

5/11/20
Gary Widerburg
Utah Division of Public Utilities
P.O. Box 146751
Salt Lake City, UT 84114-6751

Dear Mr. Widerburg,

To begin with, a co-op is formed to provide members with a reliable, quality product or service and save members money. Cooperatives are not separate from communities; they are the community. Garkane Energy Cooperative is a non-profit electrical cooperative that generates revenue for operation and infrastructure through power charges to members. To meet federal requirements to qualify as a non-profit cooperative any end of year margins are allocated back to members in the form of capital credits. These capital credits are issued with a promise that they will be returned to members at a later date as a cash payment or a refund credit to a power bill. Co-ops hold these capital credits for a time and use margins to defray infrastructure costs and the like before they are returned. Garkane Energy holds capital credits for thirty years even though they have been in operation for over eighty years. Lengthy holding periods grow capital credits; assuring large sums of Garkane management spending money should capital credits become unclaimed.

The history of the **retention** and **use** of unclaimed property at Garkane Energy obviously began several years ago. The present, and most recent, "authority" designed, lobbied and sited by Garkane administrators is H.B. 266, a 2016 version titled UNCLAIMED CAPITAL CREDITS AMENDMENTS. Since this bill is titled UNCLAIMED CAPITAL CREDITS AMENDMENTS, there must have been a prior bill to amend. Also, since Garkane Ceo, Dan McClendon, made reference to a H.B. 255 as authority for retaining and using unclaimed capital credits and Neal Brown, Garkane Manager of Member Services and Marketing, also referenced H.B. 255 in his response to my Informal Complaint, this bill, if it exists, must be the original bill. This bill may have existed prior to the current CEO and may have been devised and implemented by a different mix of directors than those currently sitting. However, some directors have been there a long time. (I would suppose it would be significant to identify those originally responsible for orchestrating the ownership transfer of unclaimed property.) It is of interest that CEO McClendon and Neil Brown do not site H.B. 266 as their authority. It is this bill, UNCLAIMED CAPITAL CREDITS AMENDMENTS, they are responsible for lobbying. Of course I do not "know" why CEO McClendon and Neal Brown prefer to site H.B. 255 as their authority to "retain" and use unclaimed capital credits; but I suppose it to be that they may not have been directly responsible for its drafting and passage- they may have inherited it; whereas they ARE directly responsible for the drafting and passage of H.B. 266- the 2016 bill. However, it is true that Garkane management is using unclaimed capital credits for more than either bill specifically "allows." They were already using unclaimed capital credits for more than H.B. 255 allowed before the passage of H.B. 266. Now, since the passage of H.B. 266, they are still using unclaimed capital credits for more than that bill specifically allows. In other words, they do just whatever they wish. (I can document this.)

Since I do not have Internet access and only limited resources and training, I have not covered all my bases. I am not an attorney and do not feel adequately prepared to argue a case such as this before the Public Service Commission where I would be combatting attorneys retained and paid with co-op member money (mine included); and, I do not have the resources to retain a competent attorney. It is my belief that this case of unclaimed property ownership transfer involves such weighty issues, multiple players and issues, as well as influential players, that I may not be up to the

task. It is my hope that I can convince members of the Public Service Commission that there are sufficient evidences of wrongdoing to qualify this issue, or these issues, for professional review. I believe this is a criminal case that deserves litigation.

In the memorandum I received relative to formal complaints, titled STATE of UTAH DEPARTMENT OF COMMERCE, DIVISION of PUBLIC UTILITIES, page 3, subject: R746-200-9, Formal Agency Proceedings Based upon Complaint Review says: "The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints." It is my contention that my concerns meet the criteria required for the initiation of "investigative proceedings." Whether the issues I am raising are within the jurisdiction of the Public Service Commission, I do not know. What I do know is that unclaimed property is being "retained" and "used" by Garkane Energy administrators rather than being remitted to the Unclaimed Property Division of the Office of State Treasurer. Since ownership transfer prevents capital credit purchasers from ever claiming these properties, I believe this ownership transfer violates state and federal law. Whether it is illegal or not it certainly destructively alters the purpose of a co-op from returning margins (capital credits) to members, equalizing infrastructure costs among members, and delivering energy to members at the lowest possible cost. If CEOs and directors can use unclaimed capital credits for elective expenditures unrelated to cooperative expenses, the best interests of members will be compromised. This is what I presently believe is happening at Garkane. Policy and practice favors the growth of unclaimed capital credits as the following materials I am providing identifies and suggest.

I am including with this letter copies of material I presented to the Wayne County Commissioners and the county attorney. If more is required to convince the commission to order an investigation of these matters, I will go back to work. However, I really believe my original informal complaint is sufficient to warrant "investigative proceedings." It is the "retention" and "use" of unclaimed capital credits that seeds the pollution of our co-op.

