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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF
ANDERSON SEED CO., INC.'S
GRAIN BUYER'S LICENSE

GW12-001

=====

Transcript of Proceedings
March 13, 2012

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER
GARY HANSON, COMMISSIONER

COMMISSION STAFF

John Smith
Rolayne Ailts Wiest
Karen Cremer
Kara Semmler
Ryan Soye
Greg Rislov
Ross Pedersen
Brittany Mehlhaff
Chris Daugaard
Brian Rounds
Jon Thurber
Demaris Axthelm
Deb Gregg

APPEARANCES

Brett Koenecke

Reported By Cheri McComsey Wittler, RPR, CRR

1 APPEARANCES BY TELEPHONE

2 Bart Banks
3 Jeff Sveen

3

4 = = = = =

5 TRANSCRIPT OF PROCEEDINGS, held in the
6 above-entitled matter, at the South Dakota State
7 Capitol Building, 500 East Capitol Avenue, Pierre,
8 South Dakota, on the 13th day of March, 2012,
9 commencing at 2:20 p.m.

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1 CHAIRMAN NELSON: Docket Grain Warehouse 12-001
2 in the matter of Anderson Seed Company, Inc., Grain
3 Buyer's License.

4 Today shall the Commission revoke grain buyer's
5 license and/or take any other necessary action?

6 And here's how I intend to proceed. We are
7 going to take testimony from Staff. We're going to take
8 testimony from anyone representing Anderson Seed,
9 although at this point I'm not sure we've got anybody
10 from them. We'll take questions from the Commission, and
11 then we'll take public testimony. And we've got folks I
12 think both on the phone and in person.

13 We will then again take any additional questions
14 that the Commission might have and then any action that
15 we might take from there.

16 So with that, Commission Staff.

17 MR. MEHLHAFF: Thank you, Mr. Chairman.
18 Jim Mehlhaff with Commission Staff.

19 The question on this one is shall the Commission
20 revoke the grain buyer's license and/or take any other
21 necessary action. Wondering if it was your desire to
22 take the first portion first or just kind of take it all.

23 CHAIRMAN NELSON: I think we can take them all
24 together.

25 MR. MEHLHAFF: Take them together. Okay.

1 Well, the letter that was filed yesterday
2 afternoon basically lays out Staff's position very well.
3 It was authored by Ms. Semmler, Commission attorney.
4 Basically kind of goes back to on February 17 where the
5 Commission agreed with Staff to suspend the license of
6 Anderson Seed.

7 They had a period of time in which they could
8 ask for a hearing to Petition to keep their license if
9 they so choose. Staff has not heard anything from
10 Anderson Seed or their attorneys in regard to this. In
11 fact, they've indicated to us that they do not intend to
12 contest it. So on that matter I think the revocation
13 Staff recommends, and I don't believe that there's
14 anybody that's going to contest that.

15 To the other matter, which is receivership over
16 the grain buyer bond, Staff recommends that the
17 Commission seek receivership over the bond and the
18 proceeds in order for Staff to make an equitable
19 distribution of those amounts, the amount of the bond.

20 And we looked at a number of other options,
21 which are taking receivership of the grain as far as
22 taking receivership of the entire facility. It's Staff's
23 opinion that to take receivership of the facility --
24 we'll take that one first -- is not a good idea.

25 We do not have the expertise. It's a very

1 volatile market. And I think as shown by Andersons,
2 those who presumably know what they're doing can lose a
3 lot of money very quickly. And I don't think Staff is
4 qualified, nor do I think it's appropriate to take
5 receivership to that extent.

6 With respect to the grain, I suppose that that
7 is an area that probably there's a little bit more gray
8 area. But with all the information that we have in
9 conversations with Mr. Anderson's attorney, it appears
10 that there is solid liens on all the grain that's in
11 possession.

12 The contracts that they entered into states
13 clear that title passes for the grain when it's delivered
14 to the facility. And the fact that it's a processing
15 facility, they don't hold a warehouse license. So
16 there's no assumption of title maintained by the producer
17 at the time of delivery. It's just understood that the
18 title passes at that time.

19 So Staff's opinion on this is that if we were to
20 take receivership of the grain, the best option would be
21 just to simply liquidate it as soon as possible as we
22 don't have a place to put it. And then there's the
23 concern of actually being responsible for the grain,
24 ensuring that it doesn't go out of condition, various
25 other things.

1 And we're not certain that liquidation --
2 immediately Staff's using the resources that we have
3 available to us is necessarily going to be what's in the
4 best interest of the unsecured creditors. I don't
5 necessarily think that we would get the best price that
6 could be gotten. Perhaps somebody who has a better
7 connection with that industry could secure better prices
8 than we could.

9 Currently we are aware that Anderson Seed -- and
10 maybe I would ask Ms. Semmler to speak on this since some
11 of the legal things that Anderson Seed is currently going
12 through in other states.

13 Would you care to elaborate on that more? That
14 also plays into Staff's recommendation.

15 MS. SEMMLER: I had a conversation with
16 Anderson Seed's attorneys yesterday. And I understand
17 they're going through a dissolution process in Minnesota.
18 And Minnesota, like in South Dakota, there's a process by
19 which creditors are protected and have the ability to
20 intervene in that -- intervene, for lack of a better
21 word, in that process.

22 They also did speak to the fact that various
23 states seeking receivership over the grain could
24 complicate the liquidation process. And they want all
25 creditors to be on equal footing. And they will assure

1 that's done through the dissolution process.

2 CHAIRMAN NELSON: Thank you.

3 Is there anyone on the line from Anderson Seed,
4 representing Anderson Seed?

5 Seeing none, I'm going to proceed to
6 Commissioner questions, at least initial questions, and
7 then we'll go to public testimony.

8 Commissioner questions?

9 Well, then I'll start. From the best that
10 you've -- you've completed and the letter indicated
11 you've completed the audits. You've got a good handle on
12 how much is owed to whom; is that correct?

13 MR. MEHLHAFF: Yes, Mr. Chairman. That is
14 correct.

15 CHAIRMAN NELSON: And I know that you've also
16 done some investigation into the assets of Anderson Seed.
17 Have you been able to determine at least as of today or
18 within the last couple of days what assets are left with
19 Anderson Seed?

20 MS. SEMMLER: We know that the grain is an asset
21 of Anderson Seed. Beyond that, we're continuing that
22 investigation.

23 CHAIRMAN NELSON: It is correct, however, that
24 their Redfield real estate no longer is owned by
25 Anderson Seed? That's been transferred; correct?

1 MS. SEMMLER: And the facility.

2 CHAIRMAN NELSON: And the facility. So far as
3 vehicles and anything else, we're unsure as to who owns
4 that at this point; is that correct?

