

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: April 22, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Daniel, Kaproth, J. Williams) *PK*
Office of the General Counsel (Fleming, A. Williams) *JSB*

RE: Docket No. 100094-WS – Notice of appointment of receiver for Service Management Systems, Inc. in Brevard County pursuant to Circuit Court foreclosure proceeding.
County(ies): Brevard

AGENDA: 05/04/10 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\100094.RCM.DOC

Case Background

Service Management Systems, Inc. (SMS or utility) is a Class B utility that provides water, wastewater, and non-potable irrigation services to approximately 370 customers in Brevard County. The utility's 2008 annual report shows combined water and wastewater revenues of \$379,622 and a net operating loss of \$75,994.

The utility has been providing service to customers in Brevard County since 1984. In 1989, the Commission granted the utility original Certificate Nos. 517-W and 450-S.¹ A name

¹ Order No. 22075, issued October 19, 1989, in Docket No. 880595-WS, In re: Objections by Service Management Systems, Inc. for water and sewer certificates in Brevard County.

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change and series of majority control transfers by Aquarina Developments, Inc. led to the certificates being transferred to SMS under IRD Osprey, LLC d/b/a Aquarina Utilities in 2003.²

Docket No. 090019-WS was an application for transfer of majority organizational control of SMS from IRD Osprey, LLC to Oak Lodge Utility, LLC. On February 13, 2009, Compass Bank (Bank) advised staff that SMS had an outstanding loan that was in default of the Forbearance Agreement. Staff was advised that on October 6, 2008, Compass Bank filed a foreclosure action, Compass Bank v. Service Management Systems, Inc. et al., Case No. 05-2008-CA-61639, in the Circuit Court for Brevard County, Florida. On February 3, 2010, the Eighteenth Judicial Circuit in Brevard County issued an Order Appointing Receiver of Service Management Systems, Inc. and named Mr. Dennis Basile as receiver. On February 10, 2010, Oak Lodge Utility, LLC filed a letter withdrawing its application for transfer of majority organization control.

This recommendation is to acknowledge the appointment of Mr. Dennis Basile as the receiver for SMS. The Commission has jurisdiction pursuant to Sections 367.145 and 367.071, Florida Statutes (F.S.).

² By Order No. PSC-03-0787-FOF-WS, issued July 2, 2003, in Docket No. 020091-WS, In re: Application for transfer of majority organizational control of Service Management Systems, Inc., holder of Certificates Nos. 517-W and 450-S in Brevard County, from Petrus Group, L.P. to IRD Osprey, LLC d/b/a Aquarina Utilities.

Discussion of Issues

Issue 1: Should the Commission acknowledge the appointment of Mr. Dennis Basile as receiver for Service Management Systems, Inc.?

Recommendation: Yes. The Commission should acknowledge the appointment of Mr. Dennis Basile as receiver for SMS effective February 3, 2010. The territory previously approved for this utility is described in Attachment A. The resultant order should serve as SMS's Certificate Nos. 517-W and 450-S and should be retained by the utility. The rates and charges approved for the utility should be continued until authorized to be changed by the Commission in a subsequent proceeding. The receiver should ensure that utility pays its 2009 RAFs and files the 2009 annual report by June 30, 2010. (J. Williams, Fleming, A. Williams, Kaproth)

Staff Analysis: By order issued February 3, 2010, the Circuit Court appointed Mr. Dennis Basile as the receiver for SMS. The responsibility of the receiver is to operate the utility efficiently and effectively until disposition of the property. With the appointment of the receiver, the utility is not owned or controlled by a governmental entity. Therefore, the utility will retain Certificate Nos. 517-W and 450-S and will remain under Commission jurisdiction. The resultant order reflecting the appointment of a receiver should serve as SMS's water and wastewater certificates and should be retained by the utility. The territory previously approved for this utility is shown on Attachment A.

