

Richter, Susan K.

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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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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. 28-2012-CV-00176
)	
Petitioner,)	
)	
vs.)	FIRST
)	REPORT AND
Falkirk Farmers Elevator Co.)	RECOMMENDATION
)	OF TRUSTEE
Respondent.)	
_____)	
PSC Case No. GE-12-769)	
)	
_____)	

1. The North Dakota Public Service Commission (Commission) as Trustee, makes the following Report and Recommendation to the Court:
2. Falkirk Farmers Elevator Co., a North Dakota cooperative association, authorized to do business in North Dakota, operated grain warehouses at Falkirk, North Dakota and at Hazen, North Dakota under North Dakota Century Code Chapters 60-02 and 60-04.
3. Falkirk Farmers Elevator Co. operated its grain warehouse at Falkirk, North Dakota under license number 128 and its grain warehouse at Hazen, North Dakota, under license number 1175.
4. As part of the licensing process, Falkirk Farmers Elevator Co. filed a bond with the Commission as required by North Dakota Century Code section 60-02-09, in the amount of \$380,000 and identified as number 141552626, with Western Surety Company, P.O. Box 5077, Sioux Falls, South Dakota, as surety.

5. On October 10, 2012, Monty Fast of Turtle Lake, North Dakota, filed with the Commission a letter for collection of outstanding funds Falkirk Farmers Elevator Co. owed Monty Fast for grain sold to Falkirk Farmers Elevator Co.
6. On October 15, 2012, Timothy Erdmann, Commission grain warehouse inspector, who had reason to believe there were pinto beans at the Falkirk facility, visited the Falkirk facility and confirmed there were approximately 8,000 gross hundredweight of pinto beans in the facility.
7. On October 18, 2012, Michael McNamee, Commission grain warehouse inspector, who had reason to believe there were pinto beans stored in an unlicensed facility in Cummings, North Dakota on behalf of Falkirk Farmers Elevator Co., stopped at the unlicensed facility in Cummings, North Dakota, owned by Cummings Ag of Buxton, North Dakota and confirmed there were approximately 1,700 gross hundredweight of sample grade pinto beans stored in the Cummings facility on behalf of Falkirk Farmers Elevator Co.
8. On November 9, 2012, the Commission received an electronic copy of a letter from Mike Guenthner, President of Falkirk Farmers Elevator Co., advising that Falkirk Farmers Elevator Co. recognized under the provisions of North Dakota Century Code, Falkirk Farmers Elevator Co. may be deemed to be insolvent, in that it was unable to fully pay for grain delivered.
9. On November 30, 2012, the Commission filed an Application for Appointment as Trustee and for Ex Parte Order in District Court, County of McLean, South Central Judicial District.

10. On December 31, 2012, the District Court issued an order requiring Falkirk Farmers Elevator Co. to preserve and protect the trust assets and authorizing the Commission to immediately take any action deemed necessary to preserve and protect the trust assets until the Court issued its order granting or denying the application for appointment of the Commission as Trustee of the trust fund.
11. Also on December 31, 2012, the District Court issued an order appointing the Commission Trustee of the trust fund provided by North Dakota Century Code Chapter 60-04 for the purpose of marshaling all trust assets of the insolvent Falkirk Farmers Elevator Co. and establishing October 10, 2012 as the date of insolvency, the date that the first claim for collection of outstanding funds owed for grain was filed with the Commission.
12. On January 17, 2013, the Commission served Notice of Entry of both orders and Notice of Appointment as Trustee and Notice to File Claims on the parties by certified mail, and also sent the notices by regular mail to 15 potential claimants identified by the Commission. The Notice of Appointment and Notice to File Claims required claims to be filed with the Commission within forty-five days of the second publication of the notice.
13. The Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in the McLean County Independent and in the Hazen Star on January 24, 2013, and January 31, 2013, as provided in North Dakota Century Code section 60-04-03.3. The McLean County Independent is located in McLean County and is the official county newspaper of the county in which Falkirk Farmers Elevator, Co.'s Falkirk warehouse is located. The Hazen Star is

located in Mercer County and is the official county newspaper of the county in which Falkirk Farmers Elevator Co.'s Hazen warehouse is located.

14. Nine claims totaling \$1,991,562.91 were filed with the Commission, as shown below. Additional detail on the claims is provided in Exhibits A, B, and C, attached to this report.

	<u>Claimant Name</u>	<u>Claim Filed</u>
a.	Jerry Blotter	\$ 6,452.73
b.	Kelly & Kristi Erdmann	\$ 118,836.25
c.	Monty Fast	\$ 38,046.24
d.	Michael Guenther	\$ 5,904.65
e.	Gary Knell	\$ 9,220.07
f.	Lowayne Krush	\$ 6,909.34
g.	Neal Peterson	\$ 5,640.00
h.	Retterath Ranch Joint Venture	\$ 94,964.94
i.	St. Hilaire Seed Company, Inc.	\$1,705,588.69

15. The Commission liquidated all grain assets stored on behalf of Falkirk Farmers Elevator Co. in the unlicensed facility in Cummings, ND, with a value of \$7,000 and all grain assets in Falkirk Farmers Elevator Co.'s Falkirk facility, with a value of \$71,507.10, and deposited the proceeds in the trust fund. The Commission also collected \$2,000 representing an outstanding account receivable from a grain sale and deposited the proceeds in the trust fund. The total deposit in the trust fund is \$80,507.10.

16. The insolvency proceeding involves claims under both North Dakota Century Code section 60-04-03, 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. Only one party has filed a claim with the Commission against the trust assets. There exists pending federal litigation between the insolvent

warehouse and the Public Service Commission's only claimant asserting a claim to the trust assets. 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, the need for bond proceeds, and any resulting distribution of the trust assets. The pending federal litigation does not affect the claims against the Credit-Sale Contract Indemnity Fund.

17. 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.
18. Proceeds from the Credit-Sale Contract Indemnity Fund will be needed to meet the insolvent licensee's obligations to holders of credit-sale contracts. Payments will be made to valid credit-sale claimants with the claimants receiving 80% of the claimants' valid claims under North Dakota Century Code section 60-10-06.
19. The Commission recommends that each credit-sale contract claimant be paid 80% of the claimant's valid credit-sale claim as provided under North Dakota Century Code section 60-10-06. The Commission recommends that payment for each credit-sale claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued.

20. The valid credit-sale claim amounts recommended for payment by the Commission total \$278,818.08 and by law each claimant is entitled to 80% of the respective valid credit-sale claim, as shown below and with additional detail in Exhibit B, attached to this report:

	Claimant Name	Claim Filed	Valid Credit-Sale Claim	80% Credit-Sale Amount
a.	Kelly & Kristi Erdmann	\$ 118,836.25	\$ 118,566.15	\$ 94,852.92
b.	Monty Fast	\$ 38,046.24	\$ 37,961.13	\$ 30,368.90
c.	Michael Guenther	\$ 5,904.65	\$ 5,889.89	\$ 4,711.91
d.	Gary Knell	\$ 9,220.07	\$ 9,199.27	\$ 7,359.42
e.	Lowayne Krush	\$ 6,909.34	\$ 6,892.69	\$ 5,514.15
f.	Neal Peterson	\$ 5,640.00	\$ 5,557.91	\$ 4,446.33
g.	Retterath Ranch Joint Venture	\$ 94,964.94	\$ 94,751.04	\$ 75,800.83

21. The Commission recommends that one credit-sale claim in the total amount of \$6,452.73, shown below, be denied because of an offset of an account payable owed by Mr. Blotter to Falkirk Farmers Elevator Co. Further detail on the claim and the basis for denial is provided in Exhibit C, attached to this report.

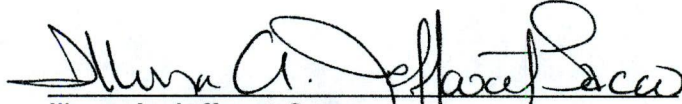
Claimant Name	Claim Filed	Invalid Claim
Jerry Blotter	\$ 6,452.73	\$ 6,452.73

22. North Dakota Century Code section 60-10-09 provides that expenses incurred in administering the Credit-Sale Contract Indemnity Fund are reimbursable from the fund. In this First Report and Recommendation, the Commission recommends reimbursement for half of the expenses from the Credit-Sale Contract Indemnity Fund incurred for postage, publication, legal, and miscellaneous expenses. The remaining half of the expenses will be addressed when the Second Report and Recommendation is filed. The total amount incurred to date is \$414.15 and half

is \$207.08 as evidenced in attached Exhibit D. The final amount to be paid will be determined once Court approval is received.

23. Contemporaneously with the filing of this First Report and Recommendation a Motion to Bifurcate Proceeding, Approve First Report and Recommendation of Trustee, and Approve Credit-Sale Contract Indemnity Fund Payments is being filed with the North Dakota District Court located in McLean County North Dakota, to be heard March 13, 2014 at 9:30 a.m. in the Burleigh County District Court. Any interested party may appear at the hearing to show cause why the First Report and Recommendation should not be approved.
24. Wherefore the Commission asks the Court to:
25. Bifurcate the proceeding to allow final adjudication of the credit-sale portion of the insolvency proceeding and consequent payment to credit-sale claimants.
26. Approve the First Report and Recommendation of the Trustee.
27. Authorize the Commission to make payments from the Credit-Sale Contract Indemnity Fund consistent with this First Report and Recommendation to persons with valid credit-sale claims for grain purchased via credit-sale contract by Falkirk Farmers Elevator Co. and relevant valid lien holders at the time checks are issued.
28. Authorize reimbursement to the Commission, as trustee, from the Credit-Sale Contract Indemnity Fund of 50% of the expenses incurred by the Commission in the administration of the insolvency, consistent with this First Report and Recommendation.

29. Respectfully submitted at Bismarck, North Dakota, this 31st day of December, 2013.

A handwritten signature in black ink, appearing to read "Illona A. Jeffcoat-Sacco". The signature is written in a cursive style with a horizontal line underneath it.

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