

1 2 to 1 vote. The Motion passes.

2 COMMISSIONER HANSON: Thank you for your
3 consideration.

4 CHAIRMAN NELSON: The next question that we will
5 deal with is how shall the Commission distribute the bond
6 proceeds? And for that I will turn to Staff.

7 MS. EDWARDS: Staff had previously prepared a
8 recommendation which we sent out to all the claimants
9 last week. Our recommendation was based upon totalling
10 up the total amount of the claim and figuring the
11 percentage of each claimant's amount and applying that
12 percentage to the bond. As of this afternoon it appears
13 that we have a party that would like to contest that. So
14 if the Commission wants to take that matter up
15 separately --

16 CHAIRMAN NELSON: I do. But I'd like for you
17 to -- and maybe there is really no argument, but make
18 your argument as to why what you've proposed is what we
19 ought to accept. And then I'll take additional
20 arguments.

21 MS. EDWARDS: Certainly.

22 Staff's findings were sent out to the claimants
23 on October 9, 2012. And the time for contesting those
24 findings expired on November 16, 2012. Claimants were
25 told that if they wished to challenge Staff's findings,

1 they must do so by November 16. Only one claimant
2 requested a hearing to challenge Staff findings, and that
3 was Martinmaas Dairy.

4 Therefore, Staff recommends that the Commission
5 not accept further testimony or evidence submitted by CHS
6 or any other claimant at this time and accepts -- and
7 requests that the Commission accept Staff's
8 recommendation as proposed.

9 Thank you.

10 CHAIRMAN NELSON: Thank you. And we had a very,
11 very recent filing from Mr. Brakke on behalf of CHS.

12 Mr. Brakke, we will at this time allow you to
13 make argument on your filing.

14 MR. BRAKKE: Thank you. Good afternoon,
15 Commissioners, Staff, and counsel. My name is
16 John Brakke, and I represent Midwest Co-op CHS.

17 COMMISSIONER FIEGEN: I have a procedural
18 question.

19 CHAIRMAN NELSON: Go ahead.

20 COMMISSIONER FIEGEN: General Counsel, is he an
21 attorney in the State of South Dakota?

22 MR. BRAKKE: No. I am not licensed in
23 South Dakota.

24 COMMISSIONER FIEGEN: What is the process? What
25 is the process of bringing attorneys into Public

1 Utilities Commission hearings? I don't know exactly
2 the --

3 MR. SMITH: Well, normally you'd have a local
4 counsel and all of that. You know, for this purpose,
5 again, it's a little different than normal because we're
6 acting under a receivership aegis. So I don't know that
7 it's quite the same as it normally would be.

8 I'm a little bit concerned about being too tough
9 on the -- and the reason why? A human -- a person can
10 appear for himself. A corporation, by South Dakota Law
11 if it's a legal proceeding, theoretically only state
12 admitted lawyers are supposed to be able to represent an
13 entity other than a human being that has protoplasm, you
14 know.

15 But here's the only concern I have is partially
16 due to the nature of this thing so far at least, we did
17 allow Ray Martinmaas to appear on behalf of Martinmaas
18 Dairy, which is also a corporation. So I'm a little
19 reluctant to be too tough on the rules of disciplinary --
20 you know, of attorney disciplinary procedure right here.

21 But really that's maybe up to you, I mean, to
22 just let him speak on behalf of them today. I guess I'm
23 not going to say no, you can't do it. We've already let
24 one person in this thing do that.

25 COMMISSIONER FIEGEN: Okay. Thank you.

1 MR. BRAKKE: If it would be of help to the
2 Commission, I do have one of my partners who is licensed
3 in the State of South Dakota who is immediately next door
4 and that could appear as local counsel.

5 MR. SMITH: Well, that wouldn't hurt maybe.
6 Could you do that?

7 MR. BRAKKE: I'll be right back.

8 MR. SMITH: Give us a little cover with the
9 Disciplinary Board anyway.

10 (Discussion off the record)

11 MS. STANLEY: Good afternoon.

12 CHAIRMAN NELSON: Good afternoon. This is Chair
13 Nelson, and who do we have joining us?

14 MS. STANLEY: Hi. My name is Caren Stanley.
15 I'm an attorney with the Vogel Law Firm. I'm in the
16 office right next to Mr. Brakke.

17 CHAIRMAN NELSON: And it's my understanding that
18 you are admitted to practice law in the state of
19 South Dakota; correct?

20 MS. STANLEY: Yes, I am. I had to look up my
21 License No. It's 4166, if you need that.

22 CHAIRMAN NELSON: Thank you. And will you be
23 making arguments or Mr. Brakke?

24 MS. STANLEY: Mr. Brakke will be making the
25 arguments, but I will remain.

1 CHAIRMAN NELSON: Thank you. And, Mr. Brakke,
2 if you could speak up just a little bit louder, that
3 would be helpful on this end. Go ahead.

4 MR. BRAKKE: Thank you.

5 Midwest Co-op timely filed a claim in this
6 proceeding for \$687,117.59. On October 9, 2012
7 Mr. Mehlhaff from the Commission wrote to Milton Handcock
8 of Midwest Co-op indicating it was the Commission's
9 belief that portions of the claim concerned either crop
10 delivered outside of the State of South Dakota or losses
11 on contracts where no delivery was made.

12 Unfortunately, Mr. Handcock believed a copy of
13 Mr. Mehlhaff's letter had been sent to me and that I was
14 addressing the matter. He did not discover his error
15 until he received last week the agenda for today's
16 meeting and the proposed payout schedule for bond
17 proceeds.

18 Midwest Co-op's full claim is, in fact, based on
19 crop that was delivered. There is no portion of the
20 claim that relates to simply losses on contracts where no
21 delivery was made. Midwest Co-op does agree that
22 \$243,250.40 of its claim or roughly 35 percent of that
23 claim concerns out-of-state deliveries and that that
24 portion of the claim would not be entitled to share as to
25 the bond.

1 However, the balance -- and I've provided as an
2 attachment to my letter the additional bills of lading.
3 That balance would be \$443,867.19 -- is for deliveries to
4 Anderson Seed in the State of South Dakota.

5 My client, Midwest Co-op, does acknowledge it
6 could have raised this dispute earlier. However, I
7 believe its failure to do so was excusable. I don't
8 believe that any party has been prejudiced. And I
9 believe that this Commission has made accommodations on
10 deadlines for at least one other claimant in these
11 proceedings.

12 As a consequence Midwest Co-op would
13 respectfully request that its allowed claim amount be
14 adjusted upward \$448,867.19.

15 CHAIRMAN NELSON: Thank you, Mr. Brakke. I'll
16 allow Staff to respond.

17 MR. MEHLHAFF: Thank you, Mr. Chair. Jim
18 Mehlhaff with Staff. This was received just today. Is
19 that working? Okay.

20 This request was received today. I haven't had
21 a chance to go through it thoroughly. Obviously, there's
22 not been enough time. But just briefly as I've gone
23 through it they've provided eight additional bills of
24 lading to be considered. Two of those were previously
25 presented in their original claim. So six of these are

1 new.

2 Of the six that have been provided, none of them
3 had a specified place of delivery. Now when we did our
4 original audit of the claim we did credit Cenex Harvest
5 States for some loads that we discovered were delivered
6 to the Redfield plant that did not have a corresponding
7 bill of lading in their original claim.

8 We feel that we've accounted for all of the
9 grain that was delivered to Redfield, and there's nothing
10 in these bills of lading to indicate beyond a shadow of a
11 doubt that this grain indeed did go to Redfield. So I
12 think there's a good chance that if we upset the
13 proceedings and kind of halt it, we'll continue to delay
14 making the distributions, and there's a good chance that
15 the outcome would remain the same, in Staff's opinion.

16 CHAIRMAN NELSON: Thank you.

17 Mr. Brakke, any response?

18 MR. BRAKKE: The bills of lading that do not
19 specify a destination, which we acknowledge, does list
20 the truckers. And based on where those truckers are
21 located and the other loads that they handled for Midwest
22 Co-op, we believe that those loads were delivered to
23 Anderson Seed in South Dakota.

24 We are aware that the Commission did previously
25 consult Anderson Seed assembly sheets. Based on

1 litigation -- I have a proceeding against Anderson Seed
2 in Minnesota -- I have great questions as to whether many
3 of the records that Anderson Seed -- or that they
4 generated are accurate.

5 So we would simply ask for the opportunity to be
6 able to consult with Staff and provide any additional
7 information Staff requests on this matter here,
8 Commissioners.

9 Thank you.

10 CHAIRMAN NELSON: Thank you. Questions from the
11 Commission?

12 Seeing no questions, is there a Motion on the
13 question of how shall the Commission distribute the bond
14 proceeds?

15 I will move that the Commission approve the plan
16 presented by Staff with no additions.

17 Discussion on the Motion?

18 Let me first address Mr. Brakke's attempt to get
19 involved today. This is nearly two months past the
20 deadline that we provided, and we believe that we gave
21 adequate notice to your client of the deadline to dispute
22 the findings of our Staff.

23 Whether there was a miscommunication within your
24 organization, there may have been. I don't know. But I
25 think we were very clear about what the deadline was.

1 And we are far, far down the track. We've just resolved
2 the last of the disputes. We have a complete plan from
3 our Staff that we are prepared to vote on.

4 The other thing that I would mention, it's
5 painfully obvious to me throughout this entire proceeding
6 that this is a zero sum game. And your contention that
7 nobody would be harmed by this, your involvement at this
8 late date, unfortunately, is not true because if you get
9 involved, there are others that lose, probably 30 others
10 that lose. And so it's not something that you can simply
11 be added at the end and it won't make any difference.

12 And so based on the fact that the deadline is
13 far passed for disputing the claim and the fact that I
14 approve of the plan that our Staff has put together for
15 us to carry to Circuit Court, I would support my Motion
16 to approve.

17 Other discussion?

18 Seeing none, all those in favor of the Motion
19 will vote aye.

20 Commissioner Hanson.

21 COMMISSIONER HANSON: Aye.

22 CHAIRMAN NELSON: Commissioner Fiegen.

23 COMMISSIONER FIEGEN: Fiegen votes aye.

24 CHAIRMAN NELSON: Nelson votes aye. Motion
25 carries.

1 MR. BRAKKE: Appreciate the opportunity to
2 appear before you on phone today.

3 CHAIRMAN NELSON: Thank you, Mr. Brakke.

4 And the last question then that we have to deal
5 with on this particular docket, shall the Executive
6 Director and General Counsel be authorized to seek
7 approval from Spink County Circuit Court to execute the
8 distribution of bond proceeds?

9 Any additional comment?

10 MS. EDWARDS: Staff would just request that the
11 Commission grant the Executive Director and General
12 Counsel the authority to schedule with the Spink County
13 Circuit Court a date to go before the court and request
14 acceptance of the Commission's proposal.

15 Thank you.

16 CHAIRMAN NELSON: Thank you.

17 Questions from the Commission?

18 Is there a Motion?

19 Commissioner Hanson.

20 COMMISSIONER HANSON: In Docket GW12-002 I move
21 that the Executive Director and General Counsel be
22 authorized to seek approval from the Spink County Circuit
23 Court to execute the distribution of the bond proceeds.

24 CHAIRMAN NELSON: Discussion on the Motion.

25 Seeing none, all those in favor will vote aye.

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Commissioner Hanson.

COMMISSIONER HANSON: Aye.

CHAIRMAN NELSON: Commissioner Fiegen.

COMMISSIONER FIEGEN: Fiegen votes aye.

CHAIRMAN NELSON: And Nelson votes aye. The
Motion carries.

(The proceeding is concluded at 3:38 p.m.)