

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

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| IN THE MATTER OF PUC STAFF'S COMPLAINT AGAINST BANGHART PROPERTIES, LLC, GETTYSBURG, SOUTH DAKOTA |)))))))) | ORDER FOR AND NOTICE OF EVIDENTIARY HEARING ON LESS THAN 10 DAYS' NOTICE GW23-001 |
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On January 30, 2023, the South Dakota Public Utilities Commission (Commission) received a Complaint against Banghart Properties, LLC, Gettysburg, South Dakota (Banghart), filed by the Commissioner staff (Staff). The Complaint alleges Banghart operated as a grain buyer without a license in both license years, 2022 and 2023, among other allegations. Notice of the Complaint was sent to Banghart on January 30, 2023.

On February 2, 2023, the Commission electronically transmitted notice of the filing and the answer deadline of February 20, 2023, to interested entities and persons on the Commission's PUC Weekly Filings electronic listserv. On February 7, 2023, Staff filed a Supplemental Affidavit of Cody Chambliss. On February 17, 2023, Banghart filed an Answer to the Complaint. On March 20, 2023, Banghart filed a Motion to Allow Delivery on Open Contracts and an Affidavit of Jan Banghart in Support of Motion to Allow Delivery of Open Contracts. On March 30, 2023, the Commission issued an Order Denying Motion to Allow Delivery on Open Contracts. On April 4, 2023, Banghart filed a Motion for Expedited Order Granting Class A Grain Buyer License (Motion). On April 5, 2023, Staff filed a confidential letter of denial and Banghart's Confidential Grain Buyer/Grain Warehouse Application. On April 17, 2023, the Commission issued an Order for and Notice of Evidentiary Hearing on Less than 10 Days' Notice. On April 27, 2023, the Commission held an evidentiary hearing on this matter. On May 9, 2023, the Commission found good cause for staff to deny Banghart's Class A grain buyer license. On May 22, 2023, staff filed a letter to Banghart and a letter to the Commission stating on May 11, 2023, staff received an application from Banghart for a Class B grain buyer license, and that based on the Commission's May 9, 2023, oral decision, any further action on this matter should be at the Commission level. On May 23, 2023, the Commission issued an Order Granting Motion to Reopen the Record and Allow Additional Testimony; Order Denying Class A License; Order Setting Post-Hearing Procedural Schedule. On May 26, 2023, Banghart submitted a written request for a hearing for approval of a new application for a Class B Grain Buyer License, submitted on May 11, 2023.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-45, specifically, SDCL 49-45-1, 49-45-7.1, 49-45-10, and 49-1-9.1. The Commission may rely upon any or all of these or other laws of this state in making its determination.

Pursuant to ARSD 20:10:01:22.02, the Commission may order a hearing on less than ten days' notice if the Commission determines good cause exists therefor. The Commission finds that, because the time remaining in the 2023 licensing period is short, there is ample reason to hear the Motion on less than ten days' notice.

A hearing will be held beginning at 9:00 a.m., CDT on June 21, 2023, in Room 413 of the Capitol Building, 500 E. Capitol Ave., Pierre, South Dakota.

At the hearing, each party will be permitted to present an opening statement summarizing the evidence that such party will offer into evidence and to briefly and concisely state the issues involved in the case. The Commission will take judicial notice of the evidentiary records from April 27, 2023, and May 9, 2023. The issues to be determined by the Commission are whether Banghart violated state law by purchasing grain without a license, whether Banghart violated state law by failing to pay a producer within the 30 days required by state law, whether there is good cause to deny a license, and whether the Commission shall issue a grain buyer license to Banghart.

The hearing will be a quasi-judicial adversarial proceeding conducted pursuant to SDCL Chapter 1-26. All parties will have the opportunity to appear, present evidence, cross-examine the other parties' witnesses, and exercise all other rights afforded by SDCL Chapters 1-26 and 49-45, and ARSD Chapters 20:10:01. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. All persons testifying will be subject to cross-examination. The Commission's final decision will be based solely on the testimony and evidence offered and received into evidence at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, a decision may be issued by default pursuant to SDCL 1-26-20. As a result of this hearing, the Commission will make a decision, including findings of fact and conclusions of law, on the issue set forth above. The Commission's final decision may be appealed by the parties to the circuit court and the State Supreme Court as provided by law.

It is therefore

ORDERED, that a hearing on the Complaint and Application will be held by the Commission on June 21, 2023, beginning at 9:00 a.m., CDT in Room 413 of the Capitol Building, 500 E. Capitol Ave., Pierre, South Dakota.

Pursuant to the Americans with Disabilities Act, this hearing is being held in physically accessible location. Please contact the Public Utilities Commission at (605) 773-3201 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 8th day of June 2023.

| CERTIFICATE OF SERVICE | |
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| 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 or by mail. | |
| By: | <u>Adam DeHueck</u> |
| Date: | <u>6/8/23</u> |
| (OFFICIAL SEAL) | |

BY ORDER OF THE COMMISSION:

Kristie Fiegen
KRISTIE FIEGEN, Chairperson

Gary Hanson
GARY HANSON, Commissioner

Chris Nelson
CHRIS NELSON, Commissioner