Sincerely,



LaVoy Tolbert

5/10/2020

COMPLAINANT INFORMATION:

Name: LaVoy Tolbert

Address: P.O. Box 61, Loa, Utah 84747

Telephone #: (435) 616-3312

I do not have internet service, and hence no Email address.

The utility being complained against is Garkane Energy Cooperative. The Main office is in Loa, Utah; however, the current office the CEO is working out of is in Kanab, Utah. The address and telephone # given by the co-op is: Garkane Energy, P.O. Box 465, Loa, Utah 84747, telephone # 1-800-747-5403.

My concerns have to do with the retention and use of unclaimed property by Garkane Energy management. Rather than remitting unclaimed property to the state's Unclaimed Property Division of the Office of State treasurer, unclaimed property is retained and used. I believe the retention and use of unclaimed property results in an effort by the management of Garkane Energy to grow unclaimed capital credits for arbitrary CEO and director use. With an emphasis on the growth of unclaimed capital credits, capital credits are not being properly returned to members. Policy and practice are designed to grow unclaimed capital credits, adversely affecting member benefits.

I believe the very existence of the amended 2016 version of H.B. 266 makes it obvious that a Garkane CEO and Garkane Board of Directors have worked out a way to transfer the ownership of unclaimed property from rightful owners to their selves. The current CEO of Garkane Energy admits that legislators were "successfully" lobbied to amend this bill. This bill allows electrical cooperatives to "retain" and "use" unclaimed capital credits. I believe this violates Utah state law that requires businesses to remit unclaimed property to the state's Unclaimed Property Division of the Office of State treasurer. I believe H.B. 266 was crafted and lobbied specifically to take member funds collected, ostensibly for power consumption, and use them for purposes unrelated to co-op operations or infrastructure. H.B. 266 "ear marks" unclaimed capital credit use, preventing its use to pay down power costs. I believe H.B. 266 also violates federal law by preventing the return of margins to members. If unclaimed capital credits are "retained" and "used," they cannot be returned to member purchasers.

I believe this transfer of unclaimed capital credits ownership is a serious breach of member trust that should be aggressively investigated and dealt with. However, the size and complexity of such an investigation is, quite frankly, beyond my ability and the capacity of my pocketbook. I would like to have the Public Service Commission order an investigation based on my informal complaint as I believe R746-200-9 allows. I have spent two years trying to get Garkane management to change course; they have refused to abandon their practice of retaining and using unclaimed capital credits for purposes unrelated to co-op power costs. At this point in time, I am ready to trust the rule of law.

There are likely multiple co-ops involved, multiple CEOs, boards and employees in the know. There are also legislators that have helped facilitate these unclaimed capital credits ownership transfers. It is unclear where a comprehensive, in-depth investigation and audit of Garkane Energy may lead.

Our co-op managers should be focused on fulfilling the promise of returning capital credits to members and delivering a product and service at the lowest possible cost. Instead, I believe they are arbitrarily taking and using member property rather than returning it. I hope to see this abuse of co-op members halted, exposed, and dealt with in a way that will discourage later directors and CEOs from repeating it. I hope to see the present Garkane management replaced with a management that will serve members properly.

I am resolved to not allow this betrayal of co-op members to continue if I can help it. I need help.

These are the notes I prepared, and used, for my first presentation before the Wayne County Commission.

FACTS

Nothing can serve us better in a political world than the rule of law.

As you probably know, I have been publishing articles in local papers critiquing policies and practices employed by the management of Garkane Energy relative to the distribution and use of co-op member capital credits, trying to prod our directors and CEO to make changes. The public pressure I had hoped to generate has not materialized and management refuses to budge. Rather than own and rectify inequities they employ various means to discredit and silence me. **I am here, because of the defiance of a board and CEO that have had ample time to evaluate the gravity of their behaviors and change course. To this point I have only sought willing change. Board refusals and the inordinate use of "position privilege" have brought us here.**

Purpose of co-op: **Save members money** by cutting out middle men, and taking advantage of perks that attend non-profit status. "Providing GREAT, AFFORDABLE SERVICE is the ONLY reason Garkane exists." (THE TRUTH!..., *Richfield Reaper*, august29,2019)

Co-op ownership: Garkane Energy is OWNED by all co-op MEMBERS. GARKANE is not eleven directors and a CEO. Directors are **elected** and CEOs are **selected**.

A private owner can do as he/she wishes with the proceeds of their business, because the business and business resources belong to them. CEOs and co-op boards are not owners; they are **guardians of member resources**; they have no more personal ownership of collective co-op resources than any other member. So; if directors give co-op resources away, they must **take** them from other members.

Director responsibility: To serve the purpose of the co-op by being responsive to member concerns and seeing to the delivery of dependable electrical energy to members at the lowest possible cost. "Providing GREAT, AFFORDABLE SERVICE is the ONLY reason Garkane exists." (THE TRUTH!..., *Richfield Reaper*, august29,2019)

Billing and Margins: { "... and at the end of any accounting year, if there is any money left over after all operational costs have been paid, the excess (labeled 'margin') is allocated back to the members who were served in that year...." (THE TRUTH!..., *Richfield Reaper*, august29,2019)

Capital credits: Dollar amount awarded members based on an annual margin; it is an amount you actually paid for power that becomes equity. Ccs are spent.

Capital credit ownership: "The "allocation" (capital credit) is a promise that the co-op will pay back the member's portion of margin in the future." (THE TRUTH!..., *Richfield Reaper*, august29,2019) So; members "**own**" ccs, and their purchase comes with a promise that those ccs will be returned "at a later date."

Return policy: Ccs are held for 30 years before returns begin. "Garkane has maintained a retirement schedule approximating 30 years." (THE TRUTH!..., *Richfield Reaper*, august29,2019) The return amounts implied in this promise equals the amounts awarded 30 yrs. ago. When anniversary is reached returns are to be executed and the expectation and promise is that a return will be executed every year after the anniversary is reached.

Why return ccs if the money they represent has been spent? I believe the intent of cc returns is to equalize the cost expended for infrastructure. Startup would be a resource starved period of time; and, early infrastructure costs will be greater than those incurred later. If refunds occur, members footing the bill for previous infrastructure expenses will be somewhat reimbursed by new members enjoying infrastructure investments already made. The return of ccs is a cost leveler for infrastructure expense born by longtime members. Ccs and cc returns are a good thing.

NOTE: (Garkane is apt at issuing ccs, but regularly **defaults on the return obligation!**) If refunds were religiously returned to purchasers there would be no unclaimed capital credits. But there are unclaimed ccs, and lots of them. **This is the case because Garkane does not have equitable policy in place to deal with members that leave the co-op.** Members leaving the co-op should be dealt with immediately. There should be no uccs!!!!!!!!!!!!

Garkane management's return policies are **inadequate, difficult and unpredictable.** Here are some examples of...

Policy and practice that does not facilitate the promise to return ccs:

1. Management does not consistently return ccs on their anniversary; and, when returns are given, amounts do not equal the amounts inferred in the promise. (In 2018 ALL members received a "refund," breaking the refund promise made to those that had reached their anniversary.)
2. Management has retained a 30 yr. cc holding period for 82 years. After 82 years of operation, infrastructure should be in place and managers should have a pretty good handle on the cost/margin relationship. A lengthy holding period translates directly to more member ccs and **more** unclaimed capital credit dollar amounts.
3. Cost/margin ratios can be manipulated. Items reported as operational costs **matter**, because high operation costs translate to a higher reported cost for power and fewer ccs. So, discretionary honesty is important. (In 2016 Garkane reported a \$4,824,131 net margin. **That's a little much** don't you think for a co-op that has operated for 82 years and should have a handle on the **cost/margin relationship.**)
4. Cc Return Policy for Deceased Members: (Forfeit of ccs in excess of \$500... "Unclaimed.") To be given to someone other than the purchaser.
5. A \$22 **base rate** fee guarantees a liberal margin every year.

NOTE: A long rotation period and difficult return policies keep ccs high and assure the maintenance of a healthy ucc fund.

These policies and practices **do not** facilitate the return of capital credits and definitely contribute to the creation of unclaimed capital credits. I think it is accurate to say that **BOARD POLICY ENCOURAGES THE GENERATION OF UNCLAIMED CAPITAL CREDITS.**

THAT IS SHAMEFUL!!!! It is SHAMEFUL because EVERY unclaimed cc represents a FAILURE to fulfill on a promise. But that doesn't seem to matter to this board. This unclaimed capital credit account is a **sacred cow and they are willing to do about anything to save it and keep it from being exposed. But, I am exposing it now...**

Unclaimed Capital Credits defined: (b) H.B. 266: (DEFINE) **NOT OWNED BY MEMBER! NOT OWNED BY CO-OP!!!** "By state law, unclaimed money is to be sent to the state to be spent outside the co-op's territory." (THE TRUTH!..., *Richfield Reaper*, august29,2019)

H.B. 266, UNCLAIMED CAPITAL CREDITS AMENDMENTS, 2016 GENERAL SESSION, STATE OF UTAH: Chief Sponsor: Michael E. Noel, Senate Sponsor: Ralph Okerlund

Path to ownership change: So, if ccs are held long enough the owner may get "lost;" or, if the retrieval process is difficult enough owners may give up on collecting. The result will be this: This is **a bill for the unclaimed capital credits of 4,800 "lost" members** or former members. (Not counting all those ccs already declared unclaimed that we have been billed for.) **This is not trivia!!!**

In 2016, Garkane CEO [REDACTED], and the Garkane Energy Board of Directors LOBBIED legislators [REDACTED] and [REDACTED] to amend H.B. 266. This bill was amended to, in Mr. [REDACTED]'s words, "broaden the scope—" allow wider disbursal of uccs. The amended version of H.B. 266 says, line 363 (2) A cooperative shall retain an unclaimed capital credit. Lines 364-372 read: "A cooperative shall use the proceeds of an unclaimed capital credit to: pay all or a portion of a low-income individual's utility bills; (b) provide scholarships to graduating high school seniors in the area where the cooperative provides service; or (c) provide assistance to ... a school; a non-profit organization; or a community organization.

This bill surrenders state ownership of uccs; and, according to CEO McClendon, uccs "cannot be used to pay down power costs;" so, obviously, he and the board don't think the co-op owns uccs either. So; who owns them? Well; I can tell you who is spending them.

Since the CEO and board lobbied legislators to amend H.B. 266, H.B. 266 becomes a VEHICLE to reassign **ownership** of capital credits for the purpose of gifting them to non-co-op groups and individuals. **(To redeem resurrected uccs, current co-op members will be billed in a power overcharge to pay for charity of the board's choice.)**

This transfer of cc ownership did not inadvertently fall from the sky as an uncontrollable event. It has been orchestrated.

Now, if you were a director **guardian** of co-op resources, and you saw member capital credits slipping from member hands into the hands of the state or other recipients, what would you do? After all; if the purchaser doesn't get his/her ccs but someone else does, the cost to the co-op is the same. **Would you take steps to honor your promise to return ccs to their purchasers? Well, this is what I have been asking co-op management to do for over a year now.** (Actually, if an equitable cc settlement with members leaving the co-op was drafted, returns to co-op purchasers would cost the co-op less.)

Our board has chosen **not** to go that route. Rather than facilitating the return of ccs to those that purchased them, our board has decided to continue to **reassign cc ownership**, allowing these **renamed** and **retained** ccs to be used at director pleasure. H.B. 266 defines uccs and mandates use, but it does not create unclaimed capital credits. It is our board of directors and CEO that CREATE unclaimed capital credits. The amended version of H.B. 266 is the instrument used to facilitate **ownership transfer**.

Policy and practice designed **to fulfill** on the promise to return ccs would prevent member ccs from ever becoming "unclaimed." But our CEO and board **REFUSE TO GO THAT ROUTE**. They didn't even request permission to **retain uccs for the purpose of paying down operation** costs, even though they have already been spent for that purpose. Instead, they lobbied legislators to expand the field of non-co-op benefactors specified in the bill.

Is there anything in this behavior that indicates a desire to fulfill on the promise made to cc purchasers? (Directors could save this co-op hundreds and hundreds of thousands of dollars by adequately reducing the cc holding period, and crafting policy to deal immediately with cc returns to members leaving the co-op, thus eliminating uccs.)

Since the changes contained in the amended form of H.B. 266 were made to accommodate Garkane administrative lobbying efforts, and since those amendments addressed the expansion of

“mandated” uses of said funds, compelling members to contribute to **partisan** giveaways rather than working to prevent the loss of member ccs, I BELIEVE OUR BOARD OF DIRECTORS AND CEO are deliberately separating members from their capital credits.

Is this really **honest, legal– the cooperative standard?**

Garkane management’s refusal to fix member unfriendly policy has brought us to where we are now– has brought me to you. I want this to be clear.

It is my belief that what Garkane Management is doing with member capital credits is not moral; nor legal, nor the cooperative standard. **I DO NOT INTEND TO ALLOW THIS TO CONTINUE**

Since I began my critique of Garkane policy and practice, other co-op members have encouraged me to investigate areas other than ccs. And, their concerns may be valid. When you see what is happening to ccs, you can’t help but suspect the existence of other dark behaviors.

What goes on at Garkane affects every family in this county as well as those in Garfield, Kane and areas round about. We all have energy meters attached to our homes and businesses. **This is our co-op.** Anyway it was our co-op; and, it can become our co-op again if we take it back.

I believe I have provided you with ample reasons to justify an in-depth investigative audit of Garkane Energy; and, I am asking you to help make that happen. Management’s refusal to plug the ucc leak demonstrates their fondness of it, and demonstrates a major investment in it.

My efforts to inform members in the Garkane service area have been hampered by administrators at the *Richfield Reaper* that have refused to accept my letters to the editor. The editor of *The Richfield Reaper*, David Anderson, initially encouraged me to use that forum to educate readers concerning these matters; then, he made an abrupt about face, refusing to print any letter I submit that mentions Garkane, while never hesitating to print Garkane management’s defensive articles. I assume, someone somewhere doesn’t want Garkane capital credit issues aired, especially in *The Richfield Reaper*. **Position privilege bullying** infuriates me.

I have been battling **Position Privilege** since day one. Directors refuse to hear me; information I request is inaccurate or out of reach, my money is used to discredit and silence me, and a local media source muzzles me.

I need your help. A request from a county commission will go a lot farther than a request from LaVoy Tolbert and a few supporters. (Perhaps the Garfield County Commissioners would be willing to join us. Kane County may be a little harder to get on board, for obvious reasons. But, it may be worth a try.)

What I am asking is that you, as a commission, through the county attorney, file a request to the appropriate state investigative agency to have my allegations looked into, and, if found to be valid, conduct a complete, by item audit of Garkane Energy.

I do not expect an answer today. I thank you for your time.

These are the notes I prepared, and used, for my second presentation before the Wayne County Commission.

3/09/20

Fact: Businesses are ordered to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer by the November 1 annual deadline for **safeguarding**, to be claimed by rightful owners.

Fact: Individuals may submit a claim to the Unclaimed Property Division of the Office of State Treasurer for properties of deceased relatives if they can prove they are a rightful heir.

Fact: Garkane Energy managers **are not** remitting unclaimed capital credits to the state's Unclaimed Property Division of the Office of State Treasurer.

Fact: Garkane management HAS successfully lobbied legislators to facilitate the **retention and use** of unclaimed capital credits. (In 2016, Garkane CEO [REDACTED], and the Garkane Energy Board of Directors LOBBIED legislators [REDACTED] and [REDACTED] to amend H.B. 266. The amended version of H.B. 266 says, line 363 (2) A cooperative shall retain an unclaimed capital credit.)

Fact: Garkane Energy managers are using the assumed authority of the amended version of H.B. 266 to justify the **retention and use** of unclaimed property.

Fact: Capital credits purchased by co-op members **DO** become the property of the Garkane CEO and Board of Directors and the board and CEO **DOES** spend them for non-operational purposes.

The requirement to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer is for **safeguarding**, to be claimed by owners or heirs. Ownership of unclaimed property is not transferred; and, capital credits in trust are not spent.

But, the amended version of H.B. 266 SURRENDERS state guardianship of unclaimed capital credits; then transfers ownership through the assignment of mandatory use. The intent of the state in requiring businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer is to **safeguard and return** unclaimed property to rightful owners or their heirs. The intent of the amended version of H.B. 266 is to surrender state guardianship of unclaimed capital credits and transfer ownership through the assignment of mandatory use.

Was the amended version of H.B. 266 imposed??? No it was not imposed. It was crafted and lobbied by Garkane's current board and CEO.

Does the retention and use of unclaimed capital credits by a board and CEO deprive rightful owners and/or heirs of property? Should we be concerned that co-op members are having their capital credits taken from them? Well I'm concerned; but, having this come to a legal reckoning is not what I originally intended. I have been actively trying to get Garkane management to right this wrong for two years. I have published numerous articles, trying to garner enough public support to pressure Garkane management to change course. If a caring membership had stepped up, or had the CEO and board been willing to adopt member friendly policy and practice, things would be very different right now. **But, where were all my freedom loving friends?**

On January 11, 2017, I wrote a letter of concern to CEO [REDACTED] and the Garkane Energy Board of Directors questioning the use of co-op member capital credits to gift groups and individuals. My specific wording was, "Do you really think you have a right to decide what charities I should support and use my money to fund them?" [REDACTED] held that letter and did not present it to board members until the spring of 2018 when I pressured my director, [REDACTED], for a response.

I met with the Garkane Board of Directors in their regular meeting in Loa shortly thereafter, and experienced an energetic push back. CEO [REDACTED] swiftly introduced me to the legislative hammer of H.B. 266. I didn't buy it, and told them they should have lobbied for a good bill. From that point on; all contact has been routed through [REDACTED]. I had touched a nerve!

For two years now Mr. [REDACTED] and I have gone back and forth in the *Insider* and *Southern Utah News*. If you have **not** been reading and following those exchanges, this request for Wayne County Commission intervention may come as a surprise. If it is a surprise, it is not my fault.

My issue is with the transfer of member capital credits ownership to board and CEO ownership. Garkane management has known this since they received my 2017 letter.

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For two years now, I have been defied and bullied by Garkane management, muzzled by a local paper, and attacked with my own money. I have expended a lot of energy trying to achieve a quieter resolution. Have I done the right thing; should I have given Garkane management a chance to change their policy? Should I have offered them a Free Pass? For a long time I would have settled for acceptable change. As I look back now, I believe I was wrong. I should have pushed for an investigation as soon as I realized directors had violated our trust by taking and spending member capital credits. There should have been no offer of a FREE PASS. And, I do not believe this commission should vote to give them a free pass either.

