

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE SOCORRO ELECTRIC COOPERATIVE, INC.,

Petitioner,

Case No. S-1-SC-38302

v.

NEW MEXICO PUBLIC REGULATION COMMISSION

and its Commissioners Cynthia B. Hall,

Jefferson L. Byrd, Valerie Espinoza, Theresa

Becenti-Aguilar and Stephen Fischmann,

Respondents,

and

CITY OF SOCORRO AND

NEW MEXICO INSTITUTE OF

MINING AND TECHNOLOGY,

Real Parties in Interest.

**SEC'S SECOND EMERGENCY VERIFIED PETITION FOR WRIT
OF MANDAMUS, OR IN THE ALTERNATIVE WRIT OF PROHIBITION,
OR IN THE ALTERNATIVE WRIT OF SUPERINTENDING CONTROL,
AND APPEAL OF THE PRC'S REVISED COMPLIANCE ORDER AND
REQUEST FOR STAY**

Oral Argument is requested.

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
STATEMENT OF COMPLIANCE.....	ii
TABLE OF AUTHORITIES	iii
JURISDICTION AND STANDARDS.....	3
PROCECURAL BACKGROUND	4
ARGUMENT	12
I. SEC’s Request for Stay Is Appropriate Because It Satisfies the Four Tenneco Conditions	13
A. Likelihood of Prevailing on the Merits.....	13
B. Irreparable Harm to the Applicant for the Stay	15
C. Evidence that No Substantial Harm Will Result to Other Interested Persons	17
D. A Showing that No Harm Will Ensur to the Public Interest.....	18
II. The Petition for writ of mandamus should be granted.....	19
III. In the alternative, this Court should issue a writ of prohibition.....	22
IV. In the alternative, the Court should issue a writ of superintending control.....	23
V. Notice of appeal.....	24
PRAYER	25
CERTIFICATE OF SERVICE	25
VERIFICATION.....	27
EXHIBIT A: PRC’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	

EXHIBIT B: Declaration of Veronica Schutt filed in Case No. 18-00383-UT

EXHIBIT C: Affidavit of Joseph Herrera filed in Case No. 18-00383-UT

EXHIBIT D: Declaration of Michael Thompson filed in Case No. 18-00383-UT

EXHIBIT E: Affidavit of Joseph Herrera

STATEMENT OF COMPLIANCE

As required by Rule 12-504(H) NMRA, this petition satisfies the type-volume limitations. The number of words in the body of the writ is 5,980, which complies with the limitations established in 12-504(G) NMRA. The word count was obtained from Word 2019, which is the word-processing program that was used to prepare the writ.

TABLE OF AUTHORITIES

New Mexico State Court Cases

<u>El Vadito De Los Cerrillos Water Ass'n v. N.M. Pub. Svc. Comm'n</u> , 1993-NMSC-041, 115 N.M. 784, 858 P.2d 1263	20
<u>Grisham v. Romero</u> , 2021-NMSC-009, 483 P.3d 545	23
<u>State ex rel. Sandel v. N.M Pub. Util. Comm'n</u> , 1999-NMSC-019, 127 N.M. 272	3, 19
<u>State v. Valerio</u> , 2012-NMCA-022, 273 P.3d 12	22
<u>Tenneco Oil Co. v. New Mexico Water Quality Control Com'n</u> , 1986-NMCA-033, 105 N.M. 708. 736 P.2d 986	13, 15, 17, 18

Federal Court Cases

<u>State of Missouri el rel. S.W. Bell Tel. Co. v. Public Service Comm'n of Missouri, et al.</u> , 262 U.S. 276, (1923)	19
---	----

Constitutional Provisions

N.M. Const. art. VI, § 3	3
--------------------------------	---

Statutes

New Mexico Public Utility Act, NMSA 1978, §§ 62-3-1 to -5	1
NMSA 1978, § 62-8-7	4, 13, 20, 21
Rural Electric Cooperative Act, NMSA 1978, §§ 62-15-1 to -37	1, 16

Regulations

17.9.540 NMAC (Recompiled 12/30/01)	4, 14, 16
---	-----------

Rules

Rule 12-504 NMRA.....	1
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SEC'S SECOND EMERGENCY VERIFIED
PETITION FOR WRIT OF MANDAMUS

The Socorro Electric Cooperative, Inc. (“SEC”), pursuant to Rule 12-504 NMRA, seeks an emergency writ of mandamus, or in the alternative a writ of prohibition, or in the alternative writ of superintending control, directed to Respondents New Mexico Public Regulation Commission (the “PRC” or “Commission”) and the individual PRC commissioners mandating that they submit to the jurisdiction granted to this Court by the New Mexico Public Utility Act, NMSA 1978, §§ 62-3-1 to -5 (the “PUA”) and Rural Electric Cooperative Act, NMSA 1978, §§ 62-15-1 to -37 (the “RECA”) under which SEC is constituted. This filing is also notice of the filing of an appeal of the PRC’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 (“Revised Compliance Order”) attached hereto as Exhibit A.

