

**Eric Fryson**

**From:** Michele Parks [mparks@sfflaw.com]  
**Sent:** Wednesday, July 25, 2012 11:46 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Keino Young; minnes.j@gmail.com  
**Subject:** {BULK} Docket No. 110061-WS; Application for Authority to Transfer Assets of Service Management Systems, Inc., and Certificate Nos. 517-W and 450-S in Brevard County, Florida to AQUARINA UTILITIES, INC.

**Importance:** Low

**Attachments:** Motion for Summary Final Order.pdf

- a. Martin S. Friedman, Esquire  
 Sundstrom, Friedman & Fumero, LLP  
 766 N. Sun Drive, Suite 4030  
 Lake Mary, FL 32746  
 PHONE: (407) 830-6331

FAX: (407) 830-8522

[mfriedman@sfflaw.com](mailto:mfriedman@sfflaw.com)

- b. Docket No. 110061-WS; Application for Authority to Transfer Assets of Service Management Systems, Inc., and Certificate Nos. 517-W and 450-S in Brevard County, Florida to AQUARINA UTILITIES, INC.

Aquarina Utilities, Inc.

- d. 6 pages
- e. <|endif]>Motion for Summary Final Order

**MICHELE PARKS**

*Paralegal for Martin S. Friedman and Bridget M. Grimsley*

**SUNDSTROM,  
 FRIEDMAN & FUMERO, LLP**  
 Attorneys | Counselors



SUNDSTROM, FRIEDMAN & FUMERO, LLP  
 Attorneys at Law  
 766 North Sun Drive, Suite 4030  
 Lake Mary, Florida 32746  
 T: 407.830.6331  
 F: 407.830.8522  
[mparks@sfflaw.com](mailto:mparks@sfflaw.com)  
[www.sfflaw.com](http://www.sfflaw.com)

Tallahassee • Lake Mary • Boca Raton

Notice: This email message, and any attachments hereto, contains confidential information that is legally privileged. If you are not the intended recipient, you must not review, transmit, convert to hard copy, copy, use or disseminate this email or any attachments to it. If you have received this email in error, please notify us immediately by return mail or by telephone at (888)-877-6555 and delete the original and all copies of this transmission, including any attachments. Thank you.

RECEIVED  
 JUL 25 2012

DOCUMENT NUMBER - DATE

04981 JUL 25 12

FPSC-COMMISSION CLERK

7/25/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority to Transfer )  
the Assets of SERVICE MANAGEMENT )  
SYSTEMS, INC., and Certificate Nos. )  
517-W and 450-S in Brevard County, )  
Florida to AQUARINA UTILITIES, INC. )

DOCKET NO. 110061-WS

**MOTION FOR SUMMARY FINAL ORDER**

AQUARINA UTILITIES, INC. (“Applicant” or “AUI”), by and through its undersigned attorneys, and pursuant to Section 120.57(1)(h), *Florida Statutes*, and Rule 28-106(4), *Florida Administrative Code*, requests that the Florida Public Service Commission (“Commission”) summarily dispose of the objection of Mr. James Minnes filed in this docket, without further necessity for hearing, and in support shows:

**I. INTRODUCTION**

1. On April 26, 2011, James Minnis, a customer of Service Management Systems, Inc. (“SMS”), and the leader of a group who had attempted to purchase the SMS water and wastewater systems, filed an Objection to AUI’s Application for Transfer of the assets of SMA to AUI (“Objection”).

2. Although Mr. Minnis asserts a number of grounds for his Objection, the Objection centers primarily on the financial ability of the AUI and its owner. This concern was previously also raised in the objection filed by the Aquarina Community Services Association, Inc, but that objection was withdrawn when it was satisfied with AUI’s financial ability after an analysis by Office of Public Counsel.

3. On April 13, 2012, Commissioner Balbis, as Prehearing Officer, issued Order No.

PSC-12-0203-PCO-WS establishing the procedure for addressing Mr. Minnis' Objection to this Application ("Prehearing Order").

4. Pursuant to the Prehearing Order, Controlling Dates were established governing the key activities of this case. In response to the Prehearing Order AUI filed pre-filed testimony and exhibits of Reginald Burge, the owner of AUI, and of Robert Dodrill, who supports the financial statements of AUI. The deadline for Mr. Minnis to file his pre-testimony and exhibits was July 20, 2012. Mr. Minnis has failed to file any pre-filed testimony or exhibits. As a result of failure to file pre-filed testimony and exhibits Mr. Minnis is precluded from presenting any testimony or exhibits at the final hearing.

## II. ARGUMENT

5. In entering a Summary Final Order in Order No. PSC-09-0342-FOF-TP this Commission set forth the stringent standard by which a Motion for Summary Final Order is considered:

Rule 28-106.204(4), *F.A.C.*, provides that "any party may move for summary final order whenever there is no genuine issue as to any material fact." Under Florida law, "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact, and ... every possible inference must be drawn in favor of the party against whom a summary judgment is sought." *Green v. CSX Transportation, Inc.*, 626 So.2d 974 (Fla. 1st DCA 1993) (citing *Wills v. Sears, Roebuck & Co.*, 351 So.2d 29 (Fla. 1977)). "Summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions [\*7] of law." *Moore v. Morris*, 475 So.2d 666 (Fla. 1985); *City of Clermont, Florida v. Lake City Utility Services, Inc.*, 760 So. 1123 (5th DCA 2000).

