

Exhibit 5



FREDERICKS PEEBLES & MORGAN LLP
ATTORNEYS AT LAW

THOMASINA REAL BIRD

1900 Plaza Drive
Louisville, CO 80027
Telephone: (303) 673-9600
Fax: (303) 673-9155
E-Mail: trealbird@ndnlaw.com
www.ndnlaw.com

April 1, 2015

SENT VIA E-MAIL AND U.S. MAIL

James E. Moore
William Taylor
P.O. Box 5027
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5-27

Re: TransCanada Keystone Pipeline Company, LP's Insufficient or Deficient Responses to Yankton Sioux Tribe's Discovery Requests and Yankton Sioux Tribe's Discovery Responses, PUC Docket No. HP14-001

Dear Messrs. Moore and Taylor:

This letter serves as notice to you that you have provided insufficient or deficient responses to the Yankton Sioux Tribe's First Interrogatories and Request for Production and to the Yankton Sioux Tribe's Second Interrogatories and Request for Production in the above-captioned matter, and as a request that you cure said deficiencies.

As noted in your February 12, 2015 letter, discovery in this matter is governed by the South Dakota Rules of Civil Procedure ("Rules"), SDCL Chapter 15-6. Section 15-6-26(b) of the Rules addresses the scope of discovery and provides that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The Rules, at Section 15-6-37(a), allow a party to apply for an order compelling discovery and requiring the defaulting party to pay the moving party reasonable expenses.

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In your responses dated January 23, 2015, to Yankton Sioux Tribe's First Interrogatories and Request for Production of Documents, as supplemented by your supplemental responses dated March 10, 2015, and in your responses dated March 10, 2015, to Yankton Sioux Tribe's Second Interrogatories and Request for Production, you asserted objections rather than fully responding to ten (10) of the Tribe's interrogatories and six (6) of the Tribe's requests for production. As described in "Attachment A," your responses to the Tribe's discovery requests thus far are deficient. We request that you cure the deficiencies in your responses to the six (6) interrogatories and six (6) requests for production referenced in Attachment A by supplementing these responses and producing additional documents as soon as possible, but no later than April 5, 2015. In the event you do not respond or your supplemental responses continue to be deficient, we will request that the Public Utilities Commission compel the Applicant to comply with our discovery requests and award the Tribe reasonable expenses of having to bring said Motion. Moreover, we will seek to have the non-produced documents excluded from the evidentiary hearing. *Lagge v. Corsica Co-op*, 677 N.W.2d 569, 573-574 (S.D. 2003). We may also seek dismissal of Applicant's action. *Van Zee v. Reding*, 436 N.W. 2d 844 (S.D. 1989).

With respect to your letter of January 23, 2015, regarding our discovery responses, we wish to point out that, to date, you have failed to remedy the deficiency contained in each of your requests by providing us with the specific permit condition or finding of fact addressed by each respective request. With respect to witnesses and exhibits, please be advised that the Tribe will not be utilizing experts and that we have not yet identified our hearing exhibits. Please also be advised that we will disclose exhibits and witness lists as required by order of the Public Utilities Commission – just as you indicated the Applicant will do in your objection to our discovery request for hearing exhibits (*see Keystone's Responses to Yankton Sioux Tribe's Second Interrogatories and Request for Production of Evidence*, Objection to RFP No. 10). If you have additional and specific concerns regarding our discovery responses, please detail those to us in writing. Otherwise, we trust that this response fully addresses your concerns.

In the interest of the good spirit that guides this discovery, we request you provide us amended answers and production as required. Failure to cure any deficiencies will require that we move the Commission for an order to compel, seek reasonable expenses associated therewith, seek exclusion of non-produced documents from introduction at the evidentiary, and seek dismissal of Keystone's case. It is in the best interest of all parties and the Commission to avoid such measures which can be avoided by your responses to such deficiencies.

Sincerely,



Thomasina Real Bird
Attorney at Law

Attachment A

Deficiencies in the Applicant's Discovery Responses

I. General Objections to the Tribe's Discovery

Keystone's general objection regarding inconsistency of the Tribe's instructions and definitions with the provisions of SDCL Chapter 15-6 fails to state the grounds for said objection with specificity, as required by SDCL 15-6-33(a), because it fails to identify the specific instruction and/or definition and corresponding provision of SDCL Chapter 15-6 to which it applies. Furthermore, because said objection fails to specify the part(s) of the instructions and definitions to which it applies, said objection fails to comply with SDCL 15-6-34(b). Please immediately provide us with this specific information so that this matter can be resolved; otherwise please respond using the definitions and instructions contained in the original discovery requests.

