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09 MAR 25 PM 2:43
COMMISSION
CLERK

March 25, 2009

Anne Cole, Commission Clerk
And Administrative Services
Room 100, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 090019-WS

In re: 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 Ms. Cole:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Petition for Formal Hearing.

- COM _____
- ECR _____
- GCL _____
- OPC _____
- RCP _____
- SSC _____
- SGA _____
- ADM _____
- CLK _____

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

SCR:bsr

DOCUMENT NUMBER-DATE

02611 MAR 25 09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority
organizational control of Service Management Docket No. 090019-WS
Systems, Inc., holder of water Certificate No.
517-W and wastewater Certificate 450-S, in
Brevard County, from IRD Osprey, LLC to Filed: March 25, 2009
Oak Lodge Utility, LLC.

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PETITION FOR FORMAL HEARING

James I. Minnes, individually, and on behalf of the Aquarina Community Services Association, Inc., the St. Andrews Home Owners Association, Inc., and on behalf of over sixty of the more than two hundred customers who have filed objections to the above application, who are listed in Exhibit "A," attached hereto and made a part hereof, hereby object to the application to transfer the majority organizational control of Service Management Systems, Inc. ("SMS") to Oak Lodge Utility, LLC, ("Oak Lodge" or "Purchaser") and I request a formal evidentiary hearing on this matter, and allege the following:

- 1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Docket No. 090019-WS

- 2. The name, address and telephone number of the Petitioner:

James I. Minnes
208 Osprey Vilas Ct.

*JMS
3/25/09
K.M.*

DOCUMENT NUMBER-DATE

02611 MAR 25 09

FPSC-COMMISSION CLERK

Melbourne Beach, FL 32951

(321) 327-2779

3. An explanation of how the Petitioner's substantial interests will be affected by the application:

The Petitioner and all of the other individuals and the two homeowner's associations listed in Exhibit "A," are all customers of SMS and reside in the community of Aquarina, located approximately thirteen (13) miles south of Melbourne Beach, in Brevard County, Florida. The substantial interests of the Petitioner and the individuals and two homeowner's associations listed in Exhibit "A" will be affected by the Commission's decision in this docket because the proposed transfer of majority organizational control of SMS to Oak Lodge is not in the public interest and if approved would adversely affect both the quality and cost of SMS's provision of water and wastewater service to the Aquarina Community.

4. A statement of when and how the Petitioner received notice of the application:

Petitioner received a copy of SMS's notice of application of the proposed transfer by U.S. mail on January 21, 2009. Petitioner and over two hundred other customers filed timely objections to the proposed transfer. Subsequent to the timely objections, Petitioner was contacted by the Commission's Staff ("Staff") inquiring if the Petitioner wished to request the Commission to conduct a formal hearing to take evidence so that it could determine if the proposed transfer is in the public interest. Staff advised that this request should be filed with the Commission on or before March 25, 2009.

5. A concise statement of the ultimate facts alleged including specific facts the Petitioner contends warrant denial of the application:

At this time the ultimate facts alleged, including specific facts the Petitioner contends warrants the denial of the application to transfer the majority

organizational control of SMS to Oak Lodge are as follows:

a. The Applicant has failed to fully identify all of the Purchaser's partners and any other persons or entities that will own an interest in SMS.

b. The Applicant's statement describing the financing of the purchase is vague and inadequate. There is no detailed information provided concerning the dollar amount of the liabilities being assumed by the Purchaser or any detail provided concerning which persons or entities will be committed and legally obligated to satisfy those liabilities.

c. The Applicant's statement which purports to describe how the transfer is in the public interest is seriously deficient. While the statement concedes the unsuitability of the Seller to continue to operate SMS, the Purchaser offers no detailed information or support concerning

the Purchaser's experience or financial ability to operate SMS. The statement also fails to assert the Purchaser's commitment to fulfill the commitments, obligations and representations of the Seller with regard to utility matters. In fact, the Stock Purchase Agreement ("SPA"), which is attached to the application, indicates that the Purchaser has no intention to fulfill what appears to be the largest single obligation of SMS, namely, its note and mortgage to Compass Bank. In Section 6 (a) of the SPA the Purchaser commits itself only to "...negotiate in good faith with Compass Bank to restructure or refinance the indebtedness in a way that is acceptable to Purchaser in its sole discretion." Also, in Section 6 (b) of the SPA, the Purchaser makes the following commitment: "In addition, in the event Compass Bank reactivates the foreclosure lawsuit against the Company (SMS), the Purchaser shall cause the Company to vigorously defend such lawsuit in whatever way Purchaser determines, in its sole and absolute discretion, including but not limited to by filing a petition to reorganize in U.S. Bankruptcy Court." Committing to take SMS into bankruptcy is hardly a reassuring statement of the Purchaser's commitment to fulfill the commitments, obligations and representations of the Seller with regard to utility matters, as required by Commission Rule 25-30.037(3) (f), Florida Administrative Code.

d. The Applicant has failed to explain the manner and amount of funding that will be provided to the Purchaser by all of the entities, including affiliates that have provided, or will provide, funding to the Purchaser, including their financial statements and copies of any financial agreements with the Purchaser or SMS, while under ownership and control of the Purchaser.

