

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  
OBJECTION TO THE FIRST  
SUPPLEMENTAL ORDER AND  
MOTION TO EXTEND THE DISCOVERY  
CUT-OFF DATE IN THE FIRST  
SUPPLEMENTAL ORDER

## I.INTRODUCTION

Puget Sound Energy Inc. ("PSE") seeks to extend the discovery cut-off date in the First Supplemental Order from September 10, 1999 to October 19, 1999. The September 10 date provided in the First Supplemental Order, although agreeable to the parties at the prehearing conference, would cut off discovery before the scheduled filing dates for prefiled testimony. An October 19 cut-off date would allow discovery to occur with respect to all prefiled testimony.

The parties to this proceeding, PSE and Kimberly-Clark Tissue Company ("Kimberly-Clark") appeared at the prehearing conference on July 7, 1999. At the prehearing conference the following procedural schedule was set:

Discovery cutoff date	September 10, 1999
Kimberly-Clark files direct testimony	September 20, 1999
PSE files direct/responsive testimony	October 4, 1999
Kimberly-Clark files rebuttal testimony	October 18, 1999

PSE counsel has been unable to obtain agreement with counsel from Kimberly-Clark to revise the discovery cut-off date. Upon receipt of the Prehearing Conference Order, counsel for PSE contacted counsel for Kimberly-Clark to suggest that it would make sense to extend the discovery date so that each side could issue data requests based on prefiled testimony. Kimberly-Clark's counsel represented that it would not agree to the extension unless each side agreed to take only one deposition. At this early stage in the proceeding, prior to any discovery being completed, PSE was unwilling to accept that condition.

## I.ARGUMENT

### **A. Extending the Discovery Cut-Off Date Will Make the Hearing Process More Effective and Allow Meaningful Participation in the Hearings by the Parties**

Typically in cases where prefiled testimony is filed, each side may issue data requests to obtain information supporting or relating to prefiled testimony. This process has been used in numerous proceedings before the Washington Utilities and Transportation Commission ("Commission"). The advantage of allowing data-requests to be issued on prefiled testimony is the parties may seek information and documentation based on an opposing party's testimony before the hearing process. This allows for a more effective and efficient cross-examination process, and for each side to fully present its position in the hearing process. Allowing data requests may also help to limit the number of depositions in a case; however, to some extent that may depend upon the number of potential fact witnesses

involved in the subject matter of the litigation.

Allowing data requests to be asked based on the prefiled testimony of expert witnesses is particularly helpful because it provides an opportunity for the parties to seek any information or documents on which the expert is relying for his or her opinion. Parties have the opportunity to review information before the hearing process and to fully develop any cross-examination before entering the hearing room. Expert testimony often contains complex issues which can be dealt with prior to hearing. The process that PSE is proposing helps ensure that full information is available to the parties and that a complete record is developed before the Commission.

**B. There Is No Reason to Limit the Number of Depositions Simply Because the Parties May Issue Data Requests on Prefiled Testimony**

None of the Prehearing Conference Orders in Exhibit A limit the number of depositions each party may take, even though they provide that data requests may be issued after prefiled testimony has been filed and shortly before evidentiary hearings take place. Kimberly-Clark has made numerous factual allegations in its Complaint which may or may not involve several potential witnesses. At this early point in the proceedings it is too early to tell exactly how many depositions will be necessary, which is why PSE did not want to limit the number of depositions it could take at this point. Under the discovery rules, PSE has the right obtain discovery which is relevant to the allegations in Kimberly-Clark's Complaint through data request or deposition. WAC 480-09-480. A limitation on discovery at such an early point in a case would prejudice PSE in defending itself in this action. Moreover, depositions may be the most efficient way to acquire information.

It is clear from the Commission rules that deposition testimony may also be used to make evidentiary hearings more efficient. Commission procedure allows parties to offer deposition testimony even if a witness is available, if certain conditions are met. WAC 480-09-480(6)(b)(ii). Deposition testimony may be admitted as testimony if it is otherwise admissible and would substantially reduce repetitive questioning. WAC 480-09-480(6)(b)(ii)(C).

Any concerns that allowing data requests on prefiled testimony will create duplicative discovery is addressed by the First Supplemental Order, which provides that the "[p]arties are required to

limit discovery to that necessary to their respective cases." There is no basis to believe that PSE's proposed discovery schedule will result in duplicative discovery.

### **C. Proposed Schedule**

PSE proposes that the First Supplemental Order be amended to provide that the last set of data requests may be issued on October 19, 1999, after Kimberly-Clark files its rebuttal testimony on October 18, 1999. Although this gives PSE only one day to prepare data requests on any rebuttal testimony Kimberly-Clark files, Kimberly Clark would have up to ten days to respond under the discovery rule with responses due on October 29, 1999. This allows the rest of the dates in the schedule to remain the same.

### **III.CONCLUSION**

Since adjusting this date early in the proceedings will not prejudice the parties to this matter, and will lead to a more efficient discovery and hearing process, PSE respectfully requests that the Commission grant its motion and amend the First Supplemental Order to allow the parties to issue their last set of data requests on October 19, 1999.

**DATED: July 19, 1999.**

**PERKINS COIE LLP**

By

Andrée G. Gagnon, WSBA #27480  
Attorneys for Respondent  
PUGET SOUND ENERGY, INC.