The importance of immediately resolving the issue of the PRC’s jurisdiction under the PUA and RECA necessitates the exercise of this Court’s extraordinary writ powers. SEC seeks this extraordinary relief following the issuance of a Revised Compliance Order, which required, among other things, that SEC (1) send a notice to all of its customers by United States Mail, return receipt requested; and (2) changed the PRC’s initial Compliance Order, entered April 15, 2020, assessing

penalties on the individual trustees, to assessing those same penalties on the SEC corporation and therefore its members, personally. This notice to customers was to be sent within seven days of entry of that order, or April 7, 2022. Further, the PRC ordered SEC to “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.” Revised Compliance Order, p. 12, ¶ 26. The Revised Compliance Order also ordered SEC to show cause why it should not be ordered to correct what the PRC identified as accounting errors and to cease and desist its alleged violation of the original Final Order, entered September 11, 2019 by the Commission (the “Final Order”).

SEC filed a request for stay before the Commission on April 7, 2022 prior to filing of this Petition, Appeal and request for stay before this Court. The evidence presented in support of SEC’s request for stay demonstrates how financially unfeasible it is for SEC to be ordered to send out an incomprehensible notice which will only confuse the members and shows how the SEC contractor responsible for SEC’s computer system is unable to collect the data to comply with the Revised Compliance Order.

On April 13, 2022, the parties received a Pre-hearing order from the newly appointed Hearing Examiner, Christopher Ryan, scheduling a pre-hearing conference to take place on April 20, 2022. During the April 20, 2022 hearing, the

hearing examiner demonstrated his bias against SEC and his conduct and behavior showed his lack of impartiality against SEC.¹

As grounds for this Petition and Appeal, SEC states:

JURISDICTION AND STANDARDS

1. Jurisdiction over this Petition arises under Article VI, Section 3 of the New Mexico Constitution, which confers original jurisdiction over mandamus and prohibition against all state commissions and authority to issue writs as necessary to carry out this Court's jurisdiction. *See State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶10, 127 N.M. 272.

2. The circumstances set forth in this Petition satisfy the standards identified in *Sandel*, 1999-NMSC-019, ¶ 11, for exercising this Court's original jurisdiction and writ authority: fundamental constitutional questions of great importance can be answered expeditiously on virtually undisputed facts. *Id.*

3. This matter implicates fundamental constitutional questions of great public importance because there are twenty-one rural electric cooperatives operating in New Mexico, each with a Board of elected volunteer Trustees,

¹For example, the hearing examiner stated that it was "tragic comic" and "ridiculous" that the Commission's directives had to be written down. He referenced "Humpty Dumpty and the "Twilight Zone." He repeatedly indicated he had prejudged the issues before hearing any evidence. Affidavit of Joseph M. Herrera.

servicing 80 percent of the land mass of the State and 211,000 customers. Affidavit of Joseph Herrera, Exhibit A to SEC's Emergency Verified Petition for Writ of Mandamus and Request for Stay filed May 8, 2020 (the "Writ Affidavit"), ¶ 2. Rural electric cooperatives are recognized as being substantially different from Investor Owned Utilities ("IOUs") and the PRC's jurisdiction to review the reasonableness of rates proposed by rural electric cooperatives is limited to specific circumstances, prescribed by the PUA and the PRC's own rules. *See*, NMSA 1978, § 62-8-7 and 17.9.540 NMAC (Recompiled 12/30/01).

PROCECURAL BACKGROUND

4. On December 3, 2018, SEC filed Advice Notice No. 69 for a proposed rate adjustment. SEC needed an 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 capital credit retirements to SEC members of about \$688,000 annually; and d) boost its OTIER as follows: in 2018, SEC's OTIER was 1.37. SEC's proposed revenue increase would boost its OTIER to 2.84.

5. The City of Socorro (“City”), New Mexico Institute of Technology (“Tech”) and other intervenors opposed the rate increase and new rate structure.

6. On January 23, 2019, the Commission issued its Initial Order Appointing Hearing Examiner which: suspended the effectiveness of Advice Notice No. 69 for nine months from December 19, 2018 to September 19, 2019.

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

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

That SEC’s proposed revenue requirement and recommended no revenue increase be denied; b) proposed the re-allocation of revenue divided among the classes Residential, Energy Thermal Storage (“ETS”) and Irrigation to achieve a “just and reasonable outcome” which the Hearing Examined dictated should include: 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) Disapproved SEC’s proposed \$5.00 monthly “Minimum Use Charge” because “it would be punitive to low-use customers and result in rate shock”; d) Disapproved of SEC’s rate design and recommended a rate design which was not studied nor proposed; and e) denied the City’s request that the Commission open an investigation into the SEC Board’s alleged practice of underrepresenting the City and to investigate into the cooperative rates and practices in general.

9. On September 11, 2019, the Commission entered its Final Order adopting the RD in its entirety.

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

11. On October 9, 2019, the Commission entered its Order that the RD was adopted in its entirety and, thus, clarification of the RD or the Final Order was unnecessary.

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

13. On October 30, 2019, the Commission issued its Order Denying SEC's Expedited Motion to Stay Pending Appeal.

14. On November 12, 2019, SEC filed its Motion to Stay Pending Appeal with the New Mexico Supreme Court in Appeal No. S-1-SC-37948.

15. Tech and the City intervened in Appeal No. S-1-SC-37948 which was assigned to the General Calendar and has been fully briefed as of May 2020.

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

17. On April 15, 2020, the PRC 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 (“Compliance Order”).

18. On May 8, 2020, SEC initiated this action by filing its initial Emergency Writ of Mandamus and Motion to Stay (the “Initial Writ”) requesting the Court grant a stay of proceedings, grant the writ and stay the enforcement of both the Final Order and the Compliance Order.

