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BEFORE THE ARIZONA CORPORATION C

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

FEB 11 2011

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

DOCKETED BY *nr*

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

DOCKET NO. E-01891A-09-0377

DECISION NO. 72175

ORDER

Open Meeting
February 1 and 2, 2011
Phoenix, Arizona

BY THE COMMISSION:

This case involves a Petition for Declaratory Order ("Petition") filed with the Arizona Corporation Commission ("Commission") by Garkane Energy Cooperative, Inc. ("Garkane"), a Utah nonprofit rural electric cooperative that supplies electricity to customers in Utah and in parts of Mohave and Coconino Counties in northern Arizona. In its Petition, Garkane requests that the Commission enter an order confirming that A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285 are not applicable to Garkane's secured loan transactions because Garkane is a foreign public service corporation engaged in interstate commerce or, alternatively and without waiving its jurisdictional position, retroactively approving five financial transactions entered into by Garkane in 1999, 2003, 2007, and 2009.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

Background

1. Garkane is a Utah nonprofit rural electric cooperative that supplies electricity to

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1 customers in Utah and in parts of Mohave and Coconino Counties in northern Arizona.¹ As of
2 December 31, 2009, Garkane had 11,187 customers in Utah (88.95 percent of total) and 1,390
3 customers in Arizona (11.05 percent of total). (Statement of Facts Concerning Prior Financial
4 Transactions, filed February 1, 2010 (“SOF”) Ex. F.)

5 2. The Commission initially granted Garkane a Certificate of Convenience and Necessity
6 (“CC&N”) to provide electric utility services in Arizona in Decision No. 38446 (April 4, 1966).²

7 3. Garkane is domiciled in Utah and applies to the Utah Public Service Commission
8 (“Utah PSC”) for approval of its financing transactions. (Decision No. 70979 at 6-7.)

9 4. Garkane purchases electric energy from plants located in different states. (Petition Ex.
10 A, Affidavit of Ira Mike Avant.)

11 5. Garkane owns and operates electricity generation plants, transmission lines, and
12 distribution facilities in Utah and Arizona. (*Id.*)

13 6. Garkane transmits electric energy across state boundaries to its members/customers in
14 Utah and Arizona. (*Id.*)

15 7. Garkane provides administrative, accounting, engineering, and other services to its
16 operating divisions and facilities in Utah and Arizona. (*Id.*)

17 8. Garkane has not applied for Commission approval of its financings since at least early
18 1999, based upon its belief that as a foreign public service corporation engaged in interstate
19 commerce, it is not required to obtain such approval. (Decision No. 70979 at 6.)

20 9. Garkane’s belief was communicated to the Commission’s Legal Division in an April
21 8, 1999, letter from Garkane’s counsel to the then-Chief Counsel for the Commission, in which
22 Garkane’s counsel stated that he was memorializing a discussion in which the two had agreed that
23 because of Commerce Clause restrictions and Garkane’s status as a foreign public service corporation
24 engaged in interstate commerce and owning facilities in more than one state, Garkane is not required
25 to obtain Commission approval of financings. (Petition Ex. D.) Garkane’s counsel stated in the letter

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27 ¹ Official notice is taken of Decision No. 70979 (May 5, 2009), in which Garkane’s Certificate of Convenience and
Necessity (“CC&N”) was extended to include Colorado City.

28 ² The original order, Decision No. 38392 (February 3, 1966), was revoked and reissued verbatim as Decision No.
38446 to alleviate due process concerns related to improper and belated service of the original order.

1 that Garkane would not seek Commission approval for an imminent loan or for any future loan
2 applications unless the Chief Counsel called to inform him that he had misunderstood or misstated
3 the conclusions reached in their discussion. (*Id.*)

4 10. Since April 1999, Garkane has entered into the following financial transactions: (1) a
5 Restated Mortgage and Security Agreement between and among the Rural Utilities Service (“RUS”),³
6 National Rural Utilities Cooperative Finance Corporation (“CFC”), and Garkane dated November 1,
7 1999; (2) a Loan Agreement in the amount of \$10 million between CFC and Garkane dated
8 December 22, 2003; (3) a Loan Agreement in the amount of \$15 million between CFC and Garkane
9 dated October 29, 2007; (4) a Substitute Secured Promissory Note in the amount of \$4.5 million
10 between CFC and Garkane dated April 22, 2009; and (5) a \$5 million Revolving Line of Credit
11 between CFC and Garkane dated May 18, 2009 (“the five transactions”).

12 11. In Decision No. 70979 (May 5, 2009), Garkane was ordered to file with the
13 Commission an application requesting a declaratory adjudication regarding the Commission’s
14 jurisdiction to approve Garkane’s financings under A.R.S. §§ 40-301 through 40-303 and Garkane’s
15 encumbrances under A.R.S. § 40-285 in light of Garkane’s status as a foreign public service
16 corporation engaged in interstate commerce. The Commission ordered Garkane, in its application,
17 alternatively to request approval of all financings and/or encumbrances that have been entered into by
18 Garkane and not approved by the Commission, if the Commission finds that approval of Garkane’s
19 financings and/or encumbrances is required.

20 12. The loans and credit facilities provided to Garkane by RUS and CFC have been
21 secured by standard form mortgages that create liens over all of Garkane’s assets in Utah and
22 Arizona, including assets acquired after the financing is extended. (Petition Ex. B, Affidavit of Stan
23 Chappell.) The five transactions were all approved by the Utah Public Service Commission (“Utah
24 PSC”). (*Id.*)

25 13. Stan Chappell, Garkane’s Finance Manager, asserts that Garkane’s financings and
26 encumbrances are for lawful objects within Garkane’s proper corporate purposes, are compatible with
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28 ³ RUS was formerly known as the federal Rural Electrification Administration.

1 the public interest, are necessary and appropriate for and consistent with the proper performance by
2 Garkane of its services as a public utility, and have not and will not impair Garkane's ability to
3 perform those services. (Petition Ex. B, Affidavit of Stan Chappell.)

4 **Procedural History**

5 14. On July 30, 2009, Garkane filed with the Commission its Petition, requesting that the
6 Commission enter an order confirming that A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285
7 are not applicable to Garkane's secured loan transactions because Garkane is a foreign public service
8 corporation engaged in interstate commerce or, alternatively and without waiver of Garkane's
9 jurisdictional position, retroactively approving the five transactions.

