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**UNITED STATES BANKRUPTCY COURT,  
FOR THE DISTRICT OF MONTANA**

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<b>IN RE,</b>	*	<b>CASE NO. 11-62031-RBK</b>
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<b>SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.</b>	*	<b>JOINDER IN FERGUS ELECTRIC COOPERATIVE'S, INC'S. MOTION TO REMOVE TRUSTEE (DOCKET NO. 1101)</b>
	*	
<b>Debtor.</b>	*	

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Mid-Yellowstone Electric Cooperative, Inc. (Mid-Yellowstone Electric), through counsel, hereby joins in Fergus Electric Cooperative's motion to remove the Trustee under Section 11 USC 1105, currently set for hearing on November 12<sup>th</sup>, 2013.

Mid-Yellowstone Electric is a member cooperative of Southern Montana (Debtor). Mid-Yellowstone Electric submits that the Bankruptcy Court should replace the Trustee, and restore the Debtor in possession to manage of Southern.

The Debtor, through the four (4) remaining members of Southern, should have the opportunity to manage this bankruptcy through its final stages.

**INTRODUCTORY COMMENTS**

In reviewing Mid-Yellowstone Electric's options in this case in September 2013, they believed that the best course of action would be to proceed to the final confirmation hearing for

the Trustee's plan with the Court having the option to consider the alternative liquidation plan filed by the Cooperatives.

This viewpoint has evolved, however, based on recent indications by the Trustee and Prudential of the prospect of extended litigation by the Trustee against the interest of the four (4) remaining member cooperatives.

### **INITIAL STAGES OF BANKRUPTCY**

Fergus Electric accurately points out that three (3) members of Southern were once in favor of a reorganized Southern.

In a Billings Gazette article covering a Southern board meeting dated March 13<sup>th</sup>, 2012, Dee Dee Isaacs of Tongue River Electric was quoted, "I, for one, am not ready to give up on Southern. Southern has come too far and spent too much money to stop."

Mid-Yellowstone Electric's Southern Trustee, Jim DeCock, said that he had doubts about Southern's Highwood Generating Station, but thought Southern should stay together through bankruptcy. Finally, the Trustee is quoted as allowing Southern to "be back in a position to provide its customers with low-cost power."

### **CHANGE OF CIRCUMSTANCE**

Since March of 2012, both Yellowstone Valley Electric Cooperative and City of Great Falls have been released from their All-Power Requirement Contracts. Great Falls and YVEC had a combined total of approximately 50% of Southern's anticipated load, at the time that Highwood was financed.

On October 1<sup>st</sup>, 2013, the Trustee provided the member cooperatives a copy of the investigative report of Nancy A. Temple. In that report, Temple identifies several issues, which contributed to Southern bankruptcy, including 1) the City of Great Falls over estimating their

needed power supply, 2) Yellowstone Valley defaulting on the contribution for Toshiba Company steam turbine generator, 3) former manager, Tim Gregori's decisions, which resulted in the over purchase of power from PPL, Montana, and 4) excessive spending for attorney fees and other administrative costs related to Highwood. It should be noted that Yellowstone Valley, the City of Great Falls, and manager Gregori are now gone from Southern.

Of the \$85 million of the Prudential loan, only \$56 million was set aside for the construction fund of Highwood. Other costs included Prudential paying itself approximately \$10 million in prepaid interest. The excessive administration cost, including \$3,872,912 for attorney Ken Reich and the cost issuing the bonds in the amount of \$3,885,496.00.

The most critical deficiency in this case is the lack of current value in the Highwood Plant. As the Court has noted, one of the original appraisals for the plant was only \$5.6 million. In preparation for the valuation hearing, MRV consultants filed a report dated June 19<sup>th</sup>, 2013, that gave a liquidation value of the Highwood plant of \$14,383,000. That amount was independently confirmed in a October 2013 report by ACES, another consultant for the Trustee.

The doubts expressed by Mid-Yellowstone's Trustee, Jim DeCock, in March of 2012 about the Highwood Generation Station, have been confirmed by the evidence developed in this case. The low-cost power as described by the Trustee, in March of 2012, is not part of the Trustee and Prudential's plan.

The four (4) remaining cooperatives have come to the unavoidable conclusion that any sale of the Highwood Plant will not achieve anything close to the amount loaned. The four (4) cooperatives did not guarantee that loan.

As a result, Southern should proceed to liquidation. The original purpose for the appointment of the Trustee no longer exists, and the bankruptcy estate will be better served by Southern becoming a debtor in possession.

**DATED** this 4<sup>th</sup> day of November, 2013.

/s/ Gary Ryder  
**GARY RYDER,**  
*Attorney for Mid-Yellowstone  
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