

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

SELLERS:

**HILDALE CITY, UTAH**

By: \_\_\_\_\_  
Name:  
Title: Mayor

By: \_\_\_\_\_  
Name:  
Title: City Recorder

**COLORADO CITY, ARIZONA**

By: \_\_\_\_\_  
Name:  
Title: Mayor

By: \_\_\_\_\_  
Name:  
Title: City Recorder

ATTEST:

By: \_\_\_\_\_  
Name:  
Title: BUYER:

**GARKANE ENERGY COOPERATIVE, INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Schedule 4.4

Seller Approvals

1. Completion of the sale of the System requires the approval of the electorate of each Seller, which approval was given, with respect to each Seller, at a general election held November 4, 2008.
2. Completion of the sale of the System requires the approval of the [town council] of Hildale City, which approval was given at a meeting of such body on [\_\_\_\_\_], 2009.
3. Completion of the sale of the System requires the approval of the [town council] of Colorado City, which approval was given at a meeting of such body on [\_\_\_\_\_], 2009.
4. [other?]

Schedule 5.4

Buyer Approvals

1. Completion of the purchase of the System requires the approval of the governing body of Buyer, which approval was given at a meeting of such body on [\_\_\_\_\_], 2009.
2. Completion of the sale of the purchase of the System requires the approval of the Arizona Corporations Commission, which approval was given on \_\_\_\_\_, 2009.
3. [other?]

*DFC draft*  
3/25/09

ORIGINAL

OPEN MEETING ITEM



0000095497

COMMISSIONERS  
KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



Interim Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

APR 16 2009

DATE: APRIL 16, 2009  
DOCKET NO.: E-01891A-08-0598  
TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

GARKANE ENERGY COOPERATIVE, INC.  
(CC&N EXTENSION)

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:

APRIL 23, 2009

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:

TO BE DETERMINED

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.

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

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

DOCKET NO. E-01891A-08-0598

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING: April 3, 2009  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring  
APPEARANCES: Mr. Michael M. Grant, Gallagher & Kennedy, P.A., on behalf of Garkane Energy Cooperative, Inc.; and  
Mr. Kevin O. Torrey, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

This case involves an application by Garkane Energy Cooperative, Inc. ("Garkane") to extend its Certificate of Convenience and Necessity ("CC&N") to provide electric utility service to Colorado City, Arizona.

\* \* \* \* \*

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

**FINDINGS OF FACT**

1. Garkane is a Utah nonprofit rural electric cooperative that currently supplies electricity to approximately 11,600 member/customers, the vast majority of whom are located in Utah. Garkane currently serves approximately 700 Arizona customers, mostly residential, about 600 of whom are situated in the vicinity of Colorado City, Arizona, north of the Grand Canyon, in an area known as

1 the Arizona Strip. (Tr. at 16.) Garkane's biggest Arizona customer is the National Parks Service at  
2 the North Rim of the Grand Canyon, consuming approximately 1 megawatt ("MW") in the summer  
3 and about 200 kilowatts ("kW") in the winter. (Tr. at 15-16.) Overall, Arizona customers consume  
4 approximately 10 percent of Garkane's approximately 40 MW of total load. (Tr. at 15.)

5 2. The Commission initially granted Garkane a CC&N to provide electric utility services  
6 in Arizona in Decision No. 38446 (April 4, 1966).<sup>1</sup>

7 3. Until April 1994, Garkane provided electric service to the residents of Colorado City  
8 and the neighboring city of Hildale, Utah. Colorado City and Hildale are jointly known as the "Twin  
9 Cities." In Decision No. 58571 (March 16, 1994), the Commission granted Garkane's application to  
10 sell to Colorado City the electric facilities used to serve Colorado City and to eliminate Colorado City  
11 and an adjacent portion of wilderness area from Garkane's CC&N.<sup>2</sup> Garkane had entered an  
12 Agreement of Purchase and Sale with the Twin Cities, which joined to form an electric utility, now  
13 known as the Twin Cities Power Authority ("TCPA"). The Twin Cities funded the acquisition of  
14 Garkane's assets through the sale of municipal bonds.

15 4. The Twin Cities began to default on their bond payments in 2000 and on their interest  
16 payments in 2005. In 2006, Garkane was approached by Wells Fargo Bank and Bondholders N.A.  
17 ("Wells Fargo"), the trustee for the Twin Cities' bondholders, regarding whether Garkane was  
18 interested in purchasing the Twin Cities' utility assets and resuming electric service to the Twin  
19 Cities. After extended negotiations, in November 2008, Garkane entered into a Memorandum of  
20 Understanding ("MOU") to purchase the utility assets to serve the Twin Cities.

