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August 22, 2019

Ms. Melanie Sandoval
Bureau Chief of Records Management
Public Regulation Commission
1120 Paseo de Peralta, Room 418
Santa Fe, New Mexico 87504-1269

Case No. 18-00383-UT; In the Matter of the
Filing of Advice Notice No. 69 by Socorro
Electric Cooperative, Inc. (SEC)

Dear Ms. Sandoval:

We enclose for filing the original and six copies of The Socorro Electric Cooperative, Inc.'s Exceptions to Recommended Decision and this Certificate of Service for same. Kindly forward an endorsed copy of each in the enclosed self-addressed, stamped envelope. Please feel free to contact us should you have any questions. Thank you for your attention to this matter.

Very truly yours,

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

By 
Christie Griego
Paralegal

CAG:me

Enclosures

cc: Service List

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE FILING OF)
OF ADVANCE NOTICE NO. 69)
BY SOCORRO ELECTRIC)
COOPERATIVE, INC.,)
SOCORRO ELECTRIC)
COOPERATIVE, INC.,)
Applicant.)**

Case No. 18-00383-UT

**THE SOCORRO ELECTRIC COOPERATIVE, INC.'S
EXCEPTIONS TO RECOMMENDED DECISION**

Submitted: August 22, 2019

by

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THE SOCORRO ELECTRIC COOPERATIVE, INC.'S
EXCEPTIONS TO RECOMMENDED DECISION

I. INTRODUCTION

The record in this case and the law require the Public Regulation Commission (Commission) to reject the denial of any proposed revenue increase and the revised rate design contained in the Recommended Decision (RD) issued by the Hearing Examiner (HE) and approve the revenue requirement and rate design proposed by The Socorro Electric Cooperative, Inc. (SEC) in its rate application. The testimony and exhibits, including the Cost of Service Study (COSS), provide substantial evidence in the record to demonstrate that SEC's revenue requirement is necessary and properly calculated and that SEC's proposed rate design is just and reasonable and allocates its proposed electric utility service rates and revenues in a manner that adequately reflects the cost of providing service to its respective classes of customers.

Specifically, SEC takes exception to the RD's decretal paragraphs A, B, C, D, E and H and objects to any findings, conclusions and rulings contained in any section of the RD related to those paragraphs. SEC respectfully requests the Commission reject the RD as it relates to SEC's revenue requirement and recommended rate design and instead approve the proposed revenue requirement established by SEC's rate application, which Utility Division Staff (Staff) supported, as more specifically set forth in Section V, below.

II. THE COVERAGE RATIO METHOD OF CALCULATING A COOPERATIVE'S REVENUE REQUIREMENT IS NOT MANDATED BY LAW AND REQUIRING SEC TO USE ANY COVERAGE RATIO AS SOLE CONSIDERATION TO DETERMINE A REVENUE REQUIREMENT IS THUS ARBITRARY AND CAPRICIOUS.

SEC calculated its revenue requirement based on required cash margins.¹ The RD, at page 6, provides in part that “the Commission has used a debt coverage ratio method of calculating cooperative’s revenue requirements” and notes it has “most recently endorsed” the “Operating Times Interest Earned Ratio (OTIER).”² The New Mexico Supreme Court has found that in the exercise of its ratemaking authority, the Commission must determine the utility’s revenue requirement, which starts with a determination of the cost of operation, and includes a determination of the utility’s rate base and rate of return. Hobbs Gas Co. v. New Mexico Pub. Serv. Comm’n, 1980-NMSC-005, ¶ 5, 94 N.M. 731, 616 P.2d 1116. Nowhere does state law provide that the Commission may mandate or dictate a single method that a cooperative can use to calculate its revenue requirement. By suggesting otherwise, the RD encourages the Commission to exceed its statutory authority and, as noted below, improperly substitute its judgment for that of SEC’s duly elected, NRECA Certified Board of Trustees. Such actions are arbitrary and capricious. See New Mexico Exch. Carrier Group v. N.M. Pub. Regulation Comm’n, 2016-NMSC-015, ¶¶ 11, 13, 18, 21, 28, 369 P.3d 1058 (an order is arbitrary and capricious where it does not adhere to New Mexico laws and PRC regulations).

¹In these exceptions, SEC will not duplicate citations to specific references in the record or reargue its positions, but will where appropriate provide citations to where such citations or argument can be found.

