

State of Florida



## Public Service Commission

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

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

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**DATE:** May 11, 2011  
**TO:** All Parties of Record & Interested Persons  
**FROM:** Anna R. Williams, Senior Attorney, Office of the General Counsel  
**RE:** Docket No. 110061-WS - Application for authority to transfer assets and Certificate Nos. 517-W and 450-S of Service Management Systems, Inc. to Aquarina Utilities, Inc., in Brevard County.

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Please note that an informal meeting between Commission staff and interested persons to the above-captioned docket has been scheduled for the following time and place:

Monday, May 16, 2011 at 10:00 a.m.  
Gerald L. Gunter Building, Conference Room 154  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

The purpose of the meeting is to discuss Service Management Systems, Inc.'s application for authority to transfer assets and Certificate Nos. 517-W and 450-S to Aquarina Utilities, Inc., in Brevard County and the requests for a formal administrative hearing filed by James I. Minnes and Aquarina Community Services Association, Inc. More specifically, the Commission's evaluation of transfer applications pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code, as well as the Commission's hearing process in general, will be discussed. A copy of Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code, are attached to this notice for reference. Attendance is not required; however, all interested persons are encouraged to attend. Interested persons may participate telephonically in this meeting by dialing 1-888-808-6959, Conference Code 4136206. If you have any questions about the meeting, please call Anna R. Williams at (850) 413-6076.

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**Section 367.071 - Sale, assignment, or transfer of certificate of authorization, facilities, or control.**

(1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

(2) The commission may impose a penalty pursuant to s. 367.161 when a transfer occurs prior to approval by the commission. The transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility.

(3) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s. 367.145. No fee is required to be paid by a governmental authority that is the buyer, assignee, or transferee.

(4) An application shall be disposed of as provided in s. 367.045, except that:

(a) The sale of facilities, in whole or part, to a governmental authority shall be approved as a matter of right; however, the governmental authority shall, prior to taking any official action, obtain from the utility or commission with respect to the facilities to be sold the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction. Any request for rate relief pending before the commission at the time of sale is deemed to have been withdrawn. Interim rates, if previously approved by the commission, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest.

(b) When paragraph (a) does not apply, the commission shall amend the certificate of authorization as necessary to reflect the change resulting from the sale, assignment, or transfer.

(5) The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof, except for any sale, assignment, or transfer to a governmental authority.

(6) Any person, company, or organization that obtains ownership or control over any system, or part thereof, through foreclosure of a mortgage or other encumbrance, shall continue service without interruption and may not remove or dismantle any portion of the system previously dedicated to public use which would impair the ability to provide service, without the express approval of the commission. This provision may be enforced by an injunction issued by a court of competent jurisdiction.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 9, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; ss. 7, 15, ch. 82-25; ss. 6, 26, 27, ch. 89-353; s. 2, ch. 90-166; s. 4, ch. 91-429; s. 5, ch. 99-319.

**Rule 25-30.037 Application for Authority to Transfer.**

(1) This rule applies to any application for the transfer of an existing water or wastewater system, regardless of whether service is currently being provided. This rule does not apply where the transfer is of an exempt or non-jurisdictional system and will result in the system continuing to be exempt from or not subject to Commission jurisdiction. The application for transfer may result in the transfer of the seller's existing certificate, amendment of the buyer's certificate or granting an initial certificate to the buyer.

(2) Each application for transfer of certificate of authorization, facilities or any portion thereof, to a non-governmental entity shall include the following information:

(a) The complete name and address of the seller;

(b) The complete name and address of the buyer;

(c) The nature of the buyer's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, or association;

(d) The name(s) and address(es) of all of the buyer's corporate officers, directors, partners or any other person(s) who will own an interest in the utility;

(e) The date and state of incorporation or organization of the buyer;

(f) The names and locations of any other water or wastewater utilities owned by the buyer;

(g) A copy of the contract for sale and all auxiliary or supplemental agreements, which shall include, if applicable:

1. Purchase price and terms of payment;

2. A list of and the dollar amount of the assets purchased and liabilities assumed or not assumed, including those of nonregulated operations or entities; and

3. A description of all consideration between the parties, for example, promised salaries, retainer fees, stock, stock options, assumption of obligations.

(h) The contract for sale shall also provide for the disposition, where applicable, of the following:

1. Customer deposits and interest thereon;

2. Any guaranteed revenue contracts;

3. Developer agreements;

4. Customer advances;

5. Debt of the utility;

6. Leases;

(i) A statement describing the financing of the purchase;

(j) A statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters;

(k) A list of all entities upon which the applicant is relying to provide funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility;

(l) The proposed net book value of the system as of the date of the proposed transfer. If rate base has been established by this Commission, state the order number and date issued and identify all adjustments made to update this rate base to the date of transfer;

(m) A statement setting out the reasons for the inclusion of an acquisition adjustment, if one is requested;

(n) If the books and records of the seller are not available for inspection by the Commission or are not adequate for purposes of establishing the net book value of the system, a statement by the buyer that a good faith, extensive effort has been made to obtain such books and records for inspection by the Commission and detailing the steps taken to obtain the books and records;

(o) A statement from the buyer that it has obtained or will obtain copies of all of the federal income tax returns of the seller from the date the utility was first established, or rate base was last established by the Commission or, if the tax returns have not been obtained, a statement from the buyer detailing the steps taken to obtain the returns;

(p) A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP) or, if the system is in need of repair or improvement, has any outstanding Notice of Violation of any standard set by the DEP or any outstanding consent orders with the DEP, the buyer shall provide a list of the improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violation, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost to make them;

(q) Evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative;

(r) A statement regarding the disposition of any outstanding regulatory assessment fees, fines, or refunds owed;

(s) The original and two copies of sample tariff sheets reflecting the change in ownership; and

(t) The utility's current certificate(s), or if not available, provide an explanation of the steps the applicant took to obtain the certificate(s).

(3) In case of a change in majority organizational control, the application shall include the following information:

(a) The complete name and address of the seller;

(b) The complete name and address of the buyer;

(c) The name(s) and address(es) of all of the buyer's corporate officers, directors, partners and any other person(s) who will own an interest in the utility;

(d) The names and locations of any other water or wastewater utilities owned by the buyer;

(e) A statement describing the financing of the purchase;

(f) A statement describing how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters;

(g) A list of all entities, including affiliates, that have provided, or will provide, funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility;

(h) A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the DEP or, if the system is in need of repair or improvement, has any outstanding Notice of Violation(s) of any standard(s) set by the DEP or any outstanding consent orders with the DEP, the buyer shall provide a list of the improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violations, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost;

(i) Evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost effective alternative;

(j) The original and two copies of sample tariff sheets reflecting the change in ownership; and

(k) The utility's current certificate(s), or if not available, the applicant shall provide an explanation of the steps the applicant took to obtain the certificate(s).

(4) Each application for transfer of certificate of authorization, facilities, or any portion thereof, or majority organizational control to a governmental authority shall contain the following information:

(a) The name and address of the utility and its authorized representative;

(b) The name of the governmental authority and the name and address of its authorized representative;

(c) A copy of the contract or other document transferring the utility system to the governmental authority;

(d) A list of any utility assets not transferred to the governmental authority if such remaining assets constitute a system providing or proposing to provide water or wastewater service to the public for compensation;

(e) A statement that the governmental authority obtained, from the utility or Commission, the most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction;

(f) The date on which the governmental authority proposes to take official action to acquire the utility;

(g) A statement describing the disposition of customer deposits and interest thereon; and

(h) A statement regarding the disposition of any outstanding regulatory assessment fees, fines or refunds owed.

(5) If a utility is transferring a portion of its facilities to a governmental agency, it must provide the following additional information:

(a) A description of the remaining territory using township, range, and section references;

(b) One copy of the official county tax assessment map, or other map, showing township, range, and section with a scale such as 1" = 200' or 1" = 400', with the remaining territory plotted thereon by use of metes and bounds or quarter sections, and with a defined reference point of beginning; and

(c) The original and two copies of sample tariff sheets reflecting the remaining territory.

(6) Upon its receipt of items required in paragraphs (4)(a), (b), (c), (d), (e) and (f), the Commission will issue an order acknowledging that the facilities or any portion thereof have

been acquired by the governmental authority.

(7) Upon receipt of the items required in paragraphs (4)(g) and (h) and, if applicable, paragraphs (5)(a), (b), and (c), and upon the completion of all pending proceedings before the Commission, the utility's certificate will be amended or cancelled. Amendment or cancellation of the certificate shall not affect the utility's obligation pursuant to Rule 25-30.120, F.A.C., Regulatory Assessment Fees.

*Specific Authority 367.121, 367.1213, 350.127(2) FS. Law Implemented 367.071, 367.1213 FS. History—New 1-27-91, Amended 11-30-93.*