

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION
OF DAKOTA ACCESS, LLC FOR AN
ENERGY FACILITY PERMIT TO
CONSTRUCT THE DAKOTA ACCESS
PIPELINE PROJECT.

HP14-002

MOTION TO:
STRIKE ROSEBUD SIOUX TRIBE'S
EXHIBIT LIST FILING, AND
PRECLUDE INTRODUCTION OF
UNDISCLOSED EXHIBITS

Applicant respectfully moves the South Dakota Public Utilities Commission to enter an Order, prior to hearing, to strike portions of Rosebud Sioux Tribe's Exhibit List filing and prohibit the Rosebud Sioux Tribe from introducing proposed exhibits which were not disclosed during the course of discovery. In support of its Motion, the Applicant states as follows:

1. The Applicant served four Discovery requests on the Rosebud Sioux Tribe. Three of those requests inquired regarding Rosebud's opposition and position in this docket and further requested production of documents in Rosebud's possession which support its position.
2. In its first discovery request dated April 1, 2015, the Applicant requested, "Objections, if any, which Rosebud Sioux Tribe...has to the Dakota Access Project." In Rosebud's response, it stated it was in the process of "determining the specific objections that it has for the Dakota Access Project." Later, that answer was generally supplemented with a statement that the Rosebud Sioux Tribe does not believe the Applicant can satisfy statutory and other legal requirements.

See Exhibit A.

3. Again, in its second discovery request dated May 29, 2015, the Applicant inquired whether the Rosebud Sioux Tribe has a formal position regarding the Dakota Access Pipeline. The Rosebud Sioux Tribe objected, stating the answer is irrelevant. Within that second discovery request, the Applicant requested a copy of all documents which support answers to Interrogatories. The Rosebud Sioux Tribe again objected, stating the material is irrelevant.

See Exhibit B.

4. In its third discovery request dated July 24, 2015, the Applicant requested the Rosebud Sioux Tribe share any knowledge of cultural resources along the route, requested information regarding Aboriginal land rights along the route, asked for the Rosebud Sioux Tribe's opinion regarding any legal violations made by the Applicant, questioned whether the pipeline will cause serious injury to the environment within the reservation and outside the reservation, questioned how the Rosebud Sioux Tribe is directly impacted in case of a leak, requested information regarding all plants located along the route which have significance to the tribe, requested information regarding all animals located along the route which have significance to the tribe, questioned what social economic conditions of the tribe will be impacted by the proposed pipeline, and how the health and safety or welfare of members of the Rosebud Sioux Tribe will be impacted by the proposed pipeline.

The tribe objected to all inquiries. The Applicant also requested a copy of all documents referenced in, or in support of, all answers. Rosebud Sioux Tribe did not provide any documents.

See Exhibit C.

5. On September 23, 2015, Rosebud Sioux Tribe listed 29 Exhibits it proposes to use at trial. The listed exhibits amount to hundreds of pages of previously undisclosed information. It is reasonable to assume the exhibits support the Rosebud Sioux Tribe position. However, none of the proposed exhibits were produced by the Rosebud Sioux Tribe in discovery.
6. Aside from the fact that no documents were provided by the Rosebud Sioux Tribe in discovery, Rosebud Sioux Tribe has provided any detail regarding its position. Thus, it is impossible for the Applicant to anticipate or understand how the Rosebud Sioux Tribe plans to use the hundreds of pages of exhibits provided on September 23, 2015.
7. The Applicant followed the Commission's Order and Rules of Civil Procedure in an attempt to obtain information and an understanding regarding the Rosebud Sioux Tribe's position in this docket. However, the Rosebud Sioux Tribe did not provide the requested information.

At this stage in the process, it is impossible to conduct additional discovery or take depositions to understand what Rosebud Sioux Tribe's position is, and how it intends to use the exhibits filed on September 23, 2015. The Rules of Civil Procedure are designed to provide all parties an equal opportunity to learn of other parties' positions and prepare one's own case. The Applicant will experience prejudice if the Rosebud Sioux Tribe is permitted to utilize documents which were subject to discovery requests and were not produced.


Wherefore, the Applicant respectfully requests an Order from the South Dakota Public Utilities Commission to strike the following undisclosed exhibits from Rosebud Sioux Tribe's September

23, 2015 filing and to further prohibit Rosebud Sioux Tribe from utilizing the listed exhibits at hearing.

RST #1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 29

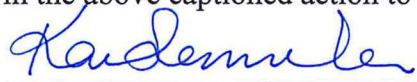
Dated this 28 day of September, 2015.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
BRETT KOENECKE
KARA C. SEMMLER
Attorneys for Defendant
503 South Pierre Street
PO Box 160
Pierre, SD 57501-0160
(605) 224-8803

CERTIFICATE OF SERVICE

28 Kara C. Semmler of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 28 day of September, 2015, she either electronically served or mailed via US Mail a true and correct copy of the foregoing in the above captioned action to the Service List in HP 14-002.


KARA C. SEMMLER