

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Certificate Nos. 524-W and 459-S in Pasco County 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.

DOCKET NO. 001513-WS
ORDER NO. PSC-01-1311-PAA-WS
ISSUED: June 18, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING TRANSFER OF ASSETS, FACILITIES, AND
CERTIFICATES NOS. 524-W and 459-S
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATE BASE AND DECLINING TO APPROVE
AN ACQUISITION ADJUSTMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein regarding the establishment of rate base and the decision not to approve an acquisition adjustment are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

DOCUMENT NUMBER-DATE

07507 JUN 18 2001

FPSC-RECORDS/REPORTING

BACKGROUND

Timberwood Utilities (Timberwood or utility) is a Class C utility serving approximately 159 water and wastewater customers in Pasco County. The utility was granted Wastewater Certificate No. 459-S by Order No. 22392, issued January 9, 1990, in Docket No. 881003-SU, and Water Certificate No. 524-W by Order No. 22302, issued December 12, 1989, in Docket No. 891010-WU. The utility purchases bulk water from Pasco County and resells it to the utility's customers. The wastewater collection and treatment systems are owned and operated by Timberwood. The utility's 1999 annual report lists total gross revenues of \$14,624 for water and \$36,656 for wastewater with net operating losses of \$4,233 for water and net operating income of \$8,611 for wastewater.

On September 29, 2000, an application was filed for transfer of Timberwood from Arbor Oaks I, LLC and Arbor Oaks II, LLC both Delaware Limited Liability Companies d/b/a Timberwood Utilities (Arbor Oaks) to Mink Associates I, LLC d/b/a Timberwood Utilities (Mink). According to the application, on September 1, 1999, Arbor Oaks and Mink entered into a contract for sale and first addendum to contract where Mink would purchase the Arbor Oaks Mobile Home Park and all improvements and easements including the Timberwood system. On January 2, 2000, the parties entered into a second addendum to contract. The purchase price for the park and utility is \$4,050,000, including the assumption of an existing mortgage of \$2,306,490. The actual closing on the transfer took place on or about March 23, 2000.

The utility also provided an estimate of the rate base at the time of transfer, using the January 31, 1998, information formalized in transfer Docket No. 971456-WS, in which we approved the transfer of the utility from B.C.D., Inc. d/b/a Timberwood Utilities to Arbor Oaks, updated to February 29, 2000. This analysis resulted in a proposed value of the utility system as of the date of the proposed transfer of \$5,143 for water and \$60,944 for wastewater. We have jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

APPLICATION

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. The application contains a check in the amount of \$1,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, without our prior approval unless such sale, assignment, or transfer is made contingent upon our approval. The utility property was deeded to Mink on or about March 23, 2000. However, to ensure that the utility was not transferred prior to our approval, the parties entered into a 99-year lease whereby Arbor Oaks has continued use of the utility property and operates and controls the utility. The 99-year lease is effective until we approve the transfer or until the term of the lease expires.

Rule 25-30.037(2)(q), Florida Administrative Code, requires the utility to provide proof of ownership of the land upon which its facilities are located. The application contains a Warranty Deed in the name of Mink that covers the entire mobile home park including the land upon which the utility treatment facilities are located. The owners of the mobile home park also own the utility.

The application contains 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 filing such has expired. A description of the territory served by the utility is appended to this Order as Attachment A, which by reference is incorporated herein. The service area attached is the original service area granted to the utility by Order No. 22302, issued December 12, 1989, in Docket No. 891010-WU, and Order No. 22392, issued January 9, 1990, in Docket No. 881003-SU.

In regard to Mink's technical ability, Mink indicated that the utility is the first and only regulated water and wastewater system that it has owned. However, Mink will continue to employ the personnel who are familiar with both the administrative and

regulatory affairs of Timberwood. Mink has contracted with Gator Water and Wastewater Management, Inc., certified operators, to provide the ongoing maintenance of the water and wastewater facilities. At the present time, the utility provides safe and reliable water and wastewater service to its customers.

Mink also has the financial resources to maintain consistent compliance with environmental regulations. Our staff has contacted the Department of Environmental Protection (DEP) and has learned that there are some outstanding items needing attention at the wastewater treatment plant, which were noted to the utility in a letter late last year. We have reminded the utility's consultant of the importance of addressing these items and will follow up with the utility to ensure that the concerns expressed by DEP are resolved as a result of this transfer of ownership.

Mink invested approximately \$1,900,000 in cash and assumed an existing mortgage from LaSalle National Bank in the amount of \$2,306,490 for the purchase of the mobile home park and the utility. Additionally, some of the cash invested by Mink was also used for closing costs and to purchase two model homes. Mink has indicated that it will provide the financial stability required to maintain the utility systems in accordance with this Commission's standards. Mink provided a copy of the 2000 year-end balance sheet which showed total assets of approximately \$4,000,000. Thus, Mink has demonstrated its financial ability to provide service.

