



# DONAHOE LAW FIRM, P.C.

Exhibit 1

Brian J. Donahoe  
Licensed to Practice in SD, IA & MN  
[brian@donahoelawfirm.com](mailto:brian@donahoelawfirm.com)

November 2, 2018

**CERTIFIED MAIL, RETURN RECEIPT**

Ms. Darla Pollman Rogers  
Riter, Rogers, Wattier & Northrup, LLP  
319 South Coteau Street  
P.O. Box 280  
Pierre, SD 57501

*Via Email & Certified Mail*

Re: RC Technologies – Sunflour Railroad Crossing Dispute  
**Objection to Application – SDCL 49-16A-100.7**

Dear Darla,

My client Sunflour Railroad, Inc. acknowledges receipt of the notice and application of your client RC Technologies, Inc. for railroad crossings in Claire City and New Effington, SD (Roberts County). We reject that application as not addressing the terms of the previously provided standard crossing agreement from Sunflour Railroad. See SDCL 49-16A-100.7.

As noted in my previous letter of October 2, 2018, Sunflour Railroad, Inc. hereby gives notice under SDCL 49-16A-100.4 that all terms of the standard crossing agreement provided to RC Technologies are necessary. To proceed without agreement constitutes a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way. In addition, Sunflour asserts the protections of SDCL 49-16A-100.8 and demands inclusion of all terms of its proposed agreement for commencement of negotiations. Please provide a redline or otherwise identify each specific provision of the standard crossing agreement to which your client objects.

Finally, we reject the proffered insurance certificate as inadequate. As noted in previous communications and per the standard crossing agreement, specific industry insurance coverage is necessary. This is also required by SDCL 49-16A-100.6:

The railroad may require protective liability insurance with a combined single limit of two million dollars for each occurrence and four million dollars aggregate. The coverage may be provided by a blanket railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately

Ms. Darla Pollman Rogers  
November 2, 2018  
Page 2

to each individual crossing. The coverage shall be required only during the period of construction, repair, or replacement of the facility.

This insurance is required and must be placed by your client per the statute. The certificate provided does not include such coverage.

We do not waive or concede the regulatory taking or inverse condemnation claims which will arise if the parties cannot agree on the proper limits of the crossing. I believed we had a reasonable compromise on compensation for the loss of Sunflour Railroad property rights inherent in the physical occupation of its railroad right-of-way. That offer was rejected by your client. Because one of the conditions of that offer was acceptance of the standard crossing agreement terms, we do not consider that compensation to be adequate in the absence of such safety and other protections. Therefore, Sunflour Railroad reserves its rights to seek full compensation.

Finally, we need to clarify the application of the alleged statutory authority of your client. Without compliance with SDCL 49-16A-100.3 and 49-16A-100.6, it appears the utility does not have authority to enter onto Sunflour Railroad property. Therefore, any unauthorized construction would be considered a trespass for which Sunflour would also reserve the right to pursue damages. That said, it seems this situation can be resolved by mutual agreement to avoid unnecessary litigation expense or damage payment. We look forward to addressing the issues as soon as possible.

Sincerely,

DONAHOE LAW FIRM, P.C.



Brian J. Donahoe  
For the Firm

cc: Jason Travers, Tom Mars (email only)