

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Mike Henle vs. Garkane Energy) DOCKET NO. 06-028-01
) REPORT AND ORDER
)

ISSUED: October 30, 2006

SYNOPSIS

Having determined Garkane Energy Cooperative, Inc. (“Garkane Energy”) misapplied its tariff in requiring Complainant to pay an impact fee incident to connection of electric service to his property, the Commission ordered Garkane Energy to refund said fee to Complainant.

By The Commission:

PROCEDURAL HISTORY

On August 18, 2006, Complainant Mike Henle filed a formal complaint against Respondent Garkane Energy Cooperative, Inc. (“Garkane Energy”) claiming Garkane Energy failed to properly notify Complainant about a public meeting held to consider Garkane Energy’s adoption of a new impact fee. Complainant also claims he should not have to pay the impact fee because he submitted his application for electric service before the impact fee took effect.

On August 28, 2006, Garkane Energy filed a memorandum with the Commission indicating it does not believe it would have been fair for Garkane Energy to reduce Complainant’s required impact fee while other customers in similar situations have been required to pay the entire fee.

On September 20, 2006, the Division of Public Utilities filed a memorandum recommending the Commission schedule a hearing in this matter to explore whether Garkane

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Energy could have offered a reasonable grace period prior to implementation of the new impact fee.

On September 26, 2006, Garkane Energy filed an email with the Commission seeking dismissal of the complaint.

This matter came on for duly-noticed hearing before the Administrative Law Judge on October 17, 2006. Complainant represented himself and appeared by telephone. Respondent was represented by Jason D. Boren of Ballard Spahr. Rob Wolfley, Garfield Area Manager, and Stan Chappell, Finance Manager, testified by telephone on behalf of Garkane Energy.

Following hearing, the Administrative Law Judge requested Garkane Energy file a copy of the application form submitted by Complainant on May 31, 2006, and informed parties that he intended to enter said application into evidence as Post Hearing Exhibit 1. Garkane Energy filed said application on October 18, 2006. Complainant was given the opportunity to object to admission of this document. However, while Complainant thereafter filed additional commentary regarding his complaint, he lodged no objection to admission of the application form. Therefore, the application form is hereby admitted as Post Hearing Exhibit 1.

BACKGROUND

In early May 2006, Garkane Energy, in conjunction with its regular monthly billing, mailed its members a notice of public hearing to be held on May 26, 2006, to consider approval of a proposed \$2,000 impact fee. Customers likely received this notice on or about May 10, 2006. On May 15 and 17, 2006, Garkane Energy published a similar notice in various

newspapers within the Garkane Energy service territory. This notice was also posted to Garkane Energy's internet website in early May 2006.

The public meeting was held as scheduled on May 26, 2006, after which Garkane Energy's Board of Directors approved the proposed impact fee with a June 1, 2006, effective date. The Board also approved a grace period giving those who had received a completed cost estimate prior to June 1, 2006, thirty days to pay those estimated costs in order to avoid payment of the new impact fee. On May 30, 2006, Garkane Energy filed with the Commission revised tariff sheets reflecting the approved impact fee.

Complainant lives in the Las Vegas, Nevada area and owns property in Duckcreek, Utah, within the service territory of Garkane Energy. At no time prior to June 1, 2006, was Complainant a member or customer of Garkane Energy. On approximately May 26, 2006, Complainant learned via facsimile from his building contractor that Garkane Energy had approved the impact fee set to take effect on June 1, 2006. On May 31, 2006, Complainant filed an application for electric service to his property, believing said application would enable him to avoid the new impact fee or at least pay some reduced fee applicable to those who had applications on file prior to the new fee's effective date.¹

On June 8, 2006, in response to Complainant's application, Garkane Energy prepared and presented to Complainant a project cost estimate of \$2,998.00, including the

¹The application is actually dated May 30, 2006, and, according to the facsimile header information printed on the top of the application, appears to have been faxed to Garkane Energy on May 30, 2006. However, the parties agreed in testimony at hearing that Complainant filed said application with Garkane Energy on May 31, 2006. We therefore refer in this Order to May 31, 2006, as Complainant's application date. Whether the correct date is May 30 or May 31 is ultimately immaterial to our decision announced herein since both pre-date the June 1, 2006, effective date for the impact fee.

