule 25-30.037(1)(o), Florida Administrative Code. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the systems that will be transferred.

A description of the territory served by the utility is appended to this memorandum as Attachment A.

According to the application, the present owners are no longer interested in owning and operating the subject utility systems. By contrast, AquaSource is actively involved in operating and managing utility systems. AquaSource also has the financial support of its parent company, DQE, a holding company with assets exceeding \$4.6 billion dollars. DQE's subsidiary companies provide electric service in Pennsylvania and invest in other activities that support DQE's core energy business. In 1997, DQE expanded its holdings to include water and wastewater systems. AquaSource is reported to be the largest investor-owned water utility in Texas, with employees that have worked with municipal or private water systems for more than 25 years. In its mission statement, AquaSource proclaims that it is dedicated to providing clean water and superior service to its customers at the lowest practical cost. AquaSource also agrees that it will fulfill any commitments, obligations, and representations of Crystal River with respect to utility matters.

AquaSource reported that its own investigation indicates that the acquired systems are in satisfactory condition and are complying with standards adopted by the Department of Environmental Protection (DEP). Upon inquiry, staff was informed by the DEP that

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these systems do not have any outstanding notices of violation.

Based on the above, staff recommends that the transfer of majority organizational control of Crystal River from Mr. Richard Bowles and Mr. Robert Sterling to AquaSource is in the public interest and should be approved.

Crystal River Utility, Inc.

Citrus County

Seven Rivers Water Systems - Water Service Area

Order No. PSC-97-0187-POF-WU, Docket No. 960642-WU

HOMOSASSA VILLA TERRACE UNIT 11 WATER SYSTEM is situated in the Northeast 1/4 of Section 24, Township 19 South, Range 17 East; Citrus County, Florida, being a recorded subdivision - Sub. 0110, Pb. 1, Pg. 52, further shown on the County Aerial No. 72D, County Map 218A and further being described as follows:

Beginning at a point of commencement - the Northeast corner of Section 24 and running due West along the North line of Section 24, 1373.08 feet to the Point of Beginning. From the Point of Beginning, going due South along the center line of Country Club Place a distance of 405.00 feet to a point. Thence going due East along the center line of Grant Drive 283.51 feet to a point of curvature. Thence along the curve having a radius of 2315.10 feet, an arc of 232.74 feet, a chord of 230.78 feet and a chord bearing of North 87°08'00" East to a point. Thence going due South along the center line of Citrus Avenue 611.50 feet to a point of curvature. Thence along the curve having a radius of 470.00 feet, an arc of 738.27 feet, a chord of 666.26 feet and a chord bearing of South 45°00'00" West to a point. Thence going due North a distance of 10 feet to a point. Thence going due West a distance of 170.00 feet to a point. Thence going due North along the center line of Country Club Place a distance of 390.00 feet to a point. Thence going due West along the Center line of Pershing Avenue a distance of 983.35 feet to a point on the center line of Rosedale Avenue and also a point of curvature. Thence along the curve have a radius of 1378.24 feet, an arch of 225.99 feet, a chord of 225.66 feet and a chord bearing of North 04°24'35" East to a point. Thence continuing due North along the center line of Rosedale Avenue a distance of 850.00 feet to a point on the North Section line of Section 24. Thence going due East along the North Section line, a distance of 1090.00 feet to the Point of Beginning.

KENWOOD NORTH WATER SYSTEM is situated in the West 1/2 of the Northwest 1/4 of the Northeast 1/4 of Section 25, Township 19 South, Range 17 East; Citrus County, Florida, being an unrecorded subdivision 1D000, further shown on the County Aerial No. 73A, County Map 219A and being further described as follows:

From a Point of Beginning - Being the Southwest corner of the Northwest 1/4 of Section 25, Township 19 South, Range 17 East, North 00°25'47" West 1288.98 feet to a point on the South right-of-

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way of Grover Cleveland Boulevard. Thence along the South right-of-way - South  $89^{\circ}58'00''$  East, 666.04 feet to a point. Thence leaving the South right-of-way South  $00^{\circ}18'48''$  East, 1292.47 feet to a point. Thence North  $89^{\circ}39'48''$  West, 663.43 feet to the Point of Beginning.

