

Sullivan-Leshin, Isaac, PRC

From: Sullivan-Leshin, Isaac, PRC
Sent: Thursday, February 10, 2022 10:33 AM
To: Records, PRC, PRC
Subject: 18-00383-UT; Filing Submission
Attachments: 18-00383-UT-2.10.2022-Commission-Initial Order on Remand.pdf

IN THE MATTER OF THE FILING OF ADVICE NOTICE NO. 69 BY)
SOCORRO ELECTRIC COOPERATIVE, INC.)
) Case No. 18-00383-UT
SOCORRO ELECTRIC COOPERATIVE, INC., APPLICANT.)
)
_____)

Please file the attached INITIAL ORDER ON REMAND into the above captioned case.

Thank you.

Isaac Sullivan-Leshin
Law Clerk for Office of General Counsel



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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE FILING OF ADVICE NOTICE)
NO. 69 BY SOCORRO ELECTRIC COOPERATIVE, INC.)
) Case No. 18-00383-UT
SOCORRO ELECTRIC COOPERATIVE, INC.,)
APPLICANT.)

INITIAL ORDER ON REMAND

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) on the New Mexico Supreme Court’s January 26, 2022 Order Granting Stay of Proceedings which stayed the mandamus proceeding in appeal no. S-1-SC-38302 until further order of the Court; and in appeal no. S-1-SC-37948, which granted the Joint Motion of SEC and NMPRC to remand jurisdiction to the Commission to consider the modification or withdrawal of the Compliance Order and stayed the appeal of the Compliance Order; wherefore, being duly advised in the premises;

THE COMMISSION FINDS AND CONCLUDES:

1. On December 3, 2018, SEC¹ initiated the Rate Case when it filed Advice Notice No. 69 for a proposed rate increase.
2. SEC calculated its needed increase in revenue requirement based on the cash margins required to meet the Board’s financial goals: a) grow equity as a percentage of assets toward a 40% goal, with the result of funding plant additions averaging \$3,713,835 annually over the next five years with 37.73% equity or \$1,401,230 cash annually; b) maintain SEC’s cash/liquidity position as of the end of the 2017 test year at approximately \$3.8 million; c) fund

¹ SEC is a rural electric cooperative providing electric service to 8,502 customers in Catron, Cibola, Sierra, Socorro and Valencia Counties in New Mexico.

capital credit retirements to SEC members of about \$688,000 annually; and d) in 2018, SEC's OTIER was 1.37. SEC's proposed revenue increase would boost its OTIER to 2.84.

3. On January 23, 2019, the Commission issued its Initial Order Appointing Hearing Examiner which: (i) suspended the effectiveness of Advice Notice No. 69 for nine months from December 19, 2018, to September 19, 2019; (ii) appointed a Hearing Examiner to issue a recommended decision regarding the issues for which the protests established just cause, which the Commission identified as: a) Is there substantial evidence to support the proposed rate increase per class and to support the allocation of the rate increase across customer classes; b) Has Socorro Electric demonstrated, with substantial evidence, that the proposed increase in rates per class is fair, just and reasonable; c) Has Socorro Electric demonstrated, with substantial evidence, that its revenue and operating margins require the proposed increase; and d) Has Socorro Electric demonstrated how it derived the proposed new rates and charges, including but not limited to the proposed increased "customer charges" (not tied to energy use), a new minimum charge and changes to the energy charge per kWh.). The following persons filed motions for leave to intervene and became parties: The City of Socorro (the "City"); The New Mexico Institute of Mining and Technology ("Tech") and Donald Steinnerd, a residential member/customer of SEC who appeared pro se.²

4. A public evidentiary hearing was held on June 24, 25 and 26, 2019.

5. On August 15, 2019, the Hearing Examiner issued a Recommended Decision ("RD") which recommended:

² Tech receives service under SEC's Small and Large Commercial Service rates. The City receives service under SEC's Irrigation, Small Commercial, Large Commercial and Streetlighting Service Rates. The City and Tech each presented witnesses and also presented a joint witness.

