

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of LaVoy Tolbert against Garkane Energy Cooperative, Inc.	<u>DOCKET NO. 20-028-01</u> <u>ORDER DISMISSING COMPLAINT</u>
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ISSUED: November 12, 2020

This docket arises out of LaVoy Tolbert’s (“Complainant”) formal complaint (“Complaint”) against Garkane Energy Cooperative, Inc. (“Garkane”), which he filed May 18, 2020. The Complaint generally alleges that Garkane retained and misused unclaimed capital credits and argues against the lawfulness of a statute, Utah Code Ann. § 54-3-26(3) (the “Statute”), that authorizes cooperatives to retain unclaimed capital credits and to use the proceeds to fund certain enumerated philanthropic causes.

As the Public Service Commission (PSC) previously observed, “Complainant alleges no remotely specific facts to support [his] conclusory allegation” that Garkane has violated the Statute and “devotes the bulk of his Complaint ... to challenging the law itself.” (Order to File Mandatory Reports issued August 6, 2020 [hereafter “August Order”].) However, noting that a copy of Garkane’s 2019 Annual Report (filed in this docket) lacked certain mandatory disclosures, the PSC directed Garkane to file the required information. Subsequently, Garkane filed notice that it had timely provided all necessary information to the Division of Public Utilities (DPU), and the PSC issued an Action Request to the DPU to provide the reports.

On September 3, 2020, the DPU filed an Action Request Response, attaching the required information. The DPU also offered comments with respect to the Complaint, concluding “Garkane is in compliance with the requirements outlined in [the Statute] concerning the

retention and reporting of unclaimed capital credits by electric cooperatives.” The DPU recommended the PSC dismiss the Complaint.

On September 15, 2020, the PSC issued a Request for Complainant to File a Response, asking Complainant to indicate whether he wishes to proceed to hearing and, if so, to “identify what issues he believes exist to be decided at hearing and what remedy he seeks to obtain from the PSC.” On September 28, 2020, Complainant filed a response, reiterating that his Complaint concerns the Statute itself: “Allow me to repeat; the issue I have with Garkane Energy management is not whether they are in compliance with House Bills 255 and 266; the issue is whether these bills are legitimate. I contend they are not.”

On September 29, 2020, Garkane filed a Response in Support of the DPU’s Recommendation and Motion to Dismiss.

As the PSC made clear in its August Order, the “PSC understands Complainant strongly disagrees with the Statute, but it is unquestionably the law.” (August Order at 2.) Having given Complainant ample opportunity to provide allegations to substantiate his Complaint, Complainant has failed to do so and has underscored that his Complaint is concerned not with Garkane’s compliance with the law but with the lawfulness of the Statute itself. Accordingly, the PSC finds and concludes the Complaint does not allege Garkane to have violated any provision of law, regulation, or tariff over which the PSC has jurisdiction. Unquestionably, the PSC is not vested with authority to review the constitutionality of legislative acts. The Complaint is dismissed.

DOCKET NO. 20-028-01

- 3 -

DATED at Salt Lake City, Utah, November 12, 2020.

/s/ Michael J. Hammer
Presiding Officer

Approved and Confirmed November 12, 2020 as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#316367

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 30 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on November 12, 2020, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

LaVoy Tolbert
P.O. Box 61
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By Email:

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