

August 8, 2013

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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Ms. Patricia Van Gerpen, Executive Director
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

RE: Comments to the proposed rules revisions regarding the regulation of grain buyers and grain warehouses by the Public Utilities Commission.

Dear Ms. Van Gerpen:

On behalf of the members of the South Dakota Association of Cooperatives (SDAC) and the South Dakota Grain & Feed Association (SDGFA), we would submit the following comments concerning the effect of the revisions to rule ARSD 20:10:12:13.

The proposed change in rule ARSD 20:10:12:13 is to allow a voluntary credit sale contract that is not signed by both parties to be enforceable if a writing of confirmation is sent and no objection is made to the writing of the confirmation within two days. This change is a response to the circuit court decision regarding the interpretation of the rule that pursuant to SDCL 49-45-11 and ARSD 20:10:12:13, that a Voluntary Credit Sale (VCS) contract is not enforceable unless signed by both parties.

The grain industry brought forth legislation in 2009 that amended the Uniform Commercial Code (UCC) to provide for the enforcement of verbal agreements for the sale/purchase of grain and SDCL 57A-2-201 was a result of that legislation. Prior to this change in South Dakota law, oral contracts were enforceable under the UCC only between merchants. The South Dakota Supreme Court has stated that a Producer is not necessarily a merchant, meaning that producers may not be held to oral promises they make. These changes in the UCC were necessary because of advances in technology that allow a producer to call a grain buyer/elevator from his cell phone and accept a price for an agreed upon quantity and delivery date, resulting in a verbal contract. As a courtesy, the grain buyer/elevator sends out a contract confirmation to the producer for record keeping purposes. The UCC provides for a two day right of objection to the terms of a verbal contract but not the contract itself.

As you know, ARSD 20:10:12:13 establishes the contents of a VCS contract. A VCS contract is for a certain quantity of grain and a delivery date and does not include a price for the grain. The UCC two day right of objection in VCS contracts means that only the quantity of grain and delivery date are points of objection and not the price as stated in testimony during the July 30th hearing.

Both SDAC and SDGFA support the proposed change in ARSD 20:10:12:13 because it keeps the grain buying statutes consistent to the grain buying rules. It is vital to the grain industry that all grain transactions in South Dakota come from a uniform marketing structure while at the same time providing producers the ability to continue buy and sell grain by using the advances in technology. Without the consistent statutes and rules, producers may again need to negotiate all contracts in person with the grain buyer/seller which takes away the reasons the grain industry sought the changes provided in SDCL 57A-2-201.

Thank you for the opportunity to comment on the proposed rules and please feel free to contact us if you have any questions.

Sincerely,



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