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April 10, 2014

Mr. James Cherry
805 Kelly Road
Magdalena, NM 87825

Response to Records Inspection Request
Socorro Electric Cooperative, Inc.

Dear Mr. Cherry:

This letter addresses your concerns that Socorro Electric Cooperative ("S.E.C.") has not produced sufficient records pursuant your request.

We will produce under separate cover, letters of engagement and contracts, to the extent they have not already been produced. We will also produce under separate cover unredacted billing records of concluded litigation, including those relating to Pineda, Torres, and prior class-action litigation.

However, we respectfully disagree that all of the redacted portions of attorney billing data which you seek are not attorney-client privileged. The remaining redacted portions clearly fall within attorney-client privilege.

Inspection of Public Records Act and Open Meetings Act:

As provided by S.E.C. bylaws, Article VI, titled "Meetings of Trustees," in Section 5, the S.E.C. voluntarily complies with the Open Meetings Act ("OMA") and Inspection of Public Records Act ("IPRA").

OMA exempts "meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant." NMSA 1978, § 10-11-1(H)(7) (amended, 2013). Similarly, IPRA exempts attorney-client privileged information from inspection, pursuant to NMSA 1978, Section 14-2-1 (A)(6).

IPRA commentary states Rule of Evidence 11-503 has an attorney-client communication exception:

A client has a privilege to refuse to disclose and prevent any other person from disclosing confidential communications between himself and his lawyer and between other specified persons, made to facilitate the rendition of professional legal services to the client.

Id. IPRA allows other public policy exceptions and expressly provides for an attorney-client privilege exception, as amended in 1999.

A trial court would certainly find sufficient indicia of confidentiality and privilege in the redacted portions. The redacted portions relate to attorney work-product, mental impressions, and disclose professional services rendered in ongoing matters. Our courts have never required the wholesale production of unredacted attorney bills. To the contrary, there is substantial case law holding that documents subject to attorney-client privilege may be withheld, including from corporate shareholders or members.

To the extent that case law would at all stand to the contrary, any such case law would be trumped by IPRA provision Section 14-2-1 (A)(6), which went into effect in 1999. This provision expressly states that attorney-client privileged information is not subject to discovery. The generally accepted rule of statutory construction is that when there is a conflict, courts presume that statutory provisions take precedence over case law.

Attorney Work-Product:

In this case, there are confidential matters relating to attorney thought processes in anticipated or ongoing litigation and personnel matters. This information is more than a mere bald assertion of privilege. Here, the redacted portions are privileged in that they are attorney work-product. They reflect the thought processes of the attorney in preparation of anticipated or ongoing litigation, which is neither remote nor a mere abstract possibility, and also regarding ongoing personnel matters. Because attorney billing records and time sheets might reveal attorney-client communications, courts have held that this information is protected by the attorney-client privilege to the extent that they reveal the nature of services performed by an attorney. See Colonial Gas Co. v. Aetna Cas. & Sur. Co., 144 F.R.D. 600, 607 (D. Mass. 1992); In re National Medical Imaging, L.L.C., 2005 Bankr. LEXIS 2374, at *21 (E.D. Pa. Oct. 31, 2005) (“Billing records are subject to the attorney-client privilege to the extent that they reveal the nature of the services rendered. Thus, the descriptions of the services in this document are privileged.”) De La Roche v. De La Roche, 209 A.D.2d 157, 159, 617 N.Y.S.2d 767, 769 (N.Y.App. Div. 1994) (“Bills showing services, conversations, and conferences between counsel and others are protected from disclosure. To allow access to such material would disclose discovery and trial strategy, and reveal the factual investigation and legal work that has been done by the attorneys. . . . [T]he court concludes that attorney billing statements are subject to the attorney-client privilege to the extent that they reveal more than client identity and fee information.”)

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Unredacted Attorney Billing Data:

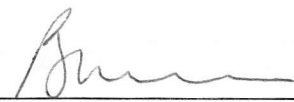
As noted above, we will produce unredacted billing data as it relates to time entries of the concluded cases of Pineda, Torres and prior class-action litigation. Because some of these entries also include attorney-client privileged information relating to ongoing litigation and other ongoing services, these bills must be redacted accordingly. This process will take at least 10 working days.

Copy fees:

According to IPRA, NMSA 1978, Section 14-2-9 (B), the fee of \$1.00 per page is within permissible limits. The fact that a redacted document may have only a few words does not warrant a reduction in the fee assessed. In fact, according to the IPRA Compliance guide published by the Office of the New Mexico Attorney General, even higher charges are permitted when it reasonably reflects the cost of production, such as oversized documents, including personnel time involved. We cannot agree that charging a copying fee which is expressly permitted by IPRA is unreasonable or punitive.

Very truly yours,

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

By 
for Lorna M. Wiggins

LMW:teg

cc: Joseph Herrera
Anne Dorrough