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100318-WS

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Sent: Friday, January 14, 2011 2:52 PM
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Subject: Docket No. 100318-WS
Attachments: Letter Requesting Customer Appearance 1_14_11.pdf

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:

Title:
 In Re: Petition for Order to Show Cause Against Service Management Systems, Inc. in Brevard County for Failure to Properly Operate and Manage Water and Wastewater System

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:

Correspondence – 3 pages

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

Correspondence requesting customer appearance

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January 14, 2011

Via Hand-Delivery

Art Graham, Chairman
c/o Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Chairman Graham,

The customer representatives of the Aquarina community respectfully request an opportunity to appear personally before the Commission on January 25, 2011, to address their grave concerns about the ongoing conditions of the Service Management Systems, Inc., utility system currently in receivership and owned by Compass Bank. In addition, these customer representatives wish to explain their concerns regarding the rate increases which will inevitably occur if any person or entity other than the Aquarina Utility Association, Inc., an association of the utility's customers, acquires this system.

The customers, through their pleadings to date in **Docket No. 100318-WS**, have detailed the numerous deficiencies in the operating conditions of the utility, and have illustrated the dangers to the health and safety of the community and to the operators of the utility. The Commission has already heard how expensive it will be to bring the operating conditions of the utility up to standards, and may also be aware of the reasons why Compass Bank is presently the owner of the system.

The bank took ownership when the former owner defaulted on a loan of more than \$1,000,000. Although it is a mystery why the bank made this loan given the financial condition of the borrower and the operational condition of the utility, it is certainly understandable that the bank wants to recover as much of this ill-conceived loan as it can. It is unclear up to this point how much of that more-than-\$1 million-loan has been invested in the utility, or in what way it may have been invested, and therefore how much the customers will ultimately suffer because of the irresponsibility of the borrower, and the lender's lax due diligence.

The customers are concerned that their interests will not be protected in a transaction between Compass Bank and a third-party buyer, or in future rate proceedings. This lack of confidence is understandable given the absence of any incentive on the part of Compass Bank to look out for the customers, the reluctance of Commission Staff to even entertain the notion of a review of the utility's financial and operating condition, and the prospect of a future owner paying a premium to acquire the utility. At the end of the day, without Commission intervention, the bank may nearly be made whole, the receiver will earn his pay, a buyer will take

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ownership, raise rates, and earn a happy return, but the customer who is wholly innocent in this affair will be left holding the bag.

The customers have reason to believe that Compass Bank has received an offer of *more than \$700,000 for the purchase of the utility*, despite the fact that in 2002, nearly a decade ago, the Commission applied a rate base far less than that to set the current rates. Given the amount of accumulated depreciation and what is likely limited additional investment in the system over that period, it is, frankly, shocking that any responsible buyer would agree to pay so much unless it anticipated significant rate increases, or was willing to operate at a significant loss for some time.

If Compass Bank sells to this prospective buyer, or any buyer other than the Aquarina community, the customers are sure to be burdened by otherwise unnecessary rate increases not only because of the improvements which must be made in the system and the high purchase price, and the additional revenue that must be generated to provide an authorized return on investment, but also because of potential increases in transactional and operational costs to that buyer.

Last year, the Aquarina community took ownership of the golf course from the developer, and as a result has fee title to several parcels which are essential to the operations of the utility. For example, the wastewater treatment and disposal system relies on the use of a leach field located on the golf course property now owned and controlled by the Aquarina Community Services Association. To date, Compass bank has not made it clear to the association whether it has the necessary licenses or easements authorizing its continued use of this leach field.

In addition, one of the utility's pumps is located on golf course property adjacent to the 17th hole tee box. Again, it is unclear whether the Bank has the necessary rights to continued access and operation of this equipment. Also, any future owner of the utility will need the use of several of the Association's roads for access to its water plant.

Complicating matters is the fact that an irrigation system underlies the Community Association's golf course which had been installed by the utility. Without a review of the chain of title, it can't be said with any certainty which entity now owns that irrigation system. Over the years, significant portions of that system, as well as some of the service lines, have been maintained or repaired at the expense of the golf course operation and the Association, not the utility, which only adds to the uncertainty. If such maintenance was, and is, the responsibility of the utility, it represents an additional and likely unanticipated operational expense of any potential buyer other than the Aquarina customers, and may constitute an additional debt owed by the utility.

The Aquarina customers intend to closely examine the chain of title and all claims to rights, title, and access by Compass Bank and any prospective buyer to ensure that its own property rights are protected. Furthermore, should the Association determine that the golf course operation has been incurring expenses which were the responsibility of the utility's owner, it will seek full recovery of those expenditures.

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Certainly, there is no more appropriate entity to own and operate the utility system now in receivership than the customers themselves, as they are the best positioned to operate the utility in the interest of the ratepayer and at the lowest possible cost. Should any buyer take ownership of this utility system other than the customers, that buyer can anticipate that this well-organized and highly motivated group of customers will pursue its rights fully under the law to ensure that no excessive or unnecessary rate increases are imposed in the future.

In the mean time, the Commission has an opportunity to act in the public interest by protecting an innocent party – the utility's customers. The Commission can accomplish this by ascertaining the financial and operational condition of the utility *before* it is sold by the bank. It would be an unusual step, but this is an unusual circumstance warranting an unusual step by the Commission. Because Compass Bank's sole incentive is to recover as much as it can on a bad loan, not to minimize the burden on customers, the Commission must exercise its authority to ensure that these customers are protected.

Again, the customers respectfully request that oral argument be granted on their motion for reconsideration, and that they be allowed to address the Commission in person at its Agenda Conference on January 25, 2011, so that they may have some confidence that their interests are considered and protected. It is well within the Commission's discretion to grant this simple request to be heard, and it is certainly consistent with the Commission's duty to protect the public interest.

Very truly yours,



Brian P. Armstrong

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cc: Mark Long, Florida Public Service Commission
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