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Banghart Properties filed its Answer to the Complaint on November 12, 2021.⁴ In its Answer, Banghart admitted entering into the grain purchase contracts referenced in the Complaint and also admitted that it "took delivery and/or paid producers for some of the grain contracted for purchase in the contracts."⁵ However, the Answer denied the specific allegations in the Complaint that Banghart Properties violated the Grain Dealer Act and related regulations by acting as a grain dealer without a license, failing to issue written documentation with required warning to seller language, and failing to issue pre-numbered documentation of grain purchase transactions.⁶

A Hearing on this matter was held January 5, 2022, in the Commission Hearing Room in Lincoln, Nebraska, as well as virtually via WebEx. The following counsel entered their appearances. Matt Effken appeared on behalf of the Commission. Dillon Keiffer-Johnson appeared on behalf of Complainant. Robert Konrad, admitted *pro hac vice*, and Loel Brooks appeared on behalf of Respondent.

E V I D E N C E

Complainant's Evidence

Complainant and grain program manager Terri Fritz testified on behalf of the grain department. In her testimony, Ms. Fritz described the definitions of "grain dealer" and "producer" under the Grain Dealer Act and the circumstances that require a company to obtain a grain dealer license from the Commission.⁷

Ms. Fritz testified that she had received a telephone call from the sole owner of Banghart Properties, Jan Banghart, who inquired about whether her company needed a grain dealer license to operate in Nebraska.⁸ Ms. Fritz stated that Ms. Banghart told her that Banghart Properties had done some business in Nebraska, "acting as a broker," earlier in the year, but were not doing so any longer.⁹ Ms. Fritz testified that Ms. Banghart described Banghart Properties' business practices, after which she informed

⁴ Exhibit 5.

⁵ Exhibit 5, ¶¶ 14 & 15.

⁶ Exhibit 5, ¶¶ 17, 18 & 19.

⁷ GDC-446 Transcript, 11:20 - 13:13. (Hereinafter "TR page number:line number.")

⁸ TR 14:7-10. Although the Complainant's testimony does not provide a date for this conversation, Ms. Banghart's testimony states it occurred on or about July 19, 2021. TR 99:20-21.

⁹ TR 14:10-14.

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Ms. Banghart that Banghart Properties would need to obtain a grain dealer license in order to operate its business in Nebraska.¹⁰ Ms. Fritz further testified that she explained the licensing process to Ms. Banghart and specified for her all the steps necessary to obtain a grain dealer license.¹¹ Ms. Fritz testified that she also explained to Ms. Banghart that the company would need to have a grain dealer license before Banghart Properties could do any further business in Nebraska.¹² Ms. Fritz stated that Ms. Banghart assured her that they were not going to be doing any further business until they were licensed.¹³

Ms. Fritz also testified that on September 8, 2021, she mailed a letter to Ms. Banghart to follow-up on their telephone conversation.¹⁴ Ms. Fritz stated the letter was of the type she normally sends to someone who has inquired about obtaining a grain dealer license.¹⁵ Ms. Fritz further testified that the letter described the process of obtaining a grain dealer license and the documents required in order for the license to be issued.¹⁶ Ms. Fritz testified that a few days after sending the letter, on September 15, 2021, she received a grain dealer license application from Banghart Properties.¹⁷ The application was in the name of Banghart Properties, LLC, with no other business names or D/B/As.¹⁸

On October 4, 2021, Ms. Fritz received an email from a western Nebraska grain warehouse manager which included a copy of an advertisement that had been published that week in the *Sheridan County Journal-Star*, a newspaper in Gordon, Nebraska.¹⁹ Ms. Fritz testified that the advertisement stated "Banghart Properties, d/b/a Fearless Grain Marketing" was buying millet and sunflowers from producers at set price ranges.²⁰ Ms. Fritz stated that the advertisement prompted her to call Ms. Banghart, who told Ms. Fritz that the ad was placed in error and should not have been put in a Nebraska newspaper.²¹ Ms. Fritz further testified that Ms. Banghart then assured her again that the company was not going to

¹⁰ Tr 14:15-19.

¹¹ TR 14:18-22.

¹² TR 14:22-24.

¹³ TR 14:24-25 - 15:1.

¹⁴ Exhibit 9; TR 15:2-3; 21:4-6.

¹⁵ TR 21:19-22.

¹⁶ TR 24:22-24.

¹⁷ TR 15:3-4.

¹⁸ TR 19:22-23.

¹⁹ Exhibit 8; TR 16:12-19.

²⁰ TR 16:12-14.

²¹ TR 19:4-6.

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be purchasing any grain in Nebraska until they received their grain dealer license.²²

Ms. Fritz testified that she also asked Ms. Banghart about the company name on the advertisement, which was "Banghart Properties, DBA Fearless Grain Marketing, Storage, and Arbitrage."²³ Ms. Fritz testified that Ms. Banghart again told her "the ad was in error," because they were licensed in other states under that name, but in Nebraska it would just be Banghart Properties, LLC.²⁴

Ms. Fritz stated that Ms. Banghart called her again not long after.²⁵ Ms. Fritz testified that during this call, she asked Ms. Banghart to send her copies of contracts Banghart Properties had entered into.²⁶ In response, Ms. Fritz testified, Ms. Banghart once again told her that they weren't doing business in Nebraska.²⁷

Ms. Fritz testified that shortly thereafter she received a telephone call from Mr. Konrad, who informed her that he was now representing Banghart Properties.²⁸ Ms. Fritz further testified that he assured her they were not doing business in Nebraska "at that point," but he would send her any contract that they had.²⁹

Ms. Fritz testified that at about the same period of time as her conversation with Mr. Konrad, she received another telephone call from Jan Banghart.³⁰ During this call, Ms. Banghart informed her that they had been doing business in Nebraska, and she specifically wanted to know if she could pay the Nebraska producers that were owed money by the company.³¹

Ms. Fritz testified that she followed up these telephone calls with a letter to Ms. Banghart on October 12, 2021, in which, among other things, she requested copies of all of their contracts with Nebraska producers.³² Ms. Fritz further testified that she received a letter from Mr. Konrad on October 14, 2021, responding

²² TR 19:7-8.

²³ TR 19:19-25.

²⁴ TR 19:25 - 20:1-3.

²⁵ TR 20:4-5.

²⁶ TR 20:5-6.

²⁷ TR 20:7-8.

²⁸ TR 20:9-12.

²⁹ TR 20:12-14.

³⁰ TR 20:16-17.

³¹ TR 20:17-20.

³² Exhibit 10; TR 25:2-20.

to her inquiries.³³ Included with the letter were copies of various documents from Banghart Properties business records, which Ms. Fritz described as a variety of contracts, settlement summaries, and checks reflecting payment for grain purchases by Banghart properties to a number of Nebraska producers.³⁴ Ms. Fritz stated that additional customer ticket details and scale tickets documenting additional grain purchases from some of the same Nebraska producers were also received from Banghart Properties at a later date.³⁵

Ms. Fritz also testified about the documentation requirements that apply to grain purchases by grain dealers under the Grain Dealer Act.³⁶ She testified that upon taking possession of the grain from the seller, the grain dealer must provide a written communication to the seller—such as a receipt, contract, or bill of lading—that includes, among other requirements, the Commission's specific warning to seller language.³⁷ Ms. Fritz also stated that such written communications must also be prenumbered and maintained in numeric order.³⁸ Ms. Fritz further testified that none of the grain purchase documentation provided by Banghart Properties contained the specific warning to seller language, nor were such documents pre-numbered, or maintained in sequential order.³⁹

Ms. Fritz also testified regarding the efforts of some producers to cancel grain purchase contracts with Banghart Properties.⁴⁰ Ms. Fritz testified that she had been contacted directly in early to mid-November 2021 by four Nebraska producers who inquired variously about whether Banghart Properties was licensed in Nebraska and the status of the required grain dealer security for their transactions.⁴¹ She stated a contract with Annie Keener and her husband had been in place since April 1, 2021, and a contract with Chris and Beth Bogert was dated March 17, 2021.⁴² However, two contracts with Scott Hawthorne and David

³³ Exhibit 11; TR 27:5-23.

³⁴ TR 27:3 - 29:16.

³⁵ Exhibit 12; TR 29:17-25 - 30:1-11.

³⁶ TR 34:2-18.

³⁷ TR 34:6-18. See Neb. Rev. Stat. § 75-904; 291 NAC 003.05A7.

³⁸ TR 34:15-18. See 291 NAC 003.05A8.

³⁹ TR 34:19 - 35:4.

⁴⁰ TR 36:23 - 38:10.

⁴¹ TR 36:23 - 37:5; 37:13-16; 38:3-6. See Neb. Rev. Stat. §§ 75-903(2) & 75-905. These producer inquiries may have been prompted by the Commission's October 22, 2021, press release regarding the Complaint against Banghart Properties. TR 37:16-18. See Exhibit 14, pp.1-2.

⁴² TR 35:18-20; 38:3-4.

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Hagstrom were both dated November 4, 2021, several days after the Complaint in this matter had already been filed with the Commission.⁴³ Ms. Fritz testified that she informed the inquiring producers that Banghart Properties was unlicensed and did not have the financial security required by the Grain Dealer Act for licensed grain dealers.⁴⁴ Although the Keeners, Hawthorne and Hagstrom were able to cancel their contracts in short order, Ms. Fritz testified that the Bogert contract was not canceled, because of Banghart Properties' unwillingness to do so.⁴⁵ Ms. Fritz testified that to her knowledge the cancellation of any contracts was initiated by the individual Nebraska producers and not on Banghart Properties own initiative.⁴⁶

Ms. Fritz concluded her direct testimony by recommending that the Commission assess a civil penalty of \$870,000 against Banghart Properties, which she described as "the maximum fine allowed."⁴⁷ Ms. Fritz explained that this amount represented (i) 29 violations of the statute requiring a grain dealer to be licensed by the Commission in order to do business in Nebraska, (ii) 29 violations of the requirement to include the prescribed warning to seller language on written communications when taking possession of grain and (iii) 29 violations of requirement that such written communications be prenumbered and maintained in sequential order.⁴⁸

Ms. Fritz further recommended that the Commission find that Banghart Properties to be not in good standing with the Commission, and not approve Banghart Properties' pending application for a Nebraska grain dealer license, until any assessed civil penalty is paid.⁴⁹

On cross-examination by Respondent's counsel, Ms. Fritz explained her understanding of a "doing business as" ("D/B/A") designation.⁵⁰ She confirmed that Banghart Properties has withdrawn any intent to use or register any such D/B/A with the Commission.⁵¹ She also confirmed that the contracts Banghart Properties entered into in November 2021, after the filing of the

⁴³ TR 36:23 - 37:6.

⁴⁴ TR 37:3-5; 37:19-21.

⁴⁵ TR 37:10-12; 37:24-25 - 38:1-2; 38:6-9.

⁴⁶ TR 38:24 - 39:10.

⁴⁷ TR 40:5-6.

⁴⁸ TR 40:6-15.

⁴⁹ TR 40:15-19.

⁵⁰ TR 41:11-19.

⁵¹ TR 42:24 - 43:2.

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Complaint, did not mention Fearless Grain Marketing or any other D/B/A.⁵²

Ms. Fritz also confirmed that the September 8, 2021, letter was mailed without any kind of certification or tracking attached and the department had no documentation to show that the letter had been delivered to Ms. Banghart.⁵³ Ms. Fritz testified that Ms. Banghart did not acknowledge receipt of the letter in subsequent communications that occurred immediately after the letter was sent.⁵⁴ Ms. Fritz agreed that subsequent mailings to Banghart Properties were sent either by certified mail or with a tracking number.⁵⁵

Discussing the contracts attached to October 14, 2021, letter from the Respondent's counsel, Ms. Fritz stated that no regulation requires Banghart Properties to terminate the contracts they signed with Nebraska producers.⁵⁶ She added: "Entering into the contract is not the issue. The issue is going forward and actually buying that commodity from the producer without the license or acting on the contract."⁵⁷ Ms. Fritz also confirmed that the department had received verification from several producers that their contracts with Banghart Properties have been canceled.⁵⁸

Ms. Fritz noted that on or about September 15, 2021, the department received an application for a grain dealer license from Banghart Properties.⁵⁹ She affirmed that Ms. Banghart has taken steps to progress the application including initiating conversations with a bonding agent, working with a Nebraska accounting firm to prepare financial documentation, and following up on the required background check.⁶⁰

Ms. Fritz also testified that no Nebraska producer had reported being financially harmed by Banghart Properties.⁶¹ She further stated that she did not know if a South Dakota bond

⁵² TR 43:4-12.

⁵³ TR 43:21-44:9.

⁵⁴ TR 46:16-25.

⁵⁵ TR 47:11-15.

⁵⁶ TR 51:23 - 52:1.

⁵⁷ TR 53:2-5.

⁵⁸ TR 59:6-21.

⁵⁹ TR 53:14-17

⁶⁰ TR 53:19-25; 56:2-15; 57:17 - 58:8.

⁶¹ TR 58:10-13.

possessed by Banghart Properties would cover grain purchased from Nebraska producers and delivered to South Dakota.⁶²

During redirect examination, Ms. Fritz agreed that a grain dealer license is required to purchase grain from a Nebraska producer for resale, even if the grain is delivered to a location outside the state of Nebraska.⁶³ She also affirmed that Banghart Properties did not necessarily need to cancel its contracts with Nebraska producers, but that the company did need to contact the producers to inform them of their unlicensed status and lack of security protection and present them with the opportunity to cancel such contracts.⁶⁴ Ms. Fritz testified that to her knowledge, Banghart Properties has not, on its own initiative, contacted each producer to provide them an opportunity to void the contracts.⁶⁵

Respondent's Evidence

Jan Banghart, sole owner and managing member of Banghart Properties, testified for the Respondent.⁶⁶ Ms. Banghart testified that before deciding to operate her own grain business in 2021, she worked for 25 years in the area of regulatory compliance and management for the State of South Dakota, and also for a private company, in the developmental disabilities field.⁶⁷ She testified that after that, she worked for four years as an employee of her son's grain business.⁶⁸

Ms. Banghart testified that Banghart Properties is in the business of grain marketing and merchandising.⁶⁹ She affirmed that the company assists some producers in the buying and selling of grain and the company also occasionally buys and resells grain.⁷⁰ She stated that Banghart Properties has three employees, including her grandson and the son who was formerly her employer.⁷¹ Ms. Banghart testified that Banghart Properties primarily operates in South Dakota, but also has licenses to conduct business in various other states.⁷² Ms. Banghart further testified that her company

⁶² TR 58:15-22.

⁶³ TR 78:8-21.

⁶⁴ TR 78:22 - 79:5.

⁶⁵ TR 79:6-11.

⁶⁶ TR 84:7-12.

⁶⁷ TR 83:7 - 84:6; 143:20 - 144:2.

⁶⁸ TR 143:24 -144:23.

⁶⁹ TR 84: 16-18.

⁷⁰ TR 84:19-23.

⁷¹ TR 82:23-25; 84:24 - 85:4; 144:21 - 145:3.

⁷² TR 89:18 - 90:8.

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acted prematurely in Nebraska because she had not taken the time to read through the Nebraska regulations.⁷³

Ms. Banghart testified that on July 19, 2021, she contacted Terri Fritz at the Commission to determine if Banghart Properties needed a license to conduct their business in Nebraska.⁷⁴ Ms. Banghart testified that Ms. Fritz informed her that a Nebraska license was required.⁷⁵ Ms. Banghart further testified that Ms. Fritz also verbally informed her of what would be needed to obtain a license and stated that she would send a letter to Ms. Banghart outlining the requirements.⁷⁶ However, Ms. Banghart testified, she has no record or recollection of receiving such a follow-up letter from Ms. Fritz.⁷⁷

Ms. Banghart testified that she submitted Banghart Properties' application for a grain dealer license on September 15, 2021.⁷⁸ She further testified that she been attempting to meet the other requirements for licensing in Nebraska, but had found them to be significantly different and less informal than in other states where Banghart Properties is licensed.⁷⁹ Ms. Banghart stated that she has tried to provide the department with acceptable financial documents for its pending application.⁸⁰ She stated that she has retained the services of a Nebraska accountant and has provided all required information to her accountant to verify the company's financial status.⁸¹ Ms. Banghart testified that the company's debts do not exceed its assets and the company is able to sufficiently pay for all debts and outstanding liabilities.⁸² She also testified, documented by a letter from her bank, that Banghart Properties has an open revolving bank line of credit of \$250,000.⁸³

Ms. Banghart testified that Banghart Properties is bonded in other states through Travelers.⁸⁴ Ms. Banghart also stated that it is her understanding that the bond Banghart Properties holds would

⁷³ TR 85:19 - 85:21.

⁷⁴ TR 99:7-9; 16-19.

⁷⁵ TR 99: 21-23.

⁷⁶ TR 99:10-25.

⁷⁷ TR 124:14-24; 128:7 - 129:8.

⁷⁸ TR 100:20 - 101:2.

⁷⁹ TR 101:17 - 102:3.

⁸⁰ TR 102:17-21.

⁸¹ TR 102:22 - 103:9.

⁸² TR 103:10-20.

⁸³ Exhibit 23; TR 104:14-20.

⁸⁴ TR 92:15-23.

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cover grain delivered into South Dakota.⁸⁵ Ms. Banghart testified that she has reached out to her bonding company to obtain a bond specifically for Nebraska and that it is her belief that Banghart Properties would be able to obtain the appropriate bond needed for Nebraska based on its current financial state.⁸⁶

Regarding the Banghart Properties advertisement that appeared in a Nebraska newspaper, Ms. Banghart testified that it was ordered by her employee/son without her authorization or knowledge.⁸⁷ She further testified that the employee did not realize the advertisement would be published in a Nebraska newspaper in addition to the South Dakota newspapers it was intended for.⁸⁸ Ms. Banghart testified that the employee explained to her that they were only trying to reach southern South Dakota and to her knowledge no Nebraska business was gained from the advertisement.⁸⁹ She further stated that she now approves all advertisements before publication.⁹⁰

Ms. Banghart testified that the company has developed and implemented new office policies, effective November 15, 2021, to act as an instruction manual for the employees in anticipation of being approved for a grain dealer license in Nebraska.⁹¹ Ms. Banghart stated that these new policies direct her employees to obtain information from Nebraska producers to prevent issues that may arise relating to grain purchases at or near state borders.⁹² Ms. Banghart further noted that Banghart Properties has altered the way business matters are discussed and has purchased a grain-buying system that monitors business transactions.⁹³

With regard to the contracts between Banghart Properties and Nebraska producers, Ms. Banghart testified that it is not her position, nor has she been informed, that Banghart Properties must cancel the contracts.⁹⁴ Ms. Banghart testified that it was her belief that a deal with a producer is not struck until her company takes ownership of the grain or when the grain is transferred even

⁸⁵ TR 131:14-24.

⁸⁶ TR 105:19 - 106:6.

⁸⁷ TR 94: 21-24.

⁸⁸ TR 94:5-20.

⁸⁹ TR 95:22 - 96:2.

⁹⁰ TR 95:15-18.

⁹¹ TR 106:17 - 108:21.

⁹² TR 108:22 - 110:12.

⁹³ TR 111:1-16.

⁹⁴ TR 114:1-3.

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though a contract or agreement has been entered into at an earlier point in time.⁹⁵

She testified that four producers had contacted Banghart Properties requesting cancellation of their contracts, including two contracts that she had not been aware of.⁹⁶ With respect to the Keener contract, Ms. Banghart testified that she was not aware the contract existed until she received an e-mail from the Keeners requesting cancelation.⁹⁷ She testified that she canceled that contract after speaking to Mr. Keener on the phone and confirmed the cancelation by e-mail.⁹⁸

Regarding the Bogert contract, Ms. Banghart agreed that Mr. Bogert had requested cancellation, but she also testified that she had written him an email offering to discuss the matter with him.⁹⁹ Ms. Banghart stated that Mr. Bogert has not contacted her to discuss the matter further.¹⁰⁰ Ms. Banghart testified that she would cancel the contract if he contacted her.¹⁰¹ However, she further testified that he did speak to one of her employees, who said that Mr. Bogert "kind of wanted to see-and this is what I was informed-as to where it would go and if we obtained a license."¹⁰² Ms. Banghart confirmed that no money is owed to Mr. Bogert and that no grain has been delivered pursuant to this contract, so they are taking a "wait and see approach."¹⁰³

Regarding the Hawthorne and Hagstrom contracts dated November 4, 2021, Ms. Banghart testified that an employee, Wade Harges, had entered into these contracts without her knowledge.¹⁰⁴ She testified that disciplinary action was taken against the employee, who was suspended without pay,¹⁰⁵ and contracts were cancelled as the producers requested, on November 12, 2021.¹⁰⁶ Ms. Banghart further testified that no grain was delivered pursuant to either contract.¹⁰⁷

⁹⁵ TR 100:3-15.

⁹⁶ TR 114:4-7.

⁹⁷ TR 116:4-10.

⁹⁸ TR 116:11-23.

⁹⁹ TR 117:12-19.

¹⁰⁰ TR 117:20-21.

¹⁰¹ TR 117:21-23

¹⁰² TR 118:3-6.

¹⁰³ TR 117:23 - 118:2, 7-14.

¹⁰⁴ TR 119:12-17.

¹⁰⁵ TR 121:7-13; 122:9-10.

¹⁰⁶ TR 119:15.

¹⁰⁷ TR 122:16-19.

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Ms. Banghart testified that all the grain purchased from Nebraska producers was delivered to South Dakota.¹⁰⁸ She also testified that Banghart Properties contracts now include the required warning to seller language, and bills of lading and contracts now contain the required sequential numbers.¹⁰⁹ Ms. Banghart concluded her direct testimony by stating that she believes her company has taken all corrective action reasonably necessary to mitigate the actions that gave rise to the Complaint.¹¹⁰

On cross-examination, Ms. Banghart stated that the failure to look into the Nebraska rules and regulations before operating in Nebraska was a major oversight on her part.¹¹¹ Ms. Banghart also stated that she had assumed that because a license was not needed to broker grain purchases in South Dakota, a license was also not required in Nebraska.¹¹² Ms. Banghart testified that Banghart Properties paid for grain even after she was aware of the license requirement because contracts had already been signed and grain had been delivered automatically without her knowing, so she felt it important to pay the producers.¹¹³ Ms. Banghart also confirmed that at no time did she reach out to any producer to inform them that Banghart Properties' did not have a Grain Dealer license and did not have the required producer security in place.¹¹⁴

Responding to questions from the Commissioners and Commission counsel, Ms. Banghart stated that if Mr. Bogert wished to deliver grain pursuant to his contract, she would decline due to not having proper licensure.¹¹⁵ Ms. Banghart also testified that Banghart Properties does not have its own grain storage facility or a grain warehouse license in any state, and would broker any delivered grain pursuant to the contracts with Nebraska producers.¹¹⁶ Ms. Banghart testified that Banghart Properties has not been found to have committed any grain dealer violations in any state.¹¹⁷ Responding to a question about how producers would know they could cancel their contracts with Banghart Properties without the company directly contacting them and providing this option, Ms. Banghart stated that the employee that entered these contracts

¹⁰⁸ TR 131:25 - 132:3.

¹⁰⁹ TR 132:9 - 132:1.

¹¹⁰ TR 132:8 - 135:1.

¹¹¹ TR 135:10 - 136:7.

¹¹² TR 153:2-15.

¹¹³ TR 136:8 - 137:8; 165:11-12.

¹¹⁴ TR 137:9-16.

¹¹⁵ TR 147:10 - 148:3.

¹¹⁶ TR 149:17 - 150:22.

¹¹⁷ TR 151:11-15.

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with producers on behalf of the company has been in constant contact with the producers so it is likely they knew of Banghart Properties' unlicensed status.¹¹⁸

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

Pursuant to the Nebraska Grain Dealer Act and applicable state regulations, all grain dealers doing business in Nebraska are required to procure and maintain a license from the Commission.¹¹⁹ The Grain Dealer Act provides that a grain dealer is defined, in pertinent part, as "any person, partnership, limited liability company, corporation, or association that . . . buys grain from the producer of the grain within this state for purposes of selling such grain," not including "a feeder or custom feeder of livestock or poultry."¹²⁰

The record clearly shows that Respondent acted as a Grain Dealer on numerous occasions by buying grain from Nebraska producers for purposes of selling such grain without first being licensed as a Nebraska Grain Dealer. Moreover, the Respondent was not an end user of the grain so purchased.¹²¹ Respondent also did not attempt to make such grain purchases through any licensed Nebraska grain dealers, electing to purchase directly from Nebraska producers.¹²²

The Complaint identifies 29 separate grain purchases with respect to which Respondent acted as an unlicensed grain dealer during the period of September 16, 2021, through October 7, 2021.¹²³ Respondent admitted to these purchases in its Answer.¹²⁴ Documentation of these transactions is included in the hearing record.¹²⁵ The existence of these transactions is not in dispute. Therefore, we find by clear and convincing evidence that the Respondent has committed 29 separate violations of the grain dealer licensure requirements of the Grain Dealer Act as alleged in the Complaint.¹²⁶

Furthermore, we note that the record also includes documentation from the Respondent's own business records

¹¹⁸ TR 154:24 - 155:20.

¹¹⁹ Neb. Rev. Stat. § 75-903, 291 NAC 8-003.01.

¹²⁰ Neb. Rev. Stat. § 75-902(5).

¹²¹ TR 150:14-22.

¹²² TR 151:1-10.

¹²³ Complaint ¶ 24.

¹²⁴ Answer, ¶ 15.

¹²⁵ Exhibit 11.

¹²⁶ Neb. Rev. Stat. § 75-903; 291 NAC 8-003.01.

