

# Thursday, August 6, 2009

## [OPINION: Letters to the Editor Aug. 6](#)

### Co-op Meeting Was Falsely Adjourned

To the Editor:

During the 2009 Socorro Electric Cooperative annual members meeting, a ruling by the co-op's two attorneys effectively blocked the members' right to hear reports, vote on resolutions and act on other business that would have come before the meeting. The two attorneys, Joanna Aguilar and Paul Kennedy, who were engaged to represent the best interests of the cooperative and its members, ruled that the "meeting failed to have a quorum." In my opinion, supported by provisions of New Mexico's Rural Electric Cooperative Act and SEC's Bylaws, they made a bad and costly call.

Each year, the board spends between \$20,000 and \$30,000 to put on the members meeting. For the past five years, the members were told the meetings must be adjourned for lack of a quorum, which means no business can be conducted. No resolutions by members can be introduced. No alterations or amendments to the bylaws can be proposed. No financial statements analyzed and no member's questions considered.

Door prizes can be distributed by trustees playing the role of Santa, giving some of what belongs to all of us to a few of us. Each trustee takes turns trying to curry favor with prize winners, as if he was being generous with his own money. The trustees' generosity is far greater when self dealing. Before each annual meeting, trustees treat themselves and their guests to a cocktails-included steak dinner at one of Socorro's fine restaurants. The tab to the co-op is usually between \$1,800 and \$2,500.

They celebrate in advance, the likely chance that by applying a false quorum standard, the members will be left out of the annual meeting. For the previous five years, it has worked for them.

You may want to get out your copy of SEC's bylaws now (or go to [www.socorroelectriccoop.org](http://www.socorroelectriccoop.org) to download a copy). Everyone who buys electric power from SEC should be interested in checking out the charge I just made. Especially if you are a judge, lawyer, a mayor or other elected official in the five-county service area, who has a responsibility to protect the public interest, or if you are the financial officer of an institution, business, school, etc., that uses a lot of electricity. Each consumer has a stake in knowing that the co-op operates ethically and efficiently to keep power cost down. You will want to know the truth about why there has been no annual members meeting since 2004.

Here is the evidence: Article III of the bylaws, Meetings of the Members, Section 6, quorum at all meetings, states: "3 percent of the total number of members registered shall constitute a quorum. If less than a quorum is registered at any meeting, a majority of those registered may adjourn the meeting from time to time without further notice. The minutes of each meeting shall contain a list of the members registered. These provisions shall apply equally to district meetings as well as general meetings of the members."

From the unapproved minutes of the annual meeting April 25, 2009, reviewed by Joanna Aguilar, attorney, before being released to me are these selected items:

- Member registration was held from 5 p.m. to 7 p.m.
- President Paul Bustamante closed member registration.
- President Bustamante announced that 291 members were required for a quorum and that 336 members registered for the meeting.

Note: 3 percent of 336 equals 10.08, so Bylaw Article III, Section 6 above places the quorum at the minimum of 10 members present and voting. When Harold Baca falsely announced the lack of a quorum, the minutes state that "244 members were counted as present." That number is 24 times greater than the 10 members needed. (Where does it say that 3 percent of the total cooperative is necessary to have a quorum?) If 291 members were necessary to have a quorum, the number of members registered would have been the product of 291 divided by 0.03, which equals 9,700, which is about the total co-op membership. So what does state law allow?

Chapter 62, Article 15 NMSA 1978, called the "Rural Electric Cooperative Act," is the primary state law that recognizes and enables electric cooperatives in New Mexico. Under that law, authority for the adoption of bylaws is established by the following: "The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter, bylaws shall be adopted, amended or repealed by the majority of the members present at any regular meeting or special meeting for that purpose, a quorum being present. The bylaws shall set forth the

rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this act or with its articles of incorporation.”

SEC’s bylaws are consistent with that law because they grant exclusive power over adoption, amendment or repeal of bylaws to members. In addition, the law requires a majority of members present at any regular or special meeting to make such alterations, adoption, amendment or repeal when a quorum exists. According to the bylaws, a quorum was in place throughout the April 25 annual meeting. The two attorneys, with Mr. Bustamante and Mr. Baca agreed to represent to the members present, a mistaken or deliberately false interpretation of the bylaws. Consistent with the theory of deliberate falsification is the fact that the chairman of the meeting, Bustamante, would not recognize “point of order” calls from the floor but did recognize a motion to adjourn, as if it was part of a plan to scuttle the meeting, which it did. What will the law permit regarding quorums at members meetings?

Consulting New Mexico’s “Rural Electric Cooperative Act,” here is what we find:

Ch. 62, Art. 15, defines quorums permitted in bylaws. It states: “5 percent of all members present in person constitutes a quorum for the transaction of business at all meetings of members, unless the bylaws prescribe the presence of a greater or lesser number of members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice. The failure to hold a meeting of members due to the absence of a quorum shall not affect the validity of any business conducted by the board of trustees.”

SEC bylaws conform to this law. The difference in words used needs only slight explanation. “Registration,” used in SEC’s bylaws is the process by which the “presence in person” of the members is recorded. The word “registered” as used in the bylaw is the equal to “present in person” as used in the law. “Registered,” when used in the bylaws’ phrase “3 percent of the total number of members registered shall constitute a quorum,” means “3 percent of the total number of members present in person shall constitute a quorum.” Neither the law nor the bylaws refers to a percentage of the total member population of the cooperative in determining quorum. That concept in connection with SEC’s bylaws is the device of those who are opposed to the interest of the cooperative, in pursuit of their own interest.

Sorry, Paul, Harold and attorneys, that is not in SEC’s bylaws, articles of incorporation, state law, federal law or the U.S. Constitution. This fraudulent, nonexistent authority for establishing a fictitious quorum may have been used for several years to prevent member participation and democratic control by members, which federal law requires. It has prevented members from playing any role in controlling or participating in the governance of their cooperative, because they have been denied participation in the business of their co-op.

This is an additional example of the majority of the board’s disobedience of the bylaws, such as Article V, Section 8’s duty to assure equitable representation; Article VIII, section 2’s duty to annually notify members of their capital credits allocations; and the fiduciary duty to provide for adequate, open, fair and equal voting rights in elections, just to mention a few, which confirms their bad faith.

Over the years, SEC’s assets have been wasted on annual meetings that failed to produce quorums. An honest approach to understanding the bylaws and a genuine interest in serving the best interest of the membership would have conserved assets lost to such foolishness. The question is how do we as a co-op recoup those wasted assets? Who is going to reimburse the co-op for the mistakes of the attorneys, trustees, manager and others involved over several years of abuse?

The abrupt adjournment of the annual meeting was improper and denied a vote on the resolutions passed at the District V meeting in October, 2008, to have open meetings, to cut the size of the board from 11 to seven and the number of board meetings from two to one a month. The subject of term limits would also have been raised along with obeying the bylaws’ mandate to equalize voting districts to give each person’s vote equal weight. These are the types of reforms that are working their way through other New Mexico co-ops.

The members of the SEC must bear in mind that they own this co-op and must be ready to act in the best interest of themselves and their neighbors. They must attend meetings, vote for reform candidates in elections and demand ethical behavior, accountability and transparency from the board and co-op management.

Sincerely,

*Charlie Wagner*  
*District V Trustee*  
*Magdalena*