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
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 ORDER NO. PSC-00-0917-SC-WS ISSUED: May 9, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE AND TO PROVIDE SECURITY FOR SERVICE AVAILABILITY CHARGES HELD SUBJECT TO REFUND IN THE EVENT OF A PROTEST
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER DISCONTINUING WATER PLANT CAPACITY CHARGES AND AFPI CHARGES, REDUCING WASTEWATER PLANT CAPACITY CHARGES, AND REQUIRING REFUNDS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the actions discussed herein, except our decisions to initiate a show cause proceeding and to require security for the service availability charges being held subject to refund in the event of a protest, are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Southlake Utilities, Inc. (Southlake or utility) is a Class C utility providing service to approximately 374 water and 368 wastewater customers in Lake County. According to the utility's 1998 annual report, the water system had actual operating revenues of $145,028 and a net operating loss of $19,837. The wastewater system had actual operating revenues of $123,304 and a net operating loss of $86,201. The utility is not located in a water use caution area designated by the Southwest Florida Water Management District.

On August 4, 1998, D.R. Horton Custom Homes, Inc. (Horton), a developer in Southlake's territory, filed a Complaint against the utility, pursuant to Rules 25-22.036 and 25-30.560, Florida Administrative Code, regarding the collection of allowance for funds prudently invested (AFPI) charges under a developer's agreement entered into by both parties on September 17, 1996. On November 16, 1998, Horton filed a Petition, pursuant to Section 367.101, Florida Statutes, and Rules 25-22.036(4)(b), 25-30.580, and 28-106.301, Florida Administrative Code, to immediately eliminate the authority of Southlake to collect service availability and AFPI charges. On December 11, 1998, Southlake filed a Motion to Dismiss Horton's November 16, 1998, Petition. By Order No. PSC-99-0027-PCO-WS, issued January 4, 1999, we initiated an investigation into the utility's AFPI and service availability charges and held these charges subject to refund. By Order No. PSC-99-0648-PCO-WS, issued April 6, 1999, we denied Southlake's Motion to Dismiss Horton's Petition and combined our investigation with Horton's Petition.

NET BOOK VALUE

According to Audit Disclosure No. 5, the utility recorded $1,500 in Account 340, Office Furniture and Equipment (water) and $1,500 in Account 390, Office Furniture and Equipment (wastewater). Our auditors requested that the utility provide sufficient support documentation for these amounts. In its response to the audit, the utility stated that these amounts were for an office copier. Further, the utility stated that the copier is currently in use and available for inspection. Southlake provided copies of canceled checks to our audit staff.

Without invoices supporting these checks, we are unable to determine whether these checks are for utility or non-utility

related costs. It is the utility's burden to prove that its costs are reasonable. Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982). Based on the above, the utility's water and wastewater plant balances shall each be reduced by $1,500. This is consistent with our decision in In Re: Application for Limited Proceeding Increase in Water and Wastewater Rates in Pasco County by Aloha Utilities, Inc., Order No. PSC-99-1917-PAA-WS, issued September 28, 1999, in Dockets Nos. 970536-WS and 980245-WS.

WATER AND WASTEWATER LAND BALANCES

When analyzing the utility's service availability policy, we reviewed the utility's recorded cost of land. According to its 1998 annual report, the utility recorded water and wastewater land balances of $201,083 and $802,141, respectively. The utility was asked to provide all support documentation for its land. Southlake provided a warranty deed and documentary stamps which supported a $20,000 purchase of 5 acres for the construction of future wells. The utility also provided a lease agreement for 12.53 acres. Based on the utility's response to our staff's data request, the utility recorded a total value of $760,586 for this leased land. Specifically, the utility recorded $153,627 for its water operations and $606,959 for its wastewater operations.

We reviewed this lease and do not find that the cost charged by the utility is prudent. The following is our analysis of this transaction.

History of the Utility and Leased Land

In the utility's original certificate application, Southlake stated that it was organized to provide water and wastewater for an affordable apartment and townhouse community located on 617 acres in Lake County. Southlake, Inc., the utility's majority shareholder and a developer, executed a funding agreement with the utility, where Southlake, Inc., agreed to provide the principal funding of the utility until such time as the utility serves 800 customers. Based on documentation in its original certificate docket and discussions with the utility, Southlake, Inc., at that time was owned by Robert L. Chapman, II, Robert L. Chapman, III, and other family members.

The 617 acres of land were owned collectively by Robert L. Chapman, II, & Elisabeth T. Chapman (the Chapmans). The Chapmans are the parents of Robert L. Chapman, III, the utility's president

and majority stockholder. On August 22, 1990, an option to lease was executed between the utility and the Chapmans, with a 99-year term for the sum of $35,000 per year. This agreement was for a 10 acre site within the 617 acres which is now used for the wastewater treatment plant. By Order No. 24564, issued May 21, 1991, in Docket No. 900738-WS, a total annual rent expense of $23,334 for this leased land was included equally in the determination of the utility's original water and wastewater rates. Further, the lease was to be treated as an operating lease. The utility was planning to record the annual lease payments as an expense. According to the utility president, this lease expired on August 22, 1991.

On August 17, 1993, Southlake and the Chapmans executed another 99-year lease for 12.53 acres of the 617 acres. According to this lease, the 12.53 acres ("leased land") consisted of three parcels which included: 1) a 10-acre parcel for the utility's wastewater treatment plant; 2) a 1.38 acre parcel for the utility's water treatment plant; and 3) a 1.15 acre parcel for a water tank. This agreement required Southlake to pay the Chapmans $47,400 annually. The lease was still treated as an operating lease, and the annual lease payments were expensed.

On July 17, 1993, the Chapmans conveyed ownership of approximately 29 other non-utility acres of the 617 acres to Robert L. Chapman, III, as a gift. This land is adjacent to the land where the utility's water treatment plant is located. In 1997, the leased land along with the entire Southlake Planned Urban Development (PUD), which consisted of 588 acres (617 acres less 29 acres), was acquired by Southlake Development, Ltd. (SDL). SDL is controlled by Richard Driehaus and Jeffrey Cagan of Chicago, Illinois. Mr. Driehaus and Mr. Cagan each own 15 percent of Southlake Utilities, Inc., which they acquired from Ron Allen, a former stockholder. Currently, Robert L. Chapman, III, the utility's president, is a limited partner in SDL, owning 5% of the company; he owns 10% of the utility; and he is the majority stockholder of Southlake, Inc., which owns 60% of the utility.

On June 27, 1997, Southlake and SDL executed an amendment to the lease. This amendment apparently was to correct the legal description of the water treatment plant parcel. The lease was still treated as an operating lease, and the utility continued to record the annual lease payments as an expense.

On December 23, 1998, Southlake and SDL executed another amendment to the lease. The purpose of this amendment was twofold.

First, it included a provision that allows the utility the right, at its option upon the completion of the lease term, to purchase the leased land from SDL for the sum of $1,000. Second, it modified the legal description of the two parcels of land utilized for the utility's water operations. The water treatment plant parcel now consists of 2.528 acres. The other parcel is for the utility's "Well A" which consists of .0023 acres. As a result of this amendment, the utility recorded the lease as a capital lease.

In 1994, the 29-acre parcel of non-utility land owned by Robert L. Chapman, III, was appraised. The appraisal report indicated that the value of the 29-acre site was $1,736,000, with a $59,862 per acre valuation. The utility utilized this appraisal to justify a total value of $760,586 for the leased utility land, which equates to a $60,700 per acre valuation.

Original Cost When First Devoted to Public Use

We find that the utility's leased land transactions were related party transactions because the Chapmans are the parents of Robert L. Chapman, III. According to Statement of Financial Accounting Standard 57, examples of related party transactions include, but are not limited to, transactions between an entity and its principal owners or members of their immediate families. Principal owners are defined as owners of record who own more than 10 percent of the voting interests of the entity. Although SDL acquired the leased land, we find that the lease is still a related party transaction because SDL's owners, Mr. Driehaus and Mr. Cagan, each own 15 percent of Southlake Utilities, Inc.

By their very nature, related party transactions require closer scrutiny. Although a transaction between related parties is not per se unreasonable, it is the utility's burden to prove that its costs are reasonable. Florida Power Corp. v. Cresse, 413 So. 2d at 1191. In GTE Florida, Inc. v. Deason, 642 So. 2d 545 (Fla. 1994), the court established that when affiliate transactions occur, that does not mean that unfair or excessive profits are being generated, without more evidence to contrary. The standard established to evaluate affiliate transactions is whether those transactions exceed the going market rate or are otherwise inherently unfair.

