



## Co-op protests to rate hike could trigger hearing, court battle

By J.R. Logan

*The Taos News*, 11/15/2012

Kit Carson Electric Cooperative has been joined by two other New Mexico co-op's in protesting a proposed rate increase by wholesale power supplier Tri-State Generation and Transmission.

Under state law, the three protests — turned in to the Public Regulation Commission (PRC) Nov. 7 — could prompt an unprecedented public hearing that would require Tri-State to justify its increase. But it's likely such a hearing would not happen without a fight.

According to the law, the PRC must determine if there is “just cause” to conduct a hearing on the proposed rates. The law says that the protesting cooperatives must have “exhausted remedies” in trying to resolve the matter with Tri-State, or the PRC must determine that Tri-State has “unreasonably rejected” the co-op's objections to the rates.

Tri-State is adamant that does not fall within the PRC's jurisdiction and has called the state law “unconstitutional.”

Commissioner Douglas Howe, who represents Taos at the PRC, told *The Taos News* that a PRC order for a public hearing would likely lead to a legal battle.

Howe said he's been told that *Tri-State* agreed to the provisions of the law when it acquired Plains Electric Generation and Transmission more than a decade ago. “I think the fly in the ointment here is that Tri-State does not believe that is a legal or enforceable commitment,” Howe said. “They've made it pretty clear they'll go to court.”

Tri-State is made up of 44 member cooperatives in New Mexico, Colorado, Nebraska and Wyoming that provide power to 1.5 million people.

In September, the Tri-State board — made up of representatives from each of the 44 co-op's — approved a 4.8 percent increase as well as a rate restructuring. Official notice of the increase was turned in to the PRC Oct. 19.

Tri-State calls the new rate structure a “modernized” approach that will ensure that all of the co-ops it serves pay equally for power.

Currently, co-ops are billed for the total amount of kilowatt- hours they use each month. Co-ops are also billed a “demand” charge based on the peak energy use during a short window every the month. The purpose is to cover Tri-State's generation costs when energy demand is at its highest.

Tri-State has proposed to alter the demand charge so that it correlates with total energy use — a design that Kit Carson says could hurt its efforts to lower its peak use and balance energy consumption.

The co-op's rates are designed to encourage members to use energy at off-peak times. If the wholesale rates change, the co-op says it could lose revenue from members without reducing what it pays Tri-State.

In its resolution approving the protest, the Kit Carson board characterized the impact of new rate design as “extremely negative” on co-op members. The protest itself says the new rates “have the effect of thwarting New Mexico’s policy of pursuing energy efficiency and conservation.”

In its protest, the co-op is asking for a “menu” of wholesale rates from which co-ops could pick. The co-op says it would not protest the rate increase alone if the rate structure was pulled.

Tri-State has argued that the rate increase is necessary, primarily because of rising fuel, transportation and regulatory costs. Co-op CEO Lu's Reyes has countered that Tri-State still enjoys a healthy profit margin. He suspects that increase is meant to improve Tri-State's credit rating, making it cheaper to borrow money to pursue new generation facilities powered by coal and natural gas.

Reyes has been at odds with Tri-State's management for years, primarily over a limit imposed by Tri-State that prevents Kit Carson and other coops from producing more than 5 percent of its energy through its own renewable sources. The limit is part of a long-term contract that doesn't expire until 2040.