

# **DUE DILIGENCE COMMITTEE REPORT**

## **Southern and SME Update to the Board of Trustees**

**March 29, 2013 Board Meeting**

**Hearing Date:** March 26, 2013

**Protective Order** – Judge heard argument to approve proposed protective order. Great Falls had objected but withdrew objection pending final agreement with Southern to receive information, not confidential information, and share all it receives with the public. Evidently they will not receive the information Southern insists is confidential. Beartooth attorney Martin Smith cross-examined the witnesses for Southern, Trustee Lee Freeman and Eric Larson from ACES. Beartooth’s final arguments (the time to make points after asking questions) were not heard as time ran out and the judge said the courtroom had to empty. A subsequent motion from the court sets April 9 as the final date for filing the final arguments on the issue. Martin will file our arguments – the board will see them when they are completed.

**YVEC Settlement** -- Judge says court will approve settlement pending final document submission by the trustee. The expected final date for YVEC to receive power from Southern is April 30.

**Bankruptcy Schedule** -- The court will hold a status/scheduling conference (telephone) on April 8 – expect more time for disclosure and confirmation

### **Legal Action BEC**

- Prepare objections to disclosure statement – due diligence meeting
- Continue to explore settlement with Prudential at Southern and individual levels
- Suit to void 2008 contract set for May
- Trustee’s lawyer has asked for all communication with the trustee to go through counsel. Trustee also is manager of Southern – co-ops often need to consult with the manager of their G&T.
- Trustee’s attorney objected to Arleen’s statement that the trustee inaccurately characterized Beartooth’s due diligence while testifying – Attorney said that the protective order was needed to prohibit “shopping around” Morgan Stanley rates as Beartooth had done and then claimed confidentiality regarding potential power suppliers for Beartooth.

**Due Diligence Committee Meeting:** The committee met April 3 at the Red Lodge Area Community Foundation Building.

- Objections to the plan and disclosure statement
- Southern viability
- Brief review of numbers for the write-offs and potential impact on alternatives (including bankruptcy)

- Brief review of power supply options and bankruptcy options.
- Report on meetings with power suppliers

**Meeting with power supply entity:** March 19, 2013

- Confirmed availability of power supply.
- Confirmed interest only if we exit Southern contract.

**Call with Rural Utility Services:** March 4, 2013

Max Baucus' staff (Liz Ching and Alexis Taylor) arranged a call with the RUS administrator (acting) legal staff and others. RUS is aware of the fact that they did not see and did not approve the 2008 contracts between Southern and member co-ops as they should have. They will not go back and question the contracts but advised us to consult with them closely and early on any amendments or changes to the current contract.

**Action –**

- Approve settlement between YVEC and Southern
- Approve Martin Smith attendance at Informational Meetings
- Martin Smith is preparing a comprehensive outline of legal paths, pros, cons, and costs. If the report is completed well in advance of the April meeting we may need a conference call meeting to review.

Closed session – nothing closed

Submitted by:

Arleen Boyd, Chairman and Representative to Southern and SME

March 28, 2013