

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

IN THE MATTER OF THE GRAIN WAREHOUSE) AND GRAIN DEALER LICENSES OF UTICA) GRAIN AND FEED, INC.)) FINDINGS OF FACT AND) CONCLUSIONS OF LAW;) NOTICE OF ENTRY OF) ORDER) GD97-001
--	--

The Public Utilities Commission (Commission) licensed Utica Grain and Feed, Inc. (Utica) on July 1, 1996, to conduct business as a grain warehouse and a grain dealer pursuant to SDCL Chapters 49-42, 49-43 and 49-45. On April 4, 1997, Utica agreed to the voluntary relinquishment of its grain dealer license and further agreed that it would no longer accept grain for storage nor issue warehouse receipts.

On its own motion, the Commission issued an Order to Show Cause and Notice of Hearing on April 11, 1997, and conducted a hearing on this matter in Yankton, South Dakota, on April 16, 1997. The issues at the hearing were whether Utica had sufficient funds to satisfy all current outstanding grain payables, meet its obligations as a grain warehouse, and whether it is otherwise financially and managerially fit to continue operations as a grain warehouse and a grain dealer within South Dakota.

By Order dated May 7, 1997, the Commission reopened the record in the docket for the purpose of receiving additional evidence regarding the recapitalization of Utica. That evidence was received on May 7, 1997. By Order dated May 14, 1997, the Commission noticed another hearing for May 16, 1997, in Yankton, South Dakota. The hearing was held as ordered and the Commission requested that additional evidence be provided to the Commission after the hearing. The Commission received that additional evidence on May 19, 1997. On May 21, 1997, the Commission unanimously voted to reinstate Utica's grain dealer license upon its meeting a number of conditions.

Based on the record in this docket, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I

Utica received its grain dealer and warehouse operator licenses on July 1, 1996. The grain dealer's license is no. 1245 and expires on June 30, 1997; the public grain warehouse license is no. 1245 and expires on June 30, 1997.

II

On March 31, 1997, Ed Anderson, Director of the Transportation/Warehouse Division of the Commission, received a call from a patron of Utica who expressed concern about Utica's financial situation. Tr. at 9. A Commission inspector, Lou Hammond, was sent to verify the information. Id. Mr. Hammond's initial investigation showed that there were approximately \$95,000.00 in outstanding checks, \$600,000.00 in outstanding delayed price contracts, and \$300,000.00 in outstanding warehouse receipt obligations. Tr. at 10.

III

Subsequently, Utica and the Commission entered into a Stipulation regarding Utica's grain dealer's and public grain warehouse licenses. By the Stipulation, Utica voluntarily relinquished its grain dealer's license. Utica also stipulated that it would no longer accept grain for storage or issue

warehouse receipts for grain and that the Commission would dictate the term and scope of all grain warehouse transactions.

IV

The Commission issued an Order to Show Cause and Notice of Hearing on April 11, 1997, and conducted a hearing on this matter in Yankton, South Dakota, on April 16, 1997.

V

At the hearing, Mr. Anderson testified that based on staff's investigation they determined that there were \$221,936.56 in outstanding checks, warehouse receipt liability or contingent warehouse receipt liability of \$314,461.34, and outstanding delayed price contract liability of \$640,942.93. Tr. at 20-21. In addition, the accounts receivable ledger indicated approximately \$335,000.00 in outstanding accounts receivable. Tr. at 21. Further information supplied to Mr. Anderson indicated that outstanding debt to the bank was \$604,401.95. Id. In addition, Commission staff did an inventory of the grain stored at Utica and compared that to producer obligations. Exhibit 1. The comparison showed that there was a potential that grain on hand would not meet producer obligations. Id. Mr. Anderson noted that their estimates had a certain margin of error since they did not actually weigh the grain and that the margin of error is probably in the plus or minus 10% range. Tr. at 30-31.

VI

Wendell Mortensen testified on behalf of Utica. Mr. Mortensen testified that he and his wife own Utica Grain and Feed. Tr. at 59. Mr. Mortensen introduced a letter from CorTrust Bank which set forth a financial plan for Utica. Exhibit 2. In the letter, CorTrust Bank asked the Commission to assist Mr. Mortensen in getting his grain dealer's license back. Id. Mr. Mortensen testified that people had voluntarily loaned him money in the amount of checks or pledges of \$34,500.00. Tr. at 67. He further stated that he had applied for a disaster loan from FEMA. Tr. at 71.

VII

The Commission reopened the record by Order dated May 7, 1997, so that additional evidence could be taken to supplement the record. That evidence was received on May 7, 1997. Exhibit 4.

VIII

By Order dated May 14, 1997, the Commission set another hearing for May 16, 1997, in Yankton, South Dakota. The hearing was held as scheduled.

