

Co-op trustees fight recall with lawsuit

By J.R. Logan

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The Kit Carson Electric Cooperative Board of Trustees is asking a district court judge in Taos to dismiss a recall effort spearheaded by 10 members.

The move comes a week after a petition signed by 822 people — more than the required 3 percent of the membership — seeking to recall nine of the 11 board members was turned in to co-op headquarters.

The group leading the effort is asking that the recall vote be included on the agenda of the annual meeting in June. If such a recall were to go forward and any or all of the trustees were removed, those present at the meeting would be responsible for voting in new representatives.

But at a meeting Friday (May 6), trustees voted unanimously to move forward with a lawsuit to stop the recall.

The suit, prepared by the co-op's law firm Cuddy & McCarthy, names all 10 co-op members who started the recall effort as defendants. It alleges the recall petition uses "vague and conclusory terms" to describe the charges against the trustees. And in court documents filed Friday, the co-op's lawyers say the petition and its charges are "effectively meaningless and legally insufficient."

Among the charges listed on the petition for all nine trustees are misfeasance, nonfeasance, and "attempted imposition of an unreasonable and/or unlawful rate increase." The petition also charges trustee Arturo Rodarte with a conflict of interest.

A cover letter attached to the petition accuses the board of losing \$7 million on subsidiary businesses, spending \$2.3 million on "a command center that has no tenants" and entering into a \$19 million loan for broadband service without a business plan. Co-op CEO Lu's Reyes Jr. has disputed all of these claims, and accused those circulating the petition of "misguiding" the community. If a judge were to allow the recall vote to go forward, co-op lawyers argue it would set a "dangerous precedent."

A hearing on the Kit Carson board suit is set for May 19 at 3 p.m. in front of Judge Peggy Nelson.

'Personal purposes'

Co-op attorney John McCarthy told *The Taos News* Monday (May 9) that there needs to be more substance to the petition for a recall to be legit. "You can't just willy-nilly file a petition for

recall,” McCarthy said, arguing that those circulating the petition were not specific enough in their charges. “We don’t know what this (recall) is about. How do you defend against that?”

The two trustees not named in the petition — Luisa Mylet and Virgil Martinez — were the only ones to vote against a rate increase last fall. Mylet and Martinez voted to go ahead with the lawsuit against the recall.

Mylet told *The Taos News* Monday (May 9) that the charges — especially the conflict of interest charge against Rodarte — were too vague. “I still believe the people that passed this (petition) out and the people that signed it followed the bylaws. This is their right,” Mylet said. “But I think it just has to be clearer.”

But Peter Adang, a former lawyer who drafted the petition, argues that the recall follows all guidelines set forward in the co-op bylaws.

“We’re just following what the bylaws say, and they’re trying to make the bylaws into something they’re not,” Adang said in an interview Tuesday (May 10). “The way the bylaws read now — and I’m taking this to the point of absurdity — my position is the bylaws give us the ability to remove for whatever grounds we want.”

Adang said he wasn’t surprised that the board of trustees was fighting the recall. Nor was he worried that the recall would be thwarted. “Our long-range goal is to keep this out in front of the public, and keep people stirred up until the elections next May so we can vote (the trustees) out of office and get some people in there that we can trust,” Adang said.

In the co-op’s suit, co-op attorneys cite a 1992 case in which the New Mexico Supreme Court ruled against an effort to recall members of a Las Cruces school board. In that case, the court said a recall should cite enough specific instances of corrupt or illegal behavior so as to not be used as a means of “harassment or for purely political or personal reasons.”

McCarthy acknowledged that the 1992 case deals with a school board rather than trustees for an electric cooperative. Though the two boards are subject to different statutory requirements, McCarthy argued the same principles apply in both cases.

In their lawsuit, co-op attorneys state that the entire recall process would be “completely subverted and misused by respondents as a means of harassment or for purely political or personal purposes ...”

Reyes and board president Bobby Ortega have said the recall petition was circulated by people with a personal vendetta against the co-op. The 10 members responsible for circulating the petition include several former co-op employees and at least one failed candidate for the board.

‘False pretenses’

Included in the co-op’s court filing are affidavits from two members who claim they were duped into signing the petition. Marisol Trujillo and Lawrence Jaramillo state they were told by those circulating the petition that it was to protest a rate increase.

“I am upset that my signature was obtained by false pretenses and deceit and I have signed a withdrawal of my signature from the recall petition,” Trujillo stated in the affidavit, adding that the top of the page was folded so she couldn’t see what it was for.

Trujillo's daughter is the granddaughter of board president Ortega.

Ortega told *The Taos News* that he's talked with several people in the Questa area — including many of his relatives — who claim to not have realized what they were signing. He said many of these people had contacted him, but he said he did make a few calls after seeing the names on the recall petition. He denies claims that he threatened or coerced people to remove their names.

Ortega also said trustees are circulating their own petition to represent the “broad-based support” of the community.

Adang dismissed claims that people had been tricked into signing the petition.

“I find it absurd that people would sign a petition without reading it and they say they were misled,” he said. “We've got 822 signatures and they're trying to invalidate all 822 on the basis of two people's claims. That doesn't make any sense.”

Ortega said Friday that a recall is within the rights of the membership. But he questioned the manner with which the signatures were collected. “If people signed (the petition), and they knew what they were signing, I have no problem with that. I respect that,” he said.

In the midst of the recall effort, the co-op and its critics are preparing for a rate case before the state Public Regulation Commission. The PRC hearing was set to start May 24, but co-op members requested a delay.

One intervenor, Link Summers, asked the PRC to hold the hearing after the co-op's annual meeting in the event that a new board is put in place.

On Tuesday (May 10), the PRC voted to postpone the Kit Carson hearing by 45 days. The delay means the rate hearing will now begin after the co-op's annual meeting June 18.