

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 24, 2005

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

FROM: Division of Economic Regulation (Clapp, Rieger, Romig)
Office of the General Counsel (Fleming)

RE: Docket No. 041394-WS – Joint application for transfer of CWS Communities LP d/b/a Crystal Lake Club, holder of Certificate Nos. 525-W and 454-S in Highlands County, to Mink Associates II, LLC d/b/a Crystal Lake Club Utilities.
County: Highlands

AGENDA: 04/05/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\041394.RCM.DOC

Case Background

CWS Communities LP d/b/a Crystal Lake Club (Crystal Lake, utility, or seller) is a Class C utility serving approximately 487 residential water and wastewater customers in Highlands County. The utility is in the Highlands Ridge Water Use Caution Area in the Southwest Florida Water Management District (SWFWMD). Crystal Lake's 2003 annual report shows total operating revenue of \$72,120 and \$59,325 for water and wastewater, respectively, and net operating income of \$3,876 for water and net operating loss of \$16,718 for wastewater.

The utility was granted Certificate Nos. 454-S¹ and 525-W² in 1989. Crystal Lake has been transferred three times.³

¹ Wastewater certificate issued pursuant to Order No. 21515, issued July 7, 1989, in Docket No. 881002-SU, In re: Application of Century Group, Inc. for a sewer certificate in Highlands County.

On May 27, 2003, CWS Communities LP (CWS) entered into a Mobile Home Park Purchase and Sale Agreement with Dockside Investors, L.L.C. (Dockside) for \$19 million. Dockside was created as a temporary, intermediate buyer. Upon closing on the transfer on September 3, 2003, all land was conveyed simultaneously and immediately by Dockside to Mink Associates I, LLC (Associates). That same day Dockside transferred all of the utility facilities to Mink Associates II, LLC d/b/a Crystal Lake Club Utilities (Mink or buyer).

On December 14, 2004, the seller and Mink submitted a joint application for transfer of Crystal Lake to Mink. No deficiencies were found in this application. Mink owns one other Public Service Commission regulated utility, Mink Associates II, LLC, d/b/a Timberwood Utilities, which is the subject of transfer Docket No. 050062-WS.

This recommendation addresses the transfer of the water and wastewater facilities from Crystal Lake to Mink. The Commission has jurisdiction to consider this matter pursuant to section 367.071, Florida Statutes.

² Water certificate issued pursuant to Order No. 22300, issued December 12, 1989, in Docket No. 891011-WU, In re: Application of Century Group, Inc. for original water certificate in Highlands County.

³ Century Group transferred the utility pursuant to Order No. 23974, issued January 9, 1991, in Docket No. 900527-WS, In re: Application for transfer of Certificates Nos. 525-W and 454-S from Century Group, Inc. to Crystal Lake Community, Limited Partnership, Diamond Valley Associates, Ltd., Friendly Village Lancaster Associates, Ltd. d/b/a Crystal Lake Club in Highlands County. The second transfer was approved pursuant to Order No. PSC-01-0428-PAA-WS, issued February 22, 2001, in Docket No. 991889-WS, In re: Application for transfer of Certificates Nos. 525-W and 454-S in Highlands County from Crystal Lake Club to CWS Communities LP d/b/a Crystal Lake Club. The third transfer was approved pursuant to Order No. PSC-02-1027-FOF-WS, issued July 29, 2002, in Docket No. 020101-WS, In re: Request for approval of transfer of majority organizational control of CWS Communities LP d/b/a Crystal Lake Club, holder of Certificate Nos. 525-W and 454-S in Highlands County, from CWS Communities Trust to CP Limited Partnership, known in Florida as Chateau Communities Limited Partnership.

Discussion of Issues

Issue 1: Should the transfer of facilities and Certificate Nos. 525-W and 454-S from CWS Communities LP d/b/a Crystal Lake Club to Mink Associates II, LLC d/b/a Crystal Lake Club Utilities be approved?

Recommendation: Yes. The transfer of facilities and Certificate Nos. 525-W and 454-S from CWS Communities LP d/b/a Crystal Lake Club to Mink Associates II, LLC d/b/a Crystal Lake Club Utilities is in the public interest and should be approved effective the date of the Commission's vote. Mink should file a recorded copy of the 99-year lease for the land for the water and wastewater facilities within 30 days of the issuance date of the Order approving the transfer. The buyer 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). Mink should be responsible for the annual reports and regulatory assessment fees (RAFs) for 2004 and the future. The territory being transferred is described in Attachment A. (Clapp, Rieger, Romig, K. Fleming)

Staff Analysis: As stated in the case background, Crystal Lake and Mink applied for a transfer of the utility facilities and certificates in Highlands County on December 14, 2004. The closing on the transfer of the utility facilities took place on September 3, 2003, subject to approval by the Commission.

All of the filing requirements for the application were completed on December 21, 2004. The application as filed is in compliance with the governing statute, section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment or transfer of certificates of authorization. The territory being transferred is described in Attachment A.

