

Diamond Williams

From: James Minnes [minnes.j@gmail.com]
Sent: Wednesday, September 28, 2011 10:01 AM
To: Filings@psc.state.fl.us
Cc: Anna Norris; Martin Friedman; Steve Reilly
Subject: Docket No. 110061-WS
Attachments: reply to AUI confidentiality motion BEFORE THE FLORIDA PUBLIC SERVICE COMMISSIO1.docx

from **James Minnes** minnes.j@gmail.com [hide details](#) 9:41 AM (16
to Fillings@psc.state.fl.us
cc Anna Norris
<anorris@psc.state.fl.us>,
Martin Friedman
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Steve Reilly
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date Wed, Sep 28, 2011 at 9:41 AM
subject re: Docket No. 110061-WS Electronic
filing of James I. Minnes' Reply and
Opposition to Aquarina Utilities, Inc.
Motion for Protective Order and Request
for Confidential Classification order
mailed-by gmail.com

From: James I. Minnes
Sent: Wednesday, September 28, 2011
To: Filings@psc.state.fl.us
cc: anorris@psc.state.fl.us, mfriedman@rsbattorneys.com, sreilly@psc.state.fl.us
Subject: Re: Docket No. 110061-WS Electronic filing of James I. Minnes' Reply and Opposition to Aquarina Utilities, Inc., Motion for Protective Order and Request for Confidential Classification and Certificate of Service of the Reply.
Electronic Filing
a. Person responsible for this electronic filing:
James I. Minnes, Party
25 Grovehurst Drive, Ottawa, Ontario, Canada, K2G 6W1
(819)-671-6732
minnes.j@gmail.com
b. Docket No. 110061-WS
In re: Application for Authority to Transfer the Assets of Service Management Systems, Inc. in Brevard County, Florida to Aquarina Utilities, Inc.
c. Document being filed on behalf of James I. Minnes
d. There are a total of 5 pages attached.
e. The document attached for electronic filing is James I. Minnes' Reply and Opposition to Aquarina Utilities, Inc., Motion for Protective Order and Request for Confidential Classification and certificate of Service of the Reply.

James I. Minnes
e-mail: minnes.j@gmail.com
(819)-671-6732

DOCUMENT NUMBER-DATE
07015 SEP 28 =
FPSC-COMMISSION CLERK

9/28/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority to Transfer)
The Assets of Service Management Systems, Inc.,) DOCKET NO. 110061-WS
And Certificate Nos. 517-W and 450-S)
In Brevard County, Florida to Aquarina Utilities, Inc.)

James I. Minnes' Reply in Opposition to Aquarina Utilities, Inc Motion for Protective Order and Request for Confidential Classification

James I. Minnes, a Party to this proceeding, files this Reply in opposition and objection to Aquarina Utilities, Inc.'s ("AUI") and/or Reginald and Lois Burge's (the "Applicants") Motion for a Protective Order and Confidential Classification.

1. James I. Minnes requests that the document described by the Applicants as the personal financial statement of Reginald and Lois Burge ("the statement") be produced and disclosed in its original, unexpurgated state to all parties to this proceeding for the purpose of examination and discovery. Such disclosure does not constitute public disclosure as contemplated by S. 119.07(1), Florida Statutes.
2. The statement is being presented to the Commission by the Applicants as probative of a central issue in this proceeding, namely, the Applicants financial ability to provide service, for the purpose of inducing belief in the minds of the Commission as to the Applicants contention that it does in fact possess the financial ability required. The parties to this proceeding have the right to make inquiries as necessary to verify the accuracy of the content of the statement and to determine its creditworthiness. Any confidential classification of the statement that keeps it secret from the parties and prevents the parties from examining the Applicants on the contents of the statement violates the right of the parties to have the truth of its contents submitted to their investigation through disclosure and discovery under oath.
3. The Office of Public Counsel (the "O.P.C.") After receiving the statement expressed it as being their opinion that "Based upon OPC's research to date our office does not believe staff would recommend or the Commission would vote to deny this application because of the applicants failure to have the financial ability or utility experience to provide service..." The Applicants Motion describes the O.P.C.'s opinion as follows: "...Office of Public Counsel has concluded that there is no basis to deny the Utilities transfer application on the basis of financial ability." The Applicants have misrepresented the O.P.C.'s opinion/conclusion and have wrongfully attempted to influence the Commission thereby.
4. The Applicants statement was prepared for the purpose of supporting a loan application by Reginald and Lois Burge to the U.S. Small Business Administration, in or about July 2011.

DOCUMENT NUMBER - DATE

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Without an investigation by OPC into the Burge's U.S. Small Business Administration loan application in July 2011, the Applicants financial ability to provide service cannot be calculated or determined, even to the qualified level of "...not believe...". ACSA's withdrawal of its objection to the transfer is not probative of any facts or issues in this proceeding.

5. The Applicants statement has been given to financial institutions, including the U.S. Small Business Administration, to obtain loans and/or provide guarantees, and to Administrative bodies, including the Public Service Commission. Without further inquiry by the parties, the extent of the statement's publication to third parties and therefore the extent to which the Applicants have disseminated this information to "the public", contrary to their bald assertion that it has not, will not be known. The above noted recipients have the authority to make inquiries about the veracity of the contents of the statement as they are being asked to rely upon them to give benefits to AUI and the Burge's. Presumably due diligence inquiries by recipients have been made involving some public disclosure. The parties to this proceeding, including ratepayers, such as myself, are entitled and have the same right as the above noted recipients to establish the veracity of the statement and additionally the current financial ability of the Applicants, including all changes to their financial situation from July 2011 to the present.
6. The Applicants attorney by letter dated August 30, 2011, in reply to Commission staff's second deficiency request, stated that Reginald Burge owns 100% of the shares of AUI, Inc. and is responsible for and has undertaken to provide all future funding for AUI by investment or guarantee of loans. The disclosure of the statement and complete financial circumstances of the Applicants is expressly required and provided for in Rule 25-30.037(2), F.A.C.
7. On September 8, 2011 I delivered a Request for Production of Documents to the Applicants. Among the documents requested was the statement. (See: Documents Requested: item B). On September 22, 2011, in response to a further written request for production and disclosure of the statement, their solicitor stated to me in an e-mail: "There is no way you are going to get Mr. & Mrs. Burge's personal financial statement." Accordingly, the stated position of the Applicants is an unconditional refusal to produce the statement to me. The suppression of the statement from the light of day to the parties in this proceeding that is necessary to be fully examined to determine a central issue to be proven by the applicant on a balance of probabilities, is injudicious. The Applicants prayer for secrecy for the statement ought to be denied.
8. The Applicants have the burden to demonstrate that the statement is proprietary confidential information the disclosure of which will cause the Applicants or its ratepayers harm. (Rule 25-22.006(4) (c), F.A.C.) The Applicants have failed to present any evidence to demonstrate the foregoing. The Applicants have not met the burden of proof upon them requiring the Commission to dismiss the Applicants Motion.
9. Article 1, Section 24(c) of the Florida Constitution states that the general law may exempt public records to be inspected or copied,"... provided that such law shall state specifically the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." There is not present any actual or apparent harm to ratepayers by production and disclosure of the statement. The potential harm to ratepayers is in the statement's non production and non disclosure which would permit inaccuracies and

misrepresentations in the statement to go unquestioned to the latter detriment of ratepayers. The harm to the ratepayers will be much greater if the statement is not disclosed, produced and examined upon and its veracity, accuracy and creditworthiness confirmed. Permitting it to be secret, if its contents turning out to be untrue, inaccurate and exaggerated, thereby obtaining a benefit for which it would not otherwise be entitled would be to the irreparable detriment of the ratepayers.

10. The production and disclosure of AUI's and the Berge's financial position would only cause harm to them if upon disclosure it proved to be an inaccurate representation of their actual financial condition.
11. The statement filed by the applicant should not be permitted to be withdrawn in the event the Applicants Motion is denied. Either the applicant stands by the representations made in the statement or it does not. By filing the statement the applicant has taken the position that its representations are true and accurate. However, the applicant seeks to withdraw it if it becomes subject to review and inquiry by the parties. Such a position is inconsistent with a representation by the applicant that the statement is evidence of financial ability to provide service. As material evidence of financial ability, submitted by the applicant to meet and satisfy the obligation upon the Applicant as provided in Section 25-30.037(2), the Applicant is subject to the ruling of the Commission on its motion and cannot dictate to the Commission the return of evidence submitted by the Applicant with the intention of influencing the Commission in its deliberations to grant a transfer as requested. The Commission has authority to retain the statement and make it subject to production and disclosure to the parties on such terms as it considers reasonable.

Wherefore, James I. Minnes submits that the Applicants motion for the entry of a protective order consistent with its motion be dismissed and that the statement be ordered to be produced and disclosed in its entirety to the parties to this proceeding, forthwith.

Respectfully submitted on this 28th day of September, 2011 by:

s/James I. Minnes

James I. Minnes

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Melbourne Beach, Fl

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Certificate of Service

Docket No. 110061-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply and Opposition to AUI'S Motion for Protective Order and Request for Confidential Classification has been filed with the PSC Clerk and furnished by regular mail to the following parties this 28th day of September, 2011;

Mr. Martin Friedman

Rose, Sundstrom & Bentley, LLP

766 N Sun Drive

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Lake Mary, FL 32746

Anna Norris,

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Florida Public Service Commission

2540 Shumard Oak Blvd., Room 301D

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J.R.Kelly/Stephen C Reilly,

Office of Public Counsel

c/o The Florida Legislature

111 W. Madison St., Room 812

Tallahassee, FL 32399-1400

s/ James I. Minnes

James I. Minnes