

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Terri Fritz,) GDC-445/GD-3022
Grain Program Manager, Grain)
Warehouse Department, Nebraska)
Public Service Commission,)
)
)
COMPLAINANT,) ORDER ASSESSING CIVIL
) PENALTIES AND REVOKING LICENSE
v.)
)
Pipeline Foods, LLC,)
Minneapolis, Minnesota,)
)
)
RESPONDENT.) Entered: September 28, 2021

BY THE COMMISSION:

On August 5, 2021, Terri Fritz, Grain Program Manager of the Grain Warehouse Department ("Complainant") of the Nebraska Public Service Commission ("Commission") filed a complaint against Pipeline Foods, LLC ("Pipeline" or "Respondent") Minneapolis, Minnesota, alleging violations of Neb. Rev. Stat. § 75-905 (Reissue 2018) and 291 Neb. Admin. Code §08-003.05A7. Complainant alleges that Respondent failed to include required warning to seller language in its purchase contracts used to inform Nebraska producers of their rights to recourse against its grain dealer security. Complainant sought an order temporarily suspending Respondent's grain dealer license during the pendency of the complaint and revocation of Respondent's grain dealer license pursuant to Neb. Rev. Stat. § 75-903.01, as well as assessment of appropriate administrative penalties authorized by law. Respondent did not file an answer to the complaint.

On August 10, 2021, the Commission entered an Order Temporarily Suspending Respondent's Grain Dealer License. In that Order, the Commission found that the public good required Respondent's license to be suspended pending the determination of the complaint.¹

¹ See Docket GDC-445/GD-3022 *In the Matter of Terri Fritz, Grain Program Manager, Grain Warehouse Department, Nebraska Public Service Commission, COMPLAINANT, v. Pipeline Foods, LLC, Minneapolis, Minnesota, RESPONDENT., Order Temporarily Suspending License* (Entered: August 10, 2021).

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On August 31, 2021, the Commission entered an Order scheduling a hearing in this matter. Notice of the hearing was published in The Daily Record, Omaha, on September 3, 2021 and in the Omaha World Herald, Omaha, on September 9, 2021.

Hearing on this matter was held on September 21, 2021, in the Commission Hearing Room and simultaneously via Webex video conference. Mr. Dillon Keiffer-Johnson appeared on behalf of Commission staff. No appearances were made on behalf Respondent.

E V I D E N C E

Testimony

Terri Fritz, grain program manager, testified on behalf of the department. Ms. Fritz testified that she oversees the licensing process for prospective grain dealers as well as the daily activities of the grain department.² Ms. Fritz explained the process and the required documentation for approval of a grain dealer's license.³ She further explained that as part of the required documentation the company must provide a copy of the purchase contract it intends to use to ensure the inclusion of the appropriate warning to seller language.⁴ Ms. Fritz testified that the warning to seller language informs a Nebraska producer of the steps they need to take in order to ensure they have recourse against a grain dealer's security.⁵ Ms. Fritz noted that a grain dealer license will not be approved if the company's contracts do not have the warning to seller language in them. Ms. Fritz further noted that when Pipeline was granted its initial grain dealer license in 2018, Pipeline's initial contracts contained the required warning to seller language.⁶

Ms. Fritz testified that prior to Pipeline's grain dealer license being suspended as part of this complaint, Pipeline held a valid grain dealer license. She explained that Pipeline's grain dealer license is renewed annually on July 1st of each year.⁷ Ms. Fritz discussed the renewal process, specifically explaining how the department confirms a company is in good standing with the

² Hrg. Trans. 8:19 - 9:10 (September 21, 2021).

³ *Id.* at 9:19 - 11:22.

⁴ *Id.* at 11:23 - 12:4.

⁵ *Id.* at 12:5 - 12:20.

⁶ *Id.* at 12:21 - 14:3.

⁷ *Id.* at 14:11 - 15:7.

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Nebraska Secretary of State. She explained how prior to renewing Pipeline's grain dealer license the department's check of the company showed it was in good standing with the Nebraska Secretary of State but currently Pipeline is no longer in good standing.⁸ Ms. Fritz testified that on June 15, 2021, the Nebraska Secretary of State administratively dissolved Pipeline. She stated that it is her understanding that an administrative dissolution occurs when a company fails to pay their annual tax or fees as well as a company's failure to submit its annual report. As a result, that entity remains in existence solely for the purpose of winding up and liquidating their business affairs. She explained that an administrative dissolution causes a company to lose its good standing with the Nebraska Secretary of State.⁹ Ms. Fritz clarified that the department became aware of the administrative dissolution after the renewal of Pipeline's grain dealer license. She explained that once the department completes its initial check on a company's standing prior to sending out the renewal documentation and confirms the company is in good standing, it is not the department's procedure to recheck to see if that status has changed prior to granting the license renewal.¹⁰ Ms. Fritz confirmed that Pipeline's license was ultimately renewed for the 2021-2022 year.¹¹

