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In the Matter of
Canaan Systems, Inc.

Docket No. 31183

* * * * *

December 8, 2010
10:00 a.m.

John Garner, Administrative Law Judge
Hearing Complex
RSA Union Building
100 North Union Street
Room 900
Montgomery, Alabama

* * * * *

1 APPEARANCES

2

3 Administrative Law Judge:

4 HONORABLE JOHN GARNER
Alabama Public Service Commission
5 100 North Union Street
Montgomery, Alabama 36104

6

On Behalf of Canaan Systems, Inc.:

7

ROGER RADER
8 Canaan Systems, Inc.
3516 Cheshire Drive
9 Birmingham, Alabama 35242

10 On Behalf of Spring Valley, LLC:

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Attorney at Law
12 2101 4th Avenue South, Suite 200
Birmingham, Alabama 35233

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On Behalf of the Alabama Public Service
14 Commission:

15 ROBERT TAYLOR, III
Public Utility Analyst III
16 Alabama Public Service Commission
100 North Union Street
17 Montgomery, Alabama 36104

18 JANICE HAMILTON
Alabama Public Service Commission
19 100 North Union Street
Montgomery, Alabama 36104

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J. RICK CLECKLER
21 Engineering Specialist II
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23

1 WITNESSES

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9 * * * * *

10 ADMINISTRATIVE LAW JUDGE: For the

11 record, we're here this

12 morning, December 8, 2010 in

13 the matter of Docket 31183.

14 This is an investigation

15 proceeding instituted into the

16 operations of Canaan Systems,

17 Inc., pursuant to Code of

18 Alabama 1975 Section 37-1-83.

19 These proceedings and today's

20 hearing were instituted

21 pursuant to Commission order

22 dated October 31, 2010. The

23 allegations we're here to

1 address today pertain to
2 certain rules compliance
3 deficiencies which have been
4 alleged and were explained in
5 the Commission's order
6 establishing today's hearing
7 and these proceedings. Those
8 alleged deficiencies will be
9 addressed in further detail
10 shortly by staff. However, if
11 those deficiencies that have
12 been alleged are demonstrated
13 to indeed exist, Canaan's
14 certificate of financial
15 viability as a wastewater
16 management entity may well be
17 revoked by the Commission, and
18 that will be the burden of
19 proof of the respondent in this
20 proceeding, Canaan, is to
21 demonstrate that those
22 deficiencies do not exist or to
23 the extent they did exist have

1 been rectified.

2 With that statement,

3 let's go ahead and take

4 appearances for the record at

5 this time. Who will be

6 appearing on behalf of the

7 respondent, Canaan?

8 MR. RADER: I, Roger Rader.

9 ADMINISTRATIVE LAW JUDGE: And you are
10 the president, Mr. Rader?

11 MR. RADER: Yes.

12 ADMINISTRATIVE LAW JUDGE: And what is
13 your mailing address, for the
14 record, please, sir?

15 MR. RADER: 3516 Cheshire Drive,
16 C-H-E-S-H-I-R-E, Birmingham,
17 Alabama, 35242.

18 ADMINISTRATIVE LAW JUDGE: Further
19 appearances.

20 MR. TAYLOR: Robert Taylor, III,
21 Public Utility Analyst III.
22 And I'd also like to
23 acknowledge that my director

1 Janice Hamilton is here, not to
2 necessarily testify in this
3 hearing, but she is present as
4 well.

5 MR. CLECKLER: Rick Cleckler,
6 Commission staff, Utilities
7 Technical Specialist, Senior.

8 ADMINISTRATIVE LAW JUDGE: All right.
9 I understand from
10 off-the-record discussions that
11 there is an additional
12 participant today. Sir, if you
13 will give us your name and
14 state your interest in this
15 proceeding.

16 MR. MOBLEY: Yes, your Honor. I'm
17 Steve Mobley, and I'm an
18 attorney for and member of
19 Spring Valley, LLC, a customer
20 of Canaan Systems.

21 ADMINISTRATIVE LAW JUDGE: And
22 Mr. Mobley, do you wish to
23 intervene on behalf of Spring

1 Valley, LLC, at this time?

2 MR. MOBLEY: I do, your Honor.

3 ADMINISTRATIVE LAW JUDGE: Your

4 intervention is granted, in

5 that you are a customer

6 yourself and represent various

7 other customers.

