

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE FILING OF)
ADVICE NOTICE NO. 69 BY SOCORRO)
ELECTRIC COOPERATIVE, INC.)
)
SOCORRO ELECTRIC COOPERATIVE, INC.,)
APPLICANT)
_____)

Case No. 18-00383-UT

STAFF’S RESPONSE TO SEC’S MOTION FOR STAY

Pursuant to the directive of the Commission in its April 8, 2022 *Order Appointing Hearing Examiner and Order For Response To SEC’s Motion To Stay* (“*Order For Response*”), Utility Division Staff (“Staff”) submits its Response to Socorro Electric Cooperative’s (“SEC” or Cooperative”) Motion To Stay (“Motion”).

As Staff has maintained throughout the proceedings which have followed the Commission’s Final Order in this case, issued September 11, 2019, it is paramount that SEC follow the directives set forth by the Commission in that Final Order. The Final Order remains the law as determined in this case, unless and until either the Commission or the Supreme Court takes action to stay or vacate the order. The Cooperative, as a utility in the State of New Mexico subject to the regulation of the Commission, is bound to follow the directives of the Final Order unless either the Court or the Commission takes such action. SEC cannot be allowed to simply ignore the rate design set by the Commission in that case, no matter what the Cooperative may believe is appropriate.

In order to obtain that compliance, Staff would be willing to accept the following compromise:

1. SEC **immediately** files an Advice Notice with the Commission in compliance with the rates approved in the Commission’s Final Order of September 11, 2019, and implements those Commission-approved rates within 30 days.

2. Should SEC file the Advice Notice as recommended above, Staff would not object to the Commission waiving or removing its requirement that the Cooperative send the Notice attached to the *Revised Compliance Order*.¹
3. Should SEC file the Advice Notice as recommended above, Staff would further recommend that the existing fines arising from the initial *Compliance Order* of April 15, 2020, to be revisited upon ultimate resolution of the appeal by the New Mexico Supreme Court and any subsequent order of the Commission that may be necessary.

Should SEC instead reject this compromise approach, Staff would oppose the relief requested by SEC. First, there is no demonstration that the timing of the Motion demonstrates an actual emergency. Had the situation been an actual emergency, Staff expects that this Motion would have been filed within a day, maybe two, of the Commission's *Revised Compliance Order*. Instead, the Cooperative waited more than a week to file this Motion, until the very day that mailing to the Cooperative's members was required.²

Further, SEC's arguments have already been rejected by the Commission in its initial *Compliance Order* and *Revised Compliance Order*. The Motion is simply a third bite of the apple for SEC. There is nothing new to justify granting the requested relief.

Finally, the consequences that SEC claims it is suffering are entirely the result of the Cooperative's lack of compliance with the Commission's lawful order. Had SEC simply followed the directives of the Commission in the *Final Order*, it would not be faced with either the penalties or the information technology work that it now claims is too onerous to perform.

¹ *Revised Compliance Order, Order To Show Cause Why SEC Should Not Book As Regulatory Assets Or Regulatory Liabilities The Amounts Not Billed In Violation Of The Final And Order For SEC To Cease And Desist Its Violation Of The Final Order*, March 30, 2022.

² Staff notes that SEC has yet to comply with this requirement of the *Revised Compliance Order*. While the Cooperative filed its Motion seeking a stay on April 7, the request for a stay does not constitute the granting of a stay, nor does it suspend the requirement that the directed action be carried out.

In sum, Staff proposes an alternative path that SEC could follow to which Staff could agree, and which could ease the burdens the Cooperative complains of in its Motion. Should SEC reject that path, Staff urges the Commission to reject SEC's Motion outright.

Respectfully Submitted,

/s/ Bradford A. Borman

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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 **Staff's Response to SEC's Motion for Stay**.

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DATED this April 15, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Peggy Martinez-Rael, electronically signed

Peggy Martinez-Rael, Paralegal

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