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BEFORE THE ARIZONA CORPORATION COMMISSION

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

2009 DEC 21 P 2:08

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC 21 2009

DOCKETED BY

8 IN THE MATTER OF THE PETITION OF
9 GARKANE ENERGY COOPERATIVE, INC.
10 FOR A DECLARATORY ORDER.

DOCKET NO. E-01891A-09-0377

PROCEDURAL ORDER

11 **BY THE COMMISSION:**

12 On July 30, 2009, Garkane Energy Cooperative, Inc. ("Garkane") filed with the Arizona
13 Corporation Commission ("Commission") a Petition for Declaratory Order ("Petition"). In its
14 Petition, Garkane requests that the Commission issue a declaratory order confirming that Garkane is
15 not required to obtain Commission approval of financings under A.R.S. §§ 40-301 et seq. or
16 encumbrances under A.R.S. § 40-285 because Garkane is a foreign public service corporation
17 engaged in interstate commerce. In the alternative, Garkane requests retroactive Commission
18 approval of a November 1999 mortgage and security agreement, a December 2003 loan agreement,
19 an October 2007 loan agreement, an April 2009 substitute secured promissory note, and a May 2009
20 revolving line of credit (collectively "the past transactions"). Garkane was required to file its
21 Petition, by Decision No. 70979 (May 5, 2009), and indicated in that matter that it was amenable to
22 doing so.

23 On September 16, 2009, a Procedural Order was issued scheduling a procedural conference to
24 be held on September 30, 2009, at the Commission's offices in Phoenix, to discuss the procedures
25 and scheduling for this matter.

26 On September 30, 2009, a procedural conference was held in this matter. Garkane and the
27 Commission's Utilities Division ("Staff") appeared through counsel. At the procedural conference,
28 Garkane and Staff both stated that they believe no hearing is necessary to resolve the legal issues
raised by Garkane's Petition. Staff suggested that the legal issues raised be resolved through a

1 Recommended Order from the Hearing Division and that additional proceedings be held regarding
2 the past transactions only if it is first determined that Garkane is legally required to obtain
3 Commission approval of its financings. Counsel for Garkane agreed with Staff's suggested approach.
4 The parties also agreed that no public notice was necessary at that time, but that the issue of public
5 notice should be revisited in the event additional proceedings are scheduled regarding the analysis
6 and approval of the past transactions. The parties suggested that Staff be provided approximately one
7 month to file a Response to Garkane's Memorandum of Points and Authorities and that Garkane then
8 be provided two to three weeks to file a Reply to Staff's Response.

9 On October 1, 2009, a Procedural Order was issued establishing the deadlines for Staff's
10 Response and Garkane's Reply. Those deadlines were subsequently extended, by a Procedural Order
11 issued on November 3, 2009, in response to an unopposed Staff Request for Modification of the
12 Procedural Schedule.

13 On November 23, 2009, Staff filed its Response. In its Response, Staff indicates that it is
14 appropriate for the Commission to grant Garkane's Petition with respect to the past transactions, but
15 that "a disclaimer with respect to all financings transactions and related encumbrances in the future
16 under A.R.S. §§ 40-301 *et seq.* and 40-285 is unlikely to be appropriate." Staff asserts that the
17 Commission should continue to analyze Garkane's financing and related encumbrance applications
18 on a case-by-case basis.

19 On December 16, 2009, Garkane filed a Reply in Support of Petition for Declaratory Order
20 (Oral Argument Requested) as well as a Request for Procedural Conference. In its Reply, Garkane
21 asserts that the Commission should reject Staff's recommended case-by-case approach and should
22 grant Garkane's Petition because requiring Garkane to apply to the Commission so that the
23 Commission may determine whether to exercise jurisdiction over each Garkane financing transaction
24 and related encumbrance would be an impermissible burden on interstate commerce in violation of
25 the U.S. Constitution. Garkane proposes that instead of requiring Garkane to apply for a
26 jurisdictional ruling each time a financing transaction is contemplated in the future, the Commission
27 could order Garkane to file (1) a copy of each application submitted to the Public Service
28 Commission of Utah for such a transaction and (2) an affidavit describing the percentage of

1 Garkane's members who are located in Arizona at the time of the filing. Garkane asserts that this
2 would allow the Commission essentially to monitor Garkane's customer base for changes indicating a
3 greater presence in Arizona, while not requiring the Commission to make a ruling on each
4 transaction. Garkane requests that a procedural conference be held in January 2010 to discuss the
5 issues in this matter.

6 In light of the parties' apparent lack of agreement regarding the issues in this matter, it is
7 appropriate to hold a procedural conference to discuss how to proceed.

8 IT IS THEREFORE ORDERED that a **procedural conference shall be held on January 11,**
9 **2010, at 10:00 a.m.,** or as soon thereafter as is practicable, in **Room 100** at the Commission's offices
10 in Phoenix, Arizona, to discuss how to proceed in this matter.

11 IT IS FURTHER ORDERED that Counsel for Staff and Counsel for Garkane shall appear in
12 person at the procedural conference, but that the **company representative for Garkane may attend**
13 **telephonically by calling (602) 542-0375.**

14 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
15 Communications) applies to this proceeding and shall remain in effect until the Commission's
16 Decision in this matter is final and non-appealable.

17 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
18 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

19 DATED this 21st day of December, 2009.

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23 SARAH N. HARPRING
24 ADMINISTRATIVE LAW JUDGE
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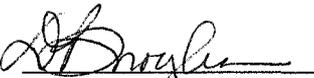
1 Copies of the foregoing mailed/delivered
this 21st day of December, 2009, to:

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