

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objections by SERVICE)	DOCKET NO. 880595-WS
MANAGEMENT SYSTEMS, INC. for water)	ORDER NO. 22075
and sewer certificates in Brevard)	ISSUED: 10-19-89
County.)	
_____)	

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
JOHN T. HERNDON

ORDER GRANTING MOTION TO SUBSTITUTE NAME,
GRANTING WATER AND WASTEWATER CERTIFICATES AND

NOTICE OF PROPOSED AGENCY ACTION

ORDER ESTABLISHING WATER AND WASTEWATER RATES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein, except for the granting of water and wastewater certificates, are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Aquarina Developments, Inc. (ADI) is a developer-owned utility which has provided water and wastewater service to the Aquarina Development in Brevard County, without receiving compensation therefor, since 1984.

On August 28, 1986, ADI entered into an agreement to provide service to the Hammock, a neighboring development, on a temporary basis. The intent of the parties was to place the provision of water and wastewater service to the Hammock outside of the jurisdiction of this Commission.

On April 6, 1987, ADI gave notice of its intent to discontinue service to the Hammock based upon the latter's failure to render payment in accordance with their agreement. On May 5, 1987, the Hammock filed a petition for an emergency

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hearing in order to prevent ADI from discontinuing water and wastewater service. In response to the Hammock's petition, ADI contended that its relationship with the Hammock was non-jurisdictional; nevertheless, ADI agreed to continue to provide service pending a jurisdictional determination by this Commission.

By Order No. 18475, issued November 24, 1987, we found that Aquarina was subject to our jurisdiction, based upon its provision of service to the Hammock for compensation. Also by Order No. 18475, we directed ADI to file applications for both water and wastewater certificates.

On April 18, 1988, Aquarina filed its application for water and wastewater certificates. Five objections were filed in response to ADI's application and the matter was, accordingly, set for hearing. However, since none of the protesters filed prehearing statements or attended the prehearing conference, their objections were dismissed and the hearing was cancelled. This docket was left open in order to process ADI's application.

MOTION TO SUBSTITUTE NAME

On February 9, 1989, ADI filed a motion to amend the name of the applicant. The application was initially filed under the name Service Management Systems, Inc. (SMS) which is a subsidiary of ADI; however, SMS does not own the land upon which the utility facilities are located. Since this land is owned by ADI, ADI has requested that its name be substituted for SMS.

We find no reason why ADI's motion should not be approved. Further, since noticing was done jointly by both SMS and ADI, we will not require ADI to renotice for its application.

APPLICATION FOR CERTIFICATES

ADI's application is in compliance with the provisions of Section 367.041, Florida Statutes, and Rules 25-30.030 through 25-30.035, Florida Administrative Code. In particular, the application contains:

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- 1) Two checks totalling \$1,800 which, upon calculation equates to the correct filing fee as prescribed by Section 367.141 Florida Statutes;
- 2) Adequate system and territorial maps, and an adequate legal description, as prescribed by Rules 25-30.035(3)(h) and (i), Florida Administrative Code. The legal description is appended to this Order as Attachment "A";
- 3) Proof of notice to all interested governmental and regulatory agencies, all utilities within a four-mile radius of the territory to be served, and proof of notice in a newspaper of general circulation in Brevard County, as prescribed by Rule 25-30.030(2), Florida Administrative Code; and
- 4) Evidence that ADI owns the land upon which its facilities are located.

As noted in the background section of this order, five objections to the application were filed but subsequently dismissed. No other objections have been filed and the time for filing such has expired.

Since ADI has operated this utility since 1984, it appears to have the required technical expertise. In addition, we have reviewed ADI's financial statements and believe that it has adequate resources to continue to operate the utility. Since we have already determined that ADI is subject to our jurisdiction, we find it to be in the public interest to grant Certificates Nos. 517-W and 450-S to ADI.

WATER AND WASTEWATER RATES

ADI's present facilities consist of a 120,000 gallons per day (gpd) reverse osmosis water treatment plant and a 300,000 gpd extended air wastewater treatment plant. Growth within the Aquarina Development as well as the Hammock has been slow, with present flows averaging 25,000 gpd for water and 17,000 gpd for wastewater.

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As discussed above, ADI provides service to the Aquarina Development free of charge and was only determined to be jurisdictional due to its provision of service to the Hammock.

The initial phase of the Hammock was to consist of four 27-unit condominium buildings. To date only one building has been constructed and there are only six occupied units. The Hammock has yet to pay for any utility service and has, in fact, filed for protection from its creditors under Chapter 11 of the United States Bankruptcy Code.

Pursuant to the August 28, 1986 agreement, the Hammock constructed all on-site water distribution and wastewater collection facilities. In addition, it paid for the interconnection with ADI. Service is provided to the Hammock through a master meter. The Hammock was originally supposed to pay \$828.90 per month per building for water and the same amount for wastewater, based upon anticipated monthly flows of 128,000 gallons for both water and wastewater. This would equate to a bulk rate of \$6.48 per 1,000 gallons for water and \$6.48 per 1,000 gallons for wastewater, which, we believe, is somewhat excessive.

In its application, ADI filed projected cost data based upon a build-out of 1600 equivalent residential connections. However, since it appears that growth is uncertain in both the Aquarina and Hammock developments, we cannot determine when or if build-out will occur. It is also uncertain, at this time, whether service will be provided to the Hammock on a permanent basis. Any analysis is further complicated by the fact that ADI does not charge for service within the Aquarina Development. Based upon the many unknowns, we have been unable to calculate a true cost-based rate for this utility.

Notwithstanding the above, in its application, ADI requested a bulk rate of \$2.70 per 1,000 gallons for water and \$2.25 per 1,000 gallons for wastewater service. We note that ADI has operated these plants since 1984 without receiving compensation and that the cost of providing service to the Hammock is, essentially, an incremental cost. Therefore, while the water rate, at least, appears low for a reverse osmosis plant, the requested rates do appear to be reasonable and are, hereby, approved for meter readings on or after 30 days from the stamped approval date on the tariff sheets.

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Upon consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the request by Aquarina Developments, Inc. to substitute its name for that of Service Management Systems, Inc. in the application for water and wastewater certificates is hereby granted. It is further

ORDERED that Aquarina Developments, Inc., 7535 Aquarina Beach Drive, Melbourne Beach, Florida 32951, be and is hereby granted Certificates Nos. 517-W and 450-S for the service territory described in Attachment "A" to this Order. It is further

ORDERED that the remaining provisions of this Order are issued as proposed agency action and will become final unless a person whose interests are substantially affected files a protest with the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that Aquarina Developments, Inc. is hereby authorized to collect a bulk rate of \$2.70 per 1,000 gallons for water service and \$2.25 per 1,000 gallons for wastewater service, subject to the filing and approval of tariff pages. It is further

ORDERED that, prior to its implementation of the water and wastewater rates approved herein, Aquarina Developments, Inc. shall have filed and received approval of tariff pages. It is further

ORDERED that the tariff pages will be approved upon Staff's verification that they accurately reflect the decision of this Commission as set forth in the body of this Order. It is further

ORDERED that the water and wastewater rates approved herein shall be effective for meter readings taken on or after thirty (30) days from the stamped approval date on the tariff pages. It is further

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ORDERED that, after November 8, 1989, this Commission will issue either a notice of further proceedings or an order indicating that the provisions of this Order have become final and effective.

By ORDER of the Florida Public Service Commission
this 19th day of OCTOBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kary Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our actions, except for the granting of water and wastewater certificates, are preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code.

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This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 9, 1989. In the absence of such a petition, this order shall become effective November 8, 1989, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on November 9, 1988, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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ATTACHMENT "A"
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AQUARINA DEVELOPMENT, INC.
BREVARD COUNTY
SERVICE DESCRIPTION FOR
THE HAMMOCK CONDOMINIUM

Township 29 South, Range 38 East

Section 36

From the Northwest corner of Section 36 run East along the North Section line 2,900 feet to the East right-of-way line of State Road No. 1A; thence run S 26°51'00"E 1980 feet along the East right-of-way line of State Road No. 1A. This point also known as the Southeast corner of said lot 1. From the Southeast corner of said lot 1; thence run S 68°33'54" W along the southerly boundary of said lot 1 for 917.97 feet to the point of beginning of the following described parcel; thence continue S 68°33'54" W a distance of 224.55 feet; thence run N 26°09'57" W a distance of 233.68 feet; thence run N 63°50'03" E a distance of 127.83 feet to a point of curvature of a circular curve, concave to the Southeast and having a radius of 118.0 feet; thence run Northeasterly along the arc of said curve through a central angle of 06°34'42" an arc distance of 13.44 feet to a point of tangency; thence run N 70°21'45" E a distance of 110.59 feet; thence run S 19°38'45" E a distance of 240.42 feet to the point of beginning.

Also, from the Northwest corner of Section 36 run East along the North section line 2,900 feet to the East right-of-way line of State Road No. 1A; thence run S 26°51'00" E 1980 feet along the East right-of-way line of State Road No. 1A. This point also known as the Southeast corner of said Lot 1. Commence at the Southeast corner of said Lot 1; thence S 68°33'54" W a distance of 1482.99 feet, thence run N 01°38'06" E a distance of 295.81 feet to the point of beginning of the following described parcel; thence continue N 01°38'06" E a distance of 187.16 feet, thence run S 83°21'54" E a distance of 235.37 feet to a point of curvature of a circular curve, concave to the East and having a

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radius of 120.0 feet bearing N 67°46'27" W from the center of the next described curve; thence Southerly along the arc of said curve through a central angle of 48°23'30" an arc distance of 101.35 feet to a point of tangency, thence run S 26°09'57" E a distance of 22.12 feet; thence run S 63°50'03" W a distance of 155.27 feet to a point of curvature of a circular curve concave to the North and having a radius of 112.0 feet; thence run Westerly along the arc of said curve through a central angle of 48°45'15" an arc distance of 95.30 feet to a point of tangency; thence run N 67°24'43" W a distance of 23.81 feet to the point of beginning.

The service description is also described as follows:
Phase I of the Hammock Condominium, units 101 thru 309.