

STATE OF NEW MEXICO  
SEVENTH JUDICIAL DISTRICT  
COUNTY OF SOCORRO

**No. D-725-CV-2012-00089**  
**Judge: Matthew G. Reynolds**

**CHARLENE WEST,  
CAROL PITTMAN, AND  
SARA ROBINSON,**

Petitioners,

vs.

**SOCORRO ELECTRIC COOPERATIVE, Inc., a  
New Mexico Non-Profit Corporation, and  
Its BOARD OF TRUSTEES, COLLECTIVELY, and  
JOSEPH HERRERA, in his capacity as its MANAGER,**  
Respondents.

**AMENDED VERIFIED PETITION**  
**FOR ALTERNATIVE WRIT OF MANDAMUS & DAMAGES** (paragraph 30)

COMES NOW, the Petitioners, Carol Pittman and Sara Robinson, by and through undersigned counsel, and for their Petition say:

**GENERAL ALLEGATIONS:**

1. Petitioner Charlene West is and has been a member in good standing of Respondent Socorro Electric Cooperative (SEC hereinafter) at all times relevant hereto.
2. Petitioner Carol Pittman is and has been a member in good standing of Respondent Socorro Electric Cooperative (SEC hereinafter), in SEC District 5 at all times relevant hereto.
3. Petitioner Sara Robinson is and has been a member in good standing of Respondent SEC, in SEC District 2, at all times relevant hereto.

4. Respondent SEC is a New Mexico non-profit corporation, organized as an electric cooperative corporation and owned by its members, with its principal office in the City and County of Socorro, State of New Mexico.
5. As Manager of SEC, Respondent Joseph Herrera conducts the day to day operations of the Co-op at the direction of Respondent SEC's Board of Trustees.
6. Petitioners have been required to incur their costs and expenses incident to bringing this action.
7. Petitioners have no other plain, speedy or adequate remedy in the ordinary course of law, except as requested herein for obtaining the relief to which they are entitled by law.
8. Through legal counsel, Petitioners have requested of Respondents' agents that Respondents cease and correct their unlawful and discriminatory conduct.
9. New Mexico Statutes, Chapter 53, Article 8, Section 27 reads in relevant part as follows:

**“53-8-27. Books and records.**

.... Each corporation shall keep at its registered office or principal office in New Mexico a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.”

**COUNT I: MANDATED MEMBER'S INSPECTION OF SEC RECORDS:**

10. On April 19, 2012, and in writing, Petitioner West requested access to the corporate books and records of SEC including its statutorily required lists of member's names and addresses entitled to vote, under the New Mexico Inspection of Public Records Act (14-2-1, et seq.)

11. Respondents, through their legal counsel, refused this request on the basis that they feared she had “an improper motive” for obtaining the information.
12. April 30, 2012, through her legal counsel, West replied that her purpose in requesting this information was to exercise her State and Federal constitutional rights of Freedom of Association and to inform the members of her opinion of their initiative rights as members of SEC and to associate with them for the purpose of initiating certain measures for presentation to the general membership of the Co-op for adoption.
13. Respondents again denied her request.
14. West repeated her request on May 29, 2012, and again the information was denied by Respondents who have continuously ignored her requests to correct their unlawful behavior.

**COUNT II. MANDATED EQUAL TREATMENT OF PETITIONERS CAROL  
PITTMAN & SARA ROBINSON’ S REPRESENTATIVE**

15. In order to properly represent the interests of the SEC members in their respective Districts, it is imperative that each Trustee be treated fairly and equally and with cooperation by the Co-operative, its agents and employees.
16. Petitioners’ representative on the SEC Board of Trustees is Charles Wagner, the duly elected SEC Trustee for District 2 which has approximately 2,000 memberships.
17. Due to recently enacted redistricting for SEC, and because Trustee Jack Bruton has resigned as one of two Trustees for District 5, and because Trustee Charles Wagner is the only current representative of District 5, pending October elections, he also represents the approximately 2000 memberships of District 5.

