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MALCOLM H. GOODRICH  
MAGGIE W. STEIN  
GOODRICH LAW FIRM, P.C.  
2619 ST. JOHNS, AVENUE, SUITE F  
P. O. BOX 1899  
BILLINGS, MT 59103-1899  
TELEPHONE: (406) 256-3663  
FAX: (406) 256-3660  
Bar No. 2551  
Bar No. 8149

ATTORNEYS FOR DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

IN RE: ) Case No.: 11-62031-11  
)  
SOUTHERN MONTANA ELECTRIC ) **APPLICATION TO APPROVE**  
GENERATION AND TRANSMISSION ) **EMPLOYMENT OF PROFESSIONALS**  
COOPERATIVE, INC., ) **AND DECLARATION**  
)  
Debtors. )

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The Application of **SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.** respectfully represents:

1. On the 21<sup>st</sup> day of October, 2011, Debtors filed a petition herein under Chapter 11.
2. This Court on November 29, 2011, as docket #113, appointed Mr. Lee Freeman as Trustee for the Debtor effective on that date. Pursuant to the effect of 11 USC §§ 1101 and 1104, once a Trustee is appointed in a Chapter 11 proceeding, the Debtor is no longer a Debtor in Possession because the Trustee succeeds to all rights and properties of the

1 Debtor in Possession, thereby displacing the Debtor in Possession from all of its property  
2 interests and contractual rights. *In re Footstar, Inc.*, 323 BR 566, 571 (Bankr. S.D.N.Y.  
3 2005).

4 3. On November 26, 2013, the Court terminated the appointment of Mr. Freeman  
5 as Trustee effective immediately whereupon the Debtor was returned to possession and  
6 control of the assets of the bankruptcy estate as debtor in possession.  
7

8 4. Because of the re-establishment of the debtor in possession status for the  
9 Debtor, the Debtor wishes to retain professionals to represent its interests in the bankruptcy  
10 proceeding. Previously, the Debtor retained the Goodrich Law Firm P.C. and its  
11 professionals, Malcolm H. Goodrich, Maggie Stein, Felicia Smith, and its application for that  
12 purpose with this Court was approved. The Goodrich Law Firm P.C. will remain as lead  
13 bankruptcy counsel in this matter. However, because of the complexity of this case, which  
14 includes two plans and disclosure statements nearly set for trial and eight adversary  
15 proceedings waiting to be prosecuted or defended, together with the fact that litigation in this  
16 case has been ongoing for nearly two years between all other parties, but the Debtor has only  
17 within the last month resumed activity in the case, the Debtor believes that additional counsel  
18 assistance would be advisable.  
19

20 5. Applicant has selected the law firm of McGuire Woods LLP, and its  
21 professionals, Mike Roeschenthaler (bankruptcy and restructuring), Mark E. Freedlander  
22 (bankruptcy and restructuring), Joanne Katsantonis (energy) and Michele McKinnon (non-  
23 profit) as counsel for the following reasons: these professionals are experienced in the fields  
24 indicated and the breadth of their knowledge will assist this Debtor cooperative energy  
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1 company in a wide array of issues facing it relative to the plans presently proposed by its  
2 members and secured creditors., in addition to other bankruptcy matters.

3 6. The professional services that the law firm of McGuire Woods LLP, and its  
4 professionals, Mike Roesenthaler, Mark E. Freedlander, Joanne Katsantonis and Michele  
5 McKinnon will render include: general counseling and representation before the Bankruptcy  
6 Court in connection with the above captioned Chapter 11 case and any associated matters  
7 before the Court.  
8

9 7. To the best of Applicant's knowledge, other than as set forth in the attached  
10 Affidavit, the law firm of McGuire Woods LLP, and its professionals, Mike Roesenthaler,  
11 Mark E. Freedlander, Joanne Katsantonis and Michele McKinnon have no connection with  
12 the creditors, or any other party in interest, or their respective attorneys and accountants, the  
13 United States Trustee, or any person employed in the office of the United States Trustee, and  
14 each of the professionals of McGuire Woods LLP is a disinterested person as defined in 11  
15 USC 101(14).  
16

17 8. The terms of employment of the law firm of McGuire Woods LLP, and its  
18 professionals, Mike Roesenthaler, Mark E. Freedlander, Joanne Katsantonis and Michele  
19 McKinnon agreed to by Southern Montana, subject to the approval of the Court are:

20 A. Services rendered by attorneys will be compensated as follows: Mike  
21 Roesenthaler \$675.00 per hour, Mark E. Freedlander \$800.00 per hour, Joanne Katsantonis  
22 \$675.00 per hour and Michele McKinnon \$650.00 per hour. McGuireWoods intends to use  
23 non-equity partners and associates as and when circumstances dictate in order to assure  
24 efficient and cost effective representation of the Debtor.  
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1 B. Photocopying by third-party copying firms, postage or other package delivery  
2 (FedEx, UPS or the like) and multiparty conference call hosting services will be charged at  
3 cost; mileage (if any is required) will be charged at the per mile rate allowed by the Internal  
4 Revenue Service or \$.45 per mile, whichever is less; and other necessary out-of-pocket costs  
5 (for example, filing fees or transcript costs) will be charged at actual cost. No proposed  
6 counsel has any fee-sharing agreement or arrangement with any other person or firm.  
7

8 C. No retainer will be required to secure engagement of the proposed counsel.

9 D. In the event of nonpayment of fees and costs the law firm will be entitled to  
10 withdraw from representation.

11 9. To the best of Applicant's knowledge, the law firm of McGuire Woods LLP,  
12 and its professionals, Mike Roesenthaler, Mark E. Freedlander, Joanne Katsantonis and  
13 Michele McKinnon represent no interests adverse to the Debtor or the estate on matters upon  
14 which they are to be engaged, and their employment would be in the best interests of this  
15 estate.  
16

17 WHEREFORE, Southern Montana Electric Generation and Transmission  
18 Cooperative, Inc., prays that the Court approve its employment of the law firm of McGuire  
19 Woods LLP, and its professionals, Mike Roesenthaler, Mark E. Freedlander, Joanne  
20 Katsantonis and Michele McKinnon as Debtor's co-counsel in this Chapter 11 case under the  
21 terms specified herein, to be approved by the Court.  
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23 Dated this 26th day of December, 2013.

24 By: \_\_\_\_\_  
25 David Dover, President  
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IN RE: )  
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SOUTHERN MONTANA ELECTRIC ) Case No.: 11-62031-11  
GENERATION AND TRANSMISSION )  
COOPERATIVE, INC., )  
)  
Debtors. )

**DECLARATION OF MARK E. FREEDLANDER  
IN SUPPORT OF APPLICATION OF MCGUIREWOODS LLP  
FOR RETENTION AS CO-COUNSEL**

I, Mark E. Freedlander, hereby declare under penalty of perjury:

1. I am a member of the Bar of the Commonwealth of Pennsylvania and the firm of McGuireWoods LLP (“MW” or the “Firm”).

2. I submit this declaration (the “Declaration”) in support of the Debtors’ Application for Entry of an Order Authorizing the Employment and Retention of McGuireWoods LLP as Co-Counsel Pursuant to Section 327of the Bankruptcy Code Nunc

1 Pro Tunc to December 23, 2013 (the "Application"). Except as otherwise noted, I have  
2 personal knowledge of the matters set forth herein.

3 3. All facts set forth below in this Declaration are based upon information from,  
4 and discussions I or other MW personnel reporting to me have had with certain of my  
5 partners and colleagues at MW, as well as with the conflicts personnel who address conflicts  
6 for MW. The facts below are also based on a review performed by the persons responsible  
7 for maintaining records of representations with the assistance of attorneys in each. Based on  
8 the foregoing, if I were called upon to testify, I could and would testify competently to the  
9 facts set forth herein. I am authorized to submit this Declaration on behalf of the Firm.  
10

11 **Services To Be Performed by MW**

12 4. The Application seeks to retain MW as co-counsel to the Debtor pursuant to  
13 section 327 of the Bankruptcy Code to perform legal services in connection with the matters  
14 set forth in the Application described further below.  
15

16 5. The Debtor's chapter 11 bankruptcy case has been pending before the Court  
17 since October 21, 2011. The case has involved significant animosity among various parties  
18 in interest, and at the moment, there is no end in sight with respect to certain disputes in the  
19 case, including, but not limited to the appropriate disposition of the Debtor's assets and  
20 operations. The Debtor has only again become a debtor in possession within the past 30  
21 days. Although the Debtor has only recently obtained the status of a debtor in possession,  
22 this does not mean that the Debtor's case is not moving forward. Presently pending before  
23 the Court are a plan of reorganization filed by a group of secured note holders (led by  
24 Prudential Life Insurance of America) and a second plan of reorganization filed by the  
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1 former chapter 11 trustee of the Debtor. The members comprising the Debtor, a Montana  
2 cooperative, do not support either of the two plans of reorganization presently pending before  
3 the Court. Likewise, substantial litigation remains pending the in the Debtor's case,  
4 including, without limitation, an adversary complaint filed by the members of the Debtor in  
5 September, 2013 seeking a determination that the requirements contracts that constitute the  
6 foundation of the Debtor's business, are not enforceable, assumable or assignable. Given  
7 the significant volume of activity in the case and action required by the Debtor, lead counsel  
8 to the Debtor, the Goodrich Law Firm ("Goodrich") requested on behalf of the Debtor that  
9 MW join Goodrich as co-counsel in Goodrich's representation of the Debtor.  
10

11 The retention of MW is intended to supplement work performed by Goodrich, which  
12 will remain lead bankruptcy counsel to the Debtor. In particular, MW currently expects that  
13 it will assist Goodrich in the representation of the Debtor with respect to matters as follows:  
14

- 15 (a) Matters involving applicable cooperative or non-profit law and its  
16 intersection with bankruptcy law and/or impact on the Debtor's bankruptcy  
17 case;
- 18 (b) Matters requiring the involvement of lawyers with specific expertise in  
19 the energy industry;
- 20 (c) Certain matters relating to the plan of reorganization or plan of  
21 liquidation process involving the Debtor, including, without limitation,  
22 litigation support, to the extent required by Goodrich;
- 23 (d) Strategic bankruptcy and restructuring matters as and when required,  
24 including, without limitation, litigation support; and
- 25 (e) Certain other matters as may be requested by the Debtor's Board of  
26 Trustees or Goodrich in order to allow the Debtor to fulfill its duties and  
obligations under this chapter 11 case.

