



Public Service Commission
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PSC

DATE: MAY 17, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (CIBULA, GERVASI) *DB*
DIVISION OF ECONOMIC REGULATION (FLETCHER, MERCHANT) *3/13*

RE: DOCKET NO. 980992-WS - COMPLAINT BY D.R. HORTON CUSTOM HOMES, INC. AGAINST SOUTHLAKE UTILITIES, INC. IN LAKE COUNTY REGARDING COLLECTION OF CERTAIN AFPI CHARGES. *TJH*

DOCKET NO. 981609-WS - EMERGENCY PETITION BY D.R. HORTON CUSTOM HOMES, INC. TO ELIMINATE AUTHORITY OF SOUTHLAKE UTILITIES, INC. TO COLLECT SERVICE AVAILABILITY CHARGES AND AFPI CHARGES IN LAKE COUNTY.

AGENDA: MAY 29, 2001 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: SETTLEMENT AGREEMENT BECOMES NULL AND VOID UNLESS APPROVED WITHOUT MODIFICATION BY MAY 31, 2001.

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981609.RCM

CASE BACKGROUND

Southlake Utilities, Inc. (Southlake or utility) is a Class C utility in Lake County. According to its 1999 annual report, the utility provides service to 589 water and 498 wastewater customers.

On August 4, 1998, D.R. Horton Custom Homes, Inc. (Horton), a developer in Southlake's territory, filed a complaint regarding the utility's collection of allowance for funds prudently invested (AFPI) charges. On November 16, 1998, Horton also filed a petition to immediately eliminate the authority of Southlake to collect service availability and AFPI charges. By Order No. PSC-99-0027-PCO-WS, issued January 4, 1999, the Commission initiated an investigation into the utility's AFPI and service availability charges and held these charges subject to refund.

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By Order No. PSC-00-0917-SC-WS, issued May 9, 2000, the Commission ordered the utility to show cause as to why it should not be fined for collecting wastewater AFPI for 186 equivalent residential connections (ERCs) in excess of the 376 ERC limit authorized by Order No. PSC-96-1082-FOF-WS, in apparent violation of that Order. The Commission also ordered Southlake to provide security for the service availability charges held subject to refund in the event of a protest. Moreover, by proposed agency action, the Commission discontinued water plant capacity charges and AFPI charges, reduced the amount of wastewater plant capacity charges collected, and required refunds. On May 30, 2000, the utility timely requested a hearing on the show cause portion of the Order. The utility also filed a protest to the proposed agency action portion of the Order and requested a formal hearing. Additionally, by Order No. PSC-00-1518-SC-WS, issued August 22, 2000, the Commission ordered the utility to show cause as to why it should not be fined for its apparent failure to file the security required by Order No. PSC-00-0917-SC-WS. On September 13, 2000, the utility responded to Order No. PSC-00-1518-SC-WS and requested a hearing. By Order No. PSC-00-1461-PCO-WS (Order Establishing Procedure), issued August 11, 2000, controlling dates were established for these dockets. An administrative hearing was scheduled in this matter for March 13 and 14, 2001.

On September 18, 2000, Southlake filed a Motion for Extension of Time, requesting a change in certain filing dates which did not necessitate a change to the prehearing or hearing dates. The motion was granted by Order No. PSC-00-1817-PCO-WS, issued October 4, 2000. On November 13, 2000, Southlake filed a second Motion for Extension of Time, requesting a change to the prehearing and hearing dates and testimony filing dates. On November 21, 2000, Horton timely filed its response to Southlake's motion, opposing the change to the hearing dates. By Order No. PSC-00-2267-PCO-WS, issued November 29, 2000, the prehearing and hearing dates were changed to April 30, 2001, and May 10 and 11, 2001, respectively, in order to accommodate the Commission calendar. The utility's Motion for Extension of Time was rendered moot by the issuance of that Order.

On April 24, 2001, the parties filed a Joint Motion for Continuance of the hearing until August 24, 2001, at the latest, and to reschedule the prehearing conference accordingly. In support of their motion, the parties stated that they believe that

they have reached a settlement of their dispute which will address their concerns. The parties further stated that they were in the process of drafting settlement documents and that they anticipated that the settlement agreement would be completed, executed, and filed on or before May 7, 2001.

By Order No. PSC-01-1034-PCO-WS, issued April 27, 2001, the Joint Motion for Continuance was granted. In the event that a settlement agreement is not approved beforehand, August 2, 2001, at 1:30 p.m., has been reserved for a prehearing conference in Tallahassee, and August 24, 2001, has been reserved for a hearing in this matter, in or around the utility's service area, with a service hearing scheduled for 9 a.m. that morning.

On May 7, 2001, as anticipated by their Joint Motion for Continuance, the parties filed a Joint Motion for Approval and Adoption of Settlement Agreement in which they state that they have completed a negotiated settlement of their dispute. An original of the Settlement Agreement (Agreement) was attached to the motion. This recommendation addresses whether the Joint Motion for Approval and Adoption of Settlement Agreement should be granted.

The Commission has jurisdiction pursuant to Sections 367.091 and 367.101, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the parties' Joint Motion for Approval and Adoption of Settlement Agreement be granted?

RECOMMENDATION: Yes. The Joint Motion for Approval and Adoption of Settlement Agreement should be granted and the Settlement Agreement (Agreement) should be approved in its entirety. The Agreement states that if the Commission does not approve Southlake's Application for Transfer of Majority Organizational Control (Transfer Application) filed in Docket No. 010507-WS, the Agreement will become null and void. The effective date for the Agreement should be the last to occur of the following: (1) the date of expiration of all protests and appeals of the Commission Order approving the Agreement; and (2) the date of the expiration

of all protests and appeals of the Commission Order approving the Transfer Application. Pursuant to the terms of the Agreement, the amount of the AFPI refunds should be set as of the effective date, and interest on the AFPI refunds should commence accruing 30 days after the effective date. The rate of the interest should be as set forth in Rule 25-30.360, Florida Administrative Code. Southlake should provide the refunds in exchange for and conditioned upon receipt of releases within 90 days of the effective date. Moreover, consistent with the final approval of the Agreement, Southlake's water and wastewater AFPI Tariff Sheets Nos. 39 and 36 should be canceled. The appropriate prospective water plant capacity charge should be \$433 per residential equivalent residential connection (ERC) with a 1.24 per gallon charge for all others, and the appropriate prospective wastewater plant capacity charge should be \$970 per residential ERC with a \$3.23 per gallon charge for all others. The utility's water Tariff Sheet No. 31.0 and wastewater Tariff Sheet No. 28.0 should be revised as discussed in staff's analysis below. The utility should file the appropriate revised tariff sheets within 10 days of the effective date of the Agreement. Staff should be given administrative authority to approve the revised tariff sheets upon staff's verification that the tariff is consistent with the Commission's decision. If the revised tariff sheets are filed and approved, the tariff sheets should become effective on or after the stamped approval date. Within 20 days of the Commission's decision made at the agenda conference, the utility should provide notice of the Commission's decision to all persons in the service area who are affected by the prospective water and wastewater plant capacity charges, the Commission's decision on the refunds, and the discontinuance of Southlake's AFPI charges. The notice should be approved by Commission staff prior to distribution. The utility should provide proof that the appropriate customers or developers have received notice within ten days of the date of the notice.
(GERVASI, FLETCHER)

STAFF ANALYSIS: As stated in the case background, on May 7, 2001, Horton and Southlake (the parties) filed a Joint Motion for Approval and Adoption of Settlement Agreement in which they state that they have completed a negotiated settlement of their dispute. An original of the Settlement Agreement (Agreement) was attached to the motion and is appended to this recommendation as Attachment A.

The Agreement is contingent upon the Commission's approval and shall become null and void in the event that it is not so approved without modification on or before May 31, 2001.

Staff has considered whether it is in the public interest for the Commission to approve the Agreement. The following is staff's analysis of each of the major provisions of the Agreement which we believe merit discussion. Further, staff notes that consistent with the Agreement, certain follow-up actions on the part of the utility are a fall-out result of the Agreement. These actions will also be discussed below.

AFPI Refunds

The parties believe that a fair, just, and reasonable amount of refunds of AFPI charges to all developers in order to resolve the dispute is a total of \$403,614.79. The \$403,614.79 amount represents the maximum amount of refunds of AFPI charges, including true-up charges and interest, to be made by Southlake. The amounts to be refunded to each developer are set forth on Exhibit A of the Agreement. Only the developers listed on Exhibit A are entitled to AFPI refunds and only in the amounts set forth on Exhibit A. Specifically, as set forth on Exhibit A, Southlake shall make an AFPI refund of \$41,530.64 to Horton.

Staff notes that according to the prefiled direct testimony of utility witness John F. Guastella, the \$403,614.79 amount was calculated based on the utility's recalculation of AFPI charges for an error made in the Commission's calculation of the existing tariff AFPI charges for wastewater. Mr. Guastella states that Order No. PSC-96-1082-FOF-WS, issued August 22, 1996, utilized an erroneous wastewater plant capacity. Specifically, Mr. Guastella asserts that a capacity of 300,000 gallons per day (gpd) should have been utilized to calculate the AFPI charges, instead of the 164,750 gpd capacity that was used.

Staff notes that pursuant to Order No. PSC-96-1082-FOF-WS and the existing tariffs for AFPI charges, the refund would amount to \$555,242.36. Nevertheless, without taking a position on whether Mr. Guastella's assertions are correct, staff believes that the \$403,614.79 amount is reasonable and in the public interest due to the significant amount that would be expended in order to consider this issue at an administrative hearing. For this reason, coupled with the present uncertainty of what the final positions would be

based upon a fully developed record, staff recommends that the agreed-upon amount of AFPI refunds should be approved. Consequently, staff also recommends that Southlake's existing water and wastewater AFPI Tariff Sheets Nos. 39 and 36 should be canceled.

