

MAR 03 2010

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE)	FINDINGS OF FACT,
ACQUISITION OF CONTROL OF)	CONCLUSIONS OF LAW,
COOPERATIVE MUTUAL)	RECOMMENDED ORDER AND
INSURANCE COMPANY)	ORDER
)	
)	CAUSE NO.: C-1817
)	

On February 8, 2010, Austin Mutual Insurance Company (“Applicant”) filed an application (“Form A”) seeking approval to acquire control of Cooperative Mutual Insurance Company (“Cooperative Mutual”), a Nebraska domestic insurer. The application was filed pursuant to the Insurance Holding Company System Act, *Neb. Rev. Stat.* §44-2120 and §44-2126 (Reissue 2004). The filing was subsequently supplemented on February 22, 2010. Applicant waived the notice requirements set forth in *Neb. Rev. Stat.* § 44-2120 *et. seq.*, including but not limited to the notice provisions of *Neb. Rev. Stat.* § 44-2127. A Notice of Public Hearing was issued February 23, 2010.

On March 1, 2010, a public hearing was held at the Nebraska Department of Insurance (“Department”). General Counsel Christine Neighbors presided over the matter. Tracy Gruhn, a licensed Notary Public, recorded the hearing. Janette Adair, Legal Counsel, and James Nixon, Chief Examiner, represented the Department. Applicant was present and represented by William Kutilek, Esq. Applicant presented testimony in favor of the acquisition through Peter J. Williams, Vice President and General Counsel of Applicant, and Doug Derscheid, Chairman of Cooperative Mutual. Exhibits were offered by Applicant and by the Department, and received into the record.

Applicant provided Cooperative Mutual with notice of the hearing. Cooperative Mutual waived the notice requirement as set forth in *Neb. Rev. Stat. §44-2127(2)* in an effort to expedite the review and hearing process. No testimony or documentary evidence was offered in opposition to the proposed acquisition.

On the basis of the filings, correspondence and information provided to the Department, the hearing officer recommends approval of the application and finds, concludes, and recommends as follows:

FINDINGS OF FACT

1. On February 8, 2010, the Department received a verified Form A from the Applicant for approval to acquire control of Cooperative Mutual through an Affiliation Agreement. The application and subsequent amendments were filed pursuant to the Insurance Holding Company System Act, *Neb. Rev. Stat. §44-2120, et seq.*, specifically §44-2126. The Affiliation Agreement will result in Applicant exercising control of Cooperative Mutual as control is defined in the Act.

2. Cooperative Mutual is a mutual property and casualty domestic insurer organized under and governed by the laws of the State of Nebraska. Cooperative Mutual obtained its Certificate of Authority to transact the business of insurance in this state on October 15, 1935.

3. Applicant is a Minnesota domiciled and organized mutual property and casualty insurer operating as a regional property and casualty insurer in thirty-three states throughout the country with premium writings that exceed \$90,000,000. Applicant intends to operate Cooperative Mutual as a stand-alone entity providing insurance

solutions to its agricultural cooperative membership. Therefore, the ultimate control rests with Applicant.

4. On January 14, 2010, the parties executed an Affiliation Agreement. The Affiliation Agreement provides for the transaction to close on or before March 1, 2010, following the approval of the Board of Directors of each company, the member policyholders of Cooperative Mutual, and the proper regulatory approval of each state where approval is necessary.

5. As consideration for the transaction, the Affiliation Agreement provides that Applicant will (1) gain voting control of the Board of Directors of Cooperative Mutual, (2) enter into a Cost Sharing and Management Agreement, (3) enter into a Quota Share Agreement, and (4) Cooperative Mutual will issue a Surplus Note in favor of Applicant in the amount of \$1 million to be repaid (subject to regulatory approval) at an interest rate of 5% annually over a twenty-year term. Applicant will fund the capital infusion into Cooperative Mutual through cash on hand.

