

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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-99-0027-PCO-WS  
ISSUED: January 4, 1999

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 INITIATING INVESTIGATION, HOLDING SERVICE AVAILABILITY AND  
AFPI CHARGES SUBJECT TO REFUND, AND REQUIRING THE ESTABLISHMENT  
OF AN ESCROW ACCOUNT AS SECURITY FOR AFPI CHARGES  
COLLECTED SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Southlake Utilities, Inc. (Southlake or utility) is a Class C utility providing service to approximately 238 water and 237 wastewater customers in Lake County. According to the utility's 1997 annual report, the water system had actual operating revenues of \$88,341 and a net operating loss of \$73,058. The wastewater system had actual operating revenues of \$84,552 and a net operating loss of \$168,550.

Order No. 24564, issued May 21, 1991, originally established the customer rates for the utility, including service availability and allowance for funds prudently invested (AFPI) charges. Southlake's original rates and charges were based upon estimated rates at 80 percent of build-out and a plant completion date of July 1, 1991. We determined that the plant capacity charges should be such that the estimated contribution level of the utility would

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be 75 percent of net plant at the time the systems reached capacity. We approved AFPI charges designed to enable the utility to recover the return on the plant needed to serve future customers at the time they connect to the system and ordered that the amount of the AFPI charges were to be based upon the date future customers connected to the system normally coinciding with the payment of the service availability charges.

On August 8, 1995, Southlake filed an application to change the start date of its AFPI charges and to adjust these charges to reflect actual construction costs. Pursuant to Order No. PSC-96-1082-FOF-WS, issued August 22, 1996, we deemed January 1, 1995, as the utility's beginning date for accruing the AFPI charges, established new AFPI charges for the utility, and ordered it to refund all AFPI charges collected prior to January 1, 1995. As for AFPI charges collected by the utility after January 1, 1995, we ordered the utility to refund any amount exceeding that allowed in the new tariff. The amount refunded to customers was based on the date the customer became active, which was determined as the date meters were set and service was available.

On November 16, 1998, D.R. Horton Custom Homes, Inc. (Horton or developer) filed a petition, pursuant to Section 367.101, Florida Statutes, and Rules 25-30.580 and 28-106.301, Florida Administrative Code, to immediately eliminate the authority of Southlake to collect service availability and AFPI charges. This action pertains to the initiation of an investigation into Southlake's service availability and AFPI charges. The merits of the petition will be addressed at a later date.

Another related docket involving both Horton and Southlake is currently pending before this Commission. On August 4, 1998, Horton filed a complaint, pursuant to Rule 25-30.560, Florida Administrative Code, against Southlake regarding the collection of AFPI charges under a developer's agreement entered into by both parties on September 17, 1996. We are in the process of reviewing the complaint, and we will address it at a later date.

#### INITIATION OF INVESTIGATION

Based on Southlake's 1997 annual report, the utility is over contributed to the extent it has no investment in plant. With regard to its water system, the plant in service net of accumulated depreciation was \$366,506 and contributions in aid of construction (CIAC) net of accumulated amortization of CIAC was \$766,141. Thus,

the utility has a contribution level of 209.04% for its water system. With regard to its wastewater system, the plant in service net of accumulated depreciation was \$903,530 and CIAC net of accumulated amortization of CIAC was \$1,180,944. Thus, the utility has a contribution level of 130.70% for its wastewater system. Therefore, we shall initiate an investigation of the utility's service availability and AFPI charges at this time.

SERVICE AVAILABILITY AND AFPI CHARGES  
HELD SUBJECT TO REFUND

Rule 25-30.580(1)(a), Florida Administrative Code, states that a utility's service availability policy shall be designed such that:

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.

Order No. 24564, issued May 21, 1991, implemented Southlake's current service availability charges. Southlake has authorized plant capacity charges of \$420 for water service and \$775 for wastewater service and meter installation fees of \$130 for 5/8 x 3/4 inch meters, \$210 for one-inch meters, and actual costs for all meters more than one inch.

