

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Parkland Utilities, Inc.,)
Petition to gross-up contributions-)
in-aid-of-construction for the)
related tax impact.)

Docket No. 931141-WS

PETITION FOR GROSS-UP AUTHORITY

Parkland Utilities, Inc., (hereinafter "Parkland", "Petitioner", or the "Utility"), by and through its undersigned attorneys, hereby petitions the Florida Public Service Commission (hereinafter "Commission") to allow Parkland to gross-up all contributions-in-aid-of-construction (hereinafter "CIAC") for the related tax impact, and to allow interim authority to gross-up CIAC for the related tax impact while final approval is pending before the Commission, and in support thereof states:

- 1. The name and address of the Petitioner in this matter is:

Parkland Utilities, Inc.
7501 S. Cypress Head Drive
Parkland, Florida 33067-1299
(305) 753-7900

The legal representative of the Petitioner is:

F. Marshall Deterding, Esquire
ROSE, SUNDSTROM & BENTLEY, P.A.
2548 Blairstone Pines Drive
Jalapa, Florida 32301
(904) 877-6555

2. The Petitioner's substantial interests are effected by the Commission's determination in that Parkland is a water and wastewater utility, regulated by the Florida Public Service Commission under the provisions of Chapter 367, Florida Statutes. Under the provisions of Commission Order No. 23541 issued on October 1, 1990, Parkland may not gross-up CIAC for the related tax

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impact without first obtaining Commission approval.

3. There are no known disputed issues of material at this time.

4. The ultimate facts alleged by the Petitioner herein are as follows:

(a) It is anticipated that Parkland will begin receiving substantial contributions immediately.

(b) Attached hereto as Section I of **Schedule No. 1** is a statement demonstrating that Parkland does not have an alternative source of financing available to fund the taxes related to the receipt of CIAC at a reasonable rate.

(c) Attached hereto as Section II of **Schedule No. 1** is a statement regarding justification for gross-up showing why Parkland needs gross-up and the facts and circumstances which lead to that conclusion.

(d) Included as Section III of **Schedule No. 1** is a statement concerning the gross-up method selected and the reasons for selection of that method.

(e) Attached is **Schedule No. 2**, which demonstrates that an actual tax liability will exist on a regulated above-the-line basis once anticipated contributions are recognized, based upon the fiscal year ended February 28, 1993. One copy of the Utility's tax return for the fiscal year ended February 28, 1993, is also attached as **Exhibit No. 1**. Parkland has recently executed a Developer Agreement to provide water and sewer utility services to Transeastern Properties of Florida, Inc. Under the terms of that

Agreement, the Utility 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. That Agreement has previously been filed with the Commission.

(f) The property of Transeastern to be developed under the terms of that September 1, 1993 Agreement, covers virtually all of the undeveloped property within the existing certificated service territory of Parkland. As such, the authority for gross-up requested herein will for the most part effect Northeastern and no other developers or persons within the certificated service territory of Parkland.

(g) Under the terms of the September 1, 1993 Developer Agreement with Transeastern, the Developer has agreed that the Utility cannot provide service to Developer's property without requiring a "gross-up" charge, that the Utility will apply to the Commission for authority to "gross-up", and that the Developer will not oppose such application. In fact, Developer has specifically funded full gross-up, for all contributions-in-aid-of-construction to be provided by him, into an escrow account pending approval of such gross-up by the Commission.

(h) The Utility anticipates a significant tax liability as result of the receipt of CIAC from Transeastern during 1994, 1995, and 1996.

(i) A calculation of the above-the-line and below-the-line depreciation and property taxes for the year ended February

28, 1993, is attached hereto as **Schedule No. 3.**

(j) A schedule calculating the composite non-used and useful percentages and applying the percentages to the various categories of plant in service utilized in conjunction with the calculation of above and below-the-line taxable income is attached hereto as **Schedule No. 4.**

(k) Attached hereto as **Schedule No. 5** is a statement of cash flows demonstrating that no net cash is available from operations to fund the tax related to CIAC expected to be received over the coming years.

