

Minority Report, October 7, 2013

By Charlie Wagner, Trustee

Socorro Electric Cooperative, Inc.

To: The Honorable Mayor and City Council of Socorro, NM:

Dear Mayor and Commissioners:

Please be advised that although Socorro Electric Cooperative (SEC), is an income tax exempt cooperative under the Internal Revenue Code Section 501 (c)(12), the duty to pay state and local taxes is acknowledged.

Any tax based on revenue must recognize that only revenue which is derived from meter readings of meters installed on locations within the city limits of Socorro is subject to the levy. Meters outside of the city are subject to taxes and fees of those other jurisdictions. Any donations unlawfully made to any governmental subdivision of the City of Socorro should be treated as a credit against taxes and fees or refunded to the SEC. It is not the function of SEC to overrule the authority of the City Council's responsibility for funding city services.

Please be aware that to maintain tax exempt and cooperative status under this code the income must be collected solely to meet the cooperative's losses and expenses. Losses are the inadvertent and unexpected cost incurred due to accidental or natural disaster type causes whereas expenses are those costs incurred to increase revenue through operations. Our members have clearly expressed through the bylaws that the co-op limit donations to scholarships through the SEC Scholarship Foundation.

SEC is governed by a combination of federal and state laws and the bylaws which are approved exclusively through fair elections by its members-owners in compliance with the U. S. Supreme Court's "One person, one vote rule". SEC may currently be in violation of these laws for failure to meet the requirements of the Democratic Member Control Principle.

There are three basic principles or requirements to be met: **(1) democratic Member control;** (2) vesting in and allocating among the members all excess operating revenues over the expenses incurred to generate the revenues **(i.e. operating at cost)**; and (3) subordination of capital. These basic requirements apply to cooperatives described in section 501 (c) (12).

I thank you for taking this opinion into consideration.

Sincerely, Charlie Wagner