

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE FILING OF ADVICE)
NOTICE NO. 69 BY SOCORRO ELECTRIC) Docket No. 18-00383-UT
COOPERATIVE, INC.)

ORDER PROPOSING MODIFICATION TO THE STIPULATION

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the Certification of Stipulation (Certification”) issued January 12, 2026 by Hearing Examiners Christopher Ryan and Jocelyn Barrett, and upon the Uncontested Stipulation (“Stipulation”) filed on November 7, 2025 entered into by Socorro Electric Cooperative, Inc. (“SEC”), Utility Division Staff of the New Mexico Public Regulation Commission (“Staff”), the City of Socorro (the “City”), New Mexico Institute of Mining and Technology (“Tech”), and residential customer Donald J. Steinnerd.

The Commission proposes modifications to the Stipulation imposing a portion of the penalty on SEC and establishing a framework providing for penalty forgiveness based on compliance throughout the term of the Stipulation.

BACKGROUND

1. SEC serves approximately 8,600 customers over an area that includes seven counties.¹ It has approximately 3,314 miles of distribution line, which equates to roughly 2.6 members per mile.² This is, according to SEC, “much less than the number of customers per mile of line of the larger investor-owned utilities.”³ SEC’s challenges include the fact that it is a

¹ Direct Testimony of Manuel J. Gonzalez at 4.

² *Id.*

³ *Id.*

provider of service to a rural area and that its members are geographically dispersed.⁴ Many of those members are also low-income.⁵

2. SEC filed the advice notices that set the 2018 rate case into motion on December 3, 2018.⁶ The rate-increase impact of the request for an average-use residential customer was projected to be about five dollars or just shy of six percent.⁷ SEC proposed to increase the customer charge by 51.67 percent.⁸ SEC also proposed a new \$5.00 monthly minimum-use charge for residential, small commercial, and energy thermal storage classes.⁹

3. At the end of November 2018 (before SEC had even filed the advice notices with the Commission), an SEC member filed a letter asserting that the rate increase SEC intended to file was “fundamentally flawed” and a product of “mismanagement.”¹⁰ The commenter identified himself as “[a]n unhappy member” of SEC and contended that the co-op had been mismanaged for “many years.”¹¹

4. On December 4, 2018, a day after SEC filed its rate-increase request, the City filed a protest.¹² It asserted that the new, increased rates would have a “negative impact” on the City and that the proposed rates are not “just and reasonable.”¹³

⁴ *See id.*

⁵ *See id.*

⁶ Advice Notice No. 69, Advice Notice No. 70, and Advice Notice No. 71 (Dec. 3, 2018).

⁷ Recommended Decision (Aug. 15, 2019) at 9.

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ Protest to Proposed Rate Increase (Nov. 28, 2018) (describing the protest of J. Lopeman).

¹¹ *Id.*

¹² City Of Socorro, NM Protest of Socorro Electric Coop. Revision of Its Retail Electric Rates (Dec. 04, 2018).

¹³ *Id.*

5. On December 12, 2018, thirty SEC members filed protests.¹⁴ An additional protest¹⁵ was filed on December 14, 2018, and thirteen more on December 18, 2018.¹⁶

6. On December 19, 2018, the Commission suspended the proposed rates contained in the advice notices.¹⁷

7. Three additional, individual protests were filed on December 21, 2018.¹⁸

8. New Mexico Institute of Mining and Technology (“Tech”) filed its protest on December 21, 2018.¹⁹ It objected that its electric costs had “more than doubled in the past decade,” and that even higher rates would be problematic for Tech’s finances.²⁰ Tech argued that the rate increases could impact the economic development in Socorro that Tech was trying to incentivize.²¹

9. On January 3, 2019, SEC filed a response to the protests.²² SEC asked the Commission to dismiss the protests of the residential members, the City, and Tech. SEC emphasized that the requests included in the filing were just and reasonable as they were intended to set rates that more closely recovered cost of service, reduced intra-class subsidies, and reduced

¹⁴ Protests of Residential Ratepayers (30) (Dec. 12, 2018). The individuals included L. Pineda, Jr.; R. Chavez; C. Lukesh; S. Saavedra; M. Lara; A. Gonzales; T. Jaramillo; A. Baca, Jr.; I. Angel; D. Aragon; R. Bhasker; C. Stewart-Roache; N. Feraldi; D. Monette; M. Salazar; J. Sedillo; L. Chavez; R. Lopez; S. Hinojosa; D. Murietta & T. Jojola; V. Alvarado; T. Rivera; J & B DiCosta; J. Rivera; J. Valencia; Z. Anaya; M. Tarango; S. Anaya; B. Anaya; V. Alonzo.

¹⁵ Protest to Proposed Rate Increase (Dec. 14, 2018) (protest of J. Quaranta).

¹⁶ Protests of Residential Ratepayers (13) (Dec. 18, 2018). The protesting individuals included M. Gonzales; A. Salome; S. Vivian; O. Acosta; J. Padilla; D. Silva; E. Trujillo; J. Peralta; J. Griego; J. Flores, Jr.; T. Montoya; D. Guttierrez; S. Standiford.

¹⁷ Order Suspending Proposed Rates (Dec., 19, 2018).

¹⁸ Protests of Residential Ratepayers (2) (Dec. 21, 2018). The protesters included C. Baca and R. & M. Serna. A separate protest was filed by D. Steinnerd on this same day.

¹⁹ Protest by NM Institute of Mining & Technology of Increased Rates Proposed by Socorro Electric's A/N Nos. 69, 70 & 71 (Dec. 21, 2018).

²⁰ *Id.* at 3.

²¹ *Id.*

²² The Socorro Electric Cooperative, Inc.'s Objections to Rate Protests (Jan. 03, 2019).

