

Diamond Williams

From: James Minnes [minnes.j@gmail.com]
Sent: Friday, October 14, 2011 9:03 AM
To: Filings@psc.state.fl.us
Cc: Martin Friedman; Keino Young; Steve Reilly
Subject: Re: 110061-WS Electronic filing James I. Minnes Motion to Compell Production of Documents by Aquarina Utilities, Inc.

Attachments: motion to compel.docx

Electronic Filing

a. Person responsible for this electronic filing:

James I. Minnes
25 Grovehurst Dr., Ottawa, Ont., Canada
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minnes.j@gmail.com

b. Docket No. 110061-WS

In Re: Application for Authority to Transfer the Assets of Service Management Systems, Inc., and Certificates Nos. 517-W and 450-S in Brevard County, Florida to Aquarina Utilities, Inc.

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

d. There are a total of 4 pages attached.

e. The document attached for electronic filing is James I. Minnes' Motion to Compel Production of Documents by Aquarina Utilities, Inc., with Certificate of Service attached.

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

DOCUMENT NUMBER-DATE

07534 OCT 14 =

10/14/2011

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Motion to Compel Aquarina Utilities, Inc., to Produce Documents

James I. Minnes ("Minnes") hereby moves to have Aquarina Utilities, Inc. ("AUI") Compelled to Produce a detailed listing of its documents that are relevant to the matters at issue in this proceeding and to produce the documents so listed by providing access to them by Minnes for inspection, examination, copying and discovery.

1. Minnes is a permanent resident and citizen of Canada residing in Ottawa, Ontario, Canada. Minnes is a temporary resident in the Aquarina community (Aquarina) between the months of November and May of each year at his residence, 208 Osprey Villas Court, Melbourne Beach, Fl. Minnes is a customer/ ratepayer of AUI . In this proceeding Minnes has filed a Notice of Objection on March 23, 2011, a Petition for Formal Hearing on April 26, 2011 and a Request for Production of Documents on September 12, 2011. No production of a list of documents or production of any documents has been made by AUI to Minnes to date.
2. AUI operates a water/ waste water utility located on Aquarina Blvd, in the Aquarina community, whose customers include all of the residents of the Aquarina Community. AUI operates the utility pursuant to the terms of an agreement of purchase and sale which is subject to and contingent upon PSC approval of the AUI's transfer application in Docket No. 110061-WS.
3. Rule 25-30.037(2)(k), F.A.C. requires, inter alia, the financial statements of any entity providing funding to the buyer including any person holding more than a 10% ownership interest in the utility. AUI represents that Reginald Burge is providing 100% of the funding and holds 100% ownership of the utility. In AUI's Application AUI expressly undertook as follows. "The Personal Financial Statement of the majority shareholders of Buyer will be provided upon request."
4. Minnes made request on or about September 9 ,2011, by the delivery to AUI of a Request for Production of Documents .In a subsequent e-mail to AUI's attorney dated on or about, September22, 2011, Minnes repeated his request for the production of Reginald and Lois Burge's personal financial statements dated July 1, 2011 used to support a US Small Business Administration Loan application, together with all documentation arising from that loan application. In reply, AUI through and by their attorney by e-mail to Minnes dated on or about September 22, 2011 stated: "There is no way you are going to get Mr. & Mrs. Burge's personal financial statement." No personal financial statement nor any of the loan documentation has

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been produced by AUI. According to AUI, no such documentation will be produced by AUI to Minnes without an Order from the Commission compelling AUI to do so.