The application contains a copy of the agreement for purchase and sale, first addendum to contract, second addendum to contract, and bill of sale, which includes the sales price, terms of payment and a list of the assets purchased and liabilities assumed for Arbor Oaks Mobile Home Park and Timberwood. The application also contains 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.

Mink has indicated that there were no outstanding or pending customer deposits, guaranteed revenue contracts, developer agreements, or customer advances related to the utility. Additionally, Mink stated that it will fulfill the commitments, obligations and representations of the seller with regard to

utility matters. Mink also stated that the existing debts of the utility will be paid by the utility.

According to our records, the utility is current on its regulatory assessment fees, has filed an annual report for 1999 and all prior years, and has been granted an extension of time for filing its 2000 annual report until April 30, 2001. Mink shall be responsible for future annual reports and the payment of all regulatory assessment fees starting with the year 2000. The application states that Mink's representative has performed a reasonable investigation of the utility system. The water and wastewater plant facilities appear to be in satisfactory condition and in compliance with all applicable standards set by DEP.

Based on the above, we find the transfer of assets, facilities, and Certificates Nos. 524-W and 459-S to be in the public interest. The transfer is hereby approved.

RATE BASE

Rate base for the utility was established by Order No. PSC-98-1388-FOF-WS, issued October 15, 1998, in Docket No. 971456-WS, at \$6,254 for the water system and \$69,681 for the wastewater system as of the transfer date of January 31, 1998. According to the application, the proposed rate base is \$5,143 for the water system and \$60,944 for the wastewater system as of the date of transfer. Rate base was determined by updating Order No. PSC-98-1388-FOF-WS to the March 23, 2000, transfer date.

An audit of the utility's books was performed, and the resulting report contained two audit exceptions concerning the utility's books and records. Audit Exception No. 1 is the audit opinion that Plant-in-Service and Accumulated Depreciation are incorrect. The audit balances from the previous audit were used for the beginning balances, and verified annual report additions plus other additions and retirements were used to determine the depreciable plant balances. The utility failed to account for its water meter replacement program from February 1, 1998, through March 23, 2000. A review of invoices indicated that meters were purchased and plumbing invoices indicated the dates and costs of meter replacements. No retirements of existing meters were noted on the company records. Additional invoices indicated that the

utility replaced a wastewater blower, chlorine pump, and lift station controller. None of these wastewater plant replacements appeared on the utility plant records, either as additions or retirements. Consequently, we have increased Plant-in-Service by \$557 for water and \$737 for wastewater. Our audit staff applied Rule 25-30.140, Florida Administrative Code, to the audited plant subaccounts balances from February 1, 1998, to March 23, 2000, to obtain the per audit water and wastewater accumulated depreciation balances. As a result of these calculations, we have decreased Accumulated Depreciation by \$1,683 for the water system and \$3,539 for the wastewater system.

Audit Exception No. 2 was the audit opinion that the contributions-in-aid-of-construction (CIAC) was correct, however, the Amortization of CIAC was incorrect. Using the audit balances from the previous audit and verified annual report additions, the per audit CIAC amortization was recalculated. As a result, we have increased Amortization of CIAC by \$418 for the water system and by \$417 for the wastewater system.

We find that, as of March 23, 2000, rate base for the utility is \$7,770 for the water system and \$65,379 for the wastewater system. The schedule of water rate base is shown on Schedule No. 1, with adjustments set forth on Schedule No. 2. The schedule of wastewater rate base is shown on Schedule No. 3, with adjustments set forth on Schedule No. 4. These schedules are incorporated herein by reference. The rate base calculations are used solely to establish the net book value at the time the property is transferred. As such, the calculations do not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. Mink stated in the application that it was not seeking an acquisition adjustment. As previously noted, Mink acquired the utility as part of the Arbor Oaks Mobile Home Park in a property transaction valued at \$4,050,000. Neither party to the overall sales transaction was able to place a separate value on the purchase of the utility facilities.

In the absence of extraordinary circumstances, it has been our practice that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. There are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base. The treatment of the acquisition adjustment in this instance is consistent with previous decisions. See Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS; Order No. PSC-00-1659-PAA-WU, issued September 18, 2000, in Docket No. 000334-WU; Order No. PSC-00-1515-PAA-WU, issued August 21, 2000, in Docket No. 000333-WU; and Order No. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU.

Based on the foregoing, an acquisition adjustment shall not be approved because one has not been requested. Moreover, an acquisition adjustment cannot be determined at this time.

