

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

DOCKET NUMBER _____

IN THE MATTER OF THE)
PETITION OF RC TECHNOLOGIES)
FOR RESOLUTION OF DISPUTED)
RAILROAD CROSSING)
APPLICATION)
)
)
)

PETITION

RC Technologies, by and through its attorneys of record, Riter, Rogers, Wattier & Northrup, LLP, Pierre, South Dakota, hereby petitions the South Dakota Public Utilities Commission ("Commission") for resolution of a disputed railroad crossing application. The dispute is between RC Technologies and Sunflour Railroad. This is a Petition submitted pursuant to SDCL Ch. 49-16A.

PARTIES

1. RC Technologies is a South Dakota Cooperative with its principal place of business at 205 Main Street, New Effington, South Dakota 57255. RC Technologies is a rural local exchange carrier that provides various telecommunications services to exchanges in its certificated service area located in Northeastern South Dakota. Two of RC Technologies' exchanges are New Effington and Claire City.

2. Upon information and belief, Sunflour Railroad, Inc. ("Sunflour" or "Sunflour Railroad") is a corporation formed under the laws of the State of Kansas, whose principal office is 3400 E 56th Ave., Commerce City, Colorado 80022-3612. Sunflour Railroad is authorized to do business in South Dakota as a foreign corporation and is a short-line railroad that owns trackage in Roberts and Marshall Counties in South

Dakota. The company owns approximately 19 route-miles of track, between the towns of Rosholt and Claire City; the line connects with the Canadian Pacific Railway at Rosholt.

3. Upon information and belief, Sunflour Railroad purchased trackage running from Rosholt to Veblen from Soo Line in 2000. The Sunflour Railroad operated as a railroad for only a short time. The line currently serves as railcar storage for other railroads. The storage cars are moved on the remaining trackage by the railroad's only locomotive, an EMD SW₁ switcher.

RELEVANT FACTS

4. RC Technologies is engaged in installation of a fiber optic cable upgrade that includes provisioning of enhanced services to customers in the New Effington and Claire City exchanges. In order to complete the upgrade, RC Technologies needs to cross the railroad lines of Sunflour Railroad in several locations in New Effington and Claire City.

5. Initial communications concerning the crossings took place between Alyssa Herman of Vantage Point Solutions, on behalf of RC Technologies, and Jason Travers, General Manager of Sunflour Railroad. Ms. Herman's initial correspondence with Mr. Travers was on September 10, 2018, at which time Ms. Herman provided Mr. Travers with drawings for seven crossings, one of which was believed to be located on property that had been abandoned by the railroad. Ms. Herman requested verification of the abandonment and also requested Sunflour's application form, as well as any other crossing requirements.

6. By correspondence dated September 11, 2018, Mr. Travers confirmed abandonment of the property for one of the crossings, failed to provide an application

form and stated the need for a utility crossing agreement for all crossings except the abandoned crossing.

7. All of the communications noted above were via email.

8. All of the railroad crossings are on public right-of-way. The original crossing request from RC Technologies was for seven crossings. One of the crossings is on property previously abandoned by the railroad. Two of the crossings provided services to only two customers, and RC Technologies has found other ways to reach those two customers with fiber. The remaining crossings, two in Claire City and two in New Effington, are necessary for RC Technologies to complete the upgrade to customers in those exchanges.

9. The crossing agreements provided by Sunflour required, among other things, a \$5,000 crossing fee per crossing.

10. RC Technologies responded by providing a copy of SDCL § 49-16A-100.5 and affirmation that all the crossings are in public right-of-way.

11. On September 17, 2018, RC Technologies sent notice via certified mail that it would proceed with the crossings, pursuant to the authority granted in SDCL Ch. 49-16A.

12. On October 2, 2018, RC Technologies' attorney received via email a letter of objection from Sunflour's attorney. The letter of objection, among other things, alleged (1) that the September 17, 2018 letter from RC Technologies failed to comply with SDCL § 49-16A-100.3; (2) that RC Technologies does not have statutory authority to proceed with construction; (3) formally stated that "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 safe operations of the railroad or to the current use of the railroad right-of-way,” and (4) that “Sunflour Railroad asserts the protections of SDCL § 49-16A-100.8 and demands inclusion of all terms of its proposed agreement for commencement of negotiations.”

13. The October 2, 2018 letter requested RC Technologies to waive the requirement of a certified letter, which RC Technologies has not done.

14. The parties have conferred in good faith to attempt to resolve the objections, but to date, no resolution has been reached.

15. Although Sunflour Railroad has received and has acknowledged constructive notice and application of the crossings from RC Technologies, on October 29, 2018 RC Technologies sent a certified letter to Sunflour Railroad to ensure compliance with all of the provisions of SDCL § 49-16A-100.3.

RC TECHNOLOGIES’ PETITION

16. RC Technologies requests a ruling from the Commission that because the crossings fall within the public right-of-way, it is not required to comply with the provisions of SDCL § 49-16A-100.3, which provisions apply only to crossings not located in the public right-of-way.

17. RC Technologies, by providing drawings of where the public right-of-way crossings were located to Sunflour in its correspondence of September 10, 2018, has complied with the statutory requirements for crossings within the public right-of-way. Accordingly, RC Technologies has statutory authority to proceed with construction of the crossings.

18. Alternatively, RC Technologies petitions the Commission for an Order authorizing it to proceed with construction of the crossings, as set forth in RC Technologies Notice and Application to Sunflour Railroad dated October 29, 2018.

19. On October 29, 2018, RC Technologies provided notice and application to Sunflour Railroad via certified mail, return receipt requested. Included with the notice and application were drawings showing the location of the proposed crossings, including the railroad's property, tracks, and wires that RC Technologies' lines will cross. A certificate of insurance accompanied the application with coverages as prescribed in SDCL § 49-16A-100.6. Copies of the letter and supporting documents are attached hereto as Exhibit A.

20. RC Technologies is not required to pay a crossing fee, per SDCL §49-16A-100.5, as all the crossings are located within the public right-of-way.

21. There is no requirement in SDCL § 49-16A-100.4 or in South Dakota case law for a crossing agreement, in particular when the crossings are in public right-of-way.¹ The crossing agreement Sunflour Railroad provided to RC Technologies fails to comply with the provisions of South Dakota law.

22. SDCL § 49-16A-100.4 authorizes a utility to commence construction of the crossing thirty days after receipt by the railroad of the completed crossing application, the fee, and certificate of insurance, all of which RC Technologies has provided to Sunflour.

23. Sunflour Railroad is not operating as a railroad, but rather serves only as railcar storage for other railroads. Accordingly, Sunflour Railroad has not and cannot

¹ See *Northwestern Bell Telephone Company vs. Chicago and North Western Transportation Company*, 245 N.W.2d 639 (SD 1976).

demonstrate a serious threat to the safe operations of the railroad or to the current use of the railroad-right-of-way.

24. Sunflour Railroad failed to comply with SDCL § 49-16A-100.7 by (a) failing to give the specific basis of its objection and by (b) failing to give notice of objection to RC Technologies by certified mail, return receipt requested.

25. Any additional requirements Sunflour Railroad seeks to impose on RC Technologies pursuant to SDCL § 49-16A-100.8 are without justification because not only is Sunflour Railroad's proposed agreement contrary to the provisions of SDCL § 49-16A-100.5, a crossing agreement is not required in order to commence construction of the crossings, all of which are in the public right-of-way.

26. The failure of Sunflour Railroad to comply with the provisions of the statutes, as stated herein, to allow RC Technologies to proceed with the crossings will likely cause many of RC Technologies' customers to be denied the benefits of upgraded broadband services, due to the delay caused by these proceedings and the lateness in the construction season.

27. It is in the public interests of RC Technologies' customers for this Commission to enter an order authorizing RC Technologies to proceed with the crossings.

Wherefore, RC Technologies seeks the following relief:

28. An Order from the Commission that RC Technologies is not required to comply with the requirements of SDCL § 49-16A-100.3, as all of the crossings are located within the public right-of-way; that RC Technologies provided sufficient notice

with its September 10, 2018 correspondence to Sunflour; and that RC Technologies may complete the crossings immediately, without any further requirements or restrictions.

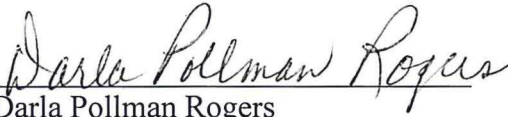
29. Alternatively, an Order from the Commission that RC Technologies has complied with all statutory requirements for crossings on public right-of-way and authorizing it to proceed with the crossings, without any further requirements or restrictions;

30. A finding that Sunflour Railroad has failed to establish that the proposed crossings are a serious threat to safe operation of the railroad or to the current use of the railroad right-of-way;

31. A finding that Sunflour Railroad has failed to establish the existence of any special circumstances that would authorize it to impose additional requirements on RC Technologies; and


32. For such other and further relief as the commission deems just.

DATED this 2nd day of November, 2018


Darla Pollman Rogers
Riter, Rogers, Wattier & Northrup, LLP
PO Box 280
Pierre, SD 57501
Telephone (605) 224-5825
Fax (605) 224-7102
Attorney for RC Technologies Inc.

RC Technologies Inc., hereby affirms that the statements of fact above are accurate to the best of its knowledge.

RC Technologies Inc.

By: 
Scott Bostrom, General Manager