

Sullivan-Leshin, Isaac, PRC

From: Sullivan-Leshin, Isaac, PRC
Sent: Wednesday, April 15, 2020 1:46 PM
To: Records, PRC, PRC
Subject: 18-00383-UT; Filing Submission
Attachments: 18-00383-UT, Order Granting the City of Socorro, Tech, and Staff's Joint Motion to Compel Socorro Electric Cooperative to Comply with the Final Order and Order Assessing Fines for Non-Compliance.pdf

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.)

Please file the attached ORDER GRANTING THE CITY OF SOCORRO, TECH, AND STAFF'S JOINT MOTION TO COMPEL SOCORRO ELECTRIC COOPERATIVE TO COMPLY WITH THE FINAL ORDER AND ORDER ASSESSING FINES FOR NON-COMPLIANCE into the above captioned case.

Thank you.

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.)

**ORDER GRANTING THE CITY OF SOCORRO, TECH, AND STAFF’S JOINT
MOTION TO COMPEL SOCORRO ELECTRIC COOPERATIVE TO COMPLY WITH
THE FINAL ORDER AND ORDER ASSESSING FINES FOR NON-COMPLIANCE**

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the April 3, 2020 Joint Motion to Compel filed by the City of Socorro, New Mexico (the “City”), New Mexico Institute of Mining and Technology (“Tech”), and Utility Division Staff (“Staff”) (collectively “Joint Movants”), the Commission’s April 9, 2020 Order Requiring Response to the Joint Movant’s Motion to Compel; the April 10, 2020 Socorro Electric Cooperative, Inc. (“SEC”) Response to Joint Movants Motion to Compel; and the April 13, 2020 Joint Movants’ Reply to SEC’s Response; wherefore, being duly advised in the premises;

THE COMMISSION FINDS AND CONCLUDES:

1. On September 11, 2019, the Commission issued its Final Order in the above-captioned matter which adopted the Recommended Decision (“RD”) of the Hearing Examiner (the “Final Order”).
2. The RD Decretal Paragraphs (Section XVI, RD at 89-91) ordered the following:
 - A. “The findings, conclusions and rulings contained in this Recommended Decision are adopted and approved as findings, conclusions and rulings of the Commission.
 - 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.

- L. Any matter not specifically ruled on during the hearing or in this Final Order is disposed of consistently with this Final Order.
- M. This Order is effective immediately”

3. On October 11, 2019, SEC filed a Notice of Appeal with the New Mexico Supreme Court and, on the same date, filed a Motion for Stay of the requirements of the Final Order with the Commission.

4. On October 24, 2019, the City and Tech filed a Joint Response in opposition to the Motion for Stay with the Commission.

5. On October 28, 2019, Donald Steinnerd filed his response in opposition to SEC’s Motion for Stay with the Commission.

6. On October 30, 2019, the Commission issued an Order which denied SEC’s request for a stay.

7. On November 12, 2019, SEC filed a Motion which requested a stay of the Final Order from the New Mexico Supreme Court.

8. On November 27, 2019, the Commission filed its Response in opposition to SEC’s request for a stay with the New Mexico Supreme Court.

9. On December 2, 2019, Tech, as party to the New Mexico Supreme Court proceeding, opposed the granting of the requested stay.

10. The City, after the New Mexico Supreme Court issued an order granting it intervenor status, joined Tech’s response on January 10, 2020.

11. It is undisputed by the Joint Movants and SEC that the Supreme Court has not ruled on SEC’s motion, nor granted SEC’s Motion requesting a stay¹.

¹ The Court has issued two (2) other orders in this proceeding, granting the City and Tech intervenor status in separate orders, and a Notice assigning the case to the General Calendar on January 17, 2020.

12. On April 3, 2020, the Joint Movants filed the Joint Motion to Compel SEC to comply with the Final Order. The Joint Movants asserted that SEC has taken no action on any of the requirements of the Final Order, including the requirement that SEC start the process for offering an economic development rate. Tech stated that it expected to benefit from the decrease in its electric bills as a result of the 1.9% decrease in the Large Commercial Rate and the economic development rate provided for in the RD and the Final Order and that the longer this case is stayed, the more Tech would be denied the significant relief provided for in the Final Order. The City stated has been harmed by SEC's failure to comply with the Commission Order and that the City expected to see benefits from the Final Order in the form of new, cost-based LED rates and the implementation of an economic development rate provided for in the Final Order. Staff stated that it has an interest in ensuring that orders of the Commission are complied with and adhered to.

13. On April 9, 2020, the Commission issued a single signature ordering a written response to be filed by SEC to the Joint Movants Motion to Compel.

14. SEC filed its Response to the Joint Movants Motion to Compel on April 10, 2020 in which it asserted that it had filed a Motion to Stay with the New Mexico Supreme Court and that it had not yet received a ruling on that and therefore, it was not required to comply with the Final Order until the Court denied its Motion to Stay.

