

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CAVALIER

NORTHEAST JUDICIAL DISTRICT

Public Service Commission

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Petitioner,

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CIVIL NO. 10-10-C-68

vs.

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Organic Grain and Milling, Inc.

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BRIEF IN SUPPORT OF
MOTION FOR APPROVAL AND
ADOPTION OF REPORT AND
RECOMMENDATION OF
TRUSTEE

Respondent.

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PSC Case No. GE-10-327

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The Public Service Commission (Commission), as trustee of the trust fund provided by North Dakota Century Code § 60-04-03 for the purpose of marshalling all trust assets of Organic Grain and Milling, Inc., an insolvent grain warehouse, seeks an order approving the Report and Recommendation of Trustee. The Commission has the authority to bring this motion and the Court has the power to grant the relief requested under North Dakota Century Code §§ 60-04-03 and 60-04-07.

A bond must be filed with the Commission before any license can be issued to any public warehouseman in North Dakota. North Dakota Century Code § 60-02-09. The bond is for the protection of holders of outstanding receipts from the North Dakota licensed facility. North Dakota Century Code § 60-02-09(6)(a). The insolvent warehouse, Organic Grain and Milling, Inc., had such a bond issued by Great American Insurance Company, PO Box 2119, Cincinnati, Ohio 45201, as surety.

The Commission has reviewed claims filed against the warehouseman and detailed its determination regarding valid claims in the Report and Recommendation of Trustee. The Commission collected outstanding accounts receivable and these trust

proceeds will be needed to redeem outstanding receipts by Organic Grain and Milling, Inc. North Dakota Century Code §60-04-09 provides in part:

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

Under North Dakota Century Code § 60-04-03.1 the “trust fund shall be established for the benefit of noncredit-sale receiptholders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. . . .” After paying the cash claim, the only noncredit-sale receiptholder, and after reimbursing the Commission for expenses, a balance will remain in the trust fund. The Commission recommends that the remaining balance be returned to Organic Grain and Milling, Inc.

The credit-sale contract indemnity fund was created for the purpose of providing protection for persons selling grain to a North Dakota licensed warehouse. North Dakota Century Code § 60-10-02. A person is eligible to receive payments from the credit-sale contract indemnity fund if the warehouse licensed under North Dakota law to which the person sold grain becomes insolvent and has not fully compensated the person in accordance with the credit-sale contract. North Dakota Century Code § 60-10-04.

Proceeds from the credit-sale contract indemnity fund will be needed to meet the licensee’s obligations to holders of credit-sale contracts. North Dakota Century Code § 60-10-05 provides:


Upon the insolvency of a licensed warehouse or grain buyer and a declaration that the public service commission serve as the trustee, the public service commission shall make the proceeds of the

credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

Under North Dakota Century Code § 60-10-06, the amount payable to any eligible person from the credit-sale contract indemnity fund may not exceed the lesser of eighty percent of the amount owed to that eligible person under that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

Bismarck, North Dakota, this 8th day of April, 2011.

Respectfully submitted,



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