(l) A statement of interest coverage calculating a times interest earned (TIE) ratio is attached hereto as **Schedule No. 6.** Based upon the criteria established by the Commission, the Utility's times interest coverage level for the year ended December 31, 1993, is expected to be a negative 113.45, far below the minimum level of two times interest expense level proposed under Commission Order No. 23541.

(m) The tariff sheets, Second Revised Sheet No. 2.0, First Revised Sheet No. 27.1, and First Revised Sheet No. 27.2, of the water tariff; and Third Revised Sheet No. 2.0, First Revised Sheet No. 23.1, and First Revised Sheet No. 23.2, of the sewer tariff of the Utility, as proposed to implement the gross-up authority requested herein, are attached hereto as **Exhibit No. 2.**

(n) The Utility previously implemented gross-up in July 1987, under the authority granted by Order No. 16971. When Commission Order No. 23541 was issued, which required all those

utilities with existing gross-up authority to re-file for continuation of that authority, Parkland was not receiving any significant contributions. As such, the Utility did not file requesting continuation of the then existing gross-up authority.

WHEREFORE, for all of the above-stated reasons, and based upon the information filed herein, the Utility requests that this Commission on an interim basis authorize Parkland Utilities, Inc., authority to gross-up CIAC for the related tax impact while the Commission considers the permanent request for such authority. The Utility anticipates substantial CIAC will be received at the beginning of 1994 and thereafter, and as such, the authority is necessary on an interim basis. Petitioner further requests that this Commission ultimately determine, based upon the criteria established in Order No. 23541, that Parkland is in need of the gross-up authority to protect its long-term financial health, to ensure that the Utility can continue to provide service as needed to its new customers upon demand, and to guard against substantial increases in rates due to an investment in tax, even if the Utility were able to fund such tax liabilities.

Respectfully submitted this 24th
day of November, 1993, by:

ROSE, SUNDSTROM & BENTLEY
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(904) 877-6555


F. MARSHALL DETERDING

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Parkland Utilities, Inc.

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Property Tax.
- Schedule No. 4 Calculation of Composite Non-use and Useful
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EXHIBITS

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Parkland Utilities, Inc.
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Cronin, Jackson, Nixon & Wilson

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November 16, 1993

Officers and Directors
Parkland Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Parkland Utilities, Inc., consisting of Schedules 1 through 8. This report is intended solely for use as part of an application for authority to gross-up Contributions in Aid of Construction (CIAC) for the tax impact associated with the receipt of CIAC to be filed with the Florida Public Service Commission.

We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

Cronin, Jackson, Nixon & Wilson

CRONIN, JACKSON, NIXON & WILSON

Parkland Utilities, Inc.
Statement of Alternative Financing, Justification For Gross-up
and Gross-up Method Selected

I Alternative financing

No alternative for gross-up exists for Parkland Utilities, Inc., at a reasonable rate. The company receives financing through non-interest bearing advances from its parent, NARCO Realty, Inc. Through February 28, 1993, such advances totaled \$2,383,238. Additionally, the parent invested \$293,620 as paid in capital in fiscal year 1993 to pay for additional Broward County wastewater capacity charges and advanced \$10,679 to fund operations. See Docket No. 920598-SU, Order No. PSC-92-0868-FOF-SU.

For the fiscal year ended February 28, 1993, the company had negative cash flow of \$2,310 from operations, with the parent making up the shortfall with additional investment mentioned above. At the same time, the company lost (\$54,821) in calendar year 1992 and had an accumulated deficit of (\$1,422,868). Therefore, the company does not believe that financing for any reason is available, much less to pay for income taxes on CIAC. Even if financing could be obtained, the interest rate would in all likelihood be unreasonable.

