

NEBRASKA

PUBLIC SERVICE COMMISSION

COMMISSIONERS:
ERIC KAMLER
CHRISTIAN MIRCH
TIM SCHRAM
KEVIN STOCKER
DAN WATERMEIER



June 12, 2024

South Dakota Public Utilities Commission
Capitol Building, 1st floor
500 E. Capitol Ave.
Pierre, SD 57501-5070

RE: Comments of the Nebraska Public Service Commission

GW23-001 In the Matter of PUC Staff's Complaint Against Banghart Properties, LLC, Gettysburg, South Dakota (Grain Warehouse Program Manager: Cody Chambliss; Staff Attorney: Amanda Reiss)

Dear Chairperson Kristie Fiegen:

The Nebraska Public Service Commission hereby submits its Comments in Docket No. GW23-001. Please contact me at (402) 471-0245 if you have any questions or need additional information.

Respectfully submitted,

Jonathan Smith
Jonathan Smith #26628
Staff Attorney

Thomas W. Golden, Executive Director
Public Service Commission

P.O. Box 94927 OFFICE 402-471-3101 FAX 402-471-0254
300 The Atrium, 1200 N Street CONSUMER HOTLINE 800-526-0017
Lincoln, Nebraska 68509

psc.nebraska.gov

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

**IN THE MATTER OF PUC STAFF'S)
COMPLAINT AGAINST BANGHART)
PROPERTIES, LLC, GETTYSBURG, SOUTH)
DAKOTA)
)
)**

**ORDER RESOLVING
STAFF'S COMPLAINT;
ORDER GRANTING CLASS B
LICENSE; NOTICE OF ENTRY

GW23-001**

Comments of the Nebraska Public Service Commission on GW23-001

I. INTRODUCTION

The Nebraska Public Service Commission (“Nebraska Commission”) hereby submits the following comments for the record with respect to GW23-001. The Nebraska Commission seeks to provide the South Dakota Public Utilities Commission additional context regarding the outstanding civil penalty assessed against Banghart Properties, LLC (“Banghart”) in Nebraska.

II. COMMENTS

On October 21, 2021, Terri Fritz, Grain Program Manager of the Grain Warehouse Department of the Nebraska Commission filed a departmental complaint against Banghart. The complaint alleged that Banghart violated the Nebraska Grain Dealer Act¹ and related Commission regulations² by (i) performing actions as a grain dealer without a license, (ii) taking possession of grain without issuing written documentation to the seller that included the required warning to seller language to inform Nebraska producers of the right to recourse against the required grain dealer’s security, and (iii) failing to issue pre-numbered receipts, contracts, bills of lading, or other written communications.

By Order dated March 15, 2021,³ the Nebraska Commission found in favor of the Complainant and assessed a civil penalty against Banghart in the amount of \$290,000.00. After the Nebraska Commission denied a motion for reconsideration, Banghart appealed the decision to the Nebraska Court of Appeals. On August 15, 2023, the Nebraska Court of Appeals affirmed the Nebraska Commission’s March 15th Order.⁴ On March 5, 2024, the Nebraska Commission, pursuant to the mandate of the

¹ See Neb. Rev. Stat. §§ 75-901-75-910.

² See 291 Neb. Admin. Code Chap. 8.

³ See Docket No. GDC-446 *In the Matter of Terri Fritz, Grain Program Manager, Grain Warehouse Department, Nebraska Public Service Commission, Complainant v. Banghart Properties, LLC, a.k.a. Fearless Grain Marketing Storage and Arbitrage, a.k.a. Fearless Grain Marketing, a.k.a. Fearless Grain, Gettysburg South Dakota, Respondent, Order Assessing Civil Penalties* (Entered March 15, 2022).

⁴ See 32 Neb. App. 168.

Nebraska Court of Appeals, entered a follow-up order spreading the mandate.⁵

As of the date of these comments, the \$290,000.00 civil penalty assessed on March 15, 2021, is outstanding and the Nebraska Commission continues to pursue the unpaid balance. Thank you for the opportunity to provide comment on this docket. Please contact us if you have any questions.

Respectfully,

A handwritten signature in cursive script that reads "Terri Fritz".

Terri Fritz
Director of Grain Warehouses & Dealers
The Nebraska Public Service Commission
300 The Atrium Building
1200 N Street, P.O. Box 94927
Lincoln, Nebraska 68509
(402) 471-0245
Terri.fritz@nebraska.gov

Dated: June 12, 2024

⁵ See Docket No. GDC-446 *In the Matter of Terri Fritz, Grain Program Manager, Grain Warehouse Department, Nebraska Public Service Commission, Complainant v. Banghart Properties, LLC, a.k.a. Fearless Grain Marketing Storage and Arbitrage, a.k.a. Fearless Grain Marketing, a.k.a. Fearless Grain, Gettysburg South Dakota, Respondent, Order Spreading the Mandate* (Entered March 5, 2024).