

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

<b>IN THE MATTER OF THE GRAIN DEALER'S</b>	)	<b>ORDER DENYING REQUEST</b>
<b>AND PUBLIC WAREHOUSE LICENSES OF</b>	)	<b>FOR CONTRACT BUY OUT</b>
<b>FREEMAN FERTILIZER CO., INC. DBA</b>	)	<b>GD01-001</b>
<b>MCCOOK FEED &amp; FERTILIZER</b>	)	<b>(Civ. 01-023)</b>

On February 13, 2001, Jeff Mulder, on behalf of Freeman Fertilizer Co. Inc. d/b/a McCook Feed & Fertilizer (McCook), entered into a stipulation with the Public Utilities Commission (Commission) surrendering his licenses as a grain dealer and grain warehouseman and permitted the Commission to take immediate possession of his facilities. On March 8, 2001, the Commission filed with the First Judicial Circuit a Petition to Appoint South Dakota Public Utilities Commission as a receiver. On March 27, 2001, the Commission was appointed receiver by the Honorable Judge Boyd L. McMurchie of the First Judicial Circuit of South Dakota.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 21-21, 49-42, 49-43, and 49-45, specifically 49-42-15.1, 49-43-5.6, 49-43-5.8, 49-45-13, 49-45-16, and 49-45-18. Pursuant to the order of the Court, the Commission shall determine claims against the cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, being the surety, and all grain inventory currently located at the Canistota facility. A hearing was held as scheduled on the claims as described above on May 3, 2001, beginning at 10:00 a.m., at the American Legion Hall, Jenard D. Post, 162 Main Street, Canistota, South Dakota.

By order dated May 8, 2001, the Court authorized the Commission to liquidate the grain inventory. The Commission sent and published notice soliciting bids for the sale of the grain and requested those interested in bidding on the grain to contact the Commission. The Commission accepted the following bids:

FreMar Farmers Cooperative, Marion, South Dakota: approximately 21,000 bushels of soybeans at \$4.12 net per bushel, subject to the discount tables; and

Hanson County Grain Store, Alexandria, South Dakota: approximately 750 bushels of oats at \$1.31 per bushel; approximately 750 bushels of mixed corn and soybeans at \$2.25 per bushel; and approximately 48,000 bushels of corn at \$1.51 per bushel, subject to the discount tables.

On June 14, 2001, the Commission received a letter from FreMar Farmers Cooperative (FreMar) stating that the actual bushels of soybeans received were 15,811 and requested that \$1500.00 be deducted from the amount FreMar owes for the 15,811

bushels of soybeans. At the Commission's June 26, 2001, meeting, FreMar further explained its request. FreMar stated that when FreMar purchased the soybeans at \$4.12 net per bushel, it then hedged its commodity position on 20,000 of the bushels it anticipated receiving. When there were only 15,811 bushels instead of 21,000 bushels, FreMar was short 5,300 bushels of futures contracts that FreMar had to buy back. FreMar stated it was advised that there were only 15,811 bushels on June 12, 2001. On that date the beans were selling at \$4.41 net. FreMar stated that it then paid approximately \$1500.00 to buy back the futures contract. FreMar requested that the buy back amount of \$1500.00 be deducted from the amount FreMar owed for the soybeans. Commission Staff recommended that FreMar be allowed an adjustment of \$908.08. Staff stated that FreMar was notified on June 6, 2001, that the soybean bushels were less than the estimated bushels of 21,000 and the closing price for June 7 and June 8 was \$4.615, less \$.32, leaving a net of \$4.295. Thus, the difference between the bid price of \$4.12 net and \$4.295 net was 17.5 cents. Staff then multiplied 17.5 cents times 5,189 bushels for a total of \$908.08. The Commission took the matter under advisement.

At its July 6, 2001, meeting, the Commission voted to deny FreMar's request to adjust the amount FreMar owed for the soybeans. The Commission noted that in its request for bids sent to potential bidders, the number of bushels were listed as approximate amounts. The Commission had no control over FreMar's course of action for disposal or marketing of grain. It is therefore

ORDERED, that FreMar's request that a buy back amount of \$1500.00 be deducted from the amount FreMar owes for the 15,811 bushels of soybeans is denied and FreMar shall pay the Commission the remainder of the purchase price for the soybeans.

Dated at Pierre, South Dakota, this 16<sup>th</sup> day of July, 2001.

<b>CERTIFICATE OF SERVICE</b>	
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:	<u>Alaine Kalbo</u>
Date:	<u>7/17/01</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner