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## **FOR IMMEDIATE RELEASE**

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### **Beartooth Electric moves aggressively to protect members**

If the multi-year resolution of Southern Montana Electric's bankruptcy were a 15 round prize fight, the fighters--lawyers on all sides of the issue--would still be trying to score points in the early rounds. Beartooth Electric's (BEC) recent legal effort, however, would be a clear attempt at a knockout punch.

On Friday, April 13, BEC filed a complaint with the federal bankruptcy court asking it to declare its 40-year, all requirements contract with Southern null and void. If successful, BEC will free its members from an obligation over the next 37 years to pay Southern's very high rates for wholesale power and to repay approximately 20 percent of Southern's \$85M loan (plus \$100M interest) to build phase one of the Highwood power generation plant.

In its complaint, BEC requested the court to determine the validity of the Amended Wholesale Power Contract dated December 19, 2008 between Beartooth and Southern. It asserted the following in its complaint:

- The Amended 2008 Contract is void because it is a guarantee of Southern's long-term indebtedness, which was not approved by the Wyoming Public Service Commission which must approve all guarantees of long-term debt for BEC.
- The Amended Power Contract as security for the Highwood Generation Station (HGS) is not legally assumable or assignable as security without first obtaining valuation of the contract and written consent from BEC. Neither was obtained.
- Under Montana law and Southern's bylaws, the mortgage by Southern of the Amended Power Agreement as security for the Prudential loan which financed HGS is void. Under Montana law Southern cannot be assigned or assume the power contract, so the bankruptcy trustee cannot assume the contract.
- Under Montana law the Amended Power Contract is void for lack of consideration. In 2007 Southern and BEC entered into a wholesale power contract. In 2008 they executed the amended power contract. Comparing the amended power contract to the 2007 contract, BEC incurred significant obligations and waived crucial rights. Southern, on the other hand, did not incur any additional obligations or give up any rights. The

one-sided amended power contract is void because it violates basic principles of contract law.

All requirement contracts for wholesale power between distribution coops like BEC and generation and transmission (G&T) coops like Southern are common in the power industry. They ensure buyers will exist for the power G&Ts contract from others or generate themselves.

BEC's contract with Southern was a typical all-requirements contract until December 2008. In December 2008, however, Southern and BEC agreed to amend the contract to include an extraordinary provision. It obligated BEC's members to pay Southern's debts even if Southern were to go out of business. With that provision in BEC's contract and in the contracts of three other member coops (Tongue River, Fergus, and Mid-Yellowstone), Southern pledged the contracts in February 2010 as collateral for its \$85M loan to build phase one of Highwood.

Without a positive ruling from the court on BEC's complaint, Southern's creditor for Highwood could potentially require BEC and the three other coops to repay Southern's loan even if Southern no longer exists after bankruptcy. BEC's complaint on the 13<sup>th</sup> contends that Southern's board did not take the required steps before agreeing to guarantee its debt and that neither Southern nor the court may legally assume or assign the contract to creditors.

In a statement after BEC filed its complaint, Roxie Melton, president of the BEC board, said, "the board was alarmed at the serious risk to the financial security of Beartooth Electric after reviewing our contract with Southern and the astounding obligations it contained. On advice of counsel, and in the best interest of our members, we are seeking to put the contract aside."

For questions call or contact Dick Nolan [dnolanmt@gmail.com](mailto:dnolanmt@gmail.com) or 425.2269.

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