SEC's throughput incentive.²³ SEC also alleged that many of the protests were the product of an orchestrated campaign led by City political leadership who, according to SEC, had voiced a desire to "take over" SEC's service territory.²⁴

10. Over the next several months, Commission personnel received additional public comments urging the Commission to reject SEC's rate-increase request. One commenter alleged that board and annual meetings had been "highly contentious," the general manager's compensation excessive, SEC's member services non-responsive, and that SEC was a "rogue organization."²⁵

11. In the order assigning a hearing examiner, the Commission found that the issues raised in the 50 protests constituted just cause for investigating the proposed rates and for holding a hearing to determine whether those rates were fair, just, and reasonable.²⁶

12. The City requested that the Commission schedule a public comment session in Socorro prior to the scheduled hearing.²⁷ SEC opposed this request on grounds that sufficient process for public comment had already been given and anyone wishing to file any new comments could do so in writing or at the opening of the public hearing.²⁸ The Commission granted the City's request.²⁹ The questions and comments SEC received from the members who appeared reveal

²³ *Id.* at 10, 17.

²⁴ *Id.* at 2.

²⁵ Comments (4) (Jan. 08, 2019). See the comment of Paul Stoehr.

²⁶ See generally Initial Order Appointing Hearing Examiner (Jan. 23, 2019) (citing the Commission's statutory authority to suspend and review new rates proposed by rural electric cooperatives upon the filing of protests from either one percent of or twenty-five members of a customer rate class, whichever is less, and after the Commission determined that there is just cause for reviewing the proposed rates on one or more of the grounds of the protests); see also NMSA 1978, §62-8-7(H) (2011).

²⁷ City of Socorro's Motion Requesting the Public Regulation Commission Schedule Public Comment in Socorro, NM (Mar. 08, 2019).

²⁸ SEC's Response in Opposition to City of Socorro's Motion Requesting the PRC Schedule Public Comment in Socorro, NM (Mar. 21, 2019).

²⁹ Order Scheduling Public Comment Meeting (May 08, 2019).

fundamental misalignment in perception between SEC and its members about the need for and equity associated with the proposed rate increase.³⁰

13. A public hearing was conducted on June 24, 25, and 26 of 2019. The hearing examiner issued a Recommended Decision (“RD”) in mid-August 2019.

14. The RD began with recognition that, because rural electric cooperatives do not have investors, the interests to be balanced in a co-op rate case are the interests of cooperative management and co-op members.³¹ The RD then recommended that the Commission deny the rate request due to the fact that SEC’s self-identified revenue requirement and the as-proposed rates do not appropriately balance those interests.³² The RD went on to offer recommendations about SEC’s allocation of cost to the co-op’s varying classes.³³ Modifications were proposed to SEC’s proposals in order “to gradually move toward each [c]lass paying its cost of service.”³⁴ The RD accepted that increased revenue should be collected from the residential and other classes that were and are subsidized by the large commercial and load management service class, but the RD independently judged what constitutes a just and reasonable allocation of costs and how much movement towards unity is necessary and desirable.³⁵ The RD also advocated that the Commission reject SEC’s proposed minimum use charge and residential customer charge.³⁶ The RD proposed a smaller increase for the customer charge.³⁷ Lastly, the RD concluded that Tech had shown that it was in the public interest for SEC to develop and implement an economic

³⁰ See Transcript of Proceedings 06/03/2019 Hearing (Jun. 18, 2019).

³¹ Recommended Decision (Aug. 15, 2019) at 13.

³² *Id.* at 13- 14.

³³ *Id.* at 14-16.

³⁴ *Id.* at 15.

³⁵ *Id.* at 15-16.

³⁶ *Id.* at 17-18

³⁷ *Id.*

development rate.³⁸ The RD determined that the Commission should order SEC to initiate the process of offering that rate.³⁹

15. SEC’s principal argument in their exceptions to the RD concerned the power of the Commission over co-ops and their rates.⁴⁰ SEC argued that the RD was directing “the Commission to exceed its statutory authority and . . . substitute its judgment for that of SEC’s duly elected” board.⁴¹ SEC also objected to the RD’s assessment of the board’s ability to identify policy objectives and pursue them in rates. SEC argued that “New Mexico rural electric cooperatives are largely self-governing entities invested with the authority . . . to govern themselves”⁴² and that co-op members have control over and may exercise control of their co-op by exercising “their ability to elect their trustees to represent them on the cooperative’s board.”⁴³

16. The Commission, in its final order, approved the RD in its entirety and rejected SEC’s contention that the Commission did not have authority to independently amend SEC’s rates through scrutiny of the cost-of-service study, allocation factors, and rate design inquiry.⁴⁴ The final order concluded that “the Commission is not required to use the method favored by SEC’s [b]oard nor is the Commission required to simply ratify the[ir] plans and objectives. . . .”⁴⁵

17. After the final order was issued, SEC filed a notice of appeal with the New Mexico Supreme Court⁴⁶ and, at the same time, filed a motion with the Commission to stay the final order adopting the RD in its entirety during the pendency of the appeal.⁴⁷ In the motion to stay filed

³⁸ *Id.* at 19.

³⁹ *Id.*

⁴⁰ The Socorro Electric Cooperative, Inc.’s Exceptions to Recommended Decision (Aug. 15, 2019).

⁴¹ *Id.* at 2.

⁴² *Id.* at 6.

⁴³ *Id.* at 6-7.

⁴⁴ Final Order Adopting Recommended Decision (Sept. 11, 2019).

⁴⁵ *Id.* at 10.

⁴⁶ The Socorro Electric Cooperative, Inc.’s Notice of Appeal (Oct. 11, 2019).

