

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

**IN THE MATTER OF THE APPLICATION) MOTION FOR EXPEDITED ORDER
FOR CLASS A GRAIN BUYER LICENSE) GRANTING CLASS A GRAIN
MADE BY BANGHART PROPERTIES, LLC,) BUYER LICENSE
GETTYSBURG, SOUTH DAKOTA.)
) **GW23-002****

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 Motion for Expedited Order Granting Class A Grain Buyer License in the above-captioned action, does hereby state and allege as follows:

Banghart is a Class B licensed grain buyer. On or about April 4, 2023 Banghart submitted to PUC staff a completed application for class A grain buyer license. The application was completed in its entirety to include the following:

1. A completed application form on the recently revised March 2023 form;
2. A copy of Banghart’s 2022 year end reviewed financials;
3. A check made payable to South Dakota PUC for the \$275.00 application fee; and
4. A completed Form 12(a) Insurance Waiver.

As this Commission is aware, Banghart is a respondent party in docket # GW23-001, wherein PUC staff has filed a Complaint alleging primarily that Banghart has exceeded the purchasing limits of its currently held class B grain buyer license. That matter is still pending before the Commission. The parties are continuing to work through this case as PUC staff has recently served a data request on the undersigned counsel dated April 3, 2023.

In docket #GW23-001, Banghart recently submitted a Motion to Allow Delivery on Open Contracts. Banghart and PUC staff briefed their legal positions for the Commission, and a contested motion hearing was held on March 28, 2023. After more than an hour of discussion, this Commission denied Banghart's request to fulfill delivery on 26 open producer contracts. In its simplest form, it appears the Commission denied the motion in part due to the allegation that Banghart had exceeded its \$5,000,000 purchase cap for licensing year commencing July 1, 2022 and ending June 30, 2023. Banghart indicated at said hearing that a revised application for class A grain buyer license would be forthcoming, and that application was electronically provided to PUC staff on April 4, 2023.

Banghart restates as if fully set forth herein the entirety of its Motion to Allow Delivery on Open Contracts. Since the time of the hearing on that motion, there has not been a material change in factual circumstances. Banghart continues to hold open 26 contracts with South Dakota grain producers. All of these contracts are lucrative for the producers if the contracts can be filled. The producers continue to express desire to fulfill the contracts. These contracts remain open, and for the reasons articulated in the Motion to Allow Delivery on Open Contracts and the supporting Affidavit of Jan Banghart, the contracts need to be fulfilled as soon as possible to maximize profits for South Dakota producers.

The application for Class A grain buyer license submitted by Banghart satisfies all applicable statutory and regulatory requirements for licensing. Banghart has submitted with its application for Class A license a reviewed financial statement which meets the requirements of SDCL 49-45-7.1. Furthermore, PUC staff is already in possession of a \$200,000.00 bond in favor of Banghart that satisfies the requirements of SDCL 49-45-9. To simplify matters,

Banghart is not requesting permission to engage in voluntary credit sales pursuant to SDCL 49-45-11, therefore the basic business practices of Banghart's will not be significantly altered. Lastly, Banghart has requested by completed a Form 12(a) that its insurance requirements under SDCL 49-45-22 be waived as it will take title to but not physically possess grain.

Banghart also meets or exceeds all applicable financial requirements. ARSD 20:10:12:14 requires that Banghart submit independently reviewed financial statements (balance sheet, statement of profit and loss, and Statement of Operations and Members' Equity), and those documents were provided to PUC staff and this Commission in the GW23-001 docket and with the class A application. These financial documents contain appropriate notes of any relevant circumstances impacting, or potentially impacting, Banghart's financial condition.

ARSD 20:10:12:15 requires that Banghart maintain a positive net worth of at least \$100,000.00 based upon the criteria set forth in that administrative rule. Banghart significantly exceeds that amount, despite any pending civil matters, or other adjustments. Banghart has not yet received its 1st Quarter 2023 balance sheet, but it is expected that this document will be prepared on or before the next commission hearing date, and Jan Banghart intends to supplement the record and the application with that quarterly statement as soon as it is provided.

In all respects it appears that Banghart meets or exceeds the statutory and administrative rule requirements for a class A application. There is also a significant and compelling reason to grant the license application as it will allow Banghart to take delivery on the 26 open contracts requested in the Motion to Allow Delivery on Open Contracts. The PUC staff will likely raise some objection to the granting of a class A license; however, it is important to keep in mind that the Class A license would only be granted through June 30, 2023 before it would need be

renewed. This time period would likely allow producers the opportunity to deliver on their open contracts and take advantage of their lucrative grain marketing positions, but yet short enough to mitigate any perceived risks raised by PUC staff.

Given that Banghart is not engaging in deferred payments or voluntary credit sales; and in light of the short time period of the remaining licensing period, there is little risk to the public given Banghart's strong financial position.

For the reasons set forth herein and the in the Motion to Allow Delivery on Open Contracts in docket GW23-001, Banghart requests that this Commission act expeditiously and grant Banghart's pending application for class A grain buyer license. In the alternative, should the Commission perceive any risk of licensing concern, Banghart alternatively seeks a conditional class A license subject to any conditions that the Commission deems necessary.

WHEREFORE, Applicant Banghart Properties, LLC requests that the South Dakota Public Utilities Commission:

1. Issue an Order granting onto Banghart Properties, LLC a Class A grain buyer license effective immediately, or in the alternative;
2. Issue an Order granting onto Banghart Properties, LLC a conditional Class A grain buyer license effective immediately, subject to any terms or conditions deemed necessary by the Commission.

Dated this 4th day of April, 2023.

/s/ Robert T. Konrad

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Attorney for Banghart Properties, LLC

Certificate of Service

The undersigned counsel hereby certifies that a true and correct copy of the forgoing Motion to For Expedited Order Granting Class A Grain Buyer License was served on the following parties in the following manner, on this the 4th day of April, 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,
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VIA EMAIL AND USPS MAIL

Dated this 4th day of April, 2023.

/s/ Robert T. Konrad

BY: Robert Thomas Konrad