II Justification

Parkland Utilities, Inc. needs to gross-up for the following reasons:

- (1) The company will have a significant income tax liability as demonstrated on Schedule No. 2.
- (2) Cash flow is not available, and the company has survived only by support from its parent.
- (3) The company continues to accumulate losses, even though no interest is charged on borrowings from its parent.
- (4) Interest coverage was negative 113.45 times, even though interest expense was minimal.
- (5) Borrowing, if available at all, could not be obtained at a reasonable rate.
- (6) Full gross-up is the least costly alternative available, since gross-up funds will be provided at no cost to the company.
- (7) Full gross-up will not result in a competitive disadvantage due to the level of service availability charges imposed by surrounding utility systems.

III Gross-up method selected

The company requests approval of the full gross-up method due to its poor financial condition and ease of administration.

Schedule No. 1

Parkland Utilities, Inc.
 Schedule Demonstrating Actual Above the Line Taxable Income
 Fiscal Year Ended February 28, 1993

<u>Above the line taxable income</u>	Year Ended 2/28/93	Proforma Adjustments	Proforma Balance
Gross receipts/sales (line 1)	\$ 410,855		\$ 410,855
Deductions:			
Bad debts	329		329
Rent	44		44
Taxes (property) (Schedule No. 3)	15,306		15,306
Interest	994		994
Depreciation (Schedule No. 3)	135,453		135,453
Other deductions:			
Chemicals	24,531		24,531
Contractual services	144,379		144,379
Insurance	3,180		3,180
Materials & supplies	109,554		109,554
Miscellaneous	7,332		7,332
Transportation	412		412
	<u>441,514</u>		<u>441,514</u>
 Above the line income before CIAC	 (30,659)		 (30,659)
Taxable CIAC (note 1)		744,450	744,450
 Total above the line taxable income (loss)	 (30,659)	 744,450	 713,791
<u>Below the line taxable income (loss)</u>			
Taxes (property) (Schedule No. 3)	14,524		14,524
Depreciation (Schedule No. 3)	128,537		128,537
Other deductions:			
Contractual services (management fees/legal expense)	70,810		70,810
Transportation	7,668		7,668
	<u>221,539</u>		<u>221,539</u>
 Total below the line taxable income (loss)	 (221,539)		 (221,539)
 Total taxable income (loss)	 \$ (221,539)	 \$ 744,450	 \$ 522,911

Note (1): On September 1, 1993, the utility signed a developer agreement with Transeastern Properties of South Florida, Inc. (Developer). Developer has reserved capacity for 341 water and sewer ERC's and will pay plant capacity charges totaling \$494,450. Developer will also contribute on-site and off-site facilities at an estimated cost of \$250,000. In addition, Developer has agreed to pay the tax impact (gross-up) associated with the contributions discussed above, subject to regulatory approval by the Commission. Receipt of contributions pursuant to the agreement will create significant above the line taxable income in fiscal year 1994.

Schedule No. 2

Parkland Utilities, Inc.
Above and Below the Line Depreciation and Property Taxes

I Depreciation

Total tax depreciation	\$ 263,990
Composite non-used & useful percentage (Schedule No. 4)	<u>0.4869%</u>
Below the line depreciation expense	<u>\$ 128,537</u>
Above the line depreciation expense	<u>\$ 135,453</u>

II Property Taxes

Total personal property tax	29,830
Composite non-used & useful percentage (Schedule No. 4)	<u>0.4869%</u>
Below the line depreciation expense	<u>\$ 14,524</u>
Above the line depreciation expense	<u>\$ 15,306</u>

Schedule No. 3

Parkland Utilities, Inc.
 Calculation of Composite Non-used & Useful Percentage
 Year Ended December 31, 1992

(A) Used and useful percentages

Water

(1) Treatment plant

Five day average peak flow (April 1992) (mgd)	0.208
Treatment plant capacity	0.800
Percent used & useful	26.00%
Percent non-used & useful	74.00
Total	100.00%

(2) Transmission and distribution plant

Total active connections	465
Total developed connections	886
Percent used & useful	52.48%
Percent non-used & useful	47.52%
Total	100.00%

Sewer

(1) Treatment plant

All sewage treatment is purchased from Broward County. The cost of the .100 mgd treatment plant is still on the books, but is 100% non-used and useful.