5 MS. SEMMLER: Correct. That's -- since
6 discovering the BinCo transfer now our new focus has been
7 on what's left at Anderson Seed. So that's the second
8 phase of the audit.

9 CHAIRMAN NELSON: But we're assured that the
10 grain and grain products that are left there are still in
11 Anderson Seed's name; correct?

12 MS. SEMMLER: Yes. I specifically wanted that
13 answer coming here today, and they did provide that
14 information yesterday.

15 CHAIRMAN NELSON: Can you give me an indication
16 as to what types of liens are in place for the grain and
17 the grain products?

18 MS. SEMMLER: U.S. Bank has filed a security --
19 they have a security interest and have filed such
20 regarding the grain, the inventory at the facility.

21 CHAIRMAN NELSON: And that was filed when?

22 MS. SEMMLER: We did a search -- the search is
23 dated February 24. I will find that right now.

24 COMMISSIONER HANSON: Excuse me, Mr. Chairman.

25 CHAIRMAN NELSON: Yes, Commissioner Hanson.

1 COMMISSIONER HANSON: While she is looking at
2 that, I'd like to ask counsel a question. Our counsel.
3 I was not aware that U.S. Bank was a participant here,
4 and my son is a financial analyst and advisor for
5 U.S. Bank. I don't know if he'd be involved in this at
6 all.

7 Is there any potential conflict of interest on
8 my behalf?

9 MR. SMITH: Boy, that's a tough one. Without --
10 you know, without knowing how close of an interest it is,
11 it's hard for me to say that there wouldn't be one,
12 particularly if he has involvement with this particular
13 matter. But without knowing that --

14 I guess the other thing too, Commissioner, is
15 just, you know, for yourself, you know, both from a --
16 the standpoint of would that relationship influence your
17 decision-making or not but also the other side of the
18 coin might be from an appearance standpoint. If you --
19 you know, I think that's the other way to look at it is
20 if it would have the appearance of conflict, I would say
21 probably the most prudent course would be to recuse
22 yourself.

23 COMMISSIONER HANSON: Thank you for the advice.
24 Mr. Chairman.

25 CHAIRMAN NELSON: Commissioner Hanson.

1 COMMISSIONER HANSON: Under the circumstances, I
2 don't think this would influence me in any way. However,
3 since I recall many times the attorney general saying
4 that if you have to ask if there's a conflict of
5 interest, then there probably is -- and I appreciate the
6 counsel from Mr. Smith -- I'm going to recuse myself from
7 this particular docket.

8 CHAIRMAN NELSON: Thank you. And,
9 Commissioner Hanson, I appreciate you volunteering that
10 information and asking the question at the appropriate
11 time, and it will be so noted that as of this point that
12 you have recused yourself from this particular docket.
13 Thank you.

14 Ms. Semmler.

15 MS. SEMMLER: U.S. Bank filed its Financing
16 Statement 10-15 of 2010. I did confirm on the phone
17 yesterday that that security interest does remain with
18 the inventory at the location in Redfield, South Dakota.

19 CHAIRMAN NELSON: Do you know the value of
20 the -- or the amount of money that Anderson Seed owes
21 U.S. Bank?

22 MS. SEMMLER: We do have a copy of the mortgage.
23 I will look for that right now.

24 CHAIRMAN NELSON: Okay. While you're looking
25 for that, I'm going to ask Jim a question I think he does

1 know. What is the estimated value of the grain and the
2 grain products?

3 MR. MEHLHAFF: The estimated value of the grain,
4 Mr. Chairman, is roughly about \$600,000.

5 CHAIRMAN NELSON: And, Jim, you looked like you
6 wanted to add something?

7 MR. MEHLHAFF: Yes. Well, I just kind of had it
8 at the top. Roughly, the mortgage, according to the
9 adjustment that U.S. Bank holds, it's just over
10 \$11 million on that particular facility.

11 CHAIRMAN NELSON: Okay. So when you're saying
12 mortgage you're talking real estate mortgage; correct?

13 MR. MEHLHAFF: Correct.

14 CHAIRMAN NELSON: Do we know if there's a
15 chattel loan also?

16 MS. SEMMLER: The UCC filing includes all
17 inventory. They've attached to the inventory.

18 CHAIRMAN NELSON: Okay. But I guess my question
19 is we understand they've got a loan that they've taken
20 out on the real estate. Have they also taken out a
21 separate loan on their chattel, their grain, grain
22 products?

23 MR. MEHLHAFF: The mortgage that they have in
24 place basically when they did the mortgage modification
25 in February it included the construction loan, their

1 \$6 million line of credit, which was for their inventory
2 and their grain, and then another I believe it was about
3 \$2.8 million.

4 CHAIRMAN NELSON: And so then obviously the
5 question -- it was 11 million it was filed or 11 million
6 and some. What's the current balance on that?

7 MR. MEHLHAFF: To the best of my knowledge,
8 Mr. Chairman, it's not changed.

9 CHAIRMAN NELSON: We understand that Anderson
10 Seed transferred real estate to this BinCo. What was the
11 amount that they paid for that real estate?

12 MR. MEHLHAFF: Mr. Chairman, that was done with
13 the Quitclaim Deed. It's my understanding that there was
14 no consideration for that. If you'd like me to elaborate
15 on that, I could.

16 CHAIRMAN NELSON: Yeah. Please do.

17 MR. MEHLHAFF: What has been explained to us was
18 that the reason that the Redfield facility was not
19 included in the sale with the rest of the Legumex Walker
20 was because there were entitlement issues and
21 environmental issues due to the fact that it was
22 constructed over a former landfill site.

23 And that site is currently undergoing a
24 environmental review, and it's my understanding that it's
25 not necessarily uncommon that when that happens that the

1 real estate is placed into special purpose entity to
2 basically put a firewall between the particular site and
3 any other assets of the company.

4 So that was the purpose for the transfer to
5 BinCo, to hold it while the environmental review was
6 underway..

7 CHAIRMAN NELSON: And is it correct U.S. Bank
8 maintains the mortgage on that property in the name of
9 BinCo now?

10 MS. SEMMLER: They did agree to the assignment,
11 correct.

12 CHAIRMAN NELSON: Assignment. Okay. And so
13 what was the value of the assignment?

14 MS. SEMMLER: We believe it's the same mortgage
15 that was -- now has been assigned.

16 MR. MEHLHAFF: Mr. Chairman, the mortgage
17 modification that was put into place occurred two days
18 prior to the Quitclaim Deed filed transferring the
19 property. So --

20 CHAIRMAN NELSON: Okay. So I guess my question
21 is what does Anderson Seed -- how much does Anderson Seed
22 owe U.S. Bank today?