19. On May 13, 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.

20. 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 Initial Writ and the Compliance Order without prolonged and costly litigation. SEC was led to believe that the PRC would

eliminate the fines assessed against the Trustees and engage in settlement discussion and, accordingly, agreed to the Commission's Joint Motion. As of that date, this 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 grounds for the Joint Motion, the Commission and SEC stated that the Initial Writ requested the Supreme Court mandate that the PRC 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.

21. The Joint Motion requested that the Court temporarily stay the appeal of the Compliance Order and temporarily stay the Initial 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 Initial Writ and the appeal of the Compliance Order. The City and Tech declined to agree to this proposal.

22. On January 26, 2022, the Court issued an Order temporarily staying the Initial Writ and temporarily staying the appeal of the Compliance Order filed by SEC in S-1-SC-37948 and remanded jurisdiction back to the PRC to modify and or withdraw the Compliance Order.

23. On February 9, 2022, the Commission issued an Initial Order on Remand requiring SEC, Tech and the City file an update on their current positions regarding the Final Order.

24. On February 23, 2022, SEC filed its Response along with the Affidavit of Joseph Herrera stating SEC had not changed its position as stated in the appeal and the petition for mandamus.

25. 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.

26. Also on February 23, 2022, SEC submitted its audited financial statements for 2019 and 2020 and noted it had not completed the 2021 audit and stated what it had been forced to do in the absence of a rate increase.

27. On February 23, 2022, the City and Tech filed their joint Response with the Commission, which supported the relief granted in the Final Order and agreed

that the new rates were just and reasonable for SEC's customers. They requested that the Commission refer the case to the Attorney General for enforcement.

28. The Commission staff stated that the Order should be imposed without change.

29. Following these responses, the Commission ordered that the penalty imposed on the individual trustees would now be imposed on SEC's members but otherwise upheld the Order, without a hearing.

30. The Commission then ordered that SEC 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. *See Exhibit A.*

31. The Commission issued a Cease and Desist Order requiring SEC to cease and desist its alleged unlawful operation by billing customers in violation of the Final Order and until SEC comes into compliance with the Final Order.

32. The Commission also ordered SEC to file a response within twenty-one (21) days of its 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.

33. The Commission also notified the parties that it will appoint 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.

34. The Revised Compliance Order was modified to eliminate the imposition of the sanctions against the individual Trustees, and impose those same sanctions “*against the corporation known as Socorro Electric Cooperative, Inc. only.*”

35. Finally, the Commission ordered SEC to send a notice “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.”

36. The cost of sending this notification, return receipt requested, is prohibitive. *See* Declaration of Veronica Schutt, attached hereto as Exhibit B.

37. Further, the software company that services the SEC software is unable to determine how to accomplish what is further required in the Revised Compliance Order when it dictates that SEC “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 order.” *See* Affidavit of Joseph Herrera and Declaration of Michael Thompson, attached hereto as Exhibits C and D, respectively.

38. Because the Joint Motion was entered, this Court has not yet addressed the underlying merits of the Initial Writ and the pending appeal. This Second petition for writ of mandamus, and in the alternative writ of prohibition, addresses and challenges the Revised Compliance Order. This document also is an appeal of that Order.

39. On April 13, 2022, the parties received a Pre-hearing order from the newly appointed hearing examiner, Christopher Ryan, scheduling a pre-hearing conference to take place on April 20, 2022. During the April 20, 2022 hearing, the hearing examiner demonstrated his bias against SEC and his conduct and behavior showed his lack of impartiality against SEC.

ARGUMENT

SEC’s Rate Application was properly filed and supported by the testimony and exhibits of Joseph Herrera and Justin W. Proctor. **[1 RP 0003-0093]**. SEC’s

Trustees exercised due diligence by considering all the evidence available to them in establishing the proposed rate structure. Writ Affidavit, ¶ 3.

I. SEC's Request for Stay Is Appropriate Because It Satisfies the Four Tenneco Conditions

The conditions for granting a stay of an administrative order are: (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. Tenneco Oil Co. v. New Mexico Water Quality Control Com'n, 1986-NMCA-033, ¶ 10, 105 N.M. 708. 736 P.2d 986.

A. Likelihood of Prevailing on the Merits

It is likely that the SEC will prevail on the merits because the Revised Compliance Order is contrary to the law, is arbitrary and capricious and is not supported by substantial evidence. Pursuant to NMSA 1978, § 62-8-7(H), the statutory authority authorizing the Commission's jurisdiction over rural electric cooperative rates is limited to a hearing and review of "the issues set forth in the protest and for which the commission may find just cause for the review." This is the extent of the Commission's rate review authority. NMSA 1978, § 62-8-7(H) does not otherwise authorize the Commission to assert jurisdiction over the internal operations or the internal management of SEC. Thus, the Commission exceeded its

regulatory authority and improperly substituted its judgment for that of SEC's members through its duly elected Board of Trustees. *See* 17.9.540.6 NMAC.

In the Revised Compliance Order, the Commission reaffirmed its initial decision despite the Supreme Court's remand to the Commission to withdraw or modify the original order. The sole modification of the penalties assessed in the Compliance Order was to impose the penalties against SEC rather than its individual Trustees. This change was implemented without notice to the parties and without a hearing to consider whether the penalties should be imposed at all; at no point were the penalties assessed by the Commission the subject of a hearing where SEC could present evidence of why those penalties were inappropriate and the effect on the cooperative of their assessment. Further, the Commission did not fulfill its commitment in the Joint Motion to end prolonged and costly litigation and never attempted "to reach a mutually agreeable solution to the matters raised by SEC in the [Initial] Writ and the Compliance Order."

