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100318-WS

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Below is the required information for the attached e-filing with the Florida Public Service Commission:

- a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

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- b. The docket number and title if filed in an existing docket:

In Re: Petition Of Aquarina Utility Association, Inc. For Order To Show Cause Against Service Management System, Inc.; Docket No. 100318-WS

- c. The name of the party on whose behalf the document is filed:

Aquarina Utility Association, Inc. – Petitioner

- d. The total number of pages in each attached document:

5 pages total

- e. A brief but complete description of each attached document:

Answer Of Aquarina Utility Association, Inc. To FI-Service Management, LLC's Motion To Dismiss

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7/7/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition Of Aquarina
Utility Association, Inc. For
Order To Show Cause Against
Service Management System, Inc.

Docket No. 100318-WS

Filed: July 6, 2010

**ANSWER OF AQUARINA UTILITY ASSOCIATION, INC. TO
FL-SERVICE MANAGEMENT, LLC's MOTION TO DISMISS**

Aquarina Utility Association, Inc. ("Customers"), by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, respectfully answers the Motion to Dismiss filed by Fl-Service Management, LLC (the "BANK") and states as follows:

1. Section 367.0822, Florida Statutes, entitled "Limited proceedings" provides as follows:

Upon petition or by its own motion, the commission may conduct limited proceedings to consider, and act upon, any matter within its jurisdiction, including any matter the resolution of which requires a utility to adjust its rates. . . .

2. Section 367.081(2)(a)(1), Florida Statutes, entitled "Rates; procedure for fixing and changing" provides that:

The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory.

3. Section 367.121(d), Florida Statutes, specifically provides the Florida Public Service Commission (the "Commission") with the power to:

[R]equire repairs, improvements, additions, and extensions to any facility, or to require the construction of a new facility, if reasonably necessary to provide adequate and proper service to any person entitled to service or if reasonably necessary to provide any prescribed quality of service,

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4. The Customers' petition does not invoke section 367.161, Florida Statutes, which is the only statute invoked in the Bank's Motion to Dismiss.

5. The Bank's Motion goes to great lengths to suggest that the Commission does not possess the authority to review the quality of service provided by the Bank or whether such service, at minimum, complies with applicable environmental and public health statutes and standards.

6. While not refuting any of the obvious violations of applicable laws, rules and standards or whether the service being provided by the Bank is deficient, the Bank suggests that the Commission should summarily dismiss the Customers' attempt to seek redress by way of a rate decrease, a revenue escrow, a rate of return reduction, or such other penalty or enforcement action available to the Commission to ensure that the Bank's non-compliance is resolved in the most expeditious manner possible. While the Bank attempts to downplay the significance and severity of the non-compliance items at issue, no utility under prudent and reasonable management would condone the existence of such operating conditions for the protracted period of time for which they have existed to date.

7. The customers are not interested in a "protracted limited proceeding." Rather, given the Bank's concessions, the Customers seek to bring these obvious deficiencies formally before the Commission so that the Commission will take such steps as are necessary to require the Bank to expeditiously remedy the existing circumstances which threaten the public health and safety and potentially the well-being of the environment in which Customers live.

8. Section 367.011(2), Florida Statutes, entitled "Jurisdiction; legislative intent" further provides, "The Florida Public Service Commission shall have exclusive jurisdiction over

each utility with respect to its authority, service, and rates." Section 367.011(3), Florida Statutes, provides:

The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

9. Section 367.071, Florida Statutes, entitled "Sale, assignment, or transfer of certificate of authorization, facilities, or control" provides in subsection (1) that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest **and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility.** [emphasis added]

Customers have brought to the Commission's attention the egregiously deficient condition of the Bank's facilities. Customers should not be required to continue to pay rates previously established by the Commission to compensate a prior owner for what so clearly has been a substandard utility operation. The Bank, which voluntarily has acquired the facilities through a foreclosure action, should not be permitted to continue to flaunt health and safety, environmental and other obligations until such time as the Bank should determine that it is willing to commit financial resources necessary not merely to improve the service provided, but to bring the Bank's facilities into compliance with applicable laws, standards and rules.

10. The quality of service provided by any utility regulated by the Commission is demonstrated primarily by the utility's compliance with applicable laws, rules, permits and other requirements imposed by the Florida Legislature and agencies of the State.

11. Customers understand that the Bank gained ownership of the Utility System through foreclosure of a mortgage after the Bank's extension of a significant sum of money which was to be used by the prior owner to make improvements to the Utility System. While it appears that such funds may not have been used for such purpose by the prior owner, customers can find no statute, rule or other provision of the Florida Statutes or this Commission, which authorizes a utility to provide substandard service or operate substandard facilities which threaten the public health and safety as well as the well-being of the environment in which the Customers live until such time as a new owner, in this case the Bank, determines for itself that it can generate sufficient funds from rate revenue to achieve compliance.

For the foregoing reasons, the Customers respectfully request that the Commission deny the Bank's Motion to Dismiss, issue the show cause order requested by Customers, and grant such further relief to the Customers as the Commission deems appropriate.

Respectfully submitted,

s/ Brian P. Armstrong

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by U.S.

Mail this 6th day of July 2010 to:

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