

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

In re

Case No. 11-62031-11

**SOUTHERN MONTANA  
ELECTRIC GENERATION AND  
TRANSMISSION  
COOPERATIVE, INC.,**

Debtor.

**ORDER PURSUANT TO 11 U.S.C. § 1142(b)**

At Butte in said District this 25<sup>th</sup> day of June, 2014

Southern Montana Electric Generation and Transmission Cooperative, Inc., the debtor and debtor-in-possession herein (the “Debtor”) and Beartooth Electric Cooperative, Inc., (“Beartooth”) filed a *Stipulation for Order Compelling Beartooth to Execute Amended Wholesale Power Contract Pursuant to 11 U.S.C. § 1142(b)* (the “Stipulation”). Having reviewed the Stipulation, the Court finds:

1. Prior to the Petition Date, Debtor and Beartooth entered into an Amended Wholesale Power Contract dated April 13, 2007 (the “Amended WPC”). The Amended WPC is effective and binding on Beartooth and Debtor. The Amended WPC is what is commonly referred to as an “all requirements contract”.

2. On April 21, 2014, the Debtor, as proponent and debtor-in-possession, filed its Chapter 11 Plan of Reorganization, which was amended on May 16, 2014, by the First Amended Plan of Reorganization dated May 12, 2014 (the “Plan”) [Docket No. 1369].

3. On May 20, 2014, the Debtor filed the Plan Supplement (as amended, the “Plan Supplement”) [Docket No. 1374], which included, *inter alia*, the amended all requirements contract between Debtor and Beartooth (the “All Requirements Contract”). On June 12, 2014, the

Debtor filed an Amended Plan Supplement, which included, *inter alia*, the final proposed form of the All Requirements Contract [Docket No. 1440].

4. Under the Plan, the Debtor proposed to assume the All Requirements Contract (which is an amendment of the Amended WPC) without cure on or before the Effective Date.

5. Under the Plan, the Effective Date is within 10 days of the Confirmation Order, unless otherwise agreed by the parties.

6. On June 20, 2014, the Court entered its Order Confirming the Debtor's Amended Chapter 11 Plan of Reorganization (the "Confirmation Order") [Docket No. 1459]. The proposed execution form of the All Requirements Contract is incorporated by reference in and an integral part of the Confirmation Order.

7. The Confirmation Order approved the All Requirements Contract and ordered that it is valid, binding, and enforceable notwithstanding any non-bankruptcy law. Moreover, pursuant to the Confirmation Order, the Debtor may take or cause to be taken all actions necessary or appropriate to implement and consummate the Plan, all without further approval, act, or action under any applicable law, order, rule, or regulation or any action by the Members.

8. Beartooth's Bylaws require a 60-day member notice and comment period before Beartooth may execute the All Requirements Contract, which conflicts with the 10-day period between the Confirmation Order and the Effective Date.

9. The parties have stipulated that (i) the All Requirements Contract is a power contract with a term exceeding two years and subject to the 60-day member notice and comment period in Beartooth's Bylaws; (ii) that, absent the provisions of the Confirmation Order summarized in paragraph 7 above, the earliest date that Beartooth could execute the All Requirements Contract under the member notice and comment period in its Bylaws is August 11,

2014; and (iii) that the Plan requires the All Requirements Contract to be executed on or before the Effective Date, or June 30, 2014.

10. Failure by Beartooth to execute the All Requirements Contract on or before the Effective Date will seriously jeopardize implementation and consummation of the Plan by causing (i) the Debtor to incur significant additional expenses (including professional fees to the Noteholders), (ii) delay in finalizing one or more long-term power arrangements at beneficial rates, (iii) violations of provisions of one or more stipulations approved by the Court and incorporated into the Plan by reference, and (iv) general uncertainty among the Debtor's creditors and other parties in interest regarding the Debtor's ability to consummate its confirmed Plan.

11. This Court retains jurisdiction over any matter arising in or related to the Plan pursuant to Sections 105(a) and 1142 of the Bankruptcy Code. Execution of the All Requirements Contract is a matter related to the Plan because the All Requirements Contract is incorporated in and an integral part of the Plan and the Confirmation Order.

12. "The court may direct ... any other necessary party ... to perform any other act ... that is necessary for the consummation of the plan." 11 U.S.C. § 1142(b); *see also In re Harlow Properties, Inc.*, 56 B.R. 794, 798 (B.A.P. 9th Cir. 1985) (finding that "[11 U.S.C. § 1142(b)] implicitly contemplates a ... party affected by the plan moving for an order which triggers the court's authority to direct a ... party to perform acts necessary to consummate the plan."). The Court has statutory jurisdiction under 11 U.S.C. § 1142(b) to ensure that any act necessary for the consummation of the plan is carried out and it has continuing responsibilities to satisfy itself that the plan is being properly implemented. *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 587 n 11 (9th Cir. 1993) (*citing Chase Manhattan Bank N.A. v. Sultan Corp. (In re Sultan Corp.)*, 81 B.R. 599, 602 (9th Cir. BAP 1987)). The Court's authority under 11 U.S.C. §

1142(b) includes, to the extent necessary to protect the confirmation order and aid in the Plan's execution, the authority to order the execution of an instrument expressly called for and included in the Plan. *See In re Chatham Parkway Self Storage, LLC*, 507 B.R. 13 (Bankr. SD Georgia 2014) (ordering the debtor and creditor to execute loan documents based on the agreed-upon terms and conditions included in the confirmed plan.)

THEREFORE, pursuant to the forgoing,

IT IS HEREBY ORDERED, that Beartooth Electric Cooperative, Inc., shall execute immediately the All Requirements Contract without member notice and comment as provided for in its Bylaws.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER  
U.S. Bankruptcy Judge  
United States Bankruptcy Court  
District of Montana