

**Richter, Susan K.**

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

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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.	)	SECOND
	)	REPORT AND
Falkirk Farmers Elevator Co.	)	RECOMMENDATION
	)	OF TRUSTEE
Respondent.	)	
_____	)	
PSC Case No. GE-12-769	)	
	)	
_____	)	

1. The North Dakota Public Service Commission, as Trustee (Commission), makes the following Second 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. On March 14, 2014, on motion of the Trustee and after hearing as required by law, the Court ordered the proceeding be bifurcated to allow final disposition of the Credit-Sale Contract Indemnity Fund portion of the proceeding. Also on March 14, 2014, the Court approved the First Report and Recommendation of the Trustee, authorized payment from the Credit-Sale Contract Indemnity Fund to each valid credit-sale contract claimant, authorized the Commission to make payment for reimbursement of one-half of the expenses related to this proceeding, ordered payment on the Credit-Sale Contract Indemnity Fund portion of the proceedings, and further ordered that the Court's Order constituted a final order regarding the First Report and Recommendation of Trustee.
15. On March 18, 2014, Notice of Entry of Order to Bifurcate Proceeding, Approve First Report and Recommendation of Trustee, and Approve Credit-Sale Contract Indemnity Fund Payments was served on Falkirk Farmers Elevator Co. and claimants.
16. On April 7, 2014 Judgment on the Trustee's First Report and Recommendation was entered. Notice of Entry of Judgment was served on April 7, 2014, on Falkirk Farmers Elevator Co. and claimants.
17. On July 29, 2014, the Trustee filed a Motion to Join Surety asking the Court to order Western Surety Company joined as Respondent under North Dakota Century Code section 60-04-03.3. The Notice of Motion, Motion, and Brief in

Support of Motion, under Rule 3.2 of the North Dakota Rules of Court, was served on Falkirk Farmers Elevator Co. and Western Surety Company.

18. Only one party, St. Hilaire Seed Company, Inc., (St. Hilaire) filed a claim with the Commission against the trust assets. On March 18, 2013, St. Hilaire. filed a claim in the amount of \$1,705,588.69. On August 19, 2014, St. Hilaire filed an amended claim in the amount of \$486,988.45.
19. The Commission recommends the Court determine St. Hilaire's claim valid in the amount of \$495,795.30, or \$8806.85 more than the amount St. Hilaire stated was its claim in its amended filing. St. Hilaire's cover letter to the amended filing notes delivery of 27,538.84 hundredweight in whole bean shipments, but the records provided by St. Hilaire in support of its amended claim show only 27,267.86 hundredweight of whole beans were delivered. In the cover letter describing the claim, St. Hilaire overstated the amount of beans it received by 270.98 hundredweight of beans with a value of \$8,806.85. The Commission recommends that St. Hilaire's valid claim amount include this additional \$8806.85, for a total valid claim amount of 495,795.30.
20. The Commission liquidated all grain assets stored on behalf of Falkirk Farmers Elevator Co. in the unlicensed facility in Cummings, North Dakota, 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 an outstanding account receivable from a grain sale in the amount of \$2,000 and deposited the proceeds in the Trust Fund. The total

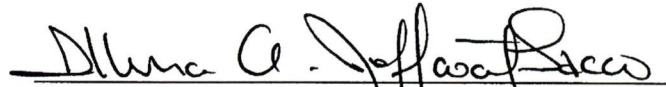
assets in the Trust Fund, including interest earned on the account as of July 31, 2014, is \$80,998.41.

21. The \$380,000 bond proceeds are needed to redeem the outstanding noncredit-sale contract claim against Falkirk Farmers Elevator Co. through its Falkirk and Hazen, North Dakota facilities.
22. When the bond proceeds are paid over to the Trustee, there will be funds available from the Trust Fund to pay the valid noncredit-sale contract claimant, St. Hilaire, approximately 93% of the valid claim.
23. The Trustee recommends that St. Hilaire be paid approximately 93% of the valid claim. The Trustee recommends that payment for St. Hilaire's claim be made jointly payable to the claimant and relevant valid lien holders at the time a check is issued. The final amount to be paid will be determined once Court approval is received.

**WHEREFORE the Trustee asks the Court to:**

24. Approve the Second Report and Recommendation of Trustee.
25. Join the surety, Western Surety Company, P.O. Box 5077, Sioux Falls, South Dakota, as a Respondent, if not already joined when this matter is heard.
26. Order the surety, Western Surety Company, P.O. Box 5077, Sioux Falls, South Dakota, to deposit with the Trustee \$380,000, the total amount of the bond proceeds, within 10 days after service of Notice of Entry of Judgment.
27. Authorize the Public Service Commission, as Trustee, to make payment of Trust Fund proceeds consistent with this Second Report and Recommendation to St. Hilaire.

28. Discharge the Public Service Commission, as Trustee, once all Trust Fund assets have been distributed.
29. Respectfully submitted at Bismarck, North Dakota, this 29th day of August, 2014.



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