

# COMMENTARY RELATED TO THE MAY 28, 2013 ANNUAL MEETING

## March 3 - Comments on No-quorum meeting in February.

What do we do with this bunch which exists to obstruct the will of the SEC member owners and enrich themselves. It was very obvious that the only people in the SEC Board meeting room last Tuesday that were not in on the plan were Trustees Wagner and Dorough, eight SEC members and the editor of the "Defensor Chieftain." The lawyer was absent, the table was empty of the usual "add piles," knowing looks and smug expressions were unmistakable.

President Aguilar jumped at Trustee Wagner's suggestion that they wait ten minutes and then call the meeting. Checks of the missing four trustees' homes turned up vehicles in driveways and curtains twitching. The quorum was in hiding.

We know what happened. The question is why. A look at the Agenda provides some answers.

### **X. CONSIDERATION TO RESCIND PREVIOUS ACTION ON SETTING DATE AND TIME FOR 2013 ANNUAL MEMBERS MEETING.**

Why this item and who placed it on the Agenda when the Minutes of the Annual Meeting Committee Meeting on 2/7/2013 make no mention of date and/or time change? The committee did vote to do away with Election Judges which could or could present a problem. SEC co-op staff should not be in charge of this election.

The minutes also do not mention the persistent rumors that lawyer, management and board majority are planning to keep the amendments passed by the District V members off of the ballot leaving only the defeated Trustee amendments for a revote. This would be an illegal act in violation of SEC Bylaws and state law but this trio has violated both in the past and dared the members to sue for justice. Why not! The lawyers make a bundle of members' money, management and the majority also have members' money to shield them from the results of their illegal behavior. " Art. III, Section

12. Action by Members at District Meetings. Any proposition submitted at a District Meeting and adopted by resolution by a majority of the members voting, together with any document submitted with the resolution, must be reported to and submitted for consideration at the next succeeding annual meeting or special meeting members, if the resolution so provides."

Questions about this action were to be raised at the Feb. SEC Board meeting. The trustees would have to take responsibility for their vote if they attended the meeting. Ask your individual trustee if they are in favor of throwing out the actions of the members of District V.

### **XII. CONSIDERATION TO RESCIND PREVIOUS ACTION TO RE-INTRODUCE BOARD APPROVED RESOLUTIONS FOR 2013 ANNUAL MEMBERS MEETING.**

Trustee Dorough of District asked that this action be placed on the agenda as the members have already rejected these resolutions by a large number. A vote on this agenda item would have shone a very bright light on the trustees.

There were several other hot button items to be addressed including the Minutes of three By-Law Committee Meetings that "carefully examined resolutions passed at the District V meeting. Indeed, Chairman Wolberg stated that the purpose of all three meetings was "to examine action by members at the District V Meeting October, 2012." Members of this committee are Chairman Wolberg, Trustees Cordova and Mauldin. Add the presence of Trustee Aguilar and there were four trustees, a quorum of the SEC Board, at the three meetings. This is illegal according to the Open Meetings Act and notice was given on this matter by Judge Albert Mitchell in a letter dated February 28, 2011.

Illegal and improper actions by board, management and legal advisors over the years have caused a very high cost to SEC members. Remember being sued by our own Board of Trustees? We are going to have to take action very

soon in the matter of what goes on that ballot for the Annual Meeting.

There is a telephonic conference with Judge Mitchell on March 14th and we must hope that the Board's continuing wrong actions will engage his attention.

See Chieftain article: <http://www.dchieftain.com/2013/03/02/co-op-meeting-doesn39t-happen>

### March 19 - Court proceedings update

The majority of the Board of Trustees of Socorro Electric Cooperative seemingly with the help of their Attorneys and General Manager, continue to violate the bylaws and waste hundreds of thousands of dollars getting the co-op deeper and deeper in trouble.

Most people would think that the Court's order rendered May 18, 2011 by the Honorable Albert J. Mitchell, Jr. in the 13th Judicial District of Valencia County would have made it clear to the board's advisors that obeying the bylaws and his order was their only option. Apparently not.

The Board's misconduct has resulted in a serious and possibly costly decision against the co-op in two cases concurrently being tried in different New Mexico State Courts. The cases are:

Leopoldo Pineda v. Socorro Electric Cooperative, Inc., et al. Case No. D-202-CV-201111975, being tried in the County of Bernalillo Second Judicial District Court and

Kathy Torres v. Charles Wagner, Socorro Electric Cooperative, et al. Civil Cause No: D-725-CV- 2011-120, Socorro County Seventh Judicial District Court.

The Judge in the Pineda case is the Honorable Shannon Bacon and the Honorable Karen L. Parsons in the Torres Case. Both of these Judges used the case of Palenick v. City of Rio Rancho as the controlling precedent. Below is an excerpt from Judge Parson's decision.

Plaintiff's Motion for Partial Summary Judgment as to Count VI: Plaintiff was a long term employee of SEC.

2. SEC members voted in April of 2010 to amend its by-laws to require the Board of Trustees (Board) to comply with the NM Open Meetings Act (OMA).

3. On August 25, 2010, the Board voted to terminate Plaintiffs employment and ceased compensating the Plaintiff.

4. The August, 2010 meeting did not comply with the OMA, and, therefore the action taken at that meeting to terminate Plaintiff's employment was invalid.

5. On August 22, 2011, nearly one year later, the Board met and attempted to retroactively ratify all of its prior actions.

6. Pursuant to the present opinion in Palenick v. City of Rio Rancho, 2012 N.M.C.A., the Board cannot retroactively ratify its actions as it attempted to do on August 22, 2011.

7. This Court acknowledges that the Supreme Court has granted certiorari on the Palenick case; but, the Court of Appeals case is, nevertheless, precedent at this time, and is controlling.

8. The Plaintiffs Motion for Partial Summary Judgment should, therefore, be granted as to the liability of the Board for violating the provisions of its amended by-laws relative to its invocation of the OMA. The amount of damages is yet to be determined.

It seems obvious that such malfeasance if not corrected will continue to waste assets of the cooperative and reflect badly on the 12 other rural electric cooperatives throughout the state.

It behooves those other cooperatives or state legislators, to create some form of disciplinary process to rein in rogue boards and their delinquent attorneys that encourage them to violate duties to obey laws and the bylaws of their co-ops.

Ref: June 24, 2011 - Judge Mitchell order on partial merits Ref: Nov. 13, 2012 - Judge Parsons partial judgment

### March 23 Commentary

The letter published in the Chieftain (3/21/13) comments on the actions of the SEC Board in their non-attendance at the February Board meeting. This board with the exception of the District 2 and District 5 trustees along with the management and attorney are acting in a manner counter to the good of the members and daring the members to go to court to stop them. The board and management have the coop money to use and the attorneys make a fortune.

The next board meeting is THURSDAY, MARCH 28, 2013. The meeting starts at 5 p.m. for a half hour meeting to attempt to correct the actions of the Board in regard to Open Meetings Act which has the potential for a high cost to the SEC Co-op.

Trustee Wagner has been warning the board of their non compliance with the OMA since the bylaw was passed at the 2010 Annual Meeting and reaffirmed in a court ruling by Judge Mitchell in 2011. Wagner was ignored, censured, and harassed.

At 5:30 p.m. the regular meeting begins and some surprises are bound to come up. One of the most interesting will be the report on the investigation of Trustee Wagner, the trustee who has fought for almost 8 years to bring transparency, honesty, and member control to the co-op. Members will have a chance to speak out at beginning of this meeting. The agenda will probably offer up a few more surprises. Rumors persist that the board, management, and attorney are not going to allow the amendments to the bylaws passed at the District 5 meeting to be presented for vote by the membership at the 2013 Annual Meeting. This would be against the bylaws and common sense and decency if these rumors are correct. Mark your calendars!

### March 27 Commentary

Everybody understands that it is much more comfortable to skip going to the SEC Board meetings and just stay home and watch the tapes of the meetings. But in the case of this particular meeting, it is important that members make a great effort to attend. Two issues need to be observed first hand and communicated to the entire membership.

ISSUE NUMBER 1. Report on the investigation of Trustee Charlie Wagner. This is the first item of business on the Agenda directly following "Public Comments." This board censured Wagner last year for audio taping the board meetings and took away many of his rights as a trustee although such action was illegal and not allowed under the SEC Bylaws. A judge has upheld the legality of such taping as no confidentially was broken but the

administration and attorney continue to withhold travel funds and other privileges. Not content with this outrageous action, the attorney demanded an investigation and selected the investigator. There are suspicions that the board will use this report no matter what it says to attempt to further harm Trustee Wagner, the 2nd District and the entire membership. The prevailing attitude is "We don't care if it is illegal. If you don't like it, take us to court using your money while we will fight you using the members' money."

