

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
THE SOCORRO ELECTRIC
COOPERATIVE, INC.,

Appellant,

v.

No. S-1-SC-37948

NEW MEXICO PUBLIC REGULATION
COMMISSION,

Appellee.

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

THE SOCORRO ELECTRIC COOPERATIVE, INC.’S
NOTICE OF APPEAL OF THE REVISED COMPLIANCE ORDER

The Socorro Electric Cooperative, Inc. (“SEC”) hereby gives notice pursuant to NMSA 1978, Section 62-11-1 (1993) and Rule 12-601 NMRA of its appeal to the New Mexico Supreme Court from the New Mexico Public Regulation Commission’s 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, Entered March 3, 2022 (the “Revised Compliance Order”). A copy of the Revised Compliance Order is attached hereto as Exhibit A. No application for

rehearing was filed in accordance with NMSA 1978, Section 62-11-1. This Notice of Appeal is timely filed from the entry of the Revised Compliance Order pursuant to the above-cited statute and rule.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

Electronically Signed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins
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CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing was served upon all counsel of record through the Court's efile and serve system on this 26th day of April, 2022 as indicated in the Notification of Service, as well as NMPRC Records Management Bureau at prc.records@state.nm.us.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

Electronically Signed

By /s/ Lorna M. Wiggins
Lorna M. Wiggins
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(505) 764-8400

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.)

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

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 and upon the Commission’s Initial Order on Remand issued on February 9, 2022 and upon the Commissions own motion, pursuant to 1.2.2.22 NMAC,¹ to bring an order to show cause why SEC should not cease and desist its violation of the Final 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. SEC stated that it needed an increase in revenue requirement

¹1.2.2.22 NMAC provides: “B. Proceedings filed by the commission of its own motion: Formal proceedings may be initiated by the commission to consider any matter within its jurisdiction against any person either by notice, order to show cause, order to cease and desist, or other process. In such cases the notice, order to show cause, or other appropriate process shall contain: (1) specifications of all the matters to be considered and such specifications shall fairly indicate what the respondent is to meet; (2) a demand for such information and disclosures as the commission may deem necessary to the question under investigation; (3) notice of the time within which such information and disclosures must be filed; (4) the time and place set for public hearing; and (5) if the commission deems necessary, the manner of notice to the public or to ratepayers.”

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 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.

2. 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

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

4. On August 15, 2019, the Hearing Examiner issued a Recommended Decision (“RD”) which recommended:

- 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 re-allocate 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 re-allocation 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 of 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; 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.

5. On September 11, 2019, the Commission's Final Order which adopted the RD in its entirety (the "Final Order").

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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").

13. 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 the Court grant a stay of proceedings, grant the writ and stay the enforcement of both the Final Order and the Compliance Order.

14. 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.

15. On May 29, 2020, the Commission and SEC filed with the New Mexico Supreme

Court 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 that date, 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. 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.

16. 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-I-SC-38302, a temporary stay of SEC’s appeal from the Compliance Order in S-I-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."

17. 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.

18. On February 9, 2022, the Commission issued an Order for Responses which required that 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 states 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. No later than February 23, 2022, the Utility Division Staff shall file its Reply to SEC's, Tech's and the City Responses filed on February 16, 2022, 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.

19. On February 23, 2022, SEC filed its Response along with the Affidavit of Joseph M. Herrera which stated that SEC: a) continues to oppose the Final Order because it exceeded the Commission's authority pursuant to 17.9.540.6 NMAC, contained internal inconsistencies that were irreconcilable that the Commission refused to address when requested, substituted the Commission's own judgment for the judgment of SEC's trustees in a manner contrary to law, required SEC to implement rates that it did not propose in Advice Notices 69-71 and was not based on substantial evidence in the record; b) continues to support its appeal of the Final Order, in Case No. S-1-SC-37948; c) continues to oppose the Compliance Order because the Commission exceeded its jurisdiction and summarily imposed fines against SEC's Trustees individually without due process of law for the following reasons: i) the Trustees were not named parties in SEC's Application; and ii) the Commission failed to hold any hearing and took no evidence regarding whether any Trustee violated his or her fiduciary or statutory duties to SEC or its members; d) continues to oppose the Compliance Order and supports its emergency petition for a writ of mandamus, Case No. S-1-SC-38302; d) is not intending to comply with the Final Order because it filed an appeal of the Commission's Final Order and filed a Motion to Stay and SEC will wait for a New Mexico Supreme Court decision and then will comply with the Court's ruling; e) states it is charging the rates that were in effect prior to filing Advice

