

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

MEMORANDUM

APRIL 7, 1994

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND WASTEWATER (IWENJIOR) *W. J. Iwens*  
DIVISION OF LEGAL SERVICES (JABER, LORENZO) *J. Jaber*

RE : UTILITY: PARKLAND UTILITIES, INC.  
DOCKET NO.: 931141-WS  
COUNTY: BROWARD  
CASE: PETITION TO GROSS-UP CONTRIBUTIONS-IN-AID-OF-  
CONSTRUCTION (CIAC) FOR RELATED TAX IMPACT

AGENDA : APRIL 19, 1994 - REGULAR AGENDA - TARIFF FILING -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60-DAYS WAIVED

SPECIAL INSTRUCTIONS: NONE

RECOMMENDATION FILE NAME: I:\PSC\WAW\WP\931141.RCM

CASE BACKGROUND

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact on contributions-in-aid-of-construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. Order No. 23541, issued October 1, 1990, ordered utilities currently grossing-up CIAC to file a petition for continued authority to gross-up and also ordered that no utility may gross-up CIAC without first obtaining the approval of this Commission. On November 24, 1993, Parkland Utilities, Inc. (Parkland or Utility) filed its petition for authority to gross-up CIAC.

On January 5, 1994, the utility waived the 60 day tariff processing requirement. This was done in order to allow the finalization of Order No. PSC-94-0156-FOF-WS, Docket No. 930914-WS, issued February 9, 1994, which revised the full gross-up formula. The above Order became final on March 3, 1994.

Parkland is a Class C wastewater utility providing service to

03278 APR 9 1994

FPSO-REC'D DIVISION OF RECORDS AND REPORTING

DOCKET NO. 931141-WS  
APRIL 7, 1994

the public in Broward County. A review of the utility's 1992 Annual Report reflected 465 water and 463 wastewater customers as of December 31, 1992. Gross annual operating revenue was \$152,759 and \$242,360 for water and wastewater system, respectively. The utility had a net operating loss of \$32,069 and \$22,273 for the water and wastewater systems, respectively. The utility was granted a 1993 price index rate increase of 3.25% for the water system and 1.51% for the wastewater effective February 28, 1994, pursuant to Section 367.081, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Parkland Utilities, Inc. be granted authority to gross-up contributions-in-aid-of-construction?

**RECOMMENDATION:** Yes, the Commission should allow the new tariffs to become effective on an interim basis, subject to refund with interest, by not acting to suspend the rates. (IWENJIORA, JABER)

**STAFF ANALYSIS:** On November 24, 1993, pursuant to Order No. 23541, Parkland filed its petition for authority to gross-up CIAC. The information as filed met the filing requirements of Order 23541, however, several questions resulted from review of the filing; therefore, staff requested clarification of several items reported in the petition.

Section 367.081(6), Florida Statutes, provides that within sixty (60) days of the filing of an application to change a rate or charge other than the monthly rates for service, the Commission may withhold consent to the operations of any or all portions of the new rate schedule by a vote to that effect giving a reason or statement of good cause for withholding consent. If the Commission does not act within 60 days, the rates become effective. The file-and-suspend statutes have been interpreted by the Florida Supreme Court in Citizens of the State of Florida v. Wilson, 568 So.2d 904 (Fla. 1990), to provide that rates which become effective upon inaction by the Commission are merely interim rates pending final order by the Commission. The case law also provides that substantially affected persons have the right to a hearing on the interim rates.

On January 5, 1994, the utility waived the 60 day tariff processing requirement. This was done in order to allow the finalization of Order No. PSC-94-0156-FOF-WS, Docket No. 930914-WS, issued February 9, 1994, which revised the full gross-up formula to be incorporated in the tariff sheets. The above Order became final on March 3, 1994.

