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

RE: Docket No: 20-028-01

Dear Mr. Winderburg,

Garkane Energy is a non-profit cooperative, owned by members, and formed to save members money. The cooperative raises capital to operate by billing members. To qualify as a non-profit cooperative federal law requires margins to be returned to members. Lines 52-55 of H.B.266 also require the return of margins to members. If a cooperative board of directors and CEO are gifting thousands and thousands and thousands of dollars every year to individuals and organizations of their choice, they are arbitrarily taking control of what contributions members make and are not returning some margins to members. If they involve legislators in a scheme to transfer ownership of capital credits from co-op members to the CEO and board of directors to collect money for this "gifting," they deliberately renege on the promise to return margins to members and default on the requirement ordered by federal mandate to be non-profit. H.B. 266 is sited as Garkane's authority to retain and spend capital credits that accrued from margins. Now, I really doubt that the federal government or the Utah State Tax Commission is on the same page with H.B. 266 when it comes to non-profit law. Furthermore, I'm pretty sure H.B. 266 did not, and cannot, annul state law requiring businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer. To "retain" and "use" unclaimed capital credits terminates any possibility of their return to owners or heirs. We have two laws here that do not agree in intent.

There are two things associated with this ownership transfer that seem far off base. Garkane managers that TAKE property from members are not acting to return margins to members; and, directors elected to serve members by saving members money, are deciding what charities members should support and forcing members to fund them with money ostensibly collected to pay for power. I have tried for more than two years to get Garkane administrators to abandon this property heist and they have consistently refused to do so. I have filed this grievance with the Division of Public Utilities and PSC to get help with a resolution. I am concerned with the retention and use of unclaimed property; however, I am concerned with more than non-compliance of reporting. But, if this is all we have right now, so be it. I am not an attorney, adequately prepared, or financially able to take this on alone. I need help.

I believe retention and use of co-op member unclaimed property by an administrative group is a clear case of fraud. In this case, it is fraud involving a small number of cooperatives, CEOs, boards of directors, **and** legislators. Garkane Energy sited H.B. 266 as their legal authority to transfer ownership of member assets to their selves and petitioned the Commission to "dismiss Mr. Tolbert's complaint." I was very relieved that members of the PSC found cause to not grant that motion.

I am aware of some of my deficiencies and failures. In taking on my own case I have definitely overstepped my training and perhaps my abilities. However, the fact that a property heist seems immoral and unlawful keeps me going forward. Thanks to the thoroughness of the Commission's work, a motion to dismiss this case was not granted. I am thankful for the opportunity to continue arguing my case. I have come too far to quit now. I intend to shine a light on what I see as a betrayal of co-op member trust.

I do not believe H.B. 266 is legit for one minute. I believe it was conceived and orchestrated to skip over non-profit protocol as well as the remittance of unclaimed property to the Unclaimed Property Division of the Office of State Treasurer. H.B. 266 transfers ownership of capital credits **from** Garkane Energy

owner-members to Garkane administrative personnel through mandated "use" of "retained" unclaimed capital credits. What in that act serves co-op members? Transferring ownership of unclaimed capital credits to co-op administrators—property that accrued from margins—is contrary to co-op purpose of delivering a service or product at the lowest possible cost. It is contrary to the intention of non-profit law and contrary to the intention of state law requiring unclaimed property of businesses to be remitted to the Unclaimed Property Division of the Office of State Treasurer where it is held in trust, available to be claimed by owners or heirs. I believe H.B. 266 was conceived and orchestrated to accommodate a laundering scheme. I believe those that conceived this scheme and legislators that participated in the crafting and passing of this bill have committed a major crime. I do not believe the transfer of property ownership is constitutional.

As mentioned earlier, the law that requires all businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer is a good law because it prevents business owners or co-op managers from profiting from the generation of unclaimed property. If unclaimed capital credits are sent to the State Treasurer where they cannot be used by co-op management, there is no incentive for co-op managers to grow them, and ample reason to eliminate them so members will not be needlessly billed to redeem them. Sending unclaimed property to the Unclaimed Property Division of the Office of State Treasurer for **safekeeping**, to be claimed by rightful owners or heirs, helps keep co-op managers on track, fulfilling the promise made to return capital credits issued. The redemption of unclaimed property for gifting represents a financial loss to the co-op or business and raises the commodity or service cost. This is true because property is taken from members and given to someone else. Remitting unclaimed property to the Unclaimed Property Division of the Office of State Treasurer keeps the focus of co-op directors on the business of serving members by **returning capital credits on schedule**, equalizing infrastructure costs, and delivering a product or service at the lowest possible cost.

What we have here are two state laws. One law is longstanding and requires **businesses** to remit unclaimed property to the Office of State Treasurer to be held in safekeeping where it is available to be claimed and returned to rightful owners or heirs. (The inference here is ALL businesses, and I would say this bill has a long history that has included ALL businesses. This law does not list exemptions.)This law does not take property from owners and give that property to solicitors that did not purchase it, but holds that property in "safekeeping" where it can be claimed. This law is also compatible with the 14th amendment of the Constitution of the United States in that it respects property rights of U.S. citizens. It is also consistent with a co-op's purpose to deliver a product or service to members at the lowest possible cost because it honors the promise made to property owners that that property will be returned to the owner purchaser. That law is also consistent with federal non-profit law in that it does not turn margins into profits. The concept of a co-op is to save members money by returning margins and taking advantage of non-profit tax benefits. The intent and application of this law is to return margins to members and provide a product and/or service to members at the lowest possible cost.

The intent of H.B. 266 is to take property from cooperative members through an arbitrary transfer of ownership, facilitated by a "retain" and mandated "use" process. H.B. 266 is a latecomer on the scene and was conceived and lobbied by Garkane managers. H.B. 266 does not authorize ALL businesses to retain and use unclaimed property, only electrical and telephone co-ops–a select group. Furthermore, I believe the "retain" and "use" authority stipulated in H.B. 266 only includes a very small group.

Garkane management sites H.B. 266 as their authority to own and spend unclaimed property and they say the PSC "has [no] jurisdiction to overturn law enacted by the [L]egislature." I say the

longstanding law that honors property rights by requiring ALL businesses to remit unclaimed property to the Office of State Treasurer is THE law. To me, an act of declaring H.B 266 as THE law is an act of "overturning." Does the recognition of H.B. 266 as the law overturn a longstanding law requiring ALL businesses to remit unclaimed property to the Office of State Treasurer? Could the PSC not just as easily, and more logically, declare the longstanding law that requires businesses to remit unclaimed property to the office of State Treasurer to be held in safekeeping where it is available to be claimed and returned to rightful owners or heirs, a law that does not take property from owners and give that property to solicitors that did not purchase it, a law that holds property in "safekeeping," a law compatible with the 14th amendment of the Constitution of the United States in that it respects property rights of U.S. citizens, a law consistent with federal non-profit law in that it does not turn margins into profits, as THE law? Nowhere in H.B. 266 do we find reference to this bill overturning business requirements to remit unclaimed property to the Office of State Treasurer.

I believe H.B. 266 is a tool lobbied and implemented to transfer the ownership of co-op member property to co-op managers. It is my contention that longstanding law requiring businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer is THE law. My expectation was that this longstanding law consistent with property rights, coop protocol, federal non-profit law and common sense would be seen as THE law. I believe Garkane Energy administrators are violating that law. They violated it when they petitioned state legislators to sponsor and orchestrate the passage of a "law" that violated law.

Provisions in the law requiring businesses to remit unclaimed property to the Office of State Treasurer serve co-op members. H.B. 266 TAKES FROM members. The intent and traditional application of the law requiring unclaimed property to be remitted to the Office of State Treasurer is to return margins to members and provide a service or product to members at the lowest possible cost. The intent of H.B. 266 is to take margins from members through a transfer of ownership, allowing coop management to choose what charities members WILL support and use member property to fund them. H.B. 266 is contrary to everything a coop is formed to achieve. This is not a bill designed to save members money; it is a bill designed to steal member money. This is not philanthropy, it is theft.

I site the law requiring businesses to remit unclaimed property to the Office of State Treasurer as THE law because of its long history, because of its consistent support of co-op purpose to deliver a product or service at the lowest possible cost and its recognition of citizen property rights, and because it honors non-profit protocol.

I realize this case is likely different from what you are generally confronted with and that you may not be empowered to directly resolve it. What I hope you can and will do is **help** me resolve it.

I know I have been "vague" and "conclusory" in some of my allegations and I accept that criticism as accurate and deserving. I have a lot to learn. I accused Garkane management of using unclaimed capital credits for more than H.B. 266 specifically allows without siting examples to support that allegation. I was focused on the fact that Garkane Energy administrators were not remitting unclaimed property to the Office of State Treasurer. That was a tunnel vision mistake on my part. I will try to correct that oversight here.

