

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Garkane )  
Energy Cooperative, Inc. for Authority to ) DOCKET NO. 10-028-02  
Issue Securities ) REPORT AND ORDER  
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ISSUED: January 11, 2011

SYNOPSIS

*With this Report and Order, the Commission approves the Application of Garkane Energy Cooperative, Inc. for Authority to Issue Securities.*

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By The Commission:

On December 3, 2010, Garkane Energy Cooperative, Inc. (Company) filed an application seeking authority pursuant to Utah Code Ann. § 54-4-31 to issue certain securities in the form of a long-term Loan Agreement and a related Secured Promissory Note in the amount of up to approximately \$15,000,000.00 (the "Loan Facility"). The Company requested informal adjudication of the Application under Utah Admin Code. R746-110 and represented that the matter was anticipated to be unopposed and uncontested. The Company further requested a waiver by the Commission of the 20-day tentative period under R746-110-2 for good cause shown on the basis that the Company desires to finalize the Loan Facility prior to anticipated expiration of the offer for long-term financing currently being held open by the National Rural Utilities Cooperative Finance Corporation ("CFC"), the Company's long term lender which requires, as a condition to providing such additional long term financing, that the Loan Facility must be final and fully enforceable in full force and effect without being subject to any appeal or protests in order to finalize such financing.

The Company has submitted copies of the relevant documents, certified and verified pursuant to the Verified Application, and other information to establish the facts pertinent to the Application.

BACKGROUND

The Company asserts that it has experienced growth in its system and demand on its cash and equivalents due to several factors, several of which were previously noted in the Commission's Report and Order dated November 18, 2010 in docket No. 10-028-01; furthermore, the Company asserts that it anticipates further financing requirements related to growth on its system as well as replacement and improvements required to its utility plant. The nature of these demands are related to developments that include but are not limited to:

- The acquisition of the Twin Cities Power System;
- Growth in Net Plant and Equipment since 2005 at an average annual rate of 12.16%;
- Anticipated requirements to upgrade transmission and/or distribution facilities to meet planned growth on the Company's system during the next several years.

The relevant terms of the Loan Facility are as set forth therein, and primarily include the following:

- a) The maximum amount of borrowing authorized under the terms of the Loan Facility will be approximately \$15,000,000.00;
- (b) The Maturity Date of the Loan Facility will be no later than the date that is forty (40) years from the date of the Loan Facility (the "Maturity Date");

- (c) The amortization period of each Advance under the Loan Facility will be determined as follows:
- (i) for each Advance with respect to which the Company elects, at or prior to the date of such Advance, an amortization method for repayment of principal of such Advance, such period as specified in writing by the Company at the time of each such Advance, *provided* that in no event may the Amortization period for any such Advance extend beyond the earlier of thirty-five (35) years from the date of such Advance or the Maturity Date; or
  - (ii) for any Advance with respect to which no amortization method is selected by the Company, a period ending on the date thirty-five (35) years from the date of such Advance, or the Maturity Date, whichever is earlier.
- (d) For each Advance under the Loan Facility, the Company must designate either a Fixed or a Variable interest rate. Such rates are determined and will be set to equal, such fixed or variable rate(s) established by CFC for long-term loans similarly classified pursuant to programs, policies and procedures of CFC then in effect, or such other rate(s) as may be agreed to by the parties in writing at the time of an Advance under the Loan Facility. Interest rates for any such Advance may be converted, at the Company's option, without a fee, pursuant to the terms of the Loan Facility Agreement. Conversion of a variable interest rate to fixed rates for any Advance(s) shall generally occur at a fixed rate or rate(s) of interest offered by or otherwise agreed to in writing by CFC in effect on the date of the Conversion Request; conversions from a fixed interest rate to a variable rate

require a payment to CFC any applicable conversion fee calculated pursuant to CFC's long-term loan policies as established from time to time for similarly classified long-term loans.

- (e) The Loan Facility will be secured by a first-lien mortgage on the Company's electric system and assets pursuant to the terms of a Restated Mortgage and Security Agreement by the Company, as Mortgagor, in favor of CFC, as Mortgagee, which lien and security interest shall be further evidenced and established by one or more Financing Statement(s) and/or Security Agreements to be executed and filed in appropriate office(s) where the Company does business or owns property.
- (f) Payments under the Loan Facility will be due quarterly in February, May, August, and November, unless agreed otherwise between the parties. All amounts outstanding and unpaid as of the Maturity Date will be due and payable on the Maturity Date.

The Company asserts that it has analyzed and considered various alternatives to the Loan Facility and that the Facility represents the best available means available to the Company to obtain long-term financing for ongoing and future anticipated capital projects and other corporate purposes. The Loan Facility was approved by the Company's Board of Trustees at a regularly scheduled meeting of the board on November 29, 2010.

On December 23, 2010, the Division of Public Utilities (Division) submitted their recommendation for approval of the application. The Division based its recommendation on its review of the Application and attachments, audited annual financial reports for the Company

DOCKET NO. 10-028-02

- 5 -

from 2005 through 2009 as well as interim financial information through October 2010, and the Company's 2010 Work Plan Summary identifying 22 planned capital projects. The Division also spoke with Stan Chappell, the Company's Finance Manager, about details of the Application and other questions regarding the Company's financial statements. The Division confirmed the details of the Application through its investigation. It concluded that the Company's loan request will allow it to fund its future capital improvement projects and will be able to continue to meet its obligations. It recommended approving the Application.

The Commission finds that all legal and factual prerequisites and requirements for the issuance of this Order have been satisfied. The execution and delivery of the Loan Facility as in the Application is in the public interest. The issuance and/or renewal of securities and security interest in connection with the Loan Facility is (i) for lawful and proper purposes; (ii) within the Company's corporate powers; (iii) consistent with the public interest, sound financial practices and the proper performance of the Company's public service; and (iv) designed to enhance and not impair the Company's ability to perform its public service.

ORDER

The Commission orders as follows:

1. This matter is converted to an informal matter and is adjudicated informally;
2. The Application is granted;
3. The 20-day tentative period under Utah Admin. Code R746-110-2 is hereby waived and this is a final order;
4. Pursuant to Sections 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

DOCKET NO. 10-028-02

- 6 -

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 20 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 Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 11<sup>th</sup> day of January, 2011.

/s/ Ruben H. Arredondo  
Administrative Law Judge

Approved and confirmed this 11<sup>th</sup> day of January, 2011, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#70360