

MEMORANDUM

October 13, 1998

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RECEIVED  
LEGAL SERVICES

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (LEGALING) *SRF YFS*

RE: DOCKET NO. 971456-WS - APPLICATION FOR TRANSFER OF CERTIFICATES NOS. 524-W AND 459-S IN PASCO COUNTY FROM B.D.C., INC. D/B/A TIMBERWOOD UTILITIES TO ARBOR OAKS I, LLC AND ARBOR OAKS II, LLC BOTH DELAWARE LIMITED LIABILITY COMPANIES D/B/A TIMBERWOOD UTILITIES.

PSC-98-1388-EDF-WS

Attached is an ORDER APPROVING TRANSFER, DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS, APPROVING CONTINUATION OF RATES AND NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING RATE BASE FOR PURPOSES OF THE TRANSFER AND DECISION NOT TO INCLUDE A POSITIVE ACQUISITION ADJUSTMENT IN THE CALCULATION OF RATE BASE, to be issued in the above-referenced docket.

(Number of pages in order - 16)

*See 2, 8*

B/O

SRF/lw

Attachment

cc: Division of Water and Wastewater (Johnson, Redemann)

I:971456OR.SRF

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Certificates Nos. 524-W and 459-S in Pasco County from B.D.C., Inc. d/b/a Timberwood Utilities to Arbor Oaks I, LLC and Arbor Oaks II, LLC both Delaware Limited Liability companies d/b/a Timberwood Utilities.

DOCKET NO. 971456-WS  
ORDER NO. PSC-98-1388-FOF-WS  
ISSUED: October 15, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER, DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS, APPROVING CONTINUATION OF RATES AND NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING RATE BASE FOR PURPOSES OF THE TRANSFER AND DECISION NOT TO INCLUDE A POSITIVE ACQUISITION ADJUSTMENT IN THE CALCULATION OF RATE BASE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the establishment of rate base for purposes of the transfer, and our decision not to include a positive acquisition adjustment in the calculation of rate base, 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.

BACKGROUND

B.D.C., Inc. d/b/a Timberwood Utilities (Timberwood or utility) is a Class C utility which provides water and wastewater

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service in Pasco County. According to the utility's 1997 annual report, it serves 160 water customers and 158 wastewater customers. In 1997, the utility had annual operating revenues of \$12,266 for water and \$24,532 for wastewater. The net operating losses were \$17,701 and \$10,409 for water and wastewater, respectively. The utility's facilities consist of one water treatment plant, one water transmission and distribution system, one wastewater treatment plant, and one wastewater collection system.

On November 5, 1997, Timberwood filed an application to transfer Certificate Nos. 524-W and 459-S from B.C.D., Inc. d/b/a Timberwood Utilities to Arbor Oaks I, LLC and Arbor Oaks II, LLC both Delaware Limited Liability companies d/b/a Timberwood Utilities (Arbor Oaks) pursuant to Section 367.071, Florida Statutes. Arbor Oaks purchased the Arbor Oaks Mobile Home Park which included the water and wastewater utility assets. The purchase price for the property, including the Timberwood Utilities was \$3,510,000.

Section 367.071, Florida Statutes, states in part that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without approval of the Commission. According to the application, the parties closed on the sale of the utility on or before October 15, 1997, which is an apparent violation of Section 367.071, Florida Statutes.

SHOW CAUSE

As stated above, Timberwood is in apparent violation of Section 367.071, Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest." Timberwood and Arbor Oaks entered into a Bill of Sale on October 15, 1997, whereby Arbor Oaks gained operational control of the facilities of the utility. Arbor Oaks has been operating the system providing water and wastewater service to customers of the utility since that time.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated, any provision of Chapter 367,

Florida Statutes. Timberwood appears to have violated Section 367.071(1), Florida Statutes, by failing to obtain the approval of the Commission before transferring to Arbor Oaks. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. See Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." *Id.* at 6.

The Bill of Sale makes the closing of the sale contingent upon our approval of the sale and issuance of certificates to Arbor Oaks. Failure of Timberwood to obtain our prior approval appears to be due to its belief that because the sale had not closed, it was not in violation of Section 367.071, Florida Statutes. We have reviewed the application and the sales agreement and, although Arbor Oaks is operating the utility, closing of the sale is conditioned upon our approval. Therefore, we do not find that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of a show cause proceeding. Therefore, Timberwood shall not be ordered to show cause for its violation of Section 376.071, Florida Statutes.

