

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of SourceGas
Distribution LLC, Lakewood,
Colorado, seeking approval of a
general rate increase.

) Application No. NG-0060
)
) HEARING OFFICER
) ORDER DENYING MOTION TO COMPEL
) AND GRANTING THE MOTION FOR
) PROTECTIVE ORDER
)
)
) Entered: November 5, 2009

BY THE HEARING OFFICER:

On October 28, 2009, the Public Advocate filed a Motion to Compel Discovery (Motion) seeking *in camera* review and possible production of a particular e-mail communication. On November 4, 2009, SourceGas Distribution LLC (SourceGas) filed a response to the Motion and a Motion for Protective Order. SourceGas contends that the e-mail communication is subject to the attorney-client privilege and/or the attorney work product doctrine and further that the *in camera* review is inappropriate.

The attorney-client privilege is set forth in *Neb. Rev. Stat.* § 27-503(2), stating,

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (a) between himself or his representative and his lawyer or his lawyer's representative, or (b) between his lawyer and the lawyer's representative, or (c) by him or his lawyer to a lawyer representing another in a matter of common interest, or (d) between representatives of the client or between the client and a representative of the client, or (e) between lawyers representing the client.

In response to a motion to compel production, the party asserting the privilege must make out a prima facie claim that the privilege applies by submitting a motion for protective order, in affidavit form, verifying the facts critical to the assertion of the privilege, which must (1) verify that it accurately describes each of the documents in question; (2) list the documents and provide a summary that includes (a) the type of document, (b) the subject matter of the document, (c) the date of the document, (d) the author of the document, and (e) each recipient of the document; and (3) state with specificity, in a nonconclusory manner, how each element of the asserted privilege or doctrine is met, to the extent possible, without revealing the information alleged to be protected.

Greenwalt v. Wal-Mart Stores, Inc., 253 Neb. 32, 567 N.W.2d 560 (1997).

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Based upon the affidavit of Mr. Breland, both the Public Advocate and the Hearing Officer have adequate information to evaluate whether the particular email is an attorney-client privileged communication, rendering the Public Advocate's request for an *in camera* review unnecessary.

Upon a review of Mr. Breland's affidavit, I find that SourceGas has established a *prima facie* showing that the privilege applies to the email, and the email is a privileged attorney-client communication. Therefore, the Public Advocate's Motion to Compel is denied. Based upon the determination that the communication constituted a privileged communication, SourceGas' Motion for a Protective Order is granted.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Public Advocate's Motion to Compel is denied.

IT IS FURTHER ORDERED that SourceGas' Motion for a Protective Order is granted.

MADE AND ENTERED at Lincoln, Nebraska this 5th day of November, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

BY:


Hearing Officer