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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
BOARD OF COMMISSIONERS
Pierre, South Dakota 57501

In the Matter of Anderson Seed Docket No. GW 12-002
Co. Inc.'s Grain Buyer Bond

BEFORE THE PUBLIC UTILITIES COMMISSION:

Chris Nelson, Chairman
Kristie Fiegen, Vice Chairman
Gary Hanson, Commissioner

APPEARANCES:

For the Commission: JOHN J. SMITH
PUBLIC UTILITIES COMMISSION
500 E. Capitol Avenue
Pierre, SD 57501

For the Staff: KAREN E. CREMER
 KRISTEN EDWARDS
 PUBLIC UTILITIES COMMISSION
 500 E. Capitol Avenue
 Pierre, SD 57501

PROCEEDINGS: The above-entitled proceeding commenced at
 approximately 1:29 p.m. on the 18th day of
 December 2012 in Room 412 of the State
 Capitol building, Pierre, South Dakota.

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1 (Whereupon the following proceedings were had, to wit:)
2 (Staff Exhibits 1 and 2 and Martinmaas Exhibit 1 through 3
3 marked for identification.)

4 MR. NELSON: Good afternoon. We will begin the
5 hearing in Docket GW 12-002 In The Matter of Anderson Seed
6 Company, Inc.'s grain buyer bond. The time is 1:30 p.m.
7 The date is December 18, 2012, and the location of the
8 hearing is in Room 412, State Capitol, Pierre, South Dakota.

9 I'm Chris Nelson, Chairman of the Commission.
10 Commissioners Kristie Fiegen and Gary Hanson are also
11 present.

12 I'm presiding over this hearing. This hearing is being
13 held to consider the request for hearing filed by Ray
14 Martinmaas on behalf of Martinmaas Dairy, Inc., referred to
15 as Martinmaas to contest the Commission Staff's
16 determination and recommendation that the Martinmaas claim
17 against the Anderson grain buyer bond is based on voluntary
18 credit sale and is therefore barred from bond coverage
19 pursuant to SDCL 49-45-9.

20 This hearing was noticed pursuant to the Commission's
21 order for and notice of hearing issued on November 29th,
22 2012. The issues at this hearing are: Number one, was all
23 or any portion of the grain delivered by Martinmaas to
24 Anderson a voluntary credit sale as defined in SDCL
25 49-45-1.1(5) and therefore barred from benefiting from the

1 proceeds pursuant to SDCL 49-45-9; Number 2, if so, what
2 portion was voluntary credit sale; and Number 3, if all or a
3 portion of the grain delivered by Martinmaas to Anderson was
4 not a voluntary credit sale, what is the dollar amount of
5 the claim attributable to such cash sale or sales that
6 should be approved for inclusion in the proportionate
7 distribution of proceeds to claimants.

8 Claimant Martinmaas has the burden of proof to
9 demonstrate his right to have his claim included in
10 distribution of bond proceeds. All parties have the right
11 to be present and to be represented by an attorney. All
12 persons testifying will be sworn in and subject to
13 cross-examination by the parties.

14 The Commission's final decision may be appealed by the
15 parties to State Circuit Court and State Supreme Court.

16 John Smith, the Commission's counsel, will act as
17 hearing examiner and will conduct this hearing subject to
18 the Commission's oversight. He may provide recommended
19 rulings on procedural and evidentiary matters. The
20 Commission may overrule the counsel's preliminary rulings
21 throughout the hearing. If not overruled, the preliminary
22 rulings will become final rulings. With that, I will turn
23 the proceedings over to Mr. Smith who will conduct the
24 hearing.

25 Mr. Smith?

1 MR. SMITH: Thank you, Mr. Chairman. Good
2 afternoon, everybody.

3 I think first, Mr. Martinmaas, I'm going to take things
4 a little more informally than we normally do at a hearing
5 because you're representing yourself here today, so we're
6 going to - I'm going to try to lead everybody through this
7 as best I can. And I'm suffering with some kind of a bug
8 here, as you can tell, so please pardon my voice because
9 it's pretty rough today, but we'll do it the best we can.

10 Now, normally in a formal hearing like this, we
11 frequently start with opening statements. I don't know this
12 to be a case but I'm sort of guessing that like - that the
13 opening statement - your opening statement might be pretty
14 close to what you're going to testify to, but if you want to
15 make a separate opening statement, that would be fine.

16 And I don't know, Staff, do you have a desire to make
17 an opening statement?

18 MS. EDWARDS: No. Staff will reserve its opening
19 statement for when it calls its first witness. Thank you.

20 MR. SMITH: Okay, any thoughts on that,
21 Mr. Martinmaas? Do you want to make an opening statement or
22 just begin with testifying because I --

23 MR. MARTINMAAS: I'll probably just wait with
24 testifying. My wife told me not to be mean.

25 MR. SMITH: Okay. There you go.

1 MR. HANSON: Bless your wife.

2 MR. SMITH: Okay, well, with that, what I'm going
3 to do is just something formal that we do - and may I ask
4 you, Mr. Martinmaas, maybe to come up and sit here in the
5 little deal, and you might want to bring those exhibits with
6 you. Is the mike on there? She'll check for you. Maybe
7 get it up there pretty close. It's - these things, if
8 you're not pretty close to them, they don't pick it up all
9 right.

10 MR. MARTINMAAS: Is this all right?

11 MR. SMITH: Yep. And, again, a lot of the reason
12 for that is the recording and whatever, so - and with that,
13 we'll do what we call the - taking appearances of the
14 parties, and we'll start with you. That means just
15 introducing yourself, usually spelling your name for the
16 transcript record, and what the nature of this is from your
17 standpoint.

18 MR. MARTINMAAS: Ray Martinmaas,
19 M-a-r-t-i-n-m-a-a-s representing Martinmaas Dairy,
20 Incorporated.

21 MR. SMITH: And are you the claimant in this case
22 who's filed a request for hearing?

23 MR. MARTINMAAS: Yes, I - yes, I am.

24 MR. SMITH: Okay, thank you.

25 Staff, would you make your appearance please.

1 MS. EDWARDS: Kristen Edwards for Staff.

2 MR. SMITH: One more question for you - thank you,
3 Kristen - Mr. Martinmaas, you're representing yourself here
4 today, right? You're appearing on behalf of yourself
5 without counsel?

6 MR. MARTINMAAS: Yes, I am. I figured there would
7 probably be a lot of attorneys here and, since this is the
8 PUC representing the public and I'm part of the public, I'll
9 probably be given good advice.

10 MR. SMITH: I hope so. I hope so.

11 Okay, here's - here's the order of presentation that
12 I'm going to suggest. As the claimant, you're like a
13 plaintiff, if you want to call it that, in a regular civil
14 case, and so what - the order of presentation I thought was
15 you would start as the claimant, and then Staff would have
16 the opportunity to question you, cross-examine you, which is
17 the normal way things are done, and then here at the
18 Commission, the way - another step that's not usually done
19 in court is commissioners and advisers, which is Mr. Rislov
20 down there in the gray jacket, and me have the opportunity
21 to ask questions, and then you get the opportunity to have
22 testimony to give your responding take on that on the
23 cross-examination, and if you feel miss - you know, that
24 it's - it's mischaracterizing the evidence or whatever, you
25 can try - you can correct that.

1 Then following that, we'll go to Staff's case on behalf
2 of their position in the case. You will have the
3 opportunity then to cross-examine each of Staff's witnesses
4 if there's more than one, and then Commissioners' questions,
5 and then followed by their opportunity to - redirect it's
6 called but to - to respond to your cross-examination.

7 And then last, you'll get one last bite at the apple as
8 the claimant to - to respond with rebuttal to whatever you
9 see that you think needs to be responded to. How does that
10 strike you?

11 MR. MARTINMAAS: That's - that's fine.

12 MR. SMITH: Okay. Any objection or thoughts on
13 that, Staff, from your standpoint?

14 MS. EDWARDS: We have no objection to the order of
15 things as you laid them out.

16 MR. SMITH: Okay, well, with that, Mr. Martinmaas,
17 I think we're going to have you stand and be sworn.

18 RAY MARTINMAAS called as a witness, having
19 been first duly sworn
 testified as follows:

20 MR. SMITH: Thank you.

21 And am I assuming correctly that you're going to
22 basically be testifying for yourself and that's going to be
23 it?

24 MR. MARTINMAAS: Yes.

25 MR. SMITH: Okay, with that, what I'm going to do

1 is just let you begin, and maybe if - you know, to the
2 extent I - I can, I'll try to help you out if I see things
3 getting bogged down, but just start out by letting you
4 start. And at some point here, we've got Martinmaas
5 Exhibits 1 and 2, so at some point here we'll probably want
6 to get those in. So maybe if we start with 1, maybe if you
7 just explain the story of what happened here with respect to
8 your submittal of the claim and all that, and then we'll
9 move for admission to this.

10 MR. MARTINMAAS: Well, I - I - I submitted a claim
11 for a portion of the bond and was denied on the grounds of I
12 gave voluntary credit. I question that because, in the
13 exhibit I have here from Anderson's which requested that I
14 sign the form giving them credit, that it is unsigned by me.
15 Now, I'm not - I'm not a lawyer but unless you sign a
16 contract, how is it valid?

17 Also, my second piece of exhibit here is a letter I
18 received from Anderson, which you have a copy of, and that
19 letter states "please review this deferred payment contract
20 and have each party that is named on the contract sign at
21 the bottom by the blue Xs. Each party must also sign in the
22 box on the lower right-hand corner. Please return the white
23 copy within 5 business days and keep the yellow one for your
24 records. If you do not sign and return the contract, it is
25 not considered to be a valid contract. Anderson Seed

1 Company."

2 MR. SMITH: Okay, and with respect to the first
3 pile of documents there, that's your claim form, is it - is
4 it not?

5 MR. MARTINMAAS: Yes, it is.

6 MR. SMITH: Your claim form and that's a 2-page -
7 well, it's your claim form and then a contract page and then
8 a - a scale ticket --

9 MR. MARTINMAAS: Right. It's --

10 MR. SMITH: -- ledger on there.

11 MR. MARTINMAAS: Right. It's an assembly sheet of
12 the scale tickets, yes, --

13 MR. SMITH: An assembly sheet.

14 MR. MARTINMAAS: -- of loads that we delivered.

15 MR. SMITH: And then the other two documents that
16 are in front of that, what are those? Would you identify
17 those for us.

18 MR. MARTINMAAS: One's a contract that they sent us
19 to be signed, which if - do you want me to go through it?

20 MR. SMITH: You could. I'm trying to just get it
21 identified and get it into the record here, and we'll be
22 done with that.

23 MR. MARTINMAAS: Okay. It says it's an agreement
24 on the 19th day of December between Martinmaas Dairy and
25 Anderson Seed. It says that owner has X number of bushels

1 and that they're oil seeds and they're nonedible, et cetera.
2 "See attached assembly sheets."

3 MR. SMITH: Okay, and the assembly sheets we talked
4 about, and then what's before that? Is that your claim form
5 in the pile there? That's the claim form, correct?

6 MR. MARTINMAAS: Yes, it is.

7 MR. SMITH: Okay. And then the - the final two
8 documents, are those documents you received from Commission
9 Staff?

10 MR. MARTINMAAS: Yes, it is.

11 MR. SMITH: Okay. And that's marked, is it not, as
12 Martinmaas Exhibit - Martinmaas Exhibit 1, that whole pile?

13 MR. MARTINMAAS: Yes.

14 MR. SMITH: With that, do you wish to move for
15 admission of those documents into evidence?

16 MR. MARTINMAAS: Yes, I do.

17 MR. SMITH: Staff, any objection?

18 MS. EDWARDS: No objection.

19 (Martinmaas Exhibit No. 1 received in evidence.)

20 MR. SMITH: Okay, I mean, basically what those are,
21 those are the documents in the claim file. That's what
22 those are are file documents.

23 Okay now, you mentioned another document. Do you want
24 to go ahead and - again, you said we had a copy. I don't
25 know that - I don't have a copy. I - I don't. . . .

1 MR. MARTINMAAS: I have additional copies here --

2 MR. SMITH: Okay.

3 MR. MARTINMAAS: -- if anyone needs them.

4 MR. SMITH: Yeah, I think maybe - yeah, we're going
5 to need those. Staff, do you have a copy of it?

6 MS. EDWARDS: We do.

7 MR. SMITH: Okay.

8 MR. MARTINMAAS: Now I'd like to - in the Anderson
9 Deferred Payment Grain Purchase Agreement I'm holding up
10 here - I think everyone has a copy of - if you go to the
11 lower, right box, it says "notice to seller of financial
12 risk" and it says "this contract is not protected by South
13 Dakota statutory bond coverage." I didn't sign that;
14 therefore I didn't acknowledge it; therefore I - I didn't
15 extend credit to these people.

16 Now, it can be argued that I was carrying my payment
17 over to the next year, which is a common practice in
18 farming, all right? And by the same token, when I haul
19 grain into an elevator and I mark it "sold" that day, I'm
20 not receiving a check many times until 30 days later or
21 longer. So am I giving those people credit?

22 You know, I didn't give these people credit; I just
23 deferred my payment. And that's my whole case right there.

24 MR. SMITH: With respect to the thing marked
25 Martinmaas 2, that's a letter you referred to that you got

1 from Anderson's?

2 MR. MARTINMAAS: Yes, it is.

3 MR. SMITH: And - and when did - when was that
4 letter sent?

5 MR. MARTINMAAS: It doesn't have a date on it.

6 MR. SMITH: Yep. Was it sent - did you get it
7 together with the --

8 MR. MARTINMAAS: I got it together with the
9 contract to be signed.

10 MR. SMITH: Okay, so that came with the contract.

11 MR. MARTINMAAS: And - and the agreement is - I
12 don't remember the - on the agreement, it says 19th day of
13 December, so I'm assuming it was in December.

14 MR. SMITH: Now, do you wish to move admission of
15 Martinmaas Exhibit 2?

16 MR. MARTINMAAS: Yes, I do.

17 MR. SMITH: Staff, do you have any objection?

18 MS. EDWARDS: I would just object as to relevancy.
19 The letter appears to be sent from Minnesota, so I'm not
20 sure how relevant it is pertaining to South Dakota law.

21 MR. SMITH: I think on that grounds I'm going to
22 overrule it. It came from the company to whom you sold
23 the - sold the stuff, and I guess we have no idea where the
24 contract came from either, but I'm going to overrule it and
25 admit it. Martinmaas 2 is admitted.

1 (Martinmaas Exhibit No. 2 received in evidence.)

2 MR. SMITH: Well, with that, then, does that
3 conclude what you have to say at the outset, Mr. Martinmaas?

4 MR. MARTINMAAS: Yes, it does.

5 MR. SMITH: Okay then, we're going to move on and
6 turn it over to staff for cross-examination.

7 MS. EDWARDS: Thank you.

8 EXAMINATION BY MS. EDWARDS:

9 Q Mr. Martinmaas, am I understanding correct that - correctly,
10 then, you intended for this to be a deferred payment sale?

11 A Yes.

12 Q With payment deferred until after the 1st of the year of
13 2012.

14 A That's correct.

15 Q And the grain was delivered in November?

16 A Yes, it was.

17 Q Okay. Did you demand payment within 30 days or anytime
18 after?

19 A No, I didn't.

20 Q Okay. And why did you not demand payment?

21 A It's just common practice in farming that you carry over
22 into the next year.

23 Q Okay. And why is that?

24 A Well, if you've had a really good year, taking additional
25 money at the end of the year just means you pay a lot more

1 in taxes, so. . . .

2 Q The letter that is marked Martinmaas Exhibit 2, did you
3 submit that with your claim to Staff?

4 A No, I didn't. I didn't know it was going to - that I was
5 going to need it at that time.

6 Q Okay.

7 A I thought it was going to be, you know, just part of the
8 bond.

9 MS. EDWARDS: No further questions.

10 MR. SMITH: Commissioners and Advisers, do you have
11 questions of Mr. Martinmaas? Mr. Chairman?

12 MR. NELSON: I do. Thank you.

13 Thanks for coming today to try to help us get to the
14 bottom of this. I do have some questions.

15 EXAMINATION BY MR. NELSON:

16 Q The deferred payment contract, along with the letter marked
17 Exhibit 2, when did you receive that?

18 A As I - as I stated, I don't - I can't give you an exact
19 date, you know. I - you know, it's probably in December.

20 Q Following receipt of that, did you dispute with the company,
21 either in writing or verbally, the contents of the contract?

22 A No, I didn't.

23 Q Why not?

24 A Well, at that time, I still thought they were a viable
25 company. You know, they were bonded; the governor was there

1 to break ground. Everybody said this was a wonderful thing.
2 I had no reason to doubt that they were a bad company.

3 Q Then why didn't you sign it?

4 A Just don't believe in signing contracts. They can be used
5 against you.

6 Q That is true.

7 If we could go back to your Exhibit 1 and,
8 particularly, the assembly sheet, there's several references
9 there that says "per Pat." In one place it says "per Pat,
10 defer payment until after the 1st of the year." Do you know
11 who Pat is?

12 A I have no idea. It must be someone that works there.

13 Q So you don't ever recall talking to or visiting with a Pat
14 at Anderson?

15 A No. I was at their plant one time. After that, my trucks
16 delivered.

17 Q So the reference on this assembly sheet to defer payment
18 until after 1st of the year, how would Anderson have
19 received that desire from you, because you testified already
20 that that was your intention? How did you communicate that
21 to them?

22 A Well, just, you know, talked to them when I went in and
23 agreed to send sunflowers to them.

24 Q So that was done in person?

25 A They - they said "would you prefer as - to defer payment?"

1 And I said, "Yes, I would."

2 Q And --

3 A And - and, you know, had I known at that time I was dealing
4 with a bunch of crooks, I wouldn't have, but, you know,
5 it's - it's quite a common practice, you know. We never
6 question it.

7 Q Who did you have that conversation with?

8 A Whoever was at the plant that day. There was a gentleman
9 and two ladies. I don't know their names. As I said, I was
10 only at that plant one day and that was only for about 10,
11 15 minutes. I went in with the first load.

12 Q So at that point in time, you made - would it be fair to say
13 you made a verbal agreement with them to defer payment?

14 A Yes.

15 Q But today you're telling us that you don't choose to honor
16 that verbal agreement; is that correct?

17 A No. I'm saying I didn't give them credit. I'm not
18 disputing the verbal agreement, you know. It comes down to:
19 I delivered sunflowers to this plant. They agreed to pay
20 me. I just agreed to take my payment later. They didn't
21 pay me.

22 Now, I can't understand why this is so complicated.
23 Right's right; wrong's wrong. Yet we get bogged down in
24 here with lawyers and politicians, and it all goes to hell,
25 so. . . .

1 Q When did you first demand payment from Anderson?

2 A I actually didn't demand payment from them until after the
3 1st of the year when I heard there was a problem. And at
4 that time, I tried to reach them.

5 Q And can you tell us when that was, other than just "after
6 the 1st of the year"?

7 A Boy, I don't know. The first week, somewhere in there.

8 Q Okay.

9 A My phone calls were not returned, and I tried - I called
10 their lawyer's office, and no one there would speak to me.

11 MR. NELSON: I don't have any further questions.

12 MR. SMITH: Other Commission questions?

13 Commissioner Hanson?

14 MR. HANSON: Thank you. Good afternoon,
15 Mr. Martinmaas.

16 EXAMINATION BY MR. HANSON:

17 Q On the - I'm going to call it Exhibit 2, this one that says
18 "Anderson Feed" on it - "Seed" on it, this is the first
19 I've - I've seen that. And as I read through it, it seems
20 to be fairly enlightening to me, and I'd like you to follow
21 through with it - with me.

22 It states in the first line - and there was some
23 trouble and some discussion as to when - since this is not
24 dated, as to when it might have been received. And I see
25 that in the first line it says "please review this deferred

1 payment contract."

2 A Okay.

3 Q So could we assume fairly - fairly likely that it says
4 "please review this deferred payment contract" that they're
5 a company that deferred payment contract, otherwise there
6 wouldn't be any point in it existing?

7 A Right.

8 Q So for all practical purposes, I think it was - at least I -
9 I think that it was received on December 19th, 2011.

10 Further down, with your discussion - a lot of - I know
11 a lot of agreements are made in farm country shaking hands
12 and working with people and such, you know. You got faith
13 in people you work with and they have real estate there and
14 you figure they're going to be there for awhile. The last
15 sentence says "if you do not sign and return the contract,
16 it is not considered to be a valid contract." Correct?

17 A That's correct.

18 Q So I - I'm going to surmise, when I - at least thus far
19 unless I - and I'm saying these things because I'm
20 interested in hearing what Staff attorneys have to say - in
21 the Deferred Payment Grain Purchase Agreement at the bottom,
22 it says what you had pointed out, that this contract is not
23 protected by South Dakota statutory bond coverage, and I see
24 it is signed by - it looks like Anderson, almost looks like
25 Paul Anderson. Do you know if that's --

1 A I have - I have no idea.

2 Q And then I say - I see on the bottom left it says "as to
3 buyer Anderson Seed 12/19."

4 A Um-hmm.

5 Q I'm going to make an assumption here that you did not sign
6 that - the name "Anderson Seed" down there.

7 A No, I didn't.

8 Q So, you being the seller, those lines are - are empty.

9 MR. HANSON: Now, I'd - I'd be interested in
10 knowing something from counsel at this point just so I can
11 continue. It's my understanding of South Dakota law that a
12 contract in writing that is proposed in writing must be
13 accepted in writing and delivered; is that correct?

14 MR. SMITH: Well, I guess - I'm hooked here. My
15 coat got hooked in the chair.

16 I mean, that's - that's one of the end issues in this
17 case, I think, is the interaction between - you know, in
18 2009, if you note, the statute of frauds, it's called, yes,
19 that requires that - the general statute of frauds requires
20 that all written contracts must be signed by both parties or
21 at least the party against whom it's enforced.

22 But in 2009, the legislature amended the statute of
23 frauds to add its new exceptions. There have always been
24 some exceptions to that. In 2009, law was amended to add
25 some explicit exceptions involving grain. And those provide

1 that in certain circumstances, a contract that is not
2 necessarily - does not necessarily meet all the other
3 requirements of the statute of frauds are nevertheless
4 enforceable.

5 Again, so among the issues we're dealing with here is,
6 one, does that apply to this particular situation, you know,
7 where we have some statutes and we have a rule of our own;
8 and secondly, do the facts of this case meet one of those
9 exceptions?

10 MR. HANSON: It's somewhat - the answer is - is
11 very pertinent to what we're discussing at this juncture,
12 and that would really be handy to know the exact situations
13 in which a written contract is not acceptable - is not
14 necessary. But in this particular - and I don't mean to be
15 argumentative at this juncture. I'm looking forward to
16 additional information, but if it states "if you do not sign
17 and return this contract, it is not considered to be a valid
18 contract" - I mean, that's pretty explicit.

19 MR. SMITH: Right. And that - of course the
20 document you have we've never seen before.

21 MR. HANSON: Right.

22 MR. SMITH: But if - I mean, here's what - I sent
23 you this --

24 MR. HANSON: Right. I have that in front of me.

25 MR. SMITH: It just gives you the - it's this,

1 the - those are the exceptions with respect to grain in the
2 statute of frauds.

3 MR. HANSON: Okay, thank you.

4 MR. SMITH: Yep.

5 MR. HANSON: Appreciate it. I'll have some other
6 questions possibly for you or for other counsel later on,
7 but thank you, Mr. Martinmaas.

8 MR. SMITH: Additional Commissioner Adviser
9 questions? Anything else?

10 Okay, Mr. Martinmaas, we'll turn to you again, and -
11 and why don't you offer whatever you want to in response to
12 Staff's questions of you and the commissioner questions.

13 MR. MARTINMAAS: Okay. Are there anymore
14 questions?

15 MR. SMITH: Staff, do you have any responsive to
16 commissioner's questions?

17 MS. EDWARDS: Briefly.

18 EXAMINATION BY MS. EDWARDS:

19 Q Looking at this letter, Exhibit 2, if you didn't sign and
20 return this within 5 business days and, say, Anderson Seed
21 hadn't gone under, then in your opinion at the end of those
22 5 business days, would you have no longer had right to defer
23 payment and would have had to go pick up your check at that
24 time? Or what happens to that sale?

25 A Anytime there's a chance I might lose a check, I will go and

1 take it. If they wanted to write me a check then, fine.

2 Okay?

3 Q But if they weren't going under and they were financially
4 stable, then --

5 A If - well, if your question is: If I had a choice between
6 not having a contract or taking the check, I would have
7 taken the check. I guess I'm not understanding your
8 question maybe.

9 Q Sorry; I'll try to clarify. At the end of the 5 days when
10 it said you had to return or - and sign within 5 days, do
11 you believe that became a straight open sale of your grain?
12 If Anderson Seed hadn't gone under and if they hadn't
13 received your check, they should have remitted payment to
14 you at that time rather than held it as a voluntary credit
15 sale or deferred payment?

16 A Yes, I would have thought so.

17 Q So if you had another contract out with another elevator
18 that's financially stable, they should remit payment to you
19 now rather than the 1st of the year?

20 A That's up to the elevator.

21 Q Okay.

22 A Like I stated, you know, if I have a choice between getting
23 a check and not getting a check, I want to get the check.

24 Q Okay. And then just to clarify - I don't know if we
25 clarified the years on the - you know, the dates on this.

1 The grain was delivered November 2011.

2 A Correct.

3 Q And then you requested payment January 2012.

4 A Correct.

5 MS. EDWARDS: Okay, thank you.

6 MR. SMITH: Okay, now we'll --

7 A In fact, I can remember being asked if I wanted to defer
8 payment. I didn't go in and seek it. They asked me, and -
9 and that's just a common practice.

10 MR. SMITH: Okay. Mr. Martinmaas, right now if you
11 want to, you can testify any further in response to what you
12 heard from commissioner questions and - and Staff
13 cross-examination --

14 MR. MARTINMAAS: I guess, you know, it - pretty
15 much you see where I'm coming from, so - I don't feel that I
16 had a - a valid contract with these crooks, so. . . .

17 MR. SMITH: Okay, with that, I think we're done
18 with your case in chief here, and we'll let you step down
19 temporarily, and you'll have another bite at the apple here
20 after Staff has - you know, and here when we get going into
21 the case - and I'm almost wishing you were up here with a
22 mike up here. You're going to have the opportunity, then,
23 to ask questions of their witness, witnesses, whoever they
24 call here, okay?

25 MR. MARTINMAAS: All right, thank you.

1 MR. SMITH: With that, I will turn to Staff.

2 Please proceed with your case.

3 MS. EDWARDS: Staff calls James Mehlhaff.

4 JAMES MEHLHAFF called as a witness, having
5 been first duly sworn
6 testified as follows:

6 EXAMINATION BY MS. EDWARDS:

7 Q Mr. Mehlhaff, will you please introduce yourself and spell
8 your last name for the record.

9 A My name is James Mehlhaff. I'm known as Jim Mehlhaff. My
10 last name is spelled M-e-h-l-h-a-f-f.

11 Q And how are you employed?

12 A I'm the director of the Grain Warehouse Division for the
13 Public Utilities Commission.

14 Q How long have you been in that position?

15 A I've been in that position since July of 2005.

16 Q Are you familiar with Anderson Seed of Redfield, South
17 Dakota?

18 A I am, yes.

19 Q And can you describe briefly your familiarity with this
20 proceeding and Anderson Seed.

21 A Anderson Seed was licensed, I believe, in October of 2011 as
22 a grain buyer.

23 MR. SMITH: Jim, can you pull the mike in just a
24 little bit.

25 THE WITNESS: Yes, I can.

1 A Anderson Seed was licensed as a grain buyer processor in
2 October of 2011. They did business in South Dakota until
3 their license was revoked - or suspended in February and
4 then revoked 15 days after the initial suspension.

5 Q (By Ms. Edwards) Are you familiar with the bonding process
6 for grain buyers in the state of South Dakota?

7 A Yes, I am. It's set in statute - I believe 49-45-9 - that
8 a - that a grain buyer seeking a license must provide a
9 surety bond to cover their obligations or any breach of
10 obligations. The bonding is set in statute at - on a 3-year
11 average annual purchases for an established grain buyer.
12 When a new grain buyer comes into the state without an
13 established record, it's required that they provide
14 projected purchases based on the operations that they intend
15 to run, and then the bond is based on the projected
16 purchases.

17 In the case of Anderson Seed - I'll just expound on
18 that if you'd like - their projected purchases - or they
19 bonded for their projected purchases to be between 2 and 5 -
20 2 and \$10 million which required them to have a bond of
21 \$100,000, which is what they procured and provided as part
22 of their license obligation.

23 Q Thank you. What types of transactions would the bond cover?

24 A The grain buyer bond covers open payables; for example, if a
25 grain buyer, such as in this case, becomes insolvent and

1 does not have assets after liquidation to cover grain
2 payables, then the bond would come into play to cover those
3 payables.

4 Q Are there any transactions the bond would not cover?

5 A It's specifically laid out right in the statute 49-45-9 that
6 grain that is subject to the terms of a voluntary credit
7 sale contract may not participate in bond proceeds, and it
8 also states that on the face of the bond as well.

9 Q Were you involved in evaluating the claims against Anderson
10 Seed's bond?

11 A Yes. I supervised the - the process of evaluating all the
12 scale tickets and claims.

13 Q Can you describe the process you used to evaluate those
14 scale tickets and claims?

15 A The claim as was set out, which was approved by the
16 Commission prior to that, we mailed official claims forms to
17 all the - all of the known patrons of Anderson Seed. The
18 claim forms that we received, we measured them against what
19 we had determined as a result of our initial scale ticket
20 audit, which was performed by going to the Redfield
21 facility, taking copies of all the contract files and scale
22 tickets that were on premises, and also information that we
23 received from the attorneys that were representing Anderson
24 Seed.

25 We determined, based on those, what we - what we

1 believed the documentation indicated was owed each patron.
2 We measured that against their check records to ascertain
3 what had been paid and what had not been paid, and we
4 measured against the contracts the spot prices on the days
5 of delivery to determine - to get a final determination on
6 what we figured each producer was owed.

7 Then we compared that with what was presented by the
8 producers when - when they filed their claims. If there was
9 a discrepancy in there, we tried to sort it out and see if
10 they provided additional information that we did not have
11 before. If we still felt that our initial scale tickets
12 showed an accurate claim amount, we sent letters - at the
13 end of that process, we sent letters to all the claimants.

14 Many times the claims we received were consistent with
15 what our scale ticket audit determined. Sometimes there
16 were minor discrepancies between the two, you know, based
17 on, perhaps a load maybe fulfilled a contract, and then
18 there was additional hundred weight that would have been
19 sold at the spot price on that particular day.

20 So there were small discrepancies that were all sorted
21 out. We sent letters explaining how we came to ours and
22 invited the producers to respond to those if they agreed
23 with us or if they had additional information or wanted to
24 discuss it further with us or - or seek a hearing in front
25 of the Commission to get to the bottom of those.

1 Q Other than the claimant issue today, did the PUC receive any
2 other claims that were denied in whole or in part?

3 A Yes. The PUC sent out - I believe it was 69 or 70 claim
4 forms. We received 29 claim forms back. I have those stats
5 written down here. We sent out 71 claim forms; we received
6 29 back. 4 claims were partially or entirely subject to VCS
7 contracts, and those were denied. And we did receive one
8 claim form back that made no claim. It was simply stated on
9 it that they'd been paid for all their grain.

10 Q Okay. Directing your attention to what has been marked for
11 identification purposes as Staff Exhibit 1 - should be up on
12 the corner there, a copy of that - could you explain what
13 that is.

14 A This is a Purchase Contract Farmer Information Form. It was
15 filled out in-house at the Redfield facility, and it's one
16 of the documents that we recovered when we did our on-site
17 inspection.

18 Q From whom did you recover that document?

19 A That was recovered Devon Glass, I believe, was the - was the
20 individual's name who - who supervised us, but we - we
21 pulled it from the files that were on premises in Redfield.

22 Q Is that a document that would have been kept in the ordinary
23 course of business at Anderson Seed?

24 A Yes. It - it lays out a - the grower and what they intend
25 to sell, various contact information, and agreed-upon price,

1 and any notes or special instructions.

2 Q And what information did you ascertain from this document?

3 A We ascertained the - the price that was agreed upon, and on
4 the bottom in the special notes, it indicated "defer
5 payments until after the 1st of the year."

6 Q Could you read what is written in the Special Items or Notes
7 section on the bottom?

8 A Yes. It says "defer payments until after the 1st of the
9 year."

10 Q And in your opinion, why would this have been written on the
11 form?

12 A It seems to document a conversation that was had between
13 Lonnie Martinmaas as the grower that's listed as the
14 representer for Martinmaas Dairy. And that - I think logic
15 would indicate to me that they had a conversation as to how
16 they wanted to be paid for their grain or when they wanted
17 to be paid and that they had made agreement to defer payment
18 until after the 1st of the year. And there's also a
19 assembly sheet that is attached to that which depicts all of
20 the scale tickets that --

21 Q Thank you.

22 A -- that were received.

23 Q Okay now, turning your attention to what has been marked
24 as - for identification purposes as Staff Exhibit 2, can you
25 explain - I'll wait until they're passed out. Can you

1 explain what that is.

2 A This is a assembly sheet with scale tickets attached to it,
3 and it has the assembly - the prices, the price grain - what
4 it was priced at and dockage that was applied to it and has
5 the settlement date of 12/19 on it, and attached to it are
6 warehouse scale tickets for each load, and it does appear to
7 match up with the assembly sheet that was supplied with
8 Exhibit 1.

9 Q How did you obtain these documents?

10 A These were also obtained at the Redfield facility when we
11 went there to get the documents to perform our scale ticket
12 audit.

13 Q Is this something that was kept in the ordinary course of
14 business at Anderson Seed?

15 A Yes. This is common in - all throughout the grain industry,
16 and it's - it's actually set in statute that each grain
17 buyer must provide a scale ticket or receipt for each load
18 of grain received.

19 Q In turning to the first scale ticket 40527, is that signed?

20 A It is signed.

21 Q And directing your attention to - looks like it's kind of
22 cut off but the Notice section - Note section about three
23 lines above the signature line?

24 A Yes.

25 Q Could you read that please.

1 A Says "credit - credit contract sales including deferred
2 payment and price later contract sales are not covered by
3 the grain buyer's bond."

4 Q And is it all - is that statement on the other scale tickets
5 in the packet as well?

6 A It is.

7 Q Are the other scale tickets signed?

8 A Yes, they are.

9 Q What are the dates of the scale tickets in that packet?

10 A Ticket 40527, delivery date is 11/4/2011; 40529 delivery
11 date 11/4/2011; ticket date 40534 ticket delivery date
12 11/7/2011; ticket number 40537 ticket date is 11/7/2011; and
13 ticket number 40572 is dated 11/16/2011.

14 Q In the course of your investigation of Anderson Seed, did
15 you find any documentation leading to - leading you to
16 believe that payment was demanded of Anderson Seed within 30
17 days of any of these scale tickets?

18 A I did not.

19 Q Turning your attention to what has been marked for
20 identification purposes as Staff Exhibit 3, can you explain
21 what that is.

22 A This is a Deferred Payment Grain Purchase contract.

23 Q And how did you obtain this particular document?

24 A We received copies of these from - from the attorney
25 representing Mr. Anderson, and we also received a copy of

1 this from Mr. Martinmaas as part of his claim.

