

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.	)	ORDER TO BIFURCATE
	)	PROCEEDING, APPROVE
Falkirk Farmers Elevator Co.	)	FIRST REPORT AND
	)	RECOMMENDATION OF
	)	TRUSTEE, AND APPROVE
Respondent.	)	CREDIT-SALE CONTRACT
_____	)	INDEMNITY FUND PAYMENTS
	)	
PSC Case No. GE-12-769	)	
	)	
_____	)	

1. This matter came before the Court on the motion of the North Dakota Public Service Commission (Commission) seeking bifurcation of proceeding, approval of the Trustee's First Report and Recommendation, and authorization for payment. This matter was scheduled for hearing before this Court on **March 14, 2014 at 9:30 a.m. CDT** at the Burleigh County Courthouse in Bismarck, North Dakota, with proper notice having been given as evidenced by the affidavits of service on file. The Commission appeared through Illona A. Jeffcoat-Sacco, Special Assistant Attorney General. Falkirk Farmers Elevator Co. appeared through its attorney Michael Gust. No other parties or claimants appeared.
2. The Court has reviewed the Trustee's First Report and Recommendation, and other documents of record. No objections have been filed or made to the Commission's First Report and Recommendation.

3. The Court has jurisdiction of this matter under North Dakota Century Code Chapters 60-04 and 60-10.
4. As a matter of law, the Commission, as Trustee, is entitled to reimbursement of its expenses from the Credit Sale Contract Indemnity Fund.
5. The Court finds there is no just reason for delay in reaching a final determination on the portion of the insolvency proceeding relating to the credit-sale contract claims and disbursements from the Credit-Sale Contract Indemnity Fund because under North Dakota Century Code Chapter 60-04, the Credit-Sale Contract Indemnity Fund portion of the proceeding has no relationship to the Trust Fund and is not dependent on resolution of the sole claim against the trust assets. Consequently, since the recommendations in the First Report and Recommendation relate only to the Credit-Sale Contract Indemnity Fund portion of the proceeding, the Court will enter a final order under Rule 54(b) North Dakota Rules of Civil Procedure approving the First Report and Recommendation of Trustee, including credit-sale contract claims and disbursements, and reimbursement to the Commission of one-half the expenses incurred in administering the insolvency.

#### **ORDER**

##### **IT IS THEREFORE ORDERED:**

6. The Court has jurisdiction in this matter.
7. The proceeding is bifurcated to allow final disposition of the Credit-Sale Contract Indemnity Fund portion of the proceeding.

8. The First Report and Recommendation of Trustee, dated December 31, 2013, requesting authorization to make Credit-Sale Contract Indemnity Fund payments on valid credit-sale contract claims and reimbursement of Commission expenses, is approved.

9. The Commission, as Trustee, is authorized to make payment from the Credit-Sale Contract Indemnity Fund to each valid credit-sale contract claimant for grain sold to Falkirk Farmers Elevator Co., not to exceed the lesser of eighty percent of the amount owed to each claimant or two hundred eighty thousand dollars as specified in the Report and Recommendation of Trustee. The Commission shall make the payments for each credit-sale contract claim jointly payable to the claimant and relevant valid lien holders at the time checks are issued.

10. The following individuals each have a valid credit-sale contract claim s. Consequently, each is entitled to 80% of the valid claim from the Credit-Sale Contract Indemnity Fund. The sums awarded, representing 80% of each valid credit-sale contract claim, are:

a.	Kelly & Kristi Erdmann	\$ 94,852.92
b.	Monty Fast	\$ 30,368.90
c.	Michael Guenthner	\$ 4,711.91
d.	Gary Knell	\$ 7,359.42
e.	Lowayne Krush	\$ 5,514.15
f.	Neal Peterson	\$ 4,446.33
g.	Retterath Ranch Joint Venture	\$ 75,800.83

11. That the following credit-sale contract claim is denied for the reasons set forth in the First Report and Recommendation:

a. Jerry Blotter \$ 6,452.73

12. As a matter of law, the Commission, as Trustee, is entitled to reimbursement from the Credit-Sale Contract Indemnity Fund for expenses incurred in the administration of the insolvency.
13. The Commission, as Trustee, is authorized to make payment for reimbursement of one-half of the expenses related to this proceeding. One-half the expenses to date total \$207.08.
14. That that there is no just reason for delay in entering a final order, under Rule 54(b) of the North Dakota Rules of Civil Procedure, regarding the First Report and Recommendation of Trustee.
15. Dated at Bismarck, North Dakota, this \_\_\_\_\_ day of March, 2014.

BY THE COURT

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Gail Hagerty  
District Judge

ORDER

Attorney for the Trustee is to serve a copy of this Order on all parties and claimants.

NOTICE OF FINAL ORDER

This constitutes a final order regarding the First Report and Recommendation of Trustee.