

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contributions-in-aid-of-
construction gross-up funds
collected for 1996 by Parkland
Utilities, Inc. in Broward
County.

DOCKET NO. 991576-WS
ORDER NO. PSC-99-2370-PAA-WS
ISSUED: December 6, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACCEPTING SETTLEMENT OFFER AND REQUIRING REFUNDS FOR THE
YEAR 1996

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

Parkland Utilities, Inc. (Parkland or utility) is a Class B
water and wastewater utility providing service to the public in
Broward County. A review of the utility's 1998 annual report
reflected approximately 656 water and 652 wastewater customers as
of December 31, 1998. Gross annual operating revenues were
\$243,225 and \$432,684 for the water and wastewater systems,
respectively. The utility reported a net operating income of
\$3,518 for water and a net operating income of \$37,505 for the
wastewater system.

By Order No. 16971, issued December 18, 1986, in Docket No.
860184-PU, we granted approval for water and wastewater utilities

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FPSC-RECORDS/REPORTING

to amend their service availability policies to meet the tax impact of 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, in Docket No. 860184-PU, 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 our approval. Orders Nos. 16971 and 23541 also prescribed the accounting and regulatory treatments for the gross-up, and required that utilities annually file information which would be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up would be appropriate. These orders also required that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, should be refunded on a pro rata basis to those persons who contributed the taxes.

By Order No. PSC-94-0653-FOF-WS, issued May 31, 1994, in Docket No. 931141-WS, Parkland was granted interim authority to collect CIAC gross-up. However, on August 1, 1996, the Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed into law by President Clinton on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, by Order No. PSC-96-1180-FOF-WS, issued September 20, 1996, in Docket No. 960965-WS, we revoked the authority of utilities to collect gross-up of CIAC and cancelled the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Parkland's interim gross-up authority was revoked and the tariff was cancelled as of October 20, 1996.

We addressed the disposition of gross-up funds for 1994 and 1995 in Docket No. 931141-WS, by Order No. PSC-98-0445-AS-WS, issued March 30, 1998. The purpose of this docket is to address the disposition of gross-up funds for 1996.

DISPOSITION OF CIAC GROSS-UP FOR 1996

In compliance with Orders Nos. 16971 and 23541, Parkland filed its 1996 annual CIAC report regarding its collection of gross-up. By later dated July 26, 1999, our staff submitted preliminary refund calculation numbers to the utility. We have calculated the gross-up required to pay the tax liability resulting from the collection of taxable CIAC by grossing-up the net taxable CIAC

amount, in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS. Our calculation, taken from the information provided by the utility in its gross-up report, is reflected on Schedule No. 1, attached to this Order.

1996

The utility's 1996 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$154,375 in taxable CIAC was received, with \$491 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$153,884. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1996 CIAC report, we calculate a tax effect of \$57,907. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$92,845. The utility collected \$103,201 of gross-up monies; therefore, the utility overcollected CIAC gross-up by \$10,358.

A portion of the CIAC collected during 1996 was contributed property. It appears that the value of the contributed property actually received by the utility was less than the value initially estimated. The developer who contributed the property paid the gross-up based on the estimated value. It appears that the developer paid \$2,949 of gross-up in excess of the amount that should have been paid based on the actual value of the contributed property. This amount is included in the \$10,358 calculated as the overcollected gross-up amount.

Consistent with prior gross-up dockets, the utility requested that it be allowed to use 50 percent of its legal and accounting costs incurred in preparing the gross-up reports to offset the contributors' refunds. The utility provided documentation for \$22,602 of legal and accounting costs. However, we have disallowed \$7,725 of legal and accounting fees as follows:

- (1) The estimate to complete the reporting for Cronin, Jackson, Nixon & Wilson, included \$450 for P. DeChario to prepare the refund schedule and transmit to staff. This represents 6 hours at \$75. Since the CIAC was received from one contributor, we find that the time allowed to prepare the report

shall be reduced to 2 hours at \$75, or \$150. Therefore, we have disallowed \$300.

- (2) The \$4,425 of costs for Ron Nunes, the manager, shall be disallowed because it appears that these costs do not relate to the preparation of the 1996 CIAC gross-up report.
- (3) Also, we have disallowed the estimated 20 hours, or \$3,000 of estimated cost to complete the case, which was included for Ron Nunes. Since there is only one contributor in this case, and anticipating that no additional hearings will be required, we do not believe that this additional cost will be incurred by the utility.

We have considered on several occasions, the question of whether an offset should be allowed pursuant to the orders governing CIAC gross-up. Where a utility has requested an offset, we have consistently approved the offset of 50 percent of the legal and accounting costs associated with the preparation and filing of the utility's gross-up reports against the overcollections. In general, the utility argues that the legal and accounting costs should be deducted from the amount of the contributors' refund, as the contributors are the cost-causers and as such, those costs should be recovered from them.

As in the other cases referenced above, we find that acceptance of the settlement proposal would avoid the substantial cost associated with a hearing, which may in fact exceed the amount of the legal and accounting costs to be recovered. We further note that the actual costs associated with making the refunds have not been included in these calculations and will be absorbed by the utility. Moreover, we find the utility's settlement proposal to be a reasonable compromise. Therefore, while not adopting the utility's position, we find it appropriate to accept the utility's settlement proposal.

