

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

IN THE MATTER OF THE PETITION OF
DAKOTA ACCESS, LLC PIPELINE, LP FOR
A PERMIT TO CONSTRUCT THE DAKOTA
ACCESS PIPELINE

**YANKTON SIOUX TRIBE'S,
ROSEBUD SIOUX TRIBE'S,
INDIGENOUS ENVIRONMENTAL
NETWORK'S, AND DAKOTA
RURAL ACTION'S JOINT
MOTION TO AMEND
PROCEDURAL SCHEDULE**

HP14-002

The Yankton Sioux Tribe (“Yankton”), the Rosebud Sioux Tribe (“Rosebud”), Indigenous Environmental Network (“IEN”), and Dakota Rural Action (“DRA”) (hereinafter collectively referred to as the “Movants”), by and through counsel, hereby collectively move the South Dakota Public Utilities Commission (the “Commission”) to amend the Procedural Schedule set by Order of the Commission on March 11, 2015. In support of this motion, Movants assert the following:

1. On March 11, 2015, the Public Utilities Commission (“PUC”) entered an order establishing a procedural schedule as follows:

First round of discovery requests served by all parties (may include more than one set of discovery requests)	April 1
First round of discovery responses served by all parties	May 1
Second round of discovery requests served by all parties (may include more than one set of discovery requests)	May 22
Second round of discovery responses served by all parties	June 15
Pre-filed direct testimony served and filed by all parties	June 26
Additional discovery requests pertaining to issues raised by pre-filed testimony and exhibits or a change in circumstances (responses due within thirty days after the date of service of the request as provided in SDCL 15-6-33(a) except those in response to requests served after August 22 (may include more than one set of discovery requests))	June 27 - Sept. 1
Pre-filed rebuttal testimony served and filed by all parties	August 14
Final discovery responses served by all parties	Sept. 21

Witness list and exhibit list served and filed by all parties	Sept. 23
Hearing	Sept. 29 - Oct. 8

2. On April 1, 2015, Yankton and DRA served Dakota Access with Interrogatories and Requests for Production of Documents in accordance with the procedural schedule. Yankton's and DRA's Interrogatories and Requests for Production of Documents are attached hereto as Exhibits 1 and 2, respectively.

3. Pursuant to the procedural schedule, responses to the first round of discovery requests were due on May 1, 2015. However, Dakota Access failed to serve its responses to Yankton's or DRA's requests by that deadline.

4. On May 1, 2015, Dakota Access sent an email to counsel for Yankton, DRA, and several other intervenors informing us that it would be unable to comply with the response deadline imposed by the Commission.

5. Upon receipt of Dakota Access' email, Yankton sent a letter to Dakota Access offering to refrain from filing a motion to compel production with the Commission if Dakota Access would stipulate to providing its late responses no later than May 8, 2015, and to amending the scheduling order because Dakota Access itself is clearly having difficulty complying with the compressed schedule currently in place. Yankton's letter of May 1, 2015 is attached hereto as Exhibit 3.

6. DRA similarly responded to Dakota Access, via email, on May 1, 2015, offering to stipulate to an extension upon the same conditions suggested by Yankton. DRA's email of May 1, 2015 is attached hereto as Exhibit 4.

7. Rather than respond to Yankton's and DRA's offers, Dakota Access served Yankton and DRA with incomplete and deficient responses to their Interrogatories and Requests

for Production of Documents. These deficiencies are described in Yankton's Motion to Compel which was filed in this matter on May 7, 2015 and is incorporated herein by reference, and in DRA's letter of May 7, 2015, attached hereto as Exhibit 5.

8. On May 6, 2015, Yankton sent a letter to Dakota Access noting that Dakota Access provided insufficient or deficient responses to Yankton's Interrogatories and Requests for Production of Documents, describing the specific deficiencies in the respective requests, and requesting that Dakota Access provide full and complete responses no later than 8:00 am (Central) on May 7, 2015, due to the delay caused by Dakota Access' continued failure to comply with the scheduling order issued by the Commission. Yankton's letter of May 6, 2015 is attached hereto as Exhibit 6.

9. On May 7, 2015, Counsel for DRA submitted a letter to Dakota Access informing it of its deficient responses, identifying the specific deficiencies, and requesting that the deficiencies be remedied by close of business on May 7, 2015. Exhibit 5.

10. As of the filing of this motion, Counsel for DRA has received no response from Dakota Access.

11. As Dakota Access' violations of the procedural schedule have already demonstrated, the current procedural schedule set by the Commission provides insufficient time for each stage of the discovery process. We are only at the initial stages of discovery, and already Dakota Access has been unable to meet the deadlines imposed by the Commission.

12. As a result of Dakota Access' failures to meet the Commission's deadlines, Yankton and DRA are currently being prejudiced by an increasingly shortened amount of time in which to review and analyze Dakota Access' responses and prepare for the next round of discovery requests.

13. Based on Dakota Access' conduct thus far, it is apparent that discovery disputes are likely to arise throughout the course of these proceedings. Yankton has already been forced to file a Motion to Compel, and DRA is currently preparing to do the same. For the second round of discovery, IEN and Rosebud will be submitting its own discovery requests to Dakota Access thus adding to the workload. Although some of the grounds for the Motion to Compel are matters that can be conclusively resolved by the Commission in one hearing, there are still a number of discovery requests that Dakota Access has not even attempted to answer. Once compelled to do so, it is possible based on Dakota Access' other responses that the requesting parties will find grounds to challenge one or more of those new responses, resulting in the need for a second hearing on Dakota Access' responses to the first round of discovery requests. This will result in excessive delay of the requesting parties' abilities to formulate its second round of requests, causing further conflict with the current procedural schedule.

14. As indicated above, the procedural schedule does not provide for meaningful time to receive and review each round of discovery responses in preparation for subsequent rounds of discovery.

15. The procedural schedule further fails to account for adequate time between discovery rounds to resolve discovery disputes, which will result again in diminished time and opportunity to prepare subsequent discovery requests.

16. Moreover, the procedural schedule does not provide for meaningful time to receive and review all discovery responses prior to formulating pre-filed direct testimony which will largely be based on those responses. In fact, the parties will not receive responses to the final round of discovery until *after* they are required to file both pre-filed direct testimony and pre-filed rebuttal testimony. The current schedule therefore effectively renders the final round of discovery

moot. Fundamental due process will be denied to all parties in this case if pre-filed testimony is required to be submitted before the discovery process, including review of all responses, has been completed.

17. In addition, the deadline to submit witness lists and exhibit lists falls only two days after final discovery responses have been received. This timing does not allow for meaningful time to review final discovery responses and analyze them for purposes of identifying witnesses and exhibits prior to the deadline for witness and exhibit lists.

18. Finally, the date of the final hearing is set only one week after the final discovery responses are due. Due to the nature of these proceedings, the volume and complexity of discovery are likely to be quite sizeable such that parties cannot possibly conduct meaningful review and analysis of the final round of discovery responses and prepare for the final hearing in just one week.

19. Based on Dakota Access' delay and non-responsiveness to requests for discovery information, the ability to file pre-filed testimony is also jeopardized.

WHEREFORE, Yankton, Rosebud, IEN, and DRA request that the Commission amend its order to provide for adequate time to receive and review discovery responses, taking into account additional time needed to resolve any disputes; to allow for sufficient time to meaningfully review all discovery for purposes of drafting pre-filed testimony prior to requiring submission of any pre-filed testimony, and to allow for sufficient time to meaningfully review all discovery for purposes of preparation for the final hearing prior to the date of the final hearing.

Respectfully submitted this 8th day of May, 2015.

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