

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

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IN THE MATTER OF THE GRAIN )  
DEALER'S AND PUBLIC WAREHOUSE )  
LICENSES OF FREEMAN FERTILIZER )  
CO., INC., d/b/a McCOOK FEED ) GD0-001  
AND FERTILIZER )  
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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS: June 26, 2001  
1:30 P.M.  
Room 412, Capitol Building  
Pierre, South Dakota

PUC COMMISSION: Jim Burg, Chairman  
Pam Nelson, Vice-Chairman

COMMISSION STAFF  
PRESENT: Rolayne Ailts Wiest  
Karen Cremer  
Gregory A. Rislov  
Kelly Frazier  
Bob Knadle  
Sue Cichos

APPEARANCES:

By Telephone:

Mr. Bbo Helmbrecht

Mr. Tim Jensen

Mr. Chris Downs

Ms. Debra Sittig

Mr. Steve Domm

Mr. Richard Lauck

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P R O C E E D I N G S

1  
2 CHAIRMAN BURG: This is Jim Burg, Chairman of the  
3 Commission; and let the record show that Pam Nelson is  
4 also here.

5 The purpose of the meeting today is GD01-001.  
6 It's an ad hoc committee meeting for the sole purpose of  
7 GD01-001, In the Matter of the Grain Dealers and Public  
8 Warehouse License of Freeman Fertilizer Company,  
9 Incorporated, doing business as McCook Feed and  
10 Fertilizer.

11 The question before us today is today shall the  
12 Commission grant the motions to re-open for further  
13 evidence? Also, how shall the Commission' act on Dakota  
14 Valley Grain's request regarding the shortage of soybean  
15 inventory? And how shall the Commission proceed in this  
16 matter?

17 We'll take each of those items separately. The  
18 first one being shall the Commission grant the motion to  
19 re-open for further evidence? I think what, go with Kelly  
20 first is the request for the re-opening?

21 MR. FRAZIER: Yes.

22 CHAIRMAN BURG: Excuse me, I need to check on the  
23 phone. Those that are on the phone, Bob Helmbrecht; is  
24 that right?

25 MS. CICHOS: He wasn't on.

1           CHAIRMAN BURG: He wasn't on, okay. Tim Jensen,  
2 are you on?

3           MR. JENSEN: Yes.

4           CHAIRMAN BURG: Chris Downs?

5           MR. DOWNS: Yes, I'm here.

6           CHAIRMAN BURG: And Debra Sittig?

7           MS. SITTIG: Yes.

8           CHAIRMAN BURG: Could I -- let's see, okay. All  
9 those -- who are you representing, Debra? Are you  
10 representing the bank?

11          MS. SITTIG: Yeah, Home Federal and Richard Lauck?

12          MR. LAUCK: Yes.

13          CHAIRMAN BURG: Yes, thank you. How do you spell  
14 your last name?

15          MR. LAUCK: L-A-U-C-K.

16          CHAIRMAN BURG: Okay. Go ahead. Is there anybody  
17 on that I did not call? Okay. Go ahead, Kelly.

18          MR. FRAZIER: Yes, Commission. Consistent with my  
19 previous argument, I would argue that there is good cause  
20 to open for new evidence here, those being the affidavits.  
21 When I moved to do that last time, the bank objected and  
22 stated that they wished to have it open to have their own  
23 affidavit entered into the record.

24                 I haven't seen a copy of that affidavit at this  
25 point yet. So I believe that the ball is somewhat in the

1 bank's court to produce the affidavit that they wished to  
2 have entered. And I renew my motion to have my affidavits  
3 put back on the record.

4 CHAIRMAN BURG: I guess what I would do at this  
5 time is also ask is there anyone on the phone that would  
6 have anything to comment that they did not comment that  
7 supports this motion to re-open as stated by Kelly  
8 Frazier?

9 Okay. If not, Debra, do you have a comment on as  
10 far as your part of the motion?

11 MS. SITTING: I do, and I must apologize. After  
12 the hearing last week, Kelly called me and said if you get  
13 your motion in today by fax, we can notice it for hearing  
14 next Tuesday. Since I hadn't received his affidavits  
15 prior to the hearing, I assumed that I could send my  
16 affidavit after I sent the motion, and I thought they were  
17 just going to get it noticed.

18 I also anticipated that I would have at least a  
19 copy to fax to the Commission by 11:00 o'clock today so  
20 that you would be able to look at it, and as would Mr.  
21 Frazier before the hearing today. Unfortunately, I was  
22 not able to get that in time; and Mr. Frazier explained to  
23 me yesterday that I had misunderstood, that I needed to  
24 have the affidavit in place with the motion.

25 I would not, I guess, have requested that the

1 motion be heard today had I known that at the time because  
2 I couldn't guarantee that I could get that to the  
3 Commission. I did inform Mr. Frazier of the content, the  
4 basic content of the affidavit, so I don't think it's any  
5 surprise. I believe that we could probably provide a  
6 faxed copy of the affidavit by tomorrow and, hopefully,  
7 the original in Pierre by Thursday morning.

8 I understand that Mr. Frazier is going to be  
9 leaving the office after work on Thursday. But it was  
10 totally my misunderstanding because we didn't receive the  
11 affidavits prior to the hearing last week, and I guess I  
12 thought I could provide it later as long as I could tell  
13 you what the substance of it was. And I did anticipate  
14 having a faxed copy to give you today.

15 And my position is the same. We would not object  
16 to Mr. Frazier entering those additional affidavits as  
17 long as we could enter our one additional affidavit from  
18 Dr. Richard Shane, setting out basically the different  
19 methods of grain marketing and the advantages and  
20 disadvantages that might be considered on each method of  
21 marketing.

22 CHAIRMAN BURG: And that's the essence of your  
23 affidavit?

24 MS. SITTIG: It is.

25 CHAIRMAN BURG: Kelly, do you want to restate what

1 the essence of the affidavit you're talking about is  
2 because I know you gave it last time? Let's do it for  
3 today's record.

4 MR. FRAZIER: Yes. The essence of the affidavits  
5 I'm motioning to get in, Commission, are regarding the  
6 intent of the people who entered into delayed and deferred  
7 price contracts with McCook. In my research there was  
8 some -- the case law which supported the position that a  
9 contract can be rescinded for failure of consideration,  
10 amongst other things, including fraud if a party to the  
11 contract wishes a contract to be rescinded.

12 We didn't have anything on the record as far as  
13 testimony from the record people who entered into those  
14 contracts expressly stating they wanted the contracts  
15 rescinded. I felt I wasn't a party to the contract,  
16 therefore, I couldn't really therefore argue that the  
17 contract could be rescinded without something on the  
18 record consistent indicating at least that they did want  
19 the contracts rescinded.

20 I received affidavits to that effect and merely  
21 wanted the record opened up to enter them in. They are  
22 notarized. They're no different than the claim forms, so  
23 to speak. When the claim forms came in, they were just  
24 notarized statements from the people with claims. This  
25 would be merely -- I would consider this to be a

1 supplement to their claim form.

2 CHAIRMAN BURG: Okay. Rolayne, I think -- let's  
3 see, I had a question. I can't remember what it was. Do  
4 you have anything to add?

5 MS. WIEST: I think what we need to do is we would  
6 need to actually get that affidavit into the office  
7 before, because I think people should have an opportunity  
8 to look at it to know whether they want to object or not.  
9 And we could have possibly had a meeting on Thursday to  
10 consider it, but my concern is that it really should be  
11 served on all of the parties in the proceeding, and I'm  
12 not sure when that could be accomplished.

13 MS. SITTING: We don't have any objection if you  
14 want to continue it for longer than that. I just  
15 anticipated that you would want to get it done as soon as  
16 possible, so I was trying to make it available as soon as  
17 possible.

18 COMMISSIONER NELSON: But I have one question. I  
19 guess I don't understand it because I thought at the last  
20 meeting all you had to do is mail this thing off and now  
21 it's still not here.