MEADOW STREET WATER SYSTEM is situated within Green Acres Pb. 5, Pg. 4, Sub. 0200 within the Southeast  $1/4$  of Section 36, Township 19 South, Range 17 East and within Green Acres Subdivision No. 1, Sub. 0210 Pb. 5, Pg. 5, within the North  $1/2$  of the Southwest  $1/4$  in Section 31, Township 19 South, Range 18 East; Citrus County, Florida, and further shown on the County Aerial 86C, County Map 375C, being further described as follows:

From a point of commencement being the Southeast corner of Section 36, Township 19 South, Range 17 East North a distance of 1966.84 feet to the Point of Beginning on the North right-of-way of Meadow Street. Thence South  $89^{\circ}44'44''$  West, 332.02 feet to a point. Thence leaving the right-of-way North  $00^{\circ}04'49''$  East, 623.43 feet to a point. Thence South  $89^{\circ}29'56''$  East, 331.09 feet to a point. Thence South  $00^{\circ}05'32''$  East, 622.00 feet to the Point of Beginning. Further being the East  $1/2$  of Lot 22 within Section 36, Township 19 South, Range 17 East.

Also the following within Section 31, Township 19 South, Range 18 East.

Beginning at the point of commencement being the Southwest corner of Section 31, North 1294.56 feet to the Point of Beginning: Thence North  $00^{\circ}13'45''$  East, 622.28 feet to a point on the South right-of-way of Meadow Street. Thence North  $88^{\circ}49'19''$  East, 336.54 feet to a point on the right-of-way. Thence leaving the right-of-way South  $00^{\circ}14'28''$  West, 624.90 feet to a point. Thence  $89^{\circ}15'59''$  West, 336.37 feet to the Point of Beginning, being Lot 40.

Beginning at a point of commencement being the Southwest corner of Section 31, North 1966.84 feet to a point on the North right-of-way of Meadow Street. Thence along the right-of-way North  $88^{\circ}49'19''$  East, 336.55 feet to the Point of Beginning on the West Property Line of Lot 42. Thence North  $00^{\circ}14'28''$  East 624.90 feet to a point. Thence along the North Property line of Lots 42 and 43, North  $88^{\circ}22'40''$  East, 673.54 feet to a point on the Northeast corner of Lot 43. Thence South  $00^{\circ}15'54''$  West, 630.13 feet to a point on the North right-of-way of Meadow Street. Thence along the North right-of-way, South  $88^{\circ}49'19''$  West, 673.10 feet to the Point of Beginning, being Lots 42 and 43.

Beginning at a point of commencement, being the Southwest corner of Section 31, North 1966.84 feet to a point on the North right-of-way of Meadow Street. Thence along the North right-of-way, North



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section line of said Section 2 739.69 feet; thence South 89 degrees 37 minutes 00 seconds East 313.77 feet; thence South 25 degrees 27 minutes 20 seconds East 820.89 feet; thence North 89 degrees 41 minutes 30 seconds West 666.60 feet to Point of Beginning.

Section 3: Commence at the southeast corner of said Section 3; thence run North 792 feet along the east section line of said Section 3 for a Point of Beginning; thence run North 89 degrees 45 minutes 00 seconds West 1043.23 feet; thence North 739.69 feet; thence South 89 degrees 45 minutes 00 seconds East 1043.23 feet; thence south 739.69 feet to Point of Beginning.

Lake County

Haines Creek Mobile Homesites Waterworks - Water Service Area

Order No. PSC-97-0375-FOF-WU, Docket No. 960793-WU

The following described lands located in portions of Sections 11 and 12, Township 19 South, Range 25 East, Lake County, Florida:

In Section 11: Commence at the Northeast corner of said Section 11, for a Point of Beginning; thence South 89° 55' 30" West along the North line of the Northeast 1/4 of said Section, 142.86 feet to a point on the West right-of-way line of County Road No. 473, said point being 40 feet from the centerline of said county road; thence South 00° 07' 47" West along said West right-of-way line, 720.08 feet to the point of beginning; thence continue South 00° 07' 47" West along said West right-of-way line, 612.00 feet; thence departing said West right-of-way-line and run North 89° 56' 23" West; 660.00 feet; thence North 00° 07' 50" East, 183.67 feet; thence North 36° 22' 38" East, 501.98 feet; thence North 86° 18' 09" East, 364.00 feet to the point of beginning, containing 7.63 acres, more or less.

In Section 12: Commence at the Northwest corner of said Section 12 for a Point of Beginning; thence run East along said section line 825 feet to the East Boundary of Learn's Road; thence South 500 feet; thence West 200 feet; thence South 1390 feet to the North right-of-way line of Haines Creek Road; thence West along said right-of-way line 630 feet to the West section line of said Section 12; thence North along said section line 1870 feet to the Point of Beginning.

Palm Beach County

Lake Osborne Water System - Water Service Area

Order No. PSC-97-1149-FOF-WU, Docket No. 961535-WU

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In Township 44 South, Range 43 East

Section 32

That part of the East 1/2 lying East and South of the center line of Lake Osborne Drive.

Section 33

That part of the Northwest 1/4 of the Southwest 1/4 lying West of the West right-of-way of Seaboard Air Line Railway right-of-way; the South 330.11 feet of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 also lying West of the West right-of-way of Seaboard Air Line Railroad.

Polk County

THE ROSALIE OAKS SUBDIVISION - Water and Wastewater Service Area

Order No. PSC-98-0371-FOF-WS, Docket No. 961014-WS

Commence at the Northeast corner of Section 29, Township 29 South, Range 29 East, Polk County, Florida, and run South along the East boundary of Section 29, 1566.41 feet; thence North 79° 24' 10" West, 908.44 feet to the centerline of Camp Mack Road; thence along said centerline, South 50° 09' 10" West, 123.40 feet to the beginning of a curve to the left having a central angle of 08° 47' 20" and a radius of 2752.18 feet; thence along said curve, for an arc length of 422.17 feet to the end of said curve; thence South 41° 21' 50" West, 143.88 feet; thence South 35° 24' 10" East, 51.36 feet to the POINT OF BEGINNING for this description; from said POINT OF BEGINNING, continue thence South 35° 24' 10" East, 134.10 feet to the beginning of a curve to the left having a central angle of 90° 00' 00" and a radius of 20 feet; thence along said curve for an arc length of 31.42 feet to the end of said curve; thence North 54° 35' 50" East, 100.00 feet; thence South 35° 24' 10" East, 175.00 feet; thence North 54° 35' 50" East, 200.00 feet; thence North 35° 24' 10" West, 115.00 feet; thence North 54° 35' 50" East, 320.95 feet to the beginning of a curve to the right having a central angle of 46° 00' 00" and a radius of 205.58 feet; thence along said curve, for an arc length of 165.05 feet, to the end of said curve; thence South 79° 24' 10" East, 110.01 feet to the beginning of a curve to the right having a central angle of 134° 00' 00" and a radius of 51.98 feet; thence along said curve for an arc length of 121.57 feet to the end of said curve; thence South 35° 24' 10" East, 185.00 feet; thence South 54° 35' 50" West, 707.86 feet; thence South 35° 24' 10" East, 72.74 feet; thence South 69° 24' 10" East, 148.94 feet; thence North 20° 35' 50" East, 10.00 feet to the beginning of a curve to the right, whose tangent

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bears South 69° 18' 44" East, and has a central angle of 21° 52' 22" and a radius of 3180.00 feet; thence along said curve, Southeasterly, for an arc length of 1213.97 feet to the end of said curve, and the beginning of a curve to the left having a central angle of 22° 50' 30" and a radius of 260.00 feet; thence along said curve for an arc length of 103.65 feet, to the end of said curve; thence South 70° 16' 52" East, 706.24 feet; thence South 10° 16' 52" East, 400.69 feet; thence North 73° 24' 00" West, 870.32 feet to the beginning of a curve to the right having a central angle of 25° 57' 38" and a radius of 655.00 feet; thence along said curve for an arc length of 296.78 feet to the end of said curve, and the beginning of a curve to the left having a central angle of 21° 57' 48" and a radius of 2785.00 feet; thence along said curve for an arc length of 1067.58 feet to the end of said curve; thence North 69° 24' 10" West, 342.13 feet; thence North 35° 24' 10" West, 538.72 feet; thence North 54° 35' 50" East, 210.00 feet; thence North 35° 24' 10" West, 190.58 feet; thence North 41° 21' 50" East, 102.73 feet to the POINT OF BEGINNING.