If the current Garkane Board of Directors and CEO did **not** lobby legislators to produce the amended form of H.B. 266; and if this bill does **not** surrender state guardianship of unclaimed capital credits; and if this bill does **not** transfer ownership of capital credits from co-op members to the board and CEO; then, I am off base and an investigation is uncalled for. On the other hand, if this bill does do these things, an investigation is long overdue.

The facts are that legislators were lobbied by the Garkane Board of Directors and CEO to amend H.B. 266; and, H.B. 266 does **transfer co-op member capital credits ownership to board and CEO ownership**. If the board and CEO lobbied to attain a desired outcome, they are the responsible force behind the amended bill. I believe the Garkane Board of Directors and CEO was fully aware of what they were doing when they lobbied this ownership transfer. [REDACTED] has been on the board for 14 years; and president of the board for a decade; and, [REDACTED] is an attorney.)

The amended version of H.B. 266 was passed in 2016; so, a prior version must have existed. It is possible that some different board members and a different CEO may have had something to do with the drafting and passage of the original bill.

In small rural areas, it is hard to separate decisions in governance from family. This complicates governance. However, we must keep in mind that there are likely four energy co-ops involved in this capital credit ownership transfer affair and many thousands of co-op members that have either been relieved of their capital credits without their permission or unknowingly been billed in a power charge for unclaimed capital credits the board has redeemed. This represents the loss of large sums of money to affected co-ops and higher power costs.

I do not believe Garkane management is striving to return capital credits to their rightful owners. Instead, I believe they are deliberately separating capital credits **from** members. Furthermore, I do not believe Garkane managers are managing to deliver power to members at the **lowest possible cost**. Co-op boards and CEOs that are there to serve members do not create policy that complicates or prevents the return of capital credits, nor do they lobby legislators to help them confiscate and spend member capital credits. In short; I do not believe we are being properly served.

Businesses are ordered to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer for **safeguarding**, to be claimed by owners, or heirs. The obvious intent of this requirement **is to return** lost property to rightful owners.

The amended version of H.B. 266 does not facilitate the return of lost property to rightful owners, but gives a license to businesses (cooperative boards and CEOs) to commandeer and spend unclaimed capital credits. The intent of the amended version of H.B. 266 is to take and spend. The intent of H.B. 266 is not in agreement with the intent inferred in the remission of unclaimed

property to the Unclaimed Property Division of the Office of State Treasurer. Therefore, an investigation is not only justified but morally required.

This capital credit commandeering operation is too well organized, inclusive and deliberate to sweep under the rug. Multiple co-ops, CEOs, directors, and legislators are involved- too many players involved for this to be an inadvertent misstep. This capital credit ownership transfer pathway is multi-faceted, and involves players familiar with the unclaimed property protocol required by the Unclaimed Property Division of the Office of State Treasurer.

If everything at Garkane is shipshape, no one will be hurt by an investigation. But; if things are not shipshape; then things need to be cleaned up.

Since I began this capital credit investigation, there has been one mouthpiece for two years and a lot of silent member "representatives." This alone told me there was something amiss.

I believe you commissioners know that crafting and lobbying a bill that allows a co-op board and CEO to confiscate and spend member capital credits is not moral and likely illegal.

There are a lot of Garkane power meters on residences and businesses here in this county. Does the oath of office obligate you to help protect us?

Again I ask this commission to look to the best interests of Garkane Co-op members and instruct our attorney to petition the appropriate state source to investigate Garkane protocol respecting the assignment and use of capital credits.

The following material is what I shared with the Wayne County Attorney.

3/03/20
Attorney [REDACTED]
Wayne County Courthouse
Loa, Utah

Dear Attorney [REDACTED]

On 1/11/17, I wrote a letter of concern to [REDACTED], CEO of Garkane Energy, and the Garkane Board of Directors questioning the use of co-op member capital credits to gift groups and individuals. My specific wording was, "Do you really think you have a right to decide what charities I should support and use my money to fund them?" [REDACTED] held that letter and did not present it to board members until the summer of 2018 when I pressured my director for a response.

I met with the Garkane Board of Directors in their regular meeting in Loa shortly thereafter. It was in that meeting that I first learned about H.B. 266 and its use as a vehicle to transfer the ownership of unclaimed capital credits to the Garkane CEO and board. There was an energetic push back from CEO McClendon and board members in that meeting and, from that point on, any response to my questions have come through [REDACTED]. No director has or will engage with me, not even my own. I had touched a nerve!

Since that time [REDACTED] and I have gone back and forth in the *Insider* and *Southern Utah News*. From these encounters I have learned a lot about the issuance, and use of capital credits. Through all these exchanges, [REDACTED] has never attempted to address my initial question directly but has used every aspect of "position privilege" to keep me information starved, and to discredit and silence me. I call these behaviors "broken wing" tactics used to lead one away from the "nest."

I decided to air my concerns in a public forum in weekly publications, because all readers are Garkane members and because the Garkane paper, *The Highlights*, is a little-read quarterly publication controlled by Garkane management. The *Highlights* looked like a no man's land to me. By taking this discussion public, I hoped to generate member support, feeling I could pressure the board to change capital credit policy. (The founding fathers had it right. The average man on the street is incapable of even preserving a republic after it's handed them.)

I get the feeling that Commissioner [REDACTED] has already decided he will not support a Wayne County Commission resolution to have you petition the appropriate state agency to investigate Garkane Energy capital credit ownership transfers. He does not attack or attempt to counter evidences I have produced to support my allegation but questions my efforts to allow Garkane management's players to fix the capital credit fiasco. Here again, he is staying clear of a discussion relative to whether Garkane management is engaged in a highly questionable capital credits ownership transfer. Perhaps he really thinks I have not made sufficient effort to encourage a quiet policy change. I, on the other hand, think two years of back and forth with [REDACTED] in the papers has been more than enough time. Anyone that has followed those exchanges knows I have addressed the capital credit issues thoroughly. (I requested an executive session with you and the commission so I could confront commissioners directly and not "wash this laundry" publicly. Since the amended version of H.B. 266 was passed in 2016, a prior version must have existed. It is possible that [REDACTED], Commissioner [REDACTED] younger brother, was a Garkane director while an early form of the bill was in use, or perhaps first negotiated.)

I'm 85 years old and am reluctant to give Garkane management two more years to fix what I see as a capital credit rip off, and an unnecessary expense to Garkane members— one I believe has been deliberately crafted and tenaciously held to. I can't help feeling that they're hoping I will soon "exit," allowing the quiet status quo to return.

This brings us to the here and now. Since there are 13,300 Garkane members and at least three other co-ops involved in the transfer of member capital credits to board and CEO control, I

thought it would be appropriate for county commissioners to request an investigation of Garkane capital credit policy. And, since others in the Loa area think there are irregularities in addition to capital credits, if capital credit practice proves to be what I think it is, it would logically follow that a by item audit be conducted to verify other concerns or put those concerns to rest. After all, every home and business in three counties and areas roundabout have Garkane Energy meters attached.

It is not hard to see that the growth of unclaimed capital credits guides Garkane policy. This focus on the generation of unclaimed capital credits harms the co-op by not returning capital credits to their rightful owners and by not providing co-op members with reliable electrical energy at the **lowest possible cost**. (I am certain that this capital credit ownership transfer is not in the best interest of co-op members; and, because legislators have been lobbied by our board and CEO to amend and expand compulsory "giving," crafting it to suit our board, I believe this betrayal of members is deliberate fraud.)

On 2/17/20 I met with commissioners in their regular meeting and presented detailed evidences respecting capital credit policy and practice at Garkane Energy. You have the notes I used in my presentation. I specifically pointed out that the purpose of a co-op was to save members money, that capital credits are a record of a power charge overpayment (margin) and that the return capital credits was a tool used to equalize infrastructure investments. I gave examples of Garkane policy that did not facilitate the promised return of capital credits but facilitated the growth of unclaimed capital credits. I then went into some detail concerning the use of H.B. 266 as a vehicle to finally transfer capital credit ownership to the Garkane Board of Directors and CEO. I pointed out several times that there are large sums of money lost to the co-op every year through these capital credit manipulations, and that unclaimed capital credits could be eliminated by adopting a policy to deal fairly with members leaving the co-op. (Such a policy could fulfill on the promise of returning capital credits to their rightful owners.) I then pointed out obvious supports for the truth of my allegations such as being muzzled by the *Richfield Reaper*. I have been battling **Position Privilege** since day one. Directors refuse to hear me; information I request is inaccurate or out of reach, my money is used to discredit and silence me, and a local media source muzzles me. I then requested that the commission direct you to seek state aid in investigating Garkane capital credit practice.

You were present at the 3/02/20 meeting when I again reviewed capital credit irregularities and renewed my request for commission involvement.

When spirited resistance to an investigation surfaces, it generally comes from those that feel vulnerable or that feel someone close to them is vulnerable, and not from flaws found in evidences prompting an investigation. In my opinion, strenuous resistance is almost an admittance of guilt. If this business of capital credits at Garkane is on the up and up, an investigation will verify as much and I will be silenced by the truth. I do not fear this.

Anyway, I recognize the rule of law as the only hope of justice for "little" people. Your recommendation, or evaluation, relative to the subject of capital credit transfers will be important to a lot of people. What the commission decides to do with your assessment, and or recommendation is another matter. Please give the notes you have of my presentations your thorough analysis and feel free to call me at (435) 616-3312 if you desire more information.

