OPEN MEETING ITEM

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COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

ARIZONA CORPORATION COMMISSION

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ORIGINAL

Arizona Corporation Commission
DOCKETED
DEC 31 2013
DOCKETED BY

DATE: DECEMBER 31, 2013

DOCKET NO.: E-01851A-11-0415

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Jane L. Rodda. The recommendation has been filed in the form of an Order on:

COLUMBUS ELECTRIC COOPERATIVE, INC.
(DECLARATORY ORDER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 9, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 14, 2014 and JANUARY 15, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

JODI JERICH
EXECUTIVE DIRECTOR

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE PETITION OF COLUMBUS ELECTRIC COOPERATIVE, INC. FOR A DECLARATORY ORDER.	DOCKET NO. E-01851A-11-0415 DECISION NO. _____ **ORDER**

Open Meeting
January 14 and 15, 2014
Phoenix, Arizona

BY THE COMMISSION:

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

Procedural History

1. On November 18, 2011, Columbus Electric Cooperative, Inc. ("Columbus" or "Cooperative") filed with the Commission a Petition for Declaratory Order ("Petition") to confirm that Arizona Revised Statutes ("A.R.S.") §§ 40-301, 40-302, 40-303 and 40-285 do not apply to Columbus in relation to past or future secured loan transactions, or alternatively, for retroactive approval of three secured loans and attendant mortgages, and for the expedited approval to prepay and refinance certain loans.

2. In order to address the Cooperative's desire to expedite the refinancing of certain of its loans while the Commission was considering the factual and legal issues attendant with its request for Declaratory Order, the Petition was bifurcated into two phases. The first phase addressed the retroactive approval of three pre-existing loans and Columbus' request for authority to refinance.

Phase two (the current proceeding) is intended to address the request for an Declaratory Order confirming that Columbus does not require Commission approval prior to issuing secured debt.

3. In Decision No. 73156 (May 18, 2012), the Commission granted Columbus' financing/refinancing request, and approved three pre-existing loans, and authorized Columbus to refinance certain debt and to pledge its Arizona assets in connection with the authorized indebtedness. In that Decision, the Commission directed the parties to "consult with each other and file procedural recommendations for the resolution of the Declaratory Petition."[1]

4. On February 28, 2013, after consulting with Staff, Columbus filed a Motion for Procedural Order. In its Motion, Columbus noted that the Cooperative and Staff agreed that Decision No. 72175 (February 11, 2011), in the Matter of Garkane Energy Cooperative, Inc. ("Garkane Decision"), granted an exemption similar to that sought in this case, and that in light of the findings in the Garkane Decision, the parties agreed that the record in this proceeding needed to be developed further. Columbus requested a Procedural Order be issued adopting the parties' mutually proposed briefing schedule.

5. By Procedural Order dated March 14, 2013, Columbus was directed to file its brief by March 25, 2013, and Staff was directed to file its brief by April 29, 2013.

6. On March 21, 2013, Columbus filed a Request to Modify Procedural Order to adjust the initial briefing schedule. Staff had no objection, and on April 1, 2013, a Procedural Order extended the briefing schedule. Columbus was directed to file its Initial Brief by April 8, 2013, and the deadline for Staff's Responsive Brief, and any Reply Brief by Columbus remained unchanged at April 29, and May 13, 2013, respectively.

7. Columbus filed its Initial Brief and Affidavit of Chris Martinez, its Executive Vice President and General Manager, on April 4, 2013.

8. Staff filed its Responsive Brief on April 29, 2013. Staff recommended approving Columbus' Petition.

9. Columbus did not file a Reply Brief.

[1] Decision No. 73156 at 7.

10. By Procedural Orders dated July 25, 2013 and August 1, 2013, a Procedural Conference was scheduled to discuss supplementing the record to include information about the process and degree of regulation by the New Mexico Public Service Regulation Commission ("NMPRC"), and how such oversight may affect the Commission's analysis of the Petition. The parties were directed to provide additional facts concerning NMPRC's process for overseeing Columbus' borrowing from federal and non-federal lenders, and how any differences in the regulatory approaches between Utah (the state involved in the Garkane Decision) and New Mexico affect the analysis of whether A.R.S. §§ 40-301, 40-302 and 40-285 apply to Columbus's securities transactions.[2]

11. A Procedural Conference convened on August 29, 2013 with Columbus and Staff represented by counsel. At that time, the parties agreed on a briefing schedule for the supplemental information requested. Pursuant to that agreement, Columbus filed a Supplemental Brief on September 30, 2013, and Staff filed a Supplemental Responsive Brief on October 18, 2013.

Cooperative Background

12. Columbus is a New Mexico non-profit rural electric cooperative incorporated in the State of New Mexico on October 1, 1946. The Cooperative's headquarters and principal place of business is in Deming, Luna County, New Mexico.

13. Columbus provides retail electric service over 130 miles of transmission lines; 2,098 miles of energized overhead distribution lines; and 82 miles of underground distribution lines to customers in Grant, Luna, and Hidalgo Counties, New Mexico, and Cochise County, Arizona. At year-end 2012, Columbus had an average 5,259 consumers, with 4,782 (91 percent) located in New Mexico, and 476 (9 percent) located in Arizona. The Cooperative reports that of the 101,612,619 kWh sold in 2012, 94,922,572 kWh (93.4 percent) was sold to New Mexico consumers, and 6,690,047 kWh (6.6 percent) was sold to Arizona consumers; and of the $13,403,460 in total revenue, $12,549,381 (93.6 percent) was derived from New Mexico consumers and $854,079 (6.4 percent) was derived from Arizona consumers.[3]

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[2] July 25, 2013 Procedural Order.

[3] Affidavit of Chris Martinez, Executive Vice President and General Manager, attached to Columbus' Initial Brief.

14. Administrative services, including marketing, operations, maintenance, planning, finance, billing and support services, are provided from Columbus' central office in Deming, New Mexico. There are certain fixed structures physically located in Arizona, such as overhead and underground distribution lines and poles, but the vast majority of Columbus' assets are located in New Mexico, including all substations and the main office. Line crews serving the Arizona customers are based at a satellite office in Animas, Hidalgo County, New Mexico.

