

# Socorro only has month-to-month franchise agreement

By Wanda Moeller and John Larson Dec 19, 2019

[http://www.dchieftain.com/news/socorro-only-has-month-to-month-franchise-agreement/article\\_ace5669e-2129-11ea-b3c9-8f321356c70e.html](http://www.dchieftain.com/news/socorro-only-has-month-to-month-franchise-agreement/article_ace5669e-2129-11ea-b3c9-8f321356c70e.html)

Last week, Socorro Electric Cooperative filed a lawsuit in the Seventh Judicial District Court, alleging the City of Socorro has violated its franchise agreement with the rural electric cooperative. The city, however, readily challenges SEC's allegations.

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, which the council passed in 1999, 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." The ordinance stipulates that the 1999 franchise agreement may be extended for a period of five years (with the option of five additional years if approved by the City Council).

A document obtained by the Defensor Chieftain states that in 2009 after the second five-year agreement expired, a "more permanent franchise agreement" had 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.

"There is no franchise agreement right now," Mayor Ravi Bhasker told the newspaper. "We are still going on a month to month basis."

The SEC conducted a special meeting on Nov. 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 from SEC was submitted to the newspaper on Monday, Dec. 9, shortly after the lawsuit was filed at the courthouse.

It stated: "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."

Trouble between the two entities began brewing in 2013.

## Highlights from 2013-2015:

In January 2013, Bhasker sent a letter to SEC General Manager Joseph Herrera requesting a meeting to begin negotiations on a new franchise agreement. He listed three items of most importance; "time of use metering" for city facilities, survey and repair of non-metered city street lights, and the use of city rights-of-way by SEC for purposes other than providing electricity with entities who do not have an agreement with the city to use city rights-of-way.

By Feb. 19, 2013, the proposed meeting hadn't happened, and at the City Council meeting that evening Bhasker told the council that if the city and SEC cannot come to terms on a new agreement, the City can bid for electric services

At the July 22, 2013, City Council meeting, Bhasker told the Council that he favored working with the co-op on a new franchise agreement and had contacted an attorney, Nann Winter, to help facilitate the process on the city's behalf, and improve transparency.

Accordingly, on July 31, 2013, Bhasker wrote a letter addressed to Luis Aguilar, then-SEC Board President inviting Aguilar to the Sept. 3, 2013, City Council meeting to a preliminary discussion of the franchise agreement with the council. Winter was also invited. According to the minutes of that Sept. 3, meeting, the attorney Nann Winter was delayed in attending, and the proposed discussion did not take place.

On Sept. 16, 2013, the City Council heard comments relating to planning a franchise agreement from Winter, Bhasker, Aguilar, and Herrera, who stated he was looking forward to working with the city on the franchise agreement.

At the Oct. 7, 2013, City Council meeting, a public forum was held on SEC rates, which included comments by SEC Trustee Charlie Wagner, Charlene West, and Marie Watkins. Bhasker said he thought that discussing co-op issues in a public meeting was important for transparency.

At the Dec. 2, 2013, City Council meeting, Bhasker read into the minutes State Statute 3-42-1, which deals with franchises. Based on the wording of the statute, he asserts that no franchise exists. Attending the meeting were Board President Anne Dorough and SEC General Manager Joseph Herrera. In "town hall" type fashion, several members of the public made comments regarding rates and services and suggestions for a proposed set of new bylaws for the co-op.

At the Feb. 18, 2014 council meeting, Bhasker said without a franchise agreement the city has three options; leaving everything the way it is; or try to keep having a dialogue with the SEC General Manager to create a new relationship between the city and the cooperative; or put the electric franchise up for bid. A fourth option would be for the city to purchase that portion of the co-op that is within the Socorro city limits.

After attending a board meeting of the SEC and after hearing issues raised during a series of public meetings, Bhasker said at the Mar. 3, 2014 City Council meeting that he feels the city should consider acquiring that portion of the co-op within city limits.

On May 14, 2014, Winter was invited back to update the City Council on her research into the viability of the city acquiring a city portion of the Socorro Electric Cooperative. She provided examples of several acquisitions in other parts of the state. Bhasker said he would present a resolution to the City Council at its next meeting. Also attending the meeting were Socorro city attorney Jerry Armijo and a representative from PNM.

A letter from the SEC was hand-delivered to Bhasker on Jun. 11, 2014, requesting a meeting for Jun. 17 to discuss the franchise agreement at City Hall. The letter was signed by Herrera, who imposed one condition; that the meeting be private rather than public.

Another public forum was held during the June 16, 2014, City Council meeting. Bhasker referred to the letter to discuss a franchise agreement from Herrera, and told the council that any discussion on a franchise agreement would not be necessary as there would be a discussion instead about the feasibility study for the acquisition of SEC assets by the city. Bhasker also read an email he received from SEC Board President Anne Dorough, in which she said Herrera had tried to schedule a private meeting with Bhasker twice to discuss a franchise agreement. Also speaking at the public forum was SEC Trustee Charlie Wagner. Bhasker reiterated his preference that discussions on a franchise agreement be open to the public.

At the May 4, 2015, City Council meeting, Bhasker voiced his opposition to the recently passed SEC bylaws that included a bylaw that allowed the co-op to charge his hotel for electricity that was not used, based on 100 percent occupancy. He then stated that he would like to see a franchise agreement that does not allow the co-op to charge residents and businesses for electricity they are not using. Bhasker said he would like to offer a franchise agreement and give SEC six months to review it and another six months to approve it, thus ending the month-to-month arrangement currently in place.

More recently, SEC's lawsuit asserts that on Mar. 13, 2018, legal counsel for the city threatened SEC with trespass actions beginning on Jan. 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 says 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 of 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. Originally assigned to hear the case, Judge Mercedes C. Murphy recused herself, and has been replaced by District Judge Shannon Murdock.