1 The list of matters in which MW may become involved is exemplary and not  
2 exclusive. MW may become involved in other or further matters on behalf of the Debtor as  
3 may be requested by the Debtor's Board of Trustees and/or Goodrich.

4 MW is a full service international law firm regularly appearing before bankruptcy  
5 courts throughout the United States. Given the size of the Firm and experience of attorneys  
6 within MW, the Firm is able to provide resources to supplement the efforts of Goodrich that  
7 will allow the Debtor to appropriately address the many matters pending before the Court  
8 (and others not pending before the Court at this time) that must be addressed within time  
9 constraints that exist. MW routinely works with other law firms as lead counsel, co-counsel  
10 or local counsel, and understands that in its role as proposed co-counsel to the Debtor, it is  
11 the responsibility of MW to coordinate with Goodrich in a manner that will assure that there  
12 is not a duplication of work and fees by MW and Goodrich.

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15 **"Connections" of MW**

16 6. In preparation of the Application, to check and clear potential conflicts of  
17 interest in these cases, as well as to determine all "connections" of MW to the Debtor, its  
18 creditors, members and other parties in interest, MW researched its client database to  
19 determine whether it had any relationships with the Debtor, its creditors, members or other  
20 parties in interest. **In an effort to expedite the filing of its Application, MW ran a**  
21 **preliminary conflicts check, and this Declaration will be supplemented as soon as**  
22 **possible following a complete search by MW of its database relating to all creditors and**  
23 **parties in interest.** As of this time, MW searched its database for connections with respect  
24 to the following: (i) the Debtor, (ii) current and former members of the Debtor, and (iii) the  
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1 Noteholders (i.e., The Prudential Insurance Company of America, Universal Prudential  
2 Arizona Insurance Company, Prudential Investment Management, Inc., Forethought Life  
3 Insurance Company, and Modern Woodmen of America). To the best of my knowledge and  
4 belief, insofar as I have been able to ascertain after reasonable inquiry, and subject to  
5 supplementing this Declaration as explained above, neither I, nor MW, nor any partner or  
6 associate thereof, has any connection with the Debtor or the other parties that have been  
7 checked against the Firm's database. Further, to the best of my knowledge, MW does not  
8 represent or hold any interest adverse to the Debtor or the Debtor's bankruptcy estate. For  
9 purposes of full disclosure, I note the following matters that involves an affiliate of The  
10 Prudential Insurance Company of America:  
11

12 MW recently closed a file relating to work performed on behalf of Prudential  
13 Real Estate Investors, an apparent affiliate of The Prudential Insurance  
14 Company of America. This matter involved real property in Virginia and was  
15 wholly unrelated to the Debtor and the representation by MW was limited to  
16 Prudential Real Estate Investors only and no other affiliates or related  
17 Prudential entities.

18 **Amounts Owed to MW**

19 7. MW is not owed any amounts by the Debtor because mw has no previously  
20 represented the Debtor either prior to or after the Debtor's petition date.

21 8. To the best of my knowledge and belief, insofar as I have been able to  
22 ascertain after reasonable inquiry, neither I, nor MW, nor any partner or associate thereof,  
23 has received or been promised any compensation for legal services rendered or to be  
24 rendered in any capacity in connection with the Debtor's chapter 11 cases, other than as  
25 permitted by the Bankruptcy Code and specific order of court in the Debtor's case. MW has  
26

1 not agreed to share compensation received in connection with this case with any other  
2 person, except as permitted by section 504(b) of the Bankruptcy Code and Bankruptcy Rule  
3 2016(b) in respect of the sharing of compensation among partners of MW.

4 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is  
5 true and correct to the best of my knowledge, information, and belief.  
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Dated: December \_\_\_\_, 2013

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Mark E. Freedlander  
Pa I.D. #70593  
McGuireWoods LLP  
EQT plaza  
625 Liberty Avenue, 23rd Floor  
Pittsburgh, PA 15222  
Phone: (412) 667-6000  
Fax: (412) 667-6050  
[mfreedlander@mcguirewoods.com](mailto:mfreedlander@mcguirewoods.com)

Proposed Co-Counsel to Debtor,  
Southern Montana Electric Generation and  
Transmission Cooperative, Inc.

Subscribed and sworn to before me this \_\_\_\_ day of December, 2013.

(SEAL)

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Notary Public for the State of Pennsylvania  
Printed Name: Lela M. Lescallete  
Commission Expires: \_\_\_\_\_

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that on December 27, 2013 a copy of the foregoing pleading was served by electronic means, pursuant to LBR 7005-1 9013-1(c) and 9036-1 on the parties noted in the Court's ECF transmission facilities.

GOODRICH LAW FIRM, P.C.

/s/ Malcolm Goodrich  
Malcolm H. Goodrich