

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of GARKANE )  
ENERGY COOPERATIVE )  
for a Declaratory Ruling Regarding the Proposed )  
Acquisition of the Electric )  
Utility Assets of Kanab City )

DOCKET NO. 04-028-01

ORDER

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ISSUED: August 10, 2004

SYNOPSIS

Garkane Energy Cooperative may purchase the utility assets of Kanab City's municipal electric utility operations and incorporate the assets and customers into its operations as proposed.

By The Commission:

On July 21, 2004, Garkane Energy Cooperative, Inc., (Garkane) filed a Petition for Declaratory Ruling relating to its proposed purchase of the electric utility plant and equipment of the municipal utility of Kanab, Utah (Proposed Purchase). Pursuant to Administrative Rule 746-110, Garkane requested that these proceedings be conducted informally; anticipating that its Petition would be unopposed and uncontested. Garkane argues that Commission approval of or consent for the Proposed Purchase is not required and seeks a declaratory ruling concluding the same. Garkane also uses the Petition to report information of the Proposed Purchase to meet the informational filing requirements of Administrative Rule 746-401-3(E) (concerning a utility's proposed purchase of assets whose value meet the threshold amounts indicated in the rule).

On August 4, 2004, the Division of Public Utilities (Division) filed its Response to Garkane's Petition. For the most part, the Division agrees with Garkane's arguments, but notes that there are other statutory provisions which could require Commission examination of the Proposed Purchase and an affirmative conclusion to permit Garkane to consummate the purchase. The Division concludes, based upon its analysis, however, that the circumstances surrounding the Proposed Purchase do not require the Commission to exercise its authority and jurisdiction under these provisions. The Division recommends that Garkane should file the definitive agreements between it and Kanab City

when available and that Garkane file new tariffs in its normal course, but otherwise not be precluded from closing the Proposed Purchase. No other filings have been made with the Commission concerning Garkane's Petition.

### DISCUSSION

With regard to Commission jurisdiction over Kanab City's municipal utility, argument is made that the Commission has no jurisdiction over Kanab City's operations. Kanab City need not obtain Commission approval or consent concerning its sale of utility plant. We agree with this argument. Utah Constitutional provisions preclude Commission jurisdiction over municipal utility activities. With regard to Garkane Energy Cooperative, Garkane argues that its purchase of the electric utility plant of Kanab City is not covered by Utah Code §54-4-30, as Garkane is not acquiring the assets of another "public utility" operating in the State. The Division agrees with this argument, but notes that irrespective of the argument relative to §54-4-30, the Commission could review the transaction pursuant to Utah Code §54-4-2 (Commission's investigatory powers) and Utah Code §54-4-26 (Commission review of utility expenditures).

Pursuant to the Commission's jurisdiction over public utilities operating in Utah, the Commission has promulgated Administrative Rule 746-401-3(A), which requires utilities to report transactions in which they will purchase or acquire utility assets of specified value. Garkane recognizes the applicability of this rule, and the underlying Commission jurisdiction, to the Proposed Purchase and has submitted its report and information as required by the rule. As noted, based upon the nature of the transaction and its size, the Division concludes that the Commission need not exercise its jurisdiction to make any further examination of the Proposed Purchase and should permit the parties to consummate the transaction. We rely upon the Division's analysis and conclusion. We will refrain from exercising our authority and jurisdiction to make any further examination of the Proposed Purchase. We need not rule on the request for a declaratory ruling concerning the application of Utah Code §54-4-30. There is no opposition to the Proposed Purchase, asking the Commission to exercise jurisdiction to preclude Garkane's purchase. With no showing of good cause to prevent or deny the purchase, we may enter our order approving the Proposed Transaction.

As there is no opposition, we will grant Garkane's request that we proceed informally and issue our order pursuant to Rule 746-110. Because of the need to close the Proposed Purchase soon, Garkane asked that the Commission waive the 20 day tentative period or delay in effectiveness for an order issued under this rule. We agree, and our order will be effective on the date of issuance.

ORDER

Wherefore, we enter this ORDER permitting Garkane to complete the Proposed Purchase with Kanab City and incorporate the electric utility plant assets and customers as proposed in Garkane's July 21, 2004, filing.

DATED at Salt Lake City, Utah, this 10<sup>th</sup> day of August, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

GW#39911