

NEW APPLICATION



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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF
GARKANE ENERGY COOPERATIVE, INC. TO
EXPAND ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY TO INCLUDE COLORADO
CITY, ARIZONA

Docket No. E-01891A-08-_____

APPLICATION

GALLAGHER & KENNEDY, P.A.
2575 E. CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
(602) 530-8000

Garkane Energy Cooperative, Inc. ("Garkane" or the "Cooperative"), pursuant to A.R.S. § 40-281 and in support of its Application to Expand its Certificate of Convenience and Necessity ("CC&N"), states as follows:

1. Garkane is a Utah non-profit cooperative association which supplies electricity to its members—most of which are located in the State of Utah. Garkane serves approximately 11,600 total customers. About 700 of those customers are in Arizona and are situated primarily north of the Grand Canyon in the vicinity of Fredonia and Colorado City, Arizona.

2. Prior to May of 1994, Garkane provided electric service to the residents of Colorado City as well as to the neighboring town of Hildale, Utah (the "Twin Cities"). In 1993, however, municipal utilities were formed by the Twin Cities. Bonds were also authorized to finance the acquisition of the Cooperative's utility assets as well as to construct additional facilities. At their request, Garkane entered into agreements with Hildale and Colorado City to sell its distribution facilities to the Twin Cities.

1 3. In Decision No. 58571 dated March 16, 1994, the Commission approved the
2 transfer of the Garkane assets to Colorado City as well as the cancellation of the relevant portion
3 of the Cooperative's CC&N relating to service to Colorado City. The transaction closed in April
4 of 1994. Garkane ceased service to Colorado City at that time.

5 4. Approximately two years ago, Garkane was approached by the Trustee for the
6 Twin Cities bondholders concerning whether the Cooperative would be interested in purchasing
7 the Twin Cities' systems and resuming electricity service to the area. Colorado City and Hildale
8 began to default on their bond payments in 2000 and on their interest payments in 2005. The
9 Trustee was considering either a receiver to run the system or a purchaser. After negotiations
10 between the parties, Garkane has entered into a Memorandum of Understanding ("MOU") to
11 purchase the Twin Cities' utility assets, including the assets which serve Colorado City. A copy
12 of the MOU is attached as Exhibit A. Closing of the transaction is contingent, among other
13 things, upon receipt of the Commission's approval to expand Garkane's CC&N to once again
14 provide electric service to the approximately 700 customers in Colorado City. Paragraph 4 of the
15 MOU requires closing of the transaction no later than June 30, 2009.

16 5. Attached hereto as Exhibit B is the legal description of the territory which
17 Garkane requests the Commission approve as the addition to its CC&N. Exhibit B describes
18 basically the same area comprising Colorado City which the Commission authorized be deleted
19 from the Cooperative's CC&N in 1994.

20 6. At the general election on November 4, 2008, Colorado City voters
21 overwhelmingly approved the issuance of a franchise to Garkane to allow its operations within
22 the city limits. The voters approved the franchise on a vote of 578-33.

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1 7. The Cooperative has made wholesale power arrangements with its power
2 supplier, Deseret Power Electric Cooperative and transmission arrangements with Rocky
3 Mountain Power for the purchase as well as the transmission of the energy necessary to supply
4 Colorado City. However, the power sale is contingent upon Garkane taking service by no later
5 than June 30, 2009 and the transmission arrangements are time sensitive as well. For these
6 reasons, the Cooperative requests that the Commission approve the expansion of its CC&N as
7 soon as possible and, in any event, no later than the Commission's April 28-29 Open Meeting to
8 allow adequate time to close the transaction and avoid default on these and the MOU conditions.

9 8. Garkane will use its current Commission-approved tariffs and regulations to
10 provide service to the residents of Colorado City. Garkane estimates that the rates it will charge
11 in Colorado City will be approximately five percent (5%) lower than current rates. The
12 wholesale power supply and transmission arrangements are specifically for the Twin Cities and
13 are approximately \$900,000 higher per year than the wholesale power costs for the balance of the
14 Cooperative's customers in Arizona and Utah. Garkane will use the tariffs' wholesale power
15 cost adjustment provision authorized by the Commission to adjust the Colorado City tariff rates
16 to account for this cost differential.

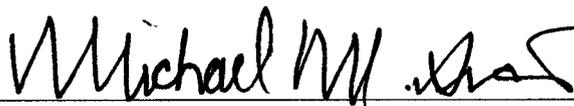
17 9. The expansion of Garkane's CC&N to reauthorize service to Colorado City is in
18 the public interest for several reasons. First, it will bring stability to the ownership and operation
19 of the electric system which has been in default to its bondholders and subject to sale or
20 receivership for several years. Second, Colorado City residents will see an immediate decrease
21 in their rates and bills. Third, Garkane's operation of the system will also provide rate stability
22 for Colorado City customers. Since 1993, the average retail power cost has doubled from
23 \$0.06/kWh to \$0.12/kWh because of the municipal system's much higher power costs and debt

1 load. Finally, there will be some operational efficiencies associated with the acquisition of the
2 Twin Cities operation which will redound to the benefit of all of Garkane's members.

3 WHEREFORE, having fully stated its Application, Garkane requests that the
4 Commission enter its Order granting this Application and including within its Certificate of
5 Convenience and Necessity the area described in Exhibit B. The Cooperative asks that the
6 approval be granted as soon as possible and no later than the Commission's April 28-29 Open
7 Meeting.

8 RESPECTFULLY SUBMITTED this 12th day of December, 2008.

9 GALLAGHER & KENNEDY, P.A.

10
11 By 
12 Michael M. Grant
13 2575 East Camelback Road
14 Phoenix, Arizona 85016-9225
15 Attorneys for Garkane Energy Cooperative, Inc.

14 **Original and 13 copies** filed this
15 12th day of December, 2008, with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 **Copy** of the foregoing delivered
21 this 12th day of December, 2008, to:

22 Steve Olea
23 Utilities Division
24 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

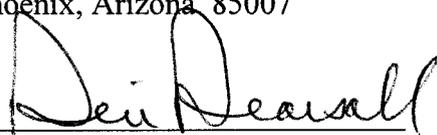

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EXHIBIT A

MEMORANDUM of UNDERSTANDING

Between

Twin Cities Power Authority (“TCP”); the City of Hildale, UT, a Utah Municipal Corporation (“Hildale”); Colorado City, AZ, an Arizona Municipal Corporation (“Colorado City”); Wells Fargo Bank, and Bondholders N.A., as Trustee for the holders of certain Revenue Bonds issued in 1995 and 1997 (“Wells Fargo”),

and

Garkane Energy Cooperative, Inc. (“Garkane”)_

This Memorandum of Understanding is intended to set forth the terms and conditions of the proposed sale of the electrical transmission, substation, and distribution system assets currently belonging to TCP, Hildale, Colorado City and/or Wells Fargo (collectively, “Sellers”) to Garkane.

It is intended that the entire existing electrical transmission, substation, and distribution system(s) of Sellers together with certain materials and supplies pertaining to such system(s) on hand be sold, as an operating unit, to Garkane together with the right and duty to provide electrical service to the residents and businesses of Hildale, Utah and Colorado City, Arizona.

In contemplation of that sale upon meeting the statutory requirements for the sale or disposition of Municipal Utility Assets it is agreed that:

1. Garkane will purchase the electric transmission, substation, and distribution system assets (the “System”) of Sellers on the closing date, consisting of the following items:
 - a. All transmission line facilities (including all easements) from the interconnect point at the Clifton Wilson Substation in Hurricane to the Twin Cities Substation. The Sellers will be responsible for the complete termination of Section 4.3 of the agreement entitled “Right-Of-Way and Pole Agreement Between Hildale, Utah and the City of Hurricane”.