15. The Joint Movants filed their Reply to SEC's Response to their Motion to Compel on April 13, 2020 and renewed their request to the Commission that it compel SEC to comply with the Final Order and to assess penalties to the SEC Board of Trustees for its non-compliance. The Joint Movants' Reply asserted the following: a) delay of the implementation of the Final Order has denied the City the relief the order grants from SEC's improper collection practices because the RD found that SEC was improperly charging the City fees that were inconsistent

with both SEC's existing Rate No. 5 and its existing Line Extension Rule. The City stated the evidence presented at hearing prompted the Hearing Examiner to order SEC to revise both the Line Extension Rule and newly consolidated Rate No. 4² to explicitly include specific installation costs and require SEC to keep a separate accounting of contributions in aid of construction; b) SEC was ordered to semiannually file 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 starting on beginning on January 1, 2020 and continued delay will allow these practices to continue; c) they are petitioning the Commission to issue an Order to Show Cause against SEC for non-compliance with the Commission's Final Order in Case No. 18-00383-UT because SEC has delayed implementing the order for over seven (7) months since the Final Order was issued on September 11, 2020; d) by delaying implementation of the Final Order, SEC continues to have no LED rate offered to its customers that allows them to take advantage of the cost-based savings; and e) compliance with the Final Order is necessary so that the members of SEC may experience the benefits of the economic development rate.

16. The Commission finds that it is undisputed that the Supreme Court has not issued a Stay Order staying the effects of the Final Order and, at this time, SEC's Motion to Stay at the Supreme Court is merely a motion— a request for a stay order from Court which the Court has not granted. For this reason, it is clear that SEC's failure to comply Final Order is contrary to established law that without a stay granted from the Supreme Court, "[t]he pendency of an appeal shall not of itself stay or suspend the operation of the order of the commission." NMSA 1978, § 62-11-6.

² Pursuant to the RD and SEC's application, Rate No. 4, SEC's Private Area Lighting Service Rate and Rate No. 5 SEC's Street and Interstate Freeway Lighting Service Rate, were to be consolidated under a single Rate No. 4.

17. Further, the Commission finds that SEC's failure to comply with a commission order is also grounds for penalties and fines under the Public Utility Act, NMSA 1978 § 62, Articles 1 to 6 and 8 to 13. "Any person or corporation which violates any provision of the Public Utility Act ... or which fails, omits or neglects to obey, observe or comply with any lawful order, or any part or provision thereof, of the commission is subject to a penalty of not less than one hundred dollars (\$100) nor more than one hundred thousand dollars (\$100,000) for each offense." NMSA 1978 § 62-12-4. Every violation of a part or portion of a Commission Order shall constitute a separate and distinct offense. In the event of a continuing violation, each day's continuance of a violation shall be deemed to be a separate and distinct offense. NMSA 1978, § 62-12-5.

18. The Joint Movants correctly contend that SEC does not believe it needs to comply with the duly issued Final Order and, for this reason, request the Commission assess monetary penalties or fines for violations of the Public Utility Act (NMSA 1978, §62, Articles 1 to 6 and 8 to 13) in addition to requiring SEC to implement provisions of the Final Order. The Joint Movants also correctly contend that because every SEC customer is a member of SEC, it would be unfair to ask that they bear the burden of monetary penalties or fines.

19. The Commission concurs with the Joint Movants that the Commission should assess monetary penalties or fines for violations of the Public Utility Act (NMSA 1978, §62, Articles 1 to 6 and 8 to 13) in addition to requiring SEC to implement provisions of the Final Order and that any penalty or fine assessed should be borne by those individuals responsible for the decision that to violate the Final Order and the Act; i.e. the SEC Board of Trustees.

20. For these reasons, the Commission finds that: a) SEC has been in violation of a Commission order by its deliberate non-compliance with Final Order for 185 days; and b) SEC's Board of Trustees should be penalized for these violations, plus additional fines of \$1000

per day for each continuing day of violations, which fines shall be held in abeyance for 60 days from the date of this Order; however, said fines shall not become due and payable if SEC has complies prior to 60 days from the date of this Final Order as certified by Staff after SEC files a pleading proving its compliance with the Final Order.

IT IS THEREFORE ORDERED:

A. The Joint Movants Motion to Compel SEC to comply with the Final Order is hereby granted and SEC is hereby ordered to immediately comply with the Final Order.

B. The Commission hereby fines SEC in the amount of \$1000 dollars per day for SEC's 185 days of non-compliance with the Final Order (a total of \$185,000.00), plus additional fines of \$1000 per day for each continuing day of violations, which fines shall be held in abeyance for 60 days from the date of this Order; however, said fines shall not become due and payable if SEC complies prior to 60 days from the date of this Order as certified by Staff after SEC files a pleading proving its compliance with the Final Order.

C. Fines shall be borne by SEC's Board of Trustees and are not recoverable in rates.

D. This Order shall be effective immediately.

E. A copy of this Order shall be served on all parties on the attached Certificate of Service via email, if their email addresses are known, and if not known, via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 15th day of
April, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Valerie Espinoza, electronically signed

VALERIE ESPINOZA, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

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 a true and correct copy of the foregoing **Order Granting the City of Socorro, Tech, and Staff's Joint Motion to Compel Socorro Electric Cooperative to Comply with the Final Order and Order Assessing Fines for Non-Compliance** issued by the New Mexico Public Regulation Commission on April 15th, 2020 was sent via email to the parties indicated below:

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DATED this 15th day of April, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal