

110061-WS

Diamond Williams

From: James Minnes [minnes.j@gmail.com]
Sent: Tuesday, April 26, 2011 10:03 AM
To: Filings@psc.state.fl.us
Cc: Anna Williams; mfriedman@rsbattorneys.com; dennis@dbasile.com; ksullivan@deanmead.com
Subject: Fwd: Petition for Formal Hearing in Docket No. 110061-WS
Attachments: PETITION FOR FORMAL HEARING (3).docx

Electronic Filing

a. Person responsible for this electronic

James I. Minnes

208 Osprey Villas Court,

Melbourne Beach, FL 32951

(321)327-5477

Email: minnes.j@gmail.com

b. Docket No. 110061-WS

In re: Application for authority to transfer
assets and Certificate Nos. 517-W and 450-S
of Service Management Systems, Inc. to
Aquarina Utilities, Inc., in Brevard County.

c. Document being filed on behalf of James I. Minnes

DOCUMENT NUMBER-DATE

02849 APR 26 =

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4/26/2011

d. There are a total of 8 pages.

e. The document attached for electronic filing is James I. Minnes' Petition for Formal Hearing

Thank you for your attention and cooperation to this request.

James I. Minnes

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for authority to transfer
assets and Certificate Nos. 517-W and 450-S
of Service Management Systems, Inc. to
Aquarina Utilities, Inc., in Brevard County.

Docket No. 110061-WS

Filed: April 26, 2011

PETITION FOR FORMAL HEARING

I, James I Minnes, do hereby object to the application for authority to transfer the assets of Service Management Systems, Inc. ("SMS", "Utility", or "Company") and Certificates Nos. 517-W and 450-S in Brevard County, Florida to Aquarina Utilities, Inc. ("AUI"), and request a formal evidentiary hearing on this matter, and allege the following:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Docket No. 110061-WS

2. The address, address and telephone number of the Petitioner:

James I. Minnes
208 Osprey Villas Court,
Melbourne Beach, FL 32951
(321)327-5477

3. An explanation of how the Petitioner's substantial interests will be affected by the application:

The Petitioner is a customer of SMS and resides in the community of Aquarina Beach and Country Club (Auarina), located 13 miles south of Melbourne Beach, in Brevard

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County, Florida. The substantial interests of the Petitioner will be affected by the Commission's decision in this docket because the proposed transfer of the assets SMS and its water and wastewater certificates to AUI is not in the public interest, and if approved would adversely affect the quality, reliability and cost of SMS's provision of water and wastewater service to the Petitioner.

4. A statement of when and how the Petitioner received notice of the application:

Petitioner received a copy of the notice of application of the proposed transfer by U.S. mail on or about March 1, 2011. Petitioner filed and served a timely objection to the proposed transfer on or about March 21, 2011. Petitioner received by U.S. mail on or about April 14, 2011 a letter from Commission Staff ("Staff") inquiring whether the Petitioner wished to request the Commission to conduct a formal hearing to take evidence so that it could determine if the proposed transfer is in the public interest. Staff advised that this request should be filed with the Commission on or before Tuesday, April 26, 2011.

5. A concise statement of the ultimate facts alleged, including specific facts that the Petitioner contends warrant denial of the application:

At this time the ultimate facts alleged, including specific facts the Petitioner contends warrant the denial of the application to transfer the assets of SMS, including water certificate No. 517-W and wastewater certificate 450-S in Brevard County, are as follows:

- (a) The application fails to provide the complete name and address of the Seller, as required by Commission Rule 25-30.037 (2) (a), Florida Administrative Code ("F.A.C.").

- (b) The application needs to clarify if there are any other partners or any other person(s), who are not corporate officers or directors, who will own an interest in the Utility, as required by Commission Rule 25-30.037 (2) (d), F.A.C.
- (c) The application needs to clarify if there are any other auxiliary or supplemental agreements between the Seller and the proposed Buyer in addition to the Purchase and Sale Agreement and two amendments attached to the application, as required by Commission Rule 25-30.037 (2) (g), F.A.C.
- (d) The application fails to provide a list of, and dollar amount of, the assets purchased and liabilities assumed or not assumed, including those of nonregulated operations or entities, if any, as required by Commission Rule 25-30.037 (2) (g) 2., F.A.C.
- (e) While the application does assert that neither the Buyer nor the Seller has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of the Utility assets, the application does not affirmatively assert that the purchase and sale agreement and its amendments disclose all of the consideration paid by either party to the other, including but not limited to, promised salaries, and stock or stock options, as required by Commission Rule 25-30.037 (2) (g) 3., F.A.C.
- (f) The application fails to provide any detail concerning the financing of the proposed purchase, as required by Commission Rule 25-30.037 (2) (i), F.A.C.
- (g) The application fails to provide detailed information documenting the Buyer's financial ability to provide service, as required by Commission Rule 25-30.037 (2) (j), F.A.C.

- (h) The application fails to provide the list of all entities which the Buyer is relying upon to provide funding to the Buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the Utility, as requested by Commission Rule 25-30.037 (2) (k), F.A.C.
- (i) While the application states that there are no customer deposits, guaranteed revenue contracts or developer agreements, the February 17, 2011 Amendment to the Purchase and Sale Agreement states that the Seller shall provide the Buyer with a schedule of all customer deposits being held by Seller, and accrued interest through closing and shall pay Buyer an amount equal to the customer deposits plus interest. The February 17, 2011 amendment also states that Seller shall assign to Buyer any outstanding Developer Agreements, if any, and provide the Buyer with a schedule of all customer pre-payments made to Seller, and Seller shall pay Buyer an amount equal to the customer pre-payments. The application fails to properly detail and disclose all applicable guaranteed revenue contracts, developer agreements and customer advances as required by Commission Rule 25-30.037 (2) (h) 1., 2., 3. and 4., F.A.C.
- (j) The application fails to adequately disclose the disposition of the Utility's debt, including but not limited to, the loan that SMS obtained from the Florida Department of Environmental Protection (DEP) State Revolving Fund (SRF) (Agreement; Item 3 – Assumption of Obligations, page 3), as required by Commission Rule 25-30.037 (2) (h), F.A.C.
- (k) The application fails to provide a proposed net book value of the system as of the date of the proposed transfer, or provide any information concerning the Commission having previously established rate base or identified any adjustments made to update the rate base to the date of the transfer, as required by Commission Rule 25-30.037 (2) (l), F.A.C.

- (l) The application fails to provide a statement from the Buyer that it has obtained or will obtain copies of all of the federal income tax returns of the Seller from the date the Utility was first established, or rate base was last established by the Commission or, if the tax returns have not been obtained, a statement from the Buyer detailing the steps taken to obtain the returns, as required by Commission Rule 25-30.037 (2) (o), F.A.C.
- (m) The application fails to adequately disclose the condition of the system being purchased, and its compliance with applicable standards set by DEP, as required by Commission Rule 25-30.037 (2) (p), F.A.C. Notwithstanding the application's assertion that the system is in satisfactory condition and in substantial compliance with all applicable DEP standards, the system may not be in compliance with DEP's standards. On January 20, 2011, the DEP issued a letter regarding the recent Compliance Sampling Inspection for the wastewater facility. This letter noted that at the time of the inspection, two blowers located at the aeration basin, and the clarifier drive skimmer units were not installed or operational at the facility. This letter also stated that these deficiencies were noted in the previous Noncompliance Letter OCD-C-WW-10-0028, dated January 28, 2010. The application should provide a list of the actions the Utility has taken or intends to take to resolve all compliance problems and a detail statement of the cost of such actions.
- (n) The application contains a statement that there are no outstanding Regulatory Assessment Fees (RAF's) due, and that the Seller will be responsible for all RAF's through closing. However, the Commission records show that SMS is delinquent on paying its 2010 RAF's that were due by January, 31, 2011. The application fails to adequately address the disposition of any outstanding RAF's, as required by Commission Rule 25-30.037 (2) (r), F.A.C.
- (o) The application contains an affidavit that the actual notice of the application was given to the entities on the list provide by the Commission. However, Exhibit E

of the application does not include the list of entities that were mailed a notice, as required by Section 367.045 (1) (a), F.S. and Commission Rule 25-30.030, F.A.C.

- (p) The principal shareholders and officers of the proposed Buyer have previously operated water and wastewater utilities in Brevard County and Martin County and are currently operating one in Polk County, through a different incorporated entity. Their prior operations in Brevard and Martin County were sold to the Counties. The facts and circumstances of these utility operations are material in determining if this Buyer possesses the qualifications, resources and ability to operate a water/wastewater utility in a safe, healthy, reliable and economic manner. A review and analysis of their current operating utility, Gold Coast Utility, in Polk County, from acquisition in 2005 to the present, is also relevant in determining if this Buyer has the qualifications, resources, and ability to operate SMS in a safe, healthy, reliable and economic manner, consistent with the welfare of the customers and in the public interest.
- (q) For all the reasons stated above the proposed transfer is not in the public interest, as required by Section 367.071 (1), F.S., and should be denied.
- (r) The deadline for filing this petition for formal hearing precedes the Applicants' satisfaction of deficiencies with the application. The Petitioner reserves the right to modify and update this petition after Staff has determined that the deficiencies of the application have been satisfied.
- (s) Each of the forgoing allegations involve disputed issues of material facts.

6. A statement of the specific rules or statutes the Petitioner contends require denial or modification of the application.

The application should be denied because of Commission Rules 25-30.030, 25-30.037 (2), (a), (d), (g), 2., 3., (h) 1., 2., 3., 4., 5., (i), (j), (k), (l), (o), (p), (r), F.A.C.; and Sections 367.045 (1) (a) and 367.071, F.S.

WHEREFORE, for the reasons stated above, the Petitioner requests the Commission to conduct a formal evidentiary hearing, pursuant to the provisions of Section 120.57 (1), Florida Statutes, and further petitions that such hearing be scheduled at a convenient time within or as close as practical to SMS's certificated service area.

s/James I. Minnes
James I. Minnes
208 Osprey Villas Court,
Melbourne, FL 32951
(321)327-5477
Email: minnes.j@gmailcom

CERTIFICATE OF SERVICE

Docket No. 110061-WS

I HEREBY CERTIFY that this petition was electronically filed with the Florida Public Service Commission, Director, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 this 26th day of April, 2011 and true and correct copies of the above and foregoing have been furnished by U.S. mail and electronic mail this 26th day of April, 2011 to Anna Williams, Attorney, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, Martin S. Friedman, Esq., Rose Law Firm, 766 North Sun Drive, Suite 4030, Lake Mary, FL 32746, and Service Management Systems, Inc., Mr. Dennis Basile, Receiver, 826 Creel Street, Melbourne, FL 32935-5992.

s/James I. Minnes
James I. Minnes