10 15. On September 16, 2009, a Procedural Order was issued scheduling a procedural
11 conference to be held on September 30, 2009, to discuss the process and scheduling for this matter.

12 16. On September 30, 2009, a procedural conference was held at the Commission's
13 offices in Phoenix, Arizona. Garkane and the Commission's Utilities Division ("Staff") appeared
14 through counsel. Garkane and Staff agreed that a hearing was not necessary in this matter. Staff
15 suggested that the proceeding could be bifurcated—with the resolution of the legal issue first being
16 addressed and then, only if necessary, scrutiny of the five transactions to follow. The parties
17 proposed for Staff to file a brief in response to Garkane's Petition and for Garkane then to file a reply
18 to Staff's brief.

19 17. On October 1, 2009, a Procedural Order was issued requiring Staff to file a Response
20 to the Petition by November 2, 2009, and requiring Garkane to file a Reply to Staff's Response by
21 November 23, 2009.

22 18. On November 2, 2009, Staff filed a Request for a Modification of the Procedural
23 Schedule, requesting that Staff's Response deadline be moved to November 23, 2009, and that
24 Garkane's Reply deadline be moved to December 11, 2009. Staff stated that Garkane supported the
25 modifications requested.

26 19. On November 3, 2009, a Procedural Order was issued extending Staff's Response
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1 deadline to November 23, 2009, and extending Garkane's Reply deadline to December 14, 2009.⁴

2 20. On November 23, 2009, Staff filed its Response to Garkane's Petition.

3 21. On December 16, 2009,⁵ Garkane filed its Reply to Staff's Response and a Request for
4 Procedural Conference.

5 22. On December 21, 2009, a Procedural Order was issued scheduling a procedural
6 conference to be held on January 11, 2010, to discuss how to proceed in this matter.

7 23. On January 11, 2010, a procedural conference was held at the Commission's offices in
8 Phoenix, Arizona. Garkane and Staff appeared through counsel and advocated their respective
9 positions. Garkane asserted that the Commission should grant its Petition and ratify the five
10 transactions, confirming that neither A.R.S. § 40-301 nor A.R.S. § 40-285 applies to those
11 transactions. Garkane proposed that going forward, each time it files an application for approval of a
12 financing with the Utah PSC, Garkane be required also to file a courtesy copy with the Commission
13 along with an affidavit verifying the current split of customers between Arizona and Utah. Staff
14 agreed that the five transactions should be ratified, but asserted that the Commission should not
15 permanently disclaim jurisdiction over transactions of this nature, instead asserting that the best
16 balance of the Arizona statutes and the Commerce Clause is to have Garkane file an application with
17 the Commission each time it files an application for approval of a financing with the Utah PSC, so
18 that the Commission can determine on a case-by-case basis whether Commission approval is
19 required. The parties both requested that the matter be taken under advisement and that a
20 Recommended Order be issued. The parties were directed to file a joint stipulation of facts
21 concerning the five transactions and were advised that if the joint stipulation contained enough
22 information, the matter would then be taken under advisement.

23 24. On February 1, 2010, the parties filed a Statement of Facts Concerning Prior Financial
24 Transactions, including copies of five Utah PSC Orders pertaining to the five transactions as well as
25 an affidavit by Stan Chappell, Finance Manager for Garkane, concerning Garkane's Arizona and
26 Utah customer counts as of December 31, 2009.

27 ⁴ This date allowed Garkane to retain a full three weeks to file its Reply.

28 ⁵ Garkane initially filed the Reply in the wrong docket on December 14, 2009, and then refiled it in the correct docket on December 16, 2009.

1 **The Five Transactions**

2 25. Transaction No. 1 involves a Restated Mortgage and Security Agreement, dated
 3 November 1, 1999, between Garkane, RUS, and CFC, entered into because Deseret Generation &
 4 Transmission Cooperative (“Deseret”) was restructuring its RUS debt through CFC, and all six of
 5 Deseret’s distribution cooperative members (“members”), including Garkane, were likewise required
 6 to refinance their existing RUS debts through CFC as part of the proposed transaction. (SOF at 1.)
 7 The Utah PSC approved Garkane’s⁶ refinancing in a Report and Order issued on July 3, 1996, in
 8 Docket No. 96-506-01, which also dealt with Deseret and the other five distribution cooperative
 9 members. (SOF Ex. A.) Transaction No. 1 was designed to effect a general restructuring of
 10 Deseret’s obligations, in response to Deseret’s financial difficulties. (SOF Ex. A at 2, 4, 5.) The
 11 Utah PSC concluded that it was in the public interest for each of the members to participate in the
 12 proposed transaction because the transaction would result in a more stable wholesale supply, rate
 13 risks would be reduced, and competitive incremental rates would be available, which would leave
 14 Deseret and the members in a better position to provide reliable and reasonably priced services to
 15 consumers. (SOF Ex. A at 11.) The Utah PSC Order authorized the members to issue promissory
 16 notes to CFC for Member Compromise Loans and to provide security interests in their assets to
 17 secure repayment of those Compromise Loans; to issue promissory notes to CFC for Member
 18 Refinancing Loans and to provide security interests to secure repayment of those Refinancing Loans;
 19 and to secure perpetual secured lines of credit from CFC in amounts approved by their respective
 20 boards of directors, up to \$7 million, and to provide security interests to secure repayment of those
 21 lines of credit. (SOF Ex. A at 12-13.) The approximate amounts for Garkane’s Member Refinancing
 22 Loan and Member Compromise Loan were \$12,978,576 and \$7,428,575, respectively. (SOF Ex. A at
 23 Ex. A.)

24 26. Transaction No. 2 involves a \$10 million loan-financing arrangement with CFC that
 25 allows Garkane to draw against the loan amount for capital as needed for project financing. (SOF Ex.

26 _____
 27 ⁶ In the Report and Order, Garkane is identified as Garkane Power Association, Inc. (SOF Ex. A.) Official notice is
 28 taken of an August 19, 2002, letter by Garkane CEO Carl Albrecht stating that Garkane Power Association, Inc. had
 officially changed its name to Garkane Energy Cooperative, Inc. effective April 27, 2001. The letter was filed with the
 Commission’s Corporations Division on September 19, 2002.

1 B.) Garkane planned to use the financing for a four-year construction work plan, to roll over an
2 existing line of credit, and possibly to fund the acquisition of Kanab City's municipal electric system.
3 (*Id.*) The Utah PSC approved the financing arrangement in a one-page Order issued on December 5,
4 2003, after receiving a recommendation for approval from the Division of Public Utilities of the Utah
5 Department of Commerce. (*Id.*)

6 27. Transaction No. 3 involves a long-term Loan Agreement and a related Secured
7 Promissory Note (jointly "Long-Term Loan Facility") with CFC in an amount up to approximately
8 \$15 million. (SOF Ex. C at 1, 4.) Garkane desired the Long-Term Loan Facility to supplement its
9 existing \$2 million line of credit (authorized as part of Transaction No. 1), upon which Garkane had
10 not yet drawn funds, and to use as a flexible financing source for ongoing capital projects and
11 potentially to finance future acquisitions of certain municipal power systems in its certificated area.
12 (SOF Ex. C at 2-3, 5.) The Long-Term Loan Facility is secured by a first-lien mortgage on
13 Garkane's electric system and assets. (*Id.* at 5.) The Utah PSC authorized the Long-Term Loan
14 Facility in a Report and Order issued on November 2, 2007. (*Id.* at 1, 6.)

15 28. Transaction No. 4 involves a Substitute Secured Promissory Note, dated April 22,
16 2009, for a 1999 loan from CFC in the amount of \$4,546,000. (SOF at 2.) The 1999 loan had been
17 approved by the Utah PSC in a one-page Report and Order issued on January 27, 2000. (SOF Ex. D.)
18 Transaction No. 4 was done solely to remove RUS as the guarantor of the loan and did not result in
19 Garkane's receiving any additional funds or incurring any new debt.⁷ (SOF at 2.)

20 29. Transaction No. 5 increased Garkane's line of credit with the CFC from \$2 million to
21 \$5 million. (SOF Ex. E at 1.) The Utah PSC approved the increased line of credit in a Report and
22 Order issued on March 30, 2009, after its Division of Public Utilities recommended approval of the
23 increased line of credit. (*Id.*) The Utah PSC found that the increase in the line of credit would not
24 harm the State of Utah, its citizens, or the Utah customers of Garkane and that it therefore was in the
25 public interest. (SOF Ex. E at 3.)

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27 ⁷ Garkane has not provided a Utah PSC Order approving the 2009 Substitute Secured Promissory Note. We infer that
28 Utah PSC approval was not obtained because the transaction did not result in any additional encumbrance of Garkane's
assets.

1 **The Statutes at Issue**

2 30. A.R.S. § 40-285 provides, in pertinent part:

3 **A.** A public service corporation shall not sell, lease, assign, mortgage
4 or otherwise dispose of or encumber the whole or any part of its railroad,
5 line, plant, or system necessary or useful in the performance of its duties
6 to the public, or any franchise or permit or any right thereunder, nor shall
7 such corporation merge such system or any part thereof with any other
8 public service corporation without first having secured from the
9 commission an order authorizing it to do so. Every such disposition,
10 encumbrance or merger made other than in accordance with the order of
11 the commission authorizing it is void.

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13 **C.** Nothing in this section shall prevent the sale, lease or other
14 disposition by any such corporation of property, which is not necessary or
15 useful in the performance of its duties to the public, and any sale of its
16 property by such corporation shall be conclusively presumed to have been
17 of property which is not useful or necessary in the performance of its
18 duties to the public as to any purchaser of the property in good faith for
19 value.

20

21 31. A.R.S. § 40-301 reads as follows:

22 **A.** The power of public service corporations to issue stocks and stock
23 certificates, bonds, notes and other evidences of indebtedness, and to
24 create liens on their property located within this state is a special privilege,
25 the right of supervision, restriction and control of which is vested in the
26 state, and such power shall be exercised as provided by law and under
27 rules, regulations and orders of the commission.

28 **B.** A public service corporation may issue stocks and stock
certificates, bonds, notes and other evidences of indebtedness payable at
periods of more than twelve months after the date thereof, only when
authorized by an order of the commission.

C. The commission shall not make any order or supplemental order
granting any application as provided by this article unless it finds that such
issue is for lawful purposes which are within the corporate powers of the
applicant, are compatible with the public interest, with sound financial
practices, and with the proper performance by the applicant of service as a
public service corporation and will not impair its ability to perform that
service.

D. The provisions of this article shall not apply to foreign public
service corporations providing communications service within this state
whose physical facilities are also used in providing communications
service in interstate commerce.

32. A.R.S. § 40-302 provides, in pertinent part:

A. Before a public service corporation issues stocks and stock
certificates, bonds, notes and other evidences of indebtedness, it shall first
secure from the commission an order authorizing such issue and stating
the amount thereof, the purposes to which the issue or proceeds thereof are

1 to be applied, and that, in the opinion of the commission, the issue is
 2 reasonably necessary or appropriate for the purposes specified in the
 3 order, pursuant to § 40-301, and that, except as otherwise permitted in the
 4 order, such purposes are not, wholly or in part, reasonably chargeable to
 5 operative expenses or to income. Before an order is issued under this
 6 section, notice of the filing of the application for such order shall be given
 7 by the commission or the applicant in such form and manner as the
 8 commission deems appropriate. The commission may hold a hearing, and
 9 make inquiry or investigation, and examine witnesses, books, papers, and
 10 documents, and require filing data it deems of assistance.

11 **B.** The commission may grant or refuse permission for the issue of
 12 evidences of indebtedness or grant the permission to issue them in a lesser
 13 amount, and may attach to its permission conditions it deems reasonable
 14 and necessary. The commission may authorize issues less than, equivalent
 15 to or greater than the authorized or subscribed capital stock of the
 16 corporation, and the provisions of the general laws of the state with
 17 reference thereto have no application to public service corporations.

18 **C.** A public service corporation shall not, without consent of the
 19 commission, apply the issue of any stock or stock certificate, bond, note or
 20 other evidence of indebtedness, or any part thereof, to any purpose not
 21 specified in the commission's order, or to any purpose specified in the
 22 commission's order in excess of the amount authorized for the purpose, or
 23 issue or dispose of the proceeds of such issuance on any terms less
 24 favorable than those specified in the order.

25 **D.** A public service corporation may issue notes, not exceeding seven
 26 per cent of total capitalization if operating revenues exceed two hundred
 27 fifty thousand dollars, for proper purposes and not in violation of law
 28 payable at periods of not more than twelve months after date of issuance,
 without consent of the commission, but no such note shall, wholly or in
 part, be refunded by any issue of stocks or stock certificates, bonds, notes
 or any other evidence of indebtedness without consent of the commission.

.....

33. A.R.S. § 40-303 provides, in pertinent part:

19 **A.** All stock and every stock certificate, and every bond, note or other
 20 evidence of indebtedness of a public service corporation, issued without a
 21 valid order of the commission authorizing the issue, or if issued with the
 22 authorization of the commission but not conforming to the order of
 23 authorization of the commission, is void, but no failure in any other
 24 respect to comply with the terms or conditions of the order of
 25 authorization of the commission shall make the issue void, except as to a
 26 person taking the issue other than in good faith and for value and without
 27 actual notice.

28 **B.** Every public service corporation which, directly or indirectly,
 issues or causes to be issued any stock or stock certificate, bond, note or
 other evidence of indebtedness not in conformity with the order of the
 commission authorizing the issue, or contrary to law, or which applies
 proceeds from the sale thereof or any part thereof, to any purpose other
 than the purpose specified in the commission order, or to any purpose
 specified in this order in excess of the amount in the order authorized for
 such purpose, is subject to a penalty of not less than five hundred or more
 than twenty thousand dollars for each offense.

1 C. A person is guilty of a class 4 felony who:

2 1. Knowingly authorizes, directs, aids in, issues or executes
3 any stock or stock certificate, bond, note or other evidence of indebtedness
4 not in conformity with the order of the commission authorizing such, or
5 contrary to law.

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7 34. The only express reference to foreign public service corporations in these statutes,
8 which appears in A.R.S. § 40-301(D), was added by the Arizona Legislature in 1971 and, by its own
9 language, excludes from the Commission's regulation under A.R.S. §§ 40-301 through 40-303 only
10 foreign public service corporations providing communications service in Arizona whose physical
11 facilities are also used to provide communications service in interstate commerce. (Laws 1971, Ch.
12 122, § 1.) A.R.S. § 40-285 makes no reference to a foreign public service corporation or to interstate
13 commerce.

14 **The Commerce Clause**

15 35. The Commerce Clause of the United States Constitution states: "The Congress shall
16 have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with
17 the Indian Tribes[.]" (U.S. Const. Art. I, § 8, Cl. 3.) Under a concept referred to as the "dormant
18 Commerce Clause," the Commerce Clause has been interpreted to prevent state regulation that
19 discriminates against or overly burdens interstate commerce. (See, e.g., *United Haulers Assoc., Inc.*
20 *v. Oneida-Herkimer Solid Waste Management Auth.*, 550 U.S. 330, 338, 346 (2007).)

21 **Attorney General Opinion No. 69-10**

22 36. In 1969, the Arizona Attorney General ("AG") issued Opinion No. 69-10 ("AG Op.
23 69-10") concerning whether a foreign public service corporation doing business in Arizona and also
24 engaged in interstate commerce must comply with the requirements of A.R.S. § 40-302 with regard
25 to issuance of stocks, stock certificates, bonds, notes, and other evidences of indebtedness payable at
26 periods of more than 12 months after issuance. The AG answered the inquiry in the negative,
27 explaining that although the Arizona Supreme Court had never considered the validity of A.R.S. §§
28 40-301 through 40-303 with regard to foreign public service corporations engaged in interstate
commerce, courts of other states that had decided the issue had generally held that public utility
commissions lacked such jurisdiction. (AG Op. 69-10 at 3.) Further, the AG stated that the holdings

1 in those other states' cases made it "readily apparent" that the legislatures of those states "never
2 intended . . . to subject foreign corporations to the jurisdiction of public utility commissions in the
3 issuance of securities." (AG Op. 69-10 at 7.) The AG stated: "It cannot be presumed that the
4 legislature intended to give the commission such power in the absence of such a statute and express
5 words to that effect." (*Id.*) The AG reasoned that because the pertinent parts of the Arizona statutes
6 were almost identical to those of other states interpreted in the cited cases, they should be interpreted
7 in the same way—not to require a foreign corporation engaged in interstate commerce to obtain
8 Commission approval for the issuance of stocks, stock certificates, bonds, notes, and other evidences
9 of indebtedness. (*Id.*) The AG cited cases from California, Missouri, Illinois, and New Hampshire in
10 which state courts essentially concluded that their statutes could not be applied to restrict a foreign
11 corporation's issuance of securities, a corporate power authorized by the incorporating state and
12 indivisible among states. (*See id.* at 3-6.) The AG also cited *United Air Lines, Inc. v. Illinois*
13 *Commerce Commission*, 207 N.E.2d 433 (Ill. 1965), in which the Illinois Supreme Court determined
14 that the Illinois commission did not have jurisdiction to regulate the issuance of securities by United,
15 a foreign corporation engaged in interstate commerce, because such regulation would impose an
16 undue burden on interstate commerce. (AG Op. 69-10 at 6.)

17 37. Although A.R.S. § 40-285 existed at the time AG Op. 69-10 was issued and also
18 would have prohibited an electric utility from mortgaging or otherwise encumbering its necessary or
19 useful system without prior Commission approval, it was not mentioned in AG Op. 69-10.

20 38. Attorney General opinions are advisory in nature and are not binding, although they
21 "should be accorded respectful consideration." (*Ruiz v. Hull*, 191 Ariz. 441, 449 (1998).)