II. Applicant's Responses to the Tribe's First Interrogatories

- **Interrogatory No. 10**

The Tribe requested that the Applicant identify the dates, addresses, phone numbers, emails, and names of person(s) responsible for conducting surveys, addressing property specific issues and civil survey information. The Applicant objected on the grounds that this information is not relevant or reasonably calculated to lead to the discovery of admissible evidence. However, the request is designed and calculated to lead to discovery of admissible evidence. The individuals about whom information is sought may possess information or records relevant to the Applicant's compliance or non-compliance with the permit conditions cited in Interrogatory No. 10. Please provide all information responsive to Interrogatory No. 10.

- **Interrogatory No. 13**

The Tribe requested that the Applicant identify and provide the phone number, address, and email address of every each environmental inspector that Keystone has incorporated into the CMR. The Applicant objected on the grounds that this information is not relevant or reasonably calculated to lead to the discovery of admissible evidence. However, the request is designed and calculated to lead to discovery of admissible evidence. The individuals about whom information is sought may possess information or records relevant to the Applicant's compliance or non-compliance with the permit conditions cited in Interrogatory No. 13. Please provide all information responsive to Interrogatory No. 13.

- **Interrogatory No. 15**

The Tribe asked the Applicant whether any contractors hired by Keystone to construct any pipeline owned or operated by Keystone or any of its affiliates have received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in the United States. The Applicant objected on the grounds that this request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence, and

that it seeks information not in the Applicant's custody or control and not maintained by the Applicant in the ordinary course of business. However, the request is designed and calculated to lead to discovery of admissible evidence. The information sought may include information relevant to the Applicant's compliance or non-compliance with the permit conditions cited in Interrogatory No. 15. In response to your concern about the breadth of this request and the fact that such information is not in the Applicant's custody or control or generally maintained in the ordinary course of business, we request that you respond to Interrogatory No. 15 based on the Applicant's knowledge, i.e., to the Applicant's knowledge, have any contractors hired by Keystone to construct any pipeline owned or operated by Keystone or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in the United States?

- **Interrogatory No. 16**

The Tribe asked the Applicant whether any contractors hired by Keystone to construct any pipeline owned or operated by Keystone or any of its affiliates have received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in Canada. The Applicant objected on the grounds that this request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence, and that it seeks information not in the Applicant's custody or control and not maintained by the Applicant in the ordinary course of business. However, the request is designed and calculated to lead to discovery of admissible evidence. The information sought may include information relevant to the Applicant's compliance or non-compliance with the permit conditions cited in Interrogatory No. 16. In response to your concern about the breadth of this request and the fact that such information is not in the Applicant's custody or control or generally maintained in the ordinary course of business, we request that you respond to Interrogatory No. 16 based on the Applicant's knowledge, i.e., to the Applicant's knowledge, have any contractors hired by Keystone to construct any pipeline owned or operated by Keystone or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in Canada?

- **Interrogatory No. 21**

The Tribe requested that the Applicant provide the name, address, phone number, and email of all persons involved in any cultural or historic survey conducted by Keystone as well as a detailed description of all pertinent professional training that qualifies the surveyor as a professional who meets the standards of the Secretary of the Interior's Historic Preservation Professional Qualification Standards (48 FR 44716, September 29, 1983). The Applicant objected on the grounds that this information is not relevant or reasonably calculated to lead to the discovery of admissible evidence. However, the request is designed and calculated to lead to discovery of admissible evidence. The information sought may include information relevant to the Applicant's compliance or non-compliance with the permit condition cited in Interrogatory No. 21. Please provide all information

- **Interrogatory No. 32**

The Tribe requested in part that the Applicant identify the location of all construction camps and housing camps in South Dakota that will be used for construction and/or temporary housing. The Applicant responded by citing the counties in which the camps would be located and referencing Figure 2.1.5-1 of the FSEIS. This information does not provide a precise location for the camps to adequately respond to the Tribe's request. The map referenced by the Applicant is of poor quality and minimal detail. Additionally, it is unclear whether the red dot indicating a camp location is to scale but it seems unlikely that this is the case. If the dot is not to scale, this calls into question the accuracy of the map and the locations depicted. The Applicant's response is therefore deficient. Please provide geographic coordinates or legal descriptions for all known or anticipated locations of construction and/or temporary housing camps.

III. Applicant's Responses to the Tribe's First Requests for Production of Documents

- **RFP No. 2**

The Tribe requested that the Applicant provide all documents relating to environmental and hydrological surveys. The Applicant objected on the grounds that this request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence because it is unlimited in time and does not refer to a specific project. However, the request is designed and calculated to lead to discovery of admissible evidence. The information sought may include information relevant to the Applicant's request to change the finding of fact cited in Request No. 2. In response to your concern about the breadth of this request, we request that you respond to Request No. 2 within the scope of the proposed Keystone XL pipeline project, i.e., please provide all documents relating to environmental and hydrological surveys conducted in conjunction with, in support of, or in planning the proposed Keystone XL pipeline project.

- **RFP No. 3**

The Tribe requested that the Applicant provide all documents relating to cultural and historic surveys, training, and response plans. The Applicant objected on the grounds that this request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence because it is unlimited in time and does not refer to a specific project. However, the request is designed and calculated to lead to discovery of admissible evidence. The information sought may include information relevant to the Applicant's compliance or non-compliance with the permit condition cited in Request No. 3. In response to your concern about the breadth of this request, we request that you respond to Request No. 3 within the scope of the proposed Keystone XL pipeline project, i.e., please provide all documents relating to cultural and historic surveys, training, and response plans prepared in conjunction with, in support of, or in planning the proposed Keystone XL pipeline project.

- **RFP No. 4**

The Tribe requested that the Applicant provide all documents relating to required permits, both in South Dakota and outside South Dakota, including permit applications which were denied, revoked, or suspended. The Applicant objected on the grounds that this request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. However, the request is designed and calculated to lead to discovery of admissible evidence. The information sought may include information relevant to the Applicant's compliance or non-compliance with the permit condition number 1. In response to your concern about the breadth of this request, we request that you respond to a narrowed request that you provide all permits required by any law, both in South Dakota and outside South Dakota, all applications for such permits, and all permit applications which were denied, revoked, or suspended.

- **RFP No. 6**

The Tribe requested that the Applicant provide all documents constituting Keystone's Emergency Response Plan. The Applicant objected on the grounds that the information is beyond the scope of the PUC's jurisdiction and Keystone's burden, the requests seeks information governed by federal law and within the exclusive province of PHMSA, and the request seeks information that is confidential and proprietary. However, an applicant's plans for addressing emergencies related to the project are of key importance to the PUC's determinations regarding pipeline permits. While safety of a pipeline once it is operational may be within the exclusive purview of the PHMSA, this is not the case with respect to a proposed project that has not yet been built. In fact, the PHMSA has expressly disclaimed authority over pipelines that are not yet operational. Furthermore, such information is vital to the Tribe because such information may directly affect the safety of Tribal members and because such information is necessary to determine whether the proposed project continues to meet the conditions on which the Applicant's permit was issued. The applicant further alleged that public disclosure of the Emergency Response Plan would commercially disadvantage Keystone. This is not a valid basis for an objection. Finally, the Applicant's reference to the FSEIS is not responsive to this request. The Tribe therefore requests that you provide all documents requested in Request No. 6.

- **RFP No. 7**

The Tribe requested that the Applicant provide all documents that support the proposed changes to the Findings of Fact identified in Appendix C to Keystone's application filed on September 14, 2014 with the PUC. The Applicant objected on the grounds that this information is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. However, the request is designed and calculated to lead to discovery of admissible evidence and is no more broad or burdensome than is necessary to procure evidence relevant to the relief the Applicant seeks and the basis for such relief. The information sought is directly related to the Applicant's request that such Findings of Facts be changed. Please provide all information responsive to Request No. 7.

III. Applicant's Responses to the Tribe's First Requests for Production of Documents

- **RFP No. 8**

The Tribe requested that the Applicant provide all documents that support the proposed changes to the Findings of Fact identified in Appendix C to Keystone's application filed on September 14, 2014 with the PUC. The Applicant objected on the grounds that this information is not reasonably calculated to lead to the discovery of admissible evidence. However, the request is designed and calculated to lead to discovery of admissible evidence. The information sought is directly related to the Applicant's request that such Findings of Facts be changed. Please provide all information responsive to Request No. 8.