⁴⁷ SEC’s Expedited Motion to Stay Pending Appeal and Brief in Support Thereof (Oct. 11, 2019).

with the Commission, SEC contended that the modifications to its cost of service and the changes to SEC's rates contained in the RD and then adopted in the final order would cause SEC irreparable injury.⁴⁸

18. Intervenors filed responses to the motion to stay. In their response the City and Tech disagreed with SEC.⁴⁹ They argued that the rate modifications imposed by the RD and final order would benefit them, and that failure to impose those rates is the thing that would produce harm.⁵⁰

19. The Commission denied SEC's request for the stay. The Commission concluded that the RD correctly determined that SEC's requested rates should not be approved, that the Commission did have authority and the obligation to determine what rates are just and reasonable, and that imposition of the rates set by the RD and final order would not irreparably harm SEC but would, in fact, have a positive effect in that the City and Tech were entitled to receive the benefit of the rates as set out in the RD and adopted by the Commission.⁵¹

20. After the Commission denied the motion to stay, SEC then asked the Supreme Court to stay the imposition of the Commission's final order pending appeal.⁵² The Commission,

⁴⁸ *Id.* at 3-4.

⁴⁹ City of Socorro & NM Institute of Mining & Technology's Joint Response to Motion for Stay (Oct. 24, 2019).

⁵⁰ *Id.* at 2.

⁵¹ Order Denying SEC's Expedited Motion To Stay Pending Appeal (Oct. 30, 2019).

⁵² SEC's Motion to Stay Pending Appeal and Brief in Support Thereof (Nov. 12, 2019).

Tech, and the City filed responses with the Court in opposition to SEC's request for the stay.⁵³ The Court declined to rule on SEC's motion to stay.⁵⁴

21. In April 2020, the City, Tech, and Commission Staff filed a motion asking the Commission to compel SEC to comply with the Commission's final order in the rate case.⁵⁵ The motion argued that "SEC has taken no action on any of the requirements of the [f]inal [o]rder, including the requirement that SEC start the process for offering an economic development rate."⁵⁶

22. In response to the motion to compel, SEC argued that the motion to compel should be denied given the fact that "the appeal of the RD is pending before the New Mexico Supreme Court, which has not addressed SEC's request for stay of the proceedings during the pendency of the appeal."⁵⁷ SEC's position seems to have been that until the Court denied the motion, there was effectively a motion in place that functioned like a stay.⁵⁸

23. The joint movants then filed a reply explicitly stating what seemed apparent from SEC's response: that SEC appeared to have taken the position "with no supporting authority . . . that the mere fact that it asked the Supreme Court for a stay should be treated the same as the

⁵³ New Mexico Public Regulation Commission's Response in Opposition to Socorro Electric Cooperative, Inc.'s Motion to Stay Pending Appeal (Nov. 27, 2019); New Mexico Institute of Mining and Technology's Motion to Provisionally File Response To Socorro Electric Cooperative's Motion To Stay Pending Appeal (Nov. 27, 2019); City of Socorro's Joinder in New Mexico Public Regulation Commission and New Mexico Institute of Mining and Technology's Responses to Socorro Electric Cooperative, Inc.'s Motion to Stay Pending Appeal (Jan. 10, 2020).

⁵⁴ New Mexico statute provides that "[t]he pendency of an appeal shall not of itself stay or suspend the operation of the order of the commission, but, during the pendency of such proceedings, the supreme court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order . . ." NMSA 1978, § 62-11-6 (1983) (emphasis added).

⁵⁵ City Of Socorro, NM Tech, and Staff's Joint Verified Motion to Compel (Apr. 03, 2020).

⁵⁶ *Id.* at 3.

⁵⁷ The Socorro Electric Cooperative Inc.'s Response in Opposition to Motion to Compel (Apr. 10, 2020).

⁵⁸ *See id.* at 2.

Supreme Court actually granting the requested stay.”⁵⁹ The joint movants suggested that the Commission fine SEC and require SEC’s board to pay those fines as they were responsible for the noncompliance.⁶⁰

24. The Commission agreed with the joint movants and entered an order granting the motion to compel and imposing fines.⁶¹ The Commission determined that SEC had not complied with the final order.⁶² The Commission agreed that monetary fines were appropriate, and that any fines should be paid by SEC’s board.⁶³ The Commission determined the finable amount was 185 days times \$1,000 per day or \$185,000.⁶⁴ The Commission then clarified that it would waive this fine if SEC showed compliance with the final order in the rate case within sixty days.⁶⁵

25. About three weeks after the Commission issued the order on the motion to compel and imposed the fines, SEC filed an emergency petition for writ of mandamus with the Supreme Court asking the Court to “grant the writ and stay the enforcement of the Final Order and the Compliance Order....”⁶⁶ Roughly three weeks later, SEC and the Commission filed a joint motion with the Supreme Court asking that SEC’s mandamus action and SEC’s appeal of the compliance order both be stayed to allow the Commission opportunity to “modify and or withdraw the [c]ompliance [o]rder.”⁶⁷

⁵⁹ City of Socorro, NM Tech, and Staff’s Joint Reply to SEC’s Response to Motion to Compel (Apr. 13, 2020) at 3.

⁶⁰ *Id.* at 10.

⁶¹ Order Granting the City of Socorro, Tech, and Staff’s Joint Motion to Compel Socorro Electric Cooperative to Comply with the Final Order and Order Assessing Fines for Non-Compliance (Apr. 15, 2020).

⁶² *Id.* at 6.

⁶³ *Id.* at 7.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Emergency Verified Petition for Writ of Mandamus and Request for Stay (May 08, 2020).

⁶⁷ Joint Motion of the Socorro Electric Cooperative, Inc. and the New Mexico Public Regulation Commission to Temporarily Stay Emergency Writ, Temporarily Stay Appeal of Compliance Order and Remand (May 29, 2020).

26. In August 2020, the City, Tech, and Commission Staff asked the Commission to request the Attorney General to take enforcement measures against SEC.⁶⁸ SEC opposed this request and made some notable criticisms of the moving parties in its response.⁶⁹ SEC objected that Commission Staff has “sent conflicting messages and taken inconsistent positions during this proceeding.”⁷⁰ SEC asserted that Staff initially supported SEC’s rate proposal but then “changed its position midstream.”⁷¹

27. SEC once more argued that the protests to its initial rate filing in 2018 were illegitimate and the product of a campaign orchestrated by the City.⁷²

28. Towards the end of the response, SEC argued that the intervenors’ objections to SEC’s noncompliance were legally illegitimate. SEC explained that “[m]ovants are essentially displaying their impatience and complaining that they are tired of waiting for the Supreme Court to act on the case, whining like a child to a parent to buy him/her something at the grocery store. The system of justice and enforcement of the law do not work that way.”⁷³

29. The Commission rejected the joint movants’ request to seek AG enforcement and concluded that the better option was to get the Supreme Court to stay the mandamus action and allow the parties to negotiate the compliance order.⁷⁴ The parties took steps that resulted in the Supreme Court remanding the writ and compliance-order issues to the Commission.⁷⁵ A

⁶⁸ City of Socorro, New Mexico Tech, and Staff’s Joint Motion to Direct Attorney General to Commence Mandamus Proceeding (Aug. 06, 2020).

⁶⁹ The Socorro Electric Cooperative, Inc.’s Response in Opposition to The City of Socorro, NM Tech & Staff’s Joint Motion to Direct Attorney General to Commence Mandamus Proceeding (Aug. 19, 2020).

⁷⁰ *Id.* at 4.

⁷¹ *Id.* at 5.

⁷² *Id.*

⁷³ *Id.* at 7.

⁷⁴ Order Denying City of Socorro, New Mexico Tech, and Staff’s Joint Motion to Direct Attorney General to Commence Mandamus Proceeding (Aug. 26, 2020).

⁷⁵ Order NMSC Case No.37958 (Jan. 26, 2022)

considerable period of time—almost eighteen months—elapsed between the Commission’s rejection of the AG-enforcement action and the remand from the New Mexico Supreme Court. On remand, the Commission directed SEC, the City, Tech, and Staff to answer a set of questions to assess their positions on the final order and SEC’s compliance/noncompliance with it.⁷⁶ In the City and Tech’s joint response, they pointed out that under the methodology of the initial compliance order, the fines against SEC had ballooned to \$866,000.⁷⁷

30. In March 2022, the Commission filed a revised compliance order and an order to show cause.⁷⁸ This revised compliance order did four notable things. First, it directed SEC to mail a notice to each of its members describing SEC’s unlawful refusal to impose the rates approved by the Commission.⁷⁹ The notice explained that SEC management’s decisions caused the co-op to incur fines that SEC’s members would have to pay.⁸⁰ Second, the Commission found that SEC’s continued use of rates other than those authorized by the Commission was not in the public interest.⁸¹ SEC was ordered to show cause why it should not record, as of the effective date of the final order in the 2018 rate case, regulatory assets or liabilities for each customer class to account for what was due or owing from each class had SEC imposed the rates in the final order.⁸² Third, the Commission determined that it should issue a cease-and-desist order requiring SEC to stop billing customers in violation of the final order in the 2018 rate case.⁸³ Fourth, the Commission

⁷⁶ Initial Order on Remand (Feb. 09, 2022).

⁷⁷ City Of Socorro’s and New Mexico Institute Of Mining and Technology’s Joint Verified Response to Initial Order on Remand (Feb.23, 2022).

⁷⁸ Revised Compliance Order, Order to Show Cause Why SEC Should Not Book as Regulatory Assets or Regulatory Liabilities the Amounts Not Billed in Violation of the Final [sic.] and Order for SEC To Cease And Desist Its Violation of the Final Order (Mar. 20, 2022).

⁷⁹ *Id.* at 14.

⁸⁰ *Id.* at Exhibit A.

⁸¹ *Id.* at 12.

⁸² *Id.* at 13.

⁸³ *Id.*

indicated its intention to designate a hearing examiner to preside over the show cause and cease and desist proceedings.⁸⁴ The Commission did indeed later appoint a hearing examiner.

31. In response to this order, SEC filed with the Commission an emergency motion to stay the revised compliance order.⁸⁵ This motion was filed on the day SEC was supposed to circulate the letter to its members contemplated by the revised compliance order.⁸⁶

32. On the same day SEC filed its second emergency motion to stay the revised compliance order, SEC also filed another emergency petition for writ of mandamus with the Supreme Court asking the Court to stay the enforcement of the revised compliance order.⁸⁷

33. Staff filed a response to SEC's motion to stay.⁸⁸ Staff noted that SEC is "subject to the regulation of the Commission" and is "bound to follow the directives" contained in lawful Commission orders.⁸⁹ Staff further argues that SEC should not and "cannot be allowed to simply ignore the rate design set by the Commission" Staff then went on to lay out three items that they thought were a path to resolution.⁹⁰

34. First, Staff recommended that SEC should immediately file an advice notice that proposed rates consistent with the final order of the 2018 rate case and then implement those Commission-approved rates within thirty days.⁹¹ Second, Staff stated that if SEC filed the advice notice, then Staff would not object to the Commission waiving or removing its requirement that

⁸⁴ *Id.*

⁸⁵ SEC's Second Emergency Motion to Stay to Prevent Imposition of the Requirements of the Revised Compliance Order Etc., Issued March 30, 2022 (Apr. 07, 2022).

⁸⁶ Staff's Response to SEC's Motion for Stay (Apr. 15, 2022) at 2.

⁸⁷ SEC'S Second Emergency Verified Petition for Writ of Mandamus, or in the Alternative Writ of Prohibition, or in the Alternative Writ of Superintending Control, and Appeal of the PRC's Revised Comp [sic.], (Apr. 26, 2022).

⁸⁸ Staff's Response to SEC's Motion for Stay (Apr. 15, 2022).

⁸⁹ *Id.* at 1.

⁹⁰ *Id.* at 1-3.

⁹¹ *Id.* at 1.

SEC send the notice attached as an exhibit to the revised compliance order to SEC's members.⁹² Third, if SEC filed the advice notice, then Staff would also recommend that the fines arising from the initial compliance order be revisited upon ultimate resolution of SEC's Supreme Court appeal of the final order of the 2018 rate case.⁹³

35. In May 2022, Staff and SEC filed a stipulation with the Commission indicating their joint amenability to the terms of compromise proposed by Staff.⁹⁴ The Commission approved the stipulation in mid-May 2022.⁹⁵ A month later, in June 2022, SEC and Staff filed a compliance notice informing the Commission that the terms of the stipulated agreement between SEC and Staff had been executed.⁹⁶

36. On June 10, 2024, the New Mexico Supreme Court issued its formal opinion on the question (stemming from the 2018 SEC rate filing) of the Commission's authority to impose modified rates in an electric co-op rate case.⁹⁷ The case was resolved in the Commission's favor, clarifying the scope of the Commission's rate setting power over co-ops.

37. After the Court issued its mandate, the Commission issued an initial order on remand⁹⁸ outlining two issues that still needed to be resolved. First, the Commission had to determine how to correct the accounts of those customers who were charged improper rates from September 11, 2019, to June 3, 2022.⁹⁹ Second, the Commission had to revisit the question of the fines that were imposed in the compliance order and then modified in the revised compliance

⁹² *Id.* at 2.

⁹³ *Id.*

⁹⁴ Stipulation (May 11, 2022).

⁹⁵ Order Approving Socorro Electric Cooperative's and Staff's Stipulation (May 18, 2022).

⁹⁶ The Socorro Electric Cooperative, Inc. and Staff's Joint Notice of Compliance (Jun. 21, 2022).

⁹⁷ *Socorro Elec. Coop., Inc. v. New Mexico Pub. Regulation Comm'n*, 2024-NMSC-017, 557 P.3d. 68.

⁹⁸ Initial Order Remand Order [sic.] Requiring Accounting for Period of Non-Compliance of Final Order, and Second Order to Show Cause (Oct. 31, 2024).

⁹⁹ Note that this June date is the date SEC started charging the correct, Commission-authorized rates.

order.¹⁰⁰ The Commission directed SEC to produce data reflecting billing that would have been in effect had the final-order rates been implemented when they should have been.¹⁰¹ As to the question of fines, the Commission determined that it was “appropriate to allow SEC another opportunity to show cause as to why a \$948,000 [fine] should not be imposed upon SEC for its continuous and blatant violation of the Commission’s final order.”¹⁰²

38. In its response to the Commission’s initial order on remand, SEC suggested that it was the Supreme Court’s fault that SEC did not impose the rates authorized by the Commission at the end of the 2018 rate case.¹⁰³ Here is the exact language SEC used to make the point: “SEC is not responsible for the six-year delay in this case. The Supreme Court failed to address SEC’s motion to stay the effectiveness of the Final Order.”¹⁰⁴ Of course, this argument rests on the flawed notion, which SEC relied upon throughout these proceedings, that when the Court declines to grant a stay, a stay exists until a decision is issued saying otherwise.

39. In the paragraphs that followed this claim, SEC nevertheless informed the Commission that the impact of SEC’s refusal to charge the rates approved by the Commission meant that SEC members now owed SEC “in excess of \$4,000,000.00 from rate payers in most rate classes.”¹⁰⁵

40. As to the question of fines, SEC generally objected to what it perceived as needless inconsistency in Commission directions. SEC wrote that “[t]he PRC initially found that SEC had consciously violated the [f]inal [o]rder by failing to implement the rates dictated without any

¹⁰⁰ Initial Order Remand Order [sic.] Requiring Accounting for Period of Non-Compliance of Final Order, and Second Order to Show Cause at 9.

¹⁰¹ *Id.* at 13.

¹⁰² *Id.* at 12.

¹⁰³ SEC’s Response in Opposition to The PRC’s Order to Show Cause Why SEC Should Not Be Fined (Dec. 03, 2024).

¹⁰⁴ *Id.* at 2.

¹⁰⁵ *Id.* at 4.

evidence of why SEC made this decision.”¹⁰⁶ SEC then went on to emphasize that, since entering the compromise with Staff, it had “been in compliance with the [f]inal [o]rder of the PRC.”¹⁰⁷

41. According to SEC, these events show that “[t]he question remains whether there is any justification for imposing the draconian fines on the members of SEC.”¹⁰⁸ SEC asserted that “[a]t no point during this lengthy litigation was there any evidence or argument that the trustees were not acting in what they believed were the best interests of the members and managing SEC efficiently.”¹⁰⁹

42. After SEC filed its response to the Commission on what should occur post-remand, the City and Tech submitted a joint response to SEC’s response to the Commission’s initial order on remand.¹¹⁰ In the joint response, the City and Tech asserted that, “[a] review of the accounting of revenues during the rate non-compliance period in SEC’s Response . . . reveals key mistakes in the calculation of what it alleges is close to \$4 million in under-collection.”¹¹¹ The City and Tech add that SEC’s claim that it undercharged certain classes \$4 million during the time it declined to impose the approved 2018 rates “is lacking credibility.”¹¹² There was evidence already available that indicated SEC was overstating anticipated revenue to the tune of \$3.2 million. The City and Tech described with reference to specific aspects of SEC rate setting how they reached their position and pointed out that their experts would “require SEC to provide the

¹⁰⁶ *Id.* at 7.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 8.

¹¹⁰ City of Socorro’s And New Mexico Institute Of Mining And Technology’s Verified Joint Response to (1) Commission Orders on Remand, Requiring Accounting and to Show Cause, and (2) Socorro Electric Cooperative, Inc.’s Response in Opposition to Order to Show Cause (Jan. 09, 2025).

¹¹¹ *Id.* at 4.

¹¹² *Id.* at 5.

detailed calculations and source data” to fully review SEC’s accounting and form any final opinion about over or undercharging.¹¹³

43. Putting that point aside, the City and Tech then persuasively argued that “regardless of the ultimate amount of purported uncollected funds, any allowance of SEC to recover lost revenues should be resoundingly rejected as SEC is attempting to profit from its violation of the Public Utility Act and a duly issued final order.”¹¹⁴ The City and Tech then added that, as to fines, the Commission should take whatever action it can to recoup fines from sources other than SEC members.¹¹⁵ Lastly, the City and Tech noted that SEC’s “failure to consent to regulation and provide reliable service at just and reasonable rates would be grounds to revoke SEC’s operating authority.”¹¹⁶

44. About four months after the Commission received the City and Tech’s response, the Commission issued an order assigning new co-hearing examiners.¹¹⁷ That order directed the hearing examiners to take action necessary to issue a recommendation on the questions of rate reconciliation, fines, and ways fines might be paid that would not impact SEC members.¹¹⁸ The order also directed the hearing examiners to give the parties (as is customary in Commission proceedings) the opportunity to reach a stipulated resolution.¹¹⁹

45. On June 18, 2025, the hearing examiners issued an order setting guidelines for settlement discussions to provide structure for the parties in their attempts to reach a negotiated resolution.¹²⁰ By that time, SEC had procured new counsel to represent it before the Commission.

¹¹³ *Id.*

¹¹⁴ *Id.* at 6.

¹¹⁵ *Id.* at 8.

¹¹⁶ *Id.* at 10.

¹¹⁷ Order Assigning Co-Hearing Examiners (May 01, 2025).

¹¹⁸ *Id.* at 15-16.

¹¹⁹ *Id.* at 15.

¹²⁰ Order Setting Settlement Discussion Guidelines (Jun.18, 2025).

46. The parties finally reached an agreement about the stipulated terms of resolution of this lengthy case in November 2025.¹²¹

47. The hearing examiners issued the Certification recommending that the Commission accept the Stipulation.

DISCUSSION

48. The Commission proposes modifications to address Commission concerns that are not addressed in the Stipulation in its current state. The Stipulation does not adequately balance the Commission's interest in holding SEC accountable for the former board of trustees' egregious violations of the Commission's authority and the improvements made by SEC's current management. The Commission proposes modifications to address its concerns.

49. The Commission's procedural rules state that "[s]ettlement stipulations shall be binding only if approved by the Commission."¹²² The proponents of a stipulation have the burden of supporting it with sufficient evidence and legal argument to allow the Commission to approve it.¹²³ They must show that the stipulation is fair, just, reasonable, and in the public interest.¹²⁴ Implicit in the Commission's procedural rule is the Commission's authority to reject or call for an amendment to a stipulation.¹²⁵ The Commission's duty is an affirmative duty rather than passive,¹²⁶ justifying the Commission's ability to propose modifications to a stipulation when the

¹²¹ This order summarizes relevant background. The full electronic record of this proceeding is available at <https://e360.prc.nm.gov/portal/public/>.

¹²² 1.2.2.20 NMAC.

¹²³ *Id.*

¹²⁴ See Docket No. 23-00255-UT, Certification of Stipulation (Jun. 6, 2024) at 20 (noting that "the stipulation must be fair, just, reasonable, and in the public interest"). See also Docket No. 24-00271-UT, Certification of Stipulation (May 6, 2025) at 18, and Docket No. 24-00113-UT, Certification of Stipulation (Dec. 20, 2024) at 13.

¹²⁵ See 1.2.2.20(a)NMAC (allowing a hearing examiner to recommend amendments to a stipulation to meet a hearing examiner's reservations about the Stipulation).

¹²⁶ *Mountain States Telephone and Telegraph Company v. New Mexico State Corporation Commission*, 1977-NMSC-032, 90 N.M. 325 ("[I]t can hardly be envisioned that the commissioners would sit as spectators, like

Commission believes modifications are necessary. The Commission proposes modifications to the Stipulation to impose a penalty on SEC, provide for possible forgiveness of portions of the penalty, and allow SEC to pay the penalty amount that is ultimately due through whatever means SEC believes is appropriate.

A. The Stipulation should be modified to assess a penalty on SEC.

50. The Stipulation currently states that any penalty assessed by the Commission will be held in abeyance for three (3) years contingent on SEC's compliance with the provisions of the Stipulation, Commission orders, and State law.¹²⁷ As summarized in the background section of this order, SEC time and time again ignored the Commission's order and authority, not to mention the plain language of the law. SEC's conduct in this proceeding demonstrates an extraordinary and unparalleled disregard for Commission authority. The Commission fears the precedent that would be created if SEC were not penalized for its conduct.

51. Along with its important concerns about precedent, the Commission is simultaneously aware of the financial impact a \$948,000 fine may have on a rural electric cooperative whose resources are already strained to meet the challenges of serving large geographic areas with few customers. Accordingly, the Commission believes it is appropriate to assess only one-fourth of the total fine, or \$237,000, and allow SEC to pay that fine over the course of three years. SEC should provide the Commission with the dates of its penalty payment remittances and ensure that payments are made at least twice per year. The Commission proposes other provisions within this Order that may assist SEC in payment of the penalty.

Roman Emperors in the coliseum, and simply exhibit a 'thumbs-up or thumbs-down judgment as the dust of battle settles in the arena.'")

¹²⁷ Stipulation at ¶ 22.

B. The Commission is amenable to allowing for a gradual forgiveness of three-fourths of the fine based on compliance with the provisions of the Stipulation, as modified.

52. The Stipulation does not address what should happen to the penalty after the three-year abeyance period. The Stipulation only explains that any penalty that may be assessed by the Commission should be held in abeyance for three (3) years, contingent on SEC's compliance with the provisions of the Stipulation.¹²⁸

53. The Stipulation does not adequately advance resolution of the penalty issues, nor does it sufficiently recognize the current SEC management's efforts in correcting the wrongs committed by prior SEC management. Accordingly, the Commission proposes a framework that ties the fine or penalty amount to compliance with the Stipulation, as proposed to be modified herein, and reduces the penalty as specific milestones are met over the next three years.

54. The Commission proposes adding the following provisions to the Stipulation:

“As of the date of the Commission order approving this Stipulation, the fine against SEC is \$ 948,000.00. This fine is held in abeyance, except the \$237,000.00 as stated otherwise in this Stipulation. The fine amount will be reduced when and if the following milestones are achieved:

- a. Upon adoption of the bylaw changes agreed to in the Stipulation, the penalty will be reduced by \$237,000, which is one-fourth of the total penalty.
- b. Upon refunding the overbilled amount, the penalty will be reduced by another \$237,000.
- c. In the event all terms of the Stipulation have been fully implemented and carried out, including repayment of the overbilled amounts and payment of one-fourth of the penalty, any remaining portion of the fine that exists after three years of the order approving this Stipulation will be held null and void and fully forgiven.

¹²⁸ Stipulation at ¶ 22.

SEC shall file a status report once each of the above milestones has been met. The status report shall be supported by an affidavit from SEC. The Commission's Utility Division Staff shall meet with the parties and confirm the milestone has in fact been met. Staff shall submit confirmation of compliance into the record within 21 days of the status report. Upon receiving Staff's confirmation, the Commission will confirm the portion of the fine that has been forgiven, via Commission order."

55. SEC's ability to cure shall remain as originally contemplated in the original Uncontested Stipulation, whereby any noncompliance identified by the Commission may be petitioned to be cured by SEC within 30 days of notice of the violation, pending Commission approval. If the Commission does not allow SEC to cure a violation of this Stipulation as provided, the Signatories agree that the full amount of any *remaining* penalty held in abeyance shall automatically become due and owing and SEC shall immediately make arrangements with the Commission to accomplish the payment thereof.

C. The Stipulation should be modified to allow SEC to pay the penalty in a manner that it believes is in the best interest of the cooperative

56. The Stipulation states that any costs associated with the imprudent decisions that led to the period of noncompliance, mis-collected bills and *the accumulated penalties* will not be recovered from ratepayers, nor will these costs be used to justify any future rate increase.¹²⁹ Having determined that a penalty should be collected from SEC, the question then becomes how that penalty should be paid. The Commission had initially attempted to hold customers harmless, or at least not unduly burden the customers. The record in this case, however, demonstrates that there is sufficient basis for allowing SEC to recover the penalty from its members if SEC determines such recovery is necessary to satisfy the penalty. The other proposed modifications

¹²⁹ Stipulation at ¶ 18 [emphasis added].

within this order help ensure that penalties are not unduly burdensome for customers if SEC decides it must use customer payments to pay the penalty.

57. Members of a rural electric cooperative have the power to elect the board of trustees,¹³⁰ who have a duty to act in the best interest of the cooperative.¹³¹ A cooperative's bylaw may provide for the removal of trustees from office.¹³² In the absence of bylaws addressing the removal of trustees, the members still retain the ability to simply not re-elect a trustee.¹³³

58. In the Order Assigning Co-Hearing Examiners, the Commission stated that “[i]t would be contrary to principles of accountability to allow SEC to be completely insulated from penalties that stem directly from its own violations.”¹³⁴ The Commission has restated within this order, that it is also “acutely aware of the impact such penalties may have on SEC’s member-customers, who would ultimately bear the financial burden of SEC’s misconduct. It [was] with the customers in mind that the Commission [referred] the case to a hearing.”¹³⁵ The additional proceedings were set “to consider mechanisms for recovering the fine, and corrective actions that do not unduly burden member-customers.”¹³⁶

59. The record, as summarized in the Certification of Stipulation, shows that the tensions between SEC and its members predated the board of trustees' decision to disregard Commission orders. These issues culminated in an in-person public comment hearing held before the rate case hearing.¹³⁷ Despite the dissatisfaction with the board of trustees, only three of the

¹³⁰ See NMSA 1978, § 62-15-9(A).

¹³¹ See NMSA 1978, § 62-15-9.1

¹³² NMSA 1978, § 62-15-9(A).

¹³³ See generally NMSA 1978, § 62-15-9.

¹³⁴ Order Assigning Co-Hearing Examiners at ¶ 45.

¹³⁵ *Id.*

¹³⁶ *Id.* at ¶ 49.

¹³⁷ See Certification of Stipulation at 12-20.

nine trustees were not reelected following the in-person public comment hearing.¹³⁸ Of the remaining trustees who served during the period of non-compliance, five concluded their terms for reasons unrelated to the membership's decision whether to re-elect them, and one continues to serve on the board. This history reflects that, even when concerns were evident, the membership did not exercise its full authority to change the board of trustees.