15. Columbus is a member/consumer of Tri-State Generation and Transmission Association, Inc. ("Tri-State"), located in Westminster, Colorado. Tri-State is a non-profit Colorado generation and transmission cooperative with 44 distribution cooperative members located in Wyoming, Colorado, New Mexico and Nebraska. Tri-State operates electric generation plants in New Mexico, Colorado and Arizona and purchases power on the open market for delivery to its member cooperatives, including Columbus. Tri-State also receives allotments from the Western Area Power Administration, headquartered in Lakewood, Colorado, with generation facilities in five western states, and also from Basin Electric Power Cooperative, headquartered in Bismarck, North Dakota, with generation facilities in six states. Columbus has an "all-requirements" contract that requires it to purchase of all of its power requirements from Tri-State, except for a 5 percent allowance for renewable distributed generation. Columbus states that the foregoing facts show that Columbus purchases electric power over numerous state lines, and upon receipt, delivers that power over state lines, to New Mexico and Arizona.[4]

16. Columbus asserts that the business activities of Columbus, (the purchase of electric generation from a Colorado generation and transmission cooperative; transmitting and distributing electric energy across state boundaries; and providing administrative, accounting, maintenance and other services to facilities and consumers in New Mexico and Arizona) are of a nature and character that constitute interstate commerce.[5]

17. Columbus states that as a non-profit cooperative, it cannot raise capital by issuing stock, and is required to finance debt to carry on the business of providing utility and energy services.

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[4] Columbus Initial Brief at 2.
[5] Columbus Initial Brief at 2-3.

Columbus has received the majority of its financing through the Rural Utilities Service ("RUS"), which is part of the United States Department of Agriculture, or through the Federal Financing Bank ("FFB"), the lending arm of the United States Government. The National Rural Utilities Cooperative Finance Corporation ("CFC"), located in Dulles, Virginia, has provided supplemental financing. Columbus has also obtained financing from the National Bank for Cooperatives ("CoBank"), in Greenwood Village, Colorado, and maintains a $1,500,000 revolving line of credit with CFC.[6]

18. Columbus' loans and credit facilities are secured by standard form mortgages which create liens on all assets in New Mexico and Arizona, and include all assets acquired after financing has been executed. As of July 31, 2012, the date of the last independent audit, substantially all of Columbus' assets were pledged as security for the long-term debt to RUS, CFC and CoBank. As of July 31, 2012, Columbus' capital structure contained equity of 30.48 percent.[7]

19. Columbus is subject to the jurisdiction of the NMPRC and the regulation and review of securities issued by a public utility are governed by New Mexico Statutes (Sections 62-6-6, 7, 8 and 9, NMSA 1978). Columbus states that all financings obtained by Columbus have been in accordance with New Mexico statutes. In addition, as an RUS borrower, Columbus states that it is subject to requirements contained in the United States Code ("U.S.C.") and Code of Federal Regulations ("CFR") affecting its operations and financing, as well as the terms and conditions of the loan agreements.[8]

20. The Commission issued Columbus a Certificate of Convenience and Necessity ("CC&N") in Decision No. 34125 (October 15, 1962) and in Decision No. 34321 (January 25, 1963). Columbus registered as a foreign corporation authorized to do business in Arizona on September 20, 1984.

21. Prior to 1998, Columbus sought approval from the Commission for all financing requests, with the most recent request filed in Docket No. E-01851A-94-0032. By letter dated March

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[6] Columbus Initial Brief at 3.

[7] As of July 31, 2012, Columbus's long-term debt comprised: 1) 35 year mortgage notes with varying maturity dates, in the total amount less current maturities, of $8,284,412 with RUS; 2) 35 year mortgage notes with varying maturity dates in the total amount less current maturities of $6,067,555 with FFB; 3) long term debt with maturity dates between 2018 and 2038, in the total amount, less current maturities, of $2,369,778 with CFC; and 4) 12 year mortgage note in the total amount, less current maturities of $2,272,780 with CoBank.

[8] Columbus' Initial Brief at 4.

30, 1998, counsel for Columbus sought confirmation of previous discussions and an agreement with the Commission's Legal Division that the Commission lacked jurisdiction over Columbus' debt financing because of interstate commerce clause restrictions.[9] Based on that understating, Columbus' counsel stated that the Cooperative would not be seeking Arizona approval for an RUS loan that was in process, or for future loans, but would seek approval from its "home" state. Thereafter, Columbus did not seek approval of the Commission for any debt financing until it filed its Petition in this docket.

The Issue

22. A.R.S. §40-301, *inter alia*, provides that a public service corporation may issue stock or incur indebtedness with a maturity of over twelve months only when authorized by the Commission.[10] A.R.S. §40-302 specifies the findings required in an Order that authorizes issuances of stock or indebtedness.[11] A.R.S. §40-303 provides that stock and bond issuances without a valid Commission Order authorizing the issuance are void, and provides that a public service corporation that violates the terms of a Commission Order authorizing the issue of stock or debt is subject to penalty.[12]

23. A.R.S. § 40-285 provides that a public service corporation may not encumber or dispose of its assets used to provide service without Commission approval.[13]

24. In its Petition, Columbus seeks a Declaratory Order that A.R.S. §§40-301 through 40-303 and §40-285 do not require it to seek Commission approval when it seeks to borrow funds or refinance existing debt.

25. The Arizona Attorney General issued Opinion No. 69-10 on March 14, 1969 ("AG Op. No. 69-10"). The question posed at that time was: "[m]ust a public service corporation doing business in the State of Arizona comply with the requirements of A.R.S. §40-302 in issuing stocks and stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date of issue when such corporation is a foreign corporation and is also

[9] *See* Exhibit A to Columbus' Petition.
[10] A.R.S. §40-301(B).
[11] A.R.S. §40-302 (A).
[12] A.R.S. §40-303(A) and (B).
[13] A.R.S. §40-285(A).

engaged in interstate commerce with an interstate operation?" The Answer was "No." Because the Supreme Court of Arizona had never passed on the validity of the statutes applied to a foreign public service corporation engaged in interstate commerce, AG Op. No. 69-10 relied on a review of court decisions in other states with statutes similar to Arizona's. The Arizona Attorney General concluded that, "it is readily apparent . . . it was never intended by the legislatures to subject foreign corporations to the jurisdiction of public utility commissions in the issuance of securities. It cannot be presumed that the legislature intended to give the commission such power in the absence of such a statute and express words to that effect." The Opinion finds that although the language of the statutes under review was sufficiently broad to include foreign corporations within their scope, such power would not be presumed to be granted to the Commission, and in the absence of plain indications to the contrary, the statutes applied only to domestic corporations. AG Op. No. 69-10 found that the pertinent parts of the Arizona statutes were almost verbatim to those which the courts had interpreted, and thus, should receive a similar construction. Thus, it was concluded that a foreign public service corporation engaged in interstate commerce need not secure the consent or approval of the Commission to issue stock or evidence of indebtedness.