²Multiple jurisdictions have approved calculating revenue requirements based on cash margins rather than a strictly coverage ratio methodology, including Arizona Corporation Commission utilities division, Arkansas Public Service Commission, Kansas Corporation Division, Louisiana Public Service Commission, Oklahoma Corporation Commission, Wyoming Public Service Commission. Other New Mexico cooperatives, including Central Valley Electric Cooperative, Central New Mexico Electric Cooperative, Farmers Electric Cooperative, Inc., Lea County Electric Cooperative, Otero County Electric Cooperative, and Navopache Electric Cooperative, also use this methodology. In 2017, Guernsey authored the NRECA & National Rural Utilities Cooperative Finance Corporation Retail Rate Guide, Vol I and II in 2017. Volume II includes the NRECA & CFC suggested approach to determining the revenue requirement; used by SEC in this proceeding.

The RD, at page 33, rejects without citation to any authority the approach that SEC's expert, Mr. Justin Proctor, used to calculate SEC's revenue requirement because it was a "departure" from the OTIER method. Because the coverage ratio method is not mandated by law, using some other approach cannot fairly be described as a "departure." The RD notes that debt coverage ratios are used to measure a cooperative's financial health and its ability to pay interest expense on long-term debt. *Id.* at page 6. While such ratios may be used to measure a cooperative's financial health at that point in time (*id.* at page 32), they do not predict nor take into consideration the planned future operating requirements and thus are not any more reliable than basing a revenue requirement calculation on cash requirements. In fact, they ignore important factors such as the approved Construction Work Plan which requires a blend of long-term debt financing and cash margins from electric rates in order to fund. It is well settled that ratemaking in general is an attempt to predict the future expenses, even when a historical test period is used. NMSA 1978, § 62-6-14(D) (2009); PNM Gas Services v. New Mexico Public Utility Commission, 2000-NMSC-012, ¶ 6, 129 N.M. 1, 1 P.3d 383 (setting of rates requires predicting utility's future revenue requirement; there is no way of learning precisely what it will cost to render any particular service). Socorro's revenue requirement was established using an adjusted test year with changes in expenses that were known, measurable and continuing in nature. A coverage ratio, such as TIER, is a metric that a lender uses to ensure a cooperative has met the minimum requirements. Tr. 316:10-21. A cooperative does not design its rates to meet a minimum and it does not design them to meet some arbitrary number. *Id.* As Mr. Proctor testified, using a TIER-based method would ignore the goals and objectives of SEC's Trustees that they were elected to establish and would ignore the cash revenue requirements that will ensure the utility can operate successfully. Tr. 313:13-25. The Commission must set rates that

will allow the utility to operate successfully, maintain its financial integrity, attract capital and compensate investors for the risk assumed. State v. Mountain States Tel. & Tel. Co., 1950-NMSC-055, ¶ 40, 54 N.M. 315, 224 P.2d 155. The cash margins required by SEC do just that.

The revenue requirement upon which proposed rates were based would:

- Grow equity as a percent of assets toward a 40% objective with projected total system plant additions averaging \$3,713,835 per year over the next five years. Schedule D-2.0 of the COSS shows that equity as a percent of assets was 29.58% in 2012 and was 37.53% at the end of the Test Period. 291:18-23.
- Maintain SEC's cash position as of the end of the Test Period at an amount that is approximately \$3,847,317, which equates to 60.09 days of cash or 4.72% of total utility plant in service. See Schedule D-7.0 of COSS. This has since eroded to approximately \$870,687 as of July 31, 2019.
- Provide sufficient cash to fund capital credit retirements of approximately \$688,467 per year. The \$688,467 is expected to produce a rotation cycle of roughly 25 years. 294:2-6. In 2018, SEC was only able to refund \$411,492.
- Maintain adequate TIER and DSC.

Herrera Supplemental Direct Testimony at page 4, lines 9–18 and page 5, lines 4-18. The HE claims a board cannot consider its financial goals when calculating its cash revenue requirements without any authority. Financial goals or strategies can and should be considered in calculating a revenue requirement that is appropriate for rate setting. Those contrary portions of the RD should be rejected by the Commission. The Board's financial goals and objects are not a wish list. Instead, they are the foundation for maintaining the financial integrity of the Cooperative. It is the fiduciary responsibility of the member-elected Board to establish such metrics and charge the Cooperative's management and staff to work toward those goals. As such, SEC must not allow its equity to erode by taking on excessive debt in order to execute its approved Construction Work Plan. The proposed rate increase appropriately balances the funding of

planned utility investments through current rates and long-term debt. At the same time, SEC must be able to pay capital credits; thereby paying back members for retained earnings in prior years. Ignoring such operating requirements may, in fact, lead to higher future rates if planned system improvements are not made or if repayment of patronage capital to members is deferred.

III. THE RD IGNORES THE SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTING SEC'S PROPOSED RATE DESIGN AND UNLAWFULLY RECOMMENDS ITS OWN RATE DESIGN THAT IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The RD would require the Commission to jettison substantial evidence in the record regarding the cost of providing electric utility services to customers in different rate classes and override the rate decisions of the SEC Board, which would frustrate the legislatively expressed public policy regarding the Commission's limited rate jurisdiction over rural electric cooperatives.

