

Clock ticking on SEC appeal

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http://www.dchieftain.com/news/clock-ticking-on-sec-appeal/article_3a20cad0-f065-11e9-a025-9b3081e2168e.html

Socorro Electric Cooperative plans to battle a New Mexico state agency stating its recent ruling was “arbitrary and capricious” and not supported by substantial evidence.

Last week, SEC made it official when it filed an appeal with the New Mexico Supreme Court asking the Public Regulation Commission to refrain from enforcing its Sept. 11 ruling until the Supreme Court rules on SEC’s appeal.

In the court documents, SEC states its request is appropriate because it satisfies four Tenneco conditions. Those conditions according to the SEC attorney include:

1. It is likely SEC will prevail on the merits because the final order by the PRC is contrary to the law, is arbitrary and capricious and not support by substantial evidence.
2. SEC alleges that it and its members will suffer irreparable harm if the stay is not granted since SEC is appealing its obligations under the Final Order. Should the Supreme Court find in SEC’s favor, SEC will have to undo whatever action it was required at under the PRC’s final order, thus it would be an additional cost to SEC and its members. According to SEC’s attorneys, the cost of performance is not an expense SEC should have to incur.
3. The intervenors and SEC members will not suffer substantial harm if the PRC grants a stay of its final order. SEC contends its members will see no changes in their rates during the appeal process.
4. Finally, SEC’s attorneys indicate that no harm to the public’s interest if a stay is granted.

Currently the City of Socorro and the PRC’s staff oppose the appeal motion.

Once the appeal has been filed, SEC will be required to file a state of issues with the Supreme Court. That statement must contain: Each issue to be presented by the appeal; A statement on how the issue arose; How each issue was preserved; A statement on the court’s jurisdiction; and a reference to all related prior appeals of which the party is aware, including an appropriate action.

According to the court, a pending appeal does not by itself stay or suspend the operation of the PRC’s order. But in its discretion, a court may stay or suspend the operation of the commission’s order.

If the court grants a stay of the PRC’s order, it may require the party seeking such remedies to secure the other parties due to the delay in enforcement of the order.

After the statement of issues has been filed with the Supreme Court, the court will assign the case a date in its legal calendar.