We have addressed the valuation of land purchased from related parties in numerous cases. See Order No. 7020, issued November 1975, in Docket No. 750128-WS; Order No. 17366, issued April 6,

1987, in Docket No. 850031-WS; Order No. 17532, issued on May 8, 1987, in Docket No. 850941-WS; Order No. PSC-93-0301-FOF-WS, issued February 25, 1993, in Docket No. 911188-WS; Order No. PSC-98-1579-FOF-WS, issued November 25, 1998, in Docket No. 980441-WS; and Order No. PSC-98-1585-FOF-WU, issued November 25, 1998, in Docket No. 980445-WU. In the instant case, the major distinction from these prior cases is that the subject land was not purchased; rather the utility obtained control of this land through a 99-year lease. However, the decisions in these prior cases are applicable in order to determine the appropriate value of land to allow as a capital lease.

Florida is an original cost jurisdiction. Pursuant to Rule 25-30.115, Florida Administrative Code, we adhere to the National Association of Regulatory Utility Commissioners' Uniform System of Accounts (USOA) in recording land when first dedicated to public use. Accounting Definition 9 for Class C Water Utilities states that utility plant is be recorded at original cost when first devoted to public service. In order to determine the original cost of the leased land when first devoted to public service, it is necessary to review: 1) when the property was dedicated to public use; and 2) what the appropriate cost was at the time of the dedication.

There are different methods for determining when land was first dedicated to public use. One method is to determine when the land or facilities were first placed into service or use. An example of this would be when a utility buys plant or land in an arm's-length transaction. Another method is to examine the land's zoning or platting time frame which can demonstrate future utility use. We have commonly used this method to determine the date of devotion to utility service in related party transactions.

In response to an audit data request, the utility stated that the leased land was zoned for water and wastewater use within the Southlake PUD by Lake County Ordinance 62-1990 adopted in 1990. In the utility's December 23, 1999 letter to our staff, Southlake stated that this Lake County Ordinance made no final decisions concerning dedication of any property to public utility use. On August 31, 1990, the utility did, however, file an application for original certificates in Docket No. 900738-WS. In the same docket, we set the utility's rates and charges based on lease payments for this leased land. See Order No. 24564, issued May 21, 1991, in Docket No. 900738-WS. Based on the above, we find that the 12.53 acres of land were first devoted to public use in 1990.

After the date is determined as to when the property was dedicated to public use, the determination of original cost should be made. To establish what an equivalent purchase price would have been in an arm's-length transaction, we have used appraisals to value land at the point in time when the land was dedicated to public service. Depending on the circumstances, we have accepted or rejected appraisals depending on whether the appraisals were based on equivalent land sales. In lieu of sufficient evidence regarding a reasonable appraised value, we have used a related party's original cost documentation reflecting an arms-length transaction and escalated this original cost forward using the Consumer Price Index (CPI). We have also used property tax information and documentary stamps to determine the original cost of land.

We have reviewed the appraisal that Southlake used to determine the value of the 12.53 acres of leased land. We find that it is inappropriate to accept the utility's valuation of this leased land for ratemaking purposes for the following reasons:

1) The appraisal was not for the 12.53 acres of leased land; rather, it was for an approximate 29-acre non-utility parcel adjacent to the utility's water plant site.

2) The appraiser used sales of land zoned multi-family residential lots instead of utility property to determine the market value.

3) The leased land for the utility's water and wastewater systems were first devoted to public use in 1990, and the appraisal was performed in the third quarter of 1994.

The utility has failed to meet its burden in proving the original cost or appropriate value of this leased land. In the absence of substantial evidence regarding original cost when first devoted to public use, we analyzed the following two methods that have been used in prior cases to establish a value for the leased land in service.

As mentioned above, the cost for this land could be determined by escalating the original cost forward using the CPI, consistent with the our decision in In Re: Application of Rolling Oaks Utilities, Inc., for Increase Rates and Charges in Citrus County, Florida, Order No. 17532, issued May 8, 1987, in Docket No. 850941-

WS. In 1951, the Chapmans purchased approximately 720 acres which presently contains the utility's water plant site. The deed for this land indicates that the purchase price was $47,000 or approximately $65 per acre. In 1962, the Chapmans purchased approximately 164 acres which presently contains the utility's wastewater plant site. The deed for this land indicates that the purchase price was $200,000 or approximately $1,087 per acre. When escalating the original cost by the CPI, this leased land has a calculated value of $337 for the water system and $21,794 for the wastewater system. Thus, the total valuation of the 12.53 acres under this method would be $22,131.

Another method of valuation for this leased land would be to use property tax appraisal information. As previously discussed, we determined that the leased land was first devoted to public use in 1990. According to SDL's property tax invoices, the 1990 tax-assessed value of the leased 2.53 acres for Southlake's water system was $7,498. Further, the 1990 tax-assessed value of the leased 10 acres for the wastewater system was $18,875. Thus, the total valuation of the 12.53 acres under this method would be $26,373. These tax-assessed values were based on the value of land for agricultural purposes.

As stated above, the utility has failed to meet its burden in proving the original cost or appropriate value of this leased land. A reasonable person would agree that the 1990 land values around the Walt Disney World theme park in Lake County are far greater than the calculated amounts of the two valuation methods outlined above. The utility has valued the leased land as of 1994 at approximately $60,700 per acre. An appraisal of this leased land as utility property in 1990 would be the most reasonable method for valuing the leased land. At this time, we do not have this information. However, given the development growth around the utility's service area and without further evidence, we find that a $30,000 per acre valuation of the leased land is fair and reasonable.

We shall use the $30,000 per acre valuation to analyze the utility's service availability policy and AFPI charges. In addition, this per acre valuation shall be applied to any future proceedings of this utility, including, but not limited to, price indexes, interim rates, and overearnings. However, if in the future the utility can provide us with an appraisal of this leased land as utility property as of 1990, the issue may be reconsidered.

According to the its 1998 annual report, the utility recorded water and wastewater land balances of $201,083 and $802,141, respectively. The utility was asked to provide all support documentation for its land. Southlake provided a warranty deed and documentary stamps which supported a $20,000 purchase of 5 acres for the construction of future wells. We find that the warranty deed and documentary stamps sufficiently justify the original cost of this 5-acre site. The utility also provided a lease agreement for 12.53 acres. However, as discussed above, a fair and reasonable value for this leased land is $75,900 (2.53 acres) for its water system and $300,000 (10 acres) for its wastewater system which equates to a total value of $375,900.

Based on the above, the water and wastewater land balances shall be restated as $95,900 and $300,000, respectively. Therefore, the utility shall reduce its water land balance by $105,183 and its wastewater land balance by $502,141.

WATER AND WASTEWATER ACCUMULATED DEPRECIATION BALANCES

According to Audit Disclosure No. 4, for the year ended December 31, 1998, the utility overstated its depreciation expense for water by $9,554 and understated its depreciation expense for wastewater by the same amount. In its response to the audit, the utility stated that it agrees with these adjustments. Based on the above, we find that the appropriate water and wastewater accumulated depreciation balances are $37,585 and $262,972, respectively. Further, the utility shall reduce its water accumulated depreciation balance by $9,554 and shall increase its wastewater accumulated depreciation balance by $9,554.

NET BOOK VALUE FOR WATER

When analyzing whether a utility's AFPI charges should be discontinued, the net book value, including any construction work in progress (CWIP) and prepaid contributions-in-aid-of-construction (CIAC), should be utilized. This is done in order to determine a utility's true investment at a specific point in time. Further, we are analyzing the utility's water net book value for the purpose of determining whether the water AFPI charges should be discontinued. We have another basis for discontinuing Southlake's wastewater AFPI charges which is discussed later in this Order.

We utilized the utility's 1998 annual report and the results of our staff's audit. We find that the appropriate water net book value, as of December 31, 1998, was ($41,153). This net book value and our corresponding adjustments are included on Schedules 1-A and 1-B attached to this Order, which by reference are incorporated herein.

SERVICE AVAILABILITY CHARGES

By a letter to our staff dated December 17, 1999, the utility stated that the houses within its service area that were constructed by Horton had an overall average daily flow of 871 gallons per day (gpd) per house, based on metered flows for the period ending November 17, 1999. The utility asserted that this flow exceeds the 350 gpd of water per house for plant capacity reserved by Horton. Further, the utility asserted that its existing tariff authorizes a reassessment of plant capacity charges for residential customers. By letter to our staff dated December 23, 1999, the utility reaffirmed its position that its existing tariff allows the utility to reassess plant capacity charges for residential customers if consumption exceeds the amount reserved by the developer.

Southlake's water service availability schedule of fees and charges, Sheet No. 38.0, states that each residential water equivalent residential connection (ERC) shall be charged $420, which is based on 350 gpd for each residential water ERC. It also states that all others customers shall pay $1.20 per gallon of estimated consumption per day. The utility's wastewater service availability schedule of fees and charges, Sheet No. 35.0, states that each residential wastewater ERC shall be charged $775, which is based on 300 gpd for each residential wastewater ERC. It further states that all others customers shall pay $2.58333 per gallon of estimated consumption per day.

Section 13 of Southlake's service availability policy describes the provision for plant capacity charges in its water and wastewater tariff, Sheets Nos. 31.0 and 28.0, respectively. Both water and wastewater are identical with the exception of the reference numbers. The water tariff states:

> Utility requires that all Contributors pay for a pro rata share of the cost of Utility's water and wastewater treatment plant facilities whether the facilities have been constructed or not. Such charges to Contributors

> pursuant to this policy are calculated based upon the estimated demand of the Contributor's proposed installations and improvements upon the treatment facilities of the Utility and are computed by multiplying the number of calculated equivalent residential connections by the plant capacity reservation charges reflected on Sheet No. 38.0.
>
> If the experience of the Contributor after twelve months of actual usage exceeds the estimated gallons on which the plant capacity charges are computed, the Utility shall have the right to collect additional contributions in aid of construction. The twelve month period shall commence when certificates of occupancy have been issued for the Contributor's entire project. (emphasis added)

Based on this tariff language, the utility contends that any customers' plant capacity charges can be reassessed after 12 months.

We disagree with the utility's interpretation to the extent that this provision applies to residential customers. The residential gpd amounts stated in the utility's service availability schedule of fees and charges are fixed amounts set by the Commission. It would be an extreme administrative burden for any utility to reevaluate consumption patterns for all residential customers after one year of service. In In Re: Application for a Rate Increase In Pinellas County By Mid-County Services, Inc., Order No. PSC-94-1042-FOF-SU, issued August 24, 1994, in Docket No. 921293-SU, we stated, "When the service availability guideline rules were being promulgated, the Commission considered and adopted a service availability policy that would fix charges for the individual residential and commercial applicants and allow some flexibility for negotiated charges between developers and utilities." Thus, we established that residential service availability charges will be determined based on fixed average gallonage per day.

Further, it appears that Southlake only wants to reassess those customers who exceeded the consumption level and also bought houses from Horton. This practice appears to be discriminatory, especially as Southlake has not mentioned offering a refund of plant capacity charges to customers whose consumption is less than the fixed residential consumption level or reassess the plant capacity charges for homes built by someone other than Horton.

Based on the above, we find that the utility's current tariff does not authorize a reassessment of plant capacity charges for changed consumption for residential customers at any time after connection to the system. To specifically delineate that residential customers cannot be reassessed, we find that it is appropriate to reflect this on the tariff. The provision for plant capacity charges of Southlake's current water and wastewater tariff, Sheets Nos. 31.0 and 28.0, respectively, shall be revised. Specifically, the first sentence in the second paragraph of the provision shall be changed to reflect the following wording: "If the experience of the non-residential Contributor after twelve months of actual usage exceeds the estimated gallons on which the plant capacity charges are computed, the Utility shall have the right to collect additional contributions in aid of construction."

The appropriate effective date and noticing requirement for the above tariff changes are discussed later in this Order.

GROWTH PROJECTIONS

The utility presented in its first supplemental response to our staff's first data request a projected growth in ERCs of 714.5 for the year 1999. Southlake also projected a growth of 1,460 ERCs for the year 2000, and a growth of 1,449 ERCs for the year 2001. The utility, at the end of year 1998 and the beginning of 1999, recorded 374 connections that calculated to 586 ERCs, a growth of 191 ERCs. As of December 31, 1999, the utility recorded 807 ERCs, a growth of 219 ERCs. This falls short of the utility's predicted growth rate by 69%. While that percentage could very well adjust to a higher percentage in subsequent years, it is still highly questionable that 100% of the anticipated growth will occur. For example, the utility predicts a growth rate of 1,460 ERCs for the year 2000. When the regression formula was used to calculate anticipated growth for year 2000 based on the last four years historical growth (1995 was the utility's "start-up" year, therefore, we used the beginning of year 1996 to the end of year 1999), the anticipated growth is expected to be 197 ERCs.

Linear regression using the best available data indicates that growth in the year 2000 will be approximately 197 ERCs and not the 1,460 ERCs claimed by the utility. This appears reasonable and consistent with the percentage growth experienced over the last few years. In 1997, the utility increased 44% (121 ERCs), in 1998 it increased 48% (191 ERCs), and in 1999, it increased 37% (219 ERCs). It has been extremely difficult to obtain accurate/consistent data

and developer agreements from the utility which might support its growth estimates. Thus, the utility's growth projection for the year 2000 and beyond shall be based on linear regression using historical growth in ERCs.

CAPACITY OF SOUTHLAKE'S EXISTING WATER AND WASTEWATER PLANTS

The water treatment plant is a closed system of operation currently rated in accordance with the Department of Environmental Protection (DEP) Pubic Water System Identification No. 3354916 at 537,000 gallons per day. The Division of Drinking Water at DEP does not permit water treatment systems. Jurisdictional systems are tracked and filed by an identification number. However, construction permits are issued when the utility requests or it is necessary to upgrade a water system. The DEP requires that a utility construct and operate its water facilities based on peak demand. For construction permits, the DEP requires 2.25 times the average demand of 350 gpd per ERC, or 787.5 gallons per ERC. Based on this requirement, it is estimated that registered capacity of 537,000 gpd will support 682 ERCs (537,000/787.5 gpd per ERC). On December 31, 1999, the utility had 807 ERCs. This would indicate the utility is behind schedule with its water plant upgrades to satisfy the DEP requirement for peak flow.

The utility had an active construction permit, WC35-0080599-004, that expired on June 15, 1999, which allowed the utility to install a second 15,000 gallon hydropneumatic tank. The permit also included the addition of associated eight-inch ductile iron and PVC yard piping, valves, controls, and appurtenances. With the installation of this tank, the plant capacity would be increased to 1,075,200 gpd, which would support 1,365 ERCs, and would increase its potential service to beyond the year 2001. During our engineering staff's field visit, the second hydropneumatic tank was installed and in use. Further, the utility's engineer confirmed by letter to Mr. Chapman, dated February 26, 1999, that the "potable water system was upgraded under DEP Permit No. WC35-0080599-004 (06-16-98) with the installation of the second 15,000 gallon hydropneumatic tank." However, the DEP does not have any record of the construction of the second tank being completed, and on March 22, 2000, continued to list the water system capacity at 537,000 gpd.

The wastewater treatment plant is an extended aeration system of operation currently permitted to 0.550 mgd annual average daily

flow (AADF) in accordance with DEP Permit No. FLA010634. The DEP structures wastewater permits differently, in that wastewater permits are issued as an operating/construction permit which will include any anticipated construction the utility foresees and applies for when requesting its five year permit. The permit issued to Southlake on November 26, 1996, states, "An existing 0.300 mgd annual average daily flow (AADF) permitted capacity extended aeration activated sludge domestic wastewater treatment plant to be expanded to 0.550 mgd AADF by adding a new 104,167 gallon clarifier." When our staff engineer was on-site for the engineering inspection on September 9, 1999, the 104,167 gallon clarifier located in the second package plant was constructed and in use. However, the DEP's records do not reflect this upgrade because the utility's engineer has not submitted a letter of completion to certify the upgrade. Meanwhile, the existing wastewater treatment plant is currently operating as a 0.550 mgd plant. According to the Monthly Operation Reports for the year 1999, the average gallons per day of treated wastewater equated to 217 gpd per ERC. It is estimated that 0.550 mgd will support 2,535 ERCs (550,000/217 gpd per ERC). If the utility continues to grow at a rate of 197 ERCs per year, as estimated by linear regression, the utility would support customer growth beyond the year 2007.

EXPANSION OF SOUTHLAKE'S PLANTS

Southlake's water treatment plant has verified plant upgrades which increased the capacity to 1,075,200 gpd, raised its ability to serve approximately 1,365 ERCs, and increased its potential service to beyond the year 2001. The existing wastewater treatment plant will not need to be expanded until beyond the year 2007, at which time an expansion will be justified. We realize that a burst in customer growth could occur in the near future. However, the utility has been unable to provide any developer agreements which would support its growth estimates. Southlake has relied on questionable data by developers as to how many homes are planned to be built, provided sales support the current building boom. The DEP requires that a capacity analysis report (CAR) be submitted for wastewater treatment systems in accordance with Rule 62-600.405(3), Florida Administrative Code, when the three-month average daily flow for the most recent three consecutive months exceeds 50% of the permitted capacity of the treatment plant or reuse and disposal systems. The utility has not filed a CAR and has not submitted a request for a construction permit beyond the current wastewater permit which expires November 1, 2001. This would need to be

issued by the DEP prior to any expansion. Currently, the DEP does not require a CAR for drinking water systems.

PLANT CAPACITY CHARGES

Southlake's service availability charges were approved pursuant to Order No. 24564. Southlake currently is authorized to collect water plant capacity charges of $420 for residential per ERC and $1.20 per gallon for all other customers and to collect wastewater plant capacity charges of $775 for residential per ERC and $2.58333 per gallon for all other customers. For informational purposes, the water plant capacity charge per gallon for all other customers was determined by dividing the $420 residential per ERC charge by the residential consumption level of 350 gpd per ERC, which was established by Order No. 24564. Further, the wastewater plant capacity charge per gallon for all other customers was determined by dividing the $775 residential per ERC charge by the residential wastewater treatment demand of 300 gpd per ERC which was established by Order No. 24564.

According to Rule 25-30.580(1)(a), Florida Administrative Code, a utility's service availability policy shall be designed so 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." A utility's compliance with Rule 25-30.580(1)(a), Florida Administrative Code, depends on the circumstances surrounding a given utility. A utility's current contribution level is not the only factor to consider in determining whether its charges should continue because the rule states that the contribution level should not exceed 75% at a utility's design capacity. Future growth and plant expansion should also be considered. A utility's contribution level at a given point in time could exceed 75% due to the timing of plant expansions and customer growth. As long as the contribution level is not projected to exceed 75% at its designed capacity, a utility would be in compliance with the rule.

As of December 31, 1999, Southlake had contribution levels of 148% and 81% for water and wastewater, respectively. Thus, consideration of future growth and construction needs is necessary to determine if changes to plant capacity charges are required. Southlake is in a high growth area which has the need for future plant expansion. The utility currently has approximately 593 water

customers and 582 wastewater customers. The utility has indicated that the total customers at build-out will be approximately 19,000 customers.

Given the level of uncertainty of what the appropriate growth rate and projected plant additions would be for total build out, we find that it is more appropriate to analyze a shorter time period. Thus, we have analyzed an eight year time period from 2000 to 2007 to determine what the appropriate charges should be. We used linear regression to determine a growth rate and matched the need for plant expansion with capacity needs of our projected growth.

Initially, the utility submitted its projected on-site and off-site facilities and projected growth from 1999 to 2007. According to the utility, on-site facilities are constructed by the utility and off-site facilities are 100% contributed by developers. The utility projected growth to be 715 ERCs for water and wastewater in 1999. The actual growth of 219 water ERCs and 214 wastewater ERCs for the year ended December 31, 1999, was far less than the projected 715 ERCs for water and wastewater. Thus, we used the utility's 1999 year-end information as a starting point for our analysis.

Water Plant Capacity Charge

As of December 31, 1998, Southlake's water plant capacity was 537,000 gpd. As stated earlier, the installation of a second 15,000 hydropneumatic tank in 1999 would increase the utility's water system capacity to 1,075,200 gpd. Based on our engineering staff's field inspection, this hydropneumatic tank was installed and in use in 1999. We calculated an annual growth rate of 197 ERCs using linear regression. We find it appropriate to change the residential consumption level to equal the DEP's construction permit requirement of 787.5 gpd, which is 2.25 multiplied by the average demand of 350 gpd. Using an annual growth of 197 ERCs, average consumption of 787.5 gpd per ERC, and a plant capacity of 1,075,200 gpd, our analysis indicates that the utility would be at approximately 102% of its current water plant capacity in the year 2002.

According to the utility's response to our staff's third data request, the utility had planned to increase its water capacity from 1,075,200 gpd to 2,448,000 gpd in the year 2000. For the purposes of our analysis, we increased the water system's capacity to 2,448,000 gpd in the year 2002 to match the capacity needs of

our projected growth. This plant expansion will provide adequate capacity in the year 2007.

According to the utility, its Phase I additions of on-site facilities totaling $586,000 will bring its water plant capacity to 2,448,000 gpd. We find that the utility's $586,000 projection is inflated. Based on our engineering cost studies, we find that the following estimate is more reasonable.

Water Proforma Plant - Phase I Additions of On-site Facilities	
Plant Description	**Commission Estimate**
Construction of a 143,000 gallon ground storage system at Water Treatment Plant (WTP)	$137,300
Install high service pumping facility at WTP	36,000
Expansion of Chlorine facility	12,000
Install a stand-by generator	50,000
Well A - equipped and connected to distribution system.	96,000
Well A - upgrade	12,000
	$343,300
Engineering @ 20%	68,660
	$411,960
Administration @ 15%	61,794
Total Phase I Additions of On-site Facilities	**$473,754**

Based on our growth projections, the continuance of the utility's existing water plant capacity charge would place the utility in violation of Rule 25-30.580(1)(a), Florida Administrative Code. The utility's existing charge would result in a year 2007 contribution level of 152.76% for the water system. Even if the utility's existing charge is discontinued, the utility will have a contribution level of 93.07% for the water system. Based on the above, all water plant capacity charges shall be

discontinued. Our analysis is depicted on Schedule No. 2 attached to this Order, which by reference is incorporated herein.

Wastewater Plant Capacity Charge

The utility's wastewater system has an existing capacity of 550,000 gpd. Using the consumption reflected in the Monthly Operation Reports submitted to DEP for the 1999 calendar year, we find that 217 gpd per ERC is the appropriate residential wastewater demand to calculate the plant capacity charge. As previously discussed, if the utility continues to grow at a rate of 197 ERCs per year, as estimated by linear regression, the utility will have adequate capacity in the year 2007. As stated earlier, we utilized the utility's 1999 year-end information as a starting point. Specifically, the utility submitted its 1999 year-end net book value and ERCs. Based on our customer growth and consumption projections, the utility's projected wastewater on-site facilities beyond the 1999 CWIP balances are unnecessary.

Based on our growth projections, allowing the continuance of the utility's existing wastewater plant capacity charge would place the utility in violation of Rule 25-30.580(1)(a), Florida Administrative Code. The utility's existing charge would result in a year 2007 contribution level of 129.54% for the wastewater system. Thus, we find that the appropriate residential per ERC and all other customers per gallon wastewater plant capacity charges shall be $240 and $1.105991, respectively. The wastewater plant capacity charge per gallon for all other customers was determined by dividing the $240 residential per ERC charge by our residential wastewater treatment demand of 217 gpd per ERC. Our analysis is depicted on Schedule No. 3 attached to this Order, which by reference is incorporated herein.

The appropriate effective date and noticing requirement for the above tariff changes are discussed later in this Order.

REFUND OF PLANT CAPACITY CHARGES

We initiated an investigation of the utility's AFPI and service availability charges and held these charges subject to refund pursuant to Order No. PSC-99-0027-PCO-WS. The utility shall be required to refund all water plant capacity charges collected on or after December 15, 1998. This refund shall include all outstanding prepaid water plant capacity charges. According to the utility's CIAC refund reports, the utility has collected $254,933

in water CIAC from December 15, 1998, to February 29, 2000. Moreover, the utility shall be required to refund the difference between the utility's existing residential wastewater plant capacity charge of $775 and our established charge of $240. The utility also shall be required to refund the difference between the utility's existing $2.58333 per gallon charge for all other customers from our established charge of $1.105991. The wastewater refunds shall include all plant capacity charges and prepayments collected on or after December 15, 1998. According to the utility's CIAC refund reports, the utility has collected $398,560 in wastewater CIAC from December 15, 1998, to February 29, 2000. The refunds shall be made pursuant to Rule 25-30.360, Florida Administrative Code. Also, the refunds shall be made payable to the individual customer or developer who paid the plant capacity charges. Further, the utility shall provide refund reports in conformance with Rule 25-30.360(7), Florida Administrative Code.