(2) Collection plant

Total active connections	463
Total developed connections	886
Percent used & useful	52.26%
Percent non-used & useful	47.74%
Total	100.00%

Parkland Utilities, Inc.
 Calculation of Composite Non-used & Useful Percentage
 Year Ended December 31, 1992

(B) Amount non-used & useful

Water

(1) Treatment plant

<u>Acct. #</u>		<u>Cost</u>
304	Structures & improvements	\$ 95,055
307	Wells & springs	36,475
309	Supply mains	10,000
311	Pumping equipment	2,547
320	Water treatment equipment	394,293
		<u>538,370</u>
	Percent non-used & useful per above	<u>74%</u>

Amount non-used & useful \$ 398,394

(2) Transmission & distribution plant

331	Transmission & distribution mains	\$ 574,412
335	Hydrants	36,400
		<u>610,812</u>
	Percent non-used & useful per above	<u>47.52%</u>

Amount non-used & useful \$ 290,258

Sewer

(1) Treatment plant

354	Structures & improvements	\$ 75,945
380	Treatment & disposal equipment	113,755
389	Other treatment plant	493
		<u>190,193</u>
	Percent non-used & useful per above	<u>100%</u>

Amount non-used & useful \$ 190,193

(2) Collection plant

360	Collection sewers - force	\$ 1,253,166
361	Collection sewers gravity	440,417
362	Special collection structures	140,868
364	Flow measuring devices	10,000
370	Receiving wells	206,862
		<u>2,051,313</u>
	Percent non-used & useful per above	<u>47.74%</u>

Amount non-used & useful \$ 979,297

Schedule No. 4

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Parkland Utilities, Inc.
Calculation of Composite Non-used & Useful Percentage
Year Ended December 31, 1992

(C) Composite non-used & useful percentage

Total non-used & useful plant, per above:	
Water treatment plant	\$ 398,394
Water transmission & distribution plant	290,258
Sewer treatment plant	190,193
Sewer collection plant	<u>979,297</u>
 Total non-used & useful plant	 <u>\$ 1,858,142</u>
 Total depreciable plant:	
Water	\$ 1,235,035
Sewer	<u>2,580,981</u>
 Total	 <u>\$ 3,816,016</u>
 Composite non-used & useful percentage	 <u>48.69%</u>

Parkland Utilities, Inc.
Statement of Cash Flows
For the Fiscal Year Ended February 28, 1993

Cash flows from operating activities:	
Cash paid from customers	\$ 397,468
Cash paid for operations	(373,906)
Cash paid for taxes other than income	(25,145)
Cash paid for interest	<u>(727)</u>
Net cash used for operating activities	<u>(2,310)</u>
Cash flows used for investing activities:	
Capital expenditures for plant	<u>(235,300)</u>
Cash flows from financing activities:	
Additional borrowings	10,679
Cash capital contributions	<u>283,620</u>
Net cash provided by financing activities	<u>294,299</u>
Increase in cash	56,689
Cash balance, beginning of year	<u>0</u>
Cash balance, end of year	<u>\$ 56,689</u>
Reconciliation of net loss to net cash used for operating activities:	
Net loss	\$ <u>(43,966)</u>
Adjustments to reconcile net loss to net cash used for operating activities:	
Depreciation	55,758
Write-off bad debt	329
Changes in assets and liabilities:	
Increase in customer accounts receivable	(13,387)
Decrease in prepaid and other receivables	812
Decrease in accounts payable	(6,808)
Increase in accrued taxes other than income	4,685
Increase in accrued interest	<u>267</u>
Total adjustments	<u>41,656</u>
Net cash used for operating activities	<u>\$ (2,310)</u>

Schedule No. 5

Parkland Utilities, Inc.
Statement of Interest Coverage
Year Ended December 31, 1993

Net loss per 1992 annual report	\$ (54,821)
Add: Interest expense	<u>479</u>
Income (loss) before taxes and interest (1)	<u>\$ (54,342)</u>
Divide by interest expense	<u>\$ 479</u>
Times interest earned	<u>\$ (113.45)</u>
Minimum coverage requirement adopted by the Commission	<u>\$ 2</u>

Note (1): No provisions for income tax expense was made due to the net loss incurred.

