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**UNITED STATES BANKRUPTCY COURT,
FOR THE DISTRICT OF MONTANA**

IN RE,	*	CASE NO. 11-62031-RBK
	*	
SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.	*	MID-YELLOWSTONE ELECTRIC'S OBJECTION TO TRUSTEE'S DISCLOSURE STATEMENT
	*	
Debtor.	*	

Mid-Yellowstone Electric objects to the Disclosure Statement filed by the Chapter 11 Trustee. For the following reasons 1) the Disclosure Statement is inadequate as it supports an unconfirmable bankruptcy plan, and 2) key portions of the Disclosure Statement are based upon a conclusory and unsupported statements.

INTRODUCTION

Bankruptcy Courts and parties rely heavily on the debtors' disclosure statement in determining whether to approve or oppose the reorganization plan. The importance of full and honest disclosure cannot be overstated. *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.2d 355, 358 (3d Cir. 1996).

A disclosure statement that describes an unconfirmable plan inherently fails to provide adequate information. A faulty disclosure statement for an unconfirmable plan should not be approved. *7 Collier on Bankruptcy*, ¶1125.03

Finally, conclusion, allegations, or opinions in the Disclosure Statement without supporting facts are generally not acceptable. *In Re Beltrami Enters.*, 191 B.R. 303m, 304 (Bankr. D. Pa. 1995). Mid-Yellowstone Electric submits that the disclosure statement is insufficient for the following reasons:

I.

TRUSTEE'S DISCLOSURE STATEMENT SUPPORTS AN UNCONFIRMABLE PLAN

A. The four (4) remaining Cooperatives strong opposition to the plan. The most critical omission of the Disclosure Statement is the failure of the Trustee to disclose the four (4) remaining Cooperatives strong opposition to the plan. The four (4) remaining Cooperatives were not involved in settlement negotiations with fellow-member, Yellowstone Valley Electric Cooperative (YVEC) or the City of Great Falls.

The four (4) Cooperatives were, more importantly, not involved in the decision making or negotiations between the Trustee and the bond holders. The results of that negotiation is confirmed beneficial to Prudential and no one else. The reasons that the Cooperatives have determined that the plan will not work are numerous and detailed, and complete discussion is beyond the scope of this objection.

In summary, without the support of the Cooperatives, the plan is not confirmable. The failure to disclose the Cooperatives opposition or their reasons for the opposition, gives the Court more than sufficient grounds to reject the statement and the plan.

B. Risk of legal challenge to contract assumption not disclosed. Besides the Cooperatives unanimous opposition to the plan, the Trustee's conclusory statements that the All-Requirement contracts are assumable does not disclose the obvious legal challenge. The proposed plan will require Southern's assumption of the All-Requirement contracts, although these contracts will require numerous impermissible modifications.

The Trustee's Disclosure Statement, in fact, contradicts the Trustee's own actions in this bankruptcy. In their Court filing, it is stated that "the All-Requirement contract is the **structural keystone (emphasis added)** by which electric cooperatives G & T systems across the nation provide a stable interdependent supply network..." YVEC was released from its financial requirements twenty (20) years before the expiration.

Both the initial and subsequent All-Requirement agreements Mid-Yellowstone Electric entered with Southern were made in full reliance that Yellowstone Valley (YVEC) would remain a member of Southern and be held to their full term of their thirty (30) years. The initial All-Requirement contract with the five (5) member Co-op were all executed in and made in conjunction with the Articles of Incorporation and the By-Laws of Southern Electric.

This changed when the Trustee reached a settlement agreement with YVEC for considerably less money than the Cooperatives had originally advised. The Cooperatives were not involved in that negotiation, even though the Cooperatives were adversely affected by the release of YVEC and approximately forty percent (40%) of the load factor and forty-five percent (45%) of the WAPA allocation.

The Disclosure Statement is insufficient as it fails to disclose this critical legal issue of contract assumption, which will affect the confirmability of the Trustee's Chapter 11 plan.

C. Loss of Ability of members to manage Southern. A fundamental principle of the Cooperative law is the ability for the members to manage their own business affairs. Each year, Mid-Yellowstone Electric holds their annual meeting with its membership. The members decide who will be placed upon the board of trustees to manage the operation of Mid-Yellowstone Electric. The trustees must often make tough choices as to the balancing of reasonable electrical rates with cost of services.

As an example, rural electric cooperatives still have the members read their own meters to save the cooperatives the expense of linemen driving to remote areas to turn in that information. The importance of the Cooperative's ability to manage themselves is thoroughly examined in the two (2) Louisiana bankruptcy cases, *Cajun* electrical cases, *In re Cajun Elect. Power Co-op, Inc.*, 230 B.R. 693 (M.D. La. 1999) ("Cajun I") and *In re Cajun Elect. Power Co-op, Inc.*, 230 B.R. 715 (M.D. La. 1999) ("Cajun II").

The Disclosure Statement has no explanation as to how the members will retain their ability to run the Southern Cooperative. As an example, the most critical decision to be made by the Cooperative boards is the hiring of a general manager to implement the policy directives of the Southern board.