23 If the mortgage has been assigned to BinCo, then
24 what does Anderson Seed owe?

25 MS. SEMMLER: Anderson Seed remains joint and

1 severally liable for that mortgage and as a guarantor of
2 that mortgage. So they remain liable for that same
3 amount of debt so when that real estate gets sold
4 ultimately to Legumex, if there's anything left unpaid,
5 anything that Anderson Seed owns is subject to the
6 repayment.

7 CHAIRMAN NELSON: Mr. Smith has a question.

8 MR. SMITH: Right. I mean, Andersons just sold
9 all of their North Dakota and Minnesota assets. I mean,
10 do we know what portion of the proceeds from the sale of
11 those assets went to retire whatever outstanding
12 obligation is owed to U.S. Bank?

13 MR. MEHLHAFF: Mr. Chairman, per the filing, the
14 Canadian filing, which is basically very similar to what
15 we have in the United States, the FCC requirements, all
16 the proceeds, that 4.8 million went to secured creditors,
17 all of it.

18 CHAIRMAN NELSON: But earlier you said to your
19 knowledge the \$11 million mortgage had not been reduced
20 at all. It was still the same amount. So that 4.8 went
21 someplace else?

22 MR. MEHLHAFF: I thought Mr. Smith was asking
23 about the sale of the North Dakota and the Minnesota
24 properties, which did not include the Redfield assets.
25 So the proceeds from the sale of those assets went

1 directly to the secured creditors, U.S. Bank. And the
2 property in Redfield is not related to that transaction.

3 CHAIRMAN NELSON: Okay. Thank you. That's the
4 questions I have for the moment.

5 Other Commissioner questions?

6 Seeing none, we will take public testimony at
7 this time. And let me first ask is there anybody on the
8 telephone -- do we have Bart Banks on the line?

9 MR. BANKS: You do, Mr. Chairman.

10 CHAIRMAN NELSON: And, Mr. Sveen, are you on the
11 line?

12 MR. SVEEN: Yes, I am, Mr. Chairman.

13 CHAIRMAN NELSON: Do we have anybody else on the
14 line who has an interest in this docket?

15 Okay. We've got at least two people in the
16 audience here that would like to testify. I'm going to
17 take them first, and then we'll go to the telephones.
18 Mr. Koenecke? Mr. Martinmaas?

19 MR. MARTINMAAS: What a deal. My first --

20 CHAIRMAN NELSON: We need you to come up and
21 make sure the microphone is on. We do have a court
22 reporter that will be taking your testimony. And if you
23 would begin by giving your full name for the court
24 reporter.

25 MR. MARTINMAAS: Ray Martinmaas, Martinmaas

1 Dairy.

2 Before I begin, I didn't catch the answer on the
3 date when U.S. Bank filed.

4 CHAIRMAN NELSON: The answer was October 15,
5 2010.

6 MR. MARTINMAAS: 2010. I'll get to that.

7 First of all, I'm not a politician, and I'm not
8 a lawyer so you're going to hear it the way it is. I had
9 to get up early this morning. I had to get the mean
10 woman up early this morning to help me feed and do chores
11 to get here. You're lucky I'm here and she's not here.

12 Start with, I guess my first question is did
13 Anderson get low interest loans or any guarantees from
14 the State of South Dakota?

15 CHAIRMAN NELSON: Okay. Here's I think what
16 we're going to do. You've got a series of questions as
17 opposed to testimony; is that correct?

18 MR. MARTINMAAS: Well, that's part of my
19 question, the questions I'd like to answer.

20 CHAIRMAN NELSON: Okay. I'm going to use a
21 little bit of latitude here because I think we're going
22 to want to get the answers to your question or at least
23 try. So what I'm going to do is as you pose a question
24 I'm going to repose that to the Staff and see if we have
25 an answer, and we'll just kind of play back and forth if

1 that's okay.

2 MR. MARTINMAAS: Okay.

3 CHAIRMAN NELSON: Do we have an answer for that
4 question?

5 MR. MEHLHAFF: Mr. Chair, we did check with the
6 Governor's Office of Economic Development, and they did
7 not provide any low interest funds to Anderson Seed on
8 this project.

9 CHAIRMAN NELSON: Thank you.

10 MR. MARTINMAAS: Were there any tax breaks?

11 CHAIRMAN NELSON: Mr. Mehlhaff?

12 MR. MEHLHAFF: I'm not privy to any. That does
13 not mean that they did not receive them.

14 CHAIRMAN NELSON: Thank you.

15 MR. MARTINMAAS: You're saying that all the
16 grain is still in Redfield. None of the grain has been
17 moved. Is that your testimony?

18 CHAIRMAN NELSON: Mr. Mehlhaff?

19 MR. MEHLHAFF: The grain that was there -- I did
20 an on-site inspection of that facility. I can't remember
21 the exact date. It was shortly after that we did it.
22 And the grain that was there on that day is still there.

23 CHAIRMAN NELSON: And so if I could expound on
24 that, I mean, we have no -- I mean, obviously grain was
25 coming and going from the facility.

1 MR. MARTINMAAS: Right.

2 CHAIRMAN NELSON: But as you probably know, a
3 couple of weeks ago we ordered that an inspection and an
4 audit be done, and that's when Mr. Mehlhaff did the
5 in-site inspection and nothing has moved since then.

6 MR. MARTINMAAS: Can I go get my grain?

7 CHAIRMAN NELSON: Mr. Mehlhaff or Ms. Semmler,
8 you might want to --

9 MS. SEMMLER: According to the documents that we
10 reviewed, title did transfer, according to those
11 contracts upon delivery. And that would be an ongoing
12 complicated legal argument you'd need to make with the
13 courts.

14 MR. MARTINMAAS: All right. Let's go back --
15 Jim Mehlhaff, Director, Grain and Warehouse Division.
16 Does Mr. Mehlhaff not have any warehouse expertise or
17 anything?

18 CHAIRMAN NELSON: Mr. Mehlhaff's qualifications
19 are not an issue in this particular docket. Let me say
20 if I might summarize his testimony is that he doesn't
21 believe he or his Staff have the ability to run a
22 sunflower processing facility. That's -- no. That is
23 not something that we would expect from that particular
24 division.

25 You may continue with any questions that apply

1 to Anderson Seed.

2 MR. MARTINMAAS: All right. In dealing with
3 Anderson Seed since they stole \$47,000 from me, do you
4 plan on prosecuting them?

5 CHAIRMAN NELSON: I'm going to turn to
6 Ms. Semmler for that.

7 MS. SEMMLER: Our jurisdiction is limited.
8 We're a regulatory agency. And we don't have
9 jurisdiction to seek criminal charges or to prosecute.
10 So there certainly are some arguments out there that
11 maybe there is some criminal fraud involved. However,
12 that would be the Attorney General's Office that would
13 pursue criminal charges.

14 CHAIRMAN NELSON: And if I might follow up with
15 a question, Mr. Mehlhaff, is it correct that the Attorney
16 General's Office has been made aware of what's occurring
17 in this docket?

18 MR. MEHLHAFF: That is correct, Mr. Chairman.

19 CHAIRMAN NELSON: Thank you.

20 MR. MEHLHAFF: As has the law enforcement in
21 Spink County, the Spink County's Sheriff Office. We've
22 also met briefly, although did not have extended
23 discussions, with the Spink County State's Attorney.

24 CHAIRMAN NELSON: Thank you.

25 MR. MARTINMAAS: How much was their bond?

1 MR. MEHLHAFF: Their bond was \$100,000.

2 MR. MARTINMAAS: Amazing. Did they have to put
3 that up in the form of cash?

4 MR. MEHLHAFF: No. They have a surety bond,
5 which is basically like insurance.

6 MR. MARTINMAAS: In other words, about
7 10 percent.

8 CHAIRMAN NELSON: Mr. Mehlhaff, if you want to
9 just give a little bit of additional information on what
10 a surety bond is.

11 MR. MEHLHAFF: A surety bond -- as part of the
12 licensing process -- I'll maybe give a little bit more
13 information than was asked.

14 As part of the licensing process, a licensed
15 applicant has to provide a surety bond based on a sliding
16 scale of the purchases that they would make over a
17 three-year period.

18 As this was a new entity, it was done on an
19 estimate. The estimate, I think they estimated they'd
20 buy \$1.4 million, which would have required a surety bond
21 of \$50,000. Obviously, they went well over that. They
22 have a \$100,000 bond, which on this scale would cover
23 them up to \$10 million in purchases.

24 Surety bond is -- basically it's like an
25 insurance company. They review and they provide an

1 insurance for sellers who are harmed by breach of the
2 contracts.

3 CHAIRMAN NELSON: And so if I could just be
4 clear, it is a full \$100,000 bond.

5 MR. MARTINMAAS: In other words, we can be made
6 whole by the surety bond company?

7 CHAIRMAN NELSON: The \$100,000 bond covers --

8 MR. MARTINMAAS: Well, that's not what he
9 stated.

10 CHAIRMAN NELSON: Covers all of the purchases.
11 It does not cover any of the voluntary credit sales, but
12 it covers all of the purchases. And that amount is
13 estimated -- correct me if I'm wrong -- about
14 \$2.2 million. Is that correct?

15 MR. MEHLHAFF: That's correct, Mr. Chairman.

16 CHAIRMAN NELSON: Therefore, no, that bond is
17 not sufficient to cover all of the losses at this point.

18 THE WITNESS: In other words --

19 CHAIRMAN NELSON: What our hope is, that there
20 will be sufficient assets found with Anderson Seed to
21 cover hopefully the whole amount. But that's what will
22 play out in this process.

23 MR. MARTINMAAS: In other words, Mr. Mehlhaff
24 was negligent when he didn't ask for a higher surety
25 bond.

1 CHAIRMAN NELSON: Sir, no. We're not taking
2 that kind of testimony. The amount of the bond is set by
3 state statute, and if you have an issue with the amount
4 of the bond, that is a question that you'd want to take
5 to your state legislators who set those bond amounts.

6 MR. MARTINMAAS: You said that -- stated that
7 was for a million dollars. And he just stated there was
8 over \$2 million in purchases.

9 CHAIRMAN NELSON: The statute requires a
10 \$100,000 bond for up to \$10 million worth of purchases.
11 They have a \$100,000 bond.

12 Now the issue of whether that bond is
13 sufficient, that philosophical question, I'm certain that
14 question will be raised the next time the legislature
15 meets. Certainly. That's not a question that we're
16 going to resolve today. Nor is that even a question
17 before us today.

18 Do you have any other questions or testimony?

19 MR. MARTINMAAS: So we don't know if we can get
20 our grain back if we wanted to do that?

21 CHAIRMAN NELSON: I believe that question was
22 answered.

23 MR. MARTINMAAS: The only thing I have are some
24 statements, and you don't want to hear those.

25 CHAIRMAN NELSON: I'll take any statements that

1 apply to this docket.

2 MR. MARTINMAAS: If U.S. Bank filed October 10
3 of 2010, is there a reason the PUC did not notify farmers
4 that Anderson Seed Company was in trouble?

5 CHAIRMAN NELSON: Well, the filing of a lien on
6 chattel, on grain, on grain products, is the normal
7 course of business. That certainly doesn't indicate that
8 there was trouble simply on the filing of a lien.

9 And if I might use an example, when I'm doing
10 business, I mean, the bank's going to file a lien on my
11 cattle, but that doesn't mean that I'm in trouble. And
12 so it's an analogous situation here. It's part of the
13 normal course of obtaining credit. A lien was filed on
14 the chattel.

15 MR. MARTINMAAS: Like I said, I'm not a
16 politician. I'm not an attorney.

17 CHAIRMAN NELSON: No. But you understand --
18 you're in the ag business. You understand borrowing
19 money and you understand liens filed against your
20 property and that's a normal course of your business.
21 And so that's -- you know, that's what I'm seeing
22 happened here.

23 Now, obviously, something went south very, very
24 quickly, and that's one of the things that as this plays
25 out we want to get to the bottom of as to how that

1 happened. But simply the filing of a lien on chattel
2 back in 2010 to me would not indicate it was anything
3 other than the ordinary course of business starting up.

4 Other questions or comments?

5 MR. MARTINMAAS: The only other comment I have
6 is, you know, I think Jim Mehlhaff should resign or be
7 fired.

8 CHAIRMAN NELSON: Sir, that is not appropriate.
9 You are dismissed. Thank you.

10 Mr. Koenecke.

11 MR. KOENECKE: Good afternoon, Mr. Chairman,
12 Commissioner Fiegen, and Staff. My name is
13 Brett Koenecke. I'm a lawyer from Pierre, and strangely
14 I'm appearing today on a grain warehousing docket. I
15 never thought that would happen in my career.

