

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRAIN BUYER
LICENSE OF H & I GRAIN OF HETLAND,
INC.

**PETITION TO APPOINT
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
AS RECEIVER**

GW17-002

Comes now the undersigned Petitioner, as counsel of record for the Plaintiffs in the matter of Chad Murphy et al. v. H & I Grain of Hetland, Inc. et al., Third Judicial Circuit, Kingsbury County, South Dakota, 38 CIV. 17 - 000045, and states as follows:

1. The Public Utilities Commission of the State of South Dakota (“Commission”) is an agency of the state of South Dakota created by SDCL 49-1-8.
2. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-45, specifically 49-45-1, 49-45-3, 49-45-6, 49-45-7, 49-45-10, 49-45-13, 49-45-16, 49-45-17, 49-45-18, 49-45-19, 49-45-25, and ARSD 20:10:12.
3. The Commission revoked H & I Grain of Hetland, Inc.’s grain buyer’s license on July 24, 2017, in Public Utilities Commission Docket No. GW17-001, pursuant to SDCL 49-45-16.
4. Pursuant to SDCL 45-45-16.1, “the Commission may apply to the circuit court in the county in which the grain buyer operated for that court to appoint [the Commission as] a receiver.”

5. Pursuant to SDCL 21-21-9, “The receiver has, under control of the court, power to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.”

6. The purpose of such receivership would be to take such actions as may be necessary to seek recovery of funds on behalf of the grain sellers damaged by the insolvency of H & I Grain of Hetland, Inc.

7. Such actions may include seeking recovery from CHS Hedging, L.L.C., which is a Limited Liability Company organized in Delaware with its principal place of business in Grove Heights, Minnesota. *See generally, Investors Equity Life Insurance Company of Hawaii, LTD, ADM Investor Services, Inc., 1 Fed.Appx. 709 (2001); and CHS Hedging, L.L.C. v. Duane J. Steffensen and Joann Steffensen, United States District Court, Southern Division of District of South Dakota, 4:16-CV-04132-KES.*

8. Such actions by the receiver against CHS Hedging, L.L.C. would address concerns articulated by the Commission that the risks and costs of a receivership would outweigh any benefits to grain sellers as all assets of H & I Grain of Hetland, Inc. are encumbered by a secured creditor.

9. In the absence of such a receivership, the affected grain sellers are limited to the recovery granted in the Order for Distribution of Bond Proceeds, GW17-002, dated April 12, 2018.

10. In said Order for Distribution of Bond Proceeds, the total of the Amounts Claimed by the grain sellers is **\$2,962,185.79** and the Total Owed to the grain sellers, as determined by the Commission is **\$400,075.08** (about 13.51% of the Amounts Claimed, although many of the grain sellers actually recovered 0%).

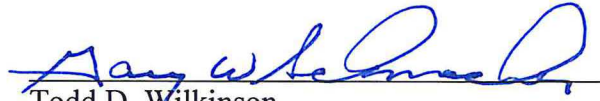
11. In the matter of Chad Murphy et al. v. H & I Grain of Hetland, Inc. et al., Third Judicial Circuit, Kingsbury County, South Dakota, 38 CIV. 17 - 000045, the Plaintiffs are seeking a partial summary judgment and it is anticipated that partial summary judgment will be granted in favor of the Plaintiffs in the approximate amount of **\$3,775,484.36**. (in comparison to the grain bond proceedings by the Commission, $\$400,075.08 / \$3,775,484.36 = 10.60\%$)

12. The grain sellers have suffered significant and consequential losses due to the insolvency of H & I Grain of Hetland, Inc.; and a receivership by the Commission is the last and only remedy that may be available to most of the grain sellers.

13. The Commission is respectfully urged to consider the grain sellers' Petition to Appoint South Dakota Public Utilities Commission as Receiver and take actions to recover on behalf of the grain sellers.

Dated this 13th day of April, 2018.

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