

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE FILING OF ADVICE )  
NOTICES NO. 69 BY SOCORRO ELECTRIC )  
COOPERATIVE, INC. )**

Case No. 18-00383-UT

**SOCORRO ELECTRIC COOPERATIVE, INC., )**

**FILED IN OFFICE OF**

**Applicant. )**

**SEP 11 2019**

**NM PUBLIC REGULATION COMM  
RECORDS MANAGEMENT BUREAU**

**FINAL ORDER ADOPTING  
RECOMMENDED DECISION**

**THIS MATTER** comes before the New Mexico Public Regulation Commission (“Commission”) upon the Protests (“Protests”) filed by members of Socorro Electric Cooperative Inc. (“SEC”), who opposed the proposed rates in Socorro Electric’s Advice Notice No. 69, filed on December 3, 2018, and upon Socorro Electric’s Objections to Rate Protests filed on January 2, 2019 and upon Staff Determination Regarding Valid, Timely Protests filed on January 9, 2019 and upon the Recommended Decision issued by Hearing Examiner Carolyn Glick on August 15, 2019 ; whereupon being duly advised in the premises,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to the New Mexico Constitution, the New Mexico Public Utility Act and other applicable law.
2. Due and proper notice of this case has been provided.
3. On December 3, 2018, SEC submitted Advice Notice Nos. 69, 70 and 71, all with a proposed effective date of January 3, 2019 and proposed an increase of approximately 5.06% or \$1,249,993 in revenue annually.<sup>1</sup>

<sup>1</sup> Advice Notice No. 69 noticed the original and revised rates for thirteen (13) rate schedules and included changes to Final Order Adopting Recommended Decision Case No. 18-00383-UT

4. On December 19, 2018, the Commission issued an Order Suspending Proposed Rates filed in Advice Notice No. 69 pending the Commission's review of objections to the Protests.

5. On January 23, 2019, pursuant to NMSA 1978, Section 62-8-7(H), the Commission issued its Initial Order which assigned the Hearing Examiner to conduct a review and issue a Recommended Decision on SEC's proposed increase in rates<sup>2</sup>, particularly on the following bases:

A. Is there substantial evidence to support the proposed rate increase per class and to support the allocation of the rate increase across customer classes; and

B. Has Socorro Electric demonstrated, with substantial evidence, that the proposed increase in rates per class is fair, just and reasonable; and

C. Has Socorro Electric demonstrated, with substantial evidence, that its revenue and operating margins require the proposed increase; and

D. Has Socorro Electric demonstrated how it derived the proposed new rates and charges, including but not limited to the proposed, increased "customer charges" (not tied to energy use), a new minimum charge, and changes to the energy charge per kWh.

6. The public hearing was held on June 24, 25 and 26, 2019 with the following parties in attendance: SEC, New Mexico Institute of Mining and Technology ("Tech"), the City of

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Rate No. 7 – Schedule of Fees, and contains the actual dollar amount of fees proposed to be charged. Advice Notice No. 70 noticed Original Form No. 23 – Optional Renewable Resource Power Rider Intent to Purchase Application which is an application for Socorro Electric's members to submit to voluntarily purchase new 100 kWh blocks of renewable resources or modify existing purchases of 100 kWh blocks of renewable resources. Advice Notice No. 71 noticed First Revised Rule No. 5 – Fees which states Socorro Electric's 17 various fees, including fees involved with delinquent accounts; metering; operations; calculation of member deposits; miscellaneous fees; and numerous changes to the existing Rule.

<sup>2</sup> The Initial Order found that the questions raised by the 50 valid and timely Protests constituted just cause and was based upon the Commission's review of the 50 Protests, Socorro Electric's Objections to the Rate Protests, and Staff's Determination and Socorro Electric's Objections.

Socorro (the “City”), Donald Steinnerd pro se, and the NMPRC Utility Division Staff (“Staff”).

7. Staff made the following recommendations in its Initial Post Hearing Brief starting at page 7: a) allow SEC to increase the operating margin by the requested amount as filed in Advice Notice 69 in the amount of \$1,249,993.00; b) allow SEC’s proposed increase in rates to residential customers (the overall residential increase results in \$5.00 per month); c) 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; d) 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 No. 69; e) SEC should 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; f) SEC should 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 Energy Transition Act; and g) SEC should 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.