Service Availability Charge Refunds

This provision provides that Southlake has properly collected the service availability charges authorized by the Commission in Order No. 24564, issued May 24, 1991, in Docket No. 900738-WS, and directed by the Commission in Order No. PSC-99-0027-PCO-WS to be collected subject to refund. The entities set forth on Exhibit B of the Agreement have not paid their full plant capacity charges and have an amount outstanding as set forth on Exhibit B. The parties have determined that Southlake's service availability charges should not be reduced and, accordingly, that it is neither appropriate nor correct to have any refunds of service availability charges made. In addition, Southlake should make no refunds of CIAC, including no refunds of service availability charges, to anyone, including Horton. Further, Southlake should make no reassessments of plant capacity charges to residential customers pursuant to Water Tariff Sheet No. 31.0 and Wastewater Tariff Sheet No. 28.0 for structures existing on the date of the execution of the Agreement. Lastly, in the event that the entities listed on Exhibit B have not paid the outstanding amounts listed on Exhibit B at the time for the AFPI refund, their respective AFPI refunds should be reduced by their respective outstanding plant capacity charge.

Based on staff's analysis of the appropriate plant capacity charges, discussed below, and our review of this provision, staff believes the provision is reasonable and recommends that it should be approved.

Plant Capacity Charges

Charges from December 15, 1998, through the Effective Date

This provision provides that, from December 15, 1998, through the effective date of its prospective charges, Southlake's existing water plant capacity charges of \$420 per residential ERC or \$1.20 per gallon for all others and Southlake's existing wastewater plant capacity charge of \$775 per residential ERC or \$2.58 per gallon for

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all others were appropriate. Staff believes this provision is reasonable because our analysis below indicates that the prospective charges are higher than the existing charges.

Charges following the Effective Date

The parties believe that Southlake's existing plant capacity charges must be increased on a prospective basis in order for Southlake's net CIAC to reach seventy-five percent (75%) of net plant at system buildout. Until changed by the Commission in a future proceeding, the parties have agreed that it is appropriate for Southlake to charge and collect a new water plant capacity charge of \$433 per residential ERC with a 1.24 per gallon charge for all others and a new wastewater plant capacity charge of \$970 per residential ERC with a \$3.23 per gallon charge for all others. Further, the parties have agreed that the Commission's investigation of Southlake's service availability charges and AFPI charges shall be completed with its approval of this Agreement and confirmation that the terms of this Agreement have been completed.

Based on staff's preliminary positions on issues in our Prehearing Statement filed on April 12, 2001, we calculated the same charges as the parties have reflected in this provision. Rule 25-30.580, Florida Administrative Code, states:

A utility's service availability policy shall be designed in accordance with the following guidelines:

- (1) The maximum amount of contributions-in-aid-of-construction, net of amortization, should not exceed 75% of the total original cost, net of accumulated depreciation, of the utility's facilities and plant when the facilities and plant are at their designed capacity;
- and (2) The minimum amount of contributions-in-aid-of-construction should not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and sewage collection systems.

Based on our analysis, these charges comply with Rule 25-30.580, Florida Administrative Code. Therefore, staff believes this provision is reasonable and recommends that it should be approved.

GPD per ERC Factors

This provision provides that the water plant capacity charge is based upon an average day design of 350 gpd per ERC and that the wastewater plant capacity charge is based upon an average day design of 300 gpd per ERC. Rule 25-30.515(8), Florida Administrative Code, states that an ERC is 350 gpd. Further, the existing water and wastewater charges are based on 350 gpd per ERC and 300 gpd per ERC, respectively. Based on the above, staff believes these gpd per ERC factors are reasonable, recommends that this provision should be approved.

Penalties

The Agreement states that Southlake has incurred extensive costs in this matter and has prepared and provided an in-depth analysis of its service availability and AFPI charges. The Agreement further states that Southlake has cooperated with the parties and staff in a collective effort to determine the correct level of charges and refunds and to reach a fair, just, and reasonable result. Moreover, the Agreement states that Southlake did not intend to violate Commission orders and acted in good faith to try to provide security for the potential refund. Therefore, the parties have agreed that Southlake shall not pay any penalties in this matter.

By Order No. PSC-00-0917-SC-WS, the Commission ordered the utility to show cause as to why it should not be fined \$5,000 for collecting 186 ERCs in excess of the 375 ERC limit for wastewater authorized by, and in apparent willful violation of, Order No. PSC-96-1082-FOF-WS. Additionally, by Order No. PSC-00-1518-SC-WS, the Commission denied the utility's request for a corporate undertaking as security for the utility's AFPI and service availability charges held subject to refund pursuant to Order No. PSC-00-0917-SC-WS, and ordered the utility to show cause as to why it should not be fined \$500 per day for its failure to provide adequate security as required by, and in apparent willful violation of, that Order. Because the utility requested a hearing on these issues, these issues were to be included in the hearing scheduled in this matter.