21 5. On December 12, 2008, Garkane filed with the Arizona Corporation Commission  
22 ("Commission") an application to extend its CC&N to provide electric utility service to Colorado  
23 City, Arizona. Garkane stated that it will use its current Commission-approved tariffs and  
24 regulations, including its purchased power adjustment mechanism ("PPAM"),<sup>3</sup> to provide service to  
25 Colorado City. In its application, Garkane requested that this matter be considered by the

26 <sup>1</sup> The original order, Decision No. 38392 (February 3, 1966), was revoked and reissued verbatim as Decision No.  
27 38446 (April 4, 1966) to alleviate due process concerns related to improper and belated service of the original order.

28 <sup>2</sup> The Public Service Commission of Utah ("Utah PSC") dealt with the corresponding transaction dealing with the  
electric facilities to serve Hildale. The wilderness area does not use electrical service.

<sup>3</sup> Garkane consistently referred to the PPAM as a wholesale power cost adjustment provision.

1 Commission as soon as possible and no later than the Open Meeting of April 28 and 29, 2009, to  
2 avoid default on the MOU, which requires closing on the sale by June 30, 2009, and on its wholesale  
3 power arrangement with its power supplier, Deseret Power Electric Cooperative ("Deseret"), which  
4 requires that service be commenced by June 30, 2009. Garkane stated that its transmission  
5 arrangement with Rocky Mountain Power ("RMP") is also time sensitive. Garkane has agreed to  
6 waive its 10-day exception period to expedite the Commission's consideration of this matter.

7 6. On February 6, 2009, Commission Utilities Division Staff ("Staff") issued a  
8 Sufficiency Letter, stating that Garkane's application had met the sufficiency requirements of the  
9 Arizona Administrative Code.

10 7. On February 10, 2009, a Procedural Order was issued scheduling a hearing in this  
11 matter for April 3, 2009, and establishing other procedural requirements and deadlines.

12 8. On March 18, 2009, Garkane filed an Affidavit of Publication showing that it had  
13 published notice of the application and hearing in *The Spectrum*, a newspaper of general circulation  
14 in Colorado City, on February 26, 2009, and a Certification of Mailing showing that notice of the  
15 application and hearing had been sent to each property owner in Colorado City and to each MOU  
16 signatory by first-class U.S. Mail on February 23, 2009. The notice stated that Garkane intends to  
17 provide service to Colorado City customers using its current Commission-approved tariffs and  
18 regulations and to use the tariffs' PPAM to adjust Colorado City's tariff rates because there is a  
19 higher annual wholesale power cost to serve the Twin Cities than exists for the remainder of  
20 Garkane's service area in Arizona and Utah. (Ex. A-2.)

21 9. On March 18, 2009, Staff filed its Staff Report, recommending that Garkane's  
22 application be approved, subject to specified conditions.

23 10. On March 27, 2009, Garkane filed a response to the Staff Report, providing several  
24 minor factual clarifications and requesting that specific language be included in the Commission's  
25 order regarding the adjustor charges to be assessed in Colorado City, as Garkane desires to set forth  
26 in its tariff the specific adjustor charges for Colorado City by customer class and desires to  
27 distinguish the Colorado City-specific adjustor charges from any future adjustor charges that may be  
28 assessed to all of Garkane's member/customers under its PPAM. (Ex. A-2.)

1           11.    On April 3, 2009, a full evidentiary hearing was held before a duly authorized  
2 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona.  
3 Garkane and Staff appeared through counsel and provided testimony and exhibits. Testimony for  
4 Garkane was received from Mike Avant, Engineering Manager for Garkane. Testimony for Staff was  
5 received from Candrea Allen, Public Utilities Analyst; Prem Bahl, Electric Utilities Engineer; and  
6 Vicki Wallace, Executive Consultant. Public comment was received from a current TCPA Board  
7 member, who stated that the TCPA Board supports Garkane's application.

8           12.    On April 6 and 8, 2009, Garkane and Staff filed late-filed exhibits ("LFEs").

9           13.    On April 14, 2009, a telephonic procedural conference was held to discuss further the  
10 issue of Garkane's financing for the acquisition, in light of the LFEs. Garkane and Staff appeared  
11 through counsel, and Garkane agreed to file copies of the Utah financing application and the approval  
12 obtained from the Utah PSC. Those items were docketed the same day.

13 **Extension Area; Requests for Service**

14           14.    The extension area encompasses all of Colorado City and is described fully in Exhibit  
15 A and shown on Exhibit B, both of which are attached hereto and incorporated herein by reference.  
16 The extension area does not include the adjacent wilderness area that was eliminated from Garkane's  
17 CC&N along with Colorado City in 1994.

18           15.    TCPA currently has approximately 700 customers in Colorado City. (Tr. at 43.)

19           16.    In the general election of November 2008, the residents of both Colorado City and  
20 Hildale voted overwhelmingly to approve the acquisition of the TCPA system by Garkane. (Tr. at  
21 44.)

22           17.    The Commission has not received any comments in opposition to Garkane's  
23 application. (Ex. S-1.)

