## BEFORE 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

## ORDER REVOKING LICENSE AND FOR COMMENCEMENT OF RECEIVERSHIP ACTION

## GW12-001

On February 16, 2012, the staff of the Grain and Warehouse Division (Staff) of the Public Utilities Commission (Commission) filed a Petition requesting the Commission to immediately suspend Anderson Seed Co., Inc.'s (Anderson) grain buyer license pursuant to SDCL 49-45-16. Staff alleged that Anderson was delinguent in making payments on scale tickets issued by Anderson to numerous grain producers in this state, with the amount of such arrearages believed by Staff to total as much as \$2.6 million and that Anderson's latest balance sheet showed Anderson to be in a serious negative equity and working capital position indicating that such delinguencies constituted acts of insolvency. On February 17, 2012, the Commission issued an Order Suspending License suspending Anderson's grain buyer license and directing Staff to immediately initiate an audit of Anderson and give notice to the surety on Anderson's grain buver bond pursuant to SDCL 49-45-1 8. On March 6, 2012, the Commission issued an agenda for its regular meeting to be held on March 13, 2012, on which this matter was placed for consideration of whether to revoke Anderson's grain buyer license and take any other action deemed necessary by the Commission. On March 8, 2012, the Commission gave notice by email of this proceeding to all legal counsel known to the Commission to represent persons who had not been paid for grain deliveries to Anderson, and on March 9, 2012, the Commission served notice by mail of this proceeding on all persons whom Staff's investigation indicated had sold grain to Anderson. On March 12, 2012, Staff filed a letter requesting that the Commission revoke Anderson's grain buyer license and recommending that the Commission seek a receivership appointment from the Circuit Court in Spink County for the purpose of overseeing the bond claim process pursuant to SDCL 49-45-16.1 and 49-45-19.

At its regular meeting on March 13, 2012, the Commission considered whether to revoke Anderson's grain buyer license and whether any additional actions should be taken. Commissioner Hansen recused himself from further participation in this matter due a potential appearance of conflict of interest. Finding that Anderson had not requested a hearing within fifteen days following suspension of its license, the Commission voted unanimously to revoke the license pursuant to SDCL 49-45-16. The Commission then considered whether any other action should be taken at this time. Staff recommended that the Commission initiate an action for receivership in Spink County pursuant to SDCL 49-45-16.1 to oversee the claims process against Anderson's grain buyer bond as contemplated by SDCL 49-45-19. Attorneys for grain sellers supported Staff's recommendation. The Commission voted unanimously to seek receivership in Spink County to administer the bond claims process.

The Commission also considered whether any additional actions should be taken. Staff recommended that the Commission not seek receivership over Anderson's grain, processed grain inventory, or other assets, arguing that the risks and costs of doing so would outweigh any benefits to grain sellers and other creditors. Attorneys for unpaid sellers of grain to Anderson recommended that the Commission seek a broader receivership, including a custodial receivership over Anderson's grain, processed grain inventory, and other assets, including recently transferred assets, in order to oversee the preservation of such assets and the integrity of the process for their liquidation and of the preservation of the proceeds thereof pending resolution of the claims of unpaid

grain sellers and others to such assets and proceeds. They further stated that such receivership need not necessarily be for the duration of the potentially lengthy litigation process, but rather until alternative arrangements were in place to provide for the security of the assets and proceeds pending final resolution of pending and future litigation. Finding that sufficient cause had been shown to warrant a custodial receivership over Anderson's assets, the Commission voted unanimously to commence an action for receivership in Spink County pursuant to SDCL 49-45-16.1 for possession and custody of Anderson's assets, its recently transferred assets, and the proceeds thereof pending determination by the Court as to the rights of sellers and other creditors to such assets and proceeds or until another structure or process is in place for the preservation of assets and proceeds pending the conclusion of the claims and litigation process against Anderson. It is therefore

ORDERED, that Anderson's grain buyer license is hereby revoked pursuant to SDCL 49-45-16; and it is further

ORDERED, that the Commission shall commence an action for receivership in Spink County pursuant to SDCL 49-45-16.1 as expeditiously as possible for the purpose of administrating the claims process against Anderson's grain buyer bond and bond proceeds distribution, and also, to the extent deemed appropriate by the Court, for the purpose of taking possession, as custodian in a fiduciary capacity, of Anderson's grain inventory, processed grain inventory, and other assets located in South Dakota, including recently transferred or assigned assets, and proceeds from the sale or liquidation of such assets, pending determination by the Court as to the rights of sellers and other creditors to such assets and proceeds or until another structure or process is in place for the preservation of such assets and proceeds pending the conclusion of the claims and litigation process against Anderson.

Dated at Pierre, South Dakota, this  $15^{4}$  day of March, 2012.

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:
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

CHRIS NELSON. Chairman

KRISTIE FIEGEN, Commissioner