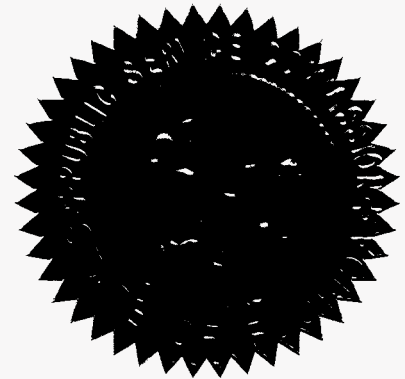


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100318-WS

PETITION FOR ORDER TO SHOW CAUSE
AGAINST SERVICE MANAGEMENT SYSTEMS,
INC. IN BREVARD COUNTY FOR FAILURE
TO PROPERLY OPERATE AND MANAGE WATER
AND WASTEWATER SYSTEM.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, September 28, 2010

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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COMMISSIONER SKOP: Good morning, I'd like to call this agenda conference to order. And as a preliminary matter, before we take up the move staff list, we have had a late request from Mr. Brian Armstrong representing Aquarina Utility Association to address the Commission on Issue 3, and I wanted to hear from my colleagues with respect to that to see if there is a problem, as Issue 3 was tentatively on the move staff list.

COMMISSIONER EDGAR: Mr. Chairman, I'm fine with hearing from Mr. Armstrong at the appropriate time.

COMMISSIONER SKOP: Very well. With that, we'll take Item 3 off the move staff list.

* * * * *

COMMISSIONER SKOP: If staff could now introduce Issue 3. And we have Mr. Armstrong that is scheduled to speak.

MS. WILLIAMS: Good morning, Commissioners.

Anna Williams, again, on Commission staff. Item 3 is a petition by Aquarina Utility Association for an order to show cause against Service Management Systems, Inc. for failure to properly

1 operate and manage its water and wastewater system.

2 Florida Service Management, LLC, who has
3 acquired ownership of Service Management's systems,
4 filed a motion to dismiss the Association's
5 petition. Staff's recommendation addresses Florida
6 Service Management's motion to dismiss the petition.
7 Staff recommends that the Commission grant the
8 motion to dismiss without prejudice.

9 Staff notes that neither party filed a
10 request for oral argument. Rule 25-22.022 provides
11 that a party's failure to timely file a written
12 request for oral argument shall constitute a waiver
13 of oral argument. However, participation is at the
14 Commission's discretion. I believe the parties are
15 here and staff is also available for any questions.

16 **COMMISSIONER SKOP:** Thank you. Any
17 questions from the bench before we look to the
18 parties?

19 Hearing none, Mr. Armstrong, you're
20 recognized.

21 **MR. ARMSTRONG:** Thank you, Mr. Chair and
22 Commissioners. I just have some hand-outs I'd like
23 to --

24 **MR. MAY:** Mr. Chairman.

25 **COMMISSIONER SKOP:** Mr. May, you're

1 recognized.

2 **MR. MAY:** Bruce May with the law firm of
3 Holland and Knight appearing on behalf of the Bank
4 and the Receiver. It was our understanding that
5 oral argument was not requested by either party. I
6 just wanted to get some clarification as to the
7 scope of these remarks.

8 I am now seeing photographs for the first
9 time. Certainly this is not an evidentiary hearing.
10 I'd like to get some clarification as to what the
11 scope of the remarks would be, if that's possible.

12 **COMMISSIONER SKOP:** Very well.

13 To Mr. Armstrong, and then also I have a
14 question to staff with respect to regular agenda
15 versus Proposed Agency Action. So I will look to
16 Mr. Armstrong first.

17 **MR. ARMSTRONG:** Thank you; I appreciate
18 that.

19 Commissioners, my name is Brian Armstrong.
20 I'm with the law firm of Nabors, Giblin, and
21 Nickerson, and in this instance I represent the
22 customers, which I have organized under the name of
23 Aquarina Utility Association, Inc. The customers
24 filed this request. Although we are using the term
25 show cause, and we used that in our pleading, we

1 also refer to several statutes under the Florida
2 Statutes that permit us to file a complaint and have
3 a limited proceeding to address the issues in that
4 complaint.

5 The purpose of this picture, and I have a
6 few others, is to address the staff recommendation
7 that is suggested that this Commission shouldn't
8 even consider the customers' plight in this docket.
9 If we aren't allowed to file this complaint and have
10 an opportunity to present the evidence that we are
11 able to present, how can we possibly get any
12 recourse on behalf of the customers as to the rates
13 they are paying?

14 I would like to distribute this picture
15 and other pictures. I'd like to distribute a few
16 DEP letters that show deficiencies in the system. I
17 would like to show you or let you know the kind of
18 evidence we can present like the fact that the
19 bank -- this is a bank now that has foreclosed upon
20 the utility system on the basis of a
21 one million-dollar loan that they made to the
22 utility. The customers have not been able -- in the
23 discussions with the utility -- have not been able
24 to identify the assets that were put into the system
25 with that one million dollars, and yet we are paying

1 rates to this utility. It's that kind of
2 information I just want to share with this
3 Commission.

4 The rates were last reviewed in 2003. We
5 have had serious, serious deficiencies. If you look
6 at that picture -- this Commission, I know many of
7 you aren't aware, but I was the general counsel and
8 senior vice-president for the largest utility in the
9 state of Florida for ten years with 150 systems. I
10 have never seen anything like that picture I have
11 presented to you in terms of hazard, in terms of the
12 fact that this is an arm that you see sitting on top
13 of this tank, and it is a board that crosses the
14 catwalk.

15 The harm to -- the potential harm to
16 employees is incredible. This arm has not been
17 sweeping for many months now. It has not been
18 sweeping the bottom of the tank, which means that
19 everything the arm is supposed to be sweeping and
20 getting out of that tank is accumulating.

21 The bank is trying to sell this system,
22 and with assets like this in this situation with
23 everything accumulating inside, whoever buys the
24 system is going to have an enormous problem, an
25 enormous problem. And I say that on the basis of

1 knowing and inspecting over 200 plants of this type
2 over the past 20 years here in the state of Florida.
3 It is that kind of information I want to present to
4 you and ask how does the Public Service Commission
5 staff, which apparently hasn't gone out to the
6 facilities, has done what appears to be very little
7 to have discussion to look at what the customers are
8 complaining about here, how can they say that this
9 Commission shouldn't even consider the customers'
10 plight and their complaint?

11 **COMMISSIONER EDGAR:** Mr. Chairman, I'm a
12 little unclear as to what procedural posture we are
13 in.

14 **COMMISSIONER SKOP:** I am, too. So, Mr.
15 Armstrong, we are going to end you there. I will
16 hear a brief response from Mr. May and then we will
17 look staff.

18 Mr. May, you're recognized.

19 **MR. MAY:** Thank you, Mr. Chairman and
20 Commissioners. Again, are you looking for us to
21 respond to Mr. Armstrong's --

22 **COMMISSIONER SKOP:** No, I'm just looking
23 for a brief response as to the appropriateness of
24 having the discussion with respect to the existing
25 staff recommendation. I think you raised the issue

1 that it was not scheduled for oral argument.

2 **MR. MAY:** We are not opposed to having the
3 customers address the Commission. I don't want that
4 impression to be left with any of you. We are
5 opposing, and we object to converting what Mr.
6 Armstrong initially led me to believe was to be
7 remarks to be converted into an evidentiary hearing.
8 I don't believe that's appropriate.

9 If Mr. Armstrong wants to address staff's
10 recommendation as to why his petition for show cause
11 is appropriate, he should move forward. Again, we
12 don't oppose that. We do oppose the introduction of
13 pictures and other documentary evidence or documents
14 which I haven't had an opportunity to review. I
15 don't know when this picture was taken, and there
16 are some real due process issues in converting this
17 into an evidentiary hearing from my perspective.
18 Thank you.

19 **COMMISSIONER SKOP:** Thank you, Mr. May.

20 Ms. Helton.

21 **MS. HELTON:** Mr. Chairman, thank you.

22 I'm also concerned about where this
23 discussion is going. We have to -- let me bring us
24 back here. We are here on the dispositive motion
25 that the utility filed some motion to dismiss.

1 Staff has recommended that the company has not
2 alleged sufficient facts to bring forward a
3 complaint to you. They have recommended that the
4 complaint be dismissed without prejudice, which
5 means that the customers are free to file their
6 complaint again, if you agree with staff.

7 I think it is highly inappropriate for the
8 customers to be bringing to you information which is
9 outside the scope of the motion to dismiss that was
10 filed. The standard is that you are supposed to
11 accept all facts as true in the motion to dismiss
12 and not go beyond the scope of that. So I think we
13 are here at an inappropriate posture.

14 **COMMISSIONER SKOP:** Thank you, Ms. Helton.
15 I tend to agree, Commissioners. I do have some
16 questions for staff. But, Commissioner Graham,
17 you're recognized.

18 **COMMISSIONER GRAHAM:** Thank you, Mr.
19 Chair.

20 I guess I'm just asking more of a
21 procedural question. Is there a policy or standard
22 of what has to happen before information is given to
23 us like this. I mean, is there a screening process
24 it goes through or --

25 **MS. HELTON:** Well, when we are in this

1 type of a legal proceeding, yes. First of all, we
2 have procedural rules, and the purpose of those is
3 to protect the due process of all parties, as Mr.
4 May said. And our procedural rules say that in the
5 case of a dispositive motion being filed, you should
6 ask for oral argument when you file that motion.
7 Mr. May did not ask for oral argument when he filed
8 his motion, and it is my understanding that
9 Mr. Armstrong did not ask for oral argument when he
10 filed his response.

11 That being said, the Commission does have
12 discretion, the discretion to hear from the parties
13 if you feel like you need additional -- to hear the
14 arguments fleshed out instead of reading the
15 arguments as they are laid out on the paper. So you
16 do have that discretion.