22 **The Parties' Positions**

23 **Garkane's Position**

24 39. Garkane's position is that A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285 do
25 not require the Commission to approve Garkane's financings and mortgage encumbrances and,
26 indeed, that the U.S. Constitution prohibits the Commission from doing so because such regulation
27 would unduly burden interstate commerce. Garkane asserts that the Commission has considered the
28 application of A.R.S. §§ 40-301 through 40-303 to foreign public service corporations engaged in

1 interstate commerce several times over the past three decades and has, on each occasion, disclaimed
2 jurisdiction. (Petition Ex. C at 1⁸.) Garkane asserts that, in so ruling, the Commission has relied
3 upon AG Op. 69-10. (Petition Ex. C at 1.) Garkane also points out that in Decision No. 61895, the
4 Commission made a Finding of Fact that the Commission's Legal Division believed that Commission
5 approval was not required for the issuance of securities by foreign public service corporations
6 engaged in interstate commerce. (Petition Ex. C at 1-2 (quoting Decision No. 61895 at 2).) Garkane
7 further asserts that the Commission's then-Chief Counsel confirmed in 1999 that the Commission
8 does not have jurisdiction over Garkane's debt and lien matters, an assertion based on a letter from
9 Garkane's counsel to the then-Chief Counsel memorializing a conversation between the two.
10 (Petition Ex. C at 2, Ex. D.) Garkane asserts that the Commission's exercise of regulatory
11 jurisdiction over Garkane's debt financings and encumbrances related to loans would create an
12 impermissible burden on interstate commerce in violation of the United States Constitution. When
13 asked whether AG Op. 69-10 remained authoritative after the 1971 legislative amendment to A.R.S.
14 § 40-301 in which subsection (D) was added, Garkane asserted that the legislative amendment would
15 not invalidate the Commission's prior jurisdictional disclaimers and pointed out that each of the
16 Commission Decisions cited by Garkane had been issued after the 1971 legislative amendment.
17 (Petition Ex. C at 2 (citing *Dupnik v. MacDougall*, 136 Ariz. 39, 44 (1983) for the proposition that
18 where there has been a history of acquiescence in the meaning of a law, it will not be disturbed unless
19 manifestly erroneous).) Garkane asserts that the Commission's jurisdictional analysis has
20 consistently been based on federal constitutional grounds rather than on the statutory exclusion in
21 A.R.S. § 40-301(D) and that the Commission has cited AG Op. 69-10 and multiple state courts while
22 "repeatedly recogniz[ing] that its regulatory supervision over the financings of foreign public service
23 corporations who are engaged in interstate commerce 'would create an impermissible burden on
24 interstate commerce in violation of the United States Constitution.'" (Petition Ex. C at 3 (quoting
25 Decision No. 51727 at 3; Decision No. 52244 at 4; Decision No. 53560 at 3; Decision No. 61895 at
26 2).) Garkane asserts that courts have long recognized that the ability to obtain financing significantly

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28 ⁸ Garkane cites Decision No. 51727 (January 16, 1981); Decision No. 52244 (June 18, 1981); Decision No. 53560 (May 18, 1983); and Decision No. 61895 (August 27, 1999).

1 and directly impacts a public service corporation's ability to deliver service, operate, and exist, and
2 further asserts that the additional administrative burdens and "chaos" that would result from requiring
3 Garkane to obtain financing approval from multiple states, with potentially different approval
4 standards and conditions, would outweigh any benefits or interest that Arizona may have in
5 regulating the financings. (Petition Ex. C at 3.⁹)

6 40. Garkane asserts that applying A.R.S. § 40-285 to Garkane would violate the same
7 constitutional principles as described above and would also be contrary to Arizona caselaw on
8 statutory construction. (Petition Ex. C at 4.) Garkane asserts that A.R.S. § 40-285 must be read in
9 conjunction with A.R.S. § 40-301, which also addresses Commission regulation of public service
10 corporation debts and liens on a public service corporation's property. (*Id.*) Garkane asserts that
11 because both relate to a company's ability to pledge its assets, they must be interpreted consistently
12 and harmoniously—to apply to domestic public service corporations only. (*Id.* at 4-5.) Garkane
13 asserts that it would not make sense to find that the Constitution prohibits jurisdiction over Garkane's
14 financing transactions under A.R.S. § 40-301, but allows jurisdiction over the securities required as
15 integral parts of the same transactions. (*Id.* at 5.) Garkane interprets A.R.S. § 40-285 to apply to all
16 of the various transactions identified therein, except foreign utility transactions involving a lien or
17 mortgage in conjunction with a financing transaction under A.R.S. § 40-301. (*Id.*) Garkane asserts
18 that this interpretation follows the principle that where statutes conflict, effect must be given to the
19 more specific statute while still adhering to the intent of the more general statute (*Id.* (citing *Backus v.*
20 *State*, 203 P.3d 499, 502 (2009); *Friedemann v. Kirk*, 197 Ariz. 616, 618 (App. 2000)).) Garkane
21 reasons that A.R.S. § 40-285 is the more general statute, generally addressing all transactions that
22 could involve a public service corporation's transfer of possession or rights to its necessary and
23 useful property, to prevent impairment of service therefrom, while A.R.S. § 40-301 "is aimed
24 precisely at a public service corporation's need to raise funds by obtaining, among other things, debt
25 financing secured by a lien or mortgage." (*Id.* at 5-6.) Garkane further asserts that A.R.S. § 40-285
26 should be interpreted in a manner that preserves its constitutional validity—*i.e.*, as not applicable to

27 ⁹ Garkane cites *United Air Lines, Inc. v. Illinois Comm. Comm'n*, 207 N.E.2d 433, 438 (Ill. 1965); *State ex rel. Utils.*
28 *Comm'n v. Southern Bell Tel. & Tel. Co.*, 217 S.E.2d 543, 550 (N.C. 1975); *Panhandle E. Pipe Line Co. v. Public Util.*
Comm'n of Ohio, 383 N.E.2d 1163 (Ohio 1978); and *ANR Pipeline Co. v. Schneidewind*, 801 F.2d 228 (6th Cir. 1986).

1 foreign public service corporations engaged in interstate commerce. (*Id.* at 6 (citing *Phoenix*
2 *Newspapers, Inc. v. Superior Court*, 180 Ariz. 159, 163 (App. 1993)).)

