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STATE OF NEW MEXICO  
THIRTEENTH JUDICIAL DISTRICT  
COUNTY OF VALENCIA

SOCORRO ELECTRIC COOPERATIVE, INC.  
Plaintiff,

v.

CHARLENE WEST, et al

Defendants.

Case No: D-1314-CV-2010-849

Judge: Albert J. Mitchell, Jr.

And

CAROL AUFFREY  
and HERBERT MYERS, individually,  
and as representatives of the class of those member/owners  
of the Socorro Electric Cooperative, Inc.  
who are similarly situated.

Cross-Claim Plaintiff,

v.

SOCORRO ELECTRIC COOPERATIVE, INC.

Cross-Claim Defendant.

**DEFENDANTS' REPLY TO PLAINTIFF'S/CROSS-CLAIM DEFENDANT'S  
RESPONSE TO AMENDED MOTION FOR LEAVE TO FILE [sic] AMENDED  
CROSS-CLAIM**

Carol Auffrey and Herbert Myers,<sup>1</sup> individually and as class  
representatives, hereinafter referred to as "Defendants", by and through their

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<sup>1</sup> Carol Auffrey and Herbert Myers file on behalf of the member/owners on the assumption that the Court will grant Defendants' Amended Motion for Leave to File First Amended Cross-Claim.

counsel of record, file this reply to Socorro Electric Cooperative, Inc.'s, hereinafter referred to as "Plaintiff" and/or "SEC", Response to Amended Motion for Leave to File [sic] Amended Cross-Claim (hereinafter referred to as "Response") and state:

#### ARGUMENT

Rule of Civil Procedure for the District Courts 1-015A, NMRA 2011, states that leave to amend shall be freely given when justice so requires. This rule coupled with Rule 1-021, NMRA 2011, which provides that parties may be added or dropped by order of the court on a parties' motion or of its own initiative at any stage of the action and on such terms as are just, provides unfettered and sweeping discretion for this Court to grant Defendants' pending Amended Motion for Leave to File First Amended Cross-Claim (hereinafter referred to as "Motion for Leave").

Further, New Mexico case law supports permitting leave to amend in these circumstances. A "trial court's exercise of discretion is limited by the policy of liberally allowing amendments to pleadings so that claims may be decided on the merits rather than on mere technicalities of procedure." *Crumpacker v. DeNaples*, 1998-NMCA-169, 126 N.M. 288, ¶17. The *Crumpacker* court went on to state that despite objections to the amendment, the trial court shall freely allow

the amendment if the objecting party fails to show that it will be prejudiced. *Id.* at ¶17.

The court in *Crumpacker* stated that when an amendment would “change the nature of the claims, require additional discovery, or increase the time and costs of litigation” allowing a party to amend would not be proper. *Crumpacker v. DeNaples*, 1998-NMCA-169, 126 N.M. 288, ¶36.

Here, SEC’s evidence does not support its contention that it would be prejudiced should the Court permit Defendants to amend their cross-claim. Ms. Auffrey and Mr. Meyers are member/owners of SEC, just as is Charles Wagner. No new claims, other than those already alleged, would arise because of Ms. Auffrey and Mr. Meyers being named individually or as putative class representatives. Moreover, discovery has not commenced, so any expenditures that have been incurred by SEC thus far would have been incurred just the same if Ms. Auffrey and Mr. Meyers were initially made named plaintiffs.

Further, *Crumpacker* raises a strong policy reason why an amendment should be granted: a plaintiff would be significantly prejudiced if the motion for leave to amend were denied because the denial would result in the dismissal of her claim. *Id.* Given the unique procedural history of this case, Defendants are also cross-claim plaintiffs. They have several claims against SEC and denying

Defendants' Motion for Leave may result in a denial of their claims and would most certainly result in a more complex, time consuming, and expensive case.

Additionally, SEC points to the proposed changes in the Amended Cross-Claim as more reasons why SEC would be prejudiced. These changes were discussed and approved by SEC during preliminary drafting discussions with counsel for SEC. These changes include the removal of claims against trustees in their individual capacities and counts brought by Defendants against SEC. These changes would have the direct opposite effect of prejudice as defined in *Crumpacker*: the nature of the claims would not change, but rather claims and counts would be removed and their removal would reduce the expense and time for all parties involved.

While SEC suggests that Ms. Auffrey and Mr. Meyers retain their right to pursue an independent lawsuit if the Court denies the Motion for Leave, that suggestion is misplaced. If the Court denied the motion and the Defendants filed a separate suit the result would be greater expense for SEC, more docket congestion, and a compromise of judicial economy.

#### CONCLUSION

Defendants' Motion for Leave should be granted for several reasons: there is a clear absence of any evidence that SEC would be prejudiced if the Motion for Leave were granted, the interest of justice requires Defendants the opportunity to

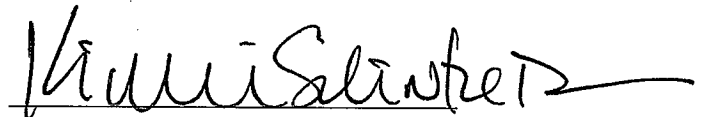
amend their cross-claim, and Rule 1-021, NMRA 2011, permits the Court to grant leave in this instance for the above reasons.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request this Honorable Court to allow Defendants leave to amend their cross-claim and that it grant such other and further relief in the premises as is consistent with the principles of law, equity, and good conscience.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "William Ikard", with a long horizontal flourish extending to the right.

William Ikard  
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CERTIFICATE OF SERVICE

This is to certify that the foregoing was served on the persons identified below on the date and in the manner stated.

*Via facsimile 505.842.0653*

Paul J. Kennedy

Darin M. Foster      *Via Electronic Mail*

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Date: 5.4.12

William Salinger