#### APPLICATION FOR TRANSFER OF CERTIFICATE

Except as previously discussed, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. The application contains \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Rule 25-30.037(2)(q), Florida Administrative Code, requires a utility to provide proof of ownership of the land upon which its facilities are located. The application contained a Warranty Deed that covers the entire Mobile Home Park. The owners of the Mobile Home Park also own the utility.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the

system being transferred. A description of the territory served by the utility is appended to this Order as Attachment A.

Arbor Oaks indicated that it has the technical and financial ability to operate the system. With regard to its technical ability, Arbor Oaks is a Limited Liability Company owned by Mr. and Mrs. Kurt Wallach, who have over twenty years of experience in owning and managing mobile home communities. The company will have a licensed operator for the utility. Regarding Arbor Oak's financial ability, it supplied a closing financial statement to our staff which shows that it has cash invested (equity) in the project equal to \$1,249,738. The statement indicates that approximately 36% of the company's total acquisition costs was paid by Arbor Oaks. We believe the owners possess the overall financial ability to operate the utility and that the assets of the new owner should be adequate to insure the continued operations of the utility. As stated previously, the annual report for 1997 shows that the consolidated annual operating revenue for the system was \$36,798.

The application states that the Company's representative has performed a reasonable investigation of the Timberwood utility systems. The facilities appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). DEP has informed us that there are no outstanding notices of violation against the utility.

The application contains a copy of the Bill of Sale and Assignment Agreement which includes the purchase price, terms of payment, and a list of the assets purchased and the liabilities assumed. According to the application, the purchase price of the utility is included in the purchase price paid for the Arbor Oaks Mobile Home Park, which was purchased for the sum of \$3,510,000 cash. Arbor Oak's has allocated \$629,200 of the purchase price for the utility system. The utility constitutes approximately 20% of the purchase price. Arbor Oaks financed the purchase with cash and proceeds for a first mortgage loan from Heller Financial, Inc., for the amount of \$2,360,000. This mortgage loan will encumber the real and personal property within the community, including the water and wastewater utility facilities. Based on the application, there are no developer agreements which Arbor Oaks is obligated to assume or fulfill. Also, the utility's 1997 regulatory assessment fees and annual report have been filed. Since ownership of the mobile home park was transferred to Arbor Oaks on October 15, 1997,

it will be responsible for the 1998 regulatory assessment fees. By letter dated September 8, 1998, Arbor Oaks confirmed that it would be responsible for the 1998 regulatory assessment fees and the filing of the 1998 annual report. In addition, there are no customer deposits, guaranteed revenue, contracts, developer agreements, customer advances, or debts of the utility independent of the first mortgage loan that will be placed upon the property in connection with the purchase.

For all of the above reasons, we find that the transfer of Certificate Nos. 524-W and 459-S in Pasco County from Timberwood Utilities to Arbor Oaks I, LLC and Arbor Oaks II, LLC is in the public interest and is approved to serve the territory described in Attachment A.

#### RATE BASE

Rate base was last established for Timberwood by Order No. 24640, issued on June 10, 1991, in Docket No. 900749-WS. That Order found rate base to be \$9,229 and \$92,836 for the water and wastewater systems, respectively, as of November 30, 1990. According to the application, rate base for the water and wastewater systems was \$7,314 and \$68,502, respectively, as of January 31, 1998.

An audit of Timberwood's books and records was conducted to determine rate base (net book value) as of January 31, 1998. Several adjustments have been made as a result of the audit report.

#### Utility Plant in Service

All three divisions of Timberwood (Timberwood Water, Timberwood Wastewater, and Arbor Oaks Mobile Home Park) share office space and office equipment in the mobile home community's clubhouse. The company allocates telephone and wastewater collection services equally between all three divisions. According to the utility's records, \$8,225 for additional office equipment was divided equally between two of the divisions. Because the cost of the additional equipment should be divided equally between the three divisions, the office equipment accounts have been reduced by \$1,371 for each of the systems. The related accumulated depreciation accounts have been reduced by \$549.

According to Timberwood, all assets are being transferred to Arbor Oaks. However, because certain assets (office equipment)

could not be located, plant has been reduced by \$449. The respective accumulated depreciation accounts have also been reduced by \$449. The combined adjustment to correct overstated plant results in a total decrease of \$1,820 to both the water and wastewater plant accounts, and a total reduction of \$998 for the related accumulated depreciation accounts.

The second adjustment involves unsupported wastewater plant and supported plant not recorded. Timberwood recorded \$426 for additional treatment and disposal equipment in 1991, but was unable to provide invoices for the equipment. The wastewater plant account has been reduced by \$426, to remove unsupported plant. Accordingly, the related accumulated depreciation account has been reduced by \$173.

During the audit, an invoice was found in the amount of \$4,000 for a chlorine contact chamber that was not recorded in the utility's books. Therefore, the wastewater plant account has been increased by \$1,000; the related accumulated depreciation account has been increased by \$156.

Rule 25-30.140(4)(b), Florida Administrative Code, requires utilities to maintain depreciation rates as prescribed by the Commission. According to the audit, the utility is not in compliance with Order No. 24640, which established the balances for organization cost, Account 354 (structures and improvements), accumulated amortization, and accumulated depreciation and the prescribed depreciation rates for the accounts. The Order authorized use of a prescribed rate of 3.17 percent for amortization of Account 301 (organization costs), and a prescribed rate of 3.70 percent for the depreciation of Account 354 (structures and improvements). The utility used lower depreciation rates than were established by the Order. Therefore, the accumulated amortization balance for Account 301 (organization costs) has been decreased by \$238. Further, the accumulated depreciation balance for Account 354 (structures and improvements) has been decreased by \$1,590.

#### Accumulated Depreciation

Accumulated depreciation has been recalculated for water and wastewater to correspond to the audit adjustments to utility plant in service. Accumulated depreciation has been decreased by \$760 for the water system; accumulated depreciation has been increased by \$575 for the wastewater system.

Acquisition Adjustment

An acquisition adjustment results when the purchase price of a utility differs from the rate base. In the absence of extraordinary circumstances, it has been Commission practice that the subsequent purchase of a utility at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary. Further, an acquisition adjustment was not requested by the applicant. Accordingly, an acquisition adjustment has not been included in the calculation of rate base.

Based on the foregoing rate base for Timberwood is found to be \$6,254 for the water system and \$69,681 for the wastewater system as of January 31, 1998. Our calculation of rate base for the water and wastewater systems is shown on Schedules 1 and 3, respectively. Adjustments to rate base for the water and wastewater systems are shown on Schedules 2 and 4, respectively.

The rate base calculation is used purely to establish the net book value of the utility at the time of the transfer. It does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

RATES AND CHARGES

The utility's approved water and wastewater rates were effective February 1, 1997, in a administrative price index and pass through proceeding. Rule 25-9.044(1), Florida Administrative Code, provides that:

In cases 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)...

Arbor Oaks has not requested a change in the rates and charges of the utility, and we see no reason to change them at this time. Therefore, Arbor Oaks shall continue charging the rates and charges approved in Timberwood's tariff until authorized to change by this Commission in a subsequent proceeding.



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CLOSING THE DOCKET

If there are no timely protests filed by a substantially affected person to the proposed agency action portions of this Order, no further action will be required and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Certificate Nos. 524-W and 459-S from B.D.C., Inc. d/b/a Timberwood Utilities to Arbor Oaks I, LLC and Arbor Oaks II, LLC, both Delaware Limited Liability Companies d/b/a Timberwood Utilities 1717 20th Street, Suite 105, Vero Beach, Florida 32960, is hereby approved. It is further

ORDERED that a show cause proceeding shall not be initiated against B.D.C., Inc. d/b/a Timberwood Utilities for violation of Section 367.071, Florida Statutes. It is further

ORDERED that Arbor Oaks I, LLC and Arbor Oaks II, LLC both Delaware Limited Liability companies d/b/a Timberwood Utilities shall be responsible for the 1998 regulatory assessment fees and the filing of the 1998 annual report.

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the schedules and attachment attached hereto are by reference incorporated herein. It is further

ORDERED that rate base for transfer purposes, reflecting net book value, is \$6,254 for water and \$69,681 for wastewater system as of January 31, 1998.

