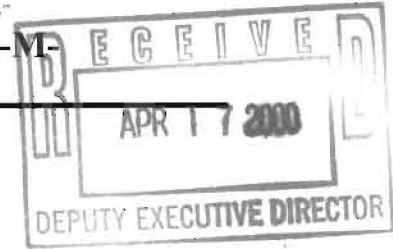




# Public Service Commission

-M-E-M-O-R-A-N-D-U-M-



**DATE:** April 17, 2000  
**TO:** Dr. Mary Bane, Deputy Executive Director, Technical Division  
**FROM:** Bart Fletcher, Division of Water and Wastewater *BF*  
 Samantha Cibula, Division of Legal Services *S.M.C. msd BF*  
**RE:** Request for Deferral of Item #35, Docket No. 980992-WS - Complaint by D. R. Horton Custom Homes, Inc. against Southlake Utilities, Inc. in Lake County regarding collection of certain AFPI charges.

Docket No. 981609-WS - 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.

Item No. 35 involves staff's recommendation on a complaint and an emergency petition filed by D.R. Horton Custom Homes, Inc. (Horton) in the above-referenced dockets. Regarding the complaint against Southlake Utility, Inc. (Southlake or utility), staff is recommending that the utility is authorized to true-up its AFPI charges. With regard to the emergency petition, staff is recommending the following: discontinuing the utility's water plant capacity charges, revising its wastewater plant capacity charges, refunding certain plant capacity charges collected, ceasing its water and wastewater AFPI charges, refunding certain AFPI collected, and ordering the utility to show cause why it apparently violated a Commission order. In addition, staff is recommending that Southlake's tariffs do not authorize a reassessment of plant capacity charges for residential customers. Lastly, staff is recommending that the Commission cannot order the utility to refund certain AFPI collected due to the prohibition against retroactive ratemaking.

Attached is the request of Southlake for deferral of Item No. 35, from the April 18, 2000 Agenda Conference. The utility is requesting a three-month extension of time to obtain and submit additional information regarding another growth rate to be utilized in setting Southlake's plant capacity charges. Staff utilized the utility's five-year historical growth and linear regression to determine the appropriate growth rate to calculate plant capacity charges. The utility believes staff's growth rate is significantly understated. Southlake proposes to employ a professional appraiser and seek supporting information from governmental planning agencies to provide better data which supports a higher growth rate.

By letter dated April 13, 2000, F. Marshall Deterding (Horton's attorney) requested that this item not be deferred. Horton's position is that no additional time is needed and that this case has already lasted more than a year and a half. Further, Horton contends that the Commission traditionally uses historic growth figures, rather than projections from developers or regulatory agencies in developing a utility's service availability policy. Given that Southlake's 1999 actual growth was much less than its projection, Horton believes it would be imprudent for the Commission to rely on more utility projections.

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- OTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS \_\_\_\_\_
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_
- SEC 1
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

04799 APR 19 2000

FPSC-RECORDS/REPORTING

Staff agrees with Horton that our recommended growth rate is appropriate. We do note, however, that projections are commonly used in developing service availability policies. In this case, the utility's projections appeared to be materially overstated for 1999. Regardless, staff does not believe that the result would materially change from our recommendation if different growth projections are used. As long as growth in equivalent residential connections (ERCs) is matched with consumption per ERC and plant capacity requirements, the relative service availability charges will remain similar. The only way this utility's future CIAC ratios will be reduced will be to add more plant than CIAC. This can be done by eliminating or reducing the service availability charge or by adding non-growth plant without incremental CIAC.

Based on the above, staff agrees with Horton that additional information is not necessary. If the utility finds that circumstances have changed in the future, it is fully allowed to file for a revision in its service availability charges. Therefore, staff recommends that the request for deferral of Item No. 35 not be granted.

Attachment

cc: Division of Water and Wastewater (Hoppe, Lowe, Willis, Merchant, Crouch, Ted Davis)  
Division of Legal Services (Bedell, N. Davis, Gervasi)  
Division of Records and Reporting

s:\psc\waw\wp\deferral.sbf

*Recommend Denial*

*MATB  
4/17/00*

*ok  
WBB for  
J.T.D.*

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

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TELECOPIER (904) 354-5842**

**FACSIMILE TRANSMITTAL**

**April 12, 2000**

**TO: Samantha Cibula, Esquire**

**Company: Florida Public Service Commission**

**FAX NUMBER: (850) 413-6203**

**NUMBER OF PAGES (INCLUDING THIS PAGE): 8**

**FROM: Mr. Scott G. Schildberg**

**SENT BY: Anna**

**REFERENCE: *Complaint by D.R. Horton Custom Homes, Inc. ...  
And Petition of D.R. Horton Custom Homes, Inc. ...***

**Please see the attached.**

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OF COUNSEL  
 LEWIS S. LEE

RALPH H. MARTIN (1917-1998)  
 L. PETER JOHNSON (1942-1988)

April 12, 2000

**Via Facsimile No. (850) 413-6203**

Ms. Samantha Cibula, Esquire  
 Division of Legal Services  
 Florida Public Service Commission  
 2540 Shumard Oak Boulevard  
 Tallahassee, FL 32399-0850

RE: Emergency Petition by D. R. Horton Custom Homes, Inc.,  
 to Eliminate Authority of Southlake Utilities, Inc. ("Southlake"),  
 to Collect Service Availability Charges and AFPI Charges in  
 Lake County, Docket No. 981609-WS ("Petition")

Complaint by D.R. Horton Custom Homes, Inc., against Southlake  
 Utilities, Inc., before the Florida Public Service Commission,  
 Docket No. 980992-WS (Complaint")

Dear Ms. Cibula:

In the Memorandum dated April 6, 2000, containing the Staff Recommendation for the above two dockets ("Recommendation"), the Staff utilized an annual growth rate of 197 Equivalent Residential Connections ("ERCs") based upon its linear regression analysis. The Recommendation states that:

Staff realizes 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 they plan to build (provided sales support the current building boom).

In Southlake's response to Staff's First Data Request, Question 1(a) (r), Southlake provided the Forecast of Water Usage from its November 1998 Water Facilities Plan, which was prepared by Corklin, Porter & Holmes Engineers, Inc., ("CPH Engineers Plan") and stated that Southlake was in the process of updating

Ms. Samantha Cibula, Esquire  
April 12, 2000  
Page 2

its growth projection schedules. In Southlake's Supplemental Response to Staff's First Data Request, Question 1(a) (r), Southlake provided such updated schedules of projected growth.

As part of Southlake's response to Staff's Third Data Request, Question No. 1, Southlake provided additional excerpts from the CPH Engineers Plan as well as an excerpt from the September 1999 draft of the Water 2020 Work Group Area I: East - Central Florida, Conceptual Water Supply Plan by St. Johns River Water Management District and CH2M Hill ("Water Management District Plan"). The Water Management District Plan projects the needs in Southlake's service area to increase by 6722% from 1995 to 2020.

On February 24, 2000, pursuant to a request from Staff, Southlake provided an updated growth forecast to reflect 1999 actual information and more current information on the timing of construction and connection of developments in the Southlake service area. After providing such growth information pursuant to Staff's specific requests, Southlake was surprised that the Recommendation said such data was questionable.

With respect to the statement that it did not provide any developer agreements that would support its growth estimates, according to Southlake, except for two areas, Glenbrook and Sunrise Lakes (formerly Walker Heights), Southlake has entered into master developer's agreements for the areas of its service area under development and filed such developer's agreements with the Commission. Southlake's developer agreements are listed in Southlake's response to Staff's First Data Request Question No. 7(a) (j) and also were available for the Staff to review during the audit. Typically, when a builder requires capacity, the builder will execute an application for service with Southlake which will set forth the capacity needed at that time. However, Southlake will require a developer agreement if the builder is contributing lift stations or mains. With respect to the Glenbrook and Sunrise areas, Southlake recently received the necessary information to prepare master developer agreements for those two areas. After those two developer's agreements are executed, all active subdivisions within Southlake's service area will be covered by a master developer agreement.