2 Q Is this an accurate copy of what you received from
3 Mr. Martinmaas as part of his claim?

4 A Yes, it is.

5 Q Did you rely on this document in determining Martinmaas
6 Dairy's eligibility for the bond proceeds?

7 A In part I did, yes.

8 Q What else did you rely on?

9 A I relied on the State statute in Chapter 49-45, the
10 definition of what his credit sale of grain is, which is
11 grain that is to be paid 30 days after the date of delivery,
12 and I also referred to the statute of frauds that was
13 mentioned earlier 57A-2-201.

14 Q So in the process of evaluating the claims, did the fact
15 that the contract you received was not signed by a
16 representative of Martinmaas Dairy cause you to question the
17 validity of the contract?

18 A It did not.

19 Q Why not?

20 A It's - it's fairly common, as we do our inspections, that we
21 find unsigned contracts, unsigned voluntary credit sale
22 contracts. It's something that goes into the notes in, I
23 would say, virtually almost every inspection of a Class A
24 grain buyer, although there are some exceptions that,
25 particularly during the harvest time, that there are

1 unsigned contracts in the books.

2 Q And if, in the course of one of your inspections, you find
3 an unsigned contract for voluntary credit sale or deferred
4 payment, what's your course of action?

5 A Our course of action is to put in the inspection notes that
6 there was an unsigned contract, and our inspectors, myself,
7 when I'm doing inspections, instruct the grain buyer to go
8 out and get the contract signed.

9 Q Do you require the grain buyer to immediately price the
10 grain or issue a check for that grain or otherwise
11 reclassify it as an open payable rather than a deferred
12 payment contract?

13 A No. We don't - we don't require them to modify how they
14 classify the grain on their daily position report, and we do
15 not require them to cut checks for the grain that had - has
16 gone beyond the 30-day threshold from delivery.

17 Q Why is that?

18 A Based on interpretation of the statutes, what we have in
19 State law, number one; and number two, the - it would cause
20 a great deal of upheaval in the grain-handling industry and
21 also in the farming community.

22 These contracts are used for - for management. As - as
23 previously testified, if you have had a good year and don't
24 want to have that income in the year that you're currently
25 in, it's common to defer. If we would require grain buyers,

1 based on the fact that the contract is not signed, to cut
2 those checks immediately, I think it would be detrimental to
3 the farm community for us to require that, and I think that
4 State statute backs up our current practice.

5 Q Do you - in your opinion, was the contract or the
6 transaction between Martinmaas Dairy and Anderson Seed a
7 voluntary credit sale?

8 A They - everything - all the evidence that I have looked at
9 indicates that it was the intent of the seller to defer
10 payment until after the 1st of the year. The contract was
11 made in writing, and it was provided to Mr. Martinmaas, and
12 there's no evidence that I've seen anywhere that there was a
13 desire to - to be paid before the 30 days expired, which
14 would have been based on the final delivery. I believe an
15 11/16 payment should have been made on December 16th.

16 Q Based on your training and experience, do you have a
17 recommendation for the Commission?

18 A I would recommend that the Commission not include this grain
19 in the bond proceeds based on what the law, I think, clearly
20 sets out.

21 MS. EDWARDS: Thank you. At this time, Staff would
22 offer exhibits - Staff Exhibits 1, 2, and 3, and
23 Mr. Mehlhaff is available for cross-examination.

24 MR. SMITH: Mr. Martinmaas, do you have an
25 objection to the admission of those? Again, it's their

1 Purchase Contract Farmer Information form, then the assembly
2 sheet and scale tickets, and then the contract that you sent
3 in.

4 MR. MARTINMAAS: Yes, I do.

5 MR. SMITH: Okay. Which of those do you wish to
6 object to?

7 MR. MARTINMAAS: I wish to object to No. 2.

8 MR. SMITH: And that would be the assembly sheet?

9 MR. MARTINMAAS: No. It's the individual signed
10 tickets that I object to.

11 MR. SMITH: Okay. Just a minute here. Right, it's
12 the assembly sheet plus the individual tickets, right?

13 MR. MARTINMAAS: Yes. I have no objection to the
14 assembly sheet.

15 MR. SMITH: Okay. Can you tell me the basis for
16 objecting to the - your basis for objecting to the scale
17 tickets?

18 MR. MARTINMAAS: The objection to the scale tickets
19 is: anytime I've dealt with FSA or RMA --

20 MR. HANSON: Excuse me, sir, --

21 MR. MARTINMAAS: -- which are government
22 entities --

23 MR. HANSON: -- could you use the microphone so
24 that we can have it on - thank you. Thank you.

25 MR. MARTINMAAS: Anytime I've dealt with FSA or

1 RMA, which are governmental entities that deal with
2 agriculture, they will only accept assembly sheets; they
3 will not accept individual grain tickets.

4 Now, I can see from the individual grain tickets - and
5 it was brought up that, yes, credit contract sales include
6 deferred payment and price leader contracts are not covered
7 by the grain buyer's bond.

8 And - and those signatures are my brother's that
9 delivered the grain. I'm sure, when they signed this, they
10 were trying to get back to the field to get another load.
11 They are not attorneys, all right? I'm not an attorney.
12 You just sign tickets when you're delivering grain, so to
13 infer that they were giving credit even though they signed
14 it is a little preposterous, you know. I mean, it just -
15 that's not how it's done. And as I stated, grain tickets
16 are not accepted by the government, so - that's my
17 objection.

18 MR. SMITH: Okay, I - I guess what I'm - when I
19 look at this, I - I see that somebody signed for this scale
20 ticket, but I don't actually - is there a reference on here
21 somewhere where it says that this is a credit sale?

22 MR. MARTINMAAS: Yeah, down at the bottom. Notice.

23 MR. SMITH: Okay, I - it's cut off from the end, so
24 I --

25 MR. MARTINMAAS: All right.

1 MR. SMITH: -- I can't tell that you're just giving
2 notice that it, you know - or whether that's on every scale
3 ticket.

4 MR. MARTINMAAS: Well, I don't want it inferred
5 that my brothers were signing away any rights here is - is
6 what I'm bringing forward.

7 MR. SMITH: Okay. I mean, I think your point's
8 made. I'm going to admit the documents because I think they
9 are what they are. You know, they form what scale tickets
10 that led to the assembly sheet. So they're admitted but, I
11 mean, your point is made already on the record, but you can
12 make it again that that isn't what this means. Okay, and
13 that's your point, right?

14 MR. MARTINMAAS: And that's my point, you know.

15 MR. SMITH: But we're going to let it into the
16 record because it is the foundation for the assembly sheets
17 and those were the actual scale tickets.

18 MR. MARTINMAAS: And that's fine with me. I just
19 don't want it brought up that, you know, they signed giving
20 away any rights.

21 MR. SMITH: Thank you. And we've noted that, and
22 the transcript will show that. Thank you.

23 With that I'm going to admit Staff's - Staff
24 Exhibits 1, 2, and 3, unless the commissioners have a
25 contrary opinion. Okay, with that, they're admitted then.

1 (Staff Exhibits 1, 2, and 3 received in evidence.)

2 MR. SMITH: Does that conclude Staff's direct
3 examination?

4 MS. EDWARDS: Yes. Mr. Mehlhaff would be available
5 for cross-examination at this point.

6 MR. SMITH: Mr. Martinmaas, are you ready to go or
7 do you want a minute to think about it or. . . ?

8 MR. MARTINMAAS: No. I'm ready.

9 MR. SMITH: Okay. If you want to, if you'd like to
10 so it isn't so awkward, you just want to - we should have
11 just put you up here to begin with. Do you want to get up
12 where there's a mike up there?

13 MR. MARTINMAAS: That would be fine.

14 MR. SMITH: I just thought it would - you know,
15 you're not looking each other right in the face quite that
16 close.

17 MR. MARTINMAAS: Well, I don't think Mr. Mehlhaff
18 would hit an old cripple anyway, but you never know.

19 EXAMINATION BY MR. MARTINMAAS:

20 Q Jim, you mentioned that October 2011 that Anderson was
21 licensed to buy grain in this state; is that correct?

22 A That's correct.

23 Q Did you do a background check at all on Anderson?

24 MS. EDWARDS: I'm going to object. That's not
25 really relevant to the purpose of this hearing unless

1 Mr. Mehlhaff --

2 MR. SMITH: I think I'm going to sustain that.
3 Here we're talking the bond proceeds and the significance of
4 the - of the grain in form, et cetera. We're really not
5 talking about the - the issues that led to Anderson's
6 problems, okay? That's not what this hearing is about.

7 MR. MARTINMAAS: Okay.

8 Q (By Mr. Martinmaas) You mentioned liquidation of assets to
9 cover grain. Were Anderson's assets liquidated to - to pay
10 farmers for grain?

11 A I don't have - I'm not privy to exactly what is going on in
12 Minnesota. I am aware that there's a process under
13 Minnesota statute for dissolving corporations.

14 Like you, I'm not an attorney either, but it is my
15 understanding that the process over there is - is not unlike
16 a liquidation bankruptcy, but I'm not aware of how that
17 process is going, and - and it's been difficult getting
18 information from the attorneys representing Anderson.

19 Q Why is there a - a different law for grain dealers'
20 elevators than the rest of the business community?

21 MS. EDWARDS: I'm going to object to that too.
22 Mr. Mehlhaff isn't an expert on that; however, our next
23 witness might be able to answer that question if he wants to
24 ask it at that time.

25 MR. SMITH: And are you talking about the statute

1 of fraud specifically?

2 MR. MARTINMAAS: Yes, yes, exactly.

3 MR. SMITH: Okay. Yeah, I'm going to sustain that,
4 because I don't think Jim had anything to do with it but -
5 or any involvement with it whatsoever.

6 MR. MARTINMAAS: Okay. I guess, then, I don't
7 really have any other questions that pertain exactly to
8 this, what we're dealing with today. You've noted my
9 disagreement with some of the sheets - or some of the
10 exhibits, so I wouldn't have anymore questions here.

11 MR. SMITH: Thank you, Mr. Martinmaas.

12 We will then turn to commissioner and adviser
13 questions. Mr. Chairman?

14 EXAMINATION BY MR. NELSON:

15 Q Mr. Mehlhaff, referencing staff Exhibit 1, the first line
16 says "date of contract November 4th, 2011." What contract
17 is that referring to and where is it?

18 A I would - my assumption is that this is the contract, so the
19 term "contract," I think, is probably used fairly loosely
20 regarding this document.

21 It appears - Mr. Martinmaas would probably have more
22 information, but it appears to be a cash sale, which is
23 based on what the price was at that time. The date on the
24 contract is 11/4, and in Exhibit 2, you'll note that the
25 first delivery was on 11/4.

1 So I think it was an agreement where they met and they
2 drew up, kind of, the terms of the sale and they call it a
3 contract. I don't know that it would actually - if the
4 NGFA, National Grain Feed Association, would actually use
5 that term for this document.

6 Q Are there any signature lines on this supposed contract?

7 A There are not.

8 Q Turning to Staff Exhibit 3 - and if you could get that in
9 front of you, I've got several questions on that. The
10 second paragraph - well, first of all, the first paragraph -
11 this is dated December 19th, 2011; is that correct?

12 A Staff Exhibit 3 seems to have taken a walk on me. Sorry,
13 Mr. Chairman.

14 Q Would you agree with me that this is a - this is a Deferred
15 Payment Grain Purchase Agreement dated December 19th, 2011?

16 A Yes, it is.

17 Q At the beginning of the second paragraph, it says, quote,
18 whereas seller is the owner of, unquote. On December 19th,
19 2011, was Martinmaas Dairy the owner of these sunflowers?

20 A Based on statute, I would say at that point he was not.

21 Q Moving down below the - there's an area that says "see
22 attached assembly sheets" and there's a sentence directly
23 below that grid. And in part that says, quote, buyer
24 desires to purchase and take title to, unquote. Had not the
25 buyer already taken title to on December 19th?