Notices 69-71 and its Application in this docket and has not charged the Final Order's rates pending the outcome of the appeal to the New Mexico Supreme Court; f) states that it is not in compliance with the Final Order because SEC is awaiting the decision of the New Mexico Supreme Court and believes this is holding the Final Order in abeyance; f) supports that the Compliance Order be withdrawn in its entirety for the reasons stated in SEC's emergency petition for a writ of mandamus filed in Case No. S-1-SC-38302; and g) SEC stated there have been no negotiations between the parties and that SEC had previously agreed to mediation to resolve both cases pending before the New Mexico Supreme Court but was informed that Tech and the City declined to participate and will agree to participate in any mediation that could result in a global resolution of all pending matters.

20. In conclusion, SEC requested that the Commission rescind the Final Order and the Compliance Order and permit SEC to implement the rates, rules and forms in Advice Notices 69-71, as filed on December 3, 2018, which were supported by its extensive Cost of Service Study.

21. Also on February 23, 2022, SEC submitted its audited financial statements for 2019 and 2020. SEC stated that it had not yet completed the 2021 audit. SEC informed that it has been forced to take multiple actions to contain expenses such as: a) no or limited wage increases limited staff training; b) deferred maintenance; c) not hired contractors to keep current with tree trimming and pole replacements; d) elected not to fill a staking engineer position; e) decreased the number of meter readers from three to two positions; f) borrowed \$8 million to infuse its cash on hand; g) delayed purchasing new or late model used vehicles for its aging fleet; g) SEC's headquarters building was constructed in 1953 and has significant issues because of its age and SEC has delayed indefinitely the construction of a new office headquarters because of its current financial position; and h) been unable to replace or update

its phone system which is outdated and has had issues with the server going down, which prevents members from being able to contact SEC by phone.

22. On February 23, 2022, the City and Tech filed their joint Response that supported the relief granted in the Final Order's end result was new just and reasonable rates for SEC's customers. The City and Tech did not support alternative dispute at this time because it was too late and was outside the scope of the Supreme Court's limited order regarding the remand of the Compliance Order. The City and Tech maintain that, without enforcement by the Commission, SEC and perhaps other companies might be encouraged to believe that a Commission "Final Order" is not in fact a Final Order.² The City and Tech support the intent of the Compliance Order at ¶¶ 15-20. The City and Tech stated that SEC has refused to comply with duly issued Commission Orders, displaying contempt for both the Commission and its own customers, and damaging its customers in the process by denying them the benefits of the Final Order, now the penalty has risen to about \$866,000. For this reason, the City and Tech have consistently maintained their position that SEC must implement the Final Order based upon: a) the undisputed law that under NMSA 1978, § 62-11-6 (1983) that the Final Order remains in full force while the Supreme Court considers an appeal; b) the Final Order is valid, and enforceable; c) no stay has been granted; and d) SEC is openly violating the Final Order. The City and Tech urge the Commission to enlist the Attorney General's Assistance pursuant to Section 62-12-1 NMSA 1978.³

² The City and Tech stated: "Simply put, the City and Tech have no interest in relitigating a fully supported Final Order that is now squarely on appeal." "SEC is blatantly ignoring Commission authority and instead has unilaterally decided to charge its captive customers whatever it desires, regardless of the just or reasonableness, or the quality of service. The City and Tech fought hard to protect the interests of their constituents and municipal corporate interests, and prevailed – SEC has wrongly denied the City and Tech and their constituents the benefits of that decision since September, 2019."

³ As the Supreme Court has reminded the Commission, "the Commission is [not] devoid of means to prevent a public utility from undermining its authority." State ex rel. Egolf v. N.M. Pub. Regulation Comm'n, 2020-NMSC-018, ¶ 28, 476 P.3d 396. To the contrary, the Public Utility Act "explicitly provides the Commission with a process to prevent violation of Commission orders." Id. In pertinent part, the statute declares: Whenever the commission shall be of the opinion that any person or utility is failing or omitting ... to do anything required of it ... by any order of the

23. In conclusion, the City and Tech request that the Commission: a) not modify the Compliance Order to not require SEC's immediate compliance with the Final Order, retroactive to the date of the Final Order; b) require SEC to track and account for all decreases that would have resulted from the new rates; c) require SEC to issue refunds to the date of the Final Order; d) require SEC to immediately implement the LED lighting rates and credit any customers with qualifying LED lighting that were not charged in accordance with the Final Order; e) require SEC to investigate the possibility of establishing an economic development rate; f) revoke SEC's operating authority due to its failure to consent to regulation and provide reliable service at just and reasonable rates; g) impose some penalty imposed on SEC's board; and h) impose a penalty in the amount of excess profits from not complying with the Final Order as being authorized pursuant to NMSA, § 62-12-4 (1993) to dissuade any future non-compliance.

24. On March 2, 2022, Staff filed its Reply to SEC, the City and Tech's Responses as well as the filing of the Report of Bryce Zedalis, Utility Division Economist, analyzing SEC's annual reports. Staff believes that SEC is not currently in compliance with the Commission's Final Order in this case and that, absent a stay or a determination by the New Mexico Supreme Court that the Final Order should be reversed, SEC should be required to comply with that Final Order. Staff has not identified any necessary changes to the Compliance Order. Staff believes the Commission should act to enforce the Compliance Order.

25. The Commission finds that the aspect of the Compliance Order, the personal sanctions that presently amount to of over \$800,000 upon the Board of Trustee members as

commission, ... it may direct the attorney general of New Mexico to commence an action or proceeding in the district court in and for the county of Santa Fe, or in the district court of the county in which the complaint or controversy arose, in the name of the state of New Mexico for the purpose of having such violations stopped and prevented ... by mandamus
NMSA 1978, § 62-12-1 (1941).

individuals, should be changed to be penalties against the corporation known as Socorro Electric Cooperative, Inc. only and not penalties against the Board of Trustees members individually.

26. The Commission further finds that its statutory mission is to ensure that all utilities and intervenors should not be allowed to completely ignore and violate Commission orders and pretend that they were granted an automatic stay of all cases pending appeal which is expressly not the law. For this reason, the Commission finds that, given that the New Mexico Supreme Court has not stayed the Final Order, SEC should comply with the Final Order effective as of the date of the Final Order and track and account for all increases and/or decreases to all customers that would have resulted from implementing the new rates set forth in the Final Order.

27. The Commission further finds that SEC's continued, unlawful operation by billing its customers in violation of the Final Order is not in the public interest and that SEC should be ordered to show cause why it should not record, as of the effective date of the Final Order, regulatory assets or regulatory liabilities for each customer class to account for what is due each class if SEC had complied with the Final Order as of its effective date

28. The Commission further finds that SEC's continued, unlawful operation by billing its customers in violation of the Final Order is not in the public interest and that the Commission should issue a Cease and Desist Order requiring SEC to cease and desist its unlawful operation by billing customers in violation of the Final Order and until SEC comes into compliance with the Final Order.

29. In addition, the Commission finds that this Order does not preclude the Commission from, in the future, pursuing all legal remedies available to the Commission for enforcement of the Final Order, including but not limited to, pursuant to NMSA 1978, § 62-12-1 (1941); NMSA 1978 § 62-12-4 and NMSA 1978, § 62-12-5.

30. By subsequent single signature Order, the Commission should designate a hearing examiner to preside over the Order to Show Cause and Order to Cease and Desist proceedings in this matter and that the hearing examiner should issue a Procedural Order scheduling the date and time of the Public Hearing, the dates for filing testimony, and the method of Notice of the Public Hearing.

IT IS THEREFORE ORDERED:

A. SEC is hereby ORDERED to CEASE AND DESIST from the operation of its unlawful billing in continued violation of the Final Order.

B. SEC shall file a response within twenty-one (21) days of this ORDER TO SHOW CAUSE why the Commission should not find that SEC's operation of its unlawful billing is not a continued violation of a lawful Commission Final Order that has not been stayed by either the Commission or the New Mexico Supreme Court and show cause why it should not record, as of the effective date of the Final Order, regulatory assets or regulatory liabilities for each customer class to account for what is due each class if SEC had complied with the Final Order as of the Final Order's effective date in violation of the statutes, rules and provisions cited in the findings above.

C. Pursuant to its authority under NMSA 1978 § 8-8-14 and 1.2.2.29A NMAC, the Commission shall, by subsequent single signature Order, designate a hearing examiner to preside over the Order to Show Cause and Order to Cease and Desist proceedings in this matter and that the hearing examiner should issue a Procedural Order scheduling the date and time of the Public Hearing, the dates for filing testimony, and the method of Notice of the Public Hearing.

