

MEMORANDUM

March <sup>30</sup> 25, 1998

RECEIVED

MAR 30 1998  
12:55  
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (JAEBER) *RRJ* *HW*  
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.

*AS*  
*98-0445 F&F-WS*

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER ACCEPTING SETTLEMENT OFFER, REQUIRING NO REFUNDS FOR THE YEARS 1994 AND 1995, AND CLOSING DOCKET to be issued in the above-referenced docket.

(Number of pages in order - 17)

RRJ/lw

*See 14*

Attachment

cc: Division of Water and Wastewater (Iwenjiora)

I:931141or.rrj

*2 fax*  
*0 mail*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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  
ORDER NO. PSC-98-0445-AS-WS  
ISSUED: March 30, 1998

The following Commissioners participated in the disposition of  
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER ACCEPTING SETTLEMENT  
OFFER, REQUIRING NO REFUNDS FOR THE YEARS 1994 AND 1995,  
AND CLOSING DOCKET

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.

BACKGROUND

By Order No. 16971, issued December 18, 1986, this Commission  
granted approval for water and wastewater utilities 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, required 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 the Commission. Orders Nos. 16971  
and 23541 also prescribe the accounting and regulatory treatments

DOCUMENT NUMBER DATE

03684 MAR 30 98

FILED BY: [REDACTED]

ORDER NO. PSC-98-0445-AS-WS  
DOCKET NO. 931141-WS  
PAGE 2

for the gross-up and require refunds of certain gross-up amounts collected.

On November 24, 1993, pursuant to Order No. 23541, Parkland Utilities, Inc. (Parkland or utility) filed its petition for authority to gross up CIAC. The information as filed met the filing requirements of Order No. 23541; however, numerous questions resulted from the review of the filing such that our staff was unable to determine with any degree of certainty that a tax liability would be created by the collection of taxable CIAC. In an effort to complete its review and analysis, our staff requested additional information and clarification. The utility submitted additional information and several revisions to its initial application, but our staff still could not conclude that gross-up authority should be granted.

Consequently, by Order No. PSC-94-0653-FOF-WS, issued May 31, 1994, we allowed the full gross-up tariff authority to become effective on an interim basis, subject to refund with interest, in accordance with the provisions of Orders Nos. 16971 and 23541. Additionally, that order required that no monies be withdrawn from the escrow account until a final determination of the utility's authority to collect CIAC gross-up was made. Further, pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility was required to provide a report by the twentieth of each month indicating the monthly and total CIAC gross-up (revenue) collected subject to refund.

At the May 30, 1995 Agenda Conference, we considered staff's recommendations regarding whether to grant Parkland authority to collect CIAC gross-up and also the disposition of CIAC gross-up funds that had been collected by Canal Utilities, Inc. (Docket No. 941083-WS). In its recommendation regarding Parkland's "final" CIAC gross-up authority, our staff recommended that the utility be denied gross-up authority. Following much discussion, this item was deferred to clarify the wording of the recommendation and to verify the amount of available net operating losses (NOLs). Also, in regards to the disposition of gross-up funds for Canal Utilities, questions were raised as to whether or not our staff's method of calculating the gross-up refunds was contrary to the requirement of Order No. 23541 and our current practice. Also at issue, among others, was the appropriate level of review necessary

ORDER NO. PSC-98-0445-AS-WS  
DOCKET NO. 931141-WS  
PAGE 3

to grant authority or process a refund, and the offsetting of above-the-line NOLs and investment tax credits (ITCs) with CIAC and taxes. As a result of these issues, among others, we directed our staff to hold workshops to discuss viable alternatives, and to consider the need, if any, to change our current policy. In addition, processing of CIAC gross-up dockets was held in abeyance pending resolution of those issues.

On March 29, 1996, we opened Docket No. 960397-WS to review our policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to review the proposals and comments offered by the workshop participants and make a recommendation concerning whether our policy regarding the collection and refund of CIAC should be changed. In addition, we directed our staff to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up. Pending this review, we directed our staff to continue processing CIAC gross-up refund cases pursuant to Orders Nos. 16971 and 23541.

However, on August 1, 1996, The Small Business Job Protection Act of 1996 (The Act) passed Congress and was signed into law 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, on September 20, 1996, in Docket No. 960965-WS, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and canceling 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 canceled as of October 20, 1996.

Since there was no longer a need to review our policy on the gross-up of CIAC, we closed Docket No. 960397-WS, by Order No. PSC-96-1253-FOF-WS, issued October 8, 1996. However, as established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Orders Nos. 16971 and 23541.

Staff's recommendation regarding this docket was originally scheduled to be heard at the November 4, 1997 Agenda Conference; however, on October 29, 1997, the utility requested, and we granted

a deferral to allow the utility and its representatives opportunity to research the issues underlying staff's positions and to meet with our staff in an attempt to resolve the differences. On December 5, 1997, the utility filed additional information and met with our staff on January 7, 1998.

Because of the current non-taxability of CIAC collected by water and wastewater utilities, the sole purpose of this Order is to address the disposition of gross-up funds collected for the period May 31, 1994, through December 31, 1995.

Parkland is a Class B water and wastewater utility providing service to the public in Broward County. A review of the utility's 1996 annual report reflected approximately 635 water and 633 wastewater customers as of December 31, 1996. Gross annual operating revenues were \$231,433 and \$401,501 for the water and wastewater systems, respectively. The utility reported a net operating loss of \$23,908 for water and a net operating profit of \$57,964 for the wastewater system.

#### TREATMENT OF NOLS AND FORGIVENESS OF DEBT

Parkland was wholly owned by the developer of the property, Narco Realty, Inc. According to the consolidated 1992 Federal Income Tax return of Narco Realty, Inc., and Subsidiaries for the fiscal tax year ended February 28, 1993, Parkland's share of NOL carry forwards was \$1,091,336 as of February 28, 1993. However, during the fiscal year ended February 28, 1994, Parkland was spun off from the consolidated group and now files a stand-alone return.

Parkland filed its own 1993 Federal Income Tax return for the fiscal period beginning on March 1, 1993 and ending on February 28, 1994, showing NOLs at March 1, 1993 of \$607,725 instead of \$1,091,336 as reflected on the consolidated return -- a difference of \$483,611. Our staff noted the difference between the \$1,091,336 NOL carry forward attributed to Parkland at February 28, 1993, on the consolidated return, and the \$607,725 NOL carry forward at the same date on Parkland's stand alone "spun-off" return and requested that the utility reconcile the difference. According to a representative of the Certified Public Accounting (CPA) firm that prepared its tax returns, some of the Parkland NOLs were utilized in that year and prior years to offset taxable income of other

subsidiaries and the parent within the consolidated group. Adding the Parkland loss of \$364,223 for 1993 (fiscal period March 1, 1993 through February 28, 1994) to the NOL carry forward of \$607,725 results in a NOL carry forward of \$971,948 at February 28, 1994 and is reflected as such on the 1993 return.

In 1994, Parkland began filing its Federal Income Tax (FIT) returns on a calendar-year basis. For the short tax year beginning on March 1, 1994 and ending on December 31, 1994, Parkland's reported \$971,948 NOL carry forward from March 1, 1993 was offset against taxable income of \$979,251. The \$979,251 was comprised of a \$1,226,510 gain from forgiveness of indebtedness income; \$139,380 in contributions-in-aid-of-construction; and a net loss of \$386,639 for other revenues and expenses. The taxable income was, therefore, \$979,251 prior to the NOL carry forward of \$971,948, and \$7,303 after taking into consideration the NOL carry forward.

Although not specifically addressed in its original early submissions and correspondence, the year that the utility was spun off from its parent, Parkland owed Narco Realty, Inc. (the parent) \$2,393,917 in debt. Narco Realty "forgave" the debt in excess of the rate base (rate base calculated to be \$1,167,407), resulting in Parkland's receiving a \$1,226,510 gain from forgiveness of indebtedness.

While we do not believe that funds can be traced, a review of the utility's annual report indicates that the amount of debt from the parent exceeded the utility's investment in all plant facilities. Further, the annual reports indicate that the utility was in a continuous loss position. Therefore, we believe it is reasonable to conclude that the excess debt from the parent funded losses from operations in prior years, and have classified the gain on forgiveness of indebtedness above the line for gross-up disposition purposes.

As previously stated, according to the consolidated 1992 Federal Income Tax return of Narco Realty, Inc. and subsidiaries for the fiscal tax year ended February 28, 1993, Parkland's share of NOL carry forwards was \$1,091,336 at February 28, 1993. The utility has not provided a calculation and/or schedule that demonstrates how the \$483,611 of NOLs were utilized by Parkland (\$1,091,336 less \$607,725). However, according to a representative



of the CPA firm that prepared their tax returns, some of the Parkland NOLs were utilized in that year and prior years to offset taxable income of other subsidiaries and the parent within the consolidated group. Although this form of tax strategy is acceptable and widely used, we believe that, in the case of a regulated entity, the NOL carry forwards of Parkland should be attributed to Parkland. In other words, the gross accumulated NOLs generated by Parkland should be used to offset the taxable CIAC for gross-up disposition purposes.

With that belief in mind, our staff examined the 1990 through 1995 FIT returns which it had in its possession. Our staff also took into consideration the data provided at the January 7, 1998 meeting. One of the utility handouts reflected additional Parkland NOL carry forwards of \$50,912 at March 1, 1988, and \$356,546 of NOLs for the period March 1, 1988 through February 28, 1989, or additional NOL carry forwards of \$407,458 at March 1, 1989. Further, in each year where a consolidated return was filed, our staff was able to locate the consolidating schedule and determine the net operating loss attributed to Parkland for that year. The losses and accumulated losses taken from FIT returns and supporting schedules, where applicable, were as follows:

<u>Tax Year</u>	<u>Consolidated (C) Stand Alone (SA)</u>	<u>NOL</u>	<u>Accumulated NOLS</u>
1987	C	\$ 50,912	\$ 50,912
1988	C	356,546	407,458
1989	C	303,797	711,255
1990	C	386,534	1,097,789
1991	C	355,527	1,458,316
1992	C	252,198	1,705,514
1993	SA	364,223	2,069,737

Based on the above, it appears that as of February 28, 1994, Parkland's accumulated NOLs were \$2,069,737, but that \$1,097,789 (\$2,069,737 less \$971,948) had been utilized by other entities within the consolidated group. Further, the utility's annual report reflects that the utility was formed in 1975 and began serving customers in 1981. However, our files contain FIT returns from 1989 forward and information on the NOLs for 1987 and 1988, only. Therefore, it is very likely that Parkland incurred

additional losses for the six years prior to 1987 that might also be considered in addition to the \$2,069,737 reflected above. However, these returns were not provided, and the utility advised our staff that these returns were probably not easily obtainable at this point because of the time that had passed.

Prior to the January 7, 1998 meeting, the utility had not provided our staff with an above-the-line/below-the-line breakdown of the NOL carry forwards at March 1, 1994, as they did not believe it was necessary in light of the substantial gain on forgiveness of indebtedness. However, at that meeting, the utility provided our staff with a breakdown of the above-the-line and below-the-line NOLs for the years 1989 through 1993. Additionally, subsequent to the meeting, the utility provided our staff with a breakdown of the above-the-line and below-the-line NOLs for 1987 and 1988. Based on this breakdown, Parkland's accumulated above-the-line NOLs as of February 28, 1994, appear to be \$1,205,126, and are calculated as follows:

<u>Year</u>	<u>Above-the-Line NOL</u>	<u>Above-the-Line NOL Carry Forward</u>
1987	0	0
1988	228,153	228,153
1989	204,771	432,924
1990	217,942	650,866
1991	246,464	897,330
1992	143,962	1,041,292
1993	163,834	1,205,126

