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May 30, 2000

VIA HAND DELIVERY

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

ORIGINAL

Re: 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

Dear Ms. Bayo:

Enclosed are an original, seven (7) copies and a diskette of Southlake Utilities, Inc.'s (i) Response to Order to Show Cause and Petition for a Hearing ("Response") and (ii) Petition for Formal Hearing ("Petition").

Accordingly, please file the original Response and Petition and distribute the copies and diskette in accordance with your usual procedures.

If you have any questions or need additional information concerning this matter, please do not hesitate to call me.

Sincerely yours,

Scott G. Schildberg
Scott G. Schildberg

APP _____
CAF _____
CMP _____
COM 3 _____
CTR _____
ECR 1 _____
LEG 1 _____
OPC _____
PAI _____
RGO _____
SEC 1 _____
SER _____
OTH _____

cc: Mr. Robert L. Chapman, III
Mr. William J. Deas
Samantha Cibula, Esquire
F. Marshall Deterding, Esquire

RECEIVED & FILED

Response
DOCUMENT NUMBER-DATE
06602 MAY 30 8

DOCUMENT NUMBER-DATE
Petition
06603 MAY 30 8
FPSC-RECORDS/REPORTING

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FPSC-BUREAU OF RECORDS

FPSC-RECORDS/REPORTING

RECEIVED-FPSC

ORIGINAL

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)

RECORDS AND)
DOCKET NO. 981609-WS)
REPORTING)

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)
DATE SUBMITTED FOR FILING)
MAY 30, 2000)

RESPONSE TO ORDER TO SHOW CAUSE
AND PETITION FOR A HEARING

Pursuant to Florida Public Service Commission ("Commission")
Order No. PSC-00-0917-SC-WS, Rule 28-106.201, Florida
Administrative Code ("FAC"), Southlake Utilities, Inc. ("Southlake
or "Respondent"), files this Response to Order to Show Cause and
Petition for a Hearing, and states as follows:

1. On May 9, 2000, the Commission issued Order No. PSC-00-
0917-SC-WS (Show Cause Order") and ordered Southlake to show cause
why it should not be fined \$5,000.00 for its apparent violation of
Order No. PSC-96-1082-FOF-WS.

2. In the Show Cause Order, the Commission stated that Order
No. PSC-96-1082-FOF-WS limited Southlake to collecting Allowance
for Funds Prudently Invested ("AFPI") charges for wastewater from
only 375 Equivalent Resident Connections ("ERC") and that Southlake
had exceeded said limit.

DOCUMENT NUMBER-DATE

06602 MAY 30 8

FPSC-RECORDS/REPORTING

3. As noted by the Commission in the Show Cause Order and Order No. PSC-96-1082-FOF-WS, the amount of Southlake's AFPI charge is to be determined as of the date that the customer connects to the system. The charge for the 375th ERC could not be determined until the date the 375th ERC connected. Under the approach in the Show Cause Order, since it would not be possible to determine which reserved but unconnected ERC would be the 375th ERC connected, Southlake would be required to collect AFPI charges from all developers until Southlake connected the 375th ERC connected. In other words, to collect the AFPI charge for the first 375 AFPI eligible ERCs, Southlake would need to collect AFPI charges from in excess of 375 ERCs. Accordingly, Southlake's collection of AFPI charges from more than 375 ERCs is not a violation of Order No. PSC-96-1082-FOF-WS even under the Show Cause Order's interpretation of Order No. PSC-96-1082-FOF-WS.

4. Southlake believes that it has acted in accordance with the Florida Statutes, its tariff, and the rules of the Florida Administrative Code ("FAC"), as well as Order No. PSC-96-1082-FOF-WS.

5. Section 367.091(4) Florida Statutes (1999) states as follows:

A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved. A change in any rate schedule may not be made without Commission approval.

6. Section 367.091(3), Florida Statutes (1999), provides as follows:

Each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the Commission.

7. The Commission approved tariff sheets for Southlake's AFPI charges (Water Tariff Sheet No. 39.0 and Wastewater Tariff Sheet No. 36.0), copies of which are attached hereto as Schedules 1 and 2. The stamped approval on the reverse side of the tariff sheets shows that the Commission approved these tariff sheets for Order PSC 96-1082-FOF-WS. The tariff sheets do not contain any limitation whatsoever as to the number of connections. The tariff sheets set forth a five (5) year chart of charges that Southlake is required to follow. Southlake complied and used the five (5) year chart.

