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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: May 19, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Johnson, Kaproth, Walden) *AKIS*
Office of the General Counsel (Vining) *REV Mkt*

RE: Docket No. 050062-WS – 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.

AGENDA: 05/31/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050062.RCM.DOC

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.

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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 recommendation 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. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statute.

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.

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 it 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.

Discussion of Issues

Issue 1: Should 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 be approved?

Recommendation: Yes, the transfer of facilities and Certificates 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 should be approved effective the date of the Commission's vote. The utility should file an executed copy of the lease assignment for the land within 30 days of the issuance date of the Order approving the transfer. In addition, Silver Fox Utility should be required to provide a statement within 30 days of the order approving the transfer that it has established its books and records in compliance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), including separate general ledgers for the water and wastewater systems. Silver Fox Utility should be responsible for the annual reports and regulatory assessment fees (RAFs) for 2005 and the future. A description of the territory being transferred is appended as Attachment A. (Johnson, Walden, , Kaproth ,Vining)

Staff Analysis: 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.

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 sales 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 99-year lease agreement between Mink I and Mink II dated August 26, 2002. The utility should be required to file an executed copy of the lease assignment within 30 days of the issuance date of the Order approving the transfer. 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). Staff has contacted DEP 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, the Commission 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 for the Commission. 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. As a result of the purchase price being equal to rate base, there is no acquisition adjustment pursuant to Rule 25-30.0371, Florida Administrative Code.

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 NARUC USOA. Both the buyer and seller agreed that they understood the importance of source documentation and maintaining the utility books and records in accordance to NARUC USOA. Therefore, staff recommends that Silver Fox Utility be required to provide a statement within 30 days of the order approving the transfer 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 Commission records, the utility is current on its regulatory assessment fees and has filed an annual report for 2004 and prior years. Silver Fox Utility should be responsible for future annual reports and the payment of all regulatory assessment fees starting with the year 2005.

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Based on the above, staff recommends that the transfer of the facilities and Certificate Nos. 524-W and 459-S from the seller to the buyer is in the public interest and should be approved effective the date of the Commission's vote. The utility should file an executed copy of the lease assignment for the land within 30 days of the issuance date of the Order approving the transfer. In addition, Silver Fox Utility should be required to provide a statement within 30 days of the order approving the transfer 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 should 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.

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Issue 2: Should the rates and charges approved for this utility be continued?

Recommendation: Yes. Silver Fox Utility Company LLC d/b/a Timberwood Utilities should continue charging the rates and charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (Johnson)

Staff Analysis: 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.

The buyer has not requested a change in the rates and charges of the utility. Accordingly, staff recommends that, pursuant to Rule 25-9.044(1), Florida Administrative Code, the utility should continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. The utility has filed a revised tariff reflecting the change in issuing officer due to the transfer. If the Commission approves staff's recommendation, the tariff filing should be effective for services rendered or connections made on or after the stamped approval date.

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Issue 3: Should this docket be closed?

Recommendation: No. The docket should remain open pending receipt of the executed assignment of the lease agreement and a statement that the buyer has established its books and records in accordance with the NARUC USOA. Upon receipt of the statement and the executed lease assignment, the docket should be administratively closed. (Vining)

Staff Analysis: The docket should remain open pending receipt of the executed assignment of the lease agreement and a statement that the buyer has established its books and records in accordance with the NARUC USOA. Upon receipt of the statement and the executed lease assignment, the docket should be administratively closed.

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Attachment A

**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.

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

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Service Availability Charges

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