a) SEC's proposed revenue requirement of \$25,953,616 should be denied for the reasons stated on pages 30-36 of the RD and recommended no revenue increase;

b) SEC should reallocate how its unchanged revenue is divided among the classes to gradually move the relative rate of return of each class so that there is less subsidization and more unity among the classes. However, the RD did not approve of SEC's proposed re-allocation of its revenue requirement because it did not result in fair, just and reasonable rates. Therefore, the RD recommended the following reallocation among the Residential, Energy Thermal Storage ("ETS") and Irrigation to achieve a "just and reasonable outcome":

i) 2% increase in the amount of base revenue collected from the Residential Service class including the ETS service class;

ii) 3% increase in the amount of base revenue collected from Irrigation Service class; and

iii) both such re-allocations to be used to reduce revenues collected from the Large Commercial and Load Management Service classes;

c) Disapprove SEC's proposed \$5.00 monthly "Minimum Use Charge" because "it would be punitive to low-use customers and result in rate shock;

d) Disapprove SEC's rate design and recommended the following rate design:

i) implement the 2% increase in revenue collected from the Residential Service Class through a \$1.50 or 10% increase in the Customer Charge;

ii) no change to the Small Commercial Service Rate design;

iii) decrease revenues collected from the Large Commercial Service Class and a change in the charges in SEC's existing Large Commercial Service rate structure in a manner that produces equivalent bill decreases for all Large Commercial Service customers;

iv) modifying SEC's proposal to increase revenue to be collected from the Irrigation Service Class by adding a new \$5.00 Customer Charge and by increasing the variable energy charge by 4.21%;

v) no change to the Load Management Service Class rate; vi) approval of SEC's proposal to cancel Rate No. 15 and replace it with two new rates (Original rate No. 8 for Residential Service with ETS and Original Rate No. 9 for General Service with ETS) and increase revenue to be collected from the ETS service classes³;

vii) no change to existing Rate No. 14 for Standby Service for Self-Generators Service Class;

³ The RD recommended increasing customer charge from \$16 to \$17.50 a \$1.50 or 9.4% increase and by increasing the variable energy charge by \$.007650 or 4.9% stated this was consistent with Staff's recommendation the Residential ETS weighted variable energy charge of \$.13265kWh closely matches the \$.131594 per Residential Service non-ETS variable energy charge.

viii) granting SEC's request to consolidate Rate Nos. 4 and 5 so that non-LED lighting rates remain unchanged and LED lighting rates as set forth on page 80 of the RD should be adopted;

ix) no change to net metering rates except that they would be subject to the \$5.00 minimum charge if their minimum consumption below a certain level;

x) rejecting Mr. Steinnerd's request to split the Residential Class into 2 groups, Urban and Rural, because there is insufficient evidence to justify higher rates for rural customers;

xi) SEC should offer an economic development rate;

xii) SEC should immediately implement and collect a Renewable Energy and Conservation Fee under 17.9.57223.G NMAC (of no more than 1% of a customer's bill) and, as Staff recommended, should continue to promote Distributed Generation and increase its investments in renewables to achieve the targets for carbon-free power in the Energy Transition Act (ETA); and

xiii) denial of the City's request that the Commission open an investigation into the SEC Board's alleged practice of under-representing the City and to investigate into the cooperative rates and practices in general.

6. On September 11, 2019, the Commission's Final Order in SEC's Rate Case No. 18-00383-UT adopted the RD in its entirety (the "Final Order").

7. On September 23, 2019, SEC filed its Request for Clarification of Final Order Adopting Recommended Decision to clarify its obligations.

8. On October 9, 2019, the Commission entered its Order stating that the RD was adopted in its entirety and, thus, clarification of the RD or the Final Order was not necessary.

9. On October 11, 2019, SEC filed a Notice of Appeal with New Mexico Supreme Court, docketed as Case No. S-1-37948 and simultaneously filed a Motion to Stay with the Commission requesting that the Commission stay its Final Order pending a decision by the Supreme Court on SEC's appeal.

10. On October 16, 2019, SEC filed a Notice of Opposition to SEC's Motion to Stay in NMPRC Case No. 18-00383-UT stating that Staff, Tech, Mr. Steinnerd and the City opposed the Motion.

11. On October 24, 2019, the City and Tech filed a Joint Response to SEC's Motion to Stay.

12. On October 30, 2019, the Commission issued its Order Denying SEC's Expedited Motion to Stay Pending Appeal and ruled, at pages 5-7.

¶9. The Commission further finds allowing the Final Order to take effect will not irreparably harm SEC, however, stay of the Final Order would harm both the City and Tech based upon the following reasons: a) SEC's revenue will remain the same; b) Tech would not receive the benefit from the decrease in its electric bills as a result of the 1.9% decrease in the Large Commercial Rate and the economic development rate provided for in the RD; c) the City would not receive the new, cost-based LED rates and the implementation of an economic development rate; d) delay of the implementation of the Final Order would deny the City the relief the order grants from SEC's improper collection practices because the RD found that SEC was improperly charging the City fees that were inconsistent with both SEC's existing Rate No. 5 and its existing Line Extension Rule which caused the Hearing Examiner to order SEC to revise both the Line Extension Rule and newly consolidated Rate No. 41 to explicitly include specific installation costs and require SEC to keep a separate accounting of contributions in aid of construction.

¶10. For these reasons, the Motion should be denied because there is not a likelihood that SEC will prevail on the merits of its appeal and the evidence in the record demonstrates that SEC will not suffer irreparable harm unless the stay is granted.

13. Tech and the City both intervened in appeal No. S-1-SC-37948 which was assigned to the General Calendar and had been fully briefed as of April 2020.

14. On April 3, 2020, the City and Tech and the NMPRC Utility Division Staff filed a Verified Motion to Compel with the Commission in NMPRC Case No. 18-00383-UT, moving to compel SEC to implement the Final Order, which was appealed in No. S-1-SC-37948.

15. On April 15, 2020, the NMPRC granted the Joint Motion to Compel and issued a Compliance Order to SEC to immediately implement the Final Order; imposed fines in the amount of \$1,000.00 per day for the 185 days that SEC had not implemented

the Final Order, plus \$1,000 per day for continuing violations after 185 days until the date of compliance; ordered that the fines would be paid by the Board of Trustees personally and not be borne by the members of SEC; ordered that the fines were held abeyance for 60 days; and ordered that said fines were not due and payable if SEC complied with the Order by June 15, 2020 (hereinafter referred to as the "Compliance Order").

16. On May 8, 2020, SEC filed its Emergency Writ of Mandamus and Motion to Stay in a new Supreme Court Docket No. S-1-SC-38302 requesting this Court grant a stay of proceedings, grant the writ and stay the enforcement of both the Final Order and the Compliance Order.

17. On May 14, 2020, SEC filed its notice of appeal of the Compliance Order in the same docket as the appeal of the Final Order in S-1-SC-37948.

18. On May 29, 2020, the Commission and SEC filed a Joint Motion to Temporarily Stay Emergency Writ, Temporarily Stay Appeal of Compliance Order and Remand ("Joint Motion") which stated that they had determined that it is in the public interest to reach a mutually agreeable solution to the matters raised by SEC in the Emergency Writ and the Compliance Order without prolonged and costly litigation. As of May 29, 2020, the Court had neither granted nor denied SEC's Motion to Stay of the Final Order, and SEC had not complied with the Final Order or Compliance Order.

19. As ground for the Joint Motion, the Commission and SEC stated that SEC's Petition for Emergency Writ of Mandamus requested the Supreme Court mandate that the NMPRC Commissioners submit to the jurisdiction of the New Mexico Supreme Court and requested the Court grant SEC extraordinary relief of immediately staying the Compliance Order which ordered compliance with the Final Order, imposed fines against SEC's

Trustees individually and held such fines in abeyance for 60 days so that the Trustees could comply with the Final Order.

20. The Joint Motion requested that the Court temporarily stay the appeal of the Compliance Order and temporarily stay the Emergency Writ and grant a remand of jurisdiction of the Compliance Order back to the Commission so that the Commission may modify and or withdraw the Compliance Order. The Joint Motion stated that the Commission and SEC have jointly agreed that if the Commission is remanded jurisdiction in order to modify and or withdraw the Compliance Order and if the Commission modifies and or withdraws the Compliance Order, then the parties intend to request the Supreme Court grant a stipulated dismissal of both the Emergency Writ and the appeal of the Compliance Order. The Joint Motion stated that concurrence of the City and Tech was sought and they requested the following language be inserted in the Joint Motion: *“The City and Tech do not oppose a temporary stay of SEC’s petition for an emergency writ in S-1-SC-38302, a temporary stay of SEC’s appeal from the Compliance Order in S-1-SC-37948, or a stipulated dismissal of the petition and the appeal. The City and Tech also do not oppose a remand of jurisdiction of the Compliance Order to the Commission so that the Commission can postpone, modify, or rescind the fines called for in decretal paragraphs (B) and (C) on page 7 of the Compliance Order and can modify paragraphs 17, 18, 19, and 20 of the Compliance Order accordingly. The City and Tech do oppose any remand of jurisdiction to the Commission that would have the purpose or the ultimate effect of withdrawing the Compliance Order entirely or deleting decretal paragraphs (A) and (D) on page 7 of the Compliance Order, which call for immediate compliance with the Commission’s September 11, 2019 Final Order.”*

21. On January 26, 2022, the Court issued an Order temporarily staying the Emergency Writ filed by SEC in S-1-SC 38302 and temporarily staying the appeal of the Compliance Order filed by SEC in S-1-SC 37948 and remand jurisdiction back to the NMPRC to modify and or withdraw the Compliance Order.

22. The Commission finds that it has been almost two years since it issued the Compliance Order on April 15, 2020 and filed its Joint Motion on May 29, 2020 and that it needs the parties to update their current positions regarding the Final Order and inform the Commission of any negotiations that may have occurred in during this period.

IT IS THEREFORE ORDERED:

A. No later than February 23, 2022, SEC, Tech and the City shall file an update on their current positions regarding the Final Order, including but not limited to: 1) do you support or oppose the Final Order and state reasons; 2) do you support or oppose the compliance Order, and state reasons; 3) is SEC intending to comply with the Final Order, and if so, when, and if not, why not; 4) are your positions identical to that stated in your Briefs filed in S-1-SC 38302 and S-1-SC 37948 and if not, what position is changed and in what manner; 5) what rates have been charged by SEC and/or paid by Tech and the City since the date of the Final Order; 6) is SEC currently in compliance with the Final Order; and if not, reasons; 7) should the Compliance Order be revised and/or withdrawn; 6) what revisions should be made to the Compliance Order; 8) have the parties been in negotiations since the Compliance Order; 9) if so, what areas of agreement and/or disagreement remain amongst the parties; 10) what proposed resolution of the matter is desired to be able to file a stipulated joint motion of dismissal of all New Mexico Supreme Court appeals; and 11) SEC shall submit its audited financial statements for 2019, 2020 and 2021.

B. No later than March 2, 2022, the Utility Division Staff shall file its Reply to SEC's, Tech's and the City Responses, addressing each party's answer to each question. Staff shall also review SEC's 2020 Annual Report filed with the NMPRC and analyze trends or areas of concern. Staff shall also review SEC's 2020 Annual Report filed with the NMPRC and analyze trends or areas of concern.

C. This Order is effective immediately.

D. Copies of this Order shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known, and otherwise shall be sent via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 9th day of
February, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson L. Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Joseph M. Maestas, electronically signed

JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3



/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5

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NO. 69 BY SOCORRO ELECTRIC COOPERATIVE, INC.)
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SOCORRO ELECTRIC COOPERATIVE, INC.,)
APPLICANT.)

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent to the parties listed here, via email only, a true and correct copy of the **Initial Order on Remand**.

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DATED this February 10, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Law Clerk

Isaac.sullivan-leshin@state.nm.us