17 The law has said that with respect to a
18 motion to dismiss, there are certain things that you
19 can consider and not consider in a motion to
20 dismiss, and you are not supposed to go beyond the
21 four corners of the initial pleading when you make a
22 determination with respect to the motion to dismiss.

23 So that is why I am suggesting that
24 Mr. Armstrong providing this photograph for you is
25 inappropriate at this time. It's my understanding

1 that that was not filed in his complaint and that
2 that was not addressed by Mr. May in his motion to
3 dismiss.

4 All of that being said, you could agree
5 with staff here, dismiss the complaint, but you
6 could also ask the staff would you please go and do
7 some further information gathering with respect to
8 this utility. Let's see if there really is a
9 problem or not. It is my understanding that before
10 staff brought their recommendation to you that they,
11 in fact, did do that. They did do some initial
12 information gathering, and based on what they
13 learned, they did not see that there was a problem.
14 Maybe they didn't dig far enough, I don't know the
15 answer to that question.

16 **COMMISSIONER GRAHAM:** If we approve this
17 thing without prejudice and we go back to the
18 drawing board, again, how long is the process to get
19 back to where we are now, today?

20 **MS. HELTON:** That's a \$64,000 question. I
21 really don't know the answer. It would be -- Mr.
22 May would need to go back and file another
23 complaint. The company would have an opportunity to
24 either respond to that complaint, file another
25 motion to dismiss, if they think it is appropriate.

1 Staff may need to conduct discovery to decide what
2 to recommend to you or whether to set it for
3 hearing.

4 **COMMISSIONER GRAHAM:** Thank you.

5 **MR. ARMSTRONG:** Mr. Chair, Commissioners,
6 if I may.

7 **COMMISSIONER SKOP:** Hold on, Mr.
8 Armstrong.

9 Please, please, you will be recognized in
10 due course.

11 **MR. ARMSTRONG:** Absolutely. Thank you.

12 **COMMISSIONER EDGAR:** Commissioner Graham.
13 Okay. All right.

14 Mr. Armstrong, you're recognized.

15 **MR. ARMSTRONG:** Sorry. Okay. I wanted to
16 point out, I mean, we are making a to-do over
17 pictures. Pictures which staff never saw the plant,
18 obviously. If you look at our complaint, if you
19 look at our request for a limited proceeding, I talk
20 about a broken clarifier arm lying across the
21 catwalk, a gap in the catwalk, a hose and a
22 sprinkler lying on it, a one-inch pipe lying across
23 the catwalk. It is all here verbally. All I am
24 doing is presenting you two things, the DEP letters
25 that talk about all the deficiencies and pictures,

1 demonstrative pictures.

2 Commissioners, what is being requested or
3 suggested is we should go back and now attach these
4 as appendices to our complaint, and maybe then, you
5 know, if we go and do that simple ministerial thing
6 then we have an opportunity to be heard by this
7 Commission? Isn't that a little bit pathetic? I
8 mean, do I really have to go back and do that now
9 just because staff says that the words aren't good
10 enough, and I shouldn't be allowed to present a
11 demonstrative picture to show you what we are
12 talking about in the complaint? It seems like that
13 would be the waste of this Commission's resources,
14 my client, the customers paying the rates for this
15 system's resources.

16 **COMMISSIONER SKOP:** Thank you, Mr.
17 Armstrong.

18 Mr. May, just a brief question. Do you
19 know if the receiver, Mr. Basil (phonetic), is here
20 today?

21 **MR. MAY:** No, Mr. Chairman, he is not.

22 **COMMISSIONER SKOP:** Okay. All right. I
23 just have some questions for staff, and then I will
24 look back to the bench. If staff could please turn
25 to Staff Data Request Number 1, Question 1. And on

1 that list there's four items. There's a backup
2 aeration blower motor, backup RAS improvement
3 support frame for the RAS motor, a clarifier drive
4 unit, and underground storage tank. With respect to
5 each of the items on those lists, does staff know
6 the status of the repair or improvements for each
7 item listed in that response?

8 **MR. WILLIAMS:** Good morning,
9 Commissioners. My name is Jay Williams, Commission
10 staff. The most recent status update that we have
11 is the response to the data request that you
12 referred to. I spoke with Tom Powers who
13 constructed the inspection for DEP on last Monday.
14 They were supposed to do a follow-up inspection, but
15 had to postpone it, and he said that once they
16 rescheduled the inspection that he would get back to
17 me about the status of the utility's facilities.

18 **COMMISSIONER SKOP:** And just going back to
19 Mr. May, just for the record, that this utility is
20 in receivership currently, is that correct?

21 **MR. MAY:** That's correct.

22 **COMMISSIONER SKOP:** Okay. Thank you.

23 Mr. Williams, in Data Request Number 1,
24 Question 2, Florida Service Management Company,
25 LLC's, response indicated the LLC is working

1 diligently to bring the utility's facilities into
2 compliance with Florida DEP and county operational
3 requirements. Do you see that?

