

December 16, 2010

## COMMENTS ON STATUS HEARING – December 14, 2010-Los Lunas, NM

The hearing was interesting and encouraging. Judge Mitchell seems to have a keen nose and little tolerance for nonsense. He is not arrogant, very courteous but his questions are pointed and to the point. Faced with a large group of lawyers and approximately 20 spectators, he moved quickly to organize the issues and get some agreements from questioning the lawyers present.

There were eleven (11) lawyers present. Dennis Francish represented the SEC; Paul Kennedy represented Polo Pineda, former Gen. Mgr. as well as the SEC & Board of Trustees.

Lee Deschamps, Socorro; William Ikard, Austin, TX, William Kilgarlin, Austin, TX & Santa Fe, NM and Jordan Haeddick, Austin, TX representing “Charlene West, et al – Defendants and Charles Wagner, individually and as representative of the class of ‘unnamed Defendants,’ being owner/members of the Socorro Electric Cooperative, Inc – Cross Claim Plaintiff.”

Roscoe Woods, Socorro representing the MOUNTAIN MAIL newspaper.

John Gerbracht, Don Klein, Tom Fitch, and Polly Tausch, all acting *Pro Se* (on behalf of themselves.)

The 13<sup>th</sup> District Court has a new three story building and the courtroom is large and modern.

Judge Mitchell began the hearing by asking all lawyers present for a courtesy copy of all pleadings and informing everyone that he was not going to rule on the merits at this point. He divided the issues into three sections: 1. Pre-trial venue and notice, 2. Original complaint (Declaratory), 3. Class Action.

1. Venue and notice: On the question of proper notice, the judge questioned the lawyers for the SEC as to their opinion. Mr. Kennedy agreed that the suit against the members did not constitute proper notice. The question of cost was raised and the judge flatly stated that notice could be contained within the monthly

billings of the SEC at little cost and cited the amendment to the bylaws passed at the April, 2010 member meeting which calls for notification of board meetings to be included in monthly billings. The issue of venue was then taken up. Judge M. asked the lawyers (and seemingly the audience) if he was correct in assuming that the SEC was not considered to be friendly toward its members. Everyone in the courtroom agreed that was the case given that the coop was suing its own members. Judge M. questioned the Socorro lawyers as to the conditions of the Socorro courthouse given the fact that he expected "the whole town to attend." Mr. Deschamps stated that the Socorro courthouse could handle the hearings and provide adequate security. The judge seemed to think that the venue could switch back and forth from Los Lunas to Socorro depending of whether or not the hearing was mainly legal details or questions of vital interest to the members who he stressed were the owners of the co-op. He made this point many times. Mr. Kennedy and Mr. Francish were the only lawyers objecting to going to Socorro.

At this point, Judge Mitchell stated that he would not dismiss the original complaint as there were legitimate issues that needed to be addressed and that he wanted motions by the end of December, 2010.

#### ORIGINAL SUIT BY SEC AGAINST ITS MEMBERS – CIVIL ACTION FOR DECLARATORY JUDGEMENT.

Judge M. cited the claims by the SEC suit and asked for opinions as to their being legally passed by the owners of the SEC (members). All lawyers agreed that the amendments were legally passed by the legal owners. Judge M. had Francish and Kennedy specifically state that they agreed. He then raised each of the three amendments under challenge. Judge M. stated that two of the amendments overlapped (First Claim and Second Claim) and asked did the two SEC lawyers have any problems with the section that okays the members being able to address the board. Mr. Francish stated that they (members) could speak but that he wanted them (members and press) to leave after that. The second amendment/Second Claim deals with the Open Meetings Act and Judge M said that he would consider that a legal issue and requested a brief from Mr. Francish on the issue. A brief was also requested on the Third Claim concerning the

providing of records upon request by members. Mr. Francish claimed that Schein vs. Northern Rio Arriba supported his contention within the Third Claim that the SEC did not have to make records available. Judge M told him that the direct opposite was true and that case supported the right of members to such records.

There is a January 20,2011 deadline for briefs on the issues of open meetings act, members addressing the board, and record request and a further issue of whether the ruling on these issues would be binding on all. Judge M wants the declaratory issues settled before moving on to class action certification.

A good deal of discussion followed on the class action issue, the bylaws as a contract between the SEC and the members (owners), errors and omission insurance, the discovery process, etc. The question of mediation was also raised. Mr. Francish and Mr. Kennedy oppose mediation; Mr. Deschamps had no problem with mediation.

Judge Mitchell then announced the schedule for briefs and ruling hearings. Mr. Ikard requested that the consideration for class action be moved up in order to speed up discovery. Judge M will consider that request.

I am sure that I have omitted several points but it was a long session and a great deal of it was very technical.

Some additional comments: Charlie Wagner was the only SEC Trustee present. Terry Last of the "El Defensor Chieftain" was the only reporter present. Richard Lopez, Interim Gen. Mgr. and Dave Montoya were the only SEC staff present and they did not remain for the entire hearing which took a little over two hours. Judge Mitchell does move things along.

Charlene F. Wagner