5. AUI represented and undertook in its Application dated February 28, 2011, Para. 10. That "... a pro forma Balance Sheet of buyer will be filed a late exhibit B." The Commission's first deficiency letter to AUI dated March 29, 2011 pointed out that no balance sheet as represented had been filed as promised. In response AUI'S attorney in his letter of April 27, 2011 to the Commission purports to provide what it describes as a "pro-forma balance sheet" dated December 7, 2010 clearly pre-dating the Application and not requiring late filing. In fact the document, dated December 7, 2010 from Mr. Dodrill of Regulated Plant Accounting, is described by Mr. Dodrill, not as a " pro-forma balance sheet" but, " a projected operating statement... based on representations of management... without audit or review... with adjustment and estimates made by management ...which differ from generally accepted accounting principles." No proper or pro-forma financial statement , balance sheet or otherwise, ,in accordance with generally accepted accounting principles has been produced to date nor will it be by AUI, without an Order from the Commission compelling AUI to do so.
6. On September 23, 2011 AUI filed a Response to Minnes' Request for Production of Documents. Para. A. states: "All such documents are being produced to Mr. Minnes." That statement is inaccurate, incomplete and misleading .
7. AUI's attorney mailed a copy of AUI's Response to Minnes' Request for Production of Documents. Enclosed with the mailed Response , was a cover letter and an invoice from AUI's attorney. In his cover letter he states: "Also enclosed is our firm's invoice for the cost of copying the documents and mailing them to you. Once we receive payment of the Invoice, we will forward the documents to you." The invoice states:

" Copies of Documents Produced	
In Response to James I. Minnes'	
Request for Production	
(at \$0.25 per page)	x822 pages\$ 205.50
Federal Express Economy	\$ 97.04
	TO \$302.54 "

This is what AUI's attorney has described as, "...are being produced to Mr. Minnes"

8. AUI has not provided any listing or description for any of the 822 pages . Before being able to reasonably make any determination of which documents are relevant, material and probative to the matters at issue, in particular, AUI's financial ability to provide service. AUI must produce a detailed listing of all the documents it has identified as being relevant, describing in chronological sequence, the title, the subject matter and the number of pages of each document. Such a listing is also necessary for discovery and hearing to prevent previously undisclosed documents from being improperly introduced at a later date causing unnecessary motions , costs and delay in the discoveries and/or Hearing.

9. Before a determination can be made on which documents in a detailed listing of documents are necessary to be copied, access to the documents for the purpose of review and examination

of their contents, their condition, whether original or copies, any notes or endorsement made on the document, etc is absolutely required.

10. AUI's position that pre-payment of its invoice for copying and mailing all 822 pages is a condition precedent to producing and providing access to and review and examination of any of its fairly extensive documentation without the provision of a detailed description of the documents and the grant of access, review and examination before determining what is to be copied and at what cost, is unreasonable and an abuse of process.

Wherefore, Minnes seeks an Order from the Commission Compelling AUI to:

A. Deliver on or before Friday, November 11, 2011 an Affidavit of Documents to Minnes disclosing to the full extent of AUI's knowledge, information and belief all documents relevant to all matters in issue in this proceeding listing such documents, chronologically, describing each document by type and title, providing a brief description of the subject matter of the contents of the document and the number of pages of each document. Reginald and Lois Burge's personal financial statement, all documentation arising from the US Small Business Administration loan application and an actual pro-forma balance sheet for AUI are to be specifically included in the Affidavit of Documents.

B. Produce all documents identified and described in AUI's Affidavit of Documents for inspection, examination and copying by Minnes at AUI'S place of business on Aquarina Blvd, Aquarina Community, Melbourne Beach, Florida, 32951 from Monday December 12 to Friday December 16, 2011 between 9:00 am and 5:00pm.

All of which is respectfully submitted this 14th day of October, 2011 by:

s/ James I. Minnes

James I. Minnes

25 Grovehurst Drive, Ottawa, Ont

819-671-6732

minnes.j@gmail.com

Certificate of Service

Docket No. 110061-WS

I Hereby Certify that a true copy of the foregoing Motion to Compel AUI to produce an Affidavit of Documents and to produce all Documents listed in the Affidavit of Documents to Minnes for review, examination and copying, has been filed with the PSC Clerk and furnished to the following parties this 14th day of October, 2011:

Martin Friedman

Rose, Sundstrom & Bentley

766 N Sun Drive, Suite 4030

Lake Mary, FL 32746

Keino Young

Office of General Counsel

Public Service Commission

2540 Shumard Oak Blvd.

Tallahassee, FL 32399-0850

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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