On remand, the Supreme Court stated that the case was being remanded "to consider the modification or withdrawal of the compliance order." *See* Order, entered January 26, 2022. The Court did not include "affirmance" in its instructions to the Commission. Thus, the Court indicated that SEC was likely to prevail on the merits of its arguments: the Court provided the Commission the opportunity to correct its order, which the Commission did not do.

B. Irreparable Harm to the Applicant for the Stay

SEC and its members will suffer irreparable harm if the stay is not granted, thereby satisfying the second Tenneco factor, 1986-NMCA-033, ¶ 10. The Commission ordered that SEC send out a notice to all of its members, “no later than April 7, 2022, by USPS mail to all of its customers,” telling the members that the fines previously assessed against the Trustees individually were now assessed against the SEC as a corporation. Also, SEC was ordered to mail out the notices “return receipts [requested] and file them in this docket no later than May 1, 2022.” As stated in Exhibit B, the cost of this mailing is prohibitive and if the order is enforced, will impact negatively SEC’s finances and operations.

This notice orders SEC to engage in unnecessary and unwarranted calculations which are meaningless to the members. The notice provides information which is irrelevant to the vast majority of the members and is confusing to all but those who are accustomed to parsing out governmental orders. At the very least, the notice should be written in plain English and translated to Spanish so that it could be understood by the members.

Further, the Commission ordered SEC to “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.” Exhibit A, p. 12, ¶ 26. To comply with this requirement

the contractors who are responsible for SEC's IT system have advised SEC that they are unable to perform this calculation. *See* Exhibits C and D.

The SEC is an electric cooperative organized pursuant to RECA. As a cooperative corporation, its members own the cooperative. The result of the Commission's order is to assess the penalties against the members of the cooperative, individually, meaning an increase in the rates being paid for electricity. The cooperative cannot manufacture money to satisfy the burden placed on it by the Commission: those funds need to come from somewhere, meaning from the members/customers. This case began when SEC filed a rate proceeding with the Commission in an attempt to increase its rates and reallocate the rates charged to the different categories of customers. The Commission denied the request for a rate increase, attempting to formulate its own rate structure without jurisdiction to do so. *See* 17.9.540.6 NMAC. The members of the cooperative ultimately will be the ones penalized by the Final Order, the Compliance Order and the Revised Compliance Order of the Commission.

As asserted in the prior motion for stay of implementation of the Final Order, implementation of the Final Order will require adjustments of the rate structure of SEC and its members. Implementing the Revised Compliance Order will add to this burden by ordering a completely new set of calculations, which SEC's IT system is

unable to perform and which have not been studied to determine their efficacy. *See* Exhibits C and D.

The Supreme Court has not addressed the issues raised in the initial appeal and Initial Writ, other than to remand the case to the Commission by agreement of the PRC and SEC to consider withdrawing or modifying the order. If the Final Order is upheld, that Order needs clarification so that SEC can fully comply. For example, the Advice Notice 69, under Rate No. 1 and Rate No. 6, proposed to separate General Service (Small Commercial) and Residential into two rate classes which was not addressed in the Final Order: there was no finding as to whether SEC is prohibited from separating its General Service (Small Commercial) and Residential classes into two classes. SEC seeks clarification regarding whether it can proceed with separating the two classes using the RD's rates contained in the Final Order. SEC will seek clarification from this Court if the Final Order is affirmed.

C. Evidence that No Substantial Harm Will Result to Other Interested Persons

With regard to the third Tenneco factor, 1986-NMCA-033, ¶ 10, Intervenor and SEC members will not suffer substantial harm if the Revised Compliance Order is stayed because, if the Commission's position is ultimately upheld by the Supreme Court, the notice can be sent out at that time, without causing SEC to expend its funds in the interim.

The SEC Board has an obligation to all members of the cooperative, whether the member is a municipality or a university or a remote family located miles from their nearest neighbor, like the intervenors in this case, to request rates that allow SEC to operate successfully and maintain its financial integrity. If this stay is not granted, SEC will not be able to operate successfully and with financial integrity during the pendency of this appeal.

SEC is not aware of any other interested parties that might be substantially harmed by the granting of a stay.

D. A Showing that No Harm Will Ensur to the Public Interest

The fourth Tenneco factor in support of a stay, that no harm will ensue to the public interest if a stay granted, is satisfied by the evidence discussed in connection with the other three factors, 1986-NMCA-033, ¶ 10: first, if the Commission assesses damages against SEC, its members will be damaged, no one else; second, SEC and its members will suffer irreparable harm if the stay is not granted since implementation of the Revised Compliance Order will require more adjustments of the services that can be offered because there is not enough money to operate effectively. SEC pointed out in its response to the Commission's Order for Responses, issued on February 9, 2022, that it was hampered in, *inter alia*, repairing its vehicles, sending employees for training and hiring contractors to trim trees. The only individuals who will suffer are the members so the result of the Commission's

order is to cause more harm to the individuals which the Commission is constituted to serve.

II. The Petition for writ of mandamus should be granted.

As determined in Sandel, issuing a writ of mandamus requires SEC to present a purely legal issue concerning the non-discretionary duty of a government official that (1) implicates fundamental constitutional questions of great public importance, (2) can be answered on the basis of virtually undisputed facts, and (3) calls for an expeditious resolution that cannot be obtained through other channels such as a direct appeal. 1999-NMSC-019, ¶ 11. This petition satisfies these requirements.

