

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of SourceGas) Application No. NG-0060
Distribution LLC, Lakewood,)
Colorado, seeking approval of a) HEARING OFFICER
general rate increase.) ORDER DENYING MOTION TO COMPEL
) IN PART AND SETTING DEADLINE
) FOR RESPONSE TO MOTION TO
) COMPEL
)
) Entered: November 24, 2009

BY THE HEARING OFFICER:

On November 20, 2009, SourceGas Distribution LLC (SourceGas) filed a Motion to Compel Discovery (Motion) seeking an order compelling the Public Advocate to provide responses to the following discovery requests: SGD-2, SGD-97, SGD-102 through 105, SGD-117 through 119, SGD-121, SGD-131 through 134, SGD-139 through 141, SGD-147, SGD-149, and SGD-159 through 163.

SourceGas contends that the Public Advocate either failed to respond or provided incomplete responses to the requests listed above. Subsequent to the filing of the Motion, SourceGas stated via electronic mail that the Public Advocate provided supplemental responses to SGD-121 and SGD-132 and that those requests could be withdrawn from the Motion.

SourceGas has requested information related to when the Public Advocate's experts were retained; when each began substantive work on the rate application; detail regarding the number of hours expended by each witness; and detail regarding the development of discovery requests. This information was sought in request numbers SGD-97, SGD-102 through 105, and SGD-139 through 141.

Pursuant to the "work product doctrine" set forth in Neb.Ct.R. § 6-326(b)(3), a party may obtain discovery of documents and tangible things

prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

However, even if required to be produced, we must "protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." Id.

Information Request Nos. SGD-102 through 105 seek information that was prepared in anticipation of litigation and there has been no showing by SourceGas that there is a "substantial need of the

material". Further, requiring production of this information would encroach on the mental impressions, conclusions, opinions, or legal theories of the Public Advocate.

Information Request No. SGD-97 asks, in part, that the Public Advocate identify the date on which each witness began to perform services. This request is vague and ambiguous. The remainder of Request No. SGD-97, in addition to Request Nos. SGD-139 through 141, seek information not reasonably calculated to lead to the discovery of admissible evidence.

Therefore, upon a review of the Motion to Compel and in order to expedite resolution of these discovery disputes in light of the compressed timeframe remaining, I find that SourceGas' Motion to Compel should be denied with respect to SGD-97, SGD-102 through 105, and SGD-139 through 141 for the reasons set forth herein.

The Public Advocate may file a response to the Motion to Compel addressing the remaining items at issue on or before **5:00 p.m. CST on November 30, 2009.**

O R D E R

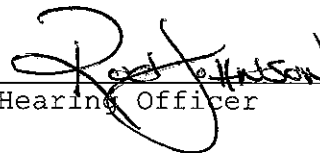
IT IS THEREFORE ORDERED by the Hearing Officer that SourceGas' Motion to Compel should be denied with respect to SGD-97, SGD-102 through 105, and SGD-139 through 141.

IT IS FURTHER ORDERED that any response to the Motion to Compel should be filed on or before **5:00 p.m. CST on November 30, 2009.**

MADE AND ENTERED at Lincoln, Nebraska this 24th day of November, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

BY:


Hearing Officer