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October 8, 2013

VIA SCAN/EMAIL
AND U.S. MAIL

John Cardinal Parks
Horowitz & Burnett, P.C.
1660 Lincoln Street, Suite 1900
Denver, CO 80264

Re: *In re: Southern Montana Electric Generation and Transmission Cooperative, Inc.*

Dear John:

I write concerning the 2004 examination of Ms. Boyd. We (Fergus' counsel) agree you can do the examination by agreement and there is no need to involve the Court in rescheduling.

Nonetheless, Fergus urges you to reconsider the need and wisdom of your present course of action. You are apparently pursuing statements that Ms. Boyd and/or Beartooth made to the members of the cooperative of which she is a trustee in a news release, memorandum and annual report. It seems clear that none of those members will be making the decision to accept or reject any particular plan – that decision will be made by the board of trustees. Any communication from Ms. Boyd to Beartooth's members could not have been an attempt to solicit acceptance or rejection "from a holder of a claim or interest with respect to such claim or interest." Instead, they appear to be entirely appropriate communications from the trustees of Beartooth to the members of Beartooth. Fergus is concerned that the trustee's efforts to examine Beartooth/Ms. Boyd are, at best, a waste of money and, at worst, an attempt to intimidate Southern's members.

Our concerns are heightened by another aspect of this issue. While aggressively seeking to examine Ms. Boyd about statements that Beartooth made to its members, the Trustee has been busy making his own statements to the press. *See, e.g.,* News-Argus Article, September 28, 2013. We have a hard time reconciling the trustee's expenditure of estate funds to examine Beartooth, "particularly focused on potential violations of 11 U.S.C. § 1125(b)," when he has apparently made statements of the same nature, and arguably far more likely to constitute solicitation of acceptance of his plan. In addition, the trustee made patently false statements in the article, including that the member co-ops are debtors to Prudential.

Fergus reserves the right to object to fees and expenses requested by the trustee and his professionals, including you and your law firm. At that time, the trustee and you will have the burden to show that "[a]ll expenses and fees . . . [were] both actual and necessary under §330(a)(3) of the Code." *In re Crown Oil, Inc.*, 257 B.R. 531, 538 (Bankr.Mont. 2000). We caution you and the trustee against wasting estate funds in this effort.



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In fact, we caution you and the trustee that, in our view, the trustee's entire effort to impose his plan is not reasonably calculated to benefit the bankruptcy estate.


While it is not necessary to have a successful reorganization for debtor's counsel to be awarded fees, fees may be denied when counsel should have realized that reorganization was not feasible and therefore services in that effort did not benefit the estate.

Crown Oil, 257 B.R. at 539 (quoting *In re Crown Oil, Inc.*, 18 Mont. B.R. at 283 (quoting *In re Kohl*, 95 F.3d at 714)). In severely limiting the awarded fees, *Crown Oil* noted that "[b]oth professionals knew or should have known early on in this case that reorganization was not feasible." *Id.* at 540. Here, it is apparent that the current plan is not feasible. Yet, you are blindly plowing ahead.

In conclusion, the money which the trustee would waste on an examination of Beartooth is a small fraction of the money he has wasted, and continues to waste, on the present plan. Nonetheless, it is a waste. Fergus reserves all rights to object to payment of any fees and expenses incurred by the trustee or his professionals in that (or any other) effort which is not reasonably likely to benefit the estate.

Sincerely,

GOETZ, BALDWIN & GEDDES, P.C.



Trent M. Gardner

TMG:kbd

cc: John Paul
Jeffery A. Hunnes
Martin S. Smith
Gary Ryder
Robert Baldwin