

## AFFADAVIT OF PUC GRAIN WAREHOUSE INSPECTOR JUSTIN BLAIS

August 23, 2018

Below is a timeline of the events precipitating Staff's petition to suspend the license of Utica Grain dba Upper Midwest Grain Elevator.

**-May 2014:** Financial statement submitted for renewal (FY ending December 2013) showed negative working capital. Licensee placed on weekly reporting. Weekly reporting is a short-term means for monitoring a Licensee's general ability to pay for grain by utilizing the company-owned stock and other easily-collectable assets like storage charges. Financial statement was amended prior to licensing for license year 2014-2015. General Manager Lyle Hoelsing and Accounts Manager Mary Jo Mikkelson at time of violation.

**-July 1, 2014:** Inspection was performed after company did not secure licensing until close of business on June 30, 2014.

**-September 4, 2014:** Inspection was performed. No deficiencies were found.

**-January 20, 2015:** Inspection was performed. No deficiencies were found.

**-March 29, 2015:** Inspection was performed. Preliminary annual financial showed [REDACTED].

**-April 22, 2015:** Inspection was performed. Informed by owner's representative that they would tap into majority owner Ralph Marquardt's other companies to strengthen the financial statement.

**-July 27, 2015:** Inspection was performed. Company was unable to meet Class A Grain Buyer requirements and was licensed as Class B. Informed by Ralph Marquardt that they were re-capitalizing.

**-October 13, 2015:** No weekly reports and no communication received for two weeks. Was told it was due to software changeover. Part-owner Lyle Hoelsing's shares in the company were purchased by majority owner Ralph Marquardt upon Hoelsing's exit from the company. Company officials during this time were General Manager Glen Danielson and Accounts Manager Mary Jo Mikkelson.

**-November 3, 2015:** Inspection was performed. Updated voluntary credit sale contracts did not meet ARSD requirements for verbiage. Company began offering price later contracts.

**-December 2015:** Line of credit increased from [REDACTED].

**-January 28, 2016:** Inspection was performed to resolve weekly reporting issues stemming from software changeover in October.

**-June 7, 2016:** Inspection was performed after two weeks of no communication from company and months of spotty communication. Inspection revealed a change in staff with new General Manager Tim Kleinsasser and a vacant accounts manager position. A Memorandum of Adjustment was issued for failure to submit weekly reports.

**-July 27, 2016:** Company failed to submit licensing documents on time, claiming financial statement review delays. License was issued July 14, 2016. Inspection showed no grain bought during that time, but some grain was received for storage.

**-January 26, 2017:** Inspection was performed. A total of [REDACTED] were issued without the required settlement dates, per the general manager's directive. Nine additional contracts were past-due. Delayed price contracts lacked correct voluntary credit sale verbiage. Basis contracts were being used as voluntary credit sales without meeting ARSD requirements for verbiage. General Manager Tim Kleinsasser and Accounts Manager Margo Logue were the key staff members.

**-May 3, 2017:** Inspection was performed. Five price later contracts were past the contracted settlement date from the previous inspection, not yet re-issued or settled. Some contracts were not on-hand and PUC Staff was informed that they were in the possession of either Ralph or Tim Marquardt so they could handle them.

**-August 8, 2017:** PUC Staff conducted an inspection after learning that General Manager Tim Kleinsasser was fired. PUC Staff was informed that approximately [REDACTED] were spoiled in a bunker, and that they dumped the bushels in a field. PUC Staff was also informed that the Commodity Credit Corporation's annual measurement showed significant additional shortfalls in corn and soybeans. These shortfalls placed the company out of compliance with CCC for failure to maintain sufficient inventory to cover storage obligations. The June 2017 financial statement also showed negative equity. The company had no general manager at this time.

**-December 14, 2017:** Inspection was performed. The October 2017 statement showed negative working capital. Multiple voluntary credit sale contracts were found to be out of compliance. General Manager Doug Archer and Accounts Manager Margo Logue were the key staff members.

**-April 22, 2018:** Inspection was performed. The February 2018 statement showed negative equity. PUC Staff was informed that internal numbers were not final and had not been reviewed for months. PUC Staff advised the company to solve the financial issues and suggested allowing Ralph Marquardt's personal balance sheet to license. Company officials refused and offered to create a new entity separate from other Marquardt-owned companies, to capitalize it and operate it separately. This was not done.

**-July 27, 2018:** The last weekly report was submitted, after nine-day delay. PUC Staff was informed by General Manager Doug Archer that the accounts manager had left company.

**-August 6, 2018:** The company submitted a June 2018 statement showing negative equity and a net loss year-to-date of [REDACTED]

**-August 17, 2018:** The company furnished a corrected June 2018 statement showing positive equity but less than the required \$100k. The net loss year-to-date was [REDACTED]

After the second financial statement showed inadequate net worth, PUC Staff was dispatched to Utica Grain to inspect on August 20, 2018. While visiting outlying locations for scale ticket information, PUC Staff located a financial statement dated June 29, 2018, for the six months ending June 30. This statement did not match either recently submitted financial statements, showing equity deficient of licensing requirements and net loss of [REDACTED]. Staff was informed that only management could generate an internal financial statement. This indicates the Licensee was aware of their deficient financial status more than 30 days before notifying the PUC, a clear violation of SDCL 49-45-25.

As the inspection progressed, the following items were uncovered:

- 1) PUC Staff was given the results of an internal measurement performed on August 17, 2018. This measurement showed a physical shortage of [REDACTED].
- 2) Of the [REDACTED] open price later contracts, five were unable to be located. Three more were past the contracted settlement date.
- 3) PUC Staff was informed that the prior general manager was demoted and replaced by the owner's brother. At close of business on the second day of this inspection, PUC Staff Justin Blais and Cody Chambliss visited the prior manager in his office for a brief discussion. After approximately five minutes there was a knock at the door. The owner's brother entered the office and stood behind PUC Staff in a threatening manner without speaking. Blais and Chambliss then ended the conversation and exited the premises.
- 4) Staff members representing the Commodity Credit Corporation, the Federal warehouse regulatory authority, were on-site conducting an inspection during PUC Staff's inspection. While the CCC staff members were unable to share details of their findings, PUC Staff believes they found numerous serious violations.

Over the course of four years of weekly monitoring, PUC Staff members have witnessed numerous large swings between general solvency and near-insolvency. While it is common for any large grain buyer to have an occasional positive-to-negative swing, the sheer number of swings seen with this Licensee have been greatly concerning.

While corrective action has been taken on previous deficiencies and may be taken on the current deficiencies, PUC Staff believe the continued issues with noncompliance and financial deficiencies as well as ongoing staff turnover has shown a repeated and blatant disregard for state law and for PUC Staff. For more than four years, the PUC has dedicated considerable time and resources including weekly monitoring, without seeing results of sustained improvement by the company. Staff believes that continuing to allow Utica Grain to operate as a grain buyer will put producers at risk for substantial losses.

As of today, the Licensee remains out of compliance.

Therefore, PUC Staff recommends suspension of the Class A Grain Buyer's license for Utica Grain dba Upper Midwest Grain Elevator.

Respectfully,



Justin Blais  
PUC Grain Warehouse Inspector

Subscribed and sworn to before me this 23 day of August, 2018.

Katlyn L. Gustafson (Notary Public)

My Commission expires: May 13, 2022

