

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

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Public Service Commission		)	CIVIL NO. 52-2013-CV-00033
	Petitioner,	)	
vs.		)	BRIEF IN SUPPORT OF
		)	MOTION TO APPROVE
Earth Harvest Mills, Inc.		)	REPORT AND RECOMMENDATION
		)	OF TRUSTEE, REQUIRE DEPOSIT
	Respondent.	)	OF BOND PROCEEDS, APPROVE
		)	PAYMENT, AND DISCHARGE
		)	TRUSTEE
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PSC Case No. GE-13-193		)	
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1. The Public Service 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 Earth Harvest Mills, Inc., an insolvent grain warehouse, seeks an Order Approving the Report and Recommendation of Trustee, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee. The Trustee 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 Public Service Commission before any license can be issued to any public warehouseman in North Dakota. The bond is for the purpose of protecting holders of outstanding receipts and covering the costs incurred by the Trustee in the administration of the licensee's insolvency. The insolvent licensee, Earth Harvest Mills, Inc., had such a bond, issued by Washington International

Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois as surety.

3. By Motion filed March 7, 2014 and Notice of Motion served March 13 2014, the Trustee requested joinder of the surety, Washington International Insurance Company, as a Respondent. As of the date of the instant Motion which this Brief supports, Washington International insurance Company has not yet been joined as a Respondent in this action.
4. The Trustee has reviewed claims filed against the warehouseman. The Trustee's conclusions and recommendations regarding the validity of each claim are summarized in the Report and Recommendation of Trustee and detailed in Exhibit A, attached to the Report and Recommendation of Trustee.
5. The proceeds from the bond will be needed to redeem outstanding receipts issued by Earth Harvest Mills, Inc. as provided in North Dakota Century Code section 60-04-09. The Court has jurisdiction under North Dakota Century Code section 60-04-03.3 to order the deposit of bond proceeds.
6. The Trust Fund will be made up of bond proceeds only. As noted in the Report and Recommendation of Trustee, there were no grain assets in the warehouse at the time of the insolvency.
7. 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. . . ." The Credit-Sale Contract Indemnity Fund was created for the purpose of providing protection for persons selling grain to a

North Dakota licensed warehouse. North Dakota Century Code section 60-10-02. A person is eligible to receive payment from the Credit-Sale Contract Indemnity Fund if the warehouse licensed under North Dakota law to which the person sold grain becomes insolvent and has not fully compensated the person in accordance with the credit-sale contract. North Dakota Century Code section 60-10-04.

8. Proceeds from the Credit-Sale Contract Indemnity Fund will be needed to meet the licensee's obligations to holders of credit-sale contracts. North Dakota Century Code section 60-10-05 provides:

Upon the insolvency of a licensed warehouse or grain buyer and a declaration that the public service commission serve as the trustee, the public service commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

9. Under North Dakota Century Code section 60-10-06, the amount payable to any eligible person from the Credit-Sale Contract Indemnity Fund may not exceed the lesser of eighty percent (80%) of the amount owed to that eligible person under that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars (\$280,000).
10. North Dakota Century Code section 60-10-09 provides that expenses incurred in administering the Credit-Sale Contract Indemnity Fund are reimbursable from the fund. In its Report and Recommendation, the Trustee requests reimbursement for one-half of the expenses of administration of the insolvency from the Credit-Sale Contract Indemnity Fund. The total amount of expenses incurred to date is

\$272.51 and one-half is \$136.26, as identified in Exhibit B, attached to the Report and Recommendation. The final amount to be reimbursed will be determined once the Court approves the Report and Recommendation of Trustee and payments are complete.

11. 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.

12. The Trustee respectfully requests that the Court approve the Report and Recommendation of Trustee, join the surety, Washington International Insurance Company, if not already joined when this matter is heard, require deposit of bond proceeds, authorize distribution of bond proceeds to valid noncredit-sale contract (cash) claimants and authorize Credit-Sale Contract Indemnity Fund payments to valid credit-sale contract claimants and for reimbursement of the expenses of administration, and following payment, discharge the Trustee.

13. Respectfully submitted at Bismarck, North Dakota, this 28<sup>th</sup> day of March, 2014.



Illona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
State Bar ID No. 03315  
Public Service Commission  
600 E. Boulevard Avenue, Dept 408  
Bismarck, ND 58505  
(701) 328-2407  
(701) 328-2410 fax  
[ijs@nd.gov](mailto:ijs@nd.gov)

Attorney for the Public Service Commission as Trustee