60. Rural electric cooperative members enjoy a benefit that investor-owned utility customers do not: rural cooperatives' members hold the authority to select the individuals who will serve on the board of trustees and act on their behalf. This benefit, however, carries with it a corresponding responsibility. That benefit can only be realized when the members actively exercise their authority and participate in the governance of their cooperative.

61. The Stipulation concedes that SEC failed to take adequate steps to fully inform its membership of the cause and risks of SEC's decision not to implement the Commission-approved rates.¹³⁹ While this lack of transparency may weigh in favor of insulating customers from the full burden of the penalty, the Commission finds that the Stipulation does not adequately recognize the member's independent responsibility to participate in the governance of the cooperative, particularly when the board of trustees is not serving the members' interests, which appears to have been the case here even before SEC began accruing fines.

62. Furthermore, the record, simply, does not show that SEC has any means of paying the penalty without passing the cost on to its member-customers — and, as previously stated, the Commission cannot leave the violation unpenalized. The record indicates that Directors, Officers and Managers Liability would not cover the penalties,¹⁴⁰ and nothing in the record identifies an

¹³⁸ SEC Response to Bench Request at 2.

¹³⁹ Stipulation at ¶ 4.

¹⁴⁰ Stipulation at ¶ 3.

alternative funding source for repayment.¹⁴¹ SEC testified to facing various challenges associated with rising costs, providing service to a large geographical area with fewer customers than investor-owned utilities, and competing priorities for improvements.¹⁴² Given these constraints and the financial realities of rural electric cooperatives, the Commission is unaware of any additional resources SEC could use to satisfy the penalty. However, the Commission has developed sufficient confidence in SEC's current management to allow it some discretion in determining an appropriate repayment method.

63. The Commission has also proposed a forgiveness structure and an amortization schedule that ensure that, if SEC concludes it must rely on customer revenue to pay the penalty, the resulting cost will not be unduly burdensome. As provided below, if SEC complies with the terms of the Stipulation, as modified and set forth herein, SEC will only bear one-fourth of the penalty, being \$237,000, over the course of 36 months (three years). Under this structure, the impact to customers can be mitigated.

64. To ensure that SEC's conduct in this matter does not go unpenalized, and to underscore for members the importance of active participation in cooperative governance—and the potential costs of failing to do so—the Commission proposes modifying the Stipulation to allow SEC to recover the penalty from its members. The Commission will not require SEC to collect the funds from customers if SEC determines it can satisfy the penalty through other means; SEC may use any appropriate funds at its disposal to meet this obligation.

65. The Commission proposes these modifications to balance the need for accountability from the SEC board of trustees and the individuals who appoint them while

¹⁴¹ See Direct Testimony of Manuel J. Gonzales at 8:7-10 (explaining that the cooperative would have a difficult time paying any penalty without adversely impacting member under the previous Stipulation structure).

¹⁴² *Id.* at 4:4-5:8 (describing the challenges faced by SEC).

acknowledging the progress SEC has made to improve business practices. These modifications place some of the financial consequences of the imposed penalty upon SEC but allow SEC to determine the best way to collect that money. The modifications also award the new Board and officers who have made strides to bring SEC into compliance and protect members from fully bearing the financial consequences for the past violations, as the penalty imposed may be partially waived upon SEC fully complying with the terms of the modified Stipulations.

66. It is incumbent upon the parties to the Stipulation to make the modifications set forth in this Order and to execute the Stipulation, as modified, reflecting their agreement to the modified terms. If any party refuses to execute the modified Stipulation, then the matter must be resubmitted to the Commission to allow the Commission to address the exceptions, determine how the \$948,000 penalty should be imposed, and provide final relief to conclude this matter.

FINDINGS AND CONCLUSIONS

The Commission finds and concludes:

67. That the following modifications should be proposed to the Uncontested Stipulation:

- a. One-fourth of the \$948,000 penalty, or \$237,000, shall be paid by SEC, which may either recover this amount from the cooperative's customers or satisfy the obligation using any SEC funds the cooperative deems appropriate. The penalty shall be paid over the course of 36 months.¹⁴³ If SEC complies with the terms of the Stipulation, as modified in this order, SEC will not bear any more of the penalty.
- b. A framework should be incorporated that ties the fine amount to compliance with the Stipulation, reducing the penalty as specific milestones described in this order are met over the next three years.

¹⁴³ SEC should provide the Commission with dates of its penalty payment remittance and ensure that payments are made at least twice a year.

68. Any additional changes to the Uncontested Stipulation that are not specifically listed in this order, but are necessary to carry out these modifications, should also be made.

69. Signatories should be allowed to consider the modifications and determine whether they remain in support of the Stipulation, given the Commission's proposed modifications.

70. The Commission incorporates by reference any findings and conclusions stated in the body of this order.

IT IS THEREFORE ORDERED:

A. If the Signatories agree to amend the Stipulation consistent with this order, SEC shall file the amended Stipulation, consistent with this order, within 30 days of entry of this order.

B. If one or more of the signatory parties to the original Stipulation do not agree to the proposed modifications within 30 days of entry of this order, such signatory shall provide a statement of position. The statement of position shall include an explanation for the signatory's objections to the proposed modification. Upon this occurrence, the Commission may enter an order denying the Stipulation and/or engage in further proceedings to resolve this matter.

C. This Order is effective when signed.

D. In computing time in accordance with statute, regulation, or Commission order, the computation shall begin on the date that this Order is filed.

**SIGNED under the Seal of the Commission at Santa Fe, New Mexico, this 18th day of
June, 2026.**

NEW MEXICO PUBLIC REGULATION COMMISSION

VOTED NO

GABRIEL AGUILERA, COMMISSIONER

/s/ Greg Nibert, electronically signed

GREG NIBERT, COMMISSIONER

/s/ Patrick J. O'Connell, electronically signed

PATRICK J. O'CONNELL, COMMISSIONER