26. The Commission has addressed situations involving foreign public service corporations engaged in interstate commerce several times prior to receiving Columbus' Petition. Each time the Commission determined that the facts supported not exercising jurisdiction over issuances of securities.

27. In Decision No. 51727 (January 16, 1981), the Commission addressed the request for a declaratory order from Citizens Utilities Company ("Citizens") that the Commission does not have jurisdiction over Citizens' securities issues. The Commission found that Citizens was engaged in interstate commerce by providing interstate telecommunications services; purchasing electric energy in interstate commerce for distribution in several states; purchasing natural gas transported in interstate commerce for distribution in two states, including Arizona; providing administrative, accounting, engineering and other services in ten different states in which they do business; and providing financing by issuing securities that are sold in commerce between the states. The Commission noted that Citizens' issues of stock and bonds, etc. are subject to the jurisdiction and

regulatory supervision of the Federal Energy Regulatory Commission ("FERC") and the Securities and Exchange Commission ("SEC"). The Commission concluded that A.R.S. §§40-301 through 40-303 are not applicable to the issuance by Citizens of its securities because to exercise jurisdiction would create an impermissible burden on interstate commerce in violation of the United Constitution, Article I, section 8, Clause 3 (the "Commerce Clause").[14]

28. In Decision No. 52244 (June 18, 1981) and Decision No. 53560 (May 18, 1983), the Commission addressed applications by Southern Union Company ("Southern Union") and Southwest Gas Corporation ("SWG"), respectively, for declaratory orders that the Commission was without jurisdiction to require submission and approval of security issuances. The Commission found that Southern Union and SWG purchased natural gas in interstate commerce for distribution in various states, including Arizona, and that they were subject to the jurisdiction of the SEC. The Commission concluded that Southern Union and SWG are foreign public service corporations doing business in Arizona and engaged in interstate commerce; and that A.R.S. §§40-301 through 40-303 are not applicable to issuance by Southern Union or SWG of securities because jurisdiction would create an impermissible burden on interstate commerce in violation of the Commerce Clause.[15]

29. In Decision No. 61895 (August 27, 1999), the Commission addressed the request of PHASER Advanced Meter Services ("PHASER") for a declaratory order that the Commission did not have jurisdiction over PHASER's intended transfer of assets. PHASER was a division of Public Service Company of New Mexico ("PNM"), a New Mexico corporation that provides electric and natural gas service in New Mexico. PHASER received a CC&N to provide competitive electric services as a meter service provider in Arizona. In Decision No. 61895, the Commission found that PNM is a foreign corporation engaged in interstate commerce, and citing AG Op. No. 69-10, found that approval is not required under A.R.S. §40-285(A) for the transfer of assets that are not necessary or useful in the performance of duties to the public in Arizona.[16]

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[14] Decision 51727 at 3, *citing inter alia*, AG Op. No. 69-10.

[15] Decision No. 52244 at 4 and Decision No. 53560 at 3.

[16] Decision No. 61895 at 3. PHASER was seeking the "technical transfer of title to certain pollution control assets." The Order states "[t]o the extent that those assets are not necessary or useful in the performance of PHASER's duties as a meter service provider in Arizona, then A.R.S. §40-285.A, would not apply to the transfer of those assets."

30. The Garkane Decision in 2011, is the most recent instance of the Commission addressing the applicability of A.R.S. §§ 40-301 through 40-303 and §40-285 to a foreign public service corporation providing utility service to customers in Arizona. Garkane Energy Cooperative, Inc. ("Garkane") is a Utah nonprofit rural electric cooperative that supplies electricity to customers in Utah (88.95 percent of its total customers) and in parts of Mohave and Coconino Counties in northern Arizona (11.05 percent of its total). Garkane is domiciled in Utah and purchases electricity from plants located in different states and transmits electric energy across state boundaries, and provides administrative, accounting, engineering and other services to its operating divisions and facilities in Utah and Arizona. In the Garkane Decision, the Commission analyzed that utility's request and factual circumstances to determine whether applying the Arizona statutes to a foreign public service corporation would violate the "dormant Commerce Clause."[17]

31. As discussed in the Garkane Decision, the Commission found that the test whether a state law violates the dormant Commerce Clause, first requires determining whether the law on its face discriminates against interstate commerce, by treating in-state and out-of-state economic interests differently, to the benefit of the former and burden on the latter. A state law that favors in-state businesses to the detriment of out-of-state domiciled entities is virtually *per se* invalid and will only be found constitutional by showing that the state has no other means to advance a legitimate local purpose. In cases where there is no facial discrimination, the United States Supreme Court established a balancing test to determine whether the law places a burden on interstate commerce that is clearly excessive in relation to the putative local benefits ("*Pike* test").[18]

32. The Garkane Decision finds that on their faces, A.R.S. §§ 40-301 through 40-303 and §40-285 apply equally to all public services corporations, regardless of domicile. Thus, the Commission employed the *Pike* test to determine their constitutionality by balancing the local interests served by the statutes and any burden on interstate commerce.[19] The Commission found that

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[17] Decision No. 72175 at 10. The Commerce Clause of the United States Constitutions states: "the Congress shall have Power . . . To regulate Commerce with Foreign Nations, and among the several States and with the Indian Tribes[.]" US. Const. Art I, §8, Cl 3. Under the dormant Commerce Clause, the Commerce Clause has been interpreted to prevent state regulations that discriminate against or overly burden interstate commerce, *United Haulers Assoc. Inc. v. Oneida-Herkimer Solid Waste Management Auth.*, 550 U.S. 330, 338 (2007).

[18] *Pike v Bruce Church*, 397 U.S. 137 (1970).

[19] Decision No. 72175 at 17.