The Montana Supreme Court examines the board's duties in those decisions, *McConkey v. Flathead Electric Cooperative*, 2005 MT 334, 125 P.2d, 1121 (2005). In *Flathead Electric*, the cooperative was justified in terminating the employment of a general manager whose management decisions resulted in Flathead Valley going in the wrong direction, including significant electrical rate increases. The plan and statement does not set forth what role the Southern board will have in overseeing the general managers decisions.

The preliminary indicators on this issue from the Trustee's attorney are not good. On September 13th, 2013, the member Cooperatives were informed, by the Trustee's attorney, that the decision was made to hire a new general manager with no input from the members. The plan also has a provision for a twelve (12) year continuation of the Trustee and other professionals without disclosure of the projected costs and without explaining how extensive their role will be.

D. Proposal for governance of board is flawed. Once YVEC was released, Southern was non-compliant with MCA §35-18-311. That statute requires that the business

affairs of a cooperative must be managed by a board of **not less** than five (5) trustees, each of whom must be a member of the cooperative or of another cooperative that is a member of the cooperative. Southern was initially formed with statutory compliance as evidenced in both the Articles of Incorporation and By-Laws. The Trustee's plan is absent any explanation as to how the Articles and By-Laws will be amended without the approval of the Southern board. Based on the Cooperatives opposition to the plan, the explanation is necessary.

Mid-Yellowstone Electric submits these inherent flaws cited in Sections A through D above, the plan is not confirmable. The Disclosure Statement that does not fully address the Cooperatives opposition, or as to why the All-Requirement contracts are automatically assumable, and should be rejected.

II. DISCLOSURE STATEMENT IS CONCLUSORY AND OPINIONATED, WITHOUT SUFFICIENT SOURCING

Trustee's position on cause of bankruptcy insufficient – Temple report not submitted. Initially, the Trustee recognized their responsibility in having an unbiased investigation conducted to determine and other factors what caused Southern into bankruptcy. There were repeated requests from the four (4) member Cooperatives for this report. The Co-ops were consistently advised by the Trustee that they would be receiving a copy of the Temple report. Through e-mail on July 26th, 2013, Mid-Yellowstone's attorney specifically requested a copy of that report. Mid-Yellowstone Electric did not receive a written response from the Trustee's attorney.

On August 14th, 2013, the Co-ops find out that Ms. Temple's report is not finalized. It is not attached to the Disclosure Statement. Clearly, the Trustee's conclusions on the cause of the bankruptcy are not based upon an objective investigation.

One of the most significant examples of the Disclosure Statement being misleading is the Trustee's explanation as to the events leading to the Chapter 11 case. Without sourcing, the Trustee makes the claim the events leading to Chapter 11 began in 2007.

The events that led to Southern's formation and eventual bankruptcy actually took place in 1997. That year, the Montana legislature approved a deregulation bill that allowed the former Montana Power Company to sell off hydroelectric and coal fired Montana assets.

These electrical generation assets were sold to Pennsylvania Power and Light (PPL), who is the current largest unsecured creditor in this case. The Chief Executive Officer of Montana Power with the advice of Goldman Sachs, made a strategic decision to take a profitable and regulated utility into the emerging business of fiber optic cables. This was disastrous to both the shareholders of Montana Power and the Montana rate payers.

The consequences of the 1997 deregulation were swift and severe. The results of the Montana failed experiment received national attention. In the May 13th, 2001 edition of the New York Times, there was an examination of the plight of Montana Resources, Inc., of Butte, Montana. At the beginning of 2000, the mine was paying \$26 a megawatt hour, however by May of 2001 that price had exploded to \$320. Montana Resources, Inc. shut down operations. The New York Times article reported that paper companies, mines, and other large industrial companies in Montana had been laying off workers because they cannot afford to pay the electrical bills.

An investigative report was broadcast in 2003 by CBS news, 60 Minutes, entitled, "Who killed Montana Power?" explored similar issues. As for Montana Power, in April 2013, it was reported that a bankruptcy settlement resulted in Montana Power shareholders receiving \$.29 a share for stock that was once worth \$65/share (Missoulain, April 14th, 2013).

In this environment, Southern Montana was formed in 2003, on the initiative of its largest member, Yellowstone Valley Electric (YVEC).

The market factors that lead to Southern's pursuit of the construction of a power plant in 2003-2004 were nonexistent in February of 2010 when the Prudential loan was made. There was an excess of power supply and there was no need for the plant as evidenced by its current \$14 million dollar value. Two (2) of three (3) major factors leading to Southern's bankruptcy, 1) the overbought PPL contracts, 2) and the YVEC litigation were known when Prudential loaned \$85 million dollars for a plant now valued at \$14 million. The Trustee portrayed that the financing and construction of HGS did not lead to the filing of the Chapter 11 case has little credibility.

The Trustee's plan serves to have the Cooperatives guarantee the deficit of the loan amount and the current value of the plan. This was not contemplated by the agreements. To the extent possible, Mid-Yellowstone Electric and the other Cooperatives should not be held responsible for the bad business decisions made by Southern's first manager.

III. MID-YELLOWSTONE ELECTRIC CONCURRENCE WITH OTHER COOPERATIVES' OBJECTIONS

Mid-Yellowstone Electric has reviewed the drafts and concurs with issues raised by the other member Cooperatives in their objections, and reserves the right to present argument on these objections as deemed appropriate.

DATED this 18th day of September, 2013.

/s/ Gary Ryder
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