Ms. Fritz then testified that the department does not review a grain dealer's purchase contracts as part of the annual renewal process. She stated that such a review is done during a grain dealer inspection.¹² Ms. Fritz explained the procedure for a grain dealer inspection. She stated that during an inspection a grain examiner randomly selects ten of the Nebraska producers a grain dealer has identified as doing business with to review the contracts and documents of those transactions to confirm the warning to seller language is present.¹³ Ms. Fritz confirmed that inspections are completed annually for in-state grain dealers and the department is currently developing a procedure to complete annual inspections for out-of-state grain dealers as well.¹⁴ She further stated that the only difference between an out-of-state inspection and an in-state inspection is that out-of-state inspections are completed electronically.¹⁵ Ms. Fritz testified

⁸ *Id.* at 15:8 - 17:3.

⁹ *Id.* at 17:4 - 17:21.

¹⁰ *Id.* at 17:22 - 18:23.

¹¹ *Id.* at 18:24 - 19:1.

¹² *Id.* at 19:2 - 19:9.

¹³ *Id.* at 19:14 - 20:1.

¹⁴ *Id.* at 20:7 - 20:14.

¹⁵ *Id.* at 20:15 - 20:22.

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that the main objective of a grain dealer inspection is to ensure compliance with the Commission's rules and regulations that grain dealers are providing the necessary warning to seller language on their purchase contracts.¹⁶ Ms. Fritz testified that an electronic inspection was completed for Pipeline.¹⁷ She stated that as part of this inspection Pipeline provided twenty-two (22) contracts that did not contain the warning to seller language prescribed by Nebraska Statute and Commission rule.¹⁸ Ms. Fritz reiterated that the importance of the warning to seller language is to provide notice to Nebraska producers of their recourse against a grain dealer's security.¹⁹

Ms. Fritz testified that in the complaint filed against Pipeline she alleged violations of the relative Nebraska statutes and Commission rules regarding the requirement of the warning to seller language. Ms. Fritz noted that Pipeline did not file an answer to her complaint.²⁰ Ms. Further explained that her complaint sought temporary suspension of Pipeline's grain dealer license, administrative fines, as well as revocation of Pipeline's grain dealer license.²¹ Ms. Fritz concluded her testimony by recommending that the Commission assess a civil penalty of five-hundred dollars (\$500) per occurrence for a total of eleven-thousand dollars (\$11,000) for violation of the Nebraska Grain Dealer Act as well as revocation of Pipeline's grain dealer license.²²

Responding to Commissioner questions, Ms. Fritz explained that for Pipeline to regain its good standing with the Commission, Pipeline would need to pay any assessed fine and complete all requirements of a grain dealer application; which would include regaining its good standing with the Nebraska Secretary of State.²³ Ms. Fritz also explained that the inspection uncovered Pipeline had multiple open fall contracts. She noted that the Commission's suspension of Pipeline's grain dealer license would prevent Pipeline from continuing with those contracts and as a result, those contracts should have either been canceled or transferred to another buyer as Pipeline lacks an active grain dealer license.

¹⁶ *Id.* at 20:23 - 21:3.

¹⁷ See Exhibit Eight in which the email initiating the inspection was sent on August 4, 2021.

¹⁸ Hrg. Trans. at 21:4 - 22:13.

¹⁹ *Id.* at 22:22 - 23:13.

²⁰ *Id.* at 23:16 - 23:24.

²¹ *Id.* at 25:6 - 25:17.

²² *Id.* at 25:18 - 26:2.

²³ *Id.* at 26:5 - 26:21.

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She further noted that as an open fall contract, there had been no delivery of grain.²⁴

Ms. Fritz, responding to Commissioner questions regarding the potential Pipeline regaining its good standing with the Commission, explained that if Pipeline were to pay any assessed fine imposed by the Commission, they would also have to meet all of the requirements of a grain dealer application, including obtaining good standing with the Nebraska Secretary of State and filing the appropriate security with the Commission in order to be reissued a grain dealer license.²⁵ Ms. Fritz clarified that the department is currently formulating a plan to inspect out-of-state grain dealers on a yearly schedule. She stated that there are approximately 80 out-of-state grain dealers.²⁶ Ms. Fritz reiterated that in-state grain dealers are inspected every year because they are done concurrently with the yearly audits of the grain warehouses.²⁷ In response to a question by Commissioner Schram inquiring how the Commission can be assured that Pipeline has ceased operations within Nebraska, Ms. Fritz explained that the no exchange between the department and Pipeline had taken place regarding the complaint, in her opinion the only way to ensure Pipeline discontinues their grain dealer operations would be to revoke Pipeline's license. She also stated that the department could complete an additional inspection of Pipeline's records if the Commission desires.²⁸ Ms. Fritz further testified that the department has not received any outreach from concerned producers regarding Pipeline.²⁹

Exhibits

Exhibits one through six were entered and received into the record. Exhibit seven, a copy of the initial contract Pipeline used in its operations, Exhibit eight, a copy of the email the department sent Pipeline initiating its grain dealer inspection, and Exhibit nine, copies of the twenty-two contracts received as part of the department's August 4, 2021 inspection, were also offered and received into evidence. The Commission also accepted a list of all Nebraska producers Pipeline had done business with

²⁴ *Id.* at 27:3 - 27:22.

²⁵ *Id.* at 31:1 - 31:16.

²⁶ *Id.* at 31:23 - 32:23.

²⁷ *Id.* at 32:23 - 33:15.

²⁸ *Id.* at 34:7 - 34:21.

²⁹ *Id.* at 34:22 - 35:10.

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provided as part of the August 4, 2021, inspection was received into the record as late-filed exhibit ten. Finally, the Commission took administrative notice of Commission Rule of Procedure 004.02B and its subparts.³⁰

O P I N I O N A N D F I N D I N G S

Pursuant to Neb. Rev. Stat. §§ 75-901 to 75-910 ("The Nebraska Grain Dealer Act"), the Commission has authority to license all grain dealers doing business in the State of Nebraska. Pipeline Foods, LLC, has operated as a grain dealer within the State of Nebraska as defined by Neb. Rev. Stat. § 75-902(5) and 291 Neb. Admin. Code § 08-001.01J. As provided in 291 Neb. Admin. Code §08-003.07, the acting Grain Program Manager filed a complaint against Pipeline Foods, LLC, alleging violations of the Nebraska Grain Dealer Act and Commission rules. The Commission's findings as it relates to the allegations against Pipeline Foods, LLC, are detailed below:

Failure to Answer the Complaint

291 Neb. Admin. Code §01-004.02B provides that an answer to a departmental complaint must be filed and must admit or deny each material allegation of the complaint. The answer must be filed within twenty (20) days of service of the complaint.³¹ Absent good cause, failure to file an answer within the allotted time will be construed as an admission of each allegation of the complaint. Further, the complaint must state that a failure to file an answer will be construed as an admission of each allegation.³² The complaint provided sufficient notice to Respondent that failure to file a timely answer could result in an admission of each allegation.³³ Pipeline failed to file an answer to the complaint within the required time. Therefore, the Commission finds that pursuant to 291 Neb. Admin. Code §01-004.02B2 each allegation made in the complaint shall be deemed admitted by the Respondent.

Failure to Include Required Warning to Seller Language

Neb. Rev. Stat. § 75-904 requires that upon taking possession of grain from a seller, each grain dealer shall issue a receipt,

³⁰ *Id.* at 24:1 - 24:22.

³¹ 291 Neb. Admin. Code §01-004.02B1.

³² 291 Neb. Admin. Code §01-004.02B2.

³³ See Exhibit 2 pg 7.

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contract, bill of lading, or other written communication to the seller than includes the provisions of Neb. Rev. Stat. § 75-905 and be in such form as the Commission's rules and regulations require. Neb. Rev. Stat. § 75-905 provides that no seller shall have recourse to a grain dealer's security unless the seller: (1) demands payment from the grain dealer within fifteen days after the date of the last shipment of any contract; (2) negotiates any negotiable instrument issued as payment for grain by the grain dealer within fifteen days after its issuance; and (3) notifies the Commission within fifteen days after any apparent loss to be covered under the terms of the grain dealer's security.³⁴ Pursuant to 291 Neb. Admin. Code §08-003.05A7, each grain dealer, upon taking possession of grain from a seller, shall issue a writing, in the form of a receipt, contract, bill of lading or other written communication to the seller, that includes, the following specific "Warning to Seller" language printed on the receipt:

"WARNING TO SELLER: You will have no recourse to the grain dealer's security posted with the Nebraska Public Service Commission (NPSC) unless you are a Nebraska Producer and you: (1) demand payment from the grain dealer within fifteen (15) days after the date of the last shipment of any contract; (2) negotiate any negotiable instrument issued as payment for your grain by the grain dealer within fifteen (15) days after its issuance; and, (3) notify the NPSC, PO Box 94927, Lincoln, NE 68509-4927, within fifteen (15) days after an apparent loss. The grain dealer's security shall provide security for direct delivery grain until a post-direct delivery storage position is created for a period not to exceed fifteen (15) days after date of the last shipment of grain. Direct Delivery of grain may affect the eligibility of the grain for participation in federal price support programs.

