



Kristie Fiegen, Chairperson
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South Dakota

PUBLIC UTILITIES COMMISSION

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Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

RE: RECEIVERSHIP OF H & I GRAIN

Dear Ms. Van Gerpen:

At the April 20, 2018 Commission meeting, the Commission posed two questions to Staff regarding the receivership motion. First, the Commission requested an estimate of the cost of taking on such litigation. Second, it requested an estimate of the likelihood of success of such litigation.

After speaking to various attorneys in the private sector, Staff came to a very rough estimate of \$70,000. This does not account for any potential expert witness, which has the potential to double the cost. To arrive at \$70,000 amount, we assumed \$300 per hour for an attorney experienced in this area of litigation. We also made several assumptions for time spent on research, preparation, and litigation. We also assumed that the process would be a binding arbitration, which would not afford the parties an appeal process and, therefore, did not account for cost of appeal.

The logical question is where will the money come from? Commission Finance Manager Cindy Kemnitz will be available at the Commission meeting to answer questions related to funding.

Regarding the likelihood of success, it is impossible to speculate whether a claim will be successful. At the very least, discovery would need to be conducted to determine whether the claim has merit.

It is necessary to note that a vote by the Commission to take receivership does not constitute a vote to bring a lawsuit against CHS Hedging. If the Commission decides to seek receivership, it would need to do so by going to the circuit court in Kingsbury County and requesting the court appoint the Commission as receiver. Should the court appoint the Commission as receiver, the Commission would only have the powers and duties directed by the court. Therefore, the Kingsbury County Circuit Court would need to specifically permit the Commission to bring the lawsuit. See SDCL 49-45-16.1.

It appears that we are well within the statute of limitations to bring this claim. Thus, while it is necessary to make a determination quickly in order to answer the question for the producers, the Commission may find it beneficial to defer action on this matter in order to consult with its own and outside counsel. Staff has consulted with outside counsel and is able to provide the contact information so the Commission may have

the legal discussion in a closed setting. It is necessary to have such a discussion in a closed meeting in order not to undermine the success of any potential litigation.¹

Going forward, the Commission has options which include deferring this matter for further consideration; seeking receivership with the intent of taking civil action; seeking receivership with the intent of exploring potential litigation; or voting to not seek receivership.

Sincerely,



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¹ See SDCL 1-25-2(3)