

UPDATE: SEC files lawsuit against Socorro

http://www.dchieftain.com/news/update-sec-files-lawsuit-against-socorro/article_3e8e0b72-1bd6-11ea-9933-df2fa2a270b6.html

By Wanda Moeller, El Defensor Chieftain Editor Dec 12, 2019

Socorro Electric Cooperative has filed a lawsuit in Seventh Judicial District Court, alleging the City of Socorro has violated its franchise agreement with the rural electric cooperative.

According to the lawsuit, SEC is asking for a declaratory judgment affirming the validity of the 1999 franchise agreement between the SEC and the city. The franchise agreement states that SEC is allowed to construct, acquire, operate and maintain an electric system in the city. In addition, the lawsuit seeks a permanent injunctive relief to prevent the city from interfering with SEC's delivery of service to its customers.

City Ordinance No. 99-4-19 states that "Socorro Electric Cooperative agrees to provide, at their cost, maintenance to all city streetlights in need of repair, and further agrees to survey these lights on a monthly basis to ensure they are properly functioning."

In addition, "The agreement is non-transferrable and runs concurrent to the 1972 Franchise agreement which was officially extended on a month-to-month basis by the Socorro City Council until such time as a more permanent agreement could be reached."

It stipulates that the original franchise agreement approved in 1999 may be extended for a period of five years (with the option of five additional years if approved by the City Council).

Since 2004, when the first five year agreement expired, a "more permanent franchise agreement" has not yet been reached between the city and the co-op. Therefore, that a franchise agreement currently exists between the two entities is in doubt.

The SEC conducted a special meeting on November 25, approving its plans to file the lawsuit. When Socorro City Council met last week, city councilors met in executive session to discuss possible pending litigation against them.

A press release was submitted to El Defensor Chieftain Monday after SEC officially filed its lawsuit late that morning in district court. The press release states: "Socorro Electric Cooperative (SEC) was created 75 years ago by its member/owners to provide safe and reliable electric service to all its members within the SEC service area, including those living in Socorro. The City of Socorro has begun efforts to create a municipal utility to serve some of SEC's largest users of power. This 'cherry-picking' would force SEC to raise rates on all customers, inside and outside the city limits, as well as on the other rate classes outside the city limits."

The lawsuit asserts that on March 13, 2018, legal counsel for the city threatened SEC with trespass actions beginning on January 1, 2020, if the co-op entered the right of way located within the city's industrial corridor. The industrial corridor contains some of SEC's larger businesses – which, the co-op says the city has targeted – which are current SEC members.

The lawsuit contends that the designated right of ways are needed for SEC employees to continue meeting its members' demand for electric service needs.

SEC's press release continues: "The city's threat of trespass actions concerns the elected SEC Board of Trustees regarding the interference with service to current SEC members/owners, within and outside the city."

The SEC board contends that during the summer of 2019, two separate meetings with members of the city council and Socorro's city administrator were unsuccessful to "avoid the interference with SEC's delivery of

electric services or duplications of delivery electric services” in Socorro’s city limits. In the lawsuit, SEC is asking the court for a declaration that the current franchise agreement should remain in effect until at least 2024. That is, if the parties do not mutually agree to renegotiate or terminate the agreement.

Secondly, SEC is asking the court to rule that the City of Socorro has violated its franchise agreement by soliciting bidders and awarding a contract to Guzman Energy to provide longterm wholesale power to the city, scheduling service, and project capital financing for starting an electric delivery system. This, in effect, would forcibly remove SEC from its ability to serve customers in the same geographic territory.

The final part of the lawsuit requests that the court rule that the city starting its own municipal utility will cause immediate and irreparable injury, loss and damage if the city is not restrained from declaring SEC to be considered in trespass on the right-of-way located within the city’s industrial corridor and negotiating for long-term wholesale power supply, scheduling services and project capital financing.

SEC also is requesting the city pay SEC’s attorney fees as well as costs of the court action.

A date for the court hearing has not yet been set. Judge Mercedes C. Murphy has been assigned the case.