A.R.S. §§ 40-301 through 40-303 and §40-285 are designed to ensure that public service corporations do not issue stock, or forms of indebtedness or create liens on their Arizona property unless doing so is consistent with the public interest, sound financial practices, and the maintenance of the utility's ability to provide an appropriate level of service. The Commission found that the burden on the foreign corporation and on interstate commerce as a result of the statutes is the prospect of inconsistent regulation.[20] The Commission in the Garkane Decision found that the potential burden was "significant."[21]

33. Ultimately, the Commission concluded that the currently existing facts comprising Garkane's request did not support a finding that A.R.S. §§ 40-301 through 40-303 and § 40-285 should apply to Garkane's financings or encumbrances at that time. The Commission listed the facts that it found to be important to its conclusion, which included the following: 1) Garkane is a nonprofit rural electric cooperative with less incentive to enter into questionable financial dealings for its own enrichment than would a for-profit investor-owned entity; 2) Garkane has been serving Arizona customers pursuant to a CC&N since 1966 and has been providing electricity for more than 70 years, and is a stable company; 3) approximately 89 percent of Garkane's customers were in Utah; 4) Garkane had had no rate increase since 1998 and was able to provide the citizens of Colorado City a rate decrease when its CC&N was extended to include them concurrent with Garkane's acquisition of the Twin Cities Power Authority system in 2008; 5) Garkane has a history of compliance with Commission requirements; and 6) Garkane's financial transactions are reviewed by the Utah Public Service Commission ("Utah PSC").[22]

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[20] Decision No. 72175 at 18.

[21] Decision No. 72175 at 18. The Commission noted that several state supreme courts have concluded that the burden is sufficient to overcome a public service commission's strong local interest in regulating a foreign public service corporation's issuance of securities, *citing Panhandle E. Pipe Line Co. v. Public Util. Comm'n*, 383 N.E.2d 1163 (Ohio 1978); *Utilities Comm'n v. Southern Bell Tel. & Tel. Co.*, 217 S.E.2d 543 (N.C. 1975); *United Air Lines, Inc. v. Illinois Commerce Comm'n*, 207 N.E.2d 433 (Ill. 1965); *United Air Lines, Inc. v. Nebraska State Ry. Comm'n*, 112 N.W.2d 414 (Neb. 1961).

[22] Decision No. 72175 at 19. It was the apparent difference between the Utah PSC's review of Garkane's borrowing transactions and the lesser involvement by the NMPRC over Columbus' borrowing from federal lenders that triggered the request to supplement the record.

Columbus' Position

34. Columbus states that its ability to obtain debt financing is vital to carrying on the business of providing utility and energy services in New Mexico and Arizona.

35. Columbus notes that on those occasions when the Commission has considered the application of certain Arizona statutes to foreign public service corporations, it has disclaimed or declined to exercise jurisdiction.[23] Columbus asserts that each of these Decisions referred to AG Op. No. 69-10, but also acknowledged that the underlying basis was that exercising jurisdiction would constitute an impermissible burden on interstate commerce in violation of the United States Constitution.[24] Columbus also asserts that the facts and statutes in the instance case are similar to those in the Garkane Decision, and that after applying the *Pike* test used by the Commission in that Decision, merit the same conclusion.

36. Columbus claims that as was the case in the Garkane Decision, the burden on Columbus and on interstate commerce from requiring Commission approval of Columbus' financing requests, is the prospect of inconsistent or potentially contradictory regulation between the NMPRC and the Commission.[25] Columbus states that such inconsistent regulation has already affected Columbus, citing the time when the Cooperative was obtaining its short-term line of credit from CFC, the borrowing limit was set at $1,500,000 to comply with Arizona rules, instead of $1,750,000 as Columbus requested, and which it would have been eligible for under CFC guidelines and applicable New Mexico laws. Columbus states that at worse, a conflict in laws between jurisdictions could result in approval in New Mexico and outright denial or approval of restrictive conditions in Arizona. The Cooperative argues that the consequent burden on Columbus of having to seek approval in both jurisdictions is significant. Columbus argues that Garkane Decision recognized that merely the possibility of such a conflict was sufficient to overcome the strong local interest in regulating a utility and was therefore an impermissible burden on interest commerce.[26]

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[23] *E.g.*, Decision No. 51727 (Citizens); Decision No. 52244 (Southern Union); Decision No. 53560 (SWG); Decision No. 61895 (PHASER); and Decision No. 72175 (Garkane).

[24] Decision No. 51727 at 3; Decision No. 52244 at 4; Decision No. 53560 at 3; Decision No. 61895 at 2; and Decision No. 72175 at 18.

[25] Columbus Initial Brief at 6.

[26] Columbus' Initial Brief at 6, *citing* Decision No. 72175 at 18.

37. Columbus states that the facts applicable to Columbus weigh even more heavily against the exercise of Commission jurisdiction than they did in the Garkane Decision.[27] Columbus cites the following facts in support of its position:

(a) Columbus is a non-profit rural electric cooperative with less incentive to enter into questionable financial dealings for its own enrichment or that of its investors than a for-profit investor-owned utility;

(b) Columbus has been serving Arizona customers pursuant to CC&Ns issued in 1962 and 1963 and has been providing reliable electricity since that time, and is a stable company, having been in business since 1946;

(c) Columbus has 91 percent of its customers in New Mexico and derives 93.4 percent of its gross revenue from New Mexico;

(d) Columbus is financially sound with margins and equity to total assets slightly in excess of 30 percent;

(e) Columbus has had two rate adjustments in recent history, one of which was a rate decrease;[28]

(f) Columbus has a history of compliance with Commission requirements; and

(g) Columbus' financial transactions are not only subject to the applicable New Mexico Statutes but to the stringent requirements for RUS borrowers contained in the U.S.C. and CFR as well as the loan agreements.

38. Columbus voluntarily agrees to file courtesy copies with the Commission Staff of all future financing applications along with an affidavit certifying the then-existing split of its consumers in New Mexico and Arizona.[29]

Staff's Position

39. Staff acknowledges that the issues in the Garkane Decision and Columbus' Petition are substantially similar. Staff believes that Columbus has established a record that shows that the

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[27] Columbus' Initial Brief at 6.

[28] Docket No. E-01851A-00-1016, reduced rates; and Docket No. E-01851A-09-0305, increased the customer charge for all rate classes.