The PRC had a duty to act within its jurisdiction. It cannot order SEC to perform duties that SEC has no power to do or where the exercise of that power is financially unacceptable and imperils the financial health of the organization.

The PRC issued the Final Order without jurisdiction under its governing statutes and regulations. The Commission does not have the authority to substitute its judgment for that of the utility's board and management. State of Missouri el rel. S.W. Bell Tel. Co. v. Public Service Comm'n of Missouri, et al., 262 U.S. 276, 289 (1923). The Final Order frustrates the efforts of SEC's Trustees to meet their fiduciary obligations regarding the financial health and integrity of SEC, and states without authority in adopting the decision of the Hearing Examiner, that "SEC is not

entitled to a revenue requirement that allows the Board to advance or achieve all of its goals” [17 RP 4154]. The PRC intruded upon the exclusive authority of SEC’s Trustees, including for example, its authority to determine how and when capital credits of SEC’s members are returned to them, or how or when the cooperative expends the equity it maintains in the form of patronage capital [17 RP 4132-4154]. El Vadito De Los Cerrillos Water Ass’n v. N.M. Pub. Svc. Comm’n., 1993-NMSC-041, ¶ 17, 115 N.M. 784, 858 P.2d 1263 (the Commission’s jurisdiction and authority over the water utility’s abandonment and transfer of service to water association did not also give it the power to dictate water association’s membership as a condition of approving water utility’s abandonment application). These are all matters that lie within the exclusive authority of SEC’s Trustees. The Final Order is thus not in accordance with the law.

The relevant facts are undisputed: SEC filed for a rate adjustment. After hearing, the Hearing Examiner recommended entry of an order that was beyond the jurisdiction of the PRC under the relevant statutes. The statutory authority authorizing the Commission to exercise its limited rate jurisdiction over rural electric cooperative rates authorizes it to “conduct a hearing concerning the reasonableness of any proposed rates” as limited to the issues set forth in the protests pursuant to NMSA 1978, § 62-8-7(H). This is the extent of the Commission’s rate review authority, *i.e.*, a review of the reasonableness of the proposed rates limited to the

issues set forth in the protests determined to have provided just cause for the rate review. NMSA 1978, § 62-8-7(H) does not otherwise authorize the Commission to assert jurisdiction over the internal operations or the internal management of SEC, which is what the Commission did in adopting the RD.

SEC has no other forum for resolving its dispute with the PRC. The PRC initially ordered that SEC recalculate its rates with a rate plan it had not studied nor verified, again without jurisdiction. The PRC then denied the stay of the order pending an appeal. SEC filed an appeal and requested a stay. This Court did not rule on the stay until it remanded the case to the Commission on January 23, 2022, at which time the stay was granted. The Commission in the interim, imposed sanctions on the individual trustees, for allegedly violating the PRC's order to implement the PRC's new rates. On remand from this Court, and in violation of this Court's order to the Commission to modify or withdraw the final order, ordered additional relief in the form of a notice to be sent to all members of the Cooperative and to do additional calculations which SEC cannot do. SEC has filed a motion to stay the Revised Compliance Order before the PRC, but on the assumption that this motion will be denied, SEC is in the same position it was when it initially filed for a stay before both the PRC and this Court. SEC is between the proverbial rock and the hard place: it cannot comply with the various orders of the Commission and has not been able to get relief from the Commission.

III. In the alternative, this Court should issue a writ of prohibition

In State v. Valerio, 2012-NMCA-022, ¶ 19, 273 P.3d 12, the Court stated:

Our Supreme Court has stated a number of times that a writ of prohibition is “an extraordinary writ, issued by a superior court to an inferior court to prevent the latter from exceeding its jurisdiction, either by prohibiting it from assuming jurisdiction in a matter over which it has no control, or from going beyond its legitimate powers in a matter of which it has jurisdiction.” *In re Extradition of Martinez*, 2001–NMSC–009, ¶ 7, 130 N.M. 144, 20 P.3d 126 (internal quotation marks and citation omitted). See generally Richard C. Bosson & Steven K. Sanders, The Writ of Prohibition in New Mexico, 5 N.M. L.Rev. 91, 101–12 (1974). The Court has defined jurisdiction in this context as “the court's power to entertain and hear the suit,” see *id.* at 101 (internal quotation marks and footnote omitted), and has further explained that the jurisdictional test is “not whether the court had a right to decide the issue in a particular way, but did it have the right to decide it at all.” *In re Extradition of Martinez*, 2001–NMSC–009, ¶ 7, 130 N.M. 144, 20 P.3d 126 (quoting State ex rel. Kermac Nuclear Fuels Corp. v. Larrazolo, 70 N.M. 475, 481, 375 P.2d 118, 122 (1962)).

The requirements for a writ of prohibition are satisfied: First, this Court has jurisdiction over the PRC. Second, the PRC has exceeded its jurisdiction by issuing an order including remedies which it had no jurisdiction to grant, such as calculating the rate differently than what SEC has proposed in the rate increase and what SEC has studied and verified. The PRC did not have the right to order the relief it ultimately granted and should be prohibited from attempting to enforce its will.

IV. In the alternative, the Court should issue a writ of superintending control.

Recently, in Grisham v. Romero, 2021-NMSC-009, ¶ 15, 483 P.3d 545, this Court addressed whether the Governor could impose business restrictions during the pandemic.

