

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

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

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**CITY OF SOCORRO’S AND NEW MEXICO INSTITUTE OF MINING AND  
TECHNOLOGY’S JOINT RESPONSE TO SEC’S SECOND EMERGENCY MOTION  
TO STAY**

COME NOW Intervenor City of Socorro (“the City”) and New Mexico Institute of Mining and Technology (“Tech”) (collectively “Joint Respondents”), by and through their respective counsel, Stelzner, Winter, Warburton, Flores & Dawes, P.A., and Rodey, Dickason, Sloan, Akin & Robb, P.A., and hereby respond to Socorro Electric Cooperative, Inc.’s (“SEC”) Second Emergency Motion to Stay regarding the requirements of the Revised Compliance Order<sup>1</sup> (the “Motion to Stay”), filed April 7, 2022. In response to SEC’s Motion, and pursuant to the Commission’s Order Appointing Hearing Examiner and Order for Responses to SEC’s Motion to Stay filed April 8, 2022, the Joint Respondents state as follows:

1. Joint Respondents oppose the relief requested for the following reasons: the timing of this motion does not demonstrate an “emergency”; SEC’s justifications have already been argued and rejected by the Commission; SEC’s motion is unsupported by law or fact and continues the trend of SEC ignoring the Commission orders; and, finally, SEC’s damages are wholly self-inflicted. The so-called emergency motion should be denied.

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<sup>1</sup> NMPRC Case No. 18-00383-UT, 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, filed March 30, 2022 (the “Revised Compliance Order”).

**I. SEC deliberately delayed filing this “emergency” motion.**

2. SEC deliberately delayed filing this “emergency” motion on the day action would be required, and has thus intentionally delayed notifying members of the Board's malpractice just days before a very important annual meeting of the membership scheduled for April 23, 2022.

3. Further, Joint Respondents object to the accuracy of this self-styled “emergency” motion. The Revised Compliance Order gave SEC twenty-one (21) days (until April 20) to respond to the order to show cause, ordered SEC to mail the notice by April 7, and provide proof of mailing by May 1. By waiting eight (8) days to file the Motion to Stay (up to the day that the Revised Compliance Order required action), SEC reveals its true purpose i.e. stall and delay, but then goes on to eventually admit it has no intent to ever comply with a Commission order.

4. By filing the Motion and not complying with the Revised Compliance Order, SEC is continuing its flawed reliance on its unsubstantiated belief that *asking* for a stay is the same as a stay being *granted*. As such, SEC apparently believes that filing this motion on April 7, 2021 constitutes an automatic stay of the April 7 deadline. The Commission should see through this transparent stall attempt.

5. SEC's stall tactics demonstrate a continued effort to avoid scrutiny by its members. SEC's annual membership meeting is scheduled for Saturday, April 23, 2021. It is apparent that SEC does not want to disclose the Commission's actions - prompted by SEC's intransigence - to its members while its Board members are up for re-election. While SEC consistently touts<sup>2</sup> the benefits of a member owner electric cooperative, its track record of actively misleading and misinforming its customers of its own malpractice speaks for itself.

6. SEC's Motion is further indicia of SEC's continued disrespect of its customers. Recall that SEC deceived its customers over two (2) years ago when it informed them it would

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<sup>2</sup> Motion to Stay at 8, 10.

comply with this Commission's order, and, prior to that, **sued all of its own members** after membership directed SEC to comply with the New Mexico Open Meetings and Inspection of Public Records Acts.<sup>3</sup> SEC has continually demonstrated the extraordinary and deceitful lengths it will go to in order to avoid oversight by the Commission and to the detriment of its own members.

**II. SEC's justifications have already been argued and rejected by the Commission.**

7. The arguments contained in the Motion to Stay are duplicative of SEC's Expedited Motion to Stay Pending Appeal, filed October 11, 2019 which motion was soundly rejected by the Commission. Order Denying SEC's Expedited Motion to Stay Pending Appeal, filed October 30, 2019.

8. Both this Motion and the initial Expedited Motion cite the four (4) factors established in *Tenneco*: (1) a likelihood that the applicant will prevail on the merits; (2) a showing of irreparable harm to the applicant unless the stay is granted; (3) evidence that no substantial harm will result to other interested persons; and (4) a showing that no harm will ensue to the public interest. Motion to Stay at 7-10, citing *Tenneco Oil Co. v. New Mexico Water Quality Control Com'n*, 1986-NMCA-033 at ¶ 10, 736 P.2d 986, 988.

9. This argument has already been made and lost by SEC. There is little to no likelihood that SEC will prevail on the merits and no irreparable harm, conversely, there is ongoing harm to the other interested parties and to the Commission itself - given the Commission's finding "that SEC's continued, unlawful operation by billing its customers in violation of the Final Order is not in the public interest." Revised Compliance Order at 12. SEC's argument is barred by the doctrine of *res judicata*.

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<sup>3</sup> City and Tech's Joint Verified Response to Initial Order on Remand, filed 2/23/22 at ¶¶ 12-13.

10. To the extent necessary, the Joint Respondents adopt and incorporate arguments made in the City and Tech's Joint Response to Motion to Stay, filed October 24, 2019.

**III. SEC's motion is unsupported by law or facts and continues the trend of SEC ignoring the orders of the Commission.**

11. It is generally accepted at the Commission that a stay, extension, or variance should be requested before a deadline, not on the day-of.

12. As a preliminary note, and normally, the Joint Respondents would object to this non-conforming pleading, as SEC's Motion is 12 pages and lacks a table of contents as required by 1.2.2.11 NMAC. However, the Joint Respondents find that no table of contents, nor a 12-page motion is necessary to surmise SEC's argument. SEC's argument is quite simply that it does not believe the Commission has any authority over it, never intends to comply with a Commission Order, and will file endless, frivolous and pointless appeals, regardless of how contrary to law and facts. SEC says as much in its Motion at ¶ 35.

13. SEC also makes the nonsensical argument that the only modification permitted by the Supreme Court was to allow complete capitulation to SEC's demands.<sup>4</sup> There is no support for that argument, as none exists.

**IV. SEC's grumbling about the costs of compliance and other damages is absurd; the injuries are wholly self-inflicted.**

14. SEC argues that it should not have to comply with the Final Order and the Revised Compliance Order because the costs are prohibitive and SEC lacks the technical ability to properly bill customers. Motion to Stay at ¶¶ 33, 34. This argument is outrageous on many levels. The reason the penalties are onerous is directly due to SEC's disregard of applicable law, and knowing, deliberate, and continuing violations of duly issued Commission orders. Thus, the penalties are accruing due to SEC's wholly self-inflicted refusal to acknowledge the regulation of the

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<sup>4</sup> Motion to Stay at 8-9.

Commission. (Oddly and apparently SEC believed the Commission had jurisdiction when it voluntarily petitioned the Commission for a rate increase – at some point in time that belief apparently changed). If SEC is not willing to pay the cost of its intransigence, it should have complied with the Final Order.

15. SEC has now accrued over \$800,000.00 in daily penalties. Any argument that this is about SEC's finances is moot, as SEC has demonstrated its willingness to damage themselves rather than accept the legal authority of the Commission – at the expense of SEC's own customers.

WHEREFORE, for the foregoing reasons, the Joint Respondents request that SEC's request be denied and that the Commission uphold the relief granted in the revised compliance order, and direct the New Mexico Attorney General to enforce the Commission's order, and any other relief the Commission deems just and reasonable.

Respectfully submitted,

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**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**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **CITY OF SOCORRO'S AND NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY'S JOINT RESPONSE TO SEC'S SECOND EMERGENCY MOTION TO STAY** was served via email on April 15, 2022, to the following persons listed below:

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DATED this 15<sup>th</sup> day of April, 2022.

Respectfully submitted,

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