

Kit Carson: Only six protests valid

Critics prep for Jan. 10 PRC hearing

By J.R. Logan

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Kit Carson Electric Cooperative says only six of the 317 protests filed against a proposed \$4.3-million rate hike are valid.

In an objection filed with the New Mexico Public Regulation Commission Tuesday afternoon (Dec. 29), the coop argues that the number of "valid" protests from its members do not meet the legal requirements needed to warrant a formal review of the rate increase.

By law, the commission must receive at least 25 valid protests in order to begin an investigation.

However, the co-op's count is anything but final. Its tally of valid protests will go under the scrutiny of the commission during a public hearing Jan. 10 in Santa Fe, and protesters can issue a response to the commission either in writing or in person.

The rate hike has been suspended until the commission makes a decision.

Co-op CEO Lu's Reyes told *The Taos News* Tuesday that he and legal counsel studied the protests in the last week, and he said most of the protests focus on issues like diversification — issues the co-op sees as unrelated to electric rates.

The co-op wants a handful of other protests thrown out because they violate procedural requirements under state statute.

In testimony also filed with the commission Tuesday, Reyes said nearly all of the hundreds of protests should be thrown out.

His testimony reads: "Once the invalid protests are removed from the spreadsheet, and those protests from non-members, inactive accounts, form letter protests and those that withdrew their protests are removed, this leaves only six (6) protests that remain valid, which is insufficient to meet the required 25 under New Mexico law."

Amid the debate over validity, there is a large discrepancy between the number of protests received by the co-op and those recorded at the commission.

Gerald Garner Jr., a spokesman for the commission, said earlier this month that the commission had recorded 317 protests from co-op members arguing against the rate increase. But in its

testimony filed with the commission, the co-op said it was provided with a spreadsheet identifying only 222 protesters.

In an e-mail to *The Taos News*, Garner explained that the discrepancy arises from “different ways of counting” the protests. The commission, Garner wrote, simply wasn’t ready for this many protests.

“According to our utility division director, the discrepancy in the count is but one wrinkle arising from the fact that the PRC has never had to confront this situation and so we did not have a foolproof process in place,” Garner wrote.

Garner said the commission would have to sort out these ambiguities at the hearing Jan. 10.

Fair game

As a part of the objection process, the co-op sent form letters to those members that the co-op feels have filed invalid protests. The form letters include a checklist of the 10 grounds that the co-op used to determine protest validity.

The co-op’s reasons for dismissal include: failure to set forth a clear and concise statement of the specific grounds upon which the effect of the rate(s) are unjust, unreasonable or otherwise unlawful; failure to present objections to Kit Carson (KCEC) and failure to meet with KCEC to address objections, or failure to present objections to KCEC and failure to do so in the protest; and failure to set forth a clear and concise statement of the relief sought from the New Mexico Public Regulation Commission.

The 10 grounds for dismissal were taken almost verbatim from the language of state statute on co-op protests. If a protester failed to meet even one of these requirements to the letter, the protest could conceivably be invalidated.

Though the co-op could dispute some of the protests based on procedural technicalities (Reyes said seven of the protesters don’t even have an active meter), the bulk of the argument at the public hearing will likely revolve around whether the protests are related to the rate increase.

Reyes has long maintained that diversification and mounting debt are issues to be debated at the local level, not during an electric rate increase.

But critics say the issues are inseparable.

“If Kit Carson wasn’t in propane, networking, telecom, the command center, and now the broadband, my position is that they wouldn’t be in front of the PRC today asking for a rate increase,” said Peter Adang, a protester and Ranchos de Taos resident.

Diversification and general co-op policies also made up the bulk of both his and fellow protester Jerome Lucero’s protests to the commission. Lucero is hopeful that those topics will be fair game during the public hearing in January.

“If enough people show up, and that’s an issue for them, I think (the commission) might look at it.” Lucero said. “It’s going to come down to whether or not the PRC agrees.”

Silent majority

Some protesters say the bureaucratic hurdles built into the protests process are problematic. They argue that the rules for filing a protest were daunting to the point that some members may not have felt it would be worth the effort.

“They make it so difficult to the consumer that they won’t want to file a protest,” Lucero said. “But even with that crap, they still got 317 (protests).”

Co-op CEO Lu's Reyes counters that it's not Kit Carson that makes up the rules.

“We’re not creators of the process,” Reyes said. “We’re participants just like they are.” The nature of the cooperative adds an interesting and complex element to the upcoming hearing.

Adang sent a letter to the co-op, asking that Kit Carson provide funds to hire a lawyer to represent the protesters during the hearing in January. Adang said the money would be used to argue against the “battery of high-priced lawyers” that have been hired to represent the co-op.

“We don’t have any form of legal representation or expertise in rate making or critiquing the rate making process,” Adang said. “The protesters are not experts on rates and don’t have access to most of the info that Lu's and the rest of board have. We’re operating with a dearth of information.”

Reyes disputes that claim. He argues that the co-op’s lawyers represent the majority of the co-op’s members — those that didn’t file a protest.

Reyes said the legal representation was there to look out for the best interest of the coop.

“It should be no surprise that the co-op hires consultants and attorneys, because it is a legal proceeding.”

He sees the “silent majority” of about 30,000 members (those that didn’t file protests) as the people who will benefit if the rate increase is passed.

On the other side, protesters argue that they’re acting for the sake of those same members.