Pursuant to Rule 25-30.090(3), F.A.C., within 10 days of the appointment of a receiver by the circuit court, the receiver shall request from the Commission a copy of the utility's tariff and most recent annual report. That information has been provided to Mr. Basile. The receiver has hired Mr. Whiteside, the licensed operator previously contracted by the utility, to run the system. It should be noted that Compass Bank is currently seeking a permanent owner for the SMS water and wastewater systems and intends to file an application for a transfer of the utility to the new owner.

The utility's initial rates and charges were approved in 1989. In 2002, the utility's water and wastewater rates were increased in a staff assisted rate case.³ The utility requested and was granted a 2008 Index which became effective June 6, 2008. All of the rates approved for the utility are shown on Attachment B. Pursuant to Rule 25-9.044(1), F.A.C., the rates and charges approved for the utility should be continued until authorized to be changed by the Commission in a subsequent proceeding.

According to the Department of Environmental Protection (DEP), there is no formal enforcement activity with the water system. However, the wastewater system requires several modifications and repairs in order to achieve compliance, including a repair to the clarifier drive unit and the installation of a backup blower. In a January 13, 2010, letter from DEP, the utility was given a March 13, 2010, deadline to complete the repairs. The utility has not yet made the repairs and is currently noncompliant; however, DEP is aware of the utility's current financial

³ Order No. PSC-03-1434-CO-WS, issued December 17, 2003, in Docket No. 021228-WS, In re: Application for staff-assisted rate case in Brevard County by Service Management Systems, Inc.

constraints and is working with Mr. Basile to coordinate the repairs and bring the wastewater system into compliance.

Staff verified that, in accordance with Rule 25-30.110, F.A.C., SMS filed its annual reports for 2008 and prior years. Staff also verified that, in accordance with Rule 25-30.120, F.A.C., the utility's regulatory assessment fees (RAFs) for 2008 and all prior years have been paid. However, the 2009 annual report has not been filed nor have the 2009 RAFs been paid. The Order appointing the receiver, issued February 3, 2010, states that the receiver shall ensure that SMS will comply with any laws, regulations, orders or requirements affecting SMS that are issued by any federal, state, county or municipal authority.^{4 5} In addition, the receiver is responsible for payment of the operating expenses that were incurred but not yet paid for the period immediately preceding the appointment of the receiver on February 3, 2010. Therefore, the receiver, on behalf of the utility, is responsible for payment of the 2009 RAFs that were due on March 31, 2010, as well as the filing of the 2009 annual report which was due to be filed on March 31, 2010. The receiver should ensure that the utility pays its 2009 RAFs and files the 2009 annual report by June 30, 2010. In addition, the receiver should ensure that the utility pays its 2010 RAFs and files its 2010 annual report on a timely basis, in the event a permanent owner has not been found by that time.

Based upon the foregoing, staff recommends that the Commission should acknowledge the appointment of Mr. Dennis Basile as receiver for SMS effective February 3, 2010. The territory previously approved for this utility is described in Attachment A. The resultant order should serve as SMS's Certificate Nos. 517-W and 450-S and should be retained by the utility. The rates and charges approved for the utility should be continued until authorized to be changed by the Commission in a subsequent proceeding. The receiver should ensure that the utility pays its 2009 RAFs and files the 2009 annual report by June 30, 2010.

⁴ In the Circuit Court, Eighteenth Judicial Circuit, in and for Brevard County, Florida, Order Appointing Receiver, issued February 3, 2010, Case No.: 05-2008-CA-61639, Division R, pages. 5-6.

⁵ Section 367.071(1) & (6), F.S.

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Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending payment of the 2009 RAFs and filing of the 2009 Annual Report. Upon payment of the utility's 2009 RAFs and filing of the utility's 2009 Annual Report, this docket should be closed administratively. (A. Williams, Fleming)

Staff Analysis: This docket should remain open pending payment of the 2009 RAFs and filing of the 2009 Annual Report. Upon payment of the utility's 2009 RAFs and filing of the utility's 2009 Annual Report, this docket should be closed administratively.

Service Management Systems, Inc.
Brevard County
Description of Water Territory

A PORTION OF SECTIONS 25, 35 AND 36 TOWNSHIP 29 SOUTH, RANGE 38 EAST, SECTION 31, TOWNSHIP 29 SOUTH, RANGE 39 EAST, SECTION 1, TOWNSHIP 30 SOUTH, RANGE 38 EAST AND SECTION 6, TOWNSHIP 30 SOUTH, RANGE 39 EAST, BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE SOUTHWEST CORNER OF SAID SECTION 25 AND RUN $N00^{\circ}19'34''W$ ALONG THE WEST LINE OF SAID SECTION 25 A DISTANCE OF 1327.58 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF SAID SECTION 25; THENCE RUN $S88^{\circ}30'24''E$ ALONG NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF SECTION 25 A DISTANCE OF 2634 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE RUN SOUTHERLY ALONG SAID MEAN HIGH WATER LINE THROUGH SAID SECTIONS 25, 36, 31 AND 6 A DISTANCE OF 12127 FEET MORE OR LESS TO THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH 1/2 OF SAID SECTION 6; THENCE RUN $N88^{\circ}48'45''W$ ALONG THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH 1/2 OF SECTION 6 A DISTANCE OF 1524 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE RUN NORTHERLY ALONG THE MEAN HIGH WATER LINE OF THE INDIAN RIVER AND MULLET CREEK 16336 FEET MORE OR LESS TO THE NORTH LINE OF SAID SECTION 35; THENCE RUN $S88^{\circ}22'47''E$ ALONG THE NORTH LINE OF SECTION 35 A DISTANCE OF 982 FEET MORE OR LESS TO THE POINT OF BEGINNING.

Service Management Systems, Inc.
Brevard County
Description of Wastewater Territory

A PORTION OF SECTIONS 25, 26, 35 AND 36 TOWNSHIP 29 SOUTH, RANGE 38 EAST, AND SECTION 31, TOWNSHIP 29 SOUTH, RANGE 39 EAST, BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE WEST 1/4 CORNER OF SAID SECTION 25 AND RUN N00°18'50"W ALONG THE WEST LINE OF SAID SECTION 25 A DISTANCE OF 1340.83 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF SAID SECTION 25; THENCE RUN S88°31'07"E ALONG NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF SECTION 25 A DISTANCE OF 1351 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE RUN SOUTHERLY ALONG SAID MEAN HIGH WATER LINE THROUGH SAID SECTIONS 25, 36, AND 31 A DISTANCE OF 9203 FEET MORE OR LESS TO THE EASTERLY EXTENSION OF THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH 1/2 OF SAID SECTION 36; THENCE RUN N88°23'42"W ALONG SAID LINE AND THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH 1/2 OF SECTION 36 A DISTANCE OF 790 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE RUN NORTHERLY ALONG THE MEAN HIGH WATER LINE OF THE INDIAN RIVER AND MULLET CREEK 8315 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 26; THENCE RUN S88°22'47"E ALONG THE SOUTH LINE OF SAID SECTION 26 A DISTANCE OF 982 FEET TO THE COMMON CORNER OF SAID SECTIONS 25, 26, 35 AND 36; THENCE RUN ALONG THE WEST LINE OF SAID SECTION 25 N00°19'34"W 1327.58 TO THE SOUTHEAST CORNER OF GOVERNMENT LOT 3 OF SAID SECTION 26; THENCE RUN N88°30'25"W ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 3 A DISTANCE OF 1276 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF MULLET CREEK; THENCE RUN NORTHERLY ALONG THE MEAN HIGH WATER LINE OF MULLET CREEK 1903 FEET MORE OR LESS TO THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 26; THENCE RUN S88°31'12"E ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SECTION 26 A DISTANCE OF 2431 MORE OR LESS TO THE POINT OF BEGINNING.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Service Management Systems, Inc.
pursuant to
Certificate Number 517-W

to provide water service in Brevard County in accordance with the provisions of Chapter 367, F.S., and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
22075	10/19/89	880595-WS	Original Certificate
23059	06/11/90	900167-WS	Territory Amendment
PSC-92-0119-FOF-WS	03/30/92	911129-WS	Territory Amendment
PSC-97-0206-FOF-WS	02/21/97	960095-WS	Name Change
PSC-97-0206A-FOF-WS	03/05/97	960095-WS	Amendatory Order
PSC-97-0918-FOF-WS	08/04/97	970093-WS	Transfer Majority Control
PSC-03-0787-FOF-WS	07/02/03	020091-WS	Transfer Majority Control
*	*	100094-WS	Receiver Appointed