Although staff questions why Southlake was unable to provide the required security, staff agrees that Southlake has incurred substantial costs in this matter. Staff notes that Southlake has agreed to reimburse Horton \$66,500 of Horton's costs, which

includes Horton's attorneys' fees incurred in these dockets. Staff also notes that Southlake has provided ample data concerning its service availability and AFPI charges in these dockets, and agrees that Southlake has cooperated with Horton and with staff in a collective effort to determine the correct level of charges and refunds in order to reach a fair, just, and reasonable result. Moreover, as noted below, Southlake's Application for Transfer of Majority Organizational Control is pending in Docket No. 010507-WS. Assuming that the Transfer Application is granted, staff does not believe that the new majority shareholder should be required to pay a fine for the prior owner's apparent violations. Based upon the information provided to staff, staff believes that the new majority shareholder will comply with the rules and orders of this Commission on an ongoing basis. For these reasons, staff recommends that this provision of the Agreement should be approved and that the utility should not be required to pay any penalties associated with this matter.

Transfer Application

An Application for Transfer of Majority Organization Control of Southlake (Transfer Application) has been filed and is being processed in Docket No. 010507-WS. The parties have made the Agreement contingent upon the Commission's approval of that Transfer Application. If the Transfer Application is not approved, the Agreement becomes null and void. Therefore, staff recommends that the approval of the Agreement should be made contingent upon the Commission's subsequent approval of the Transfer Application. The Transfer Application is currently scheduled to be placed on the August 7, 2001, agenda conference.

Effective Date

The effective date for the Agreement is defined therein as the last to occur of the following: (1) the date of expiration of all protests and appeals of the Commission Order approving the Agreement; and (2) the date of the expiration of all protests and appeals of the Commission Order approving the Transfer Application. Staff recommends that the effective date as defined in the Agreement should be approved.

Date of Refund and Interest

The parties have agreed that the amount of the AFPI refunds shall be set as of the effective date, and that interest on the AFPI refunds shall commence accruing 30 days after the effective date. The rate of the interest shall be as set forth in Rule 25-30.360, Florida Administrative Code. Southlake shall provide the refunds in exchange for and conditioned upon receipt of releases within 90 days of the effective date.

Based on our review, staff believes this provision for refunds complies with Rule 25-30.360, Florida Administrative Code. As such, staff believes this provision is reasonable recommends that it should be approved.

Tariff Sheets

The parties have agreed that Southlake's tariff sheets shall not be revised in a manner which requires Southlake to make refunds of service availability charges based upon lower than anticipated water and wastewater usage.

Staff does not take issue with this provision. However, staff believes that it is appropriate for the tariff to specify that residential customers cannot be reassessed. Consistent with the Agreement, any possible reassessments should only be made to nonresidential structures that did not exist prior to the date of execution of the Agreement. Therefore, staff recommends that the provision for plant capacity charges of Southlake's current water and wastewater tariff, Sheets Nos. 31.0 and 28.0, respectively, should be revised. Specifically, the first sentence in the second paragraph of the tariff should be changed to reflect the following wording: "If the experience of the **non-residential** Contributor after twelve months of actual usage exceeds the estimated gallons on which the plant capacity charges are computed, the utility shall have the right to collect additional contributions-in-aid-of-construction." (Emphasis added) However, consistent with the Agreement, any possible reassessments should only be made to non-residential structures that are constructed after the effective date of the Agreement.

The utility should file the appropriate revised tariff sheets within 10 days of the effective date of the Order arising from this recommendation. Staff should be given administrative authority to

approve the revised tariff sheets upon staff's verification that the tariff is consistent with the Commission's decision. If the revised tariff sheets are filed and approved, the tariff sheets should become effective on or after the stamped approval date. Within 20 days of the Commission's decision made at the agenda conference, the utility should provide notice of the Commission's decision to all persons in the service area who are affected by the prospective water and wastewater plant capacity charges and the discontinuance of Southlake's AFPI charges. The notice should be approved by Commission staff prior to distribution. The utility should provide proof that the appropriate customers or developers have received noticed within ten days of the date of the notice. Staff notes that the above tariff and noticing follow-up actions by the utility are fall-out results of the Agreement.

Other Issues

The parties have agreed that the determination of all other issues not resolved by the Agreement shall be reserved and may be raised in future Commission proceedings. These issues include, but are not limited to: 1) the time when the plant sites were placed into service; 2) the internal company costs (not contributed) related to mains installed or contributed by developers; 3) the appropriate land balances for Southlake; 4) the levels of CIAC as of December 31, 1998; 5) the reclassification of the unpaid AFPI refund to the Southlake Community Foundation from CIAC to equity; and 6) the net book value of Southlake's systems as of December 31, 1998.

Staff believes that the above issues may be properly raised in future proceedings. Therefore, staff believes this provision is reasonable and recommends that it should be approved.