8 MR. MOBLEY: I represent only Spring

9 Valley, LLC, and I am attorney

10 for that LLC.

11 ADMINISTRATIVE LAW JUDGE: I see.

12 MR. MOBLEY: But a member of also.

13 ADMINISTRATIVE LAW JUDGE: Okay.

14 Thank you for that

15 clarification.

16 MR. MOBLEY: Thank you, your Honor.

17 ADMINISTRATIVE LAW JUDGE: Anyone else

18 who needs to enter an

19 appearance?

20 (No response.)

21 ADMINISTRATIVE LAW JUDGE: All right.

22 Let's go forward with any

23 preliminary matters that we may

1 have. Mr. Rader, any updates
2 since the Commission issued its
3 order on October 31 that we
4 need to be aware of, any other
5 information before we begin
6 these proceedings?

7 MR. RADER: No, sir.

8 ADMINISTRATIVE LAW JUDGE: All right.

9 If you're going to be
10 testifying, I'm going to go
11 ahead and swear you in. Are
12 you the only witness on behalf
13 of Canaan who will be giving
14 testimony this morning?

15 MR. RADER: I believe so.

16 ADMINISTRATIVE LAW JUDGE: Let's just
17 go with you. At this point in
18 time, if you will stand and
19 raise your right hand.

20 ROGER RADER,
21 after having first been duly sworn to speak the
22 truth, the whole truth and nothing but the
23 truth, testified as follows:

1 ADMINISTRATIVE LAW JUDGE: What we're
2 going to do this morning is
3 give the allegations that have
4 been made and the timeline of
5 how we got to today,
6 demonstrated through staff.
7 And Mr. Taylor, I understand
8 you are going to handle that
9 for us this morning.

10 MR. TAYLOR: Yes, sir.

11 ADMINISTRATIVE LAW JUDGE: Give us the
12 background.

13 MR. TAYLOR: Okay. On April 29, 2010,
14 a letter was sent to the
15 president of Canaan Systems,
16 Inc., Mr. Bob Guthrie, whereby
17 we, being staff of the
18 Commission, put Canaan on
19 notice that we were going to
20 conduct an audit of its
21 operations on May 12th. We
22 advised them to apprise
23 themselves of the waste

1 management rules 6 through 9
2 and also waste management rule
3 10. We put them on notice that
4 we would be looking into their
5 accounting records, looking
6 into billing statements,
7 looking into records of
8 operation and maintenance and
9 all other matters that could
10 pertain to how it operates its
11 business. We arrived at
12 Canaan's headquarters at the
13 home of Mr. Rader on May 12th
14 around 9:30. I was accompanied
15 by Mr. Cleckler to assist in
16 the audit. We looked at
17 records on premise; we reviewed
18 the annual report that they
19 submit annually; and upon
20 discovery that we were still
21 lacking some information
22 pertaining, in particular to
23 the reserve account that had

1 been required as a result of
2 the last tariff that Canaan was
3 subjected to back in June of
4 2009, we requested that
5 information be forwarded to us
6 as soon as that information
7 became available.

8 A follow-up call was
9 made in May of that year. We
10 talked to Mr. Rader and again
11 apprised him of the kind of
12 information we would still be
13 needing in order to complete
14 the audit. By June 30th, an
15 e-mail was sent, and it
16 specifically outlined those
17 same items, particularly the
18 bank statements in regard to
19 the rate rider, the reserve
20 rate rider, and also other
21 information pertaining to
22 various things that were in
23 their annual report. A call

1 was also made June 30th, and we
2 established a deadline for
3 receiving that information, and
4 that deadline was July 9, 2010.

5 I talked to Mr. Rader on
6 July 7th, and we talked about
7 the revised annual report that
8 had been sent. And to some
9 extent, some of that
10 information did satisfy
11 portions of the audit; however,
12 still lacking were bank
13 statements from the escrow
14 account pertaining to the rate
15 rider, the reserve rate rider.
16 On July 15th we received
17 additional information, sort of
18 in summary, of activities
19 dealing with Canaan's
20 operations, but for the most
21 part, these summaries involved
22 routine operation and
23 maintenance type expenses. On

1 August 20th, a letter was sent
2 to put Canaan formally on
3 notice that the kind of
4 information that we were still
5 lacking we had not received and
6 that this matter was being
7 referred to legal for further
8 action.

