

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE GRAIN DEALER'S
AND PUBLIC WAREHOUSE LICENSES OF
FREEMAN FERTILIZER CO., INC. D/B/A
MCCOOK FEED AND FERTILIZER

GD01-001

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Transcript of Proceedings
June 19, 2001

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
JIM BURG, CHAIRMAN
PAM NELSON, VICE CHAIRMAN

COMMISSION STAFF
Rolayne Ailts Wiest
Karen Cremer
Kelly Frazier
Mary Healy
Charlene Lund
Mary Giddings
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Bob Knadle
Gregory A. Rislov
Heather Forney
Sue Cichos

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
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APPEARANCES BY TELEPHONE

Becky Gibson, US Republic Communications
Alvin Scott
Brad Schardin, Southeastern Electric Coop
Debra Sittig, Woods, Fuller, Schultz & Smith
Dave Prazak, Ottertail Corporation
Colleen Sevold, Qwest Corporation
Tom Jazz
Tim Jensen
David Schwietert

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State
Capitol, Room 464, 500 East Capitol Avenue, Pierre,
South Dakota, on the 19th day of June 2001, commencing
at 1:30 p.m.

1 CHAIRMAN BURG: In matter of the
2 grain dealer's and public warehouse licenses of
3 Freeman Fertilizer Company, Incorporated doing
4 business as McCook Feed and Fertilizer.

5 The question today is shall the Commission
6 grant staff's motion to reopen for further evidence
7 and how shall the Commission proceed in this
8 matter.

9 I'm going to turn to staff to give us support
10 for their reopening for further evidence.

11 MR. FRAZIER: Yes, Chairman Burg.
12 ARSD 20:10:01:27.01 states that anytime after any
13 matter is taken under advisement and before a
14 decision of the Commission is entered the
15 Commission may on its own motion or for good cause
16 shown by a party to the proceeding order that the
17 record be reopened and the matter set for further
18 hearing.

19 In the process of preparing my brief, as I've
20 already submitted, one issue came up as to
21 regarding rescission of the contracts. One
22 question that obviously I needed answered was
23 whether the parties -- the farmers who are affected
24 by these contracts really wanted their contracts
25 rescinded.

1 I'm not a party so I can't recommend their
2 contracts be rescinded, although there's some
3 indication that's their intent. So I contacted
4 them and as a result of those contacts received a
5 series of affidavits from the farmers saying, yes,
6 it would be the wishes to have the contracts
7 rescinded if it were legal to do so, which is what
8 I argued in the brief.

9 So all I merely wanted to do is reopen the
10 record for the purpose of entering the original
11 affidavits just into the Docket. The good cause
12 being what is the intent of these farmers now that
13 this elevator has gone insolvent.

14 I think that's a good question to have
15 answered. These affidavits answer the question,
16 and all I want is the record open merely for the
17 purpose of submitting those affidavits --

18 CHAIRMAN BURG: What would be the
19 effect if they were submitted to us?

20 MR. FRAZIER: It would give a
21 foundation for making a recommendation to
22 Circuit Court so the contracts could be rescinded.
23 Without an affidavit from them stating that's what
24 they want, without something in the record
25 indicating that that's their intent, I don't think

1 we can make that recommendation to Circuit Court,
2 if you choose to do so.

3 CHAIRMAN BURG: Could they go to
4 Circuit Court without an affidavit to us?

5 MR. FRAZIER: I don't believe. The
6 way statutes read under rescission is upon request
7 of one of the parties that a contract may be
8 rescinded and then it goes into a series of as to
9 why it may be rescinded. But without something in
10 the record, we would have absolutely nothing on the
11 record to indicate that they actually did want the
12 contracts rescinded.

13 It wasn't addressed at the hearing. They
14 didn't take the stand and testify to that. I
15 figured it seems obvious, but just for the sake of
16 completeness of the record, I just don't feel that
17 if the Commission chooses to make that
18 recommendation they can do so to Circuit Court
19 without some evidence that that's what these
20 farmers would want.

21 CHAIRMAN BURG: Tim, do you have any
22 comments on this?

23 MS. SITTIG: Could I be heard? This
24 is Deb Sittig.

25 CHAIRMAN BURG: I will, Deb. I'm

1 talking to Tim Jensen, one of the farmers. Are you
2 on yet, Tim?