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demonstrating that an additional 21 unlicensed grain purchases were made by the Respondent from four Nebraska producers between the dates of October 7, 2021, and October 21, 2021, that were not referenced in the Complaint.¹²⁷ The existence of these transactions is also not in dispute. Therefore, we find by clear and convincing evidence that such purchases constitute an additional 21 violations of the grain dealer licensure requirements of the Grain Dealer Act.

Moreover, the record clearly shows that with respect to each of the 29 transactions referenced in the Complaint, the Respondent, upon taking possession of the grain, failed to issue a receipt, contract, bill of lading or other written communication to the seller which included the required warning to seller language to inform producers of their rights to recourse against the required grain dealer security.¹²⁸ Therefore, we find by clear and convincing evidence that Respondent has committed 29 violations of the transaction documentation requirements of the Grain Dealer Act.

Furthermore, the record clearly shows that with respect to each of the 29 transactions referenced in the Complaint, the Respondent failed to issue a pre-numbered grain dealer receipt as required by Commission regulation.¹²⁹ Therefore, we find by clear and convincing evidence that Respondent has committed a further 29 violations of the transaction documentation requirements of the Grain Dealer Act and Commission regulations.

DETERMINATION OF CIVIL PENALTY

The Commission may assess a civil penalty against any person who violates the Grain Dealer Act.¹³⁰ Upon a finding that a violation is proven by clear and convincing evidence, the maximum civil penalty that may be assessed is \$10,000 per day against any person for each violation of the Act.¹³¹

The grain department has recommended that the Commission impose a civil penalty of \$870,000—"the "maximum fine allowed"¹³²—for the 87 separate violations of the Grain Dealer Act identified in the Complaint, consisting of the 29 unlicensed grain

¹²⁷ Exhibit 12.

¹²⁸ Neb. Rev. Stat. §§ 75-904 & 75-905; 291 NAC 8-003.05A7.

¹²⁹ TR 132:9-12; Neb. Rev. Stat. §§ 75-904; 291 NAC 8-003.05A8.

¹³⁰ Neb. Rev. Stat. §§ 75-910 & 75-156.

¹³¹ Neb. Rev. Stat. § 75-156.

¹³² TR 40:6.

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purchases between September 16, 2021, and October 7, 2021, each of which also violated the documentation requirements of the Act in two separate ways. Each of these violations has been proven by clear and convincing evidence appearing in the record. Moreover, the Respondent has admitted to the facts underlying these violations.¹³³

We agree with the grain department that the facts presented in this docket warrant a substantial civil penalty. However, we decline to fully adopt the department's recommendation that the Commission impose the maximum penalty for all violations of the Act identified in the Complaint. More specifically, although we agree that the documentation failures relating to the warning to seller language and pre-numbered documents are clear violations of the Act, we also note that these documentation requirements are presumably directed at grain dealers that have actually obtained proper licensing.

The purpose of the warning to seller language is to inform producers how to make a claim on the financial security that a licensed grain dealer has posted with the Commission in the event of a covered loss.¹³⁴ But Banghart Properties, an unlicensed grain dealer, did not comply with the grain dealer security requirements and did not have the required financial security in place to protect producers.¹³⁵ Providing the warning to seller language under these circumstances could give Nebraska producers the false impression that they are protected by financial security that does not actually exist. We do not want to impose a civil penalty in this docket that may financially incentivize future unlicensed grain dealers to include false statements on transactions documents to the detriment of Nebraska producers. In any event, the crux of the Respondent's violations is not that their grain purchases were improperly documented, but that such purchases occurred at all.

Therefore, we reduce the Complainant's recommendation by two-thirds and impose a civil penalty of \$290,000. We deem this amount to be an adequate penalty, taking into account the 50 unlicensed grain purchases proven by the record, which includes the 29 transactions referenced in the Complaint plus the 21 additional unlicensed grain purchases documented by the Respondent's business records.

¹³³ Answer, ¶ 15; TR 132:8 - 133:1.

¹³⁴ 291 NAC 8-003.05A7.

¹³⁵ See 291 NAC 8-003.04.

We also recognize that even this reduced amount constitutes a civil penalty that is on a scale greater than other penalties imposed by the Commission in other recent grain dealer matters.¹³⁶ Nonetheless, after a careful examination of the testimony and the written record introduced at the hearing, we think a civil penalty in the amount of \$290,000 is clearly warranted under the facts presented in this docket.

An Unlicensed Grain Dealer Presents a Significant Risk of Financial Harm to Nebraska Producers

The Commission is acutely aware of the harm that can occur to Nebraska producers and their local communities in the event of a grain dealer failure. Although licensing cannot guarantee against failure, it does help to assure that before commencing operations in Nebraska, a grain dealer has been subject to some level of scrutiny, has a positive net worth of at least \$10,000, and maintains the required financial security to protect the producer. When someone operates as a grain dealer without a license, none of these producer protections may be in place.

While no Nebraska producer has suffered direct financial harm from Banghart's unlicensed operation as far as the Commission knows, the issue is that an unlicensed grain dealer operating without the scrutiny, financial disclosure, and financial security required by the Grain Dealer Statute presents a risk of harm to producers. If ignored, this risk can be expected to eventually materialize.

For grain dealers in Nebraska, a license is not optional, it is mandatory. Obtaining a license is not, as Ms. Banghart suggested in an email to a Nebraska producer, merely part of "ironing out all wrinkles" of operating a grain dealer business in Nebraska.¹³⁷ This attitude extended to the hearing itself, where Banghart's counsel even queried the Grain Department director about why the regulations included guidance for how to operate as a licensed grain dealer, but "there's no handbook in the

¹³⁶ See, e.g., *In the Matter of the Complaint of John A. Fecht, Director of the Nebraska Public Service Commission Grain Warehouse Department, COMPLAINANT, v. Roberts Seed, Inc., Axtell, Nebraska, RESPONDENT*, Docket No. GDC-443, ORDER ASSESSING CIVIL PENALTIES (Aug. 7, 2018) (hereinafter "Roberts"); *In the Matter of Terri Fritz, Grain Program Manager, Grain Warehouse Department, Nebraska Public Service Commission, COMPLAINANT, v. Pipeline Foods, LLC, Minneapolis, Minnesota, RESPONDENT*, Docket No. GDC-445/GD-3022, ORDER ASSESSING CIVIL PENALTIES AND REVOKING LICENSE (Sept. 28, 2021) (hereinafter "Pipeline").

¹³⁷ Exhibit 13., p. 19.

