STATE OF SOUTH DAKOTA) :SS COUNTY OF BON HOMME)

IN THE MATTER OF FARMERS COOPERATIVE ELEVATOR, AVON, SOUTH DAKOTA

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

CIV21-____

PETITION FOR RECEIVER AND EXPEDITED HEARING

COMES NOW, the Staff of the South Dakota Public Utilities Commission (Commission), an administrative agency of the State of South Dakota, through and by its attorneys of record, Kristen N. Edwards and Amanda M. Reiss, and states and alleges as follows:

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1. Staff of the Commission (Commission Staff) moves the Court pursuant to SDCL Chapter 21-21, SDCL 49-43-5.6, and SDCL 49-45-16.1 and applicable common law for the appointment of Commission Staff as receiver of Farmers Cooperative Elevator (FCE) until such time as FCE attains a financially viable position which would make it eligible for a grain buyer license under South Dakota law, until all debts are satisfied to the greatest extent possible pursuant to South Dakota law, or as otherwise ordered by this Court.

2. The purpose of this Receivership will be to act in the best interest of all creditors in order to either bring FCE into a financially stable position and to engage in any necessary liquidation and restructure of business and debt in order to satisfy the debts owed by FCE.

3. The physical address of FCE is 104 E. Railway, Avon, South Dakota 57315.

4. FCE operates multiple entities under the FCE name, including a gas station, fertilizer plant, feed store, and the previously licensed elevator. FCE's financials, including assets and liabilities, are intertwined between these ventures.

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 Commission Staff requests the receivership be limited to control of the grain elevator and directly related assets, including but not limited to grain inventory.

5. For the following reasons, Commission Staff has determined FCE to be an insolvent company at this time:

- a. On or about June 30, 2021, Commission Staff became aware that FCE was unable to obtain a bond as required by SDCL 49-45-9 and 49-43-5.3 and was therefore ineligible to renew its Grain Buyer and Grain Warehouse licenses which expired on June 30, 2021. See Attachment B, Licenses.
- b. Pursuant to SDCL 49-45-11, upon non-renewal of license, all voluntary credit sale (VCS) contracts are due within 10 days. Therefore, all VCS contracts came due on or about July 10, 2021. FCE does not have the liquid assets available to satisfy these contracts at this time.
- c. On or about June 30, 2021, Commission Staff learned Avon Bank, FCE's lender, had called FCE's line of credit, and that loan would need to be paid by November 15, 2021. Commission Staff's inspections show that FCE does not have the cash on hand to meet this obligation.
- d. In the course of recent inspections, Commission Staff also became aware that FCE was expending a substantial amount of capital each month on operations expenses and is concerned these expenses will interfere with FCE's ability to meet its financial obligations.
- 6. Pursuant to SDCL 45-49-16.1, Commission Staff now petitions this Court to appoint the Commission Staff as a receiver of the grain business and grain inventory of FCE.

- 7. Upon being appointed receiver of the grain business and grain inventory of FCE, Commission Staff will conduct an in-depth review of FCE's assets and liabilities and work to either bring FCE into a financially viable position or take other reasonable and necessary steps to the benefit of all creditors of FCE, including liquidation of assets.
- Commission Staff has worked closely with FCE and FCE's primary bank for the past three years and is in the best position to continue to work with all interested parties. See Attachment A, Letter from Bank.
- If necessary, Commission Staff will contract with other experts in the field to assist in this process.
- 10. Commission Staff also moves for an expedited hearing with this Court due to the quickly declining financial position of FCE and the risk for depletion of assets.

WHEREFORE, the Commission prays for a hearing on its Motion for emergency receiver where all parties can be heard regarding Commission Staff being appointed as receiver over FCE.

Respectfully submitted this 20th day of July 2021.

ward

Kristen N. Edwards (#4124) Amanda M. Reiss Special Assistant Attorneys General South Dakota Public Utilities Commission 500 East Capitol Avenue Pierre, SD 57501 Phone (605)773-3201 Kristen.edwards@state.sd.us