[29] Columbus' Initial Brief at 7.

intended protection offered to Arizona consumers from the statutes in question are provided under the current facts.[30]

40. Staff asserts that the Garkane Decision sets out the criteria for utilities such as Columbus to meet in order for A.R.S. §§ 40-301 through 303 and §40-285 not to apply to its financing and encumbrances. Staff agrees that Columbus has presented facts that satisfy the criteria established in the Garkane Decision.[31] Staff asserts that Columbus' transactions are reviewed by the NMPRC and as an RUS borrower, are governed by New Mexico Statutes and subject to significant oversight by the U.S.C. and CFR. Moreover, Staff notes that similar to the circumstances here, Garkane also obtained recognition from the Commission's Legal Division that due to "Commerce Clause restrictions and Garkane's status as a foreign public service corporation engaged in interstate commerce, Garkane was not required to obtain Commission approval of [its] finances."[32]

41. Staff states that in the Garkane Decision, based on the facts existing at the time, the Commission determined in the Garkane Decision that its interest in exercising its jurisdiction to regulate financial transactions under A.R.S. §§ 40-301 through 303 and §40-285, were clearly outweighed by the onerous impact to interstate commerce. Staff notes further that although the Commission found that Garkane was not required to apply for approval of each future financing transaction, the Commission ordered Garkane to file, for informational purposes, any application for approval of financing filed with the Utah PSC and any subsequent Order issued thereby.

42. Given the factual background as set forth in Columbus' Initial Brief and in its Petition, together with the legal analysis and facts set forth in the Garkane Decision, Staff believes Columbus provided sufficient facts to warrant a finding commensurate with the Garkane Decision.[33] Staff also believes that there is a need for Columbus to file courtesy copies with the Commission and Staff of all future financing applications, affidavits verifying its then-existing percentages of New Mexico and

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[30] Staff Responsive Brief at 2.

[31] Staff cites the following facts: 1) Columbus is a non-profit rural electric cooperative which has been serving Arizona customers for a significant period pursuant to CC&s issued in 1962; Columbus services a total of approximately 5,259 customers, 90 percent of which are located in New Mexico and 9 percent in Arizona; as set forth in Decision No. 73156 (Phase 1 of this proceeding) the Cooperative is financially sound with a capital structure of 1.5 percent short-term debt, 66.9 percent long-term debt, 30.6 percent equity, a Debt Service Coverage ("DSC") ratio of 1.67 and no outstanding compliance issues. Staff Responsive Brief at 3.

[32] Decision No. 72175 at 2.

[33] Staff Responsive Brief at 4.

Arizona customers, and any orders issued relative thereto by the NMPRC.

Supplemental Briefing – Effect, if any, on differences in regulation between Utah and New Mexico commissions

43. Columbus and Staff rely on the Commission's Garkane Decision and cite similarities between Columbus' circumstances and the facts that gave rise to that Decision. In the Garkane Decision, one of the facts on which the Commission relied was the review and approval of the Utah PSC over Garkane's financing transactions.[34] The Utah statutes appear to be similar to Arizona's in that the commissions are charged with prior-approval of financing transactions of public utilities, including rural electric cooperatives. In contrast, New Mexico's statutes do not require a public utility to seek NMPRC approval for the issuance of securities if the transaction is subject to the oversight and approval of the federal government pursuant to the Rural Electrification Act of 1936.[35]

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[34] Decision No. 72175 at 19. The Garkane Decision also describes the Utah PSC's approval of each of the financing requests at issue. Decision No. 72175 at 6-7.

[35] New Mexico Statutes Section 62-6-6 provides:

> 62-6-6. Issuance, assumption or guarantee of securities.
>
> A. The power of a public utility to issue, assume or guarantee securities and to create liens on its property situated within this state is a special privilege subject to the supervision and control of the commission as set forth in the Public Utility Act [62-13-1 NMSA 1978].
>
> B. Except as provided in Subsection E of this section, a public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume or guarantee other securities payable at periods of more than eighteen months after the date thereof for the following purposes only:
>
> (1) making loans or grants from the proceeds of federal loans for economic development projects benefiting its service area;
>
> (2) the acquisition of property;
>
> (3) the construction, completion, extension or improvement of its facilities;
>
> (4) the improvement or maintenance of its service;
>
> (5) the discharge or lawful refunding of its obligations; or
>
> (6) the reimbursement of money actually expended for purposes set forth in this subsection from income or from any other money in the treasury not secured by or obtained from the issue, assumption or guarantee of securities, within five years next prior to the filing of an application with the commission for the required authorization.
>
> C. Notwithstanding the provisions of Subsection B of this section, the commission may authorize issuance by a public utility of shares of stock of any class as a dividend on outstanding shares of stock of the public utility of any class and may authorize the issuance of the same or a different number of shares of stock of any class in exchange for outstanding shares of stock of any class of the public utility, and the public utility may issue the stock so authorized.
>
> D. The commission shall not authorize a borrowing under the provisions of Paragraph (1) of Subsection B of this section unless the governing board has approved the borrowing by a two-thirds' majority vote of the members present at a special meeting called for that purpose. The commission shall review the terms of the economic

44. In their initial briefs the parties did not acknowledge or discuss any differences between the regulatory paradigms in New Mexico and Utah or whether any differences between the two states affect the analysis of the dormant Commerce Clause described in the Garkane Decision. Given the facial differences between the Utah and New Mexico statutes, the parties were requested to supplement the record with a description of how Utah and New Mexico regulate financing transactions of electric cooperatives, and to address whether any differences in oversight between the two states affects the analysis pursuant to the dormant Commerce Clause.

45. In its supplemental filing, Columbus provided a factual background for the 2003 changes in New Mexico law that eliminated state oversight over electric cooperative borrowings from federal government lenders. According to the evidence presented by Columbus, prior to enacting the revised NMSA Sections 62-6-6, 62-6-8.1 and 62-6-9, New Mexico's statutory scheme mirrored that in place in Utah at the time of the Garkane Decision in that § 62-6-6 NMSA 1978 required the submission of an application seeking approval of the issuance, assumption or guarantee of securities in advance of entering into any such agreements; and § 62-6-9 NMSA 1978 provided for expedited dispositions, within 30 days of the filing of such application unless the commission made a filing of good cause within that period. Columbus states that the practical effect of the law prior to 2003 was that of "going through the motions" without any substantive NMPRC decision amending or altering the requested approvals.[36] According to Columbus, in changing the statutory requirements, New Mexico recognized the unique nature of rural electric cooperatives and the extensive federal rules and regulations and contractual obligations for RUS borrowers and determined that additional state oversight was not productive or necessary.[37]

46. By looking at the timeframes for processing a finance request in Utah (which ranged between 12 and 67 days) Columbus concluded that it appears that as in New Mexico prior to 2003,

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development loan or grant to ascertain the adequacy of any collateral, to have the right to inspect books and review the level of co-participation by the borrower or grantee.

E. Commission approval is not required for the issuance, assumption or guarantee of any security of a public utility whose securities are subject to oversight and approval by the federal government pursuant to the Rural Electrification Act of 1936, as amended, or any successor law to that act. (Emphasis Added)

[36] Columbus Supplemental Brief at 6; and Attachment A. letter from Keven Groenewold Executive Vice President of the New Mexico Rural Electric Cooperative Association.

[37] Columbus Supplemental Brief at 7 and Attachment A.

the Utah process is one of "simply going through the motions."[38] Columbus argues that the practical effect of the Utah code is a nominal delay and no practical impact.

47. In its Supplemental Brief, Columbus argues that: 1) Arizona regulation of Columbus' financings would be a *per se* violation of the Commerce Clause; and 2) that even assuming *arguendo* no *per se* violation, the *Pike* balancing test supports a finding that the Arizona statutes should not be applied to Columbus' borrowings because: a) there is no permissible local public interest; and b) any local interest is outweighed by the impermissible burden on interstate commerce.

48. Columbus asserts that a *per se* violation of the Commerce Clause occurs when state regulation exerts extraterritorial control over commerce occurring outside of the borders of the state.[39] The Cooperative argues that Arizona's exertion of control over Columbus' ability to borrow creates delay and extra costs and affects Columbus' only means to obtain capital for repairs and improvements to infrastructure in New Mexico and Arizona, with the vast majority of assets being located in New Mexico.[40] Columbus argues that the detrimental impact, both potential and actual, of this extra-territorial control is prohibited by the Commerce Clause.[41]

49. Columbus argues in the alternative, that assuming *arguendo*, that there is not a *per se* violation of the Commerce Clause, that the *Pike* test supports the conclusion that application of A.R.S. §§40-301 through 40-303 and A.R.S. §40-285 is impermissible. Columbus acknowledges that the Arizona statutes in question do not discriminate against foreign public service corporations. Columbus also acknowledges that when a state statute regulates evenhandedly to effectuate a legitimate local purpose, and its effects on interstate commerce are only incidental, the statute will be upheld unless the burden on such commerce is clearly excessive in relation to the putative local benefits.[42]

50. Columbus argues that the Arizona statutes in question do not effectuate a legitimate local public interest.[43] Columbus argues that Arizona ratepayers do not need the protections of A.R.S.

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[38] Columbus Supplemental Brief at 7.
[39] Columbus Supplemental Brief at 2, *citing Healy v Beer Institute,* 491 U.S. 324, 355-40 (1989).
[40] Columbus Supplemental Brief at 3.
[41] Columbus Supplemental Brief at 4.
[42] Columbus Supplemental Brief at 4, *citing Pike,* 397 U.S. at 142.
[43] Columbus Supplemental Brief at 4.

§§40-301 through 40-303 and A.R.S. § 40-285 to protect against rate impacts from imprudent borrowing because the Commission has authority under its ratemaking authority to disallow imprudent debt service costs.[44] In addition, Columbus asserts that the Commission's interest in protecting Columbus' property from liens imposed as a condition of financing is minimal as the vast majority of Columbus' plant is located in New Mexico.[45]

51. Furthermore, Columbus argues that even if there were a legitimate local interest, the burden placed on interstate commerce by applying the Arizona statutes would outweigh the protections they are intended to safeguard. The potential burden on Columbus is the prospect of inconsistent regulation between New Mexico and Arizona as well as the regulatory costs and delays of complying with the statutes. Columbus argues that the burden of the Arizona statutes clearly exceeds the burdens of the applicable New Mexico statutes, and subjects the Cooperative to oversight already imposed by the RUS.[46]

52. Columbus contends that it is not the level of regulation in the home state of foreign service corporations that supports the finding that the Commerce Clause prohibits application of the Arizona statutes to Columbus, but rather it is the practical effect of that application (in the case of a *per se* violation), or the impermissible burden on interstate commerce (in case of a *Pike* balancing test).[47] Columbus argues that the delay and costs associated with the Arizona approval process imposes a burden at least as significant, if not more so, on Columbus, as it did on Garkane. Columbus argues that in light of the entirety of circumstances, including the breadth of the federal statutes and regulations and control obligations of RUS loans and oversight imposed by them, that like Garkane, it is entitled to a Declaratory Order exempting it from seeking approval from the Commission.[48]

53. After examining the New Mexico and Utah procedures, Staff continues to recommend that the Commission approve Columbus' request for a Declaratory Order that it should be exempted from the requirements of the Arizona financing statutes as in the Garkane Decision.[49] Staff believes

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[44] Columbus Supplemental Brief at 4-5.
[45] Columbus Supplemental Brief at 5.
[46] Columbus Supplemental Brief at 6.
[47] Columbus Supplemental Brief at 6.
[48] Columbus Supplemental Brief at 8.
[49] Staff Supplemental Responsive Brief at 1.

that the level of scrutiny in Utah's review of financing transactions and the lack of approval required in New Mexico in certain situations are not the relevant considerations in this matter. Staff argues that it is the possibility of inconsistent results that forms the basis of the Commission's order in the Garkane Decision, and applies to the analysis in the instant case.[50]

54. Staff states that NMSA §62-6-6E does not indicate a lack of supervision, but instead provides a different degree of oversight than is exercised in Utah or Arizona. Staff did not contest the evidence presented by Columbus which indicates that the New Mexico legislature determined that no formal application or NMPRC approval was required where such cooperatives secure federal financing from RUS. Staff states that "the New Mexico legislature determined that the stringent evaluations and assessments to which the RUS subjects a cooperative in securing its financing is tantamount to that state's application process which was in effect until 2003."[51]

55. Staff asserts that the Commission must analyze the applicability of the Arizona statutes on a case-by-case basis.[52] Staff submits that the differences in regulatory requirements between Utah and New Mexico are essentially the same as those between New Mexico and Arizona, and that the disparate statutory requirements of New Mexico and Arizona create the same potential and significant burden to Columbus that was present in the Garkane Decision analysis, i.e. the prospect of inconsistent regulations.[53]

56. Staff notes that New Mexico has not recused itself entirely from monitoring electric cooperative financial transactions but, rather, takes a more limited approach by relying on the stringent oversight of the RUS. Staff argues that even if New Mexico oversight is not as structured on its face as that in Utah or Arizona, the application of both New Mexico and Arizona law could result in conflicting or varying regulatory requirements, and thus impose an impermissible burden on interstate commerce. Thus, Staff maintains that requiring Columbus to obtain approval of its financial transactions from multiple jurisdictions could constitute a burden on interstate commerce which brings the matter within the ambit of the Commission's analysis in the Garkane Decision. Staff

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[50] Staff Supplemental Responsive Brief at 2. See Decision No. 72175 at 18.
[51] Staff Supplemental Responsive Brief at 3.
[52] Staff Supplemental Responsive Brief at 3.
[53] Staff Supplemental Responsive Brief at 3.

argues that the application of the tenets of the Garkane Decision is further supported by the fact that the percentage of Columbus' Arizona customers (9 percent) is less than the percentages existing in the Garkane Decision (11.5 percent).

57. Staff argues that Columbus' claim in its Supplemental Brief that Arizona's exercise of jurisdiction would constitute a *per se* violation of the Commerce Clause is outside the scope of the supplement briefs; and moreover, is not legally or factually convincing. Staff asserts that the mere existence of the subject Arizona statutes does not, in and of itself, constitute a *per se* violation of the Commerce Clause.[54] Given the foregoing analysis of the Garkane Decision, Staff argues that the Cooperative's *per se* violation argument need not be addressed in this matter.

58. While Staff agrees with Columbus that the *Pike* balancing test applies to this matter, Staff does not agree with Columbus' assertions that the Arizona statutes fail to effectuate a legitimate local public interest.[55] Staff notes the discussion in the Garkane Decision, that "[t]he local interests served by A.R.S. §§40-301 through 40-303 and A.R.S. §40-285 are great." [56] Staff cited the United States Supreme Court decision in *Arkansas Elec. Coop. v Arkansas Pub. Serv Comm'n*, 461 U.S. 375, 377 (1983), which found that "the regulation of utilities is one of the most important of the functions traditionally associated with the police powers of the states," and reiterated that the Garkane Decision delineated numerous local public interest factors.[57]

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[54] Staff Supplemental Responsive Brief at 4.

[55] Staff Supplemental Responsive Brief at 4-5.

[56] Staff Supplemental Responsive Brief at 5, citing Decision No. 72175 at 17-18.

[57] The Garkane Decision finds as follows: "A.R.S. §§ 40-301 through 40-303 are designed to ensure that public service corporations do not issue stock, stock certificates, bonds, notes, or other evidence of long-term indebtedness or create liens on their Arizona property unless doing so is consistent with the public interest, sound financial practices, and a public service corporation's maintaining its ability to provide an appropriate level of service as a utility. A.R.S. § 40-285 is designed, in pertinent part, to ensure that a public service corporation does not divest itself of or encumber any portion of its plant or system that is necessary or useful in performing its duties as a utility, so as to prevent it from impairing its service. At their most basic levels, A.R.S.§§ 40-301 through 40-303 and A.R.S. § 40-285 are designed to ensure that public service corporations are not able to engage in inadvisable financial dealings that will jeopardize their ability to provide an appropriate level of service to their customers at just and reasonable rates. They are designed to protect utility customers from being placed in jeopardy of receiving substandard service or no service or of paying unjust rates and charges to receive service, where the jeopardy is caused by inadvisable or unjust financial decisions of the public service corporation. It is incontrovertible that the local interests served by the statutes are legitimate and of great importance." Decision No. 72145 at 18.

Analysis and Conclusions

59. Columbus has demonstrated that it is a foreign public service corporation domiciled in New Mexico and engaged in providing retail electric service in New Mexico and Arizona.

60. On their face A.R.S. §§40-301 through 40-303 and A.R.S. §40-285 do not discriminate against foreign public service corporations. The United States Supreme Court has stated that "[w]here a state statute regulates evenhandedly to effectuate a legitimate public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."[58] Courts considering this issue have found that the potential for inconsistent results is enough to disallow state review of issuances of securities by entities engaged in interstate commerce.[59]

61. As we recognized in the Garkane Decision, and reaffirm here, the Arizona statutes in question promote a number of legitimate and important local public interests. A.R.S. §§ 40-301 through 40-303 and § 40-285 are intended to protect Arizona utility customers from a utility acting contrary to the public interest by engaging in financing transactions that are not reasonably necessary or appropriate to the utility's activities, not consistent with sound financial practices or its performance as a public service corporation or its ability to perform or provide service. These statutes allow the Commission to consider the prudence of borrowing prior to the public service corporation

[58] *Pike v Bruce Church, Inc.*, 397 U.S. at 142. (citations omitted).

[59] E.g. *United Air Lines v Illinois Commerce Commission*, 207 NE2d 433 (Ill C Ct, 1965). The issue was whether Illinois could exercise review over United Airlines' issuance of securities; the Illinois Supreme Court found in that case that there could have been seventeen different jurisdictions that could potentially impact the airline's ability to access capital necessary for operations and that seeking approval would be unjustifiably expensive and time consuming and burdensome. The court found the issuance of securities to be an indivisible act that cannot be fractionalized and allocated to specific states. The court noted "that the possibility of conflict or duel regulation may be sufficient to curtail powers sought to be asserted by an individual State over interstate commerce where such commerce might be impeded by conflicting and varying regulations." 207 NE2d at 526. The Illinois Supreme Court found that the local interests did not overcome the burden as only a small percentage of the airline's business was in Illinois and that to allow state regulation would intrude into an area of "over-whelming predominant national interest." Id. In *Panhandle Eastern Pipe Line Co. v. Public Utility Commission*, 393 NE2d 1163 (Ohio 1978), the Ohio Court found that national uniformity in the area of securities issuance was necessary, and expressed concern about the potential chaos that could result from disapproval, delay or conflicting multistate regulation. The court stated that protection for investors and consuming public was already provided by federal securities laws and FERC.

incurring debt and the costs associated therewith and allow the Commission to weigh the benefits of pledging utility assets as collateral. These benefits are real, legitimate and substantial.