9 And as we now know, on
10 October 31st, an order was
11 issued that has brought us here
12 today. Since that time, I have
13 met with Mr. Rader and
14 Mr. Cleckler in my office, and
15 we have reviewed information
16 again that he updated and
17 submitted, but that was still
18 lacking. It had to do with the
19 reserve rider bank statements,
20 such that we could be assured
21 that things were being
22 conducted in accordance with
23 the tariff. That gets us here

1 today.

2 ADMINISTRATIVE LAW JUDGE: What you've
3 just went through closely
4 follows the order that was
5 entered establishing this
6 proceeding.

7 MR. TAYLOR: Yes, sir.

8 ADMINISTRATIVE LAW JUDGE: I guess at
9 this point the only deficiency
10 that we're really dealing with
11 is the bank statements and the
12 information regarding the
13 reserve rider?

14 MR. TAYLOR: And we'd like to ask some
15 questions to clarify where we
16 are with that. I have some
17 questions and so does
18 Mr. Cleckler.

19 ADMINISTRATIVE LAW JUDGE: Okay. With
20 that being established as the
21 threshold we're dealing with,
22 Mr. Rader, I'll allow you a
23 response and any testimony you

1 want to provide, and then we'll
2 get into questions from the
3 staff regarding your current
4 situation.

5 MR. RADER: Yes, I think in discussing
6 with Mr. Taylor and Mr.
7 Cleckler, we furnished the
8 information they required,
9 primarily, the general revenue
10 accounts. We now have bank
11 statements on the reserve
12 account, a separate account,
13 and a summary from June '09
14 until present on the deposits
15 and the expenditures from that
16 reserve account. So we do have
17 that available today, and then
18 we have the details behind
19 that, that supports that, in
20 the means of work orders and
21 invoices and deposit slips and
22 bank statements, et cetera,
23 that support all those

1 expenditures and deposits.

2 ADMINISTRATIVE LAW JUDGE: Have you
3 had an opportunity to review
4 what they have with them today?
5 Is this additional information
6 that has not been provided
7 previously? It is additional
8 information?

9 MR. CLECKLER: Last week we had a
10 meeting, and Mr. Rader didn't
11 present any bank statements for
12 the reserve bank account.

13 ADMINISTRATIVE LAW JUDGE: How much
14 information are we talking
15 about? Fairly substantial?

16 MR. RADER: Well, if you want the
17 details, that's pretty
18 substantial. If you want the
19 bank statements and the summary
20 of it, then this is it. So we
21 can furnish whatever.

22 ADMINISTRATIVE LAW JUDGE: Probably
23 what I'm going to suggest is

1 that we take a brief recess and
2 allow staff to look over the
3 information that you've got
4 here today. Is there anything
5 you want to add? Is there any
6 other information that may need
7 to be considered during the
8 recess that we need to
9 entertain and address before we
10 go into that recess?

11 MR. RADER: I don't believe so.

12 ADMINISTRATIVE LAW JUDGE: All right.

13 Why don't you make that
14 available to staff, and let's
15 take at least a 15-minute
16 recess. And if we need longer
17 than that, just notify me; I'll
18 be in my office. If you want
19 additional time, we'll just
20 continue the recess until
21 you're ready to go forward,
22 Mr. Taylor.

23 MR. TAYLOR: All right.

1 ADMINISTRATIVE LAW JUDGE: All right.
2 Let's take a recess to allow
3 for the review of the
4 information. We're off the
5 record.

6 (Brief recess.)

7 ADMINISTRATIVE LAW JUDGE: We are back
8 on the record. I wanted to get
9 a status update from staff
10 after you've had an opportunity
11 to review the information that
12 was submitted by Mr. Rader this
13 morning --

14 MR. TAYLOR: Yes, sir.

15 ADMINISTRATIVE LAW JUDGE: -- somewhat
16 your assessment of that
17 information.

18 MR. TAYLOR: We find it's adequate,
19 that we still need to ask
20 questions to establish that it
21 is, that we were prepared to
22 ask, and have him answer on the
23 record. That's important.

