

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

IN THE MATTER OF THE PUC STAFF'S)	COMPLAINT
COMPLAINT AGAINST CROSSROADS)	
COOPERATIVE)	GW22-004

COMES NOW, the Staff of the South Dakota Public Utilities Commission (Staff), pursuant to SDCL 49-45-1 and 49-45-26 and hereby requests the Commission issue an Order finding Crossroads Cooperative (Crossroads) to be in violation of SDCL 49-45-1 and 49-45-26 and to issue a fine for the violation. In support of its Petition, Staff asserts as follows:

1. Crossroads is a grain buyer located in Sidney, Nebraska.
2. Crossroads is not registered with the South Dakota Secretary of State.
3. A Crossroads Cooperative Association is listed as a domestic corporation with the Nebraska Secretary of State with its principal office located in Sidney, Nebraska.
4. Crossroads is not licensed to operate as a grain buyer in South Dakota and has never held a grain buyer license in South Dakota.
5. Between July of 2020 and the date of this filing, Crossroads has engaged in purchasing 700 loads of grain for resale within South Dakota without a license.
6. To Staff's knowledge, Crossroads does not have a valid bond to cover any of the grain purchases in South Dakota.
7. Staff has repeatedly informed Crossroads of the need to hold a valid grain buyer license in order to purchase grain in this state.
8. Staff has repeatedly requested information from Crossroads via data request and remote inspection with Crossroads failing to provide the requested information in a timely manner.

Legal Authority

SDCL 49-45-1 provides:

Before transacting the business of a grain buyer in this state, a person shall obtain a grain buyer license from the commission. A violation of this section is a Class 1 misdemeanor. Each purchase of grain without a license is a separate offense.

Operation as a grain buyer without a license may be enjoined upon complaint of the commission. In addition, the commission may assess a civil fine against an unlicensed grain buyer in the amount of one thousand dollars for each purchase of grain up to a maximum fine of twenty thousand dollars.

SDCL 49-45-1.1(3) defines a grain buyer as “any person who purchases grain for the purpose of reselling the unprocessed grain or who purchased three hundred thousand dollars’ worth or more of grain directly from producers in a calendar year.”

SDCL 49-45-26 provides:

A grain buyer, whether licensed or unlicensed, who purchases grain within the state shall have the ability to provide all of the books, accounts, and electronic records relating to the transactions of the grain buyer, either within or without the state, upon request or within five working days of the request. Any requested materials shall be provided to the inspector at a licensed location within the state or at the offices of the commission. A willful violation of this section is a Class 1 misdemeanor.

In addition, the commission may assess a civil fine in an amount not to exceed one thousand dollars for each day requested materials are withheld up to a maximum of twenty thousand dollars.

SDCL 49-45-9 provides:

Before any grain buyer license is issued by the commission, the applicant shall file with the commission a bond conditioned to secure the faithful performance of the applicant's obligations as a grain buyer and full and unreserved compliance with the laws of this state and the rules of the commission, relating to the purchase of grain by the grain buyer. The bond is for the specific purpose of protecting persons selling grain to the grain buyer. However, the bond may not benefit any person entering into a voluntary credit sale with a grain buyer. Any person who does business as a grain buyer without a bond is guilty of a Class 1 misdemeanor. Each day a person conducts the business of a grain buyer without a bond is a separate offense.

Analysis

It appears that Crossroads has been operating as a grain buyer without a license in South Dakota for more than two years. In those two years, Staff has reached out to Crossroads

regarding the need to be licensed to continue operating as a grain buyer in South Dakota. Crossroads has yet to complete the application process.

Since December 11, 2021, Staff has repeatedly requested information from Crossroads in the form of data requests and remote inspections. Though Crossroads eventually provided requested information, Crossroads repeatedly failed to comply with the timelines established in law and specified by Staff. This caused repeated delays in reviewing Crossroads' financial information and in conducting the remote inspection, throughout which Crossroads continued to purchase grain.

When Staff was finally able to complete the remote inspection of Crossroads, it was determined that Crossroads made more than 700 purchases of grain for resale in South Dakota, with the most recent purchase made on February 8, 2022, at which time, Staff was conducting a remote inspection of Crossroads after having repeatedly warned Crossroads of the need to be licensed and the penalties associated with operating as a grain buyer without a license. Due to the sheer number of purchases made without a license, it is appropriate to impose the maximum penalty permitted by statute.

In addition, Staff requested financial information from Crossroads on January 18, 2022, and did not receive all of the requested information until February 23, 2022, 29 days late when accounting for the five-business day requirement to furnish records as required by SDCL 49-45-26. Staff repeatedly notified Crossroads of the statutory requirement to provide the requested information within five business days and the associated penalty. Staff's practice is to work with companies on a timeline if an extension is reasonably requested and the public is not at risk of additional harm during the extension. Crossroads neither made such a request nor ceased unlicensed purchasing, thus extending the risk to the public.

Crossroad's failure to provide requested information to Staff on a timely basis raises concerns with whether Crossroads would comply with state laws even if a valid grain buyer application were received. Given the maximum fine permitted by SDCL 49-45-26 is twenty thousand dollars, Staff request the Commission assess the maximum penalty allowed by statute.

Conclusion

WHEREFORE, the Staff respectfully requests the Commission find Crossroads Cooperative to have committed a violation of SDCL 49-45-1 for each instance Crossroads purchased grain in South Dakota without a license and issue the maximum permitted fine of \$20,000.

Staff also respectfully requests the Commission find Crossroads Cooperative to have committed violations of SDCL 49-45-26 for each day in which Crossroads failed to provide financial records requested by Staff, for a total of \$20,000, the maximum permitted by statute.

Additionally, because Crossroads was operating as an unlicensed grain buyer, there is not applicable bond coverage for any purchases made in South Dakota. Given the number of purchases made and Crossroads' failure to comply with state licensing requirements and provide financial information to Staff when requested, Staff respectfully requests the Commission refer this matter to the applicable States Attorneys and/or the Attorney General for prosecution in accordance with SDCL 49-45-9.

Further, given that Crossroads has not complied with Staff's request to cease grain buying activities, Staff also requests the Commission grant Staff authority to apply to the circuit court for an injunction against Crossroads pursuant to SDCL 49-45-1.

Dated this 8th day of March 2022.



Amanda M. Reiss
Kristen Edwards
Staff Attorneys
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501