

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE GRAIN BUYER)
LICENSE OF H & I GRAIN OF HETLAND,)
INC.)
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**ORDER REVOKING GRAIN)
BUYER LICENSE; ORDER)
DECLINING TO SEEK)
RECEIVERSHIP; ORDER TO)
OPEN DOCKET TO ADDRESS)
THE DISBURSEMENT OF BOND)
PROCEEDS)

GW17-001**

On June 19, 2017, the staff of the Grain Warehouse Division (Staff) of the South Dakota Public Utilities Commission (Commission) filed a Petition requesting the Commission to immediately suspend H & I Grain of Hetland, Inc.'s (H & I Grain) grain buyer license pursuant to SDCL 49-45-3. Attached to the Petition was a Notice of Intent to Sue on Bond. As a part of the Petition, Staff alleged it was aware of specific acts of insolvency and believed immediate action was necessary. H & I Grain has locations in Hetland, De Smet, and Arlington, South Dakota. On June 19, 2017, Staff served the Petition on H & I Grain.

On June 20, 2017, the Commission electronically transmitted notice of the Agenda of Ad Hoc Commission Meeting to H & I Grain as well as interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On June 20, 2017, Staff filed additional Notices of Intent to Sue on Bond. On June 21, 2017, Staff notified North American Specialty Insurance Company that it was undertaking an audit of H & I Grain. On June 23, 2017, the Commission issued an Order Suspending Grain Buyer License; Order Initiating Audit; Order to Post and Publish Notice of Suspension. On July 7, 2017, Staff filed a Request to Revoke H & I's Grain Buyer's License and to open a separate docket to address the disbursement of the bond proceeds.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-45, specifically 49-45-1, 49-45-3, 49-45-6, 49-45-7, 49-45-10, 49-45-13, 49-45-16, 49-45-17, 49-45-18, 49-45-19, 49-45-25, and ARSD 20:10:12.

At its regular meeting on July 21, 2017, the Commission considered whether to revoke H & I Grain's grain buyer license, whether the Commission should seek receivership pursuant to SDCL 49-45-16.1, and whether a new docket should be opened to address disbursement of the bond proceeds. The Commission heard from Staff, from an attorney representing a consortium of producers that were demanding payment from H & I Grain, and from another grain producer on these matters. H & I Grain did not attend the meeting in person or telephonically. Staff recommended that the Commission revoke H & I Grain's grain buyer's license, that the Commission not seek an action for receivership pursuant to SDCL 49-45-16.1 over H & I Grain's inventory or other assets, arguing that the risks and costs of doing so would outweigh any benefits to grain sellers and other creditors as all assets of H and I Grain are encumbered by a secured creditor, and that the Commission open a docket to address the disbursement of bond proceeds. The attorney for unpaid sellers of grain to H & I Grain supported Staff's recommendation for revocation and opening a docket but recommended that the Commission seek receivership in order to oversee the preservation of assets and the integrity of the process for their liquidation and of the preservation of the proceeds thereof pending resolution of the claims of unpaid grain sellers and others to such assets and proceeds.

Finding that H & I Grain had not requested a hearing within fifteen days following suspension of its grain buyer license, the Commission voted unanimously to revoke H & I Grain's grain buyer license pursuant to SDCL 49-45-16. Further, the Commission, finding the risks and costs of doing so would outweigh any benefits to grain sellers and other creditors, voted unanimously to not seek receivership at this time and to open a docket to address the disbursement of bond proceeds.

It is therefore

ORDERED, that H & I Grain of Hetland, Inc.'s grain buyer license is hereby revoked pursuant to SDCL 49-45-16; and it is further

ORDERED, that receivership of H & I Grain of Hetland, Inc. pursuant to SDCL 49-45-16.1 is declined at this time; it is further;

ORDERED, that a new docket shall be opened to address the disbursement of the bond proceeds pursuant to SDCL 49-45-19.

Dated at Pierre, South Dakota, this 24th day of July, 2017.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>Karen E. Cremer</u>
Date: <u>7/24/17</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Kristie Fiegen
KRISTIE FIEGEN, Chairperson

Gary Hanson
GARY HANSON, Commissioner

Chris Nelson
CHRIS NELSON, Commissioner