

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

REDACTED

IN THE MATTER OF THE PUC STAFF'S COMPLAINT AGAINST BANGHART PROPERTIES, LLC, GETTYSBURG, SOUTH DAKOTA)	AFFIDAVIT OF JAN BANGHART IN SUPPORT OF MOTION TO ALLOW DELIVERY OF OPEN CONTRACTS
)	
)	GW23-001
STATE OF SOUTH DAKOTA)	
)SS	
COUNTY OF HUGHES)	

Comes now Jan Banghart, sole, managing member of Banghart Properties, LLC, a South Dakota Limited Liability Company, being first duly sworn under oath, does depose and state as follows:

1. I am the sole, managing-member member of Banghart Properties, LLC (hereinafter referred to as "Banghart"), party to be above-captioned action.

2. Banghart has held a Class B Grain Buyer license since approximately July of 2021, and that license has not been revoked or surrendered.

3. Prior to the issuance of the cease and desist letter drafted by PUC Staff on or about January 12, 2023, Banghart entered into contracts with several South Dakota grain producers for the purchase of grain.

4. The vast majority of those twenty-six (26) grain purchase contracts ("open contracts" call for delivery of grain to Banghart from January - March of 2023.

5. I have compiled a summary of these 26 open contracts in an Excel spreadsheet, and I have attached a true and correct copy of that summary as "Exhibit A" to this Affidavit. I have also attached true and correct copies of 25 of the 26 open contracts as "Exhibit B" to this Affidavit. The contract with _____ has not yet been returned to our office, but we have requested that _____ return that contract for our records.

6. I or Banghart employees have personally talked to or left a detailed message for each open contract producer listed. We have advised the open contract producers of the status of their open contract and provided a basic summary of the existence of the cease and desist letter and this case. I will also be sending each open contract producer a copy of the notice of hearing on this motion.

7. In those discussions, no open contract producer has expressed a desire to cancel their contract or refuse to deliver. Rather, every producer on the list wants to fulfill the open contract.

8. Banghart has received numerous phone calls from several South Dakota producers, including the open contract producers, expressing frustration with the cease and desist letter issued by the PUC Staff. All of the producers want to deliver. No producer has expressed to Banghart any concerns as to Banghart's ability to financially perform under the open contracts.

9. Several of these producers have expressed a desire to attend the hearing on March 28, 2023, offer public comment in support of this motion, or file a letter of support with the PUC Staff. Banghart has instructed the open contract producers that it intends to comply with the cease and desist letter until further order of the PUC Commission.

10. A significant delay in this docket is attributable to Banghart's need to provide 2022 year end, reviewed, CPA-prepared, financial statements. Due to the tax season and the busy schedule of Banghart's CPA, the reviewed financial statements have not been available.

11. However, at approximately 6:00pm on March 17, 2023, I was advised by email from Houstyn Heinz, CPA and Lucas Hauert, CPA, both of ELO CPA's and Advisors of Huron, SD that our reviewed financial statements will pass final review early next week (March 20 or 21st.). As soon as the reviewed financial statements are provided to my attorney, I will provide a copy of those financials to the PUC Staff and the PUC commissioners in this docket by electronic filing.

12. In early January, Banghart submitted an Application for Class A grain dealer license. That application is pending, however, our application indicated that we were waiting on the reviewed financials to complete the application process. Because the application is incomplete, it is not been acted upon by PUC Staff. When the reviewed financial statements are available, I intend to submit to PUC Staff a new and complete application for Class A Grain Dealer license with all accompanying reviewed financial documents.

13. During the pendency of this docket, due primarily to the delay in obtaining reviewed financial statements during tax season, grain markets have fluctuated. As a result, nearly all of the open contract producers face the prospect of receiving lower prices for their grain, additional storage fees, and transport complications if they are not allowed to deliver on the open contracts. Because of these prospects, the open contract producers are all requesting permission to deliver on their open contracts.

14. Despite the allegations raised in the PUC Staff Complaint, draft financial statements (preliminarily provided to PUC Staff on or about March 4, 2023) show a healthy financial position, meeting and exceeding not only the financial requirements for a Class B grain license, but also the requirements of the Class A license.

15. Additionally, Banghart currently has no unsettled or unpaid delivery tickets with any South Dakota grain producers.

16. As managing member of Banghart, I am respectfully asking the Commission to allow Banghart to take delivery on the open contracts herein stated during the pendency of this action. At this time, I am not asking permission to enter into new grain buyer contracts, or take delivery of grain outside the listed open contracts.

17. My primary motivation for this motion and request is to help the open contract producers utilize the benefit of their effective crop pricing strategy. If the producers are not able to deliver on the open contracts, they run a risk of receiving a lower price for their grain.

18. Based upon my review of the open contracts and existing market conditions, the best interest of the public and the individual open contract producers is served by allowing delivery. Filling the open contracts let producers to reap the financial benefits of their profitable marketing positions.

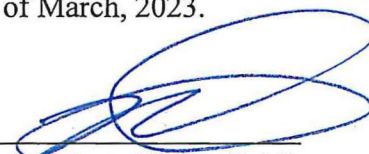
19. Should the Commission entertain this request, I would be willing to cooperate with any additional, reasonable conditions deemed necessary or prudent by the Commission.

Further your affiant sayeth naught.

Dated this 18th day of March, 2023.


Jan Banghart

Sworn and subscribed to before me this 18th day of March, 2023.


South Dakota Notary Public

My commission expires: October 25, 2026



Certificate of Service

The undersigned counsel hereby certifies that a true and correct copy of the forgoing Affidavit in Support of Motion to Allow Delivery of Open Contracts was served on the following parties in the following manner, on this the 18th day of March, 2023:

Ms. Patricia Van Green
Executive Director
South Dakota Public Utility Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

VIA EMAIL, USPS MAIL,
AND ELECTRONIC FILING

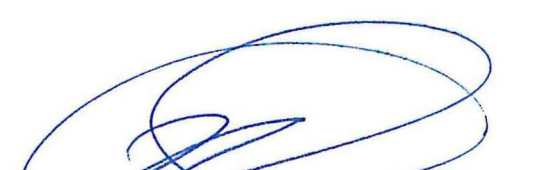
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VIA EMAIL AND USPS MAIL

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VIA EMAIL AND USPS MAIL

Dated this 18th day of March, 2023.



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Attorney for Banghart Properties, LLC.