SOUTHLAKE'S AFPI TRUE-UP PROCEDURE

On September 17, 1996, Horton and Southlake entered into a developer's agreement whereby Horton would receive service for 316 ERCs. Pursuant to this agreement, Horton paid AFPI charges totaling $169,594. Horton filed a Complaint against Southlake on August 4, 1998, regarding the collection of AFPI charges under this developer's agreement. On September 4, 1998, Southlake filed an Answer and Response to Horton's Complaint. On September 29, 1998, Horton filed a Response to Southlake's Affirmative Defenses.

In its Complaint, the developer alleged that it prepaid $169,594 in AFPI charges pursuant to the developer agreement entered into with Southlake on September 17, 1996. The developer contended that when it requested Southlake to connect 44 of the ERCs reserved under the developer agreement, the utility demanded additional AFPI charges up through the date of physical connection, claiming that the original payments of AFPI were only deposits for the total amount of AFPI charges due. The developer asserted that this action by the utility is in violation of its agreement with Southlake and is effectively an attempt to impose guaranteed revenue charges when none have been approved by this Commission. The developer requested that we order Southlake to "discontinue all attempts to assess unauthorized guaranteed revenues against D.R. Custom Homes, Inc. under the label of AFPI charges, and to refund any previously assessed AFPI charges imposed by the utility after the date that the approved plant capacity charges were paid, along with applicable interest."

In its answer, Southlake denied that it is demanding unauthorized guaranteed revenues. The utility contended that it was required by Orders Nos. 24564 and PSC-96-1082-FOF-WS, to determine AFPI charges based upon the date that customers connect to the system. Southlake also argued that H. Miller & Sons, Inc., v. F. Hawkins, 373 So. 2d 913, 916 (Fla. 1979), states that service availability charges are to be determined on the date of connection. Southlake asserted that it uses the date of connection to determine the amount of AFPI due; holds all payments for AFPI made prior to the date of connection as interest-earning deposits; 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; and then applies the AFPI deposit, and any interest on the deposit, to determine the outstanding amount due. Southlake calls this procedure "AFPI True-Up." Southlake also offered documentation, involving a complaint against Southlake involving circumstances almost identical to this case, in which the Division of Consumer Affairs found that Southlake was not violating its tariff or Commission rules in the billing of the utility's account.

In its response, Horton asserted that Order No. 24564 was canceled when Order No. PSC-96-1082-FOF-WS was issued; therefore, it is of no relevance to this case. Furthermore, Horton argued that Order No. PSC-96-1082-FOF-WS does not authorize Southlake to collect guaranteed revenues under the guise of AFPI charges. Moreover, the developer contended that Southlake's reliance on H. Miller and Sons is misplaced because that case involved a contract to supply service at an established rate or charge and the Commission later authorized an increase in that rate or charge, which is different from the circumstances in this case. Additionally, Horton argued that if Southlake wants to collect guaranteed revenues, it should apply to the Commission and substantially affected persons will then have the opportunity to "assess and ultimately test the validity of any Commission order granting or denying" the guaranteed revenues. As to the Department of Consumer Affairs letter which stated that Southlake's billing practices are not in violation of Commission rules and Southlake's tariff, Horton asserted that the document cannot be Commission precedent because the Commission staff cannot approve such procedures on the part of a regulated utility under the Florida Administrative Procedures Act or the tenets of Florida law.

To determine whether Southlake's true-up procedure is permissible, we looked at our prior orders involving the utility.

On January 2, 1991, we issued Order No. 23947, in Docket No. 900738-WS, granting Southlake Certificates Nos. 533-W and 464-S. In that same docket, we issued Order No. 24564, on May 21, 1991, establishing the current customer rates of the utility, including AFPI charges. Consistent with Commission practice, Southlake's original rates and charges were based upon estimated rates at 80% of build-out and a plant completion date of July 1, 1991. We determined the AFPI charge was 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. Hence, we found that 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, the utility filed an application to obtain approval of a change in the start date of the AFPI charges and to adjust the specified AFPI amounts to reflect actual construction costs. As stated above, the original AFPI charges were based on a plant completion date of July 1, 1991. The plant was not completed by this date; the utility did not notify the Commission of the delay; and the utility did not begin providing full water and wastewater service until June 1994. Therefore, the AFPI charges based on a plant completion date of July 1, 1991, were inappropriate because the charges accrued did not reflect the actual cost incurred by the utility.

In its application, the utility proposed water and wastewater treatment plant balances as of December 31, 1994, as the test year for its calculations. The utility also requested a waiver of Rule 25-30.434(4), Florida Administrative Code, which requires the effective date of the charge to be the month following the end of the test year. The utility requested that the charges be effective as of January 1, 1993, instead of January 1, 1995. The utility agreed to collect its tariffed AFPI charges subject to refund of any amounts exceeding the charges approved in Docket No. 950933-WS.

We addressed Southlake's application in Order No. PSC-96-1082-FOF-WS, issued August 22, 1996. In that Order, we denied the utility's request for waiver of Rule 25-30.434(4), Florida Administrative Code, because the utility failed to demonstrate unreasonable difficulty or unusual hardship that prevented compliance with the rule. Furthermore, because the plant construction was completed in 1994, a test year of December 31, 1994, was deemed appropriate. Although a test year ending June 1994 would have been more appropriate, the utility did not provide

accounting information as of that date. Rule 25-30.434(4), Florida Administrative Code, states that the beginning date for accruing the AFPI charge shall agree with the month following the end of test year that was used to establish the amount of non-used and useful plant. Therefore, the utility's beginning date for accruing the AFPI charge became January 1, 1995.

By Order No. PSC-96-1082-FOF-WS, we also required Southlake to refund previously collected AFPI charges. We determined the amount that was to be refunded to customers would be based on the date the customer became active. Specifically, we found that the date customers become active was the date meters were set and service was available for each building, whether or not the individual apartment units were occupied. The utility was ordered to refund all AFPI charges collected prior to January 1, 1995, under the existing tariff. As for the AFPI charges collected after this date, the utility was ordered to refund any amount exceeding the amount allowed in the new tariff. With regard to Horton, Southlake was required to refund the developer $88,932.

We agree with Horton that the letter from the Division of Consumer Affairs to the customer who filed a similar complaint against Southlake cannot be used as a precedent for the complaint in this instance because that complaint and letter were not considered by the Commission. However, the methodology for determining the amount of AFPI charges as of the date the customer is connected to the system has been consistently applied to Southlake in Orders Nos. 24564 and PSC-96-1082-FOF-WS; therefore, Southlake's method of calculating its AFPI charges is consistent with these orders.

As stated earlier, in Order No. 24564, we explicitly stated that "the amount of AFPI charges are based upon the date future customers connect to the system normally coinciding with the payment of the service availability charges." While it is correct that Southlake again applied for AFPI charges and was issued a new AFPI tariff in Order No. PSC-96-1082-FOF-WS, which canceled the existing AFPI tariff issued in Order No. 24564, the same methodology used to determine AFPI charges in Order No. 24564 was carried forward into Order No. PSC-96-1082-FOF-WS.

In Order No. PSC-96-1082-FOF-WS, we established new AFPI charges for Southlake because the AFPI charges implemented in Order No. 24564 were inappropriate because these charges were based on the representation that Southlake's plant would be completed and

begin serving customers by July 1, 1991. In Order No. PSC-96-1082-FOF-WS, Southlake was ordered to refund AFPI charges collected prior to the in-service date. The date used to determine the amount of refunds that were due to customers was determined to be the date that customers were connected to the system. Specifically, in this regard, we stated:

> As discussed earlier, the utility implemented its approved AFPI charge prior to the completion of the plant and prior to the date the plant was placed in service. Further, the utility failed to notify this Commission that the in-service date would be postponed almost three years. As a result, the AFPI charges collected prior to the in-service date were inappropriate and must be refunded. As of December 31, 1994, the utility collected AFPI charges of $294,775. Given the uniqueness of this utility's customers' make-up, a determination shall be made as to which date the customer became active. This date shall be determined by the date meters were set and service was available for each building, whether or not the individual apartment units were occupied. Also as of this date, each customer shall be charged service rates that all active customers are required to pay.

