

return, receipt request. Motion to Stay at ¶¶ 33, 34. SEC’s Motion to Stay and its initial 2019 Expedited Motion to Stay both cited the four (4) factors established in *Tenneco*: (1) a likelihood that the applicant will prevail on the merits; (2) a showing of irreparable harm to the applicant unless the stay is granted; (3) evidence that no substantial harm will result to other interested persons; and (4) a showing that no harm will ensue to the public interest. Motion to Stay at 7-10, citing *Tenneco Oil Co. v. New Mexico Water Quality Control Com'n*, 1986-NMCA-033 at ¶ 10, 736 P.2d 986, 988.

2. The Commission had previously rejected those arguments in its October 30, 2019 Order Denying SEC’s Expedited Motion to Stay Pending Appeal which ruled that: a) there is little to no likelihood that SEC will prevail on the merits and no irreparable harm; b) conversely, there is ongoing harm to the other interested parties and to the Commission itself - given the Commission’s finding “that SEC’s continued, unlawful operation by billing its customers in violation of the Final Order is not in the public interest.” Revised Compliance Order at 12.

3. On April 15, 2022, Utility Division Staff (“Staff”) submitted its Response to SEC’s Motion to Stay.

4. Staff has consistently maintained, and continued to assert in its Response that, since the Commission issued its Final Order on September 11, 2019, that SEC must follow the directives set forth by the Commission in that Final Order unless and until either the Commission or the New Mexico Supreme Court takes action to stay or vacate the order. Staff has repeatedly stated that State of New Mexico public utilities, including rural electric cooperatives, subject to the regulation of the Commission, must comply with the Final Order’s directives unless either the Court or the Commission stay the Final Order. Staff stated that SEC cannot be allowed to simply ignore the rate design set by the Commission in that case. Staff’s Response stated that:

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

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

2. Should SEC file the Advice Notice as recommended above, Staff would not object to the Commission waiving or removing its requirement that the Cooperative send the Notice attached to the Revised Compliance Order.

3. Should SEC file the Advice Notice as recommended above, Staff would further recommend that the existing fines arising from the initial Compliance Order of April 15, 2020, to be revisited upon ultimate resolution of the appeal by the New Mexico Supreme Court and any subsequent order of the Commission that may be necessary.

5. In the alternative, Staff stated that if SEC chose to reject this compromise, Staff would oppose the relief requested by SEC for the following reasons: a) there is no demonstration of an actual emergency, because if there had been, the Motion to Stay would have been filed within a day or two of the Commission's Revised Compliance Order, instead of waiting a week (the day the mailing to SEC's members was required); c) SEC's arguments are the same that they have made, and were previously rejected by the Commission in its initial Compliance Order and Revised Compliance Order; and d) the consequences that SEC claims it is suffering are completely caused by SEC's failure to comply with the Final Order and if SEC had simply followed the directives of the Commission in the Final Order, it would not be faced with either the penalties or the IT work that it now claims is too onerous to perform.

6. On April 15, 2022, Intervenors City of Socorro ("the City") and New Mexico Institute of Mining and Technology ("Tech") (collectively "Joint Respondents"), filed their Response to the Motion to Stay stating they oppose the relief requested for the following reasons: a) the timing of this motion does not demonstrate an "emergency"; b) SEC's justifications have already been argued and rejected by the Commission; c) SEC's motion is unsupported by law or fact and continues the trend of SEC ignoring the Commission orders; and, d), SEC's damages are self-inflicted; therefore the Joint Respondents the "so-called" emergency motion be denied. This

argument is outrageous on many levels. The reason the penalties are onerous is directly due to SEC's disregard of applicable law, and knowing, deliberate, and continuing violations of duly issued Commission orders. Thus, the penalties are accruing due to SEC's wholly self-inflicted refusal to acknowledge the regulation of the Commission. According to the Joint Respondents: "If SEC is not willing to pay the cost of its intransigence, it should have complied with the Final Order. SEC has now accrued over \$800,000.00 in daily penalties. Any argument that this is about SEC's finances is moot, as SEC has demonstrated its willingness to damage themselves rather than accept the legal authority of the Commission – at the expense of SEC's own customers." Therefore, the Joint Respondents requested that SEC's Motion to Stay be denied and that the Commission uphold the relief granted in the revised compliance order and direct the New Mexico Attorney General to enforce the Commission's order.

