

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

IN THE MATTER OF THE PUC STAFF'S)	ANSWER
COMPLAINT AGAINST BANGHART)	
PROPERTIES, LLC, GETTYSBURG,)	GW23-001
SOUTH DAKOTA)	

COMES NOW Banghart Properties, LLC, a South Dakota Limited Liability Company (hereinafter referred to as Banghart), by and through its attorney of record, Robert Konrad of Konrad Law, Prof. LLC, and for its response to the Complaint filed by PUC staff in the above-captioned action, does hereby make and file the following responsive Answer:

1. PUC staff fails to state a claim for which relief can be granted.
2. PUC staff's claim is barred by waiver, laches, and estoppel.
3. Banghart denies each and every allegation contained in the Complaint, except as specifically or partially admitted herein.
4. Banghart specifically admits the following paragraphs: 2, 3, and 6.
5. With regard to paragraph 1 of the Complaint, Banghart admits that it is a grain dealer as defined by South Dakota statute. Additionally, Banghart is the current holder of a Class B grain dealer license.
6. With regard to paragraph 4 of the Complaint, Banghart admits all allegations, but also adds that it has been continuously licensed as a Class B grain dealer from June 1, 2021 through the current date.
7. With regard to paragraph 5 of the Complaint, the statement is a legal conclusion rather than a factual allegation. As such, no response is necessary. Without waiving said objection, Banghart admits that paragraph 5 is a fair summary of SDCL 49-45-7.1.

8. With regard to paragraph 7 of the Complaint, Banghart denies all allegations of the paragraph; however, Banghart does admit that it did make grain purchases. The allegations may incorrectly include product purchases outside the statutory definition of “grain.” Furthermore, the allegations do not account for Banghart’s established fiscal year period. As such, the allegations of this paragraph are denied, and Banghart holds PUC staff to its strict burden of proof concerning this paragraph.

9. With regard to paragraph 8 of the Complaint, Banghart is without sufficient information or knowledge to admit or deny the allegations of this paragraph.

10. With regard to paragraph 9 of the Complaint, Banghart denies all allegations of the paragraph; however, Banghart does admit that it did make grain purchases during the stated time period. The allegations may incorrectly include product purchases outside the statutory definition of “grain.” Furthermore, the allegations do not account for Banghart’s established fiscal year period. During the stated time period, Banghart also passed routine license inspections performed by PUC staff. Lastly, the calculation of the number of alleged grain purchases is inaccurate as it is based upon the number of scale tickets, not transactions. In several instances, a single load or shipment is split-weighed (more than one scale tickets for a single load due to scale limitation or truck size), and therefore the number of tickets overstates the number of transactions. As such, the allegations of this paragraph are denied, and Banghart holds PUC staff to its strict burden of proof concerning this allegation.

11. With regard to paragraph 10 of the Complaint, Banghart restates as if fully set forth herein its previous response to paragraph 9 of the Complaint. Additionally, Banghart was provided conflicting information from Staff and grain inspectors concerning the fiscal year

applicable to the grain purchase limitations. Banghart is currently in the process of investigating this allegation and will supplement its response, if materially different, at a later time.

12. With regard to paragraph 11 of the Complaint, Banghart denies that there were eight instances of failure to make payment with the 30 day statutory period. Banghart does admit that there may have been two instances of this conduct. The remaining six instances stem from producers that had not yet completed “final delivery” thereby triggering payment under SDCL 49-45-10, or the purchase was not for statutorily defined “grain” under applicable law. Regarding the two possibly admitted compliance issues, these matters were due in part to producer request and mitigating circumstances.

13. With regard to paragraph 12 of the Complaint, Banghart denies the allegation of this paragraph in that the grain purchase totals are characterized as “inaccuracies.” Banghart does admit that the numbers provided to the PUC staff are indeed different. However, the differences can be at least partially be explained by whether or not the numbers account for all statutorily defined “grain” purchases, whether or not the numbers include deductions for freight or other appropriate deductions, and changes in accounting software made circa September 2021. Banghart denies that the different numbers were offered to PUC staff in an attempt to defraud, confuse, or misrepresent information as to the PUC or any other third party. Banghart states that the financial numbers provided were set forth as a response in the paragraph pertaining to calculation of the correct bond amount. Regardless of the answers provided, Banghart at all times met or exceeded the minimum bond requirements. Additionally, different answers may have been provided based upon whether or not the questions were interpreted as a licensing, fiscal, or calendar year.

14. With regard to paragraph 13 of the Complaint, the statement is a legal conclusion rather than a factual allegation. As such no response is necessary. Without waiving said objection, Banghart denies that excess purchases necessarily result in Banghart's Class B license automatically "expiring." Additionally, this allegation contains a misstatement of SDCL 49-45-10 in that it does not reflect that only "final" payment triggers the 30 day payment period. However, Banghart is currently in the process of paying producers for all "grain" delivered or in transit prior to the issuance of the cease and desist letter sent by PUC staff in this matter.

15. With regard to paragraph 14 of the Complaint, Banghart hereby restates its response to paragraph 12 as if fully set forth herein.

16. With regard to paragraphs 15 and 16 of the Complaint, Banghart denies the allegation of these paragraphs in that the financial numbers are characterized as "inaccuracies." Banghart does admit that the financial numbers are different on the listed documents and email attachments. However, the differences can be explained by variations in current financial circumstances, different but reasonable opinions as to the definition of "current" assets of "current" liabilities, accounting software, classification or current status of accounts receivable, and details set forth in the cover letter of attorney Robert Konrad to the PUC staff dated January 25, 2023. Banghart does admit that it supplied the PUC staff with the requested documents and emails. Banghart denies that the different numbers were offered to PUC staff in an attempt to defraud, confuse, or misrepresent information as to the PUC or any other third party.

17. PUC staff has set forth in its Complaint several legal authorities. These statements are legal conclusions rather than factual allegations. As such no response is

necessary. Without waiving said objection, Banghart admits that the legal authorities appear to be statements of law pertaining to the PUC's regulation of grain dealers under South Dakota law.

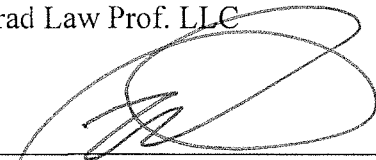
18. PUC staff has set forth in its Complaint a lengthy narrative. Banghart generally objects to the narrative statement on the grounds that it contains inaccurate facts, assumes facts or statements outside the purview of Complaint, and arrives at conclusions based upon inaccurate facts. As such, Banghart objects to the narrative and asks that the narrative be stricken from the Complaint as surplusage violative of ARSD 20:10:01:02:03.

WHEREFORE, Respondent requests that the South Dakota Public Utilities Commission:

- A. Dismiss PUC staff's Complaint in its entirety, or in the alternative, that the relief requested therein be denied after hearing;
- B. Approve and grant the Respondent's pending Class A Grain Dealer's license; and
- C. That the Commission take any further action deemed just, equitable, or appropriate under the circumstances.

Dated this 17th day of February, 2023

Konrad Law Prof. LLC



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