ROSALIE OAKS WATER TREATMENT PLANT

ALSO, commence at the Northeast corner of Section 29, Township 29 South, Range 29 East, Polk County, Florida, and run South along the East boundary of Section 29, 1566.41 feet; thence North 79° 24' 10" West, 908.44 feet to the centerline of Camp Mack Road; thence along said centerline, South 50° 09' 10" West, 123.40 feet to the beginning of a curve to the left having a central angle of 08° 47' 20" and a radius of 2752.18 feet; thence along said curve, for an arc length of 422.17 feet to the end of said curve; thence South 41° 21' 50" West, 306.72 feet; thence South 53° 24' 20" West, 420.00 feet; thence South 36° 35' 40" East, 50.00 feet to the POINT OF BEGINNING for this description; from said POINT OF BEGINNING, continue thence South 36° 35' 40" East, 208.71 feet; thence South 53° 24' 20" West, 208.71 feet; thence North 35° 35' 40" West, 208.71 feet; thence North 53° 24' 20" East, 208.71 feet to the POINT OF BEGINNING.

Sumter County

The Woods Division - Water and Sewer Service Area

Order No. PSC-97-0312-FOF-WS, Docket No. 960643-WS

The following described lands located in portions of Sections 7 and 12, Township 22 South, Range 21 East, Sumter County, Florida:

Section 12: (Water and Wastewater)

The Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4; the South 660 feet of the Southwest 1/4 of Northeast 1/4, Less the West

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480 feet thereof: the North 736 feet of Northwest 1/4 of Southeast 1/4, less the West 489 feet thereof.

**Sections 12 and 7: (Water only)**

The Southwest 1/4 of the Southeast 1/4 of the Northwest 1/4 lying West of U.S. Highway No. 301; and the Southeast 1/4 of the Southwest 1/4 of the Northwest 1/4 and the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 and the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 and the Northwest 1/4 of the Northeast 1/4 of the Southwest 1/4 lying West of U.S. Highway No. 301; thereof, all being in Section 7, Township 22 South, Range 22 East, also the Southeast 1/4 of the Southeast 1/4 of the Northeast 1/4 and the Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4; thereof, all being in Section 12, Township 22 South, Range 21 East, Sumter County, Florida.

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ISSUE 3: Should rate base be established?

RECOMMENDATION: No, different ownership of stock does not affect the rate base balance. (WALKER)

STAFF ANALYSIS: As a policy matter, this Commission has consistently held that rate base will not be established when the transfer only concerns the utility's stock. A utility's rate base determination is not changed because it has different stockholders. Thus, as a general practice, rate base determinations are not made when stock is transferred. The transfer of Crystal River's stock from Mr. Bowles and Mr. Sterling to AquaSource does not, by itself, change the utility's asset accounts or its rate base balance. In consideration of the above, the staff recommends that rate base should not be established in this docket.

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**ISSUE 4:** Should the rates and charges approved for this utility be continued?

**RECOMMENDATION:** Yes, the rates and charges approved for this utility system should be continued. (WALKER)

**STAFF ANALYSIS:** The utility's current rates and charges for water service and wastewater service were approved pursuant to recent index applications or were adopted during transfer proceedings.

Rule 25-9.044(1), Florida Administrative Code, provides that:

"In cases of change of ownership or control of a utility which places the operation under a different or new utility...the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)..."

AquaSource has not requested a change in the rates and charges of the utility and staff sees no reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a revised tariff reflecting the change in the issuing officer due to a transfer of majority organizational control. Staff will approve the tariff filing effective for services provided or connections made after the stamped approval date.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (McRae)

STAFF ANALYSIS: No further action is required in this docket, therefore, it should be closed upon issuance of the order.