16 CHAIRMAN NELSON: Frankly, we wish it wasn't
17 happening in your career.

18 MR. KOENECKE: Well, and I understand that. I
19 appreciate that. I was contacted by my client Jeff Bush.
20 I have a handful of farm and ranch clients. He contacted
21 me in January about this matter. And I directed him, as
22 I do oftentimes -- being a lawyer practicing in Pierre, I
23 understand that there are things that regulators can get
24 done for people much more quickly and inexpensively than
25 I can through the Circuit Court process.

1 I directed him to Mr. Mehlhaff and they've been
2 in contact and I believe my client to be generally
3 satisfied with Mr. Mehlhaff's actions in this matter and
4 I know that I am as well. I've had contact with several
5 of the people sitting in this room today, and they've
6 taken the initiative to call me up and ask what I thought
7 and how I could be using the information that they've
8 already obtained and I appreciate those contacts. And so
9 I would want to say that in my remarks here this
10 afternoon.

11 I think there's two things I'd like to say. I
12 didn't plan to say anything, but one thing I would want
13 the Commission to explore as it determines how to go
14 forward here is it would be, I think, helpful to my
15 client and perhaps others as well to slow this game down.

16 This situation has evolved very rapidly. I
17 filed a lawsuit in Spink County in February and am
18 currently waiting for the 30-day notice -- or the period
19 for Anderson Grain to answer to run so I can get a
20 default judgment or other process.

21 If the Commission was able to take control of
22 anything and slow the game down such that somebody had to
23 come and be responsive back to the Commission or to
24 anybody other than a secured creditor, I think the
25 unsecured creditors might be able to benefit from that.

1 And so I'd want you to consider that as you
2 think about what to do here. Maybe the best thing you
3 can do is slow the game down so we can catch up and
4 figure out what's going on here and do what we can -- or
5 do what I can for my client who is an unsecured creditor
6 of Anderson Grain.

7 The other thing I would say is that I would not
8 expect a grain warehousing division to apply their own
9 expertise to the marketing or handling or what have you
10 of the inventory of the facility. I'd expect you to
11 contract for that and go find somebody who could do that
12 in the manner, way, shape, or form that was ultimately
13 determined to be the best.

14 I wouldn't expect to rely on the Division's
15 judgment but would expect you to go find people to help
16 sort this thing out. So in your initial comments,
17 Mr. Mehlhaff, I understood you to be saying that, well,
18 we didn't want to take control of this stuff because we
19 didn't have the expertise. My reply to that would be I
20 don't expect you to. I don't know what best to do. But
21 in that case I go out and find somebody who does and
22 handle it that way if that's appropriate. And maybe it's
23 not here for reasons which I don't know about.

24 But those would be my comments on the matter.
25 And I appreciate everything that Ms. Semmler and

1 Mr. Mehlhaff and Mr. Smith have done and am thankful to
2 have the opportunity to discuss it this afternoon.

3 Thank you.

4 CHAIRMAN NELSON: Thank you. I think while
5 we've got you there maybe we'll take some questions for
6 you first, and then we'll move to the other two
7 attorneys.

8 When you talk about slowing the game down
9 obviously the things we're wrestling with is the
10 receivership that would be limited to the grain and grain
11 products. Perhaps the receivership of any of the assets
12 that are left there.

13 Do you see us -- if we were to move in that
14 direction, do you see us that in any way improving the
15 ability of your clients to recover funds?

16 MR. KOENECKE: Thanks for the question,
17 Mr. Chairman. I think it's too early to tell, and it
18 would be facts that we don't know yet as to how it all
19 shakes out. And some of it's dependent simply on
20 markets. If the price of grain doubles, well, then that
21 doesn't mean that the liens already on the grain would
22 double. They are what they are.

23 There could be value that is accumulated there
24 just simply through the movement of the markets. It
25 could go the other way, as Mr. Mehlhaff indicated. We

1 don't know about that either.

2 I think that it seems like to me that if the
3 Commission was able to take steps to get into Circuit
4 Court on behalf of let's call them producers for lack of
5 a better word -- I like that better than unsecured
6 creditors -- that courts in this state, in other states,
7 and secured creditors would have to take notice of that
8 and have to deal with you as well. And that feels to me
9 like an advantage that I just don't want to give away.

10 I hope that's responsive to your question. If
11 it isn't, feel free to dig around, and I'll see what I
12 come up with.

13 CHAIRMAN NELSON: It is. Thank you. Other
14 questions?

15 Commissioner Fiegen.

16 COMMISSIONER FIEGEN: You know, we're certainly
17 here to try to protect the producers as much as we can.
18 And we have some options here of, you know, going after
19 the bond claim and then also going after the grain, but
20 then the real estate or those type of assets, I don't
21 know.

22 Would you recommend the first two steps of the
23 grain and the bond? And what about those assets, if
24 they're --

25 MR. KOENECKE: Thanks for the question,

1 Commissioner. I don't know about recommending. I'd want
2 you to explore it and be thoughtful and take input from
3 Mr. Smith and from Ms. Semmler and from Mr. Mehlhaff and
4 the rest of us and reach a well reasoned decision.

5 I think I would -- it seems to me like there's
6 no downside to a producer from you taking all the steps
7 that you can and then subsequently relinquishing that
8 position back to a secured creditor or somebody else.
9 That strikes me as a place to start your discussion from
10 how do we make things worse by taking control of things
11 that might be owed to a security creditor?

12 I have a tough time seeing how you would.
13 Certainly for my client. The bank might not like that.
14 That's, you know, certainly a possibility as well. But
15 ultimately at the end of the day the bank's going to get
16 their value out of the property they have a security
17 interest in. There could be some loss to them, as I
18 explained, from the movement of markets. That's also a
19 possibility. I don't know what more to say on the facts
20 that we have here.

21 COMMISSIONER FIEGEN: And when somebody gives us
22 advice that they want the states to stay out, that's when
23 I want to get in.

24 MR. KOENECKE: If I could comment on that.

25 CHAIRMAN NELSON: Certainly.

1 MR. KOENECKE: I wouldn't put a lot of stock in
2 what the lawyers for Anderson Grain told anybody. I'd
3 want to, I guess, trust but verify maybe.

4 CHAIRMAN NELSON: You're being generous.

5 MR. KOENECKE: Thanks. I try to be.

6 CHAIRMAN NELSON: The one comment I would make
7 so far as playing the market if we would move for
8 receivership of grain and grain products, I would not be
9 excited about that for a couple of reasons.

10 First of all, you know, that's playing the deal.
11 We don't know if it's going up or down. Secondly, every
12 day we hang on to it we incur storage costs and costs for
13 whatever expert we might bring in. So my thought would
14 be a pretty short-term deal if we went that direction.

15 Any other questions?

16 MR. KOENECKE: Thank you.

17 CHAIRMAN NELSON: Thank you. With that,
18 Mr. Banks.

19 MR. BANKS: Thank you, Mr. Chairman. Bart Banks
20 with Dakota Mill & Grain.

21 A couple of comments. I agree with Mr. Koenecke
22 that we certainly do not blame the PUC for any of this.
23 I mean, you guys got a job to do. It's not always easy,
24 and we appreciate the opportunity to participate in this
25 this afternoon as well.

1 A couple of comments. I guess, first of all, I
2 mean, there's a lot of moving parts with this Anderson
3 transaction. It's very difficult to tell what's real and
4 what isn't. What the lawyers from Minnesota comment on
5 or say I think circumspection would be appropriate.

6 The one thing we do know is that Anderson Grain
7 has acquired quite a bit of --

8 CHAIRMAN NELSON: Mr. Banks, you're breaking up
9 a little bit. I don't know if you can get on a better
10 phone or --

11 MR. BANKS: I'm actually on my handset now.
12 Maybe I'm speaking too fast.

13 CHAIRMAN NELSON: Okay. There you go. That
14 sounded good.

15 MR. BANKS: What I would say is that we know
16 that Anderson Grain has obtained a lot of seed from local
17 producers for which it has not paid. We also know that
18 shortly after that they started selling their assets in
19 all of their locations for -- whether it was for true
20 value or appropriate value we cannot determine at this
21 point.

22 We know that they have transferred title to
23 assets in Redfield. And we know that there is a lot of
24 inventory sitting in Redfield that has not been paid.

25 I appreciate Staff's comments about what the PUC

1 might or should do. And I guess I would only comment on
2 that, that I believe there is a third alternative and
3 that would be to take and impose a temporary receivership
4 over the facility and its grain for some of the reasons
5 that other counsel have referred to, and that is slow the
6 process down a bit, let everybody catch up, figure out
7 who's on first.

8 The grain is already in that facility. I don't
9 think anyone will be harmed by leaving it there for a
10 short period of time. And I think that the people who
11 could run that facility and determine how best to proceed
12 are people in the industry itself. Certainly Dakota Mill
13 & Grain and some of the other players here have access to
14 appropriate people that would know what to do and to give
15 us a chance to explore that along with the information I
16 believe that has been obtained by Staff about the
17 condition of that facility and its contracts would allow
18 us to actually at least make a preliminary determination
19 whether that facility could be operated, what the value
20 of the grain would be, et cetera.

21 So I would encourage the Commission to consider
22 the third alternative, and that is to temporarily take
23 possession of the facility, its inventory, to attempt to
24 determine and make these determinations whether that
25 would be appropriate or not.

1 And we do appreciate what you have done to this
2 point, and I would just ask, as Mr. Koenecke indicated,
3 to slow the process down, evaluate our options. Because,
4 to be certain, the bond is not going to cover very much
5 of these claims.

6 CHAIRMAN NELSON: Thank you. Just a moment.

7 Mr. Banks, do you have any issue or concern that
8 there may be any spoilage of the product if we wait to
9 liquidate?

10 MR. BANKS: Well, in the short run I don't
11 believe that I do. You know, I don't know the condition
12 of that seed. Obviously we're not privy to that. There
13 are people that could render appropriate opinions on
14 that. I don't know how long it's been sitting there, for
15 example, or its condition so I don't know that I can
16 comment on that at this point. But, again, I'm
17 advocating a more short-term receivership than a
18 long-term.

19 CHAIRMAN NELSON: Thank you. Other questions?
20 Commissioner Fiegen.

21 COMMISSIONER FIEGEN: That was my question just
22 because I grew up on a corn and soybean farm and know a
23 little bit about storage there. But can you just give me
24 an idea because you happen to be from Mill & Grain, what
25 type of -- like if it would be perhaps delivered in

1 December, how long a shelf life or storage do we have
2 until there's some spoilage?

3 MR. BANKS: You know, I cannot answer that. I
4 am only a lawyer. So I can't -- I can't confirm that one
5 way or the other. Although with the resources I have
6 here, I could confirm that in a short period of time.

7 COMMISSIONER FIEGEN: A lawyer that did not grow
8 up on a sunflower farm?

9 MR. BANKS: That's correct.

10 CHAIRMAN NELSON: Thank you.

11 Mr. Sveen.

12 MR. SVEEN: Good afternoon. My name is
13 Jeff Sveen. I'm with the Siegel, Barnett & Schutz Law
14 Firm in Aberdeen, and I represent Glendale Hutterian
15 Brethren, Inc.

16 First, I want to say I also would commend the
17 Staff on what they've done as far as I'm concerned in
18 this matter. They tracked me down very -- they tried
19 very hard to track me down and did track me down last
20 week to alert me of this, and they had no obligation to
21 do that. And I really appreciate that.

22 And I guess a couple of things. The first thing
23 I'm wrestling with is, I assume, to take control of the
24 bond?

25 CHAIRMAN NELSON: Correct.

1 MR. SVEEN: And I don't think that's even a
2 question. I think you need to do that, obviously.

3 A couple other things. I'm echoing very badly
4 on my phone. Can you hear me okay, though?

5 CHAIRMAN NELSON: We can hear you very well, but
6 our tech person is going to try to make some adjustments
7 to help you out.

8 MR. SVEEN: Okay. I'm not sure if it was Kara
9 or whoever it was, but earlier it was stated that they're
10 going to a dissolution process in Minnesota. And in
11 Minnesota did they -- when they said they wanted to treat
12 everybody fairly was that Anderson Seed, or was that
13 somebody from the department -- or from the State?

14 MS. SEMMLER: That was from their lawyers.

15 MR. SVEEN: Okay.

16 MS. SEMMLER: They haven't filed the request for
17 dissolution yet, but they intend to shortly, I guess.

18 MR. SVEEN: And am I correct -- and I don't
19 remember who they represent, but there has been a lawsuit
20 started in Minnesota attempting to pierce the corporate
21 veil. Has anybody had any discussion with attorney
22 Brakke up there on that?

23 MS. SEMMLER: No, we have not.

24 MR. SVEEN: Okay. I don't have any, I guess,
25 allusions that we're going to recover -- the growers,

1 unsecured creditors, whatever you want to call us, are
2 going to be able to recover a lot since there appears to
3 be some valid liens against this property. But I would
4 echo, I guess, the thoughts of the other gentlemen that
5 we shouldn't wait and let Anderson Grain control this,
6 but the department, if you think you can take control.

7 And I don't know what the market's going to be.
8 I know the market -- I just know the market on soybeans.
9 But I would encourage you to do what you think is
10 appropriate and at least if there's jurisdictions in
11 South Dakota and we act on it in South Dakota, there's a
12 better chance that there will be more money left at the
13 end of the day for us unsecured creditors to at least
14 share in.

15 Those are my comments.

16 CHAIRMAN NELSON: Thank you.

17 Questions from the Commission?

18 Seeing none, any further comments from Staff?

19 MS. SEMMLER: This is Kara. Staff's concern, I
20 guess -- although I think Mr. Mehlhaff maybe already said
21 it but I'll just say it again. Our concern with the
22 receivership is whether or not us getting involved in the
23 grain actually will preserve any additional funds for
24 South Dakota creditors.

25 The slow the game down comment, I get it. You

1 know, Anderson Seed attorneys did indicate that should we
2 seek receivership over the grain, they will oppose that.
3 They will appear in Circuit Court to do so. It's going
4 to slow the process down. In the meantime, others can
5 figure out their game plan.

6 But as far as will that ultimately preserve
7 funds for South Dakota unsecured creditors? I don't
8 think it will. But it may help provide time for all
9 those creditors to put together a game plan.

10 CHAIRMAN NELSON: Other questions from the
11 Commission?

12 Mr. Smith.

13 MR. SMITH: Maybe just for Jeff Sveen or
14 Mr. Banks. You guys have seen the Minnesota lawsuit;
15 correct?

16 MR. SVEEN: Yep.

17 MR. BANKS: Correct.

18 MR. SMITH: Can I just get a gut feeling here?
19 And you've seen the claims for rescission; right?
20 Contract rescission, which would have the objective or
21 fraudulent conveyance perhaps too, which would have as
22 its objective the return of -- potentially return of
23 title to that grain or the undoing of the transfer of
24 title.

25 Do you just have any thoughts about -- you know,

1 any thoughts you might have. And also maybe piercing the
2 corporate veil here in a situation where the Anderson
3 family appears to have just received a considerable
4 amount of money. I don't know how much of that is
5 burdened with unpaid, you know, secured -- security
6 interests.

7 But, you know, they received in the -- my
8 recollection is well over \$12 million for the Hilaire,
9 St. Hilaire assets.

10 Any thoughts about -- just off the top of your
11 head as to how viable or legitimate you might think those
12 avenues of approach would be?

13 And maybe also whether that's something that is
14 more appropriate for the group of grain holders maybe
15 acting as a group to pursue on your own behalves or
16 whether that's some role that we have -- whether we have
17 a role to play in that. Maybe that's the better way to
18 put that. Or whether that's your role to play. I guess
19 I just am interested in your thoughts.

20 MR. SVEEN: Bart, you want to go first?

21 MR. BANKS: Sure, Jeff, and back me up.

22 MR. SVEEN: I will.

23 MR. BANKS: I think we both have a role, and I
24 guess that was the purpose of what we were asking today.
25 I think that the Commission could step in at least

1 initially on a short-term basis and assist us and assist
2 the producers who have been harmed by all of this in
3 South Dakota to allow us to be able to get ahold of
4 that.

5 As far as the claims that are being made in
6 Minnesota, certainly the breach of contract claims,
7 without knowing, you know, what the plaintiff has in
8 outstanding claims, I don't know whether it's viable or
9 whether the amount they're seeking is appropriate. But
10 certainly to the extent that they delivered seed and were
11 not paid, the breach of contract is a slam dunk.

12 The claims for -- I know in talking with
13 Mr. Brakke, the claims where they were seeking to obtain
14 possession of the inventory in Redfield, the primary
15 purpose of that was not to move the inventory anywhere
16 but to attempt to prevent it from being lost, sold,
17 whatever. Which is partly what we are asking the
18 Commission to help us with.

19 As far as the personal claims against the
20 Andersons, I think it's a little early to determine the
21 validity of those claims or the probability of recovery
22 on those claims. But certainly there are some questions.
23 Just the way the transaction occurred with the sales,
24 et cetera, it certainly raises an eyebrow.

25 So I don't know if that answers your question,

1 Mr. Smith, but that's kind of my take on that. I fully
2 anticipate there will probably be some more lawsuits
3 started before this is over with.

4 MR. SVEEN: My turn, I guess. I have not talked
5 to Jon Brakke, who's handling the case in Minnesota.
6 Jon's with the Vogel Law Firm in Fargo. He's a very good
7 lawyer. So I would think he has some hope something
8 could be done.

9 Piercing the corporate veil is very difficult,
10 especially in South Dakota. I don't know what the
11 Minnesota laws are on that. The whole thing stinks.
12 There's no question about that. The timeliness, the
13 BinCo, the transfer for -- the Quitclaim Deed for no
14 consideration.

15 And it's a family business. And it kind of
16 depends on what they did as far as their corporate
17 formalities, how they handled the business. There's a
18 lot of questions. And it does just not appear very
19 good.

20 Now when you -- and I don't know what recourse
21 the bank has. If they have the original debt of
22 \$11 million, they're not just going to sit back
23 obviously. And they've got some things to do.

24 But it's a tough road to hoe, and I'm just not
25 sure how much ultimately there will be to get it. If you

1 can't pierce that corporate veil, it doesn't sound like
2 there's much to spread out and for us all to share.
3 That's my two cents worth.

4 CHAIRMAN NELSON: Thank you. Any other
5 questions?

6 Seeing none, are there any motions?

7 And I'll just start out by saying I'd like to
8 break this into about three parts. And I would begin
9 with moving to revoke the grain buyer's license of
10 Anderson Seed Company, Inc.

11 Is there any discussion?

12 Seeing none, all those in favor will vote aye.
13 Commissioner Fiegen.

14 COMMISSIONER FIEGEN: Fiegen votes aye.

15 CHAIRMAN NELSON: Nelson votes aye.

16 Motion carries. The license is revoked.

17 The second question -- the second Motion is I
18 would move that the Public Utilities Commission seeks
19 receivership of the grain buyer's bond that was posted by
20 Anderson Seed Company, Inc.

21 Discussion on that Motion?

22 Seeing none, all those in favor vote aye.

23 Commissioner Fiegen.

24 COMMISSIONER FIEGEN: Fiegen votes aye.

25 CHAIRMAN NELSON: Nelson votes aye. Motion

1 carries.

2 The third Motion that I would make is that the
3 Public Utilities Commission seek receivership of any
4 current or recently transferred assets of Anderson Seed,
5 Inc., in the State of South Dakota.

6 Discussion?

7 I don't do this lightly. And I understand the
8 positions of Staff. But I am of the opinion that this
9 Commission needs to do everything possible to give our
10 producers the best possible advantage as they go through
11 this.

