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September 3, 1998

VIA FEDERAL EXPRESS

Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Complaint of D. R. Horton Custom Homes, Inc.,
Against Southlake Utilities, Inc., Docket No. 980992-WS

Dear Ms. Bayo:

In connection with the above-referenced matter, please find enclosed for filing an original and seven copies of Southlake Utilities, Inc.'s Answer and Response to Complaint by D. R. Horton Custom Homes, Inc. Please file the original and distribute the copies in accordance with your usual procedures.

If you have any questions or comments regarding this matter, please do not hesitate to call.

Sincerely yours,

Scott G. Schildberg

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1
- LIN _____
- OPC _____
- RCH _____
- SEC 1
- WAS 1
- OTH _____

SGS/dws
Enclosures

cc: Samantha McRae, Esquire
F. Marshall Deterding, Esquire
Mr. Robert L. Chapman, III

MAIL ROOM
01:11:10
SEP 4 1998
DOCUMENT NUMBER-DATE
9659 SEP-4 98

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of D. R. Horton)
Custom Homes, Inc. Against)
Southlake Utilities, Inc.)
_____)

Docket No. 980992-WS
Date Submitted for
Filing: September 3, 1998

**SOUTHLAKE UTILITIES, INC.'S ANSWER AND RESPONSE TO
COMPLAINT OF D. R. HORTON CUSTOM HOMES, INC.**

Pursuant to Rule 25-22.037, Florida Administrative Code ("FAC"), Southlake Utilities, Inc. ("Southlake"), hereby files with the Florida Public Service Commission ("Commission") its Answer and Response to the Complaint ("Complaint") filed by D. R. Horton Custom Homes, Inc. ("Horton"), and states as follows:

1. Southlake admits the allegations of Paragraph 1. Southlake further states that the Commission has opened Docket No. 980992-WS for this matter.
2. Southlake admits the allegations of paragraph 2.
3. Southlake admits the allegations of paragraph 3.
4. Southlake is without knowledge as to the allegations of paragraph 4, except that Southlake admits that Horton owns properties within the certificated service area of Southlake.
5. Southlake admits the allegations of paragraph 5.
6. Southlake admits the allegations of paragraph 6.
7. Southlake denies the allegations of paragraph 7.
8. Southlake denies the allegations of paragraph 8, except that Southlake admits that Horton has requested some connections, Southlake has required payment for the Allowance for

DOCUMENT NUMBER-DATE

09659 SEP-4 88

FILED UNDER REPORTING

Funds Prudently Invested (“AFPI”) charges due per the tariff as of the date of the physical connection of such connections, and that the original payment towards AFPI charges was a deposit.

9. Southlake denies the allegations of paragraph 9, except that Southlake admits that Horton has offered payment of all the applicable miscellaneous service charges, customer deposits, meter installation fees and has demanded service for fifty-six (56) connections.

10. Southlake denies the allegations in paragraph 10, except that Southlake admits that Southlake has agreed to provide connections to Horton and assess the outstanding AFPI charges to the AFPI deposit made by Horton pursuant to the September 17, 1996, Agreement.

11. Southlake denies the allegations of paragraph 11.

12. Southlake denies the allegations in the paragraphs following paragraph 11.

13. As a further response to the Complaint filed by Horton, Southlake states as follows:

14. In Order No. 24564, Notice of Proposed Agency Action, Order Approving Rates and Charges, In re: Application of Southlake Utilities, Inc. for water and wastewater certificates in Lake County., Docket No. 900738-WS, issued May 21, 1991 (“Initial AFPI Order”), the Commission established rates and charges for Southlake, including water and wastewater AFPI charges. While AFPI charges normally coincide with the date of payment of the service availability charges, the Commission specifically noted that “[t]he amount of the AFPI charges are based upon the date future customers connect to the system” (emphasis added). The Commission also stated, “[t]he AFPI charge will enable the Utility to recover the return on the plant needed to serve future customers at the time they connect to the system.” *Id.* (emphasis added).

15. The Commission’s order that the amount of Southlake’s AFPI charges be based upon the date that a customer connects to the system is consistent with the Florida Supreme Court’s

holding in H. Miller & Sons, Inc. v Hawkins, 373 So.2d 913 (Fla. 1979). In H. Miller, the Florida Supreme Court held:

The crucial time in regard to service availability charges must be the date of connection since there can be no ascertainment of the actual cost of maintaining sufficient capacity until that date. Id. at 916.

16. In Order No. PSC-96-1082-FOF-WS, Order Denying Southlake Utilities, Inc.'s Proposed AFPI Tariff and Notice of Proposed Agency Action Cancelling Existing AFPI Tariff, Denying Waiver of Rule 25-30.434(4), Florida Administrative Code, and Requiring Refund of Previously Collected AFPI Charges, In Re: Application for Approval of Allowance for Funds Prudently Invested (AFPI) by Southlake Utilities, Inc. in Lake County, Docket No. 950933-WS, issued on August 22, 1996 ("Second AFPI Order"), the Commission (1) determined that the plant upon which the existing AFPI charges had been based had not been completed by the time period originally projected by Southlake; (2) revised Southlake's AFPI charges; (3) required refunds of previously collected AFPI charges; and (4) ordered the new AFPI charges to be effective for connections made on or after January 1, 1995. In its decision regarding refunding certain AFPI charges, the Commission used the date upon which a customer became active (i.e., "[t]his date shall be determined by which date meters were set and service was available for each building") and, as of that date, "each customer shall be charged service rates that all active customers are required to pay" (i.e., base facility charges). Accordingly, the Commission used the date of connection to determine the amount of AFPI charges consistent with its previous order.

17. Southlake has followed the directives of the Commission with respect to its AFPI charges. Southlake uses the date of connection to determine the total amount of AFPI due. Southlake holds all payments towards AFPI charges which are made prior to the date of connection as interest-earning deposits. Southlake then determines the total amount of AFPI charges due by referring to the amount for the month and year set forth in the Commission-approved Tariff as of the date of connection. It then applies the AFPI deposit, if any, and interest on the AFPI deposit to determine the outstanding amount due. This procedure is referred to as “AFPI True Up.”

18. Southlake’s procedures with respect to its AFPI charges have been approved by the Staff of the Commission. In Consumer Request No. 168714I, a virtually identical protest addressing Southlake’s AFPI True Up in 1997, the Staff of the Commission reviewed Southlake’s procedures with respect to the AFPI True Up charges and found that it does not appear that Southlake violated Commission rules or Southlake’s tariffs in billing the developer. As noted by the Staff, “[d]ocumentation received from Southlake Utilities indicates that the properties you were developing in Lake County were assessed an additional fee for connection to wastewater services. This fee is in keeping with Southlake Utilities Tariff Sheet 36, which concerns charges for Allowances for Funds Prudently Invested (AFPI).” See December 9, 1997, letter from Douglas B. Martin, Consumer Complaint Analyst, Division of Consumer Affairs, Florida Public Service Commission to Martin Rosato, attached as Exhibit A, and a May 14, 1997, letter to Mr. Rosato by Robert L. Chapman, III, President of Southlake, attached as Exhibit B. Southlake continues to utilize the same AFPI procedures approved by the Staff.

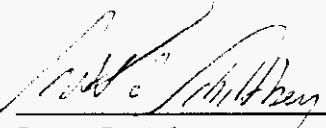
19. Southlake is following the orders of the Commission and applying its tariff consistently with the Commission's orders. Accordingly, Southlake is not in violation of any rule, statute or tariff provision in connection with AFPI charges.

THEREFORE, the Commission should deny the relief sought by Horton.

DATED this 3rd day of September, 1998.

Respectfully submitted,

MARTIN, ADE, BIRCHFIELD &
MICKLER, P.A.

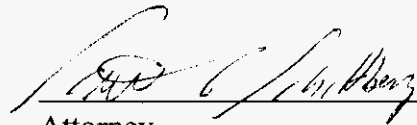
By: 

James L. Ade
Florida Bar No. 0000460
Scott G. Schildberg
Florida Bar No. 0613990
3000 Independent Square
Jacksonville, FL 32202
Telephone: (904) 354-2050

Attorneys for Southlake
Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing Southlake Utilities, Inc.'s Answer and Response to Complaint by D. R. Horton Custom Homes, Inc., have been furnished to Ms. Blanca Bayo, Director, Department of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Betty Easley Building, Room 110, Tallahassee, Florida 32399-0850, by Federal Express, overnight delivery this 3rd day of September, 1998, and that copies of the foregoing have been furnished to Samantha McRae, Attorney, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and F. Marshall Deterding, Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, by United States Mail and facsimile this 3rd day of September, 1998.



Attorney

STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA



DIVISION OF CONSUMER AFFAIRS
BEVERLEE DEMELLO
DIRECTOR
(850) 413-6100
TOLL FREE 1-800-342-3552

Public Service Commission

December 9, 1997

Mr. Martin Rosato
Wooldridge Homes
616 Grove Park Avenue
Davenport, FL 33837

Dear Mr. Rosato:

This is in response to your complaint to the Florida Public Service Commission (PSC) regarding Southlake Utilities, Inc.

Documentation received from Southlake Utilities indicates that the properties you were developing in Lake County were assessed an additional fee for connection to wastewater services. This fee is in keeping with Southlake Utilities Tariff Sheet 36, which concerns charges for Allowances for Funds Prudently Invested (AFPI).

Based upon documentation received from you and the utility, it does not appear that Southlake Utilities has violated PSC rules or its tariffs in the billing of your account.

I hope this information is helpful. If you have any questions, you may contact me, toll-free, at 1-800-342-3552.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas B. Martin".

Douglas B. Martin
Consumer Complaint Analyst
Division of Consumer Affairs

DBM:ewe

EXHIBIT A



SOUTHLAKE UTILITIES, INC.
333 U.S. Highway 27 Clermont, FL 34711
1-888-8876-FLOW FAX (352) 394-8894
Florida PSC Certificates 464-S and 533-W

May 14, 1997

Mr. Martin Rosato
Wooldridge Homes
c/o Briar Grove
616 Grove Park Avenue
Davenport, FL 33837

By Fax: (941) 424-0903

Dear Martin

I apologize for my role in the apparent confusion about pricing for Wooldridge Homes' reservation of wastewater plant capacity.*

Therefore, I am writing to provide you with a detailed statement of our understanding of the Allowance for Funds Prudently Invested (AFPI) fees and to provide you with some background information:

1. According to our records, Wooldridge Homes has reserved wastewater plant capacity by payment of the Plant Capacity Charges for 60 single family homes.
2. Reserving capacity is one step toward becoming a customer. To be connected to the utility lines, a new customer must pay other charges which include, but are not necessarily limited to, meter installation fees, initial connection fees, deposits, and AFPI fees based on the date of connection.
3. AFPI is defined by 25-30.434, Florida Statutes, as "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."
4. AFPI is calculated by multiplying the number of Equivalent Residential Connections (ERCs) by the dollar amount of AFPI set forth in the Tariff for the month of connection. AFPI is based on the pre-determined

EXHIBIT B

fee for the month in which a connection takes place. The correct fees are determined by Tariff Sheet 36. It gives the price for connection by year and month.

5. The AFPI you paid in August, 1996, would have constituted full payment of AFPI for 60 wastewater ERCs if had you proceeded to connect 60 ERCs in August, 1996.

