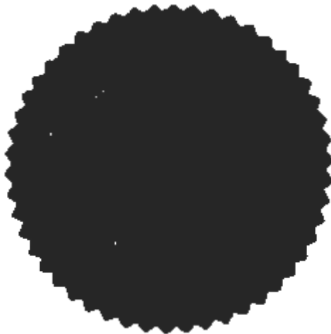


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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Petition to gross-up contributions-in-aid-of-
construction (CIAC) in Broward County for related tax
impact, by Parkland Utilities, Inc.

DOCKET NO. 931141-WS



BEFORE: CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 26**

DATE: May 30, 1995

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

JANE FAUROT, RPR
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TALLAHASSEE, FLORIDA 32302
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BUREAU OF REPORTING

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1 PARTICIPATING:

2 Marty Deterding, Esquire, representing Parkland
3 Utilities, Inc.

4 * * * * *

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6 STAFF RECOMMENDATIONS

7 Issue 1: Recommendation that the Commission deny Parkland
8 Utilities, Inc.'s tariff authority to gross-up CIAC using
9 the full gross-up method. The interim gross-up tariff
10 should be cancelled and all gross-up monies collected during
11 the interim period should be refunded to the contributors of
12 those monies with interest. The refund should be completed
13 within 90 days of the effective date of this order. The
14 utility should submit copies of cancelled checks, credits
15 applied to monthly bills or other evidence which verifies
16 that the refund has been made, within 90 days from the date
17 of refund.

18 Issue 2: Recommendation that the docket remain open pending
19 verification of the refund. Staff should be granted
20 administrative authority to close the docket upon
21 verification that the refunds have been made.
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P R O C E E D I N G S

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COMMISSIONER CLARK: Item 26.

COMMISSION STAFF: Commissioners, Item 26 is staff's recommendation that Parkland Utilities, Incorporated be denied gross-up authority. There are present representatives from Parkland that would like to address the Commission now on their ideas.

CHAIRMAN CLARK: Mr. Deterding.

MR. DETERDING: Commissioners, I'm Marty Deterding here on behalf of Parkland Utilities. With me is Bob Nixon, the utility's accountant who prepared the application in conjunction with the utility in my office. Also here is Mr. Ron Noons (phonetic), who is the Vice President for the utility and primarily responsible for the day-to-day operations of the utility.

I would like to, if I could, take just a minute to kind of give an overview, then I want to have Mr. Noons give you some specifics about the situation there about a couple of points that have been raised in the staff recommendation. And then also Mr. Nixon to give some specifics about our disagreement with some of the things contained in the staff recommendation.

Briefly as an overview, Parkland requested authority to gross-up CIAC for the related tax impact.

1 We filed an application with the Commission sometime
2 ago when they provided additional information at
3 staff's request. It is my understanding from a review
4 of the staff recommendation that the criteria necessary
5 for approval of gross-up authority are all there with
6 the exception of one which they believe the utility has
7 failed to demonstrate that there will be an actual tax
8 liability. As always, we utilized historic information
9 to justify that actual expected actual tax liability
10 from CIAC.

11 In addition to the basic disagreements with the
12 staff, information in the staff recommendation that
13 these other gentlemen will address, I would just like
14 to kind of give you a little background. The utility
15 has had basically no growth in the last five years. I
16 think they have added somewhere in the neighborhood of
17 15 customers until last year. Last year they entered
18 into the developer agreement that gave rise to this
19 filing. The developer agreed to pay gross-up, and did
20 pay gross-up, and is paying gross-up as new phases come
21 on line. That is the only area of growth and we have a
22 situation where the developer has specifically agreed
23 to pay that gross-up.

24 If the Commission accepts the staff
25 recommendation, the utility will be placed in a

1 position where if there is, in fact, a tax liability
2 resulting from CIAC, then there will be no way to
3 recoup those monies other than through increases in
4 rates to the approximately 400 customers out there now
5 and as others come on from them as well through rates.
6 If, on the other hand, the Commission accepts our
7 position, which is to grant gross-up authority on a
8 permanent basis, that decision can be reviewed on a
9 yearly basis and all collections of gross-up are
10 subject to refund until the actual tax liability is
11 determined from review of the actual tax returns and
12 other information required to be filed. In the
13 interim, as required under Commission orders, all
14 gross-up monies are placed into an interest bearing
15 account and subject to refund until the amount of
16 refund and/or retention of gross-up monies is
17 determined on a yearly basis by the Commission. That's
18 why we take the position that the staff recommendation
19 is premature.

