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State of Utah

Department of Commerce Division of Public Utilities

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Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Artie Powell, Director

Marialie Wright, Manager

Brenda Salter, Utility Technical Consultant Supervisor

Doug Wheelwright, Utility Technical Consultant Supervisor

Jeff Einfeldt, Utility Technical Consultant

Date: September 3, 2020

Re: **Docket No. 20-028-01**, Formal Complaint – LaVoy Tolbert v. Garkane Energy Cooperative, Inc.

Recommendation (Dismiss Complaint)

The Division of Public Utilities (“Division”) recommends the Public Service Commission of Utah (“Commission”) dismiss the LaVoy Tolbert Formal Complaint. Based on the Division’s review, Garkane Energy Cooperative (“Garkane” or “Company”) is in compliance with the requirements outlined in Utah Code § 54-3-26 concerning the retention and reporting of unclaimed capital credits by electric cooperatives.

Issue

The customer complaint deals primarily with H. B. 266 and a change to Utah Code § 54-3-26 that occurred in 2016. This change deals with the use of unclaimed capital credits and applies to all electric and telephone cooperatives and not exclusively to Garkane.

Background

On May 18, 2020, LaVoy Tolbert initiated a formal complaint against Garkane Energy concerning H. B. 266, and the Company's unclaimed capital credits. On May 18, 2020, the Commission issued an action request to the Division to review the complaint and make a recommendation with a response date of June 17, 2020. On May 26, 2020, the Commission issued a supplemental action request and asked the Division to include a copy of Garkane Energy's most recent Electric Cooperative Association Annual Report. On May 26, 2020, the Commission issued a notice of filing and comment period, establishing Garkane's response deadline as June 17, 2020, and the Complainant's reply deadline as July 2, 2020. On June 15, 2020 the Division issued a response to the action request and indicated it had no recommendation in this docket. On June 16, 2020, the Company provided a copy of the 2019 Annual Report for Garkane Energy Cooperative along with its response to the complaint. The response indicated that Garkane was in compliance with provisions of H. B. 266 and asked that the complaint be dismissed. On June 24, 2020, the Complainant requested a 15 day extension of his reply deadline and on June 25, 2020, the Commission amended the reply deadline to July 17, 2020. On July 10, 2020, the Complainant filed reply comments and again expressed concerns with the legality of H. B. 266. Mr. Tolbert believes the unclaimed capital credits should be remitted to the Utah State Treasurer's Office as unclaimed property and not retained by Garkane or any other co-op entity.

On August 12, 2020, the Commission issued a Second Supplemental Action Request directing the Division to investigate and provide any appropriate recommendation. The Commission asked the Division to review the enactment of House Bill 266 which amended certain sections of Utah Code Ann. § 54-3-26, Retention of unclaimed capital credits by electric and telephone cooperatives, the use of retained funds, and the reporting requirements. This memorandum represents the Division's response to the Commission's Action Request.

Discussion

The Second Supplemental Action Request asked the Division to evaluate the information provided in the Company's annual reports from 2016 through 2019 for compliance with Utah

Code § 54-3-26(5) and provide recommendations. The Division had several discussions with representatives from Garkane. The Company has been cooperative and responsive to the Division's request for additional information.

Cooperatives are accountable to members and not to corporate shareholders. Capital Credits are cooperative's margin, or money left after all expenses have been paid for the year. Co-op members are allocated a share of the annual margins based on the proportion of electricity used during the year. Cooperatives retain the capital credits for working capital needs which reduces the need for debt financing and additional interest expense. After a period of time determined by the Board of Directors, a portion of the accumulated credits are paid to members.

Garkane is currently on an approximate 30 year rotation cycle for capital credits. The goal of the Board of Directors is to have the Garkane capital credit rotation down to a 25 year rotation by 2023. In 2016 and 2017, the Garkane Board authorized the return of \$400,000 in capital credits to members. This amount was increased to \$1.0 million in 2018 and \$1.1 million in 2019. Capital credits are considered to be unclaimed three years after they have been authorized. Utah Code § 54-3-26 allows unclaimed capital credits to be retained and used to pay all or a portion of low-income utility bills, provide scholarships to high school seniors, or provide financial assistance to a school, non-profit or community organization in the area served by the co-op.

The Company has filed its annual reports to the Division on a timely basis and copies of the reports for 2016 – 2019 have been included with this response. The annual reports include Tab 17 which identifies the balance of unclaimed capital credits as well as the amounts paid out for scholarships and low income utility assistance payments. The report also includes Tab 17a which identifies the name and amount of each of the scholarship recipients. The item that has not been included in the Company's annual report is the criteria used by the cooperative to determine the recipients and the amount of financial assistance.

In response to the Division's request, the Company provided a copy of its High School Scholarship application as well as its Winter Assistance for Rural Members ("WARM")

application to support the criteria that is used to determine financial assistance. The scholarship application states;

Garkane's Board of Directors will select scholarship recipients based on scholastic achievement, financial need, extracurricular and service activities, and the essay required in the scholarship application.

The application also states dependents of Garkane Energy employees, management, or directors are not eligible for the scholarship award. A total of 22 - \$1,000 scholarships may be awarded with two scholarships intended for each of Garkane's eleven director districts.

In order to qualify for the Company's utility assistance or WARM Program, applicants must first qualify for the Home Energy Assistance Target ("HEAT") Program. The HEAT program provides energy assistance for low-income households throughout Utah. In order to qualify for the HEAT Program, the total household income must be at or below 150% of the Federal Poverty Level. Applicants that have not been approved for the HEAT Program are directed to first contact the local Department of Social Services. The maximum amount of assistance for the WARM Program is \$50 per year. In both the scholarship and the energy assistance programs, the criteria and guidelines are in place to determine eligibility. Copies of the Company's scholarship and WARM Program applications have been included with this memo.

The Company has also provided additional information concerning the annual amount and ongoing balance of unclaimed capital credits. The Division is satisfied that reporting capital credits to members is taking place and efforts are made to locate and pay capital credits to former members. Internal accounting procedures for current and unclaimed capital credits are in place as well as the criteria used to determine the recipients and amount of financial assistance.

Conclusion

The Division has reviewed the complaint filed by LaVoy Tolbert, the requirements as outlined in Utah Code § 54-3-26, and the information provided by Garkane. Mr. Tolbert's complaint deals primarily with H. B. 266 and a change to Utah Code § 54-3-26 that occurred in 2016. Garkane has cooperated with the Division's request and has provided a detailed accounting of the annual changes to the Capital Credits account for each year in question. While the Company did not

provide the criteria for determining financial assistance in its annual reports, the criteria is in place and has been documented by the Company. Based on the Division's review, Garkane is in compliance with the requirements outlined in Utah Code § 54-3-26 concerning the retention and reporting of unclaimed capital credits by electric cooperatives. The Division recommends the Commission dismiss the LaVoy Tolbert Formal Complaint.

Cc: Neal Brown – Garkane Energy Cooperative Inc.
LaVoy Tolbert