

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

<b>IN THE MATTER OF THE GRAIN ) BUYER BOND OF FARMERS ) COOPERATIVE ELEVATOR, AVON, ) SOUTH DAKOTA )</b>	<b>MOTION FOR DISBURSEMENT OF GRAIN BUYER BOND  GW21-003</b>
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Staff of the South Dakota Public Utilities Commission (Commission), pursuant to SDCL 49-45-19, and hereby recommends disbursement of the bond proceeds from the grain buyer bond of Farmers Cooperative Elevator (FCE). Staff requests the Commission order the proceeds to be disbursed as described below. The six months to file a bond claim expired on January 21, 2022, therefore, Staff requests the Commission issue an Order Disbursing Proceeds of Grain Buyer Bond.

**I. Bond Claims**

Pursuant to SDCL 49-45-19, on July 21, 2021, notice of the availability of the grain buyer bond was published in the required newspapers and sent to individuals who had sold grain to FCE. Claim forms were sent to seventeen producers. The claims are identified by initial below.

**1. LB**

- a. 893.22 bushels sold on voluntary credit sale (VCS).
- b. LB returned claim form agreeing with Staff findings.
- c. Bond-eligible amount owed: \$0

**2. BB**

- a. 7585.73 bushels sold on open ticket.

- b. BB was paid for this amount, which BB has confirmed, after Staff conducted its audit but before Staff was granted Receivership of FCE. Therefore, BB has no bond claim.
- c. Producer did not submit a claim form.
- d. Bond-eligible amount owed: \$0

3. JF

- a. JF had no sold bushels. JF had 497.41 bushels of grain in storage. All grain in storage was returned to JF.
- b. Producer did not submit a claim form.
- c. Bond-eligible amount owed: \$0

4. GF

- a. 7089 bushels sold on VCS. No open ticket sales.
- b. Producer returned claim form agreeing with Staff's findings.
- c. Bond-eligible amount owed: \$0

5. HD

- a. 1760.48 bushels sold on VCS. No open ticket sales.
- b. Producer did not submit a claim form.
- c. Bond-eligible amount owed: \$0

6. RH

- a. 880.24 bushels sold on VCS. No open ticket sales.
- b. Producer did not submit a claim form.
- c. Bond-eligible amount owed: \$0

7. AM

- a. Storage bushels only. Bushels totaled 11.48.
- b. All grain was returned to AM.
- c. Producer did not submit a claim form.
- d. Bond-eligible amount owed: \$0

8. DO

- a. Storage bushels only. Bushels totaled 43.08.
- b. All stored grain was returned to DO.
- c. DO returned claim form with statement that all grain was returned, and no claim was needed.
- d. Bond-eligible amount owed: \$0

9. KO

- a. Storage bushels only. Bushels totaled 91.20.
- b. All stored grain was returned to KO.
- c. Producer did not submit a claim form.
- d. Bond-eligible amount owed: \$0

10. PP

- a. Storage bushels only. Bushels totaled 1241.95.
- b. All stored grain was returned to PP.
- c. Producer did not submit a claim form.
- d. Bond-eligible amount owed: \$0

11. RP

- a. 100 bushels sold on VCS. No open ticket sales.

- b. Producer returned claim form agreeing with Staff's findings.
- c. Bond-eligible amount owed: \$0

12. JR

- a. 23,391.33 bushels of corn and 2,594.68 bushels of soybeans were sold as VCS, however, due to incorrect language on the deferred contract, Staff believes 17,129.51 bushels of the corn sold to be bond-eligible, as explained in detail later in this filing.
- b. Producer returned claim form agreeing with Staff's findings.
- c. Bond-eligible amount: \$111,170.52.

13. DT

- a. Storage bushels only. Bushels totaled 1000.
- b. All stored grain was returned to DT.
- c. Producer did not submit a claim form.
- d. Bond-eligible amount owed: \$0

14. PTV

- a. Staff identified storage 468.20 storage bushels, as well as VCS sales of corn and soybeans.
- b. All stored grain was returned. Producer returned claim form with additional information clarifying the amount of grain sold on VCS but did not dispute the finding that the grain all sold on VCS and not bond eligible. Based upon the information provided by PTV, Staff corrected its amounts to be paid to PTV outside of the bond proceeds.
- c. Bond-eligible amount owed: \$0

15. PVV

- a. All grain was sold on VCS.
- b. Producer submitted claim form jointly with PTV and agreed with no eligibility.
- c. Bond-eligible amount owed: \$0

16. DW

- a. Staff identified 11,7897.66 bushels of open ticket grain sold. However, this producer was paid after Staff's review but before Receivership was granted. Therefore, this Producer has \$0 in unpaid grain.
- b. Bond-eligible amount owed: \$0

17. JZ

- a. Staff identified storage 1104.97 storage bushels, as well as VCS sales of corn and soybeans.
- b. All stored grain was returned. Producer returned claim agreeing with Staff's finding that Producer had no bond-eligible sales.
- c. Bond-eligible amount owed: \$0

**II. Certain VCS to be treated as Open Ticket Sales**

Staff recommends 17,129 bushels of the 23,391.33 bushels of corn sold by JR be considered open ticket sales subject to bond coverage. The VCS contracts for the transactions covering these bushels did not satisfy the requirements of ARSD 20:10:12:13. Specifically, the contracts did not contain the required statement that the "contract is not protected by South Dakota statutory bond coverage." The Administrative Rule requires that this language be printed in red or bold type on the contract.

Pursuant to the circuit court's ruling in the Anderson Seen bond proceeding, which can be found in Docket No. GW12-002, Staff determined that a VCS transaction was never perfected. In the Anderson Seed case, the circuit court held that even though the parties "started out to enter into a voluntary credit sale, [they] never successfully consummated such arrangement" because the agreement failed to satisfy the requirements of SDCL 49-45-11 and ARSD 20:10:12:13. The court further held that since the sale was not a VSC transaction, the "[Producer] is entitled to participate in the proceeds of the bond."

Based upon this precedent, though FCE and this producer intended to enter into a VCS transaction, the contract did not satisfy the legal requirements and, therefore, their intent was not realized. Because this transaction could not legally be deemed a VCS contract, it is eligible for bond coverage.

**a. Other incomplete VCS contracts not subject to bond coverage**

In addition to the transactions described above, Staff found priced later contracts that were properly executed but were later priced and converted to deferred payment contracts. However, the deferred payment contracts lacked the proper bond coverage language, similar to the previously discussed contracts. These are nonetheless not eligible for bond coverage, in Staff's opinion. The difference between the two situations is that when the parties failed to perfect this transaction, it effectively failed to convert the transaction from one form of VCS to another, the result being that the transaction is still a VCS sale, not subject to bond coverage.

Because these transactions were perfected as VCS contracts, it is Staff's opinion that they cannot be converted or defaulted into an open ticket sale. However, we wanted to provide this


information to the Commission so that the Commission might have all of the information when making its decision.

### **III. Recommendation Disbursement**

The bond amount is \$250,000. Staff determined one producer to have a bond-eligible claim. That claim is for 17,129.51 bushels totaling \$111,170.52. Staff recommends the Commission find and order as follows:

1. JR's sale of 17,129.51 was not a VCS sale and is, therefore, bond eligible.
2. \$111,170.52 of bond proceeds shall be paid to JR.
3. The remainder of the \$250,000 bond shall be returned to the bonding company.
4. Any interest that has accumulated on the bond shall be directed to the PUC's Receiver account to pay all producers.<sup>1</sup>

Dated this 24th day of January 2022.

  
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<sup>1</sup> Staff anticipates the interest amount will be less than \$100.