8. Southlake has complied with its tariff and, therefore, with Section 367.091(3) and (4), Florida Statutes (1999). There is no limitation on the number of connections in the tariff and Southlake should not stop collecting AFPI charges without being directed to do so by the Commission.

9. Southlake believes that it has also complied with the FAC rule regarding AFPI charges. Rule 25-30.434(3)(d), FAC, provides in part that "[t]he [AFPI] charges shall cease when the plant [for which the charge applies] has reached the designed capacity." This is consistent with the Commission's direction to Southlake in Order No. 24564 that "[t]he AFPI charges will be discontinued when the

systems reach buildout." Accordingly, Southlake believes that Rule 25-30.434(3)(d), FAC, and Order No. 24564 directed it to collect wastewater AFPI charges until it reached the plant's designed capacity. Southlake collected wastewater AFPI charges until April 2000, when the levels of wastewater reached the designed capacity of the plant (after taking into account the flows and related design capacity for ERCs connected prior to the effective date of the AFPI charges approved in Order No. PSC-96-1082-FOF-WS).

10. As noted by the Commission in Order No. PSC-96-1082-FOF-WS, "the circumstances surrounding... [Southlake's] application are very complex" and the make up of Southlake's customers was very unique. Order No. PSC-96-1082-FOF-WS eliminated AFPI charges, recalculated AFPI charges, ordered complete refunds for some connections, ordered partial refunds for other connections, and based the AFPI charge at the time of connection - not the time of collection.

11. In addition to the confusion generated by the changing nature of AFPI charges, as further discussed below, and the complex nature of Order No. PSC-96-1082-FOF-WS, Southlake's wastewater plant capacity was understated in Order No. PSC-96-1082-FOF-WS. According to an April 13, 2000, letter from the Florida Department of Environmental Protection ("FDEP"), a copy of which is attached as Schedule 3, Southlake's wastewater plant capacity has been 300,000 gallons per day ("GPD") (including at the time of Order No. PSC-96-1082-FOF-WS), not the 164,750 GPD used in the order. The higher plant capacity results in a greater number of ERCs at the

time of Order PSC-96-1082-FOP-WS which would be eligible for AFPI charges (i.e., 300,000 GPD-164,750 GPD = 135,250 GPD; 135,250 GPD+300 GPD/ERC = 451 ERCs).

12. Southlake did not reach the flow level for 375 connections times 300 GPD (112,500 GPD) plus the flow for the pre AFPI connections (i.e., a total of 164,750 GPD) until April 2000. Southlake believes that this is the correct date for it to discontinue collecting Wastewater AFPI charges as directed by the Commission Order No. 24564 and Rule 25-30.434(3)(d), FAC. When Southlake reached that flow level, it discontinued collecting wastewater AFPI charges.

13. The Commission's practices regarding AFPI charges has been evolving. The true up procedure upon which D. R. Horton filed its initial complaint and that the Commission confirmed as appropriate in the Show Cause Order probably would not be used by the Commission in establishing charges today. The Commission would use AFPI charges and guaranteed revenue charges to establish a utility company's charges to achieve the same result as using "true up" AFPI charges.

14. Another change in the Commission's practices regarding AFPI charges is that the Commission now includes on tariff sheets a limitation on the number of connections for which the AFPI charges apply, which is different from its tariff sheets for plant capacity charges.

15. The evolving nature of AFPI charges has led to confusion over the number of AFPI charges allowed to be collected by utility

companies in other cases. For example, in In re: Investigation into possible overcollection of Allowance for Funds Prudently Invested (AFPI) in Lake County, by Lake Utility Services, Inc. ("LUSI"), Docket No. 980483-WU, the Commission stated:

[t]o date, LUSI has collected AFPI for 288 ERCs beyond the 106 ERC previously discussed. Upon review of this matter, we believe that extenuating circumstances exist on both sides of this issue, which makes it unclear as to whether LUSI is authorized to collect AFPI beyond 106 ERCs.... Order No. PSC-98-0796-FOF-WU.

In that order, the Commission held that:

[a]s a reasonable compromise, we find it appropriate that LUSI record all AFPI collected beyond 106 ERCs as CIAC. This compromise will prevent a refund but will, nevertheless, benefit the utility's customers.