24 **Acquisition of the TCPA System; the MOU**

25           18.    The parties to the MOU are Garkane as the Buyer and TCPA, Hildale, Colorado City,  
26 and Wells Fargo collectively as the "Sellers." (Ex. S-1 at ex. 2.) Under the MOU, Garkane will  
27 purchase all of the electrical transmission, substation, and distribution system assets currently  
28 belonging to the Sellers, certain materials and supplies, and the right and duty to provide electrical

1 service to the residents and businesses of the Twin Cities, in return for \$3 million in cash payable at  
2 the closing of the transaction, which must occur no later than June 30, 2009. (*Id.*) The Sellers must  
3 transfer to Garkane customer and system information, all customer deposits held on account, and all  
4 contributions in aid of construction and must continue to operate the system until closing. Garkane  
5 and/or Deseret must obtain delivery from RMP at Hurricane, Hildale, or a mutually agreeable point in  
6 between and must enter into a purchased power contract amendment for delivery of necessary power  
7 and energy at the delivery point, under Rate Schedule A energy and capacity charges, with a facilities  
8 charge not to exceed \$930,000 per year. (*Id.*) Garkane must establish an office in Hildale or  
9 Colorado City for receipt of payments and provision of customer service and must maintain the office  
10 for at least three years after the closing; Garkane may charge in the extension area rates equivalent to  
11 the existing TCPA rates,<sup>4</sup> with a structure similar to the existing Garkane rates, and may allocate  
12 costs and expenses specifically to the Twin Cities area to the extent that the costs or expenses are  
13 directly attributable to costs or expenses incurred in the Twin Cities area. (*Id.*) After the closing, the  
14 Twin Cities customers must become members of Garkane, with the same rights and privileges held  
15 by current members. (*Id.*) The MOU provides that closing of the transaction is contingent upon  
16 receipt of necessary approvals from (1) Garkane's Board, (2) TCPA's Board, (3) Hildale's Town  
17 Council, (4) Colorado City's Town Council, (5) Wells Fargo, (6) the voters of the Twin Cities, (7) the  
18 Utah PSC, (8) the Commission, (9) Rural Utilities Service ("RUS"), (10) National Rural Utilities  
19 Cooperative Finance Corporation ("NRUCFC"), (11) Deseret's Board, and (12) the Federal Energy  
20 Regulatory Commission ("FERC"). (*Id.*) Garkane has the right to cancel the transaction if the  
21 Commission does not approve its application in this matter or approves its application subject to  
22 conditions that Garkane finds unacceptable. (*Id.*) Garkane testified that the Commission's approval  
23 and FERC's approval of Deseret's wholesale power rate are essentially the only approvals still  
24 outstanding. (Tr. at 45.) According to Garkane, the Utah PSC, RUS, and NRUCFC only required  
25 notification, not approval, (Tr. at 44); Deseret's Board has already approved the transaction, (*Id.*); and  
26 FERC's approval was expected to be received within a few days of the hearing, (Tr. at 45).

27

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<sup>4</sup> At the time the MOU was negotiated, the existing rates were the 2003 rates.

1 Garkane's Board, TCPA's Board, Hildale's Town Council, Colorado City's Town Council, and  
2 Wells Fargo are all involved in drafting the final purchase/sale agreement, which was out for  
3 comments at the time of the hearing. (Tr. at 44-45.)

4 19. Garkane believes that it is getting a good deal on the purchase of the TCPA system, as  
5 TCPA has added a substation, a building, and a transmission line since Garkane sold its distribution  
6 system to serve the Twin Cities in 1994. (Tr. at 28.) Garkane is purchasing back substantially more  
7 facilities than what it originally sold. (*Id.*) According to Garkane, TCPA's books show that the  
8 system has a value of \$7 million. (*Id.*) Garkane has not found abnormally high outage conditions  
9 and is not aware of anything out of the ordinary in terms of maintenance and repair with TCPA's  
10 system. (Tr. at 24-25.)

11 20. Garkane will fund the purchase through a loan received in 2007 from the NRUCFC,  
12 \$3 million of which was set aside by Garkane for this acquisition. (Tr. at 27-28.) The loan, approved  
13 by the Utah PSC in November 2007, allows for maximum borrowing of \$15 million, has a 40-year  
14 initial term, and is secured by a first-lien mortgage on Garkane's electric system and assets. (LFE A-  
15 2.) According to Garkane, the mortgage actually dates back several decades and was last re-recorded  
16 in November 1999.<sup>5</sup> (Proc. Conf. April 14, 2009.) Through the mortgage, there is a lien over all of  
17 Garkane's Arizona and Utah assets, including after-acquired assets. (*Id.*) According to Garkane, the  
18 loan did not result in a new lien or other new encumbrance over Garkane's Arizona or Utah assets.  
19 (*Id.*)

20 21. Garkane has not applied for Commission approval of its financings since at least early  
21 1999, based upon its belief that as a foreign public service corporation engaged in interstate  
22 commerce, it is not required to obtain such approval.<sup>6</sup> (Tr. at 64-66.) Garkane obtained approval of  
23

24 <sup>5</sup> The mortgage does not appear to have been approved by the Commission in 1999.

