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

IN THE MATTER OF THE PETITION OF
TRANSCANADA KEYSTONE PIPELINE, LP
FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET
HP09-001 TO CONSTRUCT THE
KEYSTONE XL PIPELINE

**YANKTON SIOUX TRIBE'S
MOTION TO COMPEL**

HP14-001

The Yankton Sioux Tribe (hereinafter “the Tribe”), pursuant to SDCL §15-6-37(a), moves to compel TransCanada Keystone Pipeline, LP (“TransCanada”), to provide answers to interrogatories and requests for production of documents for the reasons stated below.

DISCUSSION OF FACTS

On January 6, 2015, TransCanada was served with the Yankton Sioux Tribe’s First Interrogatories and Request for Production of Documents. Ex. 1.

On February 6, 2015, TransCanada submitted responses to the Tribe’s First Interrogatories and Request for Production of Documents and asserted objections rather than fully responding to twelve (12) of the Tribe’s interrogatories and six (6) of the Tribe’s requests for production. Ex. 2.

On February 20, 2015, TransCanada was served with the Yankton Sioux Tribe’s Section Interrogatories and Request for Production of Documents. Ex. 3.

On March 10, 2015, TransCanada responded and asserted objections rather than fully responding to two (2) of the Tribe’s requests for production. Ex. 4.

On April 1, 2015, the Tribe sent a letter to TransCanada noting that TransCanada provided insufficient or deficient responses to six (6) of the Tribe’s interrogatories and six (6) of the Tribe’s requests for production and requesting that TransCanada cure said deficiencies. The Tribe

described each of the deficient objections to the Tribe's interrogatories and the Tribe's requests for production and requested TransCanada supplement its responses and produce additional documents no later than April 5, 2015. Ex. 5.

The Tribe's April 1, 2015 letter also advised TransCanada that the Tribe would request that the Public Utilities Commission compel TransCanada to comply with the Tribe's discovery requests and award the Tribe reasonable expenses of having to bring a motion. Moreover, the Tribe notified TransCanada that it will seek to have any non-produced documents excluded from the evidentiary hearing and it may seek dismissal of TransCanada's action. Ex. 5.

TransCanada did not respond to the Tribe's letter of April 1, 2015 until *today*, April 7, 2015, two days after the deadline provided by the Tribe in its April 1 letter and the very day by which any motions to compel must be filed. Furthermore, with the exception of one supplemental response providing the latitude and longitude for man camps, TransCanada's response to the Tribe's letter fails to provide additional information responsive to the Tribe's request and cites no new or valid basis for Keystone's failure to comply. Ex. 6.

The Yankton Sioux Tribe certifies that it has in good faith conferred or attempted to confer with the Applicant in an effort to secure the information and material sought through discovery without court action. Notwithstanding the Tribe's good faith effort, the impasse remains.

DISCUSSION OF LAW

I. TransCanada must be compelled to produce overdue answers to interrogatories and requests for production.

Under Public Utilities Commission Administrative Rule 20:10:01:22.01, an order to compel may be granted by the Commission upon the showing of good cause by a party to the proceeding. Additionally, this rule sets forth that discovery is to proceed "in the same manner as in the circuit courts of this state." A.R.S.D. 20:10:01:22.01.

In South Dakota circuit court discovery is governed by SDCL §15-6-26(b):

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) In general. 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, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. 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 discovery rules are to be accorded a “broad and liberal treatment.” *Kaarup v. St. Paul Fire and Marine Insurance Co.*, 436 N.W.2d 17, 21 (S.D. 1989). “A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial.” *Id.* at 19 (citing 8 C. Wright and A Miller, *Federal Practice and Procedure*, §2001 (1970)).

TransCanada was served with interrogatories and requests for production on January 6, 2015 and February 20, 2015, but its responses have been insufficient and deficient as explained in the Tribe’s letter dated April 1, 2015. Ex. 5. Under SDCL Section 15-6-37(a), the PUC must enter an order to compel responses and production.

The Yankton Sioux Tribe requests the Commission enter an order:

1. To compel discovery pursuant to SDCL 15-6-37(a)(2) and ARSD 20:10:01:22.01;
- and
2. Awarding reasonable attorneys’ fees and expenses with bringing this motion pursuant to SDCL 15-6-37(a)(4)(A).

Respectfully submitted this 7th day of April, 2015.

Thiri Real Bird

Thomasina Real Bird, SD Bar No. 4415
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: trealbird@ndnlaw.com
Attorney for Yankton Sioux Tribe