The order was protested and subsequently settled with LUSI refunding \$608.09 each to two customers and crediting LUSI's CIAC account by \$25,800 out of a potential refund of \$79,795. Order No. PSC-99-0644-AS-WU. It would be inconsistent for the Commission to find in one case that the confusion over the number of AFPI charges for one utility company to collect in Lake County was sufficient in 1999, to reduce possible refunds and credits while in the next year in a case with confusion over the number of AFPI charges for a utility company to collect in Lake County (i.e., the instant case), not only declining to find the confusion to be sufficient to reduce refunds and credits but instead the Commission is seeking to fine the utility company.

16. There is no adverse affect to the public health, safety or welfare or a significant threat of such harm in connection with the alleged violations.

17. The Show Cause Order mischaracterizes Southlake's action as "willful violations." The Show Cause Order states "willful" implies intent to do an act, and this is distinct from intention to violate an order. Southlake believes that its AFPI collection policy, in fact, represents a correct synthesis of Order No. 24564, Order No. PSC-96-1082-FOF-WS, the FAC rules, and the Florida Statutes.

18. Under Section 367.161, Florida Statutes (1999), the Commission only has the authority to impose penalties for refusal to comply with or willful violation of lawful rules, orders, or provisions of Chapter 367, Florida Statutes. Southlake has not refused to comply with such rules, orders, or statutory provisions - in fact, Southlake has been trying to comply with them. Southlake's actions are not "willful violations."

19. Southlake believes that it has complied with Florida Statutes, FAC rules, its Commission approved tariff, and Order No. PSC-96-1082-FOF-WS in this matter. The Commission now includes a limitation on the number of connections for AFPI charges on tariff sheets. If the Commission should have included such a limitation on Southlake's tariff sheets approved for Order No. PSC-96-1082-FOF-WS, it should not find Southlake in violation of such order for relying on its Commission approved tariff sheets.

20. Southlake requests a formal proceeding because this matter involves disputed issues of material fact which must be determined on the basis of an evidentiary record before a final order can be entered in this matter. The entry of a final order without a hearing, record, or sufficient notification of alleged offenses would constitute an arbitrary and capricious act by the Commission.

21. The agency involved is the Florida Public Service Commission whose address is 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The docket numbers are Docket Nos. 98-1609-WS and 98-0992-WS.

22. Southlake's name and address are as follows:

Southlake Utilities, Inc.
333 U.S. Highway 27
Clermont, Florida 34711

Southlake's mailing address is as follows:

Southlake Utilities, Inc.
710 Avenida Cuarta North, 204
Clermont, Florida 34711
Attention: Mr. Robert L. Chapman

23. The name, address, and telephone number of Southlake's representative for the address for service purposes during the course of the proceeding is as follows:

James L. Ade, Esquire
Scott G. Schildberg, Esquire
Martin, Ade, Birchfield & Mickler, P.A.
One Independent Drive, Suite 3000
Jacksonville, Florida 32202
(904) 354-2050

24. Southlake's substantial interests will be affected because the Show Cause Order seeks:

- a. To find Southlake in violation of Order No. PSC-96-1082-FOF-WS; and
- b. To fine Southlake in the amount of \$5,000.00.

25. Southlake's attorneys were served with a copy of the Show Cause Order on May 18, 2000, by mail. Southlake's attorney obtained a copy of the Show Cause Order from the Commission's website on May 11, 2000.

26. Known disputed issues of material fact include the following:

- a. Whether allegations upon which the Show Cause Order relies are in fact true and accurate and support the actions proposed in the Show Cause Order.
- b. Whether Southlake has violated Order No. PSC-96-1082-FOF-WS;
- c. Whether such a violation is a "willful" violation;
- d. Whether Southlake complied with its Water Tariff Sheet No. 39.0 and Wastewater Tariff Sheet No. 36.0; and
- e. If Southlake has violated Order No. PSC-96-1081-FOF-WS, whether the proposed \$5,000.00 penalty should be reduced or eliminated.

27. In the event that the Commission finds that Southlake's actions did violate Order No. PSC-96-1082-FOF-WS, Southlake alleges that in its actions it followed its tariff, Order No. 24564, Sections 367.091(3) and (4) of the Florida Statutes (1999), and Rule 25-30.434(3)(d), FAC, and, therefore, should not be fined or otherwise penalized.

28. Southlake alleges that it has not violated Order No. PSC-96-1082-FOF-WS, and, therefore, it should not be fined or otherwise penalized.

29. The ultimate facts which warrant reversal or modifications of the Show Cause Order are set forth in paragraphs 3 through 19 of this Response.

30. The specific rules or statutes which require reversal or modifications to the Show Cause Order are set forth in paragraphs 5, 6, 9 and 18 of this Response.