12 At the end of the day will this make any
13 difference? I don't know. And I think everybody here
14 has said that. We don't know.

15 But I would not feel comfortable looking back
16 six months from now and saying, you know, we could have,
17 we should have done something to help these folks out.

18 Mr. Mehlhaff, I fully get your comment about not
19 having the expertise to deal with this. Nor do I. But
20 the comment about we'll find the people and we'll work to
21 find the right people that can do this.

22 And as I indicated, I don't view this as a
23 long-term deal, particularly so far as holding the grain
24 and the grain assets. But I think we need to do -- and
25 how this will ultimately be structured should the Motion

1 pass -- how it will be structured going into court I
2 think there's 1,000 details that we're going to have to
3 work out. But you all get my drift. I think we need to
4 do what we can.

5 You know, all three attorneys -- and they are
6 really the ones that I was relying on today for the
7 question is there anything that we can do that will
8 possibly give you an advantage at the end of the day.
9 And I think they've all three said yes. And so I
10 appreciate that, and we're going to do what we can to
11 help our producers out. Hence, my reason for the Motion.

12 Further discussion, Commissioner Fiegen.

13 COMMISSIONER FIEGEN: A quick question on the
14 different motions for Chairman Nelson. I would assume
15 that you will do one separate on the grain and inventory
16 and one separate for the facilities, or are you putting
17 them all together?

18 CHAIRMAN NELSON: I'm putting them all together
19 in this Motion.

20 COMMISSIONER FIEGEN: I guess I would like to
21 ask our counsel, John, if we would have a better benefit
22 if we would do them separately so if one is thrown out,
23 we may still have the grain or the inventory. Maybe not
24 the facilities or other things, but at least we may
25 support our producers in one of the items that the courts

1 would give us.

2 CHAIRMAN NELSON: Go ahead, John.

3 MR. SMITH: Yeah. I think, in the end this
4 isn't all going to be our decision to make. The decision
5 as to whether or not to give us a receivership at all is
6 with the Circuit Court in Spink County.

7 And would it jeopardize it to have -- I mean, I
8 think if we go in there and try to get a very broad
9 receivership of all assets in South Dakota, you know, I
10 think if you wish, I mean -- and I think we'll probably
11 do that anyway, but, I mean, we can try to do that and
12 convince the court to give us that.

13 And it could be that we won't be able to sell
14 the court on it. It could be that maybe we can -- I
15 mean, certainly we'll probably do some differentiation of
16 perhaps a different set of entitlements to the grain for
17 receivership than for other things, in terms of the way
18 we put this together. And I think that's what Chairman
19 Nelson was getting at.

20 However, the whole concept of receivership if
21 you look at title 21 that -- or Chapter 21-21 that deals
22 with receivership, you know, does contemplate
23 receivership as an appropriate process in the case of an
24 insolvency when you have a risk to assets.

25 And so, you know, I mean, I think that's what we

1 could do. As I understood, the Chairman's Motion is
2 broad in terms of us seeking a broad receivership over as
3 many assets that we can maybe bring within that. And, of
4 course, the bottom line is it's going to -- it's all
5 going to depend on what the court's willing to approve.
6 I mean, that's -- and the bank's going to be in there.
7 Andersons is going to be in there. And goodness knows
8 who else might be in there fighting us on it. You know,
9 I mean, that's going to be happening.

10 COMMISSIONER FIEGEN: So if I can wrap that up
11 and if there are any attorneys that want to respond, it's
12 my understanding it doesn't matter if we have several
13 motions or just one because the courts are going to look
14 at it as just one.

15 MR. SMITH: I really think in the end we're
16 almost going to have to go in there -- you know, again,
17 unless you just want to have it be limited to our attempt
18 to take possession of only the grain -- I mean, the
19 difficulty of that, especially if we're just talking a
20 short-term situation, is where are we going to put it,
21 you know. You know, but --

22 CHAIRMAN NELSON: If I might, there's two
23 reasons that I included it as broad as I did. One is I'm
24 incredibly bothered by this recent quitclaim transfer to
25 another entity for no consideration. I think we need to,

1 as best we can, get our arms around that.

2 And, secondly, it's the practical consequence of
3 I don't want to have to start paying this BinCo storage.
4 I mean, that would just be flat wrong to have to pay
5 that. So I want to have someplace to be able to store
6 this until we can liquidate.

7 MR. BANKS: Chairman, this is Bart Banks for
8 Dakota Mill. I guess I've been involved in litigation a
9 little off and on over the 20 plus years, and I can tell
10 you that in a case like this if you go to the court
11 requesting receivership and they typically would want it
12 as broad you think would be appropriate and as broad as
13 you could. If the court believes that some aspect of
14 that it isn't going to grant, he'll tailor it.

15 So, in other words, if you ask for something
16 that he might not grant, it doesn't mean it's fatal to
17 the motion. It's just it would be tailored by the
18 court.

19 CHAIRMAN NELSON: Thank you.

20 Further discussion?

21 COMMISSIONER FIEGEN: You know, when we -- if
22 you don't mind, Mr. Chairman, when we take receivership
23 that is a big step on the part of the PUC because it's
24 something we don't normally do here. And probably, John,
25 I don't know if you've done that -- yeah. You've

1 probably done it before because you've been here
2 10 years.

3 MR. SMITH: I never have been involved in
4 seeking the receivership. Although we've got the
5 paperwork from the last time it was done. I've been
6 involved -- I was in the business world for a long, long
7 time, and I've been in a whole lot of cases involving it.
8 But the ones I was involved in the past have all been
9 actual bankruptcy court.

10 COMMISSIONER FIEGEN: But I don't think we take
11 it lightly. And when farmers have weather issues like
12 hail or floods, I mean, that's hard enough or a disease
13 or livestock when you start watching cattle die, I mean,
14 that's a hard thing and I've been there.

15 And now it's a human error. And I believe that
16 we have to do everything we can to protect our producers,
17 and that's why I'm supporting the Motion today.

18 CHAIRMAN NELSON: I appreciate that support.
19 And I will simply say I don't take this lightly. I wish
20 we were not going down this road. But the statute
21 specifically authorizes us to pursue receivership. And
22 so there's some anticipation on the part of the policy
23 makers in this state that under a certain circumstances
24 that we pursue that. And this is one where I think we
25 should.

1 With that, all those in favor will vote aye.

2 Fiegen.

3 COMMISSIONER FIEGEN: Fiegen votes aye.

4 CHAIRMAN NELSON: Nelson votes aye.

5 Motion carries.

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1 STATE OF SOUTH DAKOTA)

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CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 13th day of
11 March, 2012, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 26th day of
14 March, 2012.

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Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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