4 **MR. WILLIAMS:** Yes, sir.

5 **COMMISSIONER SKOP:** Okay. Do you know
6 which of the four items listed in response to
7 Question 1 is considered a deficiency or compliance
8 requirement?

9 **MR. WILLIAMS:** Commissioner, from my
10 understanding, I believe all of the items listed
11 were cited in the warning letter from DEP to the
12 utility.

13 **COMMISSIONER SKOP:** Okay. So that was a
14 warning letter?

15 **MR. WILLIAMS:** Could you repeat the
16 question, please?

17 **COMMISSIONER SKOP:** You indicated that was
18 a warning letter from the Florida DEP?

19 **MR. WILLIAMS:** Yes.

20 **COMMISSIONER SKOP:** Okay. All right. Do
21 we know what the impact to customers would be in the
22 event that the aeration blower motor fails?

23 **MR. WILLIAMS:** If the aeration motor
24 failed, the plant would not be operating to design
25 standards. As I understand it from talking with

1 Mr. Powers from DEP, the utility submits monthly
2 operating reports to DEP, and per those reports
3 currently all effluent standards are being met. But
4 if some of the equipment were to fail, there may be
5 a problem with meeting those standards.

6 **COMMISSIONER SKOP:** Okay. And that also
7 would occur if the clarifier drive unit would not be
8 working?

9 **MR. WILLIAMS:** That is correct.

10 **COMMISSIONER SKOP:** Okay. All right.

11 Commissioners, again, I think that the
12 procedural posture here is somewhat unique. I think
13 that, you know, the project is in receivership. At
14 least from my perspective, you know, I don't see any
15 evidence of the utility of willful violations of our
16 statutes, rules, or orders. To the contrary, the
17 receiver appears to be taking the appropriate
18 actions to correct the noted deficiencies. So I'm
19 not able to conclude that a basis for a show cause
20 violation exists at this time, but as the Commission
21 is aware, the Commission does have a rule that
22 requires each utility which provides water and
23 wastewater services to operate and maintain in a
24 safe, efficient, and proper condition all of its
25 facilities to the point of delivery, and that is

1 Commission Rule 25-30.225(7).

2 With the utility's current deficiencies,
3 however, I'm concerned that the utility may not be
4 in full compliance with our rule in its petition for
5 show cause. Aquarina noted that the operator of the
6 plant -- it stated that the utility may pose some
7 health, safety, and environmental risk to the
8 community. You know, I think it's important for the
9 Commission to have the rule, and the way our rule is
10 worded, you know, to protect the customers. But it
11 seems to me that, you know, at this point, you know,
12 I can't really state that all of the facilities are
13 in compliance with that specific rule.

14 Because if you have an instance where the
15 primary piece of equipment fails, there is no
16 functioning backup, which would -- you know, there
17 are already compliance issues. So while a show
18 cause may not be appropriate, I'd look to the bench
19 to see what we want to do. It seems to me that the
20 status of bringing the utility into compliance is
21 very important not only to the Commission in
22 relation to our rule, but in relation to the
23 customers. And I'm kind of wondering, you know,
24 what options might exist. I'd certainly welcome to
25 hear from the bench in relation to some of that.

1 Commissioner Graham, you had a question?

2 **COMMISSIONER GRAHAM:** Thank you, Mr.
3 Chair. Unless there's some sort of a time rush on
4 this thing, I don't see that it is necessary for us
5 to move forward. I think maybe we can instruct
6 staff to dig a little deeper, if you will.

7 **COMMISSIONER SKOP:** I would agree. I
8 mean, with respect to the show cause, I think that,
9 you know, you could go either way on that one. But,
10 certainly I think there are some things that need to
11 be taken a look at to address the customers'
12 concerns on behalf of the association, but noting it
13 is in receivership and the receiver is trying to,
14 you know, make the improvements and groom it for
15 sale to get it out of receivership.

16 So any other questions from the bench? Is
17 there a motion? Commissioner Edgar.

18 **COMMISSIONER EDGAR:** I'm not quite there
19 yet, if it is all right. I'm wondering if Mr. May
20 has any suggestion, and I would welcome Mr.
21 Armstrong's response to those suggestions, if,
22 indeed, there are any.

23 **COMMISSIONER SKOP:** Thank you.

24 Mr. May, you're recognized.

25 **MR. MAY:** Thank you, Mr. Chairman and

1 Commissioners.

2 I want to be clear that the bank and the
3 receiver understands its obligations to address some
4 of the repair issues with respect to this utility
5 facilities. I want Mr. Armstrong to understand
6 that, too. I think he does.

7 I also think it's important for you all to
8 understand the current legal posture of this
9 utility. It has been in receiver. The bank had
10 loaned the former owner money for utility
11 facilities. The former owner defaulted on that
12 loan. The bank purchased the utility facilities
13 through the foreclosure action. The bank has also
14 initiated a request for proposal for potential
15 purchasers. We have received two bona fide offers,
16 one of which is from Mr. Armstrong's client. The
17 bank is reviewing both of those offers. The repair
18 items, to address Commissioner Skop's issues that
19 were identified in response to Staff's Data Request
20 Number 1, those four items, both of the potential
21 purchasers are fully aware of those repair items,
22 and I assume understand the cost of those.