3 MR. JENSEN: Yes. I guess if it's
4 the right way to go, let's go.

5 CHAIRMAN BURG: Okay. So you
6 support, you know, being able to submit the
7 affidavits?

8 MR. JENSEN: Right.

9 CHAIRMAN BURG: Okay. Deb -- is
10 there anybody else, any other -- are there farmers
11 on?

12 MR. SCOTT: I'm on.

13 CHAIRMAN BURG: Do you have any
14 comments you want to make?

15 MR. SCOTT: I also wish to have my
16 contract rescinded and the grain go to an open
17 storage category.

18 CHAIRMAN BURG: Anybody else? Any
19 other farmers on?

20 MR. JAZZ: Tom Jazz is on.

21 CHAIRMAN BURG: Okay.

22 MR. JAZZ: I have several affidavits
23 in there for all the clients Farmers National
24 Company represents. We filed those affidavits to
25 rescind the contracts.

1 CHAIRMAN BURG: Okay. Anyone else?
2 Okay. Debra Sittig from Woods Fuller, you're
3 representing the bank; is that right, Debra?

4 MS. SITTIG: Home Federal, that's
5 correct, and I'm appearing for Roger Damgaard. And
6 I apologize for interrupting and being late, but I
7 apparently was cut off or not on the list.

8 Our position is is that we would not have any
9 objection to those affidavits being admitted, but
10 we would then also like to submit an affidavit from
11 Dr. Richard Shane, who is a professor at
12 South Dakota State University, simply setting out
13 the alternative methods available to sell grain and
14 the advantages and disadvantages of each and the
15 common practices that are involved.

16 CHAIRMAN BURG: Okay. That raises
17 another question --

18 MS. AILTS WIEST: Oh, yeah.

19 CHAIRMAN BURG: -- with the
20 affidavit requests.

21 MS. AILTS WIEST: I don't think the
22 Commission can consider that because I don't
23 have -- that wasn't noticed for this meeting, and I
24 believe that any of the other parties involved, you
25 know, should have an opportunity to comment on that

1 request.

2 MS. SITTIG: Then I guess we would
3 object because we don't have a chance to
4 cross-examine the people when it's submitted by
5 affidavit, and we would request then that a hearing
6 be reopened instead.

7 MS. AILTS WIEST: Then I guess the
8 only other possibility is for the Commission to not
9 rule on the current staff motion to reopen at this
10 point, and if you would also like to have a motion
11 requesting the affidavit of the other person, we
12 could consider both of them at the same time.

13 Would that be possible?

14 MS. SITTIG: That would be fine. I
15 think we just weren't able to get the affidavit
16 signed in time for today and get it noticed.

17 MS. AILTS WIEST: Does anyone object
18 to that course of action?

19 MR. FRAZIER: No objection.

20 CHAIRMAN BURG: So today we will
21 accept the --

22 MS. AILTS WIEST: No. Just defer
23 everything because they're linking the two.

24 CHAIRMAN BURG: Okay. We'll just
25 defer action on GD01-001. How long?

1 MS. AILTS WIEST: Well, I think
2 we'll do it as soon as we get the request and the
3 affidavit in from the bank. Then it's just a
4 matter of our scheduling to be heard.

5 MS. SITTIG: We'll get that in as
6 soon as we can.

7 CHAIRMAN BURG: Is it my
8 understanding, Debra, if you can submit your
9 affidavit, you don't oppose their affidavits?

10 MS. SITTIG: That's correct.

11 CHAIRMAN BURG: We can probably do
12 ad hoc because I do think we want to move forward
13 on this as fast as we can.

14 MS. SITTIG: We know time is
15 something you're considering so we would do it
16 really quickly.

17 CHAIRMAN BURG: We will just defer
18 action completely on GD01-001 and give you that
19 opportunity.

20 MS. SITTIG: Thank you very much.

21 CHAIRMAN BURG: Thank you.

22 (The hearing concluded at 2:18 p.m.)
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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF HUGHES)

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5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 19th day of
11 June 2001, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 2nd day
14 of July 2001.

15
16
17 Cheri M. Wittler

18 Cheri McComsey Wittler,
19 Notary Public and
Registered Professional Reporter