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January 27, 1999

VIA FEDERAL EXPRESS

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

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.

Dear Ms. Bayo:

In response to Staff's Second Data Request, dated December 29, 1998, Southlake Utilities, Inc., hereby files an original and five (5) copies of its Response to Staff's Second Data Request. Also enclosed is a WordPerfect 6.1 formatted, high double density diskette which contains a copy of the Response to Staff's Second Data Request.

Please file the original and distribute the copies in accordance with your usual procedures.

- ACK _____ If you have any questions or comments regarding this matter, please do not hesitate
AFA _____ to call.
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
LIN _____ SGS/dws
OPC _____ Enclosures
RCH _____ cc: Mr. Robert L. Chapman, III
SEC _____ Samantha McRae, Esquire
WAS _____ F. Marshall Deterding, Esquire
OTH _____

Sincerely yours,

[Handwritten signature of Scott G. Schildberg]

Scott G. Schildberg

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of D.R. Horton) Docket No. 980992-WS
 Homes, Inc., against Southlake)
 Utilities, Inc., in Lake County) Date Submitted for Filing:
 regarding collection of certain) January 28, 1999
 AFPI charges.)
 _____)

RESPONSE OF SOUTHLAKE UTILITIES, INC.
 TO STAFF'S SECOND DATA REQUEST
 (December 29, 1998)

Staff's Second Data Request
 Question 1

With regard to the September 16, 1996, developer agreement, did Southlake make any representations to D.R. Horton Custom Homes, Inc. (D.R. Horton or developer) that the developer would receive a savings or discount on its Allowance for Prudently Invested (AFPI) charges if it were to prepay the AFPI charges?

Southlake's Response:

In Docket No. 950933-WS, Southlake Utilities, Inc. ("Southlake"), sought to "obtain approval of a change in the starting date of the AFPI charges and to adjust the specified AFPI amounts to reflect actual construction costs" from the Florida Public Service Commission ("Commission"). Order No. PSC-1082-FOF-WS ("Order"), page 2. The Commission canceled Southlake's existing Allowance for Funds Prudently Invested ("AFPI") tariff, denied Southlake's proposed AFPI tariff, and established a new AFPI chart, which resulted in a significant reduction in prices for plant capacity reservations. In the Order, the Commission also required Southlake to make refunds of certain collections of AFPI charges. The Order also provided that "[i]f the utility is unable to make

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the refunds or is only able to make partial refunds due to its current financial situation, any unrefunded AFPI charges shall be designated as CIAC." Order, page 8.

Rule 25-30.360(2), Florida Administrative Code ("FAC") provides, in part, as follows:

Refunds must be made within 90 days of the Commission's order unless a different time frame is prescribed by the Commission.

The Order was issued on August 22, 1996, and it was Southlake's understanding that it needed to complete the refunds by November 22, 1996 (i.e., within ninety (90) days). At that time, Southlake did not have the ability to make refunds by that date due to its then current financial position. Therefore, no refunds would be issued and the entire refund amount would be converted to contributions-in-aid-of-construction ("CIAC"). In other words, Southlake's ratebase would be reduced and the developers would not get any money.

Southlake considered the situation and proposed a method to acquire the financial ability to make the refunds. If the developers who were to receive refunds also needed to acquire additional capacity for their current developments or new developments in Southlake's service area, then the developers could enter into contracts for the additional capacity. In turn, the payments under these new agreements would give Southlake the financial ability to make the refund payments.

Southlake discussed this approach of refunding previously collected AFPI charges from the amount of future AFPI charges with

the Staff of the Commission several times by telephone and at a January 10, 1996, conference at the Commission's office. Southlake's original proposal was to give the developers credit for plant capacity and AFPI charges, independent of an immediate reservation of capacity. Southlake's original proposal was not approved.

Based upon Southlake's discussions with Staff, Southlake understood that it would be able to use the reservation of capacity/refund approach only for developers who reserved additional capacity and paid additional service availability charges, including AFPI charges, prior to November 22, 1996, the date when Southlake was to complete refunds and submit the reconciliation report. When the reconciliation report was submitted, Southlake was required to reclassify any remaining unrefunded AFPI as CIAC and no further refunds would be made.

In September of 1996, Mr. Robert L. Chapman, III, President of Southlake, met with Mr. David Auld, Vice President of D.R. Horton Custom Homes, Inc. ("Horton"). Mr. Chapman explained Southlake's understanding of the situation as described above. Mr. Chapman informed Mr. Auld that if Horton had any plans to reserve additional capacity within Southlake's service area, it might want to consider doing so before Southlake had to submit its reconciliation report to the Commission. Southlake's understanding was that, if Horton prepurchased plant capacity before then, and if part of that payment were for an AFPI deposit, which was Southlake's normal practice, Southlake could then refund the AFPI

overpayment, up to the full \$88,931.52, from the new AFPI collected. Mr. Auld felt that this approach presented a good opportunity because Horton had recently purchased land for 316 new houses. Under the new AFPI schedule, the deposit for AFPI for 316 homes in September of 1996 would be \$169,594.04. If the refund to Horton were accomplished by a rebate, the total amount to be deposited would be reduced by \$88,931.52, to \$80,662.52. Horton considered this option and other factors, such as ensuring plant availability, and decided to prepurchase capacity for all 316 units. On September 30, 1996, Horton and Southlake entered into a Developer's Agreement to accomplish both the capacity reservation and the refund.

Mr. Chapman did not make any reference to "savings" or "discount" in his conversations with Mr. Auld other than as described above. Horton understood the transaction was structured to give Horton a refund. In fact, Mr. Auld provided Southlake with a letter addressed to Mr. Chapman on September 30, 1996, describing Horton's motivation for the transaction, a copy of which is attached as Exhibit A. In the letter, Mr. Auld states that the prepurchase was conditioned on receiving a "full refund of AFPI overpayments." Mr. Auld's letter does not refer to any "savings" or "discount" on the AFPI charges.

**Staff's Second Data Request
Question 2**

By Order No. PSC-96-1082-FOF-WS, issued August 22, 1996, the utility was required to make certain refunds, including but not limited to D.R. Horton. Since the Commission ordered

refunds in Order No. PSC-96-1082-FOF-WS, why did Southlake use the term rebate in the September 16, 1996, developer agreement between the utility and D.R. Horton?

Southlake's Response:

As discussed in Southlake's response Question 1 above, Southlake was using the collection of the AFPI deposit for the new 316 connections to fund the refund to Horton of \$88,931.52 relating to the old AFPI charges for the old connections. The agreement was prepared to set forth the \$88,931.52 offset and Mr. Auld's letter clearly indicates that Horton understood that it was getting a refund.

Southlake used the term "rebate" in the agreement because it is an appropriate term to use. *The American Heritage Dictionary*, Third Edition, defines "rebate" as follows: A deduction from an amount to be paid or a return of part of an amount given in payment. Southlake's use of the term "rebate" is consistent with this definition. The refund was used as a deduction from an amount to be paid by Horton.