8. On August 15, 2019, the Hearing Examiner issued her Recommended Decision (“RD”).

9. The Recommended Decision, in pertinent part, found and concluded as follows:

a) SEC’s proposed revenue requirement of \$25,953,616 should be denied for the reasons stated on pages 30-36 and no revenue increase is recommended;

b) SEC’s proposed re-allocation of revenue requirement among classes should be denied, however, the RD recommended a reallocation among the classes to gradually move the

relative rate of return of each class closer to unity and therefore, the reallocation among the Residential, ETS and Irrigation classes should be as follows: 2% of base revenue increase to the Residential Service class including the ETS service class and 3% base revenue increase to the Irrigation Service class, with such re-allocations to be used to reduce revenues collected from the Large Commercial and Load Management Service classes;

c) SEC's proposed \$5.00 monthly "Minimum Use Charge" should be denied;

d) Rate design should be as follows:

i) the increased revenue from the Residential Service Class should be collected through a \$1.50 or 10% increase in the Customer Charge and through a \$.006594 or 5.3% increase in the variable energy charge and approval of SEC's single kWh energy rate for all levels of use;

ii) Small Commercial Service Rate design should not change and deny SEC's proposed changes;

iii) Large Commercial Service Class Rate design should not change except that there are equivalent bill decreases for all Large Commercial Service Class customers;

iv) the increased revenue to be collected from the Irrigation Service Class should be collected by adding a new \$5.00 Customer Charge and by increasing the variable energy charge by 4.21%;

v) the Load Management Service Class rate should not be increased as proposed by SEC and the current rate design should remain the same with the rate decreased to

effectuate the recommendation to decrease revues collected from the Load Management Service class;

vi) SEC's proposal to cancel Rate No. 15 and replace it with two new rates (Original rate No. 8 for Residential Service with ETS and Original Rate No. 9 for General Service with ETS should be approved and the increased revenue to be collected from the ETS service classes should be collected by increasing the customer charge from \$16 to \$17.50 a \$1.50 or 9.4% increase and by increasing the variable energy charge by \$.007650 or 4.9% consistent with Staff's recommendation the Residential ETS weighted variable energy charge of \$.13265kWh closely matches the \$.131594 per Residential Service non-ETS variable energy charge;

vii) no change to existing Rate No. 14 for Standby Service for Self-Generators Service Class;

viii) SEC's request to consolidate Rate Nos. 4 and 5 should be granted, non-LED lighting rates should not be decreased but should remain unchanged and LED lighting rates as set forth on page 80 of the RD should be adopted; and

ix) Net metering rates would not change except that they would be subject to the \$5.00 minimum charge if their minimum consumption below a certain level; e) reject Mr. Steinnerd's request to split the Residential Class into 2 groups, Urban and Rural, because there is insufficient evidence to justify higher rates for rural customers.

f) Tech has proven it would be in the public interest for SEC to offer an economic

development rate and SEC is ordered to initiate under 17.9.540.13 NMAC the process of offering an economic development rate;

g) SEC should immediately implement and collect a Renewable Energy and Conservation Fee under 17.9.57223.G NMAC (of no more than 1% of a customer's bill and, as Staff recommended, should continue to promote Distributed Generation and increase its investments in renewables to achieve the targets for carbon-free power in the Energy Transition Act (ETA); and

h) deny the City's request that the Commission open an investigation into the SEC Board's alleged practice of under-representing the City and to investigate into the cooperative rates and practices in general.

10. The Recommended Decision ordered:

B. Advice Notice No. 69 is cancelled.

C. SEC shall file, under a new Advice Notice, the rates in Exhibit 2 to this Recommended Decision. Such rates shall be effective for service upon Staff's approval as to form and compliance, within seven days of the filing of the Advice Notice.

D. Under the same Advice Notice, SEC shall cancel Rate No. 5, Street and Interstate Freeway Lighting Service.

E. Under the same Advice Notice, SEC shall cancel Rate No. 15, Energy Thermal Storage.

F. Under the same Advice Notice, and pursuant to 17.1.210.11(A) and (B), SEC shall revise Section IV of its Line Extension Rule to state: IV. Installation of New Lights: A. The Cooperative will install new lights on the following terms: 1. At no cost to the applicant if the Cooperative investment does not exceed the cost of labor, trucks, a wooden pole, security light fixture and 125 feet of service wire. 2. With the Applicant making a Contribution-In-Aid-of Construction of all investment required in excess of the costs defined in Section IV.A.1. above.

G. SEC shall revise its Proposed Rate No. 4 to include the following language: SEC shall install new lights at no cost to the Customer if the Cooperative investment does not exceed the cost of labor, trucks, a wooden pole, security light fixture, and 125 feet of service wire. Any contribution in aid of construction (CIAC) paid by the Customer in excess of this allowance shall be credited by SEC in its plant ledger of accounts. If an existing light needs to be replaced, SEC shall pay for the cost of installing a replacement light. If a customer seeks to replace an existing light and the light does not need to be replaced, Customer shall

pay the cost for installing a replacement light as CIAC. The replacement light may be a LED light. SEC shall credit the CIAC in its plant ledger of accounts. The cost for replacing an existing light to be paid by Customer is labor and truck costs and the cost of the new light fixture.

H. SEC shall file in this docket semiannually, beginning on January 1, 2020 and through January 1, 2022, its plant ledger of accounts for lighting for the preceding six months, showing the recording of any contributions in excess of the line extension allowance as credits to the cost of plant.

I. When SEC next proposes new or revised rates, it shall propose inclining block rates for its Residential Service Class.

J. Within 10 days of issuance of a final order in this case, SEC shall post on its website the following statement: "Commercial customers should contact SEC at [insert phone number] to receive information about energy efficiency measures available to commercial customers."

K. Within 30 days of issuance of a final order in this case, SEC shall initiate, under 17.9.540.13 NMAC, the process of offering an economic development rate.

11. On August 22, 2019, SEC filed Exceptions to the Recommended Decision arguing that Decretal Paragraphs A, B, C, D, E and H (quoted above) should not be adopted based upon the following:

a) the OTIER coverage ratio method of calculating a rural electric cooperative's revenue requirement is not mandated by law and thus using SEC's approach of cash margins is not a "departure" from past practice of the NMPRC. Specifically, SEC stated on pages 3-4 that: "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. Using cash margins will allow the utility to operate successfully, maintain its financial integrity, attract capital and compensate investors for the risk assumed. The cash margins and 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. Tr. 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. In 2018, SEC was only able to refund \$411,492. • Maintain adequate TIER and DSC. Herrera Supplemental Direct Testimony at page 4....”;

b) the RD unlawfully recommends its own rate design without substantial evidence and 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;

c) 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; and

d) the Commission should adopt Staff's Recommendations (stated above in Staff's Initial Post Hearing Brief).

12. On August 28, 2019, the City filed its Response to SEC's Exceptions and did not file any Exceptions to the RD. The City stated that SEC's exceptions simply propose its own



arbitrary number instead of the RD's federally recognized methods of TIER and OTIER, which measure how many times a cooperative earns its interest expense. According to the City, SEC argues that the arbitrary numbers of a 40% equity as a percent of assets and 60.09 days of cash as requested by its Board are more proper - without any further justification. However, the City agrees with the RD that the OTIER method is simply a measurement of ratio calculated and used by lenders and the Hearing Examiner was correct to use the OTIER method based upon not being aware of any Commission docketed rural electric cooperative rate case in which a cooperative or the Commission has calculated the revenue requirement based on the cash margins required to meet a cooperative board's goals, citing to the RD at 33. The City states that SEC reiterates its assertion that SEC's Trustees have "exclusive authority" to manage the cooperative which was disagreed with by the Hearing Examiner in the RD at 19-20.

