

**Richter, Susan K.**

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**Sent:** Tuesday, October 21, 2014 4:56 PM  
**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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Date Submitted: 10/21/2014 3:31:05 PM

Filed By: [sbauske@nd.gov](mailto:sbauske@nd.gov)

Filing Type: EFileAndServe

Filing Code: Order

Filing Description: Executed Order to Approve Second Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee

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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
	)	
	)	ORDER TO APPROVE
vs.	)	SECOND REPORT AND
	)	RECOMMENDATION OF
Falkirk Farmers Elevator Co.	)	TRUSTEE, REQUIRE DEPOSIT
	)	OF BOND PROCEEDS,
and	)	APPROVE PAYMENT, AND
	)	DISCHARGE TRUSTEE
Western Surety Company,	)	
	)	
	)	
Respondents.	)	
_____	)	
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 approval of its Second Report and Recommendation as Trustee, Requiring Deposit of Bond Proceeds, Authorizing Payment from the Trust Fund, and Discharging Trustee. This matter was scheduled for hearing before this Court on October 21, 2014 at 1:30 p.m., at the Burleigh County Courthouse in Bismarck, North Dakota, with proper notice having been given as evidenced by the affidavit of service on file. The Commission appeared through its attorney Illona A. Jeffcoat-Sacco, Special Assistant Attorney General. Falkirk Farmers Elevator Co. appeared by telephone through its attorney Michael L. Gust. Western Surety Company appeared by telephone through its attorney Nicholas J. O'Connell. Claimant St. Hilaire Seed

Company, Inc. appeared by telephone through its attorney, Tina A. Syring-Petrocchi, with Laura N. Maupin appearing *pro hac vice*. No other parties or claimants appeared.

2. On October 20, 2014, the Court ordered that Western Surety Company be joined as a Respondent in these proceedings.
3. The Court has reviewed the Trustee's Second Report and Recommendation and other documents of record and finds grounds for approving the Second Report and Recommendation of Trustee. No objections have been filed or made to the Trustee's recommendation or its second report.
4. The Court has jurisdiction in this matter under North Dakota Century Code chapter 60-04.
5. At the time of insolvency, there were grain assets available. The Commission liquidated all grain assets stored on behalf of Falkirk Farmers Elevator Co. in an 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.
6. The \$380,000 bond proceeds are needed to redeem the valid noncredit-sale contract claim against Falkirk Farmers Elevator Co. through its Falkirk and Hazen, North Dakota facilities.

## ORDER

### IT IS THEREFORE ORDERED:

7. The Court has jurisdiction in this matter.
8. The Commission's Second Report and Recommendation of Trustee which recommends deposit of bond proceeds and distribution of a Trust Fund payment to the valid noncredit-sale contract claimant, is approved.
9. That Western Surety Company is liable on its bond to pay a proportionate share of the valid St. Hilaire Seed Company, Inc. noncredit-sale contract claim in the amount of \$495,795.30.
10. Taking into account the obligations owed under the bond by Western Surety Company, it is appropriate to require Western Surety Company to deposit the full amount of the bond, three hundred eighty thousand (\$380,000) dollars with the Trustee.
11. Western Surety Company is hereby directed to deposit the total bond proceeds in the amount of three hundred eighty thousand (\$380,000) dollars with the Trustee within 10 days of service of Notice of Entry of Judgment to pay the approved share of the valid noncredit-sale contract claim.
12. The Commission, as Trustee, is authorized to make payment from the Trust Fund proceeds, which include the grain proceeds, interest earned and bond proceeds, to the one valid noncredit-sale contract claimants specified in the Second Report and Recommendation of Trustee. The Commission shall make the payment jointly payable to the claimant and relevant valid lien holders at the time the check is issued.

13. That upon distribution of the Trust Fund proceeds to the valid noncredit-sale contract claimant as provided for in this order, the Trustee is discharged.

Dated at Bismarck, North Dakota this 21 day of October, 2014.

BY THE COURT

  
\_\_\_\_\_  
Honorable Gail Hagerty  
Judge of the District Court

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.