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Attorney for Unsecured Creditors Committee

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

IN RE

SOUTHERN MONTANA ELECTRIC
GENERALTION AND
TRANSMISSION COOPERATIVE,
INC.

Debtor.

Case No. 11-62031-11

NOTICE OF HEARING

Date: November 12, 2013

Time: 1:30 P.M.

**Location: Fifth Floor Courtroom,
Federal Courthouse, 2601 2nd
Avenue North, Billings, Montana**

JOINDER IN MOTION TO REMOVE CHAPTER 11 TRUSTEE

The Unsecured Creditors' Committee joins in the Motion to Remove Chapter 11 Trustee [Doc. # 1101] filed by Fergus Electric Cooperative, Inc.

The Committee agrees with Fergus' reasoning that since the sole reason that the trustee was appointed in the first instance – deadlock

among the Members – has been resolved, the trustee should be removed and Southern allowed determining its own fate.

The Committee also agrees that the Trustee's plan of reorganization is unconfirmable. Indeed, since the plan depends on this Court forcing the Members to remain in business together against their will and pay whatever rates are required to fund the Trustee's settlement with the Noteholders¹, it is probably existentially unconfirmable. However, in addition to the deficiencies cited by Fergus the trustee's plan is not confirmable because of the unfair discrimination in favor of unsecured creditors CFC and First Interstate Bank (who are to be paid in full) and general unsecured creditors (who are to receive \$.005 on the dollar)². The plan also violates the best interest of creditors test since the Trustee has no intention of recouping the \$3,000,000 paid to the Noteholder's professionals which is virtually certain to occur in Chapter 7 (and which will occur if the members' liquidation plan is confirmed). The only basis for such payments under 11 U.S.C. § 506(c) is that the Noteholders are oversecured which on the present record is fanciful.

1 The Trustee has never sought approval of this settlement under F.R.B.P 9019.

2 The purported business reason for this discrimination is to protect the Members – who are paying the freight - from their guaranties with CFC and FIB. However, the Members don't want the plan or its protection and the reason for discrimination disappears.

The Committee also shares Fergus' concern over the amount of money being paid out to the Trustee, his professional and the Noteholders' professionals. According to Debtor's September Monthly Operating Report [Doc. # 1088, page 29], as of September 30, 2013 Mr. Freeman has billed or been paid \$637,306.22; his various professionals \$2,720,913.76 and the Noteholders' professionals \$2,993,617.59. At the same time (according to the cash flow statement at page 6 of the same MOR) Debtor's cash balance (which was largely created by receipts from Yellowstone Valley Electric Cooperative and the settlement with YVEC and Great Falls) decreased by some \$2,425,412.53. Debtor had an operating loss of \$414,737.35 in September.

DATED: October 31, 2013.

DYE & MOE, P.L.L.P.

/s/ Harold V. Dye

Harold V. Dye

CERTIFICATE OF SERVICE

I, the undersigned certify under penalty of perjury that on October 31, 2013, copies of the foregoing Joinder In Motion To Remove Chapter 11 Trustee were served electronically by ECF notice to all persons/ entities requesting special notice or otherwise entitled to same and that in addition service by mailing a true and correct copy, first class mail, postage prepaid, was made to the following persons/ entities who are not ECF registered users

/s/ Harold V. Dye _____

Harold V. Dye