

Critics: Kit Carson uncooperative in records release

By J.R. Logan

The Taos News, April 14, 2011

Critics of Kit Carson Electric Cooperative say they are being stymied in their quest for records, but the co-op says it is being fair in the way it selects what documents to release.

"We're getting road blocked at every turn," said co-op member Peter Adang, who says he has requested a slew of records from Kit Carson in preparation for an upcoming rate case.

Despite the claims of Adang and others, Kit Carson CEO Lu's Reyes argues that the co-op is being transparent in the weeks leading up to a May 24 rate hearing.

"We've laid all our cards on the table," said Reyes in an interview Monday (April 11).

In January, the New Mexico Public Regulation Commission (PRC) ordered an investigation into a proposed co-op rate hike after hundreds of Kit Carson members protested the increase. In the subsequent weeks, individual coop members have actively requested discovery of documents and responses to questions that they consider pertinent to the May 24 rate hearing.

According to the PRC rules of discovery: "The commission favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the parties and staff for this exchange."

Adang argues that delayed responses from the co-op are tipping the balance of the rate hearing in the coop's favor. "Under the circumstances, because (the co-op) keeps refusing to give us anything, we can't present anything," said Adang.

Adang is an "intervener" in the rate case, and he noted that the standing deadline for discovery in the case is at the end of the month.

"If things go according to the current schedule, at the final hearing in late May, (the co-op lawyers) will be the only people able to present evidence and there won't be any way to rebut it because they won't give us the documents we need," he said.

"Lu's (Reyes) is constantly telling people how transparent they are, but when you really want something meaningful you can't get it," Adang said.

On Feb. 25, Adang made a request via the PRC case docket asking the coop to produce 23 separate records to be used in the rate case. To see a copy of that request, visit

<http://www.taosnews.com/downloads/adangrequest.pdf>.

Much of Adang's list included records related to the co-op's propane and Internet businesses, as well as a multi-million dollar regional command center — all of which have been lambasted by co-op critics for losing money and prompting the need for the current rate hike.

The co-op adamantly denies those charges and insists that the rate increase is strictly related to the cost of providing electric service to members. It also asserts that it has provided all appropriate documents.

In an April 4 response to Adang's request that was filed with the PRC, co-op attorney John McCarthy wrote: "Kit Carson did exactly what Adang requested in his (record request); it made the documents requested, subject to KCEC's objections, available for inspection and copying at its offices in Taos as of March 11, 2011. As of that date, 519 pages of documents were available for inspection and copying at Kit Carson's offices in Taos."

McCarthy went on to say that Adang had not yet visited the co-op offices to see the documents.

On Monday (April 11), Reyes provided *The Taos News* with the prepared packet at the coop's Taos offices. The file included 10 of the 23 items Adang had requested.

Nearly all of the omitted records were directly related to the co-op's propane and Internet divisions. Also not included were Reyes' complete employment agreement, annual audits of the co-op for the last 10 years, and invoices for attorney's fees incurred in connection with the current rate case.

Both Reyes and the co-op lawyers say they are waiting for the PRC to make a decision on a protective order that would require those seeking documents pertaining to diversified activities to first sign a confidentiality agreement.

Reyes said Monday that, because of the competitive nature of the propane and Internet businesses, the co-op is hesitant to release details of both businesses without such an order.

"We're trying to determine if the information we give them is going to be used to hurt the co-op," Reyes said. "We want to know if they're doing it to make the co-op better for all of us, and not doing it just to make the co-op look bad."

Reyes said that it is typically up to him and the co-op's legal counsel to determine what documents are and are not released.

Co-op member Link Summers, who is also acting as an intervener in the rate case, is awaiting responses to his own document requests. Among other things, Summers has asked for the balance sheets, income statements and cash flow statements of Kit Carson's electric, propane and Internet divisions.

The co-op has until Friday (April 15) to provide the documents, but Summers said the co-op appeared to be taking its time.

"This is almost like a drunk driver on the side of the road refusing to go along with the breathalyzer," Summers said. "They have this information, they know they have it, and they know we want to see it. But they're thinking that if they stand on the side of the road long enough, then maybe they'll get sober."

The PRC has said that, during the rate hearing, it will look into whether there was any “cross subsidization” from electric ratepayers to the co-op’s diversified businesses. However, the co-op and its critics disagree on how far the scope of the cross-subsidization investigation may reach.

According to McCarthy, those items on Adang’s list that dealt with diversified businesses are irrelevant to the rate case.

“None of the information requested in this representative list of records that Adang wishes to review have any bearing on the review of the reasonableness of the rates proposed by Kit Carson,” McCarthy wrote in his April 4 response.

Reyes also argues that the details of the propane and Internet businesses are beyond the scope of the hearing.

“Are they trying to make a case on the diversified projects or on the rate design?” Reyes said. “These are questions of business practices. It doesn’t have anything to do with the rate case issue.”

Adang and Summers aren’t convinced.

“Everything that I asked for related to the diversified businesses was so the PRC could determine whether, in fact, there was any cross-subsidization in violation of the Public Utility Act,” Adang said. “For them to continue to refuse to produce (the records) just boggles my mind. I have no explanation for it.” Meanwhile, Summers said he hopes to get more information than Adang by the time his records come due Friday.

If not, Summers said he plans to file a motion to delay the hearing until all requested documents are provided. If that doesn’t work, Summers said he would seek a court-ordered injunction to have the records released.