Based on the above, 50 percent of \$14,877, or \$7,438, shall be considered in determining the amount to be used to offset the contributors' refund. However, in calculating the amount of refund, legal and accounting fees shall not be offset against the \$2,949 of excess collected gross-up related to contributed property previously discussed.

As previously stated, the utility overcollected the gross-up by \$10,358. However, the legal and accounting fees shall not be offset against \$2,949 of the overcollection related to the estimated value of contributed property. Since the developer would have been entitled to a refund of this overpayment regardless of the amount of refund, we have not offset this overpayment with the legal and accounting costs incurred in filing the gross-up report. Therefore, the amount of overcollection against which the legal and accounting fees may be offset is \$7,409. The allowable legal and accounting fees of \$7,438 exceed the \$7,409 of overcollected gross-up. Therefore, the utility shall refund only the \$2,949 plus interest from December 31, 1996 to the date of refund.

In accordance with Orders Nos. 16971 and 23541, all amounts shall be refunded on a pro rata basis to those persons who contributed the taxes. Since there is only one developer who contributed this gross-up, the refund shall be completed within two months of the effective date of the Order. The utility shall submit a copy of the canceled check, or other evidence which verifies that the refund has been made, within 30 days from the date of refund. If the refund is not claimed, the utility shall provide a letter documenting the amount of the unclaimed refund and an explanation of the efforts made to make the refund.

CLOSING OF DOCKET

Upon expiration of the protest period, if no timely protest is received by a substantially affected person, the Order shall become final and effective upon the issuance of a Consummating Order. However, this docket shall remain open pending our staff's verification of the refund. Upon verification that the refund has been completed and there is no unclaimed refund, the docket shall be administratively closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer of Parkland Utilities, Inc., shall be accepted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540

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Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that Schedule No. 1, attached to this Order, is incorporated herein by reference. It is further

ORDERED that Parkland Utilities, Inc., shall refund excess gross-up of contributions-in-aid-of-construction in the amount of \$2,949 for 1996. It is further

ORDERED that the refunds shall be made as set forth in the body of this Order. It is further

ORDERED that Parkland Utilities, Inc., shall refund accrued interest through the date of refund, for gross-up of contributions-in-aid-of-construction collected in excess of the tax liability. It is further

ORDERED that, pursuant to Orders Nos. 16971 and 23541, all refund amounts shall be refunded on a pro rata basis to those persons who contributed the funds. It is further

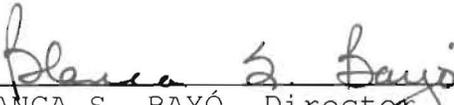
ORDERED that the refunds required herein shall be completed within two months of the effective date of this Order, and that Parkland Utilities, Inc., shall submit a copy of the canceled check, or other evidence verifying that the refunds have been made within 30 days of completion of the refund. It is further

ORDERED that within 30 days of completion of the refund, Parkland Utilities, Inc., shall provide a letter documenting the amount of the unclaimed refund and an explanation of the efforts made to make the refund. It is further

ORDERED that the docket shall be administratively closed upon expiration of the protest period, if no timely protest is filed, and upon our staff's verification that the refunds have been made.

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By ORDER of the Florida Public Service Commission this 6th
day of December, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 27, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.

PARKLAND UTILITIES, INC.
 GROSS-UP REFUND

	<u>1996</u>
A-T-L TAXABLE INCOME PER UTILITY BEFORE CIAC	\$ 89,809
Plus taxable CIAC	<u>154,375</u>
A-T-L TAXABLE INCOME PER UTILITY	<u>\$244,184</u>
ADJUSTMENTS:	
(a) First year's depreciation on contributed assets	(491)
	<u>(491)</u>
TOTAL ADJUSTMENTS	<u>(491)</u>
A-T-L TAXABLE INCOME	\$243,693
Less CIAC	(154,375)
Plus first year's depreciation on CIAC	491
A-T-L TAXABLE INCOME BEFORE CIAC	<u>\$ 89,809</u>
Less NOL carryforward	<u>\$0</u>
NET TAXABLE A-T-L INCOME	<u>\$ 89,809</u>
TAXABLE CIAC RESULTING IN A TAX LIABILITY	\$154,375
Less first year's depreciation on CIAC	<u>(491)</u>
NET TAXABLE CIAC	\$153,884
Combined marginal state & federal tax rate	<u>37.63%</u>
Net Income tax on CIAC	\$ 57,907
Expansion factor to gross up taxes	<u>1.60333</u>
Gross-up required to pay tax effect	\$ 92,843
Gross-up collected to pay tax effect	<u>(103,201)</u>
(OVER) OR UNDERCOLLECTION OF GROSS-UP	\$ (10,358)
Less: Offset of Legal and Accounting Fees	<u>7,409</u>
NET 1996 YEARLY OVERCOLLECTION	\$ (2,949)
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REFUND (EXCLUDING INTEREST)	\$ (2,949)
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