6. This Commission noted in Order No. PSC-11-0244-FOF-GU that the purpose of a summary final order is to avoid the expense and delay of trial when no dispute exists concerning the material facts.

7. Once a movant has tendered competent evidence to support his or her motion, the opposing party must produce counter evidence sufficient to show a genuine issue because it is not enough to merely assert that an issue exists. *Golden Hills Golf & Turf Club, Inc. v. Spitzer*, 475 So.2d 254, 254-255 (Fla. 5th DCA 1985) (citing *Landers v. Milton*, 370 So.2d 368 (Fla. 1979)). Also see PSC Order No. PSC-11-0244-FOF-GU that acknowledges the Commissions' application of this standard. In Order No. PSC-11-0291-PAA-TP this Commission articulated that requirement as a demonstration by the opposing party of the falsity of the showing.

8. Through the pre-filed testimony and exhibits of Mr. Burge and Mr. Dodrill<sup>1</sup>, AUI has met the requirements of Section 367.071, *Florida Statutes*, and Rule 25-30.037, *Florida Administrative Code*. Mr. Minnes has tendered no evidence to show that there is a genuine issue of fact. In other words, Mr. Minnis has failed to meet this shift in the burden of proof.

9. Specifically, AUI has filed testimony and financial statements of AUI regarding AUI's financial ability to provide service. In fact, as pointed out in Mr. Burge's pre-filed testimony AUI has undertaken significant repairs and improvements further evidencing not only its financial ability, but its willingness to bring the water and wastewater systems into compliance with all regulatory requirements. AUI would remind the Commission that due to the customers' concerns that the systems were going to be in disrepair while SMS was in foreclosure, the Community Association was able to get a receiver appointed.

10. Interestingly, in Mr. Minnes' Objection he agrees that the manner in which other water and wastewater systems owned by Mr. Burge and his family were operated is relevant in determining financial ability to operate the utility "in a safe, healthy, reliable and economic manner". This Commission on three previous occasions has reviewed Mr. Burge's financial ability to operate regulated utilities in Florida (one of which is still regulated by the Commission) and on

each occasion has found he has such financial capability. AUI requests that this Commission take Official Notice of the Orders in prior Commission Dockets involving Laniger Enterprises of America, Inc, Burkim Enterprises, Inc. and Gold Coast Utility Corp.

11. Section 90.202(5), Florida Statutes, provides that official actions of the legislative, executive, and judicial departments of the United States and of any state may be judicially noticed. Section 90.203, Florida Statutes, provides that a court must take judicial notice of any matter in Section 90.202, Florida Statutes, when a party requests it and provides timely written notice and sufficient information.

12. As noted by Mr. Minnes, the owner of AUI had and has three water and wastewater utility systems regulated by the Commission all of which were obtained through transfers. This Commission on those three previous occasions has reviewed Mr. Burge's financial ability to operate regulated utilities in Florida (one of which is still regulated by the Commission) and on each occasion has found he has such financial capability. One of those systems, Gold Coast Utility Corp. is still regulated by the Commission. The Commission has never asserted that any of the utilities in which Mr. Burge had an ownership interest were insufficiently funded.

13. In order to meet the mandate of Rule 28-106.101, *Florida Administrative Code*, that a party shall be entitled to a "just, speedy, and inexpensive determination" this Commission must enter a Summary Final Order. This Commission should not allow one customer to require AUI to incur tens of thousands of dollars in expenses of this proceeding, which may ultimately be shared by all customers, when his objection has no basis in fact.

WHEREFORE, AQUARINA UTILITIES, INC. respectfully requests that this Commission issue a Summary Final Order disposing of Mr. Minnis's Objection and granting

AUI's Application.

Respectfully submitted on this 25<sup>th</sup> day of July, 2012 by:

SUNDSTROM, FRIEDMAN &  
FUMERO, LLP  
766 North Sun Drive, Suite 4030  
Lake Mary, FL 32746  
Telephone: (407) 830-6331  
Facsimile: (407) 830 8255  
Email: [mfriedman@rsbattorneys.com](mailto:mfriedman@rsbattorneys.com)



---

MARTIN S. FRIEDMAN  
Florida Bar No.: 0199060  
For the Firm

<sup>1</sup> AUI will be filing Affidavits attesting to the statements and exhibits in the pre-filed testimony.

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 110061-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss or Motion for Summary Disposition has been E-Filed with the PSC Clerk and furnished by E-Mail and U.S. Mail to the following parties this 15 day of July, 2012:

JAMES I. MINNES  
25 Grovehurst Drive  
Ottawa, Ontario  
Canada K2G 6W1  
[minnes.j@gmail.com](mailto:minnes.j@gmail.com)

JAMES I. MINNES  
208 Osprey Villas Court  
Melbourne Beach, FL 32951

Keino Young, Esquire  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard, Room 301D  
Tallahassee, FL 32399-0850

  
\_\_\_\_\_  
MARTIN S. FRIEDMAN