

Richter, Susan K.

From: efilmingmail@tylerhost.net
Sent: Tuesday, April 05, 2016 2:54 PM
To: Richter, Susan K.
Subject: Notification of Service for Case No. 18-2015-CV-00240 (Public Service Commission, et al. vs. Grand Forks Bean Company, Inc.)

This is a service filing for Case No. 18-2015-CV-00240, Public Service Commission, et al. vs. Grand Forks Bean Company, Inc..

Date Submitted: 4/5/2016 2:52:55 PM CDT
Filing Code: Brief
Filing Desc: Public Service Commission's Reply Closing Brief
[Download Document](#)

The following are service contacts on this filing:
Public Service Commission:

Mitchell Armstrong (marmstrong@smithbakke.com)

Sara Forsberg (sforsberg@smithbakke.com)

Tiffany Knopik (tknopik@smithbakke.com)

Anna Heinen (aheinen@smithbakke.com)

Brian Schmidt (bschmidt@smithbakke.com)

Illona Jeffcoat-Sacco (ijs@nd.gov)

Auto-Owners Insurance Company:

Michael Morley (mmorley@morleylawfirm.com)

Toni Nicolson (tnicolson@morleylawfirm.com)

Other Service Contacts not associated with a party on the case:

Sue Schaumburg (sschaumburg@camrudlaw.com)

Scott Knudsvig (sknudsvig@pringlend.com)

John Schroeder (jschroeder@northdakotalaw.net)

Daniel Gaustad (dan@grandforkslaw.com)

321 GE-15-36 Filed: 4/5/2016 Pages: 8
E-file to Court – Public Service Commission's Reply Closing Brief

Public Service Commission

Mitchell Armstrong, Illona Jeffcoat-Sacco

Russ Melland (rmelland@camrudlaw.com)

Tracy Kennedy (tracykennedy@northdakotalaw.net)

Susan Richter (srichter@nd.gov)

Jon Brakke (jbrakke@vogellaw.com)

Daniel Gaustad (dan@grandforkslaw.com)

Joel Arneson (jfamoose@gra.midco.net)

[Download Document](#)

If the link above is not accessible, copy this URL into your browser's address bar to view the document:
<http://northdakota.tylerhost.net/ViewServiceDocuments.aspx?ADMIN=0&SID=65cfae0d-f160-47bf-8a95-fe40f3828d28>

This message was automatically generated using Odyssey File & Serve; do not reply to this email.

For assistance, contact the North Dakota Court's Information Technology Department at 701.328.4218. Support is available 8 a.m. to 5 p.m. CT, Monday through Friday.

STATE OF NORTH DAKOTA
COUNTY OF GRAND FORKS

IN DISTRICT COURT
NORTHEAST JUDICIAL DISTRICT

CIVIL NO. 18-2015-cv-00240

Public Service Commission,)
)
Petitioner,)
)
vs.)
)
Grand Forks Bean Company, Inc., and)
Auto-Owners Insurance Company)
)
Respondents.)

**PUBLIC SERVICE COMMISSION'S
REPLY CLOSING BRIEF**

I. INTRODUCTION

[¶1] Pursuant to the instructions of the Court at the close of the evidentiary hearing, the parties are allowed to file replies to the closing briefs by April 5, 2016. All persons participating in the hearing filed closing briefs on March 29. The PSC continues to rely on the positions taken in its report and recommendations, closing brief, and all other written filings it has made in this matter.

[¶2] The issues have been fully briefed by all involved, and there are several disagreements. Bremer disagrees with the PSC's and farmers' position that the farmers did not have credit-sale contracts and are receipt holders entitled to first priority under N.D.C.C. § 60-02-25.1. The farmers disagree with the insolvency date recommended by the PSC, while Bremer and Auto-Owners support the PSC's recommended insolvency date. Overall, the PSC asserts the arguments support its report and recommendations and request it be approved. In this reply, the PSC will attempt to avoid repetition of the arguments already made and attempt to briefly respond to issues not already addressed in its prior briefs.

II. ARGUMENT

A. The Price Later Marketing Agreements Are Not Credit-Sale Contracts.

[¶3] The PSC's and the farmers' positions are very similar on this issue. To the extent not inconsistent with the PSC's previous arguments, the PSC adopts the farmers' positions that they did not have valid credit-sale contracts with respect to the beans at issue in this insolvency.

[¶4] The PSC asserts the evidence establishes the PLMAs are not valid credit-sale contracts for the reasons previously stated. However, the PSC points out a misstatement of what it recalls the testimony and evidence to be at the hearing. At paragraph 10 of its brief, Bremer asserts Ms. Richter testified "that it would have been acceptable for Grand Forks Bean to remit a credit-sale contract fund assessment based on the Price Later Marketing Agreement" and that "if a seller under the Price Later Marketing Agreement had applied for a refund on the assessment she was not sure how the Commission would handle that and would have sought guidance from legal counsel." The PSC does not recall this as being Ms. Richter's testimony.

[¶5] Rather, the evidence indicates Ms. Richter had concerns with the PLMAs when she first became aware of them. See Ex. 114 at p. 2 (indicating she was faxed a copy of the "unacceptable" contract on November 19, 2014, and did not recognize it). There was no evidence any assessment was ever collected on the PLMAs as collection of the assessment was suspended at all relevant times to this case. See N.D.C.C. § 60-10-03 (providing that when the credit-sale contract indemnity fund reaches a certain level, collections of the assessment are suspended and do not resume until the fund decreases to a certain level). The PSC recalls Ms. Richter's testimony being that, if she had received the PLMA, she would have reviewed it and determined it was not an appropriate credit-sale contract and would have consulted with legal on how to address it.

Regardless, and as previously explained, the PLMAs do not satisfy the legal requirements for a valid and enforceable credit-sale contract.

[¶6] In addition, Bremer admits in its closing brief that “there was no evidence of a direct representation from the Commission to Bremer Bank concerning the Price Later Marketing Agreements” (*Bremer Brief* at ¶ 51), which is fatal to its estoppel argument. For these reasons and the reasons previously argued, the PSC requests the Court approve its recommendation that all of the farmers are receiptholders and no valid and enforceable credit-sale contracts exist in this case.

B. The Insolvency Date is December 19, 2014.

[¶7] The PSC, Bremer, and Auto-Owners argue the insolvency date is on or about December 19, 2014. Some of the farmers assert an insolvency date of October 15, 2013, and others assert an insolvency date of May 31, 2014. To the extent not inconsistent with the PSC’s previous arguments, the PSC adopts Bremer’s and Auto-Owners’ arguments regarding the insolvency date.

[¶8] In addition to its previous position explained in the report and its closing brief, the PSC asserts that its position on the insolvency date is also supported by and consistent with N.D.C.C. § 60-02-41. In relevant part, that statute provides, “[w]hen a public warehouseman ceases business through destruction . . . , or through insolvency, such warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency.” In this case, conversion of the farmers’ scale tickets in accordance with N.D.C.C. § 60-02-11 never occurred. Therefore, the language of this statute is consistent with the recommended insolvency date by the Commission because the evidence indicates Grand Forks Bean ceased doing business on or about December 19, 2014, as reflected in the documents included in Exhibit 17.

[¶9] Further, even if it was not each of the farmers' intent to store their beans, the beans can only be considered held as open storage under the applicable law because conversion never occurred. Even if the Court were to conclude the first part of N.D.C.C. § 60-04-02 applied (i.e. refusal, neglect or inability upon proper demand to pay for grain purchased or marketed), the farmers' argument for an earlier insolvency would require the Court to disregard the statutory requirement of a "proper" demand. Inclusion of the word "proper" in the statute must be given meaning as something more than calling and requesting payment at any point. If it is not, then any warehouseman would be insolvent any time there is a dispute with a farmer. The PSC asserts this type of evidence ignores the requirement of a "proper" demand as contemplated by N.D.C.C. § 60-04-02.

[¶10] Further, the facts do not indicate Grand Forks Bean was insolvent on October 15, 2013, as it subsequently paid for beans and received beans. In addition, the insolvency statutes recognize and provide a further remedy to the farmers in this case in the event Grand Forks Bean did not meet their asserted obligations. See N.D.C.C. § 60-04-05 (allowing receiptholders to pursue such other remedies against the warehouseman for any deficiency occurring as a result of insolvency). In other words, while this insolvency proceeding may not provide the farmers with the full relief they claim entitlement to, it must still be administered under the insolvency provisions. Any further relief the farmers may be entitled to must be pursued against Grand Forks Bean outside of the insolvency. Overall, the only asserted date of insolvency which allows for a consistent interpretation of the statutory scheme under the facts here is on or about December 19, 2014.

C. Storage

[¶11] Both the farmers and Bremer object to the storage recommendation by the PSC. While a grain warehouse is not required to receive grain for storage, it is required to publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available. N.D.C.C. § 60-02-11(2). Grand Forks Bean had a posted storage policy at its warehouse. Ex. 31. This indicates that it would receive grain for storage. As the beans at issue were never converted, they can only be considered to be held for open storage and subject to this policy and the law outlined in the PSC's report and closing brief.

D. Bean Assessment

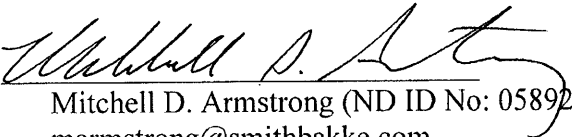
[¶12] In the post-trial brief of Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson at paragraph 9, it is asserted that assessing the edible bean promotion would be inequitable. This issue was not raised in any objection to the report, and as a result, evidence was not presented on it at the hearing. Therefore, the PSC asserts it is waived. N.D.C.C. § 60-04-09.

[¶13] Regardless, there is no evidence the assessment recommended in the report results in a "second" assessment. The documents related to the sale of the beans to Central Valley Bean do not indicate an assessment was applied. Exs. 17-18. The assessment in N.D.C.C. § 4.1-06-12, applies to all dry beans "grown in this state, delivered into this state, or sold to a designated handler." Therefore, it would apply to the beans at issue upon delivery to Grand Forks Bean. The PSC agrees it would apply only once and that is what it is seeking in the report.

III. CONCLUSION

[¶14] For the reasons described in the PSC's report, its closing brief, and above, the PSC requests its report and recommendations be approved.

Dated this 5th day of April, 2016.

By 
Mitchell D. Armstrong (ND ID No: 05892)

marmstrong@smithbakke.com

Brian D. Schmidt (ND ID No: 07498)

bschmidt@smithbakke.com

Special Assistant Attorney Generals

122 East Broadway Avenue

P.O. Box 460

Bismarck, ND 58502-0460

(701) 258-0630

and

Illona A. Jeffcoat-Sacco (ND ID No: 03315)

ijs@nd.gov

Special Assistant Attorney General

State Capitol – 12th Floor

600 East Boulevard Ave – Dept. 408

Bismarck, ND 58505-0480

(701) 328-2400

Attorneys for Petitioner, Public Service
Commission