1 ADMINISTRATIVE LAW JUDGE: Let's
2 proceed and get everything
3 established that we need to get
4 established for the record. So
5 I'll just turn it over to you
6 to ask the questions that you
7 have, Mr. Taylor.

8 MR. TAYLOR: Okay.

9 EXAMINATION

10 BY MR. TAYLOR:

11 Q. Did Alabama Public Service Commission staff
12 appear at your place of business on May 12,
13 2010, in order to conduct an audit of Canaan
14 Systems, Inc.'s operations?

15 A. Yes.

16 Q. What type of information were you asked by staff
17 to provide in the conduct of this audit?

18 A. Details of our operation expenses, including
19 bank statements, work orders, copies of the
20 checks, and those things that support those
21 documents.

22 Q. Were you asked specifically to present evidence
23 of a reserve rider account?

1 A. Yes.

2 Q. Were you able to provide that at that time?

3 A. No.

4 Q. Did the staff request that certain information
5 be forwarded to staff as soon as it became
6 available?

7 A. Yes.

8 Q. What information was requested by staff as a
9 follow-up to this audit?

10 A. The bank statements for a separate reserve
11 account and the expenditures against that
12 account and information of how we arrived at
13 those reserve account monies that were
14 deposited.

15 Q. Have you provided all of the information
16 requested?

17 A. Yes.

18 Q. Have you provided copies of bank account
19 statements of monies collected via the reserve
20 rider in your tariff?

21 A. Yes.

22 Q. Can you substantiate all expenditures from
23 revenue collected via the reserve rider in your

1 tariff?

2 A. Yes.

3 Q. Can you substantiate that all these expenditures
4 were in accordance with the reserve rider in
5 your tariff?

6 A. We believe the expenditures are in accordance
7 with the tariff.

8 MR. TAYLOR: I'm going to defer now to
9 Mr. Cleckler.

10 ADMINISTRATIVE LAW JUDGE:

11 Mr. Cleckler?

12 MR. Cleckler: Thank you. I think I
13 just have a couple of
14 clarifying questions.

15 EXAMINATION

16 BY MR. CLECKLER:

17 Q. Can you tell me, when did Canaan start making
18 the monthly deposits to the reserve bank account
19 as required by the two reserve rate riders?

20 A. Into the reserve bank account, we began in
21 August.

22 Q. August of 2010?

23 A. Of 2010.

1 Q. These were monthly bank statements that -- I
2 mean monthly bank deposits that are required by
3 the rate riders that became effective in June of
4 2009; is that correct?

5 A. Yes.

6 Q. So let me be clear. So you're saying from June
7 2009 when the reserve rate riders became
8 effective up until August of 2010, monthly
9 deposits in the amount required by the reserve
10 rate riders were not made; is that correct?

11 A. They were not made into a separate reserve
12 account -- bank account. They were made within
13 our bookkeeping and were tracked, and we
14 provided evidence to that effect, so all monies
15 were accounted for.

16 Q. But you do say that from June 2009 until August
17 of 2010, the monthly deposits as required by the
18 rate rider were not made into the bank account?

19 A. They were not made into a separate reserve bank
20 account, correct.

21 Q. And per these rate riders, approximately how
22 much per month should be deposited into this
23 reserve bank account?

1 A. Approximately \$6,000 a month.

2 Q. That's all I have. Thank you.

3 A. And I believe we also provided you a summary of
4 the account from June '09 until present showing
5 the deposits and expenditures in the reserve
6 accounts.

7 Q. Let me ask you this. Did the company have set
8 up a certain account number for the reserve
9 account before you started using the separate
10 bank account?

11 A. Yes. Within our bookkeeping we have a separate
12 account for the reserve account.

13 Q. And to that account number you debited and
14 credited per the rate rider?

15 A. Correct.

16 Q. Starting in June of 2000?

17 A. Actually, we were going in a fashion prior to
18 that for our own purposes.

19 ADMINISTRATIVE LAW JUDGE: And I would
20 assume that you are leaving the
21 information you provided today?

22 MR. RADER: Yes.

23 ADMINISTRATIVE LAW JUDGE: What we'll

1 do is collectively mark that as
2 the Respondent's Exhibit 1 and
3 admit it into evidence, because
4 that's crucial to the
5 determination that will have to
6 be made ultimately in this
7 case. Any further questions?

