

9/24/20

Public Service Commission of Utah
% Gary Winderburg, Secretary
Heber M. Wells Building, 4th Floor
160 East 300 South / Box 45585
Salt Lake City, UT 84111

UTAH PUBLIC
SERVICE COMMISSION

2020 SEP 28 A 10:10

RECEIVED

RE: Docket No: 20-028-01

Dear Mr. Winderburg,

My concern (complaint) is not, and never has been, with whether Garkane Energy Cooperative is in compliance with H.B. 266. My complaint is with the very existence of H.B.'s 255 and 266. My concern today is as it was communicated in my first request. I want the management of Garkane Energy to act for the benefit of members. I want them to develop policy and practice that saves members money. This cannot happen when capital credits are not returned to members. If management takes steps to retain and use unclaimed property, their focus will be on growing unclaimed property. That does not serve members.

Unclaimed property is created by making it difficult for members or heirs to reclaim margins. Requiring long holding periods before returns begin and extended piece-meal return policies discourage members or heirs from collecting and make it easy for those that are members for a short time, before moving to other areas, to get "lost."

Original law, still in force, requires businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer for safekeeping. Property remitted to the State Treasurer is not spent but is always available to be claimed by owners or heirs. Obedience to this law prevents management teams from profiting from unclaimed property and gives management teams no reason to create unclaimed property. House Bills 255 and 266 transfer ownership of unclaimed property from the purchaser to the cooperative management team. This is a violation of U.S citizen property rights. It is also a violation of federal law requiring nonprofit businesses to return margins to members. If a cooperative does not return margins to members it is not a nonprofit coop and not entitled to nonprofit status.

There is no reason why Garkane cannot return margins to members. A policy that returned capital credits to members leaving the coop would eliminate unclaimed property. The only reason why this is not happening is because management doesn't want it to happen. Without unclaimed property they have no "campaign fund." Rather than develop and manage policy and practice to return margins, Garkane "managers" have lobbied legislators to transfer ownership of capital credits (unclaimed property) from those that purchased the property to the management team. And there you have it in a nutshell. Unclaimed property exists because it serves management. This is, and always has been the core of my complaint. House Bills 255 and 266 are not moral, they do not serve coop members, and I do not believe they are legal. This whole scheme has as its goal the theft of coop member property.

I pointed out in a former correspondence that even IF House Bills 255 and 266 were legal, management does not follow the requirements of the lobbied bills. 23 high school **juniors** are given

scholarships to the Michael F. Peterson Leadership Camp every year and a Washington D.C youth tour is financed every year. Neither of these cash outlays are permissible “mandated” uses, but they were not recognized or addressed by the Commission. The claim that 22 scholarships, two from each Garkane District, are all the scholarships awarded by Garkane is not true. Juniors are not “graduating seniors” and a Washington D.C. Youth Tour is not a scholarship. Anyway, I hoped the Commission would rule that the law requiring businesses to remit unclaimed property to the State Treasurer could not be overturned by House Bills that transform a supposed nonprofit coop into a for profit coop– bills that **transfer ownership of property from member purchasers to a coop board and CEO**. An arbitrary ownership transfer of member property cannot be legal.

Now, this is the issue I have with Garkane Energy management. When I took up this issue with the Department of Public Utilities, I expected to get a simple ruling on the hocus pocus behavior of a coop management team that doesn’t save members money but takes member money through a power charge then, rather than return margins to members, transfers ownership of member property to their selves and assumes power over member philanthropic decisions. If the Commission could not deal with this issue, I wanted the matter referred to the appropriate authority. (What I think has happened is that Garkane has effectively shifted the focus of MY complaint to that of compliance with H.B. 266 and the assumption that it is moral and legal, and that Garkane management is in close enough compliance with that bill to get a pass. This is not the issue I wanted addressed. **The issue I wanted addressed is Garkane Energy’s noncompliance with the state law requiring ALL businesses to remit unclaimed property to the Unclaimed Property Division of the Office of State Treasurer.**)

I want to clean up what I see as a member rip-off by an administration that I believe has taken over the coop. Members interests are not the focus of Garkane management anymore. My director certainly doesn’t represent me. (There has been an embezzlement issue at Garkane in the recent past and the board member in my district will not even talk to me about it. Members have not been notified of this embezzlement affair. This board behaves as a secret society.)

One thing is certain; I am a member of Garkane Energy Cooperative and have some real concerns respecting the morality, even the legality, of activities going on here. In a nut shell, a nonprofit coop is supposed to return margins to members. This is not happening at Garkane. Some margins, credited members as capital credits, are dealt with in such a way as to become “unclaimed.” These “unclaimed capital credits” are **retained** and **used** by management. These funds are gifted to individuals and groups designated by management through a 1995 lobbied bill sponsored by legislators and expanded in a 2016 amended version, H.B. 266. **In my opinion, the deliberate creation of unclaimed property and the lobbied ownership transfer of property are nothing short of laundering.** Capital credits could easily be returned to those that purchased them, but they are not. Policy and practice embraced by Garkane management “grow” unclaimed property and lobbied House Bills mandate uses lobbied by Garkane management. The bills and mandated use of “retained” unclaimed property are all the result of lobbying efforts of Garkane management. I believe these House Bills are a violation of citizen property rights– the 14th amendment of the U.S. Constitution. By arbitrarily transferring property ownership, Utah legislators have violated citizen property rights. Garkane management engineered this. No matter how you cut it, a portion of margins at Garkane Energy Cooperative are not being returned to members and member property ownership is being transferred to Garkane management. This is the bottom line. This was and is my complaint. Federal law requires nonprofit cooperatives to return margins to members and the U.S. Constitution prohibits states from violating citizen property rights. At any rate, it takes a devious coop management team to TAKE FROM members rather than SAVE FOR members.

I do not have the resources to take the correction of this wrong on entirely by myself. This is why I have appealed to you. If this is not an issue you have authority to resolve, please use your expertise and prestige to refer it to the proper authority. I believe this is a BIG wrong that requires a BIG solution.

The Garkane management team is forcefully taking from members through a power charge and using the proceeds of manufactured unclaimed property to serve their own ends.

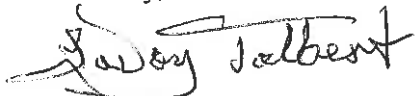
Allow me to repeat; the issue I have with Garkane Energy management is not whether they are in compliance with House Bills 255 and 266; the issue is whether these bills are legitimate. I contend they are not. They violate member property rights through a property ownership transfer, and transform a nonprofit cooperative into a for profit business. If margins are not being returned to members, but retained and used, the coop is not nonprofit and members are being stolen from.

As far as a hearing before the Commission is concerned, I think the issue needs to be clear before that would be appropriate. Perhaps a hearing will not be necessary if this matter is transferred to another agency. Also, this corona virus thing needs to be solved before I can know where to go next. I am 86 years old.

It is just not logically and morally right that a cooperative management team can manipulate coop finances so they end up owning property purchased by members. For a board and CEO to betray members in such a way is detestable. I want you to help me challenge the legality of these questioned activities. Surely, the transfer of member property ownership to board and CEO ownership, the retention and use of margins, as well as the assumption of coop member philanthropic choices are not moral or legal.

I do not want this issue dismissed. My real issue has not been addressed. If you cannot resolve this, please help me get it resolved.

Sincerely,

A handwritten signature in black ink that reads "LaVoy Tolbert". The signature is written in a cursive style with a large, sweeping initial "L".

LaVoy Tolbert