

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

**IN THE MATTER OF ANDERSON)
SEED CO. INC.'S GRAIN BUYER)
BOND)
)**

**ORDER FOR AND NOTICE OF
HEARING**

GW12-002

On February 16, 2012, the staff of the Grain and Warehouse Division (Staff) of the South Dakota 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. The Petition and other documents pertaining to the license suspension and revocation proceeding were docketed as Docket GW12-001. On February 17, 2012, the Commission issued its Order Suspending License in Docket GW12-001. On March 13, 2012, the Commission issued an Order Revoking License and for Commencement of Receivership Action in Docket GW12-001. On April 4, 2012, the Commission issued an Order on Reconsideration in Docket GW12-001. On April 5, 2012, as a result of the Order on Reconsideration in Docket GW12-001, Staff filed a Petition for Receivership, a proposed Order, Notice of Hearing, and Certificate of Service with the Spink County Clerk of Court and opened Docket GW12-002 before the Commission. The documents filed with the Court were served on Anderson, Auto-Owners Insurance Company as surety on the Anderson grain buyer bond (Bond), and on all known Anderson patrons. On May 1, 2012, the Fifth Circuit Court heard the Commission's Petition and issued an Order Appointing South Dakota Public Utilities Commission as Receiver (Receivership Order) over the proceeds of the Bond (Proceeds). On May 17, 2012, the Commission received the Proceeds from the surety.

On June 6, 2012, Staff filed a proposal regarding Commission adjudication and distribution of the Proceeds. On June 28, 2012, the Commission issued an Order Approving Claims Adjudication Process specifying that notice of the claims process and Proof of Claim forms be served by certified mail on all known patrons of Anderson and by publication. On June 29, 2012, Staff served by certified mail Proof of Claim forms and an explanatory letter outlining the process and filing deadline of September 18, 2012, on all known patrons of Anderson. Notice of the claims process was also given by publication. Proofs of Claim were filed by twenty-eight Anderson patrons (Claimants). On October 19, 2012, Staff served letters on all Claimants setting forth Staff's position with respect to each Proof of Claim and Staff's instructions to those Claimants whose Proofs of Claims contained omissions or other technical deficiencies of the actions needed to correct such deficiencies. On November 14, 2012, Ray Martinmaas on behalf of Martinmaas Dairy Inc. (Martinmaas) filed a request for hearing on his claim, contesting Staff's determination and recommendation that Martinmaas's claim is based on a voluntary credit sale and is therefore barred from coverage pursuant to SDCL 49-45-9.

The Commission has jurisdiction over this matter pursuant to the Receivership Order and SDCL Chapters 1-26 and 49-45, specifically 49-45-1.1(5), 49-45-6, 49-45-9, 49-45-11, and 49-45-16.1 and ARSD Chapters 20:10:01 and 20:10:12.

A hearing shall be held commencing at 1:30 p.m., with marking of exhibits to begin at 1:15 p.m., on Tuesday, December 18, 2012, in Room 413, State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota. The hearing is open to the public. All persons testifying shall be subject to cross-examination.

The issues at the hearing are:

- (1) Was all or any portion of the grain delivered by Martinmaas to Anderson a voluntary credit sale as defined in SDCL 49-45-1.1(5) and therefore barred from benefitting from the Proceeds pursuant to SDCL 49-45-9?
- (2) If so, what portion was a voluntary credit sale?
- (3) If all or a portion of the grain delivered by Martinmaas to Anderson was not a voluntary credit sale, what is the dollar amount of the claim attributable to such cash sale or sales that should be approved for inclusion in the proportionate distribution of Proceeds to Claimants?

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights may be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the portion of the Final Decision in this matter dealing with the issues addressed in connection with the Martinmaas Claim will be based solely on the testimony and evidence, if any, received in evidence during the hearing or by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was received in evidence at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of this hearing, the Commission will determine the issues as set forth above. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held on the issues set forth above commencing at 1:30 p.m., with marking of exhibits to begin at 1:15 p.m., on Tuesday, December 18, 2012, in Room 413, State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 29th day of November, 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, electronically.	
By:	<u>Joy Deary</u>
Date:	<u>11/29/12</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Chris Nelson
CHRIS NELSON, Chairman

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

Gary Hanson
GARY HANSON, Commissioner