



**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:** August 23, 2001

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (HARRIS, GERVASI) *PH. PJ*  
DIVISION OF ECONOMIC REGULATION (FLETCHER, MERCHANT) *PH. PJ*

**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.

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:** 09/04/2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980992.RCM

**CASE BACKGROUND**

Southlake Utilities, Inc. (Southlake or utility) is a Class C utility located in Lake County. According to its 2000 annual report, the utility provides service to 974 water and 972 wastewater customers.

On August 4, 1998, D.R. Horton Custom Homes, Inc. (Horton), a developer in Southlake's service 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-

DOCUMENT NUMBER-DATE

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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.

By Order No. PSC-00-0917-SC-WS, issued May 9, 2000, the Commission required 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 375 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 Order No. PSC-00-0917-SC-WS. 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. An administrative hearing was scheduled in this matter for March 13 and 14, 2001.

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, to accommodate the Commission calendar.

On April 24, 2001, the parties filed a Joint Motion for Continuance, requesting that the hearing be rescheduled to August 24, 2001, at the latest, and that the prehearing conference be changed accordingly. In support of their motion, the parties stated that they believed they had reached a settlement of their dispute which would 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.

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 stated that they had completed a negotiated settlement of their dispute. An original of the Settlement Agreement (Agreement) was attached to the motion.

On June 14, 2001, by Proposed Agency Action Order No. PSC-01-1297-PAA-WS, the Commission granted the Joint Motion for Approval and Adoption of the Settlement Agreement, including discontinuance of AFPI charges, requiring refunds of certain AFPI charges, and increasing plant capacity charges. On July 5, 2001, Worthwhile Development II, Ltd. (Worthwhile) timely filed a protest of the Order and requested formal proceedings pursuant to Sections 120.569 and 120.57, Florida Statutes. On July 30, 2001, Worthwhile also filed a Motion for Continuance of the August 24, 2001 hearing. The Motion was granted by Order No. PSC-01-1594-PCO-WS, issued August 2, 2001, and a formal hearing was set for September 17, 2001. No other protests were filed during the protest period, which expired July 14, 2001. On August 14, 2001, Worthwhile filed a Notice of Withdrawal of its protest of Order NO. PSC-01-1297-PAA-WS.

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

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission acknowledge the Withdrawal of Protest of Proposed Agency Action filed by Worthwhile Development II, Ltd. and make Order No. PSC-01-1297-PAA-WS final and effective?

**RECOMMENDATION:** Yes. The Commission should acknowledge the Withdrawal of Protest of Proposed Agency Action filed by Worthwhile Development II, Ltd. and make Order No. PSC-01-1297-PAA-WS final and effective. (HARRIS)

**STAFF ANALYSIS:** As stated in the case background, on July 12, 1999, Worthwhile timely filed a Protest of Proposed Agency Action. Worthwhile is a developer which was affected by the Settlement Agreement which the Commission approved by Order No. PSC-01-1297-

PAA-WS. Specifically, Worthwhile claimed the amount of AFPI funds to be refunded to it were too low, and that it was due additional refunds. Worthwhile was the only entity to protest the order.

On August 13, 2001, staff received notice that Worthwhile and Southlake agreed to settle a separate judicial proceeding, which would result in the payment of funds to Worthwhile by Southlake. The parties further agreed that Worthwhile would withdraw its protest of Order No. PSC-01-1297-PAA-WS. On August 14, 2001, Worthwhile filed a Notice of Withdrawal of Protest of that Order.

Order No. PSC-01-1297-PAA-WS was issued June 14, 2001. The protest period of that order expired July 05, 2001. There were no other protests of that order other than Worthwhile's, and Worthwhile has now withdrawn its protest. As such, Order No. PSC-01-1297-PAA-WS should now become final and effective.

The finalization and effectiveness of Order No. PSC-01-1297-PAA-WS would result in finality to these several actions regarding Southlake, would serve the public interest, and would allow all parties to avoid further expense, either in direct litigation or in monitoring litigation between other parties. As such, acknowledgment of the Notice of Withdrawal of Protest is appropriate.

Staff recommends that the Commission acknowledge the Withdrawal of Protest of Proposed Agency Action filed by Worthwhile Development II, Ltd and make Order No. PSC-01-1297-PAA-WS final and effective.

**ISSUE 2:** Should these dockets be closed?

**RECOMMENDATION:** No. Order No. PSC-01-1297-PAA-WS allowed for the administrative closing of these dockets upon Commission staff's verification that the utility has filed revised tariff sheets consistent with Order PSC-01-1297-PAA-WS, and that the utility properly refunded the AFPI charges. Staff has not yet verified this information; therefore, these dockets should remain open. After staff's verification these dockets should be administratively closed. (HARRIS, FLETCHER)

**STAFF ANALYSIS:** Order No. PSC-01-1297-PAA-WS allowed for the administrative closing of these dockets upon Commission staff's verification that the utility has taken certain action, pursuant to that Order, with respect to filing revised tariff sheets consistent with that Order, and verification that the utility has made the proper refunds of AFPI charges required by that Order. Staff has not yet verified this information; therefore, these dockets should remain open. Once staff has been able to verify the information and ensure that the requirements of Order PSC-01-1297-PAA-WS have been satisfied, these dockets should be closed.