

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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

In re: 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
ORDER NO. PSC-01-1920-FOF-WS
ISSUED: September 24, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
MICHAEL A. PALECKI

FINAL ORDER ACKNOWLEDGING WITHDRAWAL OF PROTEST OF PROPOSED
AGENCY ACTION AND MAKING ORDER NO. PSC-01-1297-PAA-WS FINAL AND
EFFECTIVE

BY THE COMMISSION:

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

DOCUMENT NUMBER-DATE

11957 SEP 24 01

FPCO-00 COMMISSION CLERK

collect service availability and AFPI charges. By Order No. PSC-99-0027-PCO-WS, issued January 4, 1999, in Docket No. 981609-WS, we 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, we 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 375 ERC limit authorized by Order No. PSC-96-1082-FOF-WS, issued August 22, 1996, in Docket No. 950933-WS, in apparent violation of that Order. We 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, we 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, we 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 these matters 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, we granted the Joint Motion for Approval and Adoption of the Settlement Agreement, including the discontinuance of AFPI charges, requiring refunds of certain AFPI charges, and increasing plant capacity charges. On July 5, 2001, Worthwhile Development II, Ltd. (Worthwhile), a developer affected by the Order, timely filed a protest and requested a hearing 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 5, 2001. On August 14, 2001, Worthwhile filed a Notice of Withdrawal of its protest of Order NO. PSC-01-1297-PAA-WS.

We have jurisdiction pursuant to Sections 367.091 and 367.101, Florida Statutes.

ACKNOWLEDGMENT OF THE WITHDRAWAL OF PROTEST

As stated in the case background, on July 5, 2001, Worthwhile timely filed a Protest of Proposed Agency Action. Specifically, Worthwhile claimed that 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, Commission 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-01-1920-FOF-WS
DOCKETS NOS. 980992-WS, 981609-WS
PAGE 4

Order No. PSC-01-1297-PAA-WS was issued June 14, 2001. The protest period of that Order expired July 5, 2001. There were no other protests of the Order other than Worthwhile's, and Worthwhile has now withdrawn its protest. As such, Order No. PSC-01-1297-PAA-WS shall become final and effective.

The finalization and effectiveness of Order No. PSC-01-1297-PAA-WS serves the public interest, and allows all parties to avoid further expense, either in direct litigation or in monitoring litigation between other parties. Therefore, we 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.

CLOSURE OF DOCKETS

Order No. PSC-01-1297-PAA-WS allowed for the administrative closing of these dockets upon our 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 that the utility has made the proper refunds of AFPI charges required by that Order. Once our staff ensured that the requirements of Order No. PSC-01-1297-PAA-WS have been satisfied, and the verification have been completed, these dockets shall be administratively closed.

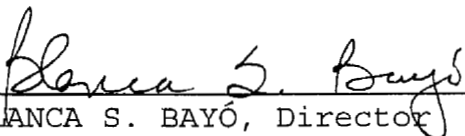
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Withdrawal of Protest of Proposed Agency Action by Worthwhile Development, II Ltd. is acknowledged. Order No. PSC-01-1297-PAA-WS is hereby final and effective. It is further

ORDERED that once our staff has ensured that the requirements of Order No. PSC-01-1297-PAA-WS have been satisfied, and the verifications have been completed, these dockets shall be administratively closed.

ORDER NO. PSC-01-1920-FOF-WS
DOCKETS NOS. 980992-WS, 981609-WS
PAGE 5

By ORDER of the Florida Public Service Commission this 24th
day of September, 2001.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

LDH

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.

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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

ORDER NO. PSC-01-1920-FOF-WS
DOCKETS NOS. 980992-WS, 981609-WS
PAGE 6

telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.