

**STATE OF NEW MEXICO
THIRTEENTH JUDICIAL DISTRICT
COUNTY OF VALENCIA**

**SOCORRO ELECTRIC COOPERATIVE, INC.,
Plaintiff,**

v.

CHARLENE WEST, et al.,

No. D1314-CV-2010-0849

Judge: Mitchell

And

**CHARLES WAGNER, individually and
on behalf of those similarly situated, et al.,
Cross-Claim Plaintiff,**

v.

**SOCORRO ELECTRIC COOPERATIVE, INC.,
et al.,**

Cross-Claim Defendants.

ORDER ON HEARING ON PARTIAL MERITS

THIS MATTER having come on before the Court on May 18, 2011, for a hearing on the partial merits, to wit: the relief requested by Plaintiff in it's Complaint for Declaratory Judgment and Injunctive Relief, filed June 29, 2010, and the Plaintiff appearing by Mr. Paul Bustamante and by and through attorneys Dennis Francish and Paul J. Kennedy and Defendants Polly Tausch and Thomas Fitch, appearing through their attorneys, Fitch & Tausch LLC (Thomas G. Fitch and Polly Ann Tausch) and the Defendant Charlene West appearing and being represented by Lee Deschamps and Stephen Karl Kortemeier of Deschamps & Kortemeier Law Offices, P.C. together with William Ikard and Jordan Haedicke of Ikard Wynne LLP, and the Court having accepted offers of proof by Plaintiff, through Mr. Francish, and having accepted offers of proof by Defendants, through Mr. Deschamps, and having otherwise heard argument of counsel and the parties as well as considering Exhibits 1 and 2, and Exhibits A and B, hereby **FINDS:**

1. It has jurisdiction over the parties and over the subject matter hereof;
2. This matter is before the court pursuant to the Declaratory Judgment Act, § 44-6-2 (NMSA, 1978);
3. The Court has previously determined, by Order dated March 29, 2010, that the Plaintiff's requests for relief may be granted and would be binding upon all interested individuals and entities, including those not represented before the Court;
4. The by-laws challenged by the Plaintiff were lawfully enacted by the members of the Socorro Electric Cooperative, Inc. at an annual meeting held April 17, 2010;
5. It is within the power of the members of the Socorro Electric Cooperative, Inc. to impose upon the cooperative, provisions for the regulation and management of the cooperative which are not inconsistent with the law;
6. There is no rule, regulation or statute which prohibits the membership of the Socorro Electric Cooperative, Inc. from adopting the by-laws challenged by the Plaintiff;
7. While Plaintiff Socorro Electric Cooperative, Inc. is not an agency of the State of New Mexico, or a governmental entity, there is no unique aspect of the Socorro Electric Cooperative, Inc. which would prohibit application of the by-laws challenged by the Plaintiff;
8. Plaintiff has not sought any interim injunction or other relief which would have suspended the operation of the challenged by-laws once the election results were certified;
9. With respect to the amendment to Article VI, Section 1, the language "open to the member/owners and the press" is redundant in light of the Court's finding with respect to the amendment to Article VI, Section 5, and is hereby stricken, but this amendment is otherwise lawful, and Plaintiff, its Board of Trustees and its members shall abide by the language of this amended Article. This paragraph shall therefore read:

"Timely notice of the meeting shall be advertised in monthly bill mailings and local newspapers. Each meeting agenda shall allow time for member participation during which member/owners may address the Board without prior approval of the Board."

10. With respect to the amendment to Article VI, Section 5, this amendment is lawful and binding upon the Plaintiff, its Board of Trustees and its members;

11. With respect to the amendment to Article VIII, Section 8, the language of the entire amendment is found to be "aspirational" and the intent expressed therein is adequately addressed by the amendment to Article VI, Section 5, and, therefore, this amendment is stricken in its entirety;

12. The Court is not reserving jurisdiction to enforce these by-laws nor the requirements of the Open Meetings Act or the Public Inspection of Records Act;

13. The parties have ten (10) days from the entry of this order within which to file their requests for costs and attorney's fees, pursuant to the Declaratory Judgment Act;

14. Plaintiff is to prepare, and the parties are to thereafter confer and submit to the court a "clean" copy of the by-laws for the Socorro Electric Cooperative, Inc., (complete with all amendments made through June 2011 as reformed by this Order) in a timely fashion; and,

15. This matter shall now proceed to consideration of the issues raised by the Cross-Claim including the matter of class action certification.

NOW THEREFORE IT IS HEREBY ORDERED that:

A. With respect to the amendment to Article VI, Section 1, the language "open to the member/owners and the press" is redundant and is hereby stricken, and the language provided in Paragraph 9 (above) shall be substituted; otherwise, this amendment is lawful and binding upon Plaintiff, its Board of Trustees and members;

B. With respect to the amendment to Article VI, Section 5, this amendment is lawful and binding upon the Plaintiff, its Board of Trustees and its members and has been binding since the election results were certified;

C. With respect to the amendment to Article VIII, Section 8, the language of the entire amendment is found to be "aspirational" and, therefore, this amendment is stricken in its entirety;


D. Plaintiff is to prepare, and the parties are to thereafter confer and submit to the Court a "clean" (complete with all amendments made through June 2011 as reformed by this Order) copy of the by-laws of the Socorro Electric Cooperative, Inc. to the court;

E. Requests for costs and attorney's fees shall be considered as set forth herein;

F. This matter shall now proceed to consider the issues raised by the Cross-Claim including issues related to the class action certification request;

G. This court is not reserving jurisdiction to enforce issues related to compliance with the by-laws or with the amendments considered by the Court herein; and,

H. All relief requested by Plaintiff inconsistent with this Order is hereby denied.


The Honorable Albert J. Mitchell, Jr.
Judge of the Tenth Judicial District
Sitting by designation

Prepared, Submitted and Approved as to Form by:

Approved telephonically 6/22/11
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