

http://www.dchieftain.com/news/city-no-permanent-agreement-is-in-place/article_2023d760-42c4-11ea-bec9-ffed4f258217.html

The City of Socorro has fired back at Socorro Electric Co-op (SEC), asking a judge to dismiss SEC's request for a declaratory judgment affirming the validity of the 1999 franchise agreement between SEC and the city.

In December, SEC's lawsuit requested a permanent injunctive relief to prevent the City of Socorro from interfering with SEC's delivery of service to customers. It stated the franchise agreement allows SEC to construct, acquire, operate, and maintain an electric system in the city.

Last week's court filing by the city notes, "SEC's complaint concerns the city's recent efforts to create a municipally-owned electric utility and the award of a contract to Guzman Energy in furtherance of those efforts."

SEC and the city entered into a franchise agreement in 1999, which authorized SEC to occupy city rights-of-way for a five-year term. However, SEC alleges the city's efforts to establish an electric utility is a breach of the franchise agreement.

The lawsuit asserts SEC's claims are incorrect. "...although SEC acknowledges that in 1999 the franchise agreement expired, SEC contends that the agreement continues under a contract. Under New Mexico law, however, a franchise agreement only continues if the parties continue to operate as though an agreement has not expired. Moreover, the implied agreement may be terminated on reasonable notice."

In April of 1999, Socorro City Council passed an ordinance stating, "Socorro Electric Cooperative agrees to provide, at their cost, maintenance to all city streetlights in need of repair, and further agrees to survey these lights on a monthly basis to ensure they are properly functioning."

In addition, "The agreement is non-transferrable and runs concurrent to the 1972 Franchise agreement which was officially extended on a month-to-month basis by the Socorro City Council until such time as a more permanent agreement could be reached."

On March 13, 2018, the city reaffirmed the expiration of the agreement when it indicated its intent to cancel the franchise agreement as it concerned SEC's occupation of the city's industrial corridor. On January 1, 2020, SEC would be considered trespassing if it continued to occupy the right of way.

SEC is asking the court to rule that the City of Socorro has violated its franchise agreement by soliciting bidders and awarding a contract to Guzman Energy to provide long-term wholesale power to the city, scheduling service, and project capital financing for starting an electric delivery system. This, in effect, would forcibly remove SEC from its ability to serve customers in the same geographic territory.

The city has not awarded a contract to Guzman Energy. Rather the City on August 20, 2018, issued an RFP (Request for Proposals) seeking competitive bids for long-term power supply, scheduling services, and capital financing. On July 8, 2019, the city council awarded a contract based upon the RFP to Guzman Energy to construct long-term wholesale power supply, scheduling services, and project capital financing for starting an electric delivery system.

The city is requesting the Seventh Judicial District Court to dismiss the case based upon SEC's false assumptions the franchise agreement still is intact.