- b. All substation and switch yard facilities including all land the stations utilize located near 770 North 1400 West Hildale UT, including the underlying property interests, with the exception of the generator stepup transformers and the associated lowside wiring from the transformer to the generator building located inside the substation yard.
 - i. The stick built control "building" located inside the metal generator building and the metal generator building will remain in place and will be included as part of this transaction.
 - ii. The generator equipment located in and on the generator building and site shall be removed by the Sellers within 12 months of closing. The Sellers will be responsible for cleaning up and debris removal, including any and all hazardous materials, from the building and site. Sellers will be responsible to safeguard and minimize damage to the building and site during equipment removal.
 - iii. The existing 24 and 48 volt DC systems necessary for the operation of the controls and relays associated with the substation shall be included as part of this transaction. Said DC systems shall remain in operation at all times through the removal of the generator equipment.
 - iv. The existing substation metering and protective equipment shall remain in place and in operation at all times during the removal of the generator equipment.
- c. All electrical distribution system facilities (including all easements).
- d. Sellers will assist Garkane in converting the existing obsolete L&G Prepaid Metering System to a replacement system which can be supported by the manufacturer.
- e. Storage yard, including all lands the yard utilizes, with storage vans, materials, supplies, and spares located within the yard.
- f. All meters and metering supplies in stock.
- g. One service truck used by electric department employees with associated tools and materials, less individual personal hand tools.
- h. Sellers shall provide acceptable Title Insurance to Garkane covering all transmission line easements, and all substation, switching station, and storage yard real property. Garkane will be responsible to pay upon

closing, one half of the cost of the Title Insurance as an addition to the amount provided in paragraph 2 with the remainder the responsibility of Seller

2. These assets to be sold are herein referred to as the "System Assets". The Sellers will warrant title to the System Assets free and clear of all liens and encumbrances. Sellers will provide to Garkane acceptable Title Insurance as indicated in the preceding paragraphs, otherwise, the System Assets are being sold and purchased in their "AS IS" condition. No other assets or liabilities of Sellers are being purchased except as specifically enumerated below.
3. Title to the distribution system facilities (including easements) purchased by the Sellers from Garkane in or about 1995 will be conveyed by Quitclaim Deed in the same manner as when purchased from Garkane. Seller will be responsible for clearing any and all liens and encumbrances that may have been placed upon the facilities during the time the Sellers held the facilities.
4. The purchase price for the System Assets is Three Million Dollars (\$3,000,000) (the "Purchase Price"). The Purchase Price will be payable in cash at the closing. All parties to this transaction will take all reasonable steps to timely obtain any and all necessary authorizations and approvals required to proceed with the sale, including any and all required approvals of the Sellers' respective electorates. Moreover, the parties shall make all reasonable efforts to close the transaction by or before December 31, 2008, but in no event later than June 30, 2009.
5. Sellers will continue to operate the System Assets until the closing and will generally maintain the System Assets in the condition in which it presently exists. Except as provided below in this Section 5, Sellers may dispose of assets of the System Assets and may acquire other assets during that period of operation, all in the ordinary course of business. There shall be no adjustment in the Purchase Price for any such dispositions or acquisitions. During that period of operation, Sellers shall not dispose of or acquire assets having an aggregate value in excess of \$5,000.00 without the written consent of Garkane, the granting of which consent may require an adjustment in the Purchase Price.
6. Garkane will not assume any obligation or liabilities to UAMPS or other entities associated with the delivery of electricity to Sellers prior to the closing of this transaction. Rather, Sellers shall be solely responsible for the satisfaction, termination, cancellation, and/or disposition of all such agreements and obligations except as otherwise specifically indicated in this Memorandum.

