

**Dorothy Menasco**

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**From:** Matherne, Angela [amatherne@ngn-tally.com]  
**Sent:** Tuesday, May 19, 2009 4:54 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 090189-SU  
**Attachments:** Objection and Petition For Formal Hearing.pdf

Dear Sir or Madam:

Attached please find a document entitled Objection and Petition for Formal Hearing to be filed under Docket No. 090189-SU.

If you have any questions, please contact Mr. Armstrong at (850) 224-4070.

**Angela Matherne**  
**Legal Assistant**

*Dme  
5/20/09  
R.V.N.*

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

5/19/2009

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for Original  
Certificate for a Proposed Wastewater  
System and Request for Bifurcation by  
Water Management Services, Inc.

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Docket No. 090189-SU

Filed: May 19, 2009

**OBJECTION AND PETITION FOR FORMAL HEARING**

The Board of County Commissioners of Franklin County, a political subdivision of the State of Florida ("Petitioner"), hereby objects to the Application by Water Management Services, Inc. ("Water Management") for an original certificate for a wastewater system to serve the central business district located on St. George Island, Florida. Petitioner hereby requests a formal evidentiary hearing on this matter pursuant to section 367.045 and sections 120.569 and 120.57, Florida Statutes, and alleges 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. 090189-SU

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

Franklin County, a political subdivision of the State of Florida  
c/o Thomas M. Shuler, Esquire, County Attorney  
P.O. Box 850  
Apalachicola, Florida 32329  
(850) 653-9226

With a copy to:

Brian P. Armstrong  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
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3. An explanation of how the Petitioner's substantial interests will be affected by the application:

Petitioner is the governing body of Franklin County which is affected by the Application and has standing pursuant to Chapter 367, Florida Statutes (2008) as Petitioner's interests would be "substantially affected" by the requested certificate, as confirmed by section 367.045(4), Florida Statutes.

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

The Petitioner received notice by mail shortly after April 15, 2009 and by publication in the Tallahassee Democrat published April 20, 2009. Petitioner reserves the right to challenge the sufficiency of the Notice.

5. The following is a concise statement of the ultimate facts supporting the County's objection to the Application, including specific facts that the Petitioner contends warrant denial of the application:

a. In its Application, Water Management alleges that:

"The need for a targeted wastewater treatment system on St. George Island has been recognized for many years, but has now become critical. In recent years, the adjacent waters have been closed numerous times due to high bacteria counts."

If the term "targeted" means "central," the Application has provided no documentation that the need for a central wastewater system for St. George Island has been required or even recommended by any governmental agency responsible for the water quality of the state. The Application does not identify

who has recognized the need "for many years" to establish a central wastewater system for any portion of this barrier island.

b. While there have been occasional closures of the bay because of high bacteria counts, the Application provides no documentation that those closures have anything to do with the several recent failures of certain businesses to meet effluent quality and disposal standards. Also, while there have been a number of beach advisories there have been no beach closures as a result of high bacteria counts.

c. Franklin County has not received or been afforded the opportunity to conduct public hearings to consider any studies which the applicant may submit which identify the location, extent and appropriate treatment regime of the point sources of the alleged water pollution. On May 6, 2009, Franklin County commissioned its own study to determine the location, extent and appropriate treatment regime of the alleged point sources of water pollution

d. Franklin County has not received sufficient information concerning the applicant's proposed central sewer system, including, but not limited to proposed rates and sewage treatment processes.

e. The Application provides no causal connection or other credible documentation establishing that a central wastewater system for the business district of St. George Island will have any effect on the beach advisories that have occurred at the four different sampling stations located on the island. In short, the beach advisory problem needs to be carefully studied and understood before a multi-million dollar solution is constructed to solve it.

f. Introducing a central sewer system to this fragile barrier island eliminates probably the single greatest obstacle to higher and more dense development for St. George Island. It would be ironic and unfortunate if introducing central sewer to the island would have little or no affect on the beach advisories, but ultimately unleash financial forces that would lobby for and

achieve higher and more dense development on the island, with all of the attending negative environmental impacts, including stormwater run-off, upon the waters surrounding the island.

g. Transporting raw sewage under pressure through pipes laid throughout the business district to a single treatment facility may present more opportunities for wastewater contamination of the waters under and around the island than transporting fully treated wastewater effluent to disposal facilities located relatively close to the treatment facilities serving each business.

h. The failure of a few businesses on St. George Island to meet effluent quality and disposal standards does not constitute the “critical” emergency alleged by Water Management, which requires all of the other businesses on St. George Island to abandon their properly working systems in favor of a central sewer system.

i. Each of the businesses that have had compliance problems can resolve their problems after making modifications to their systems. Most of the businesses having compliance problems listed in the Application have already begun that process.

