

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

<b>IN THE MATTER OF THE</b>	)	
<b>APPLICATION OF DAKOTA</b>	)	<b>HP14-002</b>
<b>ACCESS, LLC FOR AN ENERGY</b>	)	
<b>FACILITY PERMIT TO</b>	)	<b>ROSEBUD SIOUX TRIBE</b>
<b>CONSTRUCT THE DAKOTA</b>	)	<b>RESPONSE TO MOTION</b>
<b>ACCESS PIPELINE PROJECT</b>	)	<b>TO STRIKE</b>
	)	

TO: Dakota Access and its attorneys:  
Brett Koenecke  
Kara Semmler  
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For its response to the Applicant’s Motion to Strike Rosebud Sioux Tribe’s Exhibit List and Preclude Introduction of Undisclosed Exhibits, the Rosebud Sioux Tribe, by and through Counsel states the following:

1. That the Rosebud Sioux Tribe filed and served its Witness and Exhibit List on all parties on September 23, 2015 consistent with the Commissions Scheduling Order.
2. That to the best of attorney’s knowledge, for the Rosebud Sioux Tribe, Dakota Access served the Rosebud Sioux Tribe with 4 discovery requests as stated in their Motion to Strike.
3. That Discovery in this matter is governed by appropriate PUC Administrative Rules and the South Dakota Rules of Civil Procedure, particularly SDCL 16-6-33, 16-6-37(a) and 15-6-37(c).
4. That the Rosebud Sioux Tribe responded to each of Dakota Accesses discovery requests with answers and objections consistent with the Rules of Civil Procedure.
5. That the Rosebud Sioux Tribe provided supplemental answers to Dakota Access First Set of Interrogatories and Request for Production of Documents on June 15, 2015 through additional answers and objections. See RST Exhibit A which is attached hereto and incorporated by reference. The Rosebud Sioux Tribe informed Dakota Access that the Rosebud Sioux Tribe objected to the application on the grounds that Dakota Access would be unable to satisfy the statutory requirements of SDCL 49-41B and other relevant laws, including but not limited to the Pipeline Safety Act.

6. That in the same response the Rosebud Sioux Tribe objected to the remaining questions that requested a complete outline of a factual basis, any relevant law or regulation and the request for the decision maker responsible for deciding said objection on the grounds that the questions sought answers beyond the scope of the requirements of the discovery statutes. The Rosebud Sioux Tribe is entitled to rely on its objections until such time as they are ruled on by the Commission. Dakota Access has taken no action to resolve Rosebud Sioux Tribe's Objections nor to seek to resolve the issues informally and they have not filed a motion to compel production.

7. That the Motion to Strike filed by Dakota Access is not procedurally proper under the Rules of Civil Procedure and should be denied as such. Seeking to strike otherwise relevant and properly disclosed documents the day before trial without following the rules of civil procedure is akin to taking an end run around the rules and is prejudicial to the Rosebud Sioux Tribe.

8. That SDCL 15-6-37(a) requires the party seeking to enforce the discovery provisions, including the exclusion of exhibits, to seek an order to compel disclosure or production of documents prior to seeking such exclusion. However, the same rule requires the moving party to include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.

9. That at no point in time throughout the duration of this proceeding did counsel for Dakota Access ever attempt to confer with counsel for the Rosebud Sioux Tribe regarding any concerns that Dakota Access may have with Rosebud Sioux Tribe's discovery responses nor did counsel ever attempt to meet and confer in an attempt to secure the material or resolve the objections prior to seeking to exclude the identified exhibits.

10. That the motion to exclude contains no certificate that the moving party has attempted to meet and confer as required by statute.

11. That the Rosebud Sioux Tribe responded to each request with either an answer or an objection or with answers and objections to each interrogatory. The answers and objections were made in good faith and Rosebud Sioux Tribe is entitled as a matter of law to rest on its objections until such time that each and every objection is ruled on and determined by the Public Utilities Commission. Resting on our objections and reliance on the law until such time as Dakota Access sought to take action to seek an order to compel and resolve the objections, qualifies as substantial justification under SDCL 15-6-37(a).

12. That there is no statutory remedy to exclude or strike materials in the manner Dakota Access seeks. The remedy for failure to disclose information provided for in SDCL 16-6-37(c) is only appropriate following the PUC issuing an Order compelling production of discovery and resolving raised objections. In this situation there is no order compelling the production of discovery, nor is there an order ruling on the objections propounded by Rosebud in response to Dakota Access discovery requests.

13. That granting Dakota Accesses motion to strike without first requiring Dakota Access to follow the Rules of Civil Procedure would be an order that is in violation of the Rosebud Sioux Tribe's rights as an intervening party as protected by the laws and Constitution of the State of South Dakota.

14. If Dakota Access had concerns with the responses provided throughout discovery, the appropriate steps for Dakota Access to take would have been to ask for a meet and confer, asked for ruling on the objections and asked for an order compelling discovery. Dakota Access did not take any of those actions or steps and now seeks to exclude otherwise relevant evidence and exhibits without following the Rules of Civil Procedure.

15. That all of the exhibits listed in Rosebud Sioux Tribes exhibit list are either documents or websites that are either available in the public domain or are Dakota Access's own documents produced during discovery. They are all documents that one could reasonably expect that some of Dakota Accesses witnesses would have consulted and relied upon in preparing the application and testimony for the hearing.

16. Dakota Access even makes mention of RST Exhibit 23, the South Dakota Department of Game Fish and Parks, Wildlife Division; *East River Fisheries Management Area Strategic Plan (pdf)*, in its U.S. Fish and Wildlife Service Environmental Assessment Grassland and Wetland Easement Crossings application dated June 2015.

17. In this situation, where Dakota Access has sat on any rights it may have had regarding the subject matter of its motion and where all exhibits have been produced in conformance with the procedural order regarding the same; where Dakota Access has indeed referenced and relied on at least one of the documents; where some of the documents sought to be excluded are in fact documents produced by Dakota Access and many of the documents and websites are documents that other similarly situated professionals would have consulted and relied on in preparing testimony for a proceeding of this nature, it is hard to imagine a situation whereby Dakota Access is actually prejudiced by introduction of these otherwise relevant materials.

Wherefore, based on the foregoing, the Rosebud Sioux Tribe respectfully requests the PUC to deny the Motion to Strike.

Dated this 28<sup>th</sup> day of September, 2015.

RESPECTFULLY SUBMITTED:

/s/ Matthew L. Rappold  
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<b>ACCESS, LLC FOR AN ENERGY</b>	)	
<b>FACILITY PERMIT TO</b>	)	<b>ROSEBUD SIOUX TRIBE'S</b>
<b>CONSTRUCT THE DAKOTA</b>	)	<b>SUPPLEMENTED RESPONSES TO</b>
<b>ACCESS PIPELINE PROJECT</b>	)	<b>FIRST SET OF INTERROGATORIES</b>
	)	

TO: BRETT KOENECKE, Attorneys for Dakota Access, LLC 503 South Pierre Street  
P.O. Box 160, Pierre, SD 57501, (605) 224-8803 [brett@mayadam.net](mailto:brett@mayadam.net)

The Rosebud Sioux Tribe, Sicangu Oyate Land Office and the Sicangu Nation Treaty Council submits the following supplemented answers in response to Dakota Access first set of Interrogatories and Request for Production of Documents.

INTERROGATORY NO. 1: State the name of each person answering these interrogatories and include for each person their title and business address.

ANSWER: The answer previously provided in response to Interrogatory One remains unchanged.

INTERROGATORY NO. 2: Provide names of the officers and council members.

ANSWER: The answer previously provided in response to Interrogatory Two remains unchanged.

INTERROGATORY NO. 3: Please identify any witnesses, whether fact or expert, which you intend to call at the evidentiary hearing on the above-captioned matter. For each such witness, state:

- a. Witness name;
- b. Witness contact information;
- c. Whether the witness is expert or fact;
- d. A general statement descriptive of the matters to which each witness will testify;
- e. Whether the witness will submit sworn pre-filed written testimony; and,
- f. For each expert provide a resume or CV.

ANSWER: The answer previously provided in response to Interrogatory Three remains unchanged.

INTERROGATORY NO. 4: Please state with specificity the objections, if any, which Rosebud Sioux Tribe, Sicangu Lakota Treaty Office has to the Dakota Access project. For each such objection:

- a. Outline a complete factual basis, any relevant law, rule or regulation applicable thereto and an expected or desired outcome if any.
- b. For each such objection, state the decision maker responsible for deciding said objection.

ANSWER AND OBJECTION: The Rosebud Sioux Tribe objects to Dakota Access's application for the construction of the Dakota Access pipeline on the grounds, not limited to, by way of this answer, that the Applicant will be unable to satisfy the statutory requirements of SDCL 49-41B and other relevant laws, including but not limited to the Pipeline Safety Act, its associated implementing regulations, application of the PUC Administrative rules, compliance with which is necessary in order to obtain a permit for the construction of an interstate pipeline facility of this nature. Rosebud Objects to subsections (a) and (b) on the grounds that the questions seeks answers that are beyond the scope of the requirements of discovery statutes.

Dated this 15<sup>th</sup> day of June, 2015.

/s/ Matthew L. Rappold  
Matthew L. Rappold  
Rappold Law Office  
PO Box 873  
Rapid City, SD 57709

### **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on the 15<sup>th</sup> day of June, 2015, he caused a true and correct copy of the original of the foregoing Rosebud Sioux Tribe's Supplemented Responses to Dakota Accesses First Set of Interrogatories and Request for Production of Documents, by electronic transmission to the following:

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/s/ Matthew L. Rappold

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing Responses to Motion to Strike Exhibit List and Documents and RST Exhibit A to be sent electronically in the above captioned action to the following at their last known addresses, to-wit:

May, Adam, Gerdes and Thompson, LLP.

Brett Koenecke

Kara Semmler

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/s/ Matthew L. Rappold

Matthew L. Rappold