

While Socorro petitions for new rates, Co-op waits for Supreme Court

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In the latest legal dispute over electric rates, the City of Socorro is asking the attorney general to file a writ of mandamus with the New Mexico Public Regulation Commission to enforce its decision to fine Socorro Electric Cooperative trustees for non-compliance.

Or at the very least, for the co-op to immediately implement the PRC-designed power rate schedule.

The document dated August 6 is the latest motion in the months-long conflict between the city and the co-op over a new electricity rate structure which the PRC ordered the co-op to adopt. In April, the co-op was allowed 60 days to implement the new rates, but according to the motion has still not done so after nearly three months.

According to the motion, “City of Socorro, New Mexico Tech, and Staff’s Joint Motion to Direct Attorney General To Commence Mandamus Proceeding,” the co-op should be compelled to implement a rate structure defined by the PRC Hearing Examiner, or pay a fine of \$1,000 per day which dates back to September 11 or last year.

“Yet today,” the motion states, “more than 110 days later, Socorro Electric’s disregard of the final order continues unabated, and no fines have been paid.”

The motion also states, “Enforcement action by the Attorney General is necessary not only to afford the rate relief to Socorro Electric’s members that the final order requires, but also to bring to an end to the ongoing affront to the (PRC’s) authority that Socorro Electric’s defiance of the order represents.”

In the meantime, SEC General Manager Joseph Herrera says the co-op had been working with PRC attorneys to remand the PRC April 15, 2020, order back to the commission.

“SEC agreed to PRC mediation to resolve the case but the other parties didn’t accept the PRC mediation offer,” Herrera said in an email.

In addition, “The PRC staff supported our original rate case ... but for some reason joined this motion to the attorney general,” Herrera said, adding that, “SEC will vigorously oppose the motion to New Mexico’s Attorney General, just as it vigorously opposed the City’s Motion to Dismiss its complaint to affirm the validity of the franchise agreement.”

Herrera refers to the 7th District Court hearing last month where Judge Shannon Murdock denied the City of Socorro’s Motion to Dismiss SEC’s complaint asking the court to affirm the validity of the 1999 Franchise Agreement between the City and SEC.

Herrera claims that this latest motion by the City and Tech is to “divert focus from their contempt for the appeal process and wrest the case from the justices of the Supreme Court.”

As reported in The Chieftain in April, the PRC ruled that the co-op had been in violation of the order by “its deliberate non-compliance with the final order for 185 days.”

Accordingly, it would fine the co-op trustees \$1,000 per day for the 185 days of non-compliance – which comes to \$185,000 – plus additional fines of \$1,000 a day for each subsequent day of violations. That total figure of \$185,000 would be compounded by another 110 days; around \$110,000 more.

The Final Order stipulated that fines “shall be borne by SEC’s Board of Trustees and are not recoverable in rates.”

The PRC, however, gave the Board of Trustees some leeway by giving it 60 days to comply with the recommended rate structure. In the May 2020 Co-op Corner newsletter, SEC says it intended to comply with the order “while our appeal is pending before the New Mexico Supreme Court, and the ordered rates will impact our members in June.”

As of this week, the co-op has delayed implementing the new rates while waiting for the New Mexico Supreme Court to hear its side of the story.

The higher court has not heard the case yet, but that didn’t stop the city and New Mexico Tech, et al. from filing a motion with the PRC back in April to compel the co-op to quit stalling.

Despite a response motion by the SEC on April 13 to wait until the Supreme Court rules on SEC’s motion to stay the Final Order, the PRC ruled two days later that the co-op must comply with its final order.

SEC is appealing in the higher court because it does not believe that the PRC’s Final Order on the co-op’s rate structure is a lawful order, and that the PRC exceeded its jurisdiction by dictating what a cooperative’s rates should be.

The legal battle over the co-op’s rates stems from an initial application in 2018 by the co-op to implement a rate increase of 5.06 percent, or \$1,249,993 in revenue annually.