ISSUE NUMBER 2. Rumors almost certainly true. The Board, attorney and management are not putting the proposed amendments to the bylaws passed at the October, 2012 District 5 meeting on the ballot for a vote at the 2013 Annual Members' Meeting in violation of the SEC bylaw, Article III, Section 12. that clearly states: "Any proposition submitted at a District Meeting and adopted by resolution by a majority of the members voting, together with any document submitted with the resolution, MUST be reported to and submitted for consideration at the next succeeding annual meeting, or special meeting if the resolution so provides....." They are only putting the 14 trustee resolutions that the members voted down last year and the three member resolutions proposed from the floor of the 2012 Annual Meeting on the ballot. Again this is ILLEGAL and must be protested in person. It also will probably wind up in court and must be made known to Judge Mitchell in the pending class action request.

### March 29 Comment

THE ANNUAL MEMBERS MEETING: In January, 2013, the board on a tie vote broken in favor by Pres. Aguilar, set the date of Saturday, May 18th at 1 p.m. for voting and registration and 5 p.m. for the business meeting. Last night the board rescinded that motion and reset the Annual Meeting to reg. at WEDNESDAY, May 15th, voting and 1 p.m.- business meeting at 3 p.m.

The roll call vote against Wed. was Wagner, Dorough, Mauldin; the vote for Wed. was Wolberg, Cordova, Wade with Pres. Aguilar breaking the tie in favor of Wed. The unfairness of District 3 (Socorro) having 3 votes to the other districts' 1 vote each should be noted. This is a obvious attack on the members in order to stop a quorum by limiting the attendance of working people and especially people who live in the far flung districts. This is unfair beyond belief and there is more.

MEMBERS' RESOLUTIONS FOR THE ANNUAL MEMBERS MEETING: For as long as the co-op has existed, the members meet in their districts, conduct business including the debating upon and voting on resolutions for amendment to the bylaws which are then sent to the "next succeeding Annual Meeting." This happened in Oct. 27, 2012 when District 5 members voted upon a host of amendments to the bylaws but the Board, Management and Attorney are refusing to allow these bylaws to go forth for all sorts of ridiculous reasons all of which boil down to the fact that several of these amendments give more control to the members and curtail the ability of the board, management and attorney to operate secretly and without regard to the members' wishes. This trio would like to forget that the members are owners. The attorney (see video on this website) claims all sort of reasons that don't make a lot of sense especially if ARTICLE 15, RURAL ELECTRIC COOPERATIVES. Section 6 -15-7 is consulted.

"The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended or repealed by the majority of the members present at any regular annual meeting or special meeting called for that purpose, a quorum being present....." This is a state law was not mentioned during the meeting because this law clearly indicates that members "adopt, amend, or repeal" and the

trustees do not. In the SEC's topsy-turvy world, the opposite is being mandated with the defeated 2012 trustee amendments being on the 2013 ballot along with the 3 amendments raised from the floor by members in 2012.

This attorney and/or the board has no right to block the District 5 amendments. It is not their function or right. Neither should a "committee" be established to "overlook" or "correct" their amendments. The bylaw demand an up or down vote without interference. Thankfully there is a video tape of the meeting so other claims as to quorum and meeting behavior can contradict the "draft minutes" by the secretary of the meeting who is a SEC staff member. There will be further action on this matter - remember that Judge Mitchell ruled on member amendments in 2011.

WHAT CAN BE DONE? Let your trustees know what you think with a copy to the newspaper and cynic website. Talk to friends and neighbors for these and other issues are headed straight for a "necessary" rate increase. Donate to the members' legal fund as we will probably have to head for court again.

Most important ..... There are elections scheduled for October, 2013 in District 2 (Magdalena, Alamo, and the west side of Socorro) and District 3 (Socorro). Start thinking about good honest people who will act for the members on the board to run for these slots. Be careful of supposed "reformers" who will turn on the members as soon as they are elected. No person who has served on the board before should ever be elected again. Consider recall for those who have been on the board for years to the members harm. Once the board belongs to the members, things will straighten out and we will be rid of this constant battle.

### March 30 - Comments on March 28th meeting

April 1 - At the March 28 meeting of the Socorro Electric Cooperative, the annual meeting date was changed and the board determined which bylaws would be brought to the members/owners at that meeting. .... continue on the Chieftain...

### Agenda Item I -

SET DATE AND TIME FOR THE ANNUAL MEMBERS MEETING: In January, 2013, the board on a tie vote broken in favor by Pres. Aguilar, set the date of Saturday, May 18th at 1 p.m. for voting and registration and 5 p.m. for the business meeting. Last night the board rescinded that motion and reset the Annual Meeting to reg. at WEDNESDAY, May 15th, voting and 1 p.m. ; business meeting at 3 p.m.

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### Agenda Item H -

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### March 31 - Comments on Investigation

The report of the investigation was long and it is not finished yet. A confidential portion of the report will be presented during the executive session of next month's board meeting where no members are allowed. Charlie may not be allowed for that matter.

This is solely an investigation of Trustee Wagner with no consideration of surrounding events or other people's actions and prejudices. There is also no question of any behavior by Wagner that is contrary to federal, state, or SEC Bylaws. Conclusions are based on interviews with persons unnamed except for former trustee, Leroy Anaya, and policies written by a committee of trustees and their attorney. These policies would restrict any dissent by trustees, such as Policy 119 which has a section entitled, "Individual Trustee Support for all Board Decisions." which states that "Decisions by the Board must be supported by each trustee regardless of their position during deliberations." Most of these policies hamper or stop any honest look at the activities of the

board. Charlie has refused to support illegal actions by the board and to go along to get along. Over the years, he has made public many things that the board wanted hidden such as the lack of payment of capital credit, the unequal representation on the board and the huge sums paid to trustees. One of the more amusing findings is that he had "inappropriate dealings with the SEC Reform Group!" Another is the charge of "unprofessional or discriminatory conduct towards other individuals in his capacity as Trustee" and the fact that he filed a counter suit against the board when that board sued all of the SEC member/owners. He was warned that the board would strike back and they have. This "investigation" is a reminder that another trustee tried to reform the SEC some years ago and was also attacked. The members well understand what is happening in this matter.

A long lecture on Fiduciary Duty seemed to indicate that Trustee Wagner failed in his fiduciary duty to the Board of Trustees. Fiduciary means trust as in "a person who has the power and obligation to act for another under circumstances that require total trust, good faith, and honesty." Trustee Wagner has a fiduciary duty to the members especially those of the district that he was voted to represent and the corporation. He has never failed in this duty. He has no fiduciary duty to the board.

Stay tuned for next month's portion of the "investigation."

### **Trustee Dorrough Update to District V Members**

First of all I would like to thank the people who shared their personal email lists to enable me to make contact with the members of District V of the Socorro Electric Cooperative. By the same token, if you do not wish to be contacted about the coop, send me an email to that affect and I will remove you from the list.

So many things happen at the board meeting on Thursday, March 28th that I will have to break this up into more than one email. I am going to address what I feel is the most important matter first.

On October 27, 2012 members of District V attended the Annual District meeting and went to a great deal of effort to pass several amendments to the ByLaws of the cooperative. Members did this with the understanding that these would then appear on the ballot at the 2013 Annual Meeting to be voted on by the general assembly and, if passed, would go into effect immediately. This is the means by which the amendments passed at the district meetings in 2009 were added to the ballot at the 2010 Annual Meeting and passed by the general assembly.

New Year; New Attorney; New Interpretation

SEC ByLaws Article III Section 12. Action by Members at District Meetings. Any proposition submitted at a District Meeting and adopted by resolution by a majority of the members voting, together with any document submitted with the resolution, must be reported to and submitted for consideration at the next succeeding annual meeting, or special meeting of the members, if the resolution so provides.

Ms Wiggins interpretation of the preceding bylaw is based on the word "consideration." She feels that the propositions approved at the district meeting can only be "considered" and not "voted on." What is the bottom line? The amendments approved at the District V Annual Meeting will not be on the ballot but instead added to the agenda to be discussed by the members. Any propositions approved at that time will be added to the notice and ballot of the next annual meeting or a special meeting called for the purpose of voting on the propositions.

Instead of the District V amendments the following items will be on the ballot of the 2013 Annual Meeting:

Three amendments that were passed from the floor at the 2012 Annual Meeting.

1. An amendment that would allow mail in ballots to be included in the count when determining a quorum.
2. An amendment that would allow trustees from each of the districts to appoint judges to assist in counting ballots at annual meetings
3. An amendment that would allow annual district meetings

An amendment passed by the bylaw committee that would raise the quorum required from 3% to 5%.

The 14 amendments placed on the ballot at the 2012 Annual Meeting and rejected 5 to 1 by the membership

As you can see, attendance at the Annual Meeting is going to be extremely important. It is also going to be a pain in the back side. The board voted 4 to 3 to change the date and time of the Annual Meeting. It is now scheduled for WEDNESDAY, the 15th of May at Finley Gym, registration and voting starting at 1:00PM and the meeting at 3:00PM. More about this later.

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