***Order Number and date to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Service Management Systems, Inc.
pursuant to
Certificate Number 450-S

to provide wastewater service in Brevard County in accordance with the provisions of Chapter 367, F.S., and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
22075	10/19/89	880595-WS	Original Certificate
23059	06/11/90	900167-WS	Territory Amendment
PSC-92-0119-FOF-WS	03/30/92	911129-WS	Territory Amendment
PSC-97-0206-FOF-WS	02/21/97	960095-WS	Name Change
PSC-97-0206A-FOF-WS	03/05/97	960095-WS	Amendatory Order
PSC-97-0918-FOF-WS	08/04/97	970093-WS	Transfer Majority Control
PSC-03-0787-FOF-WS	07/02/03	020091-WS	Transfer Majority Control
*	*	100094-WS	Receiver Appointed

***Order Number and date to be provided at time of issuance.**

Service Management Systems, Inc.
Monthly Water Service Rates

Residential, Multi-Residential, General Service

Meter Size:

5/8" x 3/4"	\$ 18.52
3/4"	\$ 27.78
1"	\$ 46.30
1 1/2"	\$ 92.61
2"	\$ 148.18
3"	\$ 296.35
4"	\$ 463.04
6"	\$ 926.08
Gallage Charge Per 1,000 Gallons	\$ 6.72

Miscellaneous Service Charges

Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	\$ 15.00
Premises Visit Fee (in lieu of disconnection)	\$ 10.00

Service Availability Charges

Main Extension Charge – Per ERC (Residential)	\$ 500.00
– Per Gallon (All others)	\$ 1.43
Meter Installation Fee – 5/8" x 3/4"	\$ 150.00
– All Others	Actual Cost
Plant Capacity Charge – Per ERC (Residential)	\$ 780.00
– Per Gallon (All Others)	\$ 2.23

Service Management Systems, Inc.
Monthly Irrigation Service Rates

Residential, Multi-Residential, General Service
Meter Size:

All Meter Sizes:
Gallage Charge Per 1,000 Gallons \$ 0.75

Service Availability Charges

Main Extension Charge – Per ERC (Residential)	\$ 50.00
– Per Gallon (All Others)	\$ 0.14
Meter Installation Fee – 5/8” x 3/4”	\$ 150.00
– All Others	Actual Cost
Plant Capacity Charge – Per ERC (Residential)	\$ 250.00
– Per Gallon (All Others)	\$ 0.71

Service Management Systems, Inc.
Monthly Wastewater Service Rates

Residential, Multi-Residential Service

Meter Size:

All meter sizes	\$ 21.57
Gallonage Charge Per 1,000 Gallons (Maximum 8,000 Gallons)	\$ 4.67

Residential Wastewater Only Service

Flat Rate	\$ 33.81
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General Service

Meter Size

5/8" x 3/4"	\$ 21.57
3/4"	\$ 32.33
1"	\$ 53.90
1 1/2"	\$ 107.79
2"	\$ 172.47
3"	\$ 344.94
4"	\$ 538.97
6"	\$ 1077.95
Gallonage Charge Per 1,000 Gallons	\$ 5.61

Miscellaneous Service Charges

Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	Actual Cost
Premises Visit Fee (in lieu of disconnection)	\$ 10.00

Service Availability Charges

Main Extension Charge – Per ERC (Residential)	\$ 635.00
– Per Gallon (All Others)	\$ 2.27