I am a retired teacher, and not well versed in the law. But, I am pretty certain that no co-op board or CEO has a legitimate right to access what is mine without my permission.

Sincerely,

LaVoy Tolbert

This third presentation I intended to make to the Wayne County Commission did not occur. I gave the county attorney a "heads up," hoping he would be prepared to give an opinion on the validity of my findings and the appropriateness of my request and had the clerk put me on the agenda. However, the commission chairman called the clerk and had him remove me from the agenda, saying the commission was going to deal with the matter "off line." As it turned out, "off line" meant I was being dismissed and there would be no more airing of my concern in the public forum of a regular commission meeting. A few days later I heard a knock at my door. When I opened it, there was a deputy sheriff with a written message from the county attorney. The message said: "Dear Mr. Tolbert, Garkane Energy is a public utility that is regulated by the Utah Department of Commerce. I have enclosed detailed instructions for you regarding the procedure to file a complaint. If you have any further questions regarding this matter please direct them to the Division."

In other words, I was being dismissed and silenced; and, my request for commission assistance was being denied.

3/09/20
Attorney, [REDACTED]
Wayne County Courthouse
Loa, Utah 84747

Dear Attorney [REDACTED]

The material included with this letter is what I am preparing to present to the Wayne County Commission in their 3/16/20 commission meeting.

I have asked the commissioners to direct you to prepare and deliver a request to the appropriate authority to have Garkane Energy protocol respecting capital credit issuance and return investigated. I have asked this because having you prepare a letter on behalf of the commission would undoubtedly get a more attentive reception than one from a no-body like me. All I am asking the commission to do is request an investigation. I believe this investigation would quickly grow to the many co-op administrative personnel and other individuals I believe have conspired to commandeer co-op member capital credits. The transfer of member capital credit ownership to CEO and Board ownership has been a coordinated effort that I believe is corrupt and definitely illegal. Your analysis of the intent and legality of lobbying efforts to model H.B. 266, as well as the legality of H.B. 266 itself is very important.

As you can see from the enclosed material, I believe the intent of H.B. 266 is to take and spend member capital credits; whereas the intent of the order to cooperatives to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer is for safeguarding and return to rightful owners or heirs.

I believe there are plenty of reasons why an investigation is in order.

Sincerely,

I thought I would have no trouble getting the board to rectify this. Surely they knew what they were doing was wrong. I believed that once I called them out, they would rework policy and adopt new practices. Boy; was I wrong.

A lot of informed "insiders" are involved in this capital credit ownership transfer. With so many people involved, the potential for people able to refuse involvement is great. One, person refusing to play could stop the whole operation. Apparently, there has been a unanimous buy in.

When I found our co-op board and CEO had lobbied legislators to place our capital credits at their disposal, I was shocked. I could hardly believe this had taken place. Why hadn't they created policy that facilitated the return of capital credits to make good on their promise? Every unclaimed capital credit is a board failure to fulfill a promise, and every unclaimed capital credit becomes a co-op liability. Why have they gone to all this work to break a promise and burden this co-op with a financial liability? Why are they not striving to return capital credits? Why are they not striving to save this co-op money? Why would they not correct these wrongs when I confronted them?

I believe I have properly documented all the facts I have presented to you. Are there any you have questions about or dispute?

I get the feeling, Commissioner [REDACTED], that you fault me in my handling of this affair, feeling perhaps that I have not given Garkane management opportunity enough to fix this problem before requesting an investigation. Perhaps I am wrong in this, but this is my impression. You have not questioned the accuracy of evidences I have produced to support my allegation but seem to question my efforts to allow Garkane management's players to fix what I see as broken. Are my impressions correct? Do you have an issue with the way I have handled this affair? If so...

We should petition for an investigation because: a) we should not allow our freedoms to be violated. Our capital credits have been arbitrarily taken from us and spent without our even knowing about it. b) We should not allow deliberate acts of fraud to go unpunished. c) We should not betray other co-op members and ourselves by being complicit and sweeping this behavior under the rug.

If you can falsify my general premise, or question the validity of any of the declarations I believe to be fact, I invite you or any other commissioner to call me out. If, on the other hand, you really think I have not made sufficient effort to encourage a quieter policy change, I refer you to the two years of back and forth with [REDACTED] in an open forum. To me, this has been more than enough time. Anyone that has followed those exchanges knows I have addressed the capital credit issues repeatedly. It is possible that some former (past) board members inherited H.B. 266 and may not have fully understood what was going on. However, it is highly unlikely that current Garkane Directors have made an innocent mistake in orchestrating capital credit transfers. [REDACTED] a fourteen year member of the Garkane Board of Directors and president of the board for a decade, is an attorney. [REDACTED] stepped down as president a few months ago and recently announced he will not be running for another term.)