SEC provided a complete COSS developed by its expert witness that allocated costs among its customers based upon cost information developed by SEC's operations and that fairly allocated costs to a customer class based on usage and the contribution each class made to its margins, which then provided an indication of whether the electric service rates reflected the cost of providing service to that class of customers. SEC's use of a COSS achieved several objectives, including addressing subsidies among classes. The COSS was not the sole criterion the Board used in determining its proposed rates, consistent with the New Mexico Supreme Court's holding in PNM Gas Services, *supra*, 2000-NMSC-012, ¶ 100, 129 N.M. at 33. The Board again considered its financial requirements as a part of setting its proposed rates.

IV. THE RD EXCEEDS THE COMMISSION'S AUTHORITY AND IMPERMISSIBLY SUBSTITUTES THE COMMISSION'S JUDGMENT FOR SEC'S BOARD OF DIRECTORS.

The Commission does not have the authority to substitute its judgment for that of the utility's board and management. State of Missouri et al. v. S.W. Bell Tel. Co. v. Public Service Comm'n of Missouri, et al., 262 U.S. 276, 289 (1923). The RD frustrates the efforts of SEC's Trustees to meet their fiduciary obligations regarding the financial health and integrity of SEC, and states without authority that "SEC is not entitled to a revenue requirement that allows the Board to advance or achieve all of its goals." RD at page 36. The RD impermissibly intrudes upon the exclusive authority of SEC's Trustees, including for example, its authority to determine how and when capital credits of SEC's members are returned to them, or how or when the cooperative expends the equity it maintains in the form of patronage capital. El Vadito De Los Cerrillos Water Ass'n v. N.M. Pub. Svc. Comm'n., 1993-NMSC-041, ¶ 17, 115 N.M. 784, 858 P.2d 1263 (the Commission's jurisdiction and authority over the water utility's abandonment and transfer of service to water association did not also give it the power to dictate water association's membership as a condition of approving water utility's abandonment application). These are all matters that lie within the exclusive authority of SEC's Trustees.

Indeed, it is well settled that cooperatives such as SEC are owned by members and, therefore, member-consumers have an opportunity for direct control over cooperative rates through their elected Board of Trustees. *See* NMSA 1978, § 62-3-2(A)(3) (1985). New Mexico rural electric cooperatives are largely self-governing entities invested with the authority under the RECA to govern themselves pursuant to the decisions made by the elected trustees of the cooperative. For New Mexico electric cooperatives, the members subject to the rates charged for electric utility service have control over the very rates the cooperative members pay by virtue of

their ability to elect their trustees to represent them on the cooperative's board. This limitation on the Commission's authority is expressly stated by the New Mexico Public Utility Act as follows:

Experience has also proven that rural electric cooperatives are substantially different from investor-owned utilities, particularly relative to setting rates. Under the Rural Electric Cooperative Act, rural electric cooperatives are nonprofit membership corporations whose members have direct control over the cooperative's rates, through an elected board of trustees. Generally, consumers of the cooperative's power are members. In contrast, consumers of power from investor-owned utilities have no control over the setting of rates by such utilities which are profit motivated. Experience has proven that the costs to rural electric cooperatives and the public at large in complete government regulation of their rates is greatly disproportionate to the need and benefits of complete rate regulation and interferes with the setting of fair, just and reasonable rates to all utilities. Experience has shown that a rational basis exists to provide procedures for setting rates of rural electric cooperatives different from and more limited than those for setting rates of investor-owned utilities. Without limiting government regulation of rate setting by rural electric cooperatives as provided by Section 62-8-7 NMSA 1978, the declared policy of the Public Utility Act, the provision of reasonable and proper utility services at fair, just and reasonable rates, and the general welfare, business and industry of the state may be frustrated.

NMSA 1978, § 62-3-2(A)(3).

In accordance with the RECA, SEC's Trustees have the exclusive authority and obligation to manage the cooperative, determine how its funds and member capital patronage is spent, and to direct that actions it determines are appropriate and that are in the best interest of the cooperative be taken. NMSA 1978, § 62-15-9(G). The Trustees perform their duties in good faith and in the best interests of the cooperative in accordance with NMSA 1978, § 62-15-9.1 (1987). In performing their duties, they are authorized to rely upon financial data, reports and analyses performed by the officers and employees of the cooperative, as well as public accountants, other professionals and experts. Id. SEC's Trustees determined, in fulfillment of their fiduciary obligation after considering the COSS, that a rate increase was necessary to meet

operating expenses, fund planned system improvements in executing its Construction Work Plan, repay capital credits and maintain its financial integrity.