ORDERED that no positive acquisition adjustment shall be made. It is further

ORDERED that Arbor Oaks I, LLC and Arbor Oaks II, LLC both Delaware Limited Liability companies d/b/a Timberwood Utilities, shall continue charging the rates and charges in B.D.C., Inc. d/b/a Timberwood Utilities' tariff until authorized to change by this Commission in a subsequent proceeding. It is further

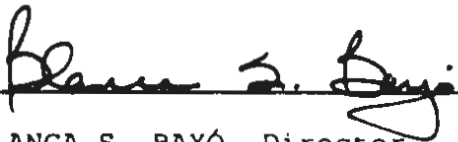
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ORDERED that all rates and charges shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective 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 or Judicial Review" attached hereto. It is further

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

By ORDER of the Florida Public Service Commission this 15th day of October, 1998.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

SRF

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, our action involving the establishment of rate base for purposes of the transfer, and our decision not to include a positive acquisition adjustment in the calculation of rate base are preliminary in nature. Any person whose substantial interests are affected by the action 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 November 5, 1998. 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 absence of such a petition, this order shall become effective on the date subsequent to the above date.

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.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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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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 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 January 31, 1998**

<b><u>DESCRIPTION</u></b>	<b><u>BALANCE PER UTILITY</u></b>	<b><u>COMMISSION ADJUSTMENTS</u></b>	<b><u>BALANCE PER COMMISSION</u></b>
Utility Plant in Service	\$ 65,883	(\$1,820)	(1) \$64,063
Land	0	0	0
Plant Held for Future Use	0	0	0
Accumulated Depreciation	(20,148)	760	(2) (19,388)
Contributions-in-aid-of-Construction	(53,583)	0	(53,583)
CIAC Amortization	<u>15,162</u>	<u>0</u>	<u>15,162</u>
<b>TOTAL</b>	<b><u>\$ 7,314</u></b>	<b><u>\$(1,060)</u></b>	<b><u>\$ 6,254</u></b>

SCHEDULE NO. 2

TIMBERWOOD UTILITIES WATER SERVICE

SCHEDULE OF WATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>		<u>ADJUSTMENT</u>
<b>Utility Plant in Service</b>		
A. Reduction to plant to reflect reallocated share		(\$1,371)
B. Reduction to reflect retired plant		<u>(\$449)</u>
	TOTAL (1)	<u>(\$1,820)</u>
 <b>Accumulated Depreciation</b>		
A. Adjustment related to reallocated plant cost		\$549
B. Adjustment related to retired plant		\$449
C. Adjustment related to retired plant		<u>(\$238)</u>
	TOTAL (2)	<u>\$760</u>

SCHEDULE NO. 3

TIMBERWOOD UTILITIES

SCHEDULE OF WASTEWATER RATE BASE

As of January 31, 1998

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$193,478	\$1,754 (1)	\$195,232
Land	10,152	0	2,610
Accumulated Depreciation	(71,903)	(575) (2)	(72,478)
Contributions-in- aid-of-Construction	(95,165)	0	(95,165)
CIAC Amortization	<u>31,940</u>	<u>0</u>	<u>31,940</u>
TOTAL	<u>\$ 68,502</u>	<u>\$ 1,179</u>	<u>\$69,681</u>



**SCHEDULE NO. 4**

**TIMBERWOOD UTILITIES**

**SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS**

<b><u>EXPLANATION</u></b>	<b><u>ADJUSTMENT</u></b>
<b>Utility Plant in Service</b>	
A. Reduction to plant to reflect reallocated share	(\$1,371)
B. Reduction to reflect retired plant	(\$449)
C. Reduction to reflect unsupported plant	(\$426)
D. Increase to reflect supported plant	<u>\$4,000</u>
TOTAL (1)	<u>\$1,754</u>
<b>Accumulated Depreciation</b>	
A. Adjustment related to reallocated plant	\$549
B. Adjustment related to retired plant	\$449
C. Adjustment related to unsupported plant	\$173
D. Adjustment related to supported plant	(\$156)
E. Adjustment to reflect the prescribe depreciation rate	<u>(\$1,590)</u>
TOTAL (2)	<u>(\$575)</u>