

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of transfer of majority
organizational control of
Certificates Nos. 517-W and 450-S
in Brevard County from Service
Management Systems, Inc. to
Petrus Group, L.P.

DOCKET NO. 970093-WS
ORDER NO. PSC-97-0918-FOF-WS
ISSUED: August 4, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL
CONTROL AND CLOSING DOCKET

BY THE COMMISSION:

Background

On January 21, 1997, Service Management Systems, Inc. (SMS or utility) filed an application for approval of the transfer of majority organizational control of SMS to Petrus Group, L.P., pursuant to Section 367.071, Florida Statutes. SMS is a Class C utility which currently provides water and wastewater service to 133 customers in Brevard County.

SMS currently holds Certificates Nos. 517-W and 450-S. The utility has been in existence since 1989. However, prior to January 1, 1996, the utility operated under the name of Aquarina Developments, Inc. (Aquarina). By Order No. PSC-97-0206-FOF-WS, issued on February 21, 1997, in Docket No. 970095-WS, the utility assets were transferred to SMS, which is a subsidiary of Aquarina. At that time the name of the utility was changed to SMS.

DOCUMENT NUMBER-DATE

07841 AUG-45

FPSC-RECORDS/REPORTING

Application

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$1,500.00, pursuant to Rule 25-30.020(2)(c), Florida Administrative Code. In addition, SMS provided evidence, in the form of a warranty deed, that the utility owns the land upon which its facilities are located.

SMS provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code. No objections to the notice have been received and the time for filing such has expired.

SMS provided a copy of the Stock Purchase and Trade Agreement for the transfer of majority organizational control of the utility to Petrus. Although the Agreement was executed on December 31, 1996, a provision of the Agreement states that the transfer is contingent upon Commission approval.

Petrus is financing the purchase through a promissory note, which is to be paid off in quarterly payments of \$15,159.88 for 15 years at an interest rate of 6.0 percent. No other entities have provided or will provide funding for the transfer.

According to information provided with the application, it appears that Petrus has the financial ability to continue to operate the system. In addition, Petrus has a personal interest in the continued operation of the utility since Petrus also purchased the assets of the original developer (Aquarina) of the real estate project.

With regard to technical ability, Petrus has no direct experience in utility operation. However, Petrus is retaining James Bates to manage the system. Mr. Bates is the current manager of the utility.

The transfer will not result in changes in the provision of service, the name of the system, or customer rates and charges. Further, the utility has no outstanding fees, penalties or fines. SMS has filed its 1996 Annual Report and paid regulatory assessment fees for 1996. SMS will also be responsible for the 1997 regulatory assessment fees. In addition, according to the

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Department of Environmental Protection, there are no outstanding violations against the utility.

Based on the foregoing, we find that the transfer of majority organizational control of SMS to Petrus is in the public interest and it is approved.

Rate Base

Traditionally, the Commission has established rate base at the time of a transfer because the purchase price is part of determining whether or not the transfer is in the public interest. Establishing rate base also provides the Commission with a view of the utility's assets and liabilities at the time of the transfer.

Rate base is not normally established in transfers of majority organizational control. Stock is publicly traded and its price has no regulatory relationship to a utility's established rate base. In addition, stock sales or purchases have no immediate affect on a utility's assets and liabilities. However, for informational purposes, rate base for SMS has been updated for the period ending December 31, 1996. Rate base is, therefore, found to be \$159,097 for the water system, \$660,886 for the wastewater system and \$425,929 for the nonpotable water system as of December 31, 1996.

Rates and Charges

Rule 25-9.044(1), Florida Administrative Code, states that when there is a change in ownership or control of a utility, the company which will operate the utility must adopt and use the rates, classification and regulations of the former operating company unless authorized to change by this Commission. Petrus has not requested to change the rates and charges and we see no reason to change them at this time. Petrus shall continue to charge the rates and charges approved in SMS's tariff until authorized to change by this Commission in a subsequent proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Service Management Systems, Inc., 235 Hammock Shore Drive, Melbourne Beach, Florida 32951, to Petrus Group, L.P., 8100 East 22nd Street, North, Building 500, Wichita, Kansas 67226, is hereby approved. It is further

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ORDERED that rate base, for informational purposes, is \$159,097 for the water system, \$660,886 for the wastewater system, and \$425,929 for the nonpotable water system, as of December 31, 1996. It is further

ORDERED that Service Management Systems, Inc. shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Docket No. 970093-WS is hereby closed.

By ORDER of the Florida Public Service Commission, this 4th day of August, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By:

Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.