25 <sup>6</sup> Garkane cites Arizona Attorney General Opinion No. 69-10 (March 14, 1969) ("AG Op. 69-10"), for its position in  
26 this regard. In addition, Garkane provided an April 1999 letter from its attorney to the Commission's Chief Counsel at  
27 the time, memorializing a discussion in which the two apparently agreed that because of Interstate Commerce Clause  
28 restrictions, Garkane, as a foreign public service corporation engaged in interstate commerce and owning facilities in  
more than one state, is not required to obtain Commission approval of financings. (Ex. A-5.) We note that Attorney  
General Opinions are only advisory and also that AG Op. 69-10 predates the amendment of A.R.S. § 40-301 to include  
subsection (D), which provides that A.R.S. §§ 40-301 to 40-303 "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." We also note that AG Op. 69-10 does not address A.R.S. § 40-285, which requires

1 the NRUCFC loan from the Utah PSC because Garkane is domiciled in Utah. (*Id.*) The Utah PSC  
2 found that the loan was in the public interest. (LFE A-2.)

3 22. To date, Garkane has not requested a declaratory adjudication regarding the  
4 Commission's jurisdiction to approve its financings under A.R.S. §§ 40-301 et seq. and/or its  
5 encumbrances under A.R.S. § 40-285 in light of its being a foreign public service corporation  
6 engaged in interstate commerce. We believe that Garkane should do so, and Garkane has indicated  
7 that it is willing to file such an application. By resolving the issue in a separate docket instead of in  
8 this docket, both Garkane and Staff will have adequate time to fully research, analyze, and (if  
9 necessary) argue the issue. Garkane's application should, in the alternative, if the Commission finds  
10 that approval of financings and/or encumbrances is required, request approval of all financings and/or  
11 encumbrances that have been entered into by Garkane and not approved by the Commission.

12 **Provision of Services to Extension Area**

13 23. Garkane does not need to build any special facilities to provide service to Colorado  
14 City, as Garkane is essentially purchasing an operating utility. (Tr. at 24.)

15 24. Garkane has an all-requirements contract to obtain needed power from Deseret, and  
16 Deseret has agreed to provide Garkane the power needed to supply Colorado City under the existing  
17 contract. (Ex. S-4.) Under the agreement with Deseret, Garkane will pay for power under Deseret's  
18 Rate Schedule A and will pay an additional facilities charge of \$75,000 per month (\$900,000 per  
19 year). (*Id.*)

20 25. The wholesale power arrangement that Garkane has negotiated with Deseret is based  
21 upon 2005 test year loads and market conditions and specifies that if Garkane does not begin to take  
22 power by June 30, 2009, Deseret can re-price the power. (Tr. at 17-18.) Garkane believes that  
23 Deseret's re-pricing the power may substantially change the economics of the transaction, (Tr. at 18),  
24 and has indicated that it will pull out of the transaction if Garkane cannot commence taking the power  
25 from Deseret by June 30, 2009, (Ex. S-4).

26 26. Garkane has an MOU with RMP for delivery of the power for Colorado City and the

27  
28 Commission approval before a public service corporation may encumber the whole or any part of its plant or system  
necessary or useful in the performance of its duties to the public.

1 vicinity. (Tr. at 21.) The RMP MOU provides that the delivery arrangement is only valid provided  
2 that Garkane closes on the purchase/sale transaction before RMP begins construction of a separate,  
3 parallel transmission line. (Tr. at 26.) If the purchase/sale transaction closes, Garkane believes that  
4 RMP will not construct the parallel line. (Tr. at 26-27.)

5       27. Until 2011, Garkane will provide power to its Colorado City customers and its  
6 existing customers in the vicinity of Colorado City using line running from the Western Area Power  
7 Administration ("WAPA") Glen Canyon Substation, which is approximately 100 line miles to the  
8 east of Colorado City. (Tr. at 30-31.) The line from the Glen Canyon Substation is Garkane's  
9 current means of delivery to its customers in the vicinity of Colorado City. (*Id.*) The Glen Canyon  
10 delivery point is the major delivery point for Garkane's system, currently providing Garkane  
11 approximately 38 MW of power. (Tr. at 31.) Of that, approximately 4 MW of power travels  
12 approximately 100 line miles to the vicinity of Colorado City. (*Id.*)

13       28. TCPA takes power from the Utah Associated Municipal Power Systems ("UAMPS")  
14 at the Cliff Wilson Substation in Hurricane City, approximately 23 miles to the west of the Twin  
15 Cities Substation, and has a 69 kV transmission line that runs from the Cliff Wilson Substation to the  
16 Twin Cities Substation. (Ex. A-3; Ex. S-1.) Garkane is acquiring TCPA's 69 kV transmission line as  
17 part of the purchase/sale transaction. (Ex. S-4.) TCPA's transmission line passes through the service  
18 areas of Garkane, RMP, and Hurricane City. (*Id.*) Garkane has agreed to trade to RMP that portion  
19 of the transmission line located west of Garkane's service area boundary in exchange for a delivery  
20 point at the RMP/Garkane service area boundary. (*Id.*) RMP will be installing a new circuit breaker,  
21 at RMP's expense, at the intertie point between the existing TCPA transmission line and the RMP  
22 transmission line. (*Id.*)