1 A That is correct. The scale tickets indicate that the buyer
2 had taken title at that point, yes.

3 Q Below that there's four bullet points numerated 1 through 4
4 and I'm looking at Number 1. It says "seller agrees to sell
5 to buyer said grain as above-described by endorsement and
6 delivery by seller to buyer of said storage for warehouse
7 receipt or receipts on the date of execution hereof at which
8 time title to said grain shall pass to buyer." It was my
9 understanding that title had already passed by
10 December 19th. Is that your understanding?

11 A My understanding, yes, that the title would have passed at
12 the time of delivery.

13 Q So based on the questions I've asked, are you troubled at
14 all by the language on this contract?

15 A It certainly could be cleaner; however, I - I'm not terribly
16 troubled as to the validity of the deferred payment. It
17 should have been filled out ahead of schedule; however,
18 having said that, prior to actually weighing and dumping the
19 grain and accounting for any dockage or - based on oil
20 content and such things, title would pass before the actual
21 agreed-upon price could be determined.

22 Q So - and I think you make an interesting point. Is that the
23 typical methodology used in the industry for preparing
24 deferred payment grain contracts, that they be done prior to
25 delivery?

1 A On deferred payment, no. Deferred payment contracts are
2 generally done postdelivery. Oftentimes it's depicted, as
3 in this case, predelivery that it was intended to defer
4 payment, but the actual contract itself is generally not
5 written up until after delivery occurs.

6 Q Are you familiar with SDCL 49-45-11, the definition of
7 "voluntary credit sales"?

8 A I am.

9 Q And would you agree that that statute requires voluntary
10 credit sales to be in writing?

11 A I would.

12 Q Are you familiar with ARSD 20:10:12:13 which is entitled
13 Notice Required to Credit Seller of Grain?

14 A I am.

15 Q And are you familiar with Sub 9 that says - well, let me -
16 let me read the heading before the subs. "Each voluntary
17 credit sale contract shall include the following," and Sub 9
18 says "signature and date of signature for both the seller
19 and buyer." Would you interpret that to be mandatory in
20 order for the contract to be valid?

21 A Chairman, I think the - that particular Administrative Rule,
22 I think, depicts the form of the contract. I don't
23 necessarily think it determines that a signature is
24 necessary in order for it to be valid. I think that
25 determines that this contract has those elements on it and

1 they should be signed by the principals in the contract.

2 Q "Should be but not required," is that what you're testifying
3 to?

4 A With respect to that law with that administrative rule, it's
5 my interpretation that that refers to the form of the
6 contract.

7 Q I believe earlier you testified that there were other folks
8 that had delivered sunflowers to Anderson and entered into
9 voluntary credit sale contracts, correct?

10 A That is correct.

11 Q Did those other sellers sign those contracts?

12 A I believe the other contracts were signed, yes.

13 Q All of them?

14 A Yes.

15 Q And so the contract that we're dealing with here today is
16 unique from all the rest; in that, it wasn't signed by
17 Martinmaas. Is that correct?

18 A It is unique, and I would have to preface that comment "to
19 the best of my knowledge." I - I would like to go back and
20 look at them, but it's - I'm quite certain that they were
21 all signed in both places. And, yes, this is unique with
22 respect to this particular case.

23 Q When you or your staff went to the Anderson Seed facility
24 and reviewed the records, made copies of the records,
25 et cetera, just so I'm certain, you did not find a copy - a

1 signed copy of this contract signed by Martinmaas.

2 A I did not, no, we did not.

3 Q Did you find signed copies by the other VCS sellers?

4 A We actually did not find copies of these contracts on the
5 premises that looked - had been taken apparently back to
6 mentor, but we did receive copies of these contracts from
7 the attorneys as part of the requests for information as
8 you - well, probably not on yours, but these contracts are
9 generally in a book. They're a standard contract, just like
10 at the bottom they have Minnesota, North Dakota, and South
11 Dakota that are produced by printing companies based to
12 comply with the laws in all three states. So that book was
13 taken from the premises.

14 Q Okay. And I think probably the last question I've got: Are
15 you familiar with SDCL 57A-2-201 what's been referred to as
16 a statute of frauds?

17 A I am.

18 Q And you're familiar, then, in 2009 the legislature amended
19 that section to add a specific exception, if you will, for
20 the sale of grain. You're familiar with that?

21 A I am, yes.

22 Q And it's my understanding, based on some research that I've
23 done, that you were in the committee hearings when this was
24 proposed on both the house and senate side and actually
25 testified, correct?

1 A That is correct.

2 Q At anytime during those hearings, did you mention - or do
3 you recall any discussion whatsoever about this section
4 applying to voluntary credit sale or credit sales of any
5 kind?

6 A I don't believe that that was ever mentioned as part of any
7 of the testimony.

8 Q And isn't it correct that all of the testimony was directed
9 at contracting for future delivery?

10 A Generally speaking, yes.

11 MR. NELSON: Thank you. That is all the questions
12 I have.

13 MR. SMITH: Thank you. Additional commissioner
14 questions? Commissioner Hanson.

15 MR. HANSON: Excuse me. I'm jotting notes from the
16 enlightenment from Mr. Chairman, his questions.

17 Mr. Mehlhaff, I appreciate very much the challenge
18 that your department was faced with in regards to Anderson.
19 I think you and your staff have done an excellent job of
20 putting the pieces together. Appreciate that very much.

21 EXAMINATION BY MR. HANSON:

22 Q On Exhibit 1, counsel was asking you some questions
23 pertaining - Staff Exhibit 1, counsel was asking you some
24 questions pertaining to this possibly memorializing a verbal
25 agreement. And you stated in your belief that it - it

1 probably was. Are you privy to any discussions that took
2 place or any evidence to that effect or is this - this is an
3 assumption on the department?

4 A I clearly was not present. My assumption is it's based on
5 what's written on the document itself.

6 Q Okay, thank you.

7 I probably should have interrupted earlier when you
8 were answering a question and you said "this," you believe
9 "this is a contract." Do you recall that, answering a
10 question and - I was wondering what - which document you
11 were referring to at the time. I should have - that's my
12 mistake for not interrupting.

13 A I'm not certain exactly what.

14 Q All right. Didn't realize it was going to - there's going
15 to be the amount of time in between, so forgive me for not
16 asking at that time.

17 In your experience - and you have a lot of experience
18 in this field - does a written agreement take precedence
19 over verbal ones?

20 A Could you - could you restate the question, please.

21 Q In your experience, do written agreements take precedence
22 over verbal agreements?

23 A Generally speaking, yes, I would say if - if a - one person
24 said that there was a verbal agreement that was contrary to
25 what Person 2 claimed and he had something in writing, I

1 would tend to agree the - with the one that had it in
2 writing.

3 Q There seemed to be some ambiguities between the agreements -
4 or the possible agreements, and they all seem to be possible
5 agreements. You testified that all of the voluntary credit
6 sales had been signed - is that correct - that you - all of
7 the - all of the --

8 A With respect to - to this particular - yes, to the best of
9 my knowledge. Now, I reviewed all of those. Obviously I
10 haven't given those as much attention because we're not
11 having hearings on those other ones.

12 Q With the exception of - of the agreement that's - or the
13 issue that's before us, --

14 A Correct.

15 Q -- all of the others were signed. Would you reach any
16 conclusion from that as a expert in this, if Martinmaas did
17 not sign and everybody else did?

18 A There were four claims that were partially or entirely
19 subject to VCS agreements, so three out of the four were
20 signed. That's 75 percent.

21 Generally speaking, I - I would say that we have a
22 higher rate of contracts that are - that are signed when
23 they're sent out and returned, but it's not uncommon to see
24 contracts that are not signed.

25 Q And yet a VCS has to be signed in order - by State law in

1 order to be VCS?

2 A I believe a State statute says "voluntary credit sale must
3 be in writing." It does not say that it must be signed.
4 That's not part of the statute.

5 Q It would have to be signed, though, in order to be in
6 writing. I mean, I could write a contract and just send it
7 to you. If you don't sign it, it's not in writing. I
8 mean, --

9 A I certainly don't want to be in a position to be debating a
10 commissioner, but I think the statutes - the entirety of
11 State law says that in the case of grain transactions that -
12 that one of the things that binds the contract is if it's
13 memorialized in writing and provided to - to the other
14 party.

15 And then there's a period of time in which they have
16 the opportunity to say "this is not what I agreed to. I
17 want my check right now" or they can take the check and
18 throw it on their desk and say "I'm going to sign that when
19 I get around to it when it gets" - and it happens in this
20 industry probably thousands of times a day.

21 So - so if the contracts must be signed in order to be
22 valid - and I think that's why we came up with the revisions
23 to 57A-2-201, and there's another witness to be able to
24 speak to that with more clarity than me, so --

25 Q But I'm putting you on the spot because you're an expert

1 witness and because I don't often have the opportunity to
2 put you on the spot.

3 A In my opinion, I think that statute in whole supports the
4 position of Staff, that a contract that is not signed is
5 still binding.

6 Q However, notwithstanding all of the things that you said
7 of - because I agree with everything you said - well, just
8 about everything you said - the Anderson Seed company then
9 sent, along with the Deferred Payment Grain Purchase
10 Agreement which is unsigned, a statement that said "please
11 review this and if you don't sign it, if you don't sign it
12 by the bottom by the blue Xs, if you don't sign in the lower
13 left-hand corner, if you don't return it," it says "if you
14 do not sign and return the contract, it is not considered to
15 be a valid contract." So wouldn't that supersede
16 everything, all of the previous?

17 A Miss Edwards did object to that being allowed, and I think
18 the basis was that it's come from a Minnesota company. That
19 may well be something that's valid in Minnesota that is
20 required that that notice be sent out and that if they're
21 not signed, but there's - there's nothing of any notice like
22 that in South Dakota law.

23 And to attach that much importance to that, if there
24 was a sentence that said "if you don't sign it, you'll
25 receive a 25 percent discount on the - on what you have

1 coming based on our agreed-upon price," I certainly don't
2 think Mr. Martinmaas or any other producer would say that
3 that piece of paper has any relevance to their prior
4 agreements just by the fact that they included it in the
5 envelope. So --

6 MR. MARTINMAAS: I object. He can't testify on my
7 behalf. I mean - or against me. He doesn't know what I
8 would have said or done. Come on. Let's --

9 MR. SMITH: I'll sustain the objection. I
10 sustained it. Let's move on.

11 Q (By Mr. Hanson) I appreciate - very much appreciate your
12 struggle in an attempt to answer the questions. You know
13 where I'm - I'm placing a lot of weight on this, so I
14 appreciate your attempt to explain. I'll try to ask a
15 question that I - you can answer the question as long as you
16 don't get into conjecture.

17 Would you have - I'm not an expert witness in contract
18 so I won't ask the last question.

19 MR. HANSON: Thank you very much, Mr. Mehlhaff.

20 MR. SMITH: Additional commissioner questions?

21 Mr. Rislov?

22 EXAMINATION BY MR. RISLOV:

23 Q I'm gathering from your testimony today that it's not
24 uncommon for people to enter into - perhaps enter into
25 contracts without a signature? Is that what you're

1 testifying or you're suggesting today?

2 A Yes. That is something that - that we see several times,
3 yes.

4 Q When you say "see," it's common within the farmer or grain
5 industry. Is that - is that what you're referring to?

6 A I am.

7 Q Why don't you enforce it differently than just allowing
8 unsigned contracts to, apparently, flourish?

9 A I think we do enforce it. As I stated in previous
10 testimony, when we do an inspection, we find unsigned
11 contracts on a regular basis. And our instructions to the
12 grain elevator is to get these producers to come in here and
13 sign the contracts.

14 So if - so I would say that we're not allowing this
15 practice to flourish, but it's done with the understanding
16 that - to say "the contract is not signed," reclassify the
17 grain, if it's beyond 30 days, write the check. I think the
18 upheaval that that would cause in the industry for the
19 grain-handling industry and for the farmer would not be
20 well-accepted, and I think that what is in the current
21 statute supports the practices that we're using as part of
22 our inspection process.

23 MR. RISLOV: Thank you.

24 MR. SMITH: Additional commissioner questions?

25 Mr. Martinmaas, do you have some questions in follow-up

1 to the commissioner questions?

