

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KIMBERLY-CLARK TISSUE COMPANY,
Complainant,

v.

PUGET SOUND ENERGY, INC.,
Respondent.

DOCKET NO. UG-990619

PUGET SOUND ENERGY, INC.'S
MOTION FOR A MORE DEFINITE
STATEMENT AND FOR EXCLUSION OF
THE EXPERT FROM ACCESS TO
CONFIDENTIAL INFORMATION

I. INTRODUCTION

Puget Sound Energy Inc. ("PSE") requests that the Commission require Kimberly-Clark to provide the date on which Richard D. Ronish signed Exhibit B (Expert Agreement) to the Protective Order in this docket. PSE further asks that Mr. Ronish be excluded from access to all Confidential Information related to PSE's customers (as more specifically described herein), other than Kimberly-Clark. Mr. Ronish is in the business of providing natural gas consulting services to companies in order to reduce their natural gas costs. See Exhibit A to this Motion attached hereto. Certain Confidential Information provided by PSE, can be exploited by Mr. Ronish to identify target PSE customers to solicit for his services, and thereby result in loss of revenue to PSE. Since Kimberly-Clark's prefiled testimony is due on September 20, 1999, PSE is concerned that Mr. Ronish has already been given access to this Confidential Information.

II. FACTS

Kimberly-Clark's Direct Testimony is due on September 20, 1999. Kimberly-Clark provided to PSE copies of Exhibit B (Expert Agreement) to the Protective Order on September 15, 1999. See copies of Kimberly Clark's Exhibit B filings attached hereto as Exhibit B. From these Exhibit B filings, PSE was notified on this date that Kimberly-Clark's proposed experts were Richard Ronish and J. T. Owens. Mr. Ronish's Expert Agreement was undated and the agreement of Mr. J.T. Owens was dated as of August 30, 1999. Mr. Ronish is in the business of providing natural gas services to companies for the purpose of reducing their current natural gas costs through his company Natural Gas Consulting Services (NGCS). See Exhibit A, p. 1. Mr. Ronish is in direct competition with PSE. Gas is a deregulated commodity and gas marketers and suppliers compete with PSE for gas customers. In addition, Mr. Ronish's company competes with PSE by assisting customers in reducing gas costs by purchasing gas from suppliers other than PSE, as well as assisting companies in adjusting rates schedules with their local distribution companies.

During the course of Kimberly-Clark's litigation with PSE, PSE has provided to Kimberly-Clark information that identifies (1) individual customers, including addresses, telephone numbers and individual contacts; and (2) customer loads, gas usage information, and rate schedules. This information has been provided in response to Kimberly-Clark's data requests and depositions. In addition, Kimberly-Clark's latest discovery requests also seek information, which contains this type of customer information.

III. ARGUMENT

A. The Purpose of Exhibit B to the Protective Order Is to Provide the Responding Party with an Opportunity to Object to an Expert's Access to Confidential Information
Paragraph B.4 of the Protective Order provides that:

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[p]rior to being given access to any Confidential Information . . . counsel or expert shall agree in writing to comply with and be bound by this Order in the form of Exhibit A (attorney) or B (expert) attached hereto, and counsel for the party seeking access to the Confidential Information shall deliver to counsel for the party producing Confidential Information a copy of such written agreement.

See Protective Order, p. 2. Exhibit B to the Protective Order requires that a proposed expert date and sign the Expert Agreement and provides the responding party ten days within receipt of such Agreement to object to a proposed expert having access to Confidential Information.

Kimberly-Clark's Expert Agreements were provided to PSE by facsimile on September 15, 1999. The Agreement of Mr. Ronish was undated and the Agreement of Mr. J.T. Owens was dated as of August 30, 1999. Kimberly-Clark's Direct Testimony is due on September 20, 1999. It seems reasonable to infer that Mr. Ronish and Mr. Owens may have had access to Confidential Information as early as August 30, 1999.

It clearly defeats the purpose of the Protective Order if a party chooses not to provide a copy of Exhibit B to the responding party until after a proposed expert has begun reviewing Confidential Information. At this time, PSE does not know the date on which Mr. Ronish signed the Expert Agreement. However, PSE is concerned that Mr. Ronish has already reviewed such information and used such information in the preparation of Kimberly-Clark's case or in prefiled testimony. PSE is therefore seeking a more definite statement from Kimberly-Clark as to (1) the date on which Mr. Ronish signed Exhibit B, (2) whether he has reviewed Confidential Information, which includes PSE customer names, gas loads and rate schedules, (3) whether Kimberly-Clark's prefiled testimony is based on Mr. Ronish's review of such material, and (4) whether Mr. Owens has already reviewed Confidential Information.