6. Because no connections were actually made in August, we now carry your payment on our books as a partial payment toward AFPI fees for future connections. Because we carry your August, 1996, payment toward AFPI as a pre-payment, we also accrue to your account a PSC approved rate of interest on the amount of AFPI which was pre-paid.

7. I believe that the source of confusion is ambiguous language which your attorney inserted into our standard PSC approved Developer's Agreement when he reviewed and retyped it. However, in spite of the ambiguity, I still read his language stating that "the fees for sewer and water shall be fixed at the amount per unit on Exhibit B. The \$74,973.60 paid with this agreement shall be credited as full payment of sewer fees at the rate of \$1,249.56 per lot" to be consistent with our policies:

- A. The price is fixed by the amount shown on Exhibit B, which states that AFPI pricing is "Per Tariff Sheet 36.00." Tariff sheet 36.0 provides a month-by-month price table. Exhibit B states that the AFPI quoted is for *August 31, 1996*. The price given is the price for August, 1996, valid through August 31, as given by Sheet 36.0.
- B. Wooldridge Homes was credited with full payment of sewer fees at \$1,249.56 per lot, which was payment of plant capacity charges and the August, 1996, AFPI. However this clearly was not payment-in-full of all sewer fees, which will also include AFPI true-up, meter installation fees, connection fees, deposits, and possibly other fees and costs as set forth in the Tariff. When I signed the agreement, in my mind I was acknowledging full payment the amount we agreed upon for reserving capacity, as at August, 1996, at the rate of \$1,249.56 per lot for 60 lots. This was not payment of all fees.

8. Under the Public Service Commission's Rules, Section 25-30.540, we are permitted to charge up to the total amount due to extend service. You agreed to pay, and paid, an amount which included the AFPI due, as of August, 1996. We reserved the capacity. However, I hope I pointed out at the time that AFPI increased each month until actual connections were made. I think we discussed the fact that the longer it takes to make connection, the greater the AFPI will be.

In summary, the full amount of the connection fees can only be determined as connections are made, based on the month of connection, using the AFPI table in the Tariff. AFPI covers the time prior to the point in time when a new residence begins using our water and sewer service, and providing revenue to us as a customer.

As a regulated public utility we are required to carefully comply with very specific regulations administered by the Florida Public Service Commission. Florida Statutes 367.091: "A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved. A change in any rate schedule may not be made without commission approval."

According to Florida Public Commission Rule 25-30.115, Allowance for Funds Prudently Invested are accounted for as Guaranteed Revenues, which are defined under Rule 25-30.515 as "a charge designed to cover the utility's costs including, but not limited to the cost of operation, maintenance, depreciation, and any taxes, and to provide a reasonable return to the utility for facilities, a portion of which may not be used and useful to the utility or its existing customers." This type of charge is designed to help the utility recover a portion of its cost from the time capacity is reserved until a customer begins to pay monthly service fees."

In structuring our tariff, the PSC elected to use the a method in which AFPI accrues until connection is made and a customer begins buying service as an appropriate alternative to separate guaranteed revenue charges.

If you still have questions after reading this letter, I would be happy to see if we can schedule a conference call with a PSC staff member to review our policy. If our procedure is not correct, we will, of course, refund the true-up amounts which Wooldridge Homes has recently paid.

Again, I apologize for my role in letting this confusion happen.

Let me assure you that we are delighted at the prospect of working with Wooldridge Homes and that we look forward to providing reliable and economical service to you and your customers.

Sincerely,

A handwritten signature in black ink that reads "Bob Chapman". The signature is written in a cursive, flowing style.

Robert L. Chapman, III
President

cc: Mr. Rob Lewis, Controller,
Wooldridge Homes by Fax (510) 680-7685
Mr. Norman Mears
Mr. Jeff Cagan

* To avoid possible future confusion, please note that under PSC rules, incorporated by reference in our Service Availability Policy, the utility does not have to refund payment for plant capacity to you if you do not proceed further with the development (unless we are able to sell the reserved capacity within four years).