Order No. PSC-96-1082-FOF-WS, issued August 22, 1996, established Southlake's current AFPI charges for water and wastewater. Rule 25-30.434(1), Florida Administrative Code, states that an AFPI charge is "a mechanism which allows a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the future customers to be served by that plant in the form of a charge paid by those customers."

Section 367.081(2)(a), Florida Statutes, requires the Commission to fix rates which are "just, reasonable, compensatory, and not unfairly discriminatory," and in doing so, the Commission must consider the "fair return on the investment of the utility in property used and useful in the public service." Moreover, Section 367.101(1), Florida Statutes, states that the Commission shall set "just and reasonable charges and conditions for service availability" and authorizes us to investigate conditions for service availability.

Considering only Southlake's 1997 annual report, the utility is over contributed to the extent that it has no investment in plant. If our investigation reveals that Southlake is actually over contributed, then the utility should not be allowed to collect service availability and AFPI charges because it would have a negative rate base and no investment in either used and useful or non-used and useful plant. However, if the utility's plant investment has increased in 1998 or the utility plans to increase its plant investment in 1999, this could provide the basis for the continued collection of service availability and AFPI charges.

Further discovery is necessary to determine whether the service availability and AFPI charges should be continued, reduced or eliminated. We have requested that an audit of the utility and an engineer field inspection be performed. Based on the foregoing, the utility's prospective service availability and AFPI charges collected shall be held subject to refund with interest, pending the completion of our investigation.

SECURITY FOR AFPI CHARGES HELD SUBJECT TO REFUND

Although both the service availability and AFPI charges are to be held subject to refund, only the AFPI charges shall be secured. Because the number of future customers to be connected to the utility's system is not readily certain, the most appropriate security for the AFPI charges held subject to refund is an escrow agreement. An escrow agreement is the only security that can guarantee, with certainty, the amount of prospective AFPI charges collected.

The escrow account for the AFPI charges collected shall be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall state the following: that the account is established at the direction of this Commission for the purpose set forth above; that withdrawals of funds shall only occur with the prior approval of this Commission through the Director of the Division of Records and Reporting; that the account shall be interest bearing; that information concerning the escrow account shall be available from the financial institution to the Commission or its representative at all times; that the amount of AFPI charges collected subject to refund shall be deposited in the escrow account within seven days of receipt; and that pursuant to Cosentino v. Elson, 263 So.2d 253

(Fla. 3d DCA 1972), escrow accounts are not subject to garnishments. Also, pursuant to Rule 25-30.360(6), Florida Administrative Code, Southlake shall provide a report by the 20th day of each month indicating the monthly and total amount of AFPI charges collected subject to refund as of the end of the preceding month.

The escrow agreement shall state that if a customer refund is required, all interest earned on the escrow account shall be distributed to the customers in accordance with Rule 25-30.360, Florida Administrative Code. Conversely, the escrow agreement shall also state that if a customer refund is not required, the interest earned on the escrow account shall revert to the utility.

In no instance will maintenance and administrative costs associated with any refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the utility.

This docket shall remain open pending our investigation of the utility's contribution levels and the appropriateness of continuing the service availability and AFPI charges.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that an investigation into Southlake Utilities, Inc.'s service availability and allowance for funds prudently invested charges shall be initiated. It is further

ORDERED that Southlake Utilities, Inc.'s prospective service availability and allowance for funds prudently invested charges shall be collected subject to refund with interest pending the completion of this Commission's investigation. It is further

ORDERED that Southlake Utilities, Inc., shall file an escrow agreement to guarantee the allowance for fund prudently invested charges held subject to refund pursuant to the conditions set forth in this Order. It is further

ORDERED that, pursuant to Rule 25-30.036(6), Florida Administrative Code, Southlake Utilities, Inc., shall provide a report by the 20th of each month indicating in detail the monthly and total amount of allowance for funds prudently invested charges collected as of the end of the preceding month. It is further

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ORDERED that this docket shall remain open pending this Commission's investigation of Southlake Utilities, Inc.'s contribution levels and the appropriateness of continuing the service availability and allowance for funds prudently invested charges.

By ORDER of the Florida Public Service Commission this 4th day of January, 1999.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

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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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.