Robert Chapman, President of Southlake, surveyed Southlake's service area this past weekend and confirmed with Southlake's engineer that a 358 unit multifamily development, the initial 272 units of a 559 unit multifamily development, a 72 unit timeshare development and 46 single family residences, including eight

Ms. Samantha Cibula, Esquire  
April 12, 2000  
Page 3

model homes, are currently under construction and should be connected this year. In addition, a developer has broken ground on a 238 unit multifamily lodging which should also be constructed and completed this year. A page from the DEP water permits for the three multifamily units are attached. Even if no other development occurred in 2000 in Southlake's service area, this initial development corresponds to 717.4 equivalent residential connections ("ERCs") using a multifamily conversion factor of 250 GPD/350 GPD, as per Southlake's Water Tariff Sheet No. 40.0. Accordingly, this 717.4 ERCs of initial growth in 2000 is 3.64 years of growth under the Recommendation's 197 ERC annual growth rate. Of course there is other development anticipated to be constructed and completed in 2000. For example, Southlake just received a DEP application for another 313 unit multifamily unit development to be constructed in 2000.

The growth rate used in the Recommendation is significantly understated and its impact reaches throughout the Recommendation. Southlake has used the best information available to it, developer's forecasts, to estimate growth. The Recommendation states that such data is questionable and instead used a growth rate which is even below 1999's annual growth rate.

Prior to the Commission's consideration of this matter, Southlake believes that the Recommendation should be revised to utilize a more realistic growth rate. Southlake proposes to employ a professional appraiser and also seek supporting information from governmental planning agencies to provide the Staff with better data for determining the appropriate growth rate. In order to obtain such data, Southlake requests a postponement of the consideration of the Recommendation and three months to obtain the initial data and provide it to the Staff.

Southlake is a Class C utility company and would prefer not to incur the significant expenses in going to a hearing in this matter or, if a hearing is necessary, would prefer to reduce the number of disputed issues in the hearing. Because the growth rate in a service availability case affects so many issues, including the amount and timing of additional capacity, Southlake believes that it is prudent for the Commission to make its decision using a more realistic growth rate than it used in the current recommendation.

Ms. Samantha Cibula, Esquire  
April 12, 2000  
Page 4

I would like to discuss Southlake's request with you and F. Marshall Deterding tomorrow afternoon by telephone. Please advise me if and at what time you are available. By this letter, I am also requesting Mr. Deterding to advise me if and when he is available for a call tomorrow afternoon. I look forward to hearing from you both.

Sincerely yours,



Scott G. Schildberg

SGS/arh  
Enclosures

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



# Department of Environmental Protection

Lawton Chiles  
Governor

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

Virginia B. Wezherell  
Secretary

Permittee:  
Worthwhile Development IV  
700 Riverbend Boulevard  
Longwood, FL 32779

Permit Number: WD35-0080599-007  
Date of Issue:  
Expiration Date: 11/03/00  
County: Lake  
Project: Nelson Park Apartments

Attention: Jay Royall, President

This permit is issued under the provisions of Chapter 403, Florida Statutes, and Florida Administrative Code Rule 62-555, (F.A.C.). The above named permittee is hereby authorized to perform the work shown on the application and approved drawing, plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

A "dry-line" extension of the Southlake Utilities water distribution system to serve Nelson Park Apartments [a 358-unit multi-family apartment complex]. The estimated average day water demand will be 89,600 GPD when cleared for service.

General Conditions are attached to be distributed to the permittee only.

DEP FORM 62-1.201(5) Effective November 30, 1982 Page 1 of 4

Permit#0080599-007

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# Department of Environmental Protection

Lawton Chiles  
Governor

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

Virginia B. Wecherell  
Secretary

Permittee:  
Southlake Development, Ltd.  
3856 Oakton Avenue  
Skokie, IL 60076

Permit Number: WD35-0080599-008  
Date of Issue:  
Expiration Date: 11/03/00  
County: Lake  
Project: Southlake Utilities, Inc.  
Southlake, Phase 2

Attention: Jeffery Cagan, President

This permit is issued under the provisions of Chapter 403, Florida Statutes, and Florida Administrative Code Rule 62-555, (F.A.C.). The above named permittee is hereby authorized to perform the work shown on the application and approved drawing, plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

Extension of the Southlake Utilities, Inc. water distribution system to serve Southlake, Phase 2 [a 559 unit multi-family apartment complex] located on the west side of U.S. Highway 27 north of U.S. Highway 192. The estimated average day water demand is 140,350 GPD.

General Conditions are attached to be distributed to the permittee only.

