
**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
MOTION TO COMPEL**

HP14-002

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

DISCUSSION OF FACTS

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

On April 1, 2015, Dakota Access was served with the Yankton Sioux Tribe’s First Interrogatories and Requests for Production of Documents in accordance with the procedural schedule. Exhibit 1 – Yankton Sioux Tribe’s First Interrogatories and Requests for Production of Documents.

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 the Tribe’s requests by that deadline. Exhibit 2 – Email from Brett Koenecke to Thomasina Real Bird dated May 1, 2015. On May 1, 2015, the Tribe 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. Rather than respond to the Tribe's offer, Dakota Access served the Tribe with its incomplete and deficient responses described below.

On May 2, 2015, Dakota Access submitted partial, incomplete, and deficient responses to the Tribe's First Interrogatories and Request for Production of Documents. Exhibit 3 – Preliminary Answers to Yankton Sioux Tribe's First Interrogatories and Requests for Production of Documents to Dakota Access, LLC. The deficiencies in Dakota Access's Answers to Yankton Sioux Tribe's First Interrogatories and Requests for Production of Documents are as follows:

- Dakota Access responded with only the word “**PENDING**” to Interrogatory Nos. 20, 25, and 26.
- Dakota Access answered Interrogatory No. 10, which requested information regarding persons responsible for conducting surveys, with the word “**PENDING**” and the following:

2014 – present.
Names

All % of Kara Semmler and Brett Koenecke
May, Adam, Gerdes & Thompson LLP
503 S. Pierre St.
PO Box 160
Pierre, SD 57501
605-224-8803
brett@mayadam.net
kcs@mayadam.net

Counsel for the Tribe has no knowledge of the meaning of “All % of Kara Semmler and Brett Koenecke” and finds it highly unlikely that the contact information for Dakota Access's attorneys is responsive to Interrogatory No. 10.

- With respect to Interrogatory No. 11, Dakota Access provide a statement in its answer but that statement is not responsive to the question asked.

- Dakota Access refused to answer Interrogatory No. 19 and refused to provide documents requested in Request No. 3 on the grounds that the information sought is confidential. However, there is no legal authority cited for this assertion of confidentiality and the information sought is in fact not required by law to be treated as confidential by Dakota Access or the Commission.
- Dakota Access's answer to Interrogatory No. 40 appears to directly contradict its answer to Interrogatory No. 18, thus it is unclear which answer is correct and which answer is incorrect.
- Finally, Dakota Access objected rather than responding to Request Nos. 4 and 7 on the grounds that the Requests were overly broad, burdensome, and outside the scope of discovery. Request No. 4 sought documents relating to permits and permit applications for the Dakota Access Pipeline Project and for any other project constructed by Dakota Access since 2010. Due to the nature of these projects, the number of permits sought over the last 4 ½ years is not likely to be very significant and such documentation is reasonably likely to lead to the discovery of admissible evidence regarding safety, risks, performance, and other aspects of Dakota Access's operations. This information is well within the scope of discovery and is adequately narrow in scope so that it places no undue burden on Dakota Access. Request No. 7 sought all documents related to Interrogatory No. 30 as well as a table to show breeding times of sensitive SD species and a map to show migration pathways of sensitive SD species. Dakota Access clearly did not find Interrogatory No. 30 to be overly broad or outside the scope of discovery, thus it is illogical for Dakota Access to claim, falsely, that documents related to that question are overly broad or outside the scope of discovery. With respect to the table

and map requested, these items contain very narrow sets of information and are in no way broad. They are within the scope of discovery because assessing the impact of projects on South Dakota's sensitive species is within the purview of the Commission and the requested documents are likely to lead to admissible evidence relevant to that issue.

On May 6, 2015, the Tribe sent a letter to Dakota Access noting that Dakota Access provided insufficient or deficient responses to the Tribe's First 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 9:00 am CDT on May 7, 2015, due to the delay caused by Dakota Access's failure once again to comply with the scheduling order issued by the Commission. Exhibit 4 – Letter from Thomasina Real Bird to Brett Koenecke dated May 6, 2015.

As of the time of this filing on May 7, 2015, Counsel for Dakota Access has neither complied with the Tribe's request to provide complete discovery nor contacted Counsel for the Tribe to further discuss this matter. As indicated previously, time is of the essence as Dakota Access's delay is cutting into the Tribe's ability to review and make use of the fruits of its discovery requests.

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. Dakota Access 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)).

Dakota Access was served with interrogatories and requests for production on April 1, 2015, but its responses were late and have been insufficient and deficient as explained above. 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 May, 2015.

Thomasina Real Bird

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