

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

IN THE MATTER OF THE FILING BY)	ORDER DENYING REQUEST
SOUTH DAKOTA GRAIN & FEED)	FOR WAIVER AND DIRECTING
ASSOCIATION FOR THE APPROVAL OF A)	RULEMAKING
WAIVER OF ARSD 20:10:12:13(9))	
)	GW13-002

On May 13, 2013, the South Dakota Public Utilities Commission (Commission) received a filing from the South Dakota Grain & Feed Association (SDGFA) requesting that a waiver of certain language in ARSD 20:10:12:13(9) be granted to remove the requirement that the seller of grain must sign a contract for a voluntary credit sale and that additional language be added to ARSD 20:10:12:13 to specify the actions that a grain buyer must take to render a voluntary credit sale agreement that is not signed by both the buyer and seller enforceable as a contract and compliant with the "in writing" requirement of SDCL 49-45-11.

On May 16, 2013, the Commission electronically transmitted notice of the request and the intervention deadline of May 31, 2013, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene were filed. The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-45 and ARSD Chapter 20:10:12, in particular ARSD 20:10:12:17.

At its regularly scheduled meeting on June 4, 2013, the Commission considered this matter. Representatives from SDGFA and grain industry producer organizations and individuals provided testimony on the request for waiver and other issues currently presented by the Court ruling on the Anderson Seed grain bond and the Commission's actions in response to decision. The Commission's Grain and Warehouse Division Staff (Staff) recommended approval of the request for waiver. After extensive questions and discussion with those participating, the Commission found that the requested waiver was not a sufficient action to remedy the situation presented in the wake of the Court's ruling in *In the Matter of the Anderson Seed Co., Inc. Grain Buyer Bond*, CIV 12-044, and that there was some question about whether ARSD 20:10:12:17 allows an industry-wide waiver and voted unanimously to deny the request for waiver and instead to direct Staff and Commission Counsel to open a rulemaking docket to consider the amendment of ARSD 20:10:12:13 as requested by SDGFA and also consider measures to address concerns raised by industry concerning the appropriate handling and pricing by buyers and Staff of transactions involving multiple deliveries of grain over time and any other issues that Staff or others believe should be addressed by rulemaking at this time.

It is therefore

ORDERED, that the request for an industry-wide waiver of language in ARSD 20:10:12:13(9) requiring the seller's signature on a voluntary credit sale is denied. It is further

ORDERED, that the Commission's Grain and Warehouse Division Staff and Commission Counsel shall open a rulemaking docket (i) to amend ARSD 20:10:12:13 to prescribe the actions that must be taken to render a voluntary credit sale agreement not signed by both the buyer and the seller enforceable as a contract and compliant with the "in writing" requirement of SDCL 49-45-11 and (ii) to consider measures to address concerns raised by

industry concerning the appropriate handling and pricing by buyers and Staff of transactions involving multiple deliveries of grain over time and any other issues that Staff or others believe should be addressed by rulemaking at this time.

Dated at Pierre, South Dakota, this 11th day of June, 2013.

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 Lashley</u>
Date: <u>6.11.13</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner