



Public Service Commission

State of North Dakota

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16 May 2013

Darrell Nitschke
Executive Secretary
Public Service Commission
600 East Boulevard Avenue – Dept. 408
Bismarck, ND 58505-0480



Re: Earth Harvest Mills, Inc.
License Renewal Year 2012
Case No. GE-12-636

Dear Mr. Nitschke:

Enclosed for filing is the Staff Response to Request for Trade Secret Protection in the captioned case.

Sincerely,

Susan K. Richter
Licensing Division Director

Enclosures

c/w enclosures: Grayson Hoberg, CEO, Earth Harvest Mills, Inc.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Earth Harvest Mills, Inc.
License Renewal Year 2012
Annual Activity

Case No. GE-12-636

**STAFF RESPONSE TO APPLICATION FOR
TRADE SECRET PROTECTION**

On 1 March 2013, Earth Harvest Mills, Inc. filed an application for trade secret protection in the captioned case under North Dakota Administrative Code Chapter 69-02-09, and North Dakota Administrative Code Section 69-02-09-04, asking the Commission to protect against public disclosure of certain information filed by Earth Harvest Mills, Inc.

North Dakota Administrative Code Chapter 69-02-09-requires that the Commission Staff examine the information and application and make a recommendation to the Commission. Staff has reviewed the request of Earth Harvest Mills, Inc. for protection of information.

Earth Harvest Mills, Inc. asks the Commission to protect financial statements and operations status from disclosure.

Earth Harvest Mills, Inc. states that the information is derived from past operational data for the facility that would not be readily available to competitors. If known to competitors, the information would give competitors a significant financial advantage in knowing and understanding the overhead cost structure, fixed costs, liquidity terms, and other financial information. Earth Harvest Mills, Inc. states that flour

mills and mixing facilities competing for grain sources may find the information useful in their marketing strategies against Earth Harvest Mills, Inc.

North Dakota Century Code Section 44-04-18.4(2) authorizes protection for commercial, financial, proprietary, and trade secret information if privileged and if the information has not been previously publically disclosed. North Dakota Century Code Section 44-04-18.4(1). Commercial and financial information can be protected from disclosure if the information has not been previously disclosed and disclosure would impair the Commission's ability to obtain similar information in the future or would cause competitive injury to the person providing the information. North Dakota Century Code Section 44-04-18.4(2)(a) and North Dakota Century Code Section 44-04-18.4(2)(b). Proprietary and trade secret information can be protected when the information derives independent economic value from not being generally known to or readily ascertainable by other persons, and is the subject of reasonable efforts to maintain its secrecy. North Dakota Century Code Section 44-04-18.4(2)(c) and North Dakota Century Code Section 44-04-18.4(2)(d).

Staff believes that the application for trade secret protection filed by Earth Harvest Mills, Inc. satisfies the requirements of the North Dakota Century Code for protection of the information which is the subject of this request. The Commission's process provides a means for interested parties to review protected documents upon signing a nondisclosure agreement.

For reasons set forth above, Staff recommends that the Commission grant the application of Earth Harvest Mills, Inc. to protect certain filed information in this case.

Dated this 16th day of May 2013.

A handwritten signature in black ink that reads "Michael D. McNamee". The signature is written in a cursive style with a large initial "M".

Michael D. McNamee