B. Allowing Richard Ronish Access to Confidential Information Relating to PSE's Customers Could Result in Competitive Harm to PSE. Mr. Ronish is in the business of providing natural gas services to companies for the purpose of reducing their current natural gas costs through his company Natural Gas Consulting Services (NGCS). See Exhibit A, p. 1. This is accomplished by an audit of a company's current gas purchase procedures. NGCS offers to find "other options or methods which would enable your company to reduce natural gas costs." Id. Access to customer names and contacts, as well as interruptible rate schedules and loads gives Mr. Ronish access to potential customers for his services, allows him to target customers, and allows him to compete directly with PSE by advising customers to change rate schedules and to purchase gas from PSE's competitors.

The Commission recognizes the potential for competitive disadvantage to parties when they produce proprietary information in proceedings. See WAC 480-09-015 and RCW 80.94.095. RCW 80.94.095 specifically identifies "customer-specific usage and network configuration and design

information" as valuable commercial information that may be exempt from disclosure under the Public Records Act if disclosure would result in "unfair competitive advantage." The Commission will deny access to such information to persons able to use the "information in a competitive or otherwise hostile manner toward the disclosing party." Washington Utils. & Transp. Comm'n v. U S West Communications, Inc., Eighth Supp. Order, Docket No. UT-950200, UTC LEXIS 42, *2 (1995). In Washington Utils. & Transp. Comm'n v. U S West Communications, Inc., the Commission denied AARP's request to have two of its employees review the confidential information contained in the testimony of AARP's own expert witness, recognizing that the potential harm to U S WEST "may be as great as though the disclosure were to operating executives of a competitor." Id.

There is no question that Mr. Ronish views himself as a competitor of PSE. As Mr. Ronish states in his promotional materials, "I will match my overall knowledge of the natural gas industry from wellhead to burner tip, with that of any individual in the greater Puget Sound region, including all of the gas marketers doing business in the area, as well as every employee of Puget Sound Energy Co. (formerly Washington Natural Gas)." See Exhibit A.

PSE is obviously concerned that Mr. Ronish will solicit PSE customers based on proprietary customer information that PSE has provided in this docket, and that these activities will result in competitive harm to PSE.

C. If Kimberly-Clark's Proposed Experts Have Already Reviewed Confidential Information Provided By PSE, Kimberly-Clark Has Violated The Protective Order and Penalties Are Appropriate

Under the Protective Order, Kimberly-Clark is supposed to provide PSE with a proposed expert's nondisclosure agreement with sufficient time for PSE to make or waive objection to the proposed expert. It seems unlikely that Kimberly-Clark has done that here, although PSE as included in its objection this Motion For A More Definite Statement to establish (1) when Mr. Ronish signed his nondisclosure agreement, and, (2) at what point, if any, did Kimberly-Clark's experts begin reviewing Confidential Information provided by PSE.

The Protective Order provides that violation of the order "by a party to this proceeding or any other person bound by this Order by reason of unauthorized use of [sic] unauthorized divulgence of Confidential Information shall subject such party or person to liability for damages and penalties as generally provided by law." Protective Order, Paragraph C.14. If Kimberly-Clark did violate the Protective Order, it should pay penalties under RCW 80.04.387, which provides for a "penalty not to exceed the sum of one thousand dollars for each and every offense."

IV. RELIEF REQUESTED

PSE requests that the Commission require that Kimberly-Clark provide a more definite

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statement as to (1) the date on which Mr. Ronish signed Exhibit B, (2) whether he has reviewed Confidential Information, which includes PSE customer names, addresses, customer contacts, gas loads and usage, and rate schedules, (3) whether Kimberly-Clark's prefiled testimony is based on Mr. Ronish's review of such material, and (4) whether Mr. Owens has already reviewed such Confidential Information.

To the extent that Mr. Ronish has reviewed the Confidential Information described above and that information has been incorporated in Kimberly-Clark's Direct Testimony, those parts of the Kimberly-Clark's testimony should be stricken from the record and Mr. Ronish should be prohibited from testifying and providing opinions which are based on such information. In addition, Mr. Ronish should be excluded from reviewing Confidential Information that contains such information.

V. CONCLUSION

For the foregoing reasons, PSE respectfully requests that the Commission grant its requested relief.

DATED: September 17, 1999.

PERKINS COIE LLP

By

Andrée G. Gagnon, WSBA #27480

Attorneys for Respondent

PUGET SOUND ENERGY, INC.