DEP FORM 62-1.201(5) Effective November 30, 1982 Page 1 of 4

Pittman0080599.008

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# Department of Environmental Protection

Jeff Bush  
Governor

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

David B. Struhs  
Secretary

Permittee:  
Summer Bay Partnership  
17805 U.S. Highway 192  
Clermont, FL 34711

Permit Number: WD35-0080599-015  
Expiration Date: 11/04/02  
County: Lake  
Utility: Southlake Utilities  
Project: Holiday Inn Express at Summer Bay

Attention: Ralph E. Zeigler, General Manager

This permit is issued under the provisions of Chapter 403, Florida Statutes, and Florida Administrative Code Rule 62-555, (F.A.C.). The above named permittee is hereby authorized to perform the work shown on the application and approved drawing, plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

Extension of the Southlake Utilities water distribution system to serve Holiday Inn Express at Summer Bay [a 238-unit hotel site]. The project is located on the north side of U.S. 192 just west of the Lake/Orange County line.

The water distribution system extension consists of eight-inch water mains with concomitant elbows, tees, valves, etc.

The estimated average day water demand is 23,800 gpd.

General Conditions are attached to be distributed to the permittee only.

DEP FORM 62-1.201(5) Effective November 30, 1982 Page 1 of 4

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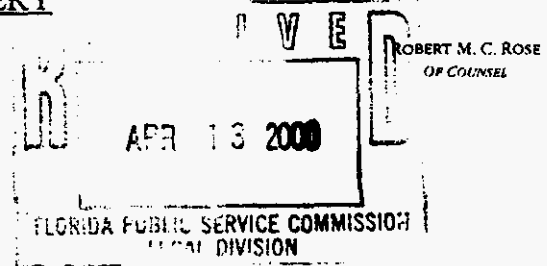
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April 13, 2000  
VIA HAND DELIVERY

Samantha Cibula, Esquire  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0873



Re: D.R. Horton Custom Homes, Inc.; PSC Docket No. 981609-WS  
Emergency Petition to Eliminate Service Availability and AFPI Charges of Southlake  
Utilities, Inc.  
Our File No. 33083.01

Dear Samantha:

Just before 7:00 yesterday evening, I received the attached letter from Scott Schildberg on behalf of Southlake Utilities, suggesting that the Commission should delay action on the Staff Recommendation until "more realistic growth information could be incorporated."

I do not agree that more time is needed, and in fact this case has lasted well over a year and half as a result of continuing desire by the Utility to provide "additional information," and there appears to be no end to their attempts to do so, especially when the facts are against them.

The Commission has traditionally utilized historic growth figures, rather than projections from developers or projections from regulatory agencies in developing Service Availability Policy. It would be imprudent on the part of the Commission to accept such projections, especially in light of the fact that the past results have not been anywhere close to the "projections." If the Utility later finds that it experiences substantial increases in its growth patterns that justifies some review of its Service Availability Policy on a going-forward basis, it certainly has every right under the Florida Statutes and Commission Rules to file for such adjustment. However, the facts as they stand today, clearly demonstrate that the Utility's Service Availability Charges and AFPI Charges have been overstated for several years and that based upon historic information, they should be refunded and reduced on a going-forward basis until actual growth patterns justify a change. For the Commission to consider projections as offered by the Utility which have historically been shown to be wholly inaccurate, would subject the entire regulatory process to being based upon speculation.

My client, just one of several developers within the Utility's service territory, has spent

Samantha Cibula, Esquire  
April 13, 2000  
Page 2

enormous amounts of money in attempting to bring some justice and sanity to the charges being assessed by Southlake, in accordance with standard Commission policy. We believe that the Staff Recommendation as presented, is based upon over a year and a half accumulation of information during which time the Utility has had more than ample opportunity to provide input. In addition, that recommendation is based on longstanding Commission policy and sound regulatory theory. As such, we are adamantly opposed to any further delays resulting in further accumulation of cost to my client as a customer of Southlake Utilities.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



F. Marshall Deterding  
For The Firm

FMD/tmg

cc: Scott Schildberg, Esq.  
Mr. David Auld  
Mr. Ralph Spano  
James Boyd, P.E.  
Mr. Mike Burton  
William E. Barfield

drhorton\cibula.ltr