

Fingers pointing over \$500K rate case costs

By J.R. Logan

The Taos News, 9/29/2011

After \$500,000, almost 3,000 pages of legal documents and plenty of insults and accusations, a decision was made last week over a contentious rate hike proposed by Kit Carson Electric Cooperative.

But the Public Regulation Commission's ruling on electric rates — to raise the flat monthly residential rate from \$10 to \$14.50 — is only one of many issues that came to the forefront during the nearly year-long battle.

Over the course of the case, ardent critics of the co-op lambasted co-op management for losing millions in its propane and Internet divisions, and they mounted a failed attempt to recall nine of the 11 members on the co-op's board of trustees.

The co-op, meanwhile, spent countless hours thumbing through the hundreds of protests sent by members to the Public Regulation Commission opposing the hike. The coop and its lawyers tried to convince commissioners that only six of the more than 300 signatures filed were valid, but the commission disagreed and voted unanimously to move forward with an investigation into the rates.

But now that the case is settled, the co-op is accusing its critics (officially known as "intervenors") of forcing it to spend hundreds of thousands of dollars in legal fees and expert testimony. CEO Lu's Reyes said it cost the co-op \$6,500 just to make a transcript of five days of hearings in Santa Fe, and he said bills are still coming in.

"I do think the intervenors will have to take some responsibility for some of these costs," Reyes told *The Taos News*.

Reyes said the scope of the investigation — employee salaries, board expenses, diversified businesses — went well outside the issue of the proposed rates. In the end, the Public Regulation Commission concluded that \$7.7 million in propane and Internet losses weren't directly related to the rates, and Reyes argues that intervenors focusing on peripheral issues forced the co-op to defend itself on several fronts.

And that defense was expensive.

"It was very costly. And I think from where we started to where we ended, our belief is that cost could have been better utilized elsewhere," Reyes said. "In the end, where does the money come from?"

At the same time, the intervenors counter that the co-op foolishly spent money on legal fees to defend a shaky case.

Intervenor Link Summers pointed out that the commission ruled that more than doubling the flat residential rate violated the legal notion of “gradualism,” which requires that rates go up little-by-little to avoid a price shock.

During his presentation to the Public Regulation Commission, hearing examiner Lee Huffman said the co-op attorney’s argument that not doubling the fixed cost deprived the co-op of its constitutional right was one of the “weakest” legal arguments he’d seen over his 30year career.

Intervenor Peter Adang told *The Taos News* that he felt much of the co-op’s legal cost was a “self-inflicted wound” because the co-op “unreasonably resisted” continual requests for records. He also suggested that the co-op’s legal firm, Cuddy and McCarthy, took advantage of the situation by billing for unnecessary work.

Reyes said the co-op and its attorneys were only doing their due diligence by going to great lengths to ensure that evidence was fair and comprehensive.

In the end, Summers argues that the intervenors saved residential rate payers \$6 per meter every month, meaning the extra costs of legal fees will be paid off in only a few months.

Though the actual savings to individual rate payers will vary depending on how much energy they use (meaning it could take much longer for the co-op to recoup those costs), Summers said a lower flat fee at least gives people the chance to cut back on costs if they need to.

However, falling energy use could force the co-op to come back for another rate increase sooner than it had hoped. Under the final decision, the co-op ended up getting more money than it had originally asked for. Public Regulation Commission staff explained that excess revenue was to make up for decreasing electricity consumption.

The trouble, according to Reyes, is that energy use will likely continue to decline. To make up for shrinking power consumption, the co-op will have to again raise the flat monthly fee just to maintain quality service.

“I think all this has just prolonged the pain for several years,” Reyes said.