

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-01-1548-PCO-WS
ISSUED: July 26, 2001

ORDER ESTABLISHING NEW CONTROLLING DATES FOR PREFILED
DIRECT AND REBUTTAL TESTIMONY AND PREHEARING CONFERENCE

Background

On August 4, 1998, D.R. Horton Custom Homes, Inc. (Horton) filed a Complaint against Southlake Utilities, Inc. (Southlake or utility) 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 Southlake's AFPI and service availability charges and held these charges subject to refund.

On May 9, 2000, the Commission issued Order No. PSC-00-0917-SC-WS, in which the utility was ordered to show cause and to provide security for the service availability charges held subject to refund. Moreover, by proposed agency action, the Commission discontinued the utility's water plant capacity and AFPI charges, reduced the amount of the utility's wastewater plant capacity charges, 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

DOCUMENT NUMBER-DATE

09124 JUL 26 01

FPCO-COMMISSION CLERK

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-00-1461-PCO-WS (Order Establishing Procedure), issued August 11, 2000, controlling dates were established for these dockets. By Order No. PSC-00-1817-PCO-WS, issued October 4, 2000, the testimony filing dates were changed. To accommodate the Commission calendar, by Order No. PSC-00-2267-PCO-WS, issued November 29, 2000, the prehearing conference and hearing dates were changed to April 30, 2001, and May 10 and 11, 2001, respectively.

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 that they had reached a settlement of their dispute which would address their concerns. 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 was not approved beforehand, August 2, 2001, and August 24, 2001, were reserved for a prehearing conference and a hearing, respectively.

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. By Proposed Agency Action (PAA) Order No. PSC-01-1297-PAA-WS, issued June 14, 2001, the Commission granted the Joint Motion for Approval and Adoption of Settlement Agreement, discontinued Southlake's AFPI charges, required refunds of certain AFPI charges to certain developers as shown on an attachment to the Settlement Agreement (attachment), and increased the utility's plant capacity charges.

On July 5, 2001, Worthwhile Development II, Ltd. (Worthwhile), timely filed a protest to PAA Order No. PSC-01-1297-PAA-WS.

Worthwhile requests a hearing to determine the appropriate level of refund of AFPI charges for Worthwhile and the propriety of requiring each developer to execute a release in order to receive the refund to which it is entitled. Accordingly, this matter will proceed to hearing on August 24, 2001, as previously scheduled. A list of the issues in dispute is attached to this Order and is incorporated herein by reference.¹

Controlling Dates

The following revised dates shall govern this case:

- 1) Prefiled Direct Testimony (Worthwhile) August 6, 2001
- 2) Prehearing Conference August 8, 2001
- 3) Prefiled Rebuttal Testimony (Southlake) August 13, 2001

Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by August 17, 2001.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this matter shall proceed to hearing on August 24, 2001. The revised controlling dates set forth in the body of this Order shall govern this case. It is further

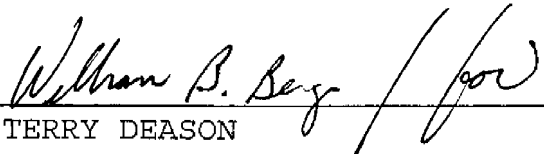
ORDERED that Attachment A, attached hereto, is incorporated herein by reference. It is further

ORDERED that except as modified herein, all other provisions of Orders Nos. PSC-00-1461-PCO-WS, PSC-00-1817-PCO-WS, and PSC-01-1034-PCO-WS shall remain in effect.

¹Pursuant to Section 120.80(13)(b), Florida Statutes, the hearing in this matter may only address the issues in dispute (i.e., protested). Issues in the PAA order which are not in dispute are deemed stipulated.

ORDER NO. PSC-01-1548-PCO-WS
DOCKETS NOS. 980992-WS, 981609-WS
PAGE 4

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 26th day of July, 2001.



J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

RG

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

ORDER NO. PSC-01-1548-PCO-WS
DOCKETS NOS. 980992-WS, 981609-WS
PAGE 5

reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.

ORDER NO. PSC-01-1548-PCO-WS
DOCKETS NOS. 980992-WS, 981609-WS
PAGE 6

ATTACHMENT A

List of Issues in Dispute

1. What is the appropriate amount of AFPI charges which Southlake should refund to Worthwhile?
2. Should Southlake require each developer to execute a release in order to receive the refund to which it is entitled?