

Beartooth continues to pursue battle with SME - 3 other claims dismissed

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Written byThe Associated Press

BILLINGS — An electricity co-op will continue its fight to cut ties with a bankrupt wholesale supplier after a federal judge ruled Beartooth Electric Cooperative had proven enough to proceed with two claims against Southern Montana Electric Generation and Transmission Cooperative.

U.S. Bankruptcy Judge Ralph Kirscher's Dec. 20 order allows the Red Lodge-based co-op, Beartooth, to pursue its legal challenge that its contract with Southern is invalid.

Beartooth says the Wyoming Public Service Commission did not approve the contract as required and Southern failed to get a valuation of the contract before pledging it as security for a loan.

Beartooth serves some customers in Wyoming. While not regulated by the Montana Public Service Commission, Beartooth is regulated by the Wyoming PSC for everything except rates.

Kirscher dismissed three other claims but said Beartooth could reassert them later.

Beartooth wants to end its 2008 contract with Southern because its board members say the contract, which runs until 2048, risks the co-op's financial security.

Beartooth told Southern's bankruptcy trustee that being a Southern member and an owner of the Highwood Generating Station, a gas-fired power plant near Great Falls, is not in its members' best interests.

"Indeed, our members are wide awake and closely following

our due diligence,” Beartooth told Southern trustee Lee Freeman in a letter in November.

In 2010, Southern, four other rural co-ops and the city of Great Falls, borrowed \$85 million to build the Highwood plant, a 40-megawatt plant limited to operating only in times of peak power demand.

As security for the loan, the Billings-based wholesaler pledged its property along with Beartooth’s contract and contracts with member co-ops Fergus, Tongue River, Mid-Yellowstone and with Great Falls.

Southern then filed for bankruptcy in October 2011 because of debts stemming from having contracted to buy more power for its members than it needed, at expensive rates.

Freeman, the wholesaler’s trustee, has filed an outline of a reorganization plan in which Southern would remain whole and retain ownership of Highwood while contracting for cheaper, longer-term power to pay off its debts.

Freeman argued Beartooth’s claims should be dismissed as premature, invalid or able to be resolved in the reorganization process.