

Judge rules petition not enough to force recall

By J.R. Logan

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A recall election for nine of Kit Carson Electric's 11 elected trustees won't appear on the agenda of the upcoming member meeting.

Acting Eighth Judicial District Court Judge Peggy Nelson sided with the co-op board of trustees and its attorneys when she issued a preliminary injunction Thursday (May 19) against the petition.

Trustees for the board say they are pleased with the decision, but the co-op's critics say the ruling won't make them go away.

On April 29, 10 co-op members turned in a petition containing the signatures of 822 members to the co-op's offices, asking that a recall vote for nine of the co-op's 11 board members be put a part of the annual member meeting. In response, the board of trustees voted unanimously to have the co-op's attorneys ask for a court order to stop the recall.

Nelson heard arguments from co-op attorneys and from those who circulated the petition at a hearing Thursday (May 19).

Co-op attorney Arthur Jaramillo argued that the charges on the petition were overly vague and that the recall was "at will" rather than "for cause."

But co-op member Peter Adang, and others who started the petition, insisted that they met all of the requirements for a recall spelled out in the co-op's bylaws.

Adang stated that the elected trustees should decide whether to make the recall election part of the annual meeting rather than ask a judge to make it for them. He went on to chide the board for dipping in to the "trough" of ratepayer money to pay lawyers to fight the petitioners.

After hearing arguments, Nelson acknowledged that a "great deal of public sentiment" has been stirred up since the co-op announced a rate hike next fall.

"Everybody sort of loves to hate Kit Carson," Nelson said.

However, Nelson ruled that the petition did not appear to meet the required standard for a recall. Nelson stated that she believed the co-op's bylaws call for a recall by "for cause" — that is, that the recall of a trustee be based on a specific act or crime — rather than simply at the whim of the members. She said the charges outlined in the petition were "very, very nonspecific."

The section of the bylaws regarding recalls reads: "Any member may bring one or more charges against a trustee and may request the removal of such trustee by reason thereof by filing with the Secretary such charge in writing together with a petition signed by not less than three percent of the then-total members of the cooperative ... " The bylaws go on to say that the petition shall include a "verbatim statement" of the charges, and trustees accused of misdeeds are to be notified of the charges in writing.

Nelson called her decision a "limited" injunction and suggested that a trial take place to determine whether the petition warrants a recall election at a later date.

'Engaged membership'

Jerome Lucero, a vocal critic of the co-op and one of the 10 members who circulated the recall petition, told *The Taos News* Tuesday (May 24) that the group was considering its options before deciding what to do next.

"We haven't decided what we're going to do, but that doesn't mean we're going to stop," Lucero said. "We're not going to stop."

In an interview Monday, Kit Carson Board of Trustees Chairman Bobby Ortega said he was "very pleased" with the judge's ruling.

"What was significant was that the ruling was based on law," Ortega said. "(The petitioners) have to have cause. They have to have due process."

Ortega did say that the language of the bylaws could be cleaned up so as to more clearly define what would constitute a valid recall. He also said the judge's ruling in no way diminished the influence members have over the operations of the co-op.

"I think the power of the membership is critical and important to this organization," Ortega said. "We have a very engaged membership, and I don't have a problem with people signing a petition as long as it was done correctly."

After the petition was turned into co-op offices, some trustees said people thought they were signing to keep electric rates from going up rather than for the recall of trustees.

Since the allegations were made, others have come forward to say that they were well aware of the purpose of the petition. Renee Lynda Mart'nez of Ranchos de Taos told *The Taos News* that the woman who came to her workplace to gather signatures was very clear in describing the purpose of the petition.

Still, co-op lawyers came to court armed with 64 individual withdrawal forms from people asking that their names be removed from the petition. In a signed affidavit attached to the withdrawals, Ortega said he had asked the co-op's attorneys to draft the form for people to sign.

Most of the people who signed the withdrawal forms said they were "misled" by those circulating the petition. One man said his mother's name had been forged on the petition. Another said he had changed his mind since signing.

But at Thursday's hearing, Nelson dismissed the withdrawals, stating that her decision would assume that there were a sufficient number of signatures per the co-op's bylaws.

Nelson's ruling in favor of the Kit Carson board came just a day before a judge in the state's 10th Judicial District ruled against the Socorro Electric Cooperative in a case involving changes to that co-op's bylaws.

The judge upheld a member- approved change that would require the co-op to follow the state's open meetings and inspection of public records acts.

'Open dialogue'

Though the recall effort has been hamstrung by the court's ruling last week, the co-op and its critics are busy preparing for an upcoming rate hearing before the New Mexico Public Regulation Commission.

The hearing, originally scheduled to start Tuesday (May 24), has been pushed back to July 6.

Several co-op critics have become "intervenor" in the case, and two requested that the hearing be delayed. The intervenors said the co-op was being uncooperative in its release of records they considered vital to their case.

The PRC granted Kit Carson a protective order which requires those seeking sensitive financial information to sign a confidentiality agreement.

In addition, intervenor Link Summers has turned in subpoenas to the PRC asking for the opportunity to interview the same nine board members cited in the recall petition. The co-op's attorneys have thus far declined to make any of the board members available to testify, and Summers is waiting for a ruling from the PRC.

Ortega said Tuesday that he is open to discussing the issue with members, but he's not ready to go under oath to testify for the rate case. Ortega called it an "unusual" move.

"A lot of the problem with the rate increase is that people aren't informed. That's why we're asking for an open dialogue to talk things through, allow people to ask questions, and debate the pros and cons," Ortega said. "But I'm not sure what the basis for the subpoena is. I'm not sure what Link is fishing for."

Summers counters that Ortega and the other board members are at the heart of coop management and the rate case.

"The issue is really the management of the co-op," Summers said Wednesday (May 25). "Are they making money or losing money?"

"The board of trustees are the ones that have an obligation to know exactly what's going on with (the co-op) and they're not telling us. They're trying to avoid answering the questions," Summers said.