7. Sellers shall be responsible for the termination and complete satisfaction of the "Hildale Interconnect Agreement Among Utah Associated Municipal Power Systems, The City of Hurricane, Utah, and the City of Hildale, Utah.
8. Sellers shall transfer to Garkane all deposits held on account of electric customers. Sellers shall provide to Garkane an itemized list of all such amounts, the account they are held for, the date such deposit was received by TCP and the terms and conditions of refunds. Sellers shall transfer to Garkane all Contributions in Aid Of Construction. TCP shall provide to Garkane an itemized list of all such amounts, the account they are held for, the date such deposit was received by TCP, terms and conditions of refunds, copies of all contracts or documents pertaining to the amount, and the amount of accrued interest if any.
9. Sellers shall make available to Garkane electrical customer information, necessary for Garkane to set up billing accounts, in a readily useable electronic format (i.e. an excel spreadsheet at least 90 days prior to the anticipated closing date with weekly updates of changes to account data. Sellers will, prior to the closing date, provide copies of all drawings, maps (including base maps), diagrams and other similar documents relating to the System. Drawings and maps shall be provided in electronic AutoCAD 2000 format. Garkane will keep all information received from Sellers under this section confidential and, in the event that the sale and purchase does not close, will return to Sellers or destroy all documents and other information received.
10. Customer meters will be read jointly by TCP and Garkane on or about the closing date. TCP will send final billings to the customers and will be entitled to all customer payments for service provided prior to the closing. Sellers will be responsible for any power purchases for usage prior to the closing date (meter reading date) regardless of the billing date. TCP and Garkane shall jointly coordinate this meter reading/closing date with their appropriate power suppliers so as to facilitate a seamless change in suppliers.
11. At closing, Garkane will establish which of TCP's outstanding electrical accounts receivable are not older than 90 days. Forty-five (45) days after closing, Garkane shall purchase such of those same receivables that as of that date remain unpaid, at a discounted rate of 50%. This amount will also be reduced by any outstanding balances of prepaid meter accounts. This purchase amount will be paid directly to Sellers, in addition to the Purchase Price.
12. Garkane will be responsible to timely obtain all governmental and lender approvals necessary to consummate the purchase of the System Assets and

the provision of electricity to the residents and businesses of Hildale and Colorado City.

13. Sellers will be responsible to timely obtain all governmental and lender approvals necessary to consummate the sale of the System Assets.
14. Sellers will be responsible for timely compliance with all applicable rules and statutes regarding sale or disposition of Municipal Utility Assets. Sellers will proceed with promptness to get the issue placed on the next General Election or at a special election called for that purpose of the sale of Twin Cities Electrical Transmission, Substation, and Distribution System.
15. Bondholder's legal counsel will assist Garkane in securing required approvals from Utah and Arizona Governmental Agencies.
16. Garkane and/or DGT must obtain a TSO delivery from Rocky Mountain Power at Hurricane, Hildale, or a mutually agreeable point in between.
17. Garkane and DGT must enter into a suitable purchased power contract amendment for delivery of necessary power and energy at the delivery point under RSA energy and capacity charges with a Facilities Charge not to exceed \$930,000 per year. In the event that the final negotiated rate from DGT exceeds RSA or a facilities charge in excess of \$930,000 per year the Purchase Price in Section 3 shall be reduced by the net present value of the difference in projected power cost over the 25 year window discounted at 7.5%.
18. Sellers will deem that granting a franchise to Garkane in the former TCP service area is beneficial, and will pass a resolution(s) to that effect. Sellers shall submit the question of granting the franchise to the qualified electors at the earliest practicable date. The franchise agreement between Colorado City and Garkane will have a minimum term of 25 years, and shall include acceptable provisions for renewal. The franchise agreement between Hildale City and Garkane will have a minimum term of 30 years. Garkane will be subject to assessment by Hildale and/or Colorado City of such franchise fees and other charges as the respective city councils may impose from time to time in accordance with the provisions of applicable law. Garkane has the right to pass such fees through to the retail customers as a tax.
19. Garkane will establish an office for receipt of payment and customer service in Hildale or Colorado City for a minimum period of three years after the closing. After the initial period the continuation of the office will be at the sole discretion of Garkane's Board.
20. All customers of Garkane in the former TCP service area may be charged rates equivalent to the existing TCP rates with a structure similar to the existing

