

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint application for transfer of Mink Associates II, LLC d/b/a Timberwood Utilities, holder of Certificate Nos. 524-W and 459-S, to Silver Fox Utility Company LLC d/b/a Timberwood Utilities, in Pasco County.

DOCKET NO. 050062-WS
ORDER NO. PSC-05-0682-FOF-WS
ISSUED: June 20, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

ORDER APPROVING TRANSFER OF FACILITIES AND CERTIFICATE NOS. 524-W AND 459-S FROM MINK ASSOCIATES II, LLC TO SILVER FOX UTILITY COMPANY LLC

BY THE COMMISSION:

CASE BACKGROUND

Mink Associates II, LLC d/b/a Timberwood Utilities (Mink II, Timberwood or utility) is a Class C utility serving approximately 159 water and wastewater customers in Pasco County. The utility is in the Southwest Florida Water Management District (SWFWMD) and it is in a critical water use caution area. The utility purchases bulk water from Pasco County and resells it to the utility's customers. The utility's 2004 annual report lists total gross revenues of \$15,314 for water and \$38,355 for wastewater with net operating losses of \$23,720 for water and \$18,936 for wastewater.

The utility was granted Water Certificate No. 524-W in 1989.¹ The Wastewater Certificate No. 459-S was granted in 1990.² In 1991, the utility was transferred³ and its name

¹ Certificate issued pursuant to Order No. 22302, issued December 12, 1989, in Docket No. 891010-WU, In re: Application of Century Group, Inc. for original certificate in Pasco County.

² The Commission granted the utility Wastewater Certificate No. 459-S pursuant to Order No. 22392, issued January 9, 1990, in Docket No. 881003-SU, In re: Application of Century Group, Inc. for Sewer certificate in Pasco County.

³ The Century Group facilities and certificate were transferred pursuant to Order No. 24638, issued June 7, 1991, in Docket No. 910097-WS, In re: Application for transfer of Certificates Nos. 524-W and 459-S from Century Group, Inc. to B.D.C., Inc. in Pasco County.

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changed.⁴ In 2001, the utility was transferred again⁵, and in 2002 its name was changed to Mink Associates II, LLC d/b/a Timberwood Utilities (Mink II).⁶

On January 26, 2005, a joint application was submitted for the transfer of Timberwood to Silver Fox Utility Company LLC d/b/a Timberwood Utilities (Silver Fox Utility or buyer). The application was deficient. The deficiencies were corrected on March 28, 2005. This Order addresses the transfer of the facilities and Certificate Nos. 524-W and 459-S from Mink Associates II, LLC d/b/a Timberwood Utilities to Silver Fox Utility Company LLC d/b/a Timberwood Utilities. We have jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

TRANSFER OF FACILITIES AND CERTIFICATE NOS. 524-W AND 459-S

Timberwood applied for a transfer of Certificate Nos. 524-W and 459-S in Pasco County to Silver Fox Utility on January 26, 2005. The closing on the transfer of the utility facilities took place on January 28, 2004, contingent upon Commission approval. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. A description of the territory served by the utility is appended as Attachment A to this Order.

The application contained proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired. According to the application there are no outstanding customer deposits, guaranteed revenue contracts, developer agreements, or customer advances related to the utility.

The application contained a copy of the agreement for purchase and sale, which includes the sale price, terms of payment, and a list of the assets purchased and liabilities assumed by the Arbor Oaks mobile home park and Timberwood Utilities. The application also contained a statement that the transfer is in the public interest because the customers of the utility will continue to receive the same quality service as in the past since the same team will continue to operate the water and wastewater facilities.

As evidence that the utility has continued use of the land, the applicant provided an unexecuted copy of the assignment of the lease from Mink II to Silver Fox Utility. The lease is a

⁴ B.D.C. was granted a name change pursuant to Order No. 25211, issued October 14, 1991, in Docket No. 910968-WS, In re: Request for acknowledgement of name change on Certificates Nos. 524-W and 459-S in Pasco County from B.D.C., Inc. to B.D.C., Inc. d/b/a Timberwood Utilities.

⁵ The utility's facilities and certificates were transferred to Mink Associates I, LLC d/b/a Timberwood Utilities pursuant to Order No. PSC-01-1167-PAA-WS, issued May 22, 2001, in Docket No. 001513-WS, In re: Application for transfer of Certificate Nos. 524-W and 459-S in Pasco from Arbor Oaks I, LLC & Arbor Oaks II, LLC, both Delaware Limited Liability Companies d/b/a Timberwood Utilities, to Mink Associates I, LLC, a Florida Limited Liability Company d/b/a Timberwood Utilities.

⁶ Mink Associates II, LLC. d/b/a Timberwood Utilities changed its name pursuant to Order No. PSC 02-1413-FOF-WS, issued October 15, 2002, in Docket No. 020552-WS, In re: Application for name change on Certificate Nos. 524-W and 459-W in Pasco County from Mink Associates I, LLC. d/b/a Timberwood Utilities to Mink Associates II, LLC. d/b/a Timberwood Utilities.

99-year lease agreement between Mink I and Mink II dated August 26, 2002. The utility must file an executed copy of the lease assignment within 30 days of the issuance date of this Order. The lease covers the entire mobile home park including the land upon which the utility wastewater treatment facilities are located. It should be noted that land was included in rate base for the wastewater system (\$10,152) in the 2001 transfer docket. The prudence of the annual land rental will be addressed in the utility's next rate proceeding.

Regarding the buyer's technical ability, Silver Fox Utility indicated that it will continue to employ the certified operators used by Timberwood to provide the ongoing maintenance of the water and wastewater facilities. According to the application, at the present time, the utility provides safe and reliable water and wastewater service to its customers. The application stated that a representative of Silver Fox Utility has performed a reasonable investigation of the utility system. The water and wastewater facilities appear to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP). DEP was contacted and verified that there are no outstanding notices of violation.

According to the application, the buyer has demonstrated its financial ability to provide service. Silver Fox Utility acquired the mobile home park and the utility in a sales transaction that included cash and an assumption of the existing mortgage. Silver Fox Utility has indicated that it will provide funding to the utility when needed and the financial stability required to maintain the utility in accordance with Commission standards and environmental regulations. The applicant stated that the buyer will fulfill the commitments, obligations, and representations of the seller with regard to utility matters. In addition, the financial statements of Mr. and Mrs. Bowlinger were included in the application as evidence of their financial stability. Timberwood is the only regulated water and wastewater system owned by Silver Fox Utility.

Rate base was last established for the utility as of March 23, 2000, in Docket No. 001513-WS. Pursuant to Section 367.071, Florida Statutes, we may set rate base in transfer dockets. Although rate base is typically set in transfer proceedings, no audit was performed in this docket as a cost savings measure; however, the utility has applied for a staff assisted rate case (Docket No. 050274-WS). According to the application, the portion of the purchase price attributable to the utility property is to be the net book value of the utility assets as established by the Commission. Because the purchase price is equal to rate base, there is no acquisition adjustment pursuant to Rule 25-30.0371, Florida Administrative Code.

Our staff discussed with the buyer and seller the importance of the buyer obtaining from the seller all books and records of the utility and maintaining the books and records in compliance with National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA). Both the buyer and seller agreed that they understood the importance of source documentation and maintaining the utility books and records in accordance with the NARUC USOA. Therefore, Silver Fox Utility shall be required to provide a statement within 30 days of the issuance of this Order that it has established its books and records in compliance with NARUC USOA, including separate general ledgers for the water and wastewater systems.

According to our records, the utility is current on its regulatory assessment fees (RAFs) and has filed an annual report for 2004 and prior years. Silver Fox Utility shall be responsible for future annual reports and the payment of all regulatory assessment fees starting with the year 2005.

Based upon all of the above, we find that the transfer of the facilities and Certificate Nos. 524-W and 459-S from Mink Associates II, LLC d/b/a Timberwood Utilities to Silver Fox Utility Company LLC d/b/a Timberwood Utilities is in the public interest and shall be approved effective May 31, 2005. The utility shall file an executed copy of the lease assignment for the land within 30 days of the issuance date of this Order. In addition, Silver Fox Utility shall be required to provide a statement within 30 days of the issuance date of this Order that it has established its books and records in compliance with the NARUC USOA, including separate general ledgers for the water and wastewater systems. Silver Fox Utility shall be responsible for the annual reports and RAFs for 2005 and the future. A description of the territory being transferred is appended as Attachment A to this Order.

RATES AND CHARGES

Timberwood's current rates for water and wastewater service were approved by the Commission in an administrative price index proceeding effective May 30, 1999. The utility's service availability charges were approved pursuant to Order No. 24640, issued June 10, 1991, in Docket No. 900749-WS, In re: Application for staff-assisted rate case for Arbor Oaks system Pasco County by Century Group, Inc. The utility's approved rates and charges are shown on Schedule No. 1 to this Order.

The buyer has not requested a change in the rates and charges of the utility. Accordingly, we find that, pursuant to Rule 25-9.044(1), Florida Administrative Code, Silver Fox Utility Company LLC d/b/a Timberwood Utilities shall continue operations under the existing tariff and apply the approved rates and charges until authorized to change by this Commission in a subsequent proceeding. The tariff reflecting the change in ownership shall be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of facilities and Certificate Nos. 524-W and 459-S from Mink Associates II, LLC d/b/a Timberwood Utilities to Silver Fox Utility Company LLC d/b/a Timberwood Utilities is in the public interest and shall be approved effective May 31, 2005. It is further

ORDERED that Attachment A and Schedule No. 1 attached hereto are incorporated herein by reference. It is further

ORDERED that the utility shall file an executed copy of the lease assignment for the land within 30 days of the issuance date of this Order. It is further

ORDERED that Silver Fox Utility Company LLC d/b/a Timberwood Utilities shall be required to provide a statement within 30 days of the issuance of this Order that it has established its books and records in compliance with the NARUC USOA, including separate general ledgers for the water and wastewater systems. It is further

ORDERED that Silver Fox Utility Company LLC d/b/a Timberwood Utilities shall be responsible for the annual reports and regulatory assessment fees for 2005 and the future. It is further

ORDERED that Silver Fox Utility Company LLC d/b/a Timberwood Utilities shall continue operations under the existing tariff and apply the approved rates and charges until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff reflecting the change in ownership shall be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the docket shall remain open pending receipt of the executed assignment of the lease agreement and a statement that Silver Fox Utility Company LLC d/b/a Timberwood Utilities has established its books and records in accordance with the NARUC USOA. Upon receipt of the statement and the executed lease assignment, the docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 20th day of June, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**TIMBERWOOD UTILITIES
TERRITORY DESCRIPTION
WATER AND WASTEWATER SERVICE AREA**

The following described lands located in a portion of Section 9, Township 26 South, Range 21 East, Pasco County, Florida:

Section 9

The SW 1/4 of the NE 1/4 of the NW 1/4 and the S 1/2 of the SE 1/4 of the NE 1/4 of the NW 1/4 and the N 1/2 of the N 1/2 of the SE 1/4 of the NW 1/4.

Schedule No. 1

Water Monthly Service Rates
Residential and General Service

Base Facility Charge

Meter Sizes:

5/8" x 3/4"	\$ 3.13
3/4"	4.68
1"	7.81
1 1/2"	15.61
2"	24.98
3"	49.94
4"	78.04
6"	156.07
Charge per 1,000 gallons	\$ 2.34

Wastewater Monthly Service Rates
Residential and General Service

Base Facility Charge

Meter Sizes:

5/8" x 3/4"	\$ 10.47
3/4"	15.71
1"	26.18
1 1/2"	52.36
2"	83.78
3"	167.58
4"	261.83
6"	523.65
Charge per 1,000 gallons Residential	\$ 5.16*
General Service	\$ 6.18
*Maximum charge of 6,000 gallons	

Miscellaneous Service Charges

	<u>Water</u>	<u>Wastewater</u>
Initial Connection	\$15.00	\$ 15.00
Normal Reconnection	\$15.00	\$ 15.00
Violation Reconnection	\$15.00	Actual Cost
Premises Visit (in lieu of disconnection)	\$10.00	\$ 10.00

Service Availability Charges

Meter Installation Fee	\$ 100.00
Wastewater Plant Capacity Charge Residential-per ERC	\$ 500.00