

Public Service Commission
608 East Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480
701-328-4097 – phone
701-328-2410 - fax

Memo

To: Yvonne, ND Insurance Department
From: Illona A. Jeffcoat-Sacco, General Counsel *DAAS*
Date: 7/31/2014
Re: Public Service Commission, Petitioner vs.
Falkirk Farmers Elevator Co., Respondent
Civil No. 28-2012-CV-00176, PSC Case No. GE-12-769

Enclosed are two photocopies of each of the documents listed below for use in providing service of process to Western Surety Company in the captioned matter. Please mail the Admission of Service to the Public Service Commission, 600 East Boulevard Avenue – Dept 408, Bismarck, ND 58505-0480.

1. Notice of Motion
2. Motion to Join Surety
3. Brief in Support of Motion to Join Surety
4. Proposed Order to Allow Joinder
5. Affidavit of Electronic Service (without attachments)
6. Affidavit of Service by Certified Mail and Regular Mail (without attachments)

Thank you and if you have any questions, please call me at 328-2407.

Enclosures



147 GE-12-769 Filed: 7/31/2014 Pages: 11
Memorandum to ND Insurance Dept. with
attachments

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Falkirk Farmers Elevator Co.

Respondent.

CIVIL NO. 28-2012-CV-00176

NOTICE OF MOTION

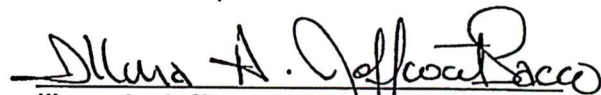
PSC Case No. GE-12-769

**TO: WESTERN SURETY COMPANY, P.O. BOX 5077, SIOUX FALLS, SOUTH DAKOTA 57117-5077.
AND
RESPONDENT, FALKIRK FARMERS ELEVATOR COMPANY AND ITS ATTORNEY MICHAEL LEONARD GUST, ANDERSON, BOTTRELL, SANDEN AND THOMPSON, 4132 30TH AVE SW, SUITE 100, P.O. BOX 10247, FARGO, NORTH DAKOTA 58106**

1. **PLEASE TAKE NOTICE** that the Public Service Commission as Trustee of the trust created by the insolvency of Falkirk Farmers Elevator Co., has moved the Court for an order joining the surety, Western Surety Company, as a respondent in this proceeding. The motion has been filed with the Court, the Honorable Gail Hagerty, Judge of the District Court, McLean County, North Dakota, seeking joinder of Western Surety Company as respondent, under North Dakota Century Code section 60-04-03.3.
2. This motion is brought under Rule 3.2 of the North Dakota Rules of Court and will be decided on the briefs provided to the Court unless a request for oral argument

is made not later than seven (7) days after expiration of the time for filing an answering brief.

3. This motion is made on the brief of the Petitioner, all of the files, records and proceedings herein and on the statutes of the state of North Dakota.
4. Dated this 29th day of July, 2014.



Illona A. Jeffcoat-Sacco (ID No. 03315)
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Attorney for the Public Service Commission, as
Trustee

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.

Falkirk Farmers Elevator Co.

MOTION TO JOIN SURETY

Respondent.

PSC Case No. GE-12-769

1. The undersigned respectfully moves the Court to join Western Surety Company as a respondent in this action, under North Dakota Century Code section 60-04-03.3.
2. This motion is brought pursuant to Rule 3.2 of the North Dakota Rules of Court, and will be decided on the briefs unless a request for oral argument is made not later than seven (7) days after expiration of the time for filing the answering brief.
3. This motion is made on the attached brief of the Petitioner, all of the files, records and proceedings herein, and on the statutes of the state of North Dakota.
4. Respectfully submitted at Bismarck, North Dakota this 29th day of July, 2014.



Illona A. Jeffcoat-Sacco (ID No. 03315)
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Attorney for the Public Service Commission,
 as Trustee

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)	
_____)	

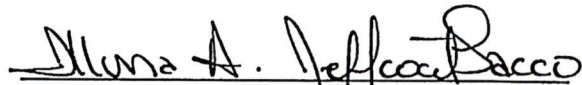
1. The Public Service Commission (Commission), Court-appointed Trustee in this matter, by and through its undersigned counsel, submits the following brief in support of its Motion to Join Surety.
2. Falkirk Farmers Elevator Co., operated licensed grain warehouses at Falkirk, North Dakota and at Hazen, 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 29th day of July, 2014.



Ilona A. Jeffcoat-Sacco (ID No. 03315)
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Attorney for the Public Service Commission, as
Trustee

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.

Falkirk Farmers Elevator Co.

AFFIDAVIT OF ELECTRONIC SERVICE

Respondent.

PSC Case No. GE-12-769

Shelly A. Bauske deposes and says that she is over the age of 18 years and not a party to this action and, on the 29th day of July, 2014, a copy of the following documents:

1. Notice of Motion
2. Motion to Join Surety
3. Brief in Support of Motion to Join Surety
4. Proposed Order to Allow Joinder

were served, via the Odyssey Electronic Service and File System using the email address provided on the Odyssey Electronic Service and File System, upon the following:

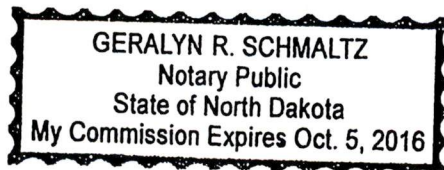
Respondent Falkirk Farmers Elevator Co, through its attorney
Michael L. Gust mgust@andersonbottrell.com

Shelly A Bauske

Subscribed and sworn to before me
this 29th day of July, 2014.

Geraldine R Schmalz
Notary Public

SEAL



The envelopes were addressed as follows:

Steven Hager
Falkirk Farmers Elevator
2896 3rd Street NW
Underwood, ND 58576

Michael Guenther
Board President
Falkirk Farmers Elevator Co.
3807 3rd Street SW
Underwood, ND 58576

Laura Maupin
Barnes & Thornburg, LLP
Attorney for St. Hilaire Seed Co., Inc.
225 South Sixth Street, suite 2800
Minneapolis, MN 55402-4662

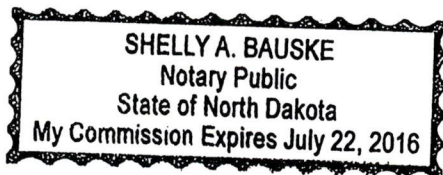
Tina S. Syring
Barnes & Thornburg, LLP
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225 South Sixth Street, Suite 2800
Minneapolis, MN 55402-4662

Emily Grande Stearns
Barnes & Thornburg, LLP
Attorney for St. Hilaire Seed Co., Inc.
225 South Sixth Street, Suite 2800
Minneapolis, MN 55402-4662

Stu Letcher
ND Grain Dealers Association
1325 23rd St. South – Suite A
Fargo, ND 58103-3723

Subscribed and sworn to before me
this 30th day of July, 2014.

SEAL



A handwritten signature in cursive script, appearing to read "Steven Hager", written over a horizontal line.

A handwritten signature in cursive script, appearing to read "Shelly A. Bauske", written over a horizontal line.

Notary Public