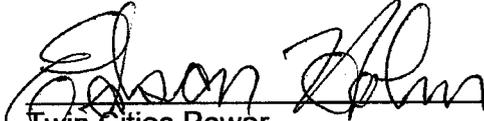
Garkane Rates. Future rate changes will be in proportion to rate changes to other Garkane customers. Garkane reserves the right to allocate costs and expenses to the TCP service area separate from other Garkane service areas provided that those costs or expenses are directly attributable to costs or expenses incurred in the TCP area. The rates and regulations for Colorado City, Arizona customers must be approved by the Arizona Corporation Commission substantially as presented and such approval must be satisfactory to Garkane in its sole and absolute discretion. The rates and regulations for Hildale, Utah customers must be approved by the Utah Public Service Commission substantially as presented and such approval must be satisfactory to Garkane in its sole and absolute discretion.

21. The customers acquired as part of this transaction by Garkane shall become members of Garkane with all the rights and privileges of others members and subject to the same rules and regulations of similar Garkane customers except as herein provided.
22. Garkane will undertake a realignment of the Garkane Board districts during a normal and regular District Election process, in order to properly and adequately represent, at the discretion of Garkane's Board using prudent business judgment, the interests of the additional approximately 1000 new customers from TCP.
23. Garkane will extend offers of employment to the two existing TCP Journeyman Linemen.
24. This entire Memorandum of Understanding is contingent upon releases from Colorado City, Hildale and the Bondholders (or the Trustee) from any and all current and future debts and liabilities for the transfer of Twin Cities distribution system to Garkane.
25. Arizona Rev. Stat. Ann. 38-511 applies to this contract as if fully set forth herewith, which allows cancellation of this contract, within three years after its execution if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or consultant to any other party of the contract with respect to the subject matter of the contract. The Parties will provide to Garkane notarized, sworn affidavits from each person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies stating that they and their actions are in full compliance with Arizona Rev. Stat. Ann. 38-511.

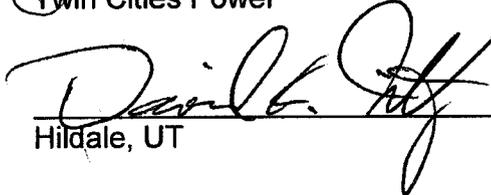
26. Upon execution of this Memorandum of Understanding by all parties, the parties will enter into negotiations for the development, approval and execution of:
- a. A Purchase and Sale Agreement for the System Assets between Garkane and Sellers; and
 - b. A Settlement Agreement and Release between Wells Fargo (on behalf of the bondholders), Hildale and Colorado City with respect to amounts owed
 - i. By Hildale to the bondholders on account of the outstanding revenue bonds issued in 1995 and 1997; and
 - ii. By Colorado City to Hildale and/or the bondholders under a certain Power Sales Contract dated December 15, 1995.
27. Without limiting the generality of the foregoing, the parties acknowledge and agree that all obligations of the Sellers contemplated here under are contingent on:
- a. The full, complete, and permanent release and discharge of the Sellers from any and all debts, liabilities, obligations or claims of any kind or nature whatsoever by or through any of the parties to this Memorandum;
 - b. The irrevocable commitment by Garkane to provide electric service to the residents and businesses of Colorado City and Hildale subject to Garkane obtaining all necessary approvals in satisfactory form to Garkane and
 - c. Approval of this Memorandum and all subsequent agreements pertaining to the subject matter hereof by the Colorado City Town Council, Hildale City Council, Wells Fargo Bank as Trustee for Bondholders, and Garkane Energy Board of Directors.
28. Final Closing of this Purchase/Sale Transaction will be contingent upon approval of the final documents and transaction by and/or receipt of necessary approvals from:
- 1. Garkane Board of Directors
 - 2. Twin Cities Board of Directors
 - 3. Hildale, UT. Town Council
 - 4. Colorado City, AZ Town Council
 - 5. Wells Fargo Bank as Trustees for Bondholders
 - 6. Affirmative vote of Hildale and Colorado City residents
 - 7. Utah Public Service Commission
 - 8. Arizona Corporation Commission

