

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.)	
	)	AFFIDAVIT OF SERVICE
Falkirk Farmers Elevator Co.	)	BY REGULAR MAIL
)	
Respondent.)	
_____)	
PSC Case No. GE-12-769)	
_____)	

Geralyn Schmaltz further deposes and says that on the **3rd day of September, 2014**, she deposited in the United States Mail, Bismarck, North Dakota, **5 envelopes** by regular mail, with postage fully prepaid, securely sealed and each containing a photocopy of:

1. Notice of Motion and Notice of Hearing;
2. Motion to Approve Second Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee;
3. Brief in Support of Motion to Approve Second Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee;
4. Second Report and Recommendation of Trustee;
5. Affidavit of Electronic Service; and
6. Affidavit of Service by Regular Mail.

The envelopes were addressed as follows:

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

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

Derek Woodward
 CNA Surety
 5201 Eden Avenue – Suite 300
 Minneapolis, MN 55436


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


Affidavit of Service by Regular Mail
Page 2
September 3, 2014

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

The addresses shown are the respectively addressee's last reasonably ascertainable mailing addresses.

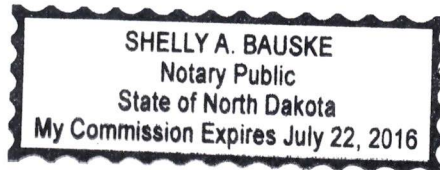
Subscribed and sworn to before me
this 3rd day of September, 2014.





Notary Public

SEAL



STATE OF NORTH DAKOTA
COUNTY OF MCLEAN

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Falkirk Farmers Elevator Co.

Respondent.

PSC Case No. GE-12-769

CIVIL NO. 28-2012-CV-00176

NOTICE OF MOTION AND
NOTICE OF HEARING


TO: 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

WESTERN SURETY COMPANY AND ITS ATTORNEY NICHOLAS JOHN O'CONNELL, MURNANE BRANDT, 30 EAST SEVENTH STREET, SUITE 3200, ST. PAUL, MINNESOTA 55101-4919

ST. HILAIRE SEED COMPANY, INC., AND ITS ATTORNEY TINA A. SYRING-PETROCCHI, BARNES & THORNBURG, LLP, 225 SOUTH SIXTH STREET, SUITE 2800, MINNEAPOLIS, MINNESOTA 55402

1. **PLEASE TAKE NOTICE** that the North Dakota Public Service Commission (Commission) as Trustee of the trust created by the insolvency of Falkirk Farmers Elevator Co. respectfully moves the Court for an Order approving the Second Report and Recommendation of Trustee, Requiring Deposit of Bond Proceeds, Authorizing Payment to the valid noncredit-sale contract claimant from the Trust Fund and Discharging Trustee. The corresponding Motion and Brief in Support of Motion are being filed with the Court contemporaneously with this Notice.

2. **FURTHER PLEASE TAKE NOTICE** that a copy of the Motion to Approve Second Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Trust Fund Payment, and Discharge Trustee, as well as a copy of the Second Report and Recommendation of Trustee and the Proposed Order Approving Second Report and Recommendation of Trustee, Approving Trust Fund Payment and Discharging Trustee are herewith served upon you, for those served other than via the Odyssey Electronic Service and File System.
3. **FURTHER PLEASE TAKE NOTICE** that the Court has scheduled a hearing on this matter for **October 21, 2014, at 1:30 p.m.**, at the Burleigh County Courthouse, 514 East Thayer Avenue, Bismarck, North Dakota 58501.
4. **FURTHER PLEASE TAKE NOTICE** that under North Dakota Century Code section 60-04-09, any aggrieved person having an objection to the Commission's Second Report and Recommendation of Trustee shall file the objection with the Court and serve copies on the Public Service Commission, the warehouseman, and the surety at least ten (10) days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Respectfully submitted at Bismarck, North Dakota, this 29th day of August, 2014.



Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Bar ID No. 03315
600 East Boulevard Avenue - Dept 408
Bismarck, ND 58505-0480
Telephone (701) 328-2400
Facsimile (701) 328-2410
Email: ijs@nd.gov

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,	)	BRIEF IN SUPPORT OF
	)	MOTION TO APPROVE
vs.	)	SECOND REPORT AND
	)	RECOMMENDATION OF
Falkirk Farmers Elevator Co.	)	TRUSTEE, REQUIRE DEPOSIT
	)	OF BOND PROCEEDS,
Respondent.	)	APPROVE PAYMENT, AND
_____	)	DISCHARGE TRUSTEE
)	
PSC Case No. GE-12-769)	
_____)	

1. The North Dakota Public Service Commission (Commission), as Trustee of the trust fund provided by North Dakota Century Code section 60-04-03 for the purpose of marshalling all trust assets of Falkirk Farmers Elevator Co., an insolvent grain warehouse, seeks an order approving the Second Report and Recommendation of Trustee, joining the surety, Western Surety Company, if not already joined, requiring deposit of bond proceeds, authorizing payment from the Trust Fund, and discharging the Commission as Trustee. The Commission has the authority to bring this Motion and the Court has the power to grant the relief requested under North Dakota Century Code sections 60-04-03 and 60-04-07.
2. 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.

3. Under North Dakota Century Code section 60-04-03.1 the "trust fund shall be established for the benefit of noncredit-sale receipt holders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. . . ."
4. 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.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. 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.

14. 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.
15. 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.
16. North Dakota Century Code section 60-04-09 provides in part:

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.
17. We respectfully request that the Court approve the Second Report and Recommendation of Trustee and authorize payments from the Trust Fund.
18. Respectfully submitted at Bismarck, North Dakota, this 29th day of August 2014.


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Special Assistant Attorney General
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Email: ijs@nd.gov

Attorney for the Public Service Commission, as Trustee

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.



Ilona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Bar ID No. 03315
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Email: ijs@nd.gov

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 August, 2014**, a copy of the following documents:

1. Notice of Motion and Notice of Hearing;
2. Motion to Approve Second Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee,
3. Brief in Support of Motion to Approve Second Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee, and
4. Second Report and Recommendation of Trustee

were served, via the Odyssey Electronic Service and File System using the email addresses 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

Western Surety Company, through its attorney
Nicholas John O'Connell noconnell@murnane.com

Kelly S. Hadac, Murnane Brandt khadac@murnane.com

St. Hilaire Seed Company, Inc., through its attorney
Tina A. Syring-Petrocchi

tsyring@btlaw.com

Laura Maupin, Barnes & Thornburg, LLP

lmaupin@btlaw.com

Linda Peterson, Barnes & Thornburg, LLP

linda.peterson@btlaw.com

Helly A Bausk

Subscribed and sworn to before me
this 3rd day of September, 2014.

Geralyn R Schmaltz

Notary Public

SEAL