j. This docket presents one of the most important policy questions that will face St. George Island and the waters around it for many years: “Should a certificate be granted to Water Management to provide central wastewater service to the center of the Island?” Approving this exclusive certificate to provide a central wastewater system will forever preclude implementing other potentially superior alternative wastewater treatment and disposal solutions that are available for the proposed initial service territory between Third Street east and Third Street west. It is contrary to the public interest to grant Water Management’s Application if the preponderance of the evidence presented at the requested hearing establishes that there are one or more superior (environmentally, financially, both capital and operating costs, and even

esthetically) wastewater treatment and disposal solutions readily available for St. George Island.

k. The Application fails to establish that Water Management has the financial and technical capabilities to construct and operate the proposed central wastewater system. Based upon information and belief, Water Management has no such experience.

l. The Application fails to provide detailed information concerning the number of Equivalent Residential Connections (ERCs) proposed to be served, by meter size and customer class.

m. The Application fails to provide evidence in the form of a warranty deed that the utility owns the land upon which the utility treatment facilities are or will be located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. Providing a one page letter granting an option to purchase a tract of land for a yet to be agreed upon price, which will expire on November 13, 2009, does not constitute adequate assurance of the availability or cost of the land needed to accommodate wastewater treatment facilities.

n. The Application fails to provide detailed information concerning exactly what wastewater treatment and collection facilities are proposed to be built and exactly where these facilities will be located, so that the costs of construction can be verified. More detailed information concerning exactly what will be built together with more detailed information furnished about who will be served will help the Petitioner and other affected parties to better estimate the costs of the proposed system.

o. The Application fails to provide detailed information concerning the separate capacities of the proposed wastewater lines and treatment facilities in terms of ERCs and gallons per day.

p. The Application fails to provide detailed information concerning Water Management's efforts to secure financing to construct the proposed facilities, including potential mandates that Island residents and businesses connect to the system within one year of it being made available.

q. The Application fails to provide any indication of what service availability charges, rates or other charges will be imposed upon the customers if the Commission grants Water Management an exclusive monopoly to provide wastewater service to this initial service territory. There is no way the Petitioner or any other person or business in the proposed initial service territory can determine if this Application is in our interest or in the general public interest until we discover what it will cost to connect to the proposed system and what it will cost to treat and dispose of our wastewater. These costs, when known, can then be compared to the cost of other available alternatives.

r. The Application fails to provide a cost study, including customer growth projections, supporting proposed rates, charges and service availability charges.

s. The Application fails to provide information showing the projected operating expenses of the proposed system when 80% of the designed capacity of the system is being utilized.

t. The Application discloses that Water Management intends to provide no equity in the proposed project, but intends to finance the entire project with debt, supported by Contributions-In-Aid-Of-Construction (CIAC) for up to 75% of the project's cost. All of the CIAC shall be collected from the customers who will be required to use this central wastewater system once it is built. The Application fails to provide a schedule showing the method of financing the operation of the central system until the utility reaches 80% of the design capacity of the system.

u. The proposed central system is inconsistent with Franklin County's comprehensive plan, including, but not limited to limitations on density and height. The territory considered for service extends into a low density rural area which is not designated for urban development. A Comprehensive Plan amendment may be necessary to allow for the development of sufficient densities to support the proposed utility services. Development of this sort would not be consistent with the principles guiding development as established in the County's Comprehensive Plan. Granting of the proposed expansion would weaken the effectiveness of Franklin County's planning and guidelines for future development and growth consistent with the Comprehensive Plan adopted by Petitioners, and thus violates such Plan.

v. Franklin County agrees with the objections identified by the Office of Public Counsel to the bifurcation of the proceedings for the reasons stated in such objection and hereby adopts and incorporates such objections herein by this reference.

w. Franklin County reserves the right to raise any and all other objections which the County may identify during this proceeding.

x. Each of the foregoing allegations identify disputed issues of material fact.

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

The Application should be denied as not being in compliance with Commission Rule 25-30.033 (1),(h), (j),(k),(m),(o),(s),(t),(u),(v), and (w), Florida Administrative Code, and section 367.045, Florida Statutes.

WHEREFORE, subject to the reservation stated hereinabove, and for the reasons stated above, Franklin County, a political subdivision of the State, objects to the application and requests the Commission to conduct a formal evidentiary hearing, pursuant to the provisions of section 120.57 (1), Florida

Statutes, and other relevant statutes and further petitions that such hearing be scheduled at a convenient time within or as close as practical to the initial service territory of the proposed wastewater system.

Respectfully submitted,

s/ Brian P. Armstrong

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Attorney for Franklin County

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 090189-SU**

**I HEREBY CERTIFY** that this objection and petition has been furnished by  
electronic and U. S. mail this 19th day of May, 2009 to the following:

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s/ Brian P. Armstrong  
Brian P. Armstrong, Esquire