

## **RECALL PETITION and SPECIAL MEETING**

I, Richard L. "Arf" Epstein, as a member of the Socorro Electric Cooperative in District 2 am bringing charges against Paul Bustamante for the purposes of his removal as Trustee for District 2 for breach of fiduciary duty and no confidence. Attached is a petition signed by 115 members of District 2 requesting a recall of Mr. Bustamante. This is about 18.5% of the members of District 2. This petition serves also as a request for a special meeting for District 2 to vote on the recall of Mr. Bustamante. This is in accord with the following bylaws of the SEC.

*Article V Section 5. Removal of Trustees.* Any member may bring charges against a trustee of his/her district and, by filing with the Secretary such charges in writing together with a petition signed by at least ten per centum of the members of the trustee's district, may request the removal of such trustee by reason thereof. Such trustee shall be informed in writing of the charges at least ten days prior to the district meeting of the members at which time the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect of the charges; and the person or persons bringing the charges against him/her shall have the same opportunity. The question of the removal of such trustee shall be considered and voted upon by majority vote at the district meeting of the members and any vacancy created by such removal may be filled by a vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations.

*Article III Section 4. Special District Meetings.* Special meetings of the members in any district may be called by resolution of the Board of Trustees, or upon written request signed by any three trustees, by the President, or by ten per centum or more of all the members in such district, and it shall thereupon be the duty of the Secretary to cause notice of any such meeting to be given as hereinafter provided. Special district meetings may be held at any place within the district specified in the notice of the special meeting.

## **PERSONS QUALIFIED to SIGN the PETITION**

The persons who signed the petition did so during the period November 3 to November 22, 2010.

Persons signing the petition were asked if they were members of the SEC. For residential customers, anyone living at the house and particularly either a husband or wife who purchase electricity are eligible to sign, in accord with the following bylaw.

*Section 3. Joint Membership.* A husband and wife shall be considered a joint Membership. Other persons residing at the same address and listed on the member account will be considered a joint membership entitled to only one vote upon registering (except as otherwise provided in Section 1), and subject to their compliance with the requirements set forth in Section 1 of this Article, may be accepted for such membership. The term "member" and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a joint membership.

Those signing as commercial members were asked if they owned the business.

## **VERIFICATION of SIGNATURES**

We understand that the signatures on the petition must be verified by the SEC as belonging to members of District 2. We expect the Trustees to appoint an independent auditor to verify the signatures. Neither Mr. Bustamante as President of the SEC, nor any of the other Trustees, nor any of the persons who have signed the petition, nor any other member of District 2 should be involved in

the verification process, for all are interested parties in the outcome. The results of the verification can be challenged by either Mr. Bustamante, myself, or any of the other members who have signed the petition. Should Trustees or employees of the SEC or most particularly Mr. Bustamante call on members to verify that they really signed the petition this will be considered an act of intimidation to try to get members to withdraw their signature.

Time is of the essence in verifying the signatures and, if the petition is approved, calling a district meeting. If the verification of signatures takes more than thirty days, and, if the petition is verified, a district meeting is not called within thirty more days, that will be a clear indication that the Trustees are unwilling to abide by the bylaws of the SEC.

### **REPRESENTATION by COUNSEL**

At the district meeting the members will hear both from those who argue that Mr. Bustamante should no longer be a Trustee and from Mr. Bustamante. The members will then vote in secret ballot on whether to recall Mr. Bustamante. If the members vote that he should no longer be Trustee, then that is the decision, regardless of whether the charges against him have been proved to a standard that might be acceptable in a court.

Nonetheless, Mr. Bustamante may choose to employ legal counsel to advise him in the matter of this recall petition and election. If he does, it is not for the SEC to pay for that. The Trustees must not take sides in this dispute between the members of District 2 and their representative.

### **ELECTION of NEW TRUSTEE(S)?**

If the recall is approved at the district meeting, the bylaw provides for the members to elect a new representative for their district at that meeting.

If the Trustees interfere with such an election, or if they do not accept as Trustee for District 2 the member who has been elected, then that would be a clear breach of their fiduciary duty by not allowing representation of the members of District 2 on the Board of Trustees.

On the other hand, if the Trustees accept a new Trustee for District 2, that would be evidence of a clear breach of their fiduciary duty in that they have not held an election for a Trustee to replace Mr. Marquez who resigned more than six months ago.

We urge the Trustees to resolve this issue by immediately creating five districts in accord with the recently approved bylaw of the SEC and holding elections for Trustees for those districts. This can be accomplished if enough Trustees agree to resign so that there will be five or fewer Trustees left, for then there would no longer be a quorum from the eleven Trustees previously elected.



Dr. Richard L. "Arf" Epstein, for those members signing the petition  
November 22, 2010