Of course the first example I would site now is the fact that Garkane's annual reports are incomplete. Garkane's annual reports lack the Statute's mandatory disclosures pertaining to the amount of retained unclaimed capital credits and any philanthropic disbursements of them. I

believe requiring Garkane to report on 1995-2015 as well as 2016-2019 would be helpful because it would provide a complete record of all revenue collected from unclaimed property as well as spending patterns. Furthermore, revenue collected must equal revenue spent plus that currently on hand. If spending does not agree with that authorized it should show up. If spending does not include the examples I will hereafter site as "unauthorized," reporting will be unauthentic. (Of course I realize that Garkane is my co-op too. I will be paying my share to bring this catch-up game to its fruition. However, in spite of that, I do not think it fair for Garkane administrators to flout reporting requirements for 25 years in a bill they lobbied, and then get off with a five year catch-up assignment.)

Every year Garkane Energy Administrators select a student to send on what they call a Washington D.C. Youth Tour. In 2018, two students in the Garkane service area attended; both with VERY close ties to Garkane Director board members. Funding of this tour comes from "retained" unclaimed capital credits but the tour is not a scholarship awarded to a graduating high school senior or other enumerated allowable cause stipulated in H.B.266. Furthermore there are chaperones paid with money that accrued from margins that rightfully belonged to former co-op members. Garkane Energy Cooperative, Inc. sponsors this Washington D.C. Youth Tour; it is not sponsored by a school. (See 2018 Summer *Highlights*)

And then there is the Michael F. Peterson Leadership Camp. Garkane sponsored 29 high school JUNIORS to this camp in 2019. (See 2019 Summer *Highlights*) When I said Garkane administrators lobbied legislators to transfer ownership of unclaimed property from rightful owners to their selves, fashioned the bill to stipulate mandated "uses," and re-tweaked it in 2016; then after all that fashioning and refashioning don't follow the enumerated allowances of the bill, these are some of the things I was referring to. The fact that the recipient list in the sited authority was altered (expanded) in 2016 suggests a desire to "give" to those not authorized or/and, perhaps, justify receiving recipients not authorized. (It is my opinion that any use of funds acquired through operational billings of co-op members that are used for unauthorized spending would constitute a betrayal of the co-op promise made to members when margins were issued as capital credits and a violation of non-profit law requiring the return of margins to members.)

I do not have documentation to prove that unauthorized spending of member capital credits, unclaimed or otherwise, occurred even before the 1995 bill authorizing the retention and use of unclaimed capital credits, but I have been told by one that should know that such spending did occur. Requiring Garkane to provide retention and giving information from 1995 to the present may verify this.

Another example of policy violation, involves the return of capital credits. Garkane policy requires the return of capital credits following a thirty-year holding period. If this policy was followed, a capital credit awarded thirty years ago would be returned to that member in the amount awarded on the anniversary (retirement date). It is my belief that this is not being done because total refunds do not appear to be determined by the number and amounts of retiring accounts. Garkane management does not consistently return capital credits on their anniversary. (In 2018 ALL members received a "refund," breaking the refund promise made to those that had reached their anniversary.)

Yes, I definitely question the morality and legality of House Bills 255 and 266, because they violate the property rights of United States citizens. I do not want to abandon this issue because these bills cannot be shown to benefit coop members. What they show is that Garkane managers have connived to take from members rather than give back property members purchased. The 14th

I believe it would be useful to know if other electrical cooperatives or telephone cooperatives in the state are retaining and using unclaimed capital credits. Are there others that are doing so? If so, are they complying with reporting requirements? Was Garkane the only electrical cooperative retaining and using unclaimed property before 2016 when H.B. 266 was passed. (It would be important to know if legislation allowing the retention and use of unclaimed property amended or granted exceptions to the law requiring unclaimed property to be returned to the Office of State Treasurer. Nothing in H.B. 266 mentions this bill as overturning any law currently in place. Was this a "sneak" bill, enacted to enable Garkane administrators to transfer unclaimed property ownership? I believe Garkane brought Flowell Electric, Dixie Power, and Moon Lake power on board in 2016. I'm fishing; but, I suspect this is so.)

If the state also required businesses to return unclaimed property to the State Treasurer so the state could profit from interest on property held and not claimed, the state is being "ripped off" by "retain," and "use" legislation.

Reporting violations are not in the same category with the transfer of ownership of capital credits; but, I will take that for now if it is all I have. I would like to pursue this record deficiency as it is closely related to my main concern. I encourage the PSC to require Garkane Energy to file with the PSC all reports required by H.B. 266 for the years 1995-2016.

Respectfully Yours,

LaVoy Tolbert

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