As we recently discussed in Reeb, 2020-NMSC-006, ¶ 8, 480 P.3d 852, this Court has the power of superintending control over inferior courts. N.M. Const. art. VI, § 3. This power enables the Court to control the course of litigation in inferior courts and "to correct any specie of error." Kerr v. Parsons, 2016-NMSC-028, ¶ 16, 378 P.3d 1 (citing Dist. Court of Second Judicial Dist. v. McKenna, 1994-NMSC-102, ¶ 4, 118 N.M. 402, 881 P.2d 1387); Albuquerque Gas & Elec. Co. v. Curtis, 1939-NMSC-024, ¶ 12, 43 N.M. 234, 89 P.2d 615 (explaining that this Court's superintending control "is authorized by the Constitution ... to prevent a failure of justice by supplying a means for the correction of manifest error committed by the [district] court ... where there is no other adequate remedy and gross injustice is threatened" (internal quotation marks and citation omitted)). This Court may make such corrections via extraordinary writs, but it employs them only in exceptional circumstances: "where the remedy by appeal seems wholly inadequate ... or where otherwise necessary to prevent irreparable mischief, great, extraordinary, or exceptional hardship[, or] costly delays and unusual burdens of expense." McKenna, 1994-NMSC-102, ¶ 4, 118 N.M. 402, 881 P.2d 1387 (alteration and omission in original) (internal quotation marks and citation omitted). We may also exercise the power of superintending control "where it is deemed to be in the public interest to settle the question involved at the earliest moment." Griego v. Oliver, 2014-NMSC-003, ¶¶ 11-14, 316 P.3d 865 (internal quotation marks and citation omitted) (issuing a writ of superintending control on the constitutionality of New Mexico marriage laws, noting, in part, the immediate need to resolve uncertainty regarding the issuance of marriage certificates to same-gender couples); *see* McKenna, 1994-NMSC-102, ¶¶ 4-5, 118 N.M. 402, 881 P.2d 1387. As Petitioners point out, we have expressly acknowledged the appropriateness of exercising the power of superintending control on an issue of first impression concerning "constitutional provisions with

serious public safety implications." State ex rel. Torrez v. Whitaker, 2018-NMSC-005, ¶ 31, 410 P.3d 201.

This case satisfies the Court's concerns in issuing a writ of superintending control. It is in the public interest to settle the interpretation of the relevant statutes: the PUA and the RECA, and the interplay between the two statutes. There are serious public interest implications: if the PRC's Final Order is permitted to stand, the members of SEC will suffer financial implications in the payment for their electricity. SEC will not be able to comply with the Revised Compliance Order because its computer system is not equipped to calculate what is required in the Revised Compliance Order. Further, changing the imposition of the penalties to the corporation itself from the individual Trustees, without a hearing to determine whether the penalties should be imposed in the first place, only shifts the burden of payment from the Trustees to the customers again, without any evidence of the ability to pay the penalties. This is not what SEC contemplated when it agreed to the PRC's Joint Motion. The Revised Compliance Order is not a mutually agreeable solution and does not facilitate the end of this prolonged and costly litigation.

V. Notice of appeal

This petition also serves as a notice of appeal of the Revised Compliance Order.

PRAYER

On the basis of this emergency petition for writ of mandamus requesting a stay of proceedings, SEC respectfully requests that this Court grant the writ and stay the enforcement of the Final Order and the Revised Compliance Order until the parties can brief the jurisdiction of the PRC.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

Electronically Signed

By /s/ Lorna M. Wiggins
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 2022 a true and correct copy of foregoing Second Emergency Verified Petition for Writ of Mandamus and Request for Stay was served as indicated in the notice of electronic filing and upon the following:

PRC Records
The New Mexico Attorney General

prc.records@state.nm.us
Fax: (505) 318-1050

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation


Electronically Signed

By /s/ Lorna M. Wiggins
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VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF SOCORRO)

I, Joseph Herrera, CEO and General Manager of the Socorro Electric Cooperative, Inc., being duly sworn upon my oath, state that I have read this Emergency Verified Petition for Writ of Mandamus and Request for Stay, and that the factual statements it contains are true and correct to the best of my knowledge, information, and belief.


Joseph M. Herrera

SUBSCRIBED AND SWORN before me this 21st day of April, 2022, by
Joseph M. Herrera.

Jenna M. Wilkins
Notary Public

My Commission Expires:

07/23/2025

State of New Mexico
Notary Public
Donna M Wilkins

Commission No. 1094017

Expiration Date 07/23/2025

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 that 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.**

Nann Winter	nwinter@stelznerlaw.com;
Keith W. Herrmann	kherrmann@stelznerlaw.com;
Ed Reyes	Edwin.reyes.jr@comcast.net;
Polo Pineda	ppineda@socorronm.gov;
Larry Blank	lb@tahoeconomics.com;
Donald J. Steinnerd	reenerd@q.com;
Mark K. Adams	mkadams@rodey.com;
Cindy Loehr	CLoehr@rodey.com;
Donald Monette	Dmonette@socorronm.gov;
Patricia G. Williams	pwilliams@wwwlaw.us;
Lorna Wiggins	lwiggins@wwwlaw.us;
Patricia G. Williams	pwilliams@wwwlaw.us;
Joseph Herrera	jherrera@socorroelectric.com;
Christie Griego	cgriego@wwwlaw.us;
Justin Proctor	Justin.proctor@guernsey.us;
Rauni Montoya	rmontoya@socorroelectric.com;
Jimmy Capps	jcapps@socorroelectric.com;
Donna Wilkins	donna@socorroelectric.com;
Bradford Borman	Bradford.borman@state.nm.us;
Milo Chavez	Milo.chavez@state.nm.us;
Judith Amer	Judith.amer@state.nm.us;
David Ault	David.Ault@state.nm.us;
Gabriella Dasheno	Gabriella.Dasheno@state.nm.us;

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

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

DECLARATION OF

OF

VERONICA SCHUTT
PROFESSIONAL SOLUTIONS USA, INC.