IX

At the May 16, 1997, hearing, a letter from the Small Business Administration was introduced which stated that SBA had approved a loan in the amount of \$245,000.00 for 30 years at an interest rate of 4% with a monthly payment of \$1,193.00. Exhibit 4. The loan was contingent on receiving evidence that the Commission had reinstated Utica's license to buy and sell grain and that CorTrust Bank had reinstated its line of credit in the amounts previously available. Id. Mr. Mortensen testified that he would apply the proceeds of the FEMA loan to the outstanding checks totaling of \$213,477.98.

X

A letter from CorTrust Bank signed by R. M. Macy stated that CorTrust Bank had approved a \$50,000.00 line of credit for operating purchases and would also be willing to advance funds for

the purchase of grain. Exhibit 3 at 6-7. In addition, Mr. Macy's letter stated the bank would be willing to purchase the accounts receivable from the elevator for those customers that keep their accounts paid within 60 days and would purchase some existing accounts receivable in the amount of \$73,000.00. Id. The letter further indicated that Utica has an existing small business loan of \$187,085.64. The loan at the bank has a balance of \$154,000.00. Id. Mr. Mortensen stated that he had cut Utica's labor force which should decrease its expenses by \$40,000.00 to \$50,000.00 per year. Mr. Mortensen testified that Utica had no judgments against it nor was it involved in any current lawsuits and that CorTrust Bank was its sole lender. Mr. Mortensen also stated that he believed Utica had more grain on hand than it had in outstanding delayed price contracts.

XI

At the May 16, 1997, hearing, Mr. Anderson showed that Utica's sales had increased from 2.6 million to 5.35 million from 1991-1996. Mr. Anderson testified that Utica had seen significant growth and showed that it could generate a profit.

XII

At the hearing, the Commission requested that Utica supply to the Commission a cash flow statement through December 1997, and a current balance statement. On May 19, 1997, the Commission received those statements.

XIII

On May 20, 1997, the Commission received a written recommendation from Mr. Anderson. In the letter he recommended that Utica's grain dealer license be reinstated under strict operational requirements. He recommended that the license be reinstated only if Utica agreed to the following conditions and requirements:

1. With the exceptions noted in #2, no additional purchases of grain will be permitted until existing delayed price contract and warehouse receipt grain is liquidated and a weigh up is performed of any remaining company owned grain to establish an accurate inventory figure.
2. The purchase of grain for feed purposes, if the grain will be processed and redelivered, will be allowed. Utica may conduct the purchase of "new" grain, subject to bank approval, if the grain will not enter the Utica facility. In these types of transactions the grain goes straight from the farm to a third facility that has contracted with Utica to purchase the grain.
3. Utica must initiate immediate steps to lower the warehouse receipt liability or obtain additional warehouse bond to comply with statutory requirements.
4. With the exception of short term financing to cover grain purchases and operating expenses, no additional debt shall be incurred.
5. To restore the operation to a positive net worth position the "loan from shareholder" of \$101,575 must be reclassified as additional paid in capital.
6. For the remainder of the licensing year the following information must be forwarded to the Commission on a weekly basis unless notified otherwise by Commission staff:

- a. Report of any "new" grain purchases to include the type of grain, date of purchase, reason for purchase (feed grain or brokered purchases), producer name and date of payment including the check number and amount
 - b. Report of any purchases or redeliveries involving existing warehouse receipt, delayed price or grain bank grain including the producer name, warehouse receipt or contract number, date, price, date paid and check number issued to satisfy the obligation
 - c. Report of accounts receivable activity including any collections made on existing accounts and new accounts created
 - d. Report of all forward sales contract activity
 - e. Report of current status on bank line of credit and any other funds provided by the bank to finance grain purchases.
7. Utica must take immediate steps to correct existing problems with the computerized accounting system and begin providing weekly profit and loss statements as soon as the system can generate accurate results.

XIV

At its May 21, 1997, meeting, the Commission considered whether to revoke, suspend, or reinstate Utica's grain dealer and warehouse licenses. The Commission voted to reinstate the grain dealer license and adopted staff's recommendations. The Commission also voted to replace any limitations on Utica's grain warehouse license with the conditions as recommended by staff. In addition, the Commission voted to add additional conditions.

XV

In addition to staff's conditions and requirements, the Commission required that the statements made by CorTrust to the Commission in its letter found at Exhibit 3, pages 6-7 be complied with in their entirety. Commissioner Schoenfelder also recommended, although she did not include this as a condition, that Utica receive outside financial management assistance.

XVI

The second additional condition that the Commission placed on Utica is that Utica provide documentation that the proceeds from the FEMA loan are not restricted and can be used for payment on the outstanding checks.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 49-42, 49-43, and 49-45.

II

The Commission finds that there is good cause to reinstate Utica's grain dealer license and to allow Utica's grain warehouse license to remain in effect subject to the conditions listed in Findings of Fact XIII to XVI.

It is therefore

ORDERED, that Utica's grain dealer's license shall be reinstated and its grain warehouse license shall be allowed to remain in effect subject to the conditions and requirements listed above.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 22 day of May, 1997. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 22 day of May, 1997.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>William T. Bell</i></u>
Date: <u>5/22/97</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner