

**Richter, Susan K.**

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**Sent:** Friday, May 30, 2014 3:50 PM  
**To:** Richter, Susan K.  
**Subject:** Courtesy Notification of filing for Case No. 52-2013-CV-00033 ( North Dakota Public Service Commission vs. Earth Harvest Mills Inc ).

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Date Submitted: 5/30/2014 3:40:41 PM

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

Filing Type: EFileAndServe

Filing Code: Proposed Order

Filing Description: Proposed Order to Approve 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 WELLS

SOUTHEAST JUDICIAL DISTRICT

_____	)	
Public Service Commission	)	CIVIL NO. 52-2013-CV-00033
	)	
Petitioner,	)	
	)	ORDER TO APPROVE
vs.	)	REPORT AND RECOMMENDATION
	)	OF TRUSTEE, REQUIRE DEPOSIT
Earth Harvest Mills, Inc.	)	OF BOND PROCEEDS,
	)	APPROVE PAYMENT, AND
and	)	DISCHARGE TRUSTEE
	)	
Washington International Insurance Co.	)	
	)	
Respondents.	)	
_____	)	
PSC Case No. GE-13-193	)	
_____	)	

1. This matter came before the Court on the motion of the North Dakota Public Service Commission (Commission) seeking approval of its Report and Recommendation of Trustee, Requiring Deposit of Bond Proceeds, Authorizing Payment and Discharging Trustee. This matter was scheduled for hearing before this Court on May 14, 2014 at 3:30 p.m., CDT, at the Wells County Courthouse, 700 Railway Street North, Fessenden, North Dakota 58438, with proper notice having been given as evidenced by the affidavit of mailing on file. The Commission appeared through attorney Illona A. Jeffcoat-Sacco, Special Assistant Attorney General. No other parties or claimants appeared.
2. On May 13, 2014 the Court ordered that Washington International Insurance Company be joined as a Respondent in these proceedings.

3. The Court has reviewed the Trustee's Report and Recommendation and other documents of record. No objections have been filed or made to the Commission's Report and Recommendation.
4. As a matter of law, the Commission, as Trustee, is entitled to reimbursement of expenses of administration of the insolvency from the Credit-Sale Contract Indemnity Fund.
5. At the time of insolvency, there were no grain assets in the warehouse at Harvey, North Dakota.
6. The \$50,000 bond proceeds are needed to redeem outstanding claims for grain purchased by means other than by credit-sale contract by Earth Harvest Mills, Inc. through its Harvey, North Dakota facility.

**ORDER**

**IT IS THEREFORE ORDERED:**

7. The Court has jurisdiction in this matter.
8. The Commission's March 28, 2014 Report and Recommendation of Trustee, which recommends distribution of Trust Fund payments to valid noncredit-sale contract claimants, i.e. cash claimants, Credit-Sale Contract Indemnity Fund payments to valid credit-sale contract claimants, and reimbursement to the Commission, as Trustee, of one-half the expenses of administration from the Credit-Sale Contract Indemnity Fund, is approved.
9. That Washington International Insurance Company is liable on its bond to pay a proportionate share of the following valid noncredit-sale contract (cash) claims:
  - a. Farmers Union Oil of Velva \$ 4,539.76
  - b. Phil Hooyer \$ 20,713.10

c. Lewis Ag	\$ 20,633.83
d. Wendell Lund	\$ 12,150.85
e. Jewell Mehlhoff	\$ 4,311.50
f. Moshers Organic Grain	\$ 8,549.63
g. <u>Robert Porch</u>	<u>\$ 10,074.59</u>
Total	\$ 80,973.26

10. Taking into account the obligations owed under the bond by Washington International Insurance Company, it is appropriate to require Washington International Insurance Company to deposit the full amount of the bond, \$50,000.
11. Washington International Insurance Company is hereby directed to deposit the bond proceeds, in the amount of \$50,000, with the Trustee to pay the approved share of valid noncredit-sale contract claims.
12. The Commission, as Trustee, is authorized to make prorated payments from the Trust Fund proceeds, which include only the bond proceeds, to claimants with valid noncredit-sale contract (cash) claims for grain sold to Earth Harvest Mills, Inc. as specified in the Report and Recommendation of Trustee. The Commission shall make the prorated payments for each noncredit-sale contract claim jointly payable to the claimant and relevant valid lien holders at the time the checks are issued.
13. The Commission, as Trustee, is authorized to make prorated payments from the Trust Fund proceeds to valid noncredit-sale contract claimants resulting in payment of approximately 62% of each valid noncredit-sale contract (cash) claim, as follows:

a. Farmers Union Oil of Velva	\$ 2,803.25
b. Phil Hooyer	\$ 12,790.08

c. Lewis Ag	\$ 12,741.14
d. Wendell Lund	\$ 7,503.00
e. Jewell Mehlhoff	\$ 2,662.30
f. Moshers Organic Grain	\$ 5,279.29
g. <u>Robert Porch</u>	<u>\$ 6,220.94</u>
Total	\$ 50,000.00

14. One noncredit-sale contract (cash) claim, the claim of Buesing Bulk Transport Inc., in the amount of \$54,041.53 is determined invalid for reasons set forth in the Report and Recommendation of the Trustee.
15. The Commission, as Trustee, is authorized to make payment from the Credit-Sale Contract Indemnity Fund to each holder of valid credit-sale contracts for grain sold to Earth Harvest Mills, Inc., not to exceed the lesser of eighty percent of the amount owed to each claimant or two hundred eighty thousand dollars as specified in the Report and Recommendation of Trustee. The Commission shall make the payments for each credit-sale contract claim jointly payable to the claimant and relevant valid lien holders at the time checks are issued.
16. The following individuals have valid credit-sale contract claims. Consequently, each is entitled to 80% of the claims, up to a maximum of \$280,000 from the Credit-Sale Contract Indemnity Fund. The sums awarded and representing 80% of each valid credit-sale contract claim or the maximum allowable amount of \$280,000 are:

a. Lyle Busch	\$ 9,353.51
b. Delbert Cousins	\$ 20,736.96
c. Donald Dufner	\$ 38,648.65
d. Farmers Direct Co-op Ltd	\$ 96,022.06

e. Murray Foulston	\$ 3,221.42
f. Ron Gleim	\$ 4,667.82
g. David Hager	\$ 3,223.41
h. Roger Hasse	\$ 19,791.00
i. Hesco, Inc.	\$280,000.00
j. Curtis Kosowan	\$ 13,787.11
k. Jon & Amy Kvaalen	\$ 27,526.15
l. Ray L. Miller	\$ 14,655.88
m. Ty O'Connor	\$ 29,644.16
n. Rowland Seeds, Inc.	\$280,000.00
o. RW Organic Ltd.	\$ 31,529.85
p. Lewis Siebold	\$ 3,225.32
q. Lee Thomas	\$ 68,017.68
r. <u>Reed Zimmerman</u>	\$ 4,901.71
Total	\$948,952.69

17. As a matter of law, the Commission, as Trustee, is entitled to reimbursement from the Credit-Sale Contract Indemnity Fund for expenses incurred in the administration of the insolvency.
18. The Commission, as Trustee, is authorized to make payment from the Credit-Sale Contract Indemnity Fund for reimbursement of one-half of the expenses related to these proceedings. The total amount of expenses incurred as of 30 April 2014 is \$339.03 and one-half is \$169.52.
19. That upon distribution of the Trust Fund proceeds to valid noncredit-sale contract (cash) claimants, payment from the Credit-Sale Contract Indemnity Fund to each valid credit-sale contract claimant, and reimbursement from the Credit-Sale

Contract Indemnity Fund of one-half of the expenses related to this proceeding, all as provided for in this order, the Trustee is discharged.

SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2014.

BY THE COURT

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Honorable James D. Hovey  
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.