**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township :

:

v. : C-2017-2589346

:

Sunoco Pipeline, L.P. :

**ORDER DENYING MOTION TO COMPEL RESPONSES TO SUNOCO PIPELINE, L.P.’S DISCOVERY REQUESTS**

On August 21, 2017, Sunoco Pipeline, L.P. (Sunoco or SPLP) propounded Discovery Requests on West Goshen Township (West Goshen or the Township). Objections were due on August 31, 2017 and responses were due on September 11, 2017. On September 11, 2017, West Goshen served objections and responses to the document requests. On September 21, 2017, Sunoco filed a Motion to Dismiss Objections and Compel Production of Documents. On September 26, 2017, West Goshen filed its Response. Sunoco’s motion to compel is ripe for a decision.

Timeliness of Township’s Objections

First, Sunoco argues the Township’s objections were untimely served ten days after the response deadline of August 31, 2017. The objections were not served until September 11, 2017. Accordingly, the Township’s objections are untimely and in violation of Rules 5.342(e) and 5.349(d) as well as the Commission’s Procedural Order. Therefore, they should be dismissed.

West Goshen contends that it responded to the clear majority of discovery requests by August 31, 2017, providing 2222 documents. However, it argues several requests were improper, including requests for documents seeking attorney-client communications prohibited by 52 Pa. Code § 5.361(a)(3). Therefore, the Township served objections contemporaneously with the discovery responses, customer in Pennsylvania civil actions, but admittedly not within the time prescribed by the Commission’s regulations, which provide that objections be served within ten (10) days. Township claims this error was not a willful disregard of the rules or prejudicial to SPLP.

Disposition

The Commission’s regulation at 52 Pa. Code § 1.2(c) gives the presiding officer and Commission the authority to overlook defects of procedure that do not affect the substantive rights of other parties, particularly in proceedings involving *pro se* complainants. Additionally, pursuant to 52 Pa. Code § 5.321(b), the presiding officer may vary provisions of discovery rules as justice requires. Given the objections were filed contemporaneously with 2222 pages of discovery responses within 20 days of the date the discovery requests were served upon the Township, and the fact that they raise an objection on the valid ground of privileged attorney-client information, they shall be accepted and considered as though they had been timely filed. At this early stage in the litigation proceedings, I fail to see how SPLP’s substantive rights are affected by a ten-day delay in the timing of the objections. 52 Pa. Code § 5.321(c). Therefore, I find in favor of the Township on this issue.

Attorney-Client Privilege

Document Request 7 provides:

Provide all documents that reflect communications between Kristin S. Camp and WGT, including any communications between Kristin S. Camp and Casey LaLonde, relating to the siting of Valve 344 or any other above-ground public utility facility by SPLP.

Document Request 8 provides:

Provide all documents that relate to the January 2016 meeting described by Casey Lalonde on p. 67 of the Hearing Transcript.

Document Request 18 provides:

Provide all documents that mention or relate to the March 2017 meeting identified by Mr. Casey LaLonde on pages 96-97 of the Hearing Transcript.

Sunoco argues the Township waived the attorney-client privileges when it introduced the testimony, sworn statements and work product of its Solicitor, Ms. Kristin Camp to establish: 1) the township’s interpretation of the settlement agreement; 2) contents of a meeting between Sunoco and the township; 3) the siting of the valve; and 4) the timing of Sunoco’s notice to the Township regarding the re-siting of the valve. Sunoco contends the information sought is likely to lead to admissible evidence. Thus, Sunoco seeks all memoranda and communications between Ms. Camp and Township Supervisors regarding her interpretation of the Settlement Agreement with respect to the siting of the Valve.

In response, the Township argues Ms. Camp’s notes at a specific meeting memorializing what was discussed therein are not a communication to her client, but rather, her impressions of a meeting with Sunoco representatives and the Township officials. Thus, there was no waiver as to her attorney-client privilege because there was no privileged communication revealed at the hearing held regarding a petition for emergency relief in this matter. Second, even if there were a waiver of communications about the siting of valve 344 or any other above-ground public utility facility by Sunoco, this was the subject of conversation at a meeting about which she testified and does not include all communications she has had with Township Supervisors.

Disposition

The standard for permissible discovery is set forth in Section 5.321 of the Commission’s regulations:

**§ 5.321. Scope.**

(c)  *Scope*. Subject to this subchapter, a party 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 another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). Section 5.361 of the Commission’s regulations, however, provides various limitations on the scope of discovery:

**§ 5.361. Limitation of scope of discovery and deposition.**

 (a)  Discovery or deposition is not permitted which:

  (1)  Is sought in bad faith.

   (2)  Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

   (3)  Relates to matter which is privileged.

   (4)  Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361(a).

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

While discovery is broad in Pennsylvania, parties are not entitled to engage in “fishing expeditions.” *Land v. State Farm Mut. Ins. Co.,* 410 Pa. Super. 579, 585, 600 A.2d 605, 608 (1991). A party invoking the attorney-client privilege must establish the following elements: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *Red Vision Sys., Inc. v. Nat’l Real Estate Info. Servs., L.P.,* 108 A.3d 54, 62-63 (Pa. Super. 2015). If the party asserting privilege satisfies these elements, then the party seeking disclosure must “set forth facts showing that disclosure will not violate the attorney-client privilege, e.g., because the privilege has been waived or because some exception applies.” *Salsman v. Brown*, 51 A.3d 892, 895 (Pa. Super. 2012). The work product doctrine provides broad protection for any material, including theories, notes, strategies and the like, prepared by the attorney or attorney’s representatives in anticipation of litigation regardless of whether it is confidential. *Levy v. Senate of Pennsylvania*, 94 A.3d 436 (Pa. Cmwlth. 2013).

