

## My Views on

### The Foster Report on the Board's suing all of the Socorro Electric Co-op Members

On Thursday, December 19<sup>th</sup> the board and others present heard an oral report from Attorney, Darin Foster. His topic was the suit filed by the board against all the members in June of 2010. **The cost of this unprecedented action by the board has yet to be revealed to the public as it should be due to its being an outrageous waste of the members' capital.** Unfortunately attorney Foster's report only sought to reveal costs associated with the counter suits.

His report was like the description of half a train wreck, where the A-train is traveling in the wrong direction on the wrong track and collides head on with the B-train. As he reports on the wreckage he pretends the A-train never existed, which makes the damage description complicated and impossible to understand. If A-train never existed logic says there could not have been a collision. If the suit against all the members had not been filed, there **would** have been no need for a counter suit. Because the suit was filed the plaintiff would have won by default were it not for the counter suit and the reform bylaw amendments would have been thrown out.

So attorney Foster begins the story of his involvement with the suit starting after May 18, 2011, the date when the Court denied the injunctive relief the board of SEC sought against transparency bylaws, by filing the suit. That Suit against all the members is represented by A-train.

When answering the suit, the attorneys representing several other members and me, advised a class action counter suit, naming me as the representative of the class. So in June 2010, when the board's suit was filed, by the board's attorneys Dennis Fransich and the Kennedy Han law firm, the judge, during the first public hearing: refused their request to withdraw the original suit brought by the SEC due to real legal issues; the judge determined to hear the case and to rule on its merits; he stayed the class action certification issue to a later, undetermined date; and said he would schedule hearings on it later. The defense against the suit of the members represents B-train.

Mr. Foster does not admit that the action by the board majority in suing the members is a breach of their fiduciary duty and an act of disloyalty, which is willful. It is opposed to the best interest of the co-op and a waste of the members' capital. Insurance only provides protection if the co-op is sued. When the co-op sues, it bares the cost and may only be reimbursed if it wins. As the Court's ruling shows, the co-op board lost and had to pay the defendants' attorneys. According to Mr. Foster's statement "the Texas attorney was awarded \$5,000." He did not offer an account as to what Mr. Fransich, Kennedy Han, and his firm received from co-op funds.

Mr. Foster wants us to forget A-train, what the board did. He explains with imagination, what kind of suit Mr. Fransich and Mr. Kennedy woulda, coulda, shoulda filed to avoid being on the wrong track and going the wrong way.

During the board meeting on May 26, 2010, when the majority of trustees authorized the suit, they failed the obligation of due diligence. I was the only trustee to ask Mr. Fransich if he was going to sue

the members. The voice recording I have of that meeting confirms that when I asked that question, the other trustees laughed in ridicule of my question. Mr. Fransich did not answer my question. If the other trustees had cared and if they had behaved with the seriousness of adult, prudent persons considering a real business decision, there would have been no A-train and no reason for a counter suit.

All the trustee now claim that they did not know Mr. Fransich was going to sue the members or that they wanted a different kind of suit, which is an admission of their failing a fiduciary duty. They allowed their animosity and child-like carelessness to obstruct their duty and authorized a suit which Mr. Foster admits was not the appropriate type of suit to file. Had they behaved properly, prudently, with good will and insisted that Mr. Fransich answer my question, they might have avoided the train wreck which earned so much loss of respect for those trustees and the members' lack of trust, not to mention the national shame of being the only cooperative in history to sue all of its members.

Mr. Foster concedes the counter suit forced the co-op to retire a calculated \$1.5 million in capital credits to members, instead of the usual, arbitrary \$300,000. He also admits that the board was slow to begin implementing the open meetings requirement of the 2010 bylaw amendments, (a delay of 22 months because the secretary apparently could not comprehend the OMA Guide, or didn't want to follow the court order.

In criticizing the high cost of resisting the counter suit (approximately \$110,000 which I assume is his fee from 5/18/2011 to now) he blames me. On the other hand, the attorneys who defended the members did so pro bono, and for the comparatively small the amount of fees (\$13,000) granted by the Court and another \$12,000 donated to the Reform defense fund by SEC consumers.

It is only fair that I acknowledge the point that Mr. Foster made. In that it probably was a bad choice for me to be a representative of the class in the class action counter suit. In June of 2010 knowing that the coop was suing all the members to whom they owed a duty of loyalty, I acted out of good faith, care and what I truly believed was in the best interest of the cooperative for the benefit of all the members.

It is my opinion that Attorney Foster's report is an attempt, in concert with the lame duck trustees and their attorney to distort the truth and deny that their suit filed on June 29, 2010 and signed by then co-op President, Paul Bustamante (copy attached) did not exist. His report's objective is to influence a few gullible people and perhaps the new trustees, that I am the bad guy and that those former trustees rejected by the members of their district in the 2013 election cycle, are not guilty of gross disloyalty.

No amount of four flushing can change the facts.

Submitted by Charlie Wagner, Trustee

Socorro Electric Cooperative, Inc.

**Notice:** I am not the spokes person for the SEC. The official spokes person is Louis Aguilar, President, until 12/31/2013. He can be reached until then on line. >[District3@socorroelectric.com](mailto:District3@socorroelectric.com)<

Attachment: Court Document SECvWest No.D1314cv2010-849