2 MR. MARTINMAAS: Yes, I do.

3 MR. SMITH: Please proceed.

4 EXAMINATION BY MR. MARTINMAAS:

5 Q I want to see if I understand this now. You stated that
6 once they sent me a contract, that was a contract I was
7 obligated to and I had 30 days, right?

8 A I stated that, based on my interpretation of the laws that
9 are on the South Dakota books, that once they send a
10 contract, that you have a period of time in order to - to
11 refute the terms of the contract and deny that the agreement
12 was made. And I've seen no evidence that you've attempted
13 to refute the - the terms of the contract. In fact, I've
14 seen plenty of evidence that that's exactly what you
15 intended to do.

16 Q No. Your statement was that I had 30 days to sell it or
17 they had to pay me.

18 MS. EDWARDS: I'm going to object. I think that's
19 a mischaracterization of what Mr. Mehlhaff said. I don't
20 believe he made that exact statement.

21 MR. MARTINMAAS: We can read it back. He said -
22 you know, said I have a period of time - and he used 30
23 days - from when a contract was sent to me. And if I didn't
24 sign it after 30 days, then it would be valid if I took no
25 action. Well, the contract came, was written on

1 December 19th. Early January I tried contacting Andersons
2 to get my money.

3 MR. SMITH: If we need to, we can go back and look
4 at the record. I don't know - Mr. Mehlhaff, do you want to
5 try to clarify without us having to go through that
6 rigmarole, --

7 THE WITNESS: I - I can say --

8 MR. SMITH: -- because then we're going to add a
9 lot of time here?

10 THE WITNESS: I do not believe that I made that
11 statement. What's in statute is that there's 2 days after
12 the writing - confirmation is received in which the producer
13 has an opportunity to refute the terms.

14 Q (By Mr. Martinmaas) 2 days?

15 A That's correct.

16 Q Apparently you don't live at Orient, South Dakota. Try and
17 send me something and see if I get it in 2 days. So that's
18 just unrealistic, 2 days.

19 A It says "after it's received." Doesn't say when it's
20 mailed. So after its - confirmation is received --

21 Q Okay, I can say I just got this the other day. I mean, you
22 know, once again, it seems like it's all semantics and
23 legalized wording and everything else, and that's what it
24 comes down to as I stated early, it's simple. I didn't sign
25 the contract. Now --

1 MR. SMITH: Mr. Martinmaas, right now would you
2 keep it at questions of Mr. Mehlhaff? And you're going to
3 have another opportunity to testify yourself, okay?

4 MR. MARTINMAAS: Okay.

5 MR. SMITH: Thank you.

6 Q (By Mr. Martinmaas) Why is a signature not required when
7 dealing with - with - with farmers and grain?

8 A Because that's what the legislature said, that it's not
9 required. And my recollection of the testimony is that
10 because - it was changed - that was added in relation to
11 grain basically because there was question as to whether a
12 farmer met the definition of "a merchant" and - under the
13 statute of frauds. And there was some questionability as to
14 whether it did, so this was added, basically, to apply that
15 to the grain and - there's going to be another witness
16 who's - who I would term more of an expert on this subject.

17 MR. SMITH: Additional - Mr. Martinmaas, any other
18 questions?

19 Q (By Mr. Martinmaas) Where was it - you know, we go back to
20 where was it intended before delivery for voluntary credit
21 sales, you know? I'm - you know, you said it was indicated
22 before delivery. I don't see anything that states that.

23 A Staff Exhibit 1 tends to indicate that prior to delivery, a
24 meeting of the minds occurred, which is - it's marked
25 Purchase Contract Farmer Information Form.

1 Q This - this is filled out, and I can assure you this isn't
2 my brother's printing. He doesn't print that neat. And
3 there's no signature.

4 So I guess - and I asked my brothers about this too,
5 because I have five of them. Any of them can do anything
6 for the company, but they don't. And so I asked: did any of
7 you guys sign anything or do anything, and they said no. So
8 I question Exhibit 1.

9 MR. SMITH: Okay. Any other questions of
10 Mr. Mehlhaff?

11 MR. MARTINMAAS: No.

12 MR. SMITH: Thank you. We will then - I have just
13 one question that kind of bothers me a little bit. I'm a
14 little out of order here, but I'm going to ask it.

15 EXAMINATION BY MR. SMITH:

16 Q Jim, with respect to that letter that Mr. Martinmaas shows
17 from Minnesota regarding that, I mean, is it possible that -
18 that that particular cover letter would have a tendency to -
19 to mislead a person about - about the way the statute of
20 frauds and the - and the system works in this state and
21 might cause them to believe in a - in - in a - in a legal
22 consequences - set of consequences that - for particular
23 actions that is wrong; in other words, you're going to do
24 something that is not right because you've been effectively
25 misled by that particular cover letter? I guess you can't

1 read somebody's mind but --

2 A Exactly. I've been a - taking the wood shed for making
3 conjectures earlier in my testimony. I think I'll just --

4 MR. SMITH: All right. I'm sorry. With that, I'll
5 turn back to - should we see if Staff has any final
6 follow-up? Do you have any redirect? And then we're going
7 to take a break for the reporter to give her a little rest.

8 MS. EDWARDS: Could I possibly, if I have any
9 redirect, do it after the break so I have a chance to --

10 MR. SMITH: Sure. We'll be in recess for 15
11 minutes or about 20 after 3:00.

12 (Recess.)

13 MR. SMITH: Okay, we'll call the hearing back to
14 order in Docket GW 12-002 In the Matter of Anderson Seed
15 Company, Inc.'s grain buyer bond, and Mr. Mehlhaff had been
16 through direct and cross-examination and now we'll turn to
17 Staff for redirect.

18 MS. EDWARDS: Thank you.

19 EXAMINATION BY MS. EDWARDS:

20 Q Mr. Mehlhaff, to clarify your recommendation, could you
21 describe in a little more detail how you arrived at your
22 decision.

23 A Well, I think that can be set out in Exhibit 2, which
24 depicts the delivery date on the scale tickets. You know,
25 and I would note that as I reviewed the contract initially

1 when I saw it - I saw the contract prior to actually
2 reviewing the seed tickets, and I noted the contract was
3 written on December 19th, and I also noted that payment,
4 according to this contract, was to occur on January 7th,
5 which is fewer than 30 days. And I was looking for a way to
6 include this in them, but when you take into consideration
7 what the law states in 45-1.1, the definition of voluntary
8 credit sale, which is grain that is to be paid 30 days after
9 the date of delivery and to note the final delivery date, I
10 thought it was clear to me that all the evidence pointed
11 that it was the intention of the seller to defer payment.

12 The buyer in this case did what the law requires in
13 order to - to buy grain under a deferred voluntary credit
14 sale contract, which is a - they memorialized it in writing
15 and they sent it to the producer, and, you know, frankly I
16 would - I would like to recommend to pay it, but I think the
17 law is - is - says the opposite, and if you don't follow the
18 law, you have to live with the consequences.

19 And the consequences are that if a - contracts are
20 required to be signed or if - in order to be binding, if
21 that's the way that we have to apply the law as - as we do
22 our business as regulators. It would be very hard on the
23 industry. It would be hard on the industry - the
24 grain-handling industry, and it would be equally hard,
25 possibly more so, on the producer to not be able to enter

1 into these types of agreements or other types of agreements
2 unless they actually come into the facility and sign the
3 contract. So those were the reasons that I reached my
4 conclusions.

5 MS. EDWARDS: Thank you. No further questions.

6 MR. SMITH: Okay, Mr. Mehlhaff, you may step down.

7 MR. HANSON: Mr. Chairman, I have one last question
8 of Mr. Mehlhaff if I could.

9 MR. SMITH: Hold on.

10 EXAMINATION BY MR. HANSON:

11 Q On the 2-day - I'll call it 2-day rule, 2-day law to object,
12 do you - do you know, through your experience, if the
13 typical rancher or farmer is aware of this 2-day rule?

14 A Once again, that would --

15 Q If you don't know, then that's fine.

16 A I do not know, but I think that the ag - agribusiness
17 industry and farmers are - are sophisticated businessmen, --

18 Q Sure.

19 A -- and I would think that they should be expected to know.
20 Whether they do or not, if that's the business they're in,
21 they should know the - the players and how the playing field
22 is set up.

23 MR. HANSON: Okay, thank you.

24 MR. SMITH: Okay. Staff, please call your next
25 witness.

1 MS. EDWARDS: Staff calls Steve Domm.

2 STEVEN DOMM called as a witness, having
3 been first duly sworn
4 testified as follows:

4 EXAMINATION BY MS. EDWARDS:

5 Q Mr. Domm, please state your name for the record.

6 A Steven Domm.

7 Q And how are you employed?

8 A I am the chief executive officer at Central Farmers
9 Cooperative in Marion, South Dakota.

10 Q Could you please describe your background in the field of
11 agriculture.

12 A I grew up on a small grain and sugar beat farm in
13 southeastern South Dakota. I graduated from high school,
14 received a bachelor's of science from North Dakota State
15 University in Fargo in agricultural economics, worked for
16 Cargill for 2 and a half years in the mid '80s, worked for
17 a - in the grain industry, worked for an independent in
18 North Dakota for 11 years and I've been with the cooperative
19 in Marion for the past 11 years. So I've been in the grain
20 business since 1987.

21 Q Could you give a brief overview of the contracting practices
22 in the farming industry.

23 A Yes. It's - it's - it's not like we've been hearing today
24 where it's contracts and it's signatures and - our industry,
25 more than any industry I know of, depends on verbal

1 contracts, depends on conversations.

2 In any one day, we will buy 50 to - 50,000 to a million
3 bushels of grain, and our risk management practices are to
4 hedge that grain immediately, in fact instantaneously now
5 via the computers. We hedge that grain by going short
6 futures contracts. We sell futures contracts.

7 50,000-bushel grain contract, we sell 10 contracts.

8 Contracts are 5,000 bushels apiece.

9 With the volatility that we have seen in the Chicago
10 Board of Trade since 2008's runup, the grain industry was
11 becoming extremely concerned with nonperformance of grain
12 contracts because "well, I didn't sign it." This - this has
13 far-reaching effects on our industry. If that is the way
14 that we're going to conduct business, the producers in the
15 state of South Dakota are not going to be able to call us
16 from the seat of their tractor; they're not going to be able
17 to call us from the combine; they're not going to be able to
18 send their hired man in and say "sell this load and send us
19 a check," because that's not all verbal. We rely on people
20 following their word.

21 So normal practice of grain contracting is: a producer
22 calls if it's a forward contract, tells us how much he wants
23 to sell; we tell him at what price; he tells us what
24 delivery period.

25 On spot grain sales, producer will haul grain into our

1 facility; he'll tell the people at the scale what he wants
2 done with the grain. If it's on contract, "contract, hold
3 the check." If he knows immediately that he wants it
4 deferred, he'll tell them to defer the check. If he does
5 not have the grain on contract, he'll either say "open
6 storage" or he'll say "sell it at today's price." And,
7 again, "do you want it deferred? Do you want a check?"

8 Signatures - we - we could have a hundred thousand
9 bushel grain contract sold and delivered before the producer
10 gets the contract. The size of these producers, as fast as
11 they can deliver grain today, we could have all the grain
12 delivered before the contract even hits the mailbox. So
13 it's - it's imperative that - that telephone and verbal
14 contracts rule now more than ever because of the volatility.

15 30 years ago a 30-cent move all year in a commodity was
16 a big move. Today you'll get a 30-cent up and a 30-cent
17 down in the same futures' month on the same day. Along with
18 today, we're trading commodity markets 23 hours a day
19 instead of from 9:30 to 1:15 the way we used to.

20 Q Thank you. Were you present for the testimony of
21 Mr. Martinmaas?

22 A Yes, I was.

23 Q And were you present for the testimony of Mr. Mehlhaff?

24 A Yes, I was.

25 Q Did - were you here when we discussed Staff Exhibit 3, the

1 Deferred Payment Grain Purchase Agreement? It should be up
2 there somewhere.

3 A Yep.

4 Q Does it cause you any concern that it refers to the grain to
5 be delivered when, in fact, we know the grain had already
6 been delivered?

7 A Well, no.

8 Q And why is that?

9 A Contract language.

10 Q Okay. So you don't feel it would have any implications on
11 the validity of the contract?

12 A I'm not - I'm not an attorney.

13 Q Okay, thank you.

14 And what role did you play in the development of the
15 legislation not - codified as 57A-2-201?

16 A I actually testified for the bill.

17 Q In the house or the Senate?

18 UNIDENTIFIED FEMALE: Both.

19 A Both.

20 Q (By Ms. Edwards) And given your background and knowledge of
21 that statute, do you feel that voluntary credit sales were
22 within the contemplation of what would fall under that
23 statute?

24 A At the time, we were talking about forward grain contracts.

25 Q And given the testimony that you have heard today, would

1 you - what - what's your opinion as to whether or not this
2 is a voluntary credit sale or deferred payment contract?

3 A If - if a producer tells us verbally to defer it, we're
4 going to defer it. Just because a contract doesn't - isn't
5 signed doesn't mean that we don't defer the payment.

6 Mr. Mehlhaff's statement as far as turning the industry
7 upside down is not necessarily going to bother the grain
8 industry because we just tear the contract up, but if we
9 start shooting checks out to every farmer, every producer
10 just because we don't have a signature, you're going to have
11 to rent the convention center in Sioux Falls for your next
12 hearing because it's - it's a big deal. It's a big deal.

13 And personally, if - if this was a customer of mine, I
14 don't know if I'd do business with him again, because our
15 industry revolves around verbal contracts. Spreading
16 fertilizer in the spring, grain contracts, credit sale
17 contracts, booking fertilizer, booking seed, booking
18 chemical, these are all positions that the grain and ag
19 supply cooperatives and businesses have to procure the
20 inputs when a producer tells us he wants to do something
21 with us. And it - it's imperative for the success.

22 Q And do you have an opinion - and I understand if you don't;
23 that's fine - on what would become of a contract that wasn't
24 signed after, as with this letter, the expiration of 5 days?
25 Would it become an open sale or what would become of that

1 transaction?

2 A Repeat that.

3 Q I'm looking at Martinmaas Exhibit 2, the letter saying to
4 return within 5 business days or the contract won't be
5 considered valid. If the deferred payment contract was not
6 considered valid, what would the transaction be considered?
7 What - would it default to something --

8 A We do not have that language in our deferred payment
9 contract, --

10 Q Okay.

11 A -- so I couldn't tell you.

12 Q Okay. And based upon any of the testimony or questions that
13 you've heard so far today, do you have any further opinions?

14 A It's ironic. Today I received an e-mail - we - we all saw
15 the financial meltdown happen right in front of our faces in
16 2008-2009 and the Dodd-Frank overhaul of the Wall Street
17 regulations we're still going through. It's ironic that
18 we're talking about this today because the swaps, which
19 really got Wall Street in trouble, the CFTC is reviewing
20 this currently. They're presently considering voice
21 recordings of every transaction.

22 This morning there was a statement out that they are
23 going to exempt grain because of what we do. So even at the
24 Wall Street level, they've realized the importance of a
25 verbal contract, and I - I just got that today.

1 MS. EDWARDS: Thank you. I have no further
2 questions for Mr. Domm, and he would be available for
3 cross-examination and Commission questions.

4 MR. SMITH: Mr. Martinmaas, do you have any
5 questions?

6 MR. MARTINMAAS: Yeah, I do.

7 EXAMINATION BY MR. MARTINMAAS:

8 Q Steve, have you ever stuck farmers for \$2.6 million?

9 A No, sir, I haven't.

10 MS. EDWARDS: Object as to relevancy unless --

11 MR. MARTINMAAS: The relevancy is, you know, he's
12 talking about oral contracts, and I just wanted to know if
13 he'd ever backed out of his word.

14 A No.

15 Q (By Mr. Martinmaas) Well, I'm glad to hear that, you know.
16 The question here - and somehow we keep getting lost in this
17 deal - is I lost a bunch of money here, and I think I'm
18 entitled to part of the bond.

19 Now, you know, Martinmaas Dairy is not some little
20 garden outfit. On the way over here today, I bought a
21 million dollars' worth of equipment on the phone. Guy's
22 going to deliver it, and I'm going to pay for it. We do all
23 our business that way. But all of a sudden, here's an
24 outfit that sticks me and I'm just trying to get a couple
25 dollars back on the backside. You know, I'm not saying we

1 have to turn the industry upside down, so - I'm glad to hear
2 that you pay your producers.

3 MS. EDWARDS: I'm going to object at this point.
4 Is there a question or. . . ?

5 Q (By Mr. Martinmaas) In your statement about oral contracts
6 and agreements, do you ever consider the farmer a secured or
7 unsecured creditor?

8 A Never thought about it.

9 Q Do you think the farmer should be a secured creditor?

10 A My - my opinion doesn't matter here.

11 Q Well, you're testifying as an expert so - you know, and
12 you're talking about large amounts of money.

13 MS. EDWARDS: I'm going to object as to relevancy
14 again. Whether or not this transaction was secured or
15 unsecured would have no effect on whether or not it should
16 be considered for bond proceeds.

17 MR. SMITH: I'm going to sustain that as it's
18 outside the scope of what we're doing here.

19 Q (By Mr. Martinmaas) Do you think that farmers who are not
20 paid for their grain should be entitled to any bond?

21 A That's why the bond exists.

22 Q So they should be paid.

23 A Farmers that do not get paid for their grain.

24 Q Okay. At this point in time with the outfit that you deal
25 with, Central Farmers in Marion, how big is your bond?

1 MS. EDWARDS: Objection as to relevancy again.

2 MR. SMITH: I'm going to sustain that. That's not
3 what we're here about today. We're here about whether your
4 claim, Mr. Martinmaas, is going to be considered.

5 MR. MARTINMAAS: All right.

6 Q (By Mr. Martinmaas) So you agree, then, as you stated that
7 farmers that aren't paid for their grain should be entitled
8 to some bond payment.

9 A As long as it's not a voluntary credit sale contract.

10 Q And what constitutes that, in your opinion?

11 A Deferred payments, delayed pricing, which, ironically, both
12 of those contracts were developed for the benefit of the
13 farmer not the grain industry. The deferred payment helps
14 the producer - "evade" is an ugly word - helps the
15 producer - warrants income averaging was - did away with.
16 Deferred money allows the producer to even out years.

17 Delayed - deferred pricing - or delayed pricing
18 contract allows the producer to haul grain into a facility
19 when he's got time but he doesn't necessarily like the
20 price. So voluntary - voluntary credit sales are there for
21 the benefit of the producer not the grain industry.

22 Q It really benefited me, didn't they, and the other farmers
23 involved?

24 If you had a chance to change this law, would you?

25 A No comment.

1 Q Would you characterize dealing in large amounts of grain
2 without having the grain on hand on the Board of Trade and -
3 that is kind of a big Ponzi scheme?

4 MS. EDWARDS: Objection as to relevancy.

5 MR. SMITH: Well, he did actually testify
6 concerning your hedging strategies, so I'm going to let you
7 respond to that.

8 A Repeat the question.

9 Q (By Mr. Martinmaas) Well, if - if you're dealing in large
10 amounts of grain and it's already sold, you don't have the
11 grain and you're anticipating the grain coming in, wouldn't
12 that be considered a Ponzi scheme?

13 A In my estimation, no. It's a hedge.

14 Q Okay.

15 A You're buying grain; you're selling futures to protect
16 yourself from the price risk.

17 Q But what if you're not paying for the grain? I mean, then
18 it's. . . .

19 A It's the purest definition of a hedge that you can find, and
20 hedging is not a Ponzi scheme.

21 MR. MARTINMAAS: Okay. I guess I have no more
22 questions.

23 MR. SMITH: Commissioner Adviser, questions?

24 MR. NELSON: Steve, thanks for coming up today to
25 help us work through this. Just a couple of questions.

1 EXAMINATION BY MR. NELSON:

2 Q We talked a lot about Martinmaas Exhibit 2, the letter that
3 accompanied the contract. When your company sends out
4 contracts to farmers for signatures, what kind of language -
5 is there a cover letter or what kind of language do you do?

6 A It's a standard deferred payment contract that, you know,
7 lists the bushels, quantity, quality, type of grain, and
8 that we - the date that we will pay them. We sign that
9 contract, and the producer signs the contract, and in the
10 signature box, it - it explicitly states that it's not
11 covered by a bond.

12 Q Do you send a cover letter with the contract?

13 A No.

14 Q Okay. The second question: I understand in 2009 House Bill
15 1167 that amended SDCL 57A-2-201 you testified both in the
16 house and the senate committees on that. I listened to your
17 testimony. It was clear to me that your testimony and that
18 of everyone else testifying all revolved around contracts
19 for future delivery of commodities; is that correct?

20 A I would say that would be a correct statement.

21 Q Was there any discussion or consideration of that amendment
22 applying to the extension of credit?

23 A Personally, even though we just talked about forward
24 contracting, because that's where the grain industry's
25 greatest risk is because of the hedging mechanism, I looked

1 at this as an unsigned contract law, whether it is bookings
2 for inputs, whether it's forward contracting for grain,
3 whether it's credit sale contracts. Because of the verbal
4 nature of our business, I - in fact, I still call it an
5 unsigned contract law, not forward contract, not variable
6 sale - or verbal credit sale contract, not deferred payment
7 contract but an unsigned contract law personally.

8 MR. NELSON: Thank you. No further questions.

9 MR. SMITH: Commissioner Fiegen?

10 EXAMINATION BY MS. FIEGEN:

11 Q So in 2009 when you were in front of the legislature, did
12 you look at an amendment to the current statute that would
13 only talk about forward contracts?

14 A The issue at the time was, as Mr. Mehlhaff stated, with the
15 volatility that we were seeing in the grain markets, the
16 statute was giving a merchant 10 days. Well, 10 days is
17 inconceivable in our business because the market could move
18 dollars per bushel.

19 And - and in today's environment, the - the - today's
20 producers are - are intelligent businessmen that can buy a
21 million dollars' worth of equipment over the phone. And
22 when you - when you have somebody's - when you have somebody
23 try to see a statute "I can get around this because I'm not
24 a merchant" and when you look at when "merchant" was defined
25 back - 1800s when the laws, the statutes came out of this,

1 our producer is a businessman today.

2 So the grain industry felt that that needed to be
3 tightened up because people were claiming "I don't have to
4 do that because, number one, I'm not a merchant; number two,
5 I didn't sign the contract." And again, the previous
6 testimony, if that is what would happen, it would be
7 gridlock at grain terminals.

8 Q So just a follow-up question: a lot of times when you're in
9 front of the legislature, you give them examples to clarify
10 what you're intending to do, and your examples might not be
11 all the examples but might be some of the examples. So when
12 you testified, do you believe that you gave examples of the
13 law, or were you only talking about forward grain contracts
14 and really wanted the law maybe to be amended only to deal
15 with forward contracts?

16 A You know, that was - that was 3 years ago. As I stated
17 earlier, my testimony, I believe, was on forward contracts.
18 The mind-set going in was verbal agreements between our
19 industry and our customer.

20 MS. FIEGEN: Thank you.

21 MR. SMITH: Other commissioner questions?

22 Commissioner Hanson.

23 MR. HANSON: Thank you. As Chairman Nelson said,
24 we very much appreciate you being here today to help provide
25 some foundation in the grain industry and how it's operated.

1 I guess Chairman Nelson's far more familiar with it than - I
2 shouldn't speak for my fellow Commissioner but certainly
3 more so than I.

4 EXAMINATION BY MR. HANSON:

5 Q And he had asked you a question about whether or not you
6 sent out the - a notice similar to the one that Anderson had
7 sent out, and you said no. Martinmaas Exhibit 2, that
8 states that "please review this deferred payment contract"
9 and later on says "if you do not sign and return the
10 contract." Have you seen - well, let me ask you: is this
11 typical of - around the state of South Dakota or anywhere
12 that you're aware of?

