



NEWS
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Judge continues to set pace in Southern bankruptcy
Increasing distance between views of future viability

In a hearing held July 31 in Missoula, U.S. Bankruptcy Court Judge Ralph Kirscher ruled to dismiss a motion to liquidate Southern Montana Electric Cooperative. Three of the four Southern member co-ops—Beartooth Electric, Fergus Electric, and Mid-Yellowstone Electric—had each joined the motion filed by Pennsylvania Power & Light EnergyPlus and the Unsecured Creditors Committee to convert the bankrupt umbrella cooperative’s Chapter 11 reorganization to a Chapter 7, liquidation.

The judge ruled without prejudice, which means the matter may be brought back to the court with further arguments and evidence. He said parties of interest may file or refile “any time.”

Harold Dye, attorney for the Unsecured Creditors Committee, argued that with Yellowstone Valley Electric Cooperative and the City of Great Falls now out of Southern, cash is being depleted, and there is little chance of a consensual agreement between the Noteholders (Prudential and Modern Woodman of America) and the remaining cooperatives for a payment structure that members can afford.

Southern trustee Lee Freeman responded that he and the Noteholders have reached a settlement agreement. To Dye’s argument that Southern’s cash is being depleted and \$1.04 million continues to be paid monthly to Prudential in “adequate protection payments,” the trustee agreed that about 40 percent of its revenue is gone with the exit of YVEC and Great Falls, but claimed positive cash flow. The trustee pointed out that the \$1.04 million per month required by the bankruptcy court under the cash collateral agreement, comes out of encumbered funds designated for secured debt and therefore is not reflected in the cooperative’s operating costs or cash flow statement.

Martin King, the attorney for PPL, asked the trustee if the Noteholder’s claim is under-secured. The trustee replied that he’s not sure, adding that the total claim is \$130 million and Southern has \$8.5 million in cash. Of that, the Noteholders have a security interest encumbering approximately \$6.5 million cash and the remaining \$2 million is unencumbered. King asked if the pending amended reorganization plan and disclosure would be very similar to the plan previously filed and if a cram down (the imposition of a reorganization plan by the court over the objections of some classes of creditors) is possible. The trustee answered “yes” to both questions.

The judge gave the Southern trustee until August 14 to file his amended disclosure statement and reorganization plan and details of a new cash collateral agreement. Judge Kirscher said he would schedule the hearing to approve the amended disclosure statement for September 24 and the hearing for confirmation of the amended plan for November 12. Parties in the case will have the opportunity to challenge confirmation of the amended plan once it is filed—and propose or join an alternative plan.

Beartooth Electric's due diligence chair and legal liaison, Arleen Boyd, provided her take on the day in court.

“The trustee said the plan will be very much like his previous plan with new provisions from the settlement agreement. This means that it will include provisions the co-ops rejected after recent discussions with Prudential. It is clear the only reason to keep Southern together is to pay the Noteholders. Three of the four co-op members have clearly stated that they want to liquidate Southern, yet this trustee told the court that ‘everyone’ is on a path for settling. He is obviously not talking about us.”

“But, no matter what, the lights will stay on,” Boyd added. Her comment was provoked by the statement of Southern attorney John Parks, who told the judge it is in the public interest to keep Southern going.

“In the public interest, don't turn the lights out,” Parks stated, arguing that the co-ops will lose power as soon as liquidation happens. Parks' remark also prompted a comment from Montana Public Service Commissioner Travis Kavulla, who has been following the bankruptcy case from the beginning.

“The notion that the lights would go out merely because Southern is liquidated is absurd. Southern at this point is simply a middleman charging an exorbitant toll on customers. If Beartooth customers were paying only for the energy they consume, and not for Southern's surcharges and rate riders, their bills would be a fraction of what they are today,” Kavulla said.

Representatives on the Beartooth Board of Trustees will meet next week to continue to examine numbers in preparation for receiving the plan and to map out legal strategy that protects the best interests of the electric co-op's 4,200 members.

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