6. Notwithstanding the transfer of control of its Board of Directors to Applicant and subject to the terms of the Cost Sharing and Management Agreement, revised Articles of Incorporation and revised By-Laws, the business operations of Cooperative Mutual will continue unchanged. Applicant has no current plans to (a) declare an extraordinary dividend; (2) to liquidate Cooperative Mutual; (3) to sell or merge it with any person or persons; or (4) to make any other material change in Cooperative Mutual's business operations other than as otherwise disclosed in the Affiliation agreement and related documents.

7. On February 16, 2010, the Minnesota Department of Commerce reviewed portions of the Form A filing and issued a letter stating that it has no objection to the affiliation of Applicant with Cooperative Mutual. In addition, on February 26, 2010, the policyholders of Cooperative Mutual voted unanimously to approve the Affiliation Agreement with Applicant.

8. Applicant has filed all the documents and information required by law and requested by the Department.

CONCLUSIONS OF LAW

1. The Department and Director have jurisdiction over the subject matter of this proceeding.

2. On the basis of the materials filed, correspondence received and evidence presented at the hearing, the Director concludes as follows:

a. After the acquisition, Cooperative Mutual will satisfy the requirements for a Certificate of Authority to conduct business of insurance in the State of Nebraska and write the lines of insurance for which it is presently licensed.

b. The effect of the acquisition will not substantially lessen the competition in insurance in the State of Nebraska nor tend to create a monopoly therein nor violate the laws of the State of Nebraska.

c. The financial condition of Applicant is such that it would not jeopardize the financial stability of Cooperative Mutual or prejudice the interest of the policyholders of Cooperative Mutual.

d. The Applicant has no plans or proposals to liquidate Cooperative Mutual, to sell the assets of Cooperative Mutual without the approval of the Department, to consolidate or merge Cooperative Mutual with any person or persons without approval of the Department, or to make any other material change in the business operations or corporate structures of management which would be unfair and unreasonable to policyholders of Cooperative Mutual and not in the public interest.

e. The competence, experience and integrity of those persons who would control the operation of Cooperative Mutual are such that it would be in the interest of the policyholders of Cooperative Mutual and the public to allow the acquisition.

f. Applicant is not subject to the provisions of *Neb. Rev. Stat. §44-6115* under the Demutualization Act; and


g. The acquisition is not likely to be hazardous or prejudicial to the public.

RECOMMENDED ORDER

Upon review of the testimony and evidence submitted, the hearing officer hereby recommends to the Director of Insurance that:

1. The application to acquire control of Cooperative Mutual through the Affiliation Agreement signed by Applicant and Cooperative Mutual which will result in Applicant exercising direct control of Cooperative Mutual be approved;
2. Within fifteen (15) days after closing, an amendment to the Insurance Holding Company System Registration Statement and a Form D Prior Notice of Transaction for the Cost Sharing and Management Agreement shall be filed with the Department in accordance with *Neb. Rev. Stat. §44-2132, et seq.*

Dated this 2nd day of March, 2010.



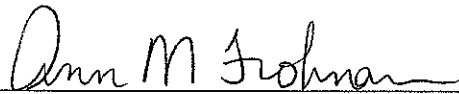
Hearing Officer

ORDER

I hereby certify that the foregoing Recommended Order is adopted as the Order of the Nebraska Department of Insurance in the Matter of the Acquisition of Cooperative Mutual Insurance Company, Cause No. C-1817.

Dated this 3rd day of March, 2010.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


ANN M. FROHMAN
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was sent to Peter J. Williams, Vice President/General Counsel, Austin Mutual Insurance Company, 15490 101st Avenue North, Maple Grove, MN 55369, and to Rocky C. Weber and William R. Kutilek, Crosby Guenzel LLP, 134 South 13th Street, Suite 400, Lincoln, NE 68508 by U.S. Mail, postage prepaid, on this 3rd day of March, 2010.

