

Marguerite McLean

110061-WS

From: Dana Rudolf [DRudolf@RSBattorneys.com]
Sent: Friday, April 08, 2011 10:41 AM
To: Filings@psc.state.fl.us
Cc: Martin Friedman
Subject: Docket No. 110061-WS; Application for Authority to Transfer the Assets of Service Management Systems, Inc., and Certificate Nos. 517-W and 450-S to Aquarina Utilities, Inc. in Brevard County, Florida

Attachments: PSC Clerk 06 (Motion to Dismiss Notice of Objection).ltr.pdf

- a) Martin S. Friedman, Esquire
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Fax: (407) 830-8522
mfriedman@rsbattorneys.com
- b) Docket No. 110061-WS
Application for Authority to Transfer the Assets of Service Management Systems, Inc., and Certificate Nos. 517-W and 450-S to Aquarina Utilities, Inc. in Brevard County, Florida
- c) Aquarina Utilities, Inc.
- d) 4 pages
- e) Motion to Dismiss the Notice of Objection

DOCUMENT NUMBER-DATE

02348 APR-8 =

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4/8/2011

LAW OFFICES

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April 8, 2011

VIA E-FILING

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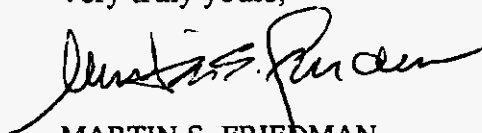
RE: Docket No. 110061-WS; Application for Authority to Transfer the Assets of Service Management Systems, Inc., and Certificate Nos. 517-W and 450-S to Aquarina Utilities, Inc. in Brevard County, Florida
Our File No.: 45052.01

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket is Aquarina Utilities, Inc.'s Motion to Dismiss the Notice of Objection filed on behalf of Aquarina Community Services Association, Inc.

Should you or the Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

MSF/tlc
Enclosures

cc: Kelly Sullivan, Esquire (w/enclosures)
Mr. James I. Minnes (w/enclosures)
Anna Williams, Esquire, Office of the General Counsel (w/enclosures)
Mr. Reginald J. Burge (w/enclosures)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority to Transfer)
the Assets of SERVICE MANAGEMENT)
SYSTEMS, INC., and Certificate Nos.)
517-W and 450-S in Brevard County,)
Florida to AQUARINA UTILITIES, INC.)
in Brevard County, Florida)

Docket No. 110061-WS

MOTION TO DISMISS NOTICE OF OBJECTION

Applicant, AQUARINA UTILITIES, INC. ("Utility"), by and through its undersigned attorneys and pursuant to Rule 28.106.204, F.A.C. and/or Rule 28-106.205, F.A.C., files this Motion to Dismiss the Notice of Objection filed on behalf of Aquarina Community Services Association, Inc. ("Association"), and in support thereof states as follows:

1. When one reviews the Notice of Objection, it is impossible to determine the actual intent. It is styled a Notice of Objection, refers to itself as a "Petition to Intervene," and the relief sought is to be listed as an "interested party" in this docket.

2. The Association filed a Notice of Objection pursuant to Section 367.045(3), F.S. That Statute addresses original certificates, not transfers. Further, in its Notice of Objection it does refer to Section 367.071, F.S., however, the Notice of Objection does not comply with procedural requirements and must be dismissed.

3. The Notice of Application for Transfer which was mailed and published, included the requirement that an "objection must state the grounds for the objection with particularity". The Association's Notice of Objection is devoid of any grounds for the Objection.

4. Any protest to the Application filed by the Utility is governed by Chapter 28-106, F.A.C. In paragraph 5 of the Notice of Objection, the Association refers to its pleading

as a "Petition to Intervene". Whether the pleading is an attempt to intervene, or to request a formal hearing, it is deficient in all requests. The Commission should keep in mind that the Notice of Objection was filed by an attorney, not a customer *pro se*, and thus, should be held to a higher standard than to which the Commission has traditionally held *pro se* customer protests.

5. If the Association's pleading is an attempt to intervene then it is governed by Rule 28-106.205, F.A.C., which requires the Petition "conform to subsection 28-106.201(2), F.A.C." These are the same requirements for a party seeking the initiation of a formal administrative proceeding.


6. The Association's Notice of Objection does not comply with Rule 28.106.201(2), F.A.C., in that it does not comply with subsections (d), (e), (f) or (g).

7. If it is the intent of the Association to become a party to this proceeding then the Notice of Objection must be dismissed.

WHEREFORE, Applicant, AQUARINA UTILITIES, INC., by and through its undersigned attorneys, hereby requests this Commission DISMISS the Association's Notice of Objection.

Respectfully submitted on this 8th day of April, 2011, by:

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By: 
MARTIN S. FRIEDMAN
For the Firm
Attorney for Applicant

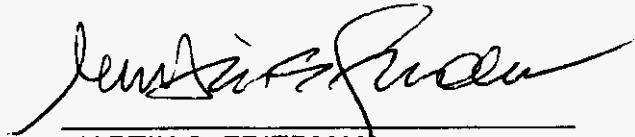
CERTIFICATE OF SERVICE
DOCKET NO. 110061-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss Notice of Objection has been furnished by U. S. Mail to the following parties this 8th day of April, 2011:

Kelly Sullivan, Esquire
Dean Mead Law Firm
800 N. Magnolia Avenue, Suite 1500
Orlando, FL 32803
Attorney for Petitioner

Mr. James I. Minnes
208 Osprey Villas Court
Melbourne Beach, FL 32951

Anna Williams, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 301D
Tallahassee, FL 32399-0850



MARTIN S. FRIEDMAN
Florida Bar No.: 0199060
For the Firm
Attorney for Applicant