18. In total, these two districts comprise over a third of the total membership of the entire SEC members and approximately one third of SEC's geographical area.
19. All Respondents have the clear duty to conduct SEC's affairs in accordance with prevailing laws, by-laws and regulations.
20. All Respondents have a clear duty to recognize Charles Wagner as the duly elected Trustee and to afford him all of the prerogatives, rights and privileges of office afforded the other SEC Trustees in representing the members in their districts.
21. These prerogatives, rights and privileges include, but are not limited to, attendance at meetings of the Trustees, including executive sessions; reimbursement for out-of-pocket expenses and per diem expenses for attendance at seminars and regional meetings and conferences; access to books, papers and other records of the SEC, and assistance from the general manager and staff, including legal advice, in carrying out the duties and functions of his office as Trustee.
22. On May 31, June 23, June 25, July 12, and July 16, 2012, Petitioner Charles Wagner, as Trustee and on behalf of his Districts, requested in writing that Respondent SEC Manager Herrera furnish him access to the Minutes of the 2012 Annual Meeting, to include a list of the names of the persons registered to vote at said meeting as required by the New Mexico Corporation Code, and a copy of the 2011 *Board of Trustees Expense Summary*.
23. Respondents have repeatedly refused to allow Trustee Wagner even have access to this and other SEC information to which he is entitled and which is necessary for him to effectively represent the interests of Petitioners Carol Pittman and Sara Robinson, as well as those of the other SEC membership.

24. Respondents have refused to allow Trustee Wagner to attend executive sessions of the Board of Trustees, thereby partially disenfranchising Petitioners.
25. Respondents have effectively denied Trustee Wagner the prerogative to attend conferences and meetings available to all other Trustees and which he is otherwise qualified to attend in that they are refusing him reimbursement for travel and expenses automatically and uniformly granted to the other Trustees.
26. Respondents have repeatedly and continually denied Trustee Wagner the usual and normal assistance required in order to effectively carry out his Trustee duties in representing Petitioners.
27. By their actions Respondents have virtually removed Petitioner Carol Pittman and Sara Robinson's lawful representative from the Board of Directors, effectively disenfranchising them, and without any legal basis to do so.
28. Through his attorney, at the July 3, 2012, Board meeting, and on behalf of the members of his Districts, Trustee Wagner requested the Board cease, desist, and correct the unlawful actions they have to date taken, but they refuse to do so.
29. Based on the history of Respondents absolute failure to make any kind of good faith response to date, Petitioners believe any further attempts to comply with the statutory requirement that Respondents be given an opportunity to correct their tortious, unlawful, and wrongful conduct as a prerequisite to bringing this action would be futile.

**COUNT III – MANDATED COMPLIANCE WITH SEC BY-LAWS.**

30. At the 2010 annual meeting certain amendments to the SEC By-Laws were enacted by the general membership, including compliance with the Open Meetings Act.
31. Respondents have refused to comply with the By-Laws in that:

- a. They continue to refuse to comply with the New Mexico Open Meetings Act and as recently as July 3, 2012, have met as a group, except for Trustee Wagner, in a closed meeting, prior to the scheduled Special Meeting held that date.
  - b. They are refusing to compile a proper list of the members attending each District and Annual Meeting.
  - c. They continue to violate Statutes, particularly those requiring access to SEC information by members upon.
32. By depriving Petitioner of the requested information which Respondents are required by law and By-Laws to furnish member upon request, Respondents are unlawfully refusing to perform their obligations and duties of their fiduciary positions in relation to the members.
33. By continuing to deprive Petitioner of the requested information Respondents are continuing to deprive them of their rights as guaranteed by both the New Mexico and Federal constitutions.

#### **COUNT IV – DAMAGES FOR FAILURE TO COMPLY WITH THE IPRA.**

34. Pursuant to NMSA 14-2-12 Petitioner are entitled to recover their damages, costs and attorney fees for Respondents' refusal to provide the requested information.

#### **WHEREFORE,**

Petitioners request this Honorable Court:

- 1-(A.) an Alternative Writ of Mandamus directed to the Respondents and ordering them to:
- a. Furnish to Petitioners or their representatives all requested access to SEC records and membership lists, in full and good faith compliance with the applicable New Mexico and Federal laws.

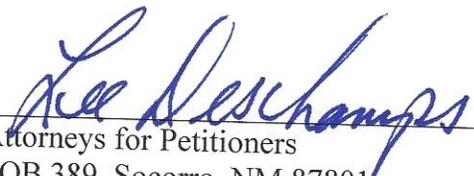
- b. Provide those full prerogatives, rights and privileges to the Trustee representing Petitioners Pittman and Robinson fully, equally and without exception as those that are given to the other Trustees.
- c. Fully and in good faith comply henceforth with all duly enacted By-Laws, Rules, and Regulations of the SEC.

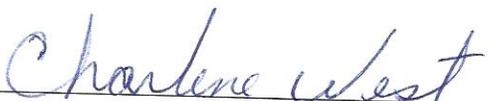
- -OR IN THE ALTERNATIVE- -

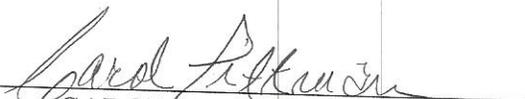
- 1-(B) Show cause why they have not done as ordered in 1-(A), by a date and time certain as set forth in the Alternative Writ of Mandamus.
- 2. Award Petitioners their costs and attorney fees incurred in bringing this action.
- 3. Award Petitioners damages in the amount of \$1.00 per day as damages, pursuant to the Inspection of Public Records Act for each day they are found to have refused to furnish the requested information.
- 4. Such other and further relief in the premises as is consistent with principles of law, equity and good conscience.

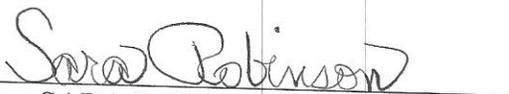
Respectfully Submitted this August 29<sup>th</sup>, 2012.

Deschamps & Kortemeier Law Offices, P.C.  
By: Lee Deschamps

  
\_\_\_\_\_  
Attorneys for Petitioners  
POB 389, Socorro, NM 87801  
575-835-2222 Fax: 575.838.2922

  
\_\_\_\_\_  
CHARLENE WEST, Petitioner

  
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CAROL PITTMAN, Petitioner

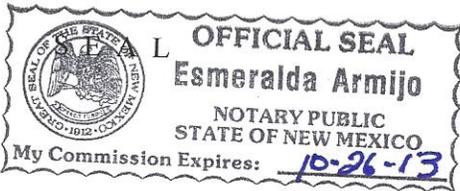
  
\_\_\_\_\_  
SARA ROBINSON, Petitioner

VERIFICATION

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SOCORRO )

On this 21<sup>st</sup> day of August, 2012, before me personally appeared the above named **Charlene West**, who, being first duly sworn, stated that they have read the petition and that the statements contained in the petition are true and correct to the best of the signer's knowledge, information and belief.

My Commission expires: 10-26-13

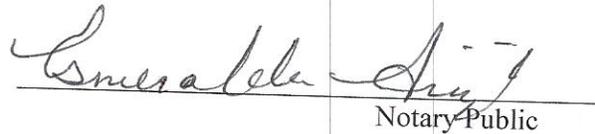
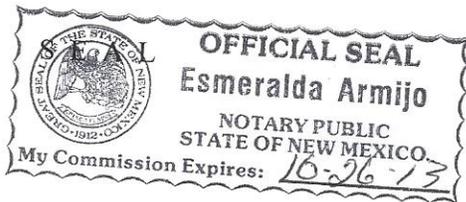


VERIFICATION

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SOCORRO )

On this 21<sup>st</sup> day of August, 2012, before me personally appeared the above named **Carol Pittman**, who, being first duly sworn, stated that they have read the petition and that the statements contained in the petition are true and correct to the best of the signer's knowledge, information and belief.

My Commission expires: 10-26-13

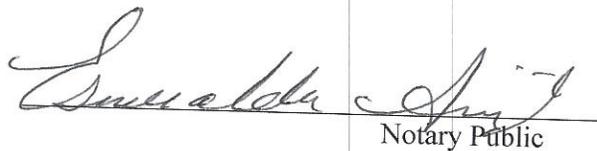
  
Notary Public

VERIFICATION

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SOCORRO )

On this 21<sup>st</sup> day of August, 2012, before me personally appeared the above named **Sara Robinson**, who, being first duly sworn, stated that they have read the petition and that the statements contained in the petition are true and correct to the best of the signer's knowledge, information and belief.

My Commission expires: 10-26-13

  
Notary Public