

MEMORANDUM

April 22, 1994

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FPSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (LORENZO) *[Handwritten initials]*

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

*0653 - Fal*

Attached is an Order Reflecting No Action by the Commission, Allowing Request for Approval of Gross-Up of Contributions-Aid-Of-Construction to become Effective on an Interim Basis, with attachments, to be issued in the above-referenced docket. (Number of pages in Order - 5)

JBL/dr

Attachment

cc: Division of Water and Wastewater (Iwenjiora)

I:931141-O.JBL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Gross-Up ) DOCKET NO. 931141-WS  
Contributions-in-Aid-of- ) ORDER NO. PSC-94-0653-FOF-WS  
Construction (CIAC) in Broward ) ISSUED: May 31, 1994  
County for Related Tax Impact, )  
by PARKLAND UTILITIES, INC. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO

ORDER REFLECTING NO ACTION BY THE COMMISSION  
ALLOWING REQUEST FOR APPROVAL OF GROSS-UP OF  
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION TO  
BECOME EFFECTIVE ON AN INTERIM BASIS

BY THE COMMISSION:

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. In Order No. 23541, issued October 1, 1990, we determined that utilities currently grossing-up CIAC must 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, pursuant to Rule 25-22.036, Florida Administrative Code and Order No. 23541, Parkland Utilities, Inc. (Parkland or Utility) filed its petition for authority to gross-up CIAC.

Tariff Implementation

In its petition, the utility asserts that this request is necessary because it anticipates that a substantial portion of CIAC received in the future will be taxed at federal statutory rates. Parkland agreed to provide service to 341 Equivalent residential

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connections (ERCs) to be developed by Transeastern Properties of Florida, Inc. over the next two to three years. Such service will result in a receipt of approximately \$750,000 in CIAC. Parkland states that unless gross-up authority is effective throughout this period, it will incur a substantial tax liability with no apparent source for the funding of such liability.

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.

Although the information filed appears to indicate that the utility will have a tax liability, we need additional information before we can find that a tax liability exists and that other sources of funds are not available at a reasonable cost, as required by Order No. 23541.

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.

In this instance, rather than suspending, approving, or denying Parkland's tariff, we are taking no action thereby allowing the tariff to become effective on an interim basis. 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 at the end of our investigation. If we approve the tariffs, we would be making the affirmative statement that the utility's gross-up tariff is correct as filed, and we cannot make that statement absent review. If the tariffs were denied, the utility would be unable to collect any CIAC gross-up and would have to refile. Therefore, we believe that it is appropriate to take no action on Parkland's tariff and thus let it go into effect on an interim basis, pending final action. The

interim charges will be subject to refund with interest. Thus, both the utility and the ratepayers are protected.

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.

Orders Nos. 16971 and 23541 granted authority for utilities to gross-up CIAC, prescribed accounting and regulatory treatment 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.

Parkland's interim collections of the CIAC gross-up shall be made in accordance with the provisions of Orders Nos. 16971 and 23541, with the modification that no monies shall be withdrawn from the escrow account until a final determination of the utility's authority to collect CIAC gross-up is made. Parkland's tariffs allowing it to gross-up will become effective on an interim basis subject to refund, on or after the stamped approval date. However, substantially affected persons shall have 21 days from the date of this Order to request a hearing.

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Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that this Commission takes no action on the tariff for CIAC gross-up collections filed by Parkland Utilities, Inc., thereby allowing said tariff to become effective on an interim basis. It is further

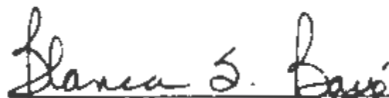
ORDERED that interim collections of the CIAC gross-up shall be subject to refund with interest as set forth in the body of this Order. It is further

ORDERED that the interim collections of the CIAC gross-up shall be made in accordance with the provisions of Orders Nos. 16971 and 23541 with the exception that no monies shall be withdrawn from the escrow account until a final determination is made. It is further

ORDERED that Parkland Utilities, Inc., shall provide, in accordance with Rule 25-30.360(6), Florida Administrative Code, a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that substantially affected persons shall have 21 days from the date of this Order to request a hearing.

By ORDER of the Florida Public Service Commission, this 31st day of May, 1994.

  
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BLANCA S. BAYO, Director  
Division of Records and Reporting

( S E A L )

JBL

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 21, 1994.

In the absence of such a petition, this order shall become final on the day subsequent to the above date

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.

If this Order becomes final on the date described above, any party adversely affected 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 date this Order becomes final, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.