

**Diamond Williams**

100318-WS

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**Sent:** Monday, June 07, 2010 10:40 AM  
**To:** Filings@psc.state.fl.us  
**Subject:** In re: Petition of Aquarina Utility Association, Inc. for Order to Show Cause Against Service Management Systems, Inc.  
**Attachments:** Aquarina Petition for Order to Show Cause.3.doc

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 document number and title if filed in an existing docket:

This is a new filing

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:

4 pages total

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

Aquarina Utility Association Inc.'s Petition for Order to Show Cause Against Service Management Systems, Inc. For Failure to Properly Operate and Manage Water and Wastewater System

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 6/7/2010

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STATE OF FLORIDA  
PUBLIC SERVICE COMMISSION

IN RE: PETITION OF AQUARINA  
UTILITY ASSOCIATION, INC. FOR  
ORDER TO SHOW CAUSE AGAINST  
SERVICE MANAGEMENT SYSTEMS, INC.

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Case No. 100318-WS

**AQUARINA UTILITY ASSOCIATION, INC.'S PETITION FOR ORDER  
TO SHOW CAUSE AGAINST SERVICE MANAGEMENT SYSTEMS, INC. FOR  
FAILURE TO PROPERLY OPERATE AND MANAGE  
WATER AND WASTEWATER SYSTEM**

Petitioner, AQUARINA UTILITY ASSOCIATION, INC. ("Customers"), by and through its undersigned counsel and pursuant to sections 367.081(2)(a)(1) and 367.0822, Florida Statutes, petitions the Public Service Commission for the entry of an Order directed to Service Management Systems, Inc. or its successor ("Utility"), as discussed below, to show cause why the rates being charged to Customers should not be reduced due to the hazardous condition of the plant facilities which threaten the public health and safety as well as the environment, and as grounds therefore states as follows:

1. Petitioner is a Florida not-for-profit corporation with its principal place of business in Brevard County, Florida consisting of Utility's Customers.
2. Customers are owners of property within the Aquarina or St. Andrews neighborhoods who are served by Utility's water and wastewater facilities in Brevard County, Florida.
3. On or about February 3, 2010, the Circuit Court in Brevard County, Florida issued an Order Appointing Receiver of Service Management Systems, Inc., appointing Mr. Dennis Basile as "Receiver."

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4. By order dated May 24, 2010, this Commission acknowledged the appointment of the Receiver for this Utility (Order No. 10-0329-FOF-WS).

5. Customers have been informed that Compass Bank ("Bank"), which held a security interest in Utility's facilities, has foreclosed upon its interest in Utility's facilities. Further, upon information and belief, court proceedings have been completed to transfer title for the Utility's facilities to the Bank or a Bank affiliate. To Customer's knowledge, no transfer application has yet been filed with the Commission regarding this ownership transfer.

6. Pursuant to a letter dated January 13, 2010, the Florida Department of Environmental Protection advised SMS that its wastewater system requires several modifications and repairs in order to achieve compliance. To date, upon information and belief, the Utility remains noncompliant.

7. Additionally, Customers have disclosed safety hazards to Utility as follows:

A. A broken clarifier arm (approximately 20 feet in length) is lying across a catwalk above a wastewater tank filled with thousands of gallons of raw sewage;

B. A gap in the catwalk, now covered by a wooden board;

C. A hose and sprinkler lying across the catwalk spraying water (so as to make the catwalk slippery) in lieu of proper aeration; and

D. A one inch pipe lying across the catwalk.

8. When advised of the hazards described above, the Receiver responded as follows:

I am well aware of the repairs that the Utility Attorney identified. The "girder" is actually the clarifier arm that was removed from the bottom of the sewage tank when it broke. The fact that this attorney was on the catwalk stepping over the "girder" without my permission is amazing to me. Yes, it is dangerous and the [sic] is exactly the reason that no one (including plant employees) walk on

the catwalk (there is no need to since the only reason is to work on the clarifier arm that is laying on the catwalk).

This repair will cost approximately \$25,000 and the funds are not available from operations at this time. The plant is running within standards without the arm in place, however, everyone knows it would be better to be repaired.

9. Contrary to the Receiver's assertions, and at no fault of Receiver as he has little to no experience regarding utility operations, wastewater treatment facilities cannot be expected to operate in compliance with applicable laws, rules and standards for an extended period of time in the current condition of the facilities. Moreover, proper Utility operations require operations and/or maintenance personnel to access the catwalk for a number of reasons, i.e., to take measurements and maintain the clarifier drive system. The current condition of the system is unacceptable.

10. In an Affidavit filed in the Brevard County Circuit Court action, David Whiteside, the operator of the Utility's plant, stated as follows:

Based on my experience as a water utilities operator, the SMS facility is presently in poor condition and without a proper budget for operations, maintenance and repairs, is continuing to deteriorate. In such a condition, the utility may pose serious health, safety and environmental risks to the community it serves.

11. Subsequent to these revelations, Customers have discovered that the Utility also owns a 1,000 gallon, single-walled oil storage tank that has been in place, upon information and belief, for decades. Utility has never obtained the required permit for the tank, never registered the tank and thus the tank has never been inspected for proper operation. Given the tank's location, underground on a barrier island surrounded by salt water, and in proximity to Utility's water supply, Customers are concerned regarding the potential contamination of the land and

water surrounding the tank. The Bank's representatives have been advised of these facts. Upon information and belief, nothing has been done to date to correct this situation.

12. Unless the Public Service Commission requires the Bank to take immediate affirmative action to correct the hazards described above concerning the Utility facilities, Customers will continue to be subject to serious health, safety and environmental risks.

13. Despite the continued failure of Utility to properly maintain and operate the Utility facilities, Customers have been required to pay the same rates for this unacceptable, deficient and potentially hazardous service.

WHEREFORE, Customers respectfully petition the Public Service Commission to issue an Order to Show Cause to Utility requesting that Utility show cause why the rates charged to the Customers should not be reduced, or such other corrective actions be mandated, due to Utility's continued failure to properly operate the water and wastewater system in compliance with applicable laws, rules and standards and in such a manner so as to protect the public health and safety as well as the environment.

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