Order No. PSC-96-1082-FOF-WS at 5.

In summary, we determined that the amount of the AFPI charges, collected pursuant to Order No. 24564, should be determined as of the date the customer connects to the system. Likewise, this foregone methodology was consistently applied to certain AFPI refunds required pursuant to Order No. PSC-96-1082-FOF-WS.

Southlake was required to refund Horton $88,932, pursuant to Order No. PSC-96-1082-FOF-WS. Instead of remitting a cash payment of said amount to Horton, both parties agreed to recognize a rebate of said amount in the September 17, 1996, developer agreement, as payment in full of the required refund. Thus, Horton paid Southlake a total of $547,214, which consisted of: $132,720 for water plant capacity charges; $244,900 for wastewater plant capacity charges; and $169,594 ($80,662 in cash and an $88,932 rebate in lieu of payment) for AFPI charges. Horton deferred payment of the meter installation fee, the initial connection fee, and water and wastewater deposits.

Since Horton paid AFPI charges before connecting to the utility's system, a true-up of AFPI charges is appropriate in order to allow Southlake to earn a fair rate of return on prudently constructed plant held for future use. Rule 25-30.434(1), Florida Administrative Code, states:

> An Allowance for Funds Prudently Invested (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.

Given the specific language in Orders Nos. 24564 and PSC-96-1082-FOF-WS in that the amount of the utility's AFPI charges shall be determined as of the date the customer connects to the system, Southlake is permitted a true-up of AFPI charges. Further, both the order and tariff are silent regarding prepayments of AFPI charges. In addition, it must be noted that Horton had the opportunity to protest the order establishing Southlake's current AFPI tariff when the order was issued, but the developer did not do so. Therefore, in light of the foregoing, we find that Southlake's AFPI true-up procedure correctly applies our directives in Orders Nos. 24564 and PSC-96-1082-FOF-WS.

DISCONTINUANCE AND REFUND OF AFPI CHARGES

Horton argues that as of December 31, 1998, the utility had no investment, and in fact, had a negative investment in plant-in-service. Since the utility had no investment and therefore no carrying costs of any significance, Horton argues that all AFPI charges collected by the utility since it exceeded the 75% contribution level should either be refunded or treated as CIAC on the utility's books and records. Horton states that to allow the utility to retain those monies for supposed carrying costs that did not exist would allow a windfall to the utility and should not be condoned by the Commission. Horton further contends that it is inappropriate to exclude prepaid CIAC when viewing the utility's investment level.

We agree with Horton in that: 1) if a utility has no investment in plant-in-service, the utility would not have any carrying costs and entitlement to AFPI charges; and 2) it is inappropriate to exclude prepaid CIAC when viewing the utility's investment. Further, when analyzing whether a utility's AFPI

charges should be discontinued, the utility's investment should also include any CWIP. Previously in this Order, we found that the utility's investment in water was ($41,153), as of December 31, 1998. In other words, the utility had a negative investment level, and thus no investment in plant able to earn a return. Therefore, the utility's AFPI charges shall be discontinued as of December 15, 1998. If at such time the utility can demonstrate the need for AFPI charges in a future rate case or in an AFPI application pursuant to Rule 25-30.434, Florida Administrative Code, we may reconsider the utility's need for AFPI and/or guaranteed revenues.

According to the utility's AFPI refund reports from December 15, 1998, to February 29, 2000, the utility has collected $5,012 in water AFPI. Based on the above, the utility shall refund, pursuant to Rule 25-30.360, Florida Administrative Code, all AFPI charges, including outstanding prepaid AFPI collected on or after December 15, 1998. Refunds shall be made payable to the individual customer or developer who paid the AFPI. The utility shall provide refund reports in conformance with Rule 25-30.360(7), Florida Administrative Code.

By letter dated December 23, 1999, the utility stated that it was required to collect AFPI through December 31, 1999. Further, the utility stated that if, after that time, the plants reach their designed capacity, these charges cease. According to Southlake's response to our staff's second data request, the utility has collected 547 ERCs of wastewater AFPI charges as of December 31, 1998. Southlake also stated that it has received $251,251 of prepaid AFPI charges from Southlake Development, Ltd., as of December 31, 1998. Further, based on the utility's response to our staff's third data request, the utility collected an additional 14 ERCs of wastewater AFPI charges in 1999 as of October 31, 1999.

Order No. PSC-96-1082-FOF-WS, issued August 22, 1996, in Docket No. 950933-WS, states in regard to Southlake's collection of AFPI charges that, "When 940 and 375 equivalent residential connections for water and wastewater, respectively, are collected, the AFPI charges shall cease. The utility shall bear the additional cost of carrying the excess plant after that date." Based on the above, the utility collected 186 ERCs in excess of the 375 ERC limit for wastewater as set forth in Order No. PSC-96-1082-FOF-WS.

According to the utility's AFPI refund reports from December 15, 1998, to February 29, 2000, the utility has collected $62,533

in wastewater AFPI. The wastewater tariff for AFPI is already canceled since the utility has collected more than the maximum allowed by tariff. Further, the utility shall refund all wastewater AFPI charges collected beyond the previously mentioned 375 ERC limit, in accordance with Rule 25-30.360, Florida Administrative Code. This includes any prepaid AFPI for ERCs in excess of the 375 ERC limit.

Refunds shall be made payable to the individual customer or developer who paid the AFPI. The utility shall provide refund reports in conformance with Rule 25-30.360(7), Florida Administrative Code. The utility shall provide notice of this Order to these customers or developers.

The appropriate effective date and noticing requirement for the above tariff changes are discussed later in this Order.

SHOW CAUSE

As discussed above, the utility collected 186 ERCs in excess of the 375 ERC limit for wastewater authorized by Order No. PSC-96-1082-FOF-WS. Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than $5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes, or any rule or order of the Commission. In collecting AFPI charges for wastewater in excess of the 375 ERCs authorized by Order No. PSC-96-1082-FOF-WS, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Southlake shall show cause, in writing, within 21 days, why it should not be fined $5,000 for its apparent violation of Order No. PSC-96-1082-FOF-WS. We realize that pursuant to Section

367.161(1), Florida Statutes, each day the utility is in violation of Order No. PSC-96-1082-FOF-WS constitutes a separate offense, which could conceivably result in a penalty of up to $5,000 per day since the date the utility began violating Order No. PSC-96-1082-FOF-WS. However, we find that $5,000 is an appropriate amount to bring the utility into compliance with Order No. PSC-96-1082-FOF-WS and to deter the utility from violating future Commission orders.

Southlake's response to the show cause order shall contain specific allegations of fact and law. Should Southlake file a timely written response that raises material questions of fact and makes a request for hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event Southlake fails to file a timely response to the show cause order, the fine shall be deemed assessed with no further action required by the Commission. If the utility timely responds but does not request a hearing, Commission staff shall prepare a recommendation for our consideration regarding the disposition of the show cause order. If the utility responds to the order to show cause by remitting the penalties, then the show cause matter shall be considered resolved.

AFPI CHARGES COLLECTED PRIOR TO DECEMBER 15, 1998

Horton argues that as of December 31, 1998, the utility has no investment in its plant. Horton contends that this situation has existed since 1996. Horton believes all AFPI charges collected by the utility since it exceeded the 75% contribution level should either be refunded or treated as CIAC on the utility's books and records. Horton further contends that to allow the utility to retain those monies for supposed carrying costs that did not exist would allow a windfall to the utility and should not be condoned by the Commission.

It is necessary to distinguish the issue of wastewater AFPI from water AFPI. As previously discussed, all wastewater AFPI collected in excess of the 375 ERC limit shall be refunded. This is because the utility exceeded the amount allowed by Order No. PSC-96-1082-FOF-WS. From the date the utility exceeded the 375 ERC limit, the subsequent wastewater AFPI collected were essentially

held subject to refund because, at that point, the wastewater AFPI collected became unauthorized charges.

The utility has had a negative water rate base from 1996 to 1998 and a negative rate base on a total company basis in 1997. Except for the wastewater AFPI collected in excess of the 375 ERC limit, we cannot order the utility to refund any AFPI charges collected prior to December 15, 1998, due to the prohibition against retroactive ratemaking. We have consistently found that ratemaking is prospective and that retroactive ratemaking is prohibited. The courts have interpreted retroactive ratemaking to occur when an attempt is made to recover either past losses (underearnings) or overearnings in prospective rates. See Order No. PSC-98-1583-FOF-WS, issued November 25, 1998, in Docket No. 971663-WS. The past collections of AFPI charges when a utility had no investment is synonymous with a utility overearning in prior years. We cannot require the utility to reach into prior periods to refund overearnings, unless those amounts were held subject to refund. Similarly, we cannot order the utility to refund any approved AFPI charges collected prior to December 15, 1998, that are not held subject to refund due to the prohibition against retroactive ratemaking.

EFFECTIVE DATES AND NOTICING REQUIREMENTS FOR TARIFF CHANGES

Rule 25-30.475(2), Florida Administrative Code, states:

> Non-recurring charges (such as service availability, guaranteed revenue charges, allowance for funds prudently invested, miscellaneous services) shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets provided customers have received notice. The tariff sheets will be approved upon staff's verification that the tariffs are consistent with the Commission's decision and that the proposed customer notice is adequate. In no event shall the rates be effective for service rendered prior to the stamped approval date.

If there is no timely protest to this Order by a substantially affected person, the utility shall file the appropriate revised tariff sheets within ten days of the effective date of this Order for the tariff changes. Our staff shall have administrative authority to approve the revised tariff sheets upon verification

that the tariff sheets are consistent with this Order. If the revised tariff sheets are filed and approved, the tariff sheets shall become effective on or after the stamped approval date.

The tariff sheets that require changes are as follows: 1) the tariffs which address the provision for water and wastewater plant capacity charges (Sheets Nos. 31.0 and 28.0, respectively); 2) the tariff which involves the discontinuance of the utility's water plant capacity charge (Sheet No. 38.0); 3) the tariff which involves the revised wastewater plant capacity charge (Sheet No. 35.0); and 4) the tariffs which involve the discontinuance of the utility's water and wastewater AFPI charges (Sheets Nos. 39.0 and 36.0, respectively).

Within 20 days of the effective date of this Order, the utility shall provide notice of this Order to all persons in the service area who are affected by the discontinuance of the utility's water plant capacity charges, the revised wastewater plant capacity charges and/or the discontinuance of Southlake's AFPI charges. The notice shall be approved by our staff prior to distribution. The utility shall provide proof that the appropriate customers or developers have received notice within ten days of the date of the notice.

SECURITY FOR SERVICE AVAILABILITY
CHARGES HELD SUBJECT TO REFUND

In the event of a protest of this Order, the utility shall file either a bond or letter of credit, or if it qualifies, a corporate undertaking for the following:

1) Any service availability charges, paid or prepaid, for connections made between December 15, 1998, and April 18, 2000. For water, 100% of the plant capacity charges, paid or prepaid, shall be secured. For wastewater, the difference between the current plant capacity charge and the plant capacity charge set forth in this Order, paid or prepaid, shall be secured.

2) Any prepaid AFPI charges collected as of December 15, 1998, that have not been escrowed prior to April 18, 2000, shall also be secured.

If the utility chooses a bond as security, the bond shall state that it will be released or shall terminate only upon

subsequent order of the Commission. If the utility chooses to provide a letter of credit as security, the letter of credit shall state that it is irrevocable for the period that it is in effect and that it will be in effect until a final Commission order is rendered releasing the funds to the utility or requiring a refund.

If the utility chooses a corporate undertaking, the utility or other entity requesting the corporate undertaking shall provide the most recent three years of financial data (ie. balance sheets and income statements). The criteria for a corporate undertaking includes sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund.

Moreover, in the event of a protest, all collections of plant capacity charges made after April 18, 2000, paid or prepaid, for water shall be escrowed. For wastewater, the difference between the current charge and the plant capacity charge set forth in this Order, collected after April 18, 2000, shall be secured. All AFPI charges held subject to refund shall continue to be secured if this Order is protested.

The escrow account shall be established between the utility and an independent financial institution. 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: the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of the Commission through the Director of the Division of Records and Reporting; that the account shall be interest bearing; that the information concerning the escrow account shall be available from the institution to the Commission or its representative at all times; that the amount of the revenue subject to refund shall be deposited in the escrow account within seven days of receipt; that if a refund to the customers is required, all interest earned on the escrow account shall be distributed to the customers, and if a refund is not required, the interest earned on the escrow account shall revert to the utility; and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

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

The utility shall keep accurate and detailed accounts of all monies it receives. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total amounts collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

DOCKETS TO REMAIN OPEN

These dockets shall remain open to allow our staff to verify that Southlake has filed a revised tariff consistent with this Order; has made the proper refunds of the service availability and AFPI charges; and to resolve the show cause matter. Upon expiration of the protest period, if no timely protest is received to the proposed agency action issues, this Order shall become final and effective upon the issuance of a Consummating Order. Once our staff has verified that the utility's revised tariff is consistent with this Order, that the proper refunds have been made, and the show cause matter has been resolved, the docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southlake Utilities, Inc.'s water plant capacity charges shall be discontinued. It is further

ORDERED that Southlake Utilities, Inc.'s wastewater plant capacity charges shall be $240 per ERC for residential customers and $1.105991 per gallon for all other customers. It is further

ORDERED that Southlake Utilities, Inc., shall refund all water plant capacity charges collected on or after December 15, 1998. The refund shall include all outstanding prepaid water plant capacity charges. It is further

ORDERED that Southlake Utilities, Inc., shall refund the difference between the utility's existing residential wastewater plant capacity charge of $775 and the charge of $240 set forth in this Order. The utility shall refund the difference between the utility's existing $2.58333 per gallon charge for all other customers and the charge of $1.105991 set forth in this Order. The refunds shall include all wastewater plant capacity charges and prepayments collected on or after December 15, 1998. It is further

ORDERED that the refunds of the plant capacity charges shall be made in accordance with Rule 25-30.360, Florida Administrative Code. The refunds shall be made payable to the individual customer or developer who paid the plant capacity charges. It is further

ORDERED that Southlake Utilities, Inc., shall provide refund reports in conformance with Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Southlake Utilities, Inc.'s collection of water AFPI charges shall be discontinued. It is further

ORDERED that Southlake Utilities, Inc.'s collection of wastewater AFPI charges is canceled pursuant to Order No. PSC-96-1082-FOF-WS. It is further

ORDERED that Southlake Utilities, Inc., shall refund all water AFPI charges collected after December 15, 1998. The refund shall include all outstanding prepaid water AFPI charges collected during this same period. It is further

ORDERED that Southlake Utilities, Inc., shall refund all wastewater AFPI charges collected beyond the 375 ERC limit authorized by Order No. PSC-96-1082-FOF-WS. The refunds shall include all outstanding prepaid wastewater AFPI charges collected in excess of the 375 ERC limit authorized by Order No. PSC-96-1082-FOF-WS. It is further

ORDERED that all refunds of the AFPI charges shall be made in accordance with Rule 25-30.360, Florida Administrative Code. Refunds shall be made payable to the individual customer or developer who paid the AFPI charge. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the Schedules attached to this Order are incorporated herein by reference. It is further

ORDERED that Southlake Utilities, Inc., shall show cause in writing, within 21 days, why it should not be fined $5,000 for its apparent violation of Order No. PSC-96-1082-FOF-WS. It is further

ORDERED that Southlake Utilities, Inc.'s response to the show cause order shall contain specific allegations of fact and law. If

the utility timely files a written response that raises material questions of fact and makes a request for hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made. It is further

ORDERED that a failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. It is further

ORDERED that in the event Southlake Utilities, Inc., fails to file a timely response to the show cause order, the fine shall be deemed assessed with no further action required by this Commission. It is further

ORDERED that if Southlake Utilities, Inc., responds to the show cause order by remitting the penalties, then the show cause matter shall be considered resolved. It is further

ORDERED that Southlake Utilities, Inc.'s water tariff, Sheet No. 31.0, and wastewater tariff, Sheet No. 28.0, shall be revised as set forth in the body of this Order. It is further

ORDERED that Southlake Utilities, Inc.'s AFPI true-up procedure is authorized by the Commission. It is further

ORDERED that if no timely protest is filed by a substantially affected person, Southlake Utilities, Inc., shall file the appropriate revised tariff sheets as set forth in the body of this Order within ten days of the effective date of this Order. The revised tariff sheets shall be administratively approved upon Commission staff's verification that the tariff sheets are consistent with this Order. It is further

ORDERED that if the tariff sheets are filed and approved, they shall become effective on or after the stamped approval date on the tariff sheets. It is further

ORDERED that within twenty days of the effective date of this Order, Southlake Utilities, Inc., shall provide notice of this Order to all persons in the service area who are affected by the discontinuance of the utility's water plant capacity charges, the revised wastewater plant capacity charges, and/or the discontinuance of the utility's AFPI charges. The notice shall be

approved by Commission staff prior to distribution. The utility shall provide proof that the appropriate customers or developers have received notice within ten days of the date of the notice. It is further

ORDERED that in the event of a protest, Southlake Utilities, Inc., shall file either a bond or a letter of credit, or if it qualifies, a corporate undertaking to secure the water and wastewater service availability charges collected between December 15, 1998, and April 18, 2000, paid or prepaid. For water, 100% of the plant capacity charges, paid or prepaid, shall be secured. For wastewater, the difference between the current plant capacity charge and the plant capacity charge set forth in this Order, paid or prepaid, shall be secured. It is further

ORDERED that in the event of a protest, any prepaid AFPI charges collected as of December 15, 1998, that have not been escrowed prior to April 18, 2000, shall be secured. It is further

ORDERED that in the event of a protest, all water plant capacity charges collected after April 18, 2000, paid or prepaid, shall be secured. For wastewater plant capacity charges, the difference between the current charge and the charges set forth in this Order collected after April 18, 2000, paid or prepaid, shall be secured. It is further

ORDERED that in the event of a protest, all AFPI charges held subject to refund shall continue to be escrowed. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, these dockets shall remain open to allow Commission staff to verify that Southlake Utilities, Inc., has filed revised tariff sheets consistent with this Order; has made the proper refunds of service availability and AFPI charges; and to resolve the show cause

matter. Once this information has been verified and the show cause issue is resolved, these dockets shall be closed administratively.

By ORDER of the Florida Public Service Commission this 9th day of May, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SMC

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.

The show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this Show Cause Order may file a response within 21 days of issuance of the Show Cause Order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 30, 2000.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to the show cause portion of this Order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 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 of the effective date of this Order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

As identified in the body of this Order, our actions, except our decisions to initiate a show cause proceeding and to require security for the service availability charges being held subject to refund in the event of a protest, are preliminary in nature. Any person whose substantial interests are affected by the actions proposed by this Order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 30, 2000. If such a petition is filed, 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. In the absence of such a petition, this Order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the portion of this Order requiring security for the service availability charges being held subject to refund in the event of a protest, 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.

SOUTHLAKE UTILITIES, INC.
SCHEDULE OF WATER NET BOOK VALUE
TEST YEAR ENDED 12/31/98

SCHEDULE NO. 1-A
DOCKET 981609-WS

	DESCRIPTION	TEST PER UTILITY	UTILITY ADJUST-MENTS	ADJUSTED TEST YEAR PER UTILITY	COMMISSION ADJUST-MENTS	COMMISSION ADJUSTED TEST YEAR
1	UTILITY PLANT IN SERVICE	$431,958	$0	$431,958	($1,500)	$430,458
2	LAND & LAND RIGHTS	$201,083	$0	$201,083	($105,183)	$95,900
3	ACCUMULATED DEPRECIATION	($47,139)	$0	($47,139)	$9,554	($37,585)
4	CIAC	($966,162)	$0	($966,162)	$0	($966,162)
5	AMORTIZATION OF CIAC	$60,593	$0	$60,593	$0	$60,593
6	CONSTRUCTION WORK IN PROGRESS	$375,643	$0	$375,643	$0	$375,643
	NET BOOK VALUE	$55,976	$0	$55,976	($97,129)	($41,153)

SOUTHLAKE UTILITIES, INC. ADJUSTMENTS TO NET BOOK VALUE TEST YEAR ENDED 12/31/98		SCHED. NO. 1-B DOCKET 981609-WS
EXPLANATION	**WATER**	**WASTEWATER**
1 **PLANT IN SERVICE**		
Reduce plant due to lack of support documentation.	(1,500)	(1,500)
Total	(1,500)	(1,500)
2 **LAND**		
Reduce land due to lack of support documentation.	(105,183)	(502,141)
Total	(105,183)	(502,141)
3 **ACCUMULATED DEPRECIATION**		
To reflect the appropriate accum. depr. balance.	9,554	(9,554)
Total	9,554	(9,554)

Company Name: Southlake Utilities, Inc.
Docket No.: 981609 WS
Water Operations

SCHEDULE NO. 2

Plant Capacity Charge:	**$0**
Meter Installation Fee:	**$130**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Capacity	537,000	1,075,200	1,075,200	1,075,200	2,448,000	2,448,000	2,448,000	2,448,000	2,448,000	2,448,000
Demand	461,081	633,229	788,366	943,504	1,098,641	1,253,779	1,408,916	1,564,054	1,719,191	1,874,329
% Used	85.86%	58.89%	73.32%	87.75%	44.88%	51.22%	57.55%	63.89%	70.23%	76.57%
Growth		219	197	197	197	197	197	197	197	197
Utility Plant	526,358	539,217	596,544	653,871	1,184,952	1,242,279	1,299,606	1,356,933	1,414,260	1,471,587
Accumulated Depreciation	(37,585)	(60,537)	(99,280)	(139,995)	(190,829)	(251,782)	(314,707)	(379,603)	(446,471)	(515,311)
Net Plant	488,773	478,680	497,264	513,876	994,123	990,497	984,899	977,330	967,789	956,276
CIAC	783,534	794,974	852,301	909,628	966,955	1,024,282	1,081,609	1,138,936	1,196,263	1,253,590
Accumulated Amortization	(60,593)	(84,925)	(112,860)	(142,767)	(174,645)	(208,496)	(244,318)	(282,112)	(321,877)	(363,614)
Net CIAC	722,941	710,049	739,441	766,861	792,310	815,786	837,291	856,824	874,386	889,976
Net Investment	(234,168)	(231,369)	(242,177)	(252,985)	201,813	174,711	147,608	120,505	93,403	66,300
CIAC Ratio	147.91%	148.33%	148.70%	149.23%	79.70%	82.36%	85.01%	87.67%	90.35%	93.07%

Company Name: Southlake Utilities, Inc.
Docket No.: 981609 WS
Wastewater Operations

Schedule No. 3

Plant Capacity Charge:	$240

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Capacity	165,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000
Demand	84,425	130,863	173,612	216,361	259,110	301,859	344,608	387,357	430,106	472,855
% Used	51.17%	23.79%	31.57%	39.34%	47.11%	54.88%	62.66%	70.43%	78.20%	85.97%
Growth		214	197	197	197	197	197	197	197	197
Utility Plant	1,403,695	1,410,973	2,064,867	2,091,659	2,118,451	2,145,243	2,172,035	2,198,827	2,225,619	2,252,411
Accumulated Depreciation	(262,972)	(327,589)	(345,019)	(455,813)	(568,035)	(681,686)	(796,765)	(913,272)	(1,031,208)	(1,150,572)
Net Plant	1,140,723	1,083,384	1,719,848	1,635,846	1,550,416	1,463,557	1,375,270	1,285,555	1,194,411	1,101,839
CIAC	1,155,296	1,108,075	1,134,867	1,208,939	1,283,011	1,357,083	1,431,155	1,505,227	1,579,299	1,653,371
Accumulated Amortization	(165,949)	(225,970)	(288,274)	(353,267)	(422,208)	(495,098)	(571,938)	(652,726)	(737,462)	(826,148)
Net CIAC	989,347	882,105	846,593	855,672	860,803	861,985	859,217	852,501	841,837	827,223
Net Investment	151,376	201,279	873,255	780,174	689,613	601,572	516,053	433,053	352,574	274,616
CIAC Ratio	86.73%	81.42%	49.22%	52.31%	55.52%	58.90%	62.48%	66.31%	70.48%	75.08%