In the instant case, any advisory memorandums from the Township’s solicitor, Ms. Camp, to her clients, the township supervisors or other township employees, are confidential attorney-client work-products and are not subject to discovery under 52 Pa. Code § 5.361(a)(3). The testimony of Ms. Camp regarding her notes from a meeting with Sunoco is more akin to revealing her minutes of a meeting than a confidential attorney-client advisory memorandum. I am persuaded by the Township’s argument that the notes were not communicated to anyone and no attorney-client communications were introduced at the July 18, 2017 hearing. Thus, there has been no waiver of attorney-client privilege because no privileged attorney-client communication was introduced by Ms. Camp in the litigation. Therefore, the motion to compel regarding Document Requests Nos. 7, 8 and 18 shall be denied.

Overly Broad or Unduly Burdensome

Document Request 6 provides:

Provide all documents in WGT’s possession, custody or control that mention the Settlement Agreement.

Document 11 provides:

Provide all documents received by WGT that mention or relate to the siting of Valve 344.

Document 12 provides:

Provide all documents prepared by WGT that mention or relate to the siting of Valve 344.

Document Request 13 provides:

Provide all documents received by WGT that mention or relate to the Settlement Agreement.

Document Request 14 provides:

Provide all documents prepared by WGT that mention or relate to the Settlement Agreement.

Document Request 16 provides:

Provide all documents in WGT’s possession, custody, or control that mention or relate to the siting of Valve 344.

Sunoco requests that Township be compelled to provide complete responses to these discovery requests including but not limited to: 1) documents related to the March 2017 meeting between Sunoco and the Township; 2) emails, document or communications from the members of the Township’s Board of Supervisors: Phillip J. Corvo, Jr., Christopher Pielli, Edward G. Meakim, Jr., Raymond H. Halvorsen, and Hugh J. Purnell, Jr.; and 3) meeting minutes or official transcripts of the Executive Sessions of the Board of Supervisors where the Settlement Agreement or Valve was discussed.

Township asserts that it has already fully complied with the document requests, but to the extent the Commission finds it has not objects to these above-document requests as they are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the term “mention or relate to” is overly broad. Additionally, the Township claims it provided full responses to these questions already as best as it could interpret the requests. Township claims it did a thorough document search and provided “a number of” emails to and from Supervisors in response to Sunoco’s request and Township denies Sunoco’s claim that the individual Supervisors’ e-mail mailboxes were not searched. Further, Township responds that there are no minutes taken of executive sessions; thus, there are none to produce. All minutes of public meetings were produced as requested. Finally, Township asserts it has already produced 2222 pages of documents in response to Sunoco’s discovery requests and has fully and completely responded to these document requests.

Disposition

Per 9A Goodrich-Amram 2d § 4011(b), discovery will be denied where the facts disclose that discovery will impose an unreasonable burden. This provision is like Section 5.361(a)(2) which prohibits discovery that would cause an unreasonable burden. 52 Pa. Code § 5.361(a)(2). The Commonwealth Court has also recognized the Commission’s right to limit discovery pursuant to 52 Pa. Code § 5.361. *See Pittsburgh v. Pa. Pub. Util. Comm’n*, 106 Pa. Commw. 437 (1986) (The Commission's rejection of the city's discovery request regarding per-district and per-customer class costs did not violate discovery rules).

In the instant case, the motion to compel further responses to Discovery Requests 6, 11, 12, 13, 14, and 16 will be denied as it appears Township has already conducted due diligence in searching internal records including the email mailboxes of its supervisors and has produced what correspondence and documents that are related to the valve siting settlement in the instant case. Specifically, Township produced documents WGT000001-WGT001985 (presumably 1985 pages) in response to these Document Requests. Township also provided links to official transcripts (See Document Request 19). Although Township responded to Document Request No. 8 that Kristin Camp has notes of the March 2017 meeting, which are protected by attorney-client privilege, the Township has otherwise produced documents regarding that meeting. This is sufficient and reasonable. Additionally, as there were no minutes taken of the executive meeting, there are none to produce. It would place an undue burden upon the Township, which has already conducted an internal search and produced email correspondence and minutes of public meetings to search further for documents presumed to be in existence by Sunoco but denied to be in existence by the Township. It is also unduly burdensome to require Township to create minutes for an executive meeting, which it would not normally do in its normal course of business. For these reasons, the motion to compel shall be denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Sunoco Pipeline, L.P.’s Motion to Dismiss Objections and Compel Production of Documents of the west Goshen Township are denied.

2. That the Objections of West Goshen Township to Sunoco Pipeline, L.P.’s Requests for Production of Documents, Requests for Admission, and Interrogatories (First Set) are sustained.

Date: October 26, 2017

Elizabeth Barnes

Administrative Law Judge

**C-2017-2589346 - WEST GOSHEN TOWNSHIP v. SUNOCO PIPELINE L.P.**

***(Revised 7/10/2017)***

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