IN SUPPORT OF

THE SOCORRO ELECTIC COOPERATIVE, INC.'S
SECOND EMERGENCY MOTION TO STAY TO PREVENT
IMPOSITION OF THE REQUIREMENTS OF THE REVISED
COMPLIANCE ORDER, ETC., ISSUED MARCH 30, 2022

EXHIBIT B



Professional Solutions USA, Inc.
2355 W. Hanford Rd.
Burlington, NC 27215

- Veronica Schutt, declares under penalty of perjury, the following:
1. My name Veronica Schutt. I am employed by Professional Solutions USA, Inc., a company that contracts with The Socorro Electric Cooperative (SEC) to provide printing, bill stuffing and mailing services to SEC customers. I have personal knowledge of the facts set forth herein and I am competent to testify.
 2. SEC contacted Professional Solutions USA, Inc. to determine the cost of mailing to all of its customers a Notice to Customers, return receipt requested.
 3. To obtain the envelopes to send the Notice to Customers will take Professional Solutions USA, Inc. eight to ten business days.
 4. The cost of the postage for one certified mail, return receipt requested that is signed by a member of the residence or business is \$7.38. If the return receipt is to be signed by the addressee on the face of the envelope, the cost of postage increases to \$13.38 per envelope.
 5. SEC mails invoices to approximately 10,000 customers each month. As a result, the total cost to SEC to send the Notice to Customers is either approximately \$73,800 or \$133,800 not including the cost of each envelope.
 6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 4/1/2022 Signed: Veronica Schutt

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

**AFFIDAVIT OF JOSEPH M. HERRERA IN SUPPORT
OF SEC'S SECOND EMERGENCY MOTION TO STAY**

STATE OF NEW MEXICO)
) ss.
COUNTY OF SOCORRO)

Joseph M. Herrera, being first duly sworn, upon his oath deposes and states as follows:

1. I am the CEO and General Manager of The Socorro Electric Cooperative, Inc. ("SEC"). I make this Affidavit in support of SEC's Second Emergency Motion To Stay To Prevent Imposition of the Requirements of the Revised Compliance Order, Etc., Issued March 30, 2022. I have personal knowledge of the information contained in this Affidavit and I would and could testify competently thereto if called to testify before the Commission.

2. In the Revised Compliance Order issued by the Commission, SEC is ordered to send notice to all of its members of the findings in the Revised Compliance Order. The Revised Compliance Order requires SEC send out the notice by no later than April 7, 2022, by US Post Office, return receipt requested, and when it received the receipts, scan those receipts and file them with the Commission as part of this proceeding.

3. Based upon the number of invoices that SEC mails each month, the cost of that mailing will be at least approximately \$75,000 and most likely will be about \$100,000 for the specialized envelopes, the initial postage and the cost of the return receipt.

4. In addition, the Revised Compliance Order requires SEC to “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.”

5. The current system used for IT by the Cooperative is unable to do this calculation.



Joseph M. Herrera

SUBSCRIBED AND SWORN before me this 6th day of April, 2022, by Joseph M. Herrera.



Notary Public

My Commission Expires: 07/23/2025

State of New Mexico
Notary Public
Donna M Wilkins
Commission No. 1094017
Expiration Date 07/23/2025

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

DECLARATION OF

OF

MICHAEL THOMPSON
MERIDIAN COOPERATIVE, INC.

IN SUPPORT OF

THE SOCORRO ELECTIC COOPERATIVE, INC.'S
SECOND EMERGENCY MOTION TO STAY TO PREVENT
IMPOSITION OF THE REQUIREMENTS OF THE REVISED
COMPLIANCE ORDER, ETC., ISSUED MARCH 30, 2022

EXHIBIT D



April 5, 2022

Meridian Cooperative, Inc., declares under penalty of perjury the following:

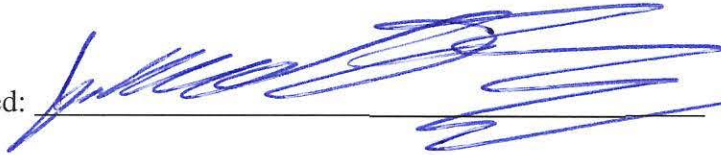
1. My name is Michael Thompson. I am employed as the COO of Meridian Cooperative, Inc. (Meridian Cooperative), the company that contracts with The Socorro Electric Cooperative (SEC) to provide the system services to the SEC to maintain their members' records. I have personal knowledge of the facts set forth herein, and I am competent to testify.
2. SEC contacted Meridian Cooperative to determine the cost and complexity of what it would take to calculate and regenerate the billing of all of SEC's customers for a prior 30-month periods.
3. SEC has 13,071 customers and the request includes the prior 30 months whereby each month must be reviewed. To do this Meridian Cooperative would have to reload every month-end tape, 30 tapes in total, which would take a minimum of 30 hours' time if there were no software changes over this 30-month time frame, which is highly unlikely. When the software changes Meridian Cooperative's DevOps group would have to make changes so that the version of the software always matches up with the version of the database backup. At this time, it is not a given that Meridian Cooperative has the object code stored in such a historical way that 100% assurance can be given that this will meet with success. The number of times this procedure must be addressed is estimated at five times, but that is just a guess. Software is always being updated and patched and without a great deal more investigation, it is impossible to know for sure how many times this may have occurred over the last 30 months because, again, Meridian Cooperative is frequently updating the software with new releases and patches to those releases.
4. The next step would then be to run a billing register for each month during the 30-month period to get the total KWH, KW and number of customers billed. Then Meridian Cooperative would calculate the difference in what was billed versus what could have been billed. This would result in totals for each rate only. There is no practical way to get the difference in each individual account because the meter readings for all 13,071 accounts have already been billed on each month's backup. There is no practical way to re-bill those meter