31. Wherefore, Southlake requests a hearing in this matter pursuant to Section 120.57(1), Florida Statutes (1999).

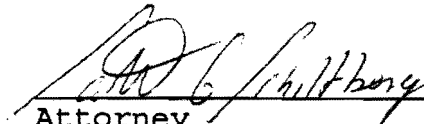
Respectfully submitted,
MARTIN, ADE, BIRCHFIELD &
MICKLER, P.A.

By: 

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing Southlake Utilities, Inc.'s Response of Order to Show Cause and Petition for a Hearing, have been furnished to Ms. Blanca Bayo, Director, Department of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Betty Easley Building, Room 110, Tallahassee, Florida 32399-0850, by hand delivery this 30th day of May, 2000, and that copies of the foregoing have been furnished to Samantha Cibula, Attorney, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and F. Marshall Deterding, Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, by United States Mail this 30th day of May, 2000.



Attorney

Water Tariff

SCHEDULE OF ALLOWANCE FOR FUNDS PRUDENTLY INVESTED

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
January	1.74	22.74	45.16	69.11	94.70	119.68
February	3.48	24.60	47.15	71.23	96.97	119.68
March	5.22	26.46	49.13	73.35	99.24	119.68
April	6.96	28.32	51.11	75.47	101.51	119.68
May	8.70	30.17	53.10	77.59	103.79	119.68
June	10.44	32.03	55.08	79.71	106.06	119.68
July	12.18	33.89	57.07	81.83	108.33	119.68
August	13.92	35.75	59.05	83.95	110.60	119.68
September	15.66	37.61	61.03	86.07	112.87	119.68
October	17.40	39.46	63.02	88.19	115.14	119.68
November	19.14	41.32	65.00	90.31	117.41	119.68
December	20.88	43.18	66.98	92.43	119.68	119.68

Effective Date: January 1, 1995

Type of Filing: AFPI

Robert L. Chapman, III
President

Wastewater Tariff

SCHEDULE OF ALLOWANCE FOR FUNDS PRUDENTLY INVESTED

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
January	23.20	302.91	598.60	911.65	1,243.50	1,564.72
February	46.40	327.43	624.56	939.16	1,272.70	1,564.72
March	69.60	351.95	650.52	966.68	1,301.90	1,564.72
April	92.79	376.47	676.47	994.19	1,331.11	1,564.72
May	115.99	400.99	702.43	1,021.70	1,360.31	1,564.72
June	139.19	425.51	728.39	1,049.22	1,389.51	1,564.72
July	162.39	450.03	754.35	1,076.73	1,418.71	1,564.72
August	185.59	474.56	780.30	1,104.24	1,447.91	1,564.72
September	208.79	499.08	806.26	1,131.76	1,477.11	1,564.72
October	231.99	523.60	832.22	1,159.27	1,506.31	1,564.72
November	255.19	548.12	858.18	1,186.79	1,535.52	1,564.72
December	278.38	572.64	884.13	1,214.30	1,564.72	1,564.72

Effective Date: January 1, 1995

Type of Filing: AFPI

Robert L. Chapman, III
President



Job Bush
Governor

Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

David B. Struhs
Secretary

SOUTHLAKE UTILITIES INC
333 US HIGHWAY 27
CLERMONT FL 34711

OGD-DW-00-0245

ATTENTION ROBERT L CHAPMAN III
PRESIDENT

Lake County - DW
Southlake WWTF
Wastewater Permit Application
File Number: FLA010634

Dear Mr. Chapman:

The Department has received and reviewed your letter of April 12, 2000, regarding the existing and proposed capacities of the Southlake WWTF. In fact, based on the engineering report submitted with the permit application, the current treatment plant capacity is 0.300 MGD. Upon completion of the new clarifier, and abandonment of the smaller existing one, the plant will have a capacity of 0.550 MGD. It is our understanding that the new clarifier is not yet in operation. As we discussed, the existing "back-up" clarifier, with a capacity of 167,750 gpd, is sized to meet the Class III reliability requirement of being able to treat at least 50% of the permitted capacity.

We hope this clarifies any misunderstanding about the plant's current and proposed capacities. Should you wish to discuss the above comments, please feel free to contact Dennise Judy at (407)893-3315.

Sincerely,

Alvin Castro, P.E.
Program Manager
Domestic Waste Permitting

Date: 4/13/00

AC/dj/cs

"More Protection, Less Process"

Printed on recycled paper.

SCHEDULE 3