

Co-op files lawsuit against members

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Taking what is believed to be unprecedented legal action, the Socorro Electric Cooperative has filed a lawsuit against the people who own it. And because of the potential ramifications, the case could establish a legal precedent not just in New Mexico, but on a national level.

The rural electric utility, which serves more than 10,000 customers, filed a complaint in District Court on Tuesday, July 6, asking for declaratory judgment and injunctive relief and challenging the validity of three bylaws adopted by member-owners at the co-op's annual meeting in April.

All three bylaws call for increased transparency of a board of trustees that for the past two years has been under scrutiny from members and the press for its spending practices, and the manner in which it goes about its business.

Like all rural electric cooperatives, the Socorro utility is a non-profit corporation and any profits it earns are distributed to member-owners in the form of capital credits.

Named as defendants are all unnamed member-owners of Socorro Electric Cooperative, totaling more than 10,000 members; Charlene West of Lemitar, who led a successful movement to reform the co-op; and the Mountain Mail and El Defensor Chieftain, two Socorro-based newspapers.

"We don't like to hear people say we're 'suing' the members, but if you're going to challenge something in court there has to be a plaintiff and there has to be defendants," said Paul Bustamante, the co-op's president. "We want the judge to read the laws and compare them to the bylaws that were passed, so there's no misunderstanding and there's something to fall back on if there are occurrences in the future."

The complaint asks that the judge declare the bylaws null and void, and the co-op be awarded costs and reasonable attorney's fees for bringing the lawsuit.

SEC v. SEC Members

The bylaws in question:

- Call for the board to voluntarily follow the Open Meetings Act and Inspection of Public Records Act
- Allow members access to co-op books, records and audits, with the exception of records protected by the Privacy Act
- Allow member-owners and the press to attend co-op board meetings and that a portion of the meeting be set aside for public comment. In addition, announcements of meetings are to be made in billing statements and advertised in local newspapers

The board of trustees voted unanimously to contest the bylaws at its May meeting, following the advice of the co-op's attorney, Dennis Francish.

Francish's argument is there are problems with the bylaws that make them impossible to implement. He said rural electric cooperatives are private, non-profit corporations not subject to laws that pertain to public entities.

"All we want to do is challenge those three bylaw changes as being unworkable and unreasonable, and beyond the scope of representative government," he said. "That's why you have board members at the exclusion of everyone else. Attempting to go beyond that is an attempt to go beyond the scope of corporate law."

Francish said the complaint was filed in district court in Los Lunas because all judges in the Seventh Judicial District Court are defendants in the case. He said 13th Judicial Court Judge John W. Pope signed an order allowing publication of the notice in the newspapers to serve as the summons for the more than 10,000 members.

Francish told El Defensor Chieftain that the newspapers were named as a defendants, "because it's my belief that the press ought not to be at a business meeting, and we're

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going to test that in court. You're the only press in the state that attends those meetings, unless I'm wrong."

The attorney said Charlene West was named specifically as a defendant because she has been disruptive at past meetings.

West last year had a restraining order imposed against her that prohibits her from attending board meetings.

"We've had some problems with her and we want to make sure we bring that to the attention of the court," Francish said.

Singled Out

West said she's being singled out in the lawsuit because it's a vindictive board that's still calling the shots. Because she was successful in leading the reform movement, they're out to get her.

"They're on a witch hunt, and I'm the witch," she said. "I feel like I'm being made a martyr, because I'm just a working Joe, and people know me and people identify with me. They're going to prosecute me and persecute me, and try to break me."

West said naming her as a defendant is the board's way of retaliating against her as a leader for reform.

"They're trying to break me, is what they're doing," she repeated, adding that she doesn't have the money to hire a lawyer. "My husband is going to divorce me. If they come after me monetarily, they're going to kill me."

West chairs the SEC Reform Committee, established almost two years ago when it came to light that expenses incurred by the Socorro cooperative's board of trustees, by comparison, far exceeded those of the other 15 electric cooperatives in New Mexico.

In 2009, the 11-member board's expenses — including travel, lodging, per diem, fees and health benefits — totaled more than \$492,000, an average of almost \$45,000 per trustee.

West, along with the one ally she has on the board, District 5 trustee Charlie Wagner of Magdalena, spearheaded a reform movement that dramatically changes how the co-op operates at the top end.

The movement gained steam last fall when three long-standing incumbents were voted out at district elections in Socorro and a bevy of reform-related resolutions won approval, which brought them to vote at the annual meeting.

All of the measures passed by overwhelming margins on April 17 and marked a clear victory for the reform movement.

Among the changes are:

- Reducing the size of the board from 11 to five members
- Putting a cap on trustees' expenses
- Limiting trustees to serving no more than two consecutive two-year terms
- Realigning districts to make for more equitable representation
- Allowing mail-in voting

The co-op board isn't disputing any of those, just the ones that address transparency.

West finds it hard to believe that a democratically controlled electric utility owned by its members could be kept in the dark about how its interests are managed.

"It's pretty scary that this can happen in the United States, just because we're asking questions," she said. "I haven't done anything that's illegal; I've just asked questions."

Conflicts of Interest

While West hoped to keep the issue out of court, Wagner has been preparing for the court battle that could ensue.

Initially, he — or the SEC reform group of which he's a part — was considering bringing a lawsuit against the co-op board. But the legal landscape has now changed.

"I don't see any reason for us to bring a suit, because the suit is already there. All we need is an attorney who will represent us," he said. "Someone has to respond. Normally the person who would respond is the co-op attorney, but he's the one suing us, so we'll have to have someone step up and represent the members."

Wagner said Friday morning that he was planning to meeting with an attorney later in the day.

"My question to the attorney is how do we respond? If the attorney wants to respond on behalf of (all the members), that's what we'll do," he said.

Wagner blamed the board and the attorney it hired last December for making a mess out of the situation.

"All along I've known that Mr. Francish was hired by the board to represent the majority of the board's interests," Wagner said. "He represents seven (board members) and he works against the interests of the membership and the interests of the co-op itself.

They've gotten somebody to help them weaken member control, and the best way to do

that is to deprive the members of information and keep everything secret.”

Retreating into executive session has been a common practice of the board over the years. Member-owners, some of them wearing T-shirts that read “Socorro Electric Cooperative Member-Owner and My Vote Counts,” forced the cancellation of the board’s June 23 meeting by refusing to leave the boardroom when trustees voted to go into executive session without stating a reason. The act of civil disobedience was broken up when police were called and everyone left peacefully.

Wagner’s position is that the bylaw mandating that the board follow OMA is already in effect and action taken at the three meetings that have been held since the annual meeting is null and void.

“They’re under the Open Meetings Act right now — since April 17 — and they should be conducting meetings that way until they get a ruling that says otherwise,” he said.

Making Claims

The basis of the lawsuit is that the co-op is a private entity that follows corporate laws and is not subject to rules and regulations that apply to government agencies. As such, transparency laws do not apply, and the co-op board is not required to follow a directive from members that is in conflict with state law.

In challenging the bylaw that allows for members and the press to attend meetings, the complaint says that doing so “will prevent the Board from effectively carrying out the business of the SEC and prevent the Board from meeting its obligation to its members.

The Board operates within corporate laws of the State of New Mexico. There is no legal basis for members or the press to participate in the Board meeting.”

It goes on to say that allowing members to speak at meetings would “adversely impact the ability of the Board to conduct business” and “essentially grind meetings to a halt.” It states “no corporate business can be effectively conducted in the presence of the press.”

The complaint states that implementing New Mexico’s OMA and IPRA laws would be a hardship on the co-op and a violation of state law.

“The NMOMA is not intended to apply to and does not apply to private entities, and the SEC cannot adequately and appropriately conduct its business if every meeting of the Board is required to occur subject to the NMOMA.”

The lawsuit’s third claim is that allowing access to records is also a violation of state law. What’s more, the complaint states that the provision against disclosing information protected by the Privacy Act was “vague and ambiguous,” as it doesn’t specify which Privacy Act it is referencing.

It also picked on other language used in the original resolution members passed and claimed limitations were not clearly defined.

“A blanket statement that the SEC shall ‘guarantee’ transparency of actions and ‘open access’ to SEC records to members does not allow the SEC the opportunity to refuse such disclosure,” it says.

The notice of suit being published in the newspapers notifies defendants that unless they serve a pleading or motion in response to the complaint within 20 days of the last publication date, which is July 28 in El Defensor Chieftain, judgment by default would be entered against them.

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