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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

IN RE

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

Debtor.

Case No. 11-62031-11

**Hearing Date: September 24, 3013  
Time: 1:30 p.m.  
Location: Federal Courthouse  
2601 2<sup>nd</sup> Ave. North,  
Billings, MT**

**OBJECTION OF PPL ENERGYPLUS, LLC TO CONFIRMATION OF THE TRUSTEE'S  
DISCLOSURE STATEMENT FOR TRUSTEE'S FIRST AMENDED PLAN OF  
REORGANIZATION**

COMES NOW, creditor PPL EnergyPlus, LLC, ("PPL"), listed by the Trustee in the Plan and Disclosure Statement as a "Class 6 Unsecured Creditor", by and through counsel, and

pursuant to F.R.B.P. 3017(a) and 11 U.S.C. § 1125(a)(1), hereby objects to the confirmation and approval of the Disclosure Statement for Trustee's First Amended Plan of Reorganization (Doc.# 990) ("Disclosure Statement"), as it presently reads, for the following reasons:

1. The Disclosure Statement and the Trustee's First Amended Plan of Reorganization (Doc.# 989) ("Plan") fail to describe and identify the basis, methodology and evidence that support valuing the Class 2(A) secured claim of U.S. Bank National Association as Indenture Trustee and certain holders consisting of Prudential Insurance Company ("Prudential"), and the collateral securing that claim, as described in paragraph II. A of the Disclosure Statement and paragraph 4.2.a. of the Plan, in an approximate sum of \$60Million (\$60,000,000.00).<sup>1</sup> Likewise, the Disclosure Statement fails to disclose the basis by which the Class 2(B) secured claim of Modern Woodman has been valued.

As the record will show, the Trustee earlier filed a Motion for Valuation ("Valuation Motion") in which the Trustee claimed that the value of the collateral securing the Prudential and Modern Woodman claims was no more than Five Million Six Hundred Thousand Dollars. (\$5,600,000.00). (See, Doc.# 816.) The individual cooperative members of Southern joined in that motion (Doc.#890). The members and the Unsecured Creditors Committee also joined in the Trustee's objection to the Prudential Proof of Claim. (Doc.#818, 822, 889).

Before those objections and the valuation issue could be resolved, the Trustee filed an unopposed motion to adjourn the hearing (Doc.#918), indicating that Valuation Motion had been settled, at least as between the Trustee and Prudential, and that the settlement terms would be incorporated into the Plan. (Doc. #918, para. 6.)

The Disclosure Statement does not disclose the basis including evidence for valuing the Prudential claim at approximately \$60Million (\$60,000,000.00) or the basis for valuing the claim

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<sup>1</sup> This is an approximation. See II.A. of the Disclosure Statement.

of Modern Woodman. The Disclosure Statement also does not disclose whether the joinder in the Valuation Motion, and the objections to the Prudential and Modern Woodman proofs of claim, and especially as they pertain to the UCC and individual members has been resolved or how and when they will be resolved.

The largest expense for Southern going forward under the Plan is service of the Prudential debt. Debt service to Prudential of \$5.6 Million, as the Trustee claimed in his Valuation Motion, is substantially less than the \$60Million now scheduled in the Plan and Disclosure Statement. The Disclosure Statement should disclose the basis for said valuation and the disposition of the Valuation Motion and the objections to the Prudential proof of claim.

2. The Disclosure Statement fails to provide any analysis, accounting or projections as to the amount of cash available for unsecured creditors at the time of confirmation or how that number was calculated.

3. According to the Disclosure Statement, the amount that may be available to Class 6 Unsecured Creditors may include "Litigation Recoveries". (Disclosure Statement at para. 4.6.b.) The Disclosure Statement provides no information regarding these "Litigation Recoveries" including the factual and legal basis, the parties, amount recoverable, merits and whether any claim thereto will be released by Prudential and, if so, how much. This information needs to be disclosed.

4. The Disclosure Statement fails to identify why or why not any surcharge cannot be charged to Prudential. In previous cash collateral orders entered by this Court, the trustee had agreed to waive any right to surcharge Prudential's collateral in exchange for Prudential's agreement to allow its cash collateral to be used to pay for all expenses of this bankruptcy case (including Trustee's Professional Fees). However, upon information and belief, the costs of this case (including professional fees) have been and/or will be paid, at least in part, from unencumbered cash as opposed to cash collateral as contemplated by the Court's orders. To the

extent unencumbered cash has been or will be used, the estate should have the right to surcharge Prudential's collateral to recoup those expenses which should have been paid through the use of cash collateral. Accordingly, Trustee should account for what unencumbered cash has been accumulated during the pendency of this case and how that cash has been and will be used so creditors will know if the estate has the ability to recoup any amounts used to pay for fees and expenses which were to be paid from cash collateral.

5. A Trustees Report should be filed with the Disclosure Statement. As noted in the disclosure statement, the trustee and his professionals have been working on the Trustee's Report for several months and have had ample time to complete the statutory required report. By its very nature, the report will necessarily contain information that the creditors of this estate will need in order to make an informed decision on whether to vote for Trustee's plan. Accordingly, this court should require the trustee to file his report as part of any disclosure statement approved in this case.

The additional information requested herein is necessary in order to allow these and other Creditors an ability to make an informed judgment about the merits of the Plan and thus how to vote on Plan confirmation in accordance with 11 U.S.C. § 1125(a)(1). See, *In re Metrocraft Pub. Ser. Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984).

Respectfully submitted this 18<sup>th</sup> day of September, 2013.

By: /s/ Martin S. King  
Martin S. King, Attorney for Creditor PPL  
EnergyPlus, LLC

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 18, 2013, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification electronically to all attorneys of record.

/s/ Rhonda Kolar  
Rhonda Kolar