23 Again, we are looking at the two bona fide
24 offers. The bank has evaluated them. I would
25 expect that in the near future the bank will make a

1 decision on which offer to accept and to move
2 forward in that case just to give you -- just to be
3 absolutely clear, at that point in time that
4 transfer of control issue will be back before you,
5 as Mr. Armstrong knows.

6 So, again, I just wanted you to have that
7 background. The bank, in the meantime, is
8 continuing to try to operate this facility to meet
9 DEP and environmental regulatory requirements, and
10 we look forward to trying to do the best we can
11 under the limited financial situation that we find
12 ourselves. Thank you.

13 **COMMISSIONER SKOP:** Thank you, Mr. May.

14 Mr. Armstrong, briefly.

15 **MR. ARMSTRONG:** Thank you, Commissioners.

16 I guess two points, and, you know, we are
17 talking about receivership. I don't know that we
18 are still in receivership. The bank foreclosed, the
19 bank took through a foreclosure sale title. And
20 that was one of my questions; have they filed an
21 application for transfer with you all, because I
22 don't believe they are still in receivership. Even
23 though it is the same receiver operating the
24 facility right now, legally I don't know that it is
25 still considered in receivership, because we have

1 had a sale of the assets. So that was one question.

2 The other question, though, and I will
3 admit that the bank is doing what it can. The bank
4 made a loan to this utility without ever knowing and
5 doing a due diligence. They conceded that already,
6 but the customers are paying rates based upon what
7 they are supposed to be getting, which is good
8 quality service. You know, again, I'm not going to
9 try and distribute out these other pictures, but the
10 facilities are not in good condition. What you see
11 here, an underground storage tank. Who knows if it
12 is leaking oil. The owner never got a permit to put
13 that tank in the ground.

14 What we would like to see is -- all we
15 want to do is have an investigation of the rates and
16 make a determination, have this Commission make a
17 determination are we paying the appropriate rates
18 for the service we are receiving. Was that one
19 million dollar loan invested in utility assets or
20 did the owner abscond with it and not put any
21 investment in utility facilities? Like I say, we
22 have been asking for a long time. We can't find any
23 documentation that shows the money was used for the
24 assets. This Commission is the only way we can find
25 those questions out and find out if we are paying an

1 appropriate rate. This Commission is the only place
2 we can do that.

3 **COMMISSIONER SKOP:** Mr. Armstrong, just
4 with respect to the appropriate rate and any
5 subsequent investigation, I mean, isn't the more
6 important thing ensuring that there is quality water
7 in compliance with applicable environmental
8 standards and such?

9 **MR. ARMSTRONG:** Yes. I mean, absolutely
10 and that is our biggest concern is the quality of
11 water and wastewater, that you rectify an OSHA -- an
12 obvious OSHA situation here that could result in a
13 lawsuit that would put this bank or any subsequent
14 owner back in a deep pit, again. We want all of
15 that to be addressed.

16 Commissioner, you're right. You're
17 heading the line and saying let's continue an
18 investigation to make sure that things are getting
19 done appropriately and in a timely basis. That's
20 what the customers want, and they don't want to pay
21 rates for a service they are not getting or that is
22 inadequate.

23 **COMMISSIONER SKOP:** All right.

24 Commissioners, we have a petition for show
25 cause before us. There is Items 1 through 3, I

1 believe. The show cause are actually 1 through 2.
2 And I believe, Commissioner Graham, if I heard you
3 correctly, you suggested perhaps we table this or
4 defer it without taking agency action at this point
5 to give staff a little additional time to move
6 forward.

7 **COMMISSIONER EDGAR:** I guess, just so that
8 I'm clear, I think what's before us is a motion to
9 dismiss.

10 **COMMISSIONER SKOP:** I believe you are
11 correct; or its a position to show cause, and the
12 staff recommendation is to dismiss the petition to
13 show cause.

14 Ms. Helton.

15 **MS. HELTON:** I really hesitate to do this,
16 because I don't want to monkey up the waters any
17 more. If you all decide after -- direct staff to go
18 back and look at the utility more closely, you
19 cannot grant the petition to show cause regardless.
20 There are some -- because you are looking at taking
21 a prosecutorial action towards the utility, there
22 are some specific legal steps that have to be made
23 that are laid out in Chapter 120 and in the Uniform
24 Rules of Procedure, and it would be that staff would
25 have to have gathered sufficient information to

1 recommend to you that the utility is violating a
2 specific rule, statute, or order, and then you on
3 your own motion would issue a show cause order.

4 So I want to make sure that everybody
5 understands that, because I know we have two new
6 Commissioners that may not be aware of those
7 particular ramifications.

8 **COMMISSIONER SKOP:** All right. So, Ms.
9 Helton, what is the recommended course of action for
10 the Commission? I know that we have the staff
11 recommendation is to dismiss the petition.

12 **MS. HELTON:** Yes, sir. My recommendation
13 still is, and I think staff would agree with me, to
14 dismiss the petition. That being said, I think that
15 you have the ability, the authority, the
16 jurisdiction to direct the staff to go back and look
17 at this utility more closely and to decide whether
18 there are potential violations or apparent
19 violations of a rule, statute, or order under your
20 jurisdiction. And if so, to make a recommendation
21 to you to initiate show cause proceedings.

22 **COMMISSIONER SKOP:** All right. So just
23 for clarity, the show cause proceeding would have to
24 be initiated by staff?

25 **MS. HELTON:** We would recommend to you, to

1 the Commission to initiate a show cause proceeding.

2 **COMMISSIONER SKOP:** All right.

3 Commissioner Brisé and then Commissioner Graham.

4 Commissioner Brise, you're recognized.

5 **COMMISSIONER BRISÉ:** I think I'm going to
6 ask the same question you asked, but just for my
7 clarity. If we agree to dismiss, we can also
8 instruct you to then go back and look, and if at
9 some further point there needs to be a further
10 action, then you can bring that back to us?

11 **MS. HELTON:** Yes, sir.

12 **COMMISSIONER BRISÉ:** Okay.

13 **COMMISSIONER SKOP:** Okay. Thank you.

14 Commissioner Graham.

15 **COMMISSIONER GRAHAM:** I guess I have to
16 ask this question because I am not an attorney, so
17 you will have to slow it down a little bit for me.
18 I have that remedial Georgia Tech education, so I
19 don't get the legal side of things.

20 So you're saying that we couldn't just lay
21 this on the table; by some state statute we actually
22 have to take some sort of action on this today?

23 **MS. HELTON:** No, sir. And I'm really
24 trying not to confuse matters. Unfortunately, I am
25 an attorney and sometimes my speak is a little bit

1 confusing. You don't have to vote today. There is
2 no jurisdictional time frame here at issue. Staff
3 is recommending that you vote today, because in
4 staff's opinion the customers have not done what
5 they need to do in filing their complaint to show
6 that there is an action that you can act on.

7 All of that being said, you can still
8 grant staff's recommendation and dismiss the
9 complaint. But just because you have dismissed the
10 complaint does not mean that you then bury the
11 issues that have been raised there. It means you
12 can direct the staff to go back and investigate this
13 utility further. You can go back and have engineers
14 go out and look at the facility, if they haven't
15 already. You can conduct more discovery. They can
16 talk to DEP. You can see if there really is a
17 legitimate question or issue that you have
18 jurisdiction over, and you can direct the staff that
19 if you find an apparent violation of a rule,
20 statute, or order over which you have jurisdiction,
21 to bring a recommendation back to you at a later
22 date and recommend appropriate action be taken to
23 ensure that the customers of this utility get good
24 service.

25 **COMMISSIONER GRAHAM:** Well, if I may, Mr.

1 Chair.

2 **COMMISSIONER SKOP:** Yes, Commissioner
3 Graham.

4 **COMMISSIONER GRAHAM:** Why couldn't you
5 still do that same thing and take no action on this
6 today by laying this on the table and instructing
7 staff to look into this matter, and then you can
8 come back with we haven't found anything, everything
9 is good, so let's just move forward and dismiss
10 this.

11 **MS. HELTON:** I'm not trying to steal the
12 show from Ms. Williams, and I think she has an
13 answer for you on that.

14 **COMMISSIONER GRAHAM:** I see everybody is
15 getting excited over there.

16 **MS. WILLIAMS:** I'm chomping at the bit
17 over here. I think what the problem is is if staff
18 had found that there were either sufficient
19 allegations or on our own research that we had
20 conducted found that there was some kind of
21 violation of a rule, or order, or statute, we could
22 have very well brought a recommendation that you
23 show cause -- that the utility be required to show
24 cause. We didn't find that, nor did they allege
25 that.

1 Furthermore, I don't think that laying
2 this on the table and not voting on it will
3 accomplish much because what was requested
4 specifically is inappropriate. They want a rate
5 reduction for -- it looks like an across-the-board
6 rate reduction for bad service, which they've said
7 in the petition and then again today that they don't
8 have bad service.

9 **COMMISSIONER GRAHAM:** Well, I mean, that
10 is not my concern. I mean, regardless of what they
11 are saying that is not my concern, because this
12 thing is in receivership. And so trying to go back
13 and figure out where the dollars were spent and
14 where they weren't spent is a completely different
15 issue. I just want to make sure that there is good
16 quality clean water coming out of that thing and the
17 wastewater is being taken care of.

18 **MS. WILLIAMS:** And we could have brought a
19 recommendation with respect to those issues of good
20 quality water if we had felt that they were
21 warranted.