20 I believe, and certainly it's my experience it is
21 the most extensive analysis of a request for initial
22 gross-up authority that we have ever seen. We are
23 concerned that what we are doing here is prejudging the
24 tax impact. If there is none, then the developer will
25 get his money back with interest. He has already

1 agreed to pay it and has paid it. If there is a tax
2 impact, then the customers won't be burdened with it,
3 so we believe that the Commission should grant gross-up
4 authority on a year-by-year basis, look at it and
5 determine what amount the utility should retain versus
6 refund.

7 And with that I would like to introduce you to Ron
8 Noons, the Vice President for the utility, and he has a
9 few points as to some specifics in the staff
10 recommendation.

11 MR. NOONS: Good morning. Marty has covered
12 probably most of the salient points, I just want to go
13 purely from an operational standpoint. My major
14 concern is the fact that this developer now is bringing
15 in many more customers. We are going to be increasing
16 our customer base by nearly 50 percent over this next
17 year, bringing us to nearly 100 percent build-out,
18 which we haven't seen obviously since our operations
19 began.

20 We are also additionally looking to expand our
21 utility area. There are approximately 1,000 acres
22 adjacent to us that currently don't have service area.
23 All this leads to the fact that the dynamics of our
24 growth are going to have an impact on our tax ability
25 that right today we cannot calculate. And what we were

1 looking for obviously would be the gross-up to pass it
2 on to the developer who has currently agreed to pay for
3 that, and is, in fact, passing those costs through to
4 existing homeowners that have since purchased from him.
5 And we would prefer to do it this way with the
6 developer paying their fair share now rather than later
7 coming back to the Commission and asking for all the
8 customers to then pitch in. And with that, that's all
9 I have right now, except if there are any questions I
10 can answer later.

11 COMMISSIONER CLARK: Mr. Nixon.

12 MR. NIXON: Commissioners, as Marty told you, we
13 believe this recommendation is premature. None of the
14 gross-up that has been collected has yet been reported
15 on any tax return. The company only first collected
16 CIAC during 1994, and that return has not been filed
17 yet. The balance of the contributions and the gross-up
18 coming from this developer will come in between 1994's
19 return and 1996. I don't know how you can in advance
20 determine that there is no tax liability until you
21 actually have the returns and the other information for
22 the applicable years.

23 During this time, if we are allowed to continue
24 (tape change) these funds are deposited into interest
25 bearing account. I would like to move briefly to some

1 of the accounting issues and some of the staff
2 analysis. Contrary to staff's conclusion, their own
3 numbers in the return indicate that there will be a tax
4 liability of approximately \$139,000. This is shown on
5 Page 5 of the recommendation where staff calculates
6 that a tax of approximately \$369,000 will be due from
7 receipt of this gross-up. In the next sentence they go
8 on to explain that this tax will be offset by \$500,000
9 of net operating loss carry-forward. Well, while we
10 disagree with the calculation of that \$500,000 net
11 operating loss carry-forward, the loss carry-forwards
12 are not a credit against the tax. The loss
13 carry-forwards are a deduction from the taxable CIAC,
14 and the total taxable CIAC is about \$869,000. So the
15 company would be left paying a tax on \$369,000 of
16 taxable CIAC at the 37-1/2 percent tax rate.

17 In reaching their conclusion, staff indicates that
18 the utility used expenses that were set by the
19 Commission in a rate case, and that's true, and we
20 believe that that's a reasonable approximation of the
21 expenses that should be considered as above-the-line
22 expenses. The final rates for that case went into
23 effect just 18 months before the end of the tax year
24 that the company filed this recommendation on, so we
25 have a very narrow time frame here, which means that

1 the comments of staff about customer growth and
2 inflation really aren't material. As Mr. Noons said,
3 the company only added 15 connections from the test
4 year, which was 1989 up through the end of the year
5 that this gross-up application was based.

6 Staff also required the utility to revise its
7 application. I think we have revised the numbers about
8 three times. One of the reasons for a revision was
9 that staff insisted we use the same used and useful
10 percentage that was established in the 1989 test year.
11 To me this seems contradictory with the fact that
12 you're going to require us to use the same used and
13 useful percentages, but totally disregard the level of
14 expenses that the Commission set in that rate case.
15 The total operating expenses set in that rate case were
16 about \$324,000. And to dramatically increase those
17 expenses on an above-the-line basis to me just doesn't
18 seem to make a lot of sense.

19 One reason we have differences between
20 above-the-line taxable income and below-the-line
21 taxable income is that a lot of expenses considered in
22 that rate case were not granted and are not embedded in
23 the company's rates. For instance, management fees was
24 a big adjustment in that rate case. Salaries was a big
25 adjustment in that rate case. So although the company

1 continued to pay those management fees and salaries and
2 gets a deduction on the tax return, for regulatory
3 purposes those expenses have been disallowed and the
4 losses caused by those items should belong to the
5 stockholders of the utility company.

6 In closing, I just would say that the company
7 should be granted authority to fully gross-up as long
8 as the company is abiding by the conditions granting
9 the gross-up, they are putting the funds into an
10 interest bearing account. Next year when the tax
11 return is filed we will make a report to the
12 Commission. The revenues and expenses of the company
13 at that time will have changed from where they are now.
14 And at that time the Commission will have much better
15 information on which to base its decision to make a
16 refund and to allow the company to continue to gross-up
17 or not. Thank you.

18 MR. DETERDING: Commissioners, just in closing, we
19 are just concerned that what is being done here is
20 going to negatively impact the utility and the
21 ratepayers with no real benefit. The gross-up
22 authority as granted has in the past been liberally
23 granted because the checks against a utility ultimately
24 getting to retain monies to which it was not entitled
25 are very much there; the escrowing of the funds, the

1 required refund with interest once the actual tax
2 situation is apparent.

3 CHAIRMAN CLARK: Commissioners, taking into
4 consideration that the basic determination to grant the
5 authority for gross-up is whether or not the utility
6 will have a tax liability, and in reviewing that we did
7 take into consideration the historical information that
8 the utility presented to us. But at that time it was
9 determined that they had a large amount of NOL at that
10 time, and there based on the NOLs that were
11 above-the-line, we indicated that the utility would not
12 have a tax liability. As far as the revisions from
13 their initial application, in reviewing their
14 application we determined that some of the numbers were
15 not consistent initially with the last rate case, and
16 we wanted them to bring up at least to that level. And
17 from there we had some other discrepancies with the
18 numbers until we asked, you know, and the utility
19 provided them to sort of bring them up again. But in
20 reviewing the O&M expenses that we were looking at in
21 comparison to the annual report and in comparison to
22 what the utility was presenting to us, it indicated
23 there was a big gap between what we were seeing. Even
24 though the utility has not come in for any major rate
25 adjustment since their last rate case, they have come

1 in for indexes and pass-throughs on a consistent basis,
2 and we basically utilized the same number of O&M that
3 was represented on their annual report to determine the
4 increase that we were giving them each year.

5 For those years, I think in 1990, the year of the
6 rate case, we did make an adjustment for any type of
7 adjustments that we made to the annual report, O&M
8 expenses to reflect that difference. But on the other
9 years, we are considering that the O&M expenses
10 represented in the annual report is more reflective of
11 the expenses that we increased based on the indexes and
12 pass-throughs that we allowed. The utility also came
13 in for a limited proceeding to get -- for water and for
14 sewage connections. Those things were taken into
15 consideration and those things were not represented
16 from the last rate case. Therefore, we feel that the
17 numbers that are represented for the O&M expenses are
18 more accurate.

19 We do use historical data in reviewing the
20 application, but in this particular case, because we
21 looked at the historical data to determine basically
22 what the NOL status would be. From that particular
23 point we needed to get some kind of pro forma and the
24 utility in their initial application did present us
25 with a pro forma. In that pro forma what it did was it

1 gave us an idea of how much revenue and how much
2 expense the utility will have with the new increase for
3 the CIAC contributions. However, when we looked at
4 that it did not show us any customer growth, it did not
5 show us any customer expense, you now, based on that.
6 So, therefore, we had to sort of come up with our idea
7 of what it would be. And what we have seen is that the
8 CIAC contributions could be offset by the NOLEs that
9 they currently had available, and there would be no tax
10 liability.

11 CHAIRMAN CLARK: I guess I would like you to
12 respond specifically to what Mr. Nixon said. As I
13 understood what he said, the net loss, net operating
14 loss carry-forward you estimated to be more than
15 \$500,000, is that correct?

16 COMMISSION STAFF: Yes.

17 CHAIRMAN CLARK: All right. So that will be shown
18 as an offset to earnings, is that right?

19 COMMISSION STAFF: An offset to above-the-line
20 revenues.

21 CHAIRMAN CLARK: Is there any dispute that there
22 will be, in effect, half a million dollars deducted
23 from their revenues for 1994?

24 COMMISSION STAFF: Well, even the utility -- they
25 had a loss even in 1994, and we did not include those

1 particular NOLs in that calculation.

2 CHAIRMAN CLARK: I will put it out very simply for
3 you. He is indicating they are not going to have --
4 they are going to have a taxable liability for CIAC.
5 You say that they should have, as I understand it, net
6 operating losses and they have not operated at a profit
7 for the last five years. You think they won't have any
8 taxes.

9 COMMISSION STAFF: No, I don't.

10 CHAIRMAN CLARK: And I'm trying to understand what
11 the difference is between the two positions that result
12 in you concluding that there is no taxable -- there
13 will be no taxable income and they are concluding it
14 is, that there will be.

15 COMMISSION STAFF: One little piece that makes
16 this even more, when we give them the gross-up
17 authority, the gross-up itself contributes to an
18 increase in revenues for the utility. And we are
19 trying to eliminate that excess -

20 (Simultaneous conversation.)

21 COMMISSION STAFF: If the gross-up is not there,
22 that will not be taxable income. Still based on the
23 information that we have, the utility would not be
24 taxable -- they would not pay taxes either way
25 above-the-line or below-the-line. But looking at the

1 above-the-line prospect for regulatory purposes, the
2 utility would not have a tax liability.

3 MR. NIXON: Commissioner, may I respond to that?

4 CHAIRMAN CLARK: Uh-huh. Go ahead, Mr. Nixon.

5 MR. NIXON: The \$869,000 number is only the CIAC;
6 it does not include any of the gross-up. And right now
7 we are just using numbers that have been developed by
8 staff to see if it is probable that the company will
9 incur a tax liability. Now their computations show
10 that available to offset the tax on that \$869,000 of
11 CIAC is about \$500,000 of NOL that they are considering
12 out of the total to be above-the-line.

13 CHAIRMAN CLARK: Wait a minute. When you say that
14 there is \$869,000 in CIAC, that is not per year, that's
15 over several years, is it not?

16 MR. NIXON: That is over three years,
17 Commissioner, 1994 through 1996.

18 COMMISSION STAFF: 1997 based on --

19 MR. NIXON: So on the tax return, if we showed on
20 the tax return \$869,000 in taxable CIAC, forgetting for
21 a moment the impact of the gross-up, we would deduct
22 the \$500,000 above-the-line NOL and we would end up
23 paying tax on \$369,000.

24 CHAIRMAN CLARK: You're asking for a gross-up for
25 1995?

1 MR. DETERDING: We have interim authority
2 currently, Commissioner, and we are asking for
3 permanent authority, which is the specific point here
4 today.

5 CHAIRMAN CLARK: All right. What do you estimate
6 the CIAC you will receive in 1995 to be?

7 MR. DETERDING: We sent an estimate of the years
8 of collections to the staff. Do you have that handy?

9 CHAIRMAN CLARK: It looks like the recommendation
10 shows 467,500.

11 MR. DETERDING: This year?

12 CHAIRMAN CLARK: For 1995.

13 MR. DETERDING: That sounds about right,
14 Commissioner. We had a significant amount in '94, as
15 well.

16 CHAIRMAN CLARK: And how much net operating losses
17 can you record for 1995?

18 MR. DETERDING: Well, are you talking about new
19 ones or net operating loss carry-forward or --

20 CHAIRMAN CLARK: Net operating loss carry-forward.

21 MR. DETERDING: Well, carry-forward we have a very
22 different opinion with the staff about how much is
23 above and below-the-line. Our position is even taking
24 the staff's \$500,000 number maybe there won't be a tax
25 in '94, maybe there won't be a tax in '95. We don't

1 agree that that is true, but even assuming it is, when
2 we get to the last year there is going to be one. The
3 third year or the fourth year there is going to be one
4 because all of that NOL will be gone.