We are recommending that no action be taken by the Commission, rather than the Commission suspending, approving or denying the tariffs, for the following reasons. If the tariffs were suspended, the utility would not be able to collect any gross-up since it has no gross-up tariff in effect presently. Thus, the utility would forever lose monies to which it might ultimately be found to be entitled to at the end of staff's investigation. If the tariffs were approved, the Commission would be making the affirmative statement that the utility's gross-up tariff is correct as filed. Staff cannot make that recommendation of correctness because we

DOCKET NO. 931141-WS  
APRIL 7, 1994

have not concluded our review of the additional information requested from the utility. If the tariffs were denied, the utility would be unable to collect any CIAC gross-up and would have to refile. Therefore, staff believes that the recommendation to take no action on the tariff and thus let it go into effect on an interim basis, subject to refund with interest, is the appropriate procedure to use. Both the utility and the ratepayer are protected.

The utility asserts that this request is necessary because they anticipate that a substantial portion of CIAC received in the future will be taxed at federal statutory rates. Parkland has agreed to provide service to 341 ERCs to be developed by Transeastern over the next two to three years. Such service will result in a receipt of approximately \$750,000 in CIAC. The utility states that unless gross-up authority is effective throughout this period, Parkland will incur a substantial tax liability with no apparent source for the funding of such liability. Although the information filed makes it appear that the utility may have a tax liability, additional information is being reviewed before staff can make a recommendation that a tax liability exists and that other sources of funds are not available at a reasonable cost, as required by Order No. 23541. In particular, staff is trying to determine the appropriated treatment of the utility's accumulated net operating losses (NOLs) and whether the utility will have taxable income after utilization of the losses. In consideration of the above, we recommend that the utility be allowed to collect the CIAC gross-up on an interim basis, and that the Commission allow the new tariffs to become effective on an interim basis by not acting to suspend the rates.

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 revenue collected subject to refund.

DOCKET NO. 931141-WS  
APRIL 7, 1994

**ISSUE 2:** Should the interim collections of the CIAC gross-up be made in accordance with the provisions of Orders Nos. 16971 and 23541?

**RECOMMENDATION:** Yes, the interim collections of the CIAC gross-up should be made in accordance with the provisions of Orders No. 16971 and 23541, with the modification that no monies shall be withdrawn from the escrow account until a final determination is made. (IWENJIORA)

**STAFF ANALYSIS:** Orders Nos. 16971 and 23541 granted authority for utilities to gross-up CIAC, prescribed accounting and regulatory treatments for the gross-up and required refunds of certain gross-up amounts collected. Pursuant to these orders, CIAC tax impact amounts should be deposited as received in a fully funded interest bearing escrow account and the utility should be required to maintain adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC tax impact account. Monies in the CIAC tax impact account may be withdrawn periodically for the purpose of paying that portion of the estimated Federal and State income tax expense which can be shown to be directly attributable to the repeal of Section 118(b) of the Internal Revenue Code and the inclusion of CIAC in taxable income. In the event that excess monies are determined to have been withdrawn from the escrow account, the utility shall repay said monies to the account together with any earnings on the account lost because of the excess withdrawals. CIAC tax impact monies received during the tax year that are in excess of the utility's actual tax liability resulting from its collection of CIAC, together with interest on such excess monies must be refunded on a pro rata basis to the contributors of those amounts. All other matters discussed in the body of those Orders are expressly incorporated herein by reference. However, although Order No. 16971 says the escrow account may be drawn upon to pay estimated taxes, staff believes that because the gross-up is being allowed on an interim basis and may not be permitted after further examination, no monies should be withdrawn from the escrow account until a final determination is made.

DOCKET NO. 931141-WS  
APRIL 7, 1994

**ISSUE 3:** What should be the effective date of the tariffs?

**RECOMMENDATION:** The tariffs should be effective, but not final, on or after the stamped approval date. However, substantially affected persons shall have 21 days from the date of the order issued as a result of Commission's decision to request a hearing.  
(IWENJIORA, JABER)

**STAFF ANALYSIS:** The file-and-suspend statutes have been interpreted by the Florida Supreme Court in Citizens of the State of Florida v. Wilson, 568 So.2d 904 (Fla. 1990), to provide that rates which become effective upon inaction by the Commission are merely interim rates pending final order by the Commission. Therefore, the tariffs will be effective, but not final, on or after the stamped approval date. Case law also provides that substantially affected persons have the right to a hearing on the tariff if requested; therefore, substantially affected persons shall have 21 days to request a hearing.