In the absence of any substantial evidence supporting the rate design recommended in the RD, the Commission has no basis for ignoring the expert testimony in this case. Absent substantial evidence, the Commission has no justifiable basis upon which to exercise its ratemaking prerogative to veto the determination of SEC's duly elected Trustees as to how to accomplish its work plan, how to retire its patronage capital or how to apportion rates among the members who elected them to make that decision. SEC's member elected Trustees are certified by the NRECA "insert program name" and attend ongoing training on such matters and are well capable of making informed decisions regarding the unique operating requirements of SEC.

V. STAFF'S RECOMMENDATIONS SHOULD BE ADOPTED

Following the hearing, Staff made eight recommendations in its Initial Post Hearing Brief (Staff Brief), all of which SEC supports:

1. Allow SEC to increase the operating margins by the requested amount as filed in Advice Notice No. 69 in the amount of \$1,249,993. Staff Brief at page 6.
2. Allow proposed rates to the residential customers. Id. Staff states, at page 6 of its Brief, that the overall residential increase results in \$5.00 per month. SEC agrees with this recommendation and notes that the \$5.00 additional Minimum Charge will also apply to General Service members as well as the Residential class.
3. Require SEC to provide proof to the Commission of annual capital credits retired in the amount of \$688,467 for the 25 year cycle proposed in Advice Notice No 69. Id. SEC has no objection to providing such proof and notes that SEC provides information regarding capital credit retirements in accordance with NMPRC Rule 17.3.510.10 and 17.3.510.12. In Part I of the

Annual RUS Form 7, which SEC files with its NMPRC Annual report, SEC states the annual amount of capital credits retired. SEC further notes that the 25 year cycle analysis for capital credits in the COSS reflects an annual average of \$688,467 and that if the RD were adopted by the Commission, a 40 plus year cycle would result. This rotation cycle at best is ill-advised and in the RD is unexplained nor justified. Such a rotation cycle does not sufficiently retire SEC's member equity and could expose the Cooperative to potential legal action due to the lengthy retirement cycle.⁴ Require SEC to provide notice of completed plant additions in accordance with their Growth Rate in Net Plant as detailed in the COSS filed with Advice Notice No. 69. Id.

5. Staff recommends that SEC recalculate the new, proposed Residential ETS rates to be closer to the new, proposed non-ETS Residential rates, calculated on the weighted proportion of 60% on-peak and 40% off-peak usage. Staff Brief at page 10. SEC can recalculate the Residential ETS rate using the weighted average provided by Staff witness Beverly Eschberger. SEC notes that the rate that was calculated was based on actual on-peak, off-peak data, and that the differential comes from the allocation of on-peak power cost.

6. Staff recommends that SEC continue to promote net metering/distributed generation to its customers, and that Socorro investigate opportunities to increase its investments in renewables such as solar and wind generation, in order to achieve the targets for carbon-free power set forth by the newly enacted Energy Transition Act (ETA). Staff Brief at page 11. SEC agrees and will continue to promote net metering/distributed generation to its members.

7. Staff recommends that SEC continue to promote its Renewable Resource Power Rider to customers, which currently only serves 27 members, as a way to achieve its targets for

carbon-free power mandated by the ETA. Id. SEC agrees and will continue to promote the Renewable Resource Power Rider.

8. Staff recommends that SEC seek to collect the yearly Renewable Energy and Conservation Fee, authorized under NMPRC Rule 17.9.572.23(G), which allows SEC to collect up to 1% of a customer's monthly bill. Id. SEC agrees to recommend that the Board of Trustees immediately implement and collect the Renewable Energy and Conservation Fee in accordance with Rule 17.9.572.23(G).

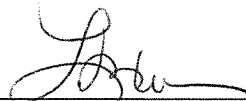
SEC asks that Staff's recommendations be adopted by the Commission.

VI. CONCLUSION

For the foregoing reasons, SEC respectfully requests the Commission reject the RD's recommendations contained in decretal paragraphs A, B, C, D, E and H and instead approve the proposed rate design as set forth in SEC's rate application as detailed in Section V, above, and for such other and further relief as the Commission deems appropriate.

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IN THE MATTER OF THE FILING OF)
ADVICE NOTICE NO. 69 BY SOCORRO)
ELECTRIC COOPERATIVE, INC.) Case No. 18-00383-UT
)
SOCORRO ELECTRIC COOPERATIVE,)
INC., APPLICANT)

I HEREBY CERTIFY that on August 22, 2019 a true and correct copy of The Socorro Electric Cooperative, Inc.'s Exceptions to Recommended Decision and this Certificate of Service were served, as indicated below, to the following:

WIGGINS, WILLIAMS & WIGGINS
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Lorna M. Wiggins
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