Conclusion

Based on all of the above, staff recommends that the Joint Motion for Approval and Adoption of Settlement Agreement should be granted and the Settlement Agreement should be approved in its entirety. The Agreement states that if the Commission does not approve the Transfer Application, the Agreement will become null and void. The effective date for the Agreement should be the last to occur of the following: (1) the date of expiration of all protests and appeals of the Commission Order approving the Agreement; and (2) the date of the expiration of all protests and

appeals of the Commission Order approving the Transfer Application. Pursuant to the terms of the Agreement, the amount of the AFPI refunds should be set as of the effective date, and interest on the AFPI refunds should commence accruing 30 days after the effective date. The rate of the interest should be as set forth in Rule 25-30.360, Florida Administrative Code. Southlake should provide the refunds in exchange for and conditioned upon receipt of releases within 90 days of the effective date.

Moreover, consistent with the final approval of the Agreement, Southlake's water and wastewater AFPI Tariff Sheets Nos. 39 and 36 should be canceled. The appropriate prospective water plant capacity charge should be \$433 per ERC with a 1.24 per gallon charge for all others, and the appropriate prospective wastewater plant capacity charge should be \$970 per residential ERC with a \$3.23 per gallon charge for all others. Further, the utility's water Tariff Sheet No. 31.0 and wastewater Tariff Sheet No. 28.0 should be revised as discussed above. The utility should file the appropriate revised tariff sheets within 10 days of the effective date of the Agreement. Staff should be given administrative authority to approve the revised tariff sheets upon staff's verification that the tariff is consistent with the Commission's decision. If the revised tariff sheets are filed and approved, the tariff sheets should become effective on or after the stamped approval date. Within 20 days of the Commission's decision made at the agenda conference, the utility should provide notice of the Commission's decision to all persons in the service area who are affected by the prospective water and wastewater plant capacity charges, the Commission's decision on the refunds, and the discontinuance of Southlake's AFPI charges. The notice should be approved by Commission staff prior to distribution. The utility should provide proof that the appropriate customers or developers have received notice within ten days of the date of the notice.

ISSUE 2: Should these dockets be closed?

RECOMMENDATION: No. These dockets should remain open pending the Commission's decision in Docket No. 010507-WS, concerning Southlake's Transfer Application. Provided the Transfer Application is approved, staff will verify that Southlake has filed revised tariff sheets consistent with the Commission's decision and that the utility has made the proper refunds of AFPI charges. Upon expiration of the protest period, if no timely protest is received, the Order should become final and effective upon the issuance of a Consummating Order. Provided the Transfer Application is approved, upon staff's verification that the utility's revised tariff is consistent with the Commission's decision and that the proper refunds have been made, these dockets should be closed administratively. (GERVASI, FLETCHER)

STAFF ANALYSIS: These dockets should remain open pending the Commission's decision in Docket No. 010507-WS, concerning Southlake's Transfer Application. Provided the Transfer Application is approved, staff will verify that Southlake has filed revised tariff sheets consistent with the Commission's decision and that the utility has made the proper refunds of AFPI charges. Upon expiration of the protest period, if no timely protest is received, the Order should become final and effective upon the issuance of a Consummating Order. Provided the Transfer Application is approved, upon staff's verification that the utility's revised tariff is consistent with the Commission's decision and that the proper refunds have been made, these dockets should be closed administratively.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into this 7th day of May, 2001, by and between D. R. Horton Custom Homes, Inc., a Delaware corporation, ("Horton"), and Southlake Utilities, Inc., a Florida corporation, ("Southlake").

WHEREAS, Southlake provides water and wastewater service in Lake County, Florida, pursuant to Florida Public Service Commission ("Commission") Certificate Nos. 533-W and 464-S; and

WHEREAS, Horton developed property in Southlake's certificated service area and paid service availability charges and Allowance for Funds Prudently Invested ("AFPI") charges to Southlake for Horton's developments; and

WHEREAS, a dispute subsequently arose over the amounts of Southlake's service availability charges and AFPI charges, and Horton filed the following two actions with the Commission: (1) a Complaint by D. R. Horton Custom Homes, Inc. against Southlake Utilities, Inc. in Lake County regarding collection of certain AFPI charges, Docket No. 980992-WS; and (2) an Emergency Petition by D.R. Horton Custom Homes, Inc. to eliminate authority of Southlake Utilities, Inc. to collect service availability charges and AFPI charges in Lake County, Docket No. 981609-WS; and

WHEREAS, the Commission initiated an investigation into Southlake's service availability charges and AFPI charges in Docket No. 981609-WS; and

WHEREAS, the parties have conducted extensive and costly investigations, including Southlake's employing highly qualified consultants who audited Southlake's records, performed analysis of the upcoming growth in Southlake's service area, reviewed the plant capacities and associated costs needed to satisfy the future demands for service in Southlake's service area, and determined the appropriate service availability charges, levels of contributions-in-aid-of-construction ("CIAC"), the amounts of refunds, and the identities of the recipients of refunds; and

WHEREAS, the parties believe that they have reached an accurate and correct resolution of this matter for Horton, all other developers in Southlake's service area, Southlake, and the Commission; and that the terms of this Settlement Agreement will result in a resolution which is factually accurate, fair, just, and reasonable for all entities, including all other developers in Southlake's service area; and

WHEREAS, the parties to this Settlement Agreement desire to compromise and settle the issues in these two dockets, rather than incur the expense and uncertainty of the outcome.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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1. AFPI Refunds. The parties have determined that a fair, just, and reasonable amount of refunds of AFPI charges to all developers in order to resolve the dispute is a total of \$403,614.79, as set forth on Exhibit A. Southlake shall make refunds of AFPI charges totaling \$403,614.79. The \$403,614.79 shall be the maximum amount of refunds of AFPI charges, including true up charges and interest, to be made by Southlake. The amounts to be refunded to each developer are set forth on Exhibit A. Only the developers listed on Exhibit A are entitled to AFPI refunds and only in the amounts set forth on Exhibit A. Specifically, as set forth on Exhibit A, Southlake shall make an AFPI refund of \$41,530.64 to Horton, and Horton acknowledges that such refund is a fair amount.

2. Service Availability Charge Refunds. Southlake has properly collected the service availability charges authorized by the Commission in Order No. 24564 and directed by the Commission in Order No. PSC-99-0027-PCO-WS to be collected subject to refund; provided, however, that the entities set forth on Exhibit B have not paid their full plant capacity charges and have an amount outstanding as set forth on Exhibit B. As a result of the investigations by the parties and consistent with the Staff's analysis, the parties have determined that Southlake's service availability charges should not be reduced and, accordingly, that it is neither appropriate nor correct to have any refunds of

service availability charges made. Southlake shall make no refunds of CIAC, including no refunds of service availability charges, to anyone, including Horton. Southlake shall make no reassessments of plant capacity charges pursuant to Water Tariff Sheet No. 31.0 and Wastewater Tariff Sheet No. 28.0 for structures existing on the date hereof. In the event that the entitles listed on Exhibit B have not paid the outstanding amounts listed on Exhibit B at the time for the AFPI Refund, their respective AFPI Refunds shall be reduced by their respective outstanding plant capacity charge.

3. Plant Capacity Charges.

a. Charges from December 15, 1998, through the Effective Date. From December 15, 1998, through the Effective Date, as hereinafter defined, as authorized in Order No. 24564, Southlake's water plant capacity charges will be \$420.00 per equivalent residential connection ("ERC") or \$1.20 per gallon per day ("GPD") and Southlake's wastewater plant capacity charge will be \$775.00 per ERC or \$2.58 per GPD.

b. Charges following the Effective Date. As a result of the extensive investigation by all parties, the parties have determined that Southlake's plant capacity charges must be increased in order for Southlake's net CIAC to reach seventy-five percent (75%) of net plant at system buildout and that until the next proceeding

addressing the reserved issues as set forth in paragraph 10 of this Settlement Agreement, it is appropriate for Southlake to charge and collect a water plant capacity charge of \$433.00 per ERC and a wastewater plant capacity charge of \$970.00 per ERC. Until changed by the Commission in a future proceeding and following the Effective Date, Southlake's water plant capacity charge will be \$433.00 per ERC or \$1.24 per GPD, and Southlake's wastewater plant capacity charge will be \$970.00 per ERC or \$3.23 per GPD. The Commission's investigation of Southlake's service availability charges and AFPI charges shall be completed with its approval of this Settlement Agreement and confirmation that the terms of this Settlement Agreement have been completed.

c. GPD per ERC Factors. The water plant capacity charge is based upon an average day design of 350 GPD per ERC. The wastewater plant capacity charge is based upon an average day design of 300 GPD per ERC.

4. Penalties. Southlake has incurred extensive costs in this matter which are disproportionate to its size and financial condition and has prepared and provided an in-depth analysis of its service availability charges and AFPI charges. Southlake has cooperated with the parties and the Staff in a collective effort to determine the correct level of charges and refunds and to reach a

fair, just, and reasonable result. Southlake did not intend to violate Commission orders and acted in good faith to try to provide security for the potential refund. The customers of Southlake will be better served if their small utility company's assets are not depleted to pay penalties and can instead be used to support and enhance Southlake's provision of service. It is not appropriate for Southlake to pay any penalties in this matter and Southlake shall not pay any penalties in these dockets.

5. Application for Transfer. An Application for Transfer of Majority Organizational Control of Southlake, Docket No. 010507-WS ("Transfer Application") has been filed with the Commission. This Settlement Agreement is contingent upon the approval by the Commission of the Transfer Application. If the Commission does not approve the Transfer Application, then this Settlement Agreement shall become null and void and all parties released from any and all duties and rights hereunder.

7. Decision by the Commission. This Settlement Agreement is contingent upon the approval by the Commission of this Settlement Agreement in its entirety in its present form and without modification. In the event that the Settlement Agreement is not so approved without modification, it shall become null and void and all parties released from any and all duties and rights hereunder. This Settlement Agreement shall also become null and void if the Commission has not voted to approve this Settlement

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Agreement without modification on or before May 31, 2001, and all parties released from any and all duties and rights hereunder.

7. Effective Date. The Effective Date for this Settlement Agreement is defined as the last to occur of the following: (1) the date of expiration of all appeals and protests of the Commission Order adopting this Settlement Agreement; and (2) the date of the expiration of all appeals and protests of the Commission Order approving the Transfer Application.

8. Date of Refund and Interest. The amount of the AFPI refunds shall be set as of the Effective Date and interest on the AFPI refunds shall commence accruing thirty (30) days after the Effective Date. The rate of the interest shall be as set forth in Rule 25-30.360, Florida Administrative Code. Southlake shall provide the refunds in exchange for and conditioned upon receipt of releases within ninety (90) days of the Effective Date.

9. Tariff Sheets. Southlake's tariff sheets shall not be revised in a manner which requires Southlake to make refunds of service availability charges based upon lower than anticipated water and wastewater usage.

10. Other Issues. Determination of all other issues not resolved by this Settlement Agreement, including but not limited to, the time when the plant sites were placed into service, the internal company costs (not contributed) related to mains installed or contributed by developers, the appropriate land balances for

Southlake, the levels of CIAC as of December 31, 1998, the reclassification of the unpaid AFPI refund to the Southlake Community Foundation from CIAC to equity, and the net book value of Southlake's systems as of December 31, 1998, shall be reserved and may be raised in future Commission proceedings.

11. Releases. All developers receiving an AFPI refund must execute a release in the form attached as Exhibit C prior to or contemporaneous with its receipt of said refunds; and as a condition to same.

12. Withdrawal of Complaint and Petition. Within ten (10) days of the Effective Date and concurrent with receiving its refund, Horton shall withdraw its complaint and petition with prejudice except as to all issues reserved in paragraph 10 of this Settlement Agreement.

13. Costs. Horton has incurred significant expenses in order to reach this settlement, which effort has benefited the other developers in Southlake's service area, and in order to reach an accurate fair, just, and reasonable resolution of this matter. Accordingly, Southlake agrees to reimburse Horton \$66,500.00 of Horton's costs, which includes Horton's attorneys' fees in these dockets. Except for this \$66,500.00, each party hereto shall bear its own costs and expenses relating to the matters contemplated in this Settlement Agreement including, without limitation, costs and expenses of its respective counsel.

DATE: MAY 17, 2001

14. No Other Consideration. The hereinabove recited consideration is the full, complete and entire consideration for this Settlement Agreement, and there is no agreement, oral or written, expressed or implied, whereby Horton is to receive at any time or in any event or upon the happening of any contingency or upon the development or discovery of any fact, circumstance or condition any further consideration of any kind whatsoever.

15. Non Admission. It is understood and agreed that this Settlement Agreement is a complete and final compromise of doubtful and disputed claims and that it is intended to avoid further litigation. This Settlement Agreement shall in no way be construed as an admission or acknowledgment of any type of liability or responsibility on the part of any party, and liability for any amount(s) paid is expressly denied.

17. Entire Agreement. This Settlement Agreement sets forth the entire agreement between the parties hereto. There is no part of the agreement between them regarding the premises which is not fully, completely, accurately and truly set forth herein.

17. Waiver or Modification. No waiver or modification of any term or condition of this Settlement Agreement shall be valid or binding unless in writing and executed by each of the parties hereto.

18. Authority to Sign. The signatories of this Settlement Agreement expressly warrant that they have the authority to enter

DATE: MAY 17, 2001

into this Settlement Agreement, that they understand the purport, tenor and effect of this Settlement Agreement and voluntarily place their signature hereto.

19. Additional Documents. The parties agree to execute any and all additional documentation necessary or desirable to effectuate this Settlement Agreement.

20. Non-Severability. If any one or more of the provisions of this Settlement Agreement is held invalid, then this entire Settlement Agreement shall become null and void.

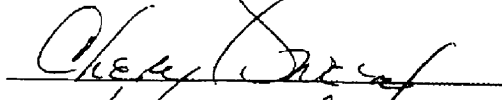
IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement this 7th day of May, 2001.