e. It appears from the application that the Purchaser performed only a cursory examination of SMS's facilities to make its determination that the facilities were in satisfactory condition. Because of the Purchaser's failure to perform adequate due diligence concerning the condition of SMS's facilities, the application fails to address the list of repairs needed and the approximate cost of those repairs in order to assure safe and adequate water and wastewater service at a reasonable cost to its customers.

f. The Applicant has failed to provide adequate proof of ownership of the land upon which the utility treatment facilities are located.

g. The Purchaser does not have the experience in water and wastewater operations or even demonstrated that it is capable of selecting qualified experienced operators to operate SMS.

h. The Purchaser has not proven that it has the financial ability to provide safe and adequate water and wastewater service on behalf of SMS to the Aquarina Community.

i. The Purchaser has not demonstrated that it has the ability or even the willingness to fulfill the commitments, obligations and representations of the Seller with regard to utility matters.

j. The proposed application to transfer the majority organizational control of SMS to Oak Lodge is not in the public interest and should be denied by the Commission.

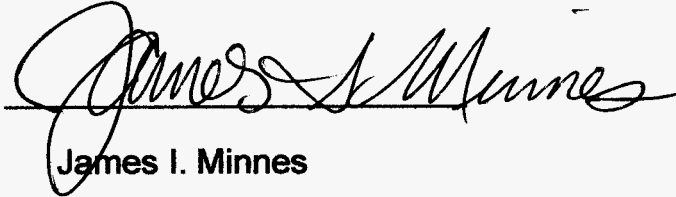
k. Each of the foregoing allegations involve disputed issues of material facts.

6. A statement of the specific rules or statutes the Petitioner contends require denial or modification of the application:

The application should be denied because of Commission Rule 25-30.037 (3), (c), (e), (f), (g), (h), (i), Florida Administrative Code and Sections 367.071 and 367.1213, Florida Statutes.

WHEREFORE, for the reasons stated above, the Petitioner requests the Commission to conduct a formal evidentiary hearing, pursuant to the provisions of Section 120.57 (1), Florida Statutes, and further petitions that such hearing be scheduled at a convenient time within or as close as practical to SMS's certificated service area.

Respectfully submitted,



James I. Minnes

208 Osprey Vilas Court.

Melbourne Beach, FL 32951

Email: taprte@gmail.com

CERTIFICATE OF SERVICE

DOCKET NO. 090019

I HEREBY CERTIFY that a true and correct copy of the forgoing petition has been furnished by U.S. mail and electronic mail to the following parties of record this 25th day of March, 2009.

Katherine Fleming, Esquire

Florida Public Service Commission

General Counsel

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399-0850

Email: kflemin@psc.state.fl.us

Service Management Systems, Inc.

P.O. Box 510388

Melbourne Beach, Florida 32951-0388

Email: servicemanagementsystems@gmail.com

Compass Bank

c/o D. Bruce May, Jr., Esquire

Holland & Knight Law Firm

P.O. Drawer 810

Tallahassee, Florida 32302-0810

Email: bruce.may@hkaw.com



James I. Minnes

EXHIBIT "A"

The following is a list of the names of all Objectors that request the Petitioner to request a formal Hearing:

Alfred & Jane Farina	796 Aquarina Boulevard
John & Diane Cobb	820 "
Robert Fata	855 "
Charles M. & Judith A Kauth	354 "
Donald D. Murray	846 "
Robert & Mary Anne Dragoon	372 "
Margaret C. Clark	149 "
Robert A. McKnight	105 "
Billy & Ann Murphy	260 "
Robert & Carol Fister	161 "
Marilyn Muskatel-Del Cielo	356 "
Donald Schwinn	378 "
Joyce Malakoff	864 "
Louis & Marion Ruppert	384 "
John & Janet Meehan	131 "
William & Judith Machorek	125 "
Paul & Claire Levesque	274 "
Edward M. Davis	860 "

Carl & Paulette Grizer	911	"	
James & Elizabeth Minnes	208 Osprey Villas Court		
Joan Lynch	212	"	
Grant & Vickie Leslie	202	"	
Bill & Sherry Burnette	218	"	
Jerry & Mary Cairns	207	"	
Carl Wennerstrom	162	Whaler Drive	
Garald L. & Nancy A. Easton	170	"	
Raymond & Margaret Bedat	130 Whaler Drive		
Jerry & Pauline Nicholson	110 Whaler Drive, Unit 404		
Edwin & Sandra Myland	110	"	Unit 305
Gary Hanbaum & Robin Whittaker	140 Warsteiner Way, Unit 803		
Lewis C. & Judith A. Shigley		"	Unit 301
Victor & Needa Churio	240 Hammock Shore Drive, Unit 108		
Patricia Andreoli Sauter		"	Unit 302
Mel & Audrey Weiss		"	Unit 104
Helen L. Sarver		"	Unit 202
John A. & Marjorie W. Hanawalt		"	Unit 204
Edward & Pamela O'Brien		"	Unit 203
Walter Spoo	375	"	

Aquarina Community Services Association, Inc.

By: Ed Muendel, Treasurer

360 Hammock Shore Drive

St. Andrews Village Homeowners Association, Inc.

By: Katherine Kozinski, President

107 Caledonia Drive