

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRUCE WILLIAM STANSBURY	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO. 2008-00277
	)	
SHELBY ENERGY COOPERATIVE, INC.	)	
	)	
DEFENDANT	)	

O R D E R

On October 14, 2008, Shelby Energy Cooperative, Inc. ("Shelby Energy") filed a motion to strike Bruce William Stansbury's ("Complainant") October 3, 2008 response to Shelby Energy's September 5, 2008 answer and motion to dismiss on grounds that the response was not signed by Complainant's attorney of record.

Also on October 14, 2008, Shelby Energy filed a motion to reconsider and amend and/or motion for rehearing of the Commission's September 23, 2008 determination denying confidentiality as to certain documents filed by Complainant as attachments to his original July 7, 2008 complaint. Shelby Energy's motion for reconsideration concerns only pages 1 and 2 of Exhibit A to Complainant's July 7, 2008 complaint. These pages contain information regarding personal health matters of certain Shelby Energy employees and information relating to the personnel records of certain Shelby Energy employees.

On October 24, 2008, the Commission entered an Order granting Shelby Energy's motion for rehearing and requiring the Complainant to file a response to both the motion to strike and the motion for reconsideration of the confidentiality

determination. On November 3, 2008, Complainant filed a response to the motion for confidentiality in which he stated that the information on pages 1 and 2 of Exhibit A was not obtained from any confidential personnel records or medical records maintained by Shelby Energy or from any Shelby Energy employee with access to such records. Rather, Complainant claims that the information was either "common knowledge at Shelby Energy," where he was formerly employed, or was communicated directly to him by the person to whom the information refers. The response does not directly address the merits of the motion to strike. Complainant did attach a copy of his October 3, 2008 response, which now contains his attorney's signature but is otherwise identical to the previously filed response.

In its November 7, 2008 reply, Shelby Energy argues that Complainant failed to address its motion to strike and, for that reason, urges the Commission to grant its motion. With regard to the motion for rehearing, Shelby Energy states that it "does not possess sufficient information to determine whether or not the information for which confidentiality is sought was obtained from employee medical or personnel records and, if it was not obtained from confidential records, the sources of that information." However, Shelby Energy argues that "the private employee medical and personnel information should not be posted on a government public website," and that "[t]he information in question is clearly personal information where public disclosure would constitute an unwarranted invasion of personal privacy."

#### MOTION TO RECONSIDER CONFIDENTIALITY DETERMINATION

Having reviewed the motions and being otherwise sufficiently advised, the Commission finds that Shelby Energy's motion to reconsider the September 23, 2008 confidentiality determination should be granted in part and denied in part.

KRS 61.878(1)(a) provides that, “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy,” are exempt from the disclosure requirements of the Kentucky Open Records Act under KRS 61.872. The Commission finds that pages 1 and 2 of Exhibit A to Complainant’s July 7, 2008 Complaint are not health records or personnel records maintained by Shelby Energy. Rather, the record shows that the documents are notes made by the Complainant regarding factual information about certain Shelby Energy employees that he learned during the time he was employed by Shelby Energy.

The factual information in question is not in the form of a confidential health record or personnel record, but is information that at one time may have been contained only in confidential records and has been made public by its dissemination in the Shelby Energy workplace. Therefore, the factual information itself is not subject to the nondisclosure provisions of KRS 61.878(1)(a). However, the Commission finds that, in this case, the disclosure of the information in the documents, along with the names of the Shelby Energy employees to whom that information applies, does constitute an unwarranted invasion of those employees’ personal privacy, and, furthermore, the identification of those individuals has no relevance to the claims raised by the Complainant. Therefore, while the factual information contained on pages 1 and 2 of Exhibit A is not entitled to confidentiality, the names of those Shelby Energy employees listed on the documents for whom Shelby Energy sought confidentiality in its October 14, 2008 motion for rehearing and any information identifying their employment positions and work locations should be redacted. Shelby Energy should redact the names of the Shelby Energy employees and any information identifying their

employment positions and work locations on pages 1 and 2 of Exhibit A and file the redacted copy with the Commission.

MOTION TO STRIKE RESPONSE TO SHELBY ENERGY'S ANSWER

The Commission finds that Shelby Energy's motion to strike Complainant's response to Shelby Energy's answer and motion to dismiss should be denied.

807 KAR 5:001, Section 3(4), provides that "[e]very pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address." This regulation applies to all pleadings, including those pleadings filed in a complaint case (after the initial complaint), where, as here, the filing party has hired an attorney to represent him in his case. Undue confusion would result if a party represented by an attorney filed pleadings which were not signed by that party's attorney.

However, in this case, Complainant refiled his pleading, with his counsel's signature, on November 3, 2008. The pleading is identical in all respects to his October 3, 2008 pleading, except for the signature line. Therefore, the denial of the motion to strike does not prejudice Shelby Energy, which filed a reply to the Complainant's response on October 14, 2008.

The Commission notes that, with the denial of Shelby Energy's motion to strike, it has taken Shelby Energy's motion to dismiss under consideration and will issue its ruling on that motion in a separate, forthcoming Order.

IT IS THEREFORE ORDERED that:

1. Shelby Energy's motion to strike Complainant's October 3, 2008 response to Shelby Energy's answer is denied.

2. Shelby Energy's motion for reconsideration of the September 23, 2008 confidentiality determination is granted in part and denied in part.

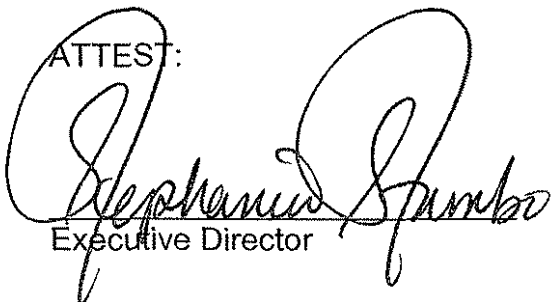
3. Within 10 days of the date of this Order, Shelby Energy shall submit a copy of pages 1 and 2 of Exhibit A to Complainant's July 7, 2008 complaint, redacting the names of those Shelby Energy employees for whom Shelby Energy sought confidentiality in its October 14, 2008 motion for rehearing and any information identifying their employment positions and work locations.

4. The Commission shall place the original, unredacted pages 1 and 2 of Exhibit A to Complainant's July 7, 2008 complaint in the confidential folder of the administrative record of this case, and shall place the redacted version of pages 1 and 2 of Exhibit A, filed by Shelby Energy in compliance with this Order, in the administrative record.

Done at Frankfort, Kentucky, this 2nd day of December, 2008.

By the Commission

ATTEST:

  
Stephanie Spumbo  
Executive Director