RATES AND CHARGES

Timberwood's current rates for water and wastewater service were approved by this Commission in a 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. The utility's approved rates and charges are as follows:

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

Gallonaage 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

Gallonaage Charge

Per 1,000 Gallons		
Residential	\$	1.42
(Maximum charge of 6,000 gallons)		
General Service		1.71

Meter Test Deposit

<u>Meter Size</u>	<u>Fee</u>
5/8" x 3/4"	\$20.00
1" and 1 1/2"	25.00
2" and over	Actual Cost

Miscellaneous Service Charges

	<u>Water</u>	<u>Wastewater</u>
Initial Connection	\$15.00	\$15.00
Normal Reconnection	\$15.00	\$15.00

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

Service Availability Charges

Water

Meter Installation Fee \$100.00

Wastewater

Plant Capacity Charge Residential-per ERC \$500.00

Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission).

Mink has not requested a change in the rates and charges of the utility. Accordingly, pursuant to Rule 25-9.044(1), Florida Administrative Code, Mink shall continue operations under the utility's existing tariff and shall continue to charge the rates and charges approved for the utility until authorized to change by this Commission in a subsequent proceeding.

The utility has filed a revised tariff reflecting the change in issuing officer due to the transfer. This tariff filing shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheet.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of assets, facilities, and Certificates Nos. 524-W and 459-S from Arbor Oaks I, LLC and Arbor Oaks II, LLC both Delaware

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Limited Liability Companies d/b/a Timberwood Utilities to Mink Associates I, LLC d/b/a Timberwood Utilities is hereby approved. It is further

ORDERED that the attachment and schedules appended hereto are incorporated herein by reference. It is further

ORDERED that Mink Associates I, LLC d/b/a Timberwood Utilities shall be responsible for future annual reports and the payment of all regulatory assessment fees starting with the year 2000. It is further

ORDERED that, as of March 23, 2000, rate base for the utility is \$7,770 for the water system and \$65,379 for the wastewater system. It is further

ORDERED that an acquisition adjustment shall not be approved. It is further

ORDERED that Mink Associates I, LLC d/b/a Timberwood Utilities shall continue operations under the utility's existing tariff and shall continue to charge the rates and charges approved for the utility until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the revised tariff reflecting the change in issuing officer due to the transfer shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheet. It is further

ORDERED that the provisions of this Order issued as proposed agency action shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 18th
day of June, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

SMC

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.

As identified in the body of this order, the Commission's action regarding the establishment of rate base and decision not to approve an acquisition adjustment are preliminary in nature. Any person whose substantial interests are affected by the actions proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 9, 2001. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the

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absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the Commission's final actions in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.

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ATTACHMENT A

TIMBERWOOD UTILITIES

PASCO COUNTY

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.

TIMBERWOOD UTILITIES
SCHEDULE OF WATER RATE BASE
AS OF MARCH 23, 2000

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$ 64,063	\$ 557	\$ 64,620
Land	0	0	0
Accumulated Depreciation	(23,553)	1,683	(21,870)
Contributions in Advance of Construction (CIAC)	(53,583)		(53,583)
Amortization of CIAC	<u>18,185</u>	<u>418</u>	<u>18,603</u>
WATER RATE BASE	<u>\$ 5,112</u>	<u>\$ 2,658</u>	<u>\$ 7,770</u>

TIMBERWOOD UTILITIES
SCHEDULE OF WATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>COMMISSION ADJUSTMENTS</u>
Utility Plant-in-Service	
1) To account for verified additions and retirements from February 1998 through March 2000	\$ 557
Accumulated Depreciation	
1) To recalculate depreciation based on service life pursuant to Rule 25-30.140	1,683
Contributions in Advance of Construction (CIAC)	
1) To account for CIAC from February 1998 through March 2000.	
Accumulated Amortization of CIAC	
1) To account for amortization of CIAC from February 1998 through March 2000	<u>418</u>
TOTAL ADJUSTMENT	<u>\$ 2,658</u>

TIMBERWOOD UTILITIES
SCHEDULE OF WASTEWATER RATE BASE
AS OF MARCH 23, 2000

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$ 195,232	\$ 737	\$ 195,969
Land	10,152	0	10,152
Accumulated Depreciation	(87,909)	3,539	(84,370)
Contributions in Advance of Construction (CIAC)	(95,165)	0	(95,165)
Amortization of CIAC	<u>38,376</u>	<u>417</u>	<u>38,793</u>
WASTEWATER RATE BASE	<u>\$ 60,686</u>	<u>\$ 4,693</u>	<u>\$ 65,379</u>

TIMBERWOOD UTILITIES
SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>COMMISSION ADJUSTMENTS</u>
Utility Plant-in-Service	
1) To account for verified additions and retirements from February 1998 through March 2000	\$ 737
Accumulated Depreciation	
1) To recalculate depreciation based on service life pursuant to Rule 25-30.140	3,539
Contributions in Advance of Construction (CIAC)	
1) To account for CIAC from February 1998 through March 2000.	
Accumulated Amortization of CIAC	
1) To account for amortization of CIAC from February 1998 through March 2000	<u>417</u>
TOTAL ADJUSTMENT	\$ <u>4,693</u>