\$2,000 impact fee, for connection of electric service to Complainant's property. Complainant paid the \$2,998.00 cost estimate in late August 2006 and electric service was connected to his property on October 4, 2006. Complainant now seeks reimbursement of part or all of the impact fee based on his claimed lack of notice of the proposed fee, as well as the fact that he applied for electric service prior to the June 1, 2006, impact fee effective date.

DISCUSSION, FINDINGS, AND CONCLUSIONS

In accordance with *Utah Code Annotated* § 57-7-12(6)(c), before implementing any rate increase, an electrical cooperative must hold a public meeting to discuss the proposed rate increase and shall mail a notice of said meeting to all of the cooperative's customers and members not less than ten days prior to the date of the meeting. In addition, *UCA* § 57-7-12(6)(d) requires the cooperative to file with the Commission its tariff revisions reflecting the rate increase.

The evidence of record establishes that Garkane Energy provided its customers timely notice of the public meeting held to discuss the proposed impact fee and thereafter filed its revised tariff with the Commission. Despite these facts, Complainant argues Garkane Energy should have ensured actual notice to each property owner within its service territory, many of whom reside in the Las Vegas area, whether or not said owner is a member or customer of the cooperative. We disagree. Complainant was not a member or customer of Garkane Energy in May 2006 so Garkane Energy was not required to provide him individual notice of the May 26, 2006, public meeting. The evidence indicates, and we so conclude, that Garkane Energy

satisfied its statutory obligations with respect to notice, approval, and implementation of the impact fee such that Complainant is not entitled to any relief based on insufficient notice.

However, Complainant also argues that he successfully avoided the impact fee by filing his application for service on May 31, 2006, one day prior to the impact fee effective date. Garkane Energy responds that Complainant's property was nothing more than a bare lot on May 31, 2006, that Complainant did not pay the estimated cost for connection of electric service until late August 2006, and that his property was not ready to receive electric service from Garkane Energy until late September 2006.² Therefore, according to Garkane Energy, Complainant's application of May 31, 2006, should not be viewed as a request for service pre-dating the impact fee.³

We disagree. Garkane Energy's tariff does not define what constitutes a request for service. Nor does the application form explain that an application will not be considered filed or complete until some other, future action has been completed by Garkane Energy.⁴ Indeed, the application form is titled "Application for Service and Membership" and appears on its face to constitute a complete application for electric service. The application filed by Complainant on May 31, 2006, is signed, dated and appears complete. We therefore find and

²The parties agree Complainant was responsible for preparing his property to receive electric service and that the lot was not so prepared until late September 2006.

³Although not in evidence, Garkane Energy's position seems to be as described by the Division in its September 20, 2006, memorandum noting that Garkane deems an application to have been filed not when the application is submitted by the prospective member but when Garkane Energy has completed a cost estimate in response to said submission.

⁴The application form does explain that the applicant will not become a member of the cooperative until the application has been approved by the Board of Directors, but we do not construe this act of conferring membership as a condition precedent to completing a request for service.

conclude that Complainant's application of May 31, 2006, constitutes a completed request for electric service.

Utility customers generally pay for service based on the tariff in effect at the time of the request for or use of that service. Garkane Energy should have charged Complainant for connection of his electric service based on the tariff in effect on May 31, 2006, which contained no impact fee provision. Instead, Garkane Energy misapplied its revised tariff of June 1, 2006, and required Complainant to pay the impact fee contained in that revised tariff. As such, in accordance with *Utah Code Annotated* 54-7-20, we herein order Garkane Energy to refund to Complainant the \$2,000 impact fee previously paid.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Garkane Energy Cooperative, Inc., shall refund to Mike Henle the \$2,000.00 impact fee previously paid.
- 2 Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the

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Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 30th day of October, 2006.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 30th day of October, 2006, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#51138