13 A All I can speak of is for our business, and it's not typical
14 in our business in - in our company, I should say.

15 Q Okay, in your company.

16 A Yes.

17 Q Have you seen this type of notice anywhere else?

18 A No.

19 Q If you had sent this out - and I assume you would not have
20 sent this out.

21 A Correct.

22 Q But if you had sent something this - like this out, would it
23 mean that you did not have a contract?

24 A I wouldn't have sent it out.

25 Q I agree. You wouldn't have, but you - you made a statement

1 that I thought was - you made a number of statements that I
2 thought were enlightening, but one of them said you would no
3 longer do business with a party that did that to you,
4 referring to breaking a verbal agreement. Can you place a
5 percentage - I'm going to imagine it high - of verbal versus
6 written contracts that you have, just a --

7 A At the - at the inception? 100 percent verbal.

8 Q And most of those are then memorialized in writing or some
9 of them. Approximately how many?

10 A 100 percent.

11 Q And approximately how much - what's the duration between
12 verbal and written?

13 A Depending on how busy we are, could be 10 minutes, could be
14 at the end of the day depending on, you know, how many
15 contracts we're printing, --

16 Q So --

17 A -- but definitely by the end of the day and then they go in
18 the mail.

19 Q Okay. You - did you - do I understand correctly that you
20 testified on the 2-day - on the change for the 2 - to have
21 the 2-day rule, that --

22 A Well, I believe it's in the statute.

23 Q Right. It's in the - it's in the statute. And you
24 understand that; I don't have to read it to you.

25 A Yes.

1 Q So did you testify in particular to that rule or did you
2 just in general testify?

3 A In general.

4 Q Okay.

5 A If I had my way, Commissioner, --

6 Q Yes.

7 A -- there wouldn't be a date. It would be instantaneous.

8 Again, you both thanked me for being here. I - I - I
9 drove through some pretty nasty weather to get here.

10 Q Exactly.

11 A And I wouldn't have missed it. It's that important to our
12 industry. Verbal contracts have to be withheld. Verbal
13 contracts, that's the foundation of our business.

14 Q I want you to understand my struggle is that with the - what
15 Anderson Seed did in sending out that notice, they changed
16 the playing field to possible detriment - certainly
17 detriment to themselves but - and that's where my confusion
18 and my struggle comes from. And I have tremendous empathy
19 for the industry.

20 Do you have any words - words of wisdom for me in how
21 to struggle - how to get over that hurdle that I have, that
22 I really truly believe that Anderson changed the playing
23 field for Anderson and understanding that no one else does
24 this? Obviously it makes --

25 MS. FIEGEN: Not one person.

1 A We don't.

2 Q (By Mr. Hanson) That's - do you have anything for me on
3 that?

4 A I would - I would tend to agree with you that they changed
5 the rules for them, period. Not the industry.

6 MR. HANSON: I'd agree with you. Thank you very,
7 very much. Appreciate that.

8 MR. SMITH: Additional commissioner questions?

9 Mr. Martinmaas, do you have any follow-up in response
10 to commissioner questions?

11 MR. MARTINMAAS: Yeah, I do. I want to thank Steve
12 for coming, and as you said, they changed the rules when
13 they sent this to me. We deal with a number of elevators,
14 fertilizer companies. Anybody - you can ask anybody we deal
15 with if our word is good or not.

16 MS. EDWARDS: Objection. I don't think there was a
17 question here. This is --

18 MR. MARTINMAAS: I'm thanking him for coming and
19 that. I'm just saying I'm glad that he made it clear about
20 the verbal agreements and that between most people and
21 customers, and I'm also agreeing with Mr. Hanson that things
22 were changed when Anderson changed them so - you know, thank
23 you, Steve.

24 MR. SMITH: Thank you. Staff, any redirect?

25 MS. EDWARDS: No.

1 MR. SMITH: I think you can step down, Mr. Domm.

2 Thank you.

3 Staff, please proceed with your case.

4 MS. EDWARDS: Staff has no further witnesses.

5 MR. SMITH: I don't know if you're ready or if you
6 need a little time, Mr. Martinmaas, but otherwise, you know,
7 you can begin your rebuttal case if you have one or have
8 more you want to say and - I think you can just testify from
9 where you're at unless --

10 MR. MARTINMAAS: That's fine with me.

11 MR. SMITH: You're still under oath, okay?

12 MR. MARTINMAAS: Right. I just have a few words
13 and - and that, and I have to make it brief or I'm going to
14 miss milking tonight so - I don't want to do that.

15 Basically all I want is justice here, you know. This
16 outfit stole from me. I think I'm entitled to some bond
17 money. It's that simple. Now, we can get all hung up in
18 legalese terms and wording and laws and rules and
19 regulations and yata-yata-yata, okay? But at the end of the
20 day, right's right; wrong's wrong. You know, it's up to you
21 guys to make it right. That's all I have to say. Thank you
22 for your time.

23 MR. SMITH: Any commissioner questions of - wait a
24 minute. We should go to Staff. Do you have any
25 cross-examination of Mr. Martinmaas on his rebuttal?

1 MS. EDWARDS: No.

2 MR. SMITH: Then we'll turn to any final
3 commissioner questions. Mr. Nelson?

4 MR. NELSON: Just one or two.

5 EXAMINATION BY MR. NELSON:

6 Q Is your word your bond?

7 A I'd like to think so, yes.

8 Q And based on your earlier testimony, it was my understanding
9 that you had a conversation with somebody at Anderson Seed
10 asking that your payment be deferred; is that correct?

11 A That's correct.

12 Q And so at that point, you had a verbal agreement with
13 Anderson.

14 A I guess so. My verbal agreement was I was going to be paid.

15 Q After the 1st of the year.

16 A Correct, but I was still going to be paid.

17 Now, they're the ones that broke it not me. Grain's
18 there; I'm not paid. So you can talk about verbal
19 agreements, whatever, but if they didn't hold up their end,
20 how's an agreement?

21 MR. NELSON: Thank you. No further questions.

22 MR. SMITH: Any additional commissioner questions
23 of Mr. Martinmaas?

24 Does Staff have any follow-up based on Commissioner
25 Nelson's question?

1 MS. EDWARDS: No.

2 MR. SMITH: Mr. Martinmaas, do you have any final
3 rebuttal or statement to make, then, following the
4 commissioner questions?

5 MR. MARTINMAAS: No. I just thank everyone for
6 their time. Sorry we got in this mess. You know, it's a
7 bad deal for everybody.

8 MR. SMITH: Thank you. Well, I think that -
9 unless - I think that concludes the evidentiary portion of
10 the hearing. Are you in agreement with that, Staff,
11 or. . . ? I mean, you've concluded - you concluded your
12 case.

13 MS. EDWARDS: Are we going to do closing arguments
14 or is this --

15 MR. SMITH: We - that's what I was going to get to.

16 MS. EDWARDS: Okay, yeah. Then, yes, we're done.

17 MR. SMITH: We're done with the evidentiary
18 portion. The evidence is done. And with that, I guess we
19 could - you know, I would ask - so, Staff, you do want to do
20 a closing argument?

21 MS. EDWARDS: Yes, briefly.

22 MR. SMITH: Okay, I'll let you do one, and then,
23 Mr. Martinmaas, you'll get a follow-up opportunity to that.
24 How's that? Okay, so you can have your say, you know, as
25 the claimant here.

1 Please proceed then.

2 MS. EDWARDS: Well, Staff would stand by any
3 decision of the Commission and support any decision. It is
4 still Staff's interpretation that the transactions between
5 Martinmaas Dairy and Anderson Seed are valid voluntary
6 credit sales that either fall within the exception to the
7 statute of frauds as codified in 57A-2-201(d) or, in the
8 alternative, falls within the exception of 57A-2-201(3)
9 Section B which states that "if the party against whom
10 enforcement is sought admits in his pleading, testimony, or
11 otherwise in court that the contract for valid sale was
12 made" and goes on to describe the terms of that contract,
13 that it is valid. Mr. Martinmaas has admitted here today
14 under oath that he did intend to enter into and, in fact,
15 did enter into a deferred credit sale or deferred payment
16 rather.

17 So Staff would rely upon that testimony and recommend
18 that, regrettably, his transaction not be covered by the
19 bond.

20 MR. SMITH: Mr. Martinmaas, do you have a closing
21 statement to make?

22 MR. MARTINMAAS: Yes, I do. Well, I don't
23 understand all those numbers she rattled off, so I won't ask
24 for that, and I freely admit I had a verbal contract. They
25 didn't hold up their end so there wasn't a contract.

1 I think, you know, both parties have to hold up their
2 end to have a contract. I think that's the way the law
3 works. Maybe I'm wrong. So it's up to you to decide if
4 that's the way the law works or not.

5 MR. SMITH: Thank you. Does that conclude your
6 statement?

7 MR. MARTINMAAS: (Nods head.)

8 MR. SMITH: Thank you. Well, I think that
9 concludes the hearing.

10 Commissioners, is it your pleasure to take action now
11 or to take it under advisement and - and take action at a
12 later date?

13 MR. NELSON: I would certainly defer to my fellow
14 commissioners, but I think at this point I would like just a
15 little bit more time. There's been really some very good
16 testimony and argument today that I need to wrestle with but
17 certainly defer to fellow commissioners.

18 MR. SMITH: Commissioner Hanson?

19 MR. HANSON: Whichever - I always defer to
20 commissioners who wish to have some more time, because some
21 day I might be in that situation. I can do it now or later.
22 It doesn't matter to me, so that's fine.

23 MR. SMITH: Commissioner Fiegen?

24 MS. FIEGEN: I know I need a little bit more time.
25 It could be half an hour today or I can wait and really -

1 because I want to do some more study on some new evidence
2 that came in today.

3 MR. SMITH: Okay. Any comments by either party?
4 No? Well, with that, I think what I'm hearing - okay, what
5 do you want to do? Are we talking - is it the transcript
6 you want to see or --

7 MR. NELSON: No.

8 MR. SMITH: No. Just some time to think about it?

9 MR. NELSON: Yes.

10 MR. SMITH: I don't have a day or anything in mind.
11 I mean, the next regular meeting is quite a ways out there,
12 but - what's your thought? It's not huge. It's like
13 January - scheduled for January 15th.

14 MR. MARTINMAAS: I'm in no hurry. I'd hate to get
15 some money now and have to pay taxes on it this year.

16 MR. NELSON: I don't know how - I don't know how
17 we're going to be able to do it any quicker than the 15th
18 unless we - unless we have a meeting on - in early January,
19 and I think that's not where we want to head so --

20 MR. SMITH: Pretty tough to - right through the
21 Christmas holiday, it's hard to get everybody rounded up.
22 Well, hearing that, I think, then, we will take the matter -
23 the Commission will take it under advisement and schedule it
24 for decision on its regular agenda for the 15th. And with
25 that, I'm going to turn the hearing back over to Chairman

1 Nelson.

2 MR. NELSON: Thank you, and I'll just - so that all
3 parties know, on the 15th we will not be taking any
4 testimony; it will simply be motion and discussion amongst
5 the Commission at that particular time. Anything else for
6 the good of the order? Seeing none, the hearing is
7 adjourned.

8 (Proceedings concluded at 4:03 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss:
COUNTY OF DAVISON)

I, Stephanie L. Moen, RPR, Freelance Court Reporter and Notary Public within and for the State of South Dakota, took the proceedings contained on the foregoing pages 1 - 85 inclusive, was reduced to stenographic writing by me and thereafter caused to be transcribed; that said proceeding commenced on the 18th day of December 2012 in Room 412 of the State Capitol building, Pierre, South Dakota; and that the foregoing is a full, true, and complete transcript of my shorthand notes of the proceedings had at the time and place above set forth.

In testimony whereof, I have hereto set my hand this 8th day of January 2013.

Stephanie L. Moen, RPR
Freelance Court Reporter