8 (Respondent's Exhibit No. 1 was
9 marked for identification.)

10 MR. TAYLOR: I just want to clarify
11 the last question.

12 EXAMINATION

13 BY MR. TAYLOR:

14 Q. You did clarify you were making credits and
15 debits to the reserve account that you
16 established?

17 A. Yes.

18 Q. But that wouldn't be the case, since the
19 deposits, for the most part, from June until
20 August were going into a -- just a business
21 account for that length of time; is that not
22 correct?

23 A. Correct, correct.

1 ADMINISTRATIVE LAW JUDGE: All right.

2 Any other question that need to

3 be posed?

4 MR. MOBLEY: Your Honor, I have a

5 question to the Court. And I

6 apologize. This may not be the

7 proper forum, but it does have

8 a bearing on their ability to

9 adequately maintain their

10 reserve account. Spring

11 Valley, LLC is required,

12 pursuant to the rate and the

13 regulations, to pay a \$10 per

14 month lot reservation access

15 fee. And for some time, most

16 of this year, Canaan is not

17 able to provide sewer service

18 to us in Jefferson County.

19 They have been shut down by

20 Jefferson County Health

21 Department from issuing and

22 allowing any permits for any

23 home construction. My question

1 is, are we still obligated to
2 pay a fee for which we cannot
3 get service?

4 ADMINISTRATIVE LAW JUDGE: Well, I'm
5 not going to render a
6 determination on that question
7 today, but if that is a
8 determination that you want to
9 be made, that's really beyond
10 the purposes of today's
11 proceeding. You will probably
12 need to pursue that through an
13 official filing with the
14 Commission, because it's not,
15 from a due process standpoint,
16 appropriate to require them to
17 respond impromptu this morning
18 on a particular issue that is
19 not --

20 MR. TAYLOR: But there is a particular
21 vehicle that that can be done
22 through the APSC.

23 ADMINISTRATIVE LAW JUDGE: That's

1 correct. So the short answer
2 is, yes, you can ask it, but
3 not today.

4 MR. MOBLEY: Thank you, your Honor.

5 ADMINISTRATIVE LAW JUDGE: It would
6 not really be appropriate. All
7 right. Anything else we need
8 to address? Mr. Rader,
9 anything you want to clear up
10 or make a closing statement?

11 MR. RADER: No. I think it's fine.

12 ADMINISTRATIVE LAW JUDGE: You want to
13 let the documents speak for
14 themselves?

15 MR. RADER: Yes.

16 ADMINISTRATIVE LAW JUDGE: From what I
17 heard you say, you don't
18 contest any of the factual
19 information that was in the
20 order establishing this
21 proceeding or as was
22 represented by Mr. Taylor.

23 MR. RADER: No. We're the first to go

1 through this, so it's a
2 learning process for all of us.

3 ADMINISTRATIVE LAW JUDGE: And again,
4 we will mark the information
5 collectively as Respondent's
6 Exhibit 1, and that information
7 is admitted into evidence.

8 MR. TAYLOR: Do we leave it with you?

9 ADMINISTRATIVE LAW JUDGE: Yes. Leave
10 it with me, and I'll
11 appropriately mark it and
12 handle the documents. The
13 matter will be taken under
14 advisement, and that will
15 conclude the hearing. Thank
16 you all.

17 (The proceedings were concluded at
18 approximately 10:54 a.m. on
19 December 8, 2010.)

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2 REPORTER'S CERTIFICATE

3 * * * * *

4

5 STATE OF ALABAMA

6 COUNTY OF MONTGOMERY

7

8 I, Nicole Paulk, Court Reporter and
9 Notary Public in and for the State of Alabama at
10 Large, do hereby certify that on December 8,
11 2010, I reported the above proceedings and that
12 the foregoing 27 typewritten pages contain a
13 true and correct transcript of said proceedings.

14 I further certify that I am neither
15 of kin nor of counsel to the parties to said
16 cause, nor in any manner interested in the
17 results thereof.

18 This 20th day of December 2010.

19

20 /s/Nicole Paulk
21 Nicole Paulk, CCR#426
22 Expiration Date: 9/30/2011
23 Certified Court Reporter and
Notary Public for the State of
Alabama at Large
My Commission Expires: 7/8/13