22 MS. SITTING: Well, the person who was giving us  
23 the affidavit is in Brookings at the university, and we  
24 didn't know whether or not we would be allowed to  
25 introduce it. And we had not seen the affidavits from

1 Mr. Frazier at that time. So, you know, we were kind of  
2 at a disadvantage to know exactly what should be in there.  
3 We had generally what we knew he would be saying, but we  
4 just we haven't received the original from him. We've  
5 been in contact with him by phone and received a draft but  
6 it isn't, you know, a signed copy.

7 CHAIRMAN BURG: The question I'd have, could you  
8 get it served on the other parties, all the interested  
9 parties, by Thursday as well?

10 MS. SITTIG: If we could do it by fax.

11 MS. WIEST: Yeah. I'm sure not everybody has a  
12 fax in this case.

13 MS. SITTIG: You know, I'm not sure. We could  
14 certainly try to get it, you know, done, but I would hate  
15 to guarantee it since I've already messed up on that once.

16 CHAIRMAN BURG: Do you have a list of the people  
17 that it should be served on?

18 MS. SITTIG: I'll look in my file here. I'm not  
19 sure if I do or not.

20 CHAIRMAN BURG: You don't have a copy of the  
21 affidavit yet?

22 MS. SITTIG: What we have is a draft but, you  
23 know, it isn't something that he has like said I'm  
24 swearing that this information is accurate. He just set  
25 out the information for us, and so we're mailing -- or

1 we're actually E-mailing the affidavit to him and he's  
2 going sign it and get it in the mail to us, I believe,  
3 today

4 CHAIRMAN BURG: We're just trying to look at the  
5 time frame of how you get it served and would like to be  
6 able to act on this Thursday or Friday.

7 MS. SITTING: I'm not sure if we have a complete  
8 list of who we would need to serve.

9 MR. FRAZIER: I could provide that.

10 CHAIRMAN BURG: That wouldn't be a problem. We  
11 can provide that. I'm just looking at your timing and  
12 getting everybody necessary served.

13 MS. SITTING: How many are there that we need to  
14 serve?

15 MR. FRAZIER: Approximately 20, possibly more 20  
16 to 25 is my recollection. I didn't bring up my full file.

17 I would like to make some clarification for the  
18 record as far as today's meeting goes. On the 21st they  
19 did receive a copy of every one of my affidavits. So as  
20 far as preparation for today, they do have the affidavits.  
21 And I did make clear in the letter on the 21st that we  
22 were hoping to get the affidavit by today. I got a letter  
23 from Deb on the 22nd indicating she was hoping to have it  
24 to us on Monday.

25 MS. SITTING: We were hoping to do that. And I

1 don't know if he misunderstood what we needed, but we just  
2 got a draft of, you know, the information went out it  
3 being an affidavit form. So I apologize for that, and  
4 that was totally my misunderstanding because I wouldn't  
5 have faxed the motion out last week if I had known that I  
6 had to guarantee it was going to be there by today.

7 MR. FRAZIER: And as far as the Commission's  
8 ruling today goes, the way that the rule reads is that it  
9 can be reopened for a showing of good cause. I believe  
10 that the intent of these farmers, I think it's relevant to  
11 what was testified to at the hearing and it's relevant to  
12 the brief that was filed.

13 To this point I haven't really seen any good cause  
14 showing on the part of the bank regarding this affidavit.  
15 I think that it seems more like if they're going to put  
16 one in, we're going to put one in.

17 MS. SITTING: Well, we believe it would be  
18 necessary to respond to the affidavits of the farmers that  
19 are being put in.

20 MR. FRAZIER: I don't see why that couldn't be an  
21 issue that was raised in the brief. I don't see why an  
22 affidavit would be necessary.

23 MS. SITTING: For the same reason that we don't  
24 have it in front of the Commission to be able to argue it  
25 in the brief unless it's put in by affidavit. So, you

1 know, I really didn't mean to mess up the timing on this,  
2 but I said we didn't have those affidavits before the  
3 hearing last week. You know, and I didn't understand that  
4 they had to be served on all the parties and done by today  
5 or I would not have filed my motion that quickly.

6 MS. WIEST: So why didn't the bank have their  
7 affidavits prior to that?

8 MR. FRAZIER: That was a mistake on my part. I  
9 take responsibility for that.

10 CHAIRMAN BURG: What you mean is that -- was that  
11 your question? Why didn't the bank have the affidavits?

12 MS. WIEST: Right.

13 MR. FRAZIER: They didn't have them last time but  
14 they do this time.

15 MS. WIEST: I understand that.

16 CHAIRMAN BURG: Well, I think the question before  
17 us, you know, is when can we get everybody adequately  
18 served so that we can make a decision.

19 MR. FRAZIER: Would the Commission be free next  
20 Friday? Are we going to have a quorum?

21 CHAIRMAN BURG: We can by phone. I can be on by  
22 phone. I won't be in the office.

23 MR. FRAZIER: As long as we keep the briefing.  
24 What's important to me is we get this accomplished  
25 expediently for the farmers here.

1 MS. SITTIG: I don't think we have any problem  
2 with the briefing schedule.

3 MR. FRAZIER: If we don't move the briefing  
4 schedule back, I see no reason why we couldn't defer this  
5 issue until next Friday when I'm back from vacation. It  
6 won't affect the --

7 CHAIRMAN BURG: Next Friday, a week from Friday?

8 MR. FRAZIER: Correct.

9 CHAIRMAN BURG: Yeah.

10 MR. FRAZIER: A telephonic meeting is possible.

11 CHAIRMAN BURG: It will be pretty hard to be in  
12 contact on that.

13 MR. FRAZIER: We would have to essentially fax the  
14 Commissioners a copy of affidavit when it came in, or  
15 hopefully it would come in before you guys leave.

16 MS. WIEST: When is the bank's brief due?

17 MR. FRAZIER: The second of July.

18 MS. WIEST: So you don't need the affidavit in  
19 before you write your brief.

20 MS. SITTIG: We know what it says. We would  
21 obviously have to take it out if you don't accept it.

22 MS. WIEST: Okay.

23 MS. SITTIG: We know the substance of it but --

24 MS. WIEST: Right. I understand you would make a  
25 make reference to it in your brief, but it is possible

1 that the Commission could subsequently not allow it and  
2 then those parts of your brief, I assume, would have to be  
3 stricken in some way.

4 MS. SITTIG: We could make our best effort to try  
5 and get it done to see if you could consider it on  
6 Thursday.

7 COMMISSIONER NELSON: This Thursday? I don't  
8 think you can serve people.

9 MS. WIEST: My concern is, let's say you get it  
10 done tomorrow. I'm not sure how people could get it by  
11 Thursday. The other option was I know for the service  
12 problem, I know Kelly is not going to be here Friday, but  
13 if you would get it -- you know, if you could fax it to us  
14 by tomorrow and actually put it in the mail tomorrow to  
15 everybody on the service list, everybody should have it by  
16 Friday and staff would have an opportunity to look it over  
17 before then and then someone could make staff's position  
18 clear on Friday.

19 COMMISSIONER NELSON: Even if they Fed Ex'd it,  
20 I'm not sure they're going to have it by Friday or  
21 Thursday.

22 MR. FRAZIER: I won't be here Friday.

23 COMMISSIONER NELSON: I mean even if you got it,  
24 if Fed Ex gets it overnight.

25 CHAIRMAN BURG: If they put in the mail, they

1 should get it on Thursday.

2 MS. WIEST: Do you want to do it next Friday by  
3 phone?

4 CHAIRMAN BURG: I don't think that will work.  
5 I'll be in Oregon by then.

6 COMMISSIONER NELSON: I have some concern about  
7 serving these people. Even if they could get it to your  
8 mailbox, it would be really close. And if you didn't  
9 happen to be home when you delivered the mail, you may not  
10 see it, and I don't think that's serving it.

11 CHAIRMAN BURG: Next Friday is not a problem, and  
12 Pam could join by phone.

13 MS. WIEST: Could you possibly join by phone on  
14 the sixth?

15 COMMISSIONER NELSON: Sure, on the sixth.

16 CHAIRMAN BURG: Or why? Oh, Kelly will be back on  
17 that date. What day do you get back?

18 MR. FRAZIER: The sixth.

19 CHAIRMAN BURG: We should have gone off the  
20 record.

21 MS. WIEST: If that works for everybody, you need  
22 to put it in the mail this week. Then the bank would need  
23 to keep the briefing schedule as set. Now your brief is  
24 due July 2nd, reply briefs are due July 9th or 10th.

25 MR. FRAZIER: We had said Thursday.

1 MS. WIEST: That's the 10th.

2 MR. FRAZIER: So we could have the meeting on it,  
3 I believe, Thursday that was discussed as far as the time  
4 line. My hopes are to have it on Monday.

5 CHAIRMAN BURG: The meeting can't be on Monday. I  
6 have to leave at six in the morning.

7 MR. FRAZIER: I'll have mine done on Monday.

8 CHAIRMAN BURG: We could do it Wednesday.

9 MS. WIEST: Well, I guess the point is I think we  
10 need to decide now is to have the motions heard next  
11 Friday if that's acceptable to everybody we will.

12 CHAIRMAN BURG: Then they will still meet their  
13 briefing schedule with comments on the affidavit as  
14 submitted by Kelly. And if we deny it that portion will  
15 be taken out. Is that what I understood?

16 MS. WIEST: Right.

17 MS. SITTIG: We can do it that way. I guess we  
18 will try and get it to you as soon as possible. And  
19 hopefully, you know, if he drops the original in the mail  
20 to us and faxes us, you know, the signed copy, we can at  
21 least fax it to the Commission and then we can try and  
22 serve the others.

23 MS. WIEST: We're going to need the affidavit for  
24 sure by the third.

25 MS. SITTIG: Okay.

1 MS. WIEST: Well, that's very late. We would  
2 expect that it should go in the mail this week.

3 MS. SITTIG: Right.

4 CHAIRMAN BURG: So we're looking at a week from  
5 Friday that we will actually make a decision.

6 MS. WIEST: Consider both.

7 COMMISSIONER NELSON: Which is July 6th; right?

8 MS. SITTIG: Okay.

9 MS. WIEST: Then we can go to the next question.

10 CHAIRMAN BURG: The second question is how shall  
11 the Commission act on Dakota Valley Grain's request  
12 regarding the shortage of soybean inventory?

13 Let's see, who should I turn that over to? Bob?  
14 We probably need a full explanation of why there was a  
15 shortage and how it come about. So go ahead.

16 MR. KNADLE: I've got Chris Downs on the phone. I  
17 can talk about it generally, I guess. There could be a  
18 number of reasons for the shortage. One of them could be  
19 we utilized a 60-pound soybeans and 12 percent moisture in  
20 our calculation. It ended up being 56.4 pounds and 9.14  
21 percent moisture. So there would be a difference there.

22 And we had more mixed corn and soybeans than we  
23 anticipated. We don't know how that happened or it could  
24 have been something when a chute unlocated the corn and  
25 beans got into it, or it could have been a hole in the bin

1 that the soybeans were next to the corn and some of it  
2 leaked into the other bin. So we had more mixed grain  
3 than we thought.

4 MR. JENSEN: How many more bushels of mixed grain?

5 CHAIRMAN BURG: Would you identify yourself?

6 MR. JENSEN: Tim Jensen.

7 MR. KNADLE: I believe there was about 2,200 than  
8 what we had estimated.

9 MR. JENSEN: 2,200 more?

10 MR. KNADLE: Right. And there's also in the  
11 calculation, I don't believe that we -- soybeans are a  
12 round and we used a pack factor for wheat and corn and  
13 soybeans won't pack as tight as those, so we probably  
14 should have took off an adjustment related to the air  
15 space in the soybeans and Chris would -- he could probably  
16 elaborate more on it if he could.

17 MR. DOWNS: Okay. This is Chris. On what Bob was  
18 just talking about, this pack factor stuff and all that,  
19 that are in these pack data books, they're all pack dated  
20 books and they don't necessarily talk about soybeans  
21 information and studies and what the pack is. And it was  
22 kind of taking an educated guess and doing some figuring  
23 and stuff it gives -- you refer to wheat and refer to corn  
24 on different things and stuff like that. That's what this  
25 pack difference would be. And that could be up to, I

1 guess, a 10 percent difference if we didn't get that pack  
2 factor right.

3 The other thing, like Bob said, would be the test  
4 weight is quite a bit different. Moisture is quite a bit  
5 different than what we had figured in the first place.  
6 The other thing that I talked about it could have been  
7 just been miscommunication in our factors on what was --  
8 what the measurements were sent to Pierre when Lisa did  
9 the calculation. Anything else? I don't know what you  
10 want.

11 CHAIRMAN BURG: The question I'd have is what was  
12 the estimated amount of soybeans and what was the weigh  
13 out amount?

14 MR. DOWNS: Estimated amount was 20,776, I do  
15 believe what we came up with, Jim. Weigh out amount was  
16 15,800 bushels. That's about 5,000 bushel difference, I  
17 guess. The other thing that would have to do -- I lost my  
18 train of thought a little bit.

19 CHAIRMAN BURG: Seeing you had 2,200 bushels more  
20 in the mixed corn and soybeans than was estimated.

21 MR. DOWNS: Right. That was what I was going to  
22 get at. You know, there's another thousand bushels right  
23 there that I didn't perceive that was going to be a big  
24 problem. I thought it's an old grain warehouse. We all  
25 know -- or we probably don't all know, but they leak,

1 especially if they haven't been taken care of very good  
2 and it leaks, and that's where most of the difference came  
3 in at.

4 CHAIRMAN BURG: How much did you calculate? How  
5 much difference it would have made based on the difference  
6 in weight and moisture?

7 MR. DOWNS: Oh, the difference in weight and  
8 moisture? About 900 bushel, Jim.

9 CHAIRMAN BURG: 900 bushel, okay.

10 COMMISSIONER NELSON: So do you guys have a  
11 recommendation?

12 MR. KNADLE: I think you probably want the company  
13 to go first, if you would. They're the ones that filed  
14 for the request, and I can speak to it after that. I  
15 believe in the letter we sent out for the bids, we just --  
16 we rounded it off, the bushel, to 21,000 bushel of  
17 soybeans. The actual that we came up was 15,811 so that  
18 would leave a difference of 5,189 bushels.

19 But if -- I think Brad Kohls is on the line, so if  
20 he would want to speak in regard to his request.

21 CHAIRMAN BURG: We didn't have a Brad Kohls on the  
22 line.

23 MR. KNADLE: He should have been.

24 CHAIRMAN BURG: Brad Kohls on the line? Is there  
25 anybody representing the purchasing elevator company?

1           MR. KNADLE: I talked to Brad Kohls, I believe it  
2 was -- it was on -- I faxed him a copy of the agenda, and  
3 I told him, you know, he needed to be on the conference  
4 call, and I gave him a number and he was going to contact  
5 her to be on the conference call. So I guess his letter  
6 probably speaks for itself, and I can make my  
7 recommendation then. He was notified.

8           MS. WIEST: Sure, go ahead, make your  
9 recommendation.

10           MR. KNADLE: Chris Downs notified Dakota Valley  
11 Grain on June 6 that there are no more soybeans in  
12 Canistota and the closing prices per the company's letter,  
13 dated June 14, 2001, for June 7th and 8th were \$4.61 and a  
14 half cents. The company could have priced the soybeans  
15 during this time period. The difference between the bid  
16 price of \$4.44 minus 32 cents equals \$4.12 and that was  
17 their bid. And the closings price on June 7th or 8th  
18 \$4.61 and a half cents minus the same 32 cents, equals  
19 \$4.29 and a half cents, or a difference of 17 and a half  
20 cents.

21           So if you take the 17 and a half cents times the  
22 5,189 bushels, which is the difference between the  
23 estimated bushels of 21,000 and the actual bushels of  
24 15,811, equals \$908.08. Staff would recommend that the  
25 company be allowed an adjustment of \$908.08 due to the

1        miscalculation of the quantity of soybeans.

2                At the present time the company has not paid the  
3        \$1,500, which is the amount in dispute according to the  
4        company. Therefore, it is staff's position that the  
5        company has an amount due of \$591.92 for the soybeans,  
6        which is a difference between \$1,500 in the \$908.08 in  
7        regard to the disputed amount of \$1,500.

