



# Public Service Commission

## State of North Dakota

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26 August 2013

Mr. Michael L. Gust  
Anderson, Bottrell, Sanden & Thompson  
4132 30<sup>th</sup> Avenue South Suite 100  
PO Box 10247  
Fargo, ND 58106-0247

**RE: Public Service Commission vs. Anderson Seed Co., Inc.**  
**CIVIL NO. 09-2012-CV-00693**

**PSC Case No. GE-12-78**

Dear Mr. Gust:

This letter is in response to your letter dated 7 August 2013 regarding your client Dirk O'Connor/DRO, Inc. You asked if Anderson Seed collected the .002% assessment pursuant to North Dakota law for a credit-sale contract on the contract between itself and DRO.

The credit-sale contract indemnity fund reached the \$6 million cap in 2008 and assessments ceased as of 1 July 2008. North Dakota Century Code § 60-10-01 provides that under a credit-sale contract, the licensee deduct the assessment from the purchase price payable to the seller and submit assessments collected to the Commission. The Commission has not collected any assessments since they ceased in 2008. Further, the Commission has no information on the question of whether Anderson Seed collected any assessments on any credit-sale contracts issued by Anderson Seed since 1 July 2008.

In addition, the only contract between Anderson Seed and Dirk O'Connor/DRO, Inc. that the Commission has in its possession is Sunflower Purchase Contract #3877. The Commission received Contract #3877 with the documents obtained from Anderson Seed. Upon examination of the contract, Staff concluded that Contract #3877 is not a credit-sale contract because it does not conform to the statutory requirements for credit-sale contracts. Rather, it is a purchase contract.

While Dirk O'Connor/DRO, Inc. did not file Contract #3877 with the Commission, Dirk O'Connor/DRO, Inc. did submit page three of Contract #3877

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with its claim. Page 3 of Contract #3877 is an addendum to the contract and provides that the "grower has the option to defer payment to 2012 at their request to ASC." No deferred payment contract between Anderson Seed and Dirk O'Connor/DRO, Inc. was filed by Dirk O'Connor/DRO, Inc. and none was included in the records that Anderson Seeds provided to the Commission.

You asked if the Commission's rejection of DRO's claim was a rejection of any indemnity fund claim or an outright "objection" to any claim at all. Staff is preliminarily classifying the claim filed by Dirk O'Connor/DRO, Inc. as invalid because the Commission received no documents to show Dirk O'Connor/DRO, Inc. made any grain delivery in North Dakota for which Dirk O'Connor/DRO, Inc. was not paid. The only documents filed by Dirk O'Connor/DRO, Inc. indicated Dirk O'Connor/DRO, Inc. made grain deliveries in South Dakota for which Dirk O'Connor/DRO, Inc. was not paid and no additional information to the contrary was provided to the Commission by Anderson Seeds. The claim documents filed by Dirk O'Connor/DRO, Inc. consisted of (1) a letter from Dirk O'Connor/DRO, Inc. saying six loads of sunflowers were delivered to Redfield, SD under contract with Anderson Seed, Inc. based in Mentor, MN, (2) assembly no. 12235 showing Redfield, and (3) a second letter from Dirk O'Connor/DRO, Inc. in which Mr. O'Connor said he was exercising his option on the deferred payment and which included a copy of the addendum to Sunflower Purchase Contract #3877. Anderson Seed provided documents to the Commission which included a copy of Sunflower Purchase Contract #3877 issued by Anderson Seed to DRO Inc. including page 3, the addendum to Sunflower Purchase Contract #3877 showing the product was to be delivered to Redfield, SD.

After a final evaluation of all claims, the Commission will prepare and file a Report and Recommendation showing the Commission's recommendation to the court on the validity of each claim. Based on the information in staff's possession to date, staff recommends that the Commission recommend the court deny the claim filed by Dirk O'Connor/DRO, Inc.

If you have any questions regarding this letter or the insolvency proceeding, please feel free to contact our office.

Best regards,



Illona A. Jeffcoat-Sacco  
General Counsel

cc: Jon Jensen