

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

IN THE MATTER OF THE REQUEST OF)	ORDER GRANTING WAIVER
GLACIAL LAKES CORN PROCESSORS FOR)	AND ISSUING LICENSE
APPROVAL OF A WAIVER OF ARSD)	SUBJECT TO CONDITIONS
20:10:12:15)	
)	GD09-001

After completing a financial review of Glacial Lakes Corn Processors (GLCP), the staff (Staff) of the South Dakota Public Utilities Commission (Commission) determined that its financial statements for the year ending August 31, 2008, did not meet the criteria for licensing as a grain buyer under ARSD 20:10:12:15. On February 25, 2009, a letter was sent to GLCP notifying GLCP that additional information showing that it was in compliance with financial requirements would be required before a license could be issued. On March 24, 2009, a response was received explaining why the financial statements were out of compliance along with a request to meet and give it an opportunity to present additional information. On June 3, 2009, a meeting was held between Staff and GLCP officers. At this meeting, pursuant to ARSD 20:10:12:17, GLCP officers presented a letter requesting a waiver of the financial criteria set out in ARSD 20:10:12:15.

On June 4, 2009, the Commission electronically transmitted notice of the filing and the intervention deadline of June 19, 2009, to interested individuals and entities. No petitions to intervene were filed.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-45 and ARSD 20:10:12.

At its regularly scheduled meeting of June 23, 2009, the Commission considered this matter. Chairman Johnson moved to grant a waiver of ARSD 20:10:12:15 and issue a grain buyer's license to GLCP subject to the following conditions:

- (1) GLCP shall provide a notice, in a form approved by the Director of the Grain Warehouse Division, to each seller of grain to GLCP under a voluntary credit sale (VCS) contract as defined in SDCL 49-45-1.1(5), with the notice to inform sellers that GLCP is operating under a waiver and conditional license due to its non-compliant working capital position and that the sale under a VCS contract is not covered by GLCP's grain dealer's bond. GLCP shall obtain a receipt of such notice executed by each VCS seller under each VCS transaction and keep a record of all such receipts for all VCS purchases.

- (2) GLCP shall provide monthly reports to the Commission detailing GLCP's current grain payables outstanding, payments made for grain during the reporting period, the balance of company-owned grain for which payment has not been made and the VCS report for such period. Such reporting shall be required weekly rather than monthly if GLCP's working capital falls below \$1,000,000, exclusive of the current liability reclassification as a result of loan covenant noncompliance. Such reports shall be in addition to any other reports required to be provided to the Commission or its Grain Warehouse Division by statute or rule or by the Commission or its Grain Warehouse Division acting under their investigative and enforcement authority under statute or rule.

- (3) This waiver and the conditions applicable to the waiver and license shall remain in effect until such time as the Commission shall determine that GLCP's financial statements have come into compliance with ARSD 20:10:12:15.

Commissioner Hanson moved to amend the motion to require the reporting under condition (2) on a weekly basis regardless of GLCP's working capital position. The motion to amend passed 2 to 1, with Chairman Johnson dissenting. Commissioner Kolbeck moved to amend the motion to add an additional condition that GLCP be required to pay in full for all non-VCS grain deliveries by the sooner of one week after delivery or demand by the seller. The motion to amend passed 2 to 1, with Commissioner Hanson dissenting. The Commission voted unanimously to approve the motion as amended.

It is therefore

ORDERED that a waiver of ARSD 20:10:12:15 is granted and a grain buyer's license shall be issued to GLCP subject to the following conditions:

- (1) GLCP shall provide a notice, in a form approved by the Director of the Grain Warehouse Division, to each seller of grain to GLCP under a voluntary credit sale (VCS) contract as defined in SDCL 49-45-1.1(5), with the notice to inform sellers that GLCP is operating under a waiver and conditional license due to its non-compliant working capital position and that the sale under a VCS contract is not covered by GLCP's grain dealer's bond. GLCP shall obtain a receipt of such notice executed by each VCS seller under each VCS transaction and keep a record of all such receipts for all VCS purchases.
- (2) GLCP shall provide weekly reports to the Commission detailing GLCP's current grain payables outstanding, payments made for grain during the reporting period, the balance of company-owned grain for which payment has not been made and the VCS report for such period. Such reports shall be in addition to any other reports required to be provided to the Commission or its Grain Warehouse Division by statute or rule or by the Commission or its Grain Warehouse Division acting under their investigative and enforcement authority under statute or rule.
- (3) GLCP shall make payment in full for all non-VCS grain deliveries by the sooner of one week after delivery or demand by the seller.
- (4) This waiver and the conditions applicable to the waiver and license shall remain in effect until such time as the Commission shall determine that GLCP's financial statements have come into compliance with ARSD 20:10:12:15.

Dated at Pierre, South Dakota, this 29th day of June, 2009.

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, electronically.	
By:	<u>Aelsime Kolbo</u>
Date:	<u>6/29/09</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman *dk*
Dissenting in part

Steve Kolbeck
STEVE KOLBECK, Commissioner

Gary Hanson
GARY HANSON, Commissioner
Dissenting in part