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regulations for how to operate without a license."¹³⁸ The reason is that Nebraska law requires that a grain dealer license be obtained before doing business, in order to protect Nebraska producers.¹³⁹

The process of obtaining a grain dealer license is not onerous. There are approximately 80 out of state Grain Dealers licensed to operate in Nebraska, and each has successfully navigated the licensing process.¹⁴⁰

We summarized the steps for obtaining a grain dealer license in a recent docket:

Pursuant to the Grain Dealer Act, Applicants are required to complete the Commission Approved Application form, pay the \$100 licensing fee, complete a background check, file an independently reviewed or audited year-end financial statement, and provide a copy of a purchase contract with the required Warning to Seller Language.¹⁴¹

Banghart Properties Operated as a Grain Dealer in Nebraska for an Extended Period of Time without Obtaining a License

Banghart Properties began signing Nebraska producers to grain purchase contracts as early as February 25, 2021.¹⁴² However, Ms. Banghart testified she did not even know about the Nebraska grain dealer licensing requirement until July 19, 2021, when she spoke to Commission Grain Department staff.¹⁴³ It should go without saying that determining the legal requirements for doing business across state lines is the company's responsibility. Even so, Banghart Properties did not take any concrete steps to obtain a Nebraska grain dealer license until months later, on September 15, 2021, when the Respondent filed its license application form and \$100.00 fee with the Commission.¹⁴⁴

Obviously, the act of filing a signed application form is not the same as actually obtaining a grain dealer license after completing the entire application process. Nonetheless, on September 16, 2021, the day after submitting the application form but without completing any other step of the application process,

¹³⁸ TR 51:23-25; 53:13.

¹³⁹ Neb. Rev. Stat. 75-903. See Also 291 N.A.C. §8-003.02-003.04.

¹⁴⁰ *Pipeline*, p. 5.

¹⁴¹ *Roberts*, p.5.

¹⁴² Exhibit 11, p. 80.

¹⁴³ TR 99:16-23; 136:13-20; 150:7-10.

¹⁴⁴ TR 53 14-17; Ex. 22.

Banghart Properties took delivery of its first purchase of grain from a Nebraska producer.¹⁴⁵ The record shows at least 50 such unlicensed grain purchases were made by the Respondent between September 16, 2021, and October 22, 2021.¹⁴⁶

The Owner of Banghart Properties has Decades of Experience in State Regulation.

Obviously, the Grain Dealer Act, including its licensing provisions, applies to every Grain Dealer operating in Nebraska whether or not a company is actually familiar with those requirements. Nonetheless, Jan Banghart has more reason than most to anticipate the need to obtain a license and comply with state law before doing business as a grain dealer. She testified to having 25 years of state government experience in South Dakota in the area of regulatory compliance, including writing state agency rules and regulations, and operating in a management capacity.¹⁴⁷ This was followed by a further four years of experience as an office employee of a grain business operated by her son.¹⁴⁸ We find it difficult to square this level of regulatory and compliance experience with the indifference to Nebraska statutes and regulations shown by Banghart Properties in this docket.

Ms. Banghart testified that "I jumped the gun, and I should have taken more time to read through the regulations, specifically in Nebraska."¹⁴⁹ She further stated that rather than reviewing the rules for grain dealer licensing in Nebraska, she just assumed that they would be the same as South Dakota.¹⁵⁰ Moreover, according to her own testimony, she had actual knowledge of the license requirement as early as July 19, 2021.¹⁵¹ This was several weeks prior to the company's first grain purchase, which was on September 16, 2021. Still, as we have seen, nothing was filed with the grain department to obtain a license until September 15, 2021, and Banghart Properties never completed the licensing process.

The Company's Application Form Presents an Inaccurate Picture of Banghart Properties' Nebraska Grain Dealer Business

The application form signed by Jan Banghart includes a declaration "under penalty of perjury" that the signer has

¹⁴⁵ Exhibit 11, p. 28.

¹⁴⁶ Exhibit 11; Exhibit 12.

¹⁴⁷ TR 83:7-11, 17; 84:3-6.

¹⁴⁸ TR 143:24-25.

¹⁴⁹ TR 85:19-21.

¹⁵⁰ TR 134:1-6; 136:17-18; 153:8-15; 159:1-2.

¹⁵¹ TR 99:16-23; 136:13-20; 150:7-10.

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"examined the information on this application and, to the best of my knowledge and belief, it is true and correct."¹⁵² The signed application form includes the company's statement that it expected to purchase \$300,000 total dollar value of millet at \$10.00 per bushel over the next 12 months.¹⁵³ Contrary to these representations, however, the record shows that on the date the application form was filed, Banghart Properties had already entered into agreements with Nebraska producers for the purchase of over \$587,000 worth of millet at \$15.00 to \$20.00 per bushel.¹⁵⁴ Therefore, the company's statements on the application form were already contradicted by the reality of the Respondent's unlicensed Nebraska grain dealer business.

Banghart Properties Never Filed the Financial Statement Required by Nebraska Law.

As the Commission has noted previously:

The ability to meet financial requirements is essential to the Grain Dealer Process. It provides the most meaningful protection to producers as it is the best guarantee that the Dealer will be able to fulfill its obligations.¹⁵⁵

The Grain Dealer Act requires that each applicant for a grain dealer license provide a reviewed or audited fiscal year-end financial statement prepared by an independent public accounting firm.¹⁵⁶ For a limited liability company such as Banghart Properties, the financial statement must include the following:

(a) A statement of income showing profit or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a statement of proprietor's capital or retained earnings; (e) the volume and dollar value of the grain purchases the licensee made in Nebraska during the fiscal year; (f) the volume and dollar value of transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is not created by an in-store transfer on the same date as the delivery of the direct delivery grain; and (g) the accounting firm's

¹⁵² Exhibit 22, p. 2.

¹⁵³ *Id.*

¹⁵⁴ Exhibit 11.

¹⁵⁵ *Roberts*, p.5.

¹⁵⁶ Neb. Rev. Stat. § 75-903(3).

certification, assurances, opinions, and comments and the notes with respect to the financial statement.¹⁵⁷

The above should not be unusual financial documents for a reputable business that handles thousands of dollars' worth of agricultural commodities. Even so, as of the date of the hearing, the Respondent had still not provided a financial statement meeting these standards to the grain department.¹⁵⁸ In fact, despite having entered into grain purchase contacts with numerous Nebraska producers beginning February 25, 2021, and being aware of the licensing requirements since July 19, 2021, the record shows that Banghart Properties did not even hire an accountant to prepare the required financial statements until October 14, 2021.¹⁵⁹ By this time, however, the record shows that Banghart Properties had already signed more than \$1,000,000 worth of grain purchase contracts with Nebraska producers¹⁶⁰, taken delivery of over \$338,000.00 worth of grain,¹⁶¹ and issued checks totaling over \$233,000.00 in payment for grain purchased from Nebraska producers.¹⁶² An enterprise that generates this much financial activity in a few months' time should be able to readily produce a financial statement.

Banghart Properties has Not Demonstrated that it Meets the Minimum Net Worth Requirement Needed to Qualify as a Licensed Grain Dealer in Nebraska

Commission regulations require each applicant for a grain dealer license to "demonstrate and maintain a minimum allowable net worth of \$10,000 obtain a license."¹⁶³ There is scant evidence in the record to show whether or not the Respondent meets this minimum solvency requirement. For example, the Respondent placed into the record a letter from a bank officer stating that Banghart Properties has an "open revolving line of credit of \$250,000," but there was no supporting testimony or documentation to show whether any of this amount has already been drawn or what the repayment or other terms of such line of credit might be.¹⁶⁴

During cross examination of the Complainant, in the context of discussing the appropriateness of the Complainant's recommended

¹⁵⁷ *Id.*

¹⁵⁸ TR 64:1-3.

¹⁵⁹ Exhibit 11, p.3.

¹⁶⁰ Exhibit 28.

¹⁶¹ Exhibit 11; Exhibit 12.

¹⁶² Exhibit 11.

¹⁶³ 291 NAC 8-003.03H.

¹⁶⁴ Exhibit 23.

civil penalty, there was a short discussion of a financial document variously described as a statement of net worth, balance sheet or statement of income purporting to show Banghart Properties' available capital.¹⁶⁵ However, after the brief discussion of this document, it was not even offered into the record, so we do not have the benefit of reviewing its contents.¹⁶⁶

On re-direct examination, Ms. Banghart testified that she agreed with certain statements made by the Respondent's attorney, to the effect that, "without getting into specific numbers," Banghart Properties has a "positive net worth," "your debts do not exceed your assets," and the company is "able to sufficiently pay for all its debts and outstanding liabilities."¹⁶⁷ However, Ms. Banghart was unable to testify, even in general terms, about the amount of capital she had contributed to the company as its sole owner or even provide a ballpark estimate of how much business the company had already done.¹⁶⁸ Moreover, there is no evidence in the record reflecting the scope of the Respondent's outstanding financial obligations to producers in the various other states where it does business. In short, given the company's unlicensed status, we have no way to be sure whether Banghart Properties has the minimum net worth required by state regulation to protect Nebraska producers.

Banghart Properties Never Obtained the Required Financial Security to Protect Nebraska Producers as Required by Nebraska Law

Furthermore, the Respondent never obtained and filed with the Commission the statutorily-required financial security to protect Nebraska producers, in the form of a corporate surety bond, irrevocable letter of credit or certificate of deposit meeting the requirements of the Grain Dealers Act and Commission regulations.¹⁶⁹ Therefore, the Nebraska producers from whom the unlicensed Respondent bought grain on at least 50 occasions did not have the protection of the financial security that is required by Nebraska law. Although the Commission is not aware of any Nebraska producers that were financially harmed by the Respondent's actions as an unlicensed grain dealer, the fact remains that producers were put at potential risk of harm, for

¹⁶⁵ TR 61:1-21; 62:20-23.

¹⁶⁶ TR 63:5-10; 104:8-9.

¹⁶⁷ TR 103:10-24.

¹⁶⁸ TR 146:15-25; 147: 1-9.

¹⁶⁹ Neb. Rev. Stat. § 75-903(2).

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which they would not have had the financial security that Nebraska law requires

Banghart Properties Continued to Operate as an Unlicensed Grain Dealer for Several Months While at the Same Time Repeatedly Assuring the Grain Department that It Was Not Doing So.

As noted above, Banghart Properties was signing agreements to buy grain from Nebraska producers as early as February 25, 2021.¹⁷⁰ Although it never completed the licensing process, Banghart Properties continued to buy grain and sign new purchase agreements with Nebraska producers for several months, while at the same time repeatedly assuring the grain department it was not doing business in Nebraska.¹⁷¹ In fact, the record shows Banghart Properties signed two grain purchase agreements on November 4, 2021, which is two full weeks after the Complaint in this docket was filed.¹⁷²

The two November contracts mentioned above were canceled by the Respondent at the producers' request, but only after the producers first contacted the grain department.¹⁷³ At least one other agreement, the Keener contract, was also canceled by Banghart Properties before the hearing, in this case a contract that Banghart had not disclosed in Mr. Konrad's October 14th letter.¹⁷⁴

However, the record contains no evidence that any contracts were canceled prior to the Commission's press release announcing the opening of the Complaint. In addition, Banghart never contacted any producers on their own initiative to inform the producers of their unlicensed status or their lack of the required financial security, although the Complainant testified that it is the grain department's position that they should do so.¹⁷⁵

In fact, Ms. Banghart testified that she left it up to each producer to contact her if they wanted to cancel and relied on employees to update the producers on Banghart Properties unlicensed status.¹⁷⁶ Ms. Banghart also testified that if a

¹⁷⁰ Exhibit 11 p. 80.

¹⁷¹ Exhibit 11, Exhibit 12, Exhibit 13; TR 14:24 -15:1; 19:7-8; 20:7-8; 20:12-14.

¹⁷² Exhibit 13, p. 6-7.

¹⁷³ Exhibit 13, pp. 2-7.

¹⁷⁴ Exhibit 13, pp. 21-24; Exhibit 25, pp. 3-4; TR 35:18-20; 38:3-7; 116:1-23.

¹⁷⁵ TR 78:22-25 - 79:11.

¹⁷⁶ TR 155:1-5, 14-19.

producer requested cancelation, she would cancel their contract.¹⁷⁷ But it was apparently up to the producers to contact her.

The record shows that Banghart Properties employees actively discouraged at least one Nebraska producer from following through on a written cancellation request.¹⁷⁸ In this instance, Ms. Banghart testified that she received Chris Bogert's written request to cancel his contract, so she personally sent him an email offering to discuss the matter with him.¹⁷⁹ She further testified that the producer never replied to her email, and she had not received another request to cancel the contract, so she has taken no action.¹⁸⁰

However, the record also includes an email sent by the producer to grain department staff the day after he received Ms. Banghart's email.¹⁸¹ In the producer's email, he informs grain department staff that he had just spoken directly to Banghart Properties employees Jeremy Frost and Wade Hardes, who actively discouraged him from canceling the contract and offering to pre-pay for grain.¹⁸² Based on her testimony at the hearing, Ms. Banghart appeared unaware of the nature of the employees' discussion with the producer.

Banghart Properties Management Failed to Exercise Effective Control Over the Activities of Company Employees

Even if motivated by the best of intentions, Jan Banghart did not exercise effective control over Banghart Properties employees, who evidently ignore her directives.

While Ms. Banghart repeatedly assured grain department staff that Banghart Properties would not do business as a grain dealer in Nebraska until licensed, company employees continued to expand the company's Nebraska business. Employees placed an advertisement in a Nebraska newspaper soliciting the purchase of grain without Ms. Banghart knowing on or about October 4, 2021.¹⁸³ Additional purchase contracts were solicited, that Ms. Banghart was not aware of.¹⁸⁴ The company took delivery of grain from

¹⁷⁷ TR 39: 20-22; 155: 4-5.

¹⁷⁸ Exhibit 13, p. 19.

¹⁷⁹ TR 117:5-23.

¹⁸⁰ TR 117:20-21; 118:10-18.

¹⁸¹ Exhibit 13, p.19

¹⁸² *Id.* This contract was actually cancelled by the producer during the hearing, who was following the proceedings via WebEx. TR 166:1-8; Exhibit 29.

¹⁸³ TR 84:18-24.

¹⁸⁴ TR 116:7-10.

Nebraska producers without her knowing.¹⁸⁵ Trucks hired by Banghart Properties picked up loads of grain from Nebraska producers without her knowledge.¹⁸⁶ Two Banghart Properties employees stopped a Nebraska producer from going through with a written cancelation request without her knowing.¹⁸⁷ One employee made at least a dozen contacts with a Nebraska producer, before finally convincing the producer to sign a contract on November 4, 2021, well after the filing of the complaint in this docket.¹⁸⁸ When Ms. Banghart learned of this contract she took disciplinary action, via a letter to the employee dated November 15, 2021, explaining that the employee would be suspended for one week beginning November 22, 2021.¹⁸⁹ But before his suspension took effect, that same employee participated in the telephone conference that talked a Nebraska producer out of his written cancelation request.¹⁹⁰ Clearly, the assurances that Ms. Banghart was giving the grain department about not doing business without being licensed had little effect on the behavior of Banghart Properties employees.

Mitigating Factors Identified by The Respondent Do Not Excuse the Company's Actions

Respondent has asserted that there are mitigating factors in the record which should reduce any civil penalty to a "minimal" amount.¹⁹¹ According to Respondent's counsel, such mitigating factors include, the partial completion of the Nebraska license process, the existence of a South Dakota bond¹⁹², the suspension of an employee who solicited Nebraska business in November 2021, the development of new operational policies incorporating Nebraska rules, and discussions with Nebraska producers.¹⁹³ In short, "new policies, new procedures, new rules, more oversight, more time in the office."¹⁹⁴

We have considered these alleged mitigating factors, but we do not agree they should result in a further reduction of the civil penalty. To begin with, these so-called mitigating factors apparently did nothing to interfere with Respondent's activities as an unlicensed grain dealer. The record shows that Banghart

¹⁸⁵ TR 165:11-12.

¹⁸⁶ TR 150:23-25; 165:3-13.

¹⁸⁷ TR 114:1-7.

¹⁸⁸ Exhibit 26, p. 1.

¹⁸⁹ *Id.*

¹⁹⁰ Exhibit 13, p. 19.

¹⁹¹ TR 174:5-6.

¹⁹² TR:129:20; 130:18; 131:15-24; 159:15-20.

¹⁹³ TR 142:1-3.

¹⁹⁴ TR 173:21-24.

Properties employees signed Nebraska producers to grain purchase contracts as late as November 5, 2021, and the company's business records show grain purchases from Nebraska producers as late as October 22, 2021. In addition, both the employee suspension and the adoption of the new operational policies did not occur until November 15, 2021.¹⁹⁵ Therefore, those items are not so much mitigating factors as subsequent remedial measures, undertaken after the Complaint was filed.

Effective mitigation would have been to offer producers the opportunity to cancel their purchase agreements after disclosing to them the lack of licensing and the lack of financial security that is required by the Grain Dealer Act. Effective mitigation would have been to diligently pursue the required license in the weeks and months after finally realizing it was required, and not purchasing grain until after the license was obtained. Effective mitigation might also have been for Banghart to stop soliciting producers grain dealer business in Nebraska, until all required steps to obtaining a license were complete and properly licensing was obtained. However, this sort of mitigation did not occur.

CONCLUSION

In summary, Banghart Properties engaged for several months in a pattern of activity that ignored and worked to circumvent Nebraska grain dealer licensing requirements, and disregarded legal requirements designed to protect Nebraska producers and their communities from a potential grain dealer failure.

Banghart Properties never obtained a Nebraska grain dealer license and never even completed the licensing process, but still entered into numerous grain purchase contracts and bought grain from Nebraska producers on 50 documented occasions over a period of several months, while repeatedly assuring the grain department that they were not doing business in Nebraska. Banghart Properties never filed the required financial statement with the Commission to demonstrate solvency. There was no financial security in place as required by Nebraska statute to protect producers owed money by Banghart Properties. Banghart Properties did not disclose all of its outstanding contracts with Nebraska producers to the grain department. Banghart Properties did not contact their contracted Nebraska producers to give them an opportunity to cancel their unlicensed grain purchase agreements. Banghart Properties resisted canceling a contract notwithstanding the producer's written

¹⁹⁵ Exhibit 12, p. 4; Exhibit 13, p. 6-7.

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request on at least one occasion. Banghart Properties employees ignored directives from their manager to stop pursuing Nebraska business. Banghart Properties' sole owner, member and manager, a person with decades of state agency regulation and compliance experience, waited from at least February 2021 until July 2021 to look into whether Nebraska statutes and regulations required her company to be licensed before buying grain from Nebraska producers. Then, having determined that a license was required, Banghart Properties waited until September 2021 before submitting an inaccurate application form, yet continued to purchase grain from Nebraska producers and pursued more business in Nebraska for two weeks after the filing of the Complaint in this Docket. Therefore, we think a civil penalty of \$290,000 is appropriate and justified in this matter.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Banghart Properties, LLC is assessed a civil penalty of \$290,000.

IT IS FURTHER ORDERED that the civil penalty 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 Banghart Properties, LLC, must not engage in any activities as a Grain Dealer in the State of Nebraska without first obtaining a Grain Dealer license.

IT IS FURTHER ORDERED that Banghart Properties, LLC must contact any Nebraska producers that are currently under contract with Banghart Properties, LCC, inform such producers that Banghart Properties, LLC, is not licensed as a Grain Dealer in the State of Nebraska and provide such producers the opportunity to cancel their contracts.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 15th day of March 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Crystal Bracker
Mary Kidden
Tim Schram

Don Winters

Chair

ATTEST:

Thomas W. Golden
Executive Director