

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of appointment of receiver for Service Management Systems, Inc. in Brevard County pursuant to Circuit Court foreclosure proceeding.

DOCKET NO. 100094-WS  
ORDER NO. PSC-10-0469-PCO-WS  
ISSUED: July 22, 2010

ORDER GRANTING EXTENSION OF TIME  
TO FILE 2009 ANNUAL REPORT AND  
REGULATORY ASSESSMENT FEES

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, we granted the utility original Certificate Nos. 517-W and 450-S.<sup>1</sup> A name 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.<sup>2</sup>

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. The Bank advised that on October 6, 2008, it filed a foreclosure action, Compass Bank v. Service Management Systems, Inc. et al., Case No. 052008-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 (Receiver). By Order No. PSC-10-0329-FOF-WS, we acknowledged the appointment of Mr. Dennis Basile as receiver and stated that the Receiver shall ensure that the utility pays its 2009 regulatory assessment fees (RAFs) and files its 2009 annual report (annual report or report) by June 30, 2010.

On June 30, 2010, the Receiver and FL-SERVICE MANAGEMENT, LLC (collectively Joint Movants) filed a Joint Motion for Extension of Time to File Annual Report and Notice of Estimated Regulatory Assessment Fees (Motion). In its Motion, the Joint Movants request an extension of time to July 30, 2010, to file its 2009 annual report for SMS and remit payment of the 2009 RAFs. In support of its Motion, the Joint Movants submit that since the appointment of

<sup>1</sup> See 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.

<sup>2</sup> See 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 Aquarina Utilities.

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the Receiver, the Utility has been making improvements to the utility's facilities identified by the Florida Department of Environmental Protection (FDEP) and customers. The Joint Movants state that due to the workload and time consuming nature of the improvement efforts, the Receiver's ability to obtain records to prepare the 2009 annual report for SMS has been adversely affected. Accordingly, the Joint Movants are seeking outside assistance to prepare the report and request additional time to file the report and remit the actual RAFs due. Joint Movants remitted payment of their estimated RAFs on June 30, 2010. No objections to the Joint Movants' Motion have been filed, and the time for doing so has expired.

### Ruling and Analysis

#### *2009 Annual Report*

Upon consideration, the Joint Movants' Motion is hereby granted. Rule 25-30.110(3), Florida Administrative Code (F.A.C.), requires each utility to file an annual report with the Commission. Pursuant to Rule 25-30.110(3)(c), F.A.C., a utility may file a written request for an extension of time with the Division of Economic Regulation no later than the date the annual report is due. One 30-day extension will automatically be granted upon request. The Receiver and FL-SERVICE MANAGEMENT, LLC collectively filed a timely motion for extension of time to file the annual report. Accordingly, the Joint Movants are hereby granted a 30-day extension to file the utility's 2009 annual report.

#### *2009 Regulatory Assessment Fees*

According to Section 367.145, Florida Statutes (F.S.), and Rule 25-30.120, F.A.C., each utility is required to pay annual RAFs. In addition, Rule 25-30.120(7), F.A.C., outlines the penalties to be assessed against a utility who fails to timely pay its RAFs.

Pursuant to Section 350.113(5), F.S., the Commission may, for good cause shown by written request, grant an extension of time for paying any fee or for filing any report, so long as the extension does not exceed 30 days. If the extension is granted, the utility accrues interest at 1.5 percent of the RAFs if the extension exceeds 15 days. However, in lieu of paying 1.5 percent interest on the RAFs, the utility is permitted to submit to the Commission an estimated fee payment by the original due date. Any utility who submits an estimated fee payment by the original due date shall be granted a 30-day extension period in which to file and remit the actual fee due without accruing interest charges, unless the estimated fee payment remitted is less than 90 percent of the actual fee due.

Similarly, Rule 25-30.120(8), F.A.C., states that any utility that requests and receives an extension of not more than 30 days, or remits, by the original RAF due date, an estimated fee payment of at least 90 percent of the actual fee, shall not be charged interest or penalty on the balance if paid within the extension period. However, if the estimated fee payment remitted by the utility is less than 90 percent of the actual fee due, the utility will be required to pay 1.5 percent interest on the balance pursuant to Rule 25.30.120(8), F.A.C., and Section 350.113(5), F.S.

In this case, the Joint Movants have shown good cause for the Commission to grant a 30-day extension for payment of the 2009 RAFs. Accordingly, the Joint Movants' request is hereby granted. In lieu of paying the 1.5 percent interest charge, the utility remitted an estimated fee payment on June 30, 2010. Thus, the utility shall not be charged interest or penalty on the difference between the estimated RAFs remitted and the actual RAFs due, provided the utility pays the actual RAFs due by July 30, 2010 and the estimated payment is not less than 90 percent of the actual fee due. If it is determined that the utility has not remitted 90 percent of the actual RAFs due, the utility will be required to pay 1.5 percent interest on the remaining balance.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Presiding Officer, that Dennis Basile and FL-SERVICE MANAGEMENT, LLC's Joint Motion for Extension of Time to File Annual Report and Notice of Estimated Regulatory Assessment Fees is hereby granted. It is further

ORDERED that Dennis Basile and FL-SERVICE MANAGEMENT, LLC's 2009 annual report and 2009 regulatory assessment fees shall be filed no later than July 30, 2010.

ORDERED that if the utility's June 30, 2010, estimated payment is not 90 percent of the actual regulatory assessment fees due, the utility will be required to pay 1.5 percent interest on the remaining balance.

By ORDER of Commissioner Nathan A. Skop, as Presiding Officer, this 22nd day of July, 2010.



NATHAN A. SKOP  
Commissioner and Presiding Officer

( S E A L )

ARW/klj

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.