Nebraska Law defines a producer as the owner, tenant, or operator of land in this state who has an interest in and receives

³⁴ See also 291 Neb. Admin. Code §08-003.04F.

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all or part of the proceeds from the sale of grain produced on that land.”

The Commission may assess an administrative penalty pursuant to Neb. Rev. Stat. §§ 75-910 and 75-156 and revoke a grain dealer license pursuant to Neb. Rev. Stat. § 75-903.01 for violations of the Grain Dealer Act.

On August 4, 2021, a grain dealer inspection was conducted on Pipeline Foods, LLC. As part to the inspection, the department reviewed numerous purchase contracts entered into by Pipeline. Exhibit 9 outlines twenty-two (22) separate incidents of Pipeline entering into purchase contracts with Nebraska producers from January 1, 2021 to August 4, 2021, with all such purchase contracts failing to include the required Warning to Seller language. No representative of Pipeline appeared at the hearing. Evidence was introduced showcasing that Pipeline had previously utilized a contract that conformed to and included the Commission's required Warning to Seller language.³⁵ Further evidence was presented that the department conducts an extensive review of a potential grain dealer's records prior to the issuance of a license to ensure the company's proposed contracts include the Warning to Seller language. The department also completes inspections on licensed grain dealers with the sole purpose of guaranteeing this language is included in their contracts. The Commission understands that a company may alter or amend the contracts it utilizes in its operations over time; however, the inclusion of the Warning to Seller language is imperative and a grain dealer must ensure this language is present. The evidence presented showcases that Pipeline was familiar with this requirement and chose to operate without complying.

While the Commission does appreciate that no farmers have yet come forward indicating they have been directly harmed, Pipeline still violated Nebraska Statutes and Commission Rules. Further, the Commission is concerned with Pipeline's lack of good standing with the Nebraska Secretary of State as well as the evidence presented that there remain various open fall contracts between Pipeline and Nebraska producers with action scheduled to be taken in the upcoming weeks. The Commission finds that action should be taken against Pipeline's grain dealer license to safeguard Nebraska producers from any potential harm.

³⁵ See Exhibit 7.

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Upon consideration of the evidence presented, the Commission finds that the complaint against Pipeline Foods, LLC, should be sustained and that Pipeline Foods, LLC, committed twenty-two (22) violations of Neb. Rev. Stat. § 75-905 and 291 Neb. Admin. Code §08-003.05A7. The Commission finds that a penalty of one-thousand dollars (\$1,000) per violation is an appropriate. The total penalty assessed by the Commission against Pipeline Foods, LLC, is twenty-two thousand dollars (\$22,000). In addition, the Commission finds that pursuant to Neb. Rev. Stat. § 75-903.01 the grain dealer license granted to Pipeline Foods, LLC in GD-3022 should be revoked. All grain dealer operations of Pipeline Foods, LLC, must cease immediately.

Commission Rule of Procedure 007.06B requires any penalty assessed be paid within thirty (30) days from the date the Order is mailed. Payment must be received within thirty (30) days from the date the Order is mailed. Failure to pay the penalty may result in the Commission referring the matter to the Nebraska Attorney General's Office for collection through the District Court of Lancaster County. Additionally, no subsequent applications for a license will be allowed until the penalty is satisfied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Pipeline Foods, LLC is assessed a civil penalty of twenty-two thousand dollars (\$22,000).

IT IS FURTHER ORDERED that all civil penalties assessed in this Order must be paid within thirty (30) days from the mailing of this Order. Failure to pay this penalty within thirty (30) days from the mailing of this Order may result in the matter being referred to the Nebraska Attorney General's office for collection through the District Court of Lancaster County. No subsequent applications for a license will be allowed until the penalty is satisfied.

IT IS FURTHER ORDERED that grain dealer license No. GD-3022 issued to Pipeline Foods, LLC, be, and is hereby, revoked.

IT IS FINALLY ORDERED that any and all grain dealer operations of Pipeline Foods, LLC, in the State of Nebraska, cease as of the effective date of this Order.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 28th day of September, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Bob Johnson
Crystal Broadus
Mary Kiddy
Tim Schram

Don Watson
Chair

ATTEST:

Sherice Knutson
Deputy Director