As stated earlier, the gain on forgiveness of indebtedness in 1994 was \$1,226,510, which exceeds the calculated above-the-line NOL carry forward at the approximate same date. The utility has stated that the debt that was forgiven was accumulated as a result of Narco Realty's funding Parkland's above-the-line losses. In its August 21, 1997 letter, the utility argues that if the losses from operations were above-the-line, the debt incurred was above-the-line, and the gain from the forgiveness of such debt should be considered above-the-line. Further, Parkland argues that, at the very least, the NOLs and the gain on forgiveness of debt are directly related and must be considered together, and be offset against each other.



While we are willing to accept this treatment of the gain on forgiveness of indebtedness in this particular CIAC gross-up disposition proceeding, we find that the amount of gain on forgiveness of indebtedness shall be limited to the above-the-line NOL carry forward. Also, this treatment does not prohibit us from reexamining the issue in a rate proceeding, nor should it be construed as precedent setting in other gross-up disposition proceedings. Further, if the NOLs are changed or diminished in any manner because of NOLs being attributed to other entities within the consolidated group, then reexamination of the above-the-line treatment of the gain is also appropriate. Finally, the amount of NOLs used to offset that gain should be the gross above-the-line NOLs that were generated by Parkland, not those NOLs that remain after a portion of them has been utilized by other members of the consolidated group. Based on the above, we have included \$1,205,126 of the \$1,226,510 gain on forgiveness of indebtedness above-the-line, and offset that against Parkland's gross above-the-line NOLs of \$1,205,126.

#### OTHER ADJUSTMENTS

##### Connection Fees

The utility included initial connection fees of \$4,140 in its calculation of 1995 above-the-line taxable income. Because connection fees, tap-in fees, meter fees and similar CIAC charges were taxable prior to the 1986 amendment of Section 118(b) of the Internal Revenue Code, these fees shall be excluded from above-the-line income. Therefore, the utility's 1995 taxable income is decreased by \$4,140.

##### Depreciation

In its above-the-line calculation of depreciation expense for 1994 and 1995, the utility reduced above-the-line depreciation expense to reflect the amount attributed to non-used and useful plant. However, Parkland removed the entire amount of depreciation on contributed plant. Pursuant to Order No. 23541, the first year's depreciation on contributed assets should be reflected above-the-line for gross-up disposition purposes. Therefore, we have decreased the utility's taxable income by \$1,160 for 1994 and

by \$11,787 for 1995, the respective amounts of first year's depreciation on contributed assets for those years.

Other deductions/O&M expenses

In 1994 and 1995, Parkland reduced the above-the-line operating expenses from the amounts in its annual reports to reflect the level of operating expenses approved in its last rate case, adjusted for inflation and customer growth. In 1994, Parkland also made an adjustment to convert the twelve months of data to ten months to "match" the FIT return period. However, we find that the amount in the FIT return is the more objective measure, and have used that.

The utility argues that absent customer growth it is appropriate to adjust the level of operation and maintenance expenses to the level approved in its last rate case because to the extent that actual expenses during these years exceeded those approved, the shortfall would not be realized through service revenues. Further, the utility believes that the shortfall was funded by the utility's stockholders, and the excess of actual expenses over those embedded in the utility's rates should appropriately be classified as below-the-line expenses.

We do not agree. All operating expenses except non-utility expenses should be included above-the-line, because those expenses are utility related and are used in determining whether the utility is exceeding its authorized rate of return for earnings surveillance purposes. The fact that the utility may not be earning within its authorized range should not determine the level of above-the-line expenses for gross-up purposes. The utility has the opportunity to request compensatory rates whenever its revenues fall short of covering its expenses.

Further, unless there is evidence that the amounts in the annual reports are unreasonable or an annual report for the tax year does not exist, the above-the-line amounts for CIAC gross-up authority, should reasonably mirror the tax return amounts and the amounts reflected in the utility's annual reports for those years. The annual reports and the tax returns are an objective measure of expenses for gross-up disposition purposes and should not be altered based on a utility's level of earnings. Further, the

utilities' annual reports contain the financial information that we rely upon to determine the utility's achieved rate of return.

This is consistent with our decisions in the CIAC gross-up cases for Eagle Ridge Utilities, Inc. (Docket No. 961077-SU, Orders Nos. PSC-96-1394-FOF-SU and PSC-97-0647-FOF-SU) and Forest Utilities, Inc. (Docket No. 961237-SU, Orders Nos. PSC-97-0007-FOF-SU and PSC-97-0648-FOF-SU) wherein we used the management fees or the officers' salaries in the utility's annual report and not the management fees or officers' salaries proposed by the utilities. In both cases, we determined that because the level of expenses in the annual report was used to determine earnings, that level also should be used for CIAC gross-up disposition purposes and reflected as an above-the-line expense. Finally, this method is consistent with our practice in determining above-the-line expenses for regulatory purposes. Based on the above, we have reduced the utility's above-the-line income by \$81,330 for 1994 and \$44,898 for 1995, to reflect the amount of expense reported in the utility's 1994 and 1995 federal income tax returns.

#### Gain on Forgiveness of Indebtedness

As explained earlier, the utility stated that the debt that was forgiven was accumulated as a result of Narco Realty's funding Parkland's above-the-line losses. Therefore, we find it appropriate to limit the gain on forgiveness of indebtedness to the above-the-line NOL carry forward. Because the above-the-line NOL carry forward is calculated to be \$1,205,126 and the gain on forgiveness of indebtedness included above-the-line by the utility was \$1,226,510, an adjustment of \$21,384 is necessary.

#### Legal, Accounting & Management Fees

The utility requested that it be allowed to offset 50 percent of legal, accounting and management costs incurred in preparing the refund reports against any overcollections. The utility has documented legal, accounting and management costs in the amount of \$80,529. We have considered on several occasions, the question of whether an offset should be allowed pursuant to the orders governing CIAC gross-up. (See, Order No. PSC-97-0647-FOF-SU, issued June 7, 1997, in Docket No. 961077-SU; Order No. PSC-97-0657-AS-WS, issued June 9, 1997, in Docket No. 961076-WS; and Order

ORDER NO. PSC-98-0445-AS-WS  
DOCKET NO. 931141-WS  
PAGE 11

No. PSC-97-0816-FOF-WS, issued July 7, 1977, in Docket No. 970275-WS.) In these orders, we accepted the utility's settlement proposals that 50 percent of the legal and accounting costs be offset against the refund amount.

As in the other cases referenced above, we find that acceptance of the utility's request 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 believe that the utility's request is a reasonable "middle ground." Therefore, while not adopting the utility's position, we accept Parkland's request that it be allowed to offset 50 percent of the legal and accounting fees against the overcollections.

#### REFUND REQUIREMENT

Our refund calculations are based on the method adopted in Order No. PSC-92-0961-FOF-WS. Our adjustments were based on information provided by the utility in its gross-up reports, supplemental information, federal income tax returns on file, annual reports and recent decisions, and are reflected on Schedule No. 1. A summary of each year's refund calculation follows.

1994

The utility proposes no refund in 1994. We have calculated an overcollection of \$12,421 prior to consideration of 50 percent of legal and accounting costs. However, after consideration of the legal and accounting costs, no refund is appropriate.

Having included the full amount of the \$1,226,510 gain on forgiveness of indebtedness above-the-line, the utility calculated the above-the-line income to be \$1,286,967 for the tax period, March 1 through December 31, 1994, before the inclusion and effect of taxable CIAC. However, as a result of the adjustments discussed above, we calculated above-the-line income of \$1,184,253 before the inclusion and effect of taxable CIAC for the same period and before consideration of the NOL carry forward of \$1,205,126.

Order No. 23541, issued October 1, 1990, requires that CIAC income be netted against the above-the-line losses and that first year's depreciation on contributed assets be netted against taxable CIAC. When the NOL carry forward was netted against the adjusted income before CIAC and its effects, the utility had \$20,873 of NOLs remaining to offset against CIAC and its effects. The utility collected \$133,400 of taxable CIAC that was reduced by first year's depreciation of \$1,160. Therefore, CIAC receipts of \$111,367 (\$133,400 less \$1,160 less \$20,873) are taxable for 1994. Based on the above, we calculate that Parkland has a taxable income resulting from the collection of CIAC.

Using the 37.63 percent combined statutory federal and state tax rates, we calculate an income tax expense of \$41,907. When this amount is multiplied by the expansion factor to gross up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$67,191. The utility collected \$79,612 of gross-up. Therefore, the overcollection is \$12,421, before the offset for 50 percent of the requested legal and accounting fees.

For 1994, the utility provided documentation for the combined legal and accounting fees of \$25,491 for services rendered by Robert Nixon of Cronin, Jackson, Nixon & Wilson and F. Marshall Deterding of Rose, Sundstrom & Bentley. In addition, the utility provided documentation for management fees of \$43,526 for services rendered by East Coast Equity Management Corporation which were outside of its regular management contract. Some of the legal and accounting costs requested by the utility related to costs incurred to prepare the utility's Petition to Continue Gross-up Authority. However, since these costs were not directly related to preparing the refund reports, consistent with our past decisions, those costs have been excluded in determining the allowable legal and accounting costs to be recovered for purposes of the disposition of CIAC gross-up.

However, some of the information provided in the petition was used to calculate the 1994 and 1995 refunds. Therefore, we have allocated the cost incurred to file the petition to continue to gross-up the refund calculation for 1994 and 1995. Also, we have adjusted the legal and accounting expenses by allowing only 1/3 of those invoiced costs that directly related to initial petition for gross-up authority in 1994 and have disallowed costs associated



with the CIAC workshop, cancellation of gross-up tariff, and other similar expenses. As a result of these adjustments, we have determined that \$13,274 of the legal and accounting fees requested to be directly associated with preparing the required report and calculating the tax effect, and, thus, are considered to be legitimate expenses. Fifty percent of this amount is \$6,637. Further, we have determined that \$15,801 of the management fees should be considered. Fifty percent of this amount is \$7,901. Therefore, we have determined, based on our acceptance of the settlement offer, that \$14,538 of legal and accounting costs incurred to prepare the gross-up refund reports should be allowed as an offset against any overcollection. However, since the overcollection was only \$12,421 for 1994, only that amount is needed to totally offset any refund amount due, and no refund is necessary.

#### 1995

For 1995, the utility calculated a refund of \$12, but proposes no refund because of the immateriality. We calculate an \$8 refund and concur that no refund should be required because of the immateriality. We did not examine legal and accounting costs because no refund was required even before their consideration.

Parkland calculates that the above-the-line income is \$60,450 for 1995, before the inclusion and effect of taxable CIAC. However, as a result of the adjustments discussed above, we calculate above-the-line income of \$11,412 before the inclusion and effect of taxable CIAC for the same period. Because we calculate above-the-line income before the inclusion and effects of taxable CIAC, we are in agreement that all CIAC (reduced by first year's depreciation) is taxable. The utility's CIAC report indicates a total of \$457,5<sup>9</sup> in taxable CIAC was received, with \$11,787 being deducted for first year's depreciation, resulting in taxable CIAC of \$445,801. Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate the tax effect to be \$167,755. When this amount is multiplied by the expansion factor to gross up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$268,966. The utility collected \$268,974 of gross-up monies. Therefore, the overcollection is only \$8. Because of the immateriality, no refund shall be required.



ORDER NO. PSC-98-0445-AS-WS  
DOCKET NO. 931141-WS  
PAGE 14

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of Parkland Utilities, Inc., to offset fifty percent of the legal and accounting fees against any overcollections is accepted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-27.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

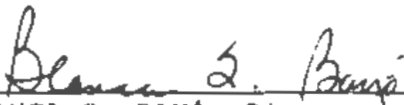
ORDERED that no refunds for overcollection of gross-up on contributions-in-aid-of-construction for the years 1994 and 1995 are required. It is further

ORDERED that the schedule attached to this order is incorporated into and made a part of this order. It is further

ORDERED that in the event this order becomes final, this docket shall be closed.

ORDER NO. PSC-98-0445-AS-WS  
DOCKET NO. 931141-WS  
PAGE 15

By ORDER of the Florida Public Service Commission this 30th  
day of March, 1998.

  
\_\_\_\_\_  
BLANCA S. BAYO, Director  
Division of Records and Reporting

( S E A L )

RRJ

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 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.

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 and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 April 20, 1998.

ORDER NO. PSC-98-0445-AS-WS  
DOCKET NO. 931141-WS  
PAGE 16

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 and effective on the date described above, any party substantially 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 effective date of this order, 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.

SCHEDULE NO. 1

FARMLAND UTILITIES, INC.  
 COMMON CALCULATED GROSS-UP RETURN

	1994	1995
1 A-T-L TAXABLE INCOME PER UTILITY BEFORE CIAC	\$1,286,967	\$60,450
2 Plus taxable CIAC	133,400	457,588
3 A-T-L TAXABLE INCOME PER UTILITY	<u>\$1,420,367</u>	<u>\$508,038</u>
4		
5 COMMON ADJUSTMENTS:		
6 (a) Remove initial connection fees		14,140
7 (b) First year's depreciation on contributed assets	(1,160)	(11,787)
8 (c) Adjust O&M expenses to amounts on FIT returns	(81,330)	(44,694)
9 (d) Adjust gain on forgiveness of indebtedness	(21,384)	
10		
11 TOTAL COMMON ADJUSTMENTS	<u>(104,854)</u>	<u>(42,341)</u>
12		
13 A-T-L TAXABLE INCOME PER STAFF	\$1,316,493	\$465,713
14 Less CIAC	(133,400)	(457,588)
15 Plus first year's depreciation on CIAC	1,160	11,787
16		
17 A-T-L TAXABLE INCOME PER STAFF BEFORE CIAC	<u>\$1,184,253</u>	<u>\$10,912</u>
18		
19 Less NOL carryforward	(51,205,120)	\$0
20		
21 NOL remaining to offset against CIAC	<u>(52,389,373)</u>	<u>\$0</u>
22		
23 Post 1986 CIAC	133,400	457,588
24 Less first year's depreciation on CIAC	(1,160)	(11,787)
25		
26 Post 1986 CIAC subject to gross-up	<u>132,240</u>	<u>445,801</u>
27		
28		
29 Adjusted income incl. CIAC & NOL	<u>\$113,967</u>	<u>\$445,801</u>
30		
31		
32		
33 Net Post 1986 CIAC	\$132,240	\$445,801
34		
35 Taxable CIAC resulting in a tax liability	\$112,527	\$447,588
36 Less first year's depreciation	(1,160)	(11,787)
37		
38 Net taxable CIAC	<u>\$111,367</u>	<u>\$445,801</u>
39 Combined marginal state & federal tax rate	37.43%	37.43%
40		
41 Net income tax on CIAC	\$41,907	\$167,155
42 Less ITC realized	0	0
43		
44 Net income tax	<u>\$41,907</u>	<u>\$167,155</u>
45 Expansion factor to gross up taxes	1.60333	1.60333
46		
47 Gross-up required to pay tax effect	\$67,191	\$268,968
48 Gross-up collected to pay tax effect	<u>(28,612)</u>	<u>(114,273)</u>
49		
50 (OVER) OR UNDERCOLLECTION	<u>(817,421)</u>	<u>(180)</u>
51		
52		
53 (d) Less 50 percent of legal & accounting fees	<u>317,471</u>	<u>N/A</u>
54		
55		
56 PROPOSED RETURN	<u>\$0</u>	<u>\$0</u>
57		