

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Earth Harvest Mills, Inc.
***Ex Parte* Cease & Desist**

Case No. GE-13-99

ORDER

May 8, 2013

Appearances

Commissioners Brian Kalk, Randy Christmann, and Julie Fedorchak.

Illona A. Jeffcoat-Sacco, General Counsel, Public Service Commission, State Capitol, 600 East Boulevard Avenue, Bismarck, ND 58505, appearing for Public Service Commission.

Grayson Hoberg, Chief Executive Officer, Earth Harvest Mills, Inc., 500 North Street West, Harvey, ND 58341-1012.

Patrick J. Ward, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, ND 58503, appearing as Administrative Law Judge.

Preliminary Statement

On February 27, 2013, the Commission issued an *Ex Parte* Cease and Desist Order against Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company (Earth Harvest Mills) ordering the entity to cease and desist from receiving or purchasing grain in North Dakota.

Also on February 27, 2013, the Commission issued a Notice of Opportunity for Hearing providing Earth Harvest Mills an opportunity to be heard on the *Ex Parte* Cease and Desist Order. The Notice provided that Earth Harvest Mills had an opportunity to be heard on the Cease and Desist Order within 15 days of February 27, 2013.

Also on February 27, 2013, the *Ex Parte* Cease and Desist Order and the Notice were served on Earth Harvest Mills.

On March 27, 2013, Earth Harvest Mills filed a letter request for a formal hearing on the Cease and Desist Order, asking for a formal hearing as soon as possible and waiving any right of Earth Harvest Mills minimum 20 days' notice prior to the hearing.

Also on March 27, 2013, the Commission issued a Notice of Hearing, scheduling the hearing for April 10, 2013, at 1:30 p.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota 58505. The Notice identified the issue to be considered in this matter is whether the Commission should lift the Cease and Desist Order. The hearing was held as scheduled.

Also on March 27, 2013, at a special meeting, the Commission passed a motion informing Earth Harvest Mills that the Commission, based on information available to the Commission as of the date of the motion and subject to receipt of any information causing the Commission to reconsider the motion, would schedule a formal meeting for the purpose of acting on a motion to lift the Cease and Desist Order, contingent upon the following conditions:

- 1) EHM has fully paid all grain payable accounts due and past due as of the date EHM files the proof required in this Motion.
- 2) EHM agrees that EHM's total cash obligations at any given time for delivered grain will not exceed 200% of the amount of bond in place and on file with the Commission.
- 3) EHM agrees to pay for, or convert to a credit-sale contract if requested by the seller, each and every grain purchase within 45 days of the date the grain is delivered.

Condition no. 1 is a condition precedent to lifting the Cease and Desist Order. Condition no. 2 and condition no. 3 are conditions subsequent and apply only if the Cease and Desist is lifted.

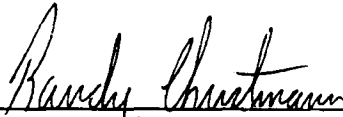
Grayson Hoberg, Chief Executive Officer of Earth Harvest Mills, appeared at the hearing and testified regarding the operations of Earth Harvest Mills and the request that the Commission lift the Cease and Desist Order. Mr. Hoberg did not provide evidence to support a finding that condition no. 1 stated in the Commission's March 27, 2013 motion has been met, nor sufficient evidence of any other reason to lift the Cease and Desist Order.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission concludes there is not sufficient evidence to lift the February 27, 2013 Cease and Desist Order.

Order

The Commission orders the continuation of the February 27, 2013 Cease and Desist Order against Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner