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Bankruptcy Court sets Southern Montana Electric hearing and trial dates

Red Lodge—Beartooth Electric Cooperative now has a timetable for arguments on major issues that will affect the distribution cooperative's more than 5,000 members. On March 6 in Billings, U.S. Bankruptcy Court judge Ralph Kirscher scheduled major actions in the bankruptcy process for Southern Montana Electric Generation and Transmission Cooperative (Southern).

Judge Kirscher set a May 21 trial date for the Beartooth Electric Cooperative (Beartooth) complaint to void its 2008 wholesale power contract with Southern. In a conference with attorneys, Judge Kirscher consolidated the Beartooth adversary proceeding with the bankruptcy confirmation process, allowing the power contract case to be resolved within the bankruptcy timeframe.

Also on March 6, a preliminary hearing was held on motions by the Southern trustee to withhold information in documents before the court. The trustee seeks a protective order permitting information to be declared confidential and sealed from public review. The judge ordered an evidentiary hearing on the matter March 26.

The motion for the protective order references information that may harm a power supply proposal from the Morgan Stanley Capital Group. The proposed order presented with the motion takes a broader approach—asking that any party in interest be allowed to designate “any document, material, or information produced by it as ‘Confidential Material’.”

Martin Smith, counsel for Beartooth, reports that Federal Court rulings require a strong presumption in favor of public access. “Beyond mere speculation, there must be a compelling reason supported by facts for sealing documents to deny access,” Smith said.

Beartooth, the city of Great Falls, and PPL Energy Plus each filed objections to the trustee's confidentiality motions. In setting the hearing for March 26, the judge added a deadline of March 13 for any additional objections to the motions. The hearing on approval of the Trustee's Disclosure Statement originally scheduled for March 26 was moved to April 23.

Southern declared bankruptcy in October 2011 with enormous debt, an unpaid \$85 million loan for the Highwood Generation Station (HGS), and a contract to purchase twice the power Beartooth and the other Southern members used. The trustee filed his Chapter 11 reorganization plan and disclosure information on February 15, 2013. The plan calls for reorganizing Southern with the four member co-ops owning and paying for the Highwood Generating Station (HGS) over ten years.

“Our due diligence shows that there is no value in remaining a member of Southern and owning HGS. If the Trustee’s plan reveals any new information demonstrating value in a reorganized Southern we cannot see it because of redactions and missing information,” said Arleen Boyd, due diligence committee chair, Beartooth Board of Trustees.

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