BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF WHEETCO, INC. FOR A GRAIN DEALER LICENSE AND SETTING THE AMOUNT OF APPLICANT'S BOND	))))	**FINDINGS OF FACT AND CONCLUSIONS OF LAW** **GD00-001**

On June 30, 2000, the Public Utilities Commission (Commission) received a Grain Dealer Application from Wheetco, Inc. (Wheetco), Groton, South Dakota. Wheetco requested a grain dealer's license. In a letter dated June 13, 2000, Wheetco requested a hearing.

A hearing was held on the application, as scheduled, at 10:00 A.M., July 7, 2000, in Room 412 of the State Capitol, Pierre, South Dakota. The issue at the hearing was whether the Commission shall grant or deny Wheetco a grain dealer's license and, if granted, determine the amount of Wheetco's bond and any other requirements or restrictions.

At the close of the hearing, the Commission took the matter under advisement. At its July 10, 2000, meeting, the Commission voted to approve the issuance of a grain dealer's license to Wheetco with conditions (Commissioner Nelson, dissenting).

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Wheetco is a specialty crop handling facility. Tr. at 8. Wheetco buys crops and then adds value to the crops by processing, cleaning, and bagging them. Tr. at 8-9. Wheetco sells the crops to markets throughout the United States and other countries. Tr. at 8, 11. Larry Wheeting is president of Wheetco. Tr. at 22.

2. By letter dated May 30, 2000, Wheetco was informed by Bob Knadle, Director of Transportation/Warehouse for the Commission, that Wheetco's financial statements did not meet the minimum requirements for the issuance of a grain dealer's license. Exhibit 2.

3. In order to improve its financial situation, Wheetco hired the consulting firm of Cody, Cruea and Associates as financial advisors. Tr. at 14. Wheetco and its consultants were working on obtaining refinancing and had developed a financial plan. Tr. at 16.

4. Wheetco filed its application for a grain dealer's license on June 30, 2000. Tr. at 17. The application states that "[a]pplications must be filed no later than June 15th in order for licenses to be processed and in effect on July 1st." Exhibit 1. Mr. Wheeting stated that the application was not filed until June 30, 2000, because Wheetco was working on improving its financial picture in order to meet the minimum requirements for a license. Tr. at 17-18.

5. Attached to Wheetco's application was a $75,000.00 bond. Exhibit 1. The bond was secured by a $75,000.00 certificate of deposit. Tr. at 18.

6. Wheetco submitted additional financial statements to Mr. Knadle, including one ending April 30, 2000, which still did not meet the minimum criteria contained in the Commission's rules. Tr. at 19. At the hearing, Mr. Wheeting submitted a new financial statement ending May 31, 2000, which represented Wheetco's present financial status. Tr. at 20; Exhibit 5. It was Mr. Wheeting's position that this financial statement met the minimum criteria. Tr. at 21.

7. The newest financial statement showed that accounts receivable from Northern Prairie Seeds had been transferred from Northern Prairie Seeds to Wheetco under an Exchange Agreement. Exhibits 5, 7, 13. Larry Wheeting is a partner with his son, John Wheeting, in Northern Prairie Seeds. Tr. at 22. The newest financial statement also reflected the sale of shares of stock in Wheetco that were sold to Northern Prairie Seeds and four others. Exhibit 14. The shares of stock were converted from Wheetco's accounts payable. Tr. at 32. Wheetco issued approximately $275,000.00 worth of additional stock. Tr. at 116.

8. Wheetco has experienced cash flow problems but Mr. Wheeting asserted that Wheetco had never had a farmer customer that was not paid. Tr. at 12. Mr. Wheeting testified that a number of people that Wheetco owed money to were willing to wait for their money. Tr. at 28-31.

9. Ronald Cody, one of Wheetco's consultants, stated that his firm was working on obtaining additional financing with a number of lending institutions, including the Small Business Administration and a lending institution in South Dakota. Tr. at 40-41. The consultants were also working on diversifying Wheetco's business and improving management of the operation. Tr. at 42-43. Mr. Cody thought it would take six to eight weeks to complete any refinancing. Tr. at 46.

10. Wheetco does not currently have a line of credit. Tr. at 48. Mr. Cody stated that without additional capital, Mr. Wheeting would have to consider other avenues, including closing the doors and declaring bankruptcy. Tr. at 49.

11. Wheetco's balance sheet showed that the accounts receivable and inventory provide substantial coverage for the accounts payable. Exhibit 5; Tr. at 85-86. Sue Meidinger, Wheetco's accountant, stated that the past few months represented the worst part of the season for Wheetco and that during the next few months Wheetco's financial situation will improve. Tr. at 85-86. She stated that Wheetco has been losing money for the last several years, ranging from $40,000.00 to $90,000.00 per year. Tr. at 96. However, Ms. Meidinger stated that one of the reasons for these losses is that Wheetco has used cash to fund the company's growth instead of long term debt. Id. This has prevented the company from taking advantage of lower cost business options. Tr. at 96-97. She stated that with adequate financing Wheetco could improve its financial condition. Id.

12. Mr. Wheeting stated that it would be disastrous for his company to have to operate without a grain dealer's license until such time as he is able to obtain refinancing. Tr. at 107-108. He stated that people are starting to stock shelves for the bird food business and Wheetco needed the ability to buy product to serve his customers. Id.

13. Mr. Knadle stated that Wheetco's grain dealer license expired on June 30, 2000. Tr. at 112. He stated that if the $75,000.00 certificate of deposit was considered an asset, then Wheetco would meet the minimum financial criteria. Tr. at 113. He stated that he did not believe the certificate of deposit should be considered as a current asset because it is 100% collateral for the bond. Id. Mr. Knadle received the newest financial statement on July 3, 2000. Tr. at 114. If the $75,000.00 certificate of deposit was included as an asset, Wheetco would have a positive working capital of approximately $19,000.00 and a positive net worth of approximately $23,000.00. Tr. at 115.

14. Mr. Knadle received inquiries from producers concerning payments by Wheetco. Tr. at 117. The producers were eventually paid. Tr. at 118.

15. Mr. Knadle recommended denial of a grain dealer's license until such time as Wheetco obtains additional financing. Tr. at 118.

16. The Commission finds that the $75,000.00 certificate of deposit is appropriately classified as a current asset. The $75,000.00 certificate of deposit is a near-cash asset and its status as bond collateral is subject to annual renewal. It is therefore appropriately considered a current asset held by Wheetco. Tr. at 95. Further, the Commission notes that although the $75,000.00 is held as collateral for the grain dealer's bond, the purpose of the bond is to pay producers in the event the grain dealer is unable to make payment. By considering the $75,000.00 certificate of deposit to be an asset, Wheetco's financial statement meets the minimum requirements of ARSD 20:10:12:15.

17. Based on the evidence presented at the hearing, the Commission finds that it appears that Wheetco needs additional capital in order to keep its operations financially viable.

18. The Commission finds that it will approve the issuance of a grain dealer's license with the following conditions:

a. Wheetco shall make no new purchases of grain unless the grain is paid for in cash at the time of delivery. This restriction also applies to voluntary credit sales;

b. Wheetco shall submit weekly reports to the Commission of any new grain purchases, including type of grain, date of purchase, and producer's name;

c. Wheetco shall file a copy of its financial plan. This plan can be filed as confidential;

d. Wheetco shall submit weekly statements of its progress in meeting the goals of its financial plan;

e. Wheetco shall submit bi-weekly financial updates, with the first update due July 17, 2000;

f. If Wheetco receives additional financing, Wheetco shall submit written proof of the financing in the form of a letter from the lender; and

g. If no additional financing has been secured on or before August 22, 2000, Wheetco shall appear before the Commission again to determine whether Wheetco's grain dealer's license should be revoked or suspended.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-45, specifically 49-45-1, 49-45-1.1, 49-45-3, 49-45-6, 49-45-7, 49-45-8 and 49-45-9, and ARSD Chapter 20:10:12.

2. The Commission finds that Wheetco's financial statement meets the minimum requirements of ARSD 20:10:12:15. The Commission finds that Wheetco shall be granted a grain dealer's license, effective July 10, 2000, subject to the conditions listed in Finding of Fact 18.

It is therefore

ORDERED, that Wheetco is granted a grain dealer's license, effective July 10, 2000, subject to the conditions listed in Finding of Fact 18.

Dated at Pierre, South Dakota, this 21st day of July, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 7/24/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner, dissenting

LASKA SCHOENFELDER, Commissioner

DISSENT OF COMMISSIONER NELSON

We must apply financial criteria rules in all grain dealer license application approval processes. Before an application can be approved, it must meet minimum financial criteria specified by rule. It became clear during the July 7, 2000, hearing that if Wheetco Inc. (Wheetco) met the minimum criteria, it only did so after last minute efforts to turn creditors into stockholders and categorizing as a current asset $75,000 pledged as bond security. I understand these desperate actions to comply with the rules. I realize that a business and jobs are at stake. I also realize that our grain dealer jurisdiction and the laws which guide us exist for a purpose. The intent is to assure those selling grain of a reasonable expectation of full and timely payment. I don't believe Wheetco has provided the necessary assurance, and therefore I dissent from the majority opinion to approve licensing.

ARSD 20:10:11:15 lists the financial criteria for licensing. One of those is:

> **At a minimum, the balance sheet must show current assets equal to or greater than current liabilities.**

The crucial decision this commission had to make for Wheetco to be in compliance was that the $75,000 CD was appropriately classified as a current asset. It is uncontroverted that the $75,000 is fully encumbered as it backs the $75,000 bond. It is not available to pay any current debt. Since this commission requires the $75,000 bond as a licensing requirement, and since the bonding company requires the $75,000 be held to back the bond, considering the CD as a current asset clearly violates the spirit of the rule. The $75,000 does not provide liquidity for an ongoing concern. I realize that the appropriate accounting classification may be arguable. What does not appear arguable is the spirit of the rule and the bonding company's requirements. The $75,000 is reserved for the bonding company, not for grain sellers. It does not protect those who rely upon our enforcement of the rules. It should not be considered as an element of working capital.

The following facts also weighed heavily in my decision:

a. Wheetco admitted cash flow problems, which were clearly evidenced by:

1. Extremely large credit card debt;
2. Nonexistent cash balances; and
3. Bloated accounts payable which have been outstanding for at least ninety days.

b. Several complaints have been received by this commission regarding Wheetco's failure to timely pay debts.

c. The purpose of a positive working capital rule is to assure payment of debts. An appropriate bond provides further assurance. The insertion of the $75,000 CD into current assets is necessary if Wheetco is to meet the minimum working capital requirement rule.

The $75,000 CD is however, already pledged as bond security. In effect, the bond amount offers no security beyond the working capital.

d. Wheetco eliminated a large amount of payables when creditors agreed to convert the payables into stock. This form of payables reduction was also necessary for Wheetco to meet minimum financial requirements for licensing.

e. Wheetco has not operated profitably in recent years, and no evidence exists that any change is forthcoming.

f. Wheetco's gross profit margin at the current level of sales appears too small to support profitable ongoing operations, much less to reduce a large amount of past due payables.

g. Wheetco has a proposed financing package before at least one bank and other lenders. The apparent consensus is that Wheetco must receive additional financial backing if it is to continue in business. There is absolutely no assurance that its proposal or any subsequent proposal will be backed by lenders.

Wheetco admittedly needs additional financing. Unfortunately the evidence shows the bulk of Wheetco's financing has been borne by grain producers through Wheetco's accounts payable. As distasteful as it is to refuse a license, sometimes it must be done to avoid further harm. I believe this is one of those times.

Pam Nelson

Pam Nelson, Commissioner