8                CHAIRMAN BURG: Okay. Let me get this clear. You  
9        based the price at 4.61 on seven and eight.

10               MR. KNADLE: June 7th and 8th, yeah.

11               CHAIRMAN BURG: What did they base the price on to  
12        arrive at the 1,500?

13               MR. KNADLE: They based on Wednesday, June 15th,  
14        of a price of \$4.74 minus the 32 cents, which is \$4.42.  
15        It's our position they knew about it on June 6th, so they  
16        could have priced the grain any time after that date and  
17        they chose the June 15th, which I think they could have  
18        priced on the 7th or 8th when the price was cheaper,  
19        therefore cutting that loss.

20               COMMISSIONER NELSON: Isn't it reasonable to  
21        assume some amount of loss? Isn't there a standard that  
22        people find acceptable because I thought it was five  
23        percent.

24               MR. KNADLE: As far as?

25               CHAIRMAN BURG: Well, I think --

1 COMMISSIONER NELSON: They're off.

2 CHAIRMAN BURG: I think I have the same question  
3 in a different way. Is it reasonable for them to market  
4 the full estimated \$20,776 bushels and expect that they're  
5 going to have that?

6 MR. KNADLE: 21,000 as in the letter, Chris might  
7 be able to speak to that. I can't. I wish Brad was on  
8 the phone.

9 MR. DOWNS: Yeah, I can kind of straighten it out.  
10 They -- technically, they can't market 21,000 bushels on  
11 the market. They can only do contracts for 5,000 bushels  
12 at a time. So you would be looking at they had done only  
13 20,000 bushels on the market.

14 As far as the standards for a difference like Pam  
15 was getting at? There really isn't a standard. It's kind  
16 of every elevator does things different. They have their  
17 own different policies and different things.

18 COMMISSIONER NELSON: But do they have a ball park  
19 because I heard figures tossed around and I mean there's a  
20 difference between 0 and 25. I don't think anybody  
21 expects that you would be exactly right, but there is a  
22 reasonable margin of error that somebody might make in the  
23 industry. Is there such a margin?

24 MR. DOWNS: Yeah. Like I said, every elevator,  
25 every company has their different ideas, Pam. I guess my

1 reasonable would be if I was running an elevator, you  
2 know, three percent would be my reasonable amount.

3 COMMISSIONER NELSON: Because my feeling is that  
4 there is a reasonable margin of error and so somewhere  
5 between 0 and 25 would be acceptable, and I've heard some  
6 farmers that I've talked to think -- the people I talked  
7 to thought five was pretty reasonable and some people  
8 thought three was reasonable, but I didn't hear anybody  
9 going above maybe five or six percent.

10 So I was thinking maybe we should be looking at  
11 five percent difference and pay them on the five percent  
12 difference. Is that clear?

13 MR. JENSEN: Did anybody send any paperwork in to  
14 justify their claim?

15 CHAIRMAN BURG: Yeah, they had that one. I had  
16 grabbed the wrong file.

17 COMMISSIONER NELSON: We know what the -- it's not  
18 hard to figure out what the market is nor is it hard to  
19 figure on you -- I mean we weighed it when they left.

20 MR. JENSEN: I was talking the claim for the  
21 \$1,500.

22 MR. KNADLE: Brad Kohls filed a letter on June  
23 14th to that effect.

24 CHAIRMAN BURG: Let me go off the record a minute.

25 (DISCUSSION HELD OFF THE RECORD.)

1 MR. JENSEN: Was Chris Downs, I believe.

2 CHAIRMAN BURG: The other question for you, Bob,  
3 is did you propose to them the \$908 and the justification  
4 for it?

5 MR. KNADLE: No, I did not.

6 CHAIRMAN BURG: Why not? I mean they should have  
7 known what your counter was going to be.

8 COMMISSIONER NELSON: Even if he did, it's not Bob  
9 that would decide. It would be you and I.

10 CHAIRMAN BURG: I know it isn't, but they would be  
11 prepared to respond.

12 MS. WIEST: I guess he assumed he was going to.

13 MR. KNADLE: I assumed he was going to be on the  
14 phone today and he would be able to discuss it.

15 MS. WIEST: Does anybody else have any comments at  
16 this time on the phone?

17 CHAIRMAN BURG: Especially Debra, are you still  
18 on?

19 MS. SITTIG: I am.

20 CHAIRMAN BURG: You know, I would presume that at  
21 least part of this difference would be the banks to do.  
22 Do you understand where the discrepancy is?

23 MS. SITTIG: Yeah, I've just been listening and  
24 I'm kind of filling in for Roger Damgaard, so I'm not as  
25 familiar with the file. But I guess I would assume, too,

1 there would be some standard margin of error. And I  
2 understand that, you know, I think the figure like 25  
3 percent is probably real high. So I would think, too,  
4 there should be some reasonable shrinkage or loss type  
5 figure that would be used.

6 CHAIRMAN BURG: Do you have any comment about the  
7 settlement proposal from the staff of \$908?

8 MS. SITTIG: I guess none other than just to  
9 assume that there would be some standard loss.

10 CHAIRMAN BURG: Do you have -- do you understand  
11 where that came from?

12 MS. SITTIG: I do.

13 CHAIRMAN BURG: Because it could be really  
14 confusing.

15 MS. SITTIG: I figured out the difference on the  
16 moisture, and then I set off for what they hadn't paid,  
17 right.

18 CHAIRMAN BURG: No, what really happens they only  
19 paid for the number of bushels they received.

20 MS. SITTIG: Right.

21 CHAIRMAN BURG: But they had marketed those  
22 bushels on contract.

23 MS. SITTIG: Right and so --

24 CHAIRMAN BURG: The price went up in the meantime.

25 MS. SITTIG: Or paper, whatever.

1           CHAIRMAN BURG: Right. So that's where the  
2 problem came in. I don't know. What do you think?  
3 Should we recess for a minute or wait a minute and see if  
4 she gets him?

5           MS. WIEST: Yeah, just wait a minute.

6           CHAIRMAN BURG: I'm not very comfortable not  
7 having them on.

8           MR. JENSEN: I guess I have a question.

9           CHAIRMAN BURG: Who is this?

10          MR. JENSEN: Tim Jensen again. There was a bill  
11 sent in from the Marquardt's as far as storage on this  
12 grain.

13          MS. WIEST: Right.

14          MR. JENSEN: What was your plan on that?

15          MS. WIEST: The Commission hasn't made any  
16 decision on that. What we're waiting for are the  
17 completion of the briefs, so no decision has been made on  
18 that.

19          MR. JENSEN: I was curious who you decided was  
20 actually responsible for that.

21          MS. WIEST: Sure, but we just haven't made any  
22 decisions on this.

23          CHAIRMAN BURG: Okay. With that we'll just be at  
24 ease until Sue comes back and see if she got ahold of him.

25          MR. LAUCK: This is Richard Lauck. What do you do

1 with mixed grain? Where did that go?

2 CHAIRMAN BURG: That was sold. Well, go ahead.

3 MR. KNADLE: That was sold to the bidder that we  
4 had the 750 bushel estimate previously. They just bought  
5 all that at the same price.

6 MR. LAUCK: What was that?

7 COMMISSIONER NELSON: So they paid for the 2,200,  
8 which they actually got versus the estimate?

9 MR. KNADLE: Right. They paid for the actual  
10 amount of mixed grain.

11 MR. LAUCK: How much did they pay a bushel though?

12 MR. KNADLE: She just took my papers out the door.  
13 I think it was like \$2.12, somewhere in that range. I  
14 don't have that in front of me now.

15 MS. WIEST: It was the accepted bid price; right?

16 MR. KNADLE: Right.

17 MR. DOWNS: That was \$2.25; right?

18 COMMISSIONER NELSON: Then that's what they paid;  
19 right?

20 MR. KNADLE: Correct. Whatever the bid was  
21 accepted, that's what they paid.

22 MR. LAUCK: The 2,200 bushels was extra over and  
23 above what you already had for mixed grain?

24 CHAIRMAN BURG: Right.

25 MR. KNADLE: That's correct.

1 MR. LAUCK: So you're just short like 3,000  
2 bushels of beans then now?

3 CHAIRMAN BURG: Right.

4 MR. DOWNS: That 2,200 bushels, that wasn't all  
5 beans. That would be figuring 50 percent corn, 50 percent  
6 beans.

7 CHAIRMAN BURG: Yeah. But if it had been beans  
8 that leaked into that bin to give the extra 2,200 bushels,  
9 it would have been all beans; right?

10 MR. DOWNS: Possible, yeah.

11 CHAIRMAN BURG: I mean it became mixed, but I  
12 would imagine it raised the percentage of beans in that  
13 mixture unless there was another bin of corn leaking  
14 someplace, which wouldn't be the case.

15 MR. LAUCK: If it was corn you would have been  
16 short on that, too, though.

17 MR. DOWNS: I think a way -- I think we were a  
18 little long on our corn estimate. And then when these  
19 bins -- see this whole elevator got hit by a tornado back  
20 in '95 or something like that and it twisted it.  
21 Supposedly they had repaired it, but they hadn't hardly  
22 ever used these overhead bins in this elevator, is what a  
23 person working there was telling me. And it just -- the  
24 distributors up top, the mechanical stuff, is old. It  
25 just leaks.

1           CHAIRMAN BURG: That is a question. There was --  
2 I remember now there was an overrun on the corn, wasn't  
3 there?

4           MR. DOWNS: Yes, there was.

5           MR. LAUCK: By how much?

6           MR. KNADLE: I think the corn was -- I don't have  
7 it in front of me. Sue took my information. But I think  
8 the corn was fairly close. I think we estimated about  
9 48,000 bushel. And just a minute here.

10          MR. DOWNS: After everything was all done, I'd  
11 have 47,067 bushels.

12          MR. KNADLE: Correct. I think the bid went out  
13 for 48,000 initially; correct?

14          MR. LAUCK: So you were short on corn too.

15          MR. DOWNS: I think actual what we measured for  
16 corn was 47,550 bushel or something like that.

17          CHAIRMAN BURG: And it weighed out at what?

18          MR. DOWNS: 40.

19          MR. LAUCK: Forty-seven six he said.

20          CHAIRMAN BURG: It would have been right at.

21          MR. LAUCK: A hundred bushel. I guess I have a  
22 concern how can you measure corn and it comes out and you  
23 measure beans and it's way off?

24          COMMISSIONER NELSON: I think moisture was one  
25 part of it and I think --

1 MR. LAUCK: Corn has moisture in it too.

2 CHAIRMAN BURG: Unless it was dryer than the  
3 average. I don't know what the -- what was the moisture  
4 on the corn?

5 MR. DOWNS: Moisture on the corn was 15, right at  
6 15.

7 CHAIRMAN BURG: So that would have been a little  
8 bit over; right?

9 MR. DOWNS: That would have been just right. I  
10 think we figured it at 13 and a half or 14.

11 CHAIRMAN BURG: But between having four pounds  
12 lighter soybeans and three percent less moisture, there  
13 would be some factor there. It wouldn't be 25 percent, of  
14 course.

15 MR. DOWNS: That's exactly right, there would be  
16 some factor, yes. I don't know to say. Measuring bins is  
17 not a perfect science. I mean if we had five people  
18 measuring the same bin, you get five different answers no  
19 matter what.

20 MR. LAUCK: But they wouldn't be off by 25 percent  
21 though. Even if you subtract off your 2,200 bushels of  
22 mixed grain, it's still a lot.

23 CHAIRMAN BURG: But the whole point being is  
24 whatever is there was there. The money -- the part we're  
25 arguing over is whether they should get compensation for

1 having contracted and lost money or not be able to fulfill  
2 the contract should they get any compensation. And the  
3 rest of it is, you know, yes, there was a certain  
4 estimate, but they actually paid for what was there. And  
5 unless some of it was stolen, which nobody has any  
6 indication that it was, it was whatever we had to deal  
7 with.

8 MR. JENSEN: Well, they should get no  
9 compensation, in my opinion, if that's the way you're  
10 going to interpret it. Basically they just bought what  
11 was there was there. Nobody knew the bin leaked.

12 CHAIRMAN BURG: That's definitely a position.

13 MR. JENSEN: Is Kelly Frazier still there? This  
14 is Tim Jensen again. The affidavit that the bank wants to  
15 send in, is that really irrelevant to this whole project?

16 MR. FRAZIER: At that point this is my position,  
17 but you haven't read it so I don't think the bank has  
18 established relevance.

19 CHAIRMAN BURG: But that's why we need it to see  
20 if there is relevance, the same as with the affidavits you  
21 guys are submitting.

22 MR. JENSEN: Well, it sounds like they want  
23 somebody to speak to us is what it sounds like to me.

24 MS. SITTING: That's what the affidavits do. They  
25 take the place of testimony.

1 MR. JENSEN: I know, but what does Dick Shane have  
2 to do with this?

3 MS. SITTIG: Well, he's going to explain the  
4 various methods of marketing grain and the advantages and  
5 disadvantage to each, which are part of our argument as to  
6 why the contract shouldn't be rescinded. But that's kind  
7 of an afterthought by these farmers.

8 CHAIRMAN BURG: Steve Domm, are you on yet? Let's  
9 take a break for five minutes.

10 (AT THIS TIME A SHORT RECESS WAS TAKEN.)

11 CHAIRMAN BURG: Steve, is that you?

12 MR. DOMM: This is Steve.

13 CHAIRMAN BURG: Okay. I'm not sure where to  
14 start. I guess maybe if you could give us a quick  
15 explanation of how you arrived at what was submitted to  
16 us.

17 MR. DOMM: Who was that bill submitted to? Who  
18 has invoiced the bill? I mean was it invoiced to the PUC?

19 CHAIRMAN BURG: Has somebody got a copy of that?  
20 I grabbed the wrong file.

21 COMMISSIONER NELSON: Are you familiar with this  
22 issue at all?

23 MR. DOMM: Yes, I am. Basically the issue at hand  
24 is when we purchased the beans out of Canistota, the  
25 contract was for \$4.12 on the 23rd of May, I believe.

1 Okay. On the, what would it be, the 12th of June, when  
2 the beans were finally delivered, or were basically we had  
3 contact -- or we were contacted stating that was all the  
4 beans that were going to be delivered because there were  
5 no beans left, there was a shortage of 5,340 bushels of  
6 soybeans. Okay.

7 When we bought those beans at \$4.12, we hedged our  
8 commodity position. So we've purchased 20,000 bushels of  
9 beans from the PUC. Now, we hedged 20,000 bushels of  
10 beans. We sold bean futures. When the contract was  
11 through and there was 5,340 bushels short, we were  
12 automatically short 5,300 bushels of futures contracts so  
13 we had to buy those back. And on the 12th of June when we  
14 were advised there was no more beans, this is a done deal,  
15 beans were at \$4.41. That's 28 cents a bushel on 5,340  
16 bushels of beans, or 1,500 bucks.

17 CHAIRMAN BURG: Okay. What was the date that you  
18 were notified that that was all the beans there were? In  
19 other words, there were 5,300 short.

20 MR. DOMM: That I really could not tell you. What  
21 I am looking at, I am looking at the settlement sheet that  
22 was printed for the Public Utilities Commission, and that  
23 settlement sheet is dated 6-12 at 1:55 in the afternoon.  
24 Okay. So what I just did is I went back to my sheets and  
25 looked at 6-12, looked at the futures levels and that's

1 where we came up with the \$1,500.

2 Now, the exact day that we were told that there is  
3 no more beans, I could not answer that. That would --  
4 Brad Kohls would have to answer that. June 8th is when --  
5 or, excuse me, June 5th was the last load that was applied  
6 to the contract. Okay. So that was Tuesday. And there  
7 was two loads delivered here on June 5th. Now, did  
8 somebody from Canistota call us on the 5th or a week later  
9 on the 12th? Did Brad call and say, you know, you -- are  
10 you going to deliver the rest of your beans or what's up?  
11 I guess I couldn't answer that question.

12 COMMISSIONER NELSON: Do we know, Bob, which day?

13 MR. DOWNS: We can answer that.

14 CHAIRMAN BURG: Do you want to respond again,  
15 Chris? I think you told us that before Steve got on.

16 MR. DOWNS: Yes, he's right, the last loads were  
17 delivered on the 5th was our very last loads. On the 6th,  
18 the morning of the 6th is when I called Brad and told him  
19 that we were all done with beans because I wanted to make  
20 sure I knew what the whole situation was going to be. I  
21 wanted to make sure that he knew as soon as possible  
22 because I had customers do that to me before and then it's  
23 kind of taken.

24 But on the 12th, like he's talking, or on that  
25 same day on the 6th I had agreed with Brad that I was --

1 that I would come in that next week either on that Monday  
2 or Tuesday, ended up being on the Tuesday.

3 MR. DOMM: Which would be the 12th.

4 MR. DOWNS: Which would be the 12th, and I would  
5 go over everything with him. We would look at his grades.  
6 We had one load that was kind of in dispute for a lot of  
7 corn in it. I wanted to see that sample. That was the  
8 reason why I had met with him on that Tuesday.

9 MR. DOMM: And I think you can concur that there  
10 was a lot of corn in those beans. I saw the sample  
11 myself.

12 MR. DOWNS: Just that one load and we took care of  
13 that. That's off the deal.

14 MR. DOMM: Because there would be the actual  
15 trucking company was the one that told us there was a lot  
16 of corn in it so...

17 MR. DOWNS: Right. And I had sent a sample along  
18 with that trucker.

19 CHAIRMAN BURG: Did you make an adjustment for the  
20 corn, or how did you handle that one?

21 MR. DOMM: As far as on soybeans, foreign  
22 material, FM dockage is a quantity discount, not a  
23 monetary discount. So on that load I would presume  
24 there's one point -- seven point seven point three -- do  
25 you remember what the FM was on that load with the corn in

1 it?

2 MR. DOWNS: It was six percent.

3 MR. DOMM: Six percent. It was the very first  
4 load. It was the very first load on the assembly sheet.  
5 I don't know if you gentleman have that assembly sheet in  
6 front of you, but there was 46 bushels of dockage taken on  
7 that load.

8 MR. DOWNS: Yes, that was all taken care of.

9 MR. DOMM: So that's a bushel discount and not  
10 monetary discount.

11 CHAIRMAN BURG: I understand. What I was trying  
12 to find out if that was any adjustment in the total  
13 bushels.

14 MR. DOMM: No, it was an adjustment of the total  
15 bushels.

16 MR. DOWNS: The final bushels we got is with those  
17 bushels adjusted out of it.

18 MR. DOMM: Right, because your total gross bushels  
19 that were delivered to us were --

20 COMMISSIONER NELSON: It's my understanding that  
21 Chris already took care of this problem.

22 MR. DOWNS: Yeah, so that's -- I did.

23 CHAIRMAN BURG: But it is an issue to me if that  
24 was part of the 5,340 that was short and --

25 MR. DOWNS: Correct.

1 MR. DOMM: Correct, it was because if it wouldn't  
2 have been all the corn in the beans.

3 CHAIRMAN BURG: There would have been 50 bushels  
4 more.

5 MR. DOMM: Well, yes and no. I mean the corn was  
6 in the beans, but if the corn wasn't in the beans, would  
7 you have found more beans in the elevator? No.

8 CHAIRMAN BURG: No, but that would have been a  
9 factor when Chris measured the bins.

10 MR. DOMM: Correct.

11 CHAIRMAN BURG: That's the only point I'm getting  
12 at.

13 MR. DOMM: The total bushels or the gross bushels  
14 that were delivered here were 15,793 bushel. And we paid  
15 on 15,659.97 bushel. So you roughly had 140 -- hundred  
16 what, 37 bushels dockage.

17 MR. DOWNS: Yeah.

18 MR. DOMM: 133 bushel of dockage, I guess.

19 CHAIRMAN BURG: Okay. Anything else you want to  
20 add?

21 MR. DOMM: No. I think the only thing I can add  
22 is if somebody did tell Brad on the 6th that they were  
23 done, we want our contract canceled, if those were the  
24 explicit instructions, Brad would have canceled it at that  
25 time. If they said we don't have any beans left, I guess

1 were we supposed to take it upon ourselves to cancel the  
2 contract?

3 CHAIRMAN BURG: That's probably where the question  
4 comes.

5 MR. DOMM: You know, and what are we talking?  
6 Going back on my bid sheet, if the dates in question was  
7 the 12th, which I think everybody concurs is when Brad and  
8 Chris met, as compared to the 6th when apparently a call  
9 was made to us that we should be canceling the contract,  
10 the difference in July soybean futures was 12 cents a  
11 bushel from \$4.00. And, no, these are the closings. From  
12 \$4.62 on the 6th of June to \$4.74 on the 12th of June.

13 CHAIRMAN BURG: Right.

14 MR. DOMM: Now, I guess I would have to dig those  
15 out. We could go through and try to, you know, with the  
16 amount of grain that we buy and the amount of futures that  
17 we sell, I think it would be virtually impossible to go  
18 through our future statements and look for an exact 5,000  
19 bushel transaction. I don't think you're going to see  
20 that on our report. I would have to ask Brad when he  
21 actually cleared the position. I don't know that  
22 personally, but the futures between the 6th and 12th was  
23 12 cents a bushel. 12 cents times the 5,300 is going to  
24 be about a third of that, \$1,500.

25 CHAIRMAN BURG: That's correct. So with that I'm

1 going to ask Bob Knadle to give us the recommendation he  
2 gave to us before you came on the line and then we can  
3 talk from there again.

4 MR. KNADLE: This is Bob Knadle again. I'll just  
5 go through any recommendation I did previously.

6 Chris Downs notified Dakota Valley Grain June 6th  
7 that there are no more soybeans in Canistota. The closing  
8 prices per the company's letter, dated June 14th, 2001,  
9 for June 7th and 8th were \$4.61 and a half cents. The  
10 company could have priced the soybeans during this time  
11 period. The difference between the bid price of \$4.44  
12 cents minus the 32 cents equals \$4.12, which was the bid.  
13 And the closing price on June 7th or 8th of \$4.61 and a  
14 half cents minus the 32 cents, or \$4.29 and a half cents  
15 is 17 and a half cents.

16 MR. DOMM: Okay. Now, we've got a problem right  
17 there. Because you really can't -- you've got to look at  
18 futures, you don't look at the flat price. So when you  
19 look, you got to look at the 4.61 and a half. On the 23rd  
20 you were looking at what Bob, 4.46?

21 MR. KNADLE: I don't think I said 4.46. I was  
22 just looking on the 7th or 8th of June, which the closing  
23 price per your letter was \$4.61 and a half cents.

24 MR. DOMM: Futures closed.

25 MR. KNADLE: Closing price.

1 MR. DOMM: Yes, correct. What are you saying less  
2 32 as far as that would be our flat price that would be  
3 the basis level?

4 MR. KNADLE: Right. So you got a difference of 17  
5 and a half cents. So I take the 17 and a half cents times  
6 the 5,189 bushels, which is a difference between the  
7 estimated bushels of 21,000, the actual bushels of 15,811  
8 equals \$908.08.

9 Staff would recommend that the company be allowed  
10 an adjustment of \$908.08 due to the miscalculation of the  
11 quantity of soybeans. At the present time the company has  
12 not paid the \$1,500 which is in dispute. Therefore, it is  
13 staff's position that the company has an amount due of  
14 \$591.92, which is 1,500 minus the \$908.08 in regard to the  
15 disputed amount of \$1,500.

16 COMMISSIONER NELSON: Well, that assumes, Bob, 100  
17 percent accuracy in measurement; right?

18 MR. KNADLE: That assumes the 21,000 bushel that  
19 we put out as our estimate.

20 COMMISSIONER NELSON: Right. And I don't think --  
21 most people assume it's rarely 100 percent right. I don't  
22 know if the industry five percent more or less is the  
23 standard. I don't know what the standard in the grain  
24 industry is, but according to the people that I've talked  
25 to from several elevators, those people at least felt it

1 was anywhere from three to five percent. So I think that  
2 it would be fair to --

3 MR. DOMM: In regulation of the CCC, we've got to  
4 go through CCC audits once a year. They look at about a  
5 one percent.

6 COMMISSIONER NELSON: Are you from the elevator?

7 MR. DOMM: Yes, I am.

8 COMMISSIONER NELSON: So you're saying that is one  
9 percent?

10 MR. DOMM: I'm saying five percent discrepancy in  
11 a measurement, that's a pretty sizeable amount.

12 CHAIRMAN BURG: Do you have a response to his  
13 recommendation?

14 MR. DOMM: Well, I guess if this is the same thing  
15 as, you know -- our business is done 100 percent over the  
16 telephone, and I can't really -- I can't really answer  
17 your questions until I talk to Brad Kohls because I don't  
18 know what the conversation was between Brad and Canistota.  
19 Apparently on the 6th the conversations was had was that  
20 there were no more beans. We were told to cancel the  
21 contract.

22 COMMISSIONER NELSON: Do we have documentation,  
23 Chris?

24 MR. DOMM: If we were told to cancel the contract  
25 on the 6th of June, I agree 100 percent with what you're

1 saying, Bob.

2 COMMISSIONER NELSON: I'm just saying to Chris,  
3 did we have documentation for the date that you said, the  
4 6th? Can we document that we talked to these -- gave  
5 these people this on the 6th?

6 MR. DOWNS: Are you talking to me? I got cut off  
7 on you.

8 COMMISSIONER NELSON: Chris, can we document we  
9 had the conversation and you told these people on the 6th  
10 they were going to be short of beans?

11 MR. DOWNS: No documentation, no. I guess when I  
12 told them -- and I don't remember exactly how the whole  
13 conversation went. But I guess, I mean I thought it would  
14 be common sense, but if you say you're done with your  
15 beans and we know that there's no more beans at our  
16 facility and we know we can't get any more beans at all,  
17 that you would take it upon yourself to cancel that  
18 contract. I just assume.

19 COMMISSIONER NELSON: Were there other people? Is  
20 there any way we can prove that they knew on June 6th?

21 MR. DOWNS: Lloyd at Canistota, he was standing  
22 right there, I do believe, when I told him.

23 COMMISSIONER NELSON: So we have witnesses that  
24 say this conversation happened so we could document the  
25 6th was the right date?

1 MR. DOWNS: Yeah. I suppose, yeah.

2 COMMISSIONER NELSON: Thank you.

3 CHAIRMAN BURG: Chris, did you know that they  
4 contracted these?

5 MR. DOWNS: I did not know what they did with  
6 these.

7 CHAIRMAN BURG: That would be the only thing I  
8 would say, Steve, is we would have no knowledge of whether  
9 you contracted them or you planned to just use them for  
10 feed or sell them. That part of it, yeah.

11 MR. DOMM: As far as Dakota Valley?

12 CHAIRMAN BURG: Yeah. I mean that would not be --

13 MR. DOMM: What are you going to do with soybeans?

14 CHAIRMAN BURG: I don't know. That's not part  
15 of --

16 MR. DOMM: Soybeans you can't feed. You either  
17 process them or you sell them.

18 CHAIRMAN BURG: But I mean that would not be part  
19 of our knowing how you handled it after you got the beans.

20 MR. DOMM: We can produce a purchase contract. Do  
21 we got a signed purchase contract on these? I'm going to  
22 have my auditor run to see if he can find a signed  
23 purchase contract on these because we print them. When  
24 we buy grain, we immediately entered into our computer  
25 system so our hedge position is always up to date. Every

1 night the contracts that were made we print out purchase  
2 contracts for every purchase, which I'm sure the PUC wants  
3 us to do and those get mailed out. He's looking to see if  
4 the contract was ever signed and returned. \$1,500 is  
5 \$1,500. It's just that's the way the grain industry  
6 works. If you're short on your contract, difference  
7 between, you know, when you sold it and when you wanted to  
8 get out of the contract, difference in the futures,  
9 difference in the basis level, you come up with a price  
10 for cents per bushel. You take it times the bushels that  
11 weren't delivered and you -- I mean that's standard  
12 protocol in the grain industry.

13 CHAIRMAN BURG: Yeah, I understand that.

14 MR. DOMM: We've got a signed -- or it isn't  
15 signed. The purchase contract was sent to South Dakota  
16 Public Utilities Commission Transportation/Warehouse  
17 Division, Pierre, South Dakota. And it is dated the 23rd  
18 of May, contract number 03997.

19 CHAIRMAN BURG: When you talk about purchase  
20 contract, you're talking about for futures position?

21 MR. DOMM: No. I'm talking for a purchase  
22 contract for 21,000 bushels of U.S. number one yellow  
23 soybeans at 13 percent moisture.

24 CHAIRMAN BURG: I understand that, picked up at  
25 Canistota. I understand that. But what I was saying is

1 it would not be part of our knowledge as to the fact that  
2 you hedged those.

3 MR. DOMM: No.

4 CHAIRMAN BURG: You know, or that what you did  
5 with them at that point. We understand that 25 percent  
6 discrepancy is a lot and you took some action based on  
7 that figure and it was there. But as far as us knowing  
8 what action you took on that grain, because if you would  
9 have just put it in your own bins for whatever purpose,  
10 then there wouldn't have been a loss on the shortage  
11 because you didn't have to pay for more bushels than you  
12 got. It's only on the position you took that the loss was  
13 on; right?

14 MR. DOMM: The position being hedging of the  
15 grain, correct.

16 CHAIRMAN BURG: Right, right.

17 MR. DOMM: When I hear position I think  
18 speculation. Hedging of the grain is not speculation.  
19 Hedging of the grain is preventing speculation.

20 CHAIRMAN BURG: But I mean that's not part of what  
21 we would have known about.

22 MR. DOMM: Like I said, I could dig back and try  
23 to find -- a 20,000 bushel is a lot of soybeans. I would  
24 be willing to bet that on a 23rd of May I could pull up  
25 our futures statement and show that we sold for July bean

1 contracts on the 23rd of May. Now, do we preserve each  
2 futures contract to a purchase contract? No, we don't.  
3 No, we don't. It's impossible because we may buy -- in  
4 the matter of five minutes we may buy 100,000 bushels of  
5 grain, and then we call the hedge desk and sell 100,000  
6 bushels of corn. We don't sell, you know, if we bought  
7 ten, 10,000 bushel lots. We don't sell ten, 10,000  
8 bushels futures. We sell \$100,000 bushels of futures. So  
9 are we going to be able to find if we hedged it? No. Our  
10 grain department hedges grain. We do not take speculative  
11 positions. It's that simple. Now, if it's somebody -- I  
12 mean if somebody is doubting that we hedged or somebody  
13 doubting the loss we have, I guess I take offense to that.

14 COMMISSIONER NELSON: I don't think anybody's  
15 doubting that.

16 MR. DOMM: Because we hedge our grain.

17 COMMISSIONER NELSON: The issue is how much money  
18 you think you should be entitled to.

19 CHAIRMAN BURG: Does anybody have any other  
20 comments or questions dealing with the issue at all? I  
21 think we have the issues in front of us.

22 MR. DOMM: What was the recommendation, Bob, as  
23 far as dollar amount that you're recommending Dakota  
24 valley grain get paid? I knew you threw around a bunch of  
25 numbers.

1 MR. KNADLE: You wouldn't get paid. You haven't  
2 paid for the \$1,500 in dispute at this point in time. I  
3 would recommend that you owe us \$591.92.

4 MR. DOMM: 591.92.

5 MR. KNADLE: Right. In other words, there was an  
6 adjustment of \$908.08 based on the June 6th or June 7th or  
7 8th period that I used versus the June 15th, I believe,  
8 what Brad used.

9 MR. DOMM: But who has the invoice for the \$1,500?  
10 Is that an actual invoice?

11 MR. KNADLE: That was off the assembly sheet that  
12 you got.

13 MR. DOMM: That's the question. I've been having  
14 my staff look for an actual invoice and haven't found one.  
15 Now, yes, there is discounts.

16 MR. KNADLE: If you look at the last page of your  
17 assembly sheet, you got in dispute \$1,500, which means you  
18 haven't paid that portion yet. And that's the issue  
19 before the Commission today.

20 MR. DOMM: In dispute 1,500, there we go. We've  
21 paid you \$40,262; correct?

22 MR. KNADLE: Plus you also paid us \$19,993.62.

23 MR. DOMM: Okay. That's where I was confused when  
24 you said invoice. It wasn't invoiced, it was -- it just  
25 wasn't paid to you off your assembly sheet.

1 MR. KNADLE: That's correct.

2 MR. DOMM: So what you're saying is you want  
3 \$591.92 back out of that \$1,500.

4 MR. KNADLE: That would be my recommendation, and  
5 the Commission will decide, you know, the issue at some  
6 point in time.

7 MR. DOMM: I guess I stand firm by what we did.  
8 If the Commission decides that, the Commission decides it.  
9 We will send the money back, but I think if you research  
10 it and talk to anybody in the grain industry, this is  
11 pretty much protocol.

12 CHAIRMAN BURG: Okay. Anybody else?

13 MR. LAUCK: This is Richard Lauck. Did the  
14 Commission know that he was going to hedge the grain when  
15 he bought it?

16 COMMISSIONER NELSON: We already said we didn't.

17 CHAIRMAN BURG: I'll let the elevator staff, do  
18 you have any comment on that at all?

19 MR. KNADLE: No comment.

20 CHAIRMAN BURG: There's no way we would know what  
21 they planned to do with it, to my knowledge. Anything  
22 else?

23 MR. LAUCK: I'm sure they would have more proof  
24 there, you know, if he made a purchase with you at a  
25 certain time in the day. He evidently sold on the board

1 at that time of the day, too, then within a matter of  
2 minutes.

3 CHAIRMAN BURG: Well, I mean to me what the real  
4 question comes down to is we have no control over what  
5 they did with that grain once they purchased it and once  
6 it was delivered. That's out of our realm of working with  
7 it at all.

8 Now, do we feel some obligation for some  
9 adjustment made due to bad estimation. That's the  
10 question that's before us.

11 MR. DOMM: I guess the other thing is I think  
12 people are getting hung up on this hedging technique that  
13 we use. What difference would it have been? It would  
14 have been the same difference if we would have bought that  
15 grain and used that grain against the sale five, six days  
16 later. Well, all of a sudden we're short with our  
17 purchaser, the person that bought that grain from us, if  
18 we just -- what would happen here if we would have bought  
19 that 21,000 bushels out of Canistota and instead of  
20 hauling it down to Marion, we would have just diverted the  
21 trucks to Volga?

22 CHAIRMAN BURG: But you would have only had to pay  
23 for the amount of bushels you got. That's all you did.

24 MR. DOMM: Let's just follow this. So we in turn  
25 sell Volga 2,100 bushels and say we don't have any beans

1 at our elevator. We only owe Volga 15,000 bushels of  
2 beans.

3 COMMISSIONER NELSON: But Volga would have only  
4 paid for 15,000 bushels.

5 MR. DOMM: But Volga contracted 21,000 thousand  
6 for me. Do you think Volga is going to cancel those  
7 bushels without me paying them something?

8 CHAIRMAN BURG: But the contracting part was not,  
9 in my opinion, part of the estimates we put out or the  
10 sales or anything. The contracting is something you or  
11 somebody subject --

12 MR. DOMM: They called us and told us  
13 purchasing -- somebody must have told us we were bidding  
14 on 21,000 bushels of beans.

15 CHAIRMAN BURG: I would have to go back and look  
16 at the contract to see whether it was an estimate or what.

17 COMMISSIONER NELSON: It did say estimated.

18 CHAIRMAN BURG: That's where it comes in, what  
19 does estimated mean?

20 MR. DOMM: And then if this is -- if -- you know,  
21 we can get it settled very easily, but I would recommend  
22 if this ever happens in the future, some more fine print  
23 gets put on what the PUC puts out.

24 CHAIRMAN BURG: I absolutely agree with you,  
25 that's a lesson we should learn from this.

1           MR. DOMM: Exactly, because this is in the grain  
2 industry protocol, is if you're long, you spot it out. If  
3 you're short, you owe me money.

4           CHAIRMAN BURG: And the other point is what we're  
5 dealing with something like this, which isn't our everyday  
6 business, the buildings are bad, the quality of the grain  
7 is not known until it's loaded out. Because I don't know  
8 what we would have done if we had got to Bob and there  
9 would have been a bunch of spoilage. And the weights, I  
10 mean, you're going make a little bit on the low moisture  
11 because you can blend it to get it the right.

12          MR. DOMM: Actually, we lose money on the low  
13 moisture because every time you move that grain it breaks  
14 up more.

15          CHAIRMAN BURG: Okay. We can get into a lot of  
16 intricacies. I suppose we could make that contract ten  
17 pages long. But, I mean, it's -- you know, those are the  
18 kind of things we both sides need to be dealing with.  
19 We're not in the grain business. We were in the disposal  
20 business in this case and if giving the conditions that we  
21 run into whenever we have to dispose.

22          MR. DOMM: Brad came in and asked what we should  
23 do, and I asked what do we do when a farmer doesn't  
24 deliver the grain? This is our standard operating  
25 procedure. I mean it doesn't matter who we're buying it

1 from. It's a purchase contract and that's what we did.  
2 Now, if the PUC doesn't agree with that, well, that's, you  
3 know, we'll just have to live with it. But I sure hope  
4 nobody thinks we're trying to get something that isn't,  
5 that we are not. Not that we're trying to pull the wool  
6 over somebody's eyes because that's not what we're trying  
7 to do.

8 CHAIRMAN BURG: I don't think so. I think there's  
9 disagreement if in what would have been a prudent  
10 procedure at one point, which is nobody's fault. I think  
11 we'll close it to the testimony.

12 Any recommendations, Rolayne, I mean as far as I'm  
13 talking about procedure, not decision?

14 MS. WIEST: Oh, the only thing I would add is that  
15 if the Commission does decide to adjust that price, I  
16 think that staff is going to need to talk to the judge to  
17 see if that needs to be approved by the judge since we are  
18 just acting as a receiver in this case. Because I know  
19 the original stated that the judge would approve -- needed  
20 to approve the bid price. So I think any adjustment after  
21 the fact is going to have to at least we have to run it by  
22 the judge as to whether he wants to approve this. If you  
23 decide to make an adjustment and it's up to you. You can  
24 make a decision now or take it under advisement now.  
25 That's certainly up to you guys.

1           CHAIRMAN BURG: Will anybody be harmed if we can  
2 analyze a little more and make the same decision at that  
3 hearing?

4           MS. WIEST: I don't think there would be any harm  
5 that I know of that if the Commission would wait until the  
6 July 6th meeting to make a final decision on this.

7           CHAIRMAN BURG: Okay. I'm going to recommend we  
8 make the decision on July 6th because I really do want to  
9 consider the information we've got today a little bit more  
10 than what I can right now.

11          MS. WIEST: So I think that's all we have for  
12 today.

13          CHAIRMAN BURG: Thank you.

14          (The hearing concluded at 2:42 p.m.)

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1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
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 2 COUNTY OF STANLEY ) SIXTH JUDICIAL CIRCUIT

3  
 4 I, Lori J. Grode, Registered Merit Reporter and  
 Registered Professional Reporter and Notary Public in and  
 for the State of South Dakota:  
 5

6 DO HEREBY CERTIFY that the above hearing pages 1  
 through 54, inclusive, was recorded stenographically by me  
 and reduced to typewriting.  
 7

8 I FURTHER CERTIFY that the foregoing transcript of  
 the said hearing is a true and correct transcript of the  
 stenographic notes at the time and place specified  
 hereinbefore.  
 9

10 I FURTHER CERTIFY that I am not a relative or  
 employee or attorney or counsel of any of the parties, nor  
 11 a relative or employee of such attorney or counsel, or  
 financially interested directly or indirectly in this  
 12 action.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
 and seal of office at Ft. Pierre, South Dakota, this 10th  
 14 day of July, 2001.

15   
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 Lori J. Grode, RMR/RPR  
 Notary Public

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