readings for all 30 months. Meridian Cooperative can provide totals on the kwh, kw, etc. that were billed but Meridian Cooperative cannot re-bill for those months. I estimate that these calculations would require a minimum of 70 hours. The word “practical” is used because it would take days just to estimate the work required to calculate each customer billed, which includes changes in taxes. The complexity time factor of such a project is enormous and simply, not practical, if it can even be done at all as the readings are constantly changing during the month.

5. Lastly, Meridian Cooperative is not staffed to engage in this type of work without negatively impacting other customers. Meridian Cooperative does not have qualified staff available to dedicate a contiguous 100 hours to the work required for such a project. However, if Meridian Cooperative were to do the work the **estimated** minimum cost to SEC would be 100 hours at \$150 per hour for a total of = \$15,000.
6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated:

Signed:



Sincerely,

J. Michael Thompson
Meridian Cooperative | COO, Executive
Meridian.coop | MichaelT@meridian.coop
Office: 678-906-2320
Mobile: 404-934-4134

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

THE SOCORRO ELECTRIC COOPERATIVE, INC.,

Petitioner,

Case No. S-1-SC-38302

v.

NEW MEXICO PUBLIC REGULATION COMMISSION
and its Commissioners Cynthia B. Hall, Jefferson L.
Byrd, Valerie Espinoza, Theresa Becenti-Aguilar
and Stephen Fischmann,

Respondents,

and

CITY OF SOCORRO AND
NEW MEXICO INSTITUTE OF
MINING AND TECHNOLOGY,

Real Parties in Interest.

**AFFIDAVIT OF JOSEPH M. HERRERA IN SUPPORT
OF SEC'S SECOND EMERGENCY MOTION TO STAY**

STATE OF NEW MEXICO)
) ss.
COUNTY OF SOCORRO)

Joseph M. Herrera, being first duly sworn, upon his oath deposes and states as follows:

1. I am the CEO and General Manager of The Socorro Electric Cooperative, Inc. ("SEC"). I attended the April 20, 2022 prehearing conference before hearing examiner Christopher Ryan. I have personal knowledge of the information contained in this Affidavit and I would and could testify competently thereto if called to testify before the Commission.

2. At the onset of the prehearing conference, Mr. Ryan indicated he read the Staff's Response to SEC's Motion to Stay that stated the SEC must follow the directives of the Commission set forth in the Final Order. After chuckling about that concept, Mr. Ryan expressed

EXHIBIT E

his unsolicited opinion, without hearing any argument or evidence, that it is “tragic comic” and it was “ridiculous” that this has even had to be written down. Mr. Ryan then went on to state his opinion that SEC “leadership did something ridiculous” and “that ship has sailed.”

3. Later in the conference after hearing that SEC had not yet filed a second appeal challenging 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 [sic] Order for SEC to Cease and Desist its Violation of the Final Order (“Revised Compliance Order”), Mr. Ryan stated, prejudging the matter without hearing evidence, that SEC is “going to eventually have to comply and pay” fines because “how do you decline to do something and not file an appeal?” He then sarcastically stated the fines “don’t magically disappear.”

4. Mr. Ryan let City of Socorro Mayor Ravi Bhasker, who was represented by two attorneys during the conference, speak repeatedly in the conference stating his opinions about SEC and Mr. Ryan agreed with Mr. Bhasker’s unsupported opinions. Mr. Ryan also overtly agreed with one of the City of Socorro’s lawyers that SEC was obligated to comply with the Final Order. Mr. Ryan then dramatically pontificated that to allow otherwise defied the Rule of Law which required payment or chaos would ensue. This statement ignores the fact that SEC has followed the Rule of Law by exercising its constitutional rights and appropriately appealing the Commission’s unlawful order, the lack of due process and other constitutional infirmities to the New Mexico courts.

5. Mr. Ryan also made references to Humpty Dumpty and the Twilight Zone that were overtly disrespectful to SEC.

6. Counsel for the parties were all in agreement that allowing them to explore a path forward to resolve the underlying issues was in their respective clients’ best interests. Mr. Ryan

then interjected that giving the parties time to negotiate “did not resolve the question of what damages were caused by SEC’s noncompliance.” This interjection was troubling to me because it assumes damages prior to hearing any evidence.



Joseph M. Herrera

SUBSCRIBED AND SWORN before me this 20th day of April, 2022, by Joseph M. Herrera.



Notary Public

My Commission Expires: 07/23/2025

State of New Mexico
Notary Public
Donna M Wilkins
Commission No. 1094017
Expiration Date 07/23/2025