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Public Service Commission

February 19, 2010

RECEIVED-PPSC
10 FEB 19 PM 1:43
COMMISSION
CLERK

James Minnes
208 Osprey Villas Ct.
Melbourne Beach, FL 32951

Re: Docket No. 090019-WS - Application for transfer of majority organizational control of Service Management Systems, Inc., holder of water Certificate No. 517-W and wastewater Certificate 450-S, in Brevard County, from IRD Osprey, LLC to Oak Lodge Utility, LLC.

Dear Mr. Minnes:

Thank you for your email dated February 12, 2010. Commission staff is aware that Service Management Systems, Inc. (SMS) does not appear to be in compliance with part VI of Chapter 403, Florida Statutes (F.S.), and parts I and II of Chapter 373, F.S. The Commission does not have primary jurisdiction or enforcement authority over environmental compliance matters. The Florida Department of Environmental Protection (FDEP) is the agency of primacy for environmental compliance. The Florida Public Service Commission, in contrast, has rate-making authority over water and wastewater systems. According to our governing statutes, if the Commission finds that a utility has failed to provide safe, efficient, and sufficient service in accordance with the standards promulgated by the FDEP, our recourse is to reduce the utility's return on equity (ROE) until the FDEP standards are met. However, neither SMS nor the court-appointed receiver have petitioned this Commission for a rate increase. Therefore, there is no current vehicle by which we can consider reducing the utility's ROE at this time. Furthermore, it appears that reducing the utility's ROE would be counter-productive, given the repairs necessary to bring the utility into compliance with FDEP standards.

On January 13, 2010, the FDEP issued a letter to SMS in which the FDEP required the utility to take the following corrective actions:

1. Within sixty (60) days – clarifier drive unit must be installed and operational;
2. Within sixty (60) days – backup blower must be installed and operational; and
3. Within ninety (90) days – utility must submit to the FDEP a Filter Media Evaluation Report as required by part VI of the utility's wastewater permit.

According to the dates set forth by the FDEP, the utility has 60 days from January 13, 2010, within which to install a clarifier drive unit and backup blower. Given today's date, the utility is still within

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the time-frame designated by the FDEP. Please find attached hereto a copy of the FDEP's January 13, 2010, letter.

Commission staff has spoken at length with Mr. Dennis Basile, the court-appointed receiver for SMS. Mr. Basile informed staff that he is working diligently to bring the utility into compliance with FDEP standards, which he understands will include installing the clarifier drive unit and backup blower, addressing the Fire Marshall's concerns regarding the fire hydrants, and ensuring that the utility operator, Mr. Whiteside, continues to maintain the system during the receivership. However, please note that per the Circuit Court's order, the receiver must maintain the utility substantially in accordance with its current condition. The receiver can only make repairs to the extent they are necessary and appropriate, and then, only to the extent the receiver determines, after consultation with Compass Bank, that such repairs are economically feasible and in the best interest of the property. Accordingly, Mr. Basile is working on presenting a budget to Compass Bank to see if Compass will agree to the capital expenditures necessary to make the repairs.

Again, thank you for expressing your concerns. I hope this response clarifies the Commission's role and facilitates resolution of your concerns by directing you to the appropriate agency.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anna R. Williams', written in a cursive style.

Anna R. Williams
Attorney

Encl.

cc: Office of Commission Clerk



Florida Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

SENT VIA E-MAIL TO: thor.ibsen@askar.is

January 13, 2010

SERVICE MANAGEMENT SYSTEMS, INC
POST OFFICE BOX 510388
MELBOURNE BEACH, FLORIDA 32951

OCD-C-WW-10-

ATTENTION THOR IBSEN
MANAGER

Brevard County - DW
Aquarina Beach Community WWTF
Wastewater Facility - Permit No. FLA010352
Response to NCL-OCD-C-WW-09-0980

Dear Mr. Ibsen:

Department has reviewed your response to the noncompliance letter dated December 17, 2009. The Department understands the financial constraints the wastewater facility has imposed on you. However, in order to comply with Department rules and permit conditions you must implement the required corrective actions in the following terms listed below:

1. Within sixty (60) days from the date of this letter the Department requires that the clarifier drive unit be installed and operational.
2. Within sixty (60) days from the date of this letter the Department requires that a backup blower be installed and operational.
3. Within ninety (90) days from the date of this letter submit to the Department a Filter Media Evaluation Report as required in Part VI of your wastewater permit.

Also, it has come to our attention that the ownership of this facility may have changed. If so, please complete the enclosed transfer form and promptly return it to this office for processing with an application fee of \$50.00.

The Department requests a written response addressing the items within 5 days from the date of this letter. Your response should include an explanation of any corrective actions that either been taken or that you plan to take. Please note that this letter is part of the Departments investigation, is preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. Please direct your response and any questions to Tom Powers at (407) 893-3313.

Sincerely,

Clarence C. Anderson

Supervisor
Wastewater Compliance/Enforcement

CCA/tp/ar
cc: Domestic Waste Permitting Section

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