62. The burdens that the statutes exert on interstate commerce, however, are not insignificant. As a rural member-owned cooperative, Columbus is dependent on federal lenders for the capital necessary for plant investments. Without such access to capital, Columbus would find continued operations difficult if not impossible. New Mexico has determined that when cooperatives such as Columbus borrow from the federal government pursuant to the Rural Electrification Act of 1936, the RUS exerts substantial oversight such that additional state oversight is not necessary. That federal oversight includes the preparation of a four-year work plan, an extensive application process and periodic audits. The potential for inconsistent results was realized when the Arizona statutory limit on short term borrowing prevented Columbus from obtaining a line of credit in the amount it otherwise would have been able to obtain under federal and New Mexico law.

63. We must balance the local interests and the potential and real burdens on a case-by-case basis. In this case, the need for ratepayer protection offered by the Arizona statutes is reduced by the stringent federal oversights that achieve the same goals. The burden on Columbus from seeking Arizona approval of its debt issuances is real in terms of time and money, and raises the potential of conflicting results. Because extensive federal oversight for RUS borrowers contained in the U.S.C. and CFR as well as in the loan agreements themselves protects Arizona consumers,[60] plus

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[60] The requirements for RUS borrowers are found in 7 CFR part 1710 et seq. Section 1710.12 establishes loan feasibility requirements and the criteria that the RUS will use to evaluate a potential borrower's request, including: (a) reasonably-based projections and adequate supporting data and analysis of power requirements, rates, revenues, expenses, margins, and other factors for the present system and proposed additions; (b) a demonstration that projected revenues are adequate to meet the required TIER and DSC ratios based on total costs, including the projected maximum debt service cost of the new loan; (c) a demonstration that the economics of the borrower's operations and service area is such that consumers can reasonably be expected to pay the proposed rates required to cover all expenses and meet RUS TIER and DSC requirements; (d) risks of possible loss of substantial loads from large consumers or from load concentrations in particular industries will not substantially impair loan feasibility; (e) a showing that the risk of loss of portions of the borrower's service territory from annexation or other cases will not substantially impair loan feasibility; (f) evidence that the experience and performance of the system's management is acceptable; (g) a demonstration that the borrower has implemented adequate financial and management controls and there are and have been no significant financial or other irregularities; and (h) a showing that the borrower's projected capitalization, measured by its equity as a percentage of total assets, is adequate to enable the borrower to meet its financial needs and to provide service consistent with the Rural Electrification Act, and considering the economic strength of the borrower's service territory, the inherent cost of providing service to the territory, the disparity in rates between the borrower and neighboring utilities, the intensity of competition, etc. 7 CFR §1710.112. Section 1710.114 requires that borrowers demonstrate that on a pro forma basis they will maintain a minimum TIER of 1.25 and DSC of 1.25. Section 1710.152 requires the borrower to provide support documents and studies including a load forecast, construction work plan, long-range financial forecasts and

the fact that only 9 percent of Columbus' members are located in Arizona, we find that at this time, that the burden on interstate commerce outweighs the local public benefits afforded by the statutes. In addition to the foregoing, other factors that weigh in favor of not exercising jurisdiction pursuant to A.R.S. §§40-301 through 303 and A.R.S. §40-285 include: (a) Columbus is a non-profit rural electric cooperative with less incentive to enter into questionable financial dealings for its own enrichment or that of its investors than a for-profit investor-owned utility; (b) Columbus has been serving Arizona customers pursuant to CC&Ns issued in 1962 and 1963 and has been providing reliable electricity since that time, and is a stable company in business since 1946; (c) Columbus derives 93.4 percent of its gross revenue from New Mexico; (d) Columbus is financially sound with margins and equity to total assets slightly in excess of 30 percent; (e) Columbus has a history of compliance with Commission requirements; (f) a history of prudent use of debt financing; and (g) Columbus' acknowledgment that the Commission has authority to disallow imprudent debt service costs.

64. Circumstances change over time, and a shift in regulatory oversight by New Mexico or the federal government or a substantial shift in the ratio of ratepayers between the two states or other factors could affect the balancing test analysis. Given the potential for changing circumstances, it is reasonable for Columbus to keep the Commission informed of its financing activities and the balance of customers between New Mexico and Arizona; thus, we adopt Staff's recommendation that Columbus be directed to file with the Commission courtesy copies of any future financing applications with the its federal lenders (RUS, CFC or Cobank) or the NMPRC, if applicable; affidavits verifying its then-existing percentages of New Mexico and Arizona customers; and any orders issued relative to these requests.

65. Given our findings herein, we do not need to decide in this case whether it is *per se* an unconstitutional burden on interstate commence under the United States Constitution Article I, §8, Cl 3, for the Commission to exercise its jurisdiction under A.R.S. §§40-301 through 40-303 and under A.R.S. §40-285 as against a foreign public service corporation.

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environmental report. The regulations describe all of the information that must go into the aforementioned reports and analyses. 7 CFR Part 1773 establishes the RUS policy and procedures on audits, and requires annual audits by a qualified auditor that has been approved by the RUS.

CONCLUSIONS OF LAW

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

2. The Commission has jurisdiction over Columbus and the subject matter of its Petition.

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

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

ORDER

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

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IT IS FURTHER ORDERED that Columbus Electric Cooperative, Inc. shall file for informational purposes, with Docket Control, in this docket, copies of any applications for approval of financing filed with its federal lenders or the New Mexico Public Regulation Commission, and an affidavit verifying its then-existing percentages of New Mexico and Arizona customers, within 10 days of the application's filing; and a copy of any subsequent approval or order issued by the lenders or the New Mexico Public Regulation Commission regarding such application, within 10 days of its issuance.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2014.

_____
JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
JR:tv

SERVICE LIST FOR: COLUMBUS ELECTRIC COOPERATIVE, INC.

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