7. On April 18, 2022, SEC filed its Reply to Staff and the Joint Respondent's Responses. SEC agreed that Staff's proposed compromised is a reasonable compromise of the existing controversy relating to the stay and states that if the Commission waives or removes the requirement that SEC send the Notice to customers attached to the Commission's Revised Compliance Order, the cost of which to the members is estimated to be at least \$100,000, and if the Commission agrees to revisit the existing fines arising from the initial Compliance Order of April 15, 2020 upon ultimate resolution of the appeal to the New Mexico Supreme Court and any subsequent Commission Order, SEC will agree to immediately file an Advice Notice in compliance with the rates approved in the Commission's Final Order of September 11, 2019 and will implement those rates within thirty days as proposed in paragraph one of Staff's Proposal. SEC asserted that if the Commission rejects Staff's proposed compromised, SEC requested that it be permitted to respond to the arguments contained in remaining portions of Staff's Response and

the April 15, 2022, responses of the City of Socorro and New Mexico Institute of Mining and Technology.

8. On April 27, 2022, SEC filed an Emergency Motion to Stay the Revised Compliance Order, and Emergency Writ of Mandamus, Writ of Prohibition and/or Writ of Superintending Control² requesting the New Mexico Supreme Court issue a stay of the Final Order and a stay of the Revised Compliance Order and issue a Writ to prevent the Commission from enforcing the Final Order and the Revised Compliance Order. In addition, on the same date, SEC filed a third Notice of Appeal, this time appealing the Revised Compliance Order.

9. On April 29, 2022, SEC filed its Notice and Amendment to its Notice in Response to the Hearing Examiner's April 28, 2022, Order responding to the Hearing Examiner's questions.

SEC gave notice that it has not withdrawn or otherwise changed its position stated in its Reply in Support of its Second Motion for Stay, which provides:

Should the Commission approve Staff's Proposal, which SEC agrees is a reasonable compromise of the existing controversy relating to the stay, and waive or remove the requirement that SEC send the Notice to customers attached to the Commission's Revised Compliance Order, the cost of which to the members is estimated to be at least \$100,000, agree to revisit the existing fines arising from the initial Compliance Order of April 15, 2020 upon ultimate resolution of the appeal to the New Mexico Supreme Court and any subsequent Commission Order, SEC will agree to immediately file an Advice Notice in compliance with the rates approved in the Commission's Final Order of September 11, 2019 and will implement those rates within thirty days as proposed in paragraph one of Staff's Proposal.

10. SEC further stated that, to clarify its previously filed Notice, SEC stated that it will agree to a hearing before the Hearing Examiner for the purpose of addressing Staff's Proposal and

² S-1-SC-38302 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. S-1-SC-37948, SEC's Notice of Appeal of Revised Compliance Order.

SEC's Response to the Proposal and would further agree to participate in a prehearing conference to address any procedural matters related to that hearing.

11. The Commission finds that Staff's proposed compromise is reasonable and is in the best interest of the public and promotes administrative efficiency; affirms the Commission's authority; and results in SEC agreeing to immediately implement the Final Order within thirty days of filing an Advice Notice in compliance with the Commission's Final Order.

12. Further, contingent upon SEC's compliance with this Order's Decretal Paragraphs, including but not limited to filing a written compromise with Staff, complying with the Final Order and filing an Advice Notice that is approved by Staff and implementing the Final Order's rates; the Commission finds that it should temporarily stay the Compliance Order and the Revised Compliance Order and delay the determination of issue of penalties and reconciliation of rates to SEC's customers between the date of the Final Order and the date SEC actually complies with the Final Order as agreed to in the written compromised until the date the New Mexico Supreme Court resolves the appeal of the Final Order by the Court's issuance of a decision, Order and Mandate.

13. Nothing in this Order waives any right of the Commission to implement the terms of Compliance Order, the Revised Compliance Order, and/or the Final Order, including but not limited to penalties, notice and reconciliation of rates, in accordance with any future Orders and Mandates issued from the New Mexico Supreme Court.

IT IS THEREFORE ORDERED:

A. Within seven (7) days of this Order, Staff and SEC shall sign an agreement containing the terms of the proposed compromise as set forth in Staff's Response and in accordance with SEC's Reply, including a form of notice to SEC's customers regarding the history of this matter and the

compromise reached and the method the notice shall be issued to SEC's customers.

B. Within seven (7) days of this Order, SEC shall file an Advice Notice containing the rates required by the Final Order; subject to Staff's approval, which approval or disapproval shall be filed within five (5) days.

C. Within thirty (30) days of this Order, SEC shall implement the rates in the filed Advice Notice, contingent upon Staff's approval.

D. Within forty-five (45) days of this Order, contingent upon the Staff and SEC's filing of a Joint Notice of Compliance with the written compromise filed in this docket the Compliance Order and the Revised Compliance Order are stayed until the New Mexico Supreme Court issues an Order or Orders and Mandates in the appeal of the Final Order.

E. This Order is effective immediately.

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

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 4th day of
May, 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

VOTED NO

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT



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 **Order Adopting Socorro Electric Cooperative's and Staff's Compromise.**

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DATED this May 4th, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Law Clerk

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