

**Richter, Susan K.**

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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.	)	
	)	BRIEF IN SUPPORT OF
Falkirk Farmers Elevator Co.	)	MOTION TO JOIN SURETY
	)	
Respondent.	)	
_____	)	
PSC Case No. GE-12-769	)	
_____	)	

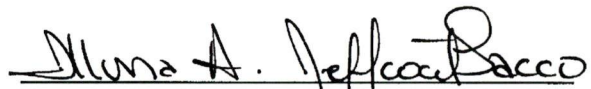
1. The Public Service Commission (Commission), Court-appointed Trustee in this matter, by and through its undersigned counsel, submits the following brief in support of its Motion to Join Surety.
2. Falkirk Farmers Elevator Co., operated licensed grain warehouses at Falkirk, North Dakota and at Hazen, North Dakota.
3. On 30 November 2012 the Commission requested appointment as Trustee under North Dakota Century Code Chapters 60-04 and 60-10 for the purpose of marshaling all trust assets of Falkirk Farmers Elevator Co. The request to appoint the Commission Trustee to administer the insolvency was granted by Order entered 31 December 2012.
4. On 14 March 2014 the proceeding was bifurcated by order of the Court to allow final disposition of the Credit-Sale Contract Indemnity Fund portion of the proceeding. The Credit-Sale Contract Indemnity Fund portion of the proceeding

is now final and all payments have been made to valid Credit-Sale Contract Indemnity Fund claimants.

5. There continues to exist pending federal litigation between the insolvent warehouse and St Hilaire Seed Company, Inc. (St. Hilaire), the only claimant asserting a claim to the assets of the Trust Fund. This federal litigation involves substantial factual and legal issues that may relate to the Trustee's recommendation on the claim involving the Trust Fund, the need for bond proceeds, and any resulting distribution of the Trust Fund assets.
6. On 18 July 2014 the Court issued a Scheduling Order that stated the Public Service Commission shall file its Second Report and Recommendation of Trustee, together with the supporting documents by 1 September 2014 or as soon thereafter as possible.
7. 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.
8. The Commission has preliminarily reviewed the claim filed against the warehouseman and a detailed determination regarding the validity of the claim will be attached to and summarized in the forthcoming Second Report and Recommendation of Trustee. From its review of the claim, the Commission

believes the proceeds from the bond will be needed to redeem outstanding receipts issued by Falkirk Farmers Elevator Co.

9. North Dakota Century Code section 60-04-03.3 provides that the surety for an insolvent licensed grain warehouse within the state of North Dakota must be joined as a party to the insolvency proceedings upon motion by the Public Service Commission.
10. The Public Service Commission respectfully requests that the Court order Western Surety Company joined as an additional Respondent.
11. Respectfully submitted at Bismarck North Dakota this 29<sup>th</sup> day of July, 2014.



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Trustee