

AY

STATE OF NEW MEXICO
THIRTEENTH JUDICIAL DISTRICT
COUNTY OF VALENCIA

Case No. D-1314-CV-2010-849
Judge: Mitchell (by designation)

THE SOCORRO ELECTRIC CO-OP., INC.,
Plaintiff,

v.

CHARLENE WEST and all unnamed
Member/Owners of Socorro Electric
Cooperative, Inc., et al.,
Defendants,

And

CHARLES WAGNER, individually, and as Representative
of the class of “unnamed Defendants”, etc.,
Cross-Claim Plaintiffs,

v.

SOCORRO ELECTRIC COOPERATIVE, INC., Et al.,
Cross-Claim Defendants.

EMERGENCY MOTION FOR ORDER TO SHOW CAUSE

COME NOW Defendants and Counter-Petitioners by undersigned counsel and Petition this
Honorable Court as follows:

- 1.) They are parties in the within cause of action are already before this Honorable Court in the above entitled matter.
- 2.) The emergency herein exists as the result of the need to provide the general membership with written Copies of all proposed By-Law Amendments to be considered at the scheduled May 15th, 2013, Annual Meeting, and which are currently scheduled to be printed by May 1, 2013.

- 3.) In violation of existing By-Laws and prior Orders of this Court, SEC is refusing to include Proposed By-Law Amendments presented by the District V members.
- 4.) At a prior hearing before this Honorable Court in this cause, SEC was ordered to follow applicable laws and regulations and all duly enacted By-Laws of SEC;
- 5.) The members attending the regularly scheduled District V meeting have adopted Proposed By-Law Amendments to be included with the Board's Proposed Amendments to be voted on by the general membership at the upcoming annual meeting, currently scheduled for May 15, 2013, at 3:00 p.m.
- 6.) But at their April 2013 Board Meeting, the SEC Board and its attorney determined that this year they will not present the District V proposed amendments to be voted upon by the general membership at the annual meeting, will only allow a vote on the Board's proposals, and will not allow the District V proposals to come to a vote.
- 7.) In order to do so, SEC, acting through a majority of its Board of Trustees and its attorney, has adopted a different and strained legal interpretation of the By-Law dealing with Amendments.
- 8.) The applicable SEC By-Laws provide in part as follows:

“ARTICLE III - “Meetings of the Members

“Section 1. Annual Meeting. The annual meeting of the members shall be held sometime between April 1 and May 30 inclusive each year at such place in Socorro, in the County of Socorro, State of New Mexico, as shall be specified in the notice of the meeting, **for the purpose of... transacting such other business as may come before the meeting. It shall be the responsibility of the Board of Trustees to make adequate plans and preparations for the annual meeting...**(emphasis added)

“Section 12. Action by Members at District Meetings. Any proposition submitted at a District Meeting and adopted by resolution by a majority of the members voting... must be reported to and submitted for consideration at the next succeeding annual meeting,

or special meeting members, if the resolution so provides. In the event one or more resolution(s) are adopted, one or more delegates may be elected to represent or speak for the district on behalf of such resolution or resolutions at the annual meeting at which such resolution or resolutions are to be reported or considered.” (emphasis added)

- 9.) In the past, the SEC Board has always construed and interpreted the term “for consideration” to include being voting upon at the upcoming annual meeting.
- 10.) Despite the court’s directive to follow the duly enacted By-Laws of SEC, the Board of Directors is refusing to do so with regard to the District V Amendment proposals.
- 11.) Additionally, the applicable By-laws and legislation require SEC to provide one-man-one-vote representation as nearly as practical.
- 12.) The SEC is currently divided into five districts.
- 13.) Because of an overlap between the former number of districts, one of the Districts is currently represented by Three grand-fathered Trustees.
- 14.) Rather than treat this District as having a total of one vote from the three Trustees, the SEC continues to provide each of them one vote apiece, thereby giving that District’s members three times the representation as the other members of the other four Districts.
- 15.) Opposing counsel, Darin Foster, was unable to be reached for position on this Motion and the relief requested herein.

WHEREFORE, Petitioners request this Honorable Court:

- A. Order the Counter-Respondents to appear and show cause why they are ignoring the order of the Court.
- B. Require that SEC present the District V Proposed By-Law Amendments along with those amendments proposed by the Board for adoption or

rejection by vote of the general membership at the upcoming Annual Meeting, as required by law.

- C. Determine that the three Trustee District is entitled to a total of only one Board of Trustees vote at meetings of the Board of Trustees.
- D. Award Counter-Petitioners their attorney fees and costs sustained in bringing this Motion;
- E. Grant Counter-Petitioners such other and further relief in the premises as is consistent with principles of law, equity and good conscience.

Respectfully Submitted,
Deschamps & Kortemeier Law Offices, P.C.

“Electronically Filed” /s/ Lee Deschamps
By Lee Deschamps
P.O. Drawer 389, Socorro, NM 87801
575-835-2222 / fax: 575-838-2922
Attorneys for Charlene West, et al.

Telephonic Approval

William Ikard
Ikard Wynne
2801 Zia Fortuna, Suite 501
Austin, TX 78746
Attorneys for Charles Wagner & Charlene West

Unable to be reached 4/17/13

Paul J. Kennedy
210 Twelfth Street NW
Albuquerque, NM 87102
Attorney for Socorro Electric Coop., Inc.