13. Tech filed its Response to SEC's Exceptions and did not file any Exceptions to the RD. Tech argues that the RD is supported by substantial evidence and did not rely solely on the evidence of any particular party as demonstrated by the fact that SEC proposed a 7.1% increase in Residential rates and a 2.7% increase in Large Commercial rates, while Tech recommended a 10% increase in Residential rates and an 8.5% reduction in Large Commercial rates and the RD provides for a 2% increase in Residential rates and a 1.89% reduction in Large Commercial rates. According to Tech, this shows that the rates proposed in the RD are significantly closer to those supported by SEC's evidence than those supported by Tech's evidence. Tech also argues that the Hearing Examiner's use of OTIER debt coverage ratio is an acceptable approach to determining revenue requirement and the SEC Board of Trustees' goals do not dictate the method for determining revenue requirement. Tech states that HE is not saying, as SEC suggests, that the OTIER debt

coverage method of calculating SEC's revenue requirement used in the RD is the only permissible method however, the RD states the OTIER method is lawful because it results in "fair, just and reasonable rates." See, NMSA 1978, § 62-3-2(A)(3). According to Tech, the method used by the HE is not contrary to law, is not being mandated and is not substituting the judgment of the Commission for SEC's Board. Tech argues the Commission is not required to use the method favored by SEC's Board nor is the Commission required to simply ratify the plans and objectives of SEC's Board. Tech cites to RD at 31 (describing law requiring balancing of interests in setting rates); New Mexico Tech's Brief Responding to SEC's Post-Hearing Brief, at 1-5 (SEC's claim of exclusive authority is contrary to law). Furthermore, Tech argues that SEC ignores that the RD permits the goals of its Board to me to be partially met and has not proven that SEC will have to take on "excessive debt" and threatening "higher future rates." In support, Tech points out that SEC was able add \$3,850,194 to plant in 2017, that its patronage capital balance increased over \$1.4 million from 2017 to 2018, and that in the same period, its OTIER increased from 1.21 to 1.37 citing to the RD at 14, 35-36. Tech states that SEC doesn't dispute these facts.

14. Staff did not file any Exceptions or Responses to Exceptions.

15. The Commission finds that the Responses of the City and Tech are persuasive and that the Exceptions of SEC are not well-taken based upon the following. The RD's method of using OTIER to determine revenue requirement "allows SEC to maintain a reasonable equity/total assets ratio and a reasonable cycle of patronage capital retirements." RD at 14, 36. Given that the end result is fair, just and reasonable rates, and based upon Commission precedent, caselaw and statutory authority, the Commission is not required to use the method favored by SEC's Board nor is the Commission required to simply ratify the plans and objectives of SEC's Board. See RD at

31 (describing law requiring balancing of interests in setting rates) and see Tech's Brief Responding to SEC's Post-Hearing Brief, at 1-5 (SEC's claim of exclusive authority is contrary to law). Additionally, the Commission finds that the RD's provision for a 2% increase in Residential rates and a 1.89% reduction in Large Commercial rates is a gradual way to reduce the subsidization of the Residential Class by other classes.

16. The Commission finds the RD is supported by substantial evidence in the record and therefore incorporates the RD in its entirety by reference as if fully set forth in this Order, and the statement of the case, discussion, and all findings of fact and conclusions of law and decretal paragraphs contained in the RD, are ADOPTED, APPROVED, and ACCEPTED as Findings and Conclusions and Decretal Paragraphs of the Commission.

**IT IS THEREFORE ORDERED:**

A. The orders contained in the RD are ADOPTED, APPROVED, and ACCEPTED as orders of the Commission.

B. The RD is ADOPTED, APPROVED and ACCEPTED in its entirety.

C. Any matter not specifically ruled on during the hearing or in this Final Order is disposed of consistently with this Final Order.

D. This Order is effective immediately.

E. Copies of this Order shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known, and otherwise shall be sent via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico,  
this 11<sup>th</sup> day of September, 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION



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THERESA BECENTI-AGUILAR, CHAIR, DISTRICT 4



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VALERIE ESPINOZA, VICE-CHAIR, DISTRICT 3



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CYNTHIA HALL, COMMISSIONER, DISTRICT 1



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JEFFERSON L. BYRD, COMMISSIONER, DISTRICT 2



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STEPHEN FISCHMANN, COMMISSIONER, DISTRICT 5



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

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 )

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date I sent to the parties listed here, via email only, a true and correct copy of the foregoing **Final Order Adopting Recommended Decision** issued on September 11, 2019.

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**DATED** September 11, 2019.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
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