

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

IN THE MATTER OF THE PUC STAFF'S COMPLAINT AGAINST BANGHART PROPERTIES, LLC, GETTYSBURG, SOUTH DAKOTA)))))))	RESPONDENT'S OBJECTION TO STAFF'S MOTION TO REOPEN THE RECORD TO ALLOW ADDITIONAL TESTIMONY GW23-001
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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 Objection to Staff's Motion to Reopen the Record to Allow Additional Testimony in the above-captioned action, does hereby state and allege as follows:

Banghart urges the Commission to overrule and reject staff's motion to reopen the record. Based upon the contents of the motion and the contemporaneously filed affidavit of Cody Chambliss, the subject matters to be explored upon possibly reopening of the record are the nature and circumstances of two grain contracts with a North Dakota producer. At the evidentiary hearing on April 28, 2023, the Commission was provided the contracts with this North Dakota producer. The same was also discussed in exhaustive testimony. Uncontroverted testimony provided by Mr. Hardes and Mr. Frost established the following facts:

1. The producer was from North Dakota;
2. The grain was stored just across the border into South Dakota;
3. The grain tax was made payable to North Dakota; and
4. Even if this transaction did constitute a grain transaction subject to South Dakota

PUC licensure and regulation; the completion of this transaction did not cause Banghart to exceed its \$5,000,000.00 purchasing cap associated with its current Class B licensure.

Banghart argues that the subject matter contemplated in the motion to reopen and the most recent Affidavit of Cody Chambliss is not “extremely relevant,” but rather expands upon information already in the record. This information is duplicative and does not help this Commission determine whether or not the Complaint has merit. Staff has maintained that Banghart exceeded its \$5,000,000 cap before the filing of the complaint, so the subsequent alleged violations pertaining the the North Dakota producer would not change that allegation.

This Commission spent more then ten hours receiving testimony from several individuals on April 28, 2023. The documents sought to be entered clearly existed before the time of the evidentiary hearing and Mr. Chambliss’s seventeen paragraph affidavit filed just prior to hearing. PUC staff could have requested the documents in data or discovery requests, issued a subpoena for the same, or called the North Dakota producer to testify. The evidence was not “newly discovered” or newly produced. All documents could have been sourced prior to hearing, but that action was never taken.

PUC staff, with the benefit of hindsight, wants to expand an already lengthy record with duplicative evidence that was certainly available and generated before the April 28, 2023 hearing. The motion is therefore improper and serves only to delay a decision for Banghart. Granting the motion at this juncture is a waste of taxpayer dollars and does not expand upon or offer insight to any significant fact that this Commission needs to decide. At this point the Commission primarily needs to decide #1.) Does Banghart meet or exceed the financial requirements for a Class A grain buyer license? and #2.) Based upon the jurisdictional arguments raised, did Banghart exceed its \$5,000,000.00 purchase authority under its current Class B grain buyer license?

Finally, the PUC Commission stated at the time of the evidentiary hearing that it would hold closing arguments on May 9, 2023. Not only has Respondent patiently waited for the decision of the Commission on its Class A license request, but numerous producers are also waiting in the balance with lucrative grain contracts. Granting the motion to reopen an already lengthy record at this juncture serves only to delay and harm the South Dakota producers.

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

1. Issue an Order overruling staff's Motion to Reopen the Record to Allow Additional Testimony;
2. Permit the parties to submit closing argument as scheduled on May 9, 2023; and
3. At a minimum, issue a decision on the merits pertaining to Banghart's pending Class A Grain Buyer application.

Dated this 18th day of March, 2023.

/s/ Robert T. Konrad

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