

## **Kit Carson Co-op accuses Tri-State of 'backtracking' on regulation compromise**

**By J.R. Logan**

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A Colorado-based wholesale power supplier is asserting that state regulators cannot hold a hearing on a proposed rate increase that would once again raise electric bills for customers of Kit Carson Electric Cooperative.

Kit Carson is among three New Mexico co-ops protesting the rate hike and an associated rate restructuring proposed by Tri-State Generation and Transmission. State law says that the Public Regulation Commission (PRC) can call a hearing on the rates if three or more co-ops protest.

In its protest, Kit Carson says Tri-State has failed to justify the need for an increase. Kit Carson also contends that the new rate structure will unfairly punish co-ops that have sought to promote energy conservation.

The protesting co-ops are asking the PRC to hold a public hearing to review the rates.

But in a 35-page objection filed with the New Mexico Public Regulation Commission Nov. 29, attorneys for Tri-State say the law setting terms for such a hearing violates the Commerce Clause of the U.S. Constitution because, according to the attorneys, Tri-State is solely involved in interstate commerce.

Kit Carson CEO Luis Reyes counters that Tri-State agreed to the exact language included in the law when it merged with Plains Generation and Transmission — Kit Carson's previous power supplier — more than a decade ago.

Last month, the PRC set up a mediation between Tri-State and the three New Mexico co-ops. The details of the mediation are confidential, but those talks appear to have failed (three attorneys for Tri-State have since asked to be admitted to the case) setting the stage for what could be a long and contentious battle before the PRC or in court.

Per a PRC order, the three protesting co-ops now have until Thursday (Dec. 6) to respond in writing to Tri-State's objections.

The issue of how to regulate Tri-State was at the center of discussion in 1999 when Plains and Tri-State came to the PRC asking it to authorize the merger. Tri-State's attorney signed a stipulation in that case agreeing that the PRC could call a hearing on future rates if three or more co-ops protest and the commission determines there is "just cause" to review the increase.

In fact, a bill passed toward the end of the merger negotiations added the same specific language to state law with the intent of putting Tri-State under the limited jurisdiction of the PRC. The bill was sponsored by then-state senator Art Rodarte, who was and still is a member of the Kit Carson board.

Reyes says the stipulation and subsequent law were seen as a compromise that would give the PRC some oversight powers without subjecting Tri-State to full regulation. Without the stipulation, Reyes said the New Mexico co-ops formerly served by Plains would not have bought into Tri-State.

“For [Tri-State] to backtrack could mean they were bargaining in bad faith,” Reyes said. “They’re trying to wiggle our of it, and I think they have to honor their agreement.”

Lee Boughey, a spokesman for Tri-State, said in an email that Tri-State has always maintained that the statute is unconstitutional. *The Taos News* could not find the constitutionality argument in any of the merger documents it reviewed. Boughey did not provide a specific reference to any such written argument.

Boughey noted that both the stipulation and the merger approval give Tri-State the ability to challenge the commission in court.

If Tri-State chooses to fight the constitutionality of the law, the case could be handled by the New Mexico Attorney General. Phillip Sisneros, spokesman for the Attorney General, told *The Taos News* that they are aware of the issue but have not yet gotten involved.

William Herrmann, the PRC staff member who acted as the mediator during merger negotiations, called the regulation of Tri-State a “critical issue” that the PRC should consider before approving the deal.

In his written recommendation on how the PRC should address the issue, Herrmann said Tri-State had “no credibility” with regard to regulation because it repeatedly shifted its position on whether it would submit to PRC oversight during the course of the negotiations. Herrmann wrote that these “antics” could be reason enough not to approve the merger.

In a written response during the merger, Tri-State characterized Herrmann’s comments as an “unwarranted attack.”

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