5 CHAIRMAN CLARK: So you can request a gross-up at
6 that time.

7 MR. DETERDING: Well, Commissioner --

8 CHAIRMAN CLARK: Based on what the staff is saying
9 it doesn't look like you will have taxable income in
10 '95 or '96, and as I understand it that is their
11 rationale for not recommending that you be allowed to
12 gross-up.

13 MR. DETERDING: And, Commissioner, while for
14 illustrative purposes we have assumed certain things
15 about their numbers, what we are asking you to do is no
16 one will be hurt by this company being allowed to
17 continue to gross-up authority it has already started
18 because all of it will be fully refundable if we cannot
19 demonstrate in any given year that there is not a tax
20 liability. And if it is broken up where we are
21 required to refund now and then we are allowed to put
22 in gross-up in 1996, then the people in 1996 are going
23 to pay substantially more than those in 1995. You are
24 going to have that sort of discrimination, you're going
25 to have a situation where a developer who has

1 apparently already passed through these costs to
2 customers is going to be getting a refund. And all we
3 are asking is let's do it year-by-year when we have the
4 actual information in hand. No one will be harmed by
5 that because it is all fully refundable until this
6 Commission rules on the specific dollar. And that's
7 why we are asking to approve permanent gross-up
8 authority as you do with all gross-up authority, review
9 each year after the fact, after the tax return has been
10 filed.

11 CHAIRMAN CLARK: But if I understand the tax
12 recommendation correctly, one of the criteria to be
13 looked at in determining whether you allow gross-up is
14 the likelihood that you will have taxable income. And
15 it is their view that you haven't substantially
16 demonstrated that you will have taxable income. If we
17 follow what you are suggesting, it changes our policy,
18 as I understand it.

19 COMMISSION STAFF: Yes. Commissioner, I would
20 like to add one point. What Mr. Deterding is proposing
21 is defeating the purpose of the gross-up policy that we
22 have established in the various orders starting with
23 23541. Utilities were supposed to demonstrate that
24 there was an above-the-line tax liability and the need
25 for gross-up existed. It is not that staff comes to

1 the Commission and asks you to blanket approve each of
2 these recommendations and then we go back and fix it.
3 That's not what gross-up is all about.

4 MR. DETERDING: We believe we have demonstrated
5 that there is going to be an actual tax liability. The
6 fact that we disagree is all based upon projections
7 about what will occur on the tax return for '94, '95,
8 and '96. We believe when we bring it in we will be able
9 to show that there is an actual tax liability
10 above-the-line for each of those years. And all I'm
11 asking is -- we are not changing anything about this
12 Commission's policy. In the past, gross-up authority
13 has been liberally granted because of those protections
14 out there. Those protections that each year you are
15 going to have to show how much. And if for three or
16 four years you come through and you don't have a tax
17 liability and it doesn't appear as though you will have
18 one, then the Commission will revisit the authority
19 itself.

20 CHAIRMAN CLARK: Any other questions,
21 Commissioners?

22 MS. McCASKILL: Commissioners, I do need to point
23 out something regarding Mr. Deterding's statement in
24 the recommendation. Each utility, we look at the
25 circumstances of that utility. It's not that we

1 liberally grant anything. We look at the
2 circumstances. The information we had regarding NOLs,
3 it appeared that the utility would not have a tax
4 liability. My concern now is the wording of staff's
5 recommendation. On Page 5 in the last paragraph, staff
6 indicates that staff has determined that the utility
7 has accumulated more than 500,000 in NOLs that would be
8 used to offset any tax liability. The 500,000 in NOLs
9 will offset taxable income, not the tax liability. So
10 it appear just from reading this the utility will
11 collect more gross-up -- more CIAC than we have shown
12 in accumulated NOLs. However, it also appears that
13 there are some NOLs that we have not taken into
14 consideration. So, at this point, I'm unsure now if we
15 can say the utility will not have a tax liability
16 because I don't know what those other NOLs are.

17 CHAIRMAN CLARK: Ms. McCaskill, what do you want
18 to do? Do you want to defer this for the next agenda?

19 MS. McCASKILL STAFF: I think we need to.

20 CHAIRMAN CLARK: Without objection, we will show
21 It n 26 Jeferred.

22 MR. DETERDING: Thank you, Commissioner.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages numbered 1 through 20 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 30 day of March, 1997.

Jane Faurot
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