

Beartooth co-op seeks to nullify SME contract

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Red Lodge-based Beartooth Electric Cooperative on Friday asked a federal bankruptcy judge to declare its wholesale power contract with a Billings-based co-op null and void.

The Billings-based co-op, Southern Montana Electric Generation & Transmission Cooperative, filed for Chapter 11 bankruptcy reorganization in October. Southern Montana sells wholesale power to five rural electric co-ops and the city of Great Falls' utility arm, Electric City Power.

Great Falls City Attorney James Santoro said the Beartooth filing "definitely sends a message" to officials involved in the bankruptcy case. Santoro said he began studying the Beartooth filing Friday, but declined further comment.

In the filing, Beartooth attorney Laurence R. Martin of Billings asked Bankruptcy Judge Ralph B. Kirscher to declare Beartooth's amended wholesale power contract with Southern Montana void for several reasons. One example cited was Southern Montana's failure to obtain approval from the Wyoming Public Service Commission before it pledged Beartooth's contract as collateral against \$85 million in loans the co-op secured to build a power plant east of Great Falls. Another reason listed in the filing was Southern Montana's failure to obtain Beartooth's consent for the power contract to be assumed or assigned.

In other news in the bankruptcy case, Kirscher postponed a hearing in the case from April 17 to April 24 in Billings to consider a variety of issues.

Meanwhile, Southern Montana's appointed trustee, Lee

Freeman, has requested pay of \$500 per hour for 228.6 hours spent working on the case from Nov. 28 through Feb. 29. The total request for compensation was for \$114,300. Freeman's attorney, Joseph Womack of Billings, noted a statutory federal cap on compensation limited the trustee's pay to a much higher figure of \$487,481 for the period.

Southern Montana borrowed \$85 million to build a 40-megawatt natural gas-fired power plant near Great Falls. It also agreed to an unfavorable power agreement with PPL EnergyPlus that helped prompt its bankruptcy filing. Freeman has rejected the PPL contract and Southern Montana recently has purchased power for less than \$20 per megawatt hour, officials said.

The city of Great Falls has lost \$7 million on its energy venture so far, and city commissioners say they want out of the power business.

Freeman has said that he wants to reorganize Southern Montana, although some co-op members would prefer to see the umbrella co-op dissolved or shrunk.

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