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Subject: Courtesy Notification of filing for Case No. 28-2012-CV-00176 (Public Service Commission vs. Falkirk Farmers Elevator Co.).

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Date Submitted: 12/31/2013 3:12:54 PM

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Filing Type: EFileAndServe

Filing Code: Brief

Filing Description: Brief in Support of Motion to Bifurcate Proceeding, Adopt First Report and Recommendation of Trustee, and Approve Credit-Sale Contract Indemnity Fund Payments

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E-filing to Dist Crt - Brief

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. 28-2012-CV-00176
)	
Petitioner,)	BRIEF IN SUPPORT OF
)	MOTION TO BIFURCATE
vs.)	PROCEEDING, APPROVE
)	FIRST REPORT AND
Falkirk Farmers Elevator Co.)	RECOMMENDATION OF
)	TRUSTEE, AND APPROVE
Respondent.)	CREDIT-SALE CONTRACT
_____)	INDEMNITY FUND PAYMENTS
)	
PSC Case No. GE-12-769)	
)	
_____)	

1. The North Dakota Public Service Commission (Commission), as Trustee of the trust fund provided by North Dakota Century Code section 60-04-03 for the purpose of marshalling all trust assets of Falkirk Farmers Elevator Co., an insolvent grain warehouse, seeks an order bifurcating proceeding, approving the First Report and Recommendation of Trustee and approving payments from the Credit-Sale Contract Indemnity Fund. 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 sections 60-04-03 and 60-04-07.
2. North Dakota Century Code section 60-02-09 requires that a bond must be filed with the Commission before any license can be issued to any public warehouseman in North Dakota. The bond is for the purpose of protecting the holders of outstanding receipts and for covering the costs incurred by the Commission in the administration of the licensee's insolvency. The insolvent

licensee, Falkirk Farmers Elevator Co., had such a bond, issued by Western Surety Company, P.O. Box 5077, Sioux Falls, South Dakota as surety.

3. This proceeding involves claims under both North Dakota Century Code section 60-04-03.1, payable if valid from the Trust Fund, and North Dakota Century Code section 60-10-05, payable if valid from the Credit-Sale Contract Indemnity Fund. However, the Commission's First Report and Recommendation in this proceeding does not make any recommendation regarding distribution of Trust Fund proceeds. Instead, the Commission is asking the Court to bifurcate the proceeding and approve only payment of Credit-Sale Contract Indemnity Fund claims at this time.
4. There exists pending federal litigation between the insolvent warehouse and the Public Service Commission's only claimant asserting a claim to the assets of the Trust Fund. This federal litigation is in its early stages, and involves substantial factual and legal issues that must be resolved before the Commission can make a recommendation on the claim involving the Trust Fund, the need for bond proceeds, and any resulting distribution of the Trust Fund assets. The pending federal litigation does not affect the claims against the Credit-Sale Contract Indemnity Fund.
5. The Commission is not including any recommendation in this First Report and Recommendation regarding this one claim against the trust assets. Since pending federal litigation will affect this claim, the Commission is requesting that the Court bifurcate the proceeding to allow final disposition of the portion of the proceeding involving the claims against the Credit-Sale Contract Indemnity Fund,

and payment to affected claimants, while the claim against the Trust Fund remains pending.

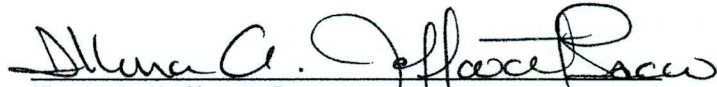
6. The Commission has reviewed the credit-sale contract claims filed against the warehouseman and a detailed determination regarding the validity of each claim is attached to and summarized in the First Report and Recommendation of Trustee.
7. Under North Dakota Century Code section 60-04-03.1 the “trust fund shall be established for the benefit of noncredit-sale receipt holders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. . . .” 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 section 60-10-02. A person is eligible to receive payment 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 section 60-10-04.
8. 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 section 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.

9. Under North Dakota Century Code section 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.
10. North Dakota Century Code section 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.
11. We respectfully request that the Court approve the First Report and Recommendation of Trustee and authorize Credit-Sale Contract Indemnity Fund payments to valid credit-sale claimants.
12. Respectfully submitted at Bismarck, North Dakota, this **31st day of December, 2013.**



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