3 41. In response to Staff's concern that facts might change in the future, Garkane offered to
4 file with the Commission a copy of any future finance application submitted to the Utah PSC,
5 together with an affidavit stating Garkane's then-current customer count, so that the Commission and
6 Staff can monitor whether the Commission's jurisdictional position should change. (Reply at 2.)
7 Garkane asserts that this will save time and money for Garkane and its members and for the
8 Commission and Staff, while still allowing Staff and the Commission to monitor Garkane's situation.
9 (*Id.*)

10 Staff's Position

11 42. Staff's position is that although A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-
12 285, on their faces, are applicable to the transactions in question, federal constitutional considerations
13 warrant the Commission's considering Garkane's financing matters on a case-by-case basis going
14 forward, because facts change. (Response at 1.) Staff acknowledged that the Commission has
15 disclaimed jurisdiction in certain past cases, but asserted that it would not be advisable to disclaim
16 jurisdiction permanently for certain entities or transactions, because facts change. (*Id.*) Staff asserts
17 that the five transactions do not require retroactive approval, however, and that the Commission
18 should grant Garkane's Petition and confirm that A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-
19 285 did not apply to them. (Response at 1, 8.)

20 43. Staff asserts that A.R.S. § 40-301 on its face applies to the issuance of stocks and
21 bonds by Garkane and that Garkane's reliance upon AG Op. 69-10 to avoid the statute's applicability
22 is misplaced because AG Op. 69-10 was issued in 1969, two years before A.R.S. § 40-301 was
23 amended by the addition of subsection (D), which exempts foreign public service corporations
24 providing communications service within Arizona whose physical facilities are also used in providing
25 communications service in interstate commerce. (Response at 3-4.) Staff reasons that the version of
26 A.R.S. § 40-301 upon which AG Op. 69-10 was based was unclear as to legislative intent and that the
27 legislature may have been responding to AG Op. 69-10 when it added subsection (D). (*See* Response
28

1 at 4 (quoting AG Op. 69-10 at 7¹⁰.) In any event, Staff asserts, the legislature clearly intended
 2 through the addition of subsection (D) to exempt only those foreign public service corporations
 3 engaged in providing both intrastate and interstate communications service from its provisions.
 4 (Response at 4.) Staff also points out that A.R.S. § 40-301 *et seq.* have never been found
 5 unconstitutional by any court and, further, that AG Op. 69-10, like all Attorney General opinions, is
 6 merely advisory. (Response at 4.) Staff further asserts that one of the Commission Decisions relied
 7 upon by Garkane (Decision No. 51727) is distinguishable because the foreign public service
 8 corporation involved was also providing interstate communications service, and that in the others, the
 9 Commission did not expressly consider the legislative amendment to A.R.S. § 40-301. (Response at
 10 5.)

11 44. Regarding A.R.S. § 40-285, Staff points out that neither AG Op. 69-10 nor the
 12 Commission Decisions relied upon by Garkane discussed the applicability of A.R.S. § 40-285 to
 13 foreign public service corporations engaged in interstate commerce.¹¹ (Response at 5-6.) Staff also
 14 asserts that A.R.S. § 40-285's purpose—to prevent a utility from disposing of resources devoted to
 15 providing utility service, thereby “looting” its facilities and impairing service to the public—is clearly
 16 different from the purpose behind the other statutes. (Response at 6.) Staff asserts that if the
 17 Commission disclaims jurisdiction under A.R.S. §§ 40-301 through 40-303 based upon the facts of a
 18 case, a similar disclaimer with respect to a related encumbrance under A.R.S. § 40-285 may be
 19 appropriate, but the determination should be made on a case-by-case basis. (*Id.*)

20 45. Staff asserts that the Commission's jurisdictional analysis has consistently been based
 21 on federal constitutional grounds rather than on the statutory exclusion in A.R.S. § 40-301(D), as
 22 evidenced by the Commission's citing to AG Op. 69-10 and multiple state courts when finding that
 23 its regulatory supervision of the financings of foreign public service corporations engaged in
 24 interstate commerce could create an impermissible burden on interstate commerce in violation of the
 25

26 ¹⁰ “[W]here the language of a statute is sufficiently broad to include within its provisions foreign corporations, it was
 27 not to be presumed that the legislature intended to give the commission such power, and in the absence of plain
 28 indications to the contrary, such statutes applied only to domestic corporations.” (AG Op. 69-10 at 7.)

¹¹ Staff stated that one of the cases relied upon by Garkane did discuss A.R.S. § 40-285, but only in the context of a
 utility's seeking confirmation that § 40-285(A) does not apply to assets that are not necessary or useful in the performance
 of the utility's duties as a public service corporation. (Response at 6 (citing Decision No. 61985 at 2).)

1 United States Constitution. (Response at 6 (citing Decision No. 51727 at 3; Decision No. 52244 at 4;
2 Decision No. 53560 at 3; Decision No. 61895 at 2).) Staff reasons that a state has the authority to
3 regulate foreign utilities engaged in interstate commerce within the state, as to essentially local
4 concerns, but only to the point where the regulation does not impose an undue burden on the foreign
5 public service corporation. (Response at 7 (citing *Panhandle E. Pipe Line Co. v. Public Utils.*
6 *Comm'n*, 383 N.E.2d 1163 (Ohio 1978).) Staff adds that having more than one state with the power
7 to approve or disapprove a single transaction may be sufficient to find an impermissible burden,
8 because of the possibility of conflicting or varying regulations. (See Response at 7 (citing *State ex*
9 *rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co.*, 217 S.E.2d 543 (N.C. 1975).) Staff notes,
10 however, that Garkane does not argue that the Utah PSC's exercise of jurisdiction over Garkane's
11 financial transactions constitutes an impermissible burden on interstate commerce and instead cites it
12 as a reason for the Commission to disclaim jurisdiction.¹² (Response at 7.) Staff characterizes
13 Garkane's as a unique situation because it used to have 90 percent of its members/owners in Utah,
14 which, combined with federal constitutional concerns, made it appropriate for the Commission to
15 disclaim jurisdiction over Garkane's financial transactions; but, Staff says, Garkane's situation has
16 changed and could again change and, thus, the Commission should not disclaim its jurisdiction over
17 Garkane's future financial transactions. (*Id.*) Instead, Staff asserts, the Commission should grant
18 Garkane's Petition as to the five transactions, but require Garkane to apply to the Commission for
19 approval of all future financial transactions so that they may be considered by the Commission on a
20 case-by-case basis. (Response at 7-8.)

21 **Discussion and Resolution**

22 46. On four prior occasions, the Commission has found that exercising A.R.S. §§ 40-301
23 through 40-303 jurisdiction over foreign corporations who are engaged in interstate commerce
24 "would create an impermissible burden on interstate commerce in violation of the United States
25 Constitution." (See Decision No. 51727 (January 16, 1981); Decision No. 52244 (June 18, 1981);
26 Decision No. 53560 (May 18, 1983); and Decision No. 61895 (August 27, 1999).) However, these

27 ¹² This is notable, we presume, because at least two of the cases cited by Garkane suggest that any state's exercise of
28 jurisdiction is an unconstitutional burden under some circumstances. (See, e.g., *Panhandle*, 383 N.E.2d at 1169; *United*
Air Lines, 207 N.E.2d at 438.)

1 decisions do not set forth any dormant Commerce Clause analysis, so it is impossible to scrutinize
2 their underpinnings and determine whether they were appropriately decided.

3 47. To determine whether a state law violates the dormant Commerce Clause, one first
4 must determine whether the law discriminates on its face against interstate commerce, by differently
5 treating in-state and out-of-state economic interests to benefit the former and burden the latter.
6 (*United Haulers*, 550 U.S. at 338.) If a discriminatory state law is motivated by economic
7 protectionism, it is virtually per se invalid and can only be redeemed by a showing that the state has
8 no other means to advance a legitimate local purpose. (*Id.*) If no facial discrimination is found
9 because in-state business interests are treated the same as out-of-state business interests, the next test
10 is that set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), which is used to analyze the
11 constitutionality of nondiscriminatory laws that are directed to local concerns, but that have
12 incidental effects upon interstate commerce. (*United Haulers*, 550 U.S. at 346.) Under *Pike*, such a
13 law is upheld unless the burden on interstate commerce is clearly excessive in relation to the putative
14 local benefits. (*United Haulers*, 550 U.S. at 346.)

15 48. With the exception of foreign public service corporations providing communications
16 services and with facilities used to provide communications services in interstate commerce, which
17 are expressly excepted in A.R.S. § 40-301(D), A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285
18 on their faces appear to apply equally to all public service corporations, regardless of domicile. The
19 statutes are facially neutral in that, except for A.R.S. § 40-301(D), they apply the same standards
20 across the board to all public service corporations, whether domestic or foreign. Thus, it is
21 appropriate to apply the *Pike* test to determine their constitutionality, which necessitates scrutiny of
22 the local interests served and a balancing of those interests against any burden on interstate
23 commerce.

24 49. The local interests served by A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285
25 are great. The United States Supreme Court has recognized that “the regulation of utilities is one of
26 the most important of the functions traditionally associated with the police powers of the states.”
27 (*Arkansas Elec. Coop. v. Arkansas Pub. Serv. Comm’n*, 461 U.S. 375, 377 (1983).) A.R.S. §§ 40-
28 301 through 40-303 are designed to ensure that public service corporations do not issue stock, stock

1 certificates, bonds, notes, or other evidence of long-term indebtedness or create liens on their Arizona
2 property unless doing so is consistent with the public interest, sound financial practices, and a public
3 service corporation's maintaining its ability to provide an appropriate level of service as a utility.
4 A.R.S. § 40-285 is designed, in pertinent part, to ensure that a public service corporation does not
5 divest itself of or encumber any portion of its plant or system that is necessary or useful in
6 performing its duties as a utility, so as to prevent it from impairing its service. At their most basic
7 levels, A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285 are designed to ensure that public
8 service corporations are not able to engage in inadvisable financial dealings that will jeopardize their
9 ability to provide an appropriate level of service to their customers at just and reasonable rates. They
10 are designed to protect utility customers from being placed in jeopardy of receiving substandard
11 service or no service or of paying unjust rates and charges to receive service, where the jeopardy is
12 caused by inadvisable or unjust financial decisions of the public service corporation. It is
13 incontrovertible that the local interests served by the statutes are legitimate and of great importance.

14 50. The obvious potential burden to Garkane, and on interstate commerce, is the prospect
15 of inconsistent regulation; this Commission may say no to a transaction, even if the Utah PSC may
16 have said yes, or may impose with its approval conditions that are not required by the Utah PSC.
17 This potential burden is significant. Several state supreme courts have concluded that this burden is
18 sufficient to overcome a public service commission's strong local interests in regulating a foreign
19 public service corporation's issuance of securities. (*Panhandle E. Pipe Line Co. v. Public Util.*
20 *Comm'n*, 383 N.E.2d 1163 (Ohio 1978); *Utilities Comm'n v. Southern Bell Tel. & Tel. Co.*, 217
21 S.E.2d 543 (N.C. 1975); *United Air Lines, Inc. v. Illinois Commerce Comm'n*, 207 N.E.2d 433 (Ill.
22 1965); *United Air Lines, Inc. v. Nebraska State Ry. Comm'n*, 112 N.W.2d 414 (Neb. 1961).)

23 51. We do not believe the facts of this case, however, are well-suited towards supporting
24 the exercise of Commission jurisdiction under A.R.S. §§ 40-301 through 40-303 or under A.R.S. §
25 40-285. There may be a case in which the public protection afforded by the exercise of such
26 jurisdiction outweighs the burden to interstate commerce, but this is not the case. Garkane is a
27 nonprofit rural electric cooperative and thus has less incentive to enter into questionable financial
28 dealings for its own enrichment, and those of its investors, than would a for-profit investor-owned

1 public service corporation. Garkane has been serving Arizona customers pursuant to its CC&N
 2 authority since 1966, has been providing electricity for more than 70 years, and is a stable company.¹³
 3 Garkane currently has approximately 89 percent of its customers in Utah and approximately 11
 4 percent of its customers in Arizona. Garkane is financially sound, with a margins and equity to total
 5 assets level of approximately 36 percent.¹⁴ Garkane has had no rate increases since 1998 and yet was
 6 able to provide the citizens of Colorado City a rate decrease when its CC&N was extended to include
 7 them concurrent with Garkane's acquisition of the Twin Cities Power Authority system in 2009.¹⁵
 8 Garkane generally has a history of compliance with Commission requirements.¹⁶ In addition, as
 9 noted previously, Garkane's financial transactions are reviewed by the Utah PSC. In light of these
 10 facts, we find that the Commission's interest in exercising its jurisdiction to regulate financial
 11 transactions under A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285 is clearly outweighed by
 12 the onerous impact to interstate commerce. Thus, based on the currently existing facts, we conclude
 13 that it would be an impermissible burden on interstate commerce for the Commission to exercise
 14 jurisdiction over Garkane pursuant to A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285 at this
 15 time.

16 52. We do not need to decide in this case whether it is *per se* an unconstitutional burden
 17 on interstate commerce, under U.S. Const. Art. I, § 8, Cl. 3, for the Commission to exercise its
 18 jurisdiction under A.R.S. §§ 40-301 through 40-303 or under A.R.S. § 40-285 as against a foreign
 19 public service corporation engaged in interstate commerce. Accordingly, we decline to do so.

20 53. It was reasonable for Garkane to rely on the prior Commission decisions referenced
 21 herein in deciding that it was not required to obtain Commission approval of the five transactions.
 22 Based on our finding that exercising jurisdiction over Garkane's financial transactions under A.R.S.
 23 §§ 40-301 through 40-303 or under A.R.S. § 40-285 would be an impermissible burden on interstate
 24 commerce, we find that it is unnecessary for the Commission to take any action regarding the five
 25 transactions. This should not be construed as a finding that the five transactions are void under
 26

27 ¹³ Decision No. 70979 at 2, 13.

¹⁴ *Id.* at 13.

¹⁵ *Id.*

28 ¹⁶ *See id.*

1 A.R.S. §§ 40-303(A) or 40-285(A).

2 **CONCLUSIONS OF LAW**

3 1. Garkane is a public service corporation within the meaning of Article XV of the
4 Arizona Constitution and A.R.S. Title 40, Chapter 2.

5 2. The Commission has jurisdiction over Garkane and the subject matter of its Petition
6 for a Declaratory Order.

7 3. Garkane is a foreign public service corporation doing business in the State of Arizona
8 and is engaged in interstate commerce.

9 4. Under the currently existing facts, it would be an impermissible burden on interstate
10 commerce, under U.S. Const. Art. I, § 8, Cl. 3, for the Commission to exercise its jurisdiction under
11 A.R.S. §§ 40-301 through 40-303 or under A.R.S. § 40-285 as against Garkane, in relation to
12 Garkane's future transactions for which approval would be required under those statutes.

13 5. It is reasonable and appropriate and in the public interest for the Commission not to
14 take any action as to the five transactions described herein. This inaction is not intended and should
15 not be construed as a finding that the five transactions are void under A.R.S. § 40-303(A) or A.R.S. §
16 40-285(A).

17 6. It is not necessary for the Commission to hold an evidentiary hearing before issuing
18 this Decision.

19 **ORDER**

20 IT IS THEREFORE ORDERED that, based on the currently existing facts, at this time,
21 Garkane Energy Cooperative, Inc. is not required to apply to the Commission for approval of each
22 future transaction for which approval would be required under A.R.S. §§ 40-301 through 40-303, and
23 A.R.S. § 40-285 with respect to Garkane's debt-related encumbrances.

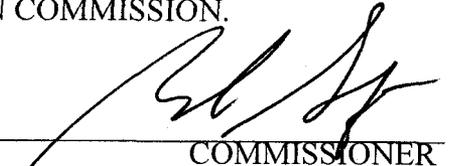
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1 IT IS FURTHER ORDERED that Garkane Energy Cooperative, Inc. shall file for
2 informational purposes, with Docket Control, in this docket, any application for approval of financing
3 filed with the Utah Public Service Commission, within 10 days of its filing; and a copy of any
4 subsequent Order issued by the Utah Public Service Commission regarding such application, within
5 10 days of its issuance.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8 
9 CHAIRMAN


COMMISSIONER

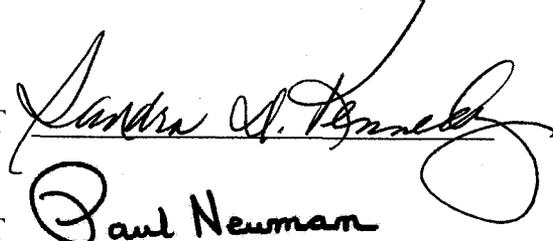
10
11 COMMISSIONER

COMMISSIONER


COMMISSIONER

12
13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this 11th day of February, 2011.

18 
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21
22 DISSENT 
23 DISSENT 

1 SERVICE LIST FOR: GARKANE ENERGY COOPERATIVE, INC.

2 DOCKET NO.: E-01891A-09-0377

3
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ARIZONA CORPORATION COMMISSION

February 10, 2011

Dissent Letter
Garkane Energy - Declaratory Order
E-01891A-09-0377

Dear Interested Parties:

This dissent letter is to explain my "no" vote on February 1, 2011 on the Garkane Energy Cooperative, Inc. ("Garkane" or "Cooperative") Declaratory Order.

Garkane is a Utah non profit rural electric cooperative that supplies power in parts of Mohave and Coconino Counties. One Thousand Three hundred ninety (1,390) Arizona customers rely on Garkane for their electricity needs.

The Cooperative's petition asked the Commission to declare that certain Arizona statutes, (A.R.S. §§ 40-285,-301,-302 and 303), do not apply to Garkane's loan transactions because Garkane is a foreign public service corporation engaged in interstate commerce.

I agree with the conclusion reached in the ALJ's well reasoned Recommended Order and Opinion ("ROO") that the Commission has jurisdiction over Garkane and its financial transactions. (Commission approval of Garkane's future loan transactions would not be an unconstitutional burden on interstate commerce.

However, the amendment adopted during the February Open Meeting, in my opinion reversed the ROO. I do not believe that it is in the public interest of the Arizona ratepayers to rely upon another state's public utility commission to review such transactions.

I believe that the Arizona Corporation Commission has a duty to our ratepayers no matter the size of the utility's service territory. I am not comfortable in handing that over to another state. I believe that approval could be accomplished in a streamlined process to minimize administrative burden.

Decision No. **72175**

I did not support the amendment and once the amendment was adopted, I could not vote for the decision.

A handwritten signature in cursive script, reading "Sandra D. Kennedy". The signature is fluid and includes a large, decorative flourish at the end of the name.

Sandra D. Kennedy
Corporation Commissioner