23       29. The RMP transmission line runs from its Toquerville Substation and crosses TCPA's  
24 transmission line at a point just to the east of the Cliff Wilson Substation. (Ex. A-3.) The  
25 Toquerville Substation is approximately 5 miles north of where the lines cross. (Ex. A-3.) RMP will  
26 not currently allow Garkane to add any load onto the line from the Toquerville Substation because of  
27 capacity concerns. (Tr. at 30.) However, RMP is planning to upgrade the line and has agreed to  
28 allow Garkane to move Garkane's load to serve Colorado City and the vicinity onto the line once the

1 upgrade is completed, which is expected to occur in 2011. (Tr. at 30.) At that point, the power to  
2 serve the Colorado City area will only travel 28 miles of line instead of the current 100 miles. (Ex.  
3 A-3.)

4 30. Garkane will experience efficiencies in line loss and power delivery when it transfers  
5 its load in 2011. (Tr. at 21, 40-41; Ex. A-3.) The longer a line is, the more power is lost, so the  
6 significantly reduced distance to the service area will result in a calculable decrease in line loss. (Tr.  
7 at 31-32.) This will benefit Garkane's existing customers in the vicinity of Colorado City as well as  
8 its new Colorado City customers. (Tr. at 21.) In addition, the more load that is on a line, the more  
9 power is lost, so moving Garkane's existing load to serve the vicinity of Colorado City should result  
10 in reducing the loss on its line from the Glen Canyon Substation, which will benefit Garkane's  
11 customers served by that line. (See Tr. at 31.)

12 31. Garkane will employ two full-time local linemen to serve its new customers in  
13 Colorado City and its approximately 600 existing customers in the vicinity of Colorado City, who are  
14 currently served by crews sent to the area approximately two to three times per week from Garkane's  
15 Kanab, Utah, office, located approximately 45 to 60 minutes away. (Tr. at 20.) With the new  
16 Colorado City customers, Garkane will have enough work to keep a two-person crew busy in the area  
17 full time. (Tr. at 20, 32-33.) Garkane has offered full-time work to TCPA's two part-time linemen,  
18 who live in Colorado City. (Tr. at 21, 32-33) Having a local crew will mean fast response times for  
19 outages and any other problems that may arise in the area. (Tr. at 21.)

20 **Proposed Rates for Extension Area**

21 32. Garkane will incur a higher annual wholesale power cost to serve the Twin Cities than  
22 it does to serve the rest of its service area because the power arrangement for the Twin Cities falls  
23 under a provision in Garkane's wholesale power contract with Deseret requiring that any new loads  
24 over 2.5 MW be priced at market rates under a specially negotiated contract. (Tr. at 29.) Garkane  
25 negotiated with Deseret to have the Colorado City customers obtain power under the same Deseret  
26 rate schedule as the rest of Garkane's customers, Rate Schedule A, but with an increased facilities  
27 charge of \$900,000 per year. (See Tr. at 29-30.) According to Garkane, its costs to provide power to  
28

1 Colorado City and Hildale are the same, aside from the higher regulatory cost in Arizona,<sup>7</sup> and it will  
2 charge the same rates to all of its Twin Cities customers. (Tr. at 33-34.)

3 33. Garkane has a Commission-approved PPAM dating back to at least 1980.<sup>8</sup> (See  
4 Decision No. 57106 (September 21, 1990); Decision No. 51645 (December 9, 1980).) Garkane's  
5 current base cost of power, established in Garkane's last permanent rate case in 1998, is \$0.02558.  
6 (See Decision No. 61105 (August 28, 1998).) For quite a few years, Garkane's purchased power  
7 adjustor has been set at zero. (Tr. at 35.)

8 34. Under the contract with Deseret, the average cost of power for Garkane to serve the  
9 Twin Cities is approximately \$0.059. (Tr. at 51, 57.) Garkane intends to recover the increased cost  
10 only from the customers in the Twin Cities, through special power adjustment charges ("SPACs"),  
11 because Garkane believes that it would be unfair to recover the increased cost from its entire  
12 customer base through the PPAM. (See Tr. at 58-61.)

13 35. Garkane proposes to charge the customers in the Twin Cities its current Commission-  
14 approved rates and charges plus SPACs set for each customer class. The SPACs were calculated to  
15 bring Garkane's revenue by customer class to the level of revenue for that customer class that would  
16 be generated by applying TCPA's 2003 rates, which are greater than Garkane's current rates, to the  
17 total kW hours ("kWh") sold in 2008. (Tr. at 47; Ex. A-4.) Garkane used this method because  
18 Garkane and TCPA agreed that Garkane's revenue would be equal to what would have been earned  
19 under TCPA's 2003 rates. (Tr. at 47.) Because TCPA's rates were last increased in 2008, by  
20 approximately 10-12 percent, this represents a reduction in rates for Colorado City customers. (Tr. at  
21 48.) Garkane testified that it cannot afford to enter into the purchase agreement unless it is able to  
22 charge the proposed SPACs or something similar because its Commission-approved Arizona rates do

23 <sup>7</sup> Garkane indicated that it was only required to make a one-page filing with the Utah PSC relating to the Hildale  
24 portion of the transaction. (Tr. at 33.)

25 <sup>8</sup> In Decision No. 50266 (September 18, 1979), the Commission determined that the adoption of purchased power or  
26 fuel cost escalation clauses by all distribution electric cooperatives in Arizona would be in the best interest of sound  
27 utility management and would result in equitable apportionment of costs between Arizona consumers and consumers in  
28 neighboring jurisdictions. (Decision No. 50266 (September 18, 1979) at 2.) The Commission ordered all electric power  
distribution cooperatives that already had Commission-approved escalator clauses to pass through all increases or  
decreases in the cost of purchased power in the month following receipt of purchased power invoices and further ordered  
that the increases or decreases were to be passed through "equally to all classes of consumers or in such manner as may  
be approved by the Commission." (*Id.*) Garkane was named as one of the cooperatives, but the order does not indicate  
whether Garkane already had a PPAM at the time. (See *id.*)

1 not generate enough revenue to make up the additional annual purchased power cost. (Tr. at 48-49.)  
 2 Garkane projects that it will generate additional annual revenue of \$690,265 with the SPACs.<sup>9</sup> (Ex.  
 3 A-4.)

4 36. Garkane would like to have its tariff specifically set forth the SPACs by customer  
 5 class for the customers located within the municipal boundaries of Colorado City. (Tr. at 62.)  
 6 Garkane proposes the following SPACs for the different customer classes:

Customer Class	SPAC (per kWh)
Residential (non-prepaid accounts)	\$0.037317
Residential (TCPA prepaid accounts)	\$0.037412
Small Commercial	\$0.006177
Large Commercial	\$0.015035
Small and Large Public Buildings	\$0.003956
Small Industrial/Retail	\$0.020568

12 37. Garkane's present rates are as follows:

Customer Class	Monthly Customer Charge	kWh Charge (per kWh)	kW Charge (per kW)
Residential	\$12.50	\$0.06907	N/A
Irrigation	N/A <sup>10</sup>	\$0.05723	\$5.31
Commercial/Industrial/ Public Buildings/ Authorities	\$12.50	\$0.05845	\$6.37
Customers with Demand >50 kW	\$20.00	\$0.06115	\$6.37

20 38. TCPA's present rates are as follows:

Customer Class	Monthly Customer Charge	kWh Charge (per kWh)	kW Charge (per kW)
Residential (prepaid and non-prepaid accounts)	\$20.00	\$0.122	N/A
Small Commercial/ Government/Utility/ School (<30 kW)	\$20.00	\$0.0826	\$5.00

27 <sup>9</sup> Although this is not enough to cover the additional \$900,000 in annual costs, Garkane appears to believe that it is sufficient.

28 <sup>10</sup> Irrigation customers are charged an annual base charge of \$75.00 single phase or \$125 three phase.

Large Commercial/ Government/Utility/ School (>30 kW)	\$20.00	\$0.060	\$12.00
Small Industrial/Retail	\$20.00	\$0.122	N/A

39. Staff provided the following comparison of the estimated monthly bills for different classes of customers under TCPA's current rates and Garkane's rates, including the proposed SPACs:

Customer Class (Usage Assumed)	TCPA Total Monthly Bill	Garkane Total Monthly Bill	Difference	Percentage Difference <sup>11</sup>
Residential (500 kWh)	\$81.00	\$65.69	-\$15.31	-18.90%
Residential Prepaid (500 kWh)	\$81.00	\$65.74	-\$15.26	-18.84%
Small Commercial (23 kW & 5,000 kWh)	\$548.69	\$483.03	-\$65.66	-11.97%
Large Commercial (37 kW & 10,000 kWh)	\$1,063.26	\$1,017.14	-\$46.12	-4.34%
Small Public Buildings (16 kW & 5,000 kWh)	\$512.30	\$425.55	-\$86.75	-16.93%
Large Public Buildings (32 kW & 10,000 kWh)	\$1,000.63	\$873.11	-\$127.52	-12.74%
Small Industrial and Retail (16 kW & 5,000 kWh)	\$630.00	\$529.61	-\$100.39	-15.93%

40. Even including the proposed SPACs, Garkane's rates represent a significant decrease from what Colorado City customers are currently paying TCPA for electric service, effectively taking the Colorado City customers back to the level of rates that they were being charged by TCPA in 2003. (Tr. at 17.)

41. Staff believes, like Garkane, that the SPACs are an implementation of Garkane's Commission-approved PPAM, (Tr. at 78-79), and that it is appropriate for Garkane to use the SPACs to target its recovery of the additional cost that Garkane will be paying to Deseret to provide power to Colorado City, (see Tr. at 79-81).

42. We find that the SPACs are an appropriate means of offsetting the additional costs that Garkane will incur to provide service to the CC&N extension area and that they should be approved and should be specifically set forth in Garkane's tariff.

<sup>11</sup> This column was not provided by Staff.

1 **Fitness and Properness/Capabilities/Resources**

2 43. Garkane has been providing electricity for 70 years and is a stable company. (Tr. at  
3 18-19.)

4 44. Garkane generates approximately 20 percent of the power it uses. (Tr. at 42.) It owns  
5 and operates three hydroelectric plants that operate continually and also owns four diesel plants that  
6 are used for emergency peaking operations. (Tr. at 42-43.)

7 45. Staff has determined that sufficient transmission capacity exists to deliver power to  
8 Colorado City. (Ex. S-1.)

9 46. Garkane is financially sound, with a current margins and equity to total assets level of  
10 approximately 36 percent. (Ex. S-4; Tr. at 114.)

11 47. Garkane has had no rate increases since 1998. (Tr. at 9-10.)

12 48. Garkane is in good standing with the Commission's Corporations Division. (Ex. S-1.)

13 49. Staff's Compliance Section reports that there are no delinquencies for Garkane. (Ex.  
14 S-1.)

15 50. Staff believes that Garkane has the financial resources, technical capabilities, and  
16 managerial experience to own and operate an electric utility; has sufficient resources to serve the  
17 additional load of Colorado City; and is a fit and proper entity to provide service to the extension  
18 area. (Ex. S-1; Tr. at 91-92, 105.)

19 **Public Interest**

20 51. Garkane believes that the extension of its CC&N to again serve Colorado City is in the  
21 public interest for several reasons. First, it will bring stability to the residents of Colorado City  
22 because of Garkane's stability as a company. (Tr. at 18-19.) Second, it will result in an immediate  
23 decrease in the rates paid by Colorado City customers and in rate stability.<sup>12</sup> (Tr. at 19.) Third,  
24 Garkane will experience some operational efficiencies as a result of providing service to Colorado  
25 City, through faster response times for outages and other problems that may arise, reduced travel  
26

27 <sup>12</sup> Garkane's average residential rate prior to 1994 was 6.5¢, its current average residential rate is 7.7¢, and its rate in  
28 Colorado City if the extension is granted will be 10.5¢. (Tr. at 19-20.) In contrast, the rate in Colorado City has gone  
from 6.5¢ in 1994 to approximately 13.4¢ today. (Tr. at 19.) In addition, Garkane states that it has a stable power  
supplier arrangement with Deseret, whose rates have not changed since 1996. (Tr. at 20.)

1 costs for maintenance crews, and ultimately reductions in line loss and enhancement of power  
2 delivery through the transfer of its load. (Tr. at 20-21.)

3 52. Staff believes that system reliability and quality of service will improve for Garkane's  
4 existing customers in the area surrounding Colorado City as a result of extending service to Colorado  
5 City because the area will be served from a substation that is much closer, thereby reducing system  
6 losses, and Garkane will employ a two-person full-time maintenance crew in the area, resulting in  
7 more readily available maintenance and repairs. (See Tr. at 88-91.) Staff believes that Garkane's  
8 extension of its CC&N service area to serve Colorado City is reasonable, appropriate, and in the  
9 public interest and should be approved. (Tr. at 95, 105.)

10 **Staff's Recommendations**

11 53. Staff recommends approval of Garkane's application to extend its CC&N to serve the  
12 extension area, subject to the following conditions:

- 13 a. That Garkane be required to file documentation of the finalized purchase  
14 agreement with the Commission in this docket upon closing the transaction;  
15 and  
16 b. That Garkane be required to charge its current Commission-approved rates and  
17 charges in the requested extension area, including the SPACs of \$0.037317 per  
18 kWh for residential, \$0.037412 per kWh for residential prepaid, \$0.006177 per  
19 kWh for small commercial, \$0.015035 per kWh for large commercial,  
20 \$0.003956 per kWh for public buildings, and \$0.020568 per kWh for small  
21 industrial and retail, until further order of the Commission.

22 54. Garkane does not object to filing a copy of the final purchase agreement with Docket  
23 Control once it is completed, (Tr. at 25), and requested that the Commission specifically set forth the  
24 SPACs and require Garkane to charge them as a condition of approval of the CC&N extension, (Ex.  
25 A-2).

26 55. Staff's recommendations in Findings of Fact No. 53 are reasonable and should be  
27 adopted.

28 ...

**CONCLUSIONS OF LAW**

1  
2 1. Garkane is a public service corporation within the meaning of Article XV of the  
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Garkane and the subject matter of the  
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,  
8 it is in the public interest to extend Garkane's CC&N service area to include the extension area  
9 requested, which is more fully described in Exhibit A and shown in Exhibit B hereto.

10 5. Garkane is a fit and proper entity to receive an extension of its CC&N service area to  
11 include the extension area requested.

12 6. It is just and reasonable and in the public interest to allow Garkane to charge in the  
13 extension area the rates and charges in Garkane's existing tariffs on file with the Commission, plus  
14 the SPAC for each customer class set forth in Findings of Fact No. 36; to require Garkane to set forth  
15 the specific SPACs by customer class in its tariff/s; and to require Garkane to provide notice of when  
16 it will commence service and of its rates and charges, including the SPACs, to the customers in the  
17 extension area.

18 7. It is reasonable and appropriate to require Garkane to file in a separate docket an  
19 application that requests a declaratory adjudication regarding the Commission's jurisdiction to  
20 approve its financings under A.R.S. §§ 40-301 et seq. and its encumbrances under A.R.S. § 40-285 in  
21 light of Garkane's status as a foreign public service corporation engaged in interstate commerce.  
22 Garkane's application should, in the alternative, if the Commission finds that approval of financings  
23 and/or encumbrances is required, request approval of all financings and/or encumbrances that have  
24 been entered into by Garkane and not approved by the Commission.

25 **ORDER**

26 IT IS THEREFORE ORDERED that Garkane Energy Cooperative, Inc.'s request for an  
27 extension of its Certificate of Convenience and Necessity to provide electric service to the extension  
28 area described in Exhibit A and shown in Exhibit B, attached hereto and incorporated herein, is

1 approved.

2 IT IS FURTHER ORDERED that until further order of the Commission, Garkane Energy  
3 Cooperative, Inc. shall charge in the extension area those rates and charges set forth in Garkane  
4 Energy Cooperative, Inc.'s existing tariffs on file with the Commission, plus the following Special  
5 Power Adjustment Charges by customer class:

Customer Class	SPAC (per kWh)
Residential (non-prepaid accounts)	\$0.037317
Residential (TCPA prepaid accounts)	\$0.037412
Small Commercial	\$0.006177
Large Commercial	\$0.015035
Small and Large Public Buildings	\$0.003956
Small Industrial/Retail	\$0.020568

6  
7  
8  
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10  
11 IT IS FURTHER ORDERED that Garkane Energy Cooperative, Inc. shall, within 30 days  
12 after the effective date of this Decision, file with the Commission's Docket Control, as a compliance  
13 item in this docket, updated tariff/s specifically setting forth for the customers located within the  
14 boundaries of the extension area the Special Power Adjustment Charges by customer class included  
15 within the prior ordering paragraph.

16 IT IS FURTHER ORDERED that Garkane Energy Cooperative, Inc. shall, within 30 days  
17 after the effective date of this Decision, send notice, in a form acceptable to Staff, to the customers  
18 located within the boundaries of the extension area and file a copy of such notice with the  
19 Commission's Docket Control, as a compliance item in this docket. The notice shall state when  
20 Garkane's service will commence and shall set forth the rates and charges approved herein, including  
21 the Special Power Adjustment Charges by customer class.

22 IT IS FURTHER ORDERED that Garkane Energy Cooperative, Inc. shall, within 30 days  
23 after the closing of the purchase/sale transaction through which it acquires the assets needed to serve  
24 the extension area, file with the Commission's Docket Control, as a compliance item in this docket, a  
25 copy of the fully executed Purchase and Sale Agreement.

26 IT IS FURTHER ORDERED that Garkane Energy Cooperative, Inc. shall, within 60 days  
27 after the effective date of this Decision, file with the Commission's Docket Control, as a compliance  
28 item in this docket, an updated service area map showing the modifications approved herein.

1 IT IS FURTHER ORDERED that Garkane Energy Cooperative, Inc. shall, within 90 days  
2 after the effective date of this Decision, file with the Commission's Docket Control an application for  
3 a declaratory adjudication regarding the Commission's jurisdiction to approve Garkane's financings  
4 under A.R.S. §§ 40-301 et seq. and Garkane's encumbrances under A.R.S. § 40-285 in light of  
5 Garkane's status as a foreign public service corporation engaged in interstate commerce. Garkane's  
6 application should, in the alternative, if the Commission finds that approval of financings and/or  
7 encumbrances is required, request approval of all financings and/or encumbrances that have been  
8 entered into by Garkane and not approved by the Commission.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
11  
12

13 CHAIRMAN \_\_\_\_\_ COMMISSIONER  
14

15 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER  
16

17 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim  
18 Executive Director of the Arizona Corporation Commission,  
19 have hereunto set my hand and caused the official seal of the  
20 Commission to be affixed at the Capitol, in the City of Phoenix,  
21 this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

22 \_\_\_\_\_  
MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

23 DISSENT \_\_\_\_\_  
24

25 DISSENT \_\_\_\_\_  
26

SNH:db

27

28

1 SERVICE LIST FOR: GARKANE ENERGY COOPERATIVE, INC.

2 DOCKET NO.: E-01891A-08-0598

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