9. Rural Utilities Service (RUS)
 10. National Rural Utilities Cooperative Finance Corporation (CFC)
 11. DGT Board of Directors (Purchase Power Contract Only)
 12. Federal Energy Regulatory Commission (FERC)
29. Sellers acknowledge that Garkane must receive various regulatory approvals from the Arizona Corporation Commission ("ACC") as a precedent to and in order to close the Purchase/Sale Transaction as well as to commence providing electric service to Colorado City, Arizona. These regulatory approvals include, but are not limited to, expansion of Garkane's service territory to include areas sufficient and necessary to provide electric service to Colorado City as well as the rates, tariffs and rules and regulations under which Garkane is willing to provide electric service (the "Necessary Regulatory Approvals"). Should the ACC refuse to issue the Necessary Regulatory Approvals or if it attaches to any of the Necessary Regulatory Approvals modifications, terms or conditions which are unacceptable in Garkane's sole and absolute discretion, then Garkane may cancel the Purchase/Sale Transaction upon written notice to the other parties.

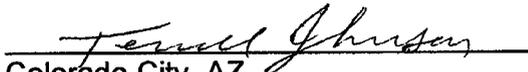
These terms and conditions are acceptable as a basis to negotiate the specific transaction hereby contemplated.


Twin Cities Power

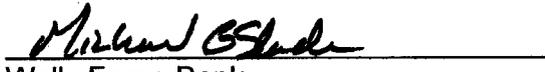
10-03-08
Date


Hildale, UT

10-3-08
Date


Colorado City, AZ

11-3-08
Date


Wells Fargo Bank

11-19-8
Date


Garkane Energy Cooperative, Inc.

11/12/08
Date

EXHIBIT B

**Legal Description of the Metes and Bounds
Colorado City, Mohave County, Arizona**

Beginning at a point in Range 6 West Township 42 North; the Northwest Corner of Sec 31 on the Utah/Arizona State Line; thence East along the Arizona State Line, Sec 31, 32, 33, to the North Quarter Corner of Sec 33; thence South to the South Quarter Corner of Sec 33, Range 6 West, Township 42 North, which also is the North Quarter Corner of Sec 4, Township 41 North, Range 6 West; thence South along the Quarter Line of Sec 4 & 9 to the South Quarter Corner of Sec 9; thence West along the South Boundary of Sec 9, 8 and 7 to the Southwest Corner of Sec 7 Township 41 North, Range 6 West; thence North along the West Boundary of Sec 7, and Sec 6, Township 41 North, Range 6 West and continuing North along the West Boundary of Sec 31, Township 42 North, Range 6 West to the point of beginning.

EXHIBIT "B"

INTEREXCHANGE TELECOMMUNICATIONS SERVICES TARIFF

SECTION 4 - GRANDFATHERED SERVICES AND RATES, (CONT'D.)

4.9 Dedicated Long Distance, Cont'd.)

4.9.3 Rates and Charges

Intrastate Long Distance Rates \$0.090

Effective June 21, 2003, for new service orders only, the Platinum Rate listed above will be replaced with the new rate below.

Intrastate Long Distance Rate \$0.086

Local Calls over Dedicated Long Distance Trunks \$0.06

	MRC	NRC	
Verified Account Codes, 1-100	\$10.00	\$25.00	
Verified Account Codes, per 100 after 1 st 100	\$10.00	\$25.00	
Changes to Verified Account Codes, per change	N/A	\$10.00	
Toll Free Number – Per number	\$12.00	N/A	
Toll Free Number Directory Listing, Per Listing	\$10.00	\$35.00	(C)
Toll Free – Real Time ANI	\$100.00	\$200.00	(D)
Toll Free – Digital Number Identification Service	\$35.00	\$75.00	

(Material found on this page was previously located on Page 102)