

## **BEC gives update on bankruptcy**

By Eleanor Guerrero CCN Reporter

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On Monday, Nov. 28, the law firm of Felt, Martin, Frazier and Weldon, P.C., attorneys for the Board of Trustees for Beartooth Electric Coop (BEC), met with the board and members to report on the bankruptcy of Southern Montana Electric Generation and Transmission Cooperative, Inc. ("Southern").

Firm members Larry Martin, Jeff Weldon and Martin Smith attended. Smith gave a review of proceedings and an update on current information. He said finding out relevant information was like, "drinking out of a fire hose." Senior partner Larry Martin acknowledged that, "at this time we do not have all the information, but we will be getting it. We shall be putting the pieces together with SME (Southern Montana Electric), Southern and Beartooth and reporting back."

Martin explained the Chapter 11 Bankruptcy process. "There will be a trustee appointed. It is up to the U.S. Trustee to ultimately decide whether it is a Chapter 11 or a Chapter 7. He does not represent Southern, the member coops or the creditors. He will decide the best way to balance the interests." The court has just appointed Livingston attorney, Lee A. Freeman, Jr. as Chapter 11 Trustee. Freeman is a magna cum laud graduate of both Harvard University and Harvard Law School with extensive experience in anti-trust and complex commercial litigation.

Smith explained last week's interim decisions. "The court approved Southern to access cash collateral to keep paying for the power being used until Dec. 20. This allows Southern to continue functioning." Smith said it was a great advance for BEC to approve the appointment of a trustee. "We have one or two other coop bankruptcies that are a blueprint for us to go by. One of them took a year just to agree to appoint the trustee." Based upon these cases, a fair solution is possible.

Southern contracted to purchase large amounts of power from PPL which could then be sold to third parties, like California. The U.S. Government moved to cap rates for California's seemingly unlimited power needs. Many coops found they had enormous obligations to purchase power but the market had shrunk.

BEC's position was explained. In March, 2011, BEC's board approved an "unlimited guarantee" to repay Southern's debt to First Interstate Bank. This indebtedness was defined as, "the principal amount outstanding, from time to time, of any and all debt, liabilities and obligations...now existing or hereafter acquired." Approximately 3.3 million dollars is due First Interstate. "Although we are jointly and severally (independently) liable," said Smith, "there are at least four other coop guarantors." The trustee may recognize Southern or dissolve it, and/or sell assets. Currently, Smith said, "the Southern board is dysfunctional."

The second serious blow to BEC is their equity exposure. This includes \$372,000 in member deposits, \$1.4 million in member investments and \$93,000 paid in cash collateral to secure Coop Financial Corporation(CFC). There is a potential rate increase obligation for BEC for \$5 million due CFC.

Smith then said, "We have not yet dealt with the issue of the 800 lb gorilla: that is \$85 million in loans to Prudential-really a collection of creditors. The PPL supply contract obligates BEC to revise its rates to cover all of Southern's liabilities-including the \$85 million. BEC is a "quasi-guarantor" because its obligation is not triggered until this contract is assigned to a third party. They are investigating whether additional Prudential indentures exist.

The first creditors meeting will take place Friday, Dec. 2. On Dec. 20, there will be a hearing. First, the court must determine what to do with the cash collateral. Second, the court will review the future needs of the coops to receive power. Third, Jon Doak, former general counsel to Southern, had applied to the court to be bankruptcy counsel. Yellowstone Valley Electrical Cooperative opposed this motion. With a trustee, Smith said, this issue may be over and any representation would not be paid. Lastly, there is a motion by the Montana Public Service Commission (PSC) to intervene. PSC is not a creditor or a party in interest but can argue two reasons to intervene: 1. if a supply contract to a utility arises from the bankruptcy the state has a regulatory interest and 2. the Attorney General has a duty towards all Montana consumers.

Martin said if the need arises for information any party in interest or financial advisor, including Tim Gregori, who retired recently as Southern's General Manager, can be compelled to appear before the court and produce documents.

Smith said the trustee would probably "go back" at least two years in researching records. A cursory financial analysis is required. Smith said he makes no reference to anyone, but, "it is always a concern when you have boards meeting behind closed doors. It is always a concern when you have unified boards-but it does not mean criminality." Smith continued, "If anything is discovered, it will be referred to the U.S. Trustee who oversees the bankruptcy court. It is another thing the U.S. Trustee will look closely at. It is the trustee's prerogative. If he sees voidable transactions-either fraud or creditor preference he can report it to the U.S. Department of Justice or to the Montana Attorney General."

"Prudential is a secured creditor," said Smith returning to the main issue. "They will play a big role; their cooperation is key." "It is to the bank's advantage to seek the highest possibility of repayment," said Martin, "and that means looking to everyone."