

July 7, 2020

Public Service Commission of Utah
Gary Winderburg
Heber M. Wells Building, 4th Floor
160 East 300 South / Box 45585
Salt Lake City, UT 84114

UTAH PUBLIC
SERVICE COMMISSION

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RE: Docket No: 20-028-01

Dear Mr. Winderburg and members of the Public Service Commission,

An article written by the current Garkane Energy CEO and signed by all Garkane Energy Directors was published in *The Richfield Reaper*, August 29, 2019. A portion of that article says: "... and at the end of any accounting year, if there is money left over after all operational costs have been paid, the excess (labeled "margin") is allocated back to the members that were served in that year. The "allocation" (capital credit) is a promise that the co-op will pay back the member's portion of margin in the future." Does H.B. 266 honor that promise?

In Garkane Energy's reply to my formal complaint, Neal Brown, Manager of Member Services and Marketing, cited Utah H.B. 266 as Garkane Energy's authority to:

- a) Forego the remitting of unclaimed property to the Unclaimed Property Division of the Office of State Treasurer,
- b) transfer ownership of unclaimed property to the Garkane Energy Board of Directors, and
- c) "use" unclaimed property for specified gifting not related to co-op expenses.

House Bill 266, then, transfers co-op member capital credit ownership to the CEO and Garkane Energy Board of Directors to gift as they choose. Since they are the ones spending these unclaimed capital credits, they are the new owners of them. By specifying categories of groups and individuals unclaimed properties MUST be gifted to, H.B. 266 allows co-op CEOs and boards of electrical cooperatives and telephone cooperatives a nearly unlimited choice of recipients of onetime co-op member properties—properties that accrued from margins. The retention and use of unclaimed properties by directors and CEOs terminates the return of capital credits to purchaser owners or heirs. Not only does H.B. 266 terminate long standing state law that requires businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer, to be held in safekeeping, to be returned to owners or heirs, but it violates federal non-profit law that requires the return of margins to members. Returns of margins to co-op owners are not an option if a non-profit status is to be achieved and retained.

Capital credits awarded members represent the member's portion of a margin and are awarded with a promise that they will be returned at a later date. Boards and CEOs then should strive to make good on that promise and create policy and practice consistent with that promise. H.B. 266 does not honor this promise. H.B. 266 makes the return of capital credits to rightful owners impossible. By holding capital credits for thirty years before retirement begins, Garkane management maximizes the amounts of possible unclaimed properties. Then H.B. 266 is lobbied and passed to achieve an ownership transfer, allowing CEOs and directors to "use" unclaimed property for political purposes.

As I see it, the transfer of member capital credit ownership is a major betrayal of member trust. Just because legislators cooperating with lobbying CEOs and directors are able to enact legislation that facilitates the ownership transfer of member property doesn't make it moral or legal. H.B. 266 was **crafted** and **solicited** by Garkane Energy administrators to serve their wishes. (The current Garkane

CEO said in the summer 2018 *Highlights*, "Garkane, along with other electric cooperatives in the state successfully lobbied the legislature a few years ago to expand the opportunities where unclaimed capital credits could be used.")

The return of margins to members is a federal non-profit law. In the current Garkane CEO's "Garkane Giveaways" Response article printed in *The Insider* August 9, 2018 page 2, the CEO said, "The capital credit allocation and retirement process is a federal law that allows cooperatives to operate as a non-profit organization." It appears then that the **return** of capital credits (margins) is required in order to maintain a nonprofit status. If Garkane managers transfer ownership of unclaimed capital credits, "retaining" and "using" unclaimed property for non-cooperative purposes, they are not returning margins to members; thus, violating federal nonprofit law. H.B. 266 cannot be seen as legitimate if it violates longstanding state and federal law.

Since unclaimed capital credits are unreturned margins of a power charge, and the return of capital credits is the signature of nonprofit businesses, the retention and use of unclaimed property for purposes unrelated to power costs designates them as profit. The requirement to return margins to members does not allow administrations to "retain" and "use" unclaimed property.

Mr. Neal Brown said in his reply to my formal complaint that: "The Utah State Public Service Commission, nor Garkane Energy Cooperative has jurisdiction to overturn law enacted by the legislature, so Garkane would like to file a motion to dismiss Mr. Tolbert's complaint."

Perhaps it is true that "The Utah State Public Service Commission, nor Garkane Energy Cooperative has jurisdiction to overturn law enacted by the legislature;" however, H.B. 266 IS Garkane's attempt to overturn state and federal law. Although The Public Service Commission does not have power to overturn law enacted by the legislature, I'm quite sure members of The Public Service Commission have power to check the legality of H.B. 266. Does H.B. 266 annul the law requiring Utah businesses to remit unclaimed property to the Office of State Treasurer; and does it annul the federal non-profit law requiring margins to be returned to members?

Utah state law requires businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer to be held in SAFEKEEPING to be claimed by owners or heirs. H.B. 266 is at odds with this law and procedure, allowing electrical cooperatives and telephone cooperatives to retain and use unclaimed property. Apparently the office of State Treasurer is unaware of H.B. 266 because they encourage Utah citizens "to check myeash.utah.gov every year as they file their taxes to see if they have lost property to claim" (February 20, 2020 *Southern Utah News*) (Have all electrical cooperatives and telephone cooperatives been notified of this new law? If so, are they taking advantage of it? I think not. Garkane Energy and perhaps three other electrical cooperatives are likely the only cooperatives that "retain" and "use" unclaimed properties and site H.B. 266 as their authority to do so.)

Since unclaimed property accrues from member portions of margins, allowing a business administrative body to "retain," and "use" unclaimed property would terminate all opportunity to return margins (unclaimed property) to owners or heirs. Margins cannot be returned to owners or heirs if ownership has been transferred and the property has been "spent."

Since H.B. 266 is not in agreement with state law requiring unclaimed properties to be remitted to the Unclaimed Property Division of the Office of State Treasurer; and, because H.B. 266 violates federal non-profit law that requires the return of margins to members, I ask that this commission seek legal opinions from the Attorney General on this matter and recommend that the Attorney General pursue legal action if such action is warranted. I believe "service to the public" requires this.

H.B. 266 appears to be a key component of a scheme to take capital credits from rightful owners and place them in the hands of administrators. I believe the conception, lobbying, participation of legislators, and use of H.B. 266 to “retain and “use” unclaimed property is a serious violation of coop member trust. As I see it, this is fraud involving many players and accomplices.

I believe the Garkane CEO and board of Directors have deliberately misled members. The current CEO and Board of directors say H.B. 266 rescues unclaimed capital credits from being used outside the Garkane service area. “If it is determined that we cannot locate a member that is owed money, this money becomes labeled “unclaimed” capital. By state law, unclaimed money is to be sent to the state to be spent outside the coop’s service territory. On the other hand, there is law that provides the electric cooperative the ability to spend this money for educational and other local qualifying purposes within the coop’s service territory. This unclaimed capital credit fund, is where the Garkane Board of Directors acquires money to pay for youth scholarships.” (Article published in *The Richfield Reaper* entitled THE TRUTH!..., August 29, 2019.) This article was written by the current Garkane CEO and signed by all Garkane directors.

The state cannot “spend” coop member capital credits unless the state assumes ownership of them. Unclaimed property remitted to the Office of State Treasurer is not “spent outside the coop’s service territory.” If it was spent by the state it could not be returned to owners or heirs. Unclaimed property is held in safekeeping to be returned to owners or heirs.

In the summer 2018 Garkane *Highlights*, management announced a new Capital Credit retirement Policy for Deceased Persons. The new policy gives heirs the option of a onetime collection and settlement. The policy states, “Garkane Management is authorized to pay deceased patron capital credit at face value of all original allocated amounts if the sum of all allocated amounts does not exceed \$500. If the sum of all allocated amounts exceeds \$500, said allocated amounts will be discounted but will in no case be discounted to less than \$500.” As it was explained to me by Garkane’s current CEO, the amount above \$500 would not be returned at face value but at a value equal to the balance minus what it would cost Garkane to borrow that balance for the retirement periods of the remaining capital credits.)

The reason this Capital Credit retirement Policy for Deceased Persons is important is because it demonstrates the ease with which Garkane management could return capital credits to members leaving the co-op. Living members leaving the co-op could be treated as management is offering to treat heirs of deceased members. If heirs can collect capital credits on these terms, living members could receive the same, or similar, treatment and there would be no unclaimed property at Garkane. It would be that easy to fulfill on the federal non-profit mandate and make good on the promise made to members when capital credits were allocated– the promise to return capital credits to members. If administrators were determined to make good on the federal non-profit mandate (requirement) to return margins to members, capital credits could be retired any time a member leaves the co-op. It would be this easy. Instead, there is an effort to grow, retain (transfer ownership) and use unclaimed property.

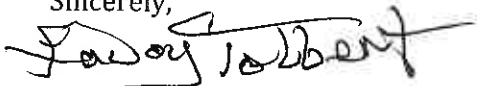
Technically, my complaint against Garkane Energy Management is that policy and practice are not in compliance with state law requiring businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer; and that capital credits are NOT being returned to members as promised. The practice of “retaining” and “using” (spending) unclaimed property makes returns impossible. Mr. Neal Brown sites H.B. 266 as Garkane Energy administrative personnel’s authority to retain and use unclaimed property, then tells Public Service Commission

members they have no authority "to overturn law enacted by the legislature." However, it is Garkane Energy that is raising the issue of the legitimacy of legislative law. Since "laws" seem to be in conflict, all cannot be equally valid. Either Garkane Energy is required to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer, or unclaimed property may be retained and spent by Garkane administrative personnel. Garkane Energy is retaining and spending unclaimed property; and, they crafted and lobbied the passage of H.B. 266. I believe this bill was crafted and lobbied to subvert state and federal law.

I do not believe ownership of capital credits can be legally transferred from members to co-op administrative personnel. Furthermore, I believe the Public Service Commission has every right to question WHY Garkane administration is NOT remitting unclaimed property to the Unclaimed Property Division of the Office of State Treasurer and why they are NOT obeying federal non-profit law requiring the return of margins to members. I urge members of the Public Service Commission to initiate an in depth investigation of Garkane Energy to include a comprehensive criminal audit. I believe the legitimacy of Garkane management's reasons for not obeying these laws is in question and that many other improper behaviors have occurred.

In my opinion, H.B. 266 was conceived and lobbied to be used as a tool- created to take margins awarded as capital credits from members rather than return them to rightful owners.

Sincerely,

A handwritten signature in black ink, appearing to read "LaVoy Tolbert". The signature is written in a cursive, somewhat stylized script.

LaVoy Tolbert