D. The Compliance Order is hereby modified to delete all Decretal Paragraphs.

E. The Compliance Order's Decretal paragraphs are revised to state as follows. *A. There are no personal fines levied against SEC Board of Trustee members as individuals of \$1000*

per day. The fines assessed as of the effective date of the Compliance Order pursuant to NMSA 1978 § 62-12-4 and NMSA 1978, § 62-12-5 are \$1000 per day penalties against the corporation known as Socorro Electric Cooperative, Inc. only and not penalties against the individual Board of Trustees, due and payable, and continuing to accrue until the date SEC fully implements the Final Order.

F. SEC shall comply with the Final Order, in total, effective to the date of the Final Order and shall track and account for all increases and/or decreases to all customers that would have resulted from implementing the new rates set forth in the Final Order.

G. SEC shall, as soon as practicable but no later than April 7, 2022, by USPS, mail to all of its customers the attached Notice to Customers, in the exact form attached hereto as Exhibit A, return receipt requested. SEC shall scan all return receipts received and file them in this docket no later than May 1, 2022.

H. This Order is effective immediately.

I. A copy of this Order shall be served upon all persons listed on the attached Certificate of Service, by e-mail, if e-mail addresses are known, or by regular mail otherwise.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 30th day of
March, 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



EXHIBIT A-FORM OF NOTICE-DATED MARCH 30, 2022

This Notice is being mailed to all member-ratepayers of Socorro Electric Cooperative, Inc. ("SEC") as an update regarding the rate increase case filed by SEC with the New Mexico Public Regulation Commission (the "NMPRC" or the "Commission") in December 2018 (docketed as Case No. 18-00383-UT).

Please be informed that the Commission's Final Order in this case denied SEC's requested rate increase while approving instead a new rate design. SEC immediately appealed to the New Mexico Supreme Court and has never complied with the lawful Final Order. In addition, the Commission has enforced this Final Order which is valid because the Court has not issued a ruling, nor has it issued a stay of the Commission's Final Order.

The Commission further provides Notice that on April 15, 2020, the Commission issued a Compliance Order to SEC to immediately implement the Final Order and 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. The Commission initially ordered that the fines would be paid by the Board of Trustees individually, and not be borne by the members of SEC, and further ordered that the fines were held abeyance for 60 days and that said fines were not due and payable if SEC complied with the Order by June 15, 2020 (the "Compliance Order").

Further, the Commission provides Notice that the April 15, 2020 Compliance Order's fining of Board of Trustees members as individuals also was appealed by SEC and the Commission has since revised that Order on March 30th 2022, when the Commission issued a Revised Compliance Order which ruled that since the Supreme Court has not stayed the Final Order in this case and SEC's continued, unlawful operation by billing its customers in violation of the Final Order is not in the public interest:

- SEC shall immediately comply with the Final Order effective as of the date of the Final Order and track and account for all increases and/or decreases to all customers that would have resulted from implementing the new rates set forth in the Final Order.
- SEC was ordered to show cause why it should not record, as of the date of the Final Order, regulatory assets or regulatory liabilities, as the Final Order is applied to each customer class, to account for what is due each class, as of the effective date of the Final Order, which accounting should continue until SEC complies with the Final Order.
- SEC is ordered to Cease-and-Desist its unlawful operation of billing customers in violation of the Final Order.
- Fines assessed by the Compliance Order, dated April 15, 2020, are not fines assessed against the Board of Trustee members as individuals but assessed against the corporation of SEC, Inc. Presently, the penalties of \$1000 per day since the effective dated of the Final Order, September 11, 2019, amount to more than \$800,000 – a cost that will be borne by the cooperative and its members as a whole.

The Commission believes this Notice to the ratepayers of SEC is essential because the Commission's mission requires that the Commission ensure that all utilities and intervenors

comply with Commission orders, rather than allowing them to completely ignore and violate Commission orders and pretend that they were granted an automatic stay of all cases pending appeal—which is expressly not the law.

Since SEC is a member-owned Cooperative, the Commission believes it is its duty to notify the members of the legal and financial consequences of the Board of Trustee's choice to ignore a Commission Final Order.

To find out more, call the SEC offices at _____ or email info@_____

Sincerely,

The New Mexico Public Regulation Commission

Summary of the September 11, 2019 Final Order of the Commission that has never been implemented by SEC

1. A re-allocation 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;
2. A disapproval SEC’s proposed \$5.00 monthly “Minimum Use Charge” because “it would be punitive to low-use customers and result in rate shock;
3. A disapproval of SEC’s rate design and approval of 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 classes; vii) no change to existing Rate No. 14 for Standby Service for Self-Generators Service Class; 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.

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.)

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 **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.**

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DATED this March 30, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Law Clerk

Isaac.sullivan-leshin@state.nm.us