

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

FPSC - Records/Reporting

JULY 2, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (COKER) *JTC* *SEM* *[Signature]*  
DIVISION OF LEGAL SERVICES (CROSBY) *[Signature]*

RE: DOCKET NO. 970093-WS - SERVICE MANAGEMENT SYSTEMS, INC. -  
APPLICATION FOR APPROVAL OF TRANSFER OF MAJORITY  
ORGANIZATIONAL CONTROL OF CERTIFICATES NOS. 517-W AND  
450-S FROM SERVICE MANAGEMENT SYSTEMS, INC. TO PETRUS  
GROUP, L.P.  
COUNTY: BREVARD

AGENDA: JULY 15, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

LOCATION OF FILE: S:\PSC\WAW\WP\970093WS.RCM

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DOCUMENT NUMBER DATE

06658 JUL-25

FPSC-RECORDS/REPORTING

DOCKET NO. 970093-WS  
DATE: JULY 2, 1997

CASE BACKGROUND

Service Management Systems, Inc., (SMS or the utility) is a Class C utility currently providing water and wastewater services to 133 water and wastewater customers in Brevard County. SMS formerly operated the utility systems under the name of Aquarina Developments, Inc. The systems have the capacity to serve 900 ERCs each and have operated under Certificates Nos. 517-W and 450-S since November 19, 1989. The utility's 1996 Annual Report shows combined gross revenues of \$165,313. The water system had a net operating loss of \$33,490 and the wastewater system had a net operating loss of \$110,024.

On January 26, 1996, Aquarina Developments, Inc. filed an application to change the name of the utility to Service Management Systems, Inc. According to the application, the effective date of the name change was January 1, 1996. What actually occurred was a corporate reorganization which resulted in utility assets being transferred from Aquarina to SMSI, a subsidiary of Aquarina. The reason given for the reorganization was so that Aquarina could "better comply with the Public Service Commissions order that we maintain our Utility Accounts in strict utility industries standards." This action of reorganization was approved by Order No. PSC-97-0206-FOF-WS, issued on February 21, 1997.

On January 21, 1997, an application for transfer of majority organizational control from SMS to Petrus Group, L.P. was filed on behalf of SMS pursuant to Section 367.071, Florida Statutes. The application was processed after the utility provided corrections to deficiencies and the completion of the staff audit. The application is the subject of this recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of majority organization control of Service Management Systems, Inc. to Petrus Group, L.P. be approved?

RECOMMENDATION: Yes, the transfer of majority organizational control of Service Management Systems, Inc. to Petrus Group, L.P. should be approved. (COKER, CROSBY)

STAFF ANALYSIS: On January 21, 1997, an application for transfer of majority organizational control from Service Management Systems, Inc. (SMS) to Petrus Group, L.P. (Petrus) was filed on behalf of SMS pursuant to Section 367.071, Florida Statutes.

The purchaser, Petrus, and SMS have agreed upon a purchase price of \$597,000 for outstanding SMS shares of common stock. Petrus shall allow the utility to continue to operate in its current fashion.

Section 367.071(1), Florida Statutes, provides that:

No utility shall sell, assign, or transfer . . . 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.

The Stock Purchase and Trade Agreement for the transfer of majority organizational control of SMS was executed December 31, 1996. However, there was a provision in the agreement for the transfer to be contingent on Commission approval. The application was filed in compliance with Section 367.071, Florida Statutes, and Rule 25-20.037, Florida Administrative Code, concerning an application for the transfer of majority organization control.

- 1) The application contains a check in the amount of \$1,500.00 which is the correct filing fee pursuant to Rule 25-30.020(2)(c), Florida Administrative Code, for water and wastewater utilities with the capacity to service from 500 to 2,001 ERCs. According to its 1995 Annual Report, SMS has the capacity to serve 900 water and wastewater ERCs.
- 2) The application provides proof of compliance with the noticing requirements as set forth in Rule 25-30.030, Florida Administrative Code. No objections to the notice were

received by the Commission and the time for filing a protest has expired.

- 3) The application includes a statement from the buyer that, after reasonable investigation, the systems being acquired appear to be in satisfactory condition and in compliance with all applicable standards set by the DEP as required by Rule 25-30.037(3)(h), Florida Administrative Code.
- 4) The application provides a warranty deed as evidence that the utility owns the land upon which its facilities are located as required by Rule 25-30.037(3)(I), Florida Administrative Code.

According to the application, the buyer is financing the purchase through a promissory note, with an agreement to make quarterly payments of \$15,159.88 for 15 years at an interest rate of 6.0%. A copy of the Stock Purchase and Trade Agreement was furnished with the application. No other entities have provided or will provide funding for the transfer of majority control.

As proof of the buyer's financial ability to continue to provide service to its current customers, Petrus furnished a statement demonstrating a self-serving interest to continue service since Petrus has also purchased the assets of the original developer in this real estate (Aquarina) project. Petrus has fully investigated the financial operation of this utility and determined that the utility is currently operating in a positive cash flow position and that the cash flow generated internally by the utility is sufficient to meet the needs of the company to insure continued service to its customers.

Petrus has no direct experience in utility operation. However, to confirm the buyer's technical ability to provide service, the application states that Petrus is going to retain James Bates as the manager of the utility system. The daily operation of the utility should not be impacted by this transaction.

The utility appropriately filed its 1996 Annual Report and regulatory assessment fees. There are no outstanding fees, penalties or fines. No changes in the provision of water service or in customer rates and charges are contemplated by the transfer. Staff has verified the utility has no outstanding violations issued against it from the Department of Environmental Protection. Finally, the buyer has provided a statement with the application of his intent to fulfill the commitments, obligations and representations of the seller in regard to utility matters.

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Based on all the above, staff believes the transfer of majority organizational control of the utility system from Service Management Systems, Inc. to Petrus Group, L.P. is in the public interest and should be approved.

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ISSUE 2: Should rate base be established for Service Management Systems, Inc.?

RECOMMENDATION: No, the change in stock ownership does not require the establishment of rate base. (COKER)

STAFF ANALYSIS: The Commission has traditionally established rate base at the time of a transfer because the purchase price is part of determining whether the transfer is in the public interest. Establishing a rate base also provides the Commission with a snapshot of the utility's assets and liabilities at the time of the transfer.

However, the establishment of rate base is not normally conducted when the transfer involves the sale of stock. Stock is publicly traded and its price has no regulatory relationship to a utility's established rate base. In addition, stock sales and purchases have no immediate affect on utility's assets and liabilities. However, for informational purposes, the rate base for SMS has been established and updated by the Commission. For the period ending December 31, 1996, the updated rate base was \$159,097 for the water system, \$660,886 for the wastewater system and \$425,929 for the nonpotable water system. Staff believes it is not necessary to establish a new rate base for this docket.

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ISSUE 3: Should the rates and charges approved for Service Management Systems, Inc. be continued?

RECOMMENDATION: Yes, the rates and charges approved for Service Management Systems, Inc. should continue. The utility's tariffs do not require any changes and should remain in effect. (COKER)

STAFF ANALYSIS: The utility's current rates and charges became effective March 13, 1997, as a result of a name change docket.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility, . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission) [.]

SMS has not requested a change in the rates and charges of the utility and staff does not see the need to change them for this filing. The utility did not have to file a revised water tariff to reflect the change in issuing officer since the issuing officer, Mr. Bates, has not changed. Since there are no required tariff changes, staff has not recommended a new effective date. The utility should continue to operate under its existing water tariff and to apply the approved rates and charges.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (CROSBY)

STAFF ANALYSIS: Since no further actions are required, staff recommends that this docket be closed upon issuance of the final order.