22 **COMMISSIONER GRAHAM:** I guess my only
23 concern is if we dismiss this today and found out
24 there is a problem, what does that do as far as our
25 due diligence or what we are supposed to be doing

1 here?

2 **MS. WILLIAMS:** It wouldn't prohibit staff
3 from coming forward and opening its own docket to
4 address those matters further.

5 **MS. HELTON:** This Commission regulates the
6 service and rates of all utilities under its
7 jurisdiction, and it's a job that staff takes very
8 seriously. And if we learn that there are issues
9 with this utility, we will bring it back before you.
10 That is what we get paid to do.

11 **COMMISSIONER SKOP:** Commissioner Graham --
12 I have a question for Ms. Williams. Again, I think
13 that a show cause is discretionary certainly. The
14 utilities are looking for a rate reduction, whereas
15 the critical issue seems to be the quality of
16 service of the water and wastewater facilities being
17 provided.

18 In relation to Rule 25-30.225,
19 specifically (7), the utility itself is not
20 currently in compliance with DEP and county
21 operational requirements, is that correct?

22 **MS. WILLIAMS:** I'm sorry, could you repeat
23 the question? They currently are or are not?

24 **COMMISSIONER SKOP:** Are not.

25 **MS. WILLIAMS:** They currently are from

1 staff's discussions with the DEP, yes.

2 **COMMISSIONER SKOP:** So they are currently
3 in compliance?

4 **MS. WILLIAMS:** Yes, they are,
5 Commissioner.

6 **COMMISSIONER SKOP:** So the statement in
7 Data Request Number 1, Question 2, the LLC is
8 working diligently to bring the utility facilities
9 into compliance with Florida DEP and county
10 operational requirements, all of that has been
11 accomplished?

12 **MS. WILLIAMS:** No, I don't believe that
13 has been accomplished, but I had the same confusion
14 you did with the language "in compliance." When I
15 called the DEP and spoke with Clarence Anderson, who
16 wrote the letter that was sent to the utility and
17 which was referenced by the association, he said --
18 you know, I said, "What are they violating, what are
19 they not in compliance with?" And he said,
20 "Ms. Williams, I want to make clear this is just
21 things we want them to improve. They are not in
22 violation."

23 **COMMISSIONER SKOP:** Very well. I think
24 that does it for me, Commissioners. So I will look
25 to the bench for a motion.

1 Commissioner Edgar, you're recognized.

2 **COMMISSIONER EDGAR:** Thank you,

3 Commissioner Skop.

4 Commissioner Graham, I guess to try to
5 respond to some of your comments and questions, and
6 this is a nonlegal comment, but I think to not
7 dispose one way or another of the motion to dismiss
8 that is pending before us today would just be
9 messier to leave that. It would just be messier.
10 You may or may not agree with that, but I think that
11 is --

12 **COMMISSIONER GRAHAM:** I understand
13 messier. I really do. (Laughter.)

14 **COMMISSIONER EDGAR:** This Commission
15 probably for our entire existence, way predating any
16 of us, has always worked closely with individual
17 customers, customer groups, customer associations,
18 customer representatives when concerns are raised.
19 And I think what I'm hearing in my perspective, and
20 also I think what I am hearing from each of us is a
21 desire to do that in this instance to address some
22 of the concerns that have been raised and maybe get
23 some additional clarity as to what those concerns
24 are or are not and what would be the appropriate
25 response if, indeed, one is needed.

1 So with that, and the discussion that we
2 have had, Commissioner Skop, if it's timely to pose
3 a motion for discussion, then I would move that we
4 adopt the staff recommendation on Item 3 with the
5 recognition that that is to grant the motion to
6 dismiss without prejudice, recognizing that this
7 representative and customers could certainly file
8 another petition with us. But also with the further
9 direction to our staff to get with Mr. Armstrong
10 and, of course, with Mr. May, as well, to try to
11 respond to the concerns that have been raised,
12 realizing that there are some unique factors here
13 because of the issue of the receivership and some
14 other factors. And to bring back forward to us an
15 item in the future, if, indeed, there are some
16 actions that this Commission should consider.

17 **COMMISSIONER GRAHAM:** Second.

18 **COMMISSIONER SKOP:** All right. We have a
19 motion and a proper second. Is there any
20 discussion?

21 All right. Hearing none, all in favor of
22 the motion signify by saying aye.

23 (Vote taken.)

24 **COMMISSIONER SKOP:** The motion passes.

25 Thank you.

1 And, Commissioners, that is our last item
2 on today's agenda. And what we are going to do is
3 we are going to adjourn the agenda conference and we
4 will reconvene in ten minutes for IA.

5 But, Commissioner Graham, before we
6 adjourn.

7 **MR. ARMSTRONG:** Commissioner Skop, I want
8 to just say thank you for giving me the opportunity
9 to address you all. Thanks.

10 **COMMISSIONER SKOP:** All right. Thank you,
11 Mr. Armstrong.

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15 **COMMISSIONER SKOP:** Commissioner Graham.

16 **COMMISSIONER GRAHAM:** Thank you, Mr.
17 Chair. Number one, I apologize to the chair and to
18 the board for being a little tardy this morning.
19 But I want to, since you guys already moved staff
20 before I got here, I would like to concur with the
21 board with the Move Staff List for Items 1, 4, 5,
22 and 6. So, therefore, I can be on the record as
23 being affirmative on those.

24 **COMMISSIONER SKOP:** Very well. Show it
25 done.

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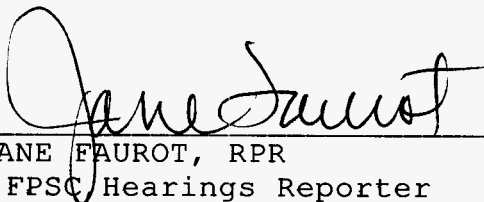
STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 4th day of October, 2010.

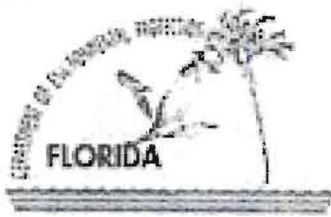


JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

Parties/Staff Handout
Internal Affairs/Agenda
on 9/28/10
Item No. 3
100318-WS

08290-10





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

CERTIFIED MAIL

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

Don - SMS response attached

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

OCD-C-WW-09 *Bob D*
1/14/2010

ATTENTION THOR IBSEN
MANAGER

Brevard County - DW
Aquarina Beach Community WWTF
Wastewater Facility - Permit No. FLA010352
Noncompliance Letter

Dear Mr. Ibsen:

On December 1, 2009, Department personnel conducted a routine inspection of your wastewater facility. A copy of the inspection report is enclosed for your review. Please note the items listed below which need to be addressed:

1. At the time of the inspection, the clarifier drive unit was not operating. This operational event was not reported to the Department. Any operational difficulty resulting in noncompliance with permit conditions or State regulations must be reported to the Department of Environmental Protection within twenty-four (24) hours of discovery.
2. At the time of the inspection, the following were not operational at the facility:
 - a. The clarifier drive unit.
 - b. Two blowers that operate the aeration basin.
 - c. One pump located at the return (RAS)/waste (WAS) activated sludge unit.
 - d. The electrical disconnect located at the WAS/RAS was in need of repair.
3. Promote Best Management Practices (BMPs) in the collection and removal of solids and paper products generated from the wastewater treatment facility. You are required to collect and dispose of this debris in a Department approved manner.
4. According to Part VI, of the wastewater permit, you were required to provide a filter media evaluation report and any corrective action necessary with the completion schedules within 30 days of the permit issuance. The permit was issued on March 31, 2008. The Department as not received this report.

Parties/Staff Handout
Internal Affairs/Agenda
on 9/12/10
Item No. 3
100318-WS

The Department requests a written response addressing the items within 14 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 and report, being 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

CCF/tp/ar
Enclosure: Inspection Report
cc: Domestic Waste Permitting Section

SERVICE MANAGEMENT SYSTEMS, INC.

P.O. BOX 510388

MELBOURNE BEACH, FLORIDA 32951

PH. 321-327-2930 / FAX 321-728-0733

EMAIL: SERVICEMANAGEMENTSYSTEMS@GMAIL.COM

January 8, 2010

Tom Powers
Florida Department of Environmental Protection
Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Attention: Mr. Tom Powers

RE: Permittee SERVICE MANAGEMENT SYSTEMS
Permit # FLA 010352
PA File # FLA 010352-003-DW3P

Per the inspection report, the following items are to be address:

1. Lack of reporting the clarifier drive unit –addressed with the plant operator.
2. The equipment not in operation at the facility:
 - a. Clarifier Drive Unit
 - b. Two (out of the three) blowers that operate the aeration basin
 - c. One pump located at return (RAS)/waste (WAS) activated sludge unit
 - d. The electrical disconnect located at the WAS/RAS was in need of repair

At the present time, SMS does not have the funds available to repair the equipment not in operation at the facility. In lieu of the Clarifier Drive Unit, the plant is transferring sludge from the clarifier to the aeration basin via a submerged pump. Reference the blowers the plants capacity is 300,000 gallons per day, however the plant is only operating at less 50,000 gallons per day therefore a single operation blower is more than sufficient. Reference the pump at return (RAS)/waste (WAS) activated sludge unit SMS does have a second pump that is available for use however was not necessary therefore is being stored in a non-deteriorating environment. Reference the electrical disconnect located at the WAS/RAS was in need of repair has been repaired.

3. Promote Best Management Practices (BMP's) in the collection and removal of solids and paper products generated from the wastewater treatment facility.

The collection and removal of all solids and paper products are being collected and disposed of in a Department approved manner; any existing conditions of non-compliance have been remedied.

4. Filter Media Evaluation Report.

Presently reviewing files to determine location of the of the evaluation report, management of plant changed in October of 2008 and files have not fully been reviewed.

Respectfully submitted,

Thor Ibsen
Managing Member
Service Management Systems, Inc.