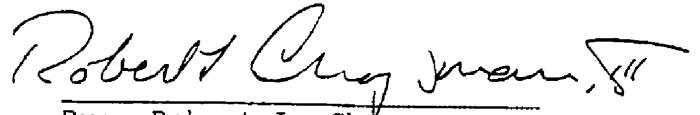
DOCKET NOS. 980992-WS, 981609-WS
DATE: MAY 17, 2001

Signed, sealed, and delivered


SOUTHLAKE UTILITIES, INC.

in the presence of:





By: Robert L. Chapman, III
Its President

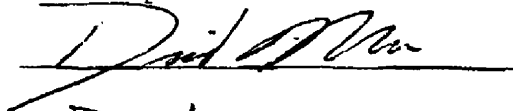


Witnesses as to
Robert L. Chapman, III,
President

"SOUTHLAKE"

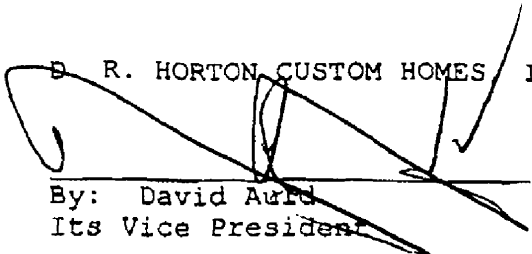
DOCKET NOS. 980992-WS, 981609-WS
DATE: MAY 17, 2001

Signed, sealed, and delivered
in the presence of:



David Moss
Witnesses as to David Auld
Vice President

D. R. HORTON CUSTOM HOMES, INC.


By: David Auld
Its Vice President

"D. R. HORTON"

DOCKET NOS. 980992-WS, 981609-WS

DATE: MAY 17, 2001

	AFPI		Total
	Water	Wastewater	
Summer Bay	\$30,455.08	\$2,275.22	\$32,730.31
Horton / Woodridge	\$35,141.36	\$28,417.28	\$61,558.64
Horton / Clear Crk	\$4,405.85	(\$24,433.85)	(\$20,028.00)
Jones / Stratford	\$39,988.32	\$59,936.37	\$99,902.69
Woodridge	\$534.31	\$34,546.19	\$35,080.50
Macchl	\$76.55	\$392.35	\$468.90
Ware Oil	\$2,572.92	\$1,858.83	\$4,431.75
Miller Bros	(\$550.39)	\$4,530.45	\$3,980.06
Winn Dixie	(\$713.96)	\$9,591.58	\$8,877.62
Worthwhile	\$3,273.32	\$112,089.44	\$120,362.76
Publix	\$4,650.98	\$39,281.30	\$43,932.28
Spur Station	\$397.72	\$3,087.49	\$3,485.21
First Federal	\$272.57	\$1,821.90	\$2,094.47
Colony Homes	\$478.72	\$6,258.88	\$6,737.60
TOTAL	\$125,961.36	\$277,653.43	\$403,614.79

Exhibit A

DOCKET NOS. 980992-WS, 981609-WS

DATE: MAY 17, 2001

Outstanding Plant Capacity
Charges for Connections Made
As of March 31, 2001

<u>Development</u>	<u>Unpaid Water Plant Capacity Charges - Amount</u>	<u>Unpaid Wastewater Plant Capacity Charges - Amount</u>
Summer Bay	\$10,646.40	\$29,284.67
Wooldridge*	\$ 4,200.00	

*Wooldridge has paid \$8,525.00 in wastewater plant capacity charges for connections not made as of March 31, 2001.

EXHIBIT B

DOCKET NOS. 980992-WS, 981609-WS
DATE: MAY 17, 2001

RELEASE

_____, a _____ corporation (the "first party"), for and in consideration of the sum of Ten Dollars (\$10.00) and the settlement and compromise of certain claims and other valuable considerations, received from or on behalf of Southlake Utilities, Inc., a Florida corporation (the "second party"), the receipt and sufficiency whereof are hereby acknowledged, (wherever used herein the terms "first party" and "second party" shall include singular and plural heirs, legal representatives, the assigns of individuals, subsidiaries and the successors and assigns of corporations, wherever the context so admits or requires),

HEREBY remises, releases, acquits, satisfies, and forever discharges the second party and the current, former, and future owners, operators, officers, directors, employees, representatives, attorneys, consultants, and agents of the second party from any and all manner of obligations, action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the first party ever had, now has or which the first party and any personal representative, successor, heir or assign of the first party hereafter can, shall or may have, against the second party or the current, former, and future owners, operators, officers, directors, employees, representatives, attorneys, consultants, and agents of the second party, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of this Release, for any and all claims which were or which could relate to service availability charges, Allowance for Funds Prudently Invested Charges, Contributions-In-Aid-Of-Construction, guaranteed revenue charges, and Docket Nos. 980992-WS and 981609-WS before the Florida Public Service Commission.

Dated: _____, 2001

By: _____
Its _____

Exhibit C

DOCKET NOS. 980992-WS, 981609-WS

DATE: MAY 17, 2001

STATE OF FLORIDA

COUNTY OF _____

The foregoing Release was acknowledged before me this ____ day
of _____, 2001, by _____. He/she

- () is personally known to me;
- () produced _____ Driver License No. _____ as
identification; or
- () has produced _____ as
identification.

Notary Public
State of Florida
Commission number: _____
My commission expires: _____