

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Formal Complaint of LaVoy Tolbert against Garkane Energy Cooperative, Inc.	<u>DOCKET NO. 20-028-01</u> <u>ORDER TO FILE MANDATORY REPORTS</u>
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ISSUED: August 6, 2020

On May 18, 2020, LaVoy Tolbert (“Complainant”) filed a Formal Complaint with the Public Service Commission (PSC) against Garkane Energy Cooperative, Inc. (“Garkane”). On May 26, 2020, the PSC issued a Notice of Filing and Comment Period, giving Garkane an opportunity to respond and Complainant an opportunity to reply. The same date, the PSC issued a Supplemental Action Request to the Division of Public Utilities (DPU), requesting the DPU provide a copy of Garkane’s most recent Electric Cooperative Association Annual Report. Garkane filed a copy of its 2019 Annual Report with the PSC on June 15, 2020.

On June 16, 2020, Garkane filed a response to the Complaint (“Motion”), moving the PSC to dismiss the Complaint. Complainant filed a reply on July 10, 2020.

The Complaint is concerned with Garkane’s “retention and use” of unclaimed capital credits. Explaining that he has “limited resources and training” and no resources for counsel, Complainant offers vague and conclusory allegations suggesting Garkane has wrongfully retained or misused unclaimed capital credits. However, Complainant devotes the bulk of his Complaint and reply to challenging the law itself, specifically Utah Code Ann. § 54-3-26(3) (the “Statute”).

The Statute authorizes cooperatives to “retain an unclaimed capital credit” and to use the “proceeds of a retained unclaimed capital credit” to fund certain, enumerated philanthropic

causes.<sup>1</sup> Declaring that Garkane designed and lobbied for the Statute, Complainant argues it is unlawful because it is inconsistent with state law pertaining to unclaimed property and federal law governing non-profit organizations.

In response to Complainant's allegations, Garkane cites the Statute and affirmatively alleges it "legally spends unclaimed capital on *financial scholarships to graduating seniors, schools, non-profit organizations, or community organizations*" consistent with the law. (Emphasis in original.) Garkane argues the PSC "has [no] jurisdiction to overturn law enacted by the [L]egislature" and asks the PSC to dismiss the Complaint.

The PSC understands Complainant strongly disagrees with the Statute, but it is unquestionably the law.<sup>2</sup> While Complainant alleges on the first page of his Complaint that Garkane is "using unclaimed capital credits for more than [the Statute] specifically allows," Complainant alleges no remotely specific facts to support this conclusory allegation. The absence of any specific allegation that Garkane has violated any statute, regulation, or tariff provision, weighs strongly in favor of granting Garkane's Motion and dismissing the Complaint.

However, in reviewing the filings in this docket, the PSC observed that Garkane's 2019 Annual Report lacks the Statute's mandatory disclosures pertaining to the amount of retained

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<sup>1</sup> Specifically, a cooperative "shall use the proceeds" to "(a) 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 financial assistance to ... (i) a school; (ii) a non-profit organization; or (iii) a community organization" in the "area where the cooperative provides service." Utah Code Ann. § 54-3-26(3).

<sup>2</sup> The PSC does not have jurisdiction or authority to resolve the conflicts Complainant argues exist between the Statute and (i) other state laws wholly outside the PSC's regulatory purview (e.g. those pertaining to unclaimed property) or (ii) federal laws.

unclaimed capital credits and any philanthropic disbursements of them. Specifically, the Statute requires a cooperative to submit a report each year, before November 1, that describes: “(a) the amount of unclaimed capital credits retained by the cooperative; (b) the amount and recipients of financial assistance disbursed under this section; and (c) the criteria used by the cooperative to determine the recipients and amount of financial assistance disbursed.”<sup>3</sup> Utah Code Ann. § 54-3-26(5).

Garkane’s 2019 Annual Report does not contain these disclosures, and the PSC is unaware of any other filing Garkane has made to comply with these requirements. Therefore, the PSC directs Garkane, on or before **Wednesday, September 2, 2020**, to file with the PSC reports, for the years 2016 through 2019, that provide all information the Statute requires concerning retained unclaimed capital credits and any disbursements Garkane has made pursuant to Utah Code Ann. § 54-3-26.<sup>4</sup>

As the Complaint is concerned with Garkane’s retention and use of unclaimed capital credits and Garkane’s reporting deficiency on the subject came to the PSC’s attention through

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<sup>3</sup> The Statute requires cooperatives to “establish criteria for recipients of [such] financial assistance” based on a “recipient’s financial or other needs” and “the recipient community’s interests.” Utah Code Ann. § 54-3-26(4).

<sup>4</sup> The Statute’s current reporting requirement has been in effect since May 10, 2016, making the first report due November 1, 2016. The PSC notes that between 1995, when the Legislature first enacted the Statute, and May 2016, the Statute similarly allowed cooperatives to use retained unclaimed capital credits for certain philanthropic purposes and required cooperatives to annually submit copies of (1) the guidelines they used to identify recipients and (2) “amounts and disposition of retained capital credits by individual recipients.” The PSC appreciates the administrative burden associated with compiling this information and is directing Garkane, at this time, to correct any deficiencies in reporting since 2016. The PSC may later, contingent on evaluation of the most recent reports, require Garkane to correct deficiencies for years prior to 2016.

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this docket, the PSC does not dismiss the Complaint and will await taking further action until it has an opportunity to review the information it has ordered Garkane to provide.

DATED at Salt Lake City, Utah, August 6, 2020.

/s/ Michael J. Hammer  
Presiding Officer

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#314923

CERTIFICATE OF SERVICE

I CERTIFY that on August 6, 2020, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

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By Email:

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Administrative Assistant