Schedule No. 6

PARKLAND UTILITIES, INC.
PETITION TO GROSS-UP CIAC
Tariffs to Implement Gross-up Authority

EXHIBIT 2

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RON NUNES
ISSUING OFFICER

VICE PRESIDENT
TITLE

TAX IMPACT OF CIAC

Prior to the Congressional Tax Reform Act of 1986, Section 118(b) of the Internal Revenue Code provided for the exclusion of certain types of Contributions in Aid of Construction (CIAC) from the taxable income of a corporate utility. Such amounts were, therefore, tax exempt.

However, pursuant to the Congressional Tax Reform Act of 1986, Section 118(b) was amended to reclassify CIAC (both cash and property) as taxable source of revenue, effective January 1, 1987. The net result of this action is that a utility which is a corporation must now pay income tax on the CIAC it collects.

Since the amount of this additional tax liability is directly attributable to the contributors (developers, builders, etc.) of the CIAC, the utility is required to collect this amount from those contributors.

Therefore, in accordance with Order No. 16971 issued on December 18, 1986 in Docket No. 860184-PU, the Public Service Commission adopted and ordered specific guidelines for a utility to administer in the calculation, collection, and reporting of CIAC tax liabilities as follows:

1) On and after January 1, 1987, utilities may collect from developers and others who convey cash and/or property to a utility as CIAC, an amount equal to the tax impact of the CIAC.

2) The tax impact amount to be collected shall be determined based upon use of the marginal rate of Federal and State corporate income tax related to the value of all property and cash contributions included in taxable income of the utility, including that tax applicable to the gross-up funds themselves, or "tax on tax" effect. The first year's tax depreciation benefits on all property contributions shall be utilized to reduce the tax impact collected.

The tax impact amount to be collected shall be determined using the following formula:

Full Gross Up:

Depreciable Plant: $(CP - (CP * (1/TL) * AR * .5)) * (1/(1-CTR))$
Land (or Cash): $(CL * (1/(1-CTR)))$

Where:

CP = Contributed plant
TL = Tax life for contributed plant
AR = Accelerated tax rate
CTR = Combined federal and state tax income tax rate
CL = Contributed land

EFFECTIVE DATE: _____

RON NUNES
Issuing Officer

TYPE OF FILING: CIAC

VICE PRESIDENT
TITLE

3) The CIAC tax impact amounts, as determined in Paragraph (2), shall be deposited as received into a fully funded interest bearing escrow account, hereinafter referred to as 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 is directly attributable to the CIAC conveyed to the utility. Annually, following the preparation and filing of the utility's annual Federal and State income tax returns, a determination shall be made by the commission as to the actual Federal and State income tax expense that is directly attributable to the receipt of CIAC. CIAC tax impact monies received during the tax year that are in excess of the actual amount of CIAC tax expense, including interest earned on such excess monies, shall be refunded on a pro rata basis to the contributors of the CIAC. The utility shall maintain adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC Tax Impact escrow account. A detailed statement of the CIAC Tax Impact Account, including the annual determination of actual tax expense attributable to the receipt of CIAC, shall be submitted as a part of the utility's annual report. The utility shall submit all information in accordance with the requirements established by the Commission.

4) The amount of CIAC tax impact monies collected by a utility shall not be treated as CIAC for ratemaking purposes.

All developer agreements in which CIAC tax monies are required shall indicate the amount of such monies separately from any other CIAC amount required, as well as the Tax Impact formula utilizing the appropriate values. The agreement should also contain an explanation of the charge for the benefit of the contributor.

EFFECTIVE DATE: _____

RON NUNES
ISSUING OFFICER

TYPE OF FILING: CIAC

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**SEWER TARIFF
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RON NUNES
ISSUING OFFICER

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