Pursuant to Rule 25-30.030, Florida Administrative Code, the application contained the requisite proof of noticing. No objections to the application were received by the Commission and the time for filing such has expired. According to the application, there are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, debts of the utility or leases pertaining to the utility operations at the time of the transfer.

The application contains a copy of an executed 99-year lease between the association and the Mink giving the utility long-term use of the land for the utility's water and wastewater facilities. The utility should file a recorded copy of the 99-year lease for the land for the water and wastewater facilities within 30 days of the issuance date of the Order approving the transfer. It should be noted that Crystal Lake owned the land during the 1993 staff assisted rate case; therefore, land was included in the utility's rate base. The prudence of the annual land rental will be addressed in the utility's next rate proceeding.

The application contains a statement that the buyer has performed a reasonable investigation of the utility system and found the overall condition of the water facilities to be in satisfactory condition and in general compliance with the requirements of the Florida

Department of Environmental Protection (DEP). Staff has contacted DEP and verified that there are no outstanding notices of violation.

According to the application, the transfer is in the public interest because the Crystal Lake Club customers will continue to receive the same quality service to which they are accustomed. The buyer is retaining the local management team that has operated the water and wastewater utility for the past ten years. The utility is staffed with trained and licensed personnel. In addition, the members of the buyer will provide funding to the utility as needed to provide the financial stability required to maintain the utility system in accordance with Commission standards and environmental regulations.

It should be noted that in a prior transfer, Docket No. 991889-WS, it was determined that the utility was not using the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) as required by Rule 25-30.115, Florida Administrative Code. The utility was ordered to set up its books using the NARUC USOA. In a related Docket No. 030998-WS⁴, it was determined that Chateau Properties, Inc. was not maintaining books and records for other CWS properties according to NARUC USOA. Staff has discussed with the buyer and the seller the rule requiring the use of NARUC USOA. The buyer stated it would comply with this requirement. Therefore, staff recommends that Mink 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.

Rate base was last set for the utility as of August 30, 1999.⁵ 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. According to the contract in this transfer, the buyer and seller agreed that the portion of the purchase price allocable or attributable to the utility property is to be the net book value of the utility assets as established by the Commission. In the absence of the Commission setting rate base in this docket, the buyer will rely on the rate base established by the Commission in 1999 and subsequent adjustments made by the seller. In addition, because the purchase price is an allocated amount equal to rate base, there will be no resulting acquisition adjustment pursuant to Rule 25-30.0371, Florida Administrative Code.

Staff discussed with the buyer and seller the need for the buyer to obtain from the seller all records pertaining to utility plant in service, depreciation, and contributions-in-aid-of-construction accounts for the water and wastewater utilities since rate base was last set so that the buyer will have supporting documentation for rate base for any future rate proceeding. They

⁴ Transfer/merger of the grandparent corporation, Chateau Communities, Inc., and the subsequent transfer of majority organization control of three of its utilities, was approved pursuant to Order No. PSC-05-0186 –PAA-WS, issued February 17, 2005, in Docket No. 030998-WS, In re: Joint application for approval of transfer of majority organizational control of Chateau Communities, Inc., grandparent of Del Tura Phase I, LLC d/b/a Del Tura Utilities, holder of Certificate No. 298-S in Lee County; CWS Communities LP d/b/a Palm Valley Utilities, holder of Certificate Nos. 277-W and 223-S in Seminole County; and CWS Communities LP, holder of Certificate No. 518-W in Lake County, to Hometown America, L.L.C.

⁵ Rate base was last set for the utility pursuant to Order No. PSC-01-0428-PAA-WS, issued February 22, 2001, in Docket No. 991889-WS, In Re: Application for transfer of Certificates Nos. 525-W and 454-S in Highlands County from Crystal Lake Club to CWS Communities LP d/b/a Crystal Lake Club.

understand the need to maintain this information and are making every effort to see that the buyer receives this information.

The 2003 and all previous annual reports were timely filed and regulatory assessment fees (RAFs) have been paid timely through December 31, 2003. No penalties, late fees, interest, or refunds are due or outstanding. The buyer has provided written assurance that it will be responsible for the 2004 and future RAFs and the 2004 and future annual reports.

Based on the above, staff recommends that the transfer of facilities and Certificate Nos. 525-W and 454-S from CWS Communities LP d/b/a Crystal Lake Club to Mink Associates II, LLC d/b/a Crystal Lake Club Utilities is in the public interest and should be approved effective the date of the Commission's vote. The utility should file a recorded copy of the 99-year lease for the land for the water and wastewater facilities within 30 days of the issuance date of the Order approving the transfer. The buyer 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. Mink should be responsible for the annual reports and regulatory assessment fees (RAFs) for 2004 and future RAFs and the 2004 and future annual reports. The territory being transferred is described in Attachment A.

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

Recommendation: Yes. The rates and charges approved for Crystal Lake should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (Clapp)

Staff Analysis: Rule 25-9.044(1), Florida Administrative Code, provides that in the 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.

Crystal Lake's current rates for water and wastewater service, customer deposits, service availability and other charges were approved by the Commission in the previous rate case.⁶ 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 the existing rates and charges for Crystal Lake be continued, pursuant to Rule 25-9.044(1), Florida Administrative Code, until authorized to change by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

⁶ The rates and charges were set pursuant to Order No. PSC-94-0243-FOF-WS, issued on March 4, 1994, in Docket No. 930572-WS, In re: Application for a Staff-Assisted Rate Case in Highlands County by Crystal Lake Club.

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Issue 3: Should this docket be closed?

Recommendation: No. The docket should remain open pending receipt of the recorded 99-year lease and a statement that it has established its books and records in compliance with the NARUC USOA, including separate general ledgers for the Mink water and wastewater systems. Upon receipt of the recorded lease and the statement, the docket should be administratively closed. (Fleming)

Staff Analysis: The docket should remain open pending receipt of the recorded 99-year lease and a statement that it has established its books and records in compliance with the NARUC USOA, including separate general ledgers for the Mink water and wastewater systems. Upon receipt of the recorded lease and the statement, the docket should be administratively closed.

MINK ASSOCIATES II, LLC d/b/a CRYSTAL LAKE CLUB UTILITIES
WATER AND WASTEWATER SERVICE AREA
DESCRIPTION OF TERRITORY SERVED

In Section 2, Township 34 South, Range 28 East

All that part of the Southeast 1/4 and the Southeast 1/4 of the Northeast 1/4 of Section 2, Township 34 South, Range 28 East, lying West of the A.C.L. Railroad right-of-way together with that part of lots 9 to 14 inclusive, of WARREN AND MONDAY'S SUBDIVISION as recorded in P.B. 1, Page 10, Highlands County, Florida, lying within the following described boundary.

Commence at the Southeast corner of Section 2, Township 34 South, Range 28 East; run thence North $1^{\circ} 08' 50''$ West along the line between Section 1 and 2 for 242.14 feet for a point of beginning, thence North $89^{\circ} 48' 08''$ West, 2042.29 feet; thence North $1^{\circ} 16' 18''$ West in and parallel with the West line of said Southeast 1/4 for 2352.93 feet to intersect the North line of said Southeast 1/4 (being also the South line of said WARREN AND MONDAY SUBDIVISION); thence run North $20^{\circ} 20' 23''$ West 899.56 feet to a point herein designated point "A" which is the Westerly end of a control line along Lake Denton; thence continue North $20^{\circ} 20' 23''$ West 30 feet, more or less, to the shore of Lake Denton, thence Easterly along the meanders of Lake Denton, 370 feet, more or less to intersect the North line of lot 9 of WARREN AND MONDAY SUBDIVISION; thence North $88^{\circ} 38' 32''$ East, 50.0 feet, more or less along said North line to a point of the aforesaid control line which bears North $68^{\circ} 29' 12''$ East, 417.65 feet from said point "A", thence continue North $88^{\circ} 38' 32''$ East along said North line of Lot 9, 626.48 feet to intersect the East line of Southwest 1/4 of Northeast 1/4, thence North $1^{\circ} 12' 34''$ West, 331.46 feet to the Northwest corner of Southeast 1/4 of Northeast 1/4, thence North $88^{\circ} 38' 48''$ East along North line of Southeast 1/4 of Northeast 1/4, 220.95 feet to the Westerly R/W line of the A.C.L. Railroad R/W, thence South $18^{\circ} 16' 58''$ East along said Westerly R/W, 3746.87 feet to the East line of Section 2; thence South $1^{\circ} 08' 50''$ East, along the section line 149.60 feet to the point of beginning. Lying in Section 2, Township 34 South, Range 28 East, Highlands County, Florida. Also a 50 foot easement whose centerline is described as beginning at a point 437.82 feet North and 2051.50 feet West of the Southeast corner of Section 2, Township 34 South, Range 28 East, Highlands County, Florida, run North $89^{\circ} 48' 08''$ West, 1548.40 feet, to the beginning of a 100 foot easement, thence continue North $89^{\circ} 48' 08''$ West, 300.0 feet to a point in the East right-of-way boundary of SR-17A.

SCHEDULE 1

Mink Associates II, LLC d/b/a Crystal Lake Club Utilities
 Monthly Service Rates
 Residential and General Service

Meter Sizes:	Base Facility Charge	
	Water	Wastewater
5/8" x 3/4"	\$ 2.78	\$ 3.63
3/4"	4.16	5.44
1"	6.94	9.06
1 1/2"	13.87	18.11
2"	22.19	28.99
3"	44.40	57.96
4"	69.37	90.57
6"	138.76	181.13
Charge Per 1,000 Gallons		
Residential	\$1.29	\$1.42*
General Service	\$1.29	\$1.71
*Maximum of 6,000 gallons		

Miscellaneous Service Charges

	Water	Wastewater
Initial Connection	\$15	\$15
Normal Reconnection	\$15	\$15
Violation Reconnection	\$15	Actual Cost
Premises Visit (in lieu of Disconnection)	\